

The Supreme Court of South Carolina

RE: Requests for Special Testing Accommodations

ORDER

The attached forms are hereby approved for use for Requests for Special Testing Accommodations on the Uniform Bar Examination administered in South Carolina.

s/ Costa M. Pleicones C.J.
FOR THE COURT

Columbia, South Carolina

August 19, 2016

**BOARD OF LAW EXAMINERS OF THE STATE OF SOUTH CAROLINA
REQUEST FOR SPECIAL TESTING ACCOMMODATIONS
FORM A**

(to be completed by all applicants requesting testing accommodations)

TO: The Board of Law Examiners of the State of South Carolina
P.O. Box 11330
Columbia, South Carolina 29211

FROM: _____
(Name) (Address)

(City, State, Zip)
_____ Home Telephone
_____ Work Telephone
_____ Cell Number

EXAM APPLIED FOR: _____

I. NATURE OF YOUR DISABILITY (CHECK ALL THAT APPLY)

- ___ Blind
- ___ Visually Impaired
If yes, please explain.

- ___ Physical Disability
If yes, please explain _____

- ___ Specific Learning Disability
If yes, please explain.

- ___ Psychological Disability
If yes, please explain.

- ___ Hearing Impaired
If yes, please explain.

1. When was your disability first diagnosed?

By whom? _____

2. Number of times treated by licensed physician or qualified professional during the past three years? _____

II. PRIOR TESTING
SAT, ACT, GRE, or GMAT

1. Give dates and scores obtained on all sittings of the above listed examinations.

Test _____ Date _____ Score _____
Test _____ Date _____ Score _____
Test _____ Date _____ Score _____

2. Did you apply for testing accommodations for any of the above examinations? ___ Yes ___ No

3. If yes, identify each test and date, whether you were granted or denied accommodations, and the accommodations granted or denied (if extra time was granted, identify how much (i.e. 15 minutes per exam, time and one-half per exam session, etc.).

COLLEGE AND GRADUATE SCHOOL (Other than law school)

1. Did you use disabled-services while you were enrolled in college or graduate school? ___ Yes ___ No
If yes, identify the school, provide dates of each school year you were granted accommodations, and list all accommodations received.

2. Did you request additional testing time for any exams while you were in college or graduate school? ___ Yes ___ No

3. If yes, identify the school, whether you were granted or denied extra time, and provide dates of each school year during which you received accommodations; if granted additional time, state how much additional time was granted (i.e. 15 minutes per exam, time and one-half per exam, etc.).

4. Describe any additional accommodations you were granted while in college or graduate school and provide dates of each school year during which you received the accommodations.

LAW SCHOOL ADMISSIONS TEST (LSAT)

1. Give dates and scores obtained on all sittings of the LSAT.

Date _____ Score _____

Date _____ Score _____

Date _____ Score _____

2. Did you apply for testing accommodations for any sitting of the LSAT?
___ Yes ___ No

3. If yes, identify each test date, whether you were granted or denied accommodations, and describe the accommodations granted or denied. If extra time was granted, state how much additional time was granted (i.e. 15 minutes per section, time and one-half per exam).

LAW SCHOOL (your law school must Complete Form E if you were granted accommodations in law school)

1. Did you apply for special accommodations for any exams during law school? ___ Yes ___ No
2. If yes, state whether you were granted or denied accommodations, provide date of each school year during which you received accommodations, and list the accommodations granted or denied. If extra time was granted, state how much additional time was granted (i.e., 15 minutes per exam, time and one-half, etc.).

MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION (MPRE)

1. Give dates and scores obtained on all sittings of the MPRE.

Date _____ Score _____
Date _____ Score _____
Date _____ Score _____
2. Did you apply for testing accommodations for any sitting of the MPRE?
___ Yes ___ No
3. If yes, identify each test date, whether you were granted or denied accommodations, and list the accommodations granted or denied. If extra time was granted, state how much additional time was granted (i.e. 15 minutes, time and one-half, etc.).

OTHER BAR EXAMINATIONS (if you were granted accommodations in any other jurisdiction(s), that jurisdiction(s) must complete Form F)

1. Have you taken the bar examination in any other jurisdiction?
 Yes No

2. If yes, identify the jurisdiction(s), the date of each examination, and the result of each examination. _____

3. Did you request special accommodations for the bar examination?
 Yes No

If yes, identify the jurisdiction, whether you were granted or denied accommodations, list the accommodations granted or denied, and specify date of the examination. If extra time was granted, state how much additional time was granted (i.e. 15 minutes per session, one hour per session, time and one-half per session, etc.).

The Board of Law Examiners may require the applicant obtain documentation from testing institutions, schools, or other jurisdictions to support the Request for Special Accommodations.

II. REQUEST FOR SPECIFIC ACCOMMODATIONS (Check all you believe are necessary for you to take the Uniform Bar Examination in South Carolina)

- | | |
|--|---|
| <input type="checkbox"/> Braille version of exam | <input type="checkbox"/> Wheelchair accessibility |
| <input type="checkbox"/> Large print (18 pt.) exam | <input type="checkbox"/> Use of medications |

- ___ Use of reader
- ___ Use of sign-language interpreter
- ___ Use of scribe to record responses
- ___ Rest time during exam sessions
- ___ Additional testing time – must specify amount of time requests for each exam session _____
- ___ Other – please specify _____

IV. APPLICANT'S SIGNATURE

I declare under penalty of perjury that the above information is true and correct.

Signature

Date

If you are unable to sign this form, please have someone sign and date in your presence.

Signature of person signing on
behalf of applicant

Date

The Board of Law Examiners reserves the right to make the final decision concerning special accommodations for the Uniform Bar Examination administered in South Carolina.

**BOARD OF LAW EXAMINERS OF THE STATE OF SOUTH CAROLINA.
SPECIAL ACCOMMODATIONS REQUEST**

**FORM B
MEDICAL DECLARATION VERIFICATION FORM
PLEASE PRINT OR TYPE**

This form to be filled out by a licensed physician or licensed professional.

Applicant Name: _____

Social Security Number: _____

Address: _____

Telephone Number: _____

LICENSED PHYSICIAN OR Name: _____

LICENSED PROFESSIONAL:

(Please Type or Print Legibly) Title: _____

Address: _____

Phone: _____

Briefly describe your diagnosis: _____

Treatment consists of: _____

Length of treatment or number of visits during past three years: _____

I last examined the applicant on _____

As a result of my examination and treatment of the applicant, I have made the following findings and conclusions:

Subjective complaints: _____

Objective findings: _____

Nature and extent of disability: _____

Explain the specific condition or physical problem that requires testing accommodations: _____

Is this a permanent condition or disability? Yes No

If no, when is the condition or disability likely to abate? _____

In what way does the condition or disability affect the applicant's ability to read, write and/or concentrate for extended periods of time? _____

South Carolina administers the Uniform Bar Examination (UBE). The UBE is a timed written examination administered in three-hour sessions from 9:30 a.m. until 12:30 p.m. and 2:00 p.m. to 5:00 p.m. on Tuesday and Wednesday as scheduled twice each year.

The first day consists of two performance test (MPT) questions in the morning session and six essay questions (MEE) in the afternoon session. The MPT and MEE are designed to assess, among other things, the applicant's ability to communicate his/her analysis effectively in writing. Applicants may use their personal laptop computers to type their answers or they may handwrite their answers.

The second day consists of 200 multiple-choice questions (MBE), with 100 questions administered in the morning session and 100 questions in the afternoon session.

Applicants record their answers by darkening circles on an answer sheet that is scanned by a computer to grade the examination.

(Continued on Next Page)

Based on this applicant's disability and your diagnosis, what testing accommodations would you recommend? (Check all that would apply)

- | | |
|--|---|
| <input type="checkbox"/> Braille version of exam | <input type="checkbox"/> Wheelchair accessibility |
| <input type="checkbox"/> Large print (18 pt.) exam | <input type="checkbox"/> Use of medications |
| <input type="checkbox"/> Use of reader | <input type="checkbox"/> Use of sign-language interpreter |
| <input type="checkbox"/> Use of a scribe to record responses | <input type="checkbox"/> Use of magnifying glass |
| <input type="checkbox"/> Rest time during exam sessions | |

Additional testing time - Please specify: _____ per session. If a specific amount of additional testing time is NOT indicated, this part of the petition cannot be processed.

Other - Please Specify:

Please describe your credential(s) allowing you to verify this applicant's disability.

SIGNATURE

I declare under penalty of perjury that the above information is true and correct.

(Signature of Physician or Licensed Professional)

(Date)

(State and License Number)

**BOARD OF LAW EXAMINERS OF THE STATE OF SOUTH CAROLINA
SPECIAL TESTING ACCOMMODATIONS
FORM C
LEARNING DISABILITY VERIFICATION**

(to be completed by a qualified professional – licensed Psychologist, licensed Neurophysiologist, licensed Educational or School Psychologist, Educational Diagnostician, Learning Disabilities Specialist, or Educational Therapist)

Qualified Professional (type or print legibly)

Name: _____

Title: _____

License/Certification Number: _____

Address: _____

Street Number or P.O. Box

City/State/Zip

Telephone: _____

Please describe the credential(s) and current professional standing which qualify you to diagnose and/or verify the applicant's disability and to recommend special testing accommodations:

Bar Applicant's Name: _____

A. Diagnosis

1. Provide DSM-5 diagnosis:

2. Date the applicant was first diagnosed: _____

3. Date of your most recent diagnosis of the applicant's disability:

B. Evaluation

1. Is the applicant significantly impaired in his or her ability to read, write, and/or concentrate for extended periods of time? Yes ___ No ___

If yes, describe:

2. Describe and attach results of objective testing you performed on the applicant that would suggest that the applicant is unable to perform an activity that most people in the general population can perform:

3. Were alternate explanations for presenting complaints ruled out via a thorough differential diagnosis? ___ Yes ___ No

If yes, please describe:

4. Briefly describe the treatment(s) that the applicant has received in the past and/or is currently receiving and the effect of treatment.

Does this treatment reduce the applicant's impairment? ___ Yes ___ No

If yes, please explain:

C. Recommendation

South Carolina administers the Uniform Bar Examination (UBE). The UBE is a timed written examination administered in three-hour sessions from 9:30 a.m. until 12:30 p.m. and 2:00 p.m. to 5:00 p.m. on Tuesday and Wednesday as scheduled twice each year.

The first day consists of two performance test (MPT) questions in the morning session and six essay questions (MEE) in the afternoon session. The MPT and MEE are designed to assess, among other things, the applicant's ability to communicate his/her analysis effectively in writing. Applicants may use their personal laptop computers to type their answers or they may handwrite their answers.

The second day consists of 200 multiple-choice questions (MBE), with 100 questions administered in the morning session and 100 questions in the afternoon session. Applicants record their answers by darkening circles on an answer sheet that is scanned by a computer to grade the examination.

Based on the applicant's disability and your diagnosis, what testing accommodation(s) would you recommend for taking the South Carolina Bar Examination?

Large print (18 pt). exam materials Use of a reader

Use of a scribe to record responses Rest time during exam sessions

Additional testing time for each examination session. If a specific amount of additional testing time is not indicated, this portion of the petition will not be processed. _____

Other _____

In addition to completing this form, the applicant must submit a separate evaluation that must comply with the guidelines listed below:

Should be completed or updated within the past (3) years; an updated evaluation does not necessarily need to be a full, comprehensive diagnostic evaluation, but must provide information concerning relevant treatment, course of condition, current impairment, and rationale for current accommodation requests. The previous comprehensive diagnostic evaluation must be submitted with the updated evaluation.

Meet full, standard criteria for LD determination with an explanation of differential diagnosis, an evaluation of current impact, and a clinical summary supported by a rationale.

Have a diagnosis that conforms with the Diagnostic and Statistical Manual of Mental Disorders (DSM-5).

Provide evidence that this diagnosis does not rely solely on self-report in establishing developmental history, current symptoms, and evidence of clinically significant impairment.

Explain past and current treatments for this condition and the effects of these treatments in ameliorating symptoms.

Provide data-based evidence of significant impairment in the area for which an accommodation is requested.

D. Signature

I declare under penalty of perjury that the above information is true and correct. I understand that this information may be reviewed by a qualified professional retained by the Board of Law Examiners to assist in determining testing accommodations.

Signature of Qualified Professional

Date

State and License Number

Attach all relevant documentation, including your complete evaluation of the applicant and any past evaluations. Completion of this request form is not sufficient evidence to support a request for a testing accommodation.

**BOARD OF LAW EXAMINERS OF THE STATE OF SOUTH CAROLINA
SPECIAL TESTING ACCOMMODATIONS**

FORM D

ATTENTION DEFICIT-HYPERACTIVITY DISORDER VERIFICATION

(to be completed by a qualified professional – licensed Psychologist, licensed Neurophysiologist or licensed Psychiatrist)

Qualified Professional (type or print legibly)

Name: _____

Title: _____

License/Certification Number: _____

Address: _____

Street Number or P.O. Box

City/State/Zip

Telephone: _____

Please describe the credential(s) which qualify you to diagnose and/or verify the applicant's disability and to recommend special testing accommodations:

Bar Applicant's Name: _____

E. Diagnosis

4. Provide DSM-5 diagnosis:

5. Date the applicant was first diagnosed: _____

6. Date of your most recent diagnosis of the applicant's disability:

F. Evaluation

5. Is the applicant significantly impaired in his or her ability to read, write, and/or concentrate for extended periods of time? Yes ___ No ___

If yes, describe:

6. Describe and attach results of objective testing you performed on the applicant that would suggest that the applicant is unable to perform an activity that most people in the general population can perform:

7. Were alternate explanations for presenting complaints ruled out via a thorough differential diagnosis? ___ Yes ___ No

If yes, please describe:

8. Briefly describe the treatment(s) that the applicant has received in the past and/or is currently receiving and the effect of treatment.

Does this treatment reduce the applicant's impairment? ___ Yes ___ No

If yes, please explain:

G. Recommendation

South Carolina administers the Uniform Bar Examination (UBE). The UBE is a timed written examination administered in three-hour sessions from 9:30 a.m. until 12:30 p.m. and 2:00 p.m. to 5:00 p.m. on Tuesday and Wednesday as scheduled twice each year.

The first day consists of two performance test (MPT) questions in the morning session and six essay questions (MEE) in the afternoon session. The MPT and MEE are designed to assess, among other things, the applicant's ability to communicate his/her analysis effectively in writing. Applicants may use their personal laptop computers to type their answers or they may handwrite their answers.

The second day consists of 200 multiple-choice questions (MBE), with 100 questions administered in the morning session and 100 questions in the afternoon session. Applicants record their answers by darkening circles on an answer sheet that is scanned by a computer to grade the examination.

Based on the applicant's disability and your diagnosis, what testing accommodation(s) would you recommend for taking the South Carolina Bar Examination?

Large print (18 pt). exam materials

Use of a scribe to record responses

Use of a reader

Rest time during exam sessions

Additional testing time for each examination session. If a specific amount of additional testing time is not indicated, this portion of the petition will not be processed. _____

Other _____

In addition to completing this form, the applicant must submit a separate evaluation that must comply with the guidelines listed below:

Should be completed or updated within the past (3) years; an updated evaluation does not necessarily need to be a full, comprehensive diagnostic evaluation, but must provide information concerning relevant treatment, course of condition, current impairment, and rationale for current accommodation requests. The previous comprehensive diagnostic evaluation must be submitted with the updated evaluation.

Meet full, standard criteria for AD/HD determination with an explanation of differential diagnosis, an evaluation of current impact, and a clinical summary supported by a rationale.

Have a diagnosis that conforms with the Diagnostic and Statistical Manual of Mental Disorders (DSM-5).

Provide evidence that this diagnosis does not rely solely on self-report in establishing developmental history, current symptoms, and evidence of clinically significant impairment.

Explain past and current treatments for this condition and the effects of these treatments in ameliorating symptoms.

Provide data-based evidence of significant impairment in the area for which an accommodation is requested.

H. Signature

I declare under penalty of perjury that the above information is true and correct. I understand that this information may be reviewed by a qualified professional retained by the Board of Law Examiners to assist in determining testing accommodations.

Signature of Qualified Professional

Date

State and License Number

Attach all relevant documentation, including your complete evaluation of the applicant and any past evaluations. Completion of this request form is not sufficient evidence to support a request for a testing accommodation.

BOARD OF LAW EXAMINERS OF THE STATE OF SOUTH CAROLINA

**FORM E
STATEMENT OF LAW SCHOOL OFFICIAL**

IN RE:

THE PETITION OF:

(Petitioner)

I, _____, as _____ state that
(Dean/Associate, Registrar)
my position at _____ is such that it is my
(Name of Law School)

responsibility to authorize any special accommodations requested by students for the specific purpose of facilitating their participation as examinees. The above named petitioner, who _____ in attendance at this law school, was given
(is/was)
authorization to receive the following special accommodations during the administration of exams at this school.

Executed on _____ by _____
(Name)

BOARD OF LAW EXAMINERS OF THE STATE OF SOUTH CAROLINA

FORM F

**SPECIAL ACCOMMODATIONS FORM FOR APPLICANTS WITH
DISABILITIES
STATEMENT OF ANOTHER BAR JURISDICTION**

IN REGARDS TO THE PETITION OF: _____
(Petitioner)

I, _____, as _____
(Title)

state that my position at _____
(Name of Jurisdiction)

is such that it is my responsibility to monitor and authorize any special accommodations requested by disabled students for the specific purpose of facilitating their participation as examinees. The petitioner, who sat for the JULY/FEBRUARY _____ bar examination was authorized to receive special testing accommodations during this examination as outlined below.

Executed on _____ by _____
(Date) (Official's Signature)



OPINIONS
OF
THE SUPREME COURT
AND
COURT OF APPEALS
OF
SOUTH CAROLINA

ADVANCE SHEET NO. 34
August 24, 2016
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

CONTENTS
THE SUPREME COURT OF SOUTH CAROLINA
PUBLISHED OPINIONS AND ORDERS

27656 - In the Matter of Spero C. Keretses	36
27657 - In the Matter of Eric G. Fosmire	39
27658 - In the Matter of Joenathan Shelly Chaplin	42
27659 - In the Matter of Abigail P. Allocco	46
27660 - In the Matter of George Thomas Samaha, III	50
27661 - In the Matter of Matthew Jeffrey Lester	55
27662 - Allegro Inc., v. Emmett J. Scully	57

UNPUBLISHED OPINIONS

None

PETITIONS - UNITED STATES SUPREME COURT

27601 - Richard Stogsdill v. SCDHHS Pending

EXTENSION TO FILE PETITION - UNITED STATES SUPREME COURT

26770 - The State v. Charles Christopher Williams Granted until 9/9/2016

PETITIONS FOR REHEARING

27345 - Gregory Smith v. D.R. Horton Pending

The South Carolina Court of Appeals

PUBLISHED OPINIONS

None

UNPUBLISHED OPINIONS

2016-UP-350-TD Bank, N.A. v. Sunil V. Lalla
(Withdrawn Substituted, and Refiled August 24, 2016)

2016-UP-403-State v. Arthur Moseley

2016-UP-404-George S. Glassmeyer v. City of Columbia

2016-UP-405-Edward Anthony Dalsing v. David A. Hudson
(Filed August 17, 2016)

2016-UP-406-State v. Darryl Wayne Moran

PETITIONS FOR REHEARING

5391-Peggy D. Conits v. Spiro E. Conits	Denied 08/18/16
5393-S.C. Ins. Reserve Fund v. East Richland Public Service Dist.	Denied 08/18/16
5398-Claude W. Graham v. Town of Latta	Denied 08/18/16
5403-Virginia Marshall v. Kenneth Dodds	Denied 08/19/16
5406-Charles Gary v. Hattie M. Askew	Denied 08/17/16
5407-One Belle Hall v. Trammell Crow (TAMKO)	Pending
5408-Martina R. Putnam v. State	Denied 08/17/16
5410-Protection and Advocacy v. Beverly Buscemi	Denied 08/22/16
5411-John Doe v. City of Duncan	Denied 08/17/16
5414-In the matter of the Estate of Marion M. Kay	Pending

5415-Timothy McMahan v. S.C. Department of Education	Pending
5416-Allen Patterson v. Herb Witter	Pending
5417-Meredith Huffman v. Sunshine Recycling	Pending
5418-Gary G. Harris v. Tietex International, Ltd.	Pending
5419-Arkay, LLC, v. City of Charleston	Pending
5420-Darryl Frierson v. State	Denied 08/18/16
5421-Coastal Federal Credit v. Angel Latoria Brown	Pending
5423-Ashley Noojin v. Frank Noojin, III	Denied 08/22/16
5424-Janette Buchanan v. S.C. Property and Casualty Ins.	Pending
5425-Carolyn Taylor-Cracraft v. Gerald Cracraft	Pending
5428-State v. Roy L. Jones	Denied 08/18/16
5430-Wilfred Allen Woods v. Etta Catherine Woods	Pending
5431-Lori Stoney v. Richard Stoney	Pending
5432-Daniel Dorn v. Paul Cohen	Pending
5433-The Winthrop University Trustees v. Pickens Roofing	Pending
5434-The Callawassie Island Members Club v. Ronnie Dennis	Pending
5435-State v. Joshua William Porch	Pending
5436-Lynne Vicary v. Town of Awendaw	Pending
2016-UP-028-Arthur Washington v. Resort Services	Pending
2016-UP-084-Esvin Perez v. Gino's The King of Pizza	Pending
2016-UP-099-Carrie Steele v. William Steele	Pending

2016-UP-139-Hector Fragosa v. Kade Construction	Pending
2016-UP-158-Raymond Carter v. Donnie Myers	Denied 08/18/16
2016-UP-182-State v. James Simmons, Jr.	Denied 08/18/16
2016-UP-184-D&C Builders v. Richard Buckley	Pending
2016-UP-204-Thomas Lowery v. SCDPPPS	Denied 08/18/16
2016-UP-206-State v. Devatee Tymar Clinton	Denied 08/22/16
2016-UP-210-Bernard Bagley v. SCDPPPS	Denied 08/18/16
2016-UP-239-State v. Kurtino Weathersbee	Denied 08/18/16
2016-UP-245-State v. Rodney Lee Rogers, Sr.	Denied 08/18/16
2016-UP-247-Pankaj Patel v. Krish Patel	Denied 08/18/16
2016-UP-248-Bruce R. Hoffman v. Seneca Specialty Insurance	Denied 08/18/16
2016-UP-253-Melissa Lackey v. 4 K&D Corporation	Denied 08/18/16
2016-UP-257-State v. James S. Cross	Denied 08/18/16
2016-UP-261-Samuel T. Brick v. Richland County	Denied 08/18/16
2016-UP-263-Wells Fargo Bank v. Ronald Pappas	Denied 08/18/16
2016-UP-264-Deutsche Bank v. Dora S. Morrow	Denied 08/18/16
2016-UP-266-Townes at Pelham v. Donna Boyd	Denied 08/18/16
2016-UP-268-SCDSS v. David and Kimberly Wicker	Denied 08/18/16
2016-UP-271-Lori Partin v. Jason Harbin	Denied 08/18/16
2016-UP-274-Bayview Loan Servicing v. Scott Schledwitz	Denied 08/18/16
2016-UP-275-City of North Charleston v. John Barra	Pending
2016-UP-276-Hubert Bethune v. Waffle House	Denied 08/18/16

2016-UP-280-Juan Ramirez v. Progressive Northern	Pending
2016-UP-281-James A. Sellers v. SCDC	Pending
2016-UP-299-State v. Donna Boyd	Denied 08/18/16
2016-UP-303-Lydia Miller v. Willie Fields	Denied 08/18/16
2016-UP-305-Phil Vasey v. Colton Builders, LLC	Pending
2016-UP-306-State v. Shawndell Q. McClenton	Denied 08/18/16
2016-UP-314-State v. Frank Muns	Denied 08/22/16
2016-UP-315-State v. Marco S. Sanders	Denied 08/18/16
2016-UP-316-Helen Marie Douglas v. State	Pending
2016-UP-318-SunTrust Mortgage v. Mark Ostendorff	Denied 08/18/16
2016-UP-320-State v. Emmanuel M. Rodriguez	Denied 08/18/16
2016-UP-325-NBSC v. Thaddeus F. Segars	Pending
2016-UP-327-John McDaniel v. Career Employment	Denied 08/18/16
2016-UP-328-SCDSS v. Holly M. Smith and Steven L. Smith	Denied 08/18/16
2016-UP-330-State v. William T. Calvert	Denied 08/18/16
2016-UP-331-Claude Graham v. Town of Latta (2)	Denied 08/18/16
2016-UP-336-Dickie Shults v. Angela G. Miller	Denied 08/18/16
2016-UP-338-HHH Ltd. of Greenville v. Randall S. Hiller	Denied 08/18/16
2016-UP-340-State v. James R. Bartee, Jr.	Pending
2016-UP-344-State v. William Anthony Wallace	Denied 08/18/16
2016-UP-348-Basil Akbar v. SCDC	Pending

2016-UP-350-TD Bank v. Sunil Lalla	Granted 08/24/16
2016-UP-351-Tipperary Sales v. S.C. Dep't of Transportation	Denied 08/18/16
2016-UP-352-State v. Daniel W. Spade	Denied 08/18/16
2016-UP-366-In re Estate of Valerie D'Agostino	Pending
2016-UP-367-State v. Christopher D. Campbell	Pending
2016-UP-368-Overland v. Lara Nance	Pending
2016-UP-373-State v. Francis Larmand	Pending
2016-UP-377-State v. Jennifer Lynn Alexander	Pending
2016-UP-382-Darrell L. Goss v. State	Pending
2016-UP-395-Darrell Efird v. State	Pending

PETITIONS-SOUTH CAROLINA SUPREME COURT

5253-Sierra Club v. Chem-Nuclear	Pending
5254-State v. Leslie Parvin	Pending
5301-State v. Andrew T. Looper	Pending
5322-State v. Daniel D. Griffin	Pending
5326-Denise Wright v. PRG	Pending
5328-Matthew McAlhaney v. Richard McElveen	Pending
5329-State v. Stephen Douglas Berry	Pending
5333-Yancey Roof v. Kenneth A. Steele	Pending
5338-Bobby Lee Tucker v. John Doe	Pending
5342-John Goodwin v. Landquest	Pending
5344-Stoneledge v. IMK Development (Southern Concrete)	Pending

5345-Jacklyn Donevant v. Town of Surfside Beach	Pending
5346-State v. Lamont A. Samuel	Pending
5348-Gretchen A. Rogers v. Kenneth E. Lee	Pending
5355-State v. Lamar Sequan Brown	Pending
5359-Bobby Joe Reeves v. State	Pending
5360-Claude McAlhany v. Kenneth A. Carter	Pending
5365-Thomas Lyons v. Fidelity National	Pending
5366-David Gooldy v. The Storage Center	Pending
5368-SCDOT v. David Powell	Pending
5369-Boisha Wofford v. City of Spartanburg	Pending
5371-Betty Fisher v. Bessie Huckabee	Pending
5373-Robert S. Jones v. Builders Investment Group	Pending
5374-David M. Repko v. County of Georgetown	Pending
5375-Mark Kelley v. David Wren	Pending
5378-Stephen Smalls v. State	Pending
5379-Fred Gatewood v. SCDC (2)	Pending
5382-State v. Marc A. Palmer	Pending
5384-Mae Ruth Thompson v. Pruitt Corporation	Pending
5387-Richard Wilson v. Laura B. Willis	Pending
5388-Vivian Atkins v. James R. Wilson, Jr.	Pending
5389-Fred Gatewood v. SCDC (2)	Pending

5390-State v. Tyrone King	Pending
5392-State v. Johnie Allen Devore, Jr.	Pending
5395-State v. Gerald Barrett, Jr.	Pending
5399-State v. Anthony Bailey	Pending
5402-Palmetto Mortuary Transport v. Knight Systems	Pending
2015-UP-010-Latonya Footman v. Johnson Food Services	Pending
2015-UP-091-U.S. Bank v. Kelley Burr	Pending
2015-UP-215-Ex Parte Tara Dawn Shurling (In re: State v. Harley)	Pending
2015-UP-248-South Carolina Electric & Gas v. Anson	Granted 08/17/16
2015-UP-262-State v. Erick Arroyo	Pending
2015-UP-266-State v. Gary Eugene Lott	Pending
2015-UP-303-Charleston County Assessor v. LMP Properties	Pending
2015-UP-304-Robert K. Marshall, Jr. v. City of Rock Hill	Pending
2015-UP-311-State v. Marty Baggett	Pending
2015-UP-330-Bigford Enterprises v. D. C. Development	Pending
2015-UP-350-Ebony Bethea v. Derrick Jones	Pending
2015-UP-357-Linda Rodarte v. USC	Pending
2015-UP-361-JP Morgan Chase Bank v. Leah Sample	Pending
2015-UP-364-Andrew Ballard v. Tim Roberson	Pending
2015-UP-365-State v. Ahmad Jamal Wilkins	Pending
2015-UP-376-Ron Orlosky v. Law Office of Jay Mullinax	Pending

2015-UP-377-Long Grove at Seaside v. Long Grove Property Owners (James, Harwick & Partners)	Pending
2015-UP-378-State v. James Allen Johnson	Pending
2015-UP-382-State v. Nathaniel B. Beeks	Pending
2015-UP-388-Joann Wright v. William Enos	Pending
2015-UP-391-Cambridge Lakes v. Johnson Koola	Pending
2015-UP-395-Brandon Hodge v. Sumter County	Pending
2015-UP-402-Fritz Timmons v. Browns AS RV and Campers	Pending
2015-UP-403-Angela Parsons v. Jane Smith	Pending
2015-UP-414-Christopher A. Wellborn v. City of Rock Hill	Pending
2015-UP-423-North Pleasant, LLC v. SC Coastal Conservation	Pending
2015-UP-432-Barbara Gaines v. Joyce Ann Campbell	Pending
2015-UP-455-State v. Michael L. Cardwell	Pending
2015-UP-466-State v. Harold Cartwright, III	Pending
2015-UP-477-State v. William D. Bolt	Pending
2015-UP-478-State v. Michael Camp	Pending
2015-UP-485-State v. Alfonzo Alexander	Pending
2015-UP-491-Jacquelin S. Bennett v. T. Heyward Carter, Jr.	Pending
2015-UP-501-State v. Don-Survi Chisolm	Pending
2015-UP-505-Charles Carter v. S.C. Dep't of Corr. (3)	Pending
2015-UP-513-State v. Wayne A. Scott, Jr.	Pending

2015-UP-524-State v. Gary R. Thompson	Pending
2015-UP-540-State v. Michael McCraw	Pending
2015-UP-547-Evalena Catoe v. The City of Columbia	Pending
2015-UP-556-State v. Nathaniel Witherspoon	Pending
2015-UP-557-State v. Andrew A. Clemmons	Pending
2015-UP-564-State v. Tonya Mcalhaney	Pending
2015-UP-568-State v. Damian D. Anderson	Pending
2015-UP-574-State v. Brett D. Parker	Pending
2016-UP-010-State v. James Clyde Dill, Jr.	Pending
2016-UP-013-Ex parte State of South Carolina In re: Cathy J. Swicegood v. Polly A. Thompson	Pending
2016-UP-015-Onrae Williams v. State	Pending
2016-UP-021-State v. Darius Ranson-Williams	Pending
2016-UP-023-Frankie Lee Bryant, III, v. State	Pending
2016-UP-039-State v. Fritz Allen Timmons	Pending
2016-UP-040-State v. Jonathan Xavier Miller	Pending
2016-UP-052-Randall Green v. Wayne Bauerle	Pending
2016-UP-054-Ex Parte: S.C. Coastal Conservation League v. Duke Energy	Pending
2016-UP-055-State v. Ryan P. Deleston	Pending
2016-UP-056-Gwendolyn Sellers v. Cleveland Sellers, Jr.	Pending
2016-UP-061-Charleston Harbor v. Paul Davis	Pending

2016-UP-067-National Security Fire v. Rosemary Jenrette	Pending
2016-UP-068-State v. Marcus Bailey	Pending
2016-UP-069-John Frick v. Keith Fulmer	Pending
2016-UP-070-State v. Deangelo Mitchell (AA Ace Bail)	Pending
2016-UP-073-State v. Mandy L. Smith	Pending
2016-UP-074-State v. Sammy Lee Scarborough	Pending
2016-UP-089-William Breland v. SCDOT	Pending
2016-UP-091-Kyle Pertuis v. Front Roe Restaurants, Inc.	Pending
2016-UP-097-State v. Ricky E. Passmore	Pending
2016-UP-109-Brook Waddle v. SCDHHS	Pending
2016-UP-118-State v. Lywone S. Capers	Pending
2016-UP-119-State v. Bilal Sincere Haynesworth	Pending
2016-UP-127-James Neff v. Lear's Welding	Pending
2016-UP-132-Willis Weary v. State	Pending
2016-UP-137-Glenda R. Couram v. Christopher Hooker	Pending
2016-UP-138-McGuinn Construction v. Saul Espino	Pending
2016-UP-141-Plantation Federal v. J. Charles Gray	Pending
2016-UP-151-Randy Horton v. Jasper County School	Pending
2016-UP-153-Andreas Ganotakis v. City of Columbia Board	Pending
2016-UP-160-Mariam R. Noorai v. School Dist. of Pickens Cty.	Pending
2016-UP-162-State v. Shawn L. Wyatt	Pending

2016-UP-168-Nationwide Mutual v. Eagle Windows	Pending
2016-UP-171-Nakia Jones v. State	Pending
2016-UP-174-Jerome Curtis Buckson v. State	Pending
2016-UP-187-Nationstar Mortgage, LLC v. Rhonda L. Meisner	Pending
2016-UP-189-Jennifer Middleton v. Orangeburg Consolidated	Pending
2016-UP-193-State v. Jeffrey Davis	Pending
2016-UP-198-In the matter of Kenneth Campbell	Pending
2016-UP-199-Ryan Powell v. Amy Boheler	Pending
2016-UP-220-SCDSS v. Allyssa Boulware	Pending

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

In the Matter of Spero C. Keretses, Respondent.

Appellate Case No. 2016-001467

Opinion No. 27656

Submitted August 9, 2016 – Filed August 24, 2016

PUBLIC REPRIMAND

Leslie M. Coggiola, Disciplinary Counsel, and Ericka M. Williams, Assistant Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

Harvey M. Watson, III, of Ballard & Watson, Attorneys at Law, of West Columbia, for Respondent.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, respondent admits misconduct and consents to the issuance of a public reprimand or the imposition of a definite suspension not to exceed two years. Respondent has agreed to pay the costs incurred by ODC and the Commission on Lawyer Conduct in investigating and prosecuting this matter within thirty days of discipline being rendered. We accept the Agreement and issue a public reprimand. The facts, as set forth in the Agreement, are as follows.

Facts

ODC was notified by BB&T that two items were presented against insufficient funds in respondent's trust account. Respondent immediately covered the deficiency with personal funds and both checks were cleared by the bank. Upon investigation into the shortage, respondent discovered an employee who was helping him with real estate transactions had made several wire transfers from respondent's trust account into the employee's personal account over a period of two years. A portion of the misappropriated funds represented earned fees that respondent had not removed from his trust account.

Respondent failed to comply with the recordkeeping and reconciliation requirements of Rule 417, SCACR, by not maintaining adequate client ledgers or conducting appropriate monthly reconciliations of his trust account. Due to the lack of account reconciliations and financial records, ODC was unable to determine the exact amount of funds that were misappropriated. However, a review of the bank statements for respondent's trust account revealed the employee transferred approximately \$23,284.95 from the account to the employee's personal account over a two year period.

Respondent represents he has restored all client funds to the trust account. He also acknowledges that his commingling of legal fees and client funds as well as his failure to conduct appropriate reconciliations contributed to his failure to detect the misappropriations. Finally, respondent acknowledges his failure to properly supervise the employee contributed to the employee's ability to misappropriate funds from the trust account. Respondent voluntarily enrolled in and completed the Legal Ethics and Practice Program Trust Account School on September 29, 2015.

Law

Respondent admits that he has violated Rules 1.15 (requirements for safekeeping property) and 5.3 (responsibility for supervising non-lawyer assistants) of the Rules of Professional Conduct, Rule 407, SCACR. Respondent also concedes he has violated provisions of Rule 417, SCACR, regarding financial recordkeeping. Finally, respondent admits these violations constitute grounds for discipline under Rule 7(a)(1) of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR

(it shall be a ground for discipline for a lawyer to violate or attempt to violate the Rules of Professional Conduct or any other rules of this jurisdiction regarding professional misconduct of lawyers).

Conclusion

We find respondent's misconduct warrants a public reprimand. Accordingly, we accept the Agreement and publicly reprimand respondent for his misconduct.

PUBLIC REPRIMAND.

PLEICONES, C.J., BEATTY, KITTREDGE, HEARN and FEW, JJ., concur.

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

In the Matter of Eric G. Fosmire, Respondent.

Appellate Case No. 2016-001469

Opinion No. 27657

Submitted August 9, 2016 – Filed August 24, 2016

PUBLIC REPRIMAND

Lesley M. Coggiola, Disciplinary Counsel, and Kelly B. Arnold, Assistant Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

Eric G. Fosmire, *Pro Se*.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, respondent admits misconduct and consents to a confidential admonition or public reprimand. As a condition of discipline, respondent agrees to complete the Legal Ethics and Practice Program Ethics School within nine months of being sanctioned. We accept the Agreement and issue a public reprimand. The facts, as set forth in the Agreement, are as follows.

Facts

An insurance company retained respondent to represent the company's insureds in a case related to an automobile accident involving the insureds. At the time, respondent was an associate in a large law firm, but later opened a solo practice.

The insurance company transferred the automobile case, as well as other pending files, to respondent. Opposing counsel in the automobile case made a settlement demand of \$750,000.

At the same time, respondent was falling behind on his case reporting to the insurance company. For nearly a year, respondent failed to maintain reasonable communications with the insurance company by not submitting case assessment reports related to the automobile case.

Respondent settled the automobile case for \$200,000 without the insurance company's authorization or knowledge, which respondent admits. He believed the settlement to be in the insureds' best interests, based on the totality of the circumstances, including the plaintiff's increased medical damages. The settlement amount was within the insurance company's policy limits.

Approximately three to four weeks later, opposing counsel contacted respondent to determine the status of the settlement check. Respondent admits he was not honest with counsel, informing counsel that respondent did not know why the check had not been received, that there was no explanation for a delay, and that he would get in touch with the insurance company to expedite the settlement process. However, respondent did not communicate the unauthorized settlement to the insurance company at the time.

In the next month, opposing counsel filed a breach of contract action against the insurance company, which was the first notice the insurance company had of the settlement. Respondent admitted his actions to the insurance company, after which the company terminated respondent as counsel in the automobile case and the other cases it had pending with respondent. Respondent cooperated with the transfer of the cases to other counsel. He also cooperated with the disciplinary investigation into the matter.

Law

Respondent admits he has violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.2(a)(a lawyer must abide by a client's decisions concerning the objectives of representation and consult with the client as to the means by which they are to be pursued, and may take such action on behalf of the client as is impliedly authorized to carry out the representation; a lawyer shall

abide by a client's decision whether to make or accept an offer of settlement of a matter); Rule 1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client); Rule 1.4 (requiring a lawyer to communicate with clients); and Rule 8.4(d)(it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation). Respondent also admits these violations constitute a ground for discipline under Rule 7(a)(1), RLDE, Rule 413 (it shall be a ground for discipline for a lawyer to violate or attempt to violate the Rules of Professional Conduct or any other rules of this jurisdiction regarding professional conduct of lawyers).

Conclusion

We find respondent's misconduct warrants a public reprimand. Accordingly, we accept the Agreement and publicly reprimand respondent for his misconduct.

PUBLIC REPRIMAND.

PLEICONES, C.J., BEATTY, KITTREDGE, HEARN and FEW, JJ., concur.

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

In the Matter of Joenathan Shelly Chaplin, Respondent.

Appellate Case No. 2016-001470

Opinion No. 27658

Submitted August 9, 2016 – Filed August 24, 2016

DEFINITE SUSPENSION

Lesley M. Coggiola, Disciplinary Counsel, and Julie
Martino, Assistant Disciplinary Counsel, both of
Columbia, for Office of Disciplinary Counsel.

Harvey M. Watson, III, of Ballard & Watson, Attorneys
at Law, of West Columbia, for Respondent.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, respondent admits misconduct and consents to a definite suspension of not less than nine months and no more than three years.¹

¹ Respondent has a disciplinary history that includes a letter of caution with no finding of misconduct, issued on June 21, 2010, which cites Rule 1.5(b), RPC, Rule 407, SCACR (requiring the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible to be communicated to the client before or within a reasonable time after commencing representation), and a public reprimand on September 25, 2013. The latter was issued as a result of respondent charging a client an unreasonable fee and thereafter failing to cooperate with the disciplinary investigation. *In re Chaplin*, 405 S.C. 605, 748 S.E.2d 791 (2013).

Respondent requests that the suspension be made retroactive to the date of interim suspension,² but understands that if the Court declines to apply the sanction retroactively, the validity or enforceability of the agreement is not affected. ODC does not oppose the request. Respondent agrees to pay the costs incurred by ODC and the Commission on Lawyer Conduct in investigating and prosecuting this matter within thirty days of discipline being rendered. As a further condition of discipline, respondent agrees to complete the Legal Ethics and Practice Program Trust Account School and Law Office Management School within one year of reinstatement. Respondent understands that *prior* to reinstatement he must also complete the Legal Ethics and Practice Program Ethics School as required by Rule 33(f), RLDE. We accept the Agreement and suspend respondent from the practice of law in this state for one year, retroactive to the date of his interim suspension. The facts, as set forth in the Agreement, are as follows.

Facts/Law

Matter A

Respondent represented a client who was indicted by the U.S. Attorney's Office for trafficking. However, respondent was relieved as counsel for the client after the U.S. Attorney's Office informed the federal court that respondent was being investigated for money laundering in connection with payments made by the client and other criminal clients to respondent.

As part of the investigation, federal agents requested respondent provide records of payments made to him by criminal clients. Respondent provided the requested records; however, the records indicated he had received cash payments for legal fees from multiple clients in amounts greater than \$10,000. When questioned by federal agents, respondent denied knowing that he was required by the Internal Revenue Service to file a Form 8300 when the aggregate amount received from a client exceeded \$10,000 for one transaction, such as legal representation. He stated he thought the form was only required for single payments over \$10,000. However, respondent did know about the reporting requirement and therefore, his assertion was untruthful.

² Respondent was placed on interim suspension by order dated May 23, 2014. *In re Chaplin*, 408 S.C. 184, 758 S.E.2d 708 (2014).

Respondent was charged with violating 18 U.S.C. § 1001 by knowingly and willfully making "a materially false, fictitious, and fraudulent statement and representation in a matter within the jurisdiction of the Executive Branch of the Government of the United States; to wit: he told a Special Agent from the Department of the Treasury that he was not aware of the reporting requirements of Form 8300." Respondent pled guilty and was sentenced to three years' probation, with electronic monitoring for six months. On December 9, 2015, respondent's motion for early termination of parole was granted, and he has now fully satisfied all conditions of his criminal conviction.

Respondent admits that his conduct violates the following Rules of Professional Conduct, Rule 407, SCACR: Rule 4.1(b)(a lawyer shall not in the course of representing a client make a false statement of material fact to a third person); Rule 8.4(b)(it is misconduct to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer); Rule 8.4(d)(it is misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and Rule 8.4(e)(it is misconduct for a lawyer to engage in conduct prejudicial to the administration of justice).

Matter B

Respondent represented a client at various times for criminal charges. Two fee agreements between respondent and the client contained the following provision: "Client acknowledges and agrees that if balance of above agreement is not paid in full as agreed upon, the Law Office of [respondent] will collect by garnishment and/or a lien on any and all client's future tax refunds and/or wages." Respondent admits he does not have the legal authority to garnish wages or tax returns in South Carolina. Another fee agreement between the two referenced payment for representation by a third party, but only referenced the identity of the payor and amount paid, without reference to the scope of representation provided in exchange for the payment.

Respondent admits his conduct violates the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.5(b)(the scope of representation shall be communicated to the client before or within a reasonable time after commencing representation); Rule 1.8(f)(a lawyer shall not accept compensation for representing a client from one other than the client unless the client gives informed consent, there is no interference with the lawyer's independence of professional judgment or with the

client-lawyer relationship, and information relating to representation of a client is protected); and Rule 8.4(d), *supra*.

Matter C

Respondent agreed to represent a client in a criminal matter but failed to execute the written fee agreement until nearly two years after agreeing to represent the client and beginning work on the case. The fee agreement failed to clearly communicate the basis and rate of fee to be charged for the representation. The agreement also contained the wage garnishment provision referenced above.

Respondent admits that his conduct violated Rules 1.5(b) and 8.4(d), RPC, *supra*. Respondent further admits his conduct in the above matters constitutes grounds for discipline under Rules 7(a)(1), (a)(4), (a)(5) and (a)(6), RLDE.

Conclusion

We hereby suspend respondent from the practice of law in this state for one year, retroactive to the date of his interim suspension. Respondent shall complete the Legal Ethics and Practice Program Ethics School *prior* to reinstatement and complete the Trust Account School and Law Office Management School within one year after reinstatement. Respondent shall, within thirty days of the date of this opinion, pay the costs incurred by ODC and the Commission on Lawyer Conduct in investigating and prosecuting this matter.

Within fifteen days of the date 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.

PLEICONES, C.J., BEATTY, KITTREDGE, HEARN and FEW, JJ., concur.

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

In the Matter of Abigail P. Allocco, Respondent.

Appellate Case No. 2016-001472

Opinion No. 27659

Submitted August 9, 2016 – Filed August 24, 2016

DEFINITE SUSPENSION

Lesley M. Coggiola, Disciplinary Counsel, and Sabrina
C. Todd, Assistant Disciplinary Counsel, both of
Columbia, for Office of Disciplinary Counsel.

Abigail P. Allocco, *Pro Se*.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, respondent admits misconduct and consents to a public reprimand or a definite suspension not to exceed nine months.¹ As a condition of discipline, respondent agrees to complete the Legal Ethics and Practice Program Law Office Management School within one year of the issuance of a sanction, if a public reprimand is issued, or prior to reinstatement if her license is suspended. Respondent has previously completed the other portions of the Legal Ethics and Practice Program. Respondent also agrees to pay the costs incurred by

¹ Respondent has a disciplinary history that consists of a confidential admonition issued on May 4, 2011, arising from previous misconduct in North Carolina. In addition to citing Rules 5.5(a), 8.4(a), and 8.4(d) of the Rules of Professional Conduct, Rule 407, SCACR, *infra*, the admonition indicated respondent failed to comply with North Carolina's rule regarding safekeeping of property.

ODC and the Commission on Lawyer Conduct in investigating and prosecuting this matter within thirty days of discipline being rendered. We accept the Agreement and suspend respondent from the practice of law in this state for nine months. The facts, as set forth in the Agreement, are as follows.

Facts

Respondent is licensed to practice law in South Carolina, but has never been licensed to practice law in North Carolina. In November 2009, the Authorized Practice Committee of the North Carolina State Bar issued a letter of caution to respondent finding probable cause that she had engaged in the unauthorized practice of law in violation of that state's statutory law and its rules of professional conduct. The letter instructed respondent to cease and desist providing legal services in the state on a systematic and continuous basis. The letter also stated the committee expected respondent to promptly withdraw her firm's interstate law firm registration on file with North Carolina and noted the registration did not authorize her to practice law in the state or hold herself out as able to do so. However, respondent did not withdraw her law firm's registration and later changed the firm's name to reflect her own name change.

In 2011, respondent entered into an agreement for discipline by consent in South Carolina for her conduct underlying the North Carolina State Bar's letter of caution. As a result of the agreement, this Court issued the confidential admonition referenced in footnote 1.

In April 2014, respondent conducted a closing for the purchase of residential property in North Carolina. The purchaser, whom respondent represented, subsequently filed a complaint against respondent with the North Carolina State Bar and the South Carolina Commission on Lawyer Conduct.

In February 2015, the Authorized Practice Committee of the North Carolina State Bar again issued a letter of caution, finding probable cause that respondent had engaged in the unauthorized practice of law. The committee found respondent provided the complainant with legal advice and services and held herself out in numerous emails and communications with the complainant as having a law office in North Carolina. The committee also found respondent negotiated with the seller's attorney on the complainant's behalf, holding herself out as an attorney licensed in North Carolina in the process. The committee demanded respondent

stop engaging in the unauthorized practice of law and requested respondent respond to the letter of caution within fifteen days; however, respondent did not respond as requested.

Approximately six weeks after closing, the complainant began inquiring by email and telephone about the title insurance policy that was supposed to have been purchased. Although the complainant initially received responses, respondent's law firm did not obtain the policy, did not adequately follow up on the issue, and later stopped responding to the complainant's inquiries.

Respondent states she thought her paralegal was handling the issue of the outstanding policy, as well as keeping the complainant informed, but respondent failed to supervise the paralegal and later learned that was not the case. Respondent learned about the paralegal's failure to handle the policy issue approximately four months after the closing, at which time respondent told the complainant she would take care of the issue herself. However, respondent became busy and the complainant's concerns "fell through the cracks."

After the complaint was filed in this matter, respondent contacted the title insurance company to learn what steps needed to be taken to secure the policy. However, after taking some action, which she did not document, respondent did not follow up and erroneously assumed the policy had been issued. Respondent did not investigate further until after ODC made multiple inquiries about the status of the policy. Respondent secured the policy in September 2015, well over a year after the closing. Respondent states she mailed the complainant the original policy with no cover letter and did not follow up to ensure he received it. When advised by ODC that the complainant did not receive the policy, respondent arranged for another copy to be mailed to him, which he received.

The complainant filed suit against respondent in North Carolina. Respondent appeared in the matter and has paid the \$575 judgment the court awarded to the complainant.

Law

Respondent admits that her conduct violated Rule 5.5(a) of the South Carolina Rules of Professional Conduct, Rule 407, SCACR (a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction). In addition, respondent admits her conduct violated the following

North Carolina Rules of Professional Conduct: Rule 1.3 (diligence); Rule 1.4 (communications); Rule 5.3 (supervision of non-lawyers); and Rule 5.5(b) (prohibiting a lawyer not licensed in North Carolina from establishing an office or other systematic and continuous presence in the state and also prohibiting the lawyer from holding herself out as admitted to practice law in North Carolina). Finally, respondent admits these violations constitute grounds for discipline under Rules 7(a)(1) and (2), RLDE.

Conclusion

We hereby suspend respondent from the practice of law in this state for nine months. Respondent shall complete the Legal Ethics and Practice Program Law Office Management School prior to reinstatement. Respondent shall also pay the costs incurred by ODC and the Commission on Lawyer Conduct in investigating and prosecuting this matter within thirty days of the date of this opinion.

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

DEFINITE SUSPENSION.

PLEICONES, C.J., BEATTY, KITTREDGE, HEARN and FEW, JJ., concur.

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

In the Matter of George Thomas Samaha, III,
Respondent.

Appellate Case No. 2016-001508

Opinion No. 27660

Submitted August 9, 2016 – Filed August 24, 2016

DISBARRED

Lesley M. Coggiola, Disciplinary Counsel, and William
C. Campbell, Assistant Disciplinary Counsel, both of
Columbia, for Office of Disciplinary Counsel.

George Thomas Samaha, III, *Pro Se*.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, respondent admits misconduct and consents to disbarment.¹ Respondent also agrees to pay the costs incurred in the investigation

¹ Respondent has a disciplinary history that consists of a deferred disciplinary agreement in 1999; a letter of caution with a finding of minor misconduct, issued in 2001, which cites Rules 1.1 (a lawyer shall provide competent representation to a client; competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation), 1.2 (scope of representation and allocation of authority between client and lawyer), 1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client), 1.4 (communication with clients), and 8.1 (responsibilities with regard to bar admissions and disciplinary matters) of the Rules of Professional Conduct, Rule 407, SCACR; a letter of caution without a finding of misconduct, issued in 2006, which cites Rules 1.1, *supra*, 1.15 (safekeeping property), and 8.4(b), RPC (it is professional misconduct for a lawyer to commit a

of this matter by ODC and the Commission on Lawyer Conduct within thirty days of imposition of discipline. We accept the Agreement and disbar respondent from the practice of law in this state. The facts, as set forth in the Agreement, are as follows.

Facts/Law

Matter A

Respondent witnessed and notarized the signature of his client's late wife, who had passed away seven years earlier, on the transfer and assignment of a mortgage in violation of Rule 8.4(d), *supra*.

Matter B

Although he originally denied any altered or forged documents came from his law office and denied any knowledge of altered documents associated with his real estate practice, respondent admits forged insured closing protection letters (ICPL) were issued to the lenders by his staff. Respondent did not prepare the ICPLs, but admits they came from his law office and were prepared by his staff. Information later supplied by the title insurance company and a mortgage lender uncovered forgeries of not only ICPLs, but title insurance binders and title insurance policies. Respondent's agency relationship with the title insurance company that reported this matter had been terminated, as had respondent's approved attorney status.

criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects); a definite suspension, *In re Samaha*, 399 S.C. 2, 731 S.E.2d 277 (2012), which cites Rules 1.1, *supra*, 1.3, *supra*, 1.5(a)(a lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses), 1.7(b)(conflicts of interest), 1.8(a)(a lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client), 3.2 (a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client), 3.3(a)(1)(a lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer), 3.4(c)(a lawyer shall not knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists), 8.4(a)(it is professional misconduct for a lawyer to violate the Rules of Professional Conduct), and 8.4(d)(it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation), RPC; and an administrative suspension on May 22, 2013.

Absent the forgeries of these documents, respondent's real estate practice could not have functioned. Respondent allowed his staff to, in effect, run his office, failed to supervise them, and failed to supervise and review documents for closings in his office. Respondent admits he bears responsibility for what occurred in his law office.

Respondent admits his conduct violated the following Rules of Professional Conduct, Rule 407, SCACR: Rules 1.1, *supra*; 1.3, *supra*; 1.15, *supra*; 4.1 (in the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person); 5.3 (responsibilities regarding nonlawyer assistants); 8.4(a), *supra*; 8.4(d), *supra*; and 8.4(e)(it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice).

Matter C

Respondent failed to ensure prior mortgages were satisfied in four matters involving closings that took place just prior to respondent's one year suspension becoming effective. Respondent also failed to insure, by respondent's account, \$239,618.31 entrusted to him to pay off four prior mortgages.

Respondent informed the attorney appointed to protect the interests of respondent's clients at the time of his suspension that the records of his law firm as well as the computers were destroyed by respondent's staff. Due to the lack of records, the total amount of funds respondent failed to safeguard is unknown. ODC reconstructed the last months of trust account transactions using bank records, but ODC cannot prove any large sums of money were transferred to respondent, his firm, or his staff. ODC notes multiple trust account checks were written to respondent, his firm or his staff. Prior to the filing of the complaints in these matters, there were no indications of serious financial mismanagement regarding respondent's real estate practice. Apparently, based on the records, new closings were funding previous closings until respondent's suspension, which caused the inflow of new funds to cease. Respondent admits he failed to supervise his staff, failed to reconcile his trust account, failed to monitor his trust account, failed to safeguard funds belonging to third parties, failed to maintain records, and failed to cooperate with the investigation of these matters.

Respondent admits his conduct violates the following Rules of Professional Conduct, Rule 407, SCACR: 1.1, *supra*; 1.3, *supra*; 1.15, *supra*; 8.1(b)(a lawyer in

connection with a disciplinary matter shall not fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from a disciplinary authority); 8.4(a), (d), and 8.4(e), *supra*. Respondent also admits he has violated the financial recordkeeping requirements of Rule 417, SCACR.

Matter D

In this matter, a forged ICPL was found in a closing package for a loan that was in default. The ICPL induced a mortgage company into permitting respondent to close on the subject transaction. Respondent also produced a title insurance binder from the closing that references a specific title insurance company that had terminated its relationship with respondent sometime prior to the closing. The binder therefore has no legal effect in affording the mortgage company protection. Respondent admits his conduct violates the following Rules of Professional Conduct, Rule 407, SCACR: 1.1, *supra*; 1.3, *supra*; 1.15, *supra*; 4.1, *supra*; 5.3, *supra*; 8.4(a), (d), and (e), *supra*.

Matter E

Despite the fact respondent's professional liability insurance carrier had filed a declaratory judgment action in federal court, in which it alleged respondent's insurance application contained false and misleading information, respondent directed parties who had prior mortgages that had not been satisfied to file a claim with the carrier.

Respondent admits his conduct violates the following Rules of Professional Conduct, Rule 407, SCACR: 4.1, *supra*; 5.3, *supra*; 8.4(a), (d) and (e), *supra*.

Matter F

Respondent admits he typed, witnessed and notarized a revocation of a durable power of attorney for an 83 year old retired paralegal with cognitive and physical limitations in violation of the following Rules of Professional Conduct: 1.14 (responsibilities related to clients with diminished capacity); 8.4(d) and (e), *supra*; as well as Rule 34, RLDE, Rule 413, SCACR (employment of lawyers who are suspended).

Respondent admits all the conduct set forth in the matters above constitutes grounds for discipline under Rule 7(a)(1), RLDE, Rule 413, SCACR (it shall be a ground for discipline for a lawyer to violate the Rules of Professional Conduct or any other rules of this jurisdiction regarding professional conduct of lawyers).

Conclusion

We accept the Agreement for Discipline by Consent and disbar respondent from the practice of law in this state. Respondent shall, within thirty days of the date of this opinion, pay the costs incurred in the investigation of this matter by ODC and the Commission on Lawyer Conduct. Within fifteen days of the date 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, and shall also surrender his Certificate of Admission to the Practice of Law to the Clerk of Court.

DISBARRED.

PLEICONES, C.J., BEATTY, KITTREDGE, HEARN and FEW, JJ., concur.

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

In the Matter of Matthew Jeffrey Lester, Respondent.

Appellate Case No. 2016-000535

Opinion No. 27661

Submitted August 9, 2016 – Filed August 24, 2016

DISBARRED

Lesley M. Coggiola, Disciplinary Counsel, and Sabrina
C. Todd, Assistant Disciplinary Counsel, both of
Columbia, for Office of Disciplinary Counsel.

Matthew Jeffrey Lester, *Pro Se*.

PER CURIAM: By order of the Superior Court of Wake County, North Carolina dated October 3, 2013, respondent was disbarred from the practice of law in North Carolina.¹ The order was forwarded to this Court by the Office of Disciplinary Counsel (ODC) on March 11, 2016. Thereafter, pursuant to Rule 29(b) of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR, ODC and respondent were notified by letter of the Clerk of this Court that they had thirty

¹ The order is a Consent Order of Disbarment that states respondent resigned from the North Carolina State Bar in light of a pending investigation into misappropriation of client funds. The order further states respondent acknowledged the material facts upon which the investigation was predicated were true and that he could not successfully defend against disciplinary charges if brought. The order concluded that by misappropriating client funds, respondent violated Rule 8.4 of the North Carolina Rules of Professional Conduct and the conduct constituted grounds for discipline. Finally, the order concluded respondent had engaged in professional misconduct warranting disbarment. Accordingly, respondent was disbarred from the practice of law in North Carolina.

days to inform the Court of any claim that imposition of the identical discipline in South Carolina is not warranted and the reasons for any such claim.² ODC submitted a letter stating it has no information that would indicate imposition of identical discipline against respondent in South Carolina is not warranted. Respondent did not respond to the Clerk's letter.

We find disbarment is the appropriate sanction to impose as reciprocal discipline, as none of the reasons set forth in Rule 29(d) of the Rules for Lawyer Disciplinary Enforcement for the imposition of different discipline exists in this matter.

DISBARRED.

PLEICONES, C.J., BEATTY, KITTREDGE, HEARN and FEW, JJ., concur.

² This letter was mailed to the two most recent addresses respondent provided in the Attorney Information System (AIS), both in North Carolina. ODC also attempted to contact respondent using the email address he provided in AIS but received no response.

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Allegro, Inc., Respondent,

v.

Emmett J. Scully, Synergetic, Inc., George C. Corbin and
Yvonne Yarborough, Petitioners.

Appellate Case No. 2014-002055

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Richland County
L. Casey Manning, Circuit Court Judge

Opinion No. 27662
Heard November 18, 2015 – Filed August 24, 2016

REVERSED

Amy L. Gaffney, of Gaffney Lewis & Edwards, LLC,
and C. Mitchell Brown, William C. Wood, Jr., and Brian
P. Crotty, all of Nelson Mullins Riley & Scarborough,
LLP, all of Columbia, for Petitioners.

Richard J. Morgan and Robert L. Widener, both of
McNair Law Firm, PA, of Columbia, for Respondent.

JUSTICE HEARN: This protracted litigation emanates from Emmitt Scully's departure from Allegro, Inc., a professional employer organization (PEO)¹, in order to form a competing PEO—Synergetic, Inc.—along with former Allegro employees, including Yvonne Yarborough. Allegro brought this suit against Scully, Yarborough, Synergetic, and George Corbin—a former client of Allegro who also performed some accounting services for the company (collectively Petitioners). The jury returned a verdict in favor of Allegro on all claims and awarded it \$1.76 million in actual damages and \$250,000 in punitive damages. Petitioners moved for, *inter alia*, JNOV on all causes of action, which the trial court denied. The court of appeals reversed and remanded for a new trial, and we therefore address only whether the claims for civil conspiracy, breach of contract, and breach of contract accompanied by a fraudulent act should be included in the remand. We find those causes of action should never have been submitted to the jury and therefore hold the court of appeals erred in affirming the trial court's denial of JNOV as to those claims.

FACTUAL/PROCEDURAL BACKGROUND

After working within the industry for several years, Mary Etta McCarthy decided to develop a PEO, and in the summer of 1997 she began looking for a partner with more human resources experience to join her in this endeavor. She eventually entered into a partnership agreement with Scully and formed Allegro. Pursuant to the agreement, Scully would ultimately have forty-nine shares of the partnership and McCarthy would have fifty-one. Scully acted as Allegro's president, supervising the day-to-day operations, working with employees, and keeping up the client relationships. During that time, Scully became acquainted with Corbin, who Allegro retained for outside accounting and CPA services. Corbin prepared the books and performed Allegro's annual audits for two or three years.

After some time, the relationship soured and Scully began considering different options to sever his ties to McCarthy, all of which he discussed with Corbin. To aid Scully in his decision making, Corbin drafted a letter identifying

¹ PEOs provide services such as human resources, employee benefits, payroll, and workers' compensation to businesses as a means of outsourcing that area of management.

Scully's different options—buying out McCarthy, McCarthy buying his shares, or starting a new company. In the spring of 2003, Scully informed McCarthy he wanted to run Allegro on his own and therefore would like to buy out her shares.

After almost a year of being unable to reach a resolution on the price of the shares, Scully tendered his resignation. Although McCarthy initially agreed to accept Scully's offer to purchase her shares, she quickly changed her mind the following week when Scully was away on business. When Scully returned from his trip, McCarthy met him at the office with a letter accepting his resignation and immediately requested the keys to the company car and the return of any company property. McCarthy had the police waiting in an adjacent room in the event trouble occurred and ordered a cab to take Scully home.

Over the course of the following week, Scully began visiting Allegro's customers. He ultimately established his new company, Synergetic, and two employees from Allegro, Yarborough and Lisa Milliken, joined him.

Allegro filed this suit on April 2004 against Synergetic, Scully, Corbin, and Yarborough, alleging thirteen causes of action. The same day, Allegro filed a motion for a temporary injunction to enjoin Synergetic, Scully, and Yarborough from soliciting any of its clients. The injunction was granted in a thorough ten-page order. The case proceeded to trial.

At the close of Allegro's case as well as at the close of all the evidence, both parties moved for directed verdict. The trial court denied the motions and submitted the case to the jury. The verdict form sent to the jury listed eleven causes of action and provided the jury a blank space to include the damages next to each action.²

² The causes submitted to the jury were: breach of duty of loyalty (Scully and Yarborough), violation of Section 33-8-420(a) of the South Carolina Code (2006) (Scully), breach of fiduciary duty (Scully), breach of contract accompanied by a fraudulent act (Scully), breach of contract (Scully), fraud (Scully), gross negligence (Scully), negligent misrepresentation (Scully), violation of Section 33-8-310 of the South Carolina Code (2006) (Scully), and civil conspiracy (Scully, Corbin, Yarborough). Synergetic was not included in any cause of action submitted to the jury.

The jury returned a verdict for Allegro on all causes of action, awarding \$160,000 in actual damages on each claim. It also awarded \$75,000 in punitive damages on the claim for breach of loyalty against Yarborough, and \$175,000 in punitive damages for the civil conspiracy claim.

Thereafter, Petitioners moved for election of remedies, judgment notwithstanding the verdict (JNOV) on all causes of action, new trial, and new trial nisi remittitur. The trial court denied all the motions in an order dated July 9, 2008, basing much of its conclusions on preservation grounds. Specifically, the trial court found Petitioners' arguments for JNOV were not preserved as to the claims for breach of duty of loyalty against Scully and Yarborough, breach of duty of good faith against Scully, breach of fiduciary duty against Scully, and conflict of interest by Scully because those issues had not been challenged at the directed verdict stage.

Addressing the remaining claims, the trial court held, *inter alia*, the limited ground upon which the breach of contract claim had been challenged was whether there was any evidence of the existence of a contract, not whether Allegro had failed to prove the terms of the contract; accordingly, it addressed only the existence and concluded there was sufficient evidence to overcome a JNOV motion. On the breach of contract accompanied by a fraudulent act claim, the trial court also found Petitioners had never alleged there was no evidence of a fraudulent act and were therefore precluded from doing so at the JNOV stage. As to the civil conspiracy claim, the trial court found Petitioners had failed to argue a lack of evidence of special damages in their directed verdict motion and therefore could not argue that as grounds for JNOV.

The trial court also denied Petitioners' motions for a new trial, which were premised in part on alleged evidentiary issues, holding it was not error to admit evidence of the temporary injunction to the jury. With regard to Petitioners' assertions that the verdict was inconsistent or that Allegro was required to elect a remedy, it concluded there was no double recovery and Petitioners' failure to object to the verdict form waived any claim that recovery for any of the claims was premised on the same conduct.

On its initial appeal, the court of appeals reversed and remanded, holding it was error to allow the temporary injunction into evidence and declining to reach Petitioners' challenges to the denial of their JNOV motions. *Allegro, Inc. v. Scully*,

400 S.C. 33, 733 S.E.2d 114 (Ct. App. 2012). Both parties petitioned for certiorari, and this Court denied Allegro's petition, granted Petitioners', and remanded to the court of appeals for consideration of the JNOV issues. *Allegro, Inc. v. Scully*, 408 S.C. 200, 758 S.E.2d 716 (2014). On remand, the court of appeals held the trial court erred in failing to grant directed verdict on the claims of fraud and negligent misrepresentation. *Allegro, Inc. v. Scully*, 409 S.C. 392, 762 S.E.2d 54 (Ct. App. 2014). In addressing the claims for breach of contract and breach of contract accompanied by a fraudulent act, the court of appeals declined to address Petitioners' argument that Allegro had failed to prove any terms of the contract, finding that argument unpreserved. *Id.* Instead, it limited its review to whether evidence was presented that a contract existed and, finding sufficient evidence to overcome that challenge, found no error in the denial of JNOV. *Id.* As to the conspiracy claim, the court of appeals concluded Petitioners had not preserved their argument there was no evidence of special damages and only considered whether there was evidence of Corbin's intent to harm. Finding sufficient evidence, the court found no error in the denial of JNOV on that ground. *Id.* Both parties petitioned for rehearing, which was denied. Only Petitioners sought certiorari, which this Court granted.

ISSUES PRESENTED

- I. Did the court of appeals err in failing to reverse the trial court's denial of directed verdict on the civil conspiracy claim?
- II. Did the court of appeals err in failing to reverse the trial court's denial of directed verdict on the claims for breach of contract and breach of contract accompanied by a fraudulent act?

STANDARD OF REVIEW

On review from a trial court's denial of a motion for directed verdict or JNOV, this Court applies the same standard as the trial court and views the evidence and all reasonable inferences in the light most favorable to the nonmoving party. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 28, 602 S.E.2d 772, 782 (2004). Motions for directed verdict or JNOV should be denied if the evidence yields more than one reasonable inference or its inference is in doubt. *Strange v. S.C. Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 429–30, 445 S.E.2d 439, 440 (1994). Further, "[a] motion for JNOV may be granted only if no

reasonable jury could have reached the challenged verdict." *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998). An appellate court will reverse the trial court's ruling only if no evidence supports the ruling below. *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 418 (Ct. App. 2000).

LAW/ANALYSIS

I. CIVIL CONSPIRACY

"A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff." *McMillan v. Oconee Mem'l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006). A plaintiff need not allege an unlawful act to state a cause of action; lawful acts may become actionable as a civil conspiracy if the objective is to ruin or damage the business of another. *LaMotte v. Punch Line of Columbia, Inc.*, 296 S.C. 66, 70, 370 S.E.2d 711, 713 (1988). Therefore, the primary inquiry in civil conspiracy is whether the principal purpose of the combination is to injure the plaintiff. *Pye v. Estate of Fox*, 369 S.C. 555, 567, 633 S.E.2d 505, 511 (2006). "Conspiracy may be inferred from the very nature of the acts done, the relationship of the parties, the interests of the alleged conspirators, and other circumstances." *Peoples Fed. Sav. & Loan Ass'n of S.C. v. Res. Planning Corp.*, 358 S.C. 460, 470, 596 S.E.2d 51, 57 (2004). "Civil conspiracy involves acts that are by their very nature covert and clandestine and usually not susceptible of proof by direct evidence." *McMillan*, 367 S.C. at 564, 626 S.E.2d at 886.

The gravamen of a civil conspiracy claim is the damage resulting to the plaintiff from the acts taken in furtherance of the combination; accordingly, the damages alleged must go beyond the damages alleged in other causes of action. *Pye*, 369 S.C. at 568, 633 S.E.2d at 511. "Special damages must be alleged in the complaint to avoid surprise to the other party." *Sheek v. Lee*, 289 S.C. 327, 329, 345 S.E.2d 496, 497 (1986).

Both the court of appeals and the trial court concluded this argument was unpreserved because trial counsel did not specifically argue special damages during her directed verdict motion at the close of trial. Petitioners, however, contend the trial court cut her off during her argument and she was therefore

simply unable to fully explicate all the grounds for dismissing the claim. Because the issue of special damages was indisputably raised at the close of Allegro's case, Petitioners contend we should find that argument preserved for review. We agree the trial court prevented trial counsel from elaborating on her argument. Specifically, as trial counsel was discussing whether evidence had been presented that Corbin possessed an intent to harm, the trial court, after interrupting her several times on this point, finally admonished her that it had "heard enough about civil [conspiracy] - - go to the cause of action." We cannot agree that counsel is required to ignore the trial court's clear instruction to proceed to the next issue in order to preserve an issue. *See State v. Ross*, 272 S.C. 56, 60, 249 S.E.2d 159, 161 (1978) ("We decline to hold that, in order to preserve an objection, when the judge begins to speak counsel must try to speak over him."). Preservation rules are designed to provide an adequate platform for appellate review by ensuring the trial court has had the opportunity to rule on an issue prior to this Court considering the matter. The utility of these rules would be grievously undermined were we to construe them to require futile additional argument after the trial judge has made his position clear.

Turning to the merits, we agree Allegro neither pled nor argued special damages. The complaint merely alleges actual, compensatory, and punitive damages—as it does in each of the other causes of action. Furthermore, at trial, the only evidence offered of damages claimed were the general damages discussed by Daniel McHenry, who approximated the damages "suffered by Allegro as a result of [Petitioners'] action[s] as set forth in the complaint" to be \$3.6 million. There was no indication of specific damages emanating solely from the conspiracy. We therefore find the trial court erred in failing to grant Petitioners' JNOV motion and reverse.³

³ Allegro made a motion to argue against the precedent of *Todd v. South Carolina Farm Bureau Mutual Insurance Co.*, 276 S.C. 284, 292–93, 278 S.E.2d 607, 611 (1981), in which the Court held a plaintiff must plead and prove special damages to state a cause of action for civil conspiracy. While Chief Justice Pleicones and Justice Beatty would overrule *Todd*, we disagree this is an appropriate vehicle in which to do so given this case's age and procedural posture. This lawsuit was filed over twelve years ago and has already been through a lengthy trial. Given the pending retrial arising out of the remaining causes of action, we believe it would be unfair to the parties to change the pleading and proof requirements at this late stage in the litigation.

II. BREACH OF CONTRACT

Scully also argues he is entitled to JNOV on the claims for breach of contract and breach of contract accompanied by a fraudulent act because there was no evidence of the existence of a contract or its terms. We agree.

In an action for breach of contract, the burden is on the plaintiff to prove the contract, its breach, and the damages caused by such breach. *Maro v. Lewis*, 389 S.C. 216, 222, 697 S.E.2d 684, 688 (Ct. App. 2010). A contract may arise from oral or written words or by conduct. *Prescott v. Farmers Tel. Co-op., Inc.*, 335 S.C. 330, 335, 516 S.E.2d 923, 926 (1999). "[F]or a contract to be valid and enforceable, the parties must have a meeting of the minds as to all essential and material terms of the agreement." *Davis v. Greenwood Sch. Dist. 50*, 365 S.C. 629, 634, 620 S.E.2d 65, 67 (2005).

In finding the trial court did not err in denying the motion for JNOV, the court of appeals, like the trial court, concluded that Scully had only ever argued no contract existed and thus he was precluded from asserting there was no proof of the terms in his post-trial motion. We believe this conclusion puts too fine a point on the discussion. If Scully contended there is no proof of a contract, which he indisputably did, necessarily wedded to that assertion is the notion that no terms of that nonexistent contract have been proven either. This is especially true where the alleged contract had no written basis from which a jury could divine the terms—no handbook, employee agreement, or noncompete agreement. Part of proving that some enforceable contract exists is being able to identify the terms thereof. *See Mathis v. Brown & Brown of S.C., Inc.*, 389 S.C. 299, 308, 698 S.E.2d 773, 778 (2010) (holding that for a contract to be valid and enforceable, there must be a meeting of the minds as to all essential and material terms of the agreement).

While there may have been evidence of an agreement by conduct—Scully admittedly served as the president of Allegro and performed certain duties and tasks in accordance with such employment—there is nothing to suggest this was anything other than an at-will relationship. *See Mathis*, 389 S.C. at 309, 698 S.E.2d at 778 ("In South Carolina, employment at-will is presumed absent the creation of a specific contract of employment."). Unable to point to explicit contractual terms in order to allege their breach, Allegro claims Scully breached the implied covenant of good faith and fair dealing. However, absent some

alteration in at-will employment status, there is no contract into which we could imply this duty. *Williams v. Riedman*, 339 S.C. 251, 274, 529 S.E.2d 28, 40 (Ct. App. 2000) ("[W]e have declined to apply [the] covenant [of good faith and fair dealing] to the employment at-will situation where no contract exists."); *Keiger v. Citgo, Coastal Petroleum, Inc.*, 326 S.C. 369, 374, 482 S.E.2d 792, 794 (Ct. App. 1997) ("[T]he implied covenant of good faith and fair dealing that is implied in every contract applies to employment contracts *that alter* the at-will employment status." (emphasis added)).

With no material terms provided or alleged, we find no contract on which Allegro can predicate its claims of breach of contract and breach of contract accompanied by a fraudulent act. We therefore reverse the court of appeals and dismiss those causes of action.

CONCLUSION

Based on the foregoing, we reverse the court of appeals, finding it erred in affirming the trial court's denial of Petitioners' motion for JNOV on the claims for civil conspiracy, breach of contract, and breach of contract accompanied by a fraudulent act. Consistent with the disposition of the court of appeals' opinion, the case is remanded for trial on the remaining causes of action against Scully and Yarborough.

**Acting Justices Jean H. Toal and James E. Moore, concur.
BEATTY, J., concurring in part and dissenting in part in a
separate opinion. PLEICONES, C.J., dissenting in a separate
opinion.**

JUSTICE BEATTY: Respectfully, I concur in part and dissent in part. While I concur with the majority's decision to reverse the Court of Appeals, I agree with the dissent's position advocating for this Court to overrule *Todd* and its progeny.

CHIEF JUSTICE PLEICONES: I respectfully dissent and would affirm the decision of the Court of Appeals which remanded all causes of action for a new trial.

A. Civil Conspiracy

I would take this opportunity to clarify the law of civil conspiracy. The definition of civil conspiracy is "the conspiring together to do an unlawful act to the detriment of another or the doing of a lawful act in an unlawful way to the detriment of another."⁴ *Charles v. Texas Co.*, 192 S.C. 82, 5 S.E.2d 464 (1939). A civil conspiracy is not actionable unless overt acts proximately damage the plaintiff. *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 278 S.E.2d 607 (1981) *appeal after remand* 283 S.C. 155, 321 S.E.2d 602 (Ct. App. 1984) *quashed in part on other grounds* 287 S.C. 190, 336 S.E.2d 472 (1985). In *Todd*, the Court created a new rule of pleading for civil conspiracy claims, holding that the plaintiff in a civil conspiracy action must allege damages different from those alleged in any other of her tort causes of action. In creating this new rule of pleading, the *Todd* Court cited 15A C.J.S. *Conspiracy* § 33. From this holding in *Todd* evolved the requirement that the civil conspiracy plaintiff must both plead and prove "special damages" in order to recover. We granted respondent's motion to argue against the "special damages" rule derived from *Todd*. After review, I agree with respondent that the *Todd* Court misread and misapplied § 33, which merely states a prohibition on double recovery, not a rule of pleading or proof:

Where the particular acts charged as a conspiracy are the same as those relied on as the tortious act or actionable wrong, plaintiff cannot recover damages for such act or wrong, and recover likewise on the conspiracy to do the act or wrong.

15A C.J.S. *Conspiracy* § 33.

I would overrule *Todd* and its progeny to the extent they create a "special damages" pleading and/or proof requirement for a civil conspiracy cause of action.

Turning to the facts of this case, the majority holds that the petitioners' JNOV motion on the civil conspiracy verdict should have been granted, at least in part,

⁴ This definition derives from Lord Dehman's statement in *King v. Jones*, 110 Eng. Rep. 485, 487 (K.B. 1832).

because of an alleged *Todd* flaw in respondent's pleading.⁵ A directed verdict and a JNOV are directed at the evidence, not the pleadings. In any case, as there is evidence in this record of damages resulting from the conspiracy, I agree with the Court of Appeals that a retrial on this cause of action is appropriate.⁶

B. Contract

I also disagree with the majority's disposition of the breach of contract and breach of contract accompanied by a fraudulent act causes of action against petitioner Scully. The majority finds Scully was entitled to a JNOV on the contract claims because "no material terms [were] provided or alleged," again indicating some confusion between evidence sufficient to withstand a directed verdict/JNOV motion and the sufficiency of pleadings. In ruling on petitioner Scully's JNOV motion, the trial court held there was evidence of an oral contract, and that to the extent petitioner Scully sought to argue in his JNOV that the terms of that oral contract were too vague, his argument was foreclosed by his failure to raise the vagueness issue at the directed verdict stage. *See, e.g., State ex rel. Wilson v. Ortho-McNeil-Janssen Pharms. Inc.*, 414 S.C. 33, 777 S.E.2d 176 (2015) (only grounds raised in directed verdict motion may be raised in JNOV motion). Petitioner Scully failed to challenge this procedural ruling, and despite the majority's decision to combine the issues of the existence of a contract and the evidence of its terms on certiorari, in my opinion, the Court of Appeals properly refused to address the unpreserved "terms" argument on appeal. *Janssen, supra*. In any case, the denial of the directed verdict motion on the existence of an oral contract and/or a contract by conduct is supported by the testimony of both Ms. McCarthy and petitioner Scully, and the majority errs in holding that there was no evidence of a contract sufficient to support the jury's finding that Scully violated the implied covenant of good faith and fair dealing. I would uphold the Court of Appeals' decision affirming the denial of petitioner Scully's JNOV motions on both contract claims, which should be retried on remand.

⁵ This 'pleading' issue was not raised at trial nor was it raised by the petitioners in brief.

⁶ Even if the Court were to preserve the *Todd* rule, the sole claim asserted against petitioner Corbin was civil conspiracy, and thus as to him the "special damages" rule created by *Todd* does not apply.

For the reasons given above, I would overrule *Todd* and affirm the Court of Appeals.