The Supreme Court of South Carolina

In the Matter of Jeffrey Franklin Cherry, Petitioner.

Appellate Case No. 2012-213512

ORDER

The records in the office of the Clerk of the Supreme Court show that on November 15, 1993, Petitioner was admitted and enrolled as a member of the Bar of this State.

By way of a letter addressed to the Clerk, South Carolina Supreme Court, dated November 29, 2012, Petitioner submitted his resignation from the South Carolina Bar. We accept Petitioner's resignation.

Petitioner shall, within fifteen (15) days of the issuance of this order, deliver to the Clerk of the Supreme Court his certificate to practice law in this State.

In addition, Petitioner shall promptly notify, or cause to be notified, by certified mail, return receipt requested, all clients currently being represented in pending matters in this State, of his resignation.

Petitioner shall file an affidavit with the Clerk of the Supreme Court, within fifteen (15) days of the issuance of this order, showing that he has fully complied with the provisions of this order. The resignation of Jeffrey

Franklin Cherry shall be effective upon full compliance with this order. His name shall be removed from the roll of attorneys.

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
December 21, 2012

The Supreme Court of South Carolina

In the Matter of Harry Edwin Harner, Petitioner

Appellate Case No. 2012-213537

ORDER

The records in the office of the Clerk of the Supreme Court show that on November 14, 1986, Petitioner was admitted and enrolled as a member of the Bar of this State.

By way of a letter addressed to the Supreme Court of South Carolina, dated December 3, 2012, Petitioner submitted his resignation from the South Carolina Bar. We accept Petitioner's resignation.

Petitioner shall, within fifteen (15) days of the issuance of this order, deliver to the Clerk of the Supreme Court his certificate to practice law in this State.

In addition, Petitioner shall promptly notify, or cause to be notified, by certified mail, return receipt requested, all clients currently being represented in pending matters in this State, of his resignation.

Petitioner shall file an affidavit with the Clerk of the Supreme Court, within fifteen (15) days of the issuance of this order, showing that he has fully complied with the provisions of this order. The resignation of Harry Edwin

Harner shall be effective upon full compliance with this order. His name shall be removed from the roll of attorneys.

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
December 21, 2012

The Supreme Court of South Carolina

In the Matter of Susanne Hughes Trainer, Petitioner

Appellate Case No. 2012-213574

ORDER

The records in the office of the Clerk of the Supreme Court show that on June 6, 1994, Petitioner was admitted and enrolled as a member of the Bar of this State.

By way of a letter addressed to the Supreme Court of South Carolina, dated December 12, 2012, Petitioner submitted her resignation from the South Carolina Bar. We accept Petitioner's resignation.

Petitioner shall, within fifteen (15) days of the issuance of this order, deliver to the Clerk of the Supreme Court her certificate to practice law in this State.

In addition, Petitioner shall promptly notify, or cause to be notified, by certified mail, return receipt requested, all clients currently being represented in pending matters in this State, of her resignation.

Petitioner shall file an affidavit with the Clerk of the Supreme Court, within fifteen (15) days of the issuance of this order, showing that she has fully complied with the provisions of this order. The resignation of Susanne

Hughes Trainer shall be effective upon full compliance with this order. Her name shall be removed from the roll of attorneys.

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
December 21, 2012

The Supreme Court of South Carolina

In the Matter of Robert Dale Wilson, Petitioner

Appellate Case No. 2012-213459

ORDER

The records in the office of the Clerk of the Supreme Court show that on November 8, 1978, Petitioner was admitted and enrolled as a member of the Bar of this State.

By way of a letter addressed to the Office of the Clerk of the Supreme Court of South Carolina, dated November 19, 2012, Petitioner submitted his resignation from the South Carolina Bar. We accept Petitioner's resignation.

Petitioner shall, within fifteen (15) days of the issuance of this order, deliver to the Clerk of the Supreme Court his certificate to practice law in this State.

In addition, Petitioner shall promptly notify, or cause to be notified, by certified mail, return receipt requested, all clients currently being represented in pending matters in this State, of his resignation.

Petitioner shall file an affidavit with the Clerk of the Supreme Court, within fifteen (15) days of the issuance of this order, showing that he has fully complied with the provisions of this order. The resignation of Robert Dale

Wilson shall be effective upon full compliance with this order. His name shall be removed from the roll of attorneys.

s/ Jean H. Toal C.J.

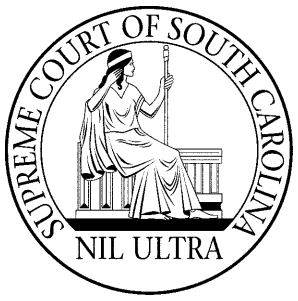
s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

Columbia, South Carolina
December 21, 2012



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OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 47
December 28, 2012
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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2012-UP-471-SCDSS v. Kelcie C. et al.	Pending
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THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Jeffery Glenn Smith, Respondent

Appellate Case No. 2012-213399

Opinion No. 27204
Submitted December 19, 2012 – Filed December 28, 2012

DEFINITE SUSPENSION

Lesley M. Coggiola, Disciplinary Counsel, Ericka M. Williams, Assistant Disciplinary Counsel, of Columbia, for Office of Disciplinary Counsel.

Michael A. Uricchio of Michael A. Uricchio Law Firm of North Charleston, for respondent.

PER CURIAM: In this attorney disciplinary matter, the Office of Disciplinary Counsel (ODC) and respondent have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, respondent admits misconduct and consents to the imposition of a definite suspension not to exceed twelve (12) months. He requests that any sanction be made retroactive to January 13, 2012, the date of his interim suspension. *In the Matter of Smith*, 396 S.C. 289, 721 S.E.2d 429 (2012). Respondent further agrees to pay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission on Lawyer Conduct (the Commission) within thirty (30) days of the date of imposition of sanction and to complete the Legal Ethics and Practice Program Ethics School prior to seeking reinstatement. In addition, respondent agrees to continue treatment for depression and substance abuse for a period of two (2) years following the imposition of a sanction and to provide quarterly treatment reports from his treatment

professional(s) to the Commission for the two (2) year period. We accept the Agreement and suspend respondent from the practice of law in this state for twelve (12) months, retroactive to the date of his interim suspension. Respondent shall pay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission within thirty (30) days of the date of this opinion and shall complete the Legal Ethics and Practice Program Ethics School prior to seeking reinstatement. For a period of two (2) years, respondent shall continue treatment for depression and substance abuse and provide quarterly reports of his treatment from his treatment professional(s) to the Commission for the two (2) year period. The facts, as set forth in the Agreement, are as follows.

Facts

Matter I

In April 2011, respondent was retained to represent Complainant A in a domestic matter. Respondent agreed to mail a divorce consent agreement to the opposing party on behalf of his client. Respondent failed to act diligently in sending the agreement as promised.

When respondent finally emailed the document to the opposing party, the agreement had several errors, including the incorrect date of the marriage, the incorrect date of birth for Complainant A's daughter, incorrect information regarding marital debts, and information that had nothing to do with Complainant A's case. Complainant A met with respondent and went through the agreement line by line, correcting the errors. Respondent later emailed the opposing party an agreement, but it was not the corrected agreement. The agreement named children that did not belong to Complainant A and contained incorrect dates of birth.

Respondent failed to respond to Complainant A's numerous telephone calls, faxes, and text messages regarding the errors. Complainant A sent respondent a certified letter requesting a refund. Respondent failed to respond to Complainant A or to Complainant A's new attorney regarding the refund request and did not return the order substituting counsel as requested by the new attorney.

Matter II

In June 2011, respondent was retained to represent Complainant B to file a complaint for separate maintenance and support. Respondent failed to diligently represent Complainant B, failed to file the complaint on Complainant B's behalf, and failed to keep Complainant B reasonably informed about the status of the case. Further, respondent failed to adequately communicate with Complainant B or respond to her numerous telephone calls and emails. Respondent abandoned his law practice without notifying Complainant B or taking steps to protect Complainant B's interests.

Matter III

In March 2011, respondent was retained to represent Complainant C in a domestic matter. Respondent informed Complainant C that her divorce case would take approximately four to five months. Respondent failed to keep Complainant C reasonably informed about the status of her case and failed to adequately communicate with Complainant C or to respond to her numerous telephone calls and letters. Respondent abandoned his law practice without notifying Complainant C or taking steps to protect Complainant C's interests.

Matter IV

Complainant D retained respondent in June 2011 and paid respondent a retainer fee of $1,500.00. Complainant D has not been able to reach respondent since the date he was retained. Respondent abandoned his law practice without notifying Complainant D or taking steps to protect Complainant D's interests.

Matter V

In October 2010, Complainant E retained respondent for the purposes of an uncontested divorce. The final hearing was held on May 25, 2011, and Complainant E was granted a divorce.

Respondent failed to file the necessary paperwork in the case to finalize the divorce and failed to adequately communicate with Complainant E regarding the

status of the case. Respondent abandoned his law practice without notifying Complainant E or taking steps to protect Complainant E's interests.

In each of the above matters, respondent failed to withdraw from representation of his clients when his physical and/or mental condition materially impaired his ability to represent the clients

Matter VI

Respondent failed to cooperate with ODC's investigation into the allegations of misconduct. In particular, respondent failed to respond to the Notices of Investigation issued in Matters I, II, III, and IV. Further, he failed to comply with a subpoena for documents and failed to appear to respond to questions under oath.

Law

Respondent admits that by his conduct he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (lawyer shall provide competent representation to client); Rule 1.3 (lawyer shall act with reasonable diligence and promptness in representing client); Rule 1.4 (lawyer shall keep client reasonably informed about the status of the matter and promptly comply with reasonable requests for information); Rule 1.16 (lawyer shall not represent client or, where representation has commenced, shall withdraw from representation of client if lawyer's physical or mental condition materially impairs lawyer's ability to represent client); Rule 3.2 (lawyer shall make reasonable efforts to expedite litigation consistent with the interests of client); and Rule 8.1 (in connection with a disciplinary matter, lawyer shall not knowingly fail to respond to lawful demand for information from disciplinary authority).[1]

Respondent also admits he has violated the following Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1) (it shall be ground for discipline for lawyer to violate Rules of Professional Conduct).

[1] The Agreement provides that respondent violated certain enumerated provisions of the Rules of Professional Conduct and, further, any other provisions as determined by the Commission or Court. The investigative panel of the Commission specifically found respondent violated Rule 8.1 and the Court agrees.

Conclusion

We accept the Agreement for Discipline by Consent and suspend respondent from the practice of law for twelve (12) months, retroactive to January 13, 2012, the date of his interim suspension. *Id.* Within thirty (30) days of the date of this opinion, respondent shall pay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission. Further, respondent shall complete the Legal Ethics and Practice Program Ethics School prior to seeking reinstatement. Finally, for the next two (2) years, respondent shall continue treatment for depression and substance abuse, and shall provide quarterly treatment reports from his professional(s) to the Commission.

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

DEFINITE SUSPENSION.

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

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of John L. Drennan, Respondent

Appellate Case No. 2012-213263

Opinion No. 27205
Submitted December 19, 2012 – Filed December 28, 2012

PUBLIC REPRIMAND

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

Harvey M. Watson, III, of Ballard Watson Weissenstein, of West Columbia, for respondent.

PER CURIAM: In this attorney disciplinary matter, the Office of Disciplinary Counsel (ODC) and respondent have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, respondent admits misconduct and consents to the imposition of an admonition or public reprimand. He further agrees to pay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission on Lawyer Conduct (the Commission) within thirty (30) days of the imposition of a sanction and to complete the Legal Ethics and Practice Program Ethics School within six (6) months of the imposition of a sanction. We accept the Agreement and issue a public reprimand. In addition, we order respondent to pay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission no later than thirty (30) days from the date of this order and to complete the Legal Ethics and Practice Program Ethics School no later than six (6)

months from the date of this order. The facts, as set forth in the Agreement, are as follows.

Facts

On June 6, 2012, respondent appeared in the City of Charleston Municipal Court to negotiate the resolution of a Driving under the Influence (DUI) charge on behalf of his client. The prosecution offered to accept a plea to a charge of disregarding a traffic signal. This plea would require either the client's presence in court or an affidavit from the client; the client was not present. Respondent represents he telephoned his client and the client authorized him to sign an affidavit accepting the plea offer.

Respondent asked his office to fax a form affidavit to the Clerk of Court's office. Respondent signed the name of his client, notarized the affidavit, and embossed it with the seal of the Clerk of Court's office. Respondent then submitted the affidavit to the court.

When the court confronted respondent about his actions, he admitted his conduct. Respondent represents he was unaware that it was improper to sign the client's name and then notarize the signature, even with the client's permission. Pursuant to the court's request, respondent subsequently submitted a properly executed affidavit and had his client appear in court to enter a plea in person.

Respondent has since completed a continuing legal education course entitled "Notary Public Law" offered by the South Carolina Bar.

Law

Respondent admits that by his conduct he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 3.3 (lawyer shall not knowingly make a false statement of fact to a tribunal); Rule 8.4(a) (it is professional misconduct for lawyer to violate Rules of Professional Conduct); and Rule 8.4(d) (it is professional misconduct for lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent also admits he has violated the following Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1) (it shall be ground for discipline for lawyer to violate Rules of Professional Conduct).

Conclusion

We find respondent's misconduct warrants a public reprimand. Accordingly, we accept the Agreement and publicly reprimand respondent for his misconduct. Within thirty (30) days of the date of this order, respondent shall pay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission and he shall complete the Legal Ethics and Practice Program Ethics School no later than six (6) months from the date of this order.

PUBLIC REPRIMAND.

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

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Ernest W. Cromartie, II, Respondent.

Appellate Case No. 2012-210367

Opinion No. 27206
Heard October 4, 2012 – Filed December 28, 2012

IRREVOCABLE RESIGNATION ACCEPTED

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

J. Steedley Bogan, of Columbia, for Respondent.

JUSTICE BEATTY: In this attorney disciplinary action, the Commission on Lawyer Conduct ("the Commission") considered Formal Charges filed against attorney Ernest W. Cromartie, II ("Respondent") that arose from: (1) Respondent's plea of guilty to one count of federal income tax evasion and two counts of aggravated structuring; and (2) Respondent's failure to maintain adequate financial records related to client transactions. A Hearing Panel of the Commission ("the Panel") found Respondent had committed misconduct and, in turn, recommended that Respondent be: (1) disbarred retroactively to the date of his interim suspension; (2) ordered to pay the costs of the disciplinary proceedings, which total $1,359.70, within thirty days; (3) required to complete the Legal Ethics and Practice Program Ethics School and the Trust Account School prior to readmission; and (4) subject to two years of trust account monitoring by the Commission upon his readmission to the practice of law.

During oral argument before this Court, Respondent agreed to resign from membership in the South Carolina Bar.[1] Due to Respondent's age and ailing health, we accept Respondent's irrevocable resignation with the condition that he may never practice law in this state. Although Respondent's misconduct warrants the sanction of disbarment, we find Respondent's irrevocable resignation is a more severe sanction because Respondent is now permanently precluded from practicing law in this state. In contrast, a sanction of disbarment would permit Respondent to file a petition for reinstatement after five years from the date of the entry of the order of disbarment. Our decision also serves the primary purpose of disbarment, which is to protect the public from unscrupulous lawyers and not retribution as Respondent has already been punished by the criminal justice system. Accordingly, we accept Respondent's irrevocable resignation and order him to pay the costs of the disciplinary proceedings as recommended by the Panel.

I. Facts

Respondent, who is now sixty-seven years old, was admitted to the practice of law in South Carolina on April 11, 1973.

On April 10, 2000, the Court accepted an Agreement for Discipline for a Public Reprimand stemming from Respondent's admitted misconduct involving his failure to: (1) conduct monthly reconciliations of his law firm's real estate account; (2) ensure that associates and non-lawyer employees conducted such reconciliations; (3) maintain a trial balance in the real estate trust account or a running balance for each client by identifying whose money was in the account at any given time; and (4) supervise non-lawyer employees who were responsible for ensuring that correct wiring instructions were given to lenders for funds to be wired to the real estate trust account. Respondent was also found to have committed misconduct by issuing a number of checks from the general escrow account without properly identifying them. *In re Cromartie, II*, 340 S.C. 54, 530 S.E.2d 382 (2000).

On October 21, 2005, pursuant to an agreement entered into between Respondent and Disciplinary Counsel, the Commission issued Respondent a Letter

[1] On October 15, 2012, this Court received a letter from Respondent wherein he formally requested to resign from membership in the South Carolina Bar.

of Caution without a finding of misconduct[2] and a Confidential Admonition[3] stemming from similar misconduct that was the subject of the Public Reprimand in 2000.

On March 9, 2010, Respondent was placed on interim suspension after he pled guilty to one count of Evasion of Income Tax Payments in violation of 26 U.S.C. § 7201[4] and two counts of Aggravated Structuring in violation of 31 U.S.C. § 5324(a)(3).[5] *In re Cromartie, II*, 387 S.C. 66, 690 S.E.2d 776 (2010). As a

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[2] The Letter of Caution cited the following Rules of Professional Conduct ("RPC") contained in Rule 407, SCACR: Rule 1.15(b) (providing that a lawyer may deposit own funds in client trust account for sole purpose of paying service charges on that account); Rule 1.15(c) (providing that a lawyer shall deposit into a client trust account unearned legal fees and expenses); and Rule 8.4(a) (providing that a lawyer shall not violate or attempt to violate the RPC).

[3] The Confidential Admonition cited the following RPC: Rule 1.1 (competent representation); Rule 1.3 (diligence); Rule 1.4 (communication); Rule 1.15 (safekeeping property); Rule 1.16(d) (termination of representation); Rule 5.1 (supervisory authority of lawyers); and Rule 8.4(a) (providing that a lawyer shall not violate or attempt to violate the RPC).

[4] This code section provides:

> Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000 ($500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

26 U.S.C.A. § 7201 (West 2012).

[5] This code section states:

> No person shall, for the purpose of evading the reporting requirements of section 5313(a) or 5325 or any regulation prescribed under any such section, the reporting or recordkeeping requirements imposed by any order issued under section 5326, or the recordkeeping

result of his guilty plea, Respondent was sentenced to three concurrent sentences of twelve months and one day. Additionally, Respondent was ordered to immediately pay a special assessment of $300 to the federal court and to pay $58,075.86 to the Internal Revenue Service ("IRS") during his three years of supervised release.

A. Formal Charges

The Office of Disciplinary Counsel ("ODC") filed Formal Charges against Respondent on July 21, 2011, alleging he committed misconduct based on his convictions in federal court and his failure to maintain adequate trust account records.

As to Respondent's criminal conduct, ODC incorporated the federal documents underlying Respondent's guilty plea and explained that Respondent, between 2004 and 2009, engaged in a pattern of disbursement of earned fees from his client trust accounts that constituted illegal structuring in at least ten client matters. ODC further noted that, in at least one client matter, Respondent disbursed settlement proceeds to a client from his client trust accounts in a manner that constituted illegal structuring.

In terms of Respondent's inadequate financial recordkeeping, ODC noted that Respondent hired a full-time bookkeeper following his Public Reprimand in 2000. ODC alleged that Respondent did not: (1) supervise her or review any records, reports, or reconciliations; (2) provide her with specific instructions or continuing education about client trust accounting; (3) know what software she used or provide a backup system for her; (4) maintain accurate client ledgers or an

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> requirements imposed by any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508—structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

31 U.S.C.A. § 5324(a)(3) (West 2012). The following elements must be met in order to sustain a conviction for structuring: (1) the defendant in fact engaged in acts of structuring; (2) he or she did so with knowledge that the financial institutions involved were legally obligated to report currency transactions in excess of $10,000; and (3) he or she acted with intent to evade the reporting requirement. *United States v. MacPherson*, 424 F.3d 183, 189 (2d Cir. 2005).

accurate accounting journal for any of his six client trust accounts; and (5) retain complete copies of his bank statements, records of deposit, or canceled checks. Based on these deficiencies, Respondent was unable to find accounting records on his bookkeeper's computer and, as a result, could not provide an accurate accounting of disbursements or the balances in his accounts.

On October 18, 2011, Respondent filed his Answer to the Formal Charges. Although Respondent admitted to the material portions of the allegations, he explained that there were no client funds missing from his trust accounts and that his trust accounts had a positive balance at the time he was placed on interim suspension. Respondent further claimed that he had in fact earned the client fees but, due to his inadequate financial records, could not "determine the identity of the ownership of these funds sufficiently to make a claim on them." Finally, Respondent denied that his conduct demonstrated an unfitness to practice law.

B. Panel Hearing

The Panel conducted a hearing on January 31, 2012. During the hearing, Respondent testified regarding his personal and educational background as well as his professional accomplishments in public service, particularly as a twenty-eight-year member of the Columbia City Council. Additionally, Respondent offered evidence of his good character through the testimony of former Mayor Robert D. Coble and Hamilton Osborne, Jr., with whom he served on the Columbia City Council. Respondent also submitted documents that outlined his extensive professional and community achievements.

Although Respondent did not contest the Formal Charges, he appeared before the Panel to oppose the potential sanction of disbarment. Instead, he requested to be "forever" suspended in order to avoid the "stigma" of being disbarred, particularly for the sake of his son who is a practicing attorney with the same name as Respondent. Respondent also took "full responsibility" for his conduct and emphasized that he did not intend to practice law in the future.

C. Panel Report

(1) Findings of Misconduct

Based on the information provided during the disciplinary proceedings and Respondent's federal guilty plea,[6] the Panel found Respondent's criminal conduct violated the following Rules of Professional Conduct ("RPC") contained in Rule 407, SCACR: Rule 8.4(b) ("It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects."); Rule 8.4(d) ("It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation."); and Rule 8.4(e) ("It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.").

The Panel also found that Respondent's admissions regarding his neglect of his trust accounts, failure to supervise his bookkeeper, and failure to maintain required financial records constituted clear and convincing evidence that Respondent violated the following RPC: Rule 1.15(a) ("A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of six years after termination of the representation. A lawyer shall comply with Rule 417, SCACR (Financial Recordkeeping).")[7]; Rule 5.3 (outlining lawyer's responsibilities regarding non-lawyer assistants); and Rule 8.4(e) ("It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the

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[6] *See* Rule 16(d), RLDE, Rule 413, SCACR ("A certified copy of a judgment of conviction constitutes conclusive evidence that the lawyer committed the crime, and the sole issue in any disciplinary proceedings based on the conviction shall be the nature and extent of the discipline imposed.").

[7] Rule 1.15 was amended effective March 1, 2012 and July 30, 2012. *See* Amendments to the South Rules of Professional Conduct, Orders dated March 1, 2012 and July 30, 2012. These amendments, however, do not affect the disposition of the instant case.

administration of justice."). Finally, the Panel found Respondent's admissions regarding his financial recordkeeping constituted clear and convincing evidence that Respondent violated the provisions of Rule 417, SCACR, which identifies the requirements of a lawyer's financial recordkeeping.

The Panel concluded Respondent's conduct constituted grounds for discipline under the following provisions of the Rules for Lawyer Disciplinary Enforcement ("RLDE") contained in Rule 413, SCACR: Rule 7(a)(1) ("It shall be a ground for discipline for a lawyer to violate or attempt to violate the Rules of Professional Conduct, Rule 407, SCACR, or any other rules of this jurisdiction regarding professional conduct of lawyers."); Rule 7(a)(4) ("It shall be a ground for discipline for a lawyer to be convicted of a crime of moral turpitude or a serious crime."); and Rule 7(a)(5) ("It shall be a ground for discipline for a lawyer to 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.").

The Panel rejected Respondent's contention that his conduct did not demonstrate a lack of fitness to practice law. The Panel found Respondent's conduct "demonstrate[d] unfitness" as Respondent's criminal conduct directly involved his client trust accounts and Respondent disregarded the directives of the Supreme Court, even after being publicly reprimanded, as to his ethical and professional obligations regarding client funds.

(2) Aggravating and Mitigating Factors

In mitigation, the Panel considered the following factors: (1) Respondent's character and reputation, particularly "his dedication and hard work as a member of the Columbia City Council," which was attested to by Respondent's character witnesses; and (2) Respondent's remorse and regret as "[h]e made no attempt at the hearing to place the blame for his situation on anyone other than himself."

In aggravation, the Panel considered several factors. First, the Panel noted the "serious and illegal nature of the Respondent's misconduct." The Panel referenced Respondent's plea agreement wherein the Respondent "admitted to willful and purposeful attempts to evade, defeat, and obstruct federal tax reporting requirements and the collection efforts of the IRS." The Panel noted that the counts to which Respondent pled guilty included "unlawful structuring in excess of $200,000, transferring title of personal assets, and failing to pay taxes due." The

Panel also pointed out that Respondent "admitted to making false statements to federal law enforcement officers during the criminal investigation." The Panel found this misconduct was aggravated by the fact that "Respondent assisted a client in illegal conduct as well." The Panel also found that Respondent's failure to keep proper financial records constituted a serious offense.

As another factor in aggravation, the Panel considered that Respondent committed multiple offenses and demonstrated a pattern of misconduct over a period of five years.

Finally, the Panel considered Respondent's "extensive disciplinary history" as he had received a Public Reprimand, a Letter of Caution, and an Admonition. In view of these censures, the Panel found Respondent had "demonstrated a blatant disregard for the rules, the cautions from the Commission, and the reprimand from the Supreme Court."

(3) Recommended Sanction

Finding the aggravating factors outweighed the mitigating factors, the Panel recommended that Respondent be: (1) disbarred retroactively to March 9, 2010, the date of Respondent's interim suspension; (2) ordered to pay the costs of the disciplinary proceedings within thirty days; (3) required to complete the Legal Ethics and Practice Program Ethics School and the Trust Account School prior to readmission; and (4) subject to two years of trust account monitoring by the Commission upon his readmission to the practice of law.

II. Discussion

A. Arguments

Although Respondent raises several arguments, his sole exception is to the Panel's recommended sanction of disbarment.[8] For several reasons, Respondent contends that his misconduct warrants the lesser sanction of a two-year suspension.

[8] Respondent's failure to take exception to the Panel's remaining conditions constitutes an acceptance of these recommendations. *See* Rule 27(a), RLDE, of Rule 413, SCACR ("The failure of a party to file a brief taking exceptions to the report constitutes acceptance of the findings of fact, conclusions of law, and recommendations.").

First, Respondent directs the Court's attention to several cases where a lawyer, who was convicted of violating federal tax law, received a suspension.[9] Based on these cases, Respondent claims there is no precedent from this Court to impose disbarment "for a lawyer who [has] violate[d] the federal structuring laws or who has a conviction for a serious tax violation." Second, Respondent challenges the Panel's reliance on his misconduct involving financial recordkeeping as a basis for disbarment. Because there was no evidence that he used client funds for his own benefit, Respondent believes only a suspension is warranted.[10]

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[9] *See In re Mitchell*, 318 S.C. 118, 456 S.E.2d 396 (1995) (finding four-month suspension was warranted where lawyer pled guilty in federal court to seven counts of willfully failing to report to the IRS a total of $154,000 in cash received from a client and admitting to failing to properly supervise the conduct of his law office resulting in the issuance of a false affidavit regarding the consideration paid in a real estate transaction); *In re Thornton*, 314 S.C. 301, 443 S.E.2d 905 (1994) (concluding six-month suspension was the appropriate sanction where lawyer pled guilty in federal court to submitting a false tax return); *In re Martin*, 264 S.C. 1, 212 S.E.2d 251 (1974) (holding that indefinite suspension was the appropriate sanction where lawyer pled guilty to five counts of failing to file income tax returns for the years 1967 through 1971); *see also In re Scurry*, 335 S.C. 618, 518 S.E.2d 824 (1999) (finding ninety-day suspension was the appropriate sanction where lawyer pled guilty to one count of willful failure to file a South Carolina Income Tax Return); *In re Barr*, 335 S.C. 617, 518 S.E.2d 823 (1999) (concluding ninety-day suspension was the appropriate sanction where lawyer pled guilty to one count of failure to file a South Carolina Income Tax Return).

[10] *See In re Hardee-Thomas*, 391 S.C. 451, 706 S.E.2d 507 (2011) (holding that two-year suspension, rather than disbarment, was warranted where: lawyer's "inept handling of trust account funds" lasted several years and affected clients; lawyer had a disciplinary history involving a Letter of Caution without a finding of misconduct and an Admonition; and lawyer took "full acceptance of responsibility for her actions").

B. 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); *see also* S.C. Const. art. V, § 4 ("The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted."). "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); *see also* Rule 27(e)(2), RLDE, Rule 413, SCACR ("The Supreme Court may accept, reject, or modify in whole or in part the findings, conclusions and recommendations of the Commission."). "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); *see In re Longtin*, 393 S.C. 368, 376, 713 S.E.2d 297, 301 (2011) ("[T]he findings and conclusions of the Panel are entitled much respect and consideration.").

"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 . . . shall be established by clear and convincing evidence, and the burden of proof of the charges shall be on the disciplinary counsel.").

C. Analysis

There is precedent from this Court and courts from other jurisdictions to support the Panel's recommended sanction of disbarment as Respondent was convicted of the "serious crime"[11] of structuring, was deficient in his financial

[11] *See* Rule 1.0(n), RPC, Rule 407, SCACR (" 'Serious crime' denotes any felony; any lesser crime that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; or, any crime a necessary element of which, as determined by the statutory or common law definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, willful failure to file income tax returns, or an attempt, conspiracy or solicitation of another to commit a serious crime."); Rule 2(aa), RLDE, Rule 413, SCACR (same).

recordkeeping, and has a prior disciplinary history. *See In re Harte*, 395 S.C. 144, 716 S.E.2d 918 (2011) (concluding disbarment was the appropriate sanction for lawyer who pled guilty to Conspiracy to Commit Mail Fraud and Money Laundering arising out of his assistance in protecting the proceeds of a client's criminal activities); *In re Franklin*, 352 S.C. 24, 572 S.E.2d 283 (2002) (finding that disbarment was warranted where lawyer pled guilty to laundering monetary instruments); *In re Holt*, 328 S.C. 169, 492 S.E.2d 793 (1997) (concluding that lawyer's federal conviction of one count of bank fraud warranted disbarment); *see also In re Counsel for Discipline of the Nebraska Supreme Court v. Wintroub*, 765 N.W.2d 482 (Neb. 2009) (finding disbarment was warranted where lawyer was convicted of structuring and committed several other acts of misconduct); *In re Disciplinary Proceeding Against Vanderveen*, 211 P.3d 1008 (Wash. 2009) (discussing crime of structuring and finding presumptive sanction of disbarment was appropriate where lawyer pled guilty to willfully failing to file a currency report for the receipt of more than $10,000 cash).

Furthermore, the extent of Respondent's criminal conduct and significant disciplinary history weighs in favor of imposing the sanction of disbarment as the facts of the instant case are distinguishable from *In re Mitchell*, 318 S.C. 118, 456 S.E.2d 396 (1995), the case on which Respondent primarily relies in support of a lesser sanction.

In *Mitchell*, the lawyer pled guilty in federal court to seven counts of willfully failing to report to the IRS a total of $154,000 in cash he received from a client. A sentence of imprisonment for ninety days was imposed on the lawyer for these crimes. *Id.* at 119, 456 S.E.2d at 397. The lawyer also admitted that he failed to properly supervise the conduct of his law office when employees issued a false affidavit regarding the consideration paid in a real estate transaction. *Id.* As a result of this misconduct, this Court suspended the lawyer for four months. *Id.*

In contrast to Mitchell, Respondent has a prior disciplinary history. Moreover, Respondent's misconduct involved his client trust accounts and included at least ten structuring transactions between April 2003 and April 2009, which clearly established a pattern of illegal activity. Furthermore, the federal plea documents reveal that the structuring not only involved Respondent's attorney's fees, but also payment of a settlement to a client.

However, because an indefinite suspension is no longer an available sanction[12] and Respondent has agreed to tender an irrevocable resignation from membership in the South Carolina Bar, we decline to accept the Panel's recommended sanction of disbarment.

Instead, due to Respondent's age and ailing health, we accept Respondent's irrevocable resignation of his certificate to practice law. *See In re Brown*, 356 S.C. 10, 587 S.E.2d 110 (2003) (imposing public reprimand even though indefinite suspension was warranted where lawyer, who was seventy-one years old, admitted misconduct and agreed to resign from membership in the South Carolina Bar); *see also In re Collins*, 311 S.E.2d 818, 818 (Ga. 1984) (accepting resignation from lawyer, who pled guilty to federal charges of failing to file income tax return and conspiracy to evade income taxes, where the action was "equivalent to disbarment"); *In re Hyter*, 677 P.2d 1017 (Kan. 1984) (issuing order of voluntary disbarment following lawyer's surrender of certificate to practice law where lawyer pled guilty to felony income tax evasion and against whom there were other pending complaints of professional misconduct); Lori Jean Henkel, Annotation, *Propriety of Attorney's Resignation From Bar in Light of Pending or Potential Disciplinary Action*, 54 A.L.R.4th 264, § 2(a) (1987 & Supp. 2012) ("Although attorneys have been accorded the right to submit their resignations at any time, including during the pendency of disciplinary proceedings, a court having jurisdiction has been required to give its consent in order for the resignation to be effective, and whether resignations have been granted has been a matter resting within the courts' discretion.").

Notably, Respondent's irrevocable resignation is a more severe sanction than disbarment as a lawyer who is disbarred may file a petition for reinstatement after five years from the date of the entry of the order of disbarment. *See* Rule 33(a), RLDE, Rule 413, SCACR ("A lawyer who has been . . . disbarred shall be

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[12] Because the Formal Charges were filed on July 21, 2011, an indefinite suspension is no longer an available sanction. *See* Amendments to the South Carolina Rules for Lawyer Disciplinary Enforcement, Order dated October 16, 2009 (recognizing that the amended rules apply to cases where formal charges are pending on the effective date of January 1, 2010); *see In re Hardee-Thomas*, 391 S.C. at 452-53, 706 S.E.2d at 507 (recognizing that "sanction of indefinite suspension is no longer an available sanction under the revised South Carolina Rules for Lawyer Disciplinary Enforcement").

reinstated to the practice of law only upon order of the Supreme Court. A petition for reinstatement shall not be filed earlier than 5 years from the date of entry of the order of disbarment."). By submitting his irrevocable resignation, Respondent is now permanently precluded from practicing law in this state.

We find this disposition serves the primary purpose of disbarment, which is to protect the public from unscrupulous lawyers and not retribution as Respondent has already been punished by the criminal justice system. *See In re Taylor*, 396 S.C. 627, 632, 723 S.E.2d 366, 368 (2012) ("As we have recognized, '[t]he primary purpose of disbarment . . . is the removal of an unfit person from the profession for the protection of the courts and the public, not punishment of the offending attorney.'" (quoting *In re Burr*, 267 S.C. 419, 423, 228 S.E.2d 678, 680 (1976))); *In re Chastain*, 340 S.C. 356, 365, 532 S.E.2d 264, 268 (2000) (stating, "where the respondent has already been punished by the criminal justice system, our aim in determining the level of discipline is not retribution, but the protection of the public" (quoting *People v. Marmon*, 903 P.2d 651, 655 (Colo. 1995))); *see also In re Brown*, 361 S.C. 347, 355, 605 S.E.2d 509, 513 (2004) ("The central purpose of the disciplinary process is to protect the public from unscrupulous and indifferent lawyers." (citation omitted)).

III. Conclusion

Although Respondent's misconduct warrants disbarment, we accept Respondent's irrevocable resignation from the South Carolina Bar and order him to pay the costs of the disciplinary proceedings, which total $1,359.70, within thirty days of the date of this opinion. Within fifteen (15) days of the date of this opinion, Respondent shall file an affidavit with the Clerk of Court showing that he has complied with Rule 30 of Rule 413, SCACR, and shall also surrender his Certificate of Admission to the Practice of Law to the Clerk of Court.

IRREVOCABLE RESIGNATION ACCEPTED.

KITTREDGE and HEARN, JJ., concur. PLEICONES, J., dissenting in a separate opinion in which TOAL, C.J., concurs.

JUSTICE PLEICONES: While this Court is the ultimate arbiter of the sanction to be imposed, I agree *in toto* with the findings of the Panel and with its recommendation to disbar Respondent. I see no reason to depart from our precedents in disciplining Respondent, and would disbar him, which carries with it the requirements of Rule 34 of Rule 413, SCACR. I would make Respondent's disbarment retroactive to March 9, 2010, the date of his interim suspension, order him to pay costs ($1,359.70) within thirty days of the filing of the opinion, and require him to comply with Rule 30 of Rule 413, SCACR. Prior to his readmission to the practice of law I would require Respondent to complete the Legal Ethics and Practice Program Ethics School and the Trust Account School and to have paid all monies ordered in his federal criminal proceedings. Further, upon his readmission, I would require that Respondent's trust account be monitored for two years by the Commission on Lawyer Conduct.

TOAL, C.J., concurs.

The Supreme Court of South Carolina

The State, Respondent,

v.

K.C. Langford, III, Appellant.

Appellate Case No. 2010-173128
Opinion No. 27195 (S.C. Sup. Ct. filed November 21, 2012)

ORDER

After careful consideration of the petitions for rehearing filed in this matter, the petitions are denied. This Court does, however, hold the implementation of the administrative orders entitled *Disposition of Cases in General Sessions* and *Uniform Differentiated Case Management*, both dated November 21, 2012, in abeyance pending further action by this Court.

To assist this Court, a committee will be appointed by the Chief Justice to propose a plan for the implementation of the changes necessary to docket management in the court of general sessions in light of the decision in this case. This committee will include a wide range of stakeholders including representatives from the South Carolina Solicitors' Association, the South Carolina Public Defender Association, the South Carolina Clerks of Court Association, Court Administration, the practicing bar and the judiciary.

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
December 20, 2012

The Supreme Court of South Carolina

RE: Amendments to the South Carolina Appellate Court Rules

O R D E R

On May 7, 2012, this Court issued an order revising, among other things, Rule 410 of the South Carolina Appellate Court Rules (SCACR). In light of this revision to Rule 410, the attached amendments are made to the SCACR. These amendments shall be effective January 1, 2013.

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
December 28, 2012

Amendments to the South Carolina Appellate Court Rules (SCACR)

(1) Rule 402(a)(1), SCACR, is amended to read:

> **(1) Members.** The Board of Law Examiners shall consist of members of the South Carolina Bar who are actively engaged in the practice of law in South Carolina and who have been members of the South Carolina Bar for at least seven (7) years. Members of the bar who are inactive members, judicial members, military members, administrative law judge members, retired members or limited members shall not be appointed to the Board. The Board members shall be appointed by the Supreme Court for three (3) year terms and shall be eligible for reappointment. At least one member shall be appointed from each Congressional District. In case of a vacancy on the Board, the Supreme Court shall appoint a member of the South Carolina Bar to serve the remainder of the unexpired term.

(2) Rule 402(b)(1), SCACR, is amended to read:

> (1) Members. The Committee on Character and Fitness shall consist of twelve (12) members of the South Carolina Bar who shall be appointed by the Supreme Court for five (5) year terms. Members of the bar who are inactive members, judicial members, military members, administrative law judge members, retired members or limited members shall not be appointed to the Committee. In case of a vacancy on the Committee, the Supreme Court shall appoint a member of the Bar to serve the remainder of the unexpired term.

(3) The second sentence of Rule 402(j)(2)(ii), SCACR, is amended to read: "The supervising attorney must be a regular member of the South Carolina Bar who has been admitted to practice for at least five (5) years and is engaged in the active practice of law in South Carolina."

(4) Rule 404(c)(8), SCACR, is amended to read: "(8) the name, address, and telephone number of the regular member(s) of the South Carolina Bar who is (are) the attorney(s) of record; and"

(5) The second sentence in Comment 10 to Rule 1.15 of the Rules of Professional Conduct contained in Rule 407, SCACR, is amended to read: "Under Rule 411, SCACR, each regular member of the Bar is required to make an annual contribution to this fund."

(6) The last sentence in the Preamble to Rule 408, SCACR, is amended to read: "It is our intention that all members of the Bar and those judges (other than federal judges) who are not required to satisfy the requirements of Rule 504 shall fulfill the mandatory continuing legal education requirements specified in this Rule."

(7) Rule 408(a), SCACR, is amended to read:

(a) Continuing Legal Education Requirements.

(1) Annual Report of Compliance; Fees; Waiver and Suspension. The reporting year under this rule shall run from March 1 through the last day in February. Reports of compliance for the reporting year shall be due not later than March 1, and shall be submitted to the Commission on Continuing Legal Education and Specialization (Commission) on a form prepared by the Commission along with a filing fee specified in the regulations of the Commission. The Commission may specify a penalty that must be paid if a person fails to timely file a report establishing compliance and/or pay the annual filing fee. For good cause shown, the Commission may, in individual cases involving extraordinary hardship or extenuating circumstances, waive or modify the requirements of this rule. When appropriate, and as a condition for any waiver or modification, the Commission may proportionally increase continuing legal education (CLE) requirements for the succeeding reporting year. A person who fails to comply with the CLE requirements of this rule will be suspended as provided by Rule 419, SCACR.

(2) Continuing Legal Education Requirements for Members of the South Carolina Bar. Except as provided below, all members of the South Carolina Bar shall be required to attend at least fourteen (14) hours of approved CLE courses each reporting year. At least two (2) of the fourteen (14) hours required annually shall be devoted to legal ethics/professional responsibility (LEPR). At least once every three reporting years, the member must complete one (1) hour of LEPR devoted exclusively to instruction in substance abuse or mental

health issues and the legal profession. The following members of the South Carolina Bar shall be exempt from these requirements:

(A) specialists certified pursuant to this Rule who satisfy the CLE requirements of their specialty; provided, however, that at least two (2) hours of the CLE credits completed by certified specialists shall be devoted to LEPR. At least once every three (3) reporting years, the member must complete one (1) hour of LEPR devoted exclusively to instruction in substance abuse or mental health issues and the legal profession.

(B) members who are at least sixty (60) years old and have been admitted to practice law for thirty (30) or more years, and who apply to the Commission for this exemption. Further, any exemptions granted prior to June 23, 1994, shall remain in effect. Provided, however, that if a member who receives an exemption or is entitled to an exemption under this provision is suspended for a definite period of more than six (6) months under Rule 413, SCACR, this exemption shall not apply or be granted during the suspension period;

(C) inactive members, military members, and retired members.

(D) judicial members who are subject to the CLE requirements of Rule 504, SCACR.

(E) members who are federal judges or federal administrative law judges.

(F) limited members licensed under Rule 415, SCACR (Limited Certificate of Admission for Retired and Inactive Attorney Pro Bono Participation Program).

(3) Continuing Legal Education Requirements for Foreign Legal Consultants. As required by Rule 424, SCACR, all foreign legal consultants shall attend at least two (2) hours of approved CLE courses devoted to LEPR each reporting year.

(8) Rule 408(e)(1)(A), SCACR, is amended to read: "**(A)** be a regular member in good standing of the South Carolina Bar;".

(9) Rule 411(d)(1), SCACR, is amended to read:

> **(1)** The South Carolina Bar shall assess each regular member of the South Carolina Bar the sum of twenty ($20.00) dollars in each calendar year and shall make an appropriation to the Lawyers' Fund for Client Protection in that amount for each year of its operation; provided, however, that no assessment or appropriation may be made which will increase the assets of the fund to an amount in excess of $3,000,000. Payment and enforcement of collection shall be in the same manner and at the same time and with the same penalties for non-payment as provided for payment and collection of license fees under Rule 410, SCACR, but otherwise shall be treated as a separate assessment of regular members.

(10) The second sentence of Rule 3 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR, is amended to read: "34 members shall be regular members of the South Carolina Bar."

(11) The first sentence of Rule 5(a) of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR, is amended to read: "The Supreme Court shall appoint a member of the South Carolina Bar who has been admitted under Rule 402, SCACR, as the disciplinary counsel."

(12) The first sentence of Rule 5(c) of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR, is amended to read: "The Supreme Court may appoint such additional regular members of the South Carolina Bar as it deems appropriate to assist the disciplinary counsel in performing disciplinary counsel's duties under this rule."

(13) The first sentence of Rule 33(f)(9) of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR, is amended to read: "If suspended for a definite period of 9 months or more, the lawyer has, during the period of suspension, completed and reported continuing legal education and legal ethics/professional responsibility credits equal to those required of regular members of the South Carolina Bar and is currently in good standing with the Commission on Continuing Legal Education and Specialization."

(14) The first sentence of Rule 425(i), SCACR, is amended to read: "Mentors must be members of the South Carolina Bar who have been admitted under Rule 402, SCACR. A person may not serve as a mentor if the person has been an inactive or retired member of the Bar for more than two years, or if the person is not a member in good standing under Rule 410, SCACR."

(15) The fourth sentence of Rule 3(c) of the Rules for Judicial Disciplinary Enforcement contained in Rule 502, SCACR, is amended to read: "4 members shall be regular members of the South Carolina Bar who have never held a judicial office."

(16) The first sentence of Rule 5(a) of the Rules for Judicial Disciplinary Enforcement contained in Rule 502, SCACR, is amended to read: "The Supreme Court shall appoint a member of the South Carolina Bar who has been admitted under Rule 402, SCACR, as the disciplinary counsel."

(17) The first sentence of Rule 5(c) of the Rules for Judicial Disciplinary Enforcement contained in Rule 502, SCACR, is amended to read: "The Supreme Court may appoint such additional regular members of the South Carolina Bar as it deems appropriate to assist the disciplinary counsel in performing disciplinary counsel's duties under this rule."

(18) The first sentence of Section B of Rule 503, SCACR, is amended to read: "The Committee shall consist of one Circuit Court judge, one Family Court judge, and one regular member of the South Carolina Bar who does not hold and has never held a judicial office."

(19) The first sentence of Rule 510, SCACR, is amend to read: "Being mindful of the improvements in the administration of justice that have resulted from our mandatory continuing legal education requirements for judges and members of the South Carolina Bar (see Rules 408 and 504, SCACR), this Rule establishes minimum requirements for continuing legal education (CLE) for magistrates and municipal judges and the means by which those requirements shall be enforced."

(20) Rule 510(e), SCACR, is amended to read:

> (**e) Reports and Fees.**
>
> (1) On forms prepared by the Commission and available through its offices, each magistrate and municipal judge shall, not later than July

15, file with the Commission a sworn annual report of compliance for the reporting year. The compliance reporting form will be accompanied by filing fees as prescribed by the regulations of the Commission.

(2) Magistrates and municipal judges who are members of the South Carolina Bar may show compliance with the CLE requirements of Rule 408, SCACR, by showing compliance with the continuing legal education and fee requirements of this rule. Provided, however, that these magistrates or municipal judges must still complete at least two (2) hours of approved CLE devoted to legal ethics/professional responsibility (LEPR) during each reporting year, and, effective July 1, 2013, at least once every three (3) reporting years, the member must complete one (1) hour of LEPR devoted exclusively to instruction in substance abuse or mental health issues and the legal profession.

(21) Rule 608(b)(1), SCACR, is amended to read:

(1) Regular Member. Any person who is a regular member of the South Carolina Bar under Rule 410, SCACR.

(22) The first sentence of Rule 608(c)(1)(A), SCACR, is amended to read: " A list of all regular members who have been certified by the Supreme Court to serve as lead counsel in death penalty cases (see Rule 421, SCACR) who are eligible for appointment in the county, and all other regular members who normally represent at least three (3) clients before the court of general sessions during a calendar year and are eligible for appointment in the county."

(23) The first sentence of Rule 608(c)(1)(B), SCACR, is amended to read: " A list of all other regular members eligible for appointment in the county."

(24) The first sentence of Rule 608(c)(2), SCACR, through the colon is amend to read: "Regular members shall, at the time of payment of annual license fees to the South Carolina Bar, provide the following information to the Bar:"

(25) Rule 608(c)(3), SCACR, is amended to read:

(3) Regular members shall notify the South Carolina Bar within thirty (30) days of any changes in the county in which they reside, primarily

practice, maintain an office, provide a significant amount of legal services, or advertise as defined in (2)(B). Regular members who wish to provide service to indigents in additional counties shall notify the Bar with the name of the additional county at the time of payment of annual license fees. The Bar shall transfer the names of those members to the appropriate list(s) and notify the appropriate clerk(s) of court.

(26) Rule 608(c)(4), SCACR, is amended to read: "(4) If a member ceases to be a regular member, the Bar shall delete that member's name from the list(s) and notify the appropriate clerk(s) of court."

(27) The heading of Rule 608(d), SCACR, is amended to read: "Members Who Are Exempt from Appointment."

(28) The first sentence of Rule 608(d)(1), SCACR, through the colon is amended to read: "The following regular members shall be exempt from appointment:"

(29) The first sentence of Rule 608(d)(3), SCACR, is amended to read: "Regular members shall claim an exemption at the time they file with the Bar under section (c)(2) above."

(30) The first sentence of Rule 608(d)(5), SCACR, is amended to read: "If a regular member is non-exempt and becomes exempt, or is exempt and becomes non-exempt, the member shall notify the Bar of this change in status within thirty (30) days of the change."

(31) Rule 608(e), SCACR, is amended to read:

> **(e) Regular Members Who Have Not Completed the Trial Experiences Required by Rule 403, SCACR.** A regular member who has not completed the trial experiences required by Rule 403, SCACR, but has been admitted to practice law in South Carolina for six months or more, shall be fully eligible for appointment under this rule, and, at his or her expense, will be expected to associate another lawyer if necessary to carry out the appointment.

(32) The first sentence of Rule 608(h)(1), SCACR, is amended to read: "Nothing in this rule shall prohibit a circuit or family court judge from appointing a regular member or any other category of member of the South Carolina Bar who may

lawfully provide the representation if the member volunteers to represent an indigent."

(33) The first sentence of Rule 608(i), SCACR, is amended to read: "Any records maintained by the South Carolina Bar, the circuit court, the family court, or a clerk of court relating to appointments under this rule shall be made available for review by any regular member upon written request of that member."

(34) Rule 609(a)(6), SCACR, is amended to read: "(6) four regular members of the South Carolina Bar; and,"

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Patricia Rhodes Johnson, Appellant,

v.

Robert E. Lee Academy, Inc., Jennifer Hostetler, Marc Quigley, Moore, Beauston & Woodham, LLP, Moore, Kirkland & Beauston, LLP and City of Bishopville, Defendants,

Of Whom Moore, Beauston & Woodham, LLP is the, Respondent.

Appellate Case No. 2011-198446

Appeal From Lee County
W. Jeffrey Young, Circuit Court Judge

Opinion No. 5067
Heard November 13, 2012 – Filed December 28, 2012

AFFIRMED

James B. Moore, III and J. Edward Bell, III, both of Law Office of J. Edward Bell, LLC, of Georgetown, for Appellant.

Mason A. Summers, Anthony E. Rebollo, and Francis Marion Mack, all of Richardson Plowden & Robinson, PA, of Columbia, for Respondent.

KONDUROS, J.: Patricia Johnson appeals the circuit court's grant of summary judgment to the accounting firm Moore, Beauston, & Woodham, LLP (MBW) with respect to her negligence claim. We affirm.

FACTS/PROCEDURAL HISTORY

Johnson was employed as the bookkeeper and office manager at Robert E. Lee Academy in Lee County, South Carolina. Her responsibilities in that role included collecting and depositing tuition and other incoming funds. Around the middle of May 2006, Johnson had collected funds including $9,100 in cash plus additional cash and checks. On May 17, Johnson accounted for the $9,100 in her record keeping and planned to deposit the funds in the bank. Not having time to reconcile the additional cash and checks, she placed those funds in a container in the school's vault. According to bank records, the $9,100 deposit was made the morning of May 18. Johnson was delayed in depositing the other monies for various personal reasons, and when she arrived at work on May 23, the container was missing. She reported this to the school principal, Mrs. Virginia Stokes.

The school began an investigation into the missing funds and the Bishopville Police Department was brought in to assist. As part of the investigation, Johnson made a list of deposits from the weeks immediately preceding the disappearance of the funds and that list showed Johnson had made the $9,100 deposit. The school's monthly statement from the bank also showed the deposit.

Johnson was fired from her position at the school, and the school board hired MBW to investigate the missing funds.[1] Marc Quigley was the accountant from MBW assigned to this task. Quigley met with the Bishopville Police investigating officer, Calvin Collins, and Agent Glen McClellan from the South Carolina Law Enforcement Division on August 8. Agent McClellan testified in his deposition Quigley indicated funds appeared to be missing. A schedule of deposits compiled by MBW and the list created by Johnson were inconsistent because the MBW list did not show the $9,100 deposit. Agent McClellan also indicated he provided Quigley with his email address should further information come to light about which the authorities should know. According to Quigley, he emphasized to Officer Collins and Agent McClellan during this meeting his review was still in the preliminary stages and had not been finalized. Later that same day, Quigley

[1] Whether MBW was hired to perform an actual audit or just to investigate the missing funds is disputed; however, that does not affect our analysis of the issues on appeal.

compared the financial records and lists and realized the $9,100 deposit had been made. He emailed Agent McClellan with that information the same day and also informed Katherine Woodham, a Robert E. Lee Academy school board member involved in the investigation. No one informed the Bishopville Police Department of this discovery. An arrest warrant accusing Johnson of misappropriating $9,100 was issued on August 15 and Johnson turned herself in to authorities on August 16.[2] The charges against Johnson were subsequently dropped.

Johnson sued Robert E. Lee Academy, Jennifer Hostetler and Marc Quigley (both of MBW), MBW, and the City of Bishopville for defamation, abuse of process, malicious prosecution, negligence, and false imprisonment. The claims against MBW were all dropped with the exception of the defamation and negligence claims. The circuit court granted summary judgment in MBW's favor on both remaining causes of action. With respect to the negligence claim, the circuit court determined that because Johnson was not a client, MBW owed no duty of care thereby eliminating that claim as a matter of law. This appeal followed.

STANDARD OF REVIEW

A trial court may grant a party's motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "An appellate court applies the same standard used by the trial court under Rule 56(c) when reviewing the grant of a motion for summary judgment." *Epstein v. Coastal Timber Co.*, 393 S.C. 276, 281, 711 S.E.2d 912, 915 (2011). "This Court has established that '[t]he plain language of Rule 56(c) mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof.'" *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 357-58, 650 S.E.2d 68, 71 (2007) (internal citations omitted).

LAW/ANALYSIS

Johnson maintains the circuit court erred in finding MBW owed her no duty. She contends Quigley's actions constituted a voluntary undertaking that gave rise to a duty of care toward her. We disagree.

[2] The record is unclear as to exactly the amount of funds that were unaccounted.

"Whether the law recognizes a particular duty is an issue of law to be determined by the court." *Ellis v. Niles*, 324 S.C. 223, 227, 479 S.E.2d 47, 49 (1996). "An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance." *Hendricks v. Clemson Univ.*, 353 S.C. 449, 456, 578 S.E.2d 711, 714 (2003). "Ordinarily, the common law imposes no duty on a person to act. Where an act is voluntarily undertaken, however, the actor assumes the duty to use due care." *Id.* at 456-57, 578 S.E.2d at 714 (citing *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991)).

The recognition of a voluntarily assumed duty in South Carolina jurisprudence[3] is rooted in the Restatement of Torts, which states:

> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

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[3] *See Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 136, 638 S.E.2d 650, 657 (2006) (recognizing a duty may arise under section 323); *Russell v. City of Columbia*, 305 S.C. 86, 89-90, 406 S.E.2d 338, 340 (1991) (relying in part on section 323 to find duty may exist between volunteer defendant and plaintiff); *Sherer v. James*, 290 S.C. 404, 407-08, 351 S.E.2d 148, 150 (1986) (internal citation omitted) ("'Section 323(a) simply establishes a duty on one who undertakes to render services for the protection of another *to use due care* to avoid increasing the risk of harm.' We agree with this rationale."); *Roundtree Villas Ass'n, Inc. v. 4701 Kings Corp.*, 282 S.C. 415, 43, 321 S.E.2d 46, 51 (1984) (finding common law duty of care arose under section 323 when lender undertook to repair defects in condominiums); *Shropshire v. Jones*, 277 S.C. 468, 471, 289 S.E.2d 410, 411 (1982) (stating cause of action for negligent performance of gratuitous promise is summarized in Restatement section 323); *Staples v. Duell*, 329 S.C. 503, 510, 494 S.E.2d 639, 643 (Ct. App. 1997) (noting the South Carolina Supreme Court recognized section 323(a) "as relating to the element of duty."); *Goode v. St. Stephens United Methodist Church*, 329 S.C. 433, 444-45, 494 S.E.2d 827, 832-33 (Ct. App. 1997) (finding no duty under section 323 when visitor to apartment building did not rely on any security measures undertaken by the building, and any measures taken were for protection of the tenants).

> (a) his failure to exercise such care increases the risk of such harm, or
> (b) the harm is suffered because of the other's reliance upon the undertaking.

Restatement (Second) of Torts § 323.

The relationship between Johnson and MBW does not fit within the parameters set forth in section 323(a). Secton 323(a) contemplates a party relying on the rendering of services to another for the other's protection. Even assuming Quigley acted voluntarily, he assisted the Bishopville Police Department in its investigation.[4] He did not render a service to Johnson; he assisted authorities. Additionally, his conduct was not undertaken for Johnson's protection and any negligence in his performance did not result in her physical harm.[5]

Furthermore, contorting the Restatement to create a precedent that may have a chilling effect on cooperation with the authorities or other conduct that inures to the public good is ill-advised and poor public policy. *See Underwood v. Coponen*, 367 S.C. 214, 219 n.3, 625 S.E.2d 236, 239 n.3 (Ct. App. 2006) ("If we extended the duty to require private landowners to ensure that their trees do not hinder traffic control devises, we would be discouraging private landowners from voluntarily maintaining vegetation on their property which adjoins a public roadway or highway in an effort to shield themselves from unwarranted liability."); *Staples*, 329 S.C. 503, 510, 494 S.E.2d 639, 643 (Ct. App. 1997) (declining to impose duty on defendant to inspect property under circumstances as doing so "would create the

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[4] While we do not need to reach the factual issue of whether Quigley's conduct arose to the level of volunteer, we generally agree with Chief Justice Toal's statement that "[i]t simply does not square with common sense experience to characterize a . . . response to a governmental inquiry as voluntary." *See Miller v. City of Camden*, 329 S.C. 310, 318, 494 S.E.2d 813, 817 (1997) (Toal, C.J., dissenting in part, concurring in part).

[5] We are cognizant of Restatement (Second) of Torts section 324A, although that section has not been adopted by our courts and is not specifically argued by Johnson on appeal. *See Miller*, 329 S.C. at 315 n.2, 494 S.E.2d at 816 n.2 (declining to adopt section 324A). Section 324A contemplates a duty arising on the part of one who undertakes to render a service to another for the protection of a third party from physical harm. However, even applying section 324A to these circumstances, Johnson's cause of action fails because Quigley's cooperation with police was not intended to protect any party from physical harm.

highly undesirable precedent of encouraging rural landowners to shield their eyes and never inspect their land"). Other causes of action exist to address when citizens have been maliciously accused of or prosecuted for a crime.

Additionally, in *Hendricks*, 353 S.C. at 456-58, 578 S.E.2d at 714-15, the South Carolina Supreme Court signaled a reluctance to expand the voluntary assumption of duty doctrine beyond the circumstances set forth in the Restatement 323 and recognized in our jurisprudence.

> We believe recognizing a duty flowing from advisors to students is not required by any precedent and would be unwise, considering the great potential for embroiling schools in litigation that such recognition would create. Further, the Court of Appeals citation to *Miller* [329 S.C. at 318, 494 S.E.2d at 817] indicating a duty may have been created by Clemson's voluntary undertaking to advise Hendricks to ensure NCAA eligibility, is inapposite. The line of cases *Miller* discusses have thus far been limited to situations in which a party has voluntarily undertaken to prevent physical harm, not economic injury.

Id. at 458, 578 S.E.2d at 715.

The circumstances of this case do not fit within the existing voluntary assumption of duty framework, and we decline to expand that doctrine under the facts presented.[6]

Additionally, Johnson submitted with her Rule 59(e), SCRCP, motion the affidavit of John Hamilton, a certified public accountant, who opined MBW owed Johnson

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[6] South Carolina has recognized an accountant may have a duty to a third party under a negligent misrepresentation cause of action. *See ML-Lee v. Deloitte*, 327 S.C. 238, 241 n.3, 489 S.E.2d 470, 471 n.3 (1997) ("We adopt the [Restatement (Second) of Torts] §552 standard of liability. . . . Under §552, an accountant has a duty to exercise reasonable care or competence in obtaining or communicating information."). However, to successfully pursue such a claim, the plaintiff must have relied on the accountant's misrepresentation, and Johnson conceded at oral arguments she did not rely on Quigley's statements.

a duty of care under the circumstances. However, the existence of a legal duty is a question of law for the court, and Hamilton's affidavit does not call into question any facts in the case. *See Hendricks*, 353 S.C. at 456, 578 S.E.2d at 714 ("Whether the law recognizes a particular duty is an issue of law to be decided by the Court."). The affidavit simply proposes extending the potential third-party liability of an accountant beyond the limitations placed thereon by the Restatement. Consequently, his affidavit did not create a genuine issue of material fact warranting the reconsideration of the circuit court's decision as to summary judgment.

Because MBW did not render a service to Johnson or for her protection from physical harm, we conclude MBW owed no duty of care to Johnson as a matter of law arising out of Quigley's conduct in communicating with police officials regarding the investigation into REL's missing funds. The circuit court's grant of summary judgment is

AFFIRMED.

SHORT and LOCKEMY, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Ella Ranette Miller Gaffney, Respondent,

v.

William Wright Gaffney, Jr., Appellant.

Appellate Case No. 2011-196446

Appeal From Greenville County
Alex Kinlaw, Jr., Family Court Judge

Opinion No. 5068
Heard December 12, 2012 – Filed December 28, 2012

REVERSED

Jeffrey A. Merriam, of Carter Smith Merriam Rogers & Traxler, PA, of Greenville, for Appellant.

Timothy E. Madden and Reid T. Sherard, both of Nelson Mullins Riley & Scarborough, LLP, of Greenville, for Respondent.

PER CURIAM: William Wright Gaffney, Jr., (Husband) appeals the order of the family court interpreting the parties' divorce decree. On appeal, Husband argues the family court erred in finding that, under the terms of the decree and the settlement agreement underlying it, the loan obligor's full payment of the principal balance owing reduced Husband's alimony obligation from $7,000 to $1,000 instead of eliminating it entirely. We reverse.

FACTS

In 2009, after thirty-four years of marriage, Ella Ranette Miller Gaffney (Wife) commenced an action for an order of separate maintenance and support, equitable distribution of property, and other relief. At the final hearing on March 30, 2009, the family court permitted Wife to amend her pleading to seek an order of divorce on the basis of one year's separation, and Husband did not object.

Two weeks later, the family court issued its order granting Wife a divorce. It merged into that order the parties' written Marital Settlement Agreement dated March 5, 2009, and an amendment to that document dated March 30, 2009 (collectively, the MSA).

I. The MSA

According to the MSA, both parties were in their fifties and in good health. Husband, who was fifty-nine years old, was a co-owner and the president of Citadel Management, LLC (the LLC). Wife, who was fifty-six, received "nominal income"[1] from her part-time employment in a retail store. The parties agreed to divide their assets more or less evenly, with Wife receiving the marital home and Husband receiving business interests other than the parties' interests in the LLC.

Each party retained his or her respective ownership interest in the LLC. Wife retained a fifteen-percent ownership interest and Husband, a thirty-five-percent interest. In addition, each party received fifty percent of a note receivable that the LLC owed to Husband and Wife.[2]

With regard to alimony, Husband acknowledged "his ability to be self-supporting without contribution from Wife" and waived alimony. He also agreed to pay Wife

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[1] Wife's financial declaration reflects she earned $300 per month from her retail employment. However, the majority of Wife's financial security does not lie in her monthly income, whether from earnings or alimony: a worksheet in the record demonstrates Wife received property worth more than $2.3 million.

[2] Although the MSA does not provide details about the note, other evidence in the record indicates the LLC owed the parties approximately $1,776,241.

$7,000 per month in alimony, with a maximum of one hundred twenty payments. The amount of alimony would be modifiable downward based upon a substantial change in circumstances. Moreover, the parties agreed:

> This alimony shall be offset dollar for dollar for any interest income Wife receives from her share of the note receivable from [the LLC]. If [the LLC] ever reduces the principal on the debt due to Wife for the note receivable, then in such event Husband's alimony obligation to Wife shall automatically reduce proportionate to the reduction made in the principal obligation.

The written amendment incorporated into the MSA addressed Husband's obligations in securing health insurance for Wife. However, it also modified the alimony agreement. In order to provide Wife with health insurance benefits through the LLC, the parties agreed Wife would enter into a separate employment agreement with the LLC. The amendment concluded: "to the extent Wife is compensated under the employment agreement with [the LLC], any such compensation shall be credited against husband's alimony obligation owed to Wife by the terms of the [MSA]."

II. Contempt Action

On April 13, 2011, Wife filed a complaint for contempt against Husband for failure to pay alimony and her health insurance costs. According to Wife, the LLC satisfied Husband's alimony obligation through January 2011: Wife received $6,000 per month in interest payments and an additional $1,000 per month for her employment with the LLC. Beginning in February 2011, the LLC paid off the principal amount of the loan due Wife, terminated her employment, and ceased making any further payments to her. As a result, Wife began paying her health insurance premiums of $402 per month out of pocket. Wife contended Husband owed her $1,000 per month in alimony from February 2011 forward, because the MSA provided the alimony obligation would be offset "dollar for dollar" by any amounts Wife received in interest on the loan or toward the principal of the loan.

Husband defended by quoting the alimony provision from the MSA and arguing it stated his obligation was to be reduced in proportion to the reduction in the principal amount owed Wife by the LLC, not dollar for dollar. He observed the

MSA entitled Wife to a maximum of $840,000 in alimony ($7,000 x 120 months) and made no provision for an additional $1,000 per month. Furthermore, Husband stated Wife received $154,000 in alimony over the course of twenty-two months plus $888,120.58, which was the principal balance owing on her half of the parties' loan to the LLC.

At a hearing on June 24, 2011, the family court determined the alimony provision of the MSA was ambiguous and received testimony from the parties as to their intent. Husband testified they had agreed to divide the interest payments from the LLC of $12,000 per month evenly between them. He denied they intended for Wife to receive no more than $6,000 from the interest payments, explaining any additional alimony he paid would have come from his half of the interest payments because they were his only source of income at the time. However, he admitted the LLC issued a Form 1099 to each party reflecting income of $72,000 per year, or $6,000 per month, and that under the amendment to the MSA, Wife received the remaining $1,000 per month in alimony through her status as an employee of the LLC. Husband stated he did not believe "there was really any concern" about the source of his alimony payments, as long as he ensured Wife received the full $7,000 each month.

Wife testified the $6,000 per month in interest payments she received from the LLC was credited toward Husband's alimony obligation. Furthermore, she understood that when the LLC reduced the principal owing on the loan, any corresponding automatic reduction in alimony would apply only to the $6,000 portion of alimony that was paid directly to her in the form of loan interest.

The family court expressed concern that the MSA did not directly state full payment of the loan by the LLC would negate Husband's alimony obligation. In its written order, it found Husband was not in compliance with the divorce decree and the MSA, but declined to find his non-compliance contemptuous. In reviewing the parties' intent when they executed the MSA, the family court found they had "intended that the automatic reduction available to [Husband] in the event of the payoff of the Note [was] proportionate to the total alimony obligation. Therefore the payoff of the Note results in a $6,000 per month reduction in total alimony obligation for Husband," leaving him owing Wife $1,000 per month. Husband appealed.

STANDARD OF REVIEW

"In appeals from the family court, [appellate courts] review[] factual and legal issues de novo." *Simmons v. Simmons*, 392 S.C. 412, 414, 709 S.E.2d 666, 667 (2011). "[W]hile retaining the authority to make our own findings of fact, we recognize the superior position of the family court judge in making credibility determinations." *Lewis v. Lewis*, 392 S.C. 381, 392, 709 S.E.2d 650, 655 (2011). The burden is upon the appellant to convince the appellate court that the preponderance of the evidence is against the family court's findings. *Id.* "Stated differently, *de novo* review neither relieves an appellant of demonstrating error nor requires us to ignore the findings of the family court." *Id.* at 388-89, 709 S.E.2d at 654.

LAW/ANALYSIS

Husband asserts the family court erred in interpreting the MSA to permit the full repayment of the parties' loan to the LLC to reduce his monthly alimony obligation by only $6,000. We agree.

"The interpretation of [marital litigation] agreements is a matter of contract law. When an agreement is clear on its face and unambiguous, the court's only function is to interpret its lawful meaning and the intent of the parties as found within the agreement." *State Mut. Ins. Co. v. Ard*, 399 S.C. 232, 237, 730 S.E.2d 912, 914 (Ct. App. 2012) (citations and quotation marks omitted). "Unambiguous marital agreements will be enforced according to their terms . . . , regardless of the contract's wisdom or folly, or the parties' failure to guard their rights carefully." *Davis v. Davis*, 372 S.C. 64, 75, 641 S.E.2d 446, 451-52 (Ct. App. 2006) (citation omitted). A court will look to extrinsic evidence only if an ambiguity exists in the agreement's terms. *Nicholson v. Nicholson*, 378 S.C. 523, 534, 663 S.E.2d 74, 80 (Ct. App. 2008) (citing *Charles v. B & B Theatres, Inc.*, 234 S.C. 15, 18, 106 S.E.2d 455, 456 (1959)).

Whether the language of a contract is ambiguous is a question of law to be determined by the court. *Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 591, 658 S.E.2d 539, 542 (Ct. App. 2008). In making this determination, the court must examine the entire contract and not merely whether certain phrases taken in isolation could be interpreted in more than one way. *Id.* "[O]ne may not, by

pointing out a single sentence or clause, create an ambiguity." *Id.* (quoting *Yarborough v. Phoenix Mut. Life Ins. Co.*, 266 S.C. 584, 592, 225 S.E.2d 344, 348 (1976)).

> In construing and determining the effect of a written contract, the intention of the parties and the meaning are gathered primarily from the contents of the writing itself, or, as otherwise stated, from the four corners of the instrument, and when such contract is clear and unequivocal, its meaning must be determined by its contents alone; and a meaning cannot be given it other than that expressed. Hence words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed.

Id. (quoting *McPherson v. J.E. Sirrine & Co.*, 206 S.C. 183, 204, 33 S.E.2d 501, 509 (1945)).

We find the language of the MSA is unambiguous and the full payment of the balance due Wife on the note satisfied Husband's alimony obligation, and reverse. When the language of an agreement is clear and unambiguous, courts may look no further than the agreement itself to discern the parties' intent. *Ard*, 399 S.C. at 237, 730 S.E.2d at 914; *accord Davis*, 372 S.C. at 75, 641 S.E.2d at 452.

The language of the MSA is not ambiguous. It required Husband to pay Wife "the sum of Seven Thousand and 00/100 ($7,000.00) Dollars per month as alimony," with a maximum of one hundred twenty payments. The MSA did not predicate this amount upon either party's receipt of other income; however, it stated the $7,000 would be:

> [O]ffset dollar for dollar for any interest income Wife receives from her share of the note receivable from [the LLC]. [Moreover, i]f [the LLC] ever reduces the principal on the debt due to Wife for the note receivable, then in such event Husband's alimony obligation to Wife shall automatically reduce proportionate to the reduction made in the principal obligation.

The amendment to the MSA further permitted Husband's monthly alimony obligation to be offset, dollar for dollar, by any employment income the LLC paid to Wife. We find these terms are clear.

Applying these terms to the situation at hand, we find the family court erred in finding the MSA required Husband to pay Wife $1,000 per month in alimony after the LLC fully satisfied its debt to her. *See Davis*, 372 S.C. at 75, 641 S.E.2d at 451-52 ("Unambiguous marital agreements will be enforced according to their terms . . . , regardless of the contract's wisdom or folly, or the parties' failure to guard their rights carefully."). The MSA unequivocally states Husband's alimony obligation "shall automatically reduce" in proportion to the reduction of principal on the LLC's debt to Wife. This provision contains no limiting language that would prevent a one hundred-percent reduction in the principal from reducing Husband's alimony obligation by one hundred percent. Further, no language in the MSA establishes a minimum amount of alimony Husband must pay after the note's principal had been eliminated.

Although the MSA does not per se discuss the "termination" of Husband's alimony obligation, neither does it contemplate the alimony obligation continuing indefinitely. In addition to listing other events that would end Husband's alimony obligation, the MSA provides for the full satisfaction of that obligation, either after Husband tendered one hundred twenty payments or after the LLC extinguished its loan obligation to Wife. The latter occurred. Because the LLC paid one hundred percent of its loan obligation to Wife, Husband's alimony obligation to Wife decreased by one hundred percent. Accordingly, the family court erred in extending Husband's alimony obligation and in finding the MSA required him to pay Wife $1,000 per month after Wife received full repayment of the LLC's loan obligation.

CONCLUSION

We find the language of the parties' settlement agreement is clear and unambiguous. We further find the terms of that agreement established Husband's alimony obligation to Wife was $7,000 per month and specified that obligation would reduce in proportion to the LLC's reduction of the principal it owed to Wife. In view of these provisions, we find the LLC's payment of one hundred percent of its loan obligation to Wife caused Husband's monthly alimony obligation to be

reduced by one hundred percent, to zero dollars. Accordingly, the decision of the family court is

REVERSED.

HUFF and THOMAS, JJ., and CURETON, A.J., concur.