



**South  
Carolina  
Bar**

**House of Delegates**



January 2019

Dear Member of the House:

Happy New Year everyone! Welcome to the 2019 House of Delegates.

The House of Delegates of the South Carolina Bar will convene promptly at 11:00 a.m. on Thursday, January 17, 2019, in the Atlantic Ballroom at Myrtle Beach Marriott Resort and Spa at Grande Dunes during the Bar Convention. When you arrive, please be certain to sign in so that the minutes will reflect your attendance. Lunch will be served at the start of the meeting. We will begin the business portion of the meeting as soon as practicable thereafter.

The proposed agenda precedes the first tab of the attached book. You may remove for discussion any item from the Consent Agenda before the agenda is adopted at the start of the meeting. Please remember the restrictions on positions which may be supported by a mandatory bar association. There is a brief description of these restrictions behind the agenda.

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

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

I look forward to our first House of Delegates meeting of 2019 and to seeing and spending some time with all of you in Myrtle Beach. If I can assist you in any way prior to the meeting, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in black ink that reads "Rusty Infinger".

Rusty Infinger  
Chair



January 2019

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 Myrtle Beach.

I look forward to seeing you there!

Sincerely,

A handwritten signature in dark ink that reads "M. Dawes Cooke, Jr." in a cursive script.

M. Dawes Cooke, Jr.  
President

**AGENDA**  
**SOUTH CAROLINA BAR HOUSE OF DELEGATES**  
**JANUARY 17, 2019 @ 11:00 A.M.**

CALL TO ORDER  
SET THE AGENDA

Russell T. Infinger  
Chair

- |     |   |  |
|-----|---|--|
| 1.  | Approval of Consent Agenda  | Russell T. Infinger<br>Chair                       |
|     | a. Approval of Minutes of Meeting Held on May 24, 2018  |  |
|     | b. Receipt of November Financial Statements   |  |
|     | c. Request from Solo and Small Firm Section to Amend Bylaws   |  |
|     | d. Request from Dispute Resolution Section to Amend Bylaws  |  |
| 2.  | Recognition of Law Day Essay Contest Winner   | Hon. Benjamin H. Culbertson<br>Circuit Court Judge |
| 3.  | Report of the President   | M. Dawes Cooke, Jr.<br>President                   |
| 4.  | Report from South Carolina Bar Foundation, Inc.   | Megan Sweeney Seiner<br>Executive Director         |
| 5.  | Request from Practice and Procedure Committee to Amend Rule 5(b)(1), SCRCF  | Jonathan W. Lounsberry<br>Committee Chair          |
| 6.  | Request from the Pro Bono Board to Amend Commentary to Canon 4B of the Code of Judicial Conduct, Rule 501, SCACR                                  | Jeffrey S. Tibbals, Sr.<br>Chair                   |
| 7.  | Request from the Pro Bono Board to Amend Rule 426, SCACR  | Jeffrey S. Tibbals, Sr.<br>Chair                   |
| 8.  | Request from the Professional Responsibility Committee to Amend Rule 3.8 of the Rules of Professional Conduct                                     | Michael J. Virzi<br>Committee Member               |
| 9.  | Request from the Professional Responsibility Committee to Amend Rules 1.0, 1.1, 1.18, 4.4, 5.3, 5.5, and 8.5 of the Rules of Professional Conduct | Michael J. Virzi<br>Committee Member               |
| 10. | Request from the Dispute Resolution Section to Recommend that the Legislature Repeal §38-77-710   | Harry L. Goldberg<br>Section Member                |
| 11. | Request from the Richland County Bar Association for Funding for the SC Supreme Court Security and Beautification Project                         | John F. McKenzie<br>Immediate Past President       |

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 24, 2018

The House met on May 24, 2018, at Wild Dunes Resort on Isle of Palms. Present were: Samuel K. Allen; J. Leeds Barroll, IV; Mark S. Berglind; Susan B. Berkowitz; Maryann E. Blake; J. Steedley Bogan; Melody J. E. Breeden; George P. Callison, Jr.; Sherri Marie Carr; Beverly A. Carroll; George B. Cauthen; Randall L. Charpia; Nicholas J. Clekis; Amie L. Clifford; M. Dawes Cooke, Jr.; Lee Deer Cope; Leslie A. Cotter, Jr.; Stephen M. Cox; Elise Freeman Crosby; Rhett C. Dunaway; Walter G. Dusky; Eric K. Englehardt; Debra J. Gammons; Kenneth S. Generette; C. Allen Gibson, Jr.; Jack W. Hammack; Daryl G. Hawkins; John Croom Colvin Hunter; Russell Thomas Infinger; Jacob H. Jennings; Lindsay Anne Joyner; Catherine H. Kennedy; Christopher R. Koon; Lanneau Wm. Lambert, Jr.; Roy Free Laney; Jonathan W. Lounsberry; Garry Donald Malphrus; Walter Keith Martens; David Andrew Maxfield; J. Edwin McDonnell; Joseph S. Mendelsohn; David B. Miller; Julie Jeffords Moose; Meredith Brooks Moss; Randall K. Mullins; Ivory L. Narcisse; Adam Christopher Ness; William M. O'Bryan, Jr.; Cynthia Hall Ouzts; Jason P. Peavy; Benjamin R. Pogue, III; John Edward Robinson; Pamela DeFanti Robinson; John Edward Rosen; John Edward Roxon; Martha Kent Runey; Nancy Doherty Sadler; Stephen T. Savitz; Barbara Marie Seymour; Mary Elizabeth Sharp; Cheryl D. Shoun; Jane Opitz Shuler; Lana H. Sims, Jr.; Michael Benjamin Smith; Megan Finch Stevens; Randell Croft Stoney, III; Hal M. Strange; Fred W. Suggs, Jr.; David L. Tedder; William R. Thomas; John Hagood Tighe; Regina Bechtler Ward; Bradish J. Waring; Elizabeth H. Warner; Dean Robert M. Wilcox; Donald B. Wildman; Mitchell Willoughby; William M. Wilson, III; Carrington S.B. Wingard; William K. Witherspoon; David Whitten Wolf; and J. Rutledge Young, Jr.

Guests present were Lyndey Bryant; Megan Dell; Amy Hill, J. René Josey, Gary Lemel; Thomas Pendarvis; Nathan Sheldon and Megan Seiner.

Representing the Bar staff were: Cindy A. Coker; Stinson Ferguson; Jeremy Frazier; Leah G. Johnson; Charmy Medlin; Allison Rock; David M. Ross; Jason Stokes; Leigh G. Thomas and Kali Turner.

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

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

Mr. Tighe stated that Agenda Item #1(c), Request from Dispute Resolution Section to Amend Section Bylaws, had been added to the Consent Agenda. He also noted that Agenda Item #10, Request from the Practice and Procedure Committee to Amend Rule 71 and Agenda Item #11, Request from the Dispute Resolution Section to Repeal §38-78-

Minutes, House of Delegates  
May 24, 2018  
Page two

710, had been withdrawn. Ms. Joyner moved to adopt the agenda as amended. The motion was seconded, and it was approved.

Mr. Robinson moved to approve the Consent Agenda - approval of the minutes of the January 18, 2018, meeting; receipt of March Financial Statements and a request from the Dispute Resolution Section to amend Section bylaws. The motion was seconded, and it was approved.

Mr. Suggs recognized the 2018 Pro Bono Lawyer of the Year, Megan Dell.

Ms. Ferguson recognized the 2018 Pro Bono Law Firm of the Year, Murphy & Grantland, PA.

Ms. Joyner recognized the 2018 Young Lawyer of the Year, Lyndey Bryant.

Mr. Cox recognized the 2018 Law Related Education Lawyers of the Year, Gary Lemel and Nathan Sheldon.

Ms. Warner recognized the 2018 Mentor of the Year, Brian Autry.

Mr. Josey and 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. They encouraged House members to contribute to the Foundation.

Under report of the President, Ms. Warner recognized, in his absence, the conclusion of service of retired Executive Director Bob Wells and noted his intent to match donations to the SC Bar Foundation up to \$10,000. She introduced and welcomed new Executive Director, David Ross. Ms. Warner noted the completion of year three of the strategic plan. She provided updates on Lawyers Helping Lawyers, Next Gen, the rebuilding of Public Services and the Pro Bono Program, CLE Programming and Young Lawyer Division programming and projects. In closing, she recognized Assistant Executive Director, Leah Johnson, who was elected to serve as Vice President of the National Association of Bar Executives and thanked the House of Delegates and Bar staff for their dedication and support.

Next, Mr. Cauthen presented a request to support U.S. Senate Bill 2282, the Bankruptcy Venue Reform Act, designed to rebalance where commercial Chapter 11 bankruptcy cases

were commenced. He moved approval of the request. The motion was seconded, and it was approved.

Ms. Hill and Mr. Pendarvis presented request from the Professional Responsibility Committee to amend Rules 1.0, 1.1 and 1.6 of the Rules of Professional Conduct. A motion was made to adopt the proposed changes to Rule 1.0. The motion was seconded, and it was approved.

Mr. Tedder moved approval of the proposed changes to Rule 1.1. The motion was seconded. Mr. Barroll moved to strike the proposed changes to Rule 1.1 and to leave the comments as written. The motion was seconded. Discussion ensued.

A motion was made to stand in recess to conduct the Assembly. The motion was seconded, and it was approved.

The House reconvened following the conclusion of the Assembly.

Discussion resumed on the Professional Responsibility Committee proposal to amend Rule 1.1. After further discussion, Ms. Gammons called the question on Mr. Barroll's motion to strike changes, and a vote was taken. The motion failed. Mr. Willoughby and Mr. Miller spoke in support of the motion. The motion to strike changes to Rule 1.1 was approved.

Discussion resumed on the motion to approve the comments to Rule 1.1. Ms. Kennedy moved to amend Comment #7 as follows:

*"... a lawyer has the discretion to associate or retain the services of a non-lawyer advisor with ~~of established~~ technological competence..."*

The motion was seconded, and it was approved.

Mr. Tedder moved to amend Comment #7 as follows:

*In connection with providing competent representation, ~~having a reasonable understanding of the benefits and risks associated with relevant technology~~, a lawyer has the discretion...."*

The motion to amend was approved.

Minutes, House of Delegates  
May 24, 2018  
Page four

Mr. Tedder moved to adopt the proposed changes to Rule 1.6 and the comments. The motion was seconded. Mr. Barroll moved to strike the changes to the rule and to leave the comments. The motion to strike the rule changes and leave the comments was seconded, and it was approved.

Mr. Tedder moved to replace the words "*paragraph c*" in Comment #20 with the words "*Rule 1.6.*" The motion was seconded, and it was approved.

The main motion to adopt the comments as amended was approved.

The following members were elected to the Nominating Committee: Daryl Hawkins (Region 2) and Carrington Wingard (Region 3).

Ms. Carroll presented Bar and CLE Division budgets for 2018-19 and moved approval. The motion was seconded, and it was approved.

Mr. Cooke recognized outgoing Bar President Warner with a commemorative plaque and gift.

There being no further business, the meeting was adjourned.

Minutes  
South Carolina Bar Assembly  
May 24, 2018

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

President Warner 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 Stephanie McDonald presented brief remarks and installed M. Dawes Cooke, Jr., as President of the South Carolina Bar. Mr. Cooke was recognized to make remarks.

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

TO: House of Delegates

FM: Roy Laney, Treasurer

DT: January 2019

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 \$1,147,011. 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 2019 license renewal and fees towards building will appear in the January statements.

Section funds increased \$16,507; which reflected dues collection for 2019; see page 6. Monies held in grants and other funds increased \$100,802; Law Related Education grant negative balance reflected a shortfall in allotments received from the Bar Foundation; see page 7.

Through November the net effect on general operating funds was a decrease of \$1,264,319, a figure found at the end of the third numerical column on page 2. (The decrease last year at the end of November was \$1,257,029.) The fourth column on that same page indicates the expected loss was \$1,345,400. Thus, the general operating funds are about \$81,081 ahead of budget.

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

License Fees: More members paying half-year dues than was projected in the budget.

Lawyer Referral Service Percentage Fees: Chiefly a settlement in a personal injury case.

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

Marketing Fees: More in royalties for usage were received from West.

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

Salaries: Positions were unfilled during the fiscal year.

FICA and Employee Benefits: Savings attributed to unfilled positions, no pension contributions were made for employees that resigned during the year, Internal Revenue Services issued a credit for FUTA overpayment.

Buildings: Reduction in SCE&G utilities cost.

Professional Fees: Human resources and attorney fees.

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

Delegate Expense: Fewer Delegates attended conferences.

Membership Services: Board approved reprinting of Daniel's Law-Safe haven brochures.

Bar Conference Center loan balance of \$574,027.44 was refinanced with a maturity date of 10/05/2021 at a rate of 4.375%

Mortgage balance at the end of November was \$548,952.89.

Page 10 reflects that the CLE Division's net loss was \$114,027. (The decrease last year at the end of November was \$185,303.) The budgeted loss was \$150,000, resulting in a positive position against budget of \$35,973.

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

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

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

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

Salaries: Positions were unfilled during the fiscal year.

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

Shipping: Shipping expense previously realized against seminars and publications as a general expense. In order to ascertain actual expense, we are now showing against shipping expense line.

Seminar Direct: There were seminars and a mediation training cancelled.

SOUTH CAROLINA BAR  
BALANCE SHEET  
For the Five Months Ending Friday, November 30, 2018

	YTD
<b>CURRENT ASSETS</b>	
CHECKING ACCOUNT	\$72,413.07
MONEY MARKET	1,373,770.44
DISCIPLINE ASSESSMENT	8,177.40
INVESTMENTS	1,144,558.34
ACCOUNT RECEIVABLES	(942.50)
PREPAID EXPENSES	153,301.61
CONTRA ACCOUNTS DUE	6,298.67
<b>TOTAL CURRENT ASSETS</b>	<b>\$2,757,577.03</b>
<b>PLANT</b>	
OFFICE EQUIPMENT	508,577.04
BUILDING & LAND	593,019.82
BUILDING # 2	6,115,290.69
DUE FROM CLE FIXED ASSETS	0.00
<b>TOTAL PLANT FUND</b>	<b>\$7,216,887.55</b>
<b>TOTAL ASSETS</b>	<b>\$9,974,464.58</b>
<b>CURRENT LIABILITIES</b>	
ACCOUNTS PAYABLE	33,276.54
PREPAID RENT	0.00
PERSONNEL PAYABLES	229,222.96
DUE:BF & COUNTY BAR	96,091.33
DEFERRED REVENUE	647,614.77
DEFERRED CONTRIBUTION TO USC	0.00
NOTES PAYABLE-CURRENT	672,921.25
RETAINAGE FOR NEW BUILDING	0.00
LEASE PAYABLE - CURRENT	0.00
SC SALES TAX REVENUE	0.00
<b>TOTAL CURRENT LIABILITIES</b>	<b>\$1,679,126.85</b>
<b>LONG TERM LIABILITIES</b>	
NOTES PAYABLE-LONG TERM	0.00
LEASE PAYABLE - LONG TERM	0.00
<b>TOTAL LONG TERM LIABILITIES</b>	<b>\$0.00</b>
<b>TOTAL LIABILITIES</b>	<b>\$1,679,126.85</b>
BEGINNING OF YEAR GENERAL FUND BALANCE	8,386,915.67
BEGINNING OF YEAR LAWYER REFERRAL FUND	489,866.76
BEGINNING OF YEAR GRANT FUND BALANCE	317,141.06
BEGINNING OF YEAR SECTION FUND BALANCE	241,390.40
<b>TOTAL BEGINNING OF YEAR FUND BALANCE</b>	<b>9,435,313.89</b>
YTD REVENUE	638,244.53
YTD EXPENSES	1,785,255.69
NET CHANGE	(1,147,011.16)
<b>FUND BALANCE</b>	<b>\$8,288,302.73</b>
<b>TOTAL LIABILITIES AND FUND BALANCE</b>	<b>\$9,967,429.58</b>

SOUTH CAROLINA BAR  
INCOME STATEMENT  
For the Five Months Ending Friday, November 30, 2018

	MONTHLY ACTUAL	MONTHLY BUDGET	YTD ACTUAL	YTD BUDGET	ANNUAL BUDGET
<b>REVENUE</b>					
LICENSE FEES	\$140.00	\$0.00	\$20,910.00	\$14,500.00	\$3,595,700.00
FEES TOWARDS BUILDING	0.00	0.00	2,835.00	1,000.00	461,200.00
INTEREST	867.83	500.00	6,735.31	3,900.00	21,000.00
LRS PERCENTAGE FEE	17,278.99	18,000.00	126,701.30	103,800.00	300,000.00
LRS SUBSCRIPTION FEE	6,200.00	1,700.00	37,250.00	66,400.00	67,400.00
MARKETING FEES	5,290.42	6,500.00	21,943.10	14,000.00	29,400.00
SC LAWYER	15,160.23	14,500.00	43,382.23	43,500.00	84,000.00
STAFF SUPPORT	0.00	0.00	0.00	0.00	51,700.00
RENTS RECEIVED	3,669.00	3,700.00	18,345.00	18,400.00	44,000.00
ADR CERTIFICATION	21,550.00	20,500.00	29,950.00	28,100.00	96,000.00
DUES COLLECTION FEES	1,705.90	1,900.00	1,705.90	1,900.00	15,100.00
MISCELLANEOUS	20.00	0.00	(16.96)	0.00	1,200.00
LAW STUDENT AFFILIATES	30.00	0.00	210.00	1,000.00	1,000.00
SALES TAX	0.00	0.00	22.89	0.00	100.00
<b>TOTAL REVENUES</b>	<b>\$71,912.37</b>	<b>\$67,300.00</b>	<b>\$309,973.77</b>	<b>\$296,500.00</b>	<b>\$4,767,800.00</b>
<b>EXPENSES</b>					
SALARIES	139,217.34	142,600.00	683,573.56	706,000.00	1,750,200.00
FICA & EMPLOYEE BENEFITS	20,112.80	26,200.00	154,564.21	181,700.00	512,300.00
BUILDINGS	12,379.33	13,100.00	67,489.61	75,800.00	210,100.00
EQUIPMENT & SOFTWARE	576.46	600.00	15,033.90	15,200.00	30,500.00
EQUIP. MAINTENANCE & LICENSES	10,319.91	11,700.00	65,269.63	68,700.00	168,900.00
OFFICE SUPPLIES	3,045.85	3,500.00	11,611.29	11,500.00	25,500.00
POSTAGE	6,828.22	7,000.00	8,418.91	8,500.00	11,000.00
TELEPHONE	1,142.68	1,200.00	7,340.35	6,000.00	16,400.00
PROFESSIONAL FEES	3,141.25	0.00	16,420.00	7,500.00	10,000.00
BOND/INSURANCE	940.75	900.00	4,703.75	4,300.00	11,200.00
STAFF EXPENSE	2,377.20	2,600.00	9,219.35	14,400.00	34,900.00
DUES/SUBSCRIPTIONS/BOOKS	0.00	900.00	1,751.00	3,300.00	4,400.00
CASUAL LABOR/HIRING	0.00	0.00	779.50	700.00	2,400.00
DELEGATE EXPENSE	0.00	0.00	21,772.93	38,700.00	75,200.00
OFFICERS' EXPENSE	0.00	0.00	0.00	0.00	4,200.00
MEMBERSHIP SERV. COMMITTEES	3,895.59	1,500.00	13,644.57	7,200.00	108,100.00
PRACTICE MANAGEMENT ASST.	443.89	0.00	2,302.71	3,800.00	15,100.00
RISK MANAGEMENT	125.35	0.00	888.00	900.00	9,000.00
MENTORING	1,094.77	1,000.00	4,535.86	5,200.00	13,000.00
LAWYERS HELPING LAWYERS	4,826.54	4,600.00	14,508.96	13,200.00	53,200.00
MEMBERSHIP BENEFITS	7,294.64	7,300.00	38,145.25	38,200.00	104,000.00
YOUNG LAWYERS	25,188.51	26,500.00	82,728.41	83,100.00	217,000.00
SENIOR LAWYERS	551.11	900.00	13,332.41	12,400.00	46,000.00
GOVERNMENT RELATIONS	1.35	0.00	1,185.27	1,000.00	38,300.00
JUDICIAL EVALUATION	301.49	0.00	4,574.17	3,200.00	3,200.00
PUBLIC SERVICE COMMITTEE	2,298.74	4,900.00	4,931.79	7,800.00	51,400.00
PRO BONO	948.64	1,000.00	7,747.40	8,100.00	62,600.00
ASK-A-LAWYER	41.95	0.00	575.32	300.00	8,300.00
CLIENT ASSISTANCE PROGRAM	73.79	100.00	216.84	400.00	1,000.00
ADR CERTIFICATION	90.28	200.00	901.80	900.00	8,000.00
REFERRAL SERV. MARKETING	13,010.70	12,000.00	28,348.51	26,600.00	127,100.00
LAW RELATED EDUCATION	14,547.26	15,000.00	32,320.80	33,500.00	165,600.00
PUBLIC RELATIONS	2,320.30	3,500.00	5,813.49	7,800.00	22,200.00
SC LAWYER	36,472.18	35,600.00	109,381.09	107,000.00	214,100.00
LAWYERS DESK BOOK	0.00	0.00	4,292.80	4,000.00	4,000.00
CONTRIBUTIONS	0.00	0.00	0.00	0.00	6,500.00
CREDIT CARD FEES	520.45	500.00	2,520.96	1,700.00	68,400.00
MISCELLANEOUS	102.08	0.00	681.30	300.00	1,500.00
SHORT TERM PROJECTS	0.00	0.00	0.00	0.00	10,000.00
LAW STUDENT AFFILIATES	14.31	0.00	14.31	1,000.00	4,300.00
SALES TAX	0.00	0.00	0.00	0.00	100.00
NEW BUILDING DEBT	26,400.00	26,400.00	132,753.12	132,000.00	316,800.00
<b>TOTAL EXPENSES</b>	<b>\$340,645.71</b>	<b>\$351,300.00</b>	<b>\$1,574,293.13</b>	<b>\$1,641,900.00</b>	<b>\$4,546,000.00</b>
<b>NET CHANGE</b>	<b>(\$268,733.34)</b>	<b>(\$284,000.00)</b>	<b>(\$1,264,319.36)</b>	<b>(\$1,345,400.00)</b>	<b>\$221,800.00</b>

**SOUTH CAROLINA BAR**  
**Government Relations**  
**Statement of Revenue and Expenses**  
For the Five Months Ending Friday, November 30, 2018

	<u>MONTHLY ACTUAL</u>	<u>MONTHLY BUDGET</u>	<u>YTD ACTUAL</u>	<u>YTD BUDGET</u>	<u>ANNUAL BUDGET</u>
<b>REVENUE</b>					
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>EXPENSES</b>					
SALARIES	0.00	0.00	0.00	0.00	0.00
FICA & EMPLOYEE BENEFITS	0.00	0.00	0.00	0.00	0.00
EQUIPMENT & FURNITURE	0.00	0.00	0.00	0.00	0.00
EQUIPMENT & MAINTENANCE	0.00	0.00	0.00	0.00	0.00
OFFICE SUPPLIES	0.00	0.00	0.00	0.00	0.00
POSTAGE	0.00	0.00	0.00	0.00	0.00
TELEPHONE	0.00	0.00	0.00	0.00	0.00
PROFESSIONAL FEES	0.00	0.00	0.00	0.00	0.00
STAFF EXPENSE	0.00	0.00	0.00	0.00	0.00
GOVERNMENT RELATIONS	1.35	0.00	1,185.27	1,000.00	38,300.00
<b>TOTAL EXPENSES</b>	<u>\$1.35</u>	<u>\$0.00</u>	<u>\$1,185.27</u>	<u>\$1,000.00</u>	<u>\$38,300.00</u>
<b>NET BALANCE</b>	<u>(\$1.35)</u>	<u>\$0.00</u>	<u>(\$1,185.27)</u>	<u>(\$1,000.00)</u>	<u>(\$38,300.00)</u>

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

<b>REVENUE</b>					
LRS PARTICIPATION FEES	\$17,278.99	\$18,000.00	\$126,701.30	\$103,800.00	\$300,000.00
LRS SUBSCRIPTION FEES	6,200.00	1,700.00	37,250.00	66,400.00	67,400.00
<b>TOTAL REVENUES</b>	<u>\$23,478.99</u>	<u>\$19,700.00</u>	<u>\$163,951.30</u>	<u>\$170,200.00</u>	<u>\$367,400.00</u>
<b>EXPENSES</b>					
SALARIES	7,363.25	7,400.00	36,816.25	37,000.00	88,800.00
FICA & EMPLOYEE BENEFITS	1,782.89	2,400.00	11,226.29	14,500.00	37,700.00
BUILDING	700.00	700.00	3,600.00	3,600.00	8,700.00
EQUIPMENT & FURNITURE	0.00	0.00	0.00	0.00	1,500.00
EQUIPMENT & MAINTENANCE	700.00	700.00	3,500.00	3,500.00	8,500.00
OFFICE SUPPLIES	0.00	0.00	0.00	0.00	1,500.00
POSTAGE	45.45	0.00	146.49	500.00	1,000.00
TELEPHONE	72.12	100.00	377.74	500.00	1,200.00
PROFESSIONAL FEES	0.00	0.00	0.00	400.00	2,900.00
STAFF EXPENSE	0.00	0.00	0.00	0.00	400.00
BOND / INSURANCE	0.00	0.00	0.00	0.00	600.00
DUES /SUBSCRIPTIONS	0.00	0.00	0.00	0.00	0.00
CASUAL LABOR	0.00	0.00	0.00	0.00	0.00
ADVERTISING	12,625.17	11,800.00	26,379.92	25,200.00	124,500.00
GENERAL EXPENSES	385.53	200.00	1,968.59	1,400.00	2,600.00
<b>TOTAL EXPENSES</b>	<u>\$23,674.41</u>	<u>\$23,300.00</u>	<u>\$84,015.28</u>	<u>\$86,600.00</u>	<u>\$279,900.00</u>
<b>NET BALANCE</b>	<u>(\$195.42)</u>	<u>(\$3,600.00)</u>	<u>\$79,936.02</u>	<u>\$83,600.00</u>	<u>\$87,500.00</u>

SOUTH CAROLINA BAR  
Statement of Revenue and Expense  
Young Lawyers Division  
For the Five Months Ending Friday, November 30, 2018

	<u>MONTHLY ACTUAL</u>	<u>MONTHLY BUDGET</u>	<u>YTD ACTUAL</u>	<u>YTD BUDGET</u>	<u>ANNUAL BUDGET</u>
<b>REVENUE</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>EXPENSES</b>					
ANNUAL CONVENTION	0.00	0.00	10,000.00	10,000.00	40,000.00
SERVICE TO THE PUBLIC	13,023.00	13,000.00	16,272.65	16,400.00	45,100.00
SERVICE TO THE BAR	5,814.77	5,400.00	12,094.92	11,600.00	38,600.00
STRATEGIC PLANNING	0.00	0.00	0.00	0.00	19,000.00
DELEGATE EXPENSE	5,779.36	6,900.00	38,119.55	38,300.00	54,500.00
ADMINISTRATIVE	361.13	300.00	1,230.56	1,400.00	3,500.00
PUBLICATIONS/SCYL	0.00	700.00	3,574.70	4,000.00	14,300.00
PROJECT COMPLETION	210.25	200.00	1,436.03	1,400.00	2,000.00
<b>TOTAL EXPENSES</b>	<u>\$25,188.51</u>	<u>\$26,500.00</u>	<u>\$82,728.41</u>	<u>\$83,100.00</u>	<u>\$217,000.00</u>
<b>NET BALANCE</b>	<u>(\$25,188.51)</u>	<u>(\$26,500.00)</u>	<u>(\$82,728.41)</u>	<u>(\$83,100.00)</u>	<u>(\$217,000.00)</u>

SOUTH CAROLINA BAR  
SECTIONS FUND BALANCES  
For the Five Months Ending Friday, November 30, 2018

	YTD
<b>CONSTRUCTION LAW SECTION</b>	
BEGINNING FY FUND BALANCE	\$21,255.83
YTD REVENUE	1,193.81
YTD EXPENSES	2,150.70
FUND BALANCE	\$20,298.94
<b>CONSUMER LAW SECTION</b>	
BEGINNING FY FUND BALANCE	3,007.52
YTD REVENUE	360.00
YTD EXPENSES	0.00
FUND BALANCE	\$3,367.52
<b>CORPORATE, BANKING &amp; SECURITIES SECTION</b>	
BEGINNING FY FUND BALANCE	24,461.29
YTD REVENUE	900.00
YTD EXPENSES	0.00
FUND BALANCE	\$25,361.29
<b>CRIMINAL LAW SECTION</b>	
BEGINNING FY FUND BALANCE	19,285.09
YTD REVENUE	840.00
YTD EXPENSES	0.00
FUND BALANCE	\$20,125.09
<b>DISPUTE RESOLUTION SECTION</b>	
BEGINNING FY FUND BALANCE	5,694.85
YTD REVENUE	825.00
YTD EXPENSES	0.00
FUND BALANCE	\$6,519.85
<b>EMPLOYMENT AND LABOR LAW SECTION</b>	
BEGINNING FY FUND BALANCE	1,367.32
YTD REVENUE	895.57
YTD EXPENSES	1,135.20
FUND BALANCE	\$1,127.69
<b>ENVIRONMENTAL &amp; NATURAL RESOURCES SECTION</b>	
BEGINNING FY FUND BALANCE	8,374.85
YTD REVENUE	575.00
YTD EXPENSES	0.00
FUND BALANCE	\$8,949.85
<b>FAMILY LAW SECTION</b>	
BEGINNING FY FUND BALANCE	14,188.77
YTD REVENUE	3,109.96
YTD EXPENSES	20.38
FUND BALANCE	\$17,278.35
<b>GOVERNMENT LAW SECTION</b>	
BEGINNING FY FUND BALANCE	3,077.30
YTD REVENUE	435.00
YTD EXPENSES	0.00
FUND BALANCE	\$3,512.30
<b>HEALTH CARE LAW SECTION</b>	
BEGINNING FY FUND BALANCE	6,465.88
YTD REVENUE	900.00
YTD EXPENSES	0.00
FUND BALANCE	\$7,365.88

SOUTH CAROLINA BAR  
 SECTIONS FUND BALANCES  
 For the Five Months Ending Friday, November 30, 2018

	YTD
<b>MILITARY LAW SECTION</b>	
BEGINNING FY FUND BALANCE	370.33
YTD REVENUE	300.00
YTD EXPENSES	450.07
FUND BALANCE	\$220.26
<b>PROBATE, ESTATE PLANNING AND TRUST</b>	
BEGINNING FY FUND BALANCE	7,353.09
YTD REVENUE	1,950.00
YTD EXPENSES	61.02
FUND BALANCE	\$9,242.07
<b>REAL ESTATE PRACTICE SECTION</b>	
BEGINNING FY FUND BALANCE	26,255.20
YTD REVENUE	2,475.00
YTD EXPENSES	0.00
FUND BALANCE	\$28,730.20
<b>SOLO AND SMALL FIRM PRACTITIONERS</b>	
BEGINNING FY FUND BALANCE	16,933.58
YTD REVENUE	4,760.00
YTD EXPENSES	3,175.29
FUND BALANCE	\$18,518.29
<b>TAX LAW SECTION</b>	
BEGINNING FY FUND BALANCE	6,123.70
YTD REVENUE	660.00
YTD EXPENSES	100.00
FUND BALANCE	\$6,683.70
<b>TORTS AND INSURANCE PRACTICE SECTION</b>	
BEGINNING FY FUND BALANCE	51,047.07
YTD REVENUE	1,530.00
YTD EXPENSES	0.00
FUND BALANCE	\$52,577.07
<b>TRIAL AND APPELLATE ADVOCACY SECTION</b>	
BEGINNING FY FUND BALANCE	21,075.10
YTD REVENUE	690.00
YTD EXPENSES	0.00
FUND BALANCE	\$21,765.10
<b>WORKERS' COMPENSATION SECTION</b>	
BEGINNING FY FUND BALANCE	5,053.63
YTD REVENUE	1,200.00
YTD EXPENSES	0.00
FUND BALANCE	\$6,253.63
BEGINNING OF YEAR FUND BALANCE	241,390.40
YTD REVENUE	23,599.34
YTD EXPENSES	7,092.66
ENDING FUND BALANCE	\$257,897.08

GRANTS & OTHER  
FUND BALANCES  
For the Five Months Ending Friday, November 30, 2018

	YTD
ASK-A-LAWYER 17/18	
YTD REVENUE	\$12,500.00
YTD EXPENSES	12,472.08
FUND BALANCE	\$27.92
LRE GRANT FUND 17/18	
YTD REVENUE	83,331.00
YTD EXPENSES	89,426.15
FUND BALANCE	(\$6,095.15)
LRE SALES AND REGISTRATIONS	
BEGINNING OF YEAR FUND BALANCE	59,346.74
YTD REVENUE	15,475.00
YTD EXPENSES	81.98
FUND BALANCE	\$74,739.76
JMLP (LRE) GRANT	
BEGINNING OF YEAR FUND BALANCE	63,953.65
YTD REVENUE	0.00
YTD EXPENSES	55,339.74
FUND BALANCE	\$8,613.91
PRO BONO OTHER	
BEGINNING OF YEAR FUND	5,950.00
YTD REVENUE	750.00
YTD EXPENSES	2,511.59
FUND BALANCE	\$4,188.41
SC ACCESS TO JUSTICE COMMISSION (IOLTA) 17/18	
YTD REVENUE	0.00
YTD EXPENSES	0.00
FUND BALANCE	\$0.00
PB INDIGENT SERVICE FEE	
BEGINNING OF YEAR FUND	119,891.73
YTD REVENUE	17,230.00
YTD EXPENSES	35,144.61
FUND BALANCE	\$101,977.12
DISCIPLINARY FUND 17/18	
BEGINNING OF YEAR FUND	3,347.40
YTD REVENUE	142,730.42
YTD EXPENSES	10.00
FUND BALANCE	\$146,067.82
DISPUTED FEES	
BEGINNING OF YEAR FUND	19,641.11
YTD REVENUE	0.00
YTD EXPENSES	0.00
FUND BALANCE	\$19,641.11
LAWYER REFERRAL SERVICE	
BEGINNING OF YEAR FUND	489,866.76
YTD REVENUE	0.00
YTD EXPENSES	0.00
FUND BALANCE	\$489,866.76

GRANTS & OTHER  
 FUND BALANCES  
 For the Five Months Ending Friday, November 30, 2018

	<u>YTD</u>
LGOA GRANT - PRO BONO	
BEGINNING OF YEAR FUND BALANCE	8,740.92
YTD REVENUE	0.00
YTD EXPENSES	323.77
FUND BALANCE	\$8,417.15
PARALEGAL CERTIFICATION	
BEGINNING OF YEAR FUND BALANCE	2,087.49
YTD REVENUE	3,825.00
YTD EXPENSES	0.00
FUND BALANCE	\$5,912.49
BANK OF AMERICA GRANT	
BEGINNING OF YEAR FUND BALANCE	34,182.02
YTD REVENUE	28,830.00
YTD EXPENSES	8,559.98
FUND BAANCE	\$54,452.04
BEGINNING OF YEAR FUND BALANCE	807,007.82
YTD REVENUE	304,671.42
YTD EXPENSES	203,869.90
ENDING FUND BALANCE	\$907,809.34

LAWYERS' FUND  
 STATEMENT OF REVENUE AND EXPENSES  
 WITH BALANCE SHEET  
 For the Five Months Ending Friday, November 30, 2018

	November	YTD
<b>REVENUES</b>		
ANNUAL ASSESSMENTS	\$0.00	\$3,225.00
CONTRIBUTIONS	27,984.12	36,060.59
INTEREST	1,169.34	7,137.84
<b>TOTAL REVENUES</b>	<b>\$29,153.46</b>	<b>\$46,423.43</b>
<b>EXPENSES</b>		
AWARDS	5,510.00	155,390.72
<b>TOTAL EXPENSES</b>	<b>\$5,510.00</b>	<b>\$155,390.72</b>
<b>NET CHANGE</b>	<b>\$23,643.46</b>	<b>(\$108,967.29)</b>

**BALANCE SHEET**

<b>ASSETS</b>	
LFCP CHECKING	2,687.04
LFCP MONEY MARKET	283,464.77
INVESTMENTS	1,471,211.83
<b>TOTAL ASSETS</b>	<b>\$1,757,363.64</b>
<b>LIABILITIES</b>	
<b>FUND BALANCE</b>	
BEGINNING OF YEAR FUND BALANCE	1,866,330.93
YTD REVENUE	46,423.43
YTD EXPENSES	155,390.72
NET CHANGE	(108,967.29)
<b>FUND BALANCE</b>	<b>\$1,757,363.64</b>
<b>TOTAL LIABILITIES AND FUND BALANCE</b>	<b>\$1,757,363.64</b>

**SOUTH CAROLINA BAR CLE - DIVISION**  
**BALANCE SHEET**  
For the Five Months Ending Friday, November 30, 2018

**CURRENT ASSETS**

SCBT CHECKING	\$390,742.61
MONEY MARKET/INVESTMENTS	514,491.10
PETTY CASH	150.00
ACCOUNT RECEIVABLES	14,836.28
PRE-PAID EXPENSE	66,240.96
GENERAL INVENTORY	110,593.07
<b>TOTAL CURRENT ASSETS</b>	<b>\$1,097,054.02</b>

CAPITAL ASSETS	20,709.70
<b>TOTAL ASSETS</b>	<b>\$1,117,763.72</b>

**CURRENT LIABILITIES**

ACCOUNTS PAYABLE	24,100.59
DUE:COMPANY 1	93.26
REFUNDS PAYABLE	0.00
CLE VACATION PAYABLE	102,123.76
FACILITIES PAYABLE	0.00
SEMINAR DEFERRED REVENUE	212,622.00
CASH HOLDING ACCOUNT	0.00
CONVENTION CASH HOLDING	85,225.00
SALES TAX RECEIVED	0.00
<b>TOTAL CURRENT LIABILITIES</b>	<b>\$424,164.61</b>

BEGINNING OF YEAR FUND BALANCE	807,626.56
YTD REVENUE	739,330.44
YTD EXPENSE	853,357.89
<b>NET CHANGE</b>	<b>(114,027.45)</b>

FUND BALANCE	\$693,599.11
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<b>TOTAL LIABILITIES AND FUND BALANCE</b>	<b>\$1,117,763.72</b>
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**SOUTH CAROLINA BAR CLE - DIVISION**  
**INCOME STATEMENT**  
For the Five Months Ending Friday, November 30, 2018

	<u>MONTHLY ACTUAL</u>	<u>MONTHLY BUDGET</u>	<u>YTD ACTUAL</u>	<u>YTD BUDGET</u>	<u>ANNUAL BUDGET</u>
<b>REVENUE</b>					
SEMINAR INCOME	\$100,540.00	\$86,000.00	\$429,780.00	\$461,700.00	\$1,250,000.00
E-CLE ACCESS	22,430.00	20,000.00	70,754.40	68,900.00	450,000.00
PUBLICATION INCOME	32,564.39	25,000.00	175,338.70	153,000.00	340,000.00
SCJ ROYALTY INCOME	0.00	0.00	48,919.99	47,500.00	95,000.00
CONVENTION	0.00	0.00	0.00	0.00	334,200.00
INTEREST INCOME	307.81	0.00	1,329.16	0.00	700.00
BUILDING RENTAL	1,100.00	700.00	3,500.00	3,600.00	8,500.00
SHIPPING REVENUE	1,845.72	2,000.00	9,708.19	10,000.00	24,400.00
<b>TOTAL REVENUE</b>	<b>\$158,787.92</b>	<b>\$133,700.00</b>	<b>\$739,330.44</b>	<b>\$744,700.00</b>	<b>\$2,502,800.00</b>
<b>EXPENSE</b>					
CLE SALARIES	69,630.92	72,300.00	343,412.99	361,500.00	867,600.00
BENEFITS	14,754.28	16,800.00	99,540.38	115,400.00	308,000.00
BUILDING ACCOUNT	5,300.00	5,300.00	28,172.00	26,500.00	63,600.00
EQUIPMENT & FURNITURE	0.00	0.00	1,340.23	500.00	13,000.00
EQUIPMENT MAINTENANCE	19,046.21	19,200.00	42,889.59	42,600.00	84,700.00
OFFICE SUPPLY EXPENSE	478.76	600.00	2,353.13	2,600.00	6,800.00
POSTAGE EXPENSE	77.25	100.00	310.40	300.00	1,000.00
SHIPPING EXPENSE	1,618.24	0.00	10,552.12	0.00	0.00
TELEPHONE EXPENSE	742.31	800.00	4,326.17	4,000.00	9,800.00
STAFF EXPENSE	1,028.13	800.00	4,174.75	3,500.00	9,100.00
STAFF EDUCATION	0.00	0.00	5,244.28	5,200.00	9,700.00
CLE COMMITTEE EXPENSE	5.19	0.00	84.05	0.00	500.00
BOND & INSURANCE	940.75	900.00	4,703.75	4,300.00	10,600.00
PROFESSIONAL FEES	0.00	0.00	5,642.50	6,000.00	7,000.00
CASUAL LABOR	0.00	0.00	280.00	300.00	500.00
SEMINAR DIRECT	52,207.09	33,700.00	155,083.67	174,100.00	324,700.00
E-CLE ACCESS	8,239.02	8,500.00	42,042.60	42,500.00	103,600.00
PUBLICATION DIRECT	11,772.82	10,700.00	62,581.62	65,600.00	146,200.00
PUBLICATION ROYALTIES	37.20	0.00	37.20	0.00	80,000.00
CONVENTION	0.00	0.00	0.00	0.00	279,100.00
MEDIA SERVICES DIRECT	300.00	600.00	1,964.19	3,100.00	7,500.00
BANKCARD CHARGES	3,956.87	3,100.00	16,373.37	15,300.00	55,000.00
MARKETING	3,784.91	3,200.00	22,248.90	21,400.00	70,400.00
<b>TOTAL EXPENSE</b>	<b>\$193,919.95</b>	<b>\$176,600.00</b>	<b>\$853,357.89</b>	<b>\$894,700.00</b>	<b>\$2,458,400.00</b>
<b>NET CHANGE</b>	<b><u>(\$35,132.03)</u></b>	<b><u>(\$42,900.00)</u></b>	<b><u>(\$114,027.45)</u></b>	<b><u>(\$150,000.00)</u></b>	<b><u>\$44,400.00</u></b>

## MEMORANDUM

**TO:** House of Delegates  
**FROM:** Courtney Troutman, Liaison, Solo & Small Firm Section  
**DATE:** December 21, 2018  
**RE:** Amendments to Bylaws

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The Council of the Solo & Small Firm Section respectfully requests the House of Delegates approve the submitted revised Bylaws. The Bylaws were revised to provide better clarity. Amendments include:

- Some articles of the Bylaws were renamed for clarity. They were also arranged in a new order.
- Definitions and administrative provisions were placed at the beginning of the Bylaws rather than the end
- Some definitions were added, including what is meant by “Section at-large” and “Representative”
- Dates and deadlines for elections were added
- The process of council succession and election was clarified
- The term “members” (when in reference to the council) was changed to “representatives” in order to eliminate confusion between members of the council and members of the Section as a whole.

The amendments to the Bylaws reflect the current practices and procedures of the Section council and merely commit to writing systems that were already in place. The most substantive change is changing the description “council member” to “council representative.”

**BYLAWS OF THE SOLO & SMALL FIRM SECTION  
OF THE SOUTH CAROLINA BAR  
Amended November 8, 2018**

**ARTICLE I  
NAME AND PURPOSE**

**Section 1. – Name.** This Section shall be known as the Solo & Small Firm Section of the South Carolina Bar.

**Section 2. – Purpose.** To promote the ethical and efficient practice of law by lawyers in small firms; to develop or otherwise provide educational and practice resources; to establish and maintain relationships with other Bar entities and other organizations; to monitor legislative, judicial, and other developments of interest to small firms; and to promote and advocate the interests of the Section within the Bar.

**ARTICLE II  
DEFINITIONS AND ADMINISTRATIVE PROVISIONS**

**Section 1. – Definitions.**

- a. **Solo or Small Firm Attorney.** - An attorney practicing alone or in association with a total of ten (10) or fewer attorneys.
- b. **Section at-large.** - All members of the Solo & Small Firm Section not on the Section Council.
- c. **Council.** Section Council shall consist of nine (9) members, as follows: the three (3) officers of the Section and six (6) representatives.
- d. **Officers.** - Section Council shall have three (3) officers as follows: a Chairperson, a Chairperson-Elect, and a Section Delegate. Officers shall be elected from the ranks of Council representatives.
- e. **Representatives.** - Council shall have six (6) representatives. Representatives shall be nominated by the Section at-large and elected by the Council.
- f. **Meeting.** - A meeting of Council is defined as any gathering of the Council members attending in person, by telephone, or by other electronic means for Section business.
- g. **Quorum.** - A quorum of Section Council shall consist of a simple majority of Council present at a meeting.

**Section 2. – Eligibility for Council.** For any individual to be eligible for election or appointment to the Section Council, (s)he must be: a member of the Bar in good standing; a member of the Section in good standing; an attorney engaged in the private practice of law in a solo or small firm of no more than ten (10) lawyers; and no firm may have more than one member on Council simultaneously.

**Section 3. - Powers and Duties.** Subject to applicable, published procedural rules and requirements of the Bar, the Section Council shall be the primary governing body of the Section. Accordingly, the powers and duties of the Section Council shall be as follows: adopting or amending Section bylaws; authorizing annual budgets and goals; nominating and electing the Chairperson-Elect and such Section officer(s) as may from time to time be required; reinstating by vote of at least a majority of Section Council the removal by the Chairperson of an individual Section Council officer or representative; authorizing specific Section-sponsored programs and activities; authorizing financial aid initiatives; bestowing an award for Solo or Small Firm of the Year, adopting or amending Section policies and procedures; and otherwise exercising such powers and fulfilling such duties as may normally be expected of such a body.

**Section 4. - Fiscal Year.** The fiscal year of the Section shall be the same as the calendar year.

**Section 5. - Financial Obligations.** All bills incurred by or on behalf of the Section shall be forwarded to the Bar for payment.

**Section 6. - Policy Matters.** To be effective, any action or decision by this Section pertaining to legislation, Bar policy, or public policy must be approved by the Bar's Board of Governors or House of Delegates.

**Section 7. - Amendments.** These bylaws may be amended by a vote of three-fourths (75%) of the Section Council at a Section Council meeting.

**Section 8. - Bar Constitution, By-Laws, and Published Rules.** The provisions of these bylaws shall at all times be subject to then prevailing provisions of the Bar's Constitution, bylaws, and other published Bar rules and requirements, as applicable.

### **ARTICLE III AT-LARGE MEMBERSHIP AND DUES**

**Section 1. - Membership Duration.** At-Large Membership shall be for a calendar year and shall expire at the end of that calendar year unless renewed by timely payment of Section dues in accordance with section 3 of this Article III.

**Section 2. - Membership Eligibility and Privileges.**

- a. **Eligibility.** Any attorney admitted to practice in South Carolina and in good standing with the Bar may become a member of the Section.
- b. **Privileges.** Any member of the Section in good standing is eligible to receive all benefits and privileges of Section membership then existing, including, but not limited to, voting rights at meetings of the Section At-Large.

**Section 3. - Dues.** Dues are payable annually on Bar members' license fee statements.

- a. **Dues Determined by Council.** The amount and timing of payment of annual Section dues shall be as determined by Section Council.
- b. **Exceptions.** The Section Council may make such exceptions to the provisions of

this section of Article III as it may determine to be appropriate.

**Section 4. – Revocation of Membership.** Any member who ceases to be a member in good standing of the South Carolina Bar shall automatically be removed as a member of this Section. Upon showing that the member meets the qualifications of Section 2 a., the member may be reinstated in the Section.

#### **ARTICLE IV COUNCIL REPRESENTATIVES**

**Section 1. - Terms.** Except for an appointment necessary to fill an unexpired term, the terms of all Section Council representatives shall be for two (2) years and shall begin and end with the new calendar year. At the conclusion of a two (2) year term, the Council representative may elect to remain for an additional two (2) year term or run for Chairperson-Elect. No Section Council representative shall serve for a period of time in excess of seven (7) successive years regardless of the nature of the elected term.

**Section 2. - Appointment of Council Representative.** If any Section Council representative shall resign or otherwise become unavailable for service during his or her term, the Section Chairperson may appoint a member of the Section at-large to fill the balance of such unexpired term. If the vacancy occurs within three (3) months preceding the regular nominations for election, the position shall be held vacant until filled by regular election means.

#### **ARTICLE V COUNCIL OFFICERS**

**Section 1. - Composition.** There shall be three (3) officers of the Section as follows: a Chairperson, a Chairperson-Elect, and a Section Delegate.

**Section 2. - Eligibility.** For any individual to be eligible for election or appointment as an officer of the Section, (s)he must be a representative currently serving in the Section Council. Representatives who have served more than four (4) years in that capacity may not be eligible to run for Chair-Elect, due to the seven (7) year term limit set in Article IV, Section 1.

**Section 3. - Terms.** Officers shall serve one (1) year in each capacity. Except for an appointment necessary to fill an unexpired term, the terms of all officers shall begin and end on the same date(s) as applicable to the new calendar year.

**Section 4. - Powers and Duties.** Subject to the Constitution and bylaws of the Bar and these bylaws, the powers and duties of each officer of the Section shall be as follows:

**a. Chairperson.**

- 1. Powers and Duties.** - The Chairperson shall be the Chief Executive Officer of the Section and, as such, (s)he shall be empowered to and responsible for appointing standing and special committees and committee chairpersons, as applicable; scheduling and presiding at Section and Council meetings; preparing or causing to be prepared the Section's annual budget and goals; appointing one or more Section liaisons to Bar entities, programs, and activities; approving specific expenditures; removing any Section Council

officer or representative who has been absent without good cause from two (2) consecutive Council meetings in one year; appointing interim representatives of the Section Council and/or interim officers to fill the balance of any unexpired term(s); and otherwise exercising such powers and fulfilling such duties as may normally be associated with such office.

2. **Appointments.** - In the event that any officer shall resign or otherwise become unavailable for service during his or her term, the Section Chairperson may appoint a Section Council representative, or other individual Section member if no Council representative will serve, to fill the balance of such unexpired term. If the vacancy occurs within three (3) months preceding the regular nominations for election, the position shall be held vacant until filled by regular election means. If the person resigning is the Chair of the Section, the Chair-Elect will assume the remainder of the exiting Chair's term, and afterward serve their own regularly elected term.

b. **Chairperson-Elect.** The Chairperson-Elect shall furnish such support and assistance to the Chairperson as may be necessary, including, but not necessarily limited to, presiding at meetings in the absence of the Chairperson; exercising the powers and fulfilling the duties of the Chairperson in the event of his or her unavailability (*i.e.*, by reason of death, disability, illness, resignation, extended absence, or similar condition or circumstance); and otherwise exercising such powers and fulfilling such duties as may normally be associated with such office.

c. **Section Delegate.** The Section Delegate shall represent the Section's interests with respect to, and shall attend meetings as a member *ex officio* of, the Bar's House of Delegates and shall keep the Chairperson and Council informed in a timely manner of agendas, issues, actions, and activities of the Bar's House of Delegates as they relate to the Section and its membership.

**Section 5. – Section Liaison.** In addition to the above-listed Section officers, if and as the Bar assigns a liaison to the Section, (s)he shall perform such duties as may be reasonably assigned by the Section Chairperson, including, but not necessarily limited to, keeping financial and non-financial records associated with Section activities and programs; taking and keeping minutes of Section Council and annual meetings; engaging in routine communications with Section members, Bar entities, and outside organizations; preparing routine documentation associated with Section programs and activities (*e.g.*, giving notice of meetings) securing and/or compiling Bar or Section related information; and performing such other duties as may be normally be associated with such capacity.

## ARTICLE VI SUCCESSION AND ELECTION

**Section 1. Succession.** In the normal course of events, at the conclusion of each annual term of office (or such longer period of time if and as may be required by then existing circumstances), the Section Chairperson shall succeed to the official position of Section Delegate for the year to follow, and the Section Chairperson-Elect shall succeed to the official position of Chairperson for the year to follow.

**Section 2. Nomination of Officers.** Representatives of Council who have served at least two (2) years shall be eligible to run for Chairperson-Elect. Nominations for Section Chairperson-Elect may be made by any person currently serving on Section Council commencing the Monday after Labor Day for a period of five (5) business days. Nominations shall be made to the Section liaison. During this period, Council representatives not running for Chair-elect shall give notice to the Section liaison of their intention to remain on Council or resign.

**Section 3. Election.** Election of the Section Chairperson-Elect shall be by a plurality of the Section Council present and voting at a Section Council meeting or by email to the Section liaison no later than September 30.

**Section 4. Nominations of Council Representatives.** Once the number of vacancies on Council has been ascertained through the officer election process, nominations for elected representatives of Section Council shall be opened to the Section at-large beginning the first Monday in October for a period of ten (10) working days. Notice of intention to run for Council may be made to any Council officer or the Bar staff liaison.

**Section 5. Election of Council Representatives.** The Section liaison shall notify Council of all nominees by October 31. Election of new representatives of Council shall be held no later than December 1 by a simple majority of Section Council present and voting at a Section Council meeting. Council shall endeavor to provide geographical diversity.

**Section 6. Re-election to Council.** If a council representative or officer has previously served seven (7) years, they may be eligible to run for council again after a period of three (3) years has passed since their last year in office, as long as they meet all other criteria.

**Section 7. Dates.** If any of the dates in Article VI shall fall on a Saturday or Sunday or a Bar holiday, the following Monday or next Bar business day shall be applicable.

## ARTICLE VII MEETINGS AND VOTING REQUIREMENTS

### **Section 1. – Section at-Large Member Meeting.**

- a. **Quorum.** Ten (10) members of the Section at-large present at any Section meeting shall constitute a quorum sufficient for the conduct of the Section’s business at such meeting.
- b. **Notice.** Special meetings of the Section-at-large may be called by the Chairperson. Regular meetings of the Section may be called and held upon the giving of no less than 30 days advance written notice (i.e., regular correspondence, e-mail, electronic mailing list, or E-Blast) to all Section members.

### **Section 2. - Council Meetings.**

- a. **Notice.** The Section Council shall meet to conduct the business of the Section at such times and places as shall be appointed by the Section Chairperson, provided that there shall be at least one such meeting each year to elect officers, adopt any

necessary budget(s), and adopt any goals for the following year. Meetings of the Section Council may be called and held upon the giving of no less than ten (10) days advance written notice (*i.e.*, regular correspondence, e-mail, or equivalent) to the Section Council. This notice requirement may be waived by consent of a majority of the Section Council.

- b. Binding Action.** Unless otherwise required by these bylaws or the Bar's Constitution or bylaws, a simple majority of those present and voting shall be sufficient to take any action(s) or make any decision(s) binding upon the Section.
- c. Binding Action without a Meeting.** Unless otherwise required by these bylaws, any action that may be taken at any Section Council meeting may be taken without such a meeting upon approval of a majority of all Section Council.

## MEMORANDUM

TO: House of Delegates

FROM: Henry Brown, Chair  
Dispute Resolution Section

RE: By-Law Amendments

DATE: January 7, 2019

The Dispute Resolution Section Council has proposed amendments to the Section by-laws to change the length of term from three (3) years to (2) years, allow a general member to succeed themselves for an additional term, eliminate the Secretary position and replace that position with the Vice-Chair and to allow for an increase in section council membership in order to accommodate the change in term length to ensure that at large membership terms expire on a staggered schedule. A redline version of the by-laws is attached. Specific changes are proposed as follows:

### Article IV

Section 1: Language added to allow for more than six (6) general council members during the transition which begins with the election at the annual meeting in January.

Section 2: Specifies the officers are the Chair, Chair-Elect and Vice-Chair. The secretary position was eliminated as that function is delegated to and performed by Bar staff.

### Article VII

Section 5 – Changes the number of general council members elected from two (2) to three (3) and shortens the terms from three (3) years to two (2) years. Also allows for a general member to serve two consecutive terms.

The changes were carefully considered by the Section Council and are proposed to allow the Council to work more efficiently. The shortened term is proposed to encourage more participation by section membership.

We respectfully request the House of Delegates approve the proposed changes.

**BYLAWS OF THE DISPUTE RESOLUTION SECTION OF THE  
SOUTH CAROLINA BAR**

**ARTICLE I  
Name and Purpose**

**Section 1.** This Section is known as the Dispute Resolution (DR) Section of the South Carolina Bar.

**Section 2.** The purpose of the Section is to promote the goals and objectives of the South Carolina Bar in the fields of alternative dispute resolution, including but not limited to mediation and arbitration. Objectives include educating the bench, the bar and the public to the benefits and use of ADR; encouraging and promoting the use of ADR in the court system and outside the court system; promoting the adoption of mediator and arbitrator standards; promoting mediator and arbitrator training standards; and seeking uniformity in legislation and procedures concerning ADR applications, where appropriate.

**ARTICLE II  
Membership and Privileges**

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

**Section 2.** Section members have the same basic privileges set forth in Section 1.4, Article I of the Bylaws of the South Carolina Bar, (i.e. only Active and Senior members may vote). However, voting and floor privileges at any Section meeting are limited to Section members in good standing thirty (30) days prior to the opening of that meeting as verified by a list provided by the Executive Director of the South Carolina Bar.

**ARTICLE III  
Section Meetings**

**Section 1.** An annual meeting of the Section will be held in conjunction with the Annual Meeting of the South Carolina Bar.

**Section 2.** Special Section meetings may be called by the Chair upon approval by the Council.

**Section 3.** The Section members present at a Section meeting constitute a quorum for transacting business. All decisions are made by majority vote.

## **ARTICLE IV Governing Body**

**Section 1.** The general business of the Section is conducted by a council composed of the Section Officers, the Immediate Past Chair, a Section Delegate and six (6) "general members". There may be more than 6 general members on the Council during the transition from 3-year to 2-year terms beginning in 2019.

**Section 2.** The Section Officers are a Chair, Chair Elect and Vice Chair. Their terms of office are for one (1) year beginning at the conclusion of the Annual Meeting of the South Carolina Bar, at which they are elected and ending at the conclusion of the Annual Meeting of the Section, at which their successors are elected.

## **ARTICLE V The Council**

**Section 1. Authority.** The Council exercises general supervision and control over Section - affairs, subject to provisions of the Constitution and Bylaws of the South Carolina Bar and these Bylaws. Council actions between annual Section meetings are binding upon the Section. The Council must authorize the commitment and expenditure of all funds appropriated to the Section (which will not exceed in any fiscal year the total amount of reserve funds credited to the Section, if any, plus estimated receipts from dues, Section publications, and other appropriations for that fiscal year).

**Section 2. Committees.** The Council may establish and terminate standing and ad hoc committees. It also may authorize the Chair to appoint such committees from Section members.

**Section 3. Quorum.** The council members present (in person or by telephone) at a properly scheduled council meeting constitute a quorum to transact business. Decisions will be made by a majority of the quorum.

**Section 4. Meetings.** The Council shall meet regularly in person or by telephone, with an annual schedule of such meetings to be decided upon at the first meeting of each year following the annual meeting. Notice of the year's scheduled meetings will be provided to all members by email within the minutes from the meeting. In addition to its regular meetings, the Council may also transact business and vote by telephone, teleconferencing, mail, etc.. Any business so conducted will be published to the entire council by email prior to the next regular council meeting.

**Section 5. Vacancies.** The Council may fill interim vacancies within its membership by majority vote.

## ARTICLE VI Officers

**Section 1. Chair.** The Chief Executive Officer of the Section who makes appointments to committees, presides at all Section and Council meetings and presents a report on the state of the Section at its annual meeting.

**Section 2. Chair Elect.** Assumes the duties of the Chair during the temporary or permanent absence, or that individual's inability to act.

**Section 3. Vice Chair.** Assumes the duties of the Chair Elect during the temporary or permanent absence, or that individual's inability to act.

## ARTICLE VII Nominations and Elections

**Section 1.** Not later than forty-five (45) days before the annual meeting of the Section, the Council will nominate such officers, Council members and Section Delegate as are scheduled to be elected by the members at the next Annual Meeting of the Section. The nominations will be published by electronic mail to the registered members of the Section.

**Section 2.** Not later than twenty (20) days before the scheduled Annual Meeting of the Section, five (5) or more members of the Section who are in good standing may file by registered mail with the Chair a nominating petition containing signatures and printed names and addresses and making nominations for one or more of the offices to be elected. Such petitions must be accompanied by the written consent of any person nominated.

**Section 3.** In each even numbered year there must be a nominee for Section Delegate to the House of Delegates. The Section Delegate serves a one year term, beginning at the conclusion of the Annual Meeting of the Section at which he or she is elected.

**Section 4.** All elections will be held at the annual meeting of the Section. Should there be more than two nominations for any one office, the candidate receiving the highest number of votes will be declared elected. If two candidates receive an equal number of votes, the Council will decide the winner. If there is only one qualified nominee for an office, that person will be declared elected by acclamation.

**Section 5.** ~~Two-Three~~ (3) general members of the Council will be elected at each annual meeting for terms of office to begin immediately upon the conclusion of the Annual Meeting of the Section at which he or she is elected and to continue for ~~three-two~~ (23) years. General members may ~~not serve~~ serve up to one successive term~~s~~.

**Section 6.** If any elected member of the Council fails to attend three (3) successive meetings of the Council, and such failures are not excused for cause by the Chair or the Council, the Chair may by electronic mail to all Council members declare such member to have automatically resigned.

**Section 7.** At the end of his or her term, the Chair Elect will automatically assume the office of Chair. The Immediately Retiring Chair will remain a member of the Council for the ensuing year.

## **ARTICLE VIII Miscellaneous**

**Section 1.** The Section's fiscal year will coincide with that of the South Carolina Bar.

**Section 2.** At any Section or Council meeting a majority of members present and voting is sufficient to approve business of any nature.

**Section 3.** The Council or the Chair must approve all Section bills before forwarding them for payment to the Executive Director of the South Carolina Bar.

**Section 4.** The Section and Council must follow the provisions of Article VI of the Bylaws of the South Carolina Bar on matters relating to legislation and representing the Bar on particular issues.

## **ARTICLE IX Amendments**

These Bylaws may be amended at any meeting of the Section. No amendment may be inconsistent with the Constitution and Bylaws of the South Carolina Bar. Amendments become effective only upon approval and ratification by the House of Delegates of the South Carolina Bar.

Effective Date: The 16th day of January, 2013, as amended in 2017 and 2018, [and on January 17, 2019.](#)

# **BYLAWS OF THE DISPUTE RESOLUTION SECTION OF THE SOUTH CAROLINA BAR**

## **ARTICLE I Name and Purpose**

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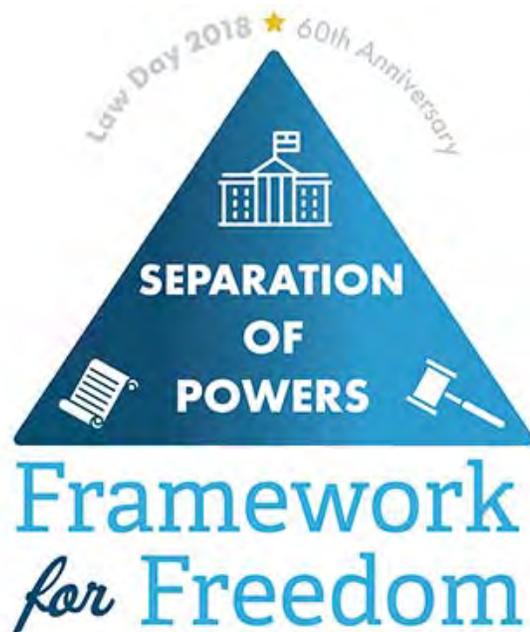
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### **2018 LAW DAY ESSAY TOPIC**

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

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

**Explain how the Separation of Powers is one of the primary safeguards of our democratic system of government.**



# Report of the President

January 17, 2019

M. Dawes Cooke, Jr.

## SC Bar Programs and Services

### **Communications**

E-Blast is delivered to members' inboxes twice each week and features advance sheet summaries, CLE information, court news, summaries on pending legislation, tech tips, job openings, firm announcements and other legal information.

*SC Lawyer* magazine is published in January, March, May, July, September, and November. Members may opt to receive just the digital edition; visit [www.scbars.org/sclawyer](http://www.scbars.org/sclawyer) for more information. Past articles can be found at the link above (including subject and author indices) and through Fastcase.

The Bar communicates daily with members and the public on social media, including photos from events, public programs, CLE programs, and other important news. Currently, Facebook has more than 3,300 likes. The top performing post in the last six months was one about Judge George McFaddin on adoption day, which reached 8,300 people, garnered 976 likes, comments, and shares. Twitter has 4,561 followers and averaged 68,000 impressions in December 2018. Under the leadership of new communications director Mary-Kathryn Craft, an updated digital content strategy includes featuring members, their stories and how they are making a difference in South Carolina, which engages both our members and public audiences.

### **Continuing Legal Education**

#### **New Programming Options**

The CLE Division, under the leadership of Terry Burnett, continues to offer a number of programs in various formats and locations around the state to give members the best value, variety and flexibility in CLE programming. Available formats include live seminars, teleseminars (via phone), online seminars and live webcasts. In 2017, the Division introduced Webcast Wednesdays, live one-hour programs held during the lunch hour, and the CLE Big Ticket, which allows members to pay one price for unlimited CLEs for one year. Since July 2018, 68 Big Ticket subscriptions have been sold, bringing the total to more than 250 since the program's inception.

In the fall of 2018, the Division introduced the On-Demand Big Ticket, which is a one-year unlimited subscription to more than 400 archived online programs.

#### **Free Course Materials**

Bar members have online access to past seminar materials. There are now 54 sets of free course books (up from 31 last year). More are added monthly.

#### **Live Seminars**

Since July 1, 2018, the CLE Division hosted 46 live programs with a total paid attendance of 1,635. During this time, more than 250 SC Bar members served as volunteer course planners or faculty.

Representative seminars have included: Community Association Law; Civil and Family Mediation Training; 2018 Family Law Hot Tips; 2018 Probate, Masters in Equity and Family Court Bench Bar

seminars; an SC Bar staff-led Ethics and Technology program in Anderson; Business Law: A Practice Guide for Business Owners, Entrepreneurs, and Their Counsel; and a two-day program on changes to Guardianships and Protective Proceedings Under the New Article 5 of the Probate Code.

### **Alternatively Delivered Programming**

The CLE Division now offers more than 450 on-demand programs. Members can watch live webcasts of seminars in real time, or pause, rewind and review archived webcasts and online programs for up to 30 days. The Division released 47 new on-demand programs since July, held 16 live webcasts, hosted 116 teleseminars, and had 633 individual sales.

### **Publications**

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

- *Estate Planning in SC, Second Edition, Volume V: Trusts*
- *Family Law Essentials: A Primer for Private Practice Before the Family Court in SC*
- *SC Business Law Handbook: A Practical Guide for Business Owners, Entrepreneurs and Their Counsel*
- *SC Consumer Protection Code 2018 Cumulative Supplement*
- *SC Criminal Offenses and Penalties 2017 Edition (book and CD)*
- *SC Evidence Handbook Annotated, 13<sup>th</sup> Edition*
- *SC Rules of Procedure Annotated 2018*
- *So You Have A Judgment, Now What?, 2<sup>nd</sup> Edition*
- *So You're Going to Try Your First Case..., 5<sup>th</sup> Edition*

A complete list of CLE publications, as well as a list of recent releases, are available for browsing in at [www.scbare.org/shop-cle](http://www.scbare.org/shop-cle).

### **Marketing**

The Division promotes its programs to members through seminar brochures, e-brochures, E-Blast, the weekly CLE email digest, signage, social media, and Bar publications. Members can opt in to targeted contact lists by logging in to their member profile on the Bar website. In late July, the Division mailed a "Seminars at Glance" booklet to all in-state Bar members. The publication listed all live CLE programs available September through March.

### **Government Affairs**

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

### **Lawyers Helping Lawyers**

The Lawyers Helping Lawyers (LHL) program continues to assist lawyers affected by depression, anxiety, substance use disorders, and/or other mental illnesses or stress-related disorders. LHL, led by Robert Turnbull and Beth Padgett, provides referral services, peer support and monitoring services. Call LHL at

(866) 545-9590 for free and confidential assistance, advice or referral. Members may also call CorpCare, which provides up to five free hours of anonymous intervention counseling, at (855) 321-4384. LHL and CorpCare phone lines are staffed 24 hours a day. CorpCare has increased its roster of providers across most of the state and is working to strengthen coverage in areas of the state identified by the SC Bar team as potential high need.

The LHL staff maintains a periodic on-site presence at the USC School of Law and Charleston School of Law. Beth Padgett presented a mindfulness-based stress management series in October at the Charleston School of Law.

The American Bar Association's Commission on Lawyers Assistance Programs (Co-LAP) Annual Conference and International Lawyers in AA Meeting was held in Charleston during the last week of September, with great success. Beth Padgett serves as chair of the Co-LAP Conference Planning Committee for the 2019 conference to be held in Austin, Texas in September 2019.

### **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 below statewide programs.

#### **Middle School Mock Trial**

Heathwood Hall Episcopal School won its first Middle School Mock Trial State Championship in December at the Richland County Central Court at Decker Center. Buist Academy was named the first runner-up, and Chapin Middle School was awarded the Professionalism and Civility Award. A total of 46 middle schools will have competed between the fall competitions and a special spring competition rescheduled due to the flood for Conway schools. Hundreds of volunteer attorneys, who served as coaches and judges, made this event a success.

#### **High School Mock Trial**

LRE released the 2019 High School Mock Trial case October 31. There are 56 teams registered to compete, which is an increase from 43 teams last year. Plans are underway for the high school teams to compete in five regional competitions on February 23 in Columbia, Conway, Georgetown, Greenville, and Lexington with a culminating state competition March 8 and 9.

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

The LRE Division co-hosted the S.C. Supreme Court Institute, a program aimed at middle and high school social studies and U.S. government/history teachers, in June. The institute featured presentations by members of the S.C. Supreme Court and Bar members; tours of the Supreme Court building; interactive opportunities; and several lesson building opportunities.

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

In 2016, the Division received a three-year James Madison Legacy Project grant to work with *We the People* teachers in recruitment, mentorship and professional development. Year three of the grant concluded September 30 with 82 teachers trained, who also participated in follow-up professional development. Final grant documentation and budget were prepared and submitted.

### **School Resource Officer Manual**

In collaboration with the Young Lawyers Division, the LRE Division completed development of a manual for school resource officers used in trainings at the S.C. Criminal Justice Academy. The manual includes 24 lesson plans and supplemental materials. The materials have been well received by school resource officers attending the course at the S.C. Criminal Justice Academy. Suggestions have been received for additional lessons to benefit the officers working with students throughout our state.

### **Teacher Newsletter**

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

### **Trainings**

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

### **We the People Contest**

Wando High School won its second We the People: The Citizen and the Constitution competition on December 7 in Lexington. The first runner-up was River Bluff High School in Lexington. The Wando High team will represent South Carolina in the national finals April 27-29 in Washington, D.C. The LRE Division thanks the dedicated volunteers who generously gave their time and energy to participate in the 2019 program: John DeLoache, Peg Fox, Susan Hackett, Leslie Harvel, Eric Johnsen, Erica Lybrand, Rachel McKain, Melissa Mosier, Tiffany Richardson, Sarah Smith, Stephanie Weissenstein and Ericka Williams.

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

## **Membership Services**

### **Member Benefits**

The Bar offers discounts on a number of products and services, such as wellness providers, travel services and office products. An insert outlining these benefits appeared in the January 2019 issue of *SC Lawyer*. New benefits include discounts to Carowinds and Riverbanks Zoo. For more information, visit [www.scbar.org/benefits](http://www.scbar.org/benefits).

### **2019 Leadership Academy**

The 11th installment of the Bar's Leadership Academy will launch in February. This highly selective program is designed to train the next generation of Bar members and community leaders. Participants will be equipped with networking opportunities, professionalism training, community awareness, and other skills necessary to give back to the profession and position themselves as leaders in their communities. Fifteen members were selected for the program, and graduates will be recognized during the House of Delegates meeting in May.

### **Paralegal Certification Program**

The SC Supreme Court implemented a program for the voluntary certification of paralegals in South Carolina. The program, which is administered by the Bar, identifies qualified individuals to perform substantive legal work under the direction and supervision of a lawyer. There are currently 69 South Carolina Certified Paralegals. Bar members can search an online database to verify certification and status. The Bar's CLE Division has been working to develop specialized training for paralegals.

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

Practice Management Advisor Courtney Troutman provides personalized assistance by phone and email to lawyers with questions about running a law firm. Guidance is offered for lawyers seeking help with opening a law practice, partnerships and mergers, retirement, and more. The Practice Management Advisor and Assistant Emily Worley track the ever-changing technology landscape, including reviewing new products. New information is continually added to the "Managing Your Law Practice" portion of the Bar's website and disseminated in E-Blast and Twitter. Weekly free software webinars from vendors are posted online. In 2018, PMAP supported the new Technology Committee, which is charged with offering guidance to Bar members on critical technology changes and helped organize the technology CLE for the Bar Convention.

PMAP also supported the Solo & Small Firm Section, which recognized Meagan Gentry of Charleston as its "Solo & Small Firm Lawyer of the Year." The PMAP Assistant provided assistance to the Judicial Qualifications Committee. PMAP also provides assistance to members with Fastcase free legal research, which launched a new version. New titles were added to the PMAP Lending Library of technology and practice management books. Five law firms donated used law libraries to other lawyers using the Bar Book Exchange.

### **Public Services**

The Bar offers a variety of free, public programs designed to connect volunteer attorneys with their communities. Cindy Coker leads this division, which includes the Pro Bono Program, clinics, and the statewide Lawyer Referral Service.

### **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.

### **Free Legal Clinics**

The Public Services Division, through volunteer Bar members, continues to host free legal clinics around the state to educate the public on such issues as bankruptcy, divorce, wills, and other legal matters. More than 50 clinics were held during the fall. The Division also partnered with the Central Midlands Area Agency on Aging and USC School of Law Pro Bono Program to sponsor monthly "My Will" clinics to offer qualified citizens assistance with creating a simple will.

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

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

### **Lawyer Referral Service**

The Lawyer Referral Service currently has 327 Bar members participating. The service is promoted through radio and online advertising and a Google AdWords campaign. 8,488 referrals were made from July through December.

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

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

### **Lawyers' Fund for Client Protection**

The Lawyers' Fund for Client Protection, which reimburses clients for money or property mishandled by Bar members, received 27 new claims this year, and paid 26 for \$161,475.76 to former clients.

### **Pro Bono Program**

Our new Pro Bono Program director, Betsy Goodale, started in September, and the Pro Bono Board met in October. In November, the Board of Governors voted to pilot the scprobono.org software and expand it to the 16<sup>th</sup> Judicial Circuit. Under the leadership of Justice Few, the project began with the Greenville County Bar Association Pro Bono Foundation. It uses state-of-the-art technology to match attorneys with clients in need.

The South Carolina Supreme Court agreed to establish a Pro Bono Honor Roll, which began on January 1, 2019 and will be published in February 2020. Information and pro bono opportunities on website has been updated and made more user friendly. Pro Bono partner organizations are participating in the Bar's Pro Bono Program booth at the Bar convention as well as in a roundtable discussion on Saturday morning to determine how the pro bono needs of those programs can best be met. The Pro Bono Board will continue to work to establish circuit pro bono committees and to meet with those committees and members of the local bars to determine how to address pro bono needs around the state.

The Pro Bono Program received a \$5,000 donation from the American Bar Association's Fund for Justice and Education to be used for training, developing an annual disaster legal services-related CLE, and to recruit and train attorney volunteers to provide pro bono legal assistance during disasters.

### **Risk Management and Mentoring**

Risk Management Director Nichole Davis oversees implementation of the Lawyer Mentoring Program in addition to administering the Ethics Hotline and other parts of the program such as ethics advisory opinions.

### **Mentoring Program**

The Bar administers the mandatory Lawyer Mentoring Program, including recruitment of new mentors and ongoing support of mentees. The program is working to match nearly 282 new attorneys sworn in this past fall and is planning the spring Mentoring Luncheon & CLE programs. The nomination period for the G. Dewey Oxner Jr. Mentor of the Year Award is now open.

### **Ethics Hotline**

A trained Bar lawyer is available to answer our 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 up to the 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 email [ndavis@sbar.org](mailto:ndavis@sbar.org).

## **Committees, Divisions and Sections**

### **Diversity Committee**

The Diversity Committee partnered with the Young Lawyers Division to host two successful events in fall 2018. In October, a CLE titled "Seeking Solutions: How Does the Charleston Legal Profession Move Forward in a post-Mother Emanuel Community?" was held in Charleston. The YLD's diversity committee organized a community panel discussion, "To Kneel or Not to Kneel? A Discussion on the Protest Against Police Violence" in November in Columbia. More than 75 community members attended.

### **Lawyers Helping Lawyers Committee**

The Board of Governors approved funding to provide training in Mental Health First Aid to 100 attorneys. This CLE will be offered in five sessions from January through April. A CLE on Question, Persuade, Refer (QPR) to prevent suicide will be held the second Friday of February.

### **Judicial Qualifications Committee**

The Judicial Qualifications Committee released reports on judicial candidates in October. The end goal of a competent and respected judiciary continues to be of the utmost importance to the Bar. SC Bar Government Affairs Director Kali Turner oversaw the 2018 Judicial Qualifications Report process.

### **Senior Lawyers Division**

#### **Essay Contest**

The Senior Lawyers Division, under the leadership of Judge Mark Hayes, sponsored its annual statewide Law Day Essay Contest. Students were invited to write an essay of 1,000 words or less on "Separation of Powers: Framework for Freedom." The 2018 overall winner, a current freshman at Duke university and the valedictorian of Spartanburg High School's class of 2018, will be recognized during the Bar Convention.

#### **Nifty Fifty**

The Senior Lawyers Division honored law school graduates from the class of 1968 during a lunch September 21. Honorees were recognized by SC Bar President Dawes Cooke, Senior Lawyers Division President Darra W. Cothran and Dean Robert Wilcox of the USC School of Law.

#### **Wellness Initiative**

The Senior Lawyers Division included a wellness corner in its quarterly newsletter. The committee is planning a wellness challenge for 2019.

### **Wellness Committee**

The CLE Division has agreed to include wellness tips on its self-mailers for free as another way to reach members with wellness messages. The Wellness Committee will host a seminar at the Convention. The committee is planning a wellness challenge for 2019.

### **Young Lawyers Division**

The YLD won the following national awards in 2018:

- The 2018 NABE LexisNexis Community & Education Outreach Award for The Your Big Idea Scholarship Contest;
- The ABA YLD's Diversity Award of Achievement for the diversity program, "The Legacy of the Confederacy -- A Town Hall Discussion About The Past, Present, and Future Impact of Confederate Relics in South Carolina;"
- The ABA YLD's Awards of Achievement's Comprehensive Award for the most successful projects conducted during the last year for our size.

The SC Bar YLD helped host the ABA YLD and GPSolo Conference "Where Tradition Meets Innovation" in October in Charleston. Tommy Preston of Charleston serves as chair of the ABA YLD and was instrumental in planning and hosting the conference.



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



**TO:** House of Delegates  
**FROM:** Practice and Procedure Committee  
**DATE:** November 21, 2018  
**RE:** Rule 5(b)(1) and Rule 6(e), SCRCP

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The Practice and Procedure Committee has studied Rule 5(b)(1) and Rule 6(e), SCRCP, and it has approved an amendment to those rules to allow for parties to consent to electronic service of documents and now presents it to the House of Delegates.

### **Rule 5(b)(1), SCRCP**

#### ***Background on This Rule and Similar Rules from Other Jurisdictions***

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

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

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

#### ***Reasons for the Proposed Amendment***

The Practice and Procedure Committee has determined that amending Rule 5(b)(1) is warranted for multiple reasons. *First*, this proposed amendment brings the

South Carolina Rules of Civil Procedure further into the twenty-first century. E-mail is now commonplace in the practice of law, and given the types of documents that are already transmitted via e-mail, no reason exists that court pleadings, discovery, and other documents cannot be served this same way.

*Second*, by adopting language similar Federal Rule 5(b)(2)(E), this amendment brings into state court a rule already familiar to South Carolina lawyers. This should minimize any confusion or concern about the new rule. The only substantive difference in the proposed rule and in Federal Rule 5(b)(2)(E) is the requirement that counsel designate an e-mail address in the written consent. This additional requirement in the proposed amendment to Rule 5(b)(1) is to avoid any possible confusion about to whom electronic service should be made.

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

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

*Fifth*, the new rule is not mandatory; even if many lawyers will consent to electronic service, no lawyer will be required to do so. Moreover, by keeping in the requirement of *written* consent, there should be few, if any, disputes about whether parties consented to electronic service. If someone does not consent to electronic service, parties would then serve documents under the other three options provided by Rule 5(b)(1). The voluntarily nature of this rule should alleviate the concerns of any lawyers who prefer service by mail.

### ***Proposed Amendment***

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

Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made **(1)** by delivering a copy to him, **(2) by sending it by electronic means if the person consented in a writing designating the electronic-mail address(es) for purposes of service (in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served), or (3)** by mailing it to him at his last known address **(in which event service is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint)** or, **(4)** if no address is known, by leaving it with the clerk of court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there be no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving a copy at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein. ~~Service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint.~~

#### **Rule 6(e), SCRPC**

Rule 6(e) provides for an additional five days after service of a document by mail. The proposed amendment to Rule 6(e) is designed simply to make clear that if parties consent to service by electronic means, the five-day mailing rule still applies. The proposed revision is in bold:

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail **or electronic means** or upon a person designated by statute to accept service, five days shall be added to the prescribed period.

This proposed amendment is not consistent with Federal Rule of Civil Procedure 6(d), which does not give the additional three days if service was by

electronic means. Admittedly, keeping the mailing days for electronic service does not fit with the logic of mailing days, given that e-mail is essentially instantaneous and the U.S. Postal Service does need time to sort and deliver the message.

Nevertheless, the Committee recommends this change to Rule 6(e) for two reasons. *First*, allowing parties still to have the additional five days should avoid parties from refusing to consent to electronic service for fear of having less time to respond to discovery or a motion (for counties that do not have e-filing yet). *Second*, lawyers are accustomed to the five mailing days in state court practice, so keeping these days avoids additional changes to state court practice.



TO: House of Delegates  
FROM: Pro Bono Board  
DATE: November 15, 2018

RE: Amendment of Commentary to Canon 4B of the Code of Judicial Conduct, Rule 501, SCACR

The Pro Bono Board submits the following proposed amendment of the Commentary to Canon 4B of the South Carolina Code of Judicial Conduct, Rule 501, South Carolina Appellate Court Rules.

In 2007, the ABA made comprehensive changes to the Model Code of Judicial Conduct. The South Carolina Supreme Court has not yet updated the South Carolina Code of Judicial Conduct to reflect those changes.

In revising the Model Code, the ABA adopted a new format that includes black-letter Rules that follow each of the Canons or statements of overarching principles of judicial conduct. Canon 3 and its Rules address specific types of personal conduct, including involvement in extrajudicial activities and in business or financial activities, most of which had previously been addressed in Canon 4. In Rule 3.7, the ABA added a provision specifically stating that judges are ethically permitted to encourage pro bono service.<sup>1</sup>

A majority of states have adopted the revisions to the Model Code of Judicial Conduct. Other states, which, like South Carolina, have not revised their

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<sup>1</sup> Model Rule 3.7 and current Canon 4 of the South Carolina Code of Judicial Conduct are attached.

Code of Judicial Conduct to reflect the changes to the Model Code, have added language to Canon 4 and/or to the Comment to the Canon similar to that found in current Model Rule 3.7.

Florida has added the following to its Comment to Canon 4B:

Support of pro bono legal services by members of the bench is an activity that relates to improvement of the administration of justice. Accordingly, a judge may engage in activities intended to encourage attorneys to perform pro bono services, including, but not limited to: participating in events to recognize attorneys who do pro bono work, establishing general procedural or scheduling accommodations for pro bono attorneys as feasible, and acting in an advisory capacity to pro bono programs.

Fla. Code Jud. Conduct, Canon 4B.

Other states have added a provision to the Canon and the Comment.

Canon 4C of the Virginia Code of Judicial Conduct states the following:

A judge may encourage lawyers to provide pro bono publico legal services.

Commentary:

A judge may promote broader access to justice by encouraging lawyers to participate in pro bono public or legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may take many forms, including providing a list of available programs, training lawyers to do pro bono publico service or legal work, and participating in events recognizing lawyers who have done pro bono public work, including nominating lawyers for such recognition. A judge may assist an organization in the recruitment of lawyers or law firms to provide pro bono legal services so long as the recruitment effort cannot reasonably be perceived as coercive. This includes a judge requesting an attorney to accept pro bono representation of a party in a proceeding pending before the judge. A judge may participate in programs concerning the

law which promote the provision of pro bono publico legal services and may provide leadership in convening, participating or assisting in advisory committees and community collaborations devoted to the provision of legal services to the indigent or those with low incomes. A judge may also support projects and programs directly related to the provision of services to indigent and low income individuals coming before the courts and may comment upon the need for funding of such projects and programs.

Va. Code Jud. Conduct, Canon 4C.

Canon 4(C)(3)(e) of the California Code of Judicial Ethics states the following:

A judge may encourage lawyers to provide pro bono publico legal services.

#### ADVISORY COMMITTEE COMMENTARY

In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, as long as the judge does not employ coercion or abuse the prestige of judicial office.

Cal. Code Jud. Ethics, Canon 4(C)(3)(e).

Until the South Carolina Supreme Court can undertake a comprehensive review of the South Carolina Code of Judicial Conduct in light of the changes to the Model Code, the South Carolina Bar Pro Bono Board proposes amending the Commentary to Canon 4B by adding, as a second paragraph, the following language, which borrows from the language used in Florida and Virginia:

A judge may promote the administration of justice by supporting and

encouraging lawyers to provide pro bono legal services as long as the judge does not employ coercion or abuse the prestige of the judicial office. Such support and encouragement may include, but is not limited to: participating in events to recognize lawyers who do pro bono work; establishing general procedural or scheduling accommodations for pro bono lawyers as feasible; acting in an advisory capacity to pro bono programs; assisting an organization in the recruitment of lawyers or law firms to provide pro bono legal services so long as the recruitment effort cannot reasonably be perceived as coercive; participating in programs concerning the law which promote the provision of pro bono legal services; and providing leadership in convening, participating or assisting in advisory committees and community collaborations devoted to the provision of legal services to the indigent or those with low incomes, including commenting on the need for funding of such projects and programs.

## Rule 3.7: Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

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(A) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

(1) assisting such an organization or entity in planning related to fund-raising, and participating in the management and investment of the organization's or entity's funds;

(2) soliciting\* contributions\* for such an organization or entity, but only from members of the judge's family,\* or from judges over whom the judge does not exercise supervisory or appellate authority;

(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice;

(5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(a) will be engaged in proceedings that would ordinarily come before the judge; or

(b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(B) A judge may encourage lawyers to provide pro bono publico legal services.

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# Comment on Rule 3.7

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[1] The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations.

[2] Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.

[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph 4(A). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.

[4] Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.

[5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work.



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## CANON 4

### A JUDGE SHALL SO CONDUCT THE JUDGE'S EXTRA-JUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS

**A. Extra-Judicial Activities in General.** A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;**
- (2) demean the judicial office; or**
- (3) interfere with the proper performance of judicial duties.**

Commentary:

Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability or age. See Section 2C and accompanying Commentary.

**B. Avocational Activities.** A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law,\* the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code.

Commentary:

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities.

In this and other Sections of Canon 4, the phrase "subject to the requirements of this Code" is used, notably in connection with a judge's governmental, civic or charitable activities. This phrase is included to remind judges that the use of permissive language in various Sections of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.

**C. Governmental, Civic or Charitable Activities.**

- (1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law,\* the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.**

Commentary:

See Section 2B regarding the obligation to avoid improper influence.

**(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law,\* the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.**

Commentary:

Section 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system or administration of justice as authorized by Section 4C(3). The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary.

Section 4C(2) does not govern a judge's service in a nongovernmental position. See Section 4C(3) permitting service by a judge with organizations devoted to the improvement of the law, the legal system or the administration of justice and with educational, religious, charitable, fraternal or civic organizations not conducted for profit. For example, service on the board of a public educational institution, unless it were a law school, would be prohibited under Section 4C(2), but service on the board of a public law school or any private educational institution would generally be permitted under Section 4C(3).

**(3) A judge may serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law,\* the legal system or the administration of justice or of an educational, religious, charitable, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.**

Commentary:

Section 4C(3) does not apply to a judge's service in a governmental position unconnected with the improvement of the law, the legal system or the administration of justice; see Section 4C(2).

See Commentary to Section 4B regarding use of the phrase "subject to the following limitations and the other requirements of this Code." As an example of the meaning of the phrase, a judge permitted by Section 4C(3) to serve on the board of a fraternal institution may be prohibited from such service by Sections 2C or 4A if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge's capacity to act impartially as a judge.

Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 4 in addition to Section 4C. For example, a judge is prohibited by Section 4G from serving as a legal advisor to a civic or charitable organization.

**(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization**

**(i) will be engaged in proceedings that would ordinarily come before the judge, or**

**(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.**

Commentary:

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

**(b) A judge as an officer, director, trustee or non-legal advisor, or as a member or otherwise:**

**(i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;**

**(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law,\* the legal system or the administration of justice;**

**(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Section 4C(3)(b)(i), if the membership solicitation is essentially a fund-raising mechanism;**

**(iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.**

Commentary:

A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system or the administration of justice or a nonprofit educational, religious, charitable, fraternal or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing or by telephone except in the following cases: 1) a judge may solicit for funds or memberships

other judges over whom the judge does not exercise supervisory or appellate authority, 2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves and 3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

Use of an organization letterhead for fund-raising or membership solicitation does not violate Section 4C(3)(b) provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

A judge must not be a speaker or guest of honor at an organization's fund-raising event, but mere attendance at such an event is permissible if otherwise consistent with this Code.

#### **D. Financial Activities.**

##### **(1) A judge shall not engage in financial and business dealings that:**

- (a) may reasonably be perceived to exploit the judge's judicial position, or
- (b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

#### **Commentary:**

The Time for Compliance provision of this Code (Application, Section F) postpones the time for compliance with certain provisions of this Section in some cases.

When a judge acquires in a judicial capacity information, such as material contained in filings with the court, that is not yet generally known, the judge must not use the information for private gain. See Section 2B; *see also* Section 3B(11).

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges on the judge's court. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification. With respect to affiliation of relatives of judges with law firms appearing before the judge, *see* Commentary to Section 3E(1) relating to disqualification.

Participation by a judge in financial and business dealings is subject to the general prohibitions in Section 4A against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Section 2B against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1. See Commentary for Section 4B regarding use of the phrase "subject to the requirements of this Code."

##### **(2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family,\* including real estate, and engage in other remunerative activity.**

#### **Commentary:**

This Section provides that, subject to the requirements of this Code, a judge may hold and manage investments owned solely by the judge, investments owned solely by a member or members of the judge's family, and investments owned jointly by the judge and members of the judge's family.

**(3) A judge may serve as an officer, director, manager, general partner, advisor or employee of a business entity if that service does not conflict with the judge's judicial duties, create the appearance of impropriety or otherwise violate any provision of this Code.**

Commentary:

A judge may participate in a business if that participation does not conflict with the judge's judicial duties, create the appearance of impropriety or violate any other provision of this Code. For example, a judge may be prohibited from participation if the business entity frequently appears before the judge's court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participation if the judge's participation would involve misuse of the prestige of office.

**(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.**

**(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household,\* not to accept, a gift, bequest, favor or loan from anyone except for:**

Commentary:

Section 4D(5) does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 5.

Because a gift, bequest, favor or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

**(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law,\* the legal system or the administration of justice;**

Commentary:

Acceptance of an invitation to a law-related function is governed by Section 4D(5)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Section 4D(5)(h).

A judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code. See Sections 4A(1) and 2B.

**(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;**

**(c) ordinary social hospitality;**

**(d) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;**

Commentary:

A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Section 4D(5)(e).

**(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Section 3E;**

**(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;**

**(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants;**

**(h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and, if its value exceeds \$150.00, the judge reports it in the same manner as the judge reports compensation in Section 4H; or**

**(i) a judicial portrait or memorial which complies with the requirements of Rule 3.5(d) of the Rules of Professional Conduct contained in Rule 407, SCACR.**

Commentary:

Section 4D(5)(h) prohibits judges from accepting gifts, favors, bequests or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

**E. Fiduciary Activities.**

**(1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, conservator, attorney in fact or other fiduciary.\* Further, a judge should not be a signatory on a joint account with a guardian, conservator, attorney in fact, or personal representative, or otherwise exercise influence or control over the investment or use of such funds and property as are within the jurisdiction of the court. A judge may, however, serve in one of these capacities for the estate, trust or person of a member of the judge's family,\* but only if such service will not interfere with the proper performance of judicial duties.**

**(2) A judge shall not serve as a fiduciary\* if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.**

**(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary\* capacity.**

Commentary:

The Time for Compliance provision of this Code (Application, Section F) postpones the time for compliance with certain provisions of this Section in some cases.

The restrictions imposed by this Canon may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of Section 4D(4).

**F. Service as Arbitrator or Mediator.** A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.\* However, a retired judge may act as an arbitrator or mediator and remain available for assignment as a judge by the Chief Justice of the Supreme Court, provided the judge is disqualified: (1) from mediation and arbitration in matters in which the judge served as judge; and (2) as a judge from matters in which the judge participated as mediator or arbitrator.

**G. Practice of Law.** A judge shall not practice law. Notwithstanding this prohibition, a judge may act *pro se* and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.\* This prohibition on the practice of law becomes effective immediately upon taking the oath of office and applies to any case in the judge's former practice that was not completed when judicial duties were assumed.

Commentary:

This prohibition refers to the practice of law in a representative capacity and not in a *pro se* capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family. See Section 2B.

The Code allows a judge to give legal advice to and draft legal documents for members of the judge's family, so long as the judge receives no compensation. A judge must not, however, act as an advocate or negotiator for a member of the judge's family in a legal matter.

**H. Compensation, Reimbursement and Reporting.**

**(1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.**

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

**(2) Public Reports. A judge shall report the date, place and nature of any activity for which the judge received compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. The judge's report shall be made at least annually and shall be filed as a public document in the Office of Court Administration.**

Commentary:

See Section 4D(5) regarding reporting of gifts, bequests and loans.

The Code does not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not appear to trade on the judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.

**I. Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this Canon and in Sections 3E and 3F, or as otherwise required by law.\***

Commentary:

Section 3E requires a judge to disqualify himself or herself in any proceeding in which the judge has an economic interest. See "economic interest" as explained in the Terminology Section. Section 4D requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of judicial duties; Section 4H requires a judge to report all compensation the judge received for activities outside judicial office. A judge has the rights of any other citizen, including the right to privacy of the judge's financial affairs, except to the extent that limitations established by law are required to safeguard the proper performance of the judge's duties.



TO: House of Delegates  
FROM: Pro Bono Board  
DATE: December 4, 2018  
RE: Amendment to Rule 426 of the South Carolina Appellate Court Rules

The Pro Bono Board submits the following proposed amendment to Rule 426 of the South Carolina Appellate Court Rules.

In 2014, the Commission on Lawyer Conduct requested the South Carolina Supreme Court adopt the ABA Model Rule on Provision of Legal Services Following Determination of Legal Disaster. The Court adopted the rule, which is now Rule 426, SCACR.<sup>1</sup> However, the Commission did not request adoption of the COMMENT to the rule; therefore, the rule was adopted without the Comment. The Comment is valuable in defining a major disaster "affecting the justice system" as well as other language in the rule. This issue has arisen in connection with the recent hurricanes and related flooding when the Bar was asked to request the Supreme Court issue an order pursuant to Rule 426 allowing attorneys from out-of-state to provide pro bono legal services to qualified indigents in the affected areas. The Bar took the position that there had not been "an emergency affecting the justice system." The Pro Bono Board believes the Comment would clarify under what circumstances the rule is applicable.

The Comment to the Model Rule reads as follows, with revisions

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<sup>1</sup> A copy of the rule is attached.

consistent with the language of Rule 426 shown with strikethrough and underline:

### Comment

[1] A major disaster in this or another jurisdiction may cause an emergency affecting the justice system with respect to the provision of legal services for a sustained period of time interfering with the ability of lawyers admitted and practicing in the affected jurisdiction to continue to represent clients until the disaster has ended. When this happens, lawyers from the affected jurisdiction may need to provide legal services to their clients, on a temporary basis, from an office outside their home jurisdiction. In addition, lawyers in an unaffected jurisdiction may be willing to serve residents of the affected jurisdiction who have unmet legal needs as a result of the disaster or, though independent of the disaster, whose legal needs temporarily are unmet because of disruption to the practices of local lawyers. Lawyers from unaffected jurisdictions may offer to provide these legal services either by traveling to the affected jurisdiction or from their own offices or both, provided the legal services are provided on a pro bono basis through an authorized not-for-profit entity or such other organization(s) specifically designated by ~~this~~ the Supreme Court. A major disaster includes, for example, a hurricane, earthquake, flood, wildfire, tornado, public health emergency or an event caused by terrorists or acts of war.

[2] Under paragraph (a)(1), ~~this~~ the Supreme Court shall determine whether a major disaster causing an emergency affecting the justice system has occurred in this jurisdiction, or in a part of this jurisdiction, for purposes of triggering paragraph (b) of this Rule. ~~This~~ The Supreme Court may, for example, determine that the entirety of this jurisdiction has suffered a disruption in the provision of legal services or that only certain areas have suffered such an event. The authority granted by paragraph (b) shall extend only to lawyers authorized to practice law and not disbarred, suspended from practice or otherwise restricted from practice in any other manner in any other jurisdiction.

[3] Paragraph (b) permits lawyers authorized to practice law in an unaffected jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practicing law in any other manner in any other jurisdiction, to provide pro bono legal services to residents of

the affected jurisdiction following determination of an emergency caused by a major disaster; notwithstanding that they are not otherwise authorized to practice law in the affected jurisdiction. Other restrictions on a lawyer's license to practice law that would prohibit that lawyer from providing legal services pursuant to this Rule include, but are not limited to, probation, inactive status, disability inactive status or a non-disciplinary administrative suspension for failure to complete continuing legal education or other requirements. Lawyers on probation may be subject to monitoring and specific limitations on their practices. Lawyers on inactive status, despite being characterized in many jurisdictions as being "in good standing," and lawyers on disability inactive status are not permitted to practice law. Public protection warrants exclusion of these lawyers from the authority to provide legal services as defined in this Rule. Lawyers permitted to provide legal services pursuant to this Rule must do so without fee or other compensation, or expectation thereof. Their service must be provided through an established not-for-profit organization that is authorized to provide legal services either in its own name or that provides representation of clients through employed or cooperating lawyers. Alternatively, ~~this~~ the Supreme eCourt may instead designate other specific organization(s) through which these legal services may be rendered. Under paragraph (b), an emeritus lawyer from another United Statesjurisdiction may provide pro bono legal services on a temporary basis in this jurisdiction provided that the emeritus lawyer is authorized to provide pro bono legal services in that jurisdiction pursuant to that jurisdiction's emeritus or pro bono practice rule. Lawyers may also be authorized to provide legal services in this jurisdiction on a temporary basis under Rule 5.5(c) of the Rules of Professional Conduct.

[4] Lawyers authorized to practice law in another jurisdiction, who principally practice in the area of such other jurisdiction determined by ~~this~~ the Supreme Court to have suffered a major disaster, and whose practices are disrupted by a major disaster there, and who are not disbarred, suspended from practice or otherwise restricted from practicing law in any other manner in any other jurisdiction, are authorized under paragraph (c) to provide legal services on a temporary basis in this jurisdiction. Those legal services must arise out of and be reasonably related to the lawyer's practice of law in the affected jurisdiction. For purposes of this Rule, the determination of a

major disaster in another jurisdiction should first be made by the highest court of appellate jurisdiction in that jurisdiction. For the meaning of "arise out of and reasonably related to," see Rule 5.5 Comment [14], Rules of Professional Conduct.

[5] Emergency conditions created by major disasters end, and when they do, the authority created by paragraphs (b) and (c) also ends with appropriate notice to enable lawyers to plan and to complete pending legal matters. Under paragraph (d), ~~this~~ the Supreme Court determines when those conditions end only for purposes of this Rule. The authority granted under paragraph (b) shall end upon such determination except that lawyers assisting residents of this jurisdiction under paragraph (b) may continue to do so for such longer period as is reasonably necessary to complete the representation. The authority created by paragraph (c) will end 60 days after ~~this~~ the Supreme Court makes such a determination with regard to an affected jurisdiction.

[6] Paragraphs (b) and (c) do not authorize lawyers to appear in the courts of this jurisdiction. Court appearances are subject to the pro hac vice admission requirements in Rule 404 of the South Carolina Appellate Court Rules. ~~This~~ The Supreme Court may, in a determination made under paragraph (e)(2), include authorization for lawyers who provide legal services in this jurisdiction under paragraph (b) to appear in all or designated courts of this jurisdiction without need for such pro hac vice admission. If such an authorization is included, any pro hac vice admission fees shall be waived. A lawyer who has appeared in the courts of this jurisdiction pursuant to paragraph (e) may continue to appear in any such matter notwithstanding a declaration under paragraph (d) that the conditions created by major disaster have ended. Furthermore, withdrawal from a court appearance is subject to Rule 1.16 of the Rules of Professional Conduct.

[7] Authorization to practice law as a foreign legal consultant or in-house counsel in a United States jurisdiction offers lawyers a limited scope of permitted practice and may therefore restrict that person's ability to provide legal services under this Rule.

[8] The ABA National Lawyer Regulatory Data Bank is available to help determine whether any lawyer seeking to practice in this jurisdiction pursuant to paragraphs (b) or (c) of this Rule is disbarred,

suspended from practice or otherwise subject to a public disciplinary sanction that would restrict the lawyer's ability to practice law in any other jurisdiction.

The Pro Bono Board proposes Rule 426 be amended to include the above

Comment as revised.

## RULE 426

### PROVISION OF LEGAL SERVICES FOLLOWING DETERMINATION OF MAJOR DISASTER

**(a) Determination of Existence of Major Disaster.** Solely for purposes of this Rule, the Supreme Court shall determine when an emergency affecting the justice system, as a result of a natural or other major disaster, has occurred in:

(1) this jurisdiction and whether the emergency caused by the major disaster affects the entirety or only a part of this jurisdiction, or

(2) another jurisdiction, but only after such a determination and its geographical scope have been made by the highest court of that jurisdiction. The authority to engage in the temporary practice of law in this jurisdiction pursuant to paragraph (c) shall extend only to lawyers who principally practice in the area of such other jurisdiction determined to have suffered a major disaster causing an emergency affecting the justice system and the provision of legal services.

**(b) Temporary Practice in this Jurisdiction Following Major Disaster.** Following the determination of an emergency affecting the justice system in this jurisdiction pursuant to paragraph (a) of this Rule, or a determination that persons displaced by a major disaster in another jurisdiction and residing in this jurisdiction are in need of pro bono services and the assistance of lawyers from outside of this jurisdiction is required to help provide such assistance, a lawyer authorized to practice law in another United States jurisdiction, and not disbarred, suspended, or otherwise restricted from practice in any jurisdiction, may provide legal services in this jurisdiction on a temporary basis. Such legal services must be provided on a pro bono basis without compensation, expectation of compensation, or other direct or indirect pecuniary gain to the lawyer. Such legal services shall be assigned and supervised through an established not-for-profit bar association, pro bono program, or legal services program or through such organization(s) specifically designated by the Supreme Court.

**(c) Temporary Practice in this Jurisdiction Following Major Disaster in Another Jurisdiction.** Following the determination of a major disaster in another United States jurisdiction, a lawyer who is authorized to practice law and who principally practices in that affected jurisdiction, and who is not disbarred, suspended, or otherwise restricted from practice in any jurisdiction, may provide legal services in this jurisdiction on a temporary basis. Those legal services must arise out of and be reasonably related to that lawyer's practice of law in the jurisdiction, or area of such other jurisdiction, where the major disaster occurred.

**(d) Duration of Authority for Temporary Practice.** The authority to practice law in this jurisdiction granted by paragraph (b) of this Rule shall end when the Supreme Court determines that the conditions caused by the major disaster in this jurisdiction have ended except that a lawyer then representing clients in this jurisdiction pursuant to paragraph (b) is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation. The lawyer shall not thereafter accept new clients. The authority to practice law in this jurisdiction granted by paragraph (c) of this Rule shall end 60 days after the Supreme Court declares that the conditions caused by the major disaster in the affected jurisdiction have ended.

**(e) Court Appearances.** The authority granted by this Rule does not include appearances in court except:

(1) pursuant to Rule 404 and, if such authority is granted, any fees for such admission shall be waived; or

(2) if the Supreme Court, in any determination made under paragraph (a), grants blanket permission to appear in all or designated courts of this jurisdiction to lawyers providing legal services pursuant to paragraph (b). If such an authorization is included, any *pro hac vice* admission fees shall be waived.

**(f) Disciplinary Authority and Registration Requirement.** Lawyers providing legal services in this jurisdiction pursuant to paragraphs (b) or (c) are subject to the Supreme Court's disciplinary authority and the Rules of Professional Conduct of this jurisdiction as provided in Rule 8.5 of the Rules of Professional Conduct. Lawyers providing legal services in this jurisdiction under paragraphs (b) or (c) shall, within 30 days from the commencement of the provision of legal services, file a registration statement with the Clerk of the Supreme Court. The registration statement shall be in a form prescribed by the Supreme Court. Any lawyer who provides legal services pursuant to this Rule shall not be considered to be engaged in the unlawful practice of law in this jurisdiction.

**(g) Notification to Clients.** Lawyers authorized to practice law in another United States jurisdiction who provide legal services pursuant to this Rule shall inform clients in this jurisdiction of the jurisdiction in which they are authorized to practice law, of any limits of that authorization, and that they are not authorized to practice law in this jurisdiction except as permitted by this Rule. They shall not state or imply to any person that they are otherwise authorized to practice law in this jurisdiction.

Adopted by Order dated July 23, 2014.



To: House of Delegates  
From: Michael Virzi, Professional Responsibility Committee Chair  
RE: Request from the Professional Responsibility Committee to Amend Rule 3.8 of the Rules of Professional Conduct

In December 2017, the South Carolina Bar's Professional Responsibility Committee formed a subcommittee to consider whether South Carolina should adopt subsections (g) and (h) in Rule 3.8 of the Model Rules of Professional Conduct. Those provisions provide:

(g) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) promptly disclose that evidence to an appropriate court or authority, and

(2) if the conviction was obtained in the prosecutor's jurisdiction,

(i) promptly disclose that evidence to the defendant unless a court authorizes delay, and

(ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

Model Rule 3.8(g), (h).<sup>1</sup>

Soon after its formation, the subcommittee sought input from prosecutors and defense counsel regarding these provisions. Defense counsel noted that adopting subsections (g) and (h) of the Model Rule would create and outline a process for prosecutors to comply with in instances where evidence of a defendant's innocence is available to the prosecution and should be turned over to the defense. Prosecutors, however, had some concerns with implementing these provisions of the Model Rule. Several were troubled with the Model Rule's "seek to remedy the conviction"

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<sup>1</sup> As of September 2017, three states had adopted subsections (g) and (h) of the Model Rule as is and fourteen states had adopted a modified version of them. American Bar Association, CPR Policy Implementation Committee, *Variations of the ABA Model Rules of Professional Conduct* (Sept. 29, 2017), [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/mrpc\\_3\\_8\\_g\\_h.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_3_8_g_h.pdf).

requirement because their offices lack the ability to oversee investigations of criminal activities and matters by law enforcement. Others felt that adopting these subsections was unnecessary because their offices already had procedures in place that satisfy the purpose of the Model Rule. After considerable discussion, the subcommittee ultimately recommended adopting modified versions of subsections (g) and (h) that address many of the concerns raised by the prosecutors.

#### Rule 3.8(g)

In its proposal, the subcommittee recommended adding “information” to subsection (g) because an individual noted that “evidence” can be narrowly defined to mean “admissible in court.” The subcommittee wanted to be clear that the rule encompassed all information not just what could be deemed “evidence.” The subcommittee used North Carolina’s Rule 3.8(g) as a guide for this change. *See* Rule 3.8(g), North Carolina Rules of Professional Conduct (providing “[w]hen a prosecutor knows of new, credible *evidence or information* creating a reasonable likelihood that a convicted defendant did not commit an offense for which the defendant was convicted”) (emphasis added).

The subcommittee removed Model Rule 3.8(g)’s requirement that the prosecutor “promptly disclose [the] evidence to an appropriate court or authority” because the prosecutors noted that it may be difficult, if not impossible, to determine the appropriate court or authority. The prosecutors also noted that courts lack the power to do anything with the evidence/information upon receipt. Accordingly, the subcommittee instead recommended requiring the prosecutor disclose the information to the chief prosecutor in the jurisdiction. This change also corresponds with what prosecutors said they would do under the current state of affairs.

The subcommittee also changed “promptly disclose” to “timely” to conform with the rest of Rule 3.8. *See* Rule 3.8(d) (explaining that the prosecutor shall “make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense”). Delaware has this change as well. *See* Rule 3.8(d)(2) (“when the prosecutor comes to know of new, credible and material evidence establishing that a convicted defendant did not commit the offense for which the defendant was convicted, the prosecutor shall, unless a court authorizes delay, make *timely* disclosure of that evidence to the convicted defendant and any appropriate court”) (emphasis added).

The subcommittee followed Colorado and changed “reasonable likelihood” to “reasonable probability.” The subcommittee thought the term “probability” addressed the prosecutor’s concerns that they would be required to turn over every little thing, including a letter from the inmate/defendant saying, “I didn’t do it.”

#### Rule 3.8(h)

To subsection (h), the subcommittee proposed the following: “When a prosecutor knows of clear and convincing evidence or information establishing that a defendant in the prosecutor’s jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall

make reasonable efforts to remedy the conviction.” The subcommittee deviated from the Model Rule language here because the prosecutors said they did not have a mechanism to “seek to remedy the conviction.”

### Rule 3.8(i)

The subcommittee proposed adding Model Rule 3.8’s Comment 9 to the body of our rule with some amendments.<sup>2</sup> This change was made in response to some prosecutors’ desire to make the “safe harbor” or “good faith exception” a part of the rule. The subcommittee added “measured by an objective standard” to respond to criticisms from the AUSA that it was unclear as to whether the exception would be measured by a subjective or objective standard. Other states, such as Hawaii, moved the safe harbor to the rule too. *See* Rule 3.8, Hawaii Rules of Professional Conduct (A prosecutor’s independent judgment, made in good faith, that the new evidence is not of such nature as to trigger the obligations of section (c), though subsequently determined to have been erroneous, does not constitute a violation of this Rule”).

### Comments

The subcommittee’s proposed Comment 7 is similar to the Model Rule’s except the subcommittee proposed placing the first sentence of the comment into the body of the rule. Proposed Comment 8 expands on the chief prosecutor’s responsibilities “[w]hen no prosecutor involved in a conviction is currently employed in a prosecutor’s office at the time credible, material evidence or information indicating innocence arises.” The subcommittee proposed Comments 9, 10 and 11, which define the terms “credible,” “material,” and “clear and convincing,” in response to criticism that the terms were vague. Proposed Comment 12 sets forth examples of steps the prosecutor may be required to take when seeking to remedy a conviction.

The subcommittee presented its proposal to the Committee during its August 2018 meeting. After discussion, the proposal passed without amendment with two votes to oppose. The Committee now asks the House of Delegates to approve its proposed changes to Rule 3.8, which are underlined below.

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<sup>2</sup> Model Rule 3.8’s Comment 9 provides “A prosecutor’s independent judgment, made in good faith, that the new evidence is not of such nature as to trigger the obligations of sections (g) and (h), though subsequently determined to have been erroneous, does not constitute a violation of this Rule.”

### **Rule 3.8: Special Responsibilities of a Prosecutor**

The prosecutor in a criminal case shall:

- (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;
- (b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- (c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;
- (d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;
- (e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:
  - (1) the information sought is not protected from disclosure by any applicable privilege;
  - (2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and
  - (3) there is no other feasible alternative to obtain the information;
- (f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.
- (g) When a prosecutor learns of credible, material evidence or information such that there is a reasonable probability that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:
  - (1) if the conviction was obtained outside the prosecutor's jurisdiction, timely disclose in writing that evidence or information to the chief prosecutor in the jurisdiction where the conviction was obtained;
  - (2) if the conviction was obtained in the prosecutor's jurisdiction but the prosecutor was not involved in the prosecution, timely disclose in writing that evidence or information to the chief prosecutor in the jurisdiction; and

(3) if the prosecutor was involved in the prosecution,

(i) make reasonable efforts to timely disclose in writing that evidence or information to the defendant, or if the defendant is represented by counsel, to the defendant's counsel, unless a court authorizes delay, and

(ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

(h) When a prosecutor knows of clear and convincing evidence or information establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall make reasonable efforts to remedy the conviction.

(i) A prosecutor who concludes in good faith, measured by an objective standard, that information is not subject to subsections (g) or (h) of this Rule does not violate those subsections even if this conclusion is later determined to have been erroneous.

### **Comment**

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to the Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

[2] In some jurisdictions, a defendant may waive a preliminary hearing and thereby lose a valuable opportunity to challenge probable cause. Accordingly, prosecutors should not seek to obtain waivers of preliminary hearings or other important pretrial rights from unrepresented accused persons. Paragraph (c) does not apply, however, to an accused appearing pro se with the approval of the tribunal. Nor does it forbid the lawful questioning of a suspect who has knowingly waived the rights to counsel and silence.

[3] The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

[4] Paragraph (e) is intended to limit the issuance of lawyer subpoenas in grand jury and other criminal proceedings to those situations in which there is a genuine need to intrude into the client lawyer relationship.

[5] Paragraph (f) supplements Rule 3.6, which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. In the context of a criminal prosecution, a prosecutor's extrajudicial statement can create the additional problem of increasing

public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused. Nothing in this Comment is intended to restrict the statements which a prosecutor may make which comply with Rule 3.6(b) or 3.6(c).

[6] Like other lawyers, prosecutors are subject to Rules 5.1 and 5.3, which relate to responsibilities regarding lawyers and nonlawyers who work for or are associated with the lawyer's office. Paragraph (f) reminds the prosecutor of the importance of these obligations in connection with the unique dangers of improper extrajudicial statements in a criminal case. In addition, paragraph (f) requires a prosecutor to exercise reasonable care to prevent persons assisting or associated with the prosecutor from making improper extrajudicial statements, even when such persons are not under the direct supervision of the prosecutor. Ordinarily, the reasonable care standard will be satisfied if the prosecutor issues the appropriate cautions to law-enforcement personnel and other relevant individuals.

[7] If the conviction was obtained in the prosecutor's jurisdiction, paragraph (g) requires the prosecutor to examine the evidence or information and undertake further investigation or make reasonable efforts to cause another appropriate authority to undertake the necessary investigation, and to promptly disclose the evidence or information to the defendant. Consistent with the objectives of Rules 4.2 and 4.3, disclosure to a represented defendant must be made through the defendant's counsel, and, in the case of an unrepresented defendant, would ordinarily be accompanied by a request to a court for the appointment of counsel to assist the defendant in taking such legal measures as may be appropriate.

[8] When no prosecutor involved in a conviction is currently employed in a prosecutor's office at the time credible, material evidence or information indicating innocence arises, the chief prosecutor has an obligation to determine in good faith whether the evidence or information has been disclosed as required under these rules or applicable law.

[9] In paragraph (g), the use of the word "credible" means the evidence or information must be trustworthy or capable of persuading a trier of fact.

[10] In paragraph (g), the use of the word "material" means the evidence or information is such that there is a reasonable possibility that the outcome of the trial or guilty plea would have been different had the defendant known of the evidence or information at the time of trial or guilty plea.

[11] In paragraph (h), the phrase "clear and convincing" means a degree of proof that produces in the mind of the prosecutor a firm belief as to the allegations sought to be established. It does not mean clear and unequivocal.

[12] In paragraph (h), once the prosecutor knows of clear and convincing evidence that the defendant was convicted of an offense that the defendant did not commit, the prosecutor must seek to remedy the conviction. Necessary steps may include disclosure of the evidence to the defendant, requesting that the court appoint counsel for an unrepresented indigent defendant and, where appropriate, notifying the court that the prosecutor has knowledge that the defendant did not commit the offense of which the defendant was convicted.



To: House of Delegates  
From: Michael Virzi, Professional Responsibility Committee Chair  
RE: Request from the Professional Responsibility Committee to Amend Rules 1.0, 1.1, 1.18, 4.4, 5.3, 5.5, and 8.5 of the Rules of Professional Conduct

The American Bar Association formed the Commission on Ethics 20/20 to study “how globalization and technology are transforming the practice of law and how the regulation of lawyers should be updated in light of those developments.”<sup>1</sup> Following the Commission’s review, the ABA made numerous changes to its Model Rules of Professional Conduct. The South Carolina Bar’s Professional Responsibility Committee began a piecemeal review of those changes in 2015.<sup>2</sup> In May 2018, the Committee formed a new subcommittee, which reviewed the remaining changes. The Committee now requests the House of Delegates approve the following changes to Rules 1.0, 1.1, 1.18, 4.4, 5.3, 5.5, and 8.5 of the South Carolina Rules of Professional Conduct.

A. Rule 1.0

To Rule 1.0 Comment 9, the Committee proposes replacing “materials” with “information, including electronic information.” This proposed change would “make clear that a screen must necessarily include protections against the sharing of both tangible as well as electronic information.”<sup>3</sup> The Committee deviated from the ABA’s “information, including *information in electronic form*”<sup>4</sup> language to be consistent with the proposed changes to Rule 4.4, which will be discussed below.

B. Rule 1.1

The Committee proposes two new comments to Rule 1.1. Proposed Comment 6 provides:

Before a lawyer retains or contracts with other lawyers outside the lawyer’s own firm to provide or assist in the provision of legal services to a client, the lawyer

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<sup>1</sup> ABA Commission on Ethics 20/20, *Introduction and Overview* p.1 (Aug. 2012).

<sup>2</sup> In 2015, the Bar petitioned the Court to amend several of South Carolina’s Rules of Professional Conduct after the House of Delegates approved the Committee’s proposal concerning the Ethics 20/20 changes to Model Rules 1.4, 7.1, 7.2, and 7.3. By order dated August 10, 2016, the South Carolina Supreme Court granted the Bar’s request and amended the rules with some modifications.

The Committee subsequently reviewed some of the Ethics 20/20 changes to Model Rules 1.0, 1.1, and 1.6. Its proposal concerning those changes was presented to the House of Delegates during its January 2018 meeting and an amended proposal was presented during its May 2018 meeting. At the time of this writing, the Bar is petitioning the Court to amend our Rules in accordance with the changes approved by the House of Delegates in May.

<sup>3</sup> ABA Commission on Ethics 20/20, *105A Revised Report* p.1 (Aug. 2012).

<sup>4</sup> Model Rule 1.0 cmt. 9 (emphasis added).

must reasonably believe that the service of the other lawyer(s) will contribute to the competent and ethical representation of the client, and the lawyer may be required to obtain the informed consent of the client under other Rules.

This new comment also identifies some of the factors lawyers should consider when retaining lawyers in a different firm to assist on a client's matter.<sup>5</sup> Proposed Comment 7 to Rule 1.1 "emphasizes that, when multiple firms work together on a client's matter, the firms ordinarily should consult with the client and each other about the scope of the work being performed by each firm and the allocation of responsibility among them."<sup>6</sup>

#### C. Rule 1.18

The Committee proposes several changes to Rule 1.18 and its Comments "that would clarify when electronic communications give rise to a prospective client-lawyer relationship."<sup>7</sup> For example, to Rule 1.18(a), the Committee recommends replacing "discusses" with "engages in mutual communication with a lawyer about."<sup>8</sup> "This change would make clear [that] . . . a prospective client-lawyer relationship can arise even when an oral discussion between a lawyer and client has not taken place."<sup>9</sup> Still, these changes "retain the idea that unilateral communications from a person to a lawyer are not sufficient to give rise to a prospective client relationship."<sup>10</sup>

#### D. Rule 4.4

To Rule 4.4, the Committee proposes adding "or electronic information" to clarify that the rule governs more than paper documents.<sup>11</sup> The Committee proposes defining "inadvertently sent" in

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<sup>5</sup> Comment 6 to Model Rule 1.1 provides "the lawyer should ordinarily obtain informed consent from the client." Some members of the Committee were concerned that this language would require a lawyer to obtain informed consent in circumstances where informed consent would normally not be required (for example, when outsourcing research to another lawyer). As a result, the Committee instead proposes "the lawyer may be required to obtain the informed consent of the client under other Rules."

<sup>6</sup> ABA Commission on Ethics 20/20, *105C Report* p.6. (Aug. 2012).

<sup>7</sup> ABA Commission on Ethics 20/20, *105B Report* p.1 (Aug. 2012).

<sup>8</sup> The ABA replaced the term "discusses" in Rule 1.18 with "consults." The Committee was unable to follow the ABA's approach here because "consult" is a defined term under Rule 1.0 of the South Carolina Rules of Professional Conduct that would not accurately reflect the purpose of the Rule if used here. See Rule 1.0(c), RPC, Rule 407, SCACR (explaining "'consult' or 'consultation' denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question").

<sup>9</sup> ABA Commission on Ethics 20/20, *105B Report* p.2 (Aug. 2012).

<sup>10</sup> *Id.* at 3.

<sup>11</sup> Instead of "electronic information," the ABA uses the phrase "electronically stored

Comment 2 in order “to give lawyers more guidance as to when [the] notification requirement of . . . Rule 4.4(b) is triggered.”<sup>12</sup> The proposed final sentence to Comment 2 also explains that the notification requirement is triggered when a lawyer receives metadata that the lawyer knows or has reason to believe was inadvertently sent.

#### E. Rule 5.3

To Rule 5.3, the Committee recommends moving current Comment 2 to Comment 1 because it provides an overview of the rule.<sup>13</sup> Additionally, the Committee proposes changes to this comment that would clarify that the rule applies to the use of nonlawyers within and outside the firm. The Committee also proposes adding two new comments to Rule 5.3. The first proposed comment “recognizes that nonlawyer services can take many forms” and “describes a lawyer’s obligations when using nonlawyer services outside the firm.”<sup>14</sup> The last sentence notes that, when retaining or directing nonlawyers outside the firm, lawyers must provide the nonlawyers with appropriate instructions. The second proposed comment acknowledges “that clients sometimes direct lawyers to use particular nonlawyer service providers. In such situations, the lawyer ordinarily should consult with the client to determine how the outsourcing arrangement should be structured and who will be responsible for monitoring the performance of the nonlawyer services.”<sup>15</sup>

#### F. Rule 5.5

As part of the Ethics 20/20 initiative, the ABA also added “through an office or other systematic and continuous presence” to Rule 5.5(d). In its report to the ABA’s House of Delegates, the Commission recognized:

Rule 5.5(d) was intended (and has been interpreted) to permit a lawyer, under limited circumstances, to establish an office or other systematic and continuous presence for the practice of law in a jurisdiction where the lawyer is not otherwise admitted to practice. Except for those limited circumstances, an out-of-state lawyer must become admitted to practice law generally in the jurisdiction in order to establish an office or engage in any other systematic or continuous practice of law there. The . . . prefatory language in Rule 5.5(d) is not sufficiently clear in this

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information.” The Committee did not believe there was an appreciable difference between “electronic information” and “electronically stored information;” therefore, it recommends the former as it is more concise.

<sup>12</sup> ABA Commission on Ethics 20/20, *105A Report* p.2 (Aug. 2012).

<sup>13</sup> The ABA changed the title of Model Rule 5.3 to “Responsibilities Regarding Nonlawyer Assistance.” The Committee is not recommending following the ABA because it believes the current title, “Responsibilities Regarding Nonlawyer *Assistants*,” better reflects the spirit of the rule.

<sup>14</sup> ABA Ethics 20/20 Commission, *105C Report* p.7 (Aug. 2012).

<sup>15</sup> *Id.* at 8.

regard and . . . the prefatory language should state explicitly that paragraph (d) is intended to explain when a lawyer may ‘provide legal services through an office or other systematic and continuous presence’ in the jurisdiction.<sup>16</sup>

The Committee agrees with the Commission and proposes adding the same language to South Carolina’s Rule 5.5(d). The proposed language to Comment 1 serves as a reminder that “[w]hen lawyers outsource work to lawyers and nonlawyers, it is important to ensure that those lawyers and nonlawyers are not engaging in the unauthorized practice of law.”<sup>17</sup> To Comment 4, the Committee proposes adding a reference to Rule 5.5(b)(1). To Comment 21, the Committee recommends adding a citation to Rule 418, SCACR, which concerns advertising and solicitation by unlicensed lawyers.<sup>18</sup>

#### G. Rule 8.5

Finally, the Committee proposes adding language to Rule 8.5 Comment 5 “acknowledg[ing] that, subject to limitations, lawyers and clients may specify [in writing] a particular jurisdiction as within the scope of paragraph (b)(2),” which *may be considered* when “determining where the predominant effect of the lawyer’s work on a matter should be deemed to have occurred.”<sup>19</sup> Under this proposed change, these “choice of law agreements” should only be used in the context of conflicts of interest and only with the client’s informed consent confirmed in the written agreement.

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<sup>16</sup> ABA Ethics 20/20 Commission, *105D Report* p.5 (Aug. 2012).

<sup>17</sup> ABA Ethics 20/20 Commission, *105C Report* p.8 (Aug. 2012).

<sup>18</sup> Ethics 20/20 included other changes to Rule 5.5 that are not mentioned in this memorandum. Those changes concerned foreign lawyers and were reviewed by the International Law Committee. At the time of this writing, a petition concerning those changes is pending before the South Carolina Supreme Court.

<sup>19</sup> ABA Ethics 20/20 Commission, *107D Report* p.2, 3.

## **Rule 1.0: Terminology**

### **Comment 9**

[9] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other ~~materials~~ information, including electronic information, relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other ~~materials~~ information, including electronic information, relating to the matter, and periodic reminders of the screen to the screened lawyer and all other firm personnel.

## **Rule 1.1: Competence**

### **Retaining or Contracting With Other Lawyers**

#### **Proposed Comment 6<sup>20</sup>**

[6] Before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the provision of legal services to a client, the lawyer must reasonably believe that the service of the other lawyer(s) will contribute to the competent and ethical representation of the client, and the lawyer may be required to obtain the informed consent of the client under other Rules. See also Rules 1.2 (allocation of authority), 1.4 (communication with client), 1.5(e) (fee sharing), 1.6 (confidentiality), and 5.5(a) (unauthorized practice of law). The reasonableness of the decision to retain or contract with other lawyers outside the lawyer's own firm will depend upon the circumstances, including the education, experience and reputation of the nonfirm lawyers; the nature of the services assigned to the nonfirm lawyers; and the legal protections and professional conduct rules of the jurisdictions in which the services will be performed, particularly relating to confidential information.

#### **Proposed Comment 7**

[7] When lawyers from more than one law firm are providing legal services to the client on a particular matter, the lawyers ordinarily should consult with each other and the client about the scope of their respective representations and the allocation of responsibility among them. See Rule 1.2. When making allocations of responsibility in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

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<sup>20</sup> If the Supreme Court adopts these changes, current Comment 6 to Rule 1.1 would become Comment 8.

### **Rule 1.18: Duties to Prospective Client**

(a) A person ~~with whom a lawyer discusses~~ who engages in mutual communication with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client only when there is a reasonable expectation that the lawyer is likely to form the relationship.

(b) Even when no client-lawyer relationship ensues, a lawyer who has ~~had discussions with~~ learned information from a prospective client shall not use or reveal that information, ~~learned in the consultation,~~ except as Rule 1.9 would permit with respect to information of a former client.

...

#### **Comment 1**

[1] Prospective clients, like clients, may disclose information to a lawyer, place documents or other property in the lawyer's custody, or rely on the lawyer's advice. A lawyer's ~~discussions~~ mutual communications with a prospective client can be written, oral, or electronic and usually are limited in time and depth and leave both the prospective client and the lawyer free (and sometimes required) to proceed no further. Hence, prospective clients should receive some but not all of the protection afforded clients.

#### **Comment 2**

[2] Not all persons who communicate information to a lawyer are entitled to protection under this Rule. ~~A person who communicates information unilaterally to a lawyer without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, therefore is not a "prospective client" within the meaning of paragraph (a).~~ Whether communications, including written, oral, or electronic communications, create a lawyer-prospective client relationship depends on the circumstances. For example, such a relationship is likely to be formed if a lawyer, either in person or through the lawyer's advertising in any medium, specifically requests or invites the submission of information about a potential representation without clear and reasonably understandable warnings and cautionary statements that limit the lawyer's obligations, and a person provides information in response. See also Comment [4]. In contrast, such a relationship does not arise solely if a person provides information to a lawyer in response to advertising that merely describes the lawyer's education, experience, areas of practice, and contact information, or provides legal information of general interest. A person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is likely to form a client-lawyer relationship, is not a "prospective client" within the meaning of paragraph (a). Moreover, a person who communicates with a lawyer for the purpose of disqualifying the lawyer is not a "prospective client."

#### **Comment 4**

[4] In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether or not to undertake a new matter should limit ~~the initial interview~~ mutual communication to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for non-representation exists, the lawyer should so inform the prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under Rule 1.7, then consent from all affected present or former clients must be obtained before accepting the representation.

#### **Comment 5**

[5] A lawyer may condition ~~conversations~~ communication with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter. See Rule 1.0(g) for the definition of informed consent. If the agreement expressly so provides, the prospective client may also consent to the lawyer's subsequent use of information received from the prospective client.

#### **Rule 4.4: Respect For Rights of Third Persons**

...

(b) A lawyer who receives a document or electronic information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronic information was inadvertently sent shall promptly notify the sender.

#### **Comment 2**

[2] Paragraph (b) recognizes that lawyers sometimes receive a documents or electronic information that ~~were~~ was mistakenly sent or produced by opposing parties or their lawyers. A document or electronic information is inadvertently sent when it is accidentally transmitted, such as when an email or letter is misaddressed or a document or electronic information is accidentally included with information that was intentionally transmitted. If a lawyer knows or reasonably should know that such a document or electronic information was sent inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the document or electronic information ~~original document~~, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document or electronic information has been waived. Similarly, this Rule does not address the legal duties of a lawyer who receives a document or electronic information that the lawyer knows or reasonably should know may have been wrongfully obtained by the sending person. For purposes of this Rule, "document or electronic information" includes, in addition to paper documents, email and other forms of electronic information, including embedded data (commonly referred to as "metadata"), that is e-mail or other electronic modes of transmission subject to being read or put into readable form. Metadata in electronic documents creates an obligation under this Rule only if the receiving lawyer knows or reasonably should know that the metadata was inadvertently sent to the receiving lawyer.

#### **Comment 3**

[3] Some lawyers may choose to return a document or delete electronic information unread, for example, when the lawyer learns before receiving it ~~the document~~ that it was inadvertently sent ~~to the wrong address~~. Where a lawyer is not required by applicable law to do so, the decision to voluntarily return such a document or delete electronic information is a matter of professional judgment ordinarily reserved to the lawyer. See Rules 1.2 and 1.4.

## **Rule 5.3: Responsibilities Regarding Nonlawyer Assistants**

### **Comment 2 1**

[1] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts ~~to establish internal policies and procedures designed to provide~~ to ensure that the firm has in effect measures giving reasonable assurance that nonlawyers in the firm and nonlawyers outside the firm engaged by the firm will act in a way compatible with the professional obligations of the lawyer, with the Rules of Professional Conduct. See Comment [6] to Rule 1.1 (retaining lawyers outside the firm) and Comment [1] to Rule 5.1 (responsibilities with respect to lawyers within a firm). Paragraph (b) applies to lawyers who have supervisory authority over ~~the work of a nonlawyer, such nonlawyers within or outside the firm.~~ Paragraph (c) specifies the circumstances in which a lawyer is responsible for ~~the conduct of a nonlawyer~~ such nonlawyers within or outside the firm that would be a violation of the Rules of Professional conduct if engaged in by a lawyer.

### **Proposed Comment 4**

[4] A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client. Examples include the retention of an investigative or paraprofessional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing or scanning, and using an Internet-based service to store client information. When using such services outside the firm, a lawyer must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations. The extent of this obligation will depend upon the circumstances, including the education, experience and reputation of the nonlawyer; the nature of the services involved; the terms of any arrangements concerning the protection of client information; and the legal and ethical rules of the jurisdictions in which the services will be performed, particularly with regard to confidentiality. See also Rules 1.1 (competence), 1.2 (allocation of authority), 1.4 (communication with client), 1.6 (confidentiality), 5.4(a) (professional independence of the lawyer), and 5.5(a) (unauthorized practice of law). When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.

### **Proposed Comment 5**

[5] Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer ordinarily should agree with the client concerning the allocation of responsibility for monitoring as between the client and the lawyer. See Rule 1.2. When making such an allocation in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

## **Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law**

...

(d) A lawyer admitted in another United States jurisdiction, and not debarred, disbarred or suspended from practice in any jurisdiction, may provide legal services, including through an office or other systematic and continuous presence, in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law or rule of this jurisdiction.

### **Comment 1**

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person. For example, a lawyer may not assist a person in practicing law in violation of the rules governing professional conduct in that person's jurisdiction.

### **Comment 4**

[4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b)(1) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1(a) and 7.5(b).

### **Comment 21**

[21] Paragraphs (c) and (d) do not authorize communications advertising legal services in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services in this jurisdiction is governed by Rules 7.1 to 7.5. See also Rule 418, SCACR.

## **Rule 8.5: Disciplinary Authority; Choice of Law**

### **Comment**

[5] When a lawyer's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule. With respect to conflicts of interest, in determining a lawyer's reasonable belief under paragraph (b)(2), a written agreement between the lawyer and client that reasonably specifies a particular jurisdiction as within the scope of paragraph (b)(2) may be considered if the agreement was obtained with the client's informed consent confirmed in the agreement.



MEMORANDUM

TO: House of Delegates

FROM: Dispute Resolution Section Council

RE: Request to repeal §38-77-710 et. seq

Date: January 7, 2019

At the December Board of Governors meeting, the Section Council presented a request to bring this issue before the House. The memorandum submitted to the Board is attached.

As noted in the Board memo, the statute was enacted approximately 60 years ago and has not been amended since. The statute allows for the appointment of a three-person panel of arbitrators from the “lawyers of this state” to hear property damage claims in auto accident cases. The filing fee is \$10 which is split between the Clerk of Court and the Sheriff. The arbitrators are paid \$35 per arbitration with no reimbursement for travel or expenses. Payment is made by the County.

The Council debated several options including proposing an increase in the compensation and including reimbursement for travel, raising the filing fee, allowing for a single arbitrator and requiring the appointments to be from lawyers in the specific county. Each of these options carried their own drawbacks.

After much debate, the Council agreed that the better option would be to repeal the statute entirely given the pre-suit options now available that were not at the time the statute was enacted.

We respectfully request that the House approve this action and authorize the Bar’s Government Relations Director to assist in finding a friendly legislator to introduce appropriate legislation.

To: South Carolina Bar Board of Governors

From: John Massalon, Chair-Elect,  
Dispute Resolution Section

Date: October 8, 2018

Re: Property Damage Arbitration Statute  
§38-77-710 et Seq

The Dispute Resolution Section has received numerous complaints from its members regarding §38-77-710 et seq of the South Carolina Code of Laws. This Section provides for property damage arbitration paid for by the county and it was enacted in 1958. A copy of statute is attached hereto.

The Statute calls for an informal pre-suit process where three arbitrators hear property damage claims in automobile accident cases. The Arbitrators are entitled to a fee of \$35.00 per arbitration, paid by the county, and no expenses. There is a \$10.00 filing fee which is to be split between the Clerk's office and the Sheriff for serving the notice on the other party.

In FY2016-17, this statute was utilized 330 times across the state. In FY2017-18, that number decreased to 238. However, we have no information with regard to how many of those arbitrations were final. The statute provides for an appeal to the circuit court by either party.

The statute was enacted long before South Carolina had formalized alternative dispute resolution through mediation and arbitration. The Dispute Resolution Section believes that the statute is probably not utilized as intended. It is certainly unfair to any attorney serving as an arbitrator.

The \$35.00 fee provided for in the original statute has never been changed. In 1958, this may have been a reasonable fee, but it certainly no longer is for busy members of the Bar.

In addition, the statute does not require that the arbitrators be from the county where the action arises. This has resulted in a practical problem. Clerks of the Court across the state are assigning arbitrators from counties very far away. We know for a fact that recently a Beaufort County lawyer was asked to serve on a Spartanburg arbitration panel. Again, keep in mind he would not be reimbursed his mileage or his time other than to receive the flat fee of \$35.00.

The Section considered amendments to the statute but felt that it currently is obsolete in light of the other pre-suit options which private litigants have under South Carolina's current ADR rules.

The Section is also aware that the ADR Commission had discussed the statute and acknowledged issues with it; however, the Commissioners felt that it was not within the Commission's authority to take a position on legislation.

Recently, the Section Council was also made aware that the Clerks of Court would be supportive of a repeal of this statute.

For the foregoing reasons, the Section asks the Board of Governors to send this request to the House of Delegates for approval and then to the Legislature for action repealing §38-77-710 et Seq.

## ARTICLE 7

### Arbitration of Property Damage Liability Claims

**SECTION 38-77-710.** Appointment of attorneys as arbitrators to hear and determine property damage liability claims; process and procedure.

The court of common pleas, or any inferior courts having concurrent jurisdiction, in and for each county, shall by order of reference appoint an attorney or attorneys to hear and determine, by arbitration, property damage liability claims arising out of motor vehicle collisions or accidents and to award actual and punitive damages. This order must be consistent with the provisions of this chapter and may not be inconsistent with the Rules of the Supreme Court of South Carolina. Process and procedure must be as summary and simple as may be reasonable and may provide for the taking of evidence in the form of reports, statements, or itemized bills or in any other manner without the procedural and evidentiary limitations which pertain in jury trials. The court may provide for the taking of depositions of a witness within or without the State.

HISTORY: Former 1976 Code Section 56-11-510 [1962 Code Section 47-750.135; 1974 (58) 2718] recodified as Section 38-77-710 by 1987 Act No. 155, Section 1.

**SECTION 38-77-720.** Number, qualifications, and compensation of arbitrators; fee paid by claimant.

(a) The order of reference shall establish a panel of arbitrators each of whom must be a member of the bar and the members must be selected for service in particular cases on some fair rotation basis. Three arbitrators shall hear and determine each case and the decision of two of the three arbitrators shall determine the issue. However, the parties to the dispute may, by agreement, provide for determination of the disputed claim by one arbitrator.

(b) Each arbitrator assigned to determine the claim may be compensated, not to exceed thirty-five dollars for his services and time, payable out of the funds of the court and which may not be taxable as costs to either party.

(c) The claimant who is the moving party in seeking arbitration shall pay to the clerk of court a fee of ten dollars. Five dollars must be retained by the clerk as the cost of filing the claim and final judgment and five dollars must be used to pay the cost of service on the other party or parties.

HISTORY: Former 1976 Code Section 56-11-520 [1962 Code Section 46-750.136; 1974 (58) 2718] recodified as Section 38-77-720 by 1987 Act No. 155, Section 1.

**SECTION 38-77-730.** Request for arbitration; no formal pleading and process; arbitration docket; filing of claim; service of summons to defendant.

(a) Any person who is a party to the disputed property damage liability claim may submit his claim for determination through arbitration. No formal pleading or process is required. The clerk of court of each county shall prepare and keep an arbitration docket and set the cases thereon for arbitration as provided by law for the settling of cases in the court of common pleas.

(b) The claim must be filed with the clerk of court in the county in which the cause of action arose or where the plaintiff or defendant resides. The claim must be filed in triplicate with the clerk of court on forms to be provided by him. The forms shall set forth the names of the parties, the date and place of the accident, and the amount of property damage claimed. The clerk shall file one copy in his office, and one copy must be served upon the defendant as provided by law for service of summons and complaints. The sheriff, or such other person, shall promptly serve the claim upon the defendant and shall receive the sum of five dollars to defray the cost of securing this service. The sheriff, or such other person, serving the process shall promptly file an affidavit of personal service with the clerk of court on forms to be provided by the clerk.

(c) There must be attached to, or made part of, the form a summons to the defendant named notifying him that he should file a response with the clerk of court within thirty days from the date of service and that failure to file a response within thirty days entitles the plaintiff to a default judgment. The form must be signed by the party filing it or his attorney, if any, and shall by order of reference show the address of the person signing it.

HISTORY: Former 1976 Code Section 56-11-530 [1962 Code Section 46-750.137; 1974 (58) 2718] recodified as Section 38-77-730 by 1987 Act No. 155, Section 1.

**SECTION 38-77-740.** Hearing; notice to parties; damages to be awarded; securing attendance of witnesses.

(a) The court, or the clerk acting for the court, shall assign the arbitrators to hear the matter at the courthouse, or other designated place in the county where the claim is filed, within sixty days after the date of filing, or as soon thereafter as is feasible. The clerk of court shall, on a form provided by him, advise the parties or their attorneys of record, if any, by mail as to the place, date, and time of hearing and shall advise the parties to bring all records which may pertain to the claim, including, but not limited to, the following:

- (1) Two estimates of damage to the motor vehicle or its contents signed by the estimator.
- (2) Signed receipts for car repairs.
- (3) Bills or receipts for other property damages claimed.

The forms shall also contain notice to the parties that, if they cannot attend because of illness or otherwise, the clerk of court must be notified as soon as possible with the request that another date be set for the hearing.

(b) Property damages must be awarded as provided by law, including, but not limited to, actual damages, loss of use, depreciation, and any other property damages which are the direct and proximate result of the accident.

(c) The parties may secure the attendance of witnesses by their voluntary appearance or may secure their attendance by subpoenas prepared and issued in accordance with the laws of this State.

HISTORY: Former 1976 Code Section 56-11-540 [1962 Code Section 46-750.138; 1974 (58) 2718] recodified as Section 38-77-740 by 1987 Act No. 155, Section 1.

**SECTION 38-77-750.** Enforcement of subpoenas; warrant to produce witnesses; certification of records.

(a) The court of common pleas shall, on application of the arbitrators, or any one of them, or any party or his attorney, enforce by proper proceedings the attendance and testimony of witnesses and the production of records and may punish for contempt of court, by fine or imprisonment or both, the unexcused failure or refusal to attend and give testimony or produce records required by any subpoena issued. The court may issue to the sheriff of the county in which any hearing is held a warrant requiring him to produce at the hearing any witness who has ignored or failed to comply with any subpoena issued and served upon the witness pursuant to this article and the warrant shall authorize and empower the sheriff to arrest and produce at the hearing the witness. It is the duty of the sheriff to do so, but the failure of a witness to appear may be excused on the same grounds as provided by law in the courts of this State.

(b) All records introduced in evidence which are not identified by their preparer must be certified under oath as a correct statement of the facts contained therein.

HISTORY: Former 1976 Code Section 56-11-550 [1962 Code Section 46-750.139; 1974 (58) 2718] recodified as Section 38-77-750 by 1987 Act No. 155, Section 1.

**SECTION 38-77-760.** Decision of arbitrators.

After receiving the evidence, the arbitrators, or a majority of them, or the single arbitrator if the parties have agreed upon a single arbitrator, shall enter the decision on the back of the original claim and file it with the clerk of court, who shall enter it as a judgment on the records of his office. The arbitrator first appointed shall, on the day the decision is filed with the clerk of court, serve a copy of the decision signed by each arbitrator on each party to the arbitration, either personally or by registered mail, or as provided by agreement.

HISTORY: Former 1976 Code Section 56-11-560 [1962 Code Section 46-750.140; 1974 (58) 2718] recodified as Section 38-77-760 by 1987 Act No. 155, Section 1.

**SECTION 38-77-770.** Right to appeal decision; procedures.

If any party is dissatisfied with the decision of the arbitrators, or the single arbitrator, he may appeal within twenty days of the decision to the court in which the claim is filed by service upon the other parties of a notice of appeal. Every notice of appeal shall include a statement under oath that the appeal is taken in good faith and not merely for the purpose of delay. The trial on appeal must be a trial de novo.

HISTORY: Former 1976 Code Section 56-11-570 [1962 Code Section 46-750.141; 1974 (58) 2718] recodified as Section 38-77-770 by 1987 Act No. 155, Section 1.



## CASE STATEMENT FOR THE SUPREME COURT BEAUTIFICATION PROJECT

### WHY IS THIS IMPORTANT?

We cannot expect our Judiciary to be treated with honor and dignity if the collective Bar is not going to treat our Judiciary with honor and dignity. As it currently stands, the parking lot looks like that of a failed strip mall built in the 1970s. Our judges, who make decisions that affect the lives of thousands, need to have a safe, healthy, and proper place to work. There are no safety measures here. There is nothing to prevent 3rd parties from walking onto the property and bothering a member of the Court. There is nothing healthy about a black asphalt parking lot without any shade in the center of Columbia, South Carolina. There is nothing proper about providing an ugly place for our Supreme Court to work.

The Court facility has storm water problems. There is pooling in spots of the parking lot that must be fixed. In the past there has been flooding in the basement of the building due, at least in part, to rain hitting the asphalt parking lot and rolling off into the building. We are to understand that a great deal of money has been spent to attempt to fix this, without addressing the fundamental cause, which is parking lot storm water run-off.

### WHAT DOES THE PLAN ENTAIL?

Chief Justice Beatty has been briefed on this project, and he greatly appreciates whatever improvements the Department of Administration may be able to make to the parking lot with the assistance of the collective Bar. Our proposal would remove the current asphalt and replace it with permeable concrete pavers. In several spots we will replace the asphalt with tree beds wherein we will plant shade trees. A fence will be placed along Sumter Street, and the boom barrier at Sumter Street will be upgraded and beautified. Parking spaces will be increased, with parking intelligently designed for smaller and larger cars, rather than the current one-size-fits-all model. (Please see the attached rendering.)

### HOW MUCH WILL IT COST?

How well it is done is a sliding scale of costs, but our goal is to privately raise \$180,000.00. As of the end of December 2018, we have raised over \$95,000.00. To complete the parking lot to the best that it can be will cost roughly \$480,000.00. We are working with the Department of Administration to contribute \$300,000.00.

### WHY SHOULD WE SUPPORT THIS?

This is for our judiciary. As stated above, if we do not show our support and respect for this institution, then we cannot expect the average citizen to do so. As it currently stands, the parking/working conditions are abysmal.

The time is now. Past ABA President William Hubbard is working on this. The Richland County Bar has hired a landscape architect to design the project, designed a webpage, and committed \$20,000.00 to get the project moving forward. The South Carolina Bar Foundation is acting as the conduit for contributions. Our work – these pavers and these trees -- will serve the Court for the next 50-100 years. This is a rare opportunity to be part of something beautiful and meaningful. It should have been done long ago and the stars are aligned to get it done now.

## THE ASK

We are requesting that the South Carolina Bar contribute \$10,000.00 toward this project. That will constitute 1/18 of the money that we must raise. As set out in our South Carolina Bar constitution, we are to uphold the integrity and honor of the legal profession and to continually improve the administration of justice throughout this state. This project does both of these things.

This is a one-time ask. We will not seek monies in addition to the \$10,000.00.



