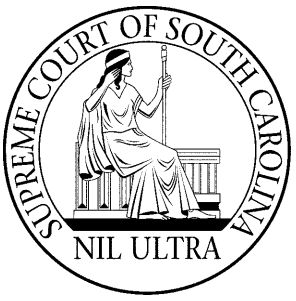

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 17

May 5, 2008
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

David Mark Hill, Petitioner,

v.

State of South Carolina, Respondent.

Appeal From Aiken County
Doyet A Early, III, Circuit Court Judge

Opinion No. 26477
Heard April 1, 2008 – Filed April 28, 2008

AFFIRMED

David Warren Miller, of Smith Massey Brodie Thurmond & Guynn, of Aiken, and Melissa Jane Reed Kimbrough, of Kimbrough & Longshore, of Columbia, for Petitioner.

Attorney General Henry Dargan McMaster, Assistant Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, Assistant Attorney General Melody J. Brown, all of Columbia, for Respondent.

JUSTICE WALLER: This matter concerns a capital defendant who has expressed a desire to waive his post-conviction relief (PCR) proceedings and all future appeals and have an execution date set. By order dated July 24, 2007, we remanded the matter to Judge Doyet Early to conduct a hearing to determine whether Hill is competent to waive his right to further review and, if so, whether his waiver is knowing and voluntary. After a hearing, Judge

Early found Hill competent to waive his rights; he also found Hill's waiver to be knowing and voluntary. Counsel for Hill concedes the record "fully supports Judge Early's order." After an extensive review of the record in this case, along with a thorough examination of Hill during oral arguments before this Court, we affirm the trial judge's findings that Hill is competent to waive appellate review, and his decision to do so is both knowing and voluntary.

FACTS

Hill was convicted of three counts of murder after he walked into the Aiken County Department of Social Services office building on September 16, 1996, and shot and killed three employees; he was sentenced to death. The underlying facts, as set forth in his direct appeal to this Court, are as follows:

> When these murders took place, [Hill] was married and had three children: a three-year-old daughter who was a quadriplegic[1] and twin two-year-old boys. DSS became involved with the family because of concern about the parents' abuse of prescription drugs. The children were eventually removed from the home.
>
> On the morning of September 16, 1996, [Hill] had a telephone conversation with his caseworker, James Riddle. [Hill] then called his sister-in-law, Tammy Campbell, to ask for a ride to the DSS office. Tammy and her husband gave [Hill] a ride to the Business & Technology Center where the DSS office was located. On the way, [Hill] said that he was tired of people "playing God" with his children. The Campbells dropped [Hill] off at the front of the building.
>
> Sometime before 2:00 p.m., several DSS workers returned to work after a birthday luncheon. Annette Michael was walking towards her cubicle in the DSS office area when another worker, Josie Currie, approached with her hands up. [Hill] was behind Josie with a gun. Josie asked Annette where James Riddle's office was. When

[1] The daughter, who was paralyzed in a 1994 car accident, died in 1998.

> Annette motioned with her hand, [Hill] told her to step in behind Josie. The three of them walked down the aisle to James's cubicle. James was seated at his desk speaking on the telephone. Josie stepped into the cubicle and said, "This man would like to see you."
>
> [Hill] fired a shot into the cubicle, hitting James in the head. He then pointed the gun over Annette's shoulder and shot Josie in the head. Annette fell with Josie as a third shot was fired. Annette saw James fall over in his chair and she saw a hole in his forehead before she fainted on the floor. Another DSS worker, Michael Gregory, was found dead of a gunshot wound in the men's restroom. Both Josie and James died within the next few hours. Annette was not injured.
>
> The next morning, police were still searching for [Hill]. At around 9:20 a.m., appellant was found lying on the railroad tracks behind the building with his gun nearby. He had a bullet hole through the roof of his mouth and an exit wound in the top of his skull. Although he was seriously injured, [Hill] was able to speak. After he was taken to the hospital, he was given Miranda warnings. [Hill] admitted to the shootings. He said he first shot Michael Gregory in the restroom because Gregory had seen him. He shot James Riddle because Riddle was his caseworker. He shot Josie Currie "because she was black."

State v. Hill, 361 S.C. 297, 300-301, 604 S.E.2d 696, 697-698 (2004), *cert. denied,* 544 U.S. 1020 (2005). This Court affirmed Hill's murder convictions and sentences.[2]

Thereafter, Hill filed an application for PCR. On May 30, 2007, Solicitor Barbara Morgan received a letter from Hill requesting her to assist him to "drop the rest of my appeals and have an execution date set." The letter was forwarded to the Court by the State. Thereafter, on June 21, 2007, counsel

[2] Hill's attempted murder conviction and related weapons charge were vacated, and his second degree burglary conviction was reversed. Hill, supra.

for Hill submitted an affidavit to the Court indicating Hill had changed his mind and did **not** wish to drop his appeals.[3] On July 16, 2007, after consulting with counsel, Hill once again advised the Court he wished to withdraw his pending PCR application and abandon any remaining appeals. The Court remanded the matter to Judge Early for a competency evaluation pursuant to Singleton v. State, 313 S.C. 75, 437 S.E.2d 53 (1993). After a hearing, a competency evaluation by Dr. Donna Schwartz-Watts, and a thorough examination of Hill, Judge Early issued an order finding Hill competent to waive his appeals, and found Hill's decision was made knowingly and voluntarily.

ISSUE

Does the evidence support a finding that Hill is competent to waive further review, and that his decision to do so is made knowingly and voluntarily?

LAW

This Court is charged with the responsibility of issuing a notice authorizing the execution of a person who has been duly convicted in a court of law and sentenced to death. Hughes v. State, 367 S.C. 389, 395, 626 S.E.2d 805, 808 (2006). We will issue an execution notice after the defendant has exhausted all appeals and other avenues of PCR in state and federal courts, or after that person, who is determined by this Court to be mentally competent, knowingly and voluntarily waives such appeals. See In re Stays of Execution in Capital Cases, 321 S.C. 544, 471 S.E.2d 140 (1996); Roberts v. Moore, 332 S.C. 488, 505 S.E.2d 593 (1998).

In Singleton v. State, we set forth the test to ascertain whether a capital defendant is competent to waive his right to further appellate review:

[3] In the interim, Judge Early ordered a competency evaluation, pursuant to Council v. Catoe, 359 S.C. 120, 597 S.E.2d 782 (2004), authorizing Dr. Donna Schwartz-Watts to determine if Hill was competent to proceed with PCR.

> The first prong is the cognitive prong which can be defined as: whether a convicted defendant can understand the nature of the proceedings, what he or she was tried for, the reason for the punishment, or the nature of the punishment. The second prong is the assistance prong which can be defined as: whether the convicted defendant possesses sufficient capacity or ability to rationally communicate with counsel.

313 S.C. at 84, 437 S.E.2d at 58; accord State v. Torrence, 317 S.C. 45, 47, 451 S.E.2d 883, 884 (1994). This standard is the same as that required before a defendant may be executed. Torrence, 317 S.C. at 47, 451 S.E.2d at 884.

When considering a request by a capital defendant to waive the right to further review, we must determine whether the defendant is competent and whether the decision is knowing and voluntary. See Reed v. Ozmint, 374 S.C. 19, 647 S.E.2d 209 (2007); Hughes v. State, 367 S.C. 389, 395, 626 S.E.2d 805, 808 (2006) (Court will issue an execution notice if the person, who is determined by the Court to be mentally competent, knowingly and voluntarily waives appeals and PCR); State v. Downs, 369 S.C. 55, 631 S.E.2d 79 (2006) (capital defendant may not waive his appellate or PCR rights unless Court first determines the defendant is competent); State v. Torrence, 317 S.C. 45, 46, 451 S.E.2d 883, 883 (1994) (waiver may not be found unless Court first determines defendant is competent and his decision is knowing and voluntary). In making a determination on the competency of a convicted capital defendant to waive his appellate or PCR rights, we are not bound by the circuit court's findings or rulings, although the circuit court judge, who saw and heard the witnesses, is in a better position to evaluate their credibility and assign comparative weight to their testimony. Hughes, 367 S.C. at 395, 626 S.E.2d at 808. The matter is akin to one arising in our original jurisdiction because it is the Court which must finally determine whether a particular capital defendant is mentally competent to make a knowing and voluntary waiver of his appellate or PCR rights. Id. at 395-96, 626 S.E.2d at 808.

In deciding the issue of a capital defendant's competency, we review the defendant's history of mental competency; the existence and present

status of mental illness or disease suffered by the defendant, if any, as shown in the record of previous proceedings and in the competency hearing; the testimony and opinions of mental health experts who have examined the defendant; the findings of the circuit court which conducted a competency hearing; the arguments of counsel; and the capital defendant's demeanor and personal responses to the Court's questions at oral argument regarding the waiver of appellate or PCR rights. Reed v. Ozmint, supra.

DISCUSSION/ANALYSIS

Here, at the hearing before Judge Early in August 2007, the only witnesses were Hill himself, and Dr. Donna Schwartz-Watts, an expert in the field of forensic psychiatry.

Dr. Schwartz-Watts testified Hill had had some very severe depressions and anxiety disorders in the past, but that those were now in remission, and Hill was not on any medications at all for mental illness. She also opined that although Hill had some brain damage and neurological impairments as a result of the gunshot wound to his head, he had made remarkable improvement and had developed collateral ways of thinking. Although it sometimes takes Hill a while to answer a question, and he is sometimes distractible, he can usually get back to the point. He has a bit of trouble with short term memory, but Dr. Schwartz-Watts did not classify it as a serious organic condition; she diagnosed a cognitive disorder. She stated that Hill "is incredibly intelligent and in possession of his faculties."

As to Hill's decision to waive his appeals, Dr. Schwartz-Watts testified the decision was based on a number of rational bases. She stated Hill is very close to his father, whose health was beginning to fail, and Hill wanted to wait until such time as his father would not be aware of his decision to waive his appeals. When his father was hospitalized and placed on "do not resuscitate status," Hill felt it was time. Also, Hill's religious beliefs as a Mormon formed some of the basis for the decision. Schwartz-Watts opined that Hill understands what he was convicted for, his sentence, and the nature of the punishment, and that he clearly knows the rights he is giving up. She testified Hill trusts his attorneys and even believed he was likely to prevail if

he proceeded with PCR. Dr. Schwartz-Watts also testified there was no evidence that Hill's decision to waive is based on any type of psychosis, delusion or outside influence.

Judge Early questioned Dr. Schwartz-Watts about Hill's initial request in May 2007 to drop his appeals, then his brief change of mind in June 2007, then his reaffirmation to waive them in July 2007. Dr. Schwartz-Watts testified Hill's wavering was due to his uncertainty concerning his father's health status and family issues.

Judge Early then examined Hill. Hill stated the only medication he was currently taking is Zantac for heartburn. He testified that he previously suffered depression, post-traumatic stress disorder, and anxiety attacks, but that he did not feel he was currently suffering from any of those illnesses. With regard to the self-inflicted gunshot on the day of the crimes, Hill testified he had some brain damage as a result, which sometimes affects his memory, and he has a small hole in the roof of his mouth which he believes sometimes causes headaches, but other than that, he had no significant impairments. He was not taking any medication for brain damage.

Hill testified as to the crimes for which he was convicted, and the sentences, and his understanding of his appeal to this Court and the United States Supreme Court. He understood his PCR application was to challenge the effectiveness of his counsel. Understanding all of these things, Hill testified he wished to give up his right to proceed with the hearing. Judge Early went through each allegation of ineffective assistance of counsel with Hill, and advised him that if he prevailed, he would perhaps be entitled to a new trial. The trial judge then requested Hill to explain why he wanted to withdraw his PCR application and abandon any rights to appeal. Hill responded, in part, as follows:

> Well, it's something I've been thinking about since I got to death row in 2000. By then one of my trial attorneys - - he didn't really talk me out of it. He just basically said, you don't want to do that. . . . And he mentioned my dad and my dad at the time was ill. . . he said that could, you know, - - that could be the - - that could put him

> over the edge. So, I was concerned about that, and he's been coming to see me regularly until that time. That was about two years ago, . .. and the last time I saw him was last August and I knew something was wrong . . . and then I got a letter from my mom a couple of months ago and she said that he was near death . . . she got to the hospital and they wanted her to sign a D.N.R. . . . I had mentioned it to him too, and she told me in the letter not to – if I decided to do that not to write and tell him but tell one of my lawyers or tell her and they would gather the family around to tell him and that he wanted to die before I did and he would if I would just talk to him about it.
>
> So, that was a lot to do with my decision - - his health - - and part of my religious beliefs are that if you kill somebody, you shed somebody else's blood, that your blood has to be shed or you have to die in order to be forgiven for that, and that's one of my concerns and then there's some health issues that I'm dealing with that's . . . bothersome at times. . . There's not really one big reason. There is just - - - several different factors.

The trial court then questioned Hill as to his understanding of what he was tried for and the reason for his punishment. He understood he had been convicted for killing three people, and that he could be executed by electrocution or lethal injection. He testified that if his decision to withdraw his PCR application and waive further appeals were granted, he understood he would be put to death.

Judge Early thoroughly explained the possibilities if Hill proceeded with PCR and were granted a new trial. Hill testified he believed he had received a fair trial, and a fair sentence, and that he had not been threatened or coerced into this decision. Judge Early then questioned Hill as to his vacillation in May, June and July 2007 as to whether he wanted to withdraw his appeals. Hill explained, "I was sure at the time, and [my attorney] came immediately to see me at Lieber and she asked - - talked to me about some things and asked me to give her until the end of the month before I made a final decision." Hill did so and then reiterated his request to withdraw his

appeals. Hill finally advised Judge Early that it was still his desire to withdraw all appeals and have the death sentence carried out.

Judge Early dismissed Hill from the stand and then inquired of Dr. Schwartz-Watts whether Hill's responses in any way caused her to change her opinion. She responded, "not at all, your honor. It's confirmed it."[4]

Judge Early issued his order on August 20, 2007 finding the requirements of Singleton v. State were met, and that Hill is competent to waive his right to further collateral review of his convictions and sentences; he understands the nature of the proceedings, the crimes for which he was sentenced, and the nature of the punishment. Judge Early also found Hill's decision to waive further review knowing and voluntary.

This Court personally examined Hill on April 1, 2008. He confirmed that it is still his desire to waive his appeals and be executed. We questioned Hill extensively about the voluntary nature of his request, whether he fully understood the appellate process, and what he could hope to gain by appealing his sentence. We inquired as to his understanding of why he had been sentenced to death, why he preferred to be executed than to pursue his appeals. We found Hill to be articulate, intelligent, and very well aware of his present circumstances, as well as the events which gave rise to his incarceration. Both his long and short-term memory are ample, and do not appear to have been affected by his self-inflicted gunshot wound on the day of the crimes. Moreover, counsel for Hill very eloquently elaborated on Hill's decision, advising that although he and co-counsel did not agree with Mr. Hill's decision to forego any further appeals, there was no basis upon which to challenge his competency, and the decision had been contemplated by Hill for nearly eight years, and was clearly made knowingly, voluntarily, and intelligently.

The record, along with our personal examination of Hill, fully supports the trial court's ruling that Hill is indeed competent, and his decision to waive further appellate remedies is both knowing and voluntary. Accordingly, we

[4] The State also introduced the portions of the trial transcript in which Hill had been found competent to stand trial.

affirm the findings of the circuit court. Hill's request to withdraw his PCR application and waive his appeals is granted.

AFFIRMED.
TOAL, C.J., MOORE, PLEICONES and BEATTY, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Ronald Hazzard, Respondent.

Opinion No. 26478
Heard March 19, 2008 – Filed May 5, 2008

DEFINITE SUSPENSION

Lesley M. Coggiola, Disciplinary Counsel, and Joseph P. Turner, Jr., Assistant Disciplinary Counsel, both of Columbia, for the Office of Disciplinary Counsel.

M. Gregory McCollum, of Myrtle Beach; for Respondent.

PER CURIAM: In this attorney disciplinary matter, the Commission on Lawyer Conduct filed formal charges against Respondent with regard to four matters. After a hearing, the Hearing Panel recommended Respondent be sanctioned to a one-year definite suspension from the practice of law, retroactive to his August 6, 2003 interim suspension, with certain conditions. We adopt the recommendation, and we sanction Respondent to a one-year definite suspension, retroactive to the date of his interim suspension, with the following conditions: entering a two-year monitoring contract with Lawyers

Helping Lawyers and agree to random drug screens during the period; making full restitution to the Lawyers Fund for Client Protection in the amount of $21,148.30 prior to being eligible to apply for readmission; and payment of $683.23 for the costs of the proceedings.

FACTS

The Office of Disciplinary Counsel alleged Respondent committed misconduct with regard to four matters.

Matter I

On June 19, 2003, Respondent appeared before Judge Baxley in the Court of Common Pleas in a civil matter in response to a Rule to Show Cause and as part of his representation of Client A. The purpose of the Rule to Show Cause was to determine: (1) whether Respondent had violated a previous court order compelling discovery responses; and (2) whether he had violated a previous order to pay opposing counsel $350 for attorneys fees incurred in bringing the motion to compel discovery. The court found Respondent in contempt with regard to the civil matter, ordered additional monies to be paid to opposing counsel, and imposed sanctions with regard to the pending civil litigation to the prejudice of Client A. Later, Respondent's check for $700 to opposing counsel to pay the court-ordered attorney's fees was returned by the bank for "non-sufficient funds." When the civil case came before the master-in-equity for a bench trial on July 15, 2003, neither Respondent nor Client A appeared for trial, and judgment was entered against Client A in his absence based solely on the uncontradicted testimony of the opposing party. Respondent did not inform Client A of the trial date.

Further, while before Judge Baxley at the June 19, 2003 Rule to Show Cause hearing, it appeared that Respondent was under the influence of alcohol or drugs. Upon inquiry by the court, Respondent denied being under the influence of any substance and denied having used any alcohol or drugs in the past seventy-two hours. The court then required Respondent to submit to an immediate urinalysis drug screening. The screening indicated the presence of cocaine in Respondent's system. Upon learning of the results,

Respondent admitted to the court that he had used cocaine within the previous seventy-two hours but denied being "under the influence." The court found Respondent in direct criminal contempt for lying to the court about his use of cocaine and imposed a contempt sanction by sentencing Respondent to ninety days in the Horry County Detention Center to begin no later than June 25, 2003. However, the court allowed Respondent to avoid jail by enrolling in a drug treatment program with certain conditions. The court found Respondent's conduct was having a detrimental effect on his clients, which the court believed to be the result of "a substance abuse problem that is destroying his life and legal practice and is certainly interfering with the administration of justice" and is "not isolated to this judge or this court." Respondent initially entered a drug treatment program, but because he was unable to pay for the program, he failed to complete it. Respondent carried out his ninety-day sentence at the Horry County Detention Center.

Matter II

Respondent hired a court reporter for a July 9, 2002 deposition. On July 22, 2002, the court reporter forwarded to Respondent a copy of the deposition transcript along with a bill. Respondent failed to pay the court reporter's bill or otherwise communicate with her in response to the July 22 bill. The court reporter notified Respondent of his outstanding debt to her by letters dated November 12, 2002; December 18, 2002; and January 7, 2003. Respondent did not respond to any of the letters and only paid the bill after receiving a Notice of Full Investigation of this matter from ODC in August 2003.

Respondent was notified of the court reporter's Complaint by letter from ODC dated February 20, 2003, requesting a response within fifteen days. Respondent failed to respond or otherwise communicate with ODC. After ODC sent him a letter on March 11, 2003, reminding him of his duty to respond pursuant to In the Matter of Treacy, 277 S.C. 514, 290 S.E.2d 240 (1982), Respondent contacted ODC by telephone on March 26, 2003, indicating that he would send a response to the court reporter's Complaint by

facsimile the next day. Respondent failed to send a response until April 14, 2003.

Matter III

In May 2002, Respondent was retained by Client B to represent her in a divorce action. Client B paid Respondent $1,650 in cash and office cleaning services that Respondent agreed were worth $350. Respondent failed to file a complaint on behalf of Client B in the proper county and later failed to pursue a transfer of her case from the wrong county. Over the next year, Respondent canceled and failed to attend several meetings with Client B regarding her divorce, deliberately avoided many of her attempts to communicate with him in writing and by telephone, and misled Client B about whether her complaint for divorce was pending in Family Court in the proper county and about the existence of a scheduled hearing before the Family Court.

Respondent was notified of the Client B complaint by a letter from ODC dated May 19, 2003, requesting a response within fifteen days. Respondent failed to respond or otherwise communicate with ODC. On June 6, 2003, ODC sent Respondent a letter informing him of his obligation to respond pursuant to In the Matter of Treacy and again requesting a response. On June 24, 2003, Respondent telephoned ODC in response to an inquiry regarding Matter II, and he informed ODC that he was not calling to respond to the Client B matter, but that he intended to do so. However, Respondent failed to respond or otherwise communicate with ODC regarding the Client B matter in any way until after receiving a Notice of Full Investigation in September 2003.

Matter IV

On January 7, 2003, Respondent's former client, Client C, initiated a formal dispute of Respondent's fee by filing an Application for Resolution of Disputed Fee with the South Carolina Bar Resolution of Fee Disputes Board (FDB). A panel member of the FDB investigated the fee dispute, and on

May 7, 2003, reported his findings and recommended that Respondent pay $750 to Client C within thirty days. On May 8, 2003, the FDB Circuit Chair issued Respondent a letter adopting the recommendation of the panel member as the final decision of the FDB. Respondent failed to repay Client C within thirty days and did not refund any portion of the $750 until after receiving a Notice of Full Investigation of this matter from ODC in October 2003.

Respondent was placed on interim suspension on August 6, 2003. At the May 1, 2007 hearing before the Hearing Panel, Respondent testified that he began using cocaine in 2001 to deal with depression stemming from the breakup of his marriage. He testified that he voluntarily started having drug tests and has passed over one hundred drug tests since he discontinued using cocaine in late 2003. He stated he attends both N.A. and A.A. meetings and intends to do so for the foreseeable future. Respondent submitted several affidavits, and several witnesses testified at the hearing, that respondent is an excellent attorney and they would have every confidence in him should he be admitted back to the practice of law.

After the hearing, the Hearing Panel issued a report and recommendation. As to Matter I, the Hearing Panel found that by his actions, Respondent: (1) failed to provide the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation of Client A, in violation of Rule 1.1, Rules of Professional Conduct (RPC), Rule 407, SCACR; (2) failed to act with reasonable diligence and promptness on behalf of Client A, in violation of Rule 1.3; (3) failed to keep Client A reasonably informed about the status of litigation in violation of Rule 1.4; (4) failed to expedite litigation consistent with the interests of Client A, in violation of Rule 3.2; (5) made a false statement of material fact to the circuit court, in violation of Rules 3.3, 4.1, 8.4(a), 8.4(d), and 8.4(e); and (6) committed the criminal acts of possessing and using a controlled substance, in violation of Rules 8.4(b) and 8.4(c). The Hearing Panel found Respondent's conduct was grounds for discipline under Rules 7(a)(1)(violating the Rules of Professional Conduct), 7(a)(5) (engaging in conduct tending to bring the legal profession into disrepute), 7(a)(6) (violating the oath of office), and 7(a)(7) (willfully violating a court order), RLDE.

Regarding Matter II, the Hearing Panel found Respondent: failed to timely pay a court-related expense in violation of Rule 8.4(e); and failed to respond to demands for information from ODC in violation of Rule 8.1. The Hearing Panel determined the conduct was grounds for discipline under Rules 7(a)(1), and 7(a)(3) (willfully violating a valid order of the Commission), RLDE.

As to Matter III, the Hearing Panel determined that Respondent: (1) failed to provide competent representation to Client B in violation of Rule 1.1; (2) failed to act with reasonable diligence and promptness in representing Client B, in violation of Rule 1.3; (3) failed to keep Client B reasonably informed about the status of her divorce and failed to promptly comply with reasonable requests for information in violation of Rule 1.4; (4) charged Client B a fee that was not reasonable in light of the time and labor Respondent provided, the results obtained, and other relevant considerations, in violation of Rule 1.5; (5) failed to expedite Client B's divorce consistent with her interests in violation of Rule 3.2; and (6) failed to respond to ODC's demands for information in violation of Rule 8.1. The Hearing Panel found Respondent's conduct was grounds for discipline under Rules 7(a)(1), 7(a)(3), 7(a)(5), and 7(a)(6), RLDE.

Finally, with regard to Matter IV, the Hearing Panel determined Respondent failed to comply with the FDB's final decision in violation of Rule 8.4(e), and that his conduct was grounds for discipline under Rules 7(a)(1), 7(a)(5), and 7(a)(10), RLDE (willfully failing to comply with a final decision of the Resolution of Fee Disputes Board).

DISCUSSION

Neither Respondent nor ODC raise any exceptions to the Hearing Panel's report and recommendation. Thus, it is up to this Court to determine whether the recommended sanction is appropriate.

The authority to discipline attorneys and the manner in which discipline is given rests entirely with this Court. In re Long, 346 S.C. 110, 551 S.E.2d 586 (2001). The Court is not bound by the panel's recommendation and may

make its own findings of fact and conclusions of law. In re Larkin, 336 S.C. 366, 520 S.E.2d 804 (1999). After a thorough review of the record, the Court must impose the sanction it deems appropriate. In re Strickland, 354 S.C. 169, 580 S.E.2d 126 (2003).

We agree with the Hearing Panel that Respondent's actions violated the above-listed rules. We find the recommended sanction of a retroactive, one-year definite suspension, with the recommended conditions, is appropriate. See In re Newton, 361 S.C. 404, 605 S.E.2d 538 (2004) (sanctioning a former assistant solicitor to a one-year suspension, retroactive, where charged with possession with intent to distribute marijuana, reduced to possession, and completion of pre-trial intervention); In re Smith, 347 S.C. 437, 556 S.E.2d 388 (2001) (sanctioning to a six-month retroactive suspension where charges for trafficking in cocaine, methamphetamines, and possession of marijuana were dismissed but attorney admitted cocaine use); In re Tribert, 343 S.C. 326, 540 S.E.2d 467 (2000) (sanctioning attorney to a one-year suspension, retroactive, where the attorney pled guilty to driving under the influence and where a charge of possession of cocaine was dismissed upon completion of a pre-trial intervention program); see also In re Newton, 366 S.C. 276, 621 S.E.2d 657 (2005) (adding a two-year monitoring contract with LHL and the taking of the new attorney oath as a condition of Newton's reinstatement).

Within fifteen days of this opinion, Respondent shall file an affidavit with the Clerk of Court showing that he has complied with Rule 30 of Rule 413, SCACR.

DEFINITE SUSPENSION.

TOAL, C.J., WALLER, PLEICONES, BEATTY, JJ., and Acting Justice E. C. Burnett, III, concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Appellant,

v.

John "Jack" M. Sterling, Respondent.

Appeal from Lexington County
James W. Johnson, Jr., Circuit Court Judge

Opinion No. 26479
Heard March 19, 2008 – Filed May 5, 2008

REVERSED

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Attorney General Jennifer D. Evans, and Assistant Attorney General Deborah R.J. Shupe, all of Columbia, for Appellant.

E. Bart Daniel and Matthew R. Hubbell, both of Charleston, for Respondent.

CHIEF JUSTICE TOAL: In this case, the State appeals from the trial court's order granting Respondent Jack Sterling's motion to exclude the testimony of four of the State's witnesses. We reverse.

FACTUAL/PROCEDURAL BACKGROUND

In June 2003, following the financial collapse of Carolina Investors, Inc. ("CI") and HomeGold Financial, Inc. ("HGF"), the grand jury initiated an investigation into the collapse. Subsequently, after SLED requested an interview with Respondent,[1] Respondent contacted attorney Bill Bannister for legal advice. On July 30, 2003, Bannister accompanied Respondent to the SLED interview. During this same time period, SLED also conducted interviews of several other officers of CI and HGF, including Larry Owen, Anne Owen, Don Bobo, and Danny Sharpe, all of whom Bannister represented. On January 19, 2004, Respondent sent a letter to Bannister terminating his services.

On April 12, 2006, more than two years after firing Bannister, the grand jury indicted Respondent on two counts of securities fraud and one count of conspiracy. Respondent filed a motion to quash the indictment or, in the alternative, exclude the testimonies of Larry Owen, Anne Owen, Don Bobo, and Danny Sharpe (hereinafter "the witnesses") based on Bannister's purported conflict of interest after having represented all parties at the time of their SLED interviews. The trial court declined to quash the indictment, finding such a drastic remedy was inappropriate absent prosecutorial misconduct. However, the trial court found that Bannister's past representation of Respondent and the witnesses violated Respondent's Sixth Amendment right to counsel in that it created an actual conflict of interest. Therefore, the trial court granted Respondent's motion to exclude the witnesses' testimonies.

[1] Respondent served on both the CI and HGF Board of Directors.

STANDARD OF REVIEW

The Court is bound by the trial court's preliminary factual findings in determining the admissibility of certain evidence in criminal cases unless the findings are clearly erroneous or unless the trial court abused its discretion. *State v. Wilson*, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001).

LAW/ANALYSIS

As a primary matter, Respondent argues that this order is not immediately appealable. We disagree.

This Court has interpreted the appealability statute, S.C. Code Ann. § 14-3-330 (1976), to allow the immediate appeal of pre-trial orders which would significantly impair the prosecution of a criminal case. The witnesses to which the trial court's order pertained personally interacted with Respondent during the relevant time period and will be able to provide a first-hand account of what Respondent knew and his actions. Thus, their testimonies are critical to prove the charges against Respondent, and the suppression of their testimonies would significantly impair the State's case. Accordingly, we hold that the trial court's order is immediately appealable. *See State v. McKnight*, 287 S.C. 167, 168, 337 S.E.2d 208, 209 (1985) (holding that a pre-trial order granting the suppression of evidence which significantly impairs the prosecution of a criminal case is directly appealable under S.C. Code Ann. § 14-3-330(2)(a) (1976)).

Turning to the merits of the appeal, the State argues that the trial court erred in excluding the testimonies because Respondent suffered no Sixth Amendment violation and because no actual conflict of interest existed. We agree.

The Sixth Amendment right to counsel attaches upon initiation of adversarial judicial proceedings and at all critical stages of a criminal trial. *Michigan v. Jackson*, 475 U.S. 625, 629 (1986). In order to prove a per se Sixth Amendment violation, the defendant must show that

counsel acted under an actual conflict of interest. Stated differently, "prejudice is presumed only if the defendant demonstrates that counsel 'actively represented conflicting interests' and that 'an actual conflict of interest adversely affected his lawyer's performance.'" *Strickland v. Washington*, 466 U.S. 668, 692 (1984) (quoting *Cuyler v. Sullivan*, 446 U.S. 335, 350 (1980)).

In our view, the trial court erred in presuming Respondent's rights were prejudiced. Significantly, Respondent's Sixth Amendment right had not attached at any point during Bannister's representation, as Respondent had not yet been indicted. *See State v. Council*, 335 S.C. 1, 15, 515 S.E.2d 508, 515 (1999) (noting that the Sixth Amendment right attaches only post-indictment, at least in the questioning/statement setting). At the time that Bannister represented Respondent, the State had not initiated any criminal proceedings against Respondent, and Respondent had not been indicted. In fact, Respondent fired Bannister more than two years before he was indicted. This Court has never found per se Sixth Amendment violations during the pre-indictment stage, and Respondent cites no authority to the contrary. *See State v. Gregory*, 364 S.C. 150, 612 S.E.2d 449 (2005) (finding a per se Sixth Amendment violation where attorney acted under an actual conflict of interest at trial); *Thomas v. State*, 346 S.C. 140, 551 S.E.2d 254 (2001) (finding a per se Sixth Amendment violation where attorney acted under an actual conflict of interest at the plea hearing). To the extent an attorney is acting under a conflict of interest in the pre-indictment stage, we think that the actual conflict of interest must persist into the post-indictment stage before a court will presume prejudice. *See United States v. Tatum*, 943 F.2d 370, 380 (4th Cir. 1991) (presuming prejudice where actual conflict adversely affected pretrial strategies as well as the defense at trial); *Hoffman v. Leeke*, 903 F.2d 280, 290 (4th Cir. 1990) (holding defendant suffered a Sixth Amendment violation where counsel acted under a conflict of interest from the pre-indictment stage until the conclusion of defendant's trial).

Not only did the representation terminate pre-indictment, but also Respondent failed to show Bannister operated under any actual conflict of interest. Bannister represented Respondent and the witnesses in the

preliminary stages of the investigation before any criminal proceedings began. Thus, at that time, the witnesses' interests were not necessarily adverse to Respondent's interests. *See Mickens v. Taylor*, 535 U.S. 162, 175 (2002) (recognizing that until a defendant shows that counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of a Sixth Amendment violation); *Fuller v. State*, 347 S.C. 630, 557 S.E.2d 664 (2001) (holding an actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's interests). Given that Respondent failed to show that Bannister operated under an actual conflict of interest after criminal proceedings had begun, it is inappropriate to presume prejudice in this case.

If we were to hold that a pre-indictment conflict could pose a Sixth Amendment violation, we think Respondent must be able to demonstrate some way in which Bannister's representation prejudiced his rights,[2] which he cannot do. Bannister stated in his affidavit that Respondent never conveyed confidential information to him, and Respondent does not point to any evidence that Bannister disclosed privileged information to the witnesses. Furthermore, the record contains no evidence of prosecutorial misconduct. We note that Respondent is not without protections during trial. For example, should it appear that the witnesses will disclose privileged information during their testimonies, the trial court is free to hold a hearing *in camera* to determine the admissibility of such testimony and to craft protective orders or instructions where necessary.

[2] That a defendant must show prejudice absent an actual conflict of interest is extremely important in preventing multiple defendants from frustrating prosecution efforts. In the instant case, for example, the trial court's ruling creates an incentive for possible future co-defendants who may take adverse positions in a criminal case to retain one attorney for any investigative proceedings, thereby "conflicting out" all of the possible co-defendants from testifying against any other defendant.

As a practical matter, the trial court's remedy of excluding witness testimony based on a Sixth Amendment violation is somewhat puzzling. Typically, in cases involving a violation of the Sixth Amendment right to counsel, the defendant has suffered a violation of his right to counsel during the adjudication proceeding (i.e., a trial or a plea hearing), and the remedy granted as a result of the constitutional violation is a new trial. *See Staggs v. State*, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007) (ordering a new trial where attorney simultaneously represented a defendant and the defendant's father, mother, and brother, all of whom were charged as accessories after the fact). In the instant case, however, the trial court applied a broad remedy that effectively operated as an expansive version of the exclusionary rule, a remedy typically applied to Fourth Amendment violations. *See State v. Freiburger*, 366 S.C. 125, 131, 620 S.E.2d 737, 740 (2005) (recognizing that the exclusionary rule operates as a mechanism to enforce the Fourth Amendment prohibition against unreasonable searches and seizures). For such a rule to be the appropriate remedy in this case, we think several additional circumstances would need to be present, such as the former attorney intentionally conveying privileged information to other witnesses or to the State or some form of prosecutorial misconduct. While this conduct may implicate any number of constitutional rights, we are unaware of any jurisprudence analyzing such violations under the Sixth Amendment rubric.

Accordingly, we hold that Respondent suffered no Sixth Amendment violation of his right to counsel and that Respondent failed to show he was otherwise prejudiced by Bannister's representation. Therefore, we further hold that the trial court erred as a matter of law in granting Respondent's motion to exclude the witnesses' testimonies.

CONCLUSION

For the foregoing reasons, we reverse the trial court's order excluding the witnesses' testimonies.

WALLER, PLEICONES, BEATTY, JJ., and Acting Justice E. C. Burnett, III, concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Kamathene Cooper, Respondent,

v.

South Carolina Department of Probation, Parole and Pardon Services, Appellant.

Appeal From Dorchester County
James C. Williams, Jr., Circuit Court Judge

Opinion No. 26480
Heard January 8, 2008 – Filed May 5, 2008

AFFIRMED AS MODIFIED

Teresa Knox, J. Benjamin Aplin and Tommy Evans, Jr., all of S.C. Department of Probation, Parole & Pardon Services, of Columbia, for Appellant.

Arthur C. McFarland, of Charleston, for Respondent.

JUSTICE BEATTY: In this case, the South Carolina Department of Probation, Parole, and Pardon Services (the Department) appeals the circuit court's reversal of the Administrative Law Court's (ALC) order. In its order, the ALC dismissed Kamathene Cooper's appeal from the denial of his request for parole on the ground that it lacked subject matter jurisdiction to review the appeal. We granted the Court of Appeals' motion for the appeal to be certified directly to this Court. We affirm as modified.

FACTUAL/PROCEDURAL HISTORY

On November 30, 1984, Cooper stabbed Rheupart Stewart with a knife and then beat him with a chair. Stewart died as a result of his injuries. Before leaving Stewart's residence, Cooper took Stewart's checkbook. That same day, Cooper forged Stewart's signature on one of the checks and used it to make a purchase at a local department store.

As a result of this incident, Cooper was arrested and a Florence County grand jury indicted him for murder, armed robbery, and forgery. Subsequently, a jury convicted Cooper of murder and forgery, but acquitted him of armed robbery. Cooper was sentenced to death. This Court reversed Cooper's conviction and remanded for a new trial. State v. Cooper, 291 S.C. 332, 353 S.E.2d 441 (1986), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). Following this reversal, Cooper was convicted of murder and sentenced to incarceration for the remainder of his natural life and a consecutive seven-year term for forgery.

At the time of his conviction, South Carolina law permitted an inmate who was serving a life sentence to appear before the Parole Board upon the service of twenty years. S.C. Code Ann. § 16-3-20(A) (1985). On May 23, 2000, Cooper made his initial appearance before the Parole Board. On five more occasions, Cooper appeared before the Parole Board. Each time, the Parole Board rejected Cooper's request. On the last occasion, the Parole Board rejected Cooper's parole for the following reasons: (1) the nature and seriousness of the current

offense; (2) an indication of violence in this or a previous offense; and (3) the use of a deadly weapon in this or a previous offense.

Following the rejection of his parole and the denial of his motion for reconsideration, Cooper filed an appeal with the Administrative Law Court (ALC). In his appeal, Cooper "challenged the denial of parole by [the Parole Board] and asserted that the [Board] denied him a realistic opportunity to participate in the South Carolina Parole program and that such action by [the Board] was arbitrary, capricious, and in violation of the United States Constitution Article 14 Section I and South Carolina Constitution Article XII Section 2 and State statutes."

Chief Administrative Law Judge Marvin F. Kittrell, dismissed Cooper's appeal on the ground the ALC did not have jurisdiction to review an appeal from the denial of parole. Judge Kittrell found that Cooper's appeal did "not involve a determination by the Department that he is permanently ineligible for parole. Instead, Appellant is challenging the Board's decision not to grant him parole at his regularly scheduled parole hearing." In reaching this conclusion, Judge Kittrell primarily relied on this Court's decisions in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), Furtick v. S.C. Department of Probation, Parole and Pardon Services, 352 S.C. 594, 576 S.E.2d 146 (2003), and Sullivan v. S.C. Department of Corrections, 355 S.C. 437, 586 S.E.2d 124 (2003).

Cooper appealed Judge Kittrell's order to the circuit court. The parties appeared before Circuit Court Judge James C. Williams, Jr. Judge Williams issued an order in which he reversed Judge Kittrell's order and remanded the matter to the ALC to take testimony and render a decision. In reaching this decision, Judge Williams found the ALC had jurisdiction to review the Parole Board's final decision denying Cooper's parole because the Parole Board: (1) failed to apply the criteria for parole as required by the state parole statutes, specifically section 24-21-640, in violation of Cooper's liberty interest; (2) willfully denied Cooper the realistic opportunity to participate in the parole program in violation of his constitutional rights; and (3) violated the ex post facto clause of the South Carolina Constitution in denying Cooper

the realistic opportunity to participate in the South Carolina parole program. Judge Williams denied the Department's motion for reconsideration. Subsequently, the Department appealed Judge Williams' order to the Court of Appeals. This Court granted the Court of Appeals' motion to certify the appeal.

DISCUSSION

I.

The Department asserts the ALC properly dismissed Cooper's administrative appeal for lack of jurisdiction. Specifically, the Department contends the denial of Cooper's request for parole did not constitute a protected liberty interest which required judicial review. Because the Parole Board's decision did not render Cooper ineligible for parole, the Department claims the ALC was without jurisdiction to review the appeal.[1]

In contrast, Cooper argues that he is not challenging the denial of parole, but rather, the procedure employed by the Parole Board in denying his request. He believes the Parole Board effectively rendered him ineligible for parole when it issued its decision based on three "immutable" or fixed criteria. Because the Parole Board did not consider all relevant factors[2] in making its decision, Cooper contends

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[1] Because a decision on the jurisdictional question encompasses the first two issues raised by the Department, we have consolidated the analysis on these two issues in the interest of clarity and brevity.

[2] Cooper references a form given to an inmate by the Department which outlines the relevant criteria for parole consideration. This form lists the following non-inclusive criteria:

1. The risk the inmate poses to the community;
2. The nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it;
3. The inmate's prior criminal records and his/her adjustment under any previous programs or supervision;

the Parole Board acted arbitrarily and capriciously and deprived him of a state-created liberty interest under section 24-21-640 of the South Carolina Code, which outlines criteria to be considered by the Parole Board.[3]

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4. The inmate's attitude toward his/her family, the victim, and authority in general;
5. The inmate's adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
6. The inmate's employment history, including his/her job training and skills and his/her stability in the work place;
7. The inmate's physical, mental and emotional health;
8. The inmate's understanding of the cause of his/her past criminal conduct;
9. The inmate's efforts to solve his/her problems, such as seeking treatment for substance abuse, enrolling in academic and vocational educational courses, and in general using whatever resources the Department of Corrections has made available to inmates to help with their problems;
10. The adequacy of the inmate's overall parole plan. This includes inmates living arrangements, where he/she will live and who he will live with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours; the inmate's plans for gainful employment;
11. The willingness of the community into which the inmate will be released to receive the inmate;
12. The willingness of the inmate's family to allow him/her to return to the family circle;
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole;
14. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate;
15. Other factors considered relevant in a particular case by the Board.

[3] Section 24-21-640 provides in relevant part:

> The board must carefully consider the record of the prisoner before, during and after imprisonment, and no such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner has shown a disposition to reform; that, in the future he will

Given that neither party disputes the applicable law, this case essentially involves a determination of whether the Parole Board's decision amounted to a routine denial of parole or effectively rendered Cooper parole ineligible. If the former, then the ALC was without jurisdiction to review Cooper's appeal. Conversely, if Cooper was rendered ineligible for parole due to the procedure employed by the Parole Board, then he was deprived of a state-created liberty interest which triggered the due process requirements of judicial review.

Parole is a privilege, not a right. Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 443 n.4, 586 S.E.2d 124, 127 n.4 (2003), cert. denied, 540 U.S. 1153 (2004). A court's final judgment in a criminal case is the pronouncement of the sentence. The parole board, however, has the sole authority to determine parole eligibility separate and apart from the court's authority to sentence a defendant. State v. McKay, 300 S.C. 113, 115, 386 S.E.2d 623, 623-24 (1989).

This Court has the authority to interpret the parole statute. In interpreting statutes, we look to the plain meaning of the statute and the intent of the Legislature. Hinton v. S.C. Dep't of Prob., Parole, & Pardon Servs., 357 S.C. 327, 332, 592 S.E.2d 335, 338 (Ct. App. 2004). Because the statute is penal in nature, the Court must construe it strictly in favor of the defendant and against the State. See Hair v State, 305 S.C. 77, 79, 406 S.E.2d 332, 334 (1991) (construing in favor of the defendant the different time frames for parole eligibility found in the general parole statute and in a statute regarding parole eligibility for burglary).

> probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and, that suitable employment has been secured for him. The board must establish written, specific criteria for the granting of parole and provisional parole. This criteria must reflect all of the aspects of this section and include a review of a prisoner's disciplinary and other records. The criteria must be made available to all prisoners at the time of their incarceration and the general public.

S.C. Code Ann. § 24-21-640 (2007).

In the key case involving the jurisdiction of the ALC regarding review of inmate matters, this Court in Al-Shabazz v. State held:

> an inmate may seek review of [the] Department's final decision in an administrative matter under the APA. Placing review of these cases within the ambit of the APA will ensure that an inmate receives due process, which consists of notice, a hearing, and judicial review.

Al-Shabazz v. State, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000). The Court emphasized that its decision was not without limitation. Significantly, the Court noted that the requirements of procedural due process would be applicable when an inmate was deprived of a protected liberty interest under the Fourteenth Amendment in order to ensure that a "state-created right was not arbitrarily abrogated." Id. at 370, 527 S.E.2d at 750 (citing Wolff v. McDonnell, 418 U.S. 539 (1974)).

In cases post-dating Al-Shabazz, this Court has discussed in specific terms the subject matter jurisdiction of the ALJD, stating "the ALJD has subject matter jurisdiction to hear appeals from the final decision of [the Department] in a non-collateral or administrative matter. Subject matter jurisdiction refers to the ALJD's 'power to hear and determine cases of the general class to which the proceedings in question belong.'" Slezak v. S.C. Dep't of Corr., 361 S.C. 327, 331, 605 S.E.2d 506, 507 (2004), cert. denied, 544 U.S. 1033 (2005) (quoting Dove v. Gold Kist, Inc., 314 S.C. 235, 238, 442 S.E.2d 598, 600 (1994)). Further, "the ALC has subject matter jurisdiction over an inmate's appeal when the claim sufficiently 'implicates a state-created liberty interest.'" Furtick v. S.C. Dep't of Corr., 374 S.C. 334, 339, 649 S.E.2d 35, 38 (2007) (quoting Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 443, 586 S.E.2d 124, 127 (2003), cert. denied, 540 U.S. 1153 (2004)).

In terms of the ALC's jurisdiction to review parole decisions, this Court has analyzed the appealability ramifications of a decision by the

Parole Board denying parole versus a determination that an inmate is not parole eligible. Furtick v. S.C. Dep't of Prob., Parole & Pardon Servs., 352 S.C. 594, 576 S.E.2d 146 (2003), cert. denied, 539 U.S. 932 (2003). In Furtick, this Court extended the Al-Shabazz holding by finding "the *permanent* denial of parole *eligibility* implicates a liberty interest sufficient to require at least minimal due process," and, thus, review by the ALC. Furtick, 352 S.C. at 598, 576 S.E.2d at 149. "In reaching this conclusion, the Court emphasized the finality of the Department's decision, and distinguished the *final* determination of parole eligibility from the *temporary* granting or denial of parole to an eligible inmate." Sullivan, 355 S.C. at 443, 586 S.E.2d at 127. This Court has further elaborated on the holding in Furtick, stating:

> In simple terms, this means that an inmate has a right of review by the ALJD after a *final* decision that he is *ineligible* for parole, but that a parole-eligible inmate does not have the same right of review after a decision denying parole; the parole board is, however, required to review an inmate's case every twelve months after a negative parole determination. S.C. Code Ann. § 24-21-620 (Supp. 2002). This distinction stems from the fact that parole is a privilege, not a right.

Sullivan, 355 S.C. at 443 n.4, 586 S.E.2d at 124 n.4; see Steele v. Benjamin, 362 S.C. 66, 72, 606 S.E.2d 499, 502 (Ct. App. 2004) ("Furtick established that an inmate has a right to a ALJD review of an agency's final decision denying parole eligibility, but an inmate does not have a right to a review of a denial of parole. The distinction is that the review or consideration for parole is a right granted by statute whereas parole is only a privilege."). However, our Court of Appeals has noted that "[t]he use of the word *permanent* in Sullivan and Furtick does not mean that there must be a permanent denial of parole eligibility before a sufficient liberty interest is involved. It is merely one of the ways that a sufficient liberty interest may be involved." Steele, 362 S.C. at 72, 606 S.E.2d at 502.

As a threshold matter, we find the fact that the Parole Board did not permanently deny Cooper parole is not dispositive and the ALC erred in summarily dismissing the appeal on this basis. To make a decision based solely on the outcome of the Parole Board's decision would be an oversimplification and merely involves a matter of semantics. As noted in Steele, a sufficient liberty interest may be implicated to trigger due process requirements even though the Parole Board's decision did not constitute a permanent denial of parole eligibility. See Steele, 362 S.C. at 72-73, 606 S.E.2d at 503 (holding inmate's complaint that the Department's application of biannual parole review to him constituted an ex post facto violation implicated a protected liberty interest which warranted judicial review under the APA); Id. at 71, 606 S.E.2d at 502 (stating "Sullivan seems to imply that a quantitative analysis of the liberty interest must be conducted" when determining whether the ALJD has subject matter jurisdiction over non-collateral matters).

Here, Cooper clearly was not permanently denied parole eligibility.[4] Moreover, Cooper is not appealing the denial of parole. Instead, he is challenging through his appeal the Parole Board's failure to utilize the procedure promulgated by the Legislature in section 24-21-640 of the South Carolina Code and the criteria established by the Parole Board pursuant to this statute. Thus, the question becomes whether Cooper's claim raises a sufficient state-created liberty interest to trigger due process requirements. If a Parole Board deviates from or fails to render its decision without consideration of the appropriate criteria, we believe it essentially abrogates an inmate's right to parole eligibility and, thus, infringes on a state-created liberty interest.

Undoubtedly, the Parole Board is the sole authority with respect to decisions regarding the grant or denial of parole. However, the Legislature created this Board to operate within certain parameters. We do not believe the Legislature established the Board and intended for it to render decisions without any means of accountability.

[4] During the course of this appeal, Cooper may have received another review by the Parole Board in June 2006 and June 2007.

In the instant case, the Parole Board denied Cooper's parole apparently without giving credence to section 24-21-640 or its own criteria. The Parole Board rejected Cooper's parole for three limited reasons: (1) the nature and seriousness of the current offense; (2) an indication of violence in this or a previous offense; and (3) the use of a deadly weapon in this or a previous offense.[5] Each of these reasons, as Cooper points out, "are fixed as of the date of the offense and can never . . . be changed by the actions of [Cooper] while incarcerated." Parole is a privilege and Cooper has no right to be paroled; however, Cooper does have a right to require the Board to adhere to statutory requirements in rendering a decision. We find the apparent failure by the Parole Board to consider the requisite statutory criteria in rendering its decision constitutes an infringement of a state-created liberty interest and, thus, warrants minimal due process procedures. Therefore, we hold, Cooper's appeal was appropriate for disposition under the APA and should have been reviewed by the ALC.

We recognize the Department's concern that a decision affirming the circuit court and remanding to the ALC will create an overabundance of appeals from denials of parole. However, we believe this concern will be alleviated if the Parole Board issues orders that are sufficiently detailed for the ALC to conduct appellate review, limited to the Board's adherence to section 24-21-640, of decisions denying parole. Because the limited appeal of parole decisions is governed by the APA, the Parole Board and the ALC must comply with its provisions. Pursuant to the terms of the APA, a final decision in an agency adjudication of a contested case "shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings." S.C. Code Ann. § 1-23-350 (2005).[6]

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[5] These reasons would be sufficient to deny parole in the Board's discretion, if the Board's decision evinced consideration of section 24-21-640 and its own criteria.

[6] We are cognizant of the unique status accorded parole and our precedent of limited appellate review notwithstanding the APA.

Here, the Parole Board apparently only considered the nature of Cooper's crime when it rejected his request based on three limited reasons. Because the Parole Board neither offered an explanation nor indicated that it had considered the statutory criteria of section 24-21-640 and the fifteen criteria listed on the parole form, the order was defective. Therefore, we, as did the circuit court, can only conclude that the Parole Board's decision was arbitrary and capricious.

We emphasize that in future parole review hearings the Parole Board may avoid the result in the instant case if it clearly states in its order denying parole that it considered the factors outlined in section 24-21-640 and the fifteen factors published in its parole form. If the Board complies with this procedure, the decision will constitute a routine denial of parole and the ALC would have limited authority to review the decision to determine whether the Board followed proper procedure. Under that scenario, the ALC can summarily dismiss the inmate's appeal.[7]

II.

The Department asserts the Parole Board did not violate the Ex Post Facto clause in denying Cooper parole. The Department contends the detailed factors on the parole form, used by the Parole Board, were based on the statutory criteria of section 24-21-640. In response, Cooper appears to challenge the authority of the Parole Board to create these detailed factors. Cooper contends that by creating these factors the Parole Board "effectively changed the standards for granting parole and retroactively applied it to [his] offenses which were committed before the establishment of these factors." In doing so, Cooper claims

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[7] Notably, Cooper acknowledged at oral argument that the parties would not be before this Court had the Parole Board stated in its order that the section 24-21-640 had been considered as well as the other conditions outlined on the parole form.

the Parole Board changed the law and, thus, violated the Ex Post Facto clause of the South Carolina Constitution.[8]

We agree with the Department's assertion for two reasons. First, Cooper acknowledges that section 24-21-640 has not been substantively amended since he was convicted. This section specifically authorizes the Board to establish written criteria for the granting of parole. Therefore, we find the Parole Board did not exceed its authority by creating the written criteria. Given the Parole Board was authorized to establish these criteria, we do not believe the Parole Board changed the law in violation of the Ex Post Facto clause. See State v. Walls, 348 S.C. 26, 30, 558 S.E.2d 524, 525 (2002) (recognizing that while both the United States and South Carolina Constitutions specifically prohibit ex post facto laws, two critical elements must be present for a law to fall within the prohibition: (1) the law must apply to events that occurred before its enactment; and (2) the offender of the law must be disadvantaged by the law); see also Jernigan v. State, 340 S.C. 256, 261, 531 S.E.2d 507, 509 (2000) (noting ex post facto violation occurs when a change in the law retroactively alters definition of crime or increases punishment for crime). Secondly, it is disingenuous for Cooper to contend the Parole Board exceeded its authority in adopting these written criteria when his primary complaint is that the Parole Board failed to consider any other factors than the three reasons given for the denial of his parole.

Although we disagree with the circuit court's finding that the Parole Board violated the Ex Post Facto clause, we agree with the court's ultimate conclusion that the Board failed to apply the statutory criteria of section 24-21-640 in denying Cooper's petition for parole. Therefore, we modify the circuit court's order with respect to this issue.

[8] The Constitutions of the United States and of South Carolina specifically prohibit the passage of ex post facto laws. U.S. Const. art. I, § 10; S.C. Const. art. I, § 4.

CONCLUSION

Based on the foregoing, we hold the ALC had jurisdiction to review Cooper's appeal. Because Cooper is not appealing the denial of parole, but rather, is challenging the method and procedure employed by the Parole Board in reaching its decision, Cooper's claim raises a sufficient liberty interest to trigger due process requirements of judicial review. If a Parole Board fails to consider and apply the statutorily-created parole criteria, it has the effect of rendering an inmate parole ineligible, which under Furtick warrants review by the ALC. In the instant case, the Parole Board apparently failed to consider the requisite factors and, instead, based its decision on certain fixed factors that are unaffected by any rehabilitation efforts on the part of Cooper. Accordingly, we affirm as modified the circuit court's order reversing the ALC and remand the matter to the ALC for disposition in accordance with this opinion.

AFFIRMED AS MODIFIED.

TOAL, C.J., MOORE, WALLER and PLEICONES, JJ., concur.

The Supreme Court of South Carolina

In the Matter of Marva A. Hardee-Thomas, Respondent.

ORDER

The Office of Disciplinary Counsel has filed a petition asking this Court to place respondent on interim suspension pursuant to Rule 17(b), RLDE, Rule 413, SCACR, and seeking the appointment of an attorney to protect respondent's clients' interests pursuant to Rule 31, RLDE, Rule 413, SCACR. Respondent consents to the suspension.

IT IS ORDERED that respondent's license to practice law in this state is suspended until further order of the Court.

IT IS FURTHER ORDERED that Richard A. Farrier, Jr., Esquire, is hereby appointed to assume responsibility for respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office account(s) respondent may maintain. Mr. Farrier shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. Mr. Farrier may make disbursements from respondent's

trust account(s), escrow account(s), operating account(s), and any other law office account(s) respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating accounts of respondent, shall serve as an injunction to prevent respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that Richard A. Farrier, Jr., Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Richard A. Farrier, Jr., Esquire, has been duly appointed by this Court and has the authority to receive respondent's mail and the authority to direct that respondent's mail be delivered to Mr. Farrier's office.

This appointment shall be for a period of no longer than nine months unless request is made to this Court for an extension.

s/ Jean H. Toal C.J.
FOR THE COURT

Columbia, South Carolina

April 30, 2008

The Supreme Court of South Carolina

In the Matter of Derwin T. Brannon, Respondent.

ORDER

The Office of Disciplinary Counsel has filed a petition asking this Court to place respondent on interim suspension pursuant to Rule 17(c), RLDE, Rule 413, SCACR, and seeking the appointment of an attorney to protect respondent's clients' interests pursuant to Rule 31, RLDE, Rule 413, SCACR.

IT IS ORDERED that respondent's license to practice law in this state is suspended until further order of the Court.

IT IS FURTHER ORDERED that Tracey C. Green, Esquire, is hereby appointed to assume responsibility for respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office account(s) respondent may maintain. Mr. Green shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. Mr. Green may make disbursements from respondent's

trust account(s), escrow account(s), operating account(s), and any other law office account(s) respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating accounts of respondent, shall serve as an injunction to prevent respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that Tracey C. Green, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Tracey C. Green, Esquire, has been duly appointed by this Court and has the authority to receive respondent's mail and the authority to direct that respondent's mail be delivered to Mr. Green's office.

This appointment shall be for a period of no longer than nine months unless request is made to this Court for an extension.

IT IS SO ORDERED.

s/ Jean H. Toal C.J.

FOR THE COURT

Columbia, South Carolina

April 30, 2008

The Supreme Court of South Carolina

RE: Amendment to Court-Annexed Alternative Dispute Resolution Rules

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O R D E R

By order dated January 31, 2008 (copy attached), this Court adopted an amendment to the South Carolina Court-Annexed Alternative Dispute Resolution Rules and this amendment was submitted to the General Assembly pursuant to Art. V, § 4A, of the South Carolina Constitution. Since ninety days have passed since submission without rejection by the General Assembly, this amendment is effective immediately.

IT IS SO ORDERED.

s/ Jean H. Toal C.J.

s/ James E. Moore J.

s/ John H. Waller, Jr. J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

Columbia, South Carolina
May 1, 2008

The Supreme Court of South Carolina

In re: Amendments to Court-Annexed Alternative Dispute Resolution Rules

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O R D E R

Pursuant to Article V, § 4 of the South Carolina Constitution, Rule 8(a) of the South Carolina Court-Annexed Alternative Dispute Resolution Rules is hereby amended as provided in the attachment to this order. This amendment shall be submitted to the General Assembly as provided by Art. V, § 4A of the South Carolina Constitution.

IT IS SO ORDERED.

s/ Jean H. Toal C.J.

s/ James E. Moore J.

s/ John H. Waller, Jr. J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

Columbia, South Carolina
January 31, 2008

Rule 8
Confidentiality

(a) Confidentiality. Communications during a mediation settlement conference shall be confidential. Additionally, the parties, their attorneys and any other person present must execute an Agreement to Mediate that protects the confidentiality of the process. To that end, the parties and any other person present shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial or other proceeding, any oral or written communications having occurred in a mediation proceeding, including, but not limited to:

(1) Views expressed or suggestions made by another party or any other person present with respect to a possible settlement of the dispute;

(2) Admissions made in the course of the mediation proceeding by another party or any other person present;

(3) Proposals made or views expressed by the mediator;

(4) The fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator; or

(5) All records, reports or other documents created solely for use in the mediation.

. . . .

The Supreme Court of South Carolina

RE: Amendments to the South Carolina Appellate Court Rules

O R D E R

By order dated January 31, 2008 (copy attached), this Court adopted amendments to the South Carolina Appellate Court Rules and these amendments were submitted to the General Assembly pursuant to Art. V, § 4A, of the South Carolina Constitution. Since ninety days have passed since submission without rejection by the General Assembly, these amendments are effective immediately.

IT IS SO ORDERED.

s/ Jean H. Toal C.J.

s/ James E. Moore J.

s/ John H. Waller, Jr. J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

Columbia, South Carolina
May 1, 2008

The Supreme Court of South Carolina

RE: Amendments to the South Carolina Appellate Court Rules

ORDER

Pursuant to Article V, §4 of the South Carolina Constitution, the attached amendments are made to the South Carolina Appellate Court Rules. These rule amendments shall be submitted to the General Assembly as provided by Article V, § 4A of the South Carolina Constitution.

IT IS SO ORDERED.

s/ Jean H. Toal C.J.

s/ James E. Moore J.

s/ John H. Waller, Jr. J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

Columbia, South Carolina
January 31, 2008

AMENDMENTS TO THE SOUTH CAROLINA APPELLATE COURT RULES

1. Rule 203(d)(1)(B) is amended to read:

(B) When and What to File. The notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served. The notice filed with the appellate court shall be accompanied by the following:

(i) Proof of service showing that the notice has been served on all respondents;

(ii) A copy of the order(s) and judgment(s) to be challenged on appeal if they have been reduced to writing;

(iii) A filing fee as set by order of the Supreme Court;[1] this fee is not required for criminal appeals or appeals by the State of South Carolina or its departments or agencies;

(iv) If the appeal is from a guilty plea, an Alford[2] plea or a plea of nolo contendere, a written explanation showing that there is an issue which can be reviewed on appeal. This explanation should identify the issue(s) to be raised on appeal and the factual basis for the issue(s) including how the issue(s) was raised below and the ruling of the lower court on that issue(s). If an issue was not raised to and ruled on by the lower court, the explanation shall include argument and citation to legal authority showing how this issue can be reviewed on appeal. If the appellant fails to make a sufficient showing, the notice of appeal may be dismissed;

[1] By order dated April 17, 1990, this filing fee was set at one hundred ($100.00) dollars.

[2] North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)

(v) If the notice of appeal is from a post-conviction relief case and the lower court determined that the post-conviction relief action is barred as successive or being untimely under the statute of limitations, the written explanation required by Rule 227(c), SCACR; and,

(vi) If the notice of appeal is from a habeas corpus proceeding and the lower court determined that habeas corpus relief was improper because the issues could have been raised in a timely application under the Post-Conviction Relief Act (see Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (1998)), a written explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper. If the appellant fails to make a sufficient showing, the notice of appeal may be dismissed.

2. Rule 203(d)(1)(C) is deleted. This provision is duplicative of Rule 203(e)(1).

3. Rule 210(b) is amended to read as follows:

(b) Time for Filing. The appellant must file with the clerk of the appellate court fifteen (15) copies of the Record on Appeal no later than the date his brief(s) are due under Rule 211. As provided by Rule 238(d), one copy filed with the appellate court shall be filed unbound. The appellate court may require an appellant to file additional copies of the Record on Appeal.

4. Rule 211(a) is amended to read as follows:

(a) Time to Serve and File. Within twenty (20) days after the service of the Record on Appeal, each party shall serve a copy of his final brief(s) on every other party to the appeal, and file fifteen (15) copies of the final brief(s) with the clerk of the appellate court. As provided by Rule 238(d), one copy filed with the appellate court shall

be filed unbound. The party must also file with the clerk proof that the final brief(s) has been served, and a certificate that his final brief(s) complies with Rule 211(b). The appellate court may require a party to file additional copies of its brief(s).

5. The portion of Rule 226(e) before the colon is amended to read:

(e) Appendix. At the same time the petition is filed, the petitioner shall also file two (2) copies of the Appendix with the Clerk of the Supreme Court. As provided by Rule 238(d), one copy filed with the Supreme Court shall be filed unbound. The Appendix shall include the following:

6. Rule 227(d) is amended to read:

(d) Service and Filing of Petition and Appendix. Within thirty (30) days of receipt of the transcript, petitioner shall serve a copy of the Appendix and petition for writ of certiorari on opposing counsel and shall file with the Clerk of the Supreme Court an original plus six (6) copies of the petition, two (2) copies of the Appendix, and proof of service showing the Appendix and petition have been served. As provided by Rule 238(d), one copy of the Appendix filed with the Supreme Court shall be filed unbound.

7. Rule 238(d) is amended to read as follows:

(**d) Margins and Bindings.** Typewritten papers or reproductions must have a blank margin of an inch and a half on the left. If more than two sheets are used, they shall be securely fastened on the left margin. While petitions or motions need not be bound, Records on Appeal, Appendices in post-conviction relief matters and briefs must be bound in volumes not exceeding 250 sheets each. If staples or clasps are used to bind the volumes, the spines of the volumes shall be bound with heavy tape. One copy of every Final Brief, Record on Appeal, Supplemental Record, or Appendix filed with the appellate court shall be filed unbound.

The Supreme Court of South Carolina

RE: Amendments to the South Carolina Rules of Magistrates Court

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O R D E R

By order dated January 31, 2008 (copy attached), this Court adopted amendments to the South Carolina Rules of Magistrates Court (SCRMC) and these amendments were submitted to the General Assembly pursuant to Art. V, § 4A, of the South Carolina Constitution. Since ninety days have passed since submission without rejection by the General Assembly, these amendments are effective immediately. Rules 6(k) and 20, SCRMC, however, shall not be effective to the extent that they may be inconsistent with S.C. Code Ann. §§22-3-120 and 22-3-220 (2007).[1]

IT IS SO ORDERED.

s/ Jean H. Toal C.J.

s/ James E. Moore J.

[1] Senate Bill 1221, which has passed the Senate and is pending in the House, will eliminate any conflict. If this bill becomes law, Rule 6(k) and 20 shall be fully effective without any further order of this Court.

s/ John H. Waller, Jr. J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

Columbia, South Carolina
May 1, 2008

The Supreme Court of South Carolina

In re: Amendments to the South Carolina Rules of Magistrates Court

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O R D E R

Pursuant to Article V, § 4 of the South Carolina Constitution, the South Carolina Rules of Magistrates Court are hereby amended as provided in the attachment to this order. These amendments shall be submitted to the General Assembly as provided by Art. V, § 4A of the South Carolina Constitution.

IT IS SO ORDERED.

s/ Jean H. Toal C.J.

s/ James E. Moore J.

s/ John H. Waller, Jr. J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

Columbia, South Carolina
January 31, 2008

SOUTH CAROLINA RULES OF MAGISTRATES COURT

SCOPE & PURPOSE

These rules govern civil procedure in the magistrates courts. They are to be known and cited as the "South Carolina Rules of Magistrates Court." They shall be construed to secure the just, speedy, and inexpensive determination of every civil case within the jurisdiction of the magistrates court. All civil actions in the magistrates court shall be conducted in such a manner as to do substantial justice between the parties according to the rules of substantive law. Provided, however, the time limits for taking any actions under these rules shall not apply where different time limits are specified by statute.

RULE 1
DEFINITIONS

"Amendment" means making a change in a complaint, answer, or counterclaim.

"Answer" means the paper filed by the party responding to the complaint.

"Complaint" means the paper containing the claim filed by the plaintiff.

"Counterclaim" means the paper containing a claim by a defendant against a plaintiff.

"Court" means the judge of the magistrates court.

"Default" means failure to respond to the complaint or failure to appear at trial.

"Defendant" means the party against whom the plaintiff has filed a complaint.

"Execution" means enforcement of the judgment.

"Judgment" means the decision of the court on the case.

"Party" means either a plaintiff or a defendant.

"Plaintiff" means the party filing the complaint.

"Subpoena" means an order of the court requiring a witness to attend and testify at a specified place and time.

"Summons" means the paper issued by the court which orders the defendant to respond to the complaint.

"Working day" means a day which is not a Saturday, Sunday, or legal holiday under state or federal law.

RULE 2
APPLICATION OF STATUTORY LAW AND CIRCUIT COURT PRACTICE IN ABSENCE OF RULE

These rules shall govern all civil suits in the magistrates court. If no procedure is provided by these rules, the court shall proceed in a manner consistent with the statutory law applicable to magistrates and with circuit court practice in similar situations but not inconsistent with these rules.

RULE 3
COMPUTATION OF TIME PERIODS

In computing any period of time prescribed or allowed by these rules, by order of the court, or by any applicable statute, the day of the act, event, or default after which the designated period begins to run is not to be included. The last day of the period so computed is to be included in the period unless it is not a working day, in which event the period runs until the end of the next day which is a working day. When the period of time prescribed or allowed is less than seven days, Saturdays, Sundays, and holidays shall be excluded in the computation. A half holiday shall be construed as a working day.

RULE 4
FILING CIVIL ACTION; ACTION AGAINST CORPORATION; LONG ARM STATUTE

(a) A civil action may be filed in any magistrates court in the county in which at least one defendant resides or where the most substantial part of the cause of action arose, except that civil actions against domestic corporations may be filed in the county where such corporation shall have its principal place of business.

(b) A civil action may be filed in any magistrates court in the county in which the plaintiff resides or where the cause of action arose when the defendant does not reside in this State and jurisdiction is based upon S.C. Code Ann. § 36-2-803.

RULE 5
COMPLAINT

(a) A suit is commenced by filing with the magistrates court a short and plain written statement of the facts showing what the plaintiff claims and why the claim is made. Provided, however, upon a personal appearance, the plaintiff may make an oral statement which shall be reduced to writing. The court or court personnel shall assist the plaintiff in reducing the statement to writing if the court determines assistance is required. This statement shall be called a complaint. A plaintiff may combine as many claims as the plaintiff has against a defendant in one case and may sue more than one defendant in one case if the claim involves all of the defendants.

(b) The plaintiff shall state on the complaint the address to which the court may mail notices and correspondence concerning the case. If the plaintiff's mailing address changes, the plaintiff must advise the court in writing. The court may notify the plaintiff of all proceedings incident to the case by mailing the notice by regular mail to the plaintiff at the address provided.

(c) A plaintiff who desires to file an action without costs shall file a motion for leave to proceed *in forma pauperis*, together with the complaint proposed to be filed and an affidavit showing the plaintiff's inability to pay

the fee required to file the action. If the motion is granted, the plaintiff may proceed without further application and file the complaint in the court without payment of filing fees.

RULE 6
SUMMONS; SERVICE

(a) Upon the filing of the complaint and a copy with any attachments for each defendant, the court shall issue a summons. A copy of the original summons, along with a copy of the complaint and any attachments, shall be served on each defendant.

(b) The summons shall contain the name of the State and county, the name of the court, the file number of the action, and the names of the parties, be directed to the defendant, and shall state the time within which these rules require the defendant to file an answer and any counterclaim, and shall notify the defendant that in case of failure to do so, judgment by default will be rendered against the defendant for the relief demanded in the complaint.

(c) Service of the summons may be made by the sheriff, the sheriff's deputy, a magistrate's constable, or by any other person not less than eighteen (18) years of age, who is not an attorney in or a party to the action. Service of all other process shall be made by the sheriff or the sheriff's deputy, a magistrate's constable, or any other duly constituted law enforcement officer, or by any person designated by the court who is not less than eighteen (18) years of age and who is not an attorney in or a party to the action.

(d) The summons and complaint must be served together. The plaintiff shall furnish the person making service with as many copies as are necessary. Voluntary appearance made by the defendant is equivalent to personal service. Service shall be made as follows:

> **(1) Individuals.** Upon an individual other than a minor under the age of fourteen (14) years or an incompetent person, by delivering a

copy of the summons and complaint to the individual personally or by leaving copies of the summons and complaint at the individual's dwelling house or usual place of abode with a resident of suitable age and discretion, or by delivering a copy to an agent authorized by appointment or by law to receive service of process.

(2) Minors and Incompetents. Upon a minor under the age of fourteen (14) years, a person judicially declared incapable of conducting the person's own affairs, or an incompetent person, by delivering a copy of the summons and complaint to the minor or incompetent person personally and also a copy to (a) the person's guardian or committee or, if there is no guardian or committee within the State, upon (b) a parent or other person having care and control of the person, or (c) any competent person with whom the person resides or (d) by whom the person is employed. If the individual upon whom service is made is a minor between the ages of fourteen (14) and eighteen (18) who lives with a parent or guardian, a copy of the summons and complaint shall also be served upon the parent or guardian if the parent or guardian resides within the State. Service on persons confined shall also conform to the provisions of S.C. Code Ann. § 15-9-510.

(3) Corporations and Partnerships. Upon a corporation, a partnership, or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process, and if the agent is one authorized by statute to receive service and the statute requires it, by also mailing a copy to the defendant.

(4) Governmental Subdivision. Upon a municipal corporation, county, or other governmental or political subdivision subject to suit in the magistrates court, by delivering a copy of the summons and complaint to the governmental subdivision's chief executive officer or clerk, or by serving the summons and complaint in the manner prescribed by statute for the service of summons and complaint or any similar process upon this type of defendant.

(5) Statutory Service. Service upon a defendant of any class referred to in paragraph (d)(1) or (d)(3) of this rule is also sufficient if the summons and complaint are served in the manner prescribed by statute.

(6) Service by Certified Mail. Service of a summons, complaint, and any appropriate attachments upon a defendant of any class referred to in paragraph (d)(1) or (d)(3) of this rule may be made by certified mail, return receipt requested and delivery restricted to the addressee. Service is effective upon the date of delivery as shown on the return receipt. Service pursuant to this paragraph shall not be the basis for the entry of a default judgment unless the record contains a return receipt showing the acceptance by the defendant. Any default judgment shall be set aside pursuant to Rule 12 if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person. If delivery is refused or is returned undelivered, service shall be made as otherwise provided by these rules.

(e) Same: Other Service. Whenever a statute or an order of the court provides for service of a summons and complaint, or an order upon a party not an inhabitant or found within the county of the court's jurisdiction, service shall be made under the circumstance and in the manner prescribed by the statute, rule, or order.

(f) Territorial Limits of Effective Service. All process other than a subpoena may be served anywhere within the territorial limits of the State and, when a statute so provides, beyond the territorial limits of the State. A subpoena may be served within the county of the court's jurisdiction. Nothing in this subdivision is meant to extend the jurisdiction of the magistrates court beyond the limits otherwise established by law.

(g) Proof and Return. The person serving the process shall promptly make proof of service and deliver it to the court. If served by the sheriff, the sheriff's deputy, or a magistrate's constable, proof of service shall be made by certificate. If served by any other person, the person shall make an affidavit of service. If served by publication, the printer or publisher shall

make an affidavit of publication, and an affidavit of mailing shall be made to the party or the party's attorney if mailing of process is permitted or required by law. Failure to make proof of service does not affect the validity of service. The proof of service shall state the date, time, and place of service and a description of the person actually served. If service was by mail, the person serving process shall show in the proof of service the date and place of mailing, and attach a copy of the return receipt or the returned envelope showing whether the mailing was accepted, refused, or otherwise returned. If the mailing was refused, the return shall also show proof of any further service on the defendant pursuant to paragraph (d)(6) of this rule. The return along with the receipt or envelope and any other proof shall be promptly filed with the court with the pleadings and become a part of the record.

(h) Proof of Service Outside the State. When the service is made outside of the State, the proof of service may be made by affidavit before:

(1) Any person in this State authorized to make an affidavit;

(2) A commissioner of deeds for this State;

(3) A notary public who shall affix to the proof of service an official seal;

(4) A clerk of court of record who shall certify the same by an official seal; or,

(5) If made outside the limits of the United States, a consul, vice-consul, or consular agent of the United States who shall use in the certificate an official seal.

(i) Amendment. At any time in its discretion and upon terms it deems just, the court may, by written order, allow any process or proof of service to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(j) Acceptance of Service. No other proof of service shall be required when acceptance of service is acknowledged in writing and signed by the

person served or the person's attorney and delivered to the court. The acknowledgement shall state the place and date service is accepted.

(k) Dismissal of Summons and Complaint. Subject to the provisions of any statute, rule, or order, a magistrate may dismiss a summons and complaint against any or all defendants without prejudice to the plaintiff if service of process cannot be obtained within one hundred twenty (120) days of the filing of the complaint.

RULE 7
ANSWER AND COUNTERCLAIM; TIME FOR FILING

(a) The defendant may reply to the plaintiff's complaint by filing a written statement in a form approved by the magistrate or by personally appearing and making an oral statement. This reply shall be called an "answer." If the defendant personally appears within the specified time period and makes an oral answer, it shall be reduced to writing. The court or court personnel shall assist the defendant in reducing the answer to writing if the court determines assistance is required. The defendant's answer may deny in total or in part any or all of the material allegations made in the plaintiff's complaint, and/or allege any new matter constituting a defense. The court shall deliver a copy of the answer to the plaintiff in a manner provided for in Rule 8.

(b) A defendant shall file an answer and any appropriate counterclaims with the court within thirty (30) days from the first day after the date of service. When service is by some other means, as provided for in Rule 6, the defendant shall file the answer and any appropriate counterclaims with the court within the time period designated by the statute, rule, or order, and the time period shall be stated in the summons.

RULE 8
DELIVERY AND FILING OF PLEADINGS AND OTHER PAPERS

(a) Delivery: When required. Every order, pleading after the original summons and complaint, written motion, written notice, appearance, demand, offer of judgment, or similar documents shall be delivered to each of the parties unless otherwise ordered by the court.

(b) Same: How Made. Whenever under these rules delivery of documents is required to be made upon a party represented by an attorney, delivery of the documents shall be made to the attorney unless otherwise ordered by the court. Delivery of a document to a party shall be made by delivering it to that party or by mailing it to the party's last known address or, if no address is known, by filing it with the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the office of the attorney or the party with a clerk or other person in charge of the office; or, if there is no one in charge, leaving it at the party's usual place of abode with a resident of suitable age and discretion; or mailing it to the last known address of that party. Delivery by mail of all pleadings and papers after service of the original summons and complaint is complete upon mailing.

(c) Service or Delivery on Sunday. Civil process may be served on Sundays, provided that no person may be served going to or from or attending a regularly or specially scheduled church or religious service on Sunday.

RULE 9
COUNTERCLAIM

(a) At any time within the time period specified in these rules for answering the complaint, the defendant may assert a counterclaim which grows out of the same transaction or occurrence as the plaintiff's claim by filing a written statement in a form approved by the magistrate or by personally appearing and making an oral statement. If the defendant personally appears within the specified time period and makes an oral counterclaim, it shall be reduced to writing. The court or court personnel shall assist the defendant in reducing the counterclaim to writing if the court determines assistance is required. The counterclaim shall be delivered to the plaintiff by the court in a manner provided for in Rule 8. The claims contained in the counterclaim shall be deemed denied by the plaintiff and no answer or reply is required to be filed by the plaintiff in response to a counterclaim filed by the defendant.

(b) The defendant in a counterclaim may waive the excess of the claim over the jurisdictional maximum to bring it within the jurisdiction of the magistrates court. If the defendant elects to waive a portion of the counterclaim, a separate action for the remainder of the claim may not be maintained. If the defendant does not waive the excess, the entire action shall be transferred to the circuit court of the county to be considered and tried as if the action had been originally filed in the circuit court as provided for in Rule 13(j), SCRCP.

RULE 10
TRIAL DATE; NOTICE; FAILURE TO ANSWER

(a) Upon the filing of an answer by the defendant, the magistrate shall set the date of trial and deliver notice of the trial date to both parties in a manner provided for in Rule 8.

(b) If the defendant has failed to answer within the time period specified by these rules, the magistrate shall set a hearing date and shall deliver notice of the hearing date to both parties in a manner provided for in Rule 8 when the hearing is necessary for the entering of a default judgment in a manner consistent with Rule 11. At the default hearing, the defendant may participate only by cross-examining witnesses and objecting to evidence.

RULE 11
DEFAULT JUDGMENT; DISMISSAL OF ACTION; DAMAGES

(a) If the defendant does not answer the complaint within the time period specified by these rules or answers within the specified time period but fails to appear at the time set for trial, judgment may be given for the plaintiff by default if the amount of the claim is liquidated. If the claim is unliquidated, and the defendant fails to answer within the time period specified by these rules or answers within the specified time period but then fails to appear at the time set for trial, judgment may be given to the plaintiff by default as in the case of liquidated claims if (1) the plaintiff itemizes the account and attaches an affidavit that it is true and correct and that no part of the sum sued for has been paid by discount or otherwise and (2) a copy of the account and affidavit was served with the summons on the defendant. In all other cases when the

defendant fails to appear or answer, the plaintiff cannot recover without proving damages.

(b) If the plaintiff does not appear at trial, or if neither the plaintiff nor the defendant appears at the time and place specified for trial, the court may enter an order dismissing the action.

(c) If the defendant has filed a counterclaim against the plaintiff and the plaintiff fails to appear at the time set for trial, judgment may be given for the defendant by default if the claim is liquidated. If the claim is unliquidated, and the plaintiff fails to appear at the time set for trial, judgment may be given to the defendant by default as in the case of liquidated demands if (1) the defendant itemizes the account and attaches an affidavit that it is true and correct and that no part of the sum sued for has been paid by discount or otherwise and (2) a copy of the account and affidavit is filed with the answer and is delivered to the plaintiff as provided for in Rule 8. In all other cases when the plaintiff fails to appear, the defendant cannot recover on a counterclaim without proving damages.

(d) If a default hearing is conducted at the time set for trial because either the plaintiff or the defendant failed to appear, no further notice need be given of the default hearing, provided both parties were properly delivered notice of the time set for trial in a manner provided for in Rule 8.

(e) For good cause shown, the court may set aside a default or a default judgment in accordance with Rule 12.

RULE 12
RELIEF FROM JUDGMENT OR ORDER

(a) Clerical mistakes and errors arising from oversight or omission in judgments, orders, or other parts of the record may be corrected by the court at any time of its own initiative or on the motion of any party and after any notice that the court orders. During the pendency of an appeal, leave to correct the mistake must be obtained from the appellate court.

(b) On motion and upon terms that are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 19; (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3), not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of the court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. During the pendency of an appeal, leave to make the motion must be obtained from the appellate court. The procedure for obtaining any relief from judgment shall be by motion as prescribed in these rules, by appeal, or by an independent action.

RULE 13
CONDUCT OF TRIAL; JURY TRIALS; WITNESSES; SUBPOENAS

(a) Trials should be conducted in an informal manner and the South Carolina Rules of Evidence shall apply but shall be relaxed in the interest of justice. In the trial of a civil action, in which one or both parties are unrepresented by legal counsel, the court shall question the parties and witnesses in order to assure that all claims and defenses are fully presented.

(b) Notice of the fact that court personnel will explain to all parties the procedure of the magistrates court and will assist them, if such assistance is required, to fill out all forms that may be necessary or appropriate shall be conspicuously posted in the magistrates office in the following form:

NOTICE TO ALL PARTIES IN CIVIL ACTIONS

THIS OFFICE WILL EXPLAIN THE PROCEDURE OF THE COURT, AND WILL HELP YOU PREPARE PAPERS RELATED TO YOUR ACTION, IF THE COURT DETERMINES SUCH HELP IS REQUIRED.

(c) If either party wants a jury trial, it must be requested in writing at least five (5) working days prior to the original date set for trial.

(d) All testimony shall be given under oath or affirmation.

(e) The court shall have the power to issue subpoenas to compel the attendance of witnesses. The court may issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney as officer of the court may also issue and sign a subpoena on behalf of a court in which the attorney is authorized to practice.

RULE 14
AMENDMENT OF COMPLAINTS, ANSWERS, AND COUNTERCLAIMS; CONTINUANCES

The court shall be lenient in the allowance of changes or amendments to complaints, answers, and counterclaims, and in granting continuances of trials for good cause shown when necessary to serve the ends of justice. However, except in unusual circumstances, no party shall be allowed more than one continuance in any case and all continuances must have the specific approval of the court. Continuances shall be for as short a period as possible, and, where feasible, the wishes of the party not requesting the continuance shall be considered in scheduling a new hearing date. Raising a claim, defense, or counterclaim for the first time at trial shall constitute grounds for a continuance when necessary to serve the ends of justice.

RULE 15
EXCHANGE OF INFORMATION BETWEEN PARTIES; SETTLEMENT

(a) Recognizing the unique nature of the court's jurisdiction and the need for a speedy determination of actions filed in the court, the prompt voluntary exchange of information and documents by parties prior to trial is encouraged, but in no event shall the court require such exchange.

(b) The court, with both parties present, shall confer with the parties before any trial whenever it appears that a conference might simplify the issues, shorten the trial, or lead to a voluntary exchange of information which might promote settlement. The court in its discretion may order that a list of exhibits a party intends to offer into evidence at the trial be furnished to the opposing party and/or that the opposing party be given a reasonable opportunity to copy or examine the exhibits.

RULE 16
DIRECTED VERDICT; JUDGMENT NOTWITHSTANDING THE VERDICT

(a) At the close of evidence offered by a party, if the case presents only questions of law, the court may direct a verdict on its own motion or on motion of either party. The order of the court granting a directed verdict is effective without any assent of a jury.

(b) If, at the close of all the evidence, a directed verdict is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised during the trial of the case if the case is being tried before a jury. If a jury verdict is returned, the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if a directed verdict had been granted. A jury verdict is final if no motion for a new trial or judgment notwithstanding the verdict is filed with the court within five (5) days of the rendering of the jury verdict and the court has not on its own motion ordered a new trial or directed a verdict notwithstanding the jury verdict.

RULE 17
COSTS; NOTICE OF JUDGMENT; ENFORCEMENT

(a) The party recovering judgment shall also recover those costs provided for by law, which shall not be included when determining the jurisdictional amount of the court.

(b) The court shall deliver written notice of judgment to all parties or their attorneys using the procedure described in Rule 8, except that no written notice need be delivered to a party if the judgment is announced at the trial in the presence of that party or the party's attorney.

(c) The process to enforce a judgment for the payment of money shall be by writ of execution and shall be conducted as provided by law.

(d) Upon payment in full, the judgment creditor shall file a statement of collection with the magistrates court and with the Clerk of the Circuit Court, if the judgment had been previously filed with the Clerk of the Circuit Court.

RULE 18
APPEALS

(a) All appeals of judgments rendered by the magistrates court shall be to the circuit court of the county where the judgment was rendered. Within thirty (30) days after delivery of written notice of judgment to the parties or their attorneys, a party wishing to appeal shall serve on the respondent and file a notice of appeal containing a statement of the grounds for appeal with the magistrate rendering the judgment and with the Circuit Court of the County where the judgment was rendered. If the judgment is announced at the trial in the presence of the parties or their attorneys, the notice of appeal shall be served and filed within thirty (30) days of the date the judgment is announced. At the time of the filing of the notice of appeal, the appropriate filing fee shall be paid by the appellant to the clerk of the circuit court to which the appeal is taken, unless a motion for leave to proceed *in forma pauperis* and an affidavit showing the

appellant's inability to pay the fee required to appeal the action accompanies the filing of the notice of appeal. The right of appeal from a judgment exists for thirty (30) days after the denial of a motion for a new trial.

(b) Within thirty (30) days of the date of filing of the notice of appeal with the Circuit Court, the magistrate shall file the return to the notice of appeal with the Clerk of the Circuit Court for the county wherein the judgment was rendered, together with the record, a statement of all proceedings in the case, and, if necessary, the testimony taken at trial. Upon motion for good cause shown, the Circuit Court may allow a definite extension of time in which to file the return.

(c) Pursuant to Rule 75, SCRCP, upon receipt of the magistrate's return, the clerk of the Circuit Court to which the appeal is taken shall give notice in writing to the parties that the return has been filed.

RULE 19
NEW TRIAL; AMENDMENT OF JUDGMENTS

(a) A new trial may be granted to all or any of the parties and on all or part of the issues for any of the reasons for which new trials previously have been granted in the courts of this state. On motion for a new trial in an action tried without a jury, the court may open the judgment, if one has been entered, may take additional testimony, may amend findings of fact and conclusions of law, may make new findings and conclusions, and may direct the entry of a new judgment.

(b) The motion for a new trial shall be made in writing and filed with the court no later than five (5) days after notice of the judgment. The court shall notify all opposing parties that the motion has been filed and shall provide those parties a copy of the motion in a manner provided for in Rule 8.

(c) Not later than five (5) days after entry of judgment, the court, on its own initiative, may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds for granting a new trial.

(d) A motion to alter or amend the judgment shall be filed no later than five (5) days after notice of the judgment. The court shall notify all opposing parties that the motion has been filed and shall provide those parties a copy of the motion in a manner provided for in Rule 8.

(e) Except by consent of the parties, argument on a motion for a new trial or to alter or amend the judgment shall be heard by the magistrate before whom the trial was held. However, the motion may, in the discretion of the court, be decided on briefs filed by the parties without oral argument.

RULE 20
OFFER OF JUDGMENT; CONSEQUENCES OF NON-ACCEPTANCE

(a) Offer of Judgment. No later than ten (10) days prior to trial, either party may serve upon the adverse party an offer to allow judgment to be taken against the party for the money or property or to the effect specified in the offer with costs accrued to the date of the offer. If, within ten (10) days after service of the offer, or at least five (5) days prior to the trial date, whichever date is earlier, the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the court shall enter judgment. An offer that is not accepted shall be deemed rejected and evidence of the offer is not admissible except in a proceeding to determine costs.

(b) Consequences of Non-Acceptance. If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until the entry of the judgment; (2) if the offeror is a plaintiff, eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of judgment; or (3) if the offeror is a defendant, reduction from the judgment or award of eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of the judgment.

(c) This rule shall not abrogate the contractual rights of any party concerning the recovery of attorney's fees or other monies in accordance with the provision of any written contract between the parties to the action.

RULE 21
BUSINESS REPRESENTATION

A business, as defined by S.C. Code Ann. § 33-1-103, may be represented in a civil magistrates court proceeding by a non-lawyer officer, agent, or employee, including attorneys licensed in other jurisdictions and those possessing Limited Certificates of Admission pursuant to Rule 405, SCACR. The representation may be compensated and shall be undertaken at the business's option and with the understanding that the business assumes the risk of any problems incurred as the result of the representation. The court shall require a written authorization from the entity's president, chairperson, general partner, owner, or chief executive officer, or in the case of a person possessing a Limited Certificate, a copy of that certificate, before permitting the representation.

RULE 22
ARGUMENTS ON MOTIONS AND AT TRIAL

The moving party upon a motion shall have the right, at that party's option, to both open and close argument, and the plaintiff shall have the option to have the right to open and close argument upon the trial; except that a party admitting the adverse party's claim in his pleading, and taking upon him the burden of proof, shall have the same privilege. The party having the right to open shall be required to open in full, and in reply may respond in full but may not introduce any new matter.

RULE 23
SUBPOENAS

(a) Any magistrate, on the application of any party to a cause pending in the magistrates court, shall issue a subpoena citing any person whose testimony may be required in the cause to appear and give evidence. The Court may issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney as officer of the court may also issue and sign a subpoena on behalf of a court in which the attorney is authorized to

practice. Every subpoena shall state the name of the court, and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place specified.

(b) A subpoena may be served by the sheriff of any county in which the witness may be found, by the sheriff's deputy, by a constable of the court, or by any other person who is not a party and is not less than eighteen (18) years of age. Service of a subpoena upon a person named in the subpoena shall be made as provided by Rule 6 and Rule 8 (c).

(c) No subpoena shall require a witness to appear in any proceeding not held within the county where that witness resides.

(d) Failure by any person without adequate excuse to obey a subpoena served upon the person may be deemed in contempt of court from which the subpoena issued.

(e) A witness subpoenaed to attend a proceeding under these rules shall receive for each day's attendance and for the time necessarily occupied in going to and returning from the proceeding $25.00 per day and mileage in the same amount as provided by law for official travel of State officers and employees.

(f) In case it shall appear to the satisfaction of any magistrate that the attendance of any witness whose testimony may be required in any case pending before the magistrate cannot be had because of just cause for the witness' absence, extreme age, sickness or infirmity, or when the witness does not reside in the county of the court's jurisdiction, the magistrate may take the examination of such witness or cause it to be done by another magistrate or other officer authorized by law to administer oaths, to be used in evidence on the trial of the case. All parties to the cause shall have notice of the examination so that they may examine or cross-examine the witness. When the examination is made by another, it shall be recorded and sealed, with the title of the case endorsed, and conveyed by a disinterested person to the magistrate authorizing it or mailed postage prepaid to that magistrate.

RULE 24
FORMS

The use of the following forms in the magistrates court is recommended. The magistrates court shall make these forms available without charge to any person who is a litigant in an action before the court. Subject to the approval of the Supreme Court, the Office of Court Administration shall make amendments to these forms and add forms as is deemed appropriate.

[1] SUMMONS
[2] COMPLAINT
[3] INSTRUCTIONS TO DEFENDANT
[4] ANSWER
[5] JUDGMENT
[6] COUNTERCLAIM
[7] INSTRUCTIONS TO PLAINTIFF
[8] AMENDMENT TO COMPLAINT
[9] SUBPOENA OF WITNESS
[10] DISMISSAL
[11] SATISFACTION OF JUDGMENT
[12] PARTIAL SATISFACTION OF JUDGMENT
[13] PETITION AND ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM
[14] NOTICE OF INTENTION TO SEEK CHANGE OF VENUE
[15] AFFIDAVIT FOR CHANGE OF VENUE
[16] ORDER FOR CHANGE OF VENUE
[17] AFFIDAVIT AND ITEMIZATION OF ACCOUNTS
[18] AFFIDAVIT OF DEFAULT
[19] NOTICE OF EXCEPTION TO SURETIES
[20] NOTICE
[21] NOTICE OF CIVIL APPEAL
[22] NOTICE OF DEFAULT JUDGMENT
[23] JURY SUMMONS
[24] JURY DUTY CERTIFICATION
[25] BOND UNDERTAKING AND ORDER
[26] MEMORANDUM OF COSTS

[27] AFFIDAVIT (Claim and Delivery)
[28] AFFIDAVIT AND CLAIM FOR IMMEDIATE DELIVERY OF PROPERTY (Claim and Delivery)
[29] ORDER OF IMMEDIATE POSSESSION
[30] UNDERTAKING BY SURETY AND APPROVAL (Claim and Delivery)
[31] NOTICE OF RIGHT TO A PRESEIZURE HEARING (Claim and Delivery)
[32] ORDER RESTRAINING DAMAGE OR CONCEALMENT OF PROPERTY (Claim and Delivery)
[33] APPLICATION FOR EJECTMENT (Eviction)
[34] RULE TO VACATE OR SHOW CAUSE (Eviction)
[35] WRIT OF EJECTMENT (Eviction)
[36] AFFIDAVIT OF PLAINTIFF (Distraint)
[37] NOTICE OF PREDISTRESS HEARING (Distraint)
[38] AFFIDAVIT OF ABANDONMENT (Distraint)
[39] AFFIDAVIT (Attachment)
[40] BOND UNDERTAKING AND APPROVAL (Attachment)
[41] WARRANT OF ATTACHMENT
[42] MOTION AND AFFIDAVIT TO PROCEED *IN FORMA PAUPERIS*
[43] MOTION AND AFFIDAVIT FOR EMERGENCY HEARING (Protection from Domestic Abuse Act)
[44] SUMMONS (Protection from Domestic Abuse Act)
[45] PETITION FOR ORDER OF PROTECTION (Protection from Domestic Abuse Act)
[46] ORDER OF PROTECTION (Protection from Domestic Abuse Act)
[47] ORDER DENYING RELIEF (Protection from Domestic Abuse Act)
[48] TRANSMITTAL FORM FOR DOCUMENTS (Protection from Domestic Abuse Act)
[49] AFFIDAVIT OF SERVICE
[50] COMPLAINT AND MOTION FOR RESTRAINING ORDER (Harassment and Stalking)
[51] SUMMONS (RESTRAINING ORDER) (Harassment and Stalking)
[52] RESTRAINING ORDER (Harassment and Stalking)
[53] MOTION AND AFFIDAVIT FOR EMERGENCY HEARING (TEMPORARY RESTRAINING ORDER) (Harassment and Stalking)
[54] TEMPORARY (EX PARTE) RESTRAINING ORDER (Harassment and Stalking)

[55] NOTICE AND MOTION TO EXTEND RESTRAINING ORDER (Harassment and Stalking)
[56] RULE TO SHOW CAUSE (Harassment and Stalking)
[57] COMPLAINT FOR INTERPLEADER
[58] SUMMONS (INTERPLEADER)
[59] ANSWER TO COMPLAINT IN INTERPLEADER
[60] ORDER FOR INTERPLEADER AND SUMMONS FOR HEARING
[61] JUDGMENT IN INTERPLEADER ACTION
[62] AUTHORIZATION FOR NON-LAWYER REPRESENTATIVE
[63] AUTHORIZATION FOR NON-LAWYER REPRESENTATIVE

The Supreme Court of South Carolina

RE: Amendment to the South Carolina Rules of Civil Procedure

O R D E R

By order dated January 31, 2008 (copy attached), this Court adopted an amendment to the South Carolina Rules of Civil Procedure and this amendment was submitted to the General Assembly pursuant to Art. V, § 4A, of the South Carolina Constitution. Since ninety days have passed since submission without rejection by the General Assembly, the amendment is effective immediately.

IT IS SO ORDERED.

s/ Jean H. Toal C.J.

s/ James E. Moore J.

s/ John H. Waller, Jr. J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

Columbia, South Carolina
May 1, 2008

The Supreme Court of South Carolina

In re: Amendments to South Carolina Rules of Civil Procedure

O R D E R

Pursuant to Article V, § 4 of the South Carolina Constitution, Rule 33(b) of the South Carolina Rules of Civil Procedure is hereby amended as provided in the attachment to this order. This amendment shall be submitted to the General Assembly as provided by Art. V, § 4A of the South Carolina Constitution.

IT IS SO ORDERED.

s/ Jean H. Toal C.J.

s/ James E. Moore J.

s/ John H. Waller, Jr. J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

Columbia, South Carolina
January 31, 2008

AMENDMENTS TO THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE

Rule 33(b), SCRCP, is hereby amended as follows:

RULE 33
INTERROGATORIES TO PARTIES

. . .

(b) Standard Interrogatories. In all cases the following standard interrogatories may be served by one party upon another unless otherwise ordered by the court for good cause shown. The interrogatories shall be deemed to continue from the time of service, until the time of trial of the action so that information sought, which comes to the knowledge of a party, or his representative or attorney, after original answers to interrogatories have been submitted, shall be promptly transmitted to the other party.

. . .

(8) [Defendants only.] If the defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

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

. . . .

The Supreme Court of South Carolina
P. O. Box 11330
Columbia, South Carolina 29211

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