



**South Carolina Bar**  
Continuing Legal Education Division

## **2026 SC BAR CONVENTION**

**Government Law Section**

“Beautifying Government Law”

**Thursday, January 22**

*SC Supreme Court Commission on CLE Course No. 260128*

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# South Carolina Bar

Continuing Legal Education Division

## Chat RPC: Ethical Considerations for the Use of Generative Artificial Intelligence

*John Nichols*

# Hallucinations, Discipline and Other Bummers: Ethics and GAI

John S. Nichols  
Bluestein Attorneys

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## Recent Decision

“My dear Miss Glory, the Robots are not people. Mechanically they are more perfect than we are; they have an enormously developed intelligence, but they have no soul.”

*Bunce v. Visual Technology Innovations, Inc.*, C.A. No. 23-1740 (E.D. Pa. 2025) 2025 WL 662398 (citing Capek, Karel, *R.U.R. (Rossum's Universal Robots): A Fantastic Melodrama in Three Acts and an Epilogue* 17 (Paul Selver and Nigel Playfair trans., Samuel French, Inc. 1923)).

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## This is a halucination!



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## AI hallucinations include:

- Fake citations: Cases that do not exist.
- Real citations, but fake statements from the cases.

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## Regulating A.I.?

“In the Times, Kevin Roose worried that when it comes to regulations, the stately metabolism of institutions is no match for the velocity of A.I.”

‘It feels, at times, like watching policymakers on horseback, struggling to install seatbelts on a passing Lamborghini.’ (Conrad Macina, Landing, N.J.)”

Frank Bruni, *The Best Sentences of 2025* (New York Times Dec. 29, 2025)

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## Misuse of Generative AI: Rules Implicated

“The written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it....”

Rule 11, SCRCP

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## Misuse of Generative AI: Rules Implicated

“A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous....”

Rule 3.1, RPC (meritorious claims and contentions)

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## Misuse of Generative AI: Rules Implicated

“A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.”

Rule 3.2 (expediting litigation)

“Dilatory practices bring the administration of justice into disrepute.”

Rule 3.2, Comment [1]

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## Misuse of Generative AI: Rules Implicated

“(a) A lawyer shall not knowingly:

(i) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

Rule 3.3 (candor toward the tribunal)

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## Misuse of Generative AI: Rules Implicated

“(a) A lawyer shall not knowingly:

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel....”

Rule 3.3 (candor toward the tribunal)

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## Misuse of Generative AI: Rules Implicated

“In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person....”

Rule 4.1 (truthfulness in statements to others)

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## Misuse of Generative AI: Rules Implicated

“It is professional misconduct for a lawyer to:

- (d) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (e) engage in conduct that is prejudicial to the administration of justice....”

Rule 8.4

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## *Re: Interim Policy on the Use of Generative Artificial Intelligence*

### **(d) Use of AI by Lawyers and Litigants in Matters.**

While this Interim Policy does not specifically address the use of Generative AI by lawyers and litigants, **lawyers and litigants are reminded that they are responsible to ensure the accuracy of all work product** and must use caution when relying on any output of Generative AI.

Order (S.C. Sup. Ct. filed March 25, 2025)

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## *Re: Interim Policy on the Use of Generative Artificial Intelligence*

### **(d) Use of AI by Lawyers and Litigants in Matters.**

\*\*\*

**(2) Lawyers in particular must ensure that the use of Generative AI does not compromise client confidentiality or otherwise violate the South Carolina Rules of Professional Conduct, Rule 407, SCACR.**

Order (S.C. Sup. Ct. filed March 25, 2025)

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## **Sanctions**

The following are what we see in the cases:

- Public reprimands
- Modest monetary fines
- Revocation of *pro hac vice* admission
- Report to disciplinary authorities
- Requiring lawyers to send the order to all clients
- Requiring lawyers to attend CLE on AI

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## *Ader v. Ader (10/1/2025)*

“This case adds yet another unfortunate chapter to the story of artificial intelligence misuse in the legal profession. Here, Defendants’ counsel not only included an AI-hallucinated citation and quotations in the summary judgment brief that led to the filing of this motion for sanctions, **but also included multiple new AI-hallucinated citations and quotations in Defendants’ brief opposing this motion.**”

Um...

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## *Ader v. Ader (10/1/2025)*

“In other words, counsel relied upon unvetted AI — in his telling, via inadequately supervised colleagues — to defend his use of unvetted AI.”

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## Ader v. Ader (10/1/2025)

Court ordered Defendants and counsel to pay Plaintiff's attorney fees and costs based on application supported by documentation;

Court also ordered Plaintiff's counsel to send a copy of the order to the Grievance Committee for the Appellate Division as well as the New Jersey Office of Attorney Ethics

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When it comes to AI...

**Stop, Look & Listen**



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## COMPLAINTS PENDING/RECEIVED:

|   |             |
|---|-------------|
| Complaints Pending June 30, 2021                  | 818         |
| Complaints Pending June 30, 2024                  | 2433        |
| Complaints Received July 1, 2021 - June 30, 2022  | 1571        |
| Complaints Received July 1, 2024 - June 30, 2025  | 1798        |
| <b>Total Complaints Pending and Received 2021</b> | <b>2389</b> |
| <b>Total Complaints Pending and Received 2025</b> | <b>4231</b> |

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## DISPOSITION OF COMPLAINTS

### Dismissed:

|   |                     |
|---|---------------------|
| By Disciplinary Counsel after initial review<br>(no jurisdiction) | 345/813             |
| By Disciplinary Counsel after investigation<br>(lack of evidence) | 611/921             |
| By Investigative Panel  | 28/129              |
| By Commission Counsel   | 11                  |
| By Supreme Court  | <u>0</u> / <u>0</u> |
| <b>Total Dismissed</b>  | <b>984/1874</b>     |

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## Action by Supreme Court

|                                   |      |
|-----------------------------------|------|
| Dismissal                         | 0    |
| Closed But Not Dismissed          | 0/6  |
| Closed due to Lawyer's Death      | x/19 |
| Letter of Caution                 | 0/0  |
| Admonition                        | 1/1  |
| Public Reprimand                  | 16/5 |
| Definite Suspension               | 23/6 |
| Disbarment                        | 10/5 |
| Debarment                         | 0/0  |
| Resignation in Lieu of Discipline | 3/0  |
| Transfer to Incapacity Inactive   | 1/2  |
| Interim Suspension                | 15/4 |

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## Overall Not Dismissed

|   |                |
|---|----------------|
| Referred to Other Agency                                | 0/1            |
| Closed But Not Dismissed                                | 3/6            |
| Closed Due to Death of Lawyer                           | 13/19          |
| Deferred Discipline Agreement                           | 1/0            |
| <b>Letter of Caution</b>                                | <b>68/112</b>  |
| Admonition  | 5/4            |
| Public Reprimand  | 16/6           |
| Restitution Ordered                                     | 0/0            |
| Suspension  | 23/17          |
| Disbarment  | 10/22          |
| Bar to Future Admission/Debarment (out-of-state lawyer) | 0/0            |
| Permanent Resignation in Lieu of Discipline             | <u>3/0</u>     |
| <b>Total Not Dismissed</b>                              | <b>142/187</b> |

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## Summary

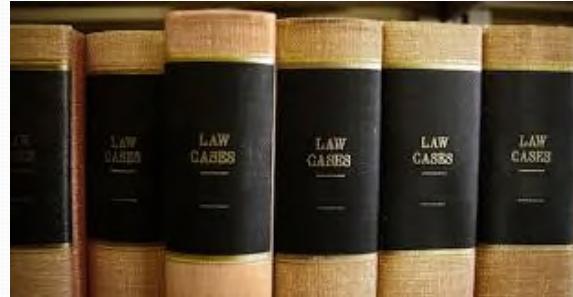
2021 VS 2025

Total Complaints Resolved 1126/2068

Total Complaints Pending 1263/2163

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## Recent Cases



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## Miscellaneous

*Anonymous Mediator v. SCODC*, Op. No. 28293 (S.C. Sup. Ct. filed July 30, 202) – DJ action in original jurisdiction. Mediator not prevented from revealing information regarding observations of lawyer's demeanor during mediation because it does not relate to any communication regarding the substance of the mediation. “[A]n attorney's ethical misconduct cannot be ignored by other members of the legal profession or obscured by the mediation process.”

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## Advertising

*Matter of Hostillo* – public reprimand of a Georgia lawyer for numerous advertising violations



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## Serious Crime

“Serious crime” denotes

- any felony;
- any lesser crime that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects; or

Rule 1.0(o), RPC, Rule 407, SCACR;  
Rule 2(bb), RLDE, Rule 413, SCACR



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## Serious Crime

- any crime a necessary element of which, as determined by the statutory or common law definition of the crime, involves
  - interference with the administration of justice,
  - false swearing,
  - misrepresentation,
  - fraud,
  - deceit,
  - bribery,
  - extortion,
  - misappropriation,
  - theft,
  - willful failure to file income tax returns, or
  - an attempt, conspiracy or solicitation of another to commit a serious crime.

Rule 1.0(o), RPC, Rule 407, SCACR; Rule 2(bb), RLDE, Rule 413, SCACR

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## Arrest for Serious Crime

*Matter of Surface* – lawyer arrested for felony CDV – 6 month suspension

*Matter of Johnston* – 6 month suspension following arrest on federal misdemeanors after participating in January 6, 2021, breach of U.S. Capitol.

*Matter of Nix* – public reprimand following arrest for possession of controlled substances during traffic stop. Already had been on interim suspension for 2 years.

*Matter of Sims* – 9 month suspension following arrest during manic episode.

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## Arrest for Serious Crime

*Matter of Suggs* – lawyer arrested for discharge of firearm within city limits – public reprimand

*Matter of Foster* – 1 year suspension for lawyer for numerous misdemeanor charges including DUIs, DUS, child endangerment, and CDV.

*Matter of Blincow* – lawyer disbarred for, among other things, arrest for breach of trust.

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# Communication

*Matter of Mercer* – public reprimand

*Matter of White* - 9 month suspension



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# Conflict of Interest

*Matter of Spell* – 6 month suspension for engaging in an inappropriate sexual relationship with a client who was also the spouse of a client.



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## Contract with LHL

*Matter of Bergen* – public reprimand for lawyer for violation LHL contract which was a condition of admission.



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## Diligence

*Matter of Mercer* – public reprimand.



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## Failure to Return Client File

*Matter of Surface* – 6 month suspension



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## Failing to Respond (*Treacy* letter)

*Matter of Hanlin* – 6 month suspension for numerous violations, including failure to respond to ODC.



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## Honesty/Reckless Behavior

*Matter of Miller* – lawyer practiced while on administrative suspension and lied to clerks and judges about ability to appear – suspended 1 year. Had been on interim over 2 years.



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## Neglecting a Legal matter

*Matter of Mercer* – public reprimand.



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## Professionalism

*Matter of Phillips* – 6 month suspension for lawyer for responses to Facebook posts by friend who did not want to serve on a jury. Lawyer was a prosecutor and continued exchanges after friend was, in fact, selected on a jury.



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## Reciprocal Discipline

*Matter of Flowers* – public reprimand following censure by DC Court of Appeals – withdrew appeal without client's consent.

*Matter of Portner* – disbarred after permanent revocation of license in Florida.



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## Theft/Trust Account

*Matter of Moore* – disbarred for misappropriating client funds.

*Matter of Blinco* – disbarred for commingling, misappropriation, failure to do reconciliations, and numerous defalcations in trust account.

*Matter of Bush* – disbarred for theft arising out of real estate practice.

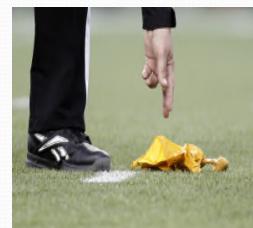


*Matter of Webb* – disbarred for numerous improper transfers between operating and trust accounts and not doing reconciliations. Lawyer had a gambling disorder.

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## Bar Application (Rule 8.1)

*In re Anonymous Bar Applicant (2023)*



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## *In re Shobe*

We are cognizant of Respondent's health concerns that, at times, impacted her communication with clients and affected her ability to practice law diligently and competently. Nevertheless, Respondent neglected seven clients, prejudicing several in doing so, and failed to respond to multiple ODC investigations.

September 17, 2025

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## *In re Shobe*

Further, even after several years, Respondent has yet to pay restitution that she admits she owes certain clients, and has provided no explanation as to why she has not done so.

Accordingly, we accept the Agreement and suspend Respondent from the practice of law for a period of six months.

September 17, 2025 (order to complete LEAPP and pay restitution to several clients)

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## Administrative Orders



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## Published Summaries of Dismissed Complaints of Confidential Dispositions of Judicial Case

Order filed June 25, 2025 – Court ordered Commission Counsel to publish quarterly summaries regarding dismissals or confidential resolutions of judicial matters handled by ODC and the Commission.

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## Electronic Devices in Courthouses

Court amended prior order on possession and use of electronic devices within a courthouse -

Not just in the courtroom!

Order – filed Dec. 19, 2024

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## Military Members

Rule 410(h)(1)(E), SCACR, is amended to provide:

**(E) Military Member.** Any member who is serving on active duty with the Armed Forces of the United States for six months or more, including members of the National Guard and other reserve components, and elects to become a military member.

Order January 7, 2026

Removes prohibition on military members engaging in the practice of law in SC outside their duties in the US Armed Forces

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## Rule Amendments



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## RLDE and RJDE

Rule 12 – confidentiality

Rule 14 – filing complaints in person or by mail

Rule 14 – made against specific lawyer/judge – clear statement of details of alleged misconduct

Rule 15 – Subpoena to appear – may review testimony

Rule 17 – Return to petition for interim suspension

Rule 19 – Screening and investigation

Canon 5 – political activity prohibition applies to part-time judges

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# The End



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**A REALLY BAD TRIP:  
HALLUCINATIONS FROM THE USE OF GENERATIVE ARTIFICIAL  
INTELLIGENCE - COLLECTED CASES**

John S. Nichols  
Bluestein Thompson Sullivan, LLC  
2025

“My dear Miss Glory, the Robots are not people. Mechanically they are more perfect than we are; they have an enormously developed intelligence, but they have no soul.”

*Bunce v. Visutal Technology Innovations, Inc.*, C.A. No. 23-1740 (E.D. Pa. 2025) 2025 WL 662398 (citing Capek, Karel, *R.U.R. (Rossum's Universal Robots): A Fantastic Melodrama in Three Acts and an Epilogue* 17 (Paul Selver and Nigel Playfair trans., Samuel French, Inc. 1923)).

Courts around the Country are dealing with the emerging use by lawyers of generative AI to assist them in preparing documents the lawyers file with the courts. Issues arise when a lawyer uses AI, but then fails to take the very basic (and required) step of verifying the cites. When a lawyer files a document containing fake cites (or fake statements of law from genuine cites), the lawyer necessarily violates Rule 11. The lawyer may also be committing ethical violations, such as a violation of Rules of Professional Conduct Rule 3.1 (meritorious claims and contentions), Rule 3.2 (expediting litigation), Rule 3.3 (candor toward the tribunal), Rule 4.1 (truthfulness in statements to others), and Rule 8.4 (engage in conduct involving dishonesty or misrepresentation or that is prejudicial to the administration of justice).

On March 25, 2025, the Supreme Court of South Carolina issued an administrative order governing the appropriate use of AI by the judiciary and court personnel. *Re: Interim Policy on the Use of Generative Artificial Intelligence*, Order (S.C. Sup. Ct. filed March 25, 2025)(App. Case No. 2025-000043). The Order contains the following:

**(d) Use of AI by Lawyers and Litigants in Matters.**

**(1)** While this Interim Policy does not specifically address the use of Generative AI by lawyers and litigants, lawyers and litigants are reminded that they are responsible to ensure the accuracy of all work product and must use caution when relying on any output of Generative AI.

(2) Lawyers in particular must ensure that the use Generative AI does not compromise client confidentiality or otherwise violate the South Carolina Rules of Professional Conduct, Rule 407, SCACR.

*Id.*, at p. 3.

Courts dealing with the issue of AI-generated hallucinations are becoming less and less tolerant. As time passes and examples are published, lawyers are finding the courts more willing to impose severe sanctions since the perception is that the prior sanctions imposed did not act as a sufficient example to deter the conduct.

The sanctions range from public reprimands and modest monetary fines to revocation of pro hac vice admission and report to disciplinary authority. Some courts require the lawyers to send a copy of the order to all of their clients, and most require the lawyers to attend CLE presentations on the ethical use of AI.

Below are recent examples of cases in which courts addressed the lawyers' submission of AI generated documents that contained citation to non-existent cases or non-existent statements of law from actual cases (*i.e.*, "hallucinations"). I have discussed only 11 of the dozens of opinions or orders that were filed in 2024 or 2025.

#### 1. ***Wadsworth v WalMart Inc.*, 348 F.R.D. 489 (D.Wy. 2025)**

The plaintiff's attorneys filed motions in limine citing 9 cases, 8 of which were non-existent ("hallucinations") and generated by AI ("MX2.law"). The attorneys first learned of the hallucinations when the court *sua sponte* issued a rule to show cause. The attorneys took numerous remedial measures.

The Court found: the attorney who filed the motion violated Rule 11; two attorneys who

failed to review the motion before the other attorney signed on their behalf violated Rule 11; revocation of drafter's pro hac vice admission was warranted as a Rule 11 sanction; the Court imposed \$3,000 fine against drafter of the motion; the Court imposed \$1,000 fine against attorney whose name was signed to the motion but did not revoke pro hac admission; the Court imposed \$1,000 fine against attorney who sponsored other attorney's pro hac admission.

**2. *In re Martin*, \_\_\_ B.R. \_\_\_ (N.D. Ill. 2025), 2025 WL 2017224**

A Bankruptcy lawyer filed brief containing fake citations and nonexistent authority manufactured by AI ("ChatGPT"). The Court stated

At this point, to be blunt, any lawyer unaware that using generative AI platforms to do legal research is playing with fire is living in a cloud.

Slip at 6. "The bottom line is this: at this point, no lawyer should be using ChatGPT or any other generative AI product to perform research without verifying results." Slip at 7.

The Court held the lawyers violated Bankruptcy Rule 9011 and imposed a \$5,500 penalty, noting the sum would have been more but for lawyer's candor and remorse. The Court ordered the lawyers to register and attend a CLE being conducted by the National Conference of Bankruptcy Judges.

**3. *Benjamin v. Costco Wholesale Corp.*, \_\_\_ F.Supp.3d \_\_\_ (E.D. N.Y. 2025), 2025 WL 1195925**

Plaintiff's lawyer cited fake cases in reply to a motion to remand which he generated by using AI ("ChatOn"). The Court stated, "An attorney who submits fake cases clearly has not *read* those nonexistent cases, which is a violation of Rule 11[, Fed.R.Civ.P.]." Slip at 2 (italics by the

Court). The Court held lawyer acted in “subjective bad faith” and imposed sanctions of \$1,000 because of the lawyer’s candor and remorse. The Court also ordered the lawyer to provide proof of service of the order upon her client.

4. ***Versant Funding LLC v. Teras Breakbulk Ocean Nav. Enterp LLC, (So. D. Fla. 2025) 2025 WL 1440351***

Defendants’ lawyers, who were admitted pro hac vice, submitted a document generated by AI without checking the cites. The Court did not revoke the pro hac vice admission. However, the Court fined both the lawyer who was admitted pro hac (\$1,000) and the lawyer who sponsored the pro hac (\$500) and ordered both of them to attend a CLE on AI. The Court also ordered them to pay plaintiffs’ attorneys’ fees.

5. ***US v. Cohen, 724 F.Supp.3d 251 (2024)***

Michael Cohen’s lawyer filed a motion seeking early termination of supervised release for various federal crimes. The lawyer gave “examples” of similar cases granting early termination which were purportedly affirmed on appeal. However, the cases did not exist; they had been generated by “Google Bard,” a generative text service. The Court stated the lawyer’s “citation to non-existent cases is embarrassing and certainly negligent, perhaps even grossly negligent. But the Court cannot find that it was done in bad faith.” 724 F.Supp.3d at 258. The Court did not sanction the lawyer.

6. *Kaur v. Desso, (N.D.N.Y. 2025), 2025 WL 1895859*

Plaintiff's counsel used AI ("Claude Sonnet 4") to draft a submission which contained fabricated quotations from cited cases. Court found he violated Rule 11. Court fined the lawyer \$1,000 and ordered him to attend a CLE related to use of AI.

7. *Bunce v. Visual Techn. Innov., Inc. (E.D.Pa. 2025), 2025 WL 662398*

A lawyer filed a motion to withdraw that contained "hallucinations" including citation to orders that had been reversed or vacated. The Court stated:

This Court recognizes that technology is always evolving, and legal research tools are no exception. But if approached without prudential scrutiny, use of artificial intelligence can turn into outright negligence. Where the danger in violating Rule 11 lies not in AI's utility but in the overconfidence of attorneys who revere it as infallible. There is nothing in Rule 11 that specifically prohibits reliance on AI for research assistance, but Rule 11 does make clear that the signing attorney is the final auditor for all legal and factual claims contained in their motions. Far from complying with this duty, Mr. Rajan was "entirely reliant upon some computer, some machinery to do the job that [he was] supposed to be doing."

Slip at 4. The Court fined him \$2,500 and ordered him to attend a CLE on use of AI and legal ethics.

8. *In re Baby Boy, \_\_\_ N.E.3d \_\_\_ (Ill. App. Ct., Fourth Dist. 2025), 2025 WL 2046315*

This was a TPR case involving appointed counsel, William Panichi. The Court affirmed, but stated:

Additionally, unrelated to the merits of the termination of respondent's parental rights, this court issued a rule to show cause against respondent's attorney, William T. Panichi, as to why he should not be sanctioned for citing

eight nonexistent cases in the briefs he filed on behalf of respondent. For the reasons articulated below, we find that Mr. Panichi violated Illinois Supreme Court Rule 375 (eff. Feb. 1, 1994) and order that (1) Mr. Panichi disgorge the payment of \$6,925.62 he received for his work on this appeal; (2) Mr. Panichi pay \$1,000 as monetary sanctions to the clerk of the Fourth District Appellate Court; and (3) the clerk of the Fourth District Appellate Court send a copy of this opinion to the Illinois Attorney Registration and Disciplinary Commission.

Slip at 1. The Court added:

Although the Illinois Appellate Court has not yet dealt with the issue of litigants submitting fictitious AI-generated case law, courts from other jurisdictions have. The federal district court for the Southern District of New York emphasized:

“Many harms flow from the submission of fake opinions. The opposing party wastes time and money in exposing the deception. The Court’s time is taken from other important endeavors. The client may be deprived of arguments based on authentic judicial precedents. There is potential harm to the reputation of judges and courts whose names are falsely invoked as authors of the bogus opinions and to the reputation of a party attributed with fictional conduct. It promotes cynicism about the legal profession and the American judicial system. And a future litigant may be tempted to defy a judicial ruling by disingenuously claiming doubt about its authenticity.” *Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443, 448-49 (S.D.N.Y. 2023).

Slip at 17.

**9. *Johnson v. Dunn*, \_\_\_ F.Supp.3d \_\_\_ (N.D. Ala. 2015), 2025 WL 2086116**

The former Commissioner of the Alabama Department of Corrections filed a document that contained hallucinations caused by generative AI (“ChatGPT”). The District Court Judge stated:

The court must determine an appropriate sanction. Fabricating legal authority is serious misconduct that demands a serious sanction. In the court’s view, it demands substantially greater accountability than the reprimands and

modest fines that have become common as courts confront this form of AI misuse. As a practical matter, time is telling us – quickly and loudly – that those sanctions are insufficient deterrents. In principle, they do not account for the danger that fake citations pose for the fair administration of justice and the integrity of the judicial system. And in any event, they have little effect when the lawyer’s client (here, an Alabama government agency) learns of the attorney’s misconduct and continues to retain him.

An appropriate and reasonable sanction must (1) have sufficient deterrent force to make this misuse of AI unprofitable for lawyers and litigants, (2) correspond to the extreme dereliction of professional responsibility that sham citations reflect (whether generated by artificial or human intelligence), and (3) effectively communicate that made-up authorities have no place in a court of law.

For the reasons explained below, the court PUBLICLY REPRIMANDS Mr. Reeves, Mr. Cranford, and Mr. Lunsford for making false statements to the court; ORDERS publication of this order to effectuate that reprimand; DISQUALIFIES them from further participation in this case; and REFERS this matter to the Alabama State Bar and other applicable licensing authorities.

In the light of the results of the independent investigation commissioned by the attorneys’ law firm, the court exercises its discretion not to suspend them from practice in the Northern District of Alabama. The court RELEASES WITHOUT SANCTION attorneys Daniel J. Chism and Lynette E. Potter, and the law firm Butler Snow LLP (“Butler Snow”) from disciplinary proceedings.

Slip at 1. In imposing disqualification, the Court stated:

The court finds that (1) a public reprimand paired with a limited publication requirement, (2) disqualification, and (3) referral to applicable licensing authorities are necessary to rectify the misconduct here and vindicate judicial authority. Disqualification fits well: lawyers should know that if they make false statements in court proceedings, they will no longer have the professional opportunity to participate in those proceedings. Similarly, litigants should have assurance that false statements will not be allowed in their cases, and no court should be required to allow an attorney responsible for making false statements in the proceedings to continue in the proceedings. Likewise, a public reprimand with limited publication fits: it makes other clients, counsel, and courts aware of the lawyer’s misconduct so that they may assess whether any measures are needed to protect their proceedings. Finally, the referral to licensing authorities is a bare minimum in the light of the primary nature of a lawyer’s professional responsibility not to make things up.

Slip at 20.

10. *ByoPlanet International, LLC v. Johansson*, \_\_\_ F.Supp.3d \_\_\_ (S.D. Fla. 2025), 2025 WL 2091025

The District Court's order begins with the following quote:

“The integrity of judicial proceedings depends upon the ethical obligations of candor and honesty being strictly observed by all parties.” *Liteky v. United States*, 510 U.S. 540 [114 S.Ct. 1147, 127 L.Ed.2d 474] (1994) (Scalia, J., concurring).

Slip at 1. The Court added a footnote to the following: “ChatGPT (July 7, 2025, response to query: ‘scalia quotes on candor’).” The District Court proceeded:

Two things: (1) The above statement is absolutely correct. (2) the great Justice Antonin Scalia did not write this anywhere in his Opinion of the Court (not concurring) in *Liteky*. A quick review of the U.S. Reports confirms that. But ChatGPT, with the slick, cool authority of instantly-generated pixels on a screen, declares otherwise. *Artificial intelligence, indeed.*

The proliferation and availability of artificial intelligence (“AI”) tools presents a challenge to the legal profession. Lawyers have duties both to their clients and to the courts to present accurate facts and citations to legal authority. When a lawyer presents false information to a court, that lawyer violates his duties. This case presents an important issue (unfortunately one that is occurring more often): what sanctions should a court impose on a lawyer who repeatedly uses false, fake, non-existent, AI-generated legal authorities in the drafting of complaints, motions, and other filings? Here, Plaintiffs’ counsel repeatedly regurgitated such “hallucinated” authority in eight separate but related cases. Four of these eight cases are presently before this Court. After considering the factual record, the relevant legal authority, and the threat this rampant conduct poses to the practice of law and the integrity of judicial proceedings, this Court imposes substantial sanctions.

Slip at 1 (emphasis added).

The District Judge dismissed the cases without prejudice and ordered the Clerk to assign the cases to him if they are re-filed. The Judge also ordered the lawyers to pay the opponents

attorneys fees. As to one lawyer, the Judge required the lawyer to attach a copy of the order to any filing in federal court over the next two years. Finally, the Court referred another lawyer to the Florida Bar “for appropriate discipline.”

**11. *Dehghani v. Castro, (D.N.M. 20205), 2025 WL 988009***

The lawyer outsourced legal research to a group called “LAWCLERK.” The New York freelance lawyer from LAWCLERK used AI to produce the document, which contained hallucinations, and the lawyer did not review the work. The Court fined him \$1,500, ordered him to send a copy of the order to LAWCLERK, ordered him to attend a CLE regarding AI and legal writing, ordered him to self-report to the New Mexico and Texas disciplinary boards, and ordered him to report the freelance lawyer to the New York disciplinary board with a copy of the order.

## CONCLUSION

Generative AI is a valuable tool which, when used correctly, can be of great assistance and save much time. However, it is just a tool, and lawyers must use caution when relying upon these products. As the Florida District Court stated in *ByoPlanet*:

We live in an age when two things are happening simultaneously: (1) institutions central to our constitutional republic are suffering from a loss of trust and confidence; and (2) technology has developed to a point that few could scarcely imagine even twenty years ago. At all times, attorneys must ensure that their conduct, including their use of technology, never contributes to any diminishment of trust and confidence held by the public for the practice of law and judicial proceedings. \*\*\* Perhaps twenty years from now, AI will be flawless. Whenever that day comes, that flawless brief will only have meaning because the signature at the bottom does.

*ByoPlanet International, LLC v. Johansson*, \_\_\_ F.Supp.3d \_\_\_ (S.D. Fla. 2025), 2025 WL 2091025, Slip at 10.

## **DISCIPLINARY UPDATE**

### **2024-2025 DATA FROM THE COMMISSION ON JUDICIAL CONDUCT AND THE COMMISSION ON LAWYER CONDUCT July 2024-June 2025**

#### **A. COMMISSION ON JUDICIAL CONDUCT**

Complaints - 636

pending-199

received - 437

Complaints disposed -

dismissed - 490

not dismissed -21

closed other - 0

total resolved -511

Carryover - 125

#### **B. COMMISSION ON LAWYER CONDUCT**

Complaints received - 4231

pending - 2433

received - 1798

Complaints disposed -

dismissed - 1874

not dismissed - 187

closed other - 7

total resolved - 2068

Carryover - 2163

## 2024-2025 Administrative Order

*Re: Published Summaries of Dismissed Complaints and Confidential Discipline Issued or Imposed on South Carolina Judges, Order (S.C. Sup. Ct. filed June 25, 2025)  
Appellate Case No. 2025-000989*

The Court ordered “disciplinary counsel and Counsel for the Commission on Judicial Conduct (Commission counsel) to begin preparing and publishing summaries of all judicial complaints that are dismissed, along with summaries for all cases where a letter of caution, confidential admonition, or deferred discipline agreement is issued or imposed on a judge. These summaries shall be anonymous and must not identify the judge by name, but must include certain details.” The Court added:

Summaries of dismissals must identify the type of judge named in the complaint, include a brief summary of the allegation(s) of judicial misconduct, and state the basis for the dismissal. Summaries of confidential resolutions of judicial complaints must identify the type of judge named in the complaint, include a brief summary of the nature of the misconduct, and state whether a letter of caution, confidential admonition, or deferred discipline agreement was issued or imposed.

- Disciplinary counsel and Commission counsel shall prepare these summaries for all complaints that are dismissed or resolved by a letter of caution, confidential admonition, or deferred discipline agreement on or after July 1, 2025. These summaries shall be published on the Judicial Branch website on a quarterly basis beginning no later than November 1, 2025. Additional summaries shall be prepared and published on a quarterly basis unless otherwise ordered by this Court.

Order, p. 2.

## 2024-2025 Rule Amendments

A. *Re: Amendments to Rule 413, RLDE, and Rule 502, RJDE, SCACR, Order (S.C. Sup. Ct. filed June 25, 2025.*

The Court amended the following Rules:

1. **Rule 12 (Confidentiality).** The change provides greater discretion to ODC to disclose information about pending, confidential South Carolina complaints or discipline to appropriate disciplinary authorities in other jurisdictions where the lawyer or judge is admitted to practice or is seeking admission. The Court stated the change will better allow ODC to exchange information with other jurisdictions when South Carolina lawyers or judges are charged with misconduct in those other jurisdictions, and to obtain information about complaints that may be pending in other jurisdictions when a lawyer or judge is alleged to have committed misconduct in South Carolina.
2. **Rule 14 (Process for filing complaints).** The change requires that complaints be made against a specific lawyer or judge and contain a clear statement of the details of each act of alleged misconduct or incapacity. The rule continues to permit ODC to seek additional information from complainants.
3. **Rule 19 (Screening and investigating complaints).** The amendments:
  - (a) provide ODC with additional tools to assist in determining whether a complainant raises allegations that, if true, would constitute misconduct or

incapacity. The changes permit ODC to seek additional information from the lawyer or judge and to review publicly available documents or other information – in addition to asking the complainant for additional information – before determining whether to dismiss or investigate.

(b) permit ODC to dismiss complaints that are facially frivolous, or that are submitted by persons who have no personal knowledge of the matter and have relied solely on published news reports or social media posts. ODC retains the ability to investigate and prosecute matters that come to ODC's attention by any source (Disciplinary Counsel is the complainant in those cases).

(c) include a time limitation on filing of a complaint - the complaint must be filed within 5 years of the time the complainant discovered or reasonably should have discovered the alleged misconduct. There are a number of appropriate exceptions in the interest of fairness. The lawyer must raise the defense, and a complainant will have the right to have the Commission review any decision to dismiss on this basis pursuant to Rule 18, RLDE/RJDE.

B. *Re: Amendments to Rules 413 and 502, SCACR, Order (S.C. Sup. Ct. filed Feb. 14, 2024)*

The Court amended Rules 15 and 17, RLDE/RJDE as follows:

1. **Rule 15(b)** was amended to add:

(3) Any person making an appearance and answering questions pursuant to Rule

15 may review the transcript of the person's own testimony in private at the Office of Disciplinary Counsel unless otherwise directed by the Commission chair or vice-chair for good cause shown.

2. **Rule 17** (Interim Suspension) was amended to provide:

**(d) Return to Petition.** Upon request of the lawyer, the Supreme Court may grant the lawyer leave to file a return to a petition filed under this rule prior to issuing an order of interim suspension. The request must be filed with the Supreme Court and the Commission and served on disciplinary counsel.

Existing paragraphs (d) and (e) were renumbered as (e) and (f).

C. *Re: Amendments to Rule 413 and 502, SCACR, Order (S.C. Sup. Ct. filed June 24, 2024)*

The Court amended **Rule 14, RLDE/RJDE** to insert new paragraph (d) and renumber existing paragraphs (d) and (e) to paragraphs (e) and (f):

**(d) Filing Complaint with Disciplinary Counsel.** Filing of a complaint with the Office of Disciplinary Counsel, along with any relevant supporting documentation or exhibits, shall be made by:

(1) Delivering one unbound copy to the Office of Disciplinary Counsel. Delivery of a copy under this provision means handing it to an employee of the Office of Disciplinary Counsel.

(2) Depositing one unbound copy in the U.S. Mail, properly addressed to the

Office of Disciplinary Counsel with sufficient first-class postage attached.

D. *Re: Amendment to Rule 501, SCACR*, Order (S.C. Sup. Ct. filed Dec. 11, 2024)

The Court amended **Canon 5, CJC**, to apply to part-time judges, that is, to eliminate the exemption for part-time from many of the political activities prohibited under Canon 5.

E. *Re: Electronic Devices in Courthouses*, Order (S.C. Sup. Ct. filed Dec. 19, 2024)

The Court amended a prior order regarding possession and use of electronic devices within a courthouse.

## 2024-2025 Disciplinary Cases

1. *Matter of Surface*, Op. No. 28287 (S.C. Sup. Ct. filed July 2, 2025) - Supreme Court suspended a lawyer for 6 months for (1) not returning the file to a client after the lawyer withdrew; and (2) being arrested for felony CDV first degree (the charges were later dismissed).
2. *Matter of Flowers*, Op. No. 28288 (S.C. Sup. Ct. filed July 2, 2025) - Supreme Court issued a public reprimand of a lawyer as reciprocal discipline following the lawyer's public censure by the DC Court of Appeals for withdrawing a client's appeal without specific instructions from the client to do so. The Court noted the lawyer filed no response to the notice of reciprocal discipline, noting "[w]hile this Court might not have otherwise imposed a public sanction for this misconduct, we are constrained by the provisions of Rule 29, RLDE, which require the imposition of identical discipline in this matter."
3. *Matter of Johnston*, Op. No. 28292 (S.C. Sup. Ct. filed July 23, 2025) - Supreme Court suspended a lawyer for 6 months following the lawyer's arrest on several federal misdemeanors arising from his participation in the breach of the US Capitol on January 6, 2021.
4. *Anonymous Mediator/Attorney v. SC Office of Disciplinary Counsel*, Op. No. 28293 (S.C. Sup. Ct. filed July 30, 2025) - Supreme Court issued an order in its original jurisdiction

that a lawyer/mediator was required to provide information ODC sought which related to the mediator's observations of a lawyer's demeanor during the mediation – namely, whether the lawyer's behavior indicated he was intoxicated – because the investigative inquiry did not relate to any communication regarding the substance of the mediation. Nothing in subsections (a) or (g) of Rule 8, SCADR, prohibited the mediator from responding to ODC's inquiry. The Court stated, "public confidence in the legal system requires that all members of the legal profession diligently and faithfully observe all relevant professional obligations, including reporting misconduct and cooperating with processes designed to ensure accountability. In other words, an attorney's ethical misconduct cannot be ignored by other members of the legal profession or obscured by the mediation process."

5. *Matter of Nix*, Op. No. 28286 (S.C. Sup. Ct. filed June 11, 2025) - Supreme Court issued a public reprimand for a lawyer who was pulled over for speeding and, following a search incident to the stop was charged with one felony count of possession with intent to distribute LSD and several misdemeanor charges. After completing PTI, all charges were dismissed and everything but speeding was expunged. The Court noted a prior confidential admonition, but added that the lawyer agreed to meet with Lawyers Helping Lawyers and abide by any recommendations. The Court also noted that the lawyer had been on interim suspension or administrative suspension since April 2023, adding "[h]ad Respondent not been already suspended for over two years, it is likely that the outcome of this case would be different."

6. *Matter of Sims*, Op. No. 28281 (S.C. Sup. Ct. filed May 14, 2025) - Supreme Court ordered a 9-month suspension for a lawyer, retroactive to the date of interim suspension (November 2022), following his arrest on numerous charges after having a manic episode (he was diagnosed with manic depression). The Court ordered the lawyer to enter into a 3-year monitoring contract with Lawyers Helping Lawyers.
7. *Matter of Moore*, Op. No. 28282 (S.C. Sup. Ct. filed May 14, 2025) - Supreme Court disbarred a lawyer who had a significant history of discipline, failed to comply with two orders from the Resolution of Fee Dispute Board, failed to cooperate with ODC, neglected a criminal legal matter to the client's prejudice, misappropriated funds due clients, and failed to pay a process server.
8. *Matter of Suggs*, Op. No. 28283 (S.C. Sup. Ct. filed May 21, 2025) - Supreme Court ordered a public reprimand for a lawyer following his arrest for discharging a firearm within city limits and his failure to perfect an appeal in a criminal case. The Court noted the lawyer suffered from depression and expressed deep remorse.
9. *Matter of Hostilo*, Op. No. 28272 (S.C. Sup. Ct. filed April 9, 2025) - Supreme Court issued a public reprimand of a Georgia lawyer, who employed South Carolina lawyers to provide legal services in South Carolina, for numerous violations of advertising rules in South Carolina.

10. *Matter of Miller*, Op. No. 28276 (S.C. Sup. Ct. filed April 30, 2025) - Supreme Court suspended a lawyer for one year for misconduct involving practicing law while on administrative suspension for failing to pay annual license fees, and lying to a judge about his ability to practice in court (the court ultimately held him in contempt for lying). The Court stated, “[a]n attorney’s obligation to tell the truth is fundamental to the ethical practice of law, and a failure to be truthful undermines both the proceeding at hand and public confidence in the overall administration of justice in South Carolina. Accordingly, this Court views acts of dishonesty with the utmost scrutiny and disfavor. In light of Respondent’s absence from the practice of law since March 3, 2023, we find a one-year suspension from today’s date will suffice as an adequate sanction for Respondent’s serious misconduct.” The Court noted, “[h]ad Respondent not been already administratively suspended for over two years, it is likely the outcome of this case would be different.”

11. *Matter of Foster*, Op. No. 28277 (S.C. Sup. Ct. filed April 30, 2025) - Supreme Court suspended a lawyer for one year for misconduct involving numerous misdemeanor criminal charges involving DUI and DUS, child endangerment, and CDV. The lawyer also failed to act with reasonable diligence and promptness in a legal matter, failed to turn fees over to his employer, and appeared in court for several clients while on interim suspension.

12. *Matter of Portner*, Op. No. 28269 (S.C. Sup. Ct. filed Marcg 19, 2025) - Supreme Court

disbarred a lawyer whose license to practice law in Florida had been permanently revoked (which was tantamount to disbarment); the Court imposed the sanction as reciprocal discipline.

13. *Matter of Spell*, Op. No. 28261 (S.C. Sup. Ct. filed February 19, 2025) - Supreme Court suspended a lawyer for 6 months for misconduct in which the lawyer had an intimate and sexual relationship with a client who was the spouse of another client. The lawyer also failed to file state and federal tax returns for several years. The lawyer also had a significant disciplinary history.
14. *Matter of Blincow*, Op. No. 28262 (S.C. Sup. Ct. filed February 19, 2025) - Supreme Court disbarred a lawyer for misconduct involving failure to properly deposit a retainer into a trust account (it was not a fee immediately earned), failure to perform monthly reconciliations of the trust account, transferring personal funds to cover insufficiencies in the trust account, getting arrested for felony breach of trust with fraudulent intent in relation to client funds, numerous instances in which the lawyer made improper withdrawals, deposits, disbursements before collection, and commingling. Despite significant mitigation evidence the Court declined to impose the sanction retroactively to the lawyer's date of interim suspension.
15. *Matter of Hanlin*, Op. No. 28248 (S.C. Sup. Ct. filed December 18, 2024) - Supreme Court suspended a lawyer for 6 months for misconduct in 9 matters involving lack of

diligence, failure to adequately communicate with clients, failure to return unearned fees upon termination of representation, and failing to respond to ODC or appear for an interview under oath. The Court ordered the lawyer to retain a law office management advisor during a 2-year period who will provide reports to the Commission on Lawyer Conduct.

16. *Matter of Bergen*, Op. No. 28240 (S.C. Sup. Ct. filed November 6, 2024) - Supreme Court issued a public reprimand for a lawyer for violating a contract with Lawyers Helping Lawyers which had been a condition of his admission to practice law.
17. *Matter of Bush*, Op. No. 28241 (S.C. Sup. Ct. filed November 6, 2024) - Supreme Court disbarred a lawyer for misappropriating funds related to real estate closings, failing to disburse funds for title insurance policies, fraudulently representing himself as an authorized agent and collecting fees, costs and premiums, failing to safeguard funds entrusted for closings, and failing to inform clients he was placed on interim suspension. Despite evidence in mitigation the Court declined to impose the sanction retroactively to the date of interim suspension.
18. *Matter of Webb*, Op. No. 28237 (S.C. Sup. Ct. filed September 18, 2024) - Supreme Court disbarred a lawyer for making numerous improper transfers between his trust account and his firm's operating account. The lawyer also failed to perform monthly reconciliations on the account, maintain client ledgers or other financial records required

by Rule 417, SCACR. The lawyer admitted he had a gambling disorder. The lawyer provided significant mitigation evidence and the Court imposed the sanction retroactive to the date of interim suspension.

19. *Matter of Phillips*, Op. No. 28231 (S.C. Sup. Ct. filed August 14, 2024) - The Supreme Court suspended a lawyer for 6 months for misconduct involving his response to a Facebook post by a friend who did not want to serve on jury duty. The lawyer was an assistant solicitor and engaged in text messages with the friend after the friend was, in fact, selected for a jury. They did not discuss the facts of the case, but the ex parte communication was still improper.
20. *Matter of Mercer*, Op. No. 28232 (S.C. Sup. Ct. filed August 21, 2024) - Supreme Court issued a public reprimand of a lawyer for misconduct involving diligence, lack of proper communication, and failure to expedite litigation.



# South Carolina Bar

Continuing Legal Education Division

## Code Enforcement and Sovereign Citizens

*Adam Whitsett*

# Code Enforcement and Sovereign Citizens

Adam Whitsett  
SLED General Counsel

1

## Code Enforcement

Municipal Code Enforcement - S.C. Code Ann. § 5-7-32

- A municipality may appoint and commission as many code enforcement officers as may be necessary for the proper security, general welfare, and convenience of the municipality. These officers are vested with all the powers and duties conferred by law upon constables in addition to duties imposed upon them by the governing body of the municipality. **However, no code enforcement officer commissioned under this section may perform a custodial arrest. These code enforcement officers shall exercise their powers on all private and public property within the municipality.**

2

## Litter Control Officers

S.C. Code Ann. § 4-9-145

(2)(a) A litter control officer appointed and commissioned pursuant to subsection (A) may exercise the power of arrest with respect to his primary duties of enforcement of litter control laws and ordinances and other state and local laws and ordinances as may arise incidental to the enforcement of his primary duties **only if the officer has been certified as a law enforcement officer pursuant to Chapter 23, Title 23.**

(b) In the absence of an arrest for a violation of the litter control laws and ordinances, a litter control officer authorized to exercise the power of arrest pursuant to subitem (a) may not stop a person or make an incidental arrest of a person for a violation of other state and local laws and ordinances.

3

## Litter Control Officers

(3) For purposes of this section, the phrase “litter control officer” means a code enforcement officer authorized to enforce litter control laws and ordinances.

4

## Animal Control

S.C. Code Ann. § 47-3-30

The governing body of the county or municipality is authorized to establish an animal shelter for the county or municipality for the purpose of impounding and quarantining dogs and quarantining cats and shall employ such personnel, **including enforcement personnel**, as may be necessary to administer the provisions of this article. If an animal shelter is established, funds to establish and operate the shelter and employ necessary personnel may be provided in the annual county or municipal appropriations.

5

## Use of Blue Lights

2005 South Carolina Attorney General's Opinion:

“Consistent with such, in my opinion, the vehicles used by the animal control officers, the county fire code officials, and the building code officials referenced by you who are commissioned pursuant to Section 4-9-145 would be allowed to use or display blue or red lights on their county vehicles.”

2005 WL 1983360, at \*2 (S.C.A.G. July 29, 2005)

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## Certification

S.C. Code Ann. § 23-23-60(B) All city and county police departments, sheriffs' offices, state agencies, or other employers of law enforcement officers having such officers as candidates for certification shall submit to the director, for his confidential information and subsequent safekeeping, the following:...

(4) evidence satisfactory to the director that the applicant has not been convicted of any criminal offense that carries a sentence of one year or more or of any criminal offense that involves moral turpitude.

7

## Certification

(5) evidence satisfactory to the director that the candidate is a person of good character. This evidence must include, but is not limited to:

- (a) certification by the candidate's employer that a background investigation has been conducted and the employer is of the opinion that the candidate is of good character;...
- (d) evidence satisfactory to the director that the candidate's fingerprint record as received from the Federal Bureau of Investigation and South Carolina Law Enforcement Division indicates no record of felony convictions....”

8

## Background Checks

S.C. Code Ann. § 23-23-60(E)

An individual seeking [law enforcement] certification pursuant to this section shall undergo a state criminal records check, supported by fingerprints, by the South Carolina Law Enforcement Division (SLED) and a national criminal records check, supported by fingerprints, by the Federal Bureau of Investigation (FBI). SLED is authorized to retain the fingerprints for certification purposes and for notification of the academy regarding criminal charges. Both SLED and the FBI may retain the applicant's fingerprints for future submission to the Next Generation Identification (NGI) program and for latent fingerprint searches. The results of these criminal record checks must be reported to the academy and cannot be further disseminated.

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## Background Checks

S.C. Code Ann. § 23-23-60(E) cont'd - Certification is defined as:

- (1) Class I Law Enforcement (Class I LE)--Law enforcement officers with full arrest powers.
- (2) Class II Local Corrections (Class II LCO)--Local Detention Officers.
- (3) Class II State Corrections (Class II SCO)--South Carolina Department of Corrections Officers.
- (4) Class II Juvenile Corrections (Class II JCO)--South Carolina Department of Juvenile Justice Officers.
- (5) Class I Law Enforcement/Corrections (Class I LECO)--Law enforcement officers employed with one law enforcement agency, whose job requires the routine performance of both Class I LE duties and jail/detention center duties.
- (6) Class III Special Law Enforcement (Class III SLE)--Law enforcement officers with limited powers of arrest or special duties.
- (7) Class III Special Law Enforcement/Corrections (Class III SLECO)--Law enforcement officers employed with one law enforcement agency, whose job requires the routine performance of both Class III SLE and Class II Corrections/Jail/Detention Center duties. In order for a detention center and/or a sheriff's office to send candidates for Class III SLECO, the detention center must fall under the sheriff's authority.
- (8) Class IV (TCO)--means a telecommunications operator or dispatcher employed in an E-911 system.

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## IdentoGO

- IdentoGO
  - <https://sc.state.identogo.com>
- Criminal Justice Academy Service Code -  
2BF9V1
- Physical Location List for IdentoGo locations throughout the state is in the materials

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## Making Charges without ORI

Per South Carolina Court Administration –

- An ORI is not required in CMS for the issuance of a warrant and should not be entered on warrants made by licensed security guards or other individuals with entities that do not have an ORI

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## Sovereign Citizen

Per SLED's Behavioral Science Unit:

- A network of loosely affiliated individuals who believe the federal, state, and local governments are operating illegitimately. (USDOJ-FBI, 2010).
- Believe the government is illegitimate via hidden contracts. (Anti-Defamation League, 2012).
- Believe in an alternate history of the U.S. consisting of a conspiracy governed by complex and arcane rules. (Berger, 2016).

13



14



15

## Common Elements

- “Affidavit of Truth” or “Notice of Declaration”
- “Natural Man/Woman living on the land”
- “Sovereign under his/her creator” or other references to sovereignty
- “In Propria Persona” or “De jure citizen”
- “Nation of South Carolina, United States Minor Outlying Islands”
- “All Rights Reserved”
- References to Admiralty Law or Uniform Commercial Code
- Failure to respond is sign of agreement
- Fascination with CAPITALIZATION and the copyright symbol
- Grandiose legalese and a refusal to use zip codes
- References to “common-law Courts”

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## The “Gatekeepers”

### Clerks of Court and Registers of Deeds

- S.C. Code Ann. § 30-9-30(B)(1) authorizes the refusal to accept “materially false or fraudulent” or “sham legal process”
- S.C. Code Ann. § 30-9-30 – also sets forth
  - Challenge Process, Definitions, Immunity

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## Rule 12 Motions to Strike

SCRCP 12(f) Motion to Strike.

Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court’s own initiative, at any time the court may order stricken from any pleading **any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.**

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## Potential Criminal Violations

- **S.C. Code Ann. § 16-17-735** – Impersonating Officials and Law Enforcement
- **S.C. Code Ann. § 16-17-430** – Unlawful Communication
- **S.C. Code Ann. § 16-3-1700** – Harassment Offenses

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## Potential Criminal Violations

- **S.C. Code Ann. § 16-17-410** – Conspiracy
- **S.C. Code Ann. § 16-15-250** – Communicating Obscene Messages
- **S.C. Code Ann. § 16-9-30** – False Swearing

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## Potential Criminal Violations

- **S.C. Code Ann. § 16-3-1040** – Threatening Public Official
- **S.C. Code Ann. § 16-9-340** – Intimidation of Court Officials
- **S.C. Code Ann. § 16-9-330** – Refusal to answer questions required by court

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## Potential Criminal Violations

Common Law **Obstruction of Justice** - any act which

- prevents,
- obstructs,
- impedes, or
- hinders

the administration of justice.

State v. Cogdell, 273 S.C. 563, 567, 257 S.E.2d 748, 750 (1979); State v. Lyles-Gray, 328 S.C. 458, 464, 492 S.E.2d 802, 805 (Ct. App. 1997)

22

## Sovereign Citizen Resources

- Anti-Defamation League (2012). The lawless ones: The resurgence of the sovereign citizen movement, 2nd Edition, New York, NY: Anti-Defamation League.
- Berger, J.M. (2016) Without prejudice: What sovereign citizens believe. George Washington Program of Extremism. Retrieved from <https://extremism.gwu.edu/sites/g/files/zad2s2191/downloads/JMB%20SovereignCitizens.pdf>
- MacNab, J.J. (2012). What is a sovereign citizen? Forbes. Retrieved from <https://www.forbes.com/sites/jjmacnab/2012/02/13/what-is-a-sovereign-citizen/#5394671a6012>
- USDOJ-FBI Domestic Terrorism Operations Unit II. (2010). Sovereign citizens: An introduction for law enforcement. Retrieved from [http://www.minnesotatzd.org/events/conference/2016/documents/Sovereign\\_Citizens\\_Intro\\_For\\_LE.pdf](http://www.minnesotatzd.org/events/conference/2016/documents/Sovereign_Citizens_Intro_For_LE.pdf)

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## Renouncing U.S. Citizenship

Pursuant to 18 U.S.C.A. § 922(g)(7), anyone who has “renounced their U.S. Citizenship” is prohibited from possessing firearms or ammunition.

To do so – <https://www.usa.gov/renounce-lose-citizenship>

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## SLED Resources

- For an evaluation of the legitimacy of any threats, contact SLED's Behavioral Sciences Unit
  - Office - (803) 896-2389 (2604 or 6908)
  - 24-hour line – 803-737-9000
- For any other information or to provide information, contact the SLED Fusion Center
  - [sledfc@sled.sc.gov](mailto:sledfc@sled.sc.gov)

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## Contact Information

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Code of Laws of South Carolina 1976 Annotated

Title 16. Crimes and Offenses

Chapter 3. Offenses Against the Person

Article 11. Miscellaneous Offenses

Code 1976 § 16-3-1040

§ 16-3-1040. Threatening life, person or family of public official or public employee; punishment.

Currentness

(A) It is unlawful for a person knowingly and wilfully to deliver or convey to a public official or to a teacher or principal of an elementary or secondary school any letter or paper, writing, print, missive, document, or electronic communication or verbal or electronic communication which contains a threat to take the life of or to inflict bodily harm upon the public official, teacher, or principal, or members of his immediate family if the threat is directly related to the public official's, teacher's, or principal's professional responsibilities.

(B) It is unlawful for a person knowingly and wilfully to deliver or convey to a public employee a letter or paper, writing, print, missive, document, or electronic communication or verbal or electronic communication which contains a threat to take the life of or to inflict bodily harm upon the public employee or members of his immediate family if the threat is directly related to the public employee's official responsibilities.

(C) A person who violates the provisions of subsection (A), upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both.

(D) A person who violates the provisions of subsection (B), upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

(E) For purposes of this section:

(1) "Public official" means an elected or appointed official of the United States or of this State or of a county, municipality, or other political subdivision of this State.

(2) "Public employee" means a person employed by the State, a county, a municipality, a school district, or a political subdivision of this State, except that for purposes of this section, a "public employee" does not include a teacher or principal of an elementary or secondary school.

(3) "Immediate family" means the spouse, child, grandchild, mother, father, sister, or brother of the public official, teacher, principal, or public employee.

**Credits**

HISTORY: 1982 Act No. 299; 1990 Act No. 579, § 8; 1998 Act No. 435, § 1.

Notes of Decisions (8)

Code 1976 § 16-3-1040, SC ST § 16-3-1040

Current through 2025 Act No. 94, subject to final approval by the Legislative Council, technical revisions by the Code Commissioner, and publication in the Official Code of Laws.

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Code of Laws of South Carolina 1976 Annotated  
Title 16. Crimes and Offenses  
Chapter 9. Offenses Against Public Justice  
Article 1. Perjury

Code 1976 § 16-9-30

§ 16-9-30. False swearing before persons authorized to administer oaths.

Currentness

It is unlawful for a person to wilfully and knowingly swear falsely in taking any oath required by law that is administered by a person directed or permitted by law to administer such oath.

A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both.

**Credits**

HISTORY: 1962 Code § 16-203; 1952 Code § 16-203; 1942 Code § 1400; 1932 Code § 1400; Cr. C. '22 § 335; Cr. C. '12 § 343; Cr. C. '02 § 256; G. S. 2534; R. S. 220; 1833 (2) 485; 1993 Act No. 184, § 166.

Notes of Decisions (7)

Code 1976 § 16-9-30, SC ST § 16-9-30

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Code of Laws of South Carolina 1976 Annotated  
Title 16. Crimes and Offenses  
Chapter 9. Offenses Against Public Justice  
Article 4. Interference with Judicial Process

Code 1976 § 16-9-330

§ 16-9-330. Refusal or wilful failure to obey subpoena; refusal to take oath or answer questions as required by court.

Currentness

Any person who:

- (a) Being duly served with a subpoena legally issued in any cause pending in any court or in any matter before any legal authority, shall refuse or wilfully fail to obey such subpoena or shall secret himself shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned for not more than six months, or both;
- (b) Being present before any court and being called upon to give testimony, shall refuse to take an oath or affirmation or, being sworn or affirmed, shall refuse to answer any questions required by such court shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars nor more than five hundred dollars or be imprisoned for not more than six months, or both. Nothing in this item shall be construed to prohibit or punish the exercise by any person of his right not to be compelled to incriminate himself, as set forth in the Constitutions of this State and the United States and construed by the courts of this State and the United States.

**Credits**

HISTORY: 1980 Act No. 511, § 3.

Code 1976 § 16-9-330, SC ST § 16-9-330

Current through 2025 Act No. 94, subject to final approval by the Legislative Council, technical revisions by the Code Commissioner, and publication in the Official Code of Laws.

Code of Laws of South Carolina 1976 Annotated  
Title 16. Crimes and Offenses  
Chapter 9. Offenses Against Public Justice  
Article 4. Interference with Judicial Process

Code 1976 § 16-9-340

§ 16-9-340. Intimidation of court officials, jurors or witnesses.

Currentness

(A) It is unlawful for a person by threat or force to:

- (1) intimidate or impede a judge, magistrate, juror, witness, or potential juror or witness, arbiter, commissioner, or member of any commission of this State or any other official of any court, in the discharge of his duty as such; or
- (2) destroy, impede, or attempt to obstruct or impede the administration of justice in any court.

(B) A person who violates the provisions of subsection (A) is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

**Credits**

HISTORY: 1980 Act No. 511, § 3; 1993 Act No. 184, § 25; 1996 Act No. 255, § 1.

Notes of Decisions (7)

Code 1976 § 16-9-340, SC ST § 16-9-340

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Code of Laws of South Carolina 1976 Annotated

Title 16. Crimes and Offenses

Chapter 15. Offenses Against Morality and Decency (Refs & Annos)

Article 1. Miscellaneous Offenses

Code 1976 § 16-15-250

§ 16-15-250. Communicating obscene messages to other persons without consent.

Currentness

It is unlawful for a person to anonymously write, print, telephone, transmit a digital electronic file, or by other manner or means communicate, send, or deliver to another person within this State, without that person's consent, any obscene, profane, indecent, vulgar, suggestive, or immoral message.

A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

**Credits**

HISTORY: 1962 Code § 16-552; 1952 Code § 16-552; 1943 (43) 26; 1967 (55) 626; 1993 Act No. 184, § 181; 2001 Act No. 81, § 6.

Notes of Decisions (1)

Code 1976 § 16-15-250, SC ST § 16-15-250

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Code of Laws of South Carolina 1976 Annotated

Title 16. Crimes and Offenses

Chapter 17. Offenses Against Public Policy

Article 7. Miscellaneous Offenses

Code 1976 § 16-17-410

§ 16-17-410. Conspiracy.

Currentness

The common law crime known as “conspiracy” is defined as a combination between two or more persons for the purpose of accomplishing an unlawful object or lawful object by unlawful means.

A person who commits the crime of conspiracy is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years.

A person who is convicted of the crime of conspiracy must not be given a greater fine or sentence than he would receive if he carried out the unlawful act contemplated by the conspiracy and had been convicted of the unlawful act contemplated by the conspiracy or had he been convicted of the unlawful acts by which the conspiracy was to be carried out or effected.

#### Credits

HISTORY: 1962 Code § 16-550; 1957 (50) 58; 1993 Act No. 184, § 35.

Notes of Decisions (119)

Code 1976 § 16-17-410, SC ST § 16-17-410

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Code of Laws of South Carolina 1976 Annotated

Title 16. Crimes and Offenses

Chapter 17. Offenses Against Public Policy

Article 7. Miscellaneous Offenses

Code 1976 § 16-17-430

§ 16-17-430. Unlawful communication.

Currentness

(A) It is unlawful for a person to:

- (1) use in a telephonic communication or any other electronic means, any words or language of a profane, vulgar, lewd, lascivious, or an indecent nature, or to communicate or convey by telephonic or other electronic means an obscene, vulgar, indecent, profane, suggestive, or immoral message to another person;
- (2) threaten in a telephonic communication or any other electronic means an unlawful act with the intent to coerce, intimidate, or harass another person;
- (3) telephone or electronically contact another repeatedly, whether or not conversation ensues, for the purpose of annoying or harassing another person or his family;
- (4) make a telephone call and intentionally fail to hang up or disengage the connection for the purpose of interfering with the telephone service of another;
- (5) telephone or contact by electronic means another and make false statements concerning either the death or injury of a member of the family of the person who is telephoned or electronically contacted, with the intent to annoy, frighten, or terrify that person; or
- (6) knowingly permit a telephone under his control to be used for any purpose prohibited by this section.

(B) A person who violates any provision of subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned not more than thirty days.

#### Credits

HISTORY: 1962 Code § 16-552.1; 1961 (52) 451; 1967 (55) 626; 1993 Act No. 184, § 36; 2001 Act No. 81, § 13.

Notes of Decisions (8)

Code 1976 § 16-17-430, SC ST § 16-17-430

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Code of Laws of South Carolina 1976 Annotated

Title 16. Crimes and Offenses

Chapter 17. Offenses Against Public Policy

Article 7. Miscellaneous Offenses

Code 1976 § 16-17-735

§ 16-17-735. Persons impersonating officials or law enforcement officers; persons falsely asserting authority of law; offenses; punishment.

Currentness

(A) It is unlawful for a person to impersonate a state or local official or employee or a law enforcement officer in connection with a sham legal process. A person acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity commits a misdemeanor if, knowing that his conduct is illegal, he:

(1) subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or

(2) denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity.

A person violating the provisions of this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand five hundred dollars or imprisoned not more than one year, or both.

(B) It is unlawful for a person falsely to assert authority of state law in connection with a sham legal process. A person violating the provisions of this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand five hundred dollars or imprisoned not more than one year, or both.

(C) It is unlawful for a person to act without authority under state law as a Supreme Court Justice, a court of appeals judge, a circuit court judge, a master-in-equity, a family court judge, a probate court judge, a magistrate, a clerk of court or register of deeds, a commissioned notary public, or other authorized official in determining a controversy, adjudicating the rights or interests of others, or signing a document as though authorized by state law. A person violating the provisions of this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand five hundred dollars or imprisoned not more than one year, or both.

(D) It is unlawful for a person falsely to assert authority of law, in an attempt to intimidate or hinder a state or local official or employee or law enforcement officer in the discharge of official duties, by means of threats, harassment, physical abuse, or use of a sham legal process. A person violating this subsection is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not less than one year and not more than three years, or both.

(E) For purposes of this section:

(1) “Law enforcement officer” is as defined in Section 16-9-310.

(2) “State or local official or employee” means an appointed or elected official or an employee of a state agency, board, commission, department, in a branch of state government, institution of higher education, other school district, political subdivision, or other unit of government of this State.

(3) “Sham legal process” means the issuance, display, delivery, distribution, reliance on as lawful authority, or other use of an instrument that is not lawfully issued, whether or not the instrument is produced for inspection or actually exists, which purports to:

(a) be a summons, subpoena, judgment, lien, arrest warrant, search warrant, or other order of a court of this State, a law enforcement officer, or a legislative, executive, or administrative agency established by state law;

(b) assert jurisdiction or authority over or determine or adjudicate the legal or equitable status, rights, duties, powers, or privileges of a person or property; or

(c) require or authorize the search, seizure, indictment, arrest, trial, or sentencing of a person or property.

(4) “Lawfully issued” means adopted, issued, or rendered in accordance with the applicable statutes, rules, regulations, and ordinances of the United States, a state, an agency, or a political subdivision of a state.

#### Credits

HISTORY: 1998 Act No. 385, § 1.

Code 1976 § 16-17-735, SC ST § 16-17-735

Current through 2025 Act No. 94, subject to final approval by the Legislative Council, technical revisions by the Code Commissioner, and publication in the Official Code of Laws.

Code of Laws of South Carolina 1976 Annotated

Title 23. Law Enforcement and Public Safety

Chapter 23. Law Enforcement Training Council and Criminal Justice Academy (Refs & Annos)

Code 1976 § 23-23-60

§ 23-23-60. Certificates of compliance; information to be submitted  
relating to qualification of candidates for certification; expiration.

Currentness

(A) At the request of any public law enforcement agency of this State the council is hereby authorized to issue certificates and other appropriate indicia of compliance and qualification to law enforcement officers or other persons trained under the provisions of this chapter. Members of the council may individually or collectively visit and inspect any training school, class, or academy dealing with present or prospective law enforcement officers, and are expected to promote the most efficient and economical program for police training, including the maximum utilization of existing facilities and programs for the purpose of avoiding duplication. The council may make recommendations to the director, the General Assembly, or to the Governor regarding the carrying out of the purposes, objectives, and intentions of this chapter or other acts relating to training in law enforcement.

(B) All city and county police departments, sheriffs' offices, state agencies, or other employers of law enforcement officers having such officers as candidates for certification shall submit to the director, for his confidential information and subsequent safekeeping, the following:

(1) an application under oath on a format prescribed by the director;

(2) evidence satisfactory to the director that the candidate has completed high school and received a high school diploma, equivalency certificate (military or other) recognized and accepted by the South Carolina Department of Education or South Carolina special certificate;

(3) evidence satisfactory to the director of the candidate's physical fitness to fulfill the duties of a law enforcement officer including:

(a) a copy of his medical history compiled by a licensed physician or medical examiner approved by the employer;

(b) a certificate of a licensed physician that the candidate has recently undergone a complete medical examination and the results thereof;

(4) evidence satisfactory to the director that the applicant has not been convicted of any criminal offense that carries a sentence of one year or more or of any criminal offense that involves moral turpitude. Forfeiture of bond, a guilty plea, or a plea of nolo contendere is considered the equivalent of a conviction;

(5) evidence satisfactory to the director that the candidate is a person of good character. This evidence must include, but is not limited to:

(a) certification by the candidate's employer that a background investigation has been conducted and the employer is of the opinion that the candidate is of good character;

(b) evidence satisfactory to the director that the candidate holds a valid current state driver's license with no record during the previous five years for suspension of driver's license as a result of driving under the influence of alcoholic beverages or dangerous drugs, driving while impaired (or the equivalent), reckless homicide, involuntary manslaughter, or leaving the scene of an accident. Candidates for certification as state or local correctional officers may hold a valid current driver's license issued by any jurisdiction of the United States;

(c) evidence satisfactory to the director that a local credit check has been made with favorable results;

(d) evidence satisfactory to the director that the candidate's fingerprint record as received from the Federal Bureau of Investigation and South Carolina Law Enforcement Division indicates no record of felony convictions; and

(e) evidence satisfactory to the director that the candidate has signed an attestation form committing to the practice of ethical policing, which means the discharge of responsibilities, stemming from employment as a law enforcement officer, which is devoid of misconduct and which is carried out in conformance with this chapter, including the duty to safeguard life and the duty to intervene.

In the director's determination of good character, the director shall give consideration to all law violations, including traffic and conservation law convictions, as indicating a lack of good character. The director shall also give consideration to the candidate's prior history, if any, of alcohol and drug abuse in arriving at a determination of good character;

(6) a copy of the candidate's photograph;

(7) a copy of the candidate's fingerprints;

(8) evidence satisfactory to the director that the candidate's present age is no less than twenty-one years. However, if the person is a candidate for detention or correctional officer, not to include officers for the Department of Juvenile Justice, then the candidate's present age must be no less than eighteen years of age. This evidence must include a birth certificate or another acceptable document;

(9) evidence satisfactory to the director of successful completion of a course of law enforcement training as established and approved by the director, and conducted at an academy or institution approved by the director, this evidence to consist of a certificate granted by the approved institution.

(C)(1) A certificate as a law enforcement officer issued by the council will expire three years from the date of issuance or upon discontinuance of employment by the officer with the employing entity or agency.

(2) Notwithstanding the provisions of item (1), a certificate may not expire if employment is discontinued because of the officer's absence from work due to a disability he sustained in that employment for which he receives workers' compensation benefits and from which he has not been authorized to return to work without restriction; provided, however, that before he may resume employment for which the certificate is required, he must complete all continuing education requirements for the period of time in which he was receiving workers' compensation benefits and had not been authorized to return to work. Additionally, the three-year duration of a certificate is tolled during such an absence from employment, and begins running when the officer is authorized to return to work without restriction.

(3) Prior to the expiration of the certificate, the certificate may be renewed upon application presented to the director on a form prescribed by the director. The application for renewal must be received by the director at least forty-five days prior to the expiration of the certificate.

(4) If the officer's certificate has lapsed, the council may reissue the certificate after receipt of an application and if the director is satisfied that the officer continues to meet the requirements of subsection (B)(1) through (9).

(D) The director may accept for training as a law enforcement officer an applicant who has met requirements of subsection (B)(1) through (8).

(E) An individual seeking certification pursuant to this section shall undergo a state criminal records check, supported by fingerprints, by the South Carolina Law Enforcement Division (SLED) and a national criminal records check, supported by fingerprints, by the Federal Bureau of Investigation (FBI). SLED is authorized to retain the fingerprints for certification purposes and for notification of the academy regarding criminal charges. Both SLED and the FBI may retain the applicant's fingerprints for future submission to the Next Generation Identification (NGI) program and for latent fingerprint searches. The results of these criminal record checks must be reported to the academy and cannot be further disseminated. Certification is defined as:

(1) Class I Law Enforcement (Class I LE)--Law enforcement officers with full arrest powers.

(2) Class II Local Corrections (Class II LCO)--Local Detention Officers.

(3) Class II State Corrections (Class II SCO)--South Carolina Department of Corrections Officers.

(4) Class II Juvenile Corrections (Class II JCO)--South Carolina Department of Juvenile Justice Officers.

(5) Class I Law Enforcement/Corrections (Class I LECO)--Law enforcement officers employed with one law enforcement agency, whose job requires the routine performance of both Class I LE duties and jail/detention center duties.

(6) Class III Special Law Enforcement (Class III SLE)--Law enforcement officers with limited powers of arrest or special duties.

(7) Class III Special Law Enforcement/Corrections (Class III SLECO)--Law enforcement officers employed with one law enforcement agency, whose job requires the routine performance of both Class III SLE and Class II Corrections/Jail/Detention Center duties. In order for a detention center and/or a sheriff's office to send candidates for Class III SLECO, the detention center must fall under the sheriff's authority.

(8) Class IV (TCO)--means a telecommunications operator or dispatcher employed in an E-911 system.

#### Credits

HISTORY: 2006 Act No. 317, § 1, eff May 30, 2006; 2014 Act No. 206 (H.4630), § 1, eff June 2, 2014; 2014 Act No. 225 (H.3958), § 1, eff June 2, 2014; 2022 Act No. 215 (S.1092), § 1, eff May 23, 2022; 2022 Act No. 218 (H.3050), § 7, eff May 23, 2022; 2025 Act No. 66 (H.3752), § 5, eff May 22, 2025.

Code 1976 § 23-23-60, SC ST § 23-23-60

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Code of Laws of South Carolina 1976 Annotated  
Title 30. Public Records  
Chapter 9. Indexing and Filing

Code 1976 § 30-9-30

§ 30-9-30. Filing of written instruments concerning real or personal property; false or fraudulent documents.

Currentness

(A) Except as otherwise provided by statute, each clerk of court and register of deeds in this State shall keep a record, in the office in which he files all conveyances, mortgages, judgments, liens, contracts, and papers relating to real and personal property required by statute to be kept by him, by entering in the record the names of the grantor and grantee, mortgagor and mortgagee, obligor and obligee, or other parties to the written instruments, date of filing, and nature of the instrument immediately upon its lodgment for record. The filing is notice to all persons, sufficient to put them upon inquiry of the purport of the filed instrument and the property affected by the instrument. A return address must be provided on each conveyance, mortgage, judgment, lien, contract, or other document submitted for filing with the clerk of court or register of deeds. A document may be refused for filing if it lacks a complete return address.

(B)(1) If a person presents a conveyance, mortgage, judgment, lien, contract, or other document to the clerk of court or the register of deeds for filing or recording, the clerk of court or the register of deeds may refuse to accept the document for filing if he reasonably believes that the document is materially false or fraudulent or is a sham legal process. Within thirty days of a written notice of such refusal, the person presenting the document may commence a suit in a state court of competent jurisdiction requiring the clerk of court or the register of deeds to accept the document for filing.

(2) If the clerk of court or the register of deeds reasonably believes that a conveyance, mortgage, judgment, lien, contract, or other document is materially false or fraudulent, or is a sham legal process, the clerk of court or the register of deeds may remove the document from the public records after giving thirty days' written notice to the person on whose behalf the document was filed at the return address provided in the document. Within thirty days written notice of the proposed removal, the person providing the notice may commence a suit in a state court of competent jurisdiction preventing the clerk of court or the register of deeds from removing the document.

(3) If a clerk of court or a register of deeds improperly refuses to accept for filing or recording or improperly removes from the public records a conveyance, mortgage, judgment, lien, contract, or other document pursuant to this section, the clerk of court or register of deeds is not liable for damages, personally or in his official capacity, for the improper refusal or removal.

(4) For purposes of this subsection:

(a) "Sham legal process" means a document that is not issued lawfully and that purports to be a judgment, lien, or order of a court or appropriate government entity, or otherwise purports to assert jurisdiction over or determine the legal or equitable status, rights, duties, powers, or privileges of a person or property.

(b) “Lawfully issued” means adopted, issued, or rendered in accordance with applicable statutes, rules, regulations, and ordinances of the United States, a state, or an agency or a political subdivision of a state.

**Credits**

HISTORY: 1962 Code § 60-153; 1952 Code § 60-153; 1942 Code § 8889; 1932 Code § 8889; Civ. C. '22 § 5320; Civ. C. '12 § 3550; 1911 (27) 152; 1912 (27) 564; 1914 (28) 511; 1916 (29) 781; 1926 (34) 1725; 1972 (57) 2636; 1988 Act No. 494, § 8(15); 1998 Act No. 385, § 3; 2005 Act No. 161, § 18.

Notes of Decisions (5)

Code 1976 § 30-9-30, SC ST § 30-9-30

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| <u>Location Name</u>                     | <u>Type</u> | <u>Address Line 1</u>       | <u>Address Line 2</u>              | <u>City</u>        | <u>State</u> | <u>Zip Code</u> | <u>Counties</u> |
|--|-------------|-----------------------------|------------------------------------|--------------------|--------------|-----------------|-----------------|
| Abbeville, SC-W Greenwood St             | Host        | 909 W Greenwood St          | Ste 1                              | Abbeville          | SC           | 29620-5678      | Abbeville       |
| Allendale, SC-Main St N                  | Host        | 911 Main St N               |                                    | Allendale          | SC           | 29810           | Allendale       |
| Anderson, SC-McGee Rd                    | Host        | 600 McGee Rd                |                                    | Anderson           | SC           | 29625-1400      | Anderson        |
| Bamberg, SC-Log Branch Rd                | Host        | 498 Log Branch Rd           |                                    | Bamberg            | SC           | 29003           | Bamberg         |
| Barnwell, SC-Fuldner Rd                  | Host        | 179 Fuldner Rd              |                                    | Barnwell           | SC           | 29812-7328      | Barnwell        |
| Bennettsville, SC-N Marlboro St          | Host        | 714 N Marlboro St           |                                    | Bennettsville      | SC           | 29512-2640      | Marlboro        |
| Bluffton, SC-William Pope Dr             | Host        | 36 William Pope Dr          | Ste 203                            | Blufhton           | SC           | 29909-7518      | Beaufort        |
| Camden, SC-Broad St                      | Host        | 1111 Broad St               |                                    | Camden             | SC           | 29020-3611      | Kershaw         |
| Chesterfield, SC-W Main St               | Host        | 119 W Main St               |                                    | Chesterfield       | SC           | 29709           | Chesterfield    |
| Columbia, SC-Saint Andrews Rd            | Fixed       | 612 Saint Andrews Rd        | Ste 9                              | Columbia           | SC           | 29210-5120      | Richland        |
| Dillon, SC-Commerce Dr                   | Host        | 1647 Commerce Dr            |                                    | Dillon             | SC           | 29536           | Dillon          |
| Easley, SC-Gentry Memorial Hwy           | Host        | 619 Gentry Memorial Hwy     | Ste V                              | Easley             | SC           | 29640-1086      | Pickens         |
| Florence, SC-W Evans St                  | Fixed       | 1801 W Evans St             | Ste 102                            | Florence           | SC           | 29501-3801      | Florence        |
| Gaffney, SC-Tiffany Park Cir             | Host        | 111-A Tiffany Park Circle   |                                    | Gaffney            | SC           | 29341-1258      | Cherokee        |
| Greenville, SC-Orchard Park Dr           | Fixed       | 30 Orchard Park Dr          | Ste 21                             | Greenville         | SC           | 29615-3500      | Greenville      |
| Greenwood, SC-Main St N                  | Host        | 106 Main St N               |                                    | Greenwood          | SC           | 29646-2240      | Greenwood       |
| Hanahan, SC-Old Murry Ct                 | Host        | 1216 Old Murry Ct           |                                    | Hanahan            | SC           | 29410           | Berkeley        |
| Hartsville, SC-W College Ave             | Host        | 147 W College Ave           |                                    | Hartsville         | SC           | 29550-4113      | Darlington      |
| Hilton Head Island, SC-Corpus Christi Pl | Host        | 1 Corpus Christi Pl         | Ste 103                            | Hilton Head Island | SC           | 29928-4768      |                 |
| Hilton Head Island, SC-Wilborn Rd        | Host        | 20 Wilborn Rd               |                                    | Hilton Head Island | SC           | 29926-1627      | Beaufort        |
| Kingstree, SC-Martin Luther King Blvd    | Host        | 530 Martin Luther King Blvd |                                    | Kingstree          | SC           | 29556-4102      | Williamsburg    |
| Laurens, SC-Anderson Dr                  | Host        | 410 Anderson Dr             |                                    | Laurens            | SC           | 29360-1755      | Laurens         |
| Lexington, SC-W Main St                  | Host        | 311 W Main St               |                                    | Lexington          | SC           | 29072-2635      | Lexington       |
| McCormick, SC-S Main St                  | Host        | 100 S Main St               |                                    | McCormick          | SC           | 29835           | McCormick       |
| Mount Pleasant, SC-N Highway 17          | Fixed       | 1485 N Highway 17           | Ste H                              | Mount Pleasant     | SC           | 29464-3344      | Charleston      |
| Myrtle Beach, SC-N Kings Hwy             | Fixed       | 1521 N Kings Hwy            | Kings Festival Shopping Center     | Myrtle Beach       | SC           | 29577-3640      | Horry           |
| Newberry, SC-Jollystreet Rd              | Host        | 8220 Jollystreet Rd         |                                    | Newberry           | SC           | 29108-8261      | Newberry        |
| North Augusta, SC-E Martintown Rd        | Fixed       | 802 E Martintown Rd         | N Augusta Bus Techlg Ctr Ste 103   | North Augusta      | SC           | 29841-5308      | Aiken/Edgefield |
| Pawleys Island, SC-Ocean Hwy             | Host        | 13088 Ocean Hwy             | Unit 7                             | Pawleys Island     | SC           | 29585-6678      | Georgetown      |
| Port Royal, SC-14th St                   | Host        | 714 14th St                 |                                    | Port Royal         | SC           | 29935-2217      | Beaufort        |
| Ridgeland, SC-Wilson St                  | Host        | 451A Wilson St              |                                    | Ridgeland          | SC           | 29936           | Jasper          |
| Rock Hill, SC-Herlong Village Dr         | Fixed       | 1742 Herlong Village Dr     | Ste 103                            | Rock Hill          | SC           | 29732-3294      | York            |
| Saluda, SC-W Eutaw St                    | Host        | 113 W Eutaw St              |                                    | Saluda             | SC           | 29138-1727      | Saluda          |
| Santee, SC-Old Hwy Number Six            | Host        | 9158 Old Hwy Number Six     |                                    | Santee             | SC           | 29142           | Orangeburg      |
| Seneca, SC-Leas Courtyard Dr             | Host        | 2 Leas Courtyard Dr         |                                    | Seneca             | SC           | 29672-6660      | Oconee          |
| Spartanburg, SC-E Blackstock Rd          | Host        | 477 E Blackstock Rd         | Ste 5                              | Spartanburg        | SC           | 29301-3712      | Spartanburg     |
| St. Helena Island, SC-Sea Island Pkwy    | Host        | 1029 Sea Island Pkwy        | St. Helena Migrant Head Start Bldg | St. Helena Island  | SC           | 29920-4301      | Beaufort        |
| St. Matthews, SC-State Road S-9-46       | Host        | 900 State Rd S-9-46         |                                    | St. Matthews       | SC           | 29135           | Calhoun         |
| Summerville, SC-N Main St                | Host        | 402 N Main St               |                                    | Summerville        | SC           | 29483-6440      | Dorchester      |
| Sumter, SC-W College St                  | Host        | 100 W College St            |                                    | Sumter             | SC           | 29150-3502      | Sumter          |
| Union, SC-E South St                     | Host        | 300 E South St              |                                    | Union              | SC           | 29379-2349      | Union           |
| Walterboro, SC-Forest Cir                | Host        | 500 Forest Cir              |                                    | Walterboro         | SC           | 29488           | Colleton        |

328 S.C. 458

Court of Appeals of South Carolina.

The STATE, Respondent,

v.

Henrietta LYLES-GRAY, Appellant.

No. 2721

|

Submitted Sept. 9, 1997.

|

Decided Sept. 29, 1997.

|

Rehearing Denied Nov. 20, 1997.

**Synopsis**

Defendant, a police officer, was convicted after jury trial in the Circuit Court, Kershaw County, James W. Johnson, Jr., J., of common-law obstruction of justice and official misconduct in office, in connection with her handling of shoplifting case in which her child was a suspect. Defendant appealed. The Court of Appeals, Goolsby, J., held that: (1) statute governing intimidation of court officials did not supersede or otherwise prevent prosecution of defendant for common-law obstruction of justice, and (2) evidence was sufficient to support the convictions.

Affirmed.

West Headnotes (9)

**[1] Obstructing Justice** Obstructing Justice

Under common-law obstruction of justice, it is an offense to do any act which prevents, obstructs, impedes, or hinders administration of justice.

4 Cases that cite this headnote

**[2] Criminal Law** Application and Operation of Common Law**Obstructing Justice** Influencing juror or court officer

Although statute governing intimidation of court officials codifies various common-law crimes,

it does not purport to codify or supersede all of them. Code 1976, § 16–9–340.

**[3] Obstructing Justice** Nature and Elements of Offense in General

Although person can commit obstruction of justice by use of force or threats, such conduct is neither essential element of, nor only means of committing, crime of common-law obstruction of justice.

3 Cases that cite this headnote

**[4] Criminal Law** Application and Operation of Common Law**Obstructing Justice** Influencing juror or court officer

Statute governing intimidation of court officials did not supersede or otherwise prevent state's prosecution of police officer for conduct amounting to common-law obstruction of justice. Code 1976, § 16–9–340.

3 Cases that cite this headnote

**[5] Criminal Law** Suspicion or conjecture; reasonable doubt

Trial court should grant directed verdict in criminal case if evidence fails to raise more than mere suspicion that the accused is guilty.

**[6] Criminal Law** Nature of Decision

Appealed from as Affecting Scope of Review

**Criminal Law** Construction in favor of government, state, or prosecution

In reviewing trial court's refusal to grant directed verdict, Court of Appeals must view evidence in light most favorable to the state to determine whether there is any direct or any substantial circumstantial evidence that reasonably tends to prove guilt of the accused or from which guilt may fairly and logically be deduced.

**[7] Public Employment** Offenses

Misconduct in office occurs when persons in public office fail to properly and faithfully discharge duty imposed by law.

1 Case that cites this headnote

[8] **Obstructing Justice**  Interfering with performance of official duties

Conviction for common-law obstruction of justice was supported by evidence that defendant, a police officer, was informed by store security manager and patrol officer that shoplifter had placed stolen goods in defendant's car, that shoplifting suspect was defendant's child, that defendant failed to properly interview witnesses during investigation, and that defendant failed to turn over stolen merchandise to officer in charge of investigation, even though person other than defendant's child testified to being the shoplifter.

[9] **Municipal, County, and Local Government**  Prosecutions

**Public Employment**  Weight and sufficiency

Conviction for misconduct in office was supported by evidence that defendant, a police officer, was informed by store security manager and patrol officer that shoplifter had placed stolen goods in defendant's car, that shoplifting suspect was defendant's child, that defendant failed to properly interview witnesses during investigation, and that defendant failed to turn over stolen merchandise to officer in charge of investigation, even though person other than defendant's child testified to being the shoplifter.

Robert Deloach, III; and Solicitor Warren B. Giese, Columbia, for respondent.

### Opinion

GOOLSBY, Judge:

Henrietta Lyles-Gray was convicted of two counts of common-law obstruction of justice and two counts of official misconduct in office as an officer in the Camden Police Department. Lyles-Gray appeals. We affirm.<sup>1</sup>

### FACTS

On the evening of December 2, 1994, Betty Kennedy was working as a security manager at the Belk's store in Camden when she saw two suspicious women, later identified as Renee Lyles and Valerie Drakeford. Drakeford carried an unzipped **\*461** purse around the store while Lyles carried a shopping bag. The women carried clothing into the fitting rooms **\*\*804** without looking at the price tag or size. Kennedy, therefore, suspected the women were shoplifting because of their strange behavior.

While observing Drakeford and Lyles, Kennedy pretended to shop with her daughter Linda. Lyles tossed a sweater into the air, allowing it to drop to the floor; then Lyles placed the sweater into the shopping bag. Lyles and Drakeford were chatting with Niki Hinson, a sales clerk, when Lyles said she needed a checkbook and left to go outside. Kennedy then asked Linda to follow Lyles outside. Linda saw Lyles unlock a blue Ford Escort parked near the store entrance. Lyles placed the bag on the floorboard, locked the car, and returned to the store.

While Lyles was outside, Kennedy asked someone to call the police and asked Stephanie Griffin, a sales manager, for help. Kennedy also asked Hinson to identify the shoplifter. Hinson then identified the woman carrying the shopping bag as Renee Lyles and Valerie Drakeford as her companion.

Linda reported the theft to Sergeant George Waters. When Sergeant Waters arrived at the scene, he shined his flashlight in the Escort and saw the shopping bag on the floorboard. Sergeant Waters waited in his patrol car for the owner of the Escort to leave.

As Drakeford and Lyles left the store, Kennedy followed them outside, identified herself, and asked to look in the

### Attorneys and Law Firms

**\*\*803 \*460** I.S. Leevy Johnson and George C. Johnson, both of Johnson, Toal, & Battiste, Columbia, for appellant.

Attorney General Charles Molony Condon, Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliot, Assistant Attorney General G.

car. Sergeant Waters drove his patrol car behind the Escort and blocked it from leaving. Lyles offered to allow Sergeant Waters to search a Hyundai that either Lyles or Drakeford was driving. Lyles denied any knowledge of the Escort. During this conversation, Lyles repeatedly stated, "Let's go let's go." Lyles and Drakeford eventually left in the Hyundai.

Sergeant Waters ran a license check on the Escort and learned that Lyles-Gray owned the Escort. Lyles-Gray is Renee Lyles's mother and was at that time a Camden city police officer. Sergeant Waters had the police dispatcher call Lyles-Gray. When Lyles-Gray was on the telephone, Waters asked if a locksmith could open the Escort. Lyles-Gray told Sergeant Waters to "leave it alone." Following this conversation, \*462 Sergeant Waters called Chief Jack Cobb at home. After Sergeant Waters explained to Chief Cobb that the evidence was in Lyles-Gray's car, Chief Cobb instructed Sergeant Waters to tell Kennedy that the vehicle belonged to a police officer and that the police officer would take care of it as soon as she got there.

After Sergeant Waters left, Kennedy, Adele Holbrook, and Stephanie Griffin waited for the owner of the Escort. After Griffin and Holbrook went inside, Kennedy saw a light-colored car park beside the Escort. Lyles-Gray got out of that car and unlocked the Escort.

Kennedy testified that when she walked to Lyles-Gray's Escort and tapped on the window, Lyles-Gray ignored her. When Kennedy knocked again, Lyles-Gray asked, "Do you know who I am?" Kennedy identified herself and told Lyles-Gray she believed there was stolen merchandise in the Escort. Lyles-Gray responded, "I'm Henrietta Gray with the Camden City Police Department, and I think not." When Kennedy asked Lyles-Gray for the merchandise, she said, "I think not, lady," and drove away.

Chief Cobb later met with Kennedy and other store personnel at the station. After Kennedy described the incident, Chief Cobb spoke to Lyles-Gray, who told Chief Cobb, "It's my car, I'll drive it anywhere I want to" and "Them [sic] people are crazy, and I'll go up and tell them." Chief Cobb ordered Lyles-Gray to go home and prepare a warrant when she returned to work. Chief Cobb also stated he wanted the merchandise brought to the station. On the following Monday, Lyles-Gray showed Chief Cobb an arrest warrant for Nechelle Drakeford, and he considered the matter closed.

When Kennedy went to the magistrate's office on December 5 to sign several arrest warrants, she saw Drakeford's arrest warrant. The warrant stated what Kennedy observed on that night, including that she observed Drakeford put the sweater into the shopping bag and later place it into the Escort. Kennedy, however, testified Lyles-Gray \*\*805 never interviewed her about the case. Kennedy refused to sign the warrant. Kennedy denied seeing Drakeford place the sweater into the Escort as the warrant stated. Moreover, Kennedy identified \*463 the shoplifter as Renee Lyles when she reported the crime and denied seeing Nechelle Drakeford in the store.

Kennedy reported the defective arrest warrant to store manager Will Kuhne, who later met with Chief Cobb. Chief Cobb met with Lyles-Gray and Sergeant Herbie Frazier and turned the investigation over to Sergeant Frazier. Chief Cobb also ordered Lyles-Gray to give the evidence to Sergeant Frazier. Sergeant Frazier asked Lyles-Gray for any evidence in her possession, but she never gave the evidence to Sergeant Frazier.

On December 8, 1994, after interviewing the Kennedys and Niki Hinson, Sergeant Frazier charged Renee Lyles with shoplifting. When the case was called to trial in March 1995, however, the assistant solicitor discovered the police did not have the sweater. The solicitor learned that Renee Lyles's attorney, Doug Robinson, had the sweater. Lyles had retained Robinson to represent her in January. Robinson testified that, at the time he agreed to represent Lyles, he learned that Lyles-Gray still had the sweater in her car. Chief Cobb testified that when he asked Lyles-Gray about the sweater, she confirmed she gave it to attorney Robinson. At Chief Cobb's request, Robinson brought the sweater to the station. Chief Cobb testified he kept the sweater in his desk rather than in the evidence locker because the chain of custody was already broken.

At Chief Cobb's request, SLED agent Alice Shealy investigated Lyles-Gray in her conduct of the shoplifting investigation. Following this investigation, the Kershaw County grand jury indicted Lyles-Gray for obstruction of justice and misconduct in office.

At trial, Nechelle Drakeford stated she stole the sweater from Belk's while shopping with Lyles and Valerie Drakeford. Nechelle Drakeford also stated that she admitted the shoplifting when Lyles-Gray questioned her.

## DISCUSSION

### I.

Lyles-Gray first contends the trial court erred in not quashing her indictments for common-law obstruction of justice, \*464 claiming section 16–9–340 supersedes common-law obstruction of justice. We disagree.

[1] Under common-law obstruction of justice, “it is an offense to do *any* act which prevents, obstructs, impedes, or

hinders the administration of justice.”  *State v. Cogdell*, 273 S.C. 563, 567, 257 S.E.2d 748, 750 (1979) (emphasis added). Section 16–9–340, codified under article 4 of the criminal code concerning interference with judicial process, provides in pertinent part as follows:

**16–9–340. Intimidation of court officials, jurors or witnesses.**

(A) It is unlawful for a person by *threat or force* to:

- (1) intimidate or impede a judge, magistrate, juror, witness, or potential juror or witness, arbiter, commissioner, or member of any commission of this State or any other official of any court, in the discharge of his duty as such; or
- (2) destroy, impede, or attempt to obstruct or impede the administration of justice in any court.

S.C.Code Ann. § 16–9–340 (Supp.1996) (emphasis added). Section 16–9–380 provides that article 4 “codifies *various* common law crimes and supersedes them....” S.C.Code Ann. § 16–9–380 (1985) (emphasis added).

[2] [3] The two indictments for obstruction of justice do not allege that Lyles-Gray obstructed justice by “threats or force.” Moreover, section 16–9–340 principally applies to those acts that use threat or force against court officials and members of administrative agencies. Although the statute codifies “*various* common law crimes,” it does not purport to codify or supersede *all* of them. Indeed, a person can commit obstruction of justice by use of force or threats; however, such conduct is neither an essential element of, nor the only means of committing, the crime of common-law obstruction of justice. See \*\*806 *State v. Love*, 275 S.C. 55, 61, 271 S.E.2d 110, 113 (1980) (former magistrate's procurement of invalid driver's license for an individual and

promise to fix traffic records and “fix the prosecution” against the individual for \$5,500 was sufficient evidence to establish common-law obstruction of justice), *cert. denied*, 449 U.S.

901, 101 S.Ct. 272, 66 L.Ed.2d 131 (1980);  *Cogdell*, 273 S.C. at 567, 257 S.E.2d at 750 (holding that the \*465 “intentional failure of a responsible public official to report convictions of traffic violations so as to interrupt or prevent the mandated suspension of a motorist's drivers [sic] license is an obstruction of justice and punishable at common law”); *State v. De Witt*, 20 S.C.L. (2 Hill) 282 (1834) (fabrication of evidence sufficient to establish common-law obstruction of justice).

[4] We, therefore, conclude section 16–9–380 does not prohibit the State's prosecution of Lyles-Gray for conduct amounting to common-law obstruction of justice. *See State v. Prince*, 316 S.C. 57, 66, 447 S.E.2d 177, 182 (1993) (“Common law offenses are not abrogated simply because there is a statutory offense proscribing similar conduct.”); WILLIAM S. McANINCH AND W. GASTON FAIREY, THE CRIMINAL LAW OF SOUTH CAROLINA 430 (3d ed. 1996) (“Many other acts do not fall within the statutory scheme of Article 4, such as destruction or substitution of evidence or dissuading or preventing a witness from attending or testifying at a trial. These acts, therefore, would be punishable under the common law as obstruction of justice.”).

### II.

Lyles-Gray also argues the trial court erred in denying her motion for a directed verdict. We disagree.

[5] [6] The trial court should grant a directed verdict in a criminal case if evidence fails to raise more than a mere suspicion that the accused is guilty.  *State v. Barksdale*, 311 S.C. 210, 428 S.E.2d 498 (Ct.App.1993). In reviewing a trial court's refusal to grant a directed verdict, this court must view the evidence in the light most favorable to the state to determine whether there is any direct or any substantial circumstantial evidence that reasonably tends to prove the guilt of the accused or from which guilt may fairly and logically be deduced.  *State v. Childs*, 299 S.C. 471, 385 S.E.2d 839 (1989).

[7] [8] [9] As mentioned above, common-law obstruction of justice is conduct that “prevents, obstructs, impedes or

hinders the administration of justice.” <sup>466</sup> *Cogdell*, 273 S.C. at 567, 257 S.E.2d at 750. Misconduct in office occurs when persons in <sup>466</sup> public office fail to properly and faithfully discharge a duty imposed by law. *State v. Hess*, 279 S.C. 14, 301 S.E.2d 547 (1983), *cert. denied*, 464 U.S. 827, 104 S.Ct. 100, 78 L.Ed.2d 105 (1983).

The indictments allege Lyles-Gray obstructed justice and committed misconduct in office because she (1) failed to interview witnesses after Renee Lyles was identified as a suspect, (2) obtained a false arrest warrant for Nechelle Drakeford's arrest, and (3) refused to turn over the sweater to Belk's personnel or the investigating officer.

Lyles-Gray argues she was unaware Renee Lyles was the shoplifting suspect; she attempted to contact Belk's employees after the incident; she did not knowingly refuse to return the evidence to Belk's; and her investigation pointed toward Nechelle Drakeford, rather than her daughter, as the shoplifter.

Renee Lyles testified she drove Lyles-Gray's Escort. Brenda Johnson, George Waters, Sergeant Waters, and Kennedy all testified they informed Lyles-Gray the shoplifter placed stolen goods in her car. Kennedy stated that Lyles-Gray never attempted to contact her before obtaining the warrant for Drakeford's arrest and that Lyles-Gray refused to discuss the stolen goods after the witness identified herself. Chief Cobb testified Lyles-Gray should have interviewed the security personnel when she retrieved her car. Chief Cobb also testified Lyles-Gray should have removed the stolen merchandise from the car when she met with the Belk's

employees. Although Chief Cobb ordered Lyles-Gray to give the sweater to Sergeant Frazier, when Sergeant Frazier asked for the sweater, Lyles-Gray “just sort of avoided [him] and didn't bring it back to [him].”

These facts should have given Lyles-Gray notice that her daughter was a possible suspect. Finally, Lyles-Gray's conduct at the <sup>807</sup> crime scene and her mishandling of the evidence is circumstantial evidence of her knowledge that her daughter was a suspect.

Although Nechelle Drakeford testified she was the shoplifter, this admission is not dispositive because the trial court is concerned with the existence of evidence and not its weight when deciding a directed verdict motion. Apart from that, the <sup>467</sup> evidence shows Lyles-Gray failed to follow proper investigatory procedures when she refused to cooperate with Kennedy or Frazier after learning that her car contained stolen merchandise from a shoplifting.

We find the State presented sufficient evidence from which a jury can logically conclude Lyles-Gray committed the crimes of obstruction of justice and official misconduct.

## AFFIRMED.

CURETON and CONNOR, JJ., concur.

## All Citations

328 S.C. 458, 492 S.E.2d 802

## Footnotes

1 Because oral argument would not aid the court in resolving the issues, we decide this case without oral argument pursuant to Rule 215, SCACR.



# South Carolina Bar

Continuing Legal Education Division

Provision of Emergency Services by Counties,  
Cities and Special Purpose Districts

*Ken Roper*

## **Beautifying Government Law**

### **Provisions of Emergency Services by Counties, Cities, and Special Purpose Districts**

Ken Roper  
Pickens County Administrator

#### **SECTION 4-9-25. Powers of counties.**

All counties of the State, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of these powers in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them. The powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.

#### **SECTION 4-9-33. Referendum required to approve creation of county police department.**

A referendum must be held to approve the creation of a county police department prior to the implementation of an ordinance adopted by a county council which would duplicate or replace the law enforcement functions of a sheriff. As used in this section, the term law enforcement means those activities and duties which require the exercise of custodial arrest authority by a sheriff or his duly appointed and sworn deputy or the performance of duties conferred by state law upon a sheriff and those activities incidental to the performance of law enforcement duties.

Nothing in this section shall be construed as a limitation on the authority of a county council to provide litter control and animal control, to appoint and commission code enforcement officers as provided for in Section 4-9-145, to provide other services not directly related to law enforcement, to exercise the powers conferred by general law upon counties to protect the public health, safety, and general welfare of the community, or to adopt capital and operating budgets for the operation of the county as provided for in Section 4-9-140.

A county council may provide for E-911 services as provided for in Chapter 47 of Title 23; provided, however, that access to criminal records databases and other similar restricted databases relating to law enforcement functions must remain under the supervision of the

sheriff or his designee unless law enforcement functions are transferred to a county police department pursuant to a referendum provided for in this section.

**SECTION 4-9-40.** Power of county to contract for services within municipalities.

Any county may perform any of its functions, furnish any of its services within the corporate limits of any municipality, situated within the county, by contract with any individual, corporation or municipal governing body, subject always to the general law and the Constitution of this State regarding such matters. Provided, however, that where such service is being provided by the municipality or has been budgeted or funds have been applied for that such service may not be rendered without the permission of the municipal governing body.

**SECTION 4-9-41.** Joint administration of functions by county, incorporated municipality, special purpose district, or other political subdivision.

(A) Any county, incorporated municipality, special purpose district, or other political subdivision may provide for the joint administration of any function and exercise of powers as authorized by Section 13 of Article VIII of the South Carolina Constitution.

(B) The provisions of this section may not be construed in any manner to result in diminution or alteration of the political integrity of any of the participant subdivisions which agree to and become a part of the functional consolidation, nor may any constitutional office be abolished by it.

Editor's Note

1992 Act No. 319, SECTION 1 effective April 8, 1992, reads as follows:

"SECTION 1. It is the legislative intent and purpose of this chapter to provide a means for the consolidation of the governmental and corporate functions now vested in municipal corporations and other political subdivisions and with the governmental and corporate functions now vested in the counties in which these municipal corporations and other political subdivisions are located, and to provide a method for the creation of consolidated governments which may be used to fulfill the unique needs and demands in various county areas. This chapter is provided as enabling legislation to be liberally construed as a utilization of the constitutional power granted by Section 12 of Article VIII of the Constitution of South Carolina, 1895."

## **SECTION 4-19-10. Powers of governing body generally.**

The governing body of each county has the following powers:

- (a) To establish, operate, and maintain a system of fire protection.
- (b) To designate, subject to the provisions of Section 4-19-20, the areas of the county where fire protection service may be furnished by the county under the provisions of this chapter (referred to in this chapter as service areas); provided, however, that these service areas shall exclude those areas where fire protection is then being furnished by some other political subdivision unless an agreement be entered into between the county and such other political subdivision for the joint exercise of fire protection powers within the service area of such political subdivision and the sharing of the costs thereof.
- (c) To buy such fire-fighting equipment as the governing body deems necessary for the purpose of controlling fires within the service areas.
- (d) To select sites or places within the service areas where the fire-fighting equipment must be kept.
- (e) To employ all necessary fire protection personnel and fix their compensation.
- (f) To employ and supervise the training of firemen to insure that the equipment is utilized for the best interest of all service areas within the county.
- (g) To be responsible for the purchase, acquisition, upkeep, maintenance, and repairs of all fire-fighting equipment and fire stations and the sites of the stations.
- (h) To promulgate such relations as it may deem proper and necessary to insure that the equipment is being used to the best advantage of the county and to carry out the provisions of this chapter.
- (i) To construct the necessary buildings to house the equipment authorized by this chapter, and all fire stations necessary to provide an adequate fire protection system.
- (j) To place into effect and to revise, whenever it so wishes or may be required, a schedule of rates and charges for the furnishing of fire protection services within each service area.

(k) To appoint officers, agents, employees, and servants, to prescribe the duties of such, to fix their compensation, and to determine if and to what extent they must be bonded for the faithful performance of their duties.

(l) To effect the levy and collection of ad valorem taxes without limit as to rate or amount upon all taxable property in each service area where fire protection services are furnished to effect the payment of principal and interest of all bonds issued pursuant to this chapter or required for the maintenance and operation of the fire protection system.

(m) To exercise any and all other powers necessary to operating and maintaining a system of fire protection.

**Editor's Note**

1992 Act No. 519 SECTION 1, effective thirty days after September 3, 1992, provides as follows:

"SECTION 1. As incident to the adoption of this amendment to Act 408 of the Acts and Joint Resolutions of the General Assembly of the State of South Carolina, the General Assembly finds that Act 408 of 1984, which was adopted in order to reverse the holding of the Supreme Court of South Carolina in the case of City of Myrtle Beach v. Richardson, 280 S.C. 167, 311 S.E.2d 922 (1984), is a useful and needed vehicle for the provision of fire protection services to residents and businesses in the unincorporated areas of the State. The utility of Act 408 of 1984 has been limited by the decision of the Supreme Court in the case of Carolina Power & Light Co. v. Darlington County, S.C., 405 S.E.2d 823 (1991), in which the court narrowly construed the purpose of a limitations period contained in Act 408. The court's ruling has left the creation of fire protection districts pursuant to Act 408 subject to challenge for an unlimited period of time. The General Assembly adopts this act to clarify the procedure to be followed by the governing bodies of counties in the establishment of fire protection districts, to provide that the limitations period contained in Act 408 applies to all challenges to the establishment of a taxing district for fire protection created under the act, and to provide for the validity of fire protection districts established on the effective date of this act pursuant to Act 408 of 1984."

**SECTION 4-19-15.** Extension of fire protection in area where service offered on individual contractual basis to landowners not served by other political subdivision.

In those areas of the county where fire protection service is offered on an individual contractual basis, a county governing body may extend fire protection to those landowners within the service area who are not served by a contract with another political subdivision.

**SECTION 4-19-20.** Prerequisites to creation of fire protection district; ad valorem taxes within district.

Before the establishment of a fire protection district pursuant to this chapter, the governing body must comply with the following requirements:

- (1) The governing body shall, by resolution, order a public hearing to be held on the question of the establishment of the district.
- (2) Notice of the hearing must be published once a week for three successive weeks in a newspaper of general circulation in the county and the notice must state:
  - (a) the time and place of the public hearing, provided that the date of the public hearing must not be less than sixteen days following the first publication of the notice;
  - (b) a description of the area to be included within the proposed fire protection district;
  - (c) whether there must be levied within the proposed fire protection district ad valorem taxes for the operation and maintenance of it;
  - (d) whether there must be imposed rates and charges within the proposed fire protection district for the operation and maintenance of it; and
  - (e) whether the governing body is empowered to issue general obligation bonds of the county, payable from an ad valorem tax levied within the district, for the purpose of providing fire protection service in it.
- (3) The hearing must be conducted publicly and both proponents and opponents of the proposed action must be given full opportunity to be heard.

(4) Following the hearing, the governing body, by ordinance, may establish the fire protection district and, in order to provide for the operation and maintenance of it, authorize the levy of an annual ad valorem tax on all taxable property within the fire protection district or the imposition of rates and charges for fire protection services within the fire protection district, or both. The governing body shall specifically find by ordinance that the establishment of the fire protection district satisfies the requirements and conditions set forth in Section 4-19-10 and in this section. The governing body also shall provide for the administration of the fire protection district. The fire protection district may be operated as an administrative division of the county, or the governing body may appoint a commission consisting of three to seven members and provide for their duties and terms of office.

(5) The governing body shall give notice of its action by publishing it once a week for two successive weeks in a newspaper of general circulation within the county, which shall state:

(a) the boundaries of the fire protection district;

(b) whether there must be levied within the proposed fire protection district ad valorem taxes for the operation and maintenance of it;

(c) whether there must be imposed rates and charges within the proposed fire protection district for the operation and maintenance of it; and

(d) whether the governing body is empowered to issue general obligation bonds of the county, payable from an ad valorem tax levied within the district for the purpose of providing fire protection service in it.

(6) A person affected by the action of the governing body taken in accordance with this section, by action de novo instituted in the court of common pleas for the county, within twenty days following the last publication of the notice prescribed by item (5) of this section, but not afterwards, may challenge the action of the governing body.

#### **SECTION 4-19-25. Creation of fire protection districts validated.**

(A) All fire protection districts created pursuant to the provisions of Act 408 of 1984 or its predecessor as of the effective date of this section are declared to be validly created and constituted according to the terms of the resolution or ordinance pursuant to which created.

(B) The provisions of subsection (A) do not affect actions filed before the effective date of this section.

**SECTION 4-19-30. Conditions precedent to issuance of bonds.**

As a condition precedent to the issuance of any bonds under this chapter, the governing body shall provide for either:

- (a) The levy and collection of an annual ad valorem tax within the service areas where fire protection services will be furnished from the proceeds of the bonds to be issued which will be sufficient to provide for the payment of the principal and interest on the bonds to be issued; or
- (b) The imposition of rates and charges for the furnishing of fire protection services within each service area where fire protection services will be furnished from the proceeds of the bonds to be issued which will be sufficient to provide for the payment of the principal and interest on the bonds to be issued.

The finding by the governing body that one of these conditions precedent to the issuance of bonds hereunder has been met shall be conclusive.

**SECTION 5-7-30.**Powers conferred upon municipalities; surtax for parking spaces.

Each municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it, including the authority to levy and collect taxes on real and personal property and as otherwise authorized in this section, make assessments, and establish uniform service charges relating to them; the authority to abate nuisances; the authority to provide police protection in contiguous municipalities and in unincorporated areas located not more than three miles from the municipal limits upon the request and agreement of the governing body of such contiguous municipality or the county, including agreement as to the boundaries of such police jurisdictional areas, in which case the municipal law enforcement officers shall have the full jurisdiction, authority, rights, privileges, and immunities, including coverage under the workers' compensation law, which they have in the municipality, including the authority to make arrests, and to execute criminal process within the extended jurisdictional area; provided, however, that this shall not extend the effect of the laws of the municipality beyond its corporate boundaries; grant franchises for the use of public streets and make charges for them; grant franchises and make charges for the use of public beaches; engage in the recreation function; levy a business license tax on gross income, but a wholesaler delivering goods to retailers in a municipality is not subject to the business license tax unless he maintains within the corporate limits of the municipality a warehouse or mercantile establishment for the distribution of wholesale goods; and a business engaged in making loans secured by real estate is not subject to the business license tax unless it has premises located within the corporate limits of the municipality and no entity which is exempt from the license tax under another law nor a subsidiary or affiliate of an exempt entity is subject to the business license tax; and a business engaged in operating a professional sports team as defined in Section 12-6-3360(M)(17) is not subject to the business license tax; borrow in anticipation of taxes; and pledge revenues to be collected and the full faith and credit of the municipality against its note and conduct advisory referenda. The municipal governing body may fix fines and penalties for the violation of municipal ordinances and regulations not exceeding five hundred dollars or imprisonment not exceeding thirty days, or both. If the person or business taxed pays a business license tax to a county or to another municipality where the income is earned, the gross income for the purpose of computing the tax must be reduced by the amount of gross income taxed in the other county or municipality.

**SECTION 5-7-155.** Police jurisdiction over certain streets and highways along which municipal boundaries run.

If any portion of a street or highway is within the boundary of a municipality, the right of way of the street or highway not within the municipal boundary but touching the boundary is nevertheless considered to be within the boundary of that municipality for purposes of its police jurisdiction.

A street or highway which serves as the boundary between municipalities is under the police jurisdiction of both municipalities regardless of the municipality in which the street or highway is located.

**SECTION 6-1-190.**Ambulance service designated an essential service.

(A) As used in this section:

- (1) "Ambulance service" means a public or private entity that is a licensed provider who has obtained the necessary permits and licenses for the transportation of persons who are sick, injured, wounded, or otherwise incapacitated.
- (2) "County" means a county of this State.
- (3) "Municipality" means a municipal corporation created pursuant to Chapter 1, Title 5 or a municipal government or governing body as the use of the term dictates.

(B)(1) Ambulance service is hereby designated as an essential service in this State.  
(2) Each county governing body in this State shall ensure that at least one licensed ambulance service is available within the county. This may be provided as a county service, but also may be accomplished through other means including, but not limited to:

- (a) providing a license or franchise to a private company;
- (b) contracting with a public, private, or nonprofit entity for the service;
- (c) entering into an intergovernmental agreement with one or more local governments; or
- (d) entering into an agreement with a hospital or other health care facility.

(3) A county is not required to appropriate county revenues for ambulance service if the service can be provided by any other means.

(C) Municipal governing bodies also are authorized to make provisions for ambulance service within the boundaries of the municipality. A municipality may not provide and maintain, license, franchise, or contract for ambulance service outside its corporate boundaries without the approval of the county governing body, in the case of unincorporated areas, or the municipal governing body if the area to be served lies within the boundaries of another municipality.

(D) A county may not provide and maintain, license, franchise, or contract for ambulance service within the boundaries of a municipality that has made provisions for ambulance service without the approval of the municipal governing body of the area to be served.

(E) The governing body of any county or municipality may adopt and enforce reasonable regulations to control the provision of private or nonprofit ambulance service.

(F) Two or more counties and municipalities may enter into agreements with each other and with persons providing both emergency and nonemergency ambulance service for a county or counties on a countywide basis, for joint or cooperative action to provide for ambulance service.

**SECTION 6-11-410. Definitions.**

For the purposes of this article, the following terms shall have the following meanings:

- (a) "Special purpose district" shall mean any district created by act of the General Assembly prior to March 7, 1973, and to which has been committed prior to March 7, 1973, any local governmental function.
- (b) "County board" shall mean the governing bodies of the several counties of the State as now or hereafter constituted.
- (c) "Commission" shall mean the governing body of any special purpose district as now or hereafter constituted.

**SECTION 6-11-420. Special purpose districts may be enlarged, diminished or consolidated; general obligation bonds authorized.**

The county boards of the several counties of the State are authorized to enlarge, diminish or consolidate any existing special purpose districts located within such county and authorize the issuance of general obligation bonds by such special purpose district by the procedure prescribed by this article.

**SECTION 6-11-430. Exercise of powers by county board; public hearing.**

Each county board may, on its own motion, and shall, upon the petition of the commissions of the special purpose districts to be affected, take the action authorized by this article to enlarge, diminish or consolidate any special purpose districts lying within such county. In each such instance, by resolution duly adopted, the county board shall order a public hearing to be held for the purpose of making a determination as to whether and to what extent a special purpose district shall be enlarged, diminished or consolidated.

**SECTION 6-11-435. "Political subdivision" defined; provision of governmental services in event of alteration of boundaries of special purpose district.**

(A) For purposes of this section "political subdivision" means a municipality, county, or special purpose district.

(B) A consolidated or enlarged special purpose district which results from action taken pursuant to this chapter may not provide a governmental service to an area within its boundaries to which it has not previously provided such service if an overlapping political subdivision is authorized to provide that same service in the area and the area is situated within the boundaries of such overlapping political subdivision without the express authorization of the governing body of such overlapping political subdivision. The governing body of the county shall expressly provide by ordinance that the consolidated or enlarged special purpose district shall not provide a governmental service to an area within its boundaries within which an overlapping political subdivision is authorized to provide that same service.

(C) If the boundaries of a special purpose district which provides waterworks or sewer service are diminished in accordance with this article, the special purpose district may continue to provide water or sewer services outside of its diminished boundaries (1) in accordance with its enabling legislation, or (2) if provided by the governing body of the county in the resolution required by Section 6-11-460, pursuant to an intergovernmental agreement with one or more political subdivisions authorized to provide the water or sewer service directly.

#### Effect of Amendment

The 2003 amendment added subsection (C) relating to providing water or sewer services outside of the special purpose district's diminished boundaries.

#### **SECTION 6-11-440. Notice of hearing.**

(A) The notice required by Section 6-11-430 must be published once a week for three successive weeks in a newspaper of general circulation in the county. Such notice must state:

- (1) the time of the public hearing which may be not less than sixteen days following the first publication of the notice;
- (2) the place of the hearing;

- (3) the nature of the change to be made in the special purpose district;
- (4) a brief description of the new boundary lines to result if the proposed change is made;
- (5) the functions to be performed by the special purpose district;
- (6) a summary of the reasons for the proposed change;
- (7) the cost of proposed improvements, if any, and a statement as to the method to be employed to raise the funds necessary for it; and
- (8) a statement of the amount and type of bonds, if any, then proposed to be issued immediately following the change of boundaries of the special purpose district.

(B) If a consolidated or enlarged special purpose district is, pursuant to this chapter, precluded from providing a governmental service to an area within its boundaries, the notice prescribed by subsection (A) also must include a description of the area in which the governmental service will not be provided by the special purpose district and shall identify the political subdivision which is authorized to provide the service.

#### **SECTION 6-11-450. Hearing.**

Such hearing shall be conducted publicly and both proponents and opponents of the proposed action shall be given full opportunity to be heard.

#### **SECTION 6-11-455. Levying of ad valorem taxes in overlap areas.**

If a consolidated or enlarged special purpose district is, pursuant to this chapter, precluded from providing a governmental service to an area within its boundaries, there must not be levied within the area ad valorem taxes for the purpose of providing the service to the remaining portions of the special purpose district.

#### **SECTION 6-11-460. Decision of county board.**

Following the hearing the county board shall, by resolution, make a finding as to whether and to what extent the boundaries of the special purpose district shall be changed or

whether the special purpose districts shall be consolidated. If such finding be affirmative, such resolution shall redefine the boundaries of the special purpose district in such fashion as to make possible appropriate entries in the records of the county auditor and the county treasurer establishing the boundaries of the special purpose district as reconstituted.

**SECTION 6-11-470. Publication of action of county board.**

(A) The county board shall give notice of its action to be published once a week for two successive weeks in a newspaper of general circulation within the county which shall state:

(1) the results of its action;

(2) whether, pursuant to the remaining provisions of this article, bonds of the special purpose

district are then to be immediately issued, and, if so, the amount of bonds and the method provided for their payment; and

(3) whether, pursuant to the provisions of Section 6-11-10, there will be a new commission or changes made in the personnel of the old commission for the special purpose district as enlarged, diminished, or consolidated.

(B) If a consolidated or enlarged special purpose district is, pursuant to this chapter, precluded from providing a governmental service to an area within its boundaries, the notice prescribed by subsection (A) also shall include a description of the area in which the governmental service will not be provided by the special purpose district and shall identify the political subdivision which is authorized to provide the service.

**SECTION 6-11-480. Challenge of county board's decision in court.**

Any person affected by the action of the county board may, by action de novo instituted in the Court of Common Pleas for such county, within the twenty days following the last publication of the notice prescribed by SECTION 6-11-470, but not afterwards, challenge the action of the county board.

**SECTION 23-47-20.** System requirements.

(A)(1) The Revenue and Fiscal Affairs Office shall be responsible for creating, updating, and implementing a comprehensive strategic plan, including operating standards for a coordinated statewide 911 system to address changing technology, services, and operating efficiency and effectiveness. The standards must be developed and updated with comments and recommendations from the South Carolina 911 Advisory Committee, local officials, service providers, and the public. The plan must be approved by the board and may be amended as necessary.

Service available through a local 911 system includes law enforcement, fire, and emergency medical services. Other emergency and emergency personnel services may be incorporated into the 911 system at the discretion of the local government being served by the system. Public safety agencies within a local government 911 system, in all cases, must be notified by the PSAP of a request for service in their area. Written guidelines must be established to govern the assignment of calls for assistance to the appropriate public safety agency. There must be written agreements among state, county, and local public safety agencies with concurrent jurisdiction for a clear understanding of which specific calls for assistance will be referred to individual public safety agencies.

(2) The Revenue and Fiscal Affairs Office may request written verification from PSAPs regarding compliance with current or updated standards and may develop policies to address noncompliance.

(B)(1) A 911 system must include all of the territory of the local government, either county, municipality, or multi-jurisdictional government. A 911 system may be an enhanced 911 system until the board establishes NG9-1-1 or another subsequent system.

(2) Public safety agencies that provide emergency service within the territory of a 911 system shall participate in the countywide system. Each PSAP must be operated twenty-four hours a day, seven days a week.

**SECTION 23-47-30.** System plan.

(A) A local government which seeks funding for a 911 system shall submit to the Revenue and Fiscal Affairs Office, a 911 system plan for review and approval. The plan shall conform to the planning guidelines set forth in this chapter, guidelines promulgated by the Revenue and Fiscal Affairs Office, and meet the requirements of current tariffs applicable to the 911

system. The plan must include:

- (1) the type of 911 system desired for the local government including the type of equipment to be used and the associated costs;
- (2) the location of the PSAP and the county or municipality agency or organization responsible for operating the PSAP;
- (3) a listing of those public safety agencies whose services will be available through the 911 system;
- (4) the personnel determined necessary to operate and maintain the 911 system;
- (5) educational efforts the local government will undertake to acquaint the general public with the availability and proper use of the 911 system.

(B) Those local governments which already have a 911 system are encouraged to conform to the standards set forth in this section.

HISTORY: 1991 Act No. 245, SECTION 1.

**SECTION 23-47-40. System funding.**

(A) The local government is authorized to adopt an ordinance to impose a monthly 911 landline charge upon each local exchange access facility subscribed to by telephone subscribers whose local exchange access lines are in the area served or which would be served by the 911 service. The 911 landline charge must be uniform and may not vary according to the type of local exchange access facility used.

#### **Cruz v. City of Columbia (S.C. Sup. Ct. 2024)**

In this case, a group of retired firefighters from the City of Columbia claimed that the city had promised them *free lifetime health insurance* via verbal statements, newsletters, and retirement letters; when the City later required contributions toward health insurance premiums, the retirees sued under the doctrine of promissory estoppel. The South Carolina Supreme Court affirmed the lower court's ruling that the retirees failed to establish (1) an **unambiguous promise** from the City of free lifetime coverage, and (2) **reasonable reliance** on a binding commitment by persons with authority to bind the City. Thus, the City was not held liable under promissory estoppel.

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#### **Cone v. Nettles (S.C. Sup. Ct. 1992)**

In this case the Court held that a deputy sheriff (Deputy Frier) in South Carolina is a "state official" (rather than a county official) for purposes of § 1983 liability, because the office of sheriff is so closely connected to the state rather than the county and the state has the potential power of control over the office. Consequently, the deputy was not liable in his official capacity for monetary damages under 42 U.S.C. § 1983 (under the principle of § 1983 immunity for state officials in their official capacities).

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#### **Heath v. County of Aiken (S.C. Sup. Ct. 1988)**

In this case, the sheriff of Aiken County sought a declaratory judgment to define the relationship between his office and the County Council with respect to personnel policies. The Court held that (1) the county may *not* develop personnel system policies and procedures for the sheriff's commissioned deputies under S.C. Code Ann. § 4-9-30(7) because deputies are *not* "employees" of the county within the meaning of that statute, and (2) a discharged employee of the sheriff's department (other than a deputy) has the right to submit a grievance to the county's grievance committee. The decision affirms the separate status of the sheriff's department in relation to county personnel oversight.





# South Carolina Bar

Continuing Legal Education Division

## Code Enforcement: So I Really Am My Brother's Keeper?

*Bradley Farrar*

# Code Enforcement: “So I Really Am My Brother’s Keeper?”

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12/5/2025

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## Am I My Brother’s Keeper?

*Who first said this?*

**4** Now Adam knew Eve his wife, and she conceived and bore Cain, saying, “I have gotten a man with the help of the LORD.” **2** And again, she bore his brother Abel. Now Abel was a keeper of sheep, and Cain a worker of the ground.

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## Am I My Brother's Keeper?

<sup>3</sup> In the course of time Cain brought to the LORD an offering of the fruit of the ground, <sup>4</sup> and Abel also brought of the firstborn of his flock and of their fat portions.

And the LORD had regard for Abel and his offering, <sup>5</sup> but for Cain and his offering he had no regard. So Cain was very angry, and his face fell.

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## Am I My Brother's Keeper?

<sup>6</sup> The LORD said to Cain, “Why are you angry, and why has your face fallen? <sup>7</sup> If you do well, will you not be accepted? And if you do not do well, sin is crouching at the door. Its desire is for you, and you must rule over it.”

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## Am I My Brother's Keeper?

<sup>8</sup> Cain spoke to Abel his brother. And when they were in the field, Cain rose up against his brother Abel and killed him.

<sup>9</sup> Then the LORD said to Cain, “Where is Abel your brother?” He said, “I do not know; am I my brother's keeper?”

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## Neighbor Disputes

- Did you know when you became a government employee that there were so many people who flunked kindergarten?

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## Neighbor Disputes

- Liberty—the absence of artificial impediments.
- Libertarianism—the laudatory belief that anyone can do anything he likes, so long as it does not mess me up...at which point I am calling my government to promote my liberty and to restrict my neighbor's liberty.

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## Local Government Code Enforcement is...

- Enforcing county and municipal ordinances to keep the peace at the point where security and liberty intersect in areas such as:
  - Animal Care
  - Refuse Control
  - Zoning
  - Fire Prevention
  - Building, Electrical, Gas, Plumbing, Mechanical, Swimming Pools, Property Maintenance...

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## Goals of Code Enforcement

- Public safety
- Punish wrongdoing
- Deterrence/prevention
- Justice/ensure system is fair
- Retribution?
- Rehabilitation?
- Raise \$ for government?
- Solving a problem



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## S.C.Code Ann. § 4-9-30

“...each county government...shall have the following powers which shall be exercised by the respective governing bodies thereof:

(14) to enact ordinances for the implementation and enforcement of the powers granted in this § and provide penalties for violations thereof not to exceed the penalty jurisdiction of magistrates' courts...

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## Sources of Authority

- Home Rule (S.C. Code Ann. § 4-9-145)
- County ordinance incorporating § 4-9-145
- Commission (tangible evidence of authority)
- Other law enforcement credential(s)?
- Dual office holding problem?



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## S.C. Code Ann. § 4-9-145

(A) ...the governing body of a county may appoint and commission as many code enforcement officers as may be necessary for the proper security, general welfare, and convenience of the county.

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## S.C.Code Ann. § 4-9-145

“These officers are vested with all the powers and duties conferred by law upon constables ... However, no code enforcement officer commissioned under this section may perform a custodial arrest, except as provided in subsection (B).”

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## S.C.Code Ann. § 4-9-145

(B)(2)(a) A litter control officer...may exercise the power of arrest with respect to his primary duties of enforcement of litter control laws and ordinances...as may arise incidental to the enforcement of his primary duties only if the officer has been certified as a law enforcement officer pursuant to **Article 9, Chapter 6, Title 23.**

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## TITLE 23, CHAPTER 6

### Department of Public Safety

#### ARTICLE 9

Division of Training and Continuing Education

### [Repealed]

*...Noooooooo!*

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## TITLE 23, CHAPTER 23

Now codified in...

“Law Enforcement Training Council and Criminal  
Justice Academy”

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## Law Enforcement Officer

### S.C.Code Ann. § 23-13-280

Any such deputy sheriff:

(1) Shall have, do and exercise all the rights, duties and powers prescribed by law for constables or magistrates and such powers as are usually exercised by marshals and policemen of towns and cities;

(2) Shall act as a conservator of the peace;

(3) Shall take into custody and carry before the nearest magistrate any person who may, in his view, engage in riotous conduct or violation of the peace...;

(4) Shall arrest any person who may, in his view, commit any felony or misdemeanor and carry him before a court of competent jurisdiction; and

(5) Shall execute any and all criminal process from magistrates' courts.

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## Duties and Powers of Code Enforcement Officers

- Enforce County Code (unless specific exemption)
- Promote public safety and welfare, primarily within area of expertise

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## Duties and Powers of Code Enforcement Officers

- Free from external pressure (S.C.Code Ann. § 4-9-660)

“Except for the purposes of inquiries and investigations, the council shall deal with county officers and employees who are subject to the direction and supervision of the county administrator solely through the administrator, and neither the council nor its members shall give orders or instructions to any such officers or employees.”

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## Limitations and Safeguards

- Only County Code violations
- Uniform Ordinance Summons (56-7-80)
- Generally, no custodial arrests
- Safety issues in Code enforcement
- Carrying a firearm?
- Liability/risk
- Badge
- Uniform/vest



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## Doing Your Job vs. Trespassing

- **104.3 Right of entry.** Where it is necessary to make an inspection to enforce the provisions of this code...the code official is authorized to enter the structure or premises at reasonable times to inspect or perform the duties imposed by this code, provided that if such structure or premises is occupied the code official shall present credentials to the occupant and request entry. If such structure or premises is unoccupied, the code official shall first make a reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is refused, the code official shall have recourse to the remedies provided by law to secure entry.

2012 International Property Maintenance Code

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## Right of Entry for Constables

- **S.C.Code Ann. § 22-9-50.** ...every qualified constable shall be entitled to exercise his office throughout the county in which he may be elected or appointed.
- **S.C.Code Ann. § 22-9-60.** Constables shall execute all legal orders to them directed by the governing bodies of the several counties...
- **S.C.Code Ann. § 22-9-80.** A constable shall faithfully and promptly: (1) Execute all processes lawfully directed to him by competent authority...

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## Property Access for Assessors

- **S.C. Code Ann. § 12-37-90.**

The assessor ...shall:

...(i) have the right to enter and examine all new nonresidential buildings and structures and those portions of an existing nonresidential building or structure covered by a building permit for renovations or additions.

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## Trespassing in South Carolina

- 16-11-520
- 16-11-535
- 16-11-560
- 16-11-600
- 16-11-610
- 16-11-620
- 16-11-640
- 16-11-650

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## S.C.Code Ann. § 16-11-620.

...[enter] without legal cause or good excuse, the dwelling house, place of business, or on the premises of another person after having been warned not to do so... ...All peace officers of the State and its subdivisions shall enforce the provisions hereof within their respective jurisdictions.

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## S.C.Code Ann. § 16-11-640

It shall be unlawful for any person not an occupant, owner or invitee to enter any private property enclosed by walls or fences with closed gates between the hours of six P.M. and six A.M. The provisions of this section shall not apply to any justifiable emergency entry or to premises which are not posted with clearly visible signs prohibiting trespass upon the enclosed premises.

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## Laws vs. Ordinances: Which Authority Controls?

- “Supremacy Clause,” Article VI, § 2, U.S. Constitution

“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby...”

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## Laws vs. Ordinances: Which Authority Controls?

- Preemption

“Doctrine adopted by the U.S. Supreme Court holding that certain matters are of such a national, as opposed to local, character that federal laws preempt or take precedence over state laws.”

Black’s Law Dictionary, 5<sup>th</sup> Edition

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## An offense has occurred

- Options
- Verbal warning
- Written warning (e.g., Notice of Violation)
- Fair, factual, not personal and non-threatening
- Citation
- Referral to another department or agency
- Administrative process/order
- Injunction
- *Nolle prosequi*
- Consent Order



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### *The Foothills Brewing Concern, Inc. et al. v. The City of Greenville* (March 31, 2008, S.C. Supreme Court)

- FACTS
  - Municipal ordinance banning smoking in: (1) all enclosed public places, including bars and restaurants; (2) places of employment; and (3) certain outdoor areas, such as stadiums and zoos.
  - “A person who smokes in an area where smoking is prohibited by the provisions of this Ordinance shall be guilty of an infraction, punishable by a fine ....”

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*The Foothills Brewing Concern, Inc. et al. v. The City of Greenville (cont'd)*

- Appellants contend the ordinance is preempted by State law and violates the State Constitution.

■ ISSUE

Did the trial court err in ruling that the Ordinance is preempted by State law and violates the South Carolina Constitution?

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*The Foothills Brewing Concern, Inc. et al. v. The City of Greenville (cont'd)*

A two-step process is used to determine whether a local ordinance is valid. First, the Court must consider whether the municipality had the power to enact the ordinance.

If the State has preempted a particular area of legislation, a municipality lacks power to regulate the field, and the ordinance is invalid.

If, however, the municipality had the power to enact the ordinance, the Court must then determine whether the ordinance is consistent with the Constitution and the general law of the State.

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### *The Foothills Brewing Concern, Inc. et al. v. The City of Greenville (cont'd)*

- To preempt an entire field, “an act must make manifest a legislative intent that no other enactment may touch upon the subject in any way.”
- Furthermore, “for there to be a conflict between a state statute and a municipal ordinance both must contain either express or implied conditions which are inconsistent or irreconcilable with each other.... If either is silent where the other speaks, there can be no conflict between them. Where no conflict exists, both **laws** stand.”

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### Hard “Words Mean Things” SC Code of Laws Segue

- “*Laws*,” did you say, SC Supreme Court?

Okay, if an ordinance is considered by the Supreme Court to be a “law,” then what does that mean for...

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## Hard “Words Mean Things” SC Code of Laws Segue

**S.C.Code Ann. § 30-4-40**

“(a) A public body may but is not required to exempt from disclosure the following information:

...(4) Matters specifically exempted from disclosure by statute or law.”

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## *The Foothills Brewing Concern, Inc. et al. v. The City of Greenville (cont'd)*

- “In enacting provisions required or authorized by this article, general law provisions applicable to the following matters shall not be set aside: ... (5) criminal laws and the penalties and sanctions for the transgression thereof.” S.C. Const., art. VIII, § 14.

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### *The Foothills Brewing Concern, Inc. et al. v. The City of Greenville (cont'd)*

- ...the Constitution requires “statewide uniformity” regarding the criminal law of this State, and therefore, “local governments may not criminalize conduct that is legal under a statewide criminal law.” *Martin v. Condon*, 324 S.C. 183, 478 S.E.2d 272, 274 (1996); accord *Connor v. Town of Hilton Head Island*, 314 S.C. 251, 442 S.E.2d 608 (1994) (where the Court held that a municipality cannot criminalize nude dancing when State law does not).

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### *The Foothills Brewing Concern, Inc. et al. v. The City of Greenville (cont'd)*

S.C. law provides that each municipality of this State may enact: regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State... for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it.” S.C. Code Ann. § 5-7-30.

“...all laws concerning local government shall be liberally construed in their favor.” S.C. Const. art. VIII, § 17.

“A municipal ordinance is a **legislative enactment** and is presumed to be constitutional.” Furthermore, “[a]s a general rule, ‘additional regulation to that of State law does not constitute a conflict therewith.’”

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*The Foothills Brewing Concern, Inc. et al. v. The City of Greenville (cont'd)*

- While the Ordinance in this case does make smoking in certain areas “unlawful” where the Clean Indoor Air Act does not, it is our opinion the Ordinance does not criminalize such behavior. Instead, the Ordinance states that a violation constitutes “an infraction.” “Infraction” is defined as:

A breach, violation, or infringement; as of a law, a contract, a right or a duty. A violation of a statute for which the only sentence authorized is a fine and which violation is expressly designated as an infraction.

Black's Law Dictionary 537 (6th ed. 1992).

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*The Foothills Brewing Concern, Inc. et al. v. The City of Greenville (cont'd)*

- “Put simply, the plain language of the Ordinance is non-criminal in nature. This contrasts with the Clean Indoor Air Act’s ‘misdemeanor’ language which clearly indicates that a violation of the State law is considered a criminal offense.”

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## Prosecuting Criminal Cases in SC

- Hold on! Can I even prosecute this case?
  - Who wants the file?
  - Unauthorized practice of law?
  - What says the Solicitor?
    - Supervising lawyers (SCRPC 5.1)
  - But I'm the officer's lawyer!
  - Is it okay unless you're caught?

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## Who Can Prosecute?

- *State v. Addis*, 257 S.C. 482, 186 S.E.2d 415 (1972)
  - "...(private lawyer) with the consent of the solicitor and the approval of the judge..."

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## Who Can Prosecute?

- *In Re: Richland County Magistrate's Court* (Op. No. 26876, September 7, 2010)
  - “...a non-lawyer’s representation of a business entity in criminal magistrate’s court runs afoul of South Carolina law, is repugnant to our system of justice and constitutes the unauthorized practice of law.”

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## Who Can Prosecute?

- *State v. Messervy*, 258 S.C. 110, 187 S.E.2d 524 (1972)
  - “It has long been the practice in the magistrates’ courts of this State for the arresting patrolman to prosecute the cases which he has made.”

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## Who Can Prosecute?

- *State Ex Rel. McLeod v. Seaborn*, 270 S.C. 696, 244 S.E.2d 327 (1978)
  - “...the prosecution of misdemeanor traffic violations in the magistrates’ courts by either the arresting officer or a supervisory officer assisting the arresting officer does not constitute the unlawful practice of law...”

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## Who Can Prosecute?

- *State v. Sossamon*, 298 S.C. 72, 378 S.E.2d 259 (1989)
  - “Because (he) was not an arresting officer nor a supervisor of the county sheriff’s deputies who arrested appellants, it was error to allow him to prosecute this case. Necessity does not require that we extend our holdings in *Messervy* and *Seaborn*. We limit the practice of an officer acting as a prosecutor to the circumstances set forth therein.”

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## Who Can Prosecute?

- SEC AO92-169

- “A County Attorney is advised against representation of clients on matters in which the Sheriff's Office is the arresting agency. He is also advised against representing clients in magistrate's court when he has advised the magistrate's office on legal matters.”

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## Injunctions

- S.C.Code Ann. § 4-9-30(16.2)
- S.C.Code Ann. § 6-29-950
- S.C.Code Ann. § 15-43-10

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## 4-9-30(16.2)

“...each county government...shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof:

...(16.2) To obtain injunctive relief in the Court of Common Pleas to abate nuisances created by the operation of business establishments in an excessively noisy or disorderly manner which disturbs the peace in the community..

...[i]nited by petition of the County Attorney in the name of the County Council not sooner than ten days following noncompliance with a written notice to the owner of the offending establishment or his agent to cease and desist in the conduct or practice which disturbs the peace and good order of the area...

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## 6-29-950

(A) The governing authorities of municipalities or counties may provide for the enforcement of any ordinance adopted pursuant to the provisions of this chapter by means of the withholding of building or zoning permits, or both, and the issuance of stop orders against any work undertaken by an entity not having a proper building or zoning permit, or both...

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## 6-29-950

(A) ...[i]n case a building, structure, or land is or is proposed to be used in violation of any ordinance adopted pursuant to this chapter, the zoning administrator or other appropriate administrative officer, municipal or county attorney, or other appropriate authority of the municipality or county or an adjacent or neighboring property owner who would be specially damaged by the violation may in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent the (violation)...

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## 15-43-10

(A) A person who erects, establishes, continues, maintains, uses, owns, occupies, leases, or releases any building or other place used for the purposes of lewdness, assignation, prostitution, repeated acts of unlawful possession or sale of controlled substances, or continuous breach of the peace in this State is guilty of a nuisance; and the building, place, or the ground itself in or upon which the lewdness, assignation, prostitution, repeated acts of unlawful possession or sale of controlled substances, or continuous breach of the peace is conducted, permitted, carried on, continued, or exists and the furniture, fixtures, musical instruments, and movable property used in conducting or maintaining the nuisance also are declared a nuisance and shall be enjoined and abated as provided in this chapter.

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## 15-43-10

(B) As used in this section "continuous breach of the peace" means a pattern of repeated acts or conduct which either (1) directly disturbs the public peace or (2) disturbs the public peace by inciting or tending to incite violence...

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## Who Pays for Demo and Cleanup? (In Municipalities of Over 1,000)

Municipalities of over 1,000 inhabitants may adopt unfit dwelling ordinances that include provisions such as:

"...(5) That, if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished; and

(6) That the amount of the cost of such repairs, alterations or improvements, vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which such cost was incurred and shall be collectible in the same manner as municipal taxes.

S.C.Code Ann. § 31-15-30

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## Who Pays for Demo and Cleanup? (In Counties)

Counties may adopt unfit dwelling ordinances that include provisions such as:

“...(5) That, if the owner fails to comply with an order to remove or demolish the dwelling, **the public officer may cause such dwelling to be removed or demolished**; and

(6) That the amount of the cost of such repairs, alterations or improvements, vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which such cost was incurred and **shall be collectible in the same manner as county taxes.**

S.C.Code Ann. § 31-15-330

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## Final Order and Judgment

NOW THEREFORE, it is therefore ORDERED that Plaintiff's motion for **summary judgment** is GRANTED.

IT IS FURTHER ORDERED that:

(1) Defendant shall within thirty (30) days from the date of this Order permanently **abate the nuisance** at the Property by bringing it into compliance with the **Aiken County Code of Ordinances...;**

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## Final Order and Judgment

(2) In the event Aiken County Code Enforcement determines that the nuisance at the Property has not been abated within thirty (30) days from the date of this Order, Aiken County, its...contractors and subcontractors may enter the Property, including any portions of the Property that may be fenced or enclosed, and if fenced or enclosed, whether locked or unlocked, to abate the nuisance declared at Defendant's Property ("Remedial Actions").

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## Final Order and Judgment

(3) The Remedial Action costs and any other costs to abate the nuisance at the Property incurred by Plaintiff shall be assessed against the Defendant and shall constitute a judgment lien on and be collectable as against the Property.

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## Final Order and Judgment

(4) In addition to the judgment lien described in paragraph (3), above, pursuant to S. C. Code Ann. § 31-15-330(6), and Aiken County Code of Ordinances Chapter 15, Article IV, § 15-42, the amount of the costs of repairs, alterations or improvements or the removal or demolition by the county (i.e., the Remedial Actions) shall be a lien against the Property upon which such cost was incurred and shall be collectible in the same manner as county taxes.

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## Final Order and Judgment

(5) The Office of the Aiken County Register of Deeds shall record this Final Order and Judgment in its real property records.

AND IT IS SO ORDERED this 29th day of July, 2025.

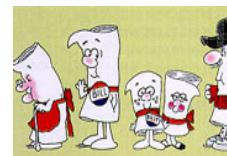
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## The Code should be changed!

- Issue spotting
- Proposing amendments (rationally related to problem sought to be addressed)
- Fair, specific, understandable, promotes public purpose
- “I’m just a bill...Yes, I’m a bill...and I’m sitting here on Capitol Hill...”



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## Warning



- Extenuation/mitigation
- Benefit of the doubt
- Enhances good will before Magistrate (“I gave them a second chance, and they still broke the law...”)
- Diffuses the situation/good feeling about government
- Frequent flyers



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## Uniform Ordinance Summons

- S.C. Code Ann. § 56-7-80
- Practical concern—Is it legible?
- List court date
- Cite specific violation (by code section, by description)
- Personally serve D
- Tell D to ask questions

If doctors are so smart  
why is their handwriting  
not messy?

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## Case Disposition

- Has problem been resolved (big picture)?
- Is further/different enforcement needed?
- County/Municipality better off after the case?
- Prosecuting hard cases (“if you never have an acquittal...probably not prosecuting the tough cases”)



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## Finding Parties and Witnesses

- Sheriff
- SLED
- DMV
- Municipalities
- Assessor, Treasurer, Auditor
- Military
- *Internet*
- Resources of gov't at your disposal
- Cost/benefit



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## Continuances

- Either side can ask for them
- Delay usually attributed to one side
- Conflict with other court (precedence of higher court)
- Witness unavailability
- Waiting on key evidence/test result
- Military service
- Legislator-lawyer
- Personal matter



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## Nolle prosequi



- Essentially dismissing charge
- Complete paperwork (no inadvertent bench warrants)
- Drop charge, but don't delete personal/corporate history of D
- Release of liability? (malicious prosecution?)

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## Keeping Others Informed

- Chain of command (supervisor, department head, assistant administrators, administrator, council, ombudsman, public information officer)
- Victims/witnesses/families
- The Court
- Legal
- Attorney/client privilege
- Confidentiality
- Hot button issues



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## Any Questions?

- Have you got your code book?



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## Backup Slides

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## Has an offense occurred?



- What does the law say?
- Know elements of each offense
- Is it more appropriate to cite someone else?
- Is it more appropriate for someone else to investigate/prosecute?

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## Elements of the Offense

### **Sec. 12-21. Unlawful disposal generally.**

(a) It shall be unlawful for 1) any person, firm, or corporation 2) to dump or cause to be dumped 3) any garbage, trash, litter, junk, appliances, equipment, cans, bottles, paper, trees, tree limbs, tree stumps, brush or parts thereof, anywhere 4) in the unincorporated area of the county 5) except at approved sanitary landfills.

(b) The above provisions shall not apply to the dumping on 6) private property, 7) with the owner's written permission, of 8) sand, dirt, broken brick, blocks, or broken pavement or other suitable material for use as a fill to raise the elevation of land; 9) provided, the same is not maintained in an unsightly condition and, 10) further provided, the owner of the property on which such material is dumped agrees to level such dumped material with 11) appropriate grading equipment.

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## S.C.Code Ann. §16-11-520.

16-11-520

...wilfully and maliciously cut, mutilate, deface, or  
otherwise injure a tree, house, outside fence, or  
fixture of another or commit any other trespass upon  
real property of another

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## S.C.Code Ann. §16-11-535.

...wilfully, unlawfully, and maliciously vandalize,  
deface, damage, or destroy or attempt to vandalize,  
deface, damage, or destroy any place, structure, or  
building of worship...

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## S.C.Code Ann. §16-11-560.

...maliciously, unlawfully, and wilfully burn or cause to be burned, cut or cause to be cut, or destroyed any untenantanted or unfinished house or building or any frame of timber of another person...

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## S.C.Code Ann. §16-11-600.

...[enter] upon the lands of another where any horse, mule, cow, hog or any other livestock is pastured, or any other lands of another, after notice from the owner or tenant prohibiting such entry...

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## S.C.Code Ann. §16-11-610.

...[enter] upon the lands of another for the purpose of hunting, fishing, trapping, netting; for gathering fruit, wild flowers, cultivated flowers, shrubbery, straw, turf, vegetables or herbs; or for cutting timber on such land, without the consent of the owner or manager...

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## Trespassing in South Carolina

### ■ S.C.Code Ann. §16-11-510.

(A) It is unlawful for a person to wilfully and maliciously cut, shoot, maim, wound, or otherwise injure or destroy any horse, mule, cattle, hog, sheep, goat, or any other kind, class, article, or description of personal property, or the goods and chattels of another.

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## Trespassing in South Carolina (cont'd)

### ■ **S.C. Code Ann. §16-11-520.**

(A) It is unlawful for a person to wilfully and maliciously cut, mutilate, deface, or otherwise injure a tree, house, outside fence, or fixture of another or commit any other trespass upon real property of another.

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## Trespassing in South Carolina (cont'd)

### ■ **S.C. Code Ann. §16-11-535.**

Whoever shall wilfully, unlawfully, and maliciously vandalize, deface, damage, or destroy or attempt to vandalize, deface, damage, or destroy any place, structure, or building of worship or aid, agree with, employ, or conspire with any person to do or cause to be done any of the acts mentioned above is guilty of a felony and, upon conviction, must be imprisoned not less than six months nor more than ten years or fined not more than ten thousand dollars, or both.

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## Trespassing in South Carolina (cont'd)

### ■ **S.C.Code Ann. §16-11-560.**

It is unlawful for a person to maliciously, unlawfully, and wilfully burn or cause to be burned, cut or cause to be cut, or destroyed any untenanted or unfinished house or building or any frame of timber of another person made and prepared for or towards the making of a house, so that the house is not suitable for the purposes for which it was prepared...

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## Trespassing in South Carolina (cont'd)

### ■ **S.C.Code Ann. §16-11-600.**

Every entry upon the lands of another where any horse, mule, cow, hog or any other livestock is pastured, or any other lands of another, after notice from the owner or tenant prohibiting such entry, shall be a misdemeanor and be punished by a fine not to exceed one hundred dollars, or by imprisonment with hard labor on the public works of the county for not exceeding thirty days. When any owner or tenant of any lands shall post a notice in four conspicuous places on the borders of such land prohibiting entry thereon, a proof of the posting shall be deemed and taken as notice conclusive against the person making entry, as aforesaid, for the purpose of trespassing.

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## Trespassing in South Carolina (cont'd)

### ■ **S.C.Code Ann. §16-11-610.**

Any person entering upon the lands of another for the purpose of hunting, fishing, trapping, netting; for gathering fruit, wild flowers, cultivated flowers, shrubbery, straw, turf, vegetables or herbs; or for cutting timber on such land, without the consent of the owner or manager, shall be deemed guilty of a misdemeanor...

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## Trespassing in South Carolina (cont'd)

### ■ **S.C.Code Ann. §16-11-620.**

Any person who, without legal cause or good excuse, enters into the dwelling house, place of business, or on the premises of another person after having been warned not to do so or any person who, having entered into the dwelling house, place of business, or on the premises of another person without having been warned fails and refuses, without good cause or good excuse, to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative shall, on conviction, be fined not more than two hundred dollars or be imprisoned for not more than thirty days.

...All peace officers of the State and its subdivisions shall enforce the provisions hereof within their respective jurisdictions.

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## Trespassing in South Carolina (cont'd)

### ■ **S.C.Code Ann. §16-11-640.**

It shall be unlawful for any person not an occupant, owner or invitee to enter any private property enclosed by walls or fences with closed gates between the hours of six P.M. and six A.M. The provisions of this §shall not apply to any justifiable emergency entry or to premises which are not posted with clearly visible signs prohibiting trespass upon the enclosed premises.

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## Trespassing in South Carolina (cont'd)

### **S.C.Code Ann. §16-11-650.**

(A) A person, other than the owner or a person acting under the authority of the owner, who wilfully and knowingly removes, destroys, or leaves down any portion of a fence in this State intended to enclose animals of any kind or crops or uncultivated lands or who wilfully and knowingly leaves open or removes a gate or leaves down bars or other structure intended for the same purpose is guilty of a misdemeanor and must be punished by a fine of one thousand dollars or imprisonment for thirty days, or both.

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## S.C.Code Ann. §16-11-650.

...wilfully and knowingly removes, destroys, or leaves down any portion of a fence in this State intended to enclose animals of any kind or crops or uncultivated lands...

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## Carrying a Firearm

■ **S.C.Code Ann. §22-9-180.** ...magistrates' constables who have received the required training by the South Carolina Law Enforcement Division as set forth in Sections 22-9-180 to 22-9-210, shall be authorized to carry pistols...when on official duty as such constables and when going to and from their places of residence...

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## Trespassing in South Carolina

### ■ **S.C. Code Ann. §16-11-510.**

...wilfully and maliciously cut, shoot, maim, wound, or otherwise injure or destroy any horse, mule, cattle, hog, sheep, goat, or any other kind, class, article, or description of personal property, or the goods and chattels of another.

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## Working with other agencies

- Sheriff's Office (primary backup)
- City Police Department
- SLED
- FBI
- Contact Sheriff if safety is an issue, if an arrest is possible, or if offense is not one you are authorized to cite (e.g., it cannot be processed on a Uniform Ordinance Summons)



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## Trial Advocacy Breakout

Training Code Enforcement Officers how to take a case through the Magistrate Court system.

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## Building your case

- Witnesses
- Statements
- Notarized, free, voluntary
- Leniency for cooperating Ws?
- Photographs (critical for jurors' attention spans)
- Label, date, time



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## Trial preparation

- Organize the file
- Copies for judge, jury, D, your file
- Notify Ws *before* they get a subpoena
- Subpoena Ws



- Get Ws contact info ("Give me the number you'd give the lottery commission")
- Label exhibits if not already done

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## When to bring in Legal Department

- To address complex legal issues
- If D has a lawyer
- For jury trials
- Negotiation



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## When Legal's not necessary

- Bench trial
- No lawyer on other side
- Routine matters
- Simple facts, issues
- Comfort level/experience



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## Direct examination

- 5 Ws and H
- Develop theme/theory of case
- Relevant/material
- Know answer before you ask the question
- Credibility
- Humanize witness



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## Cross-examination

- Know answer before you ask question
- Polite, forceful, bearing, professional
- Just doing your job (may be a W for you in next case)
- Impeach W
- Prior bad acts or record



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## Common Objections

- Beyond the scope of direct exam
- Hearsay
- Leading
- Relevance
- Misstating/misquoting a witness
- Assumes facts not in evidence
- Preserve the record (“appeal proof”)



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## Handling Exhibits

- Label/mark it beforehand
- Don't have to admit everything (may use simply as visual aid)
- Do you know?
- How do you know?
- What is it?
- Enter as evidence
- Publish to jury



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## Consent Orders

- Lock D into specific conditions
- Benefit of doubt/break for D
- Contempt of Court
- May get more than a conviction
- Can always issue new citation(s)



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## Jury vs. Bench Trial

- Jury decides facts, judge decides law
- More formal.
- Takes longer (opening statement, closing arguments, exhibits, jury instructions, deliberation, recesses).
  - Defendant's right ("trial by peers").
  - State can ask for one, too.



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## Jury vs. Bench Trial

- Jury selection
- Strikes (peremptory vs. challenge for cause)
- Sizing up the jury panel
- No *Ex Parte* communications
- Appeals to Circuit Court



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## Bench Trial



- Less formal
- Faster
- Simpler evidence, testimony standards
- Judge decides law **and** facts
- Appeals to Circuit Court

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