

The Supreme Court of South Carolina

In the Matter of Anne Mahoney, Petitioner

Appellate Case No. 2016-001378

ORDER

Petitioner is currently admitted to practice law in South Carolina, and has now submitted a resignation under Rule 409 of the South Carolina Appellate Court Rules. The resignation is accepted.

If petitioner is currently representing any South Carolina clients, petitioner shall immediately notify those clients of the resignation by certified mail, return receipt requested. Further, if petitioner is currently counsel of record before any court of this State, petitioner shall immediately move to be relieved as counsel in that matter.

Within twenty (20) days of the date of this order, petitioner shall:

(1) surrender the certificate of admission to the Clerk of this Court. If petitioner cannot locate this certificate, petitioner shall provide the Clerk with an affidavit indicating this fact and indicating that the certificate will be immediately surrendered if it is subsequently located.

(2) provide an affidavit to the Clerk of this Court showing that petitioner has fully complied with the requirements of this order.

s/ Costa M. Pleicones _____ C.J.

s/ Donald W. Beatty _____ J.

s/ John W. Kittredge _____ J.

s/ Kaye G. Hearn _____ J.

s/ John Cannon Few _____ J.

Columbia, South Carolina

August 4, 2016



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

ADVANCE SHEET NO. 32
August 10, 2016
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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The South Carolina Court of Appeals

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None

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5333-Yancey Roof v. Kenneth A. Steele	Pending
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5338-Bobby Lee Tucker v. John Doe	Pending
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2015-UP-361-JP Morgan Chase Bank v. Leah Sample	Pending
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2015-UP-365-State v. Ahmad Jamal Wilkins	Pending
2015-UP-367-Angela Patton v. Dr. Gregory A. Miller	Granted 08/04/16
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2015-UP-378-State v. James Allen Johnson	Pending
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2015-UP-402-Fritz Timmons v. Browns AS RV and Campers	Pending
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2015-UP-414-Christopher A. Wellborn v. City of Rock Hill	Pending
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2015-UP-432-Barbara Gaines v. Joyce Ann Campbell	Pending
2015-UP-446-State v. Tiphani Marie Parkhurst	Granted 08/04/16
2015-UP-455-State v. Michael L. Cardwell	Pending
2015-UP-466-State v. Harold Cartwright, III	Pending
2015-UP-477-State v. William D. Bolt	Pending
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2015-UP-491-Jacquelin S. Bennett v. T. Heyward Carter, Jr.	Pending
2015-UP-501-State v. Don-Survi Chisolm	Pending
2015-UP-505-Charles Carter v. S.C. Dep't of Corr. (3)	Pending
2015-UP-513-State v. Wayne A. Scott, Jr.	Pending
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2016-UP-012-Whelthy McKune v. State	Denied 08/04/16
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2016-UP-023-Frankie Lee Bryant, III, v. State	Pending
2016-UP-039-State v. Fritz Allen Timmons	Pending
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2016-UP-052-Randall Green v. Wayne Bauerle	Pending
2016-UP-054-Ex Parte: S.C. Coastal Conservation League v. Duke Energy	Pending
2016-UP-055-State v. Ryan P. Deleston	Pending
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2016-UP-070-State v. Deangelo Mitchell (AA Ace Bail)	Pending
2016-UP-073-State v. Mandy L. Smith	Pending

2016-UP-074-State v. Sammy Lee Scarborough	Pending
2016-UP-089-William Breland v. SCDOT	Pending
2016-UP-091-Kyle Pertuis v. Front Roe Restaurants, Inc.	Pending
2016-UP-097-State v. Ricky E. Passmore	Pending
2016-UP-109-Brook Waddle v. SCDHHS	Pending
2016-UP-118-State v. Lywone S. Capers	Pending
2016-UP-119-State v. Bilal Sincere Haynesworth	Pending
2016-UP-127-James Neff v. Lear's Welding	Pending
2016-UP-132-Willis Weary v. State	Pending
2016-UP-134-SCDSS v. Stephanie N. Aiken	Denied 08/04/16
2016-UP-137-Glenda R. Couram v. Christopher Hooker	Pending
2016-UP-138-McGuinn Construction v. Saul Espino	Pending
2016-UP-141-Plantation Federal v. J. Charles Gray	Pending
2016-UP-151-Randy Horton v. Jasper County School	Pending
2016-UP-153-Andreas Ganotakis v. City of Columbia Board	Pending
2016-UP-160-Mariam R. Noorai v. School Dist. of Pickens Cty.	Pending
2016-UP-162-State v. Shawn L. Wyatt	Pending
2016-UP-168-Nationwide Mutual v. Eagle Windows	Pending
2016-UP-171-Nakia Jones v. State	Pending
2016-UP-174-Jerome Curtis Buckson v. State	Pending
2016-UP-187-Nationstar Mortgage, LLC v. Rhonda L. Meisner	Pending

2016-UP-189-Jennifer Middleton v. Orangeburg Consolidated	Pending
2016-UP-193-State v. Jeffrey Davis	Pending
2016-UP-198-In the matter of Kenneth Campbell	Pending
2016-UP-199-Ryan Powell v. Amy Boheler	Pending

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

Jane Roe, as parent and natural guardian of Judy Roe,
James Roe, and Joyce Roe, Minor Children Under the
Age of Eighteen, (18), Petitioners,

v.

Daniel Bibby Sr. and Michelle Bibby, Defendants,

of Whom Michelle Bibby is the Respondent.

Appellate Case No. 2014-002500

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Berkeley County
R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 27652
Heard November 5, 2015 – Filed August 10, 2016

DISMISSED AS IMPROVIDENTLY GRANTED

Eric M. Poulin, of Anastopoulo Law Firm, LLC, of
Charleston, for Petitioners.

Eugene P. Corrigan, III and J.W. Nelson Chandler, both
of Corrigan & Chandler, LLC, of Charleston, for
Respondent.

PER CURIAM: We granted certiorari to review the court of appeals' decision in *Roe v. Bibby*, 410 S.C. 287, 763 S.E.2d 645 (Ct. App. 2014). We now dismiss the writ as improvidently granted.

DISMISSED AS IMPROVIDENTLY GRANTED.

PLEICONES, C.J., BEATTY, KITTREDGE, HEARN, JJ., and Acting Justice Jean H. Toal, concur.

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

In the Matter of Justin J. Trapp, Respondent.

Appellate Case No. 2016-001076

Opinion No. 27653

Submitted July 19, 2016 – Filed August 10, 2016

DEFINITE SUSPENSION

Disciplinary Counsel Lesley M. Coggiola and Senior
Assistant Disciplinary Counsel C. Tex Davis, Jr. for
Office of Disciplinary Counsel.

Justin J. Trap, *Pro Se*.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, respondent admits misconduct and consents to a definite suspension not to exceed three years, with the conditions that within thirty days of imposition of discipline, respondent shall pay the costs incurred by ODC and the Commission on Lawyer Conduct in investigating and prosecuting this matter (\$113.70), and prior to reinstatement, complete the Legal Ethics and Practice Program's Ethics School, Trust Account School, and Advertising School. Respondent requests that the suspension be made retroactive to the date of interim suspension.¹ We accept the Agreement and suspend respondent from the practice

¹ Respondent was placed on interim suspension by order dated September 25, 2014. *In re Trapp*, 410 S.C. 151, 763 S.E.2d 811 (2014).

of law in this state for one year, retroactive to the date of his interim suspension, subject to the conditions set forth in the Agreement.

Facts

The allegations set forth in the Formal Charges, which have been incorporated into the Agreement, are as follows. Respondent, who was admitted to the South Carolina Bar in 2009, was appointed in 2012 to represent an applicant in a post-conviction relief matter. The Attorney General's Office mailed various pleadings and other correspondence to respondent at the address respondent provided in the Attorney Information System (AIS). None of the correspondence was returned, nor did respondent make any response. On April 14, 2014, the Attorney General's Office notified respondent that the applicant's case was on the roster for the upcoming term of court. Respondent informed the Attorney General's Office that he was not admitted to the South Carolina Bar and did not practice law.² New counsel was appointed for the applicant.

On May 14, 2014, ODC informed respondent by way of Notice of Investigation that it was investigating his conduct in connection with the applicant's case and that he was required to submit a written response within fifteen days. The notice was mailed to the address respondent provided in AIS, but respondent failed to respond as required. On June 6, 2014, ODC sent respondent a letter pursuant to *In the Matter of Treacy*, 277 S.C. 514, 290 S.E.2d 240 (1982), again requesting a response and notifying him that failure to respond to ODC was, in and of itself, a separate ground for discipline. However, respondent failed to respond to the *Treacy* letter. On August 14, 2014, ODC served respondent with a Notice to Appear pursuant to Rule 19, RLDE, to answer questions on the record and under oath. The notice was served on respondent by mail at the address respondent provided in AIS. Respondent failed to appear, after which ODC filed a Petition for Interim Suspension. As noted earlier, respondent was placed on interim suspension on September 25, 2014. The order and a letter from the Clerk of Court directing respondent's attention to the requirements of Rule 30, RLDE, and specifically noting the affidavit required by Rule 30(i), RLDE, had to be filed within fifteen

²Respondent had been placed on administrative suspension by orders of this Court dated March 14, 2014, and April 25, 2014, for failure to pay license fees and failure to comply with continuing legal education requirements, respectively.

days, was eventually served on respondent by SLED. Respondent never filed an affidavit.

Law

Respondent admits that by his conduct he has violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 8.1(b) (a lawyer in connection with a disciplinary matter shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority); Rule 8.4(d) (it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation); Rule 8.4(e) (it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice).

Respondent also admits his conduct constitutes grounds for discipline under Rule 7(a)(1), (3), (5), (6), and (7), RLDE.³

Conclusion

We accept the Agreement for Discipline by Consent and suspend respondent from the practice of law in this state for one year, retroactive to the date of his interim suspension. Respondent shall also comply with the conditions set forth in the Agreement and noted in the first paragraph 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.

³ These provisions set forth the following grounds for discipline: violating or attempting to violate the Rules of Professional Conduct or any other rules of this jurisdiction regarding professional conduct of lawyers; willfully violating a valid order of the Supreme Court, Commission or panels of the Commission in a proceeding under these rules, willfully failing to appear personally as directed, willfully failing to comply with a subpoena issued under these rules, or knowingly failing to respond to a lawful demand from a disciplinary authority, to include a request for a response or appearance under Rule 19(b)(1), (c)(3) or (c)(4); engaging 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; violating the Lawyer's Oath contained in Rule 402(k), SCACR; and willfully violating a valid court order issued by a court of this state or of another jurisdiction.

DEFINITE SUSPENSION.

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

The Supreme Court of South Carolina

In the Matter of the Application of Alison Collins Ard,
Respondent.

Appellate Case No. 2012-211960

ORDER

This matter is before the Court for the imposition of a sanction as the result of respondent's admitted violation of this Court's August 24, 2012, order, and of the terms of her monitoring contract. We find that respondent's misconduct warrants the imposition of a ninety (90) day suspension from the practice of law and, accordingly, suspend her from the practice of law in this state for ninety (90) days. Further, we order respondent to execute a new monitoring contract with Lawyers Helping Lawyers within twenty (20) days of the date of this order. The new contract shall be for a period of nine (9) months and shall contain the same terms as provided in her original contract. Respondent shall file a copy of the newly-executed contract with the Clerk of this Court and with the Commission on Lawyer Conduct within thirty (30) days of the date of this order.

Within fifteen (15) days of the date of this order, respondent shall file an affidavit with the Clerk of Court showing that she has complied with Rule 30 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR).¹

¹ Any petition for reinstatement shall be filed in accordance with the provisions of Rule 32, RLDE.

This order shall be public.

s/ Costa M. Pleicones C.J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

Columbia, South Carolina

August 4, 2016

The Supreme Court of South Carolina

In the Matter of William Jefferson McMillian, III,
Petitioner.

Appellate Case No. 2015-001163

ORDER

By opinion dated June 26, 2013, the Court definitely suspended petitioner from the practice of law for three (3) years, retroactive to February 22, 2013, the date of his interim suspension. *In the Matter of McMillian*, 404 S.C. 117, 744 S.E.2d 579 (2013). Petitioner has now filed a Petition for Reinstatement pursuant to Rule 33 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR).

After thorough consideration of the entire record, the Court grants the Petition for Reinstatement.

s/ Costa M. Pleicones C.J.

s/ Donald W. Beatty J.

s/ Kaye G. Hearn J.

We would deny the Petition for Reinstatement.

s/ John W. Kittredge J.

s/ John Cannon Few J.

Columbia, South Carolina

August 4, 2016

The Supreme Court of South Carolina

Re: Expansion of Electronic Filing Pilot Program - Court of
Common Pleas

Appellate Case No. 2015-002439

ORDER

Pursuant to the provisions of Article V, Section 4 of the South Carolina Constitution,

IT IS ORDERED that the Pilot Program for the Electronic Filing (E-Filing) of documents in the Court of Common Pleas, which was established by Order dated December 1, 2015, is expanded to include Spartanburg County. Effective August 23, 2016, all filings in all common pleas cases commenced or pending in Spartanburg County must be E-Filed if the party is represented by an attorney, unless the type of case or the type of filing is excluded from the Pilot Program. The counties currently designated for mandatory E-Filing are as follows:

Clarendon	Lee	Greenville
Sumter	Williamsburg	Pickens
Spartanburg—Effective August 23, 2016.		

Attorneys should refer to the South Carolina Electronic Filing Policies and Guidelines, which were adopted by the Supreme Court on October 28, 2015, and the training materials available at <http://www.sccourts.org/efiling/> to determine whether any specific filings are exempted from the requirement that they be E-Filed. Attorneys who have cases pending in Pilot Counties are strongly encouraged to review, and to instruct their staff to review, the training materials available on the E-Filing Portal.

s/Costa M. Pleicones
Costa M. Pleicones
Chief Justice of South Carolina

Columbia, South Carolina
August 8, 2016

The Supreme Court of South Carolina

Re: Amendments to Rule 411, South Carolina Appellate Court Rules.

Appellate Case No. 2016-001218 and 2016-001219

ORDER

The South Carolina Bar has proposed several amendments to Rule 411, SCACR, which governs the Lawyers' Fund for Client Protection. The Bar also requests the Court approve a change to the Lawyers' Fund for Client Protection of the South Carolina Bar Rules of Procedure.

We grant the Bar's request to amend Rule 411(d)(1) to reduce the Lawyers' Fund assessment for all regular members from \$50 per year to \$30 per year, and to amend Rule 411(b) to reduce the terms of service for members of the Lawyers' Fund for Client Protection Committee from five years to three years. We deny the Bar's request to amend the Lawyers' Fund for Client Protection of the South Carolina Bar Rules of Procedure.

These amendments are effective immediately.

s/ Costa M. Pleicones C.J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

Columbia, South Carolina
August 10, 2016

The Supreme Court of South Carolina

Re: Amendments to the South Carolina Electronic Filing
Policies and Guidelines; Pilot Version-Common Pleas

Appellate Case No. 2015-001532

ORDER

Pursuant to Art. V, § 4 of the South Carolina Constitution, we adopt the attached amendments to Section 2 of the South Carolina Electronic Filing Policies and Guidelines. We also amend the Certificate of Technical Failure/Difficulty Form.

These amendments alter Section 2(d) of the Policies and Guidelines to provide for an exemption from mandatory E-Filing where the defendant, rather than the plaintiff, initiates a new case as a minor settlement or death settlement. We further amend Section 2(d) of the Policies and Guidelines and the Technical Failure/Difficulty Form to provide that, whenever a party seeks to Traditionally file a document pursuant to one of the exemptions listed in Section 2(d), the party must also submit a Technical Failure/Difficulty Form explaining the claimed exemption. These amendments are effective immediately.

s/ Costa M. Pleicones C.J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

Columbia, South Carolina
August 10, 2016

Section 2(d) of the South Carolina Electronic Filing Policies and Guidelines is amended to provide:

(d) Excluded Documents. The following documents may not be E-Filed, regardless of whether the filer is an attorney, and must be Traditionally filed together with a Certificate of Technical Difficulty:

- (1) A motion to quash a subpoena filed by or on behalf of a non-party;
- (2) A motion that may be filed *ex parte* in an existing case;
- (3) Any other pleadings filed by or on behalf of a person or entity who is not a party to an existing case, other than motions to intervene or filings by a person or entity granted intervenor status;
- (4) A filing that initiates a new case and exceeds 40 Megabytes when converted to PDF;
- (5) Settlements filed as new cases, including Minor Settlement and Death Settlement Proceedings, if initiated and filed by the defendant, rather than the plaintiff.

The Supreme Court of South Carolina

Re: Amendments to Rule 407, South Carolina Appellate
Court Rules

Appellate Case No. 2015-002035

ORDER

The South Carolina Bar has proposed a number of amendments to the South Carolina Rules of Professional Conduct, which are contained in Rule 407, SCACR. The Bar requests the Court adopt modified versions of the American Bar Association's Commission on Ethics 20/20 revisions to the Model Rules of Professional Conduct. These amendments to the Model Rules recognize that technological advances have affected various obligations of lawyers related to advertising and solicitation.

We grant the Bar's request and amend Rules 1.4; 5.5, 7.1; 7.2; and 7.3, RPC, Rule 407, SCACR, with some modifications. We decline to adopt the Bar's proposal to amend Rule 1.0, RPC, Rule 407, SCACR, and have instead included the Bar's suggested language within the Comments to Rule 7.3. The amendments, which are set forth in the attachment to this Order, are effective immediately.

s/ Costa M. Pleicones C.J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

Columbia, South Carolina
August 10, 2016

Comment 4 to Rule 1.4, RPC, Rule 407, SCACR, is amended to provide:

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. A lawyer should promptly respond to or acknowledge client communications.

Comment 21 to Rule 5.5, RPC, Rule 407, SCACR, is amended to provide:

[21] Paragraphs (c) and (d) do not authorize communications advertising legal services in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services in this jurisdiction is governed by Rules 7.1 to 7.5.

Comment 3 to Rule 7.1, RPC, Rule 407, SCACR, is amended to provide:

[3] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

Comments 1, 2, 3, and 4 to Rule 7.2, RPC, Rule 407, SCACR, are amended to provide:

[1] To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

[2] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television, the Internet, and other forms of electronic communication are now among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. But see Rule

7.3(a) for the prohibition against a solicitation through a real time electronic exchange initiated by the lawyer.

[4] Regardless of medium, a lawyer's advertisement should provide only useful, factual information presented in an objective and understandable fashion so as to facilitate a person's ability to make an informed choice about legal representation. A lawyer should strive to communicate such information without the use of techniques intended solely to gain attention and which demonstrate a clear and intentional lack of relevance to the selection of counsel, as such techniques hinder rather than facilitate intelligent selection of counsel. A lawyer's advertisement should reflect the serious purpose of legal services and our judicial system. The state has a significant interest in protecting against a public loss of confidence in the legal system, including its participants, and in protecting specifically against harm to the jury system that might be caused by lawyer advertising. The effectiveness of the legal system depends upon the public's trust that the legal system will operate with fairness and justice. Public trust is likely to be diminished if the public believes that some participants are able to obtain results through inappropriate methods. Public confidence also is likely to be diminished if the public perceives that the personality of their advocate, rather than the legal merit of their claim, is a key factor in determining the outcome of their matter. It is necessary to ensure that lawyer advertisements do not have these detrimental impacts. This rule is intended to preserve the public's access to information relevant to the selection of counsel, while limiting those advertising methods that are most likely to have a harmful impact on public confidence in the legal system and which are of little or no benefit to the potential client.

Comments 7, 8, and 9 to Rule 7.2, RPC, Rule 407, SCACR, are amended to provide:

[7] Except as permitted under paragraphs (c)(1)-(c)(3), lawyers are not permitted to pay others for recommending the lawyer's services or for channeling professional work in a manner that violates Rule 7.3. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other

professional qualities. Paragraph (c)(1), however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the cost of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public relations personnel, business development staff and website designers. Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.1 (communications concerning a lawyer's services). To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers who prepare marketing materials for them); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another).

[8] A lawyer may pay the usual charges of a legal service plan or a not-for-profit lawyer referral service, which is itself not acting in violation of the Rules of Professional Conduct. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit lawyer referral service. The "usual charges" may include a portion of legal fees collected by a

lawyer from clients referred by the service when that portion of fees is collected to support the expenses projected for the referral service.

[9] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See Rule 5.3. Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association. See also Rule 7.3(b).

New Comment 10 is added to Rule 7.2, Rule 407, SCACR, and provides:

[10] Paragraph (d) is intended to work in conjunction with paragraph (b) to provide accountability for the content of lawyer advertising. It applies only to communications that contain substantive advertising or soliciting statements and inferences beyond a lawyer or law firm's mere name, design logo, and ordinary contact information. Thus lawyers may advertise through promotional items, such as pens, clothing, coffee mugs, and signage without the need for the name and address of an individual lawyer responsible for the materials, provided that such items or signage contain nothing other than the firm name, logo, and contact information; that any logo is merely a design shape and not a depiction; and that any included contact information does not contain a tagline or slogan. Any depiction (such as an animal, hammer, or other recognizable thing) within a logo triggers the requirement of paragraph (d), as does any slogan, tagline, or logo whether used as a part of contact information (e.g., www.sclawyer.com or 1-800-SC-LAWYER) or otherwise.

Rule 7.3, RPC, Rule 407, SCACR, is amended to provide:

RULE 7.3: SOLICITATION OF CLIENTS

(a) A lawyer shall not by in person, live telephone or real time electronic contact solicit professional employment when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

- (1) is a lawyer; or
- (2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment by direct written, recorded or electronic communication or by in person, telephone, telegraph, facsimile or real time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer;
- (2) the solicitation involves coercion, duress, harassment, fraud, overreaching, intimidation or undue influence;
- (3) the solicitation concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person solicited or a relative of that person unless the accident or disaster occurred more than thirty (30) days prior to the solicitation;
- (4) the solicitation concerns a specific matter and the lawyer knows, or reasonably should know, that the person solicited is represented by a lawyer in the matter; or
- (5) the lawyer knows, or reasonably should know, that the physical, emotional, or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer.

(c) Any lawyer who uses written, recorded, or electronic solicitation shall maintain a file for two years showing the following:

(1) the basis by which the lawyer knows the person solicited needs legal services; and

(2) the factual basis for any statements made in the written, recorded, or electronic communication.

(d) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter, and with whom the lawyer has no family, close personal or prior professional relationship, shall conform to Rules 7.1 and 7.2 and, in addition, must conform to the following provisions:

(1) The words "ADVERTISING MATERIAL," printed in capital letters and in prominent type, shall appear on the front of the outside envelope and on the front of each page of the material. Every such recorded or electronic communication shall clearly state both at the beginning and at the end that the communication is an advertisement. If the solicitation is made by computer, including, but not limited to, electronic mail, the words "ADVERTISING MATERIAL," printed in capital letters and in prominent type, shall appear in any subject line of the message and at the beginning and end of the communication.

(2) Each solicitation must include the following statements:

(A) "You may wish to consult your lawyer or another lawyer instead of me (us). You may obtain information about other lawyers by consulting directories, seeking the advice of others, or calling the South Carolina Bar Lawyer Referral Service at 799-7100 in Columbia or toll free at 1-800-868-2284. If you have already engaged a lawyer in connection with the legal matter referred to in this communication, you should direct any questions you have to that lawyer" and

(B) "The exact nature of your legal situation will depend on many facts not known to me (us) at this time. You should understand that the advice and information in this communication is general and that your own situation may vary."

Where the solicitation is written, the above statements must be in a type no smaller than that used in the body of the communication.

(3) Each solicitation must include the following statement:
"ANY COMPLAINTS ABOUT THIS COMMUNICATION OR THE REPRESENTATIONS OF ANY LAWYER MAY BE DIRECTED TO THE COMMISSION ON LAWYER CONDUCT, 1220 SENATE STREET, SUITE 305, COLUMBIA, SOUTH CAROLINA 29201 – TELEPHONE NUMBER 803-734-2037." Where the solicitation is written, this statement must be printed in capital letters and in a size no smaller than that used in the body of the communication.

(e) Written communications mailed to the target of the solicitation shall be sent only by regular U.S. mail, not by registered mail or other forms of restricted or certified delivery.

(f) Written communications mailed to the target of the solicitation shall not be made to resemble legal pleadings or other legal documents.

(g) Any written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member shall disclose how the lawyer obtained the information prompting the communication.

(h) A written communication seeking employment by the target of the solicitation in a specific matter shall not reveal on the envelope, or on the outside of a self mailing brochure or pamphlet, the nature of the client's legal problem.

(i) If a lawyer reasonably believes that a lawyer other than the lawyer whose name or signature appears on the communication will likely be

the lawyer who primarily handles the case or matter, or that the case or matter will be referred to another lawyer or law firm, any written communication concerning a specific matter shall include a statement so advising the potential client.

(j) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan. A lawyer may participate with a prepaid or group legal service plan only if the plan is established in compliance with all statutory and regulatory requirements imposed upon such plans under South Carolina law. Lawyers who participate in a legal service plan must make reasonable efforts to assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(b).

Comment

[1] A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a lawyer's communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches. For example, advertisements that are automatically generated in response to an Internet search are not solicitations. Because those advertisements are generated in response to Internet-based research, they are more analogous to a lawyer's response to a request for information (which is not a solicitation) than an unsolicited and targeted letter to a person who is known to be in need of a particular legal service (which is a solicitation).

[2] There is a potential for abuse when a solicitation involves direct in person or live telephone or real time electronic contact by a lawyer with someone known to need legal services. These forms of contact subject a person to the private importuning of the trained advocate in a

direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult to fully evaluate all available alternatives with reasoned judgment and appropriate self interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and overreaching.

[3] The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to the public, rather than direct in person, live telephone or real time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false, misleading, deceptive, or unfair communications, in violation of Rule 7.1. The contents of direct in person, live telephone or real time electronic contact can be disputed and may not be subject to third party scrutiny. Consequently, they are much more likely to approach, and occasionally cross, the dividing line between accurate representations and those that are false and misleading.

[4] There is far less likelihood that a lawyer would engage in abusive practices against a former client, or a person with whom the lawyer has a close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(d) are not applicable in those situations. Also, paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries.

[5] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false, misleading, deceptive or unfair within the meaning of Rule 7.1; which involves coercion, duress, harassment, fraud, overreaching, intimidation or undue influence within the meaning of Rule 7.3(b)(2); which involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1); which involves contact with a person the lawyer reasonably should know is represented by another lawyer in the matter; or which involves contact with someone the lawyer reasonably should know is physically, emotionally or mentally incapable of exercising reasonable judgment in choosing a lawyer under Rule 7.3(b)(5) is prohibited. Moreover, if after sending a letter or other communication as permitted by Rule 7.2, the lawyer receives no response, any further effort to communicate with the recipient of the communication may violate the provisions of Rule 7.3(b).

[6] The public views direct solicitation in the immediate wake of an accident as an intrusion on the personal privacy and tranquility of citizens. The 30-day restriction in paragraph (b)(3) is meant to forestall the outrage and irritation with the legal profession engendered by crass commercial intrusion by attorneys upon a citizen's personal grief in a time of trauma. The rule is limited to a brief period, and lawyer advertising permitted under Rule 7.2 offers alternative means of conveying necessary information about the need for legal services and the qualifications of available lawyers and law firms to those who may be in need of legal services without subjecting the target of the solicitation to direct persuasion that may overwhelm their judgment.

[7] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to a prospective client. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they

choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

[8] The requirement in Rule 7.3(d) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

[9] Requiring communications to be marked as advertisements sent only by regular U.S. mail and prohibiting communications from resembling legal documents is designed to allow the recipient to choose whether or not to read the solicitation without fear of legal repercussions. In addition, the lawyer or law firm should reveal the source of information used to determine that the recipient has a potential legal problem. Disclosure of this information source will help the recipient understand the extent of knowledge the lawyer or law firm has regarding the recipient's particular situation and will avoid misleading the recipient into believing that the lawyer has particularized knowledge about the recipient's matter if the lawyer does not.

[10] Paragraph (j) of this Rule permits a lawyer to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization referred to in paragraph (j) must not be owned by or directed, whether as manager or otherwise, by any lawyer or law firm that participates in the plan. For example, paragraph (j) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in person or telephone solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The

communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services.