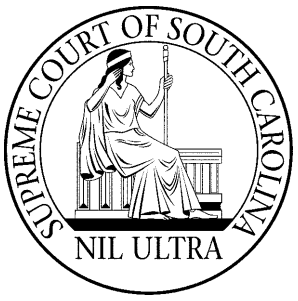

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 41
November 21, 2011
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

Alexander Michau, Employee, Claimant, Appellant,

v.

Georgetown County, Self-Insured Employer, through, South Carolina Counties Workers Compensation Trust, Defendants, Respondents.

Appeal from the South Carolina
Workers Compensation Commission

Opinion No. 27064
Heard October 6, 2011 – Filed November 21, 2011

REVERSED AND REMANDED

Raymond C. Fischer and William Stuart Duncan, both of Georgetown, for Appellant.

Kirsten L. Barr and Jamie C. Guerrero, both of Mt. Pleasant, for Respondents.

CHIEF JUSTICE TOAL: Appellant, Alexander Michau (Employee), appeals a ruling by the Appellate Panel of the South Carolina Workers' Compensation Commission (Commission) denying Employee's claim for repetitive trauma injuries to his shoulders. Specifically, Employee challenges the Commission's interpretation and application of section 42-1-172 of the South Carolina Code. Because the Commission erred in admitting a medical opinion that was not stated to a reasonable degree of medical certainty, as required under section 42-1-172, we reverse and remand.

FACTS/ PROCEDURAL HISTORY

Employee alleges he sustained a compensable repetitive trauma injury to both of his shoulders on September 29, 2008, and reported it to his supervisor that same day. Prior to this date, Employee did not report any work-related problems with his arms to Georgetown County (Employer) although he sought outside treatment. Employee seeks reimbursement for medical expenses and an award of temporary total disability benefits.

Employee is in his sixties and has twice worked for Employer. When he returned to work for Employer in 1988, he was initially employed as a truck driver, but eventually switched to operating a motor grader, a device used to grade and smooth dirt and gravel on roads. Employee usually worked ten hours per day, spending about eight hours actually operating the motor grader.

Employee testified he operated two types of motor graders during his tenure with Employer. The original motor graders had manual levers while newer models were equipped with hydraulics. After Employer purchased the newer model, Employee operated it for approximately three years without any incident, admitting that "it was a good machine."[1] Employee did not file

[1] Employee elaborated further, "I mean, it was good. I mean, I had a steering wheel that, that I pulled to me, and I had my levers on each side. It was right

a workers' compensation claim until he began operating the new, non-vibrating machine, but he testified that the old machine did vibrate.

In 1997, Employee first sought medical treatment with Dr. Benjamin Lawless for problems relating to his arms and shoulders. Dr. Lawless's medical reports indicate that Employee complained of arthritis-related symptoms involving pain and swelling in his hands and redness in his joints.[2] In August 2005, Dr. Lawless referred Employee for a total body bone scan, which also found evidence of rheumatoid arthritis. Consequently, he referred Employee to a rheumatologist, Dr. Mitch Twinning, who examined Employee on May 24, 2006, and diagnosed him with rheumatoid arthritis. Employee continued treatment with Dr. Lawless for this disease until June 2006.

On December 1, 2006, Dr. Michael Bohan, an orthopaedic specialist, began treating Employee and reported that x-ray data of the left shoulder "show[ed] rather significant degenerative arthritis of the glenohumeral joint as well as the AC joint." Employee eventually underwent surgery on his left shoulder, and on November 21, 2008, Dr. Bohan issued a letter to Employee's attorney stating:

> I do believe *within a reasonable degree of medical certainty* that these repetitive work activities over the years of his shoulders [sic] have resulted in his severe osteoarthritis of both shoulders.

(emphasis added).

Seeking independent verification of Employee's claim, Employer engaged Dr. Chris Tountas, a specialist in the treatment of arthritis, to perform a medical evaluation of Employee. Dr. Tountas opined:

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there. I mean, it was just—it was just easy as—almost as eating ice cream."

[2] In June 2001, Employee complained of arthritic symptoms in his arms, and Dr. Lawless's medical report indicates he suspected Employee suffered from carpal tunnel syndrome. In July and November 2001, Employee followed up with Dr. Lawless, again complaining of pain in his arms and hands.

> Based on the history, physical examination, objective findings, and review of available records, it is my *opinion* that [Employee] has had a long history of arthritis involving multiple joints with diagnosis of rheumatoid arthritis . . . . There is no indication from the job description or his employment that would relate any of his shoulder problems to his work driving a road grader. In my opinion this is a natural progression of a preexisting condition. The preexisting condition in my opinion would ultimately result in a need for treatment and the recent surgery.

(emphasis added).

The Commission denied Employee's claim on the grounds that "the greater weight of the medical evidence reflects [Employee's] upper extremity and shoulder problems are related to pre-existing osteoarthritis and/or rheumatoid arthritis and not caused or aggravated by his employment with Georgetown County." In reaching this conclusion, the Commission considered all of the medical evidence including Dr. Tountas's report. Employee disputes the admissibility of Dr. Tountas's report under South Carolina Code section 42-1-172 because it was not stated "to a reasonable degree of medical certainty." Employee argues that without this evidence, the remaining competent evidence would support Employee's claim of sustaining a compensable repetitive trauma injury.

ISSUES

I. Whether section 42-1-172(C) governs the admissibility of evidence in a workers' compensation claim.

II. Whether the Commission properly construed and applied section 42-1-172 in admitting Dr. Tountas's statement.

STANDARD OF REVIEW

The South Carolina Administrative Procedure Act (APA) governs appeals from the decisions of the Commission. S.C. Code Ann. § 1-23-380 (Supp. 2010); *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 134–35, 276 S.E.2d 304, 306 (1981). Under the APA, an appellate court may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact, but it may reverse when the decision is affected by an error of law. S.C. Code Ann. § 1-23-380(5).

ANALYSIS

I. Admissibility of Evidence under section 42-1-172

Employer contends that South Carolina Code section 42-1-172 does not govern the admissibility of evidence in a workers' compensation claim involving a repetitive trauma injury. S.C. Code Ann. § 42-1-172 (Supp. 2010). We disagree.

Specifically, Employer argues that admissibility of evidence in this case is governed *solely* by section 1-23-330, which provides that "in contested cases . . . [i]rrelevant, immaterial or unduly repetitious evidence shall be excluded." S.C. Code Ann. § 1-23-330 (2005). However, Employer cites no supporting authorities for this interpretation.

In our view, section 1-23-330 establishes a minimum standard that applies generally, but not exclusively. On the other hand, section 42-1-172(C) expressly creates an additional heightened standard for repetitive trauma injury cases. Specifically, it requires "medical evidence," in the form of "expert opinion or testimony [to be] stated to a reasonable degree of medical certainty." S.C. Code Ann. § 42-1-172(C). Indeed, section 42-1-172(C) commands that the "[c]ompensability of a repetitive trauma injury must be determined *only* under the provisions of this statute." *Id.* (emphasis added); *see also Murphy v. Corning*, 393 S.C. 77, 84, 710 S.E.2d 454, 458

(Ct. App. 2011) ("[T]he compensability of a repetitive trauma injury must be determined by the Commission under the provisions of [section] 42-1-172 . . . . [and] the Commission erred by failing to address [section] 42-1-172.").

Thus, in repetitive trauma injury cases such as this, section 42-1-172 governs the admissibility of medical evidence.

II. Commission's Construction and Application of section 42-1-172

Employee argues that the Commission incorrectly construed section 42-1-172 by admitting Dr. Tountas's medical evidence, as it was not stated "to a reasonable degree of medical certainty."[3] We agree.

Section 42-1-172 provides:

> An injury is not considered a compensable repetitive trauma injury unless a commissioner makes a specific finding of fact by a preponderance of the evidence of a causal connection that is established by medical evidence . . . . As used in this section, "medical evidence" means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed and qualified medical physician.

S.C. Code Ann. § 42-1-172.

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[3] Specifically, the Commission concluded:

> Subsection (C) merely defines what medical evidence is necessary to establish causation of a repetitive trauma claim. This provision of the Act could not have been intended to require every medical report submitted by the parties be stated within a reasonable degree of medical certainty.

It is clear the plain reading of the statute requires that "opinion or testimony" must be "stated to a reasonable degree of medical certainty." *Id.* In contrast, "documents, records, or other material" is not similarly modified. *Id.* As this Court has recognized, the "use of the word 'or' in a statute 'is a disjunctive particle that marks an alternative.'" *K & A Acquisition Group, LLC v. Island Pointe, LLC*, 383 S.C. 563, 580, 682 S.E.2d 252, 261 (2009). Here, the legislature intentionally used "or" after a series of commas to expand the definition of "medical evidence" beyond "opinion or testimony." S.C. Code Ann. § 42-1-172. This Court has said that words should be given "their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010) (citation omitted). Because the statute does not require that "documents, records, or other material" be "stated to a reasonable degree of medical certainty," we will not expand its plain meaning or interpolate this requirement.[4] *Id.*

Consequently, we must address whether Dr. Tountas's statement constitutes an "opinion or testimony" that must be "stated to a reasonable degree of medical certainty." S.C. Code Ann. § 42-1-172. Employer contends that Dr. Tountas's letter represents "documents, records, or other

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[4] Legislative history also supports this interpretation of section 42-1-172. Had the General Assembly intended to require "documents, records, or other material" be "stated to a reasonable degree of medical certainty," it would have left the April 4, 2007 amended and adopted Senate version of this section intact. This version unambiguously provides:

> As used in this title, "medical evidence" means expert opinion, expert testimony, documents, or other material that is offered or stated to a reasonable degree of medical certainty by a licensed health care provider.

S. 332, reprinted in 4 Senate Journal, South Carolina Regular Session, 2007, at 1662. However, the legislature did not adopt this language.

material" that need not be stated to a reasonable degree of medical certainty. The Commission agreed with Employer and pointed out that a contrary interpretation and application of the statute would require this Court to ignore eleven years of Employee's prior medical history and reports merely because they do not contain the magic phrase "within a reasonable degree of medical certainty." We note that Employee does not challenge the other admitted medical evidence, and therefore the only issue we decide here is the admissibility of Dr. Tountas's statement.

While we recognize that medical "records" will often also contain physicians' opinions, in this instance, Dr. Tountas was not Employee's treating physician, and Employer specially sought out Dr. Tountas to evaluate Employee and issue a medical "opinion" to decide the compensability of Employee's claim. Under these facts, Dr. Tountas's letter does not constitute "documents, records, or other material," but is an "opinion or testimony" that must be "stated to a reasonable degree of medical certainty." *Id.* § 42-1-172.

In the alternative, Employer also argues that if Dr. Tountas's statement constitutes an "opinion or testimony," the requirement of section 42-1-172 applies only to claimants and not defendants. The statutory language makes no such distinction, so we decline to adopt this forced construction. *See Sweat*, 386 S.C. at 350, 688 S.E.2d at 575 (finding words should be given "their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.") (citation omitted).

Thus, we reverse the Commission's decision to admit Dr. Tountas's medical opinion.

CONCLUSION

For the foregoing reasons, we reverse and remand the case to the Commission to decide whether the remaining competent evidence supports Employee's claim of sustaining a compensable, repetitive trauma injury.

REVERSED AND REMANDED.

PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Kiawah Development Partners, II, Respondent,

v.

South Carolina Department of Health and Environmental Control, Appellant.

and

South Carolina Coastal Conservation League, Appellant,

v.

South Carolina Department of Health and Environmental Control and Kiawah Development Partners, II, of whom South Carolina Department of Health and Environmental Control is, Appellant,

and Kiawah Development Partners, II, is, Respondent.

Appeal from Richland County
Ralph K. Anderson, III, Administrative Law Judge

Opinion No. 27065
Heard January 18, 2011 – Filed November 21, 2011

REVERSED AND REMANDED

Amy E. Armstrong, of Pawleys Island, for Appellant SC Coastal Conservation League; Bradley D. Churdar and Davis A. Whitfield-Cargile, both of Charleston; and Carlisle Roberts, Jr, of Columbia, for Appellant SCDHEC.

G. Trenholm Walker , of Pratt-Thomas & Walker, and Gedney M. Howe, III, both of Charleston, for Respondent.

JUSTICE PLEICONES: The South Carolina Coastal Conservation League (League) and the South Carolina Department of Health and Environmental Control (DHEC) appeal an administrative law judge's (ALJ) order permitting respondent to construct erosion control devices in a critical zone on Captain Sam's Spit (Spit). We reverse and remand, finding the ALJ's decision is affected by numerous errors of law.

FACTS

Respondent owns a peninsula (Spit) which lies primarily south of Kiawah Island, surrounded on three sides by the Atlantic Ocean, the Kiawah River, and by Capitan Sam's Inlet, which separates the Spit from Seabrook Island. At the time of this hearing, the Spit was approximately a mile and a third long, with the narrowest part being the "neck" where the Spit joins Kiawah Island. The neck is approximately 450 feet wide, as measured from the critical line on the Kiawah River side to the mean high water line on the

Atlantic Ocean side. At its widest part, the Spit has a high ground width of more than 1,600 feet. The Spit has a number of high dune ridges running its entire length, and, on the river side, a "young and growing maritime forest."

For the past sixty years, the Spit has been "growing," accreting sand on the ocean side at a greater rate than it has been losing ground to erosion on the river side. Over the past three hundred years, however, a version of the Spit has formed and disappeared at least twice. The present Spit began to reform around 1949.

At present, respondent leases oceanfront property near the neck to the Charleston County Parks and Recreation Commission, which operates Beachwalker Park there. The Spit has approximately 150 acres of highland above mean high water, and respondent has obtained permission from the Town of Kiawah Island to develop not more than 50 home sites, on not more than 20 of the 31 highland acres which lie between the river's critical line and the set-back line established by DHEC's Ocean and Coastal Resource Management (OCRM) division.

Respondent sought a permit from DHEC to erect a 2,783 foot bulkhead/revetment combination along the Kiawah River, with the structure to begin at the neck, that is, at Beachwalker Park. DHEC authorized construction of the proposed erosion control device for 270 feet, beginning at Beachwalker Park, and denied the remaining portion of the request. Both the League and respondent requested a contested case hearing before the ALJ, the League to protest the portion of the permit request which was granted, and respondent to challenge the portion denied.

After an evidentiary hearing, the ALJ "amended" DHEC's original permit to allow respondent to construct a combination of bulkheads, which would be placed upright against the vertical face of riverbank, and revetments, in the form of a flexible interconnected articulated concrete block (ACB) mat, along the Spit's riverside sandy shoreline. The mat was to extend from the bulkhead toward the river. The bulkhead could not be installed in

certain areas, and the ACB mat permitted by the ALJ would vary in width from 40 feet to eight feet.

The ALJ found that respondent needed this permit in order to stabilize the width of the neck so that it could support an access road with underground utilities, road shelters, and other improvements. He also found such a road was required in order for respondent to develop the Spit, and that the entire revetment/bulkhead system was necessary in order for "the developable land on the peninsula [to] . . . be readily marketable."

The League and DHEC appeal. We have consolidated the appeals.

ISSUES

I) Did the ALJ err in not deferring to the DHEC Board's interpretation of its rules and regulations, including the agency's exclusive right to issue a permit?

II) Did the ALJ err in its interpretation and application of the Coastal Zone Management Act and the Coastal Management Program, and the applicable statutes and regulations?

I. Deference/Authority

In 2006, the General Assembly restructured the Administrative Procedures Act. 2006 Act. No. 387; Chem-Nuclear Sys., LLC v. S.C. Dep't of Health and Enviro. Control, 347 S.C. 201, 648 S.E.2d 601 (2007). Under this restructuring, the ALJ has become the agency fact-finder in a contested case such as this. See S.C. Code Ann. § 1-23-600(A) (Supp. 2010). Despite that change in function, DHEC retains the exclusive authority to issue a permit,[1] and the ALJ must give the same deference to the agency's

[1] See Oakwood Landfill, Inc. v. S.C. Dep't of Health and Enviro. Control, 381 S.C. 120, 671 S.E.2d 646 (Ct. App. 2009) *overruled on other grounds*

interpretation of its statutes and regulations that a court would. Media Gen. Comm., Inc. v. S.C. Department of Revenue, 388 S.C. 138, 694 S.E.2d 525 (2010).

The appellants contend the ALJ failed to give the deference due DHEC's interpretation of the statutes and regulations, and further that he exceeded his authority in rewriting the permit, resulting in one with terms neither approved by DHEC nor sought by respondent. We agree. Oakwood Landfill, *supra*; Media Gen., *supra*. These errors require that we reverse the ALJ's decision, and remand it for reconsideration. As the order contains other legal errors, we address those which will arise upon remand.

II. Statutes and Regulations

Appellants contend that the ALJ misconstrued the governing statutes and regulations. We agree.

The Spit is part of South Carolina's coastal zone,[2] and the structure which is at issue here would be constructed in the critical area.[3] It is the policy of the State to balance development in the coastal zone with concern for sensitive and fragile coastal areas.[4]

Under the Coastal Zone Management Act (CZMA), appellant DHEC, through OCRM, was required to develop a comprehensive coastal management program (CMP) for the coastal zone, and was given the responsibility to enforce and administer the CMP. S.C. Code Ann. § 48-39-80 (2008); Spectre, LLC v. S.C.Dep't of Health and Enviro. Control, 386 S.C. 357, 688 S.E.2d 844 (2010). DHEC was also required by statute to enact rules and regulations to enforce the CMP. § 48-39-80.

Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health and Enviro. Control, 387 S.C. 265, 692 S.E.2d 894 (2010).

[2] S.C. Code Ann. § 48-39-10(B) (2008).

[3] S.C. Code Ann. § 48-39-10(J) (2008).

[4] S.C. Code Ann. § 48-39-30(B)(1) (2008); 49-39-20(F) (2008).

Section 48-39-150 (2008) states the general considerations to be used by OCRM in determining whether to issue a permit for construction in the critical area, and reiterates that the policies found in § 48-39-20 (2008), requiring that high priority be given to protecting "natural systems in the coastal zone while balancing economic interests," and § 48-39-30 (2008), requiring that "[c]ritical areas . . . be used to provide the combination of uses which will ensure the maximum benefit to the people, but not necessarily a combination of uses which will generate measurable, maximum dollar benefits," must be honored.

The General Assembly further required that, in determining whether to permit erosion devices such as the ones at issue here, OCRM must act in the manner it "deem[ed] most advantageous to the State" in order to promote public health, safety, and welfare; to protect public and private property from beach and shore destruction; and to ensure the continued use of tidelands, submerged lands, and waters for public purposes. S.C. Code Ann. § 48-39-120(F) (2008).

OCRM is charged with two separate, but interrelated responsibilities. As explained in the CMP,

> Two types of management authority are granted in two specific areas of the State. [OCRM][5] has direct control through a permit program over critical areas…Direct permitting authority is specifically limited to these critical areas. Indirect management authority of coastal resources is granted to [OCRM] in…the coastal zone…."
>
> CMP, Chapter II, cited in Spectre, LLC, *supra*.

In this case the ALJ narrowed consideration of the public interest solely to the impact of the proposed revetment and bulkhead on the shore of the Kiawah River, that is, to the critical area upon which the device is to be

[5] The CMP refers to the Coastal Council, which was abolished in 1994 when its authority was transferred to OCRM. See 1993 Act. No. 181.

constructed. As state statutes, regulations, and the CMP make clear, the public interest encompasses that of the entire Spit, and the surrounding coastal zone. In determining that he could not consider the impact beyond the critical area, the ALJ opined that to do so would allow OCRM to "deny critical area permits near towns or cities simply because it believes the permits would facilitate upland sprawl and general over-development." He went on to state, "In fact, [an OCRM witness] testified he denied the revetment…other than adjacent to Beachwalker Park, because he believed potential residential development would destroy the pristine habitat of Captain Sam's. Thus [OCRM] avers that it has the authority through coastal permitting to deny upland development even against [municipal] approval of that development through its zoning process." By law, OCRM must take into account the impact of any critical area permit on upland sprawl, general overdevelopment, and pristine habitats. E.g., Reg. 30-1(C)(1), *infra*; CMP, Chapter II, *supra*.

The ALJ misconstrued OCRM's role here. The failure of the order to consider the policies set forth in the statutes, reiterated in the CMP and the regulations, is an error of law requiring we reverse and remand this order.

Both appellants argue that the ALJ misunderstood Reg. 30-11(C)(1), and the League also contends that the ALJ misapplied Reg. 30-12(C)(1). We agree with both contentions.

Regulation 30-11 is entitled "General Guidelines for All Critical Areas." Subsection (B) restates the general considerations for permitting in critical areas found in § 48-39-150. Subsection (C), entitled "Further Guidelines" provides that OCRM's permit decisions must be based in part on the policies in §§ 48-39-20 and-30, and take into consideration:

> (1) The extent to which long-range, cumulative effects of the project may result within the context of other possible developments and the general character of the area.
>
> Reg. 30-11 C(1).

The ALJ held that Reg. 30-11 C(1) requires that OCRM consider only the cumulative impact of the proposed project on the critical area itself, and does not permit OCRM to look at the impact on the area surrounding the critical area for which the permit is sought.[6]

Read in its entirety, Reg. 30-11 is consistent with the two prong management approach stated in the CMP. While OCRM's permitting authority is limited to critical areas, it is charged with managing the entire coastal zone, and thus permitting decisions are not to be made in a vacuum. For example, Reg. 30-11(B) specifically provides that in assessing the potential impact of critical area projects, OCRM must be guided by the policies in §§ 48-39-20 and -30, both of which are concerned with the coastal zone, and its vulnerability to manmade alterations. See § 48-39-20(B), (D), (E), and (F); § 48-39-30(A), (B)(1), (2), (5), and (E). Reg. 30-11(C) reiterates the need for the public policies found in these two statutes to be considered in making permitting decisions pursuant to § 48-39-150, the statute governing this bulkhead and revetment. Further, subsection (C)(1) specifically refers to the long range cumulative effects of permitting a project within the context of other possible development and the general character of the area. Since the ALJ's decision was controlled by his erroneous belief that all permitting decisions in the critical area must be decided in a vacuum, this error of law alone requires we reverse and remand.

The League contends the ALJ also committed an error of law in applying Reg. 30-12(C)(1). This regulation provides the standards for

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[6] The ALJ was concerned that permitting OCRM to consider the area outside the critical zone would intrude on local government's land use planning and zoning authority. The granting of an OCRM permit does not preempt local zoning requirements any more than zoning ordinances are inapplicable to a project permitted by OCRM. See Rockville Haven, LLC v.Town of Rockville, 394 S.C. 1, 714 S.E.2d 277 (2011). Local zoning rules serve one purpose in the coastal zone, while State CZMA policies, statutes, and regulations serve another. This is yet another error of law requiring reversal.

bulkheads and revetments that, like those sought by respondent, are not ocean front:

> (c) Bulkheads and revetments will be prohibited where . . . public access is adversely affected unless upland is being lost due to tidally induced erosion.
>
> (d) Bulkheads and revetments will be prohibited where public access is adversely affected unless no feasible alternative exists.

The ALJ found that "public access to the riverbank at low tide may be affected on a very limited basis" and that the revetment "degrades public uses of the shoreline." In other sections of the order, however, he stated the project "does not eliminate all public access," and would not "significantly impair public access to critical areas." The prohibitions in Regulation 30-12(C)(1) were triggered by the ALJ's finding that there was some adverse effect on public access, even if the ALJ believed this effect was not substantial. The plain language of the regulation demands that *any* adverse effect on public access must be overcome by a showing that one of the exceptions in parts (c) and (d) apply.

We agree with the League that the ALJ did not make sufficient findings of fact with regard to the lack of feasible alternatives as required by Reg. 30-12(C)(1)(d). The ALJ found "evidence did not establish that there was a feasible alternative to the bulkhead/revetment that would stabilize the river shoreline . . . . ," a finding which imposed upon the League the burden to demonstrate that there was a feasible alternative. Regulation 30-12(C)(1)(d) creates a presumption that a structure which will adversely affect public access is prohibited unless the applicant shows there are no feasible alternatives, and thus the duty to show that the structure fits within an exception to the prohibition falls on the applicant, i.e., upon respondent. We agree with the league that the order's findings with regard to Reg. 30-12(C)(1)(d) must be reversed.

CONCLUSION

The appealed order reflects several errors of law, beginning with the ALJ's misunderstanding of the applicable statutes, regulations, and public policies, and concluding with his erroneous effort to craft a new permit, one which has never been sought by respondent, nor reviewed by OCRM, and which he, in any case, lacks the authority to issue. We therefore vacate the appealed order, and remand the matter to the Administrative Law Court for reconsideration.

BEATTY, KITTREDGE and HEARN, JJ., concur. TOAL, C.J., dissenting in a separate opinion.

CHIEF JUSTICE TOAL: I respectfully dissent and would affirm the ALJ's decision authorizing KDP to construct a bulkhead and revetment on the Spit on Kiawah Island. The majority's decision rests primarily on the ALJ's application of Regulations 30-11(C) and 30-12(C). It is my view that the majority reads Regulation 30-11(C) too broadly, and expands OCRM authority beyond what the General Assembly intended. Moreover, the ALJ's decision pursuant to Regulation 30-12(C) is supported by substantial evidence in the Record.

The Administrative Procedures Act (APA) provides the appropriate standard of review. This court will only reverse the ALJ's decision if it is:

> (a) in violation of constitutional or statutory provisions;
> (b) in excess of the statutory authority of the agency;
> (c) made upon unlawful procedure;
> (d) affected by other error of law;
> (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-610(B) (Supp. 2008). "The court may not substitute its judgment for the judgment of the administrative law court as to the weight of the evidence on questions of fact." *Id*.

REGULATION 30-11

The majority's construction of Regulation 30-11 expands OCRM's permitting authority beyond that envisioned by the General Assembly. Administrative agencies possess only those powers expressly conferred or necessarily implied to effectively fulfill the duties with which they are charged. *See Captain's Quarters Motor Inn, Inc. v. S.C. Coastal Council*, 306 S.C. 488, 490, 413 S.E.2d 13, 14 (1991).

Regulation 30-11(C) states in pertinent part:

> In the fulfilling of its responsibility under Section 48-39-150, the Department must in part base its decisions regarding permit applications on the policies specified in Sections 48-39-20 and 48-39-30, and thus, be guided by the following:
>
> (1) The extent to which long-range cumulative effects of the project may result within the context of other possible development and the general character of the area.

The majority adopts Appellants contention that the "area" referred to under this regulation extends beyond the critical area to adjacent highlands. The ALJ, however, found that "area" denotes only the critical area over which OCRM has permitting authority, and the construction's impact outside of that critical area is not a valid consideration.

The General Assembly has directed OCRM to regulate this State's coastal zone, and issue permits for construction within the critical areas of the coastal zone. *See* S.C. Code Ann. § 48-39-10. The majority's position extends OCRM's grant of authority beyond the critical area and allows OCRM to deny critical area permits when the permitted construction would facilitate upland development. I believe this is an inappropriate consideration and unreasonably enlarges OCRM's regulatory purview.

Furthermore, the majority's reliance on our decision in *Spectre* is misplaced. In *Spectre*, we held that the CMP's reach extended beyond the critical areas in the eight coastal counties and could be applied to isolated freshwater wetlands that were not subject to the jurisdiction of the Army Corps of Engineers. *Spectre, LLC, v. S.C. Dep't of Health and Enviro. Control*, 386 S.C. 357, 366–68, 688 S.E.2d 844, 849–50 (2010). However, *Spectre* did not involve a critical area permit. Instead we were dealing with a permit to fill isolated freshwater wetlands for commercial development, an activity expressly addressed in the CMP.[7]

[7] The CMP provides that upland wetlands play an important role in the ecosystem and thus prohibits most commercial construction that requires filling these freshwater wetlands.

In contrast, Regulation 30-11(C) does not specifically direct OCRM to account for land outside the critical area. If the General Assembly had intended for OCRM to analyze the cumulative impacts outside critical areas, it is my opinion that specific provisions would have been added. For example, the General Assembly saw fit to include specific language in the CMP with respect to isolated freshwater wetlands, and in Regulation 30-11(D) with respect to tidally induced upland erosion. *See* S.C. Code Ann. § 48-39-80 (2008). Thus, it is my opinion that the ALJ correctly confined OCRM's inquiry to the bounds of its regulatory authority.

In so concluding, I do not suggest that OCRM should grant critical area permits simply because a landowner complains he would be unable to develop his property without it. There are always statutory and regulatory considerations in any permitting decision, and those must control regardless of the economic harm or benefit to the landowner resulting from any permitting decision. Here, however, the statutory and regulatory guidelines do not militate against the ALJ's decision to grant the permit. Future upland development alone is not a proper consideration for granting or denying a critical area permit. The permit may not be denied solely because development may occur—development which will, of course, be subject to the local zoning authorities and must comply with any applicable DHEC regulations—nor may the permit be granted solely in consideration of KDP's economic interest. Instead, as outlined thoroughly in the ALJ's amended final order, all potential impacts within the critical area should be considered.

REGULATION 30-12

The ALJ further found the proposed bulkhead and revetment complied with Regulation 30-12(C). The majority holds that Regulation 30-12(C)(1)(d) places a burden on the applicant for a proposed structure to show that there are no feasible alternatives when the structure will adversely affect public access. However, the plain language of the regulation creates no such presumption.

Regulation 30-12(C)(1)(d) states:

> "[B]ulkheads and revetments will be prohibited where public access is adversely affected unless no feasible alternative exists."

The ALJ found that KDP was losing upland due to tidally induced erosion, and that no feasible alternative existed to stabilize the eroding riverbank. Thus, he did not prohibit the proposed bulkhead and revetment construction.

Appellants contend that the ALJ did not make sufficient findings of fact with regard to the lack of feasible alternatives. This argument should carry little weight when juxtaposed with our standard of review for the ALJ's factual determinations. The majority does not hold that the ALJ's findings were not supported by substantial evidence, but instead adopts Appellant's position that the findings were not "sufficient." However, the sufficiency of the ALJ's findings is determined by whether "reasonable minds could reach the same conclusion the ALJ reached." *Hill v. S.C. Dep't of Health and Envtl. Control*, 389 S.C. 1, 9–10, 698 S.E.2d 612, 617. The majority does not assert that it is impossible for "reasonable minds" to reach the same conclusion as the ALJ. Moreover, the General Assembly has directed this Court not to substitute our own judgment "for the judgment of the administrative law court as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-610(B) (Supp. 2008).

The ALJ in this case examined the testimony in detail and thoroughly recited the evidence offered on each issue. Over half of his 31-page amended final order was dedicated to his factual findings. He clearly explained what facts he found, and upon what evidence and testimony he based those findings. A review of the record demonstrates that the ALJ made sufficient factual findings supported by substantial evidence in the record, and that the ALJ's conclusions drawn from those facts were reasonable.

The simple fact that Appellants disagree with the ALJ's determination is not sufficient grounds for reversal. *See Id*. at 10, 698 S.E.2d at 617 (citation omitted) ("[T]he mere possibility of drawing two inconsistent

conclusions from the evidence does not prevent a finding from being supported by substantial evidence.").

For the above reasons I would affirm the ALJ's decision.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of James H. Dickey, Respondent.

Opinion No. 27066
Heard October 6, 2011 – Filed November 21, 2011

DEFINITE SUSPENSION

Lesley Coggiola, Disciplinary Counsel, and Barbara M. Seymour, Deputy Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

James H. Dickey, of Atlanta, Georgia, pro se Respondent.

PER CURIAM: In this attorney disciplinary matter, the Commission on Lawyer Conduct ("Commission") investigated eight allegations of misconduct against James H. Dickey ("Respondent"). The allegations accused Respondent of, among other things, making false representations to judges and opposing counsel, failing to diligently pursue litigation matters, failing to comply with a fee dispute award and several court orders, engaging in conflicts of interest, and practicing law while on Interim Suspension. The Office of Disciplinary Counsel ("ODC") filed formal charges against Respondent.

A Hearing Panel of the Commission ("Hearing Panel") issued its Panel Report, finding Respondent had committed misconduct and recommended that Respondent: (1) be disbarred; (2) be ordered to pay the costs of the proceedings, attend the Legal Ethics and Practice Program and Trust Account

school, and pay the fee dispute award prior to petitioning for reinstatement; (3) pay a fine in an appropriate amount; and (4) comply with such other directives as this Court deems appropriate. Respondent raises seven exceptions to the Panel Report. We find Respondent committed misconduct and impose the following sanctions: a definite suspension of two years, which shall run retroactively to the date of Respondent's Interim Suspension; payment of the costs of these proceedings; and payment of $1,750 to a client as directed by the South Carolina Bar Fee Disputes Resolution Board.

I. Factual/Procedural History

Respondent, whose office is located in Atlanta, Georgia, is licensed to practice law in South Carolina. The complaints that formed the basis of this disciplinary action involve Respondent's conduct from 2001 through 2006.

In 2005, an attorney filed a complaint against Respondent, alleging Respondent created a fictitious medical record in conjunction with a 1998 automobile accident case. This complaint precipitated Respondent's Interim Suspension on September 27, 2005. The Formal Charges in this case were not filed until March 10, 2009.[1] The Hearing Panel heard testimony on the eight complaints over the course of January 27, 28, 29, and March 22, 2010, and ultimately issued its report on March 15, 2011, wherein it recommended that Respondent be disbarred.

A. Allegations of Misconduct

Respondent faced formal disciplinary charges in connection with the following eight matters:

1. Medical Record Matter

Respondent was retained to represent a client who was injured in an automobile accident that occurred on May 3, 1995, in Hartsville, South

[1] In re Dickey, 366 S.C. 18, 620 S.E.2d 332 (2005). The length of time between Respondent's Interim Suspension and the filing of the formal charges gives this Court cause for concern.

Carolina. Medical records indicate the client received injuries to her head, neck, and right knee. Six days after the accident, the client sought follow-up care for headaches and knee pain. The medical record from this follow-up visit made no mention of any complaint concerning the client's heart, and instead noted that the "heart has regular rate and rhythm w/o gallops or murmurs."

Approximately one year later, the client began to experience chest discomfort while working out at the YMCA. Then, while at work on July 31, 1996, the client experienced recurrent chest discomfort and was taken to the Byerly Hospital where she was diagnosed as having had a "myocardial infarction." Subsequently, she underwent treatment at Providence Hospital for that condition. In a medical record dated July 31, 1996, the client's condition was described as "a history of recent exertional chest discomfort" that had been ongoing for the "last two months." The record also states that the client was "[n]egative for a prior history of heart problems," and concludes that the client had suffered an "[a]cute inferior posterior myocardial infarction."

In 1998, Respondent filed a lawsuit on behalf of the client against the at-fault driver in the 1995 automobile accident. On April 27, 1998, Respondent sent a document, which appeared to be a medical record,[2] as part

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[2] The document, which did not include a medical-facility letterhead or reference a physician, was similar in appearance to the Byerly Hospital medical record dated July 31, 1996 and provided in pertinent part:

> HISTORY: Moderately obese female with a recent history of headaches and exertional chest discomforts following MVA on 5/3/95. She developed problems with headaches, confusion, memory loss, and chest discomforts which she thought was indigestion soon after the MVA. This had been ongoing for several months and increasing in frequency while at work.
>
> IMPRESSION: Portable chest, but no obvious acute abnormality is identified. Patient has a history of acute MI following the accident. (Emphasis added.)

of the settlement package to the insurance company (Unisun) for the at-fault driver. Subsequently, Unisun's claims representative provided Respondent's case documents to Andrew McLeod, an attorney retained by Unisun. McLeod testified that he settled the case for the $15,000 policy limit, but clarified that he did not participate in the negotiations and primarily drafted the Covenant Not to Execute. He did, however, believe the document was part of the client's medical records.

In March 2000, Respondent filed an amended lawsuit for underinsured motorist coverage. Lawrence Orr, the attorney who represented the insurance company (Horace Mann) in the underinsured motorist coverage claim, received Respondent's case documents from McLeod. This package, as well as Respondent's discovery, included the document that attributed client's heart problems to the 1995 automobile accident. Orr discovered that the document was not included in the medical records he independently subpoenaed from the client's medical providers.

Months after settling the case, Orr reported the matter to the ODC by letter dated March 7, 2005. On March 24, 2005, Larry Huffstetler, Special Investigator for the South Carolina State Attorney General's Office, received the purported medical document. That same day, Respondent came to the ODC's office to deliver documents pursuant to a subpoena in another disciplinary matter. Upon his arrival, Respondent was taken to a conference room and questioned by Investigator Huffstetler and Assistant Deputy Attorney General Robert Bogan about the document. Respondent denied that he had "manufactured or created any medical record" and "offered no explanation concerning the source of the suspected false medical record." Based on this matter, this Court placed Respondent on Interim Suspension beginning September 27, 2005.

During the subsequent investigation and at the panel hearing on the formal charges, Respondent admitted he had directed an assistant to create the document. Although Respondent acknowledged the document had the appearance of a medical record, he denied producing it to Unisun or Orr as evidence of a medical record. Instead, Respondent claimed that his purpose for creating and producing the document was only to communicate his theory of the case during settlement negotiations, which was that any settlement for

the 1995 automobile accident should include expenses for treatment of the client's heart condition. Respondent further explained that he had attached a "sticky note" to the document to apprise Orr that this document was not a medical record, but rather, his version of the damages. Orr testified there was no such note attached to the documents that he received.

2. Unauthorized Practice of Law

On June 30, 2005, Respondent filed a lawsuit against a nursing home and other medical care providers, naming himself as plaintiff "individually and as personal representative of the estate of Ruth S. Dickey, deceased" and asserting claims for wrongful death, gross negligence, and breach of contract.

After Respondent was placed on Interim Suspension for the Medical Record Matter, the circuit court granted summary judgment to the nursing home on October 12, 2005. Respondent filed a motion to reconsider, signing it "James H. Dickey, pro se." In denying the motion, the court referenced Dickey's Interim Suspension and stated that "[w]hile Mr. Dickey is authorized to file this pleading in his individual capacity, he is not in a position to file this pleading on behalf of the Estate." As a result, the court concluded that "Mr. Dickey's efforts to file pleadings on behalf of the Estate by virtue of his being the Personal Representative are not proper and not effective, is an unauthorized practice of law and are not being considered by the Court . . . ." [3]

On May 26, 2006, Respondent appeared in circuit court to oppose a motion for summary judgment that was filed by another defendant in the above-referenced lawsuit. The circuit court continued the hearing and ordered Respondent to retain counsel and respond to matters pending in the case no later than June 26, 2006. The circuit court granted summary judgment when it did not receive responsive pleadings and neither Respondent nor counsel for the Estate appeared at the hearing on October 3,

[3] We note that this Court appointed an attorney to protect the interests of Respondent's South Carolina clients during Respondent's Interim Suspension, which began on September 27, 2005. This attorney was relieved on June 5, 2008.

2006. The court further ordered that "all claims made on behalf of the estate of Ruth S. Dickey against [defendant] are dismissed for failure to prosecute, as well as failure to comply with this Court's prior Order [to retain counsel and respond not later than June 26, 2006]."[4]

3. Fee Dispute Matter

In October 2000, Hieshia Wright consulted Respondent about an employment discrimination claim. A time sheet summary prepared by Respondent reveals that Respondent began work on Wright's case after this initial consultation. On February 5, 2001, Respondent met with Wright and her husband at a Columbia library and wrote the following on the back of a business card:

> $125 pd; consultation. Retainer Fee $1500 plus $250 (preparation and court cost) Will Return $1500 if case not filed for suit. 2/5/01

On July 10, 2001, Respondent mailed Wright a proposed Complaint for her approval. In the transmittal letter, Respondent indicated that there were "strong" claims to be pursued and that the deadline for filing was August 25, 2001. Respondent never filed the lawsuit.

On August 29, 2001, Wright wrote Respondent expressing her "disappointment" with his representation and requesting a refund of $1,750, the amount paid on February 5, 2001. Respondent disputed Wright's entitlement to a refund based on her misunderstanding regarding the terms of Respondent's representation, her desire not to proceed with the lawsuit, and

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[4] Respondent, in his individual capacity, appealed both orders to the Court of Appeals. The court affirmed both orders, finding that only a duly appointed personal representative could initiate a wrongful death action on behalf of the Estate, and a licensed attorney must represent the Estate in court. Because Respondent appealed the circuit court's decisions only in his individual capacity, the court held that Respondent could not maintain the appeals. Dickey v. Clarke Nursing Home et al., Op. No. 2007-UP-098 (S.C. Ct. App. Feb. 23, 2007) and Op. No. 2007-UP-344 (S.C. Ct. App. filed June 29, 2007).

the amount of time Respondent had expended in investigating and preparing her claim.

Wright sought assistance with the fee dispute from the South Carolina Bar by letter dated January 7, 2002, which was initially submitted to the Office of Disciplinary Counsel.

In a letter dated April 5, 2002, an attorney appointed to investigate the fee dispute requested that Respondent submit within thirty days certain documents, including fee agreements, time and bill records, receipt/disbursement ledgers, and any other items Respondent wanted the South Carolina Bar Fee Disputes Resolution Board (Board) to consider. Respondent wrote to the investigator advising that the matter was the subject of a disciplinary complaint and suggested that it should be handled by the ODC; however, he never provided the requested records. In explaining his conduct, Respondent pointed out that Wright had also submitted a complaint to the Office of Disciplinary Counsel based on the same fee dispute. Ultimately, the investigator recommended that Respondent refund $1,750 to Wright. In a letter dated September 9, 2002, the circuit chair informed Respondent and Wright that the Board concurred in the investigator's report and recommendation and that the decision was final.[5]

On October 8, 2002, Respondent appealed the Board's decision to the circuit court. The circuit court dismissed the appeal with prejudice after Respondent failed to file a brief asserting his grounds for relief and failed to appear for the final hearing. The court also denied Respondent's motion to alter or amend.

On May 13, 2004, the Board filed a Certificate of Non-Compliance as Respondent had not satisfied the fee dispute award. Subsequently, Respondent appealed the circuit court's decision to the Court of Appeals. The Court of Appeals dismissed the appeal, finding it did not have jurisdiction as "there is no appeal from a decision of the Resolution of Fee Disputes Board of the South Carolina Bar beyond the circuit court as set forth in Rule 416,

[5] Rule 416, SCACR, Rule 13.

SCACR, Rule 20." Wright v. Dickey, 370 S.C. 517, 521, 636 S.E.2d 1, 3 (Ct. App. 2006), cert. denied (May 3, 2007).

When the Hearing Panel questioned Respondent as to why he had not yet refunded the fee award to Wright, Respondent stated that he was "still challenging the ruling in the matter" and intended to exhaust his legal remedies, which might include federal court. Respondent, however, could not identify any legal action that he had taken since his appeal to the Court of Appeals and specifically stated that he "can't do anything now."

4. Conflict of Interest Matter

Respondent's parents divorced in 1981. Sometime after the divorce, a dispute arose as to whether Respondent's father had complied with the division of certain real property. Respondent initiated an action in which he represented his mother against his father. On January 6, 1997, the family court issued an order that required the father to transfer certain property to Respondent's mother. When the father did not comply, Respondent filed a Petition for a Rule to Show Cause in April 2001 to determine whether his father should be held in contempt for failing to deed the property as required by the order.

During the time that Respondent represented his mother adverse to his father, Respondent also represented his father in a legal malpractice action. Respondent's representation of his father began in 1999 and continued through the conclusion of the appeal in June of 2003. Additionally, an opinion by the Court of Appeals lists Respondent as the attorney for his mother and father in an appeal during this same time period.[6]

Respondent testified both parents were aware of his dual representation and he had advised his father that the mother's case had priority. There is no evidence in the record to refute Respondent's testimony.

[6] Mut. Sav. & Loan Ass'n v. Dickey et al., Op. No. 2000-UP-070 (S.C. Ct. App. filed Feb. 5, 2001).

5. Failure to Prosecute Matters

a. Samuel Matter

Respondent represented Christina Samuel in a medical malpractice action in Darlington County, captioned 2000-CP-16-0076, for injuries allegedly caused to her daughter during childbirth in 1997.

By order dated March 22, 2001, the circuit court granted the defendants' motion for summary judgment and dismissed the case with prejudice for Respondent's failure to answer discovery and failure to prosecute. In so ruling, the court found that Respondent had failed to provide any discovery as to potential experts and failed to provide any expert affidavits to support an alleged deviation from the standard of care. With respect to Respondent's failure to prosecute, the judge noted that Respondent had sought multiple continuances as to the defendants' motion to dismiss. Based on Respondent's failure to appear at a scheduled hearing, the circuit court issued an order dated June 30, 2000, which stated "Dickey is on notice that a subsequent failure to appear without prior approval by the court may result in any sanctions the presiding judge may deem appropriate; the sending of a fax without the court's subsequent approval is insufficient to excuse any failure to appear." The defendants' motion to dismiss was ultimately heard via conference call.

Subsequently, a hearing was set for the defendants' motions for summary judgment on the morning of Monday, March 12, 2001. On March 12, 2001, the court received a faxed letter from Respondent in which he requested a continuance. Respondent did not fax the letter to defense counsel, but instead left a telephone message sometime over the weekend informing counsel of the continuance request. Without receiving prior approval from the court, Respondent failed to appear at the scheduled hearing.

Respondent appealed the circuit court's order dismissing Samuel's case to the Court of Appeals. The Court of Appeals summarily affirmed the circuit court's order. Samuel v. Brown et al., Op. No. 2003-UP-751 (S.C. Ct.

App. filed Dec. 18, 2003). This Court denied Respondent's petition for a writ of certiorari to review the decision of the Court of Appeals.

When questioned by the Hearing Panel regarding his representation of Samuel, Respondent claimed that he continued to represent her but was unsure whether he had advised her that certiorari was denied by this Court. Respondent admitted that it had been years since he had spoken with Samuel and that he had never informed her of his Interim Suspension. In his defense, Respondent attempted to establish that he was unable to get in contact with Samuel because her telephone was always "turned off" and her address had changed from that listed on the fee agreement.

Samuel testified the last time she spoke with Respondent was approximately four or five years ago when he informed her that the case was being appealed to the Supreme Court. Samuel stated that Respondent never explained to her why the case had been dismissed. She further testified that she first learned the status of her case two weeks before the panel hearing when Bogan met with her regarding her testimony.

b. Suber Matter

On September 29, 2000, Respondent filed a lawsuit in Richland County on behalf of a client, Ida Mae Suber, who was injured in an automobile accident. By order dated July 31, 2001, the circuit court dismissed the case based on Respondent's failure to prosecute. After dismissing the insurance carrier with prejudice, the court further stated that "[i]n the event the Plaintiff shall attempt to commence another action against the [remaining defendants], such shall not be commenced before and until attorneys' fees and costs in the amount of Five Hundred and no/100 ($500.00) Dollars have been paid to each of the attorneys for the Defendants, Robert A. McKenzie and Robert W. Buffington."

Thereafter, Respondent filed a motion for reconsideration pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. A year later, while this motion was pending, Respondent filed an identical suit on behalf of Suber on August 1, 2002 without paying the court-ordered fees. The circuit court dismissed this lawsuit due, in part, to Respondent's failure to

comply with the prior order. Respondent acknowledged that he did not pay the court-ordered fees before filing the second lawsuit, but explained he took that course of action in order to compel a ruling on his motion for reconsideration because his repeated requests for a ruling were not effective. At the time of the hearing to dismiss the second lawsuit, the Rule 59(e) motion had not been ruled upon.

c. Darlington/Florence County Matter

Respondent represented his father as the plaintiff in a matter captioned Dickey v. Holloway, 1999-CP-16-0346, which was pending in Darlington County and appeared on the roster for the week of March 5, 2001. Respondent also represented the plaintiff in a matter captioned Arthur v. Sexton Dental Clinic, et al., 1998-CP-21-684, which was pending in Florence County and appeared on the roster for the week of March 5, 2001.

On Thursday, March 1, 2001, opposing counsel in the Florence County case called Respondent to inform him the case was on the roster but was not ready for trial. On the morning of Friday, March 2, 2001, Respondent called the office of the Honorable Paul M. Burch, the presiding judge in Florence County, and spoke with the judge's law clerk. Respondent informed the law clerk that the Florence County case was not ready for trial. Written notice of the continuance in the Florence County case was faxed to Respondent at 11:20 a.m. that same day with a message that stated:

> Please be advised that Judge Burch has GRANTED your request for a continuance beyond March 2001 for the following matters:
>
> 98-CP-21-684, Arthur v. Sexton Dental Clinic et al.
>
> Kindly advise the other counsel and the Clerk of Court for this continuance.

Because Respondent did not recall receiving this fax, he testified he only had a "good faith" belief that it would be continued.

On the same day, Respondent sent a letter to the Honorable Sidney Floyd, the presiding judge in Darlington County, concerning the roster meeting scheduled for March 5, 2001. The letter, which was clocked as filed by the Clerk of Court at 4:29 p.m. on March 2, 2001, stated that Respondent had a conflict because the Florence County and Darlington County cases were both scheduled for trial or motions during the week of March 5, 2001. The letter further stated that the Arthur v. Sexton Dental Clinic et al., was a "Trial—3/5/01."

On Monday, March 5, 2001, Respondent appeared for the roster meeting in Darlington County even though opposing counsel failed to appear. The testimony is divergent as to what transpired during the roster meeting. Respondent testified that he told Judge Floyd that he was ready to proceed to trial in Dickey v. Holloway. A former Darlington County Clerk of Court employee also testified that Respondent appeared and said he was ready for trial. Additionally, the Darlington County roster sheets for the week of March 5, 2001 contained handwritten notations that appeared to support the testimony of Respondent and the Darlington County Clerk of Court employee.

In contrast, the Darlington County Clerk of Court testified that Respondent told Judge Floyd that he could not try the Darlington County case as the Florence County case was scheduled for trial and he was selecting a jury that day.[7] The Clerk further testified that once it was determined that the Florence County case was not scheduled for trial, Judge Floyd ordered Respondent to appear on Wednesday, March 7, 2001, to proceed to trial on Dickey v. Holloway. Because Respondent did not appear on March 7, Judge Floyd dismissed the case for failure to prosecute.

In his defense, Respondent explained that he fell ill on the night of March 6 and was unable to return to work until March 15. As corroborative evidence, Respondent offered a doctor's excuse dated March 9, 2001. Respondent also offered into evidence an affidavit, which was filed with the Darlington County Clerk of Court's office on April 6, 2001, wherein he stated

[7] The Clerk testified he really did not recall the events of March 7, 2001, but that he was testifying from notes provided by Investigator Huffstetler.

that when he became ill he notified the Darlington County Clerk of Court's office on March 7, 2001, and requested continuances on all of his pending cases. The affidavit stated that due to Respondent's illness, he was unable to work until March 27, 2001. The former Darlington County Clerk of Court employee also testified that Respondent appeared ill when he attended the March 5, 2001 roster meeting. She further testified that on March 6, 2001, she was instructed by the Darlington County Clerk of Court to notify opposing counsel in Respondent's cases (scheduled for the week of March 5, 2001) that Respondent would be absent and that they should appear to have their cases dismissed.

B. Aggravating and Mitigating Circumstances

In terms of aggravating circumstances the Hearing Panel considered the following: (1) Respondent's dishonest or selfish motive, particularly with respect to the Medical Record Matter and the Suber Matter; (2) Respondent's pattern of misconduct; (3) seven of the eight allegations of misconduct were proven by clear and convincing evidence;[8] (4) Respondent falsely represented to the ODC's investigator that he had not manufactured the document that appeared to be a medical record; (5) Respondent's refusal to acknowledge the wrongful nature of his conduct and his continued attack on the court system as being "corrupt"; (6) the vulnerability of Wright, who received "no meaningful services" despite her payment of a fee, and Samuel, who was made to believe that her case was still pending; and (7) Respondent's indifference to making restitution as he has not satisfied the Board's award of unearned fees to Wright.

In mitigation, the Hearing Panel considered that: (1) Respondent had no prior disciplinary record; and (2) the disciplinary proceedings had been pending for some amount of time while Respondent has remained on Interim Suspension.

[8] With respect to the Darlington/Florence County Matter, the Hearing Panel concluded that Disciplinary Counsel did not prove by clear and convincing evidence that Respondent was dishonest with Judge Floyd as to whether his Florence County case had been continued.

C. Hearing Panel's Conclusions and Recommended Sanctions

Based on Respondent's misconduct, the Hearing Panel concluded that Respondent had violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (competent representation to a client requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation); Rule 1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client); Rule 1.4(a) (a lawyer shall keep a client reasonably informed about the status of a matter); Rule 1.5 (a lawyer shall not charge or collect an unreasonable fee); Rule 1.7 (conflict of interest); Rule 1.16(d) (upon termination of representation, a lawyer shall refund any advance payment of fee or expense that has not been earned or incurred); Rule 3.3 (candor toward the tribunal); Rule 3.4 (fairness to opposing party and counsel); Rule 4.1 (lawyer shall not knowingly make a false statement of material fact to a third person); Rule 5.5 (unauthorized practice of law); Rule 8.1(a) (a lawyer shall not knowingly make a false statement of material fact in connection with a disciplinary matter); Rule 8.4(a) (it is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct); Rule 8.4(d) (engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and Rule 8.4(e) (engage in conduct that is prejudicial to the administration of justice).

Additionally, the Hearing Panel found Respondent violated the following Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1) (violate or attempt to violate the Rules of Professional Conduct); Rule 7(a)(3) (willfully fail to appear personally as directed); Rule 7(a)(5) (engage in conduct tending to pollute the administration of justice or to bring the courts or the legal profession into disrepute or conduct demonstrating an unfitness to practice law); Rule 7(a)(7) (willfully violate a valid court order issued by a court of this state or of another jurisdiction); and Rule 7(a)(10) (willfully fail to comply with a final decision of the Resolution of Fee Disputes Board).

Due to the quantity and nature of Respondent's misconduct, the Hearing Panel recommended that Respondent: (1) be disbarred; (2) be ordered to pay the costs of the proceedings, attend the Legal Ethics and Practice Program and Trust Account school, and pay the fee dispute award

prior to petitioning for reinstatement; (3) pay a fine in an appropriate amount; and (4) comply with such other directives as this Court deems appropriate.

II. Discussion

A. Standard of Review

This Court has the sole authority to discipline attorneys and to decide the appropriate sanction after a thorough review of the record. In re Welch, 355 S.C. 93, 96, 584 S.E.2d 369, 370 (2003). "The Court is not bound by the panel's recommendation and may make its own findings of fact and conclusions of law." In re Hazzard, 377 S.C. 482, 488, 661 S.E.2d 102, 106 (2008). "Although this Court is not bound by the findings of the Panel and Committee, these findings are entitled to great weight, particularly when the inferences to be drawn from the testimony depend on the credibility of the witnesses." In re Marshall, 331 S.C. 514, 519, 498 S.E.2d 869, 871 (1998).

"A disciplinary violation must be proven by clear and convincing evidence." In re Greene, 371 S.C. 207, 216, 638 S.E.2d 677, 682 (2006); see also Rule 8, RLDE, Rule 413, SCACR ("Charges of misconduct or incapacity shall be established by clear and convincing evidence, and the burden of proof of the charges shall be on the disciplinary counsel."). "Clear and convincing evidence is that degree of proof which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established." Peeler v. Spartan Radiocasting, Inc., 324 S.C. 261, 265 n.4, 478 S.E.2d 282, 284 n.4 (1996) (citation omitted). "Such measure of proof is intermediate, more than a mere preponderance but less that is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal." Id.

B. Propriety of the State Court System and Disciplinary Proceedings

Although Respondent raises seven separate exceptions, his primary contention is that the Panel Report is invalid or void due to procedural and substantive deficiencies. Specifically, Respondent challenges: (1) the propriety of the state court system as well as the disciplinary proceedings, and (2) the level of proof supporting the findings of misconduct. Thus, in the

interest of clarity and logical progression, we have addressed Respondent's exceptions under these two headings and out of the order presented in his brief.

1.

In challenging the propriety of the state court system, Respondent claims he offered evidence that the allegations of misconduct were precipitated by irregularities and corruption within the state court system. As to the disciplinary proceedings, Respondent directs this Court's attention to the following: (1) the ODC's four-year delay in filing formal charges after Respondent's Interim Suspension; (2) the Hearing Panel's failure to grant Respondent's request for additional discovery time; (3) the appointment and conduct of Robert Bogan as the Special Prosecutor;[9] (4) the conduct of the panel hearing, which included the Hearing Panel's decision to quash Respondent's subpoenas of key witnesses and to question witnesses; and (5) the Hearing Panel's delay in filing the Panel Report.

Based on these claimed procedural irregularities, Respondent asserts that the entire disciplinary proceeding violated his procedural and substantive rights to due process in the suspension of his license to practice law in this state.

As a threshold matter, we note that Respondent for the first time on appeal challenges the appointment of Robert Bogan as a Special Prosecutor[10]

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[9] By order dated October 5, 2009, this Court appointed Robert Bogan as Special Prosecutor in this matter. Bogan, who was no longer employed with the South Carolina Attorney General's Office at the time of the hearing, handled the investigation of the complaints against Respondent.

[10] Even if properly preserved, we find this contention to be without merit. First, Respondent was apprised of the request and expressed no objection to the order in which this Court appointed the Special Prosecutor. Secondly, any assertion that Bogan engaged in the unauthorized practice of law by prosecuting Respondent's case while employed at another state agency is not supported by the Appellate Court Rule cited by Respondent. Rule 506,

and the Panel's method of questioning witnesses during the hearing.[11] Accordingly, we find these arguments are not properly before this Court. See Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

In view of the foregoing, our analysis turns to assessing the merits of Respondent's remaining claims that involve the limitation of time allotted for discovery, the quashing of Respondent's subpoenas for key witnesses, and the timeliness of the filing of the Panel Report.

a.

Respondent contends the Hearing Panel improperly refused to extend the time period for discovery. Specifically, Respondent submits that "the time period for the completion of discovery is so limited in terms of sixty days that the hearing and discovery process in this action was completely prejudicial to the Respondent and tantamount to an unconstitutional application of the law."

As we interpret Respondent's argument, he essentially challenges the Hearing Panel's denial of his motion for additional time to complete discovery, which was incorporated into Respondent's Answer to the Formal Charges and clarified in a subsequent motion in which Respondent requested

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SCACR, which deals with the Code of Conduct for Staff Attorneys and Law Clerks, is not applicable to Bogan because he was not a staff attorney.

[11] As to Respondent's claim regarding the Hearing Panel's calling witnesses out of order and questioning witnesses, we note that Respondent specifically agreed to the procedure employed by the Hearing Panel and was also given the opportunity to call witnesses out of order. Furthermore, even if we construe the procedure as improper, we find Respondent was not prejudiced as he was given an unlimited opportunity to question the witnesses and adequately present his case.

480 days of discovery (sixty days for each of the eight misconduct allegations).

Initially, we note the chairman was authorized to deny Respondent's motion pursuant to Rule 14(b)(1) of the Rules of Lawyer Disciplinary Enforcement.[12] Furthermore, we find that Respondent was not prejudiced by this decision. Respondent's request for a 480-day period of discovery was clearly excessive and not contemplated by Rule 14 as the time for discovery is sixty days[13] with the possibility of a thirty-day extension. Respondent was also afforded a significant amount of time for discovery as he was served with the formal charges on March 10, 2009, discovery was extended until July 29, 2009, and a pre-hearing conference was held on January 4, 2010, at which time Respondent's motion was denied.[14]

At the pre-hearing conference, the panel chair granted Respondent additional time to issue subpoenas for documents. Significantly, Respondent waited until eight days before the panel hearing to issue subpoenas. Taking into consideration this procedural history, we find Respondent cannot establish that he was prejudiced by the denial of his motion for additional time for discovery.

b.

In a related argument, Respondent contends the Hearing Panel committed error in quashing the subpoenas he issued for the Honorable Paul

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[12] Rule 14(b)(1), RLDE, Rule 413, SCACR.

[13] Rule 25(f), RLDE, Rule 413, SCACR.

[14] On November 13, 2009, the Administrative Chairman of the Hearing Panel conducted a hearing for "the purpose of addressing Respondent's motion for additional time to conduct discovery and any other outstanding discovery issues." Despite being notified of this proceeding, Respondent failed to appear. Due to Respondent's absence, the Chairman declined to rule on the motion.

M. Burch and the Honorable Jean Hoefer Toal to produce certain documents and to appear at the panel hearing.[15]

In quashing the subpoenas, the Hearing Panel relied on Rule 45 of the South Carolina Rules of Civil Procedure, which sets forth the requirements for the form, issuance, and service of subpoenas. Based on the provisions of Rule 45, the Hearing Panel found the subpoenas were not timely served and Respondent failed to comply with requirements of witness fees and mileage expenses as to Judge Burch. Additionally, the Hearing Panel found Respondent had failed to demonstrate that the testimony was critical to his case or that it could not be obtained by other means.

Respondent asserts that the provisions of Rule 45 were inapplicable to the disciplinary proceedings. Instead, he contends that Rule 15 of the Rules for Lawyer Disciplinary Enforcement[16] is the governing rule as it specifically applies to subpoenas in disciplinary proceedings.

We find the Hearing Panel correctly quashed the subpoenas based on Respondent's failure to comply with the provisions of Rule 45, SCRCP. Rule 15 authorizes an accused lawyer to request the subpoena of witnesses and documents during the discovery period. Notably, Rule 15 does not include any procedural requirements regarding these subpoenas. Rule 9 of the Rules of Disciplinary Enforcement, however, incorporates the Rules of Civil Procedure in disciplinary proceedings, stating "[e]xcept as otherwise provided in these rules . . . the South Carolina Rules of Civil Procedure apply in lawyer discipline cases . . . when formal charges have been filed." Rule 9, RLDE, Rule 413, SCACR.

Respondent clearly did not comply with the provisions of Rule 45 as the service of the subpoenas on Judge Burch and Chief Justice Toal was untimely. Furthermore, Respondent has never articulated how the testimony

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[15] Respondent served subpoenas to: (1) Judge Burch on January 22, 2010, and March 10, 2010; and (2) Chief Justice Toal on January 25, 2010, and March 10, 2010.

[16] Rule 15, RLDE, Rule 413, SCACR.

of Chief Justice Toal was necessary to his case. Although it is a closer question whether Judge Burch could have been a material witness as he was involved in certain allegations of misconduct, we conclude that his failure to testify did not prejudice Respondent given all of the documentary evidence related to these misconduct allegations was offered into evidence.

c.

As to the timeliness of the Panel Report, we find the Hearing Panel filed its Panel Report in accordance with the applicable rules of procedure. As Respondent correctly notes, Rule 26(d) of the Rules for Lawyer Disciplinary Enforcement requires the Hearing Panel to submit the record and its report to the Supreme Court within sixty days after the filing of the transcript of a hearing. This time period, however, may be extended by the chair of the Commission pursuant to Rule 14(b)(1) of the Rules for Lawyer Disciplinary Enforcement. This rule further authorizes the chair to grant extensions beyond thirty days if "good cause" is shown.

Despite these provisions, Respondent contends that an extension beyond six months required the permission of this Court. Pursuant to Rule 14, the chair was the proper authority to grant the extension as Rule 14(b)(4) states, "[e]xcept for those periods of time that may be extended by the Commission under (1) above, the Supreme Court . . . may grant an extension of time to perform any act required by these Rules." Rule 14(b)(4), RLDE, Rule 413, SCACR; see In re Crews, 389 S.C. 322, 336, 698 S.E.2d 785, 792 (2010) (recognizing that Rule 14(b)(1) grants the chair of the Commission "broad powers to extend or shorten time periods in disciplinary hearings"). Furthermore, this Court implicitly granted the Hearing Panel's request for an extension as we issued an order on July 30, 2010, denying Respondent's motion to dismiss with prejudice due to the untimeliness of the filing of the Panel Report. Finally, any delay in the filing of the Panel Report has been taken into consideration by this Court as a factor in mitigation; thus, we can discern no prejudice to Respondent.

d.

Respondent claims the above-outlined procedural irregularities and Panel decisions culminated in a denial of his "right to due process in the suspension of his license to practice law in this State for over 5 years."

"When the State seeks to revoke a professional license, procedural due process rights must be met." Zaman v. S.C. State Bd. of Med. Exam'rs, 305 S.C. 281, 284, 408 S.E.2d 213, 215 (1991). However, "[o]ne cannot complain of a due process violation if he has recourse to a constitutionally sufficient administrative procedure but merely declines or fails to take advantage of it." Id. at 285, 408 S.E.2d at 215.

We find that Respondent's rights to due process were not violated by the disciplinary proceedings. Initially, we note that this Court was authorized to place Respondent on Interim Suspension based on the ODC's petition involving the Medical Record Matter.[17] In turn, the ODC properly served Respondent with the formal charges. Respondent was then given an opportunity to retain counsel, answer the charges, and engage in discovery. During the panel hearing, the Panel allowed Respondent to cross-examine the ODC's witnesses and challenge its evidence. Additionally, Respondent presented his own evidence in his defense of the misconduct allegations. Although there was delay in the filing of the Panel Report, the Respondent has been given an opportunity to challenge it before this Court through briefs and oral arguments.

Based on the foregoing, we conclude there was no due process violation as Respondent was provided notice, an opportunity to be heard, and judicial review. See In re Vora, 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003) ("Procedural due process requirements are not technical; no particular form of procedure is necessary. The United States Supreme Court has held,

[17] See Rule 17(b), RLDE, Rule 413, SCACR ("Upon receipt of sufficient evidence demonstrating that a lawyer poses a substantial threat of serious harm to the public or to the administration of justice, the Supreme Court may suspend the lawyer or transfer the lawyer to incapacity inactive status pending a final determination in any proceeding under these rules.").

however, that at a minimum certain elements must be present. These include (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses." (citation omitted)); Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) (stating "[t]he fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review").

2.

Respondent contends the findings of the Hearing Panel are without evidentiary support because the ODC did not satisfy its burden to prove the allegations by clear and convincing evidence. In support of this contention, Respondent avers that the Hearing Panel "merely accept[ed] as true the claims of misconduct by the ODC," which were primarily based on circuit court orders that were challenged by Respondent. Essentially, Respondent asserts that the ODC did not present any independent evidence to substantiate the allegations of misconduct. Furthermore, Respondent argues the Hearing Panel failed to consider and include all of the mitigating factors in favor of Respondent.

Although we give some credence to Respondent's claims concerning procedural irregularities in the state court system and the disciplinary proceedings, we find that these deficiencies do not warrant the invalidation of the Panel Report. However, we agree in part with Respondent's arguments as we find the ODC only proved three of the eight allegations of misconduct by clear and convincing evidence. Specifically, as will be discussed, we find the ODC presented clear and convincing evidence that Respondent committed misconduct with respect to the following: the Medical Record Matter, the Fee Dispute Matter, and the Samuel Matter.

a.

Deferring to the credibility determinations of the Hearing Panel, we find there is clear and convincing evidence that Respondent committed misconduct in creating the document that appeared to be a medical record.

Facially, the document is formatted similar to that of the Byerly Hospital report and even includes the client's vital signs, thus, giving it the appearance of a medical record. Respondent included the document in the settlement package to the Unisun claims representative and to Orr without alerting them to the fact that the document was not a medical record.

Although it is disputable whether the defense attorneys in the 1998 automobile accident case relied on this document in reaching their settlement agreements, it is evident that Respondent created the document with the intention of establishing that the client's heart condition was caused by the 1995 automobile accident. Given that there were no medical records in evidence to support this causal relation, we agree with the Panel's conclusion that Respondent's creation of this document constituted misconduct.[18] See In re Pennington, 380 S.C. 49, 668 S.E.2d 402 (2008) (imposing definite suspension of two years where attorney committed several acts of misconduct, which included the submission of false documents to ODC); In re Lathan, 360 S.C. 326, 600 S.E.2d 902 (2004) (finding definite suspension of six months, retroactive to Interim Suspension, was warranted where attorney committed misconduct arising out of false HUD-1 Settlement Statements); In re Belding, 356 S.C. 319, 325, 589 S.E.2d 197, 200 (2003) (concluding one-year suspension was appropriate where attorney drafted false documents and "made a conscious effort to make the documents appear authentic").

b.

We find there is clear and convincing evidence to support a finding of misconduct as to the Fee Dispute Matter.

On September 9, 2002, the South Carolina Bar Fee Disputes Resolution Board (Board) notified Respondent of its final decision that Wright was

[18] During oral argument before this Court, Respondent referenced the record of Dr. Dean Banks, a chiropractor, in support of his position. In our review of the medical records in evidence, we carefully considered this particular document. We, however, found that this document does not relate the client's heart condition to the 1995 automobile accident.

entitled to a fee refund in the amount of $1,750. Respondent, however, continues to dispute the validity of this award based on irregularities in the fee dispute proceedings. Essentially, Respondent claims that he did not have to respond to the fee dispute investigation as he believed the client had filed a separate complaint with the Office of Disciplinary Counsel. Furthermore, he asserts that the Chairman of the Board had a conflict and, thus, should have been disqualified in the proceedings.

Although there may be some merit to Respondent's assertions, they are of no consequence at this stage in the proceedings since Respondent had the opportunity to raise these issues in circuit court. He failed to file a brief and failed to appear at the hearing, thus, effectively waiving any challenge to the finality of the fee award. Moreover, despite clear language in the Rules, which instruct that the circuit court was the final appellate level, Respondent proceeded to appeal the decision to the Court of Appeals. Even after the Court of Appeals dismissed his appeal and this Court denied Respondent's petition for a writ of certiorari in 2007, Respondent still has not tendered the fee award to his client and, thus, has willfully failed to comply with a final decision of the Board.

Accordingly, we agree with the Hearing Panel's finding of misconduct as to this allegation. See In re Danielson, 391 S.C. 386, 706 S.E.2d 1 (2011) (imposing two-year suspension where lawyer committed numerous acts of misconduct, including failure to comply with a Final Decision of the Board); In re Thomson, 389 S.C. 24, 698 S.E.2d 625 (2010) (issuing public reprimand where lawyer failed to pay fee that was ordered by the Board).

c.

Of the three findings of misconduct based on Respondent's failure to prosecute, we find only the Samuel Matter was proven by clear and convincing evidence.

Approximately one year after filing the medical malpractice lawsuit, the circuit court granted summary judgment to the defendants due to Respondent's failure to provide potential experts and their affidavits. The court also dismissed the case due to Respondent's failure to appear at

scheduled hearings and his request for a continuance in violation of a court order. Once summary judgment was granted any other reason for dismissal was superfluous. Moreover, a litigant cannot be barred from requesting a continuance. A judge only has the option to grant or deny it.

The granting of summary judgment in a medical malpractice case for failure to produce an expert witness is not unusual and would not normally result in disciplinary action for failure to prosecute the case. However, Respondent never informed Samuel of the reason for the dismissal, but only communicated that the case was on appeal. Respondent also failed to maintain contact with Samuel and never informed her that the Court of Appeals had affirmed the circuit court's order, this Court had denied the petition for a writ of certiorari, or that he had been placed on Interim Suspension. In fact, Samuel testified that she was apprised of the status of her case two weeks before the panel hearing when she talked with Bogan about her testimony.

Accordingly, we find there is clear and convincing evidence that Respondent committed misconduct with respect to the Samuel Matter. See In re Longtin, 393 S.C. 368, 713 S.E.2d 297 (2011) (concluding nine-month suspension was warranted, in part, by lawyer's failure to prosecute cases adequately on behalf of his clients, to follow orders of the court, and to respond to his clients); In re Moore, 329 S.C. 294, 494 S.E.2d 804 (1997) (finding definite suspension of one year was appropriate, in part, where lawyer's neglect resulted in dismissal of client's case for lack of prosecution); In re Baldwin, 278 S.C. 292, 294 S.E.2d 790 (1982) (concluding indefinite suspension was warranted where lawyer failed to appear at scheduled court hearings).

3.

Finally, Respondent contends the Hearing Panel failed to consider and include in its report all of the mitigating factors in favor of Respondent. We find this contention to be without merit as Respondent has presented the additional mitigating factors in his brief to this Court. In reaching our decision, we have considered all mitigating factors that Respondent deems significant.

III. Conclusion

Based on the three proven incidents of misconduct and the mitigating and aggravating factors, we conclude the following sanctions are appropriate: a definite suspension from the practice of law for two years, which shall run retroactively to the date of Respondent's Interim Suspension; payment of the costs of these proceedings in an amount of $8,073.99; and payment of $1,750, the fee dispute amount awarded to Wright. Prior to petitioning for reinstatement, Respondent shall file an affidavit with the Clerk of Court showing that he has complied with the sanctions imposed by this Court.

DEFINITE SUSPENSION.

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

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Ivan N. Walters, Petitioner/Respondent.

Opinion No. 27067
Heard July 20, 2011 – Filed November 21, 2011

DISBARRED

Lesley M. Coggiola, Disciplinary Counsel, of Columbia, for Office of Disciplinary Counsel.

Ivan N. Walters, of Rock Hill, pro se.

PER CURIAM: This matter is before the Court on petitioner/ respondent's Petition for Reinstatement and the reciprocal disciplinary provisions of Rule 29, RLDE, Rule 413, SCACR.

PROCEDURAL BACKGROUND

Petitioner/respondent was admitted to the South Carolina Bar in 1988 and to the North Carolina Bar in 1993. By order dated September 28, 2009, the Court definitely suspended petitioner/respondent from the practice of law in this State for twelve

(12) months, retroactive to June 27, 2008, the date of his interim suspension.[1] In the Matter of Walters, 385 S.C. 235, 683 S.E.2d 801 (2009).

In June 2010, petitioner/respondent filed a Petition for Reinstatement and the matter was referred to the Committee on Character and Fitness (the Committee) pursuant to Rule 33(d), RLDE. After a hearing on October 21, 2010, the Committee issued a Report and Recommendation. The March 31, 2011, Report and Recommendation recommends petitioner/respondent be reinstated subject to certain conditions.

ODC filed exceptions to the Report and Recommendation. ODC asserted petitioner/respondent failed to promptly notify ODC that he had been disbarred by the North Carolina Bar on September 9, 2010, as required by Rule 29(a), RLDE, and, further, never informed the Committee of his North Carolina disbarment. As a result, ODC requested the Court either deny the Petition for Reinstatement or require petitioner/respondent to reappear before the Committee to address his failure to notify the Committee of his disbarment in North Carolina and the effect of the disbarment on his Petition for Reinstatement in South Carolina.

Petitioner/respondent filed exceptions to the conditions of reinstatement proposed by the Committee. In addition, he asserted he learned of his North Carolina disbarment "a couple of weeks" after the issuance of the September 9, 2010, Order of Disbarment. According to petitioner/respondent, when ODC approached him with a letter from North Carolina immediately before the October 21, 2010, Committee hearing, he told ODC he had been disbarred in North Carolina. He stated he did not inform the Committee of his North Carolina disbarment because it was for the same misconduct for which he had

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[1] In the Matter of Walters, 378 S.C. 596, 663 S.E.2d 482 (2008).

been sanctioned by the Court and, therefore, the disbarment was not relevant to his Petition for Reinstatement.

In the meantime, by letter dated April 5, 2011, ODC notified the Court that petitioner/respondent had been disbarred by the North Carolina Bar on September 9, 2010.[2] See Rule 29(a), RLDE. In accordance with Rule 29(b), RLDE, the Clerk of Court provided ODC and petitioner/respondent with thirty (30) days in which to inform the Court of any reason why the imposition of identical discipline in this State was not warranted.

Petitioner/respondent submitted a document entitled "Claim of Petitioner" maintaining that, because he was considering filing an appeal from the Order of Disbarment, his notice to ODC of the Order of Disbarment was timely within the meaning of Rule 29(a), RLDE. He further asserted the misconduct which formed the basis for his North Carolina disbarment was "basically" considered by the Court in its order imposing the twelve (12) month suspension from the practice of law and, therefore, the imposition of reciprocal discipline for the same misconduct would result in grave injustice. Alternatively, petitioner/respondent claimed that, if the Court concluded the imposition of reciprocal discipline was appropriate, it would be inequitable for this Court to disbar him for the misconduct found by the North Carolina State Bar because the Court has imposed lesser sanctions for similar misconduct.

After oral argument, the Court granted petitioner/respondent's request to brief the issues raised by this matter.

[2] The Order of Disbarment is attached.

DISCUSSION

Reciprocal Discipline

Rule 29(d), RLDE, Rule 413, SCACR, provides that the Court shall impose the identical discipline imposed in another jurisdiction unless the lawyer or ODC demonstrate or the Court finds that it clearly appears upon the face of the record from which the discipline is predicated that the identical discipline is improper for one of four stated reasons:

> 1) the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
>
> 2) there was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Supreme Court could not, consistent with its duty, accept as final the conclusion on that subject;
>
> 3) imposition of the same discipline by the Court would result in grave injustice; and
>
> 4) the established misconduct warrants substantially different discipline in this state.

If the Supreme Court determines that any of the above elements exist, it shall enter such other order as it deems appropriate. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that the imposition of the same discipline is not appropriate. Rule 29(d), RDLE.

I. Timeliness of Notice of Disbarment

Petitioner/respondent asserts he promptly notified ODC of his disbarment by the North Carolina State Bar by informing Disciplinary Counsel of the discipline immediately before his October 21, 2010, reinstatement hearing. He states that he received service of

the September 9, 2010, Order of Disbarment on September 20, 2010, and contemplated filing an appeal. According to petitioner/respondent, under the North Carolina Rules of Appellate Procedure, he had until October 20, 2010, to assert his appellate rights and, until that date, the Order of Disbarment was not final and, therefore, his notice to ODC on October 21, 2010, was timely.

Rule 29(a), RLDE, states, in part, as follows:

> Upon being disciplined …in another jurisdiction, a lawyer admitted to practice in this state shall promptly inform disciplinary counsel of the discipline...

Petitioner/respondent did not promptly inform ODC of the September 9, 2010, Order of Disbarment. Rule 29(a), RLDE, does not permit a lawyer who has been disciplined in another jurisdiction to delay informing ODC of discipline while the lawyer contemplates the filing of an appeal or until such time as the disciplinary order becomes final in the other jurisdiction. Petitioner/respondent's notice to ODC on October 21, 2010, more than one month after he received the North Carolina Order of Disbarment, did not comply with Rule 29(a), RLDE.

II. Same Misconduct

Petitioner/respondent argues the Court should not impose reciprocal discipline because the misconduct for which he was disbarred in North Carolina is the same misconduct for which he was suspended from the practice of law in South Carolina. We disagree.

The Court's order imposing discipline on petitioner/respondent addressed two matters of misconduct. The first matter was petitioner/respondent's felony conviction for violating 18 U.S.C. § 4, entitled "misprision of felony." The opinion states that petitioner/respondent pled guilty to misprision of felony, admitting that, although he had knowledge of the actual commission of bank fraud from April 2003 through October 2004, he concealed the information

by failing to inform a judge or other person in authority of the felony. In the Matter of Walters, supra.

The second matter involved petitioner/respondent's completion of a series of closings on the same piece of property. At the time of the last closing for Mr. and Mrs. Doe, petitioner/respondent did not satisfy the mortgage from the closing proceeds and did not insure that a release was executed and filed. In a previous closing on the same property, petitioner/respondent failed to insure the proper release and/or satisfactions were filed by the lender. Id.

In addition to addressing petitioner/respondent's misprision of felony conviction, the North Carolina Order of Discipline discussed petitioner/respondent's misconduct as the closing attorney for more than twenty real estate transactions involving Kyle Wimmer.[3] The Order of Discipline reports that, in numerous instances involving the sale of property to and from Wimmer or his affiliate business(es), petitioner/respondent knowingly made false statements on HUD-1 Settlement Statements for the purpose of influencing the action of the lending institution whose accounts were insured by the Federal Deposit Insurance Corporation in violation of 18 U.S.C. § 1014. The false statements allowed Wimmer, in some of the instances, to "flip" the loans and/or properties. In addition, on several occasions, petitioner/respondent disbursed funds from the lending institution in a manner which was inconsistent with the disbursement listed on the HUD-1 Settlement Statements provided to the institution. None of the reported instances of misconduct involved Mr. and Mrs. Doe.

Neither petitioner/respondent's knowingly false statements on numerous HUD-1 Settlement Statements nor his improper

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[3] As stated in the Order of Discipline, Wimmer was convicted of bank fraud and money laundering in connection with a real estate investment scheme. Petitioner/respondent's misprision of felony conviction was in connection with Wimmer's real estate investment scheme.

disbursements were considered by the Court in its order suspending petitioner/respondent from the practice of law. Consequently, it is appropriate for the Court to consider the imposition of reciprocal discipline for the misconduct which was not previously addressed by the Court.[4]

III. Infirmity of Proof

Petitioner/respondent argues that, if the Court determines the North Carolina Order of Disbarment addresses misconduct not previously considered by the Court, the Court should refuse to impose reciprocal discipline for the additional misconduct because of the infirmity of proof of the misconduct. He states he chose not to file an answer to the disciplinary complaint in North Carolina even though all the allegations were untrue because he would still have been subject to discipline in North Carolina as a result of his conviction for misprision of felony. Petitioner/respondent further asserts he feared that, if he challenged the North Carolina complaint, South Carolina would assume he did not recognize the wrongfulness and seriousness of the misconduct which would negatively impact his Petition for Reinstatement.[5] As a result, petitioner/respondent asserts the Court should not accept the unchallenged findings reported in the Order of Disbarment. We disagree.

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[4] Petitioner/respondent alleged that, except for the misconduct involving one property located in North Carolina, ODC investigated all of the misconduct addressed in the North Carolina State Bar's disbarment order. However, the bulk of misconduct addressed in the Order of Disbarment was not addressed in the parties' Agreement for Discipline by Consent and was not considered by the Court in its order suspending petitioner/respondent from the practice of law.

[5] According to the Order of Disbarment, petitioner/respondent filed a document with the Disciplinary Hearing Commission in which he indicated he did not intend to participate in the matter.

Under the North Carolina State Bar's Discipline and Disability Rules, if a lawyer fails to file an answer to a complaint, the allegations contained in the complaint will be deemed admitted. 27 N.C. Admin Code Chapter 1, Subchapter B § 0114(f). Since petitioner/respondent chose not to file an answer, he knowingly admitted the allegations in the North Carolina complaint and, therefore, is precluded from challenging them in the current proceeding.

Further, petitioner/respondent was entitled to challenge the allegations of misconduct in North Carolina. The Court would not have not looked negatively upon petitioner/respondent's assertion of his rights in that disciplinary proceeding.

IV. Imposition of Same Discipline Would Result in Grave Injustice and Warrants Substantially Different Discipline

Petitioner/respondent argues that, if the Court concludes the imposition of reciprocal discipline is appropriate, it would be inequitable for this Court to disbar him for the misconduct found by the North Carolina State Bar because the Court has imposed lesser sanctions for similar misconduct. Petitioner/respondent claims that, at most, a sanction of twelve months, retroactive to the date of his twelve month suspension imposed on September 28, 2009, or an eight month suspension retroactive to September 9, 2010, the date of the North Carolina Order of Disbarment, should be imposed. We disagree.

In each of the cases cited by petitioner/respondent the disciplined lawyer was unaware that his misconduct assisted in the perpetuation of a criminal or fraudulent scheme committed by others. As noted in the Order of Disbarment, petitioner/respondent knowingly made false statements on HUD-1 Settlement Statements for the purpose of influencing the action of the lending institution. Further, petitioner/respondent pled guilty to misprision of felony, admitting that he knew of the actual commission of bank fraud from April 2003 through October 2004, but concealed the information by failing to

inform a judge or other person in authority of the felony. We find disbarment is the appropriate sanction.

Petition for Reinstatement

Since we disbar petitioner/respondent from the practice of law pursuant to the reciprocal disciplinary provisions of Rule 29, RLDE, we deny his Petition for Reinstatement. Further, the Court is extremely troubled by petitioner/respondent's failure to inform the Committee that he had been disbarred by the North Carolina State Bar on September 9, 2010, one month before the hearing on his Petition for Reinstatement. While we recognize Rule 33, RLDE, did not specifically require petitioner/respondent to inform the Committee of the North Carolina Order of Discipline,[6] petitioner/respondent affirmatively stated to the Committee "I haven't had any prior disciplinary orders except for this one [the Court's order suspending him from the practice of law in South Carolina]." This was patently untrue. Further, although he responded to numerous questions posed by the Committee about the bank fraud underlying his misprision of felony conviction, petitioner/respondent never advised the Committee that he had been disbarred in North Carolina as a result of his complicity in the bank fraud. Petitioner/respondent's statement and omission indicate a lack of honesty, candor, and integrity which, alone, constitute a basis for denying his Petition for Reinstatement. See Rule 33(f)(6), RLDE (in order to be reinstated, lawyer must possess requisite honesty and integrity to practice law).

CONCLUSION

After thorough review of the record, we deny the Petition for Reinstatement. Further, we hereby disbar respondent from the

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[6] Rule 33(f)(5), RLDE, does require a lawyer seeking reinstatement not to have engaged in any other professional misconduct *since* the lawyer's suspension or disbarment from which he seeks reinstatement.

practice of law in this State pursuant to the reciprocal discipline provisions of Rule 29, RLDE. 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, RLDE, Rule 413, SCACR, and shall also surrender his Certificate of Admission to the Practice of Law to the Clerk of Court.

DISBARRED.

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

NORTH CAROLINA WAKE COUNTY	BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 09 DHC 3
THE NORTH CAROLINA STATE BAR, Plaintiff v. IVAN N. WALTERS, Attorney, Defendant	ORDER OF DISCIPLINE

This matter is before a hearing panel of the Disciplinary Hearing Commission composed of J. Michael Booe, Chair, and members Robert F. Siler and Karen B. Ray. Brian P.D. Oten and Carmen Hoyme Bannon represent Plaintiff, the North Carolina State Bar. Defendant, Ivan N. Walters, filed a document with the DHC indicating that he did not intend to participate in this matter and no counsel of record has appeared on his behalf.

On Plaintiff's motion, judgment by default was entered against Defendant. Based upon the pleadings and admissions pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(f) and Rule 8(d) of the Rules of Civil Procedure, the hearing panel hereby finds by clear, cogent, and convincing evidence the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper

party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Ivan N. Walters (hereafter "Defendant" or "Walters"), was admitted to the North Carolina State Bar in 1993 and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. Defendant was properly served with process in this action.

4. Walters is also licensed to practice law in South Carolina. During all or part of the relevant periods referred to herein, Walters was engaged in the practice of law in the State of South Carolina and maintained a law office in Rock Hill, York County, South Carolina.

5. From 2003 through 2005, Walters served as closing attorney in multiple real estate transactions involving Kyle Edward Wimmer, who was later convicted of bank fraud and money laundering in connection with a real estate investment scheme.

6. During this period, Wimmer was the sole managing member, operator, and registered agent of Real Estate Investment Capital, Inc. ("REIC"), a South Carolina corporation. Wimmer also owned and operated an entity called Landmark Remodeling.

7. Branch Banking and Trust (BB&T) was the mortgage lender in all of the real estate transactions described herein for which Walters served as closing attorney. BB&T's accounts are insured by the Federal Deposit Insurance Corporation (FDIC), a federal agency.

8. It is a violation of 18 U.S.C. § 1014 to knowingly make a false statement upon any application for the purpose of influencing in any way the action of any institution the accounts of which are insured by the FDIC.

9. In 2003, Vicky and Charles Snyder ("the Snyders") were the sole owners of Snyder Enterprises, Inc., a company that invested in rental properties. In or about July 2003, the Snyders agreed to sell seven of Snyder Enterprises' rental properties in Lexington, South Carolina, ("the Lexington properties") to Wimmer.

10. The Snyders agreed to sell the Lexington properties to Wimmer for the payoff amounts of the outstanding mortgage loan on the properties. Accordingly, the Snyders did not expect to make a profit on the sale, seeking only to be relieved of the debt associated with those properties.

11. Neither Wimmer nor anyone else provided a down payment or any other funds to the Snyders or to Snyder Enterprises in connection with the sale of the Lexington properties.

12. At Wimmer's instruction, the Snyders went to Walters's law office to complete paperwork for the sale of the Lexington properties to Wimmer.

13. At Walters's direction, Vicky Snyder signed seven blank HUD-1 Settlement Statements ("HUD-1s") and seven blank deeds.

14. Instead of purchasing the Lexington properties himself, Wimmer arranged for individuals from Utah to buy the Lexington properties. These buyers obtained mortgage loans from BB&T to fund the purchases.

15. Walters completed four of the HUD-1s signed by Vicky Snyder to reflect that Snyder Enterprises was selling the properties identified on the HUD-1 to an individual from Utah for a purchase price of $125,000.00 per property. These four HUD-1s prepared by Walters also reflected that the buyer had paid a $25,000.00 deposit to Snyder Enterprises per property, and that the buyer brought approximately $1,900.00 to closing per property.

16. Walters's statements on the HUD-1s described in paragraph 15 above were false in that:

(a) The Snyders, on behalf of Snyder Enterprises, did not agree to a $125,000.00-per-property purchase price for four of the Lexington properties;

(b) None of the buyers in these four transactions paid $25,000.00 deposits;

(c) The Snyders, on behalf of Snyder Enterprises, did not receive $25,000.00-per-property deposits in connection with the sale of four of the Lexington properties; and

(d) None of the buyers in these four transactions brought approximately $1,900.00 to closing.

17. Wimmer paid the approximately $1,900.00 per closing which was shown on the HUD-1s as cash from the buyers.

18. Walters provided the four false HUD-1s described in paragraph 15 above to BB&T.

19. For each of these four transactions, BB&T loaned the buyer $100,000.00. After closing costs, Walters disbursed the remainder of the proceeds from each of the $100,000.00 loans as follows:

(a) $79,343.31 to pay off the existing mortgage; and

(b) $17,330.34 to Wimmer's company, Landmark Remodeling.

20. Landmark Remodeling had not performed any services on these four properties to earn the $17,330.34-per-property payment.

21. For the remaining three Lexington properties, Walters prepared HUD-1s reflecting that the individuals from Utah were refinancing properties they already owned. At the time he prepared these three HUD-1s, Walters knew that these individuals were not the record owners of the properties and that the purpose of the loans was to enable them to purchase the properties.

22. Walters provided the three false HUD-1s described in paragraph 21 above to BB&T.

23. For each of these three "refinance" transactions, BB&T loaned the borrower $100,000.00.

24. For each of these three transactions, Walters disbursed the loan proceeds remaining after closing costs as follows:

(a) $79,343.31 to pay off the existing mortgage; and

(b) Approximately $15,800 to Wimmer's company, Landmark Remodeling.

25. Landmark Remodeling had not performed any services on these three properties to earn the approximately $15,800-per-property payment.

26. Wimmer directed Walters to make the disbursements to Landmark Remodeling described in paragraphs 19 and 24 above.

27. Walters knew or should have known, at the time he prepared the HUD-1s and made the disbursements for the sales of the Lexington properties, that Landmark had not performed any services on the Lexington properties.

28. Walters prepared the deeds transferring the Lexington properties from Snyder Enterprises to the various individuals from Utah.

29. The deeds Walters prepared for the transfer of the Lexington properties falsely reflected that the purchase price for each property was $125,000.00.

30. Walters caused the deeds reflecting false purchase prices for the Lexington properties to be filed in the public record.

31. In May 2003, Walters served as closing attorney for a transaction in which properties located at 807 Chesterfield Avenue and 1137 6th Street in Chester, South Carolina ("the Chesterfield Ave and 6th Street properties") were transferred on the same day from William & Diane Glassberg to REIC and from REIC to Robert Ellis.

32. The purchase price for REIC's purchase of the properties was $45,000.00. The purchase price for Ellis's purchase of the properties on that same day was $113,000.00.

33. Ellis obtained a $90,400.00 mortgage loan from BB&T to fund his purchase of the Chesterfield Ave and 6th Street properties.

34. Walters prepared the HUD-1 Settlement Statement for Ellis's purchase of these properties. The HUD-1 prepared by Walters showed REIC as the seller and reflected that the purchase price for the Chesterfield Ave and 6th Street properties was $113,000.00. The HUD-1 prepared by Walters also reflected that Ellis had paid REIC a deposit in the amount of $21,716.31, and that Ellis brought $2,415.50 to closing.

35. Walters's statements on the HUD-1 described in paragraph 34 above were false in that:

(a) At the time the HUD-1 was prepared and submitted to the lender, REIC was not the record owner of the property;

(b) Ellis did not pay any deposit to REIC;

(c) The purchase price reflected on the HUD-1 was artificially inflated; and

(d) Ellis did not bring any cash to closing.

36. The HUD-1 prepared by Walters in connection with Ellis's purchase of the Chesterfield Ave and 6th Street properties also stated that $90,126.90 of the loan proceeds would be disbursed to the seller, REIC. This statement was false, in that Walters actually disbursed only $44,316.90 to REIC. The remaining $45,810.00 of Ellis's loan proceeds were used to fund REIC's purchase of the Chesterfield Ave and 6th Street properties.

37. Walters did not disclose to his client, Ellis, information that he learned from his representation of REIC, to wit: That the properties securing the $90,400.00 loan to Ellis were being sold to REIC for

$45,000.00 earlier that day, and that the loan proceeds for Ellis's purchase were used to fund REIC's purchase of the properties.

38. In May 2003, Walters served as closing attorney for a transaction in which seven properties located in Lancaster, South Carolina were transferred from William & Diane Glassberg to REIC and, on that same day, four of those seven properties were transferred from REIC to Kendrick Hicks ("Hicks").

39. The total purchase price for REIC's purchase of the seven properties was $75,000.00. The purchase price for Hicks's purchase of the four properties on that same day was $116,000.00.

40. Hicks obtained a $92,800.00 mortgage loan from BB&T to fund his purchase of these four properties from REIC.

41. Walters prepared the HUD-1 Settlement Statement for Hicks's purchase of these four properties. The HUD-1 prepared by Walters showed REIC as the seller and reflected that the purchase price was $116,000.00. The HUD-1 prepared by Walters also reflected that Hicks had paid REIC a deposit in the amount of $23,200.00, and that Hicks brought $3,030.70 to closing.

42. Walters's statements on the HUD-1 described in paragraph 41 above were false in that:

(a) At the time the HUD-1 was prepared and submitted to the lender, REIC was not the record owner of the property;

(b) Hicks did not pay any deposit to REIC;

(c) The purchase price reflected on the HUD-1 was artificially inflated; and

(d) Hicks did not bring any cash to closing.

43. The HUD-1 prepared by Walters in connection with Hicks's purchase of these four properties also stated that all $92,800.00 of the loan proceeds would be disbursed to the seller, REIC. This statement was false, in that Walters actually disbursed only $16,651.65

to REIC. The remaining $76,148.35 of Hicks's loan proceeds were used to fund REIC's purchase of all seven of the properties.

44. Walters did not disclose to his client, Hicks, information that he learned from his representation of REIC, to wit: That the properties securing the $92,800.00 loan to Hicks were being sold to REIC for less than $75,000.00 earlier that day, and that the loan proceeds for Hicks's purchase were used to fund REIC's purchase of all seven of the properties.

45. In May 2004, Walters served as closing attorney for transactions in which properties located at 130 Saluda Street in Chester, South Carolina and 8 Elliott Street in Chester, South Carolina ("the Saluda and Elliott Street properties") were transferred on the same day from Eric McLaren and Carl Campbell, respectively, to REIC and from REIC to Sheila Pincock ("Pincock").

46. The total purchase price for REIC's purchase of the properties was $38,661.97. The purchase price for Pincock's purchase of these properties was $136,000.00.

47. Pincock obtained a $108,800.00 mortgage loan from BB&T to fund her purchase of the Saluda and Elliott Street properties.

48. Walters prepared the HUD-1 Settlement Statement for Pincock's purchase of the Saluda and Elliott Street properties and provided the HUD-1 to BB&T.

49. The HUD-1 prepared by Walters showed REIC as the seller and reflected that the purchase price for the Saluda and Elliott Street properties was $136,000.00. The HUD-1 prepared by Walters also reflected that Pincock had paid REIC a $27,200.00 deposit, and that Pincock brought $2,032.75 to closing.

50. Walters's statements on the HUD-1 described in paragraph 49 above were false in that:

(a) At the time the HUD-1 was prepared and submitted to the lender, REIC was not the record owner of the properties;

(b) Pincock did not pay any deposit to REIC;

(c) The purchase price reflected on the HUD-1 was artificially inflated; and

(d) Pincock did not bring any cash to closing.

51. Walters did not disclose to his client, Pincock, information that he learned from his representation of REIC, to wit: That the properties securing the $108,800.00 loan to Pincock were being sold to REIC for $38,661.97 that same day.

52. In January 2004, Walters served as closing attorney for a transaction in which REIC bought a property at 1301 N. Lafayette Street in Shelby, North Carolina ("the Shelby property"). REIC bought this property for $49,600.00.

53. Several days later, Walters served as closing attorney for a transaction in which REIC sold the Shelby property to Marcus Beeson.

54. Beeson obtained an $84,100.00 loan from BB&T to fund his purchase of the Shelby property.

55. As closing attorney for Beeson's purchase of the Shelby property, Walters represented the buyer/borrower and the lender in the transaction.

56. Walters prepared the HUD-1 Settlement Statement for Beeson's purchase of the Shelby property. The HUD-1 prepared by Walters reflected that the loan was a refinance loan.

57. The HUD-1 prepared by Walters and described in paragraph 56 above was false in that:

(a) At the time the HUD-1 was prepared and submitted to the lender, Beeson was not the record owner of the property;

(b) The loan proceeds from BB&T were used to fund Beeson's purchase of the property.

58. In September 2004, Walters served as closing attorney for a transaction in which REIC bought a property at 130 Cushman Drive in Chester, South Carolina ("the Cushman property"). REIC bought this property for $22,500.00.

59. Several days later, Walters served as closing attorney for a transaction in which REIC sold the Cushman property to Jennifer Satterlee.

60. Satterlee obtained an $83,000.00 loan from BB&T to fund her purchase of the Cushman property.

61. Walters prepared the HUD-1 Settlement Statement for Satterlee's purchase of the Cushman property. The HUD-1 prepared by Walters reflected that the loan was a refinance loan.

62. The HUD-1 prepared by Walters and described in paragraph 61 above was false in that:

(a) At the time the HUD-1 was prepared and submitted to the lender, Satterlee was not the record owner of the property;

(b) The loan proceeds from BB&T were actually used to fund Satterlee's purchase of the property.

63. Walters provided the HUD-1s described in paragraphs 56 and 61 above to the lender, BB&T.

64. BB&T underwrote the loans as if they were refinance loans rather than purchase loans.

65. Walters knew that BB&T would loan more money to the borrowers for a refinance loan than for a purchase loan.

66. Walters prepared these false refinance HUD-1s to enable the borrower to borrow more money than otherwise would have been approved for a purchase loan.

67. By submitting a false refinance HUD-1 to BB&T, Walters knowingly made false statements to an institution the accounts of

which were insured by the FDIC for the purpose of influencing the action of that institution in violation of 18 U.S.C. § 1014.

68. Walters disbursed the proceeds of Beeson's loan as follows:

(a) $49,375.00 to REIC; and

(b) $32,981.00 to Landmark Remodeling.

69. Walters disbursed the proceeds of Satterlee's loan as follows:

(a) $21,284.77 to REIC; and

(b) $60,328.73 to Landmark Remodeling.

70. Landmark Remodeling had not performed any services on the Shelby or Cushman properties to earn the $32,981.00 and $60,328.73 payments, respectively.

71. Wimmer directed Walters to make the disbursements to Landmark Remodeling described in paragraphs 68 and 69 above.

72. Walters knew or should have known, at the time he prepared the HUD-1s and made the disbursements described in paragraphs 68 and 69 above that Landmark had not performed any services on the Shelby or Cushman properties.

73. In the following additional transactions, Walters also prepared HUD-1 Settlement Statements that falsely reflected that the loans were refinance loans when in fact the borrowers used the loan proceeds to purchase the properties:

Property	**Borrower**	**Seller**	**Date**
737 Ellis Avenue, NE Orangeburg, SC	Frederick Atherley	Southeastern Regional Housing Cooperative, Inc.	12/12/2003
718 Sweeney		Rhett Hasell	3/8/2004

Property	Borrower	Seller	Date
Street Chester, SC & 215 Sanders Street Fort Mill, SC	Shawna Beeson	& REIC	& 3/9/2004
568 2nd Street & 538 4th Street Chester, SC	Janie Wade	Richard A. Hall	8/18/2004
521 2nd Street Chester, SC	Russell Horne	REIC	1/12/2005

74. In connection with each of the real estate closings on the list above, Walters provided the false HUD-1 to the lender, BB&T.

75. BB&T underwrote the loans as if they were refinance loans rather than purchase loans.

76. Walters knew that the lenders would loan more money to the borrowers for a refinance loan than for a purchase loan.

77. Walters prepared the false refinance HUD-1s to enable the borrowers to borrow more money than otherwise would have been approved for a purchase loan.

78. By submitting false refinance HUD-1s to BB&T, Walters knowingly made false statements to an institution the accounts of which were insured by the FDIC for the purpose of influencing the action of that institution in violation of 18 U.S.C. § 1014.

79. Wimmer was convicted of bank fraud and money laundering in connection with the real estate investment scheme described in the preceding paragraphs. The United States District Court for the District of South Carolina sentenced Wimmer to 63 months in prison and ordered him to pay $4 million in restitution.

80. On 28 April 2008, Walters was charged with misprision of felony in connection with Wimmer's real estate investment scheme.

81. The elements of misprision of felony are: (1) having knowledge of the actual commission of a felony; and (2) concealing and failing to report the felonious conduct. *See* 18 U.S.C. § 4.

82. On 18 June 2008, Walters pled guilty to misprision of felony in violation of Title 18 U.S.C. § 4, South Carolina District Court file number 6:08-CR-385. Judgment was entered on 30 September 2008.

As previously found by default judgment and now recited herein, based on the foregoing Findings of Fact the hearing panel makes the following

CONCLUSIONS OF LAW

1. All the parties are properly before the hearing panel and the panel has jurisdiction over Defendant, Ivan N. Walters, and the subject matter.

2. Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(1), for his conviction of one count of misprision of felony in violation of 18 U.S.C. § 4, a criminal offense showing professional unfitness.

3. Defendant's conduct, as set out in the Findings of Fact above, also constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:

(a) By directing the Snyders to sign blank HUD-1s and deeds and then completing those documents with false information, Walters engaged in conduct involving fraud, deceit, or misrepresentation in violation of Rule 8.4(c);

(b) By following Wimmer's directive to disburse loan proceeds to Landmark Remodeling in connection with closings on the Lexington properties when he knew or should have known that Landmark had not performed any remodeling services on the properties, Walters assisted his client—Wimmer—in conduct he knew was criminal or fraudulent in violation of Rule 1.2(d), and engaged in conduct involving dishonesty, deceit or misrepresentation in violation of Rule 8.4(c);

(c) By knowingly preparing HUD-1s containing false information about the transfer of the Lexington properties, and providing those HUD-1s to the mortgage lender, Walters engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and committed criminal acts reflecting adversely on his honesty, trustworthiness or fitness as a lawyer—to wit: violation of 18 U.S.C. § 1014—in violation of Rule 8.4(b);

(d) By knowingly preparing and filing in the public record deeds that reflected false purchase prices for the Lexington properties, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);

(e) By knowingly preparing a HUD-1 containing false information for the transactions involving the Chesterfield Ave and 6th Street properties and providing that HUD-1 to the mortgage lender, Walters engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and committed criminal acts reflecting adversely on his honesty, trustworthiness or fitness as a lawyer—to wit: violation of 18 U.S.C. § 1014—in violation of Rule 8.4(b);

(f) By disbursing funds loaned by BB&T to Robert Ellis in a manner differing from the disbursements listed on the HUD-1 he provided to BB&T, Walters engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);

(g) By acting as closing attorney for transactions in which he could not and did not disclose material information to his client, Robert Ellis, Walters engaged in representation involving a concurrent conflict of interest in violation of Rule 1.7(a);

(h) By knowingly preparing a HUD-1 containing false information about Hicks's closing and providing that HUD-1 to the mortgage lender, Walters engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and committed criminal acts reflecting adversely on his honesty, trustworthiness or fitness as a lawyer—to wit: violation of 18 U.S.C. § 1014—in violation of Rule 8.4(b);

(i) By disbursing funds loaned by BB&T to Kendrick Hicks in a manner differing from the disbursements listed on the HUD-1 he provided to BB&T, Walters engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);

(j) By acting as closing attorney for transactions in which he could not and did not disclose material information to his client, Kendrick Hicks, Walters engaged in representation involving a concurrent conflict of interest in violation of Rule 1.7(a);

(k) By knowingly preparing a HUD-1 containing false information about the transfer of the Saluda and Elliott Street properties and providing that HUD-1 to the mortgage lender, Walters engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and committed criminal acts reflecting adversely on his honesty, trustworthiness or fitness as a lawyer—to wit: violation of 18 U.S.C. § 1014—in violation of Rule 8.4(b);

(l) By acting as closing attorney for transactions in which he could not and did not disclose material information to his client, Sheila Pincock, Walters engaged in representation

involving a concurrent conflict of interest in violation of Rule 1.7(a);

(m) By preparing and providing BB&T with false refinance HUD-1s in the closings on the Shelby and Cushman properties, Walters engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), committed criminal acts reflecting adversely on his honesty, trustworthiness or fitness as a lawyer—to wit: violation of 18 U.S.C. § 1014—in violation of Rule 8.4(b), and (with respect to the Shelby property transaction in which he represented BB&T) intentionally prejudiced his client—the lender—during the course of the professional relationship in violation of Rule 8.4(g);

(n) By following Wimmer's directive to disburse a portion of Beeson's and Satterlee's loan proceeds to Landmark Remodeling when he knew or should have known that Landmark had not performed any remodeling services on the properties, Walters assisted his client—Wimmer—in conduct he knew was criminal or fraudulent in violation of Rule 1.2(d), and engaged in conduct involving dishonesty deceit or misrepresentation in violation of Rule 8.4(c);

(o) By preparing and providing BB&T with false refinance HUD-1s in the additional transactions identified in paragraph 73, Walters engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and committed criminal acts reflecting adversely on his honesty, trustworthiness or fitness as a lawyer—to wit: violation of 18 U.S.C. § 1014—in violation of Rule 8.4(b); and

(p) By engaging in the felonious conduct for which he was convicted, Walters committed a criminal act that reflects adversely upon his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b), assisted his client—Wimmer—in conduct he knew was criminal or fraudulent in violation of Rule 1.2(d), and engaged in conduct involving

dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

Based upon the foregoing Findings of Fact and Conclusions of Law, the hearing panel hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings in paragraphs 1 through 82 above are reincorporated as if fully set forth herein.

2. Walters has substantial experience in the practice of law.

3. Walters was obligated, as closing attorney, to produce accurate HUD-1 statements for the transactions he closed. Accurate HUD-1s are necessary for the system of finance in real estate to function.

4. The falsely inflated purchase prices and false down-payments shown on the HUD-1s Walters provided to BB&T were designed to mislead the lender about the value of the properties which served as collateral for the mortgage loans.

5. Banks are not normally thought of as vulnerable entities. Nevertheless, lending institutions are placed at risk by the conduct of attorneys who circumvent or knowingly facilitate others' circumvention of safeguards employed to avoid fraud.

6. Walters's preparation and submission of HUD-1s that failed to accurately show the receipt and disbursement of funds for numerous transactions evaded the safeguards relied upon by lenders in mortgage loan transactions.

7. Walters's preparation and submission of HUD-1s that made purchase transactions falsely appear to be refinance transactions resulted in significant harm in that it furthered and helped effectuate a scheme whereby the bank loaned significantly more than it otherwise would have for a given transaction.

8. The buyers in the transactions described herein were Walters's clients. As buyers, one of their goals was not to pay an unnecessarily inflated price for properties they were purchasing. Walters's failure to disclose to his clients that the properties they were purchasing had just been sold for far lesser sums impaired the buyers' ability to avoid paying unnecessarily inflated prices.

9. Walters engaged in multiple and similar instances of conduct involving misrepresentation and deceit over a substantial period of time.

10. Clients are entitled to attorneys they can trust. Walters, by engaging in conduct involving misrepresentation and deceit over a substantial period of time, has shown himself to be untrustworthy.

11. Walters engaged in criminal conduct while acting in his capacity as a lawyer. His criminal conduct involved dishonesty.

12. Walters's criminal conviction is a matter of public record.

13. When a lawyer is convicted of a serious crime, particularly a crime involving dishonesty, it brings the legal profession into disrepute.

14. The hearing panel has carefully considered all of the different forms of discipline available to it in considering the appropriate discipline to impose in this case.

Based upon the foregoing Findings of Fact, Conclusions of Law, and additional Findings of Fact Regarding Discipline, and upon consideration of the factors set forth in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(w), the hearing panel hereby enters the following additional

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. The hearing panel has carefully considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w) of the Rules and

Regulations of the North Carolina State Bar. The hearing panel finds evidence of the following factors:

(a) From Rule .0114(w)(1):

i. Intent of Defendant to cause the resulting harm or potential harm, in that Walters knowingly prepared and submitted false HUD-1s to the banks in order to assist Wimmer in fraudulent activity;

ii. Intent of Defendant to commit acts where the harm or potential harm is foreseeable: Our financial system is dependent upon accuracy and truthfulness in disclosure, and harm or potential harm is foreseeable anytime a financial institution is asked to make a loan decision based upon false information;

iii. Circumstances reflecting Defendant's lack of honesty, trustworthiness or integrity;

iv. Impairment of clients' ability to achieve the goals of the representation; and

v. Acts of dishonesty, misrepresentation, deceit, or fabrication. Walters deceived BB&T by preparing and submitting false HUD-1s and admitted (by virtue of his plea) to knowingly concealing and/or failing to report Wimmer's bank fraud and money laundering scheme.

(b) From Rule .0114(w)(2):

i. Acts of dishonesty, misrepresentation, deceit, or fabrication, as stated in the Rule violations found and further articulated in these findings and conclusions regarding discipline; and

ii. Commission of a felony.

(c) From Rule .0114(w)(3):

i. Dishonest motive;

ii. A pattern of misconduct

iii. Multiple offenses; and

iv. Substantial experience in the practice of law.

2. Walters's conduct resulted in at least potential significant harm to the profession due to the public nature of his criminal charges and conviction.

3. Walters's conduct resulted in significant harm and/or potential harm to BB&T. Walters's conduct evaded safeguards relied upon by BB&T. BB&T loaned significantly more than it otherwise would have in the transactions Walters falsely characterized as "refinances," and may have approved other loans based on false information submitted by Walters.

4. Walters's pattern of dishonest conduct poses potential significant harm to the public that may seek to retain him or those who may deal with him in other capacities. When a lawyer violates the trust clients and others should be able to have in attorneys, it harms the public and the profession.

5. The hearing panel has carefully considered admonition, reprimand, censure, suspension and disbarment in considering the appropriate discipline in this case.

6. The hearing panel finds that admonition, reprimand, censure or suspension would not be sufficient discipline because of the gravity of harm to clients, the public, and the profession in the present case.

7. The hearing panel concludes that discipline short of disbarment would not adequately protect the public for the reasons stated above and for the following reasons:

a. Walters committed misdeeds involving moral turpitude and violations of the public trust, including fraudulent conduct, material misrepresentations, and deceit. Misconduct involving misrepresentations and deceit are among the most serious that an attorney can commit. Such offenses demonstrate that the offending attorney is not trustworthy. Clients are entitled to have trustworthy attorneys;

b. Walters repeatedly engaged in criminal acts reflecting adversely on his honesty, trustworthiness or fitness as a lawyer.

c. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Walters committed, would be inconsistent with discipline issued in prior cases involving similar misconduct, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State.

d. The protection of the public and the legal profession requires that Walters not be permitted to resume the practice of law until he demonstrates the following: that he has reformed; that he understands his obligations to his clients, the public, and the legal profession; and that permitting him to practice law will not be detrimental to the public or the integrity and standing of the legal profession or the administration of justice. Disbarred lawyers are required to make such a showing before they may resume practicing law.

Based upon the foregoing Findings of Fact, Conclusions of Law, and additional Findings of Fact and Conclusions of Law Regarding Discipline, the hearing panel hereby enters the following

ORDER OF DISCIPLINE

1. Defendant, Ivan N. Walters, is hereby DISBARRED from the practice of law.

2. Defendant shall surrender his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon Defendant.

3. Defendant shall pay the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar. Defendant must pay the costs within 30 days of service upon him of the statement of costs by the Secretary.

4. Defendant shall comply with all provisions of 27 NCAC 1B § .0124 of the North Carolina State Bar Discipline & Disability Rules.

Signed by the Chair with the consent of the other hearing panel members, this the 9 day of September, 2010.

s/ J. Michael Booe
J. Michael Booe, Chair
Disciplinary Hearing Committee

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Petitioner,

v.

Charles Q. Jackson, Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Bamberg County
Doyet A. Early, III, Circuit Court Judge

Opinion No. 27068
Heard November 2, 2011 – Filed November 21, 2011

DISMISSED AS IMPROVIDENTLY GRANTED

Attorney General Alan Wilson, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, Assistant Attorney General Mark R. Farthing, all of Columbia, and J. Strom Thurmond, Jr., of Aiken, for Petitioner.

Chief Appellate Defender Robert M. Dudek, of South Carolina Commission on Indigent Defense, of Columbia, for Respondent.

PER CURIAM: We granted a writ of certiorari to review the court of appeals' decision in *State v. Jackson*, 384 S.C. 29, 681 S.E.2d 17 (2009). We now dismiss the writ as improvidently granted.

DISMISSED AS IMPROVIDENTLY GRANTED.

TOAL, C.J., PLEICONES, BEATTY, HEARN, JJ., and Acting Justice James E. Moore, concur.

The Supreme Court of South Carolina

In the Matter of Gary D. James, Sr., Respondent.

ORDER

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

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

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

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

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

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

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

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

Columbia, South Carolina

November 15, 2011

The Supreme Court of South Carolina

In the Matter of Rose Marie Cooper, Respondent.

ORDER

By order dated August 17, 2011, the Court placed respondent on interim suspension pursuant to Rule 17, RLDE, Rule 413, SCACR. In the Matter of Cooper, 394 S.C. 34, 714 S.E.2d 312 (2011). Thereafter, respondent filed a Petition for Reconsideration.

The Court grants the Petition for Reconsideration. Respondent is reinstated to the practice of law.

IT IS SO ORDERED.

s/ Jean H. Toal C.J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

Columbia, South Carolina
November 16, 2011

The Supreme Court of South Carolina

In the Matter of Wilton Darnell Newton, Respondent.

ORDER

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

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

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

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

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

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

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

IT IS SO ORDERED.

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

Columbia, South Carolina

November 17, 2011