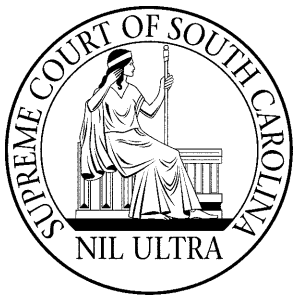

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

FILED DURING THE WEEK ENDING

September 29, 2003

ADVANCE SHEET NO. 36

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

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None

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Susan B. Oliver, Respondent.

Opinion No. 25721
Heard June 10, 2003 - Filed September 29, 2003

DEFINITE SUSPENSION

Henry B. Richardson, Jr., and Senior Assistant Attorney General James G. Bogle, Jr., both of Columbia, for the Office of Disciplinary Counsel.

Coming B. Gibbs, Jr., of Charleston, for respondent.

PER CURIAM: In this attorney disciplinary matter, the Commission on Lawyer Conduct filed formal charges against respondent Susan Oliver. Respondent filed an answer admitting the charges, but requesting the charges against her be dismissed. After a hearing, the Panel recommended respondent be given a public reprimand.

FACTS

On March 21, 1996, respondent was placed on disability inactive status

pursuant to former Rule 413, SCACR.[1] Prior to being placed on disability inactive status, respondent represented a client in a workers compensation matter. On November 30, 1995, a settlement payment, in the amount of $15,498 was received on the client's behalf. Of this amount, respondent's fee and costs were $5,310, giving the client a net amount of $10,188. After respondent took $2,000 cash out of the amount, the rest was deposited into respondent's trust account. Respondent did not timely disburse the proceeds to her client.

During December 1995 and January 1996, respondent wrote a series of checks on her trust account, payable to "cash" and other personal expenses, reducing the balance in the trust account to $8,453.69.

Respondent was committed to a mental health facility and remained there from January 26, 1996, to March 6, 1996. After her release, respondent obtained funds from family members and the remaining funds in her trust account to pay the client.

The Panel found respondent misappropriated approximately $1,734.31 from the client, and at the time these misappropriations occurred, respondent was suffering from the symptoms of her bipolar disorder.[2]

Panel's Findings

The Panel found that respondent has committed the following violations from Paragraph 5 of the Rule on Disciplinary Procedure, former Rule 413, SCACR: (1) violation of the oath of office taken upon admission to practice law, (2) violation of a rule of professional conduct, (3) conduct tending to pollute the administration of justice or bring the courts or legal profession into disrepute or conduct demonstrating an unfitness to practice law, and (4) conduct in violation of the Rules on Trust Accounts of

[1]At the hearing, respondent testified she has been treated for bipolar disorder since 1984.

[2]The full Panel adopted the Subpanel's report.

Attorneys. The Panel further found that respondent has violated the following Rules of Professional Conduct, Rule 407, SCACR: (1) Rule 1.1, competence; (2) Rule 1.3, diligence; (3) Rule 1.4, communication; (4) Rule 1.15 safekeeping of property; and (5) Rule 8.4, misconduct.

When determining how to discipline respondent, the Panel noted that in severe cases this Court has refused to accept impairment as an excuse or defense to a charge of misconduct. However, the Panel noted that in this case, the misappropriation occurred over a very short period of time, was relatively minor, and was immediately repaid by respondent upon her release from the hospital. The Panel was impressed with respondent's honesty and desire for rehabilitation and was convinced that respondent's failings did not represent a willingness to allow wrongdoing, but were the result of a single, isolated incident of mental illness. The Panel, therefore, recommended respondent be publicly reprimanded. The Panel noted respondent would remain on disability inactive status until further order of this Court.

DISCUSSION

The authority to discipline attorneys and the manner in which discipline is given rests entirely with the Supreme Court. In re Long, 346 S.C. 110, 551 S.E.2d 586 (2001). The Court may make its own findings of fact and conclusions of law, and is not bound by the Panel's recommendation. In re Larkin, 336 S.C. 366, 520 S.E.2d 804 (1999). The Court must administer the sanction it deems appropriate after a thorough review of the record. *Id.*

In a similar case involving misappropriation and subsequent reimbursement by a lawyer suffering bipolar disorder, we ordered a two-year retroactive suspension. In re Howle, 294 S.C. 244, 363 S.E.2d 693 (1988). In another case, we ordered a thirty-day suspension for similar misconduct and placed the attorney on disability inactive status. In re Holler, 329 S.C. 395, 496 S.E. 2d 627 (1998).

Respondent's conduct warrants a serious sanction. However, we conclude a six-month definite suspension is the appropriate sanction given the misappropriation occurred over a short period of time, was relatively

minor, and was immediately repaid by respondent upon her release from the hospital.

Accordingly, we definitely suspend respondent for six months, retroactive to the date respondent was placed on disability inactive status, and order her to pay the costs of these disciplinary proceedings. Within fifteen days of the date of this opinion, respondent shall file an affidavit with the Clerk of Court showing that she has complied with Rule 30 of the Rules for Lawyer Disciplinary Enforcement.

DEFINITE SUSPENSION.

s/Jean H. Toal C.J.

s/James E. Moore J.

s/John H. Waller, Jr. J.

s/E. C. Burnett, III J.

s/Costa M. Pleicones J.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Fountain Inn and Simpsonville Municipal Court Judge William G. Walsh, Respondent.

Opinion No. 25722
Submitted September 2, 2003 - Filed September 29, 2003

REMOVAL FROM OFFICE

Henry B. Richardson, Jr., and Deborah Stroud McKeown, both of Columbia, for Office of Disciplinary Counsel.

William G. Walsh, of Simpsonville, Pro Se.

PER CURIAM: In this judicial disciplinary matter, respondent and the Office of Disciplinary Counsel have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RJDE, Rule 502, SCACR. In the agreement, respondent admits misconduct and consents to the imposition of any sanction set forth in Rule 7(b), RJDE, Rule 502, SCACR. We accept the agreement and remove respondent from office. The facts, as set forth in the agreement, are as follows.

Facts

I. Intemperate Behavior Matters

A defendant, who had been charged with failure to stop for a stop sign, appeared before respondent for a bench trial. After the State presented its case in chief, the defendant and his wife testified and asserted the defendant had, in fact, stopped for the stop sign. Respondent, sua sponte, asked the officer if he had a videotape of the stop. The officer informed respondent that he had a videotape but that he would have to locate it. Respondent then stated to the defendant, "All right, I'll go you double or nothing. Okay? If I play the tape and find that you did not stop you will pay, as a fine, not only what is written on the ticket, but that amount again for not telling me the truth." After viewing the tape, respondent found it was clear the defendant did not stop at the stop sign. Although the defendant still believed he had come to a complete stop, he stated, "Write the ticket up."

Thereafter, respondent asked the defendant if he had any questions and the defendant stated, "At this point, I think I need to keep my mouth shut." Respondent threatened to charge the defendant with contempt. Respondent shouted in a loud and harsh voice, "Are you going to defy me [defendant]? [Wife], tell your husband unless I see a 100 - no wait- a 180 degree change in his attitude in five seconds I'm going to lock him up for contempt of court. I'll be damned if I'm going to have you or anyone else make a complete total mockery, do you understand me, sir?" Respondent continued to berate the defendant in a loud and harsh tone for his continued belief that the tape showed he came to a stop. Respondent stated, "You don't deserve to be driving . . . [y]ou drive badly and you lied to me." When the defendant's wife asked to speak, respondent stated, " . . . I don't know how much credibility you have . . . I gave you an out. I gave him an out. Your attitude, run the tape. I'm not going to run a tape unless I know exactly what's going to happen, okay? I'm not that stupid. You are, you didn't figure out that I had an idea of what goes on?"

Respondent further chastised the defendant for challenging the word of the officer, stating, "Didn't an officer under oath swear that you did not stop?" Respondent's question suggested a predisposed bias toward the testimony of an officer over defendants. Respondent again told the defendant he was "stupid."

Respondent now recognizes that (1) in requesting a tape after the parties had rested their respective cases, and after the officer had elected not to offer the tape, respondent assisted the officer in the prosecution of the defendant; (2) his "double or nothing" proposal would tend to cause defendants to waive their right to plead not guilty and to proceed with a bench trial; (3) defendants can be "mistaken" without "lying"; and (4) it was inappropriate under any circumstances for respondent to say "I'll be damned," call a defendant "stupid," lose his temper or appear to lose his temper, or shout in a loud, demeaning tone while holding court.

On two other occasions, respondent displayed similar intemperate behavior. In one instance, after releasing the jury at the conclusion of a trial, respondent screamed at the defendant who had been tried, told her how ashamed he was of her and asked her "who the hell" did she think she was.

In another instance, a defendant appearing before respondent informed respondent that his mother, who had accompanied him to court, had recently undergone serious surgery and that, as a result of the surgery, she was wearing a colostomy bag. The defendant's two children were also present. The respondent addressed the defendant, who had no prior criminal record, in a harsh tone, told the defendant he did not care about the condition of the defendant's mother, and sentenced the defendant to three days in jail. The defendant's mother took respondent's tone to be loud, harsh, and angry and reported that respondent raised his voice and growled while addressing the defendant. Respondent represents that he consistently gives a small amount of jail time for simple possession of marijuana, as well as for several other offenses he considers serious, as is within his discretion to do. He further represents that he is stern and harsh with defendants as part of their punishment and in an attempt to rehabilitate them.

Respondent acknowledges that he has, in the past, often and regularly talked loudly, sternly and in a demeaning manner to defendants. Respondent initially represented to Disciplinary Counsel that he felt this was appropriate because it was his responsibility to see to the correction of defendants and that it was part of their punishment that respondent was charged with imposing.[1] Respondent now acknowledges that shouting, belittling and cursing in the presence of defendants is inconsistent with the Code of Judicial Conduct.

II. Roll Call Matters

In March or April 2003, respondent initiated a procedure in both Simpsonville and Fountain Inn Municipal Courts pursuant to which defendants charged with magisterial level offenses who requested jury trials were required to appear in respondent's court once a week and answer a "jury trial roll call" at the conclusion of the other business of the court even when no jury trials were scheduled on those dates and even when no term for jury trials had been scheduled.[2] The defendants were required to appear on the date the bench trial had originally been scheduled and once a week thereafter until there was a disposition of their case or an attorney made an appearance on their behalf. Initially, respondent handled this procedure by issuing subpoenas to the defendants. Thereafter, respondent prepared a form for use in both the Simpsonville and Fountain Inn Municipal Courts.

On April 17, 1985, the Chief Justice of the South Carolina Supreme Court issued an administrative order for magistrate and municipal courts which provides, in part, ". . . that a person charged with a . . . traffic offense triable in a . . . municipal court may make written demand for jury

[1] On one occasion, respondent stated in open court, "It's purposely cold in here. I don't want it comfortable in here. In fact, I'm thinking about taking out chairs and just putting in hard benches. It's intentionally uncomfortable, that's part of the punishment aspect." Respondent now acknowledges that such comments were inappropriate and indicated a bias towards those who elected not to forfeit bond and were awaiting trial.

[2] On one occasion, respondent heard approximately seventeen cases and then had "jury trial roll call." On another occasion, respondent heard approximately twenty-five cases before having "roll call."

trial prior to the time and date set for bench trial, and the case shall be forthwith continued until the next available time reserved for jury trials, thereby relieving defendant of the responsibility for the appearance at the originally scheduled bench trial." This order is a part of the Magistrate's and Municipal Court Judge's Bench Book provided to each and every magistrate and municipal court judge by South Carolina Court Administration. Respondent was, upon appointment, given a copy of the Bench Book containing the administrative order. Respondent recognizes that (1) the "jury trial roll call" procedure he implemented is in violation of that order; (2) requiring defendants to appear at previously scheduled bench trials after they have requested a jury trial is in violation of the administrative order; (3) he was without authority to issue subpoenas for "jury trial roll call" and that doing so was in contravention of the administrative order; (4) he was without authority to issue orders requiring defendants to appear for "jury trial roll call" and that doing so was in violation of the administrative order; and (5) it was inappropriate to coerce defendants to obtain an attorney, especially for minor traffic offenses, and inappropriate to treat defendants without attorneys different from those with attorneys.

One defendant, who was charged with not having a brake light, requested a jury trial. The defendant appeared at approximately three "roll calls." On one occasion, respondent stated ". . . you've requested a jury trial . . . you will be here every Tuesday until your case is called, your case is tried, or an attorney sends notice of representation. You will be here for roll call . . . you requested a jury trial. You're being called every Tuesday for roll call until the case is tried . . . Okay? It's that simple."

On one occasion, the defendant requested to be excused early after appearing in a timely fashion for "roll call." He was held in contempt and sentenced to twenty-four hours in jail. This occurred after respondent learned that the defendant had asked to be allowed to answer roll call prior to the conclusion of the other business of the court to tend to some personal business the defendant felt was pressing. Respondent represents the sentence for contempt was warranted because the defendant was disrespectful to the court. The record indicates that respondent stated to the defendant, "You're the one who asked for a jury trial. You're gonna waste the city's money on a

jury trial? You don't think that I, a judge, would give you a fair hearing? You want a jury to hear it? You want to cost the city all that money for a jury? You're the one making a big deal of it! . . . . So you think a jury trial is fair, so that means you don't think I can be fair. . . . You've got things you've got to do so you come in and you mouth off, you mouth off to the Clerk of Court, you mouth off to the administrative judge and you come in my courtroom with an attitude . . . ." Then respondent asked the ministerial judge, "What do you think would be appropriate for [defendant]?" The ministerial judge stated he thought "[t]wenty-four hours" was appropriate. Respondent then asked the clerk, "Okay, madam clerk, what do you think would be appropriate?" The clerk responded, "The same." Thereafter, respondent sentenced the defendant to twenty-four hours in jail. Respondent now recognizes that this was an inappropriate delegation of his judicial authority and that he compromised the independence of the judiciary by soliciting input on the disposition of the matter from the ministerial judge and the clerk of court and by indicating that the ministerial judge and the clerk of court were in a special position to influence the judge.

The following week, the defendant appeared as required for "jury trial roll call" and respondent was advised that the defendant had withdrawn his request for a jury trial. Respondent proceeded to hear the case and dismiss the brake light charge against the defendant. The defendant advised Disciplinary Counsel that he withdrew his request for a jury trial to avoid having to come to "roll call" each week, to avoid hiring an attorney for an alleged brake light violation, and because he felt he could not get a fair trial from respondent.

A second defendant, who had been charged with a speeding violation and had requested a jury trial, was told to be in court on the date his bench trial had originally been scheduled. On that date, no jury trials were scheduled or held. Respondent suggested to the defendant that he might want to withdraw his request for a jury trial. When the defendant elected not to do so, respondent issued a subpoena requiring the defendant to appear again the following week despite the fact that no jury trials were scheduled or held on that date. This process continued for two weeks. When the defendant appeared on the third occasion, respondent demanded that the defendant

provide his social security number to be included on the "jury trial roll call" order. When the defendant objected to providing that information, respondent threatened the defendant with contempt of court.[3] It was the defendant's contention that the use of a person's social security number for such purposes is proscribed by federal law. Respondent is now aware that such is the case.

On the same date, respondent issued an order directing the defendant to appear in court at 10:00 a.m. every Tuesday thereafter until the completion of the trial of his case or receipt by the court of a letter of representation from an attorney. Under this arrangement, the defendant was required to appear approximately ten times for "jury roll call," sit through the other business of the court and then be excused until the next week. The only reason given by respondent for requiring the appearances was to ". . . make sure we don't lose track of each other."

Numerous other defendants who requested a jury trial were also required to appear before respondent on the date set for their bench trials and to appear for "jury trial roll calls" every Tuesday for weeks thereafter. On each occasion, roll was called at the conclusion of the other business before the court and the defendants were then allowed to leave the court with the requirement that they be back at the same time each week until their cases were concluded or they obtained the services of an attorney to represent them on their charges. The roll call requirement caused some defendants to travel long distances on a weekly basis and caused others to be absent from their jobs. At least three defendants who either did not appear on the date of their originally scheduled bench trial or who did not appear for "jury trial roll call" were tried in their absence and convicted of the offenses with which they had been charged.

Respondent maintains the purpose of the "jury trial roll calls" was to "keep track" of defendants who often ended up not availing themselves of

[3] Respondent required the first defendant, despite the defendant's wish not to do so, to recite the details of his earlier incarceration to the second defendant and all those present in the courtroom. After hearing the first defendant recite the circumstances of his incarceration, the second defendant relented and gave respondent his social security number.

the jury trials they had requested. In addition, respondent contends that, while awaiting roll call, defendants would be educated about respondent and his court and many would determine respondent was lenient and fair and that it would be in their best interest to withdraw their request for a jury trial and instead let their case be concluded by a bench trial before respondent. Respondent now recognizes that, in addition to being contrary to the plain language of the administrative order, the "jury trial roll call" procedure acted to deter persons from exercising their right to a trial by jury and their right to be released on bond pending trial.

III. Pre-trial Conference Matters

Prior to the holding of jury trials, pro se defendants were served with subpoenas requiring that they attend pre-trial conferences. No such subpoenas were served on the prosecutor or police officers; however, witnesses and victims were subpoenaed. At the pre-trial conferences, respondent sat on the bench and the pro se defendants were required to enter into discussions with the prosecutor for the State. Respondent maintains he did not conduct the conferences, but instead they were conducted by the prosecutor. Respondent now recognizes that this arrangement is suggestive of a bias toward the State, that there is no statutory authority authorizing the issuance of such subpoenas, that it was inappropriate to issue such subpoenas for the convenience of the State and not that of defendants, that it was inappropriate for respondent to issue subpoenas requiring defendants' presence at the conferences and then allow the prosecutor to conduct the conferences, and that this mandatory, one-sided appearance conflicted with the directives of the administrative order.

IV. Juror Dismissal Matter

A juror who had two young children and could not find anyone to care for them while she was on jury duty brought them with her to respondent's court. The juror advised a court employee of her situation. The employee told the juror that she had to go into the courtroom and discuss the matter with respondent. When the juror entered the courtroom, respondent, in a loud and harsh tone, told her she could not bring the children into the

courtroom, pointed his finger at her and told her to leave. The juror reported back to the employee and was again instructed she had to go into the courtroom and discuss the matter with respondent. When the juror explained to the employee that respondent had just told her to leave the courtroom, the employee told the juror to go home. The events were very embarrassing to the juror. Respondent represents that he was harsh with the juror because she was late to court, she should have brought up the issue of the lack of adequate care for the children prior to the date of jury service, and she should have left the children unattended in the hall and come into his courtroom without the children to address the issue of being excused from jury duty. Respondent is now aware that, pursuant to S.C. Code Ann. § 14-78-50, the juror was, as a matter of law, entitled to be excused from jury duty, that his staff should have advised the juror of the requirement of providing an affidavit as required by the statute, and that it was respondent's responsibility to have such issues addressed without respondent causing embarrassment to potential jurors under such circumstances.

V. Prior Disciplinary History

Respondent has received letters of caution from the Commission on Judicial Conduct on two prior occasions for conduct similar to that set forth in the Agreement for Discipline by Consent.

Law

Respondent admits that the conduct set forth above constitutes a violation of the following Canons of the Code of Judicial Conduct, Rule 501, SCACR: Canon 1 (a judge shall uphold the integrity and independence of the judiciary); Canon 2 (a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities); Canon 2(A)(a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary); Canon 2(B)(a judge shall not convey or permit others to convey the impression that they are in a special position to influence the judge); Canon 3 (a judge shall perform the duties of judicial office impartially and diligently); Canon 3(B)(2)(a judge shall be faithful to the law and maintain professional

competence in it); Canon 3(B)(4)(a judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity); Canon 3(B)(5)(a judge shall perform judicial duties without bias or prejudice); Canon 3(B)(7)(a judge shall accord to every person who has a legal interest in a proceeding the right to be heard according to law); Canon 3(C)(1)(a judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business); and Canon 3(C)(2)(a judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge).

Respondent also concedes that his misconduct constitutes grounds for discipline under the following provisions of the Rules for Judicial Disciplinary Enforcement, Rule 502, SCACR: Rule 7(a)(1)(it shall be a ground for discipline for a judge to violate the Code of Judicial Conduct); Rule 7(a)(5)(it shall be a ground for discipline for a judge to be habitually intemperate); and Rule 7(a)(7)(it shall be a ground for discipline for a judge to willfully violate a valid court order issued by a court of this state).

Conclusion

We find, based on respondent's history of intemperate behavior in the courtroom, his failure to modify his behavior after previous letters of caution, and his failure to abide by an administrative order of the Chief Justice, that removal from office is warranted. See In the Matter of Dearman, 277 S.C. 394, 287 S.E.2d 921 (1982)(magistrate removed from office due to habitual intemperance). It is therefore ordered that respondent be removed from office as of the date of the filing of this opinion.

REMOVED.

TOAL, C.J, WALLER, BURNETT and PLEICONES, JJ., concur. MOORE, J., not participating.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Wade H. Jones, III, Respondent.

Opinion No. 25723
Submitted August 29, 2003 - Filed September 29, 2003

DISBARRED

Henry B. Richardson, Jr., Susan M. Johnston and Princess F. H. Hodges, all of Columbia, for the Office of Disciplinary Counsel.

John P. Freeman, of Columbia, for Respondent.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR. In the agreement, respondent admits misconduct and consents to the sanction of an indefinite suspension or disbarment. We accept the agreement and disbar respondent from the practice of law in this state. The facts, as set forth in the agreement, are as follows.

Facts

From August 2000 until November 2002, respondent retained for his personal use approximately $51,000 in legal fees that belonged to the law

firm by which he was employed. On some occasions, respondent misappropriated funds by having clients make checks payable to him instead of the firm. On other occasions involving closings, instead of preparing a check to the law firm for the entire legal fee, respondent made one check payable to the firm for a portion of the fee and made another check payable to his personal credit card. On another occasion, respondent, without the client's consent, used client trust funds to pay two of his credit cards. It was respondent's intention to charge the client legal fees for the amount of the disbursements.

Taking into account monies the firm owed him, respondent still owes the firm $23,520. Respondent is attempting to repay this amount to the firm and fully acknowledges his responsibilities to the firm.

Law

Respondent admits that by his conduct he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.15(a) (a lawyer shall hold property of clients that is in the lawyer's possession in connection with a representation separate from the lawyer's own property); Rule 8.4(a) (it is professional misconduct for a lawyer to violate the Rules of Professional Conduct); and Rule 8.4(d) (it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent also acknowledges that his misconduct constitutes grounds for discipline under the following provisions of Rule 7, RLDE, Rule 413, SCACR: Rule 7(a)(1) (it shall be a ground for discipline for a lawyer to violate the Rules of Professional Conduct) 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).

Conclusion

We accept the Agreement for Discipline by Consent and disbar respondent. Within thirty days of the date of this opinion, Disciplinary Counsel and respondent shall establish a restitution schedule pursuant to which respondent shall make restitution to the law firm from which funds were taken. Failure to make restitution in accordance with this opinion and the restitution plan may result in respondent being held in contempt of this Court. Respondent shall not apply for readmission until restitution to the firm has been paid in full.

Within fifteen days of the date of this opinion, respondent shall file an affidavit with the Clerk of Court showing that he has complied with Rule 30 of Rule 413, SCACR, and shall also surrender his Certificate of Admission to the Practice of Law to the Clerk of Court.

DISBARRED.

TOAL, C.J., WALLER, BURNETT and PLEICONES, JJ., concur. MOORE, J., not participating.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Russell Brown, Respondent.

Opinion No. 25724
Submitted September 2, 2003 - Filed September 29, 2003

PUBLIC REPRIMAND

Henry B. Richardson, Jr., and Senior Assistant Attorney General James G. Bogle, Jr., both of Columbia, for the Office of Disciplinary Counsel.

David Christopher Shea, of Columbia, for Respondent.

PER CURIAM: Respondent and Disciplinary Counsel have entered into an agreement pursuant to Rule 21, RLDE, Rule 413, SCACR, in which respondent admits misconduct and agrees to accept an admonition or a public reprimand. Respondent also agrees to resign from membership in the South Carolina Bar effective December 31, 2003. Because respondent is 71 years old and has agreed to resign from the Bar, we accept the agreement and issue a public reprimand. The facts, as set forth in the agreement, are as follows.

Facts

I. Tax Sale Matter

Respondent was consulted by a client concerning a property dispute which resulted from a tax sale of the client's property. The client paid respondent a retainer of approximately $175. Thereafter, respondent investigated the tax sale and reported his findings to the client. The case was scheduled for trial before the master-in-equity in Charleston. Meanwhile, the client retained a new attorney who obtained the contents of the client's file from respondent. When the case came before the master-in-equity, respondent appeared as attorney for the opposing party.

The property matter was the same or substantially related to the matter in which the former client had consulted respondent prior to the date of the hearing. The former client's interests were materially adverse to the party respondent represented at the hearing. Respondent did not, prior to the trial, consult personally with the former client about his adverse representation of the opposing party at trial nor did he obtain the former client's consent to represent the opposing party.

II. Court Reporter Matter

On three separate occasions, respondent failed to promptly remit payment to Ray Swartz and Associates, Professional Court Reporters, for transcripts. On one occasion, respondent submitted a check which was returned due to insufficient funds. Respondent made repeated promises to pay the amounts, but did not do so until after letters of complaint were sent to the Commission on Lawyer Conduct by Ray Swartz and Associates.

III. Criminal Trial Matter

Respondent represented a client in a non-capital murder trial. Respondent argued the wrong burden of proof in his closing argument, stating the burden of proof was clear and convincing evidence. He also made

a post-trial motion for judgment notwithstanding the verdict although the only proper post-trial motion was a motion for a new trial. Respondent set forth mitigating circumstances and argued for parole eligibility for less than twenty years despite the fact that the case was a non-capital case in which statutory mitigating factors did not apply and the client was facing a statutorily mandated life sentence with parole eligibility after twenty years. Finally, respondent failed to sufficiently advise his client about the risks of testifying, resulting in the solicitor being able to use evidence of a prior bad act against the client during cross-examination. Respondent did not make a record of the extent of his advice to the client.

In addition, respondent had engaged in a sexual relationship with the client's mother prior to representing the client at trial. Respondent did not disclose that information to the client prior to or during the trial.

IV. Real Estate Closing Matter

Respondent performed a real estate closing for a client. New Home Builders, a construction company of which respondent was president at the time, loaned the client $7,000. Respondent and another corporate officer signed the check. This loan was made without advising the client to seek the advice of independent counsel.

V. Quiet Title and Partition Matter

Respondent was retained by a client to quiet title to a piece of property. The client was unable to pay the initial cost of the representation so respondent agreed to front all costs and recoup any expenses he may incur upon settlement and sale of the property. No written contract was entered into by respondent and the client. Respondent failed to document the time he spent on the matter.

Respondent conducted a title search and filed a Lis Pendens, Summons and Complaint, and a Notice of Intent to Refer the Case to the Master-In-Equity, in circuit court. The action to quiet title also included a claim to partition the land so that it could be sold. The matter was referred to

the master-in-equity who wrote a letter to respondent detailing problems with the case which rendered it unable to proceed. Thereafter, no action was taken on the case and it was eventually dismissed for lack of prosecution.

The client contacted respondent in an effort to obtain information about her case, but respondent failed to return her telephone calls. The client, accompanied by her children, went to respondent's office to discuss delays in the case and to request the return of the client's file so that she could seek other counsel; however, respondent refused to release the file. A confrontation ensued, and respondent ordered the client and her children to leave his office. When they refused to leave, respondent summoned the police.

The client paid respondent $500 for expenses related to the case. Respondent informed the Commission on Lawyer Conduct that he expended over $1,400 in personal funds on the case. As a result, respondent asserted a lien on the client file and refused to release any documents to the client other than documents the client had provided to him. The assertion of such a lien on the client's file was done without basis in law or fact.

VI. Forgery Matter

In 1971 and 1972, respondent prepared three deeds which bore the forged signatures of several grantors. All of the signatures were witnessed and/or notarized by respondent and/or his secretary or another notary public. The forged signatures were placed on the deeds without the knowledge or consent of the grantors and outside the presence of the witnesses or notary. Respondent did not forge the grantor's names on the deeds in question, but failed to fulfill his duties as witness and/or notary or failed to properly supervise his secretary when she served as a witness to the deeds. Moreover, respondent failed to include one of the grantors on the three deeds. In 1973, another lawyer prepared a deed, which included the names of all of the grantors, conveying a parcel of the property to a different grantee.

VII. Failure to Respond

Respondent failed to reply to a Notice of Full Investigation sent to him by the Commission on Lawyer Conduct in one of the above matters. An examination of respondent's file at the Notice to Appear, conducted pursuant to Rule 19(c)(4), RLDE, Rule 413, SCACR, revealed a handwritten response, a draft of a typed response, a transmittal letter and an unsigned file copy of a response mailed to the Commission; however, a response was never received by the Commission.

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 (a lawyer shall provide competent representation to a client); Rule 1.7(a) (a lawyer shall not represent a client if the representation of that client will be directly adverse to another client unless the lawyer reasonably believes the representation will not adversely affect the relationship with the other client and each client consents after consultation); Rule 1.9(a) (a lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation); Rule 3.2 (a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client); Rule 4.1 (in the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person or fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client); Rule 8.4(a) (it is professional misconduct for a lawyer to violate the Rules of Professional Conduct); Rule 8.4(c) (it is professional misconduct for a lawyer to engage in conduct involving moral turpitude); 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).

Respondent concedes that his misconduct constitutes grounds for discipline under the following provisions of Rule 7, RLDE, Rule 413, SCACR: Rule 7(a)(1) (it shall be a ground for discipline for a lawyer to violate the Rules of Professional Conduct); Rule 7(a)(3) (it shall be a ground for discipline for a lawyer to fail to respond to a lawful demand from a disciplinary authority including a request for a response); 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); and Rule 7(a)(6) (it shall be a ground for discipline for a lawyer to violate the oath of office taken upon admission to practice law in this state).

Conclusion

Normally, the misconduct set forth in this opinion would warrant an indefinite suspension. However, as stated earlier, respondent is 71 years old and has agreed to resign from the South Carolina Bar. Respondent would have to appear before this Court's Committee on Character and Fitness before seeking to be readmitted. Respondent would also have to meet the requirements of Rule 402, SCACR, before being readmitted, which, in addition to approval by the Committee on Character and Fitness, require him to take and pass the Bar Examination. It is only because of respondent's age, his agreement to resign from the South Carolina Bar and the unlikelihood that he will ever be readmitted to practice law in this state that we issue a public reprimand in this matter. Accordingly, we accept the Agreement for Discipline by Consent and publicly reprimand respondent for his actions.

PUBLIC REPRIMAND.

TOAL, C.J., WALLER, BURNETT and PLEICONES, JJ., concur. MOORE, J., not participating.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of David R. Harrison, Respondent.

Opinion No. 25725
Submitted August 29, 2003 - Filed September 29, 2003

DEFINITE SUSPENSION

Henry B. Richardson, Jr., Susan M. Johnston, and C. Tex Davis, all of Columbia, for the Office of Disciplinary Counsel.

David R. Harrison, of Pickens, Pro Se.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR. In the agreement, respondent admits misconduct and consents to the imposition of a thirty day suspension from the practice of law. We accept the agreement and suspend respondent from the practice of law for thirty days.[1] The facts, as set forth in the agreement, are as follows.

[1] Respondent has received two prior private reprimands and a letter of caution for unrelated misconduct. He also received a ninety day suspension for failure to pay state income taxes. In the Matter of Harrison, 322 S.C. 444, 472 S.E.2d 620 (1996).

Facts

Respondent was retained to represent a client and her children with regard to injuries sustained in an automobile accident. Respondent failed to reduce the contingency fee agreement to writing.

Over a period of four years, respondent never communicated in writing with the client and only had three meetings with the client. The client initiated all contact with respondent regarding her case.

Within three months of agreeing to represent the client, respondent learned that the client's physicians did not support the contention that the client's injuries were caused by the car accident. However, respondent failed to render candid advice to the client regarding the merits of her case. When the client contacted respondent to inquire about the status of her case, respondent repeatedly told her he was working on the case and, on one occasion, told her the case was "on the docket." Respondent failed to inform the client of the applicable statute of limitations. When the client finally confronted respondent about the lack of progress with her case, respondent informed her that he had never filed the lawsuit because he and the client "would be laughed out of court."

Respondent's deceit and misrepresentation prevented the client from seeking competent legal advice and making an informed decision regarding the merits of her case. As a result of respondent's inaction and failure to render timely legal advice, the client has been barred from any recovery for herself or her children due to the expiration of the statute of limitations.

Law

Respondent admits that by his conduct he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client); Rule 1.4 (a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed

decisions regarding the representation, keep the client reasonably informed about the status of the matter, and promptly comply with reasonable requests for information); Rule 1.5(c) (a contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined and upon conclusion of the matter the lawyer shall provide the client with a written statement stating the outcome of the matter, the remittance to the client, if there is a recovery, and the method of its determination); Rule 1.16(d) (while a lawyer may withdraw from representation of a client if the client insists upon pursuing an objective the lawyer considers imprudent, upon termination of representation, the lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned); Rule 2.1 (in representing a client, a lawyer shall exercise independent professional judgment and render candid advice); Rule 3.2 (a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client); and Rule 8.4(a) (it is professional misconduct for a lawyer to violate the Rules of Professional Conduct).

Respondent also admits that his misconduct constitutes grounds for discipline under Rule 7(a)(1) of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR.

Conclusion

We hereby accept the Agreement for Discipline by Consent and suspend respondent from the practice of law in this state for thirty days. Within fifteen days of the date of this opinion, respondent shall file an affidavit with the Clerk of Court showing that he has complied with Rule 30, RLDE, Rule 413, SCACR.

DEFINITE SUSPENSION.

TOAL, C.J., WALLER, BURNETT and PLEICONES, JJ., concur. MOORE, J., not participating.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Jeffrey T. Spell, Respondent.

Opinion No. 25726
Submitted August 8, 2003 - Filed September 29, 2003

PUBLIC REPRIMAND

Henry B. Richardson, Jr., and Michael S. Pauley, both of Columbia, for the Office of Disciplinary Counsel.

Jeffrey T. Spell, of Charleston, Pro Se.

PER CURIAM: Respondent and Disciplinary Counsel have entered into an agreement pursuant to Rule 21, RLDE, Rule 413, SCACR, in which respondent admits misconduct and agrees to accept an admonition or a public reprimand. We accept the agreement and issue a public reprimand. The facts, as set forth in the agreement, are as follows.

Facts

I. Loan Closing Matter

Respondent was retained by a client to act as a closing attorney in the refinancing of the client's home. When respondent learned the client would not be available on the date originally scheduled for the closing, he

provided the loan package to the mortgage broker. The mortgage broker took the loan package to the client's house to be executed over the weekend. Respondent admits he was not present when the loan documents were executed by the client. Instead, respondent requested that the mortgage broker contact respondent on his cellular phone if questions arose regarding the transaction or the execution of the closing documents.

Respondent instructed the mortgage broker to make sure the client understood her three day right of rescission and to "make sure the borrower understands that the settlement statements in the package were prepared by the lender and [do] not show all fees to be collected." Respondent instructed the mortgage broker to inform the client that she would have to come to respondent's office and sign a settlement statement prepared by respondent's office prior to the disbursement of funds. Respondent did not communicate directly with the client for approximately eighteen days after the loan package was executed.

The client received the loan proceeds prior to discussing or signing the settlement statement that was to be prepared by respondent. As a result of respondent's failure to adequately and timely explain the closing and the disbursements to the client, the client negotiated the proceeds without fully understanding the amounts she would receive as a result of the closing. This lack of understanding led to the client spending funds for purposes other than to pay off a specific debt which was a major reason for the client refinancing her home.

Respondent admits that his actions assisted a person, who is not a member of the Bar, to engage in the unauthorized practice of law. He also admits that his failure to directly participate in the closing contributed to the frustration of the client's original purpose for refinancing her home.

II. Recording of Deed Matter

Respondent closed a residential real estate transaction for a client. As a result of respondent's failure to timely record the deed, the client was

required to pay his property taxes at a rate of 6%, rather than the primary residence rate of 4%.

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 (a lawyer shall provide competent representation to a client); Rule 1.2(a) (a lawyer shall abide by a client's decisions concerning the objectives of representation and shall consult with the client as to the means by which they are to be pursued); Rule 1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client); Rule 1.4(a) (a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information); Rule 1.4(b) (a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation); Rule 5.5(b) (a lawyer shall not assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law); Rule 8.4(a) (it is professional misconduct for a lawyer to violate the Rules of Professional Conduct); and 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 acknowledges that his misconduct constitutes grounds for discipline under the following provisions of Rule 7, RLDE, 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 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); and Rule 7(a)(6) (it shall be a ground for discipline for a lawyer to violate the oath of office taken upon admission to practice law in this state).

Conclusion

We find that respondent's misconduct warrants a public reprimand. See In the Matter of Lester, 353 S.C. 246, 578 S.E.2d 7 (2003). Accordingly, we accept the Agreement for Discipline by Consent and publicly reprimand respondent for his actions.

PUBLIC REPRIMAND.

TOAL, C.J., WALLER, BURNETT and PLEICONES, JJ., concur. MOORE, J., not participating.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Kay F. Paschal, Respondent.

Opinion No. 25727
Submitted August 29, 2003 - Filed September 29, 2003

PUBLIC REPRIMAND

Henry B. Richardson, Jr., and Barbara M. Seymour, both of Columbia, for the Office of Disciplinary Counsel.

Desa A. Ballard and Jason B. Buffkin, both of West Columbia, for Respondent.

PER CURIAM: Respondent and Disciplinary Counsel have entered into an agreement pursuant to Rule 21, RLDE, Rule 413, SCACR, in which respondent admits misconduct and agrees to accept an admonition or a public reprimand. We accept the agreement and issue a public reprimand.[1] The facts, as set forth in the agreement, are as follows.

[1] Respondent has previously received a private reprimand and a letter of caution for similar but unrelated violations of the Rules of Professional Conduct.

Facts

I. Failure to Respond to Disciplinary Counsel Matter

Respondent failed to timely respond to inquiries from Disciplinary Counsel during an investigation into a complaint against respondent. Respondent did not respond to a letter from Disciplinary Counsel informing respondent of the complaint or to a letter from Disciplinary Counsel sent pursuant to In re Treacy, 277 S.C. 514, 290 S.E.2d 240 (1982), which again requested a response to the allegations in the complaint. Respondent did not file a written response to the allegations until after she was served with a Notice of Full Investigation.

During the initial investigation, respondent was experiencing difficulty receiving mail sent to her home office. Respondent failed to take reasonable steps to ensure that she was receiving mail at that address, which was listed with the South Carolina Bar and this Court.

II. Continuing Legal Education (CLE) Matter

Respondent failed to keep accurate records of the time she spent attending continuing legal education seminars in 2001 and 2002. As a result, respondent inadvertently claimed full credit for a CLE seminar that was actually cut short when one of the scheduled speakers was unable to attend. Following an audit by the Commission on Continuing Legal Education and Specialization, respondent was administratively suspended for nine days until she completed and reported sufficient CLE hours to meet her annual requirement.

III. Contract Dispute Matter

Respondent was retained to represent a client in connection with a contract dispute with a builder. When settlement negotiations were unsuccessful, the client agreed to pursue the matter with litigation. After filing a complaint, respondent gave her client file to another attorney to review for possible association on the case. Respondent did not retain a copy

of the file. The other attorney did not accept the case and respondent never retrieved her client file. In addition, because respondent failed to properly serve the builder with the complaint, the lawsuit was dismissed for lack of service. Respondent did not inform the client of the dismissal or that her file had been sent to another attorney. The client learned of the dismissal by calling the clerk of court, who she contacted after thirteen telephone calls to respondent went unreturned. By the time the client learned of the dismissal, the statute of limitations had expired on her claims against the builder.

Law

Respondent admits that by her conduct she has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (a lawyer shall provide competent representation to a client); Rule 1.2 (a lawyer shall abide by a client's decisions concerning the objectives of representation and shall consult with the client as to the means by which they are to be pursued); Rule 1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client); Rule 1.4 (a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, keep the client reasonably informed about the status of the matter, and promptly comply with reasonable requests for information); Rule 3.2 (a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client); Rule 8.4(a) (it is professional misconduct for a lawyer to violate the Rules of Professional Conduct); and Rule 8.4(e) (it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice).

Respondent's misconduct constitutes grounds for discipline under the following provisions of Rule 7, RLDE, Rule 413, SCACR: Rule 7(a)(1) (it shall be a ground for discipline for a lawyer to violate the Rules of Professional Conduct); Rule 7(a)(3) (it shall be a ground for discipline for a lawyer to fail to respond to a lawful demand from a disciplinary authority including a request for a response); 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).

Conclusion

We find that respondent's misconduct warrants a public reprimand. Accordingly, we accept the Agreement for Discipline by Consent and publicly reprimand respondent for her actions.

PUBLIC REPRIMAND.

TOAL, C.J., WALLER, BURNETT and PLEICONES, JJ., concur. MOORE, J., not participating.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of M. M. Weinberg, III, Respondent.

Opinion No. 25728
Submitted August 29, 2003 - Filed September 29, 2003

INDEFINITE SUPSENSION

Susan M. Johnston and C. Tex Davis, Jr., both of Columbia, for the Office of Disciplinary Counsel.

John P. Freeman, of Columbia, for Respondent.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR. In the agreement, respondent admits misconduct and consents to a sanction ranging from a one year suspension from the practice of law to an indefinite suspension from the practice of law. After considering information submitted by respondent in mitigation, we accept the agreement and impose an indefinite suspension. The facts, as set forth in the agreement, are as follows.

Facts

I. Matter A

Respondent was retained to defend clients in a civil action and to file a counterclaim on the clients' behalf. The clients paid respondent a $2,000 retainer fee. It was further agreed that respondent would receive a fee of twenty-five percent of any recovery on the counterclaim minus the $2,000 retainer fee. However, respondent failed to prepare and have executed a written fee agreement.

For almost two years, respondent conducted discovery in the case. When opposing counsel filed a motion for summary judgment, respondent requested the counterclaim be dismissed pursuant to Rule 40(j), SCRCP. A consent order dismissing the lawsuit was executed by respondent, without the knowledge or consent of the clients, and filed in Horry County. Over the next two years and nine months, respondent initiated and continued a pattern of intentional misrepresentations to the clients concerning the progress of the case. During that time, respondent performed little or no work on the case and the case was never restored to the docket.

However, respondent informed the clients that the court had awarded them a judgment of $135,000. Respondent informed the clients that they would receive $102,000 of the judgment. When the clients asked respondent for a copy of the order, respondent maintained the court had issued a verbal order and he therefore could not produce any documentation to support the existence of the order. Thereafter, respondent continued to make numerous misleading statements and produce fabricated documents consistent with the misleading statements to deceive the clients regarding respondent's efforts to secure the non-existent judgment.

At one point, respondent presented the clients with a check for $25,000 drawn on respondent's operating account.[1] Respondent informed the clients that the money was a partial payment of the judgment. Over the next

[1] Respondent represents he used personal funds, not other client funds or law firm funds, to pay the client.

several months, respondent made numerous false promises and statements to the clients regarding respondent's efforts to obtain the balance of the non-existent judgment. On two separate occasions, respondent informed the clients that he had received the remaining balance of the judgment and would be depositing the money into the clients' account; however, no such deposit was ever made. Respondent did pay the clients $8,000, once again out of personal funds, under the guise of an additional partial payment of the judgment. Respondent assured the clients he would have the remaining balance within thirty days. Approximately one month later, respondent presented the clients with a check for $5,000 drawn on respondent's operating account, into which respondent had purportedly placed personal funds to continue to cover up the scheme to deceive the clients. Shortly thereafter, respondent informed the clients that he still did not have the balance of the funds but offered to pay the clients the balance owed by selling stock and property, which he would recover through a subsequent lawsuit. The clients informed respondent that they did not want his money but instead wanted the money from the judgment respondent claimed had been awarded to the clients.

II. Matter B

Respondent was retained by a client to represent her as to any claims she had as a result of her husband's death in a car accident. Respondent led the client to believe he had hired an expert witness to examine her husband's car and that the fictitious expert had issued a report stating the accident was due to the car having faulty brakes. Respondent waited until the day before the statute of limitations expired to file the case. Respondent misrepresented to the client the value of her case and failed to provide her with candid advice regarding the merits of the case. As a result, the client had unrealistic expectations of a large settlement or judgment.

Just over a year after the case was filed, respondent, without the client's knowledge or consent, consented to the case being dismissed pursuant to Rule 40(j), SCRCP. Respondent failed to inform the client of his actions after the consent order was signed. After respondent informed the client that he could no longer handle her case due to his impending withdrawal from the

practice of law, the client took her file to another attorney for review. That attorney would not accept the case due to a lack of evidence to substantiate the claim. When the client asked respondent why her file did not contain the expert's report, respondent informed the client that the report should have been in the case file.

III. Matter C

Respondent was retained to assist a client in obtaining title to a mobile home and resolving an unrelated contract dispute. However, respondent failed to maintain adequate communication with the client regarding the status of his cases and failed to pursue the client's cases in a diligent manner, requiring the client to seek other legal counsel.

IV. Matter D

Respondent was retained to handle a workers' compensation claim for a client. After receiving an initial judgment, respondent filed an appeal. However, respondent failed to perform the necessary research to determine the impact the appeal would have on the statute of limitations. As a result, the statute of limitations which applied to the case expired.

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 (a lawyer shall provide competent representation to a client); Rule 1.2 (a) (a lawyer shall abide by a client's decisions concerning the objectives of representation and shall consult with the client as to the means by which they are to be pursued); Rule 1.2(c) (a lawyer may limit the objectives of the representation if the client consents after consultation); Rule 1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client); Rule 1.4 (a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, keep the client reasonably informed about the status of the matter, and promptly comply with reasonable requests for

information); Rule 1.5(c) (a contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined and upon conclusion of the matter the lawyer shall provide the client with a written statement stating the outcome of the matter, the remittance to the client, if there is a recovery, and the method of its determination); Rule 2.1 (in representing a client, a lawyer shall exercise independent professional judgment and render candid advice); Rule 3.1 (a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous); Rule 3.2 (a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client); Rule 8.4(a) (it is professional misconduct for a lawyer to violate the Rules of Professional Conduct); 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).

In addition, respondent admits that his actions constitute grounds for discipline under the following provisions of Rule 7, RLDE, Rule 413, SCACR: Rule 7(a)(1) (it shall be a ground for discipline for a lawyer to violate the Rules of Professional Conduct) 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).

Conclusion

Ordinarily, the misconduct set forth in this opinion would warrant disbarment. However, respondent has presented medical evidence that these violations occurred while he was suffering from a psychological illness which manifested itself in an intense need to please others even to the detriment of respondent's own personal health and well being. Taking into account respondent's diagnosis and the fact that he is currently undergoing treatment for his condition, we accept the Agreement for Discipline by Consent and impose an indefinite suspension. In re Glover, 333 S.C. 423, 510 S.E.2d 419 (1998)("In the past, we have allowed evidence of depression

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

INDEFINITE SUSPENSION.

TOAL, C.J., WALLER, BURNETT and PLEICONES, JJ., concur. MOORE, J., not participating.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Randall M. Chastain, Respondent.

Opinion No. 25729
Heard September 24, 2003 - Filed September 29, 2003

DISBARRED

Henry B. Richardson, Jr., and Michael S. Pauley, both of Columbia; for the Office of Disciplinary Counsel

Randall M. Chastain, of Charleston, pro se.

PER CURIAM: In this attorney disciplinary matter, the Hearing Officer and the Full Panel recommended respondent Randall M. Chastain be disbarred. We agree and disbar respondent.

FACTS

Respondent's disciplinary history is pertinent to the instant matter. In 1994, this Court definitely suspended respondent for: neglecting several legal matters, failing to respond to various clients' telephone calls and letters, failing to return retainer fees, and failing to respond to inquiries by disciplinary authorities. We imposed a two-year definite suspension and

ordered respondent to pay restitution in excess of $30,000 to his clients before applying for readmission to the Bar. In re Chastain, 316 S.C. 438, 450 S.E.2d 578 (1994).

In 1995, we found respondent in criminal contempt of the 1994 suspension order because he had performed legal research and prepared and reviewed pleadings. In re Chastain, Order No. 1995-OR-1448 (S.C. Sup. Ct. dated October 6, 1995). No additional sanction was imposed on respondent.

In 1997, we suspended respondent for 90 days after he pleaded guilty to three counts of failure to make and file a state income tax return in tax years 1989, 1990, and 1993. In re Chastain, 327 S.C. 173, 488 S.E.2d 878 (1997).

Finally, in 2000, we considered whether to sanction respondent after he was convicted of one count of breach of trust with fraudulent intent. The conduct underlying the conviction involved the failure to return one of the retainer fees involved in the 1994 proceeding. We declined to impose an additional sanction. In re Chastain, 340 S.C. 356, 532 S.E.2d 264 (2000).

Respondent has never been reinstated since his 1994 two-year definite suspension. However, even a suspended lawyer is subject to the Rules for Lawyer Disciplinary Enforcement. Specifically, Rule 34 of the RLDE provides as follows, in pertinent part:

> A lawyer who is disbarred, suspended or transferred to incapacity inactive status shall not be employed by a member of the South Carolina Bar as a paralegal, investigator or in any other capacity connected with the law.… A disbarred or suspended lawyer who violates this rule shall be deemed in contempt of the Supreme Court and may be punished accordingly.

Rule 34, RLDE, Rule 413, SCACR.

The charges brought against respondent in the instant matter concern his employment as Office Manager with the Richland County Attorney's Office. According to the formal charges, respondent became employed with

the County Attorney's Office in September 1999. The job description for the position of Office Manager states that the manager "organizes and oversees the day-to-day office/administrative activities of the County Attorney's Department including paralegal activities; adherence to established Court dates/deadlines, legal preparations and other related documentation and research." In addition, the job description detailed that the Office Manager would: (1) regularly interact with outside attorneys and representatives of the court system; and (2) have part-time law clerks reporting to him.

The Office of Disciplinary Counsel alleged that these job responsibilities applied to respondent's employment with the County Attorney's Office, and therefore, respondent acted as a paralegal and supervised other paralegals. In short, the formal charges allege that respondent's job as Office Manager constituted employment connected with the law in violation of Rule 34 of the RLDE. Additionally, respondent failed to respond to the formal charges, various initial inquiries from Disciplinary Counsel, and the Notice of Full Investigation. Accordingly, respondent was found in default.

At the hearing (which respondent did not attend), Disciplinary Counsel presented a single witness, Barbara Hinson, records custodian for the Commission on Lawyer Conduct.[1] The Hearing Officer found respondent had been properly served with both the Notice of the Hearing and the Order of Default and yet had failed to appear at the hearing to provide any mitigation evidence. Further, the Hearing Officer found respondent had violated various Rules of Professional Conduct (RPC), Rule 407, SCACR.[2] In addition, the Hearing Officer found respondent had violated Rule 34, RLDE, supra. As to the sanction, the Hearing Officer specifically referenced this Court's 1995 contempt order wherein the Court found respondent in criminal contempt for practicing law while under suspension. The Hearing Officer concluded that respondent engaged in a deliberate pattern of

[1] Hinson essentially provided exhibits documenting respondent's disciplinary history and his failure to respond to ODC's various inquiries and filings.
[2] See Rules 5.5; 7(a)(1), (3), (5), (6) & (7); 8.1(b); and 8.4.

misconduct and recommended respondent be disbarred. The Panel adopted the Hearing Officer's report and recommendation.

DISCUSSION

It is of course well-settled that the authority to discipline attorneys and the manner in which the discipline is given rests entirely with this Court. E.g., In re Yarborough, 337 S.C. 245, 524 S.E.2d 100 (1999). Because respondent failed to answer the formal charges against him, this failure constitutes an admission of the factual allegations. See Rule 24(a), RLDE, Rule 413, SCACR; In re Purvis, 347 S.C. 605, 557 S.E.2d 651 (2001). Furthermore, respondent failed to appear at the hearing; therefore, he is deemed to have: (1) admitted the factual allegations that were to be the subject of such appearance; and (2) conceded the merits of any recommendation to be considered at the hearing. Rule 24(b), RLDE; Purvis, supra. Accordingly, we only have to determine the appropriate sanction for respondent. E.g., Purvis, supra; In re Rast, 337 S.C. 588, 524 S.E.2d 619 (1999).

We find respondent violated the following Rules of Professional Conduct (RPC), Rule 407, SCACR:

(1) Rule 5.5 (unauthorized practice of law);

(2) Rule 7(a)(1), (3), (5), (6) & (7) (it is grounds for discipline for a lawyer to violate or attempt to: violate the Rules of Professional Conduct, Rule 407, SCACR; knowingly fail to respond to a lawful demand from a disciplinary authority; engage in conduct tending to pollute the administration of justice or to bring to the courts or the legal profession into disrepute or conduct demonstrating an unfitness to practice law; violate the oath of office taken upon admission to practice law in this state; willfully violate a valid court order issued by a court of this state);

(3) 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); and

(4) Rule 8.4 (violation of the rules of professional conduct).

Moreover, it is clear respondent violated Rule 34 of the RLDE. See Rule 34, RLDE, Rule 413, SCACR (a suspended lawyer shall not be employed as a paralegal, investigator **or in any other capacity connected with the law**).

Respondent has demonstrated a pattern of misconduct. In addition to his other misconduct over the years, he has on more than one occasion worked, while under suspension, in a capacity connected with the practice of law. Obviously, employment within a County Attorney's office falls within the ambit of the type of work barred by Rule 34, RLDE. Accordingly, we disbar respondent. See In re Hall, 341 S.C. 98, 533 S.E.2d 588 (2000) (where Hall was disbarred for practicing law while under indefinite suspension, neglect of legal matters, and failure to respond to disciplinary authority).

Within fifteen days of the date of this opinion, respondent shall file an affidavit with the Clerk of Court showing that he has compiled with Rule 30 of Rule 413, SCACR, and shall also surrender his Certificate of Admission to the Practice of Law to the Clerk of Court.

DISBARRED.

TOAL, C.J., WALLER, BURNETT, PLEICONES, JJ., and Acting Justice G. Thomas Cooper, Jr.

The Supreme Court of South Carolina

In the Matter of Robert J. Cantrell, Respondent.

ORDER

The Office of Disciplinary Counsel has filed a petition asking this Court to place respondent on interim suspension pursuant to Rule 17(b), RLDE, Rule 413, SCACR. Respondent consents to the issuance of an order placing him on interim suspension.

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

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

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

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

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

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

IT IS SO ORDERED.

Jean H. Toal C.J.
FOR THE COURT

Columbia, South Carolina
September 23, 2003

The Supreme Court of South Carolina

In the Matter of Robert Lee Newton, Jr., Respondent.

ORDER

The Office of Disciplinary Counsel has filed a petition asking this Court to place respondent on interim suspension pursuant to Rule 17(a), RLDE, Rule 413, SCACR, based on respondent's arrest for manufacturing marijuana with intent to distribute and possession of marijuana with intent to distribute in violation of S.C. Code Ann. § 44-53-370. Respondent consents to the issuance of an order placing him on interim suspension.

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

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

account(s) respondent may maintain that are necessary to effectuate this appointment.

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

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

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

IT IS SO ORDERED.

Jean H. Toal C.J.
FOR THE COURT

Columbia, South Carolina
September 25, 2003

The Supreme Court of South Carolina

In the Matter of M. Parker Vick, Respondent.

ORDER

The Office of Disciplinary Counsel has filed a petition asking this Court to place respondent on interim suspension pursuant to Rule 17(b), RLDE, Rule 413, SCACR. Respondent consents to the issuance of an order placing him on interim suspension.

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

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

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

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

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Edward L. Bailey, Esquire, and Robert H. Cooper, Esquire, have been duly appointed by this Court and have the authority to receive respondent's mail and the authority to direct that respondent's mail be delivered to either of their offices.

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

IT IS SO ORDERED.

Costa M. Pleicones J.
FOR THE COURT

Columbia, South Carolina
September 26, 2003

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Robert L. Townsend, Respondent,

v.

Patricia Joyce Townsend, Appellant.

Appeal From Dillon County
Jamie Lee Murdock, Jr., Family Court Judge

Opinion No. 3680
Heard August 20, 2003 – Filed September 29, 2003

REVERSED

Flo Lester Vinson, of Florence, for Appellant.

Robert L. Widener, of Columbia, for Respondent.

GOOLSBY, J.: This is an appeal from an order of the family court granting the respondent Robert L. Townsend's request for a reduction in child support. Patricia Joyce Townsend, Townsend's former wife and custodial parent of the children affected by the family court's order, appeals that reduction. We reverse.

FACTS

The parties, who were married on March 12, 1993, have three children, one of whom is autistic. At the time of the divorce hearing on June 29, 2000, the children were six, five, and three years old. The father is a medical doctor while the mother is a full-time homemaker. The father earned $250,000 a year or about $21,000 a month at the time of the divorce hearing.

A settlement agreement filed on July 5, 2000, set the amount of monthly child support at $3,250. When the parties entered into the agreement on June 29, 2000, the father had submitted his resignation to his employer, Dillon Internal Medicine, some thirty days or so before. The agreement was based on the father's "income as of that moment," that is, the date of the settlement agreement.[1] The family court approved the settlement agreement, incorporating it into its order of divorce.

As anticipated, the father left Dillon International Medicine in November 2000, four months after the family court filed its order on July 5, 2000. He opened his own medical practice on December 1, 2000, employing twelve employees. Approximately two weeks after he opened his medical practice, the father sought a reduction in his child support obligation.

Following the divorce, the father remarried, paid counsel fees to adopt his new wife's son, and bought a house that carries a mortgage of $185,000. In addition to his new home, the father owns a rental house. He also has five automobiles, including a Durango that he helped his new wife purchase after borrowing $27,000, and three collector Corvettes that cost him $915 a month. During the first five months of 2001, the father's current wife, using "marital funds," took "a couple" of vacations "for a couple of weeks at a time." The

[1] The father acknowledged that when he negotiated the parties' agreement, he contemplated that his change in employment could result in a decrease in income. The father stated he specifically considered several alternative methods of calculating his income, but expressly agreed to an amount based on his current income, notwithstanding the fact that he would be leaving his employment with Dillon Internal Medicine and going out on his own.

father also paid to fly his current wife, his mother, and his mother-in-law to and from Michigan for family visits.

The father's notarized, handwritten March 6, 2001 financial declaration places his gross salary and wages at $15,000 a month and shows him receiving an additional $550 a month in rental income. In other words, he earns approximately $186,000 a year.

The family court reduced the father's child support obligation by $895 a month, requiring him to make monthly payments of $2,355.

STANDARD OF REVIEW

While the court of appeals may make findings of fact based on its own view of the preponderance of the evidence when reviewing a family court order[2], questions concerning child support are ordinarily committed to the discretion of the family court, whose conclusions will not be disturbed on appeal absent a showing of an abuse of discretion.[3] An abuse of discretion occurs either when the court is controlled by some error of law or where the order, based upon findings of fact, lacks evidentiary support.[4]

A substantial or material change of circumstances must occur to warrant a modification of child support.[5] Generally, a change in future circumstances within the contemplation of the parties at the time of a child support award affords no basis for a modification of the award[6], unless the future change is one that cannot be addressed at the time because of other

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[2] Kelley v. Kelley, 324 S.C. 481, 477 S.E.2d 727 (Ct. App. 1996).

[3] Mitchell v. Mitchell, 283 S.C. 87, 320 S.E.2d 706 (1984).

[4] McKnight v. McKnight, 283 S.C. 540, 324 S.E.2d 91 (Ct. App. 1984).

[5] Calvert v. Calvert, 287 S.C. 130, 336 S.E.2d 884 (Ct. App. 1985).

[6] Id. at 139, 336 S.E.2d at 889.

considerations.[7] Moreover, a reduction in the earning capacity of a supporting parent does not necessarily require a reduction in child support.[8] Indeed, a reduction in child support cannot be based on a decrease in the noncustodial parent's income absent a strong showing by the latter that he or she can no longer make the support payments required by the earlier order.[9] Where the amount of child support is based on a settlement agreement, the party requesting a modification has an even heavier burden.[10]

ISSUE

Whether the family court erred in finding there had been a substantial or material change in circumstances to warrant a decrease in child support.[11]

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[7] Sharps v. Sharps, 342 S.C. 71, 535 S.E.2d 913 (2000).

[8] Vestal v. Vestal, 297 S.C. 215, 375 S.E.2d 355 (Ct. App. 1988).

[9] Miller v. Miller, 299 S.C. 307, 384 S.E.2d 715 (1989); see generally Garris v. Cook, 278 S.C. 622, 300 S.E.2d 483 (1983) (holding that the party seeking to modify a support obligation has the burden of proving a sufficient change of circumstances).

[10] Ratchford v. Ratchford, 295 S.C. 297, 368 S.E.2d 214 (Ct. App. 1988); 27 C.J.S. Divorce § 735, at 386 (1986).

[11] The father attempts to couch an unappealed adverse evidentiary ruling by the family court as an "additional sustaining ground." Cf. I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 418, 526 S.E.2d 716, 722 (2000) (The supreme court "chose to avoid using the term 'additional sustaining ground' in the present appellate court rules. Instead, the present rules provide simply that '[r]espondent's brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c), [SCACR].") (alterations in original). The ruling excluded certain evidence on the question of whether he voluntarily left his employment with Dillon Internal Medicine. The family court viewed the question of whether the father voluntarily left that medical practice as an issue resolved by the court-approved settlement agreement. We agree with the family court. See 27

ANALYSIS

In our view, the father failed to make the strong showing necessary for a downward modification of his child support obligation for his three children. First, the father continues to maintain a high standard of living, notwithstanding his change of jobs. He has acquired a new home, helped his new wife to buy a new motor vehicle, paid for his new wife's vacations, paid for other trips for her and other family members, and made payments for three collector Corvettes each month in an amount that exceeds by $20 the amount of the child support reduction granted him by the family court.[12] Second, while we recognize the father's earnings have decreased since he left Dillon Internal Medicine to open his own medical practice, as he planned to do before the divorce, nothing in the record persuades us that his earning potential has been adversely affected by the move.[13] His current gross income as reflected in his financial statement is still quite substantial and of an amount sufficient for him to honor the agreement to pay the sum of $3,250 a month in child support, an agreement the family court incorporated into its order.

C.J.S. Divorce § 735, at 387 (1986) (stating that evidence dealing with matters occurring before the entry of the original decree will usually be excluded).

[12] See Kielar v. Kielar, 311 S.C. 466, 429 S.E.2d 851 (Ct. App. 1993) (ruling that there was no material change in circumstances warranting modification of alimony or child support where an anesthesiologist earning in excess of $300,000 a year at the time of the divorce later took a job paying $180,000); see also Eagerton v. Eagerton, 265 S.C. 90, 95, 217 S.E.2d 146, 148 (1975) (ruling that a modification of child support payments was not warranted because of a change in the father's health and financial ability where his income dropped from approximately $200,000 annually to $100,000 annually, stating that the father "was a man of sufficient property and means to meet the ordered payments if minded to do so").

[13] See Roy T. Stuckey, Marital Litigation in South Carolina Substantive Law 591 (2001) ("The primary factors to be considered under the guidelines are the actual gross incomes and earning potential of both parties.").

Finally, the supreme court's decision in Sharps[14] does not aid the father. Aside from the fact that the case deals with alimony and not child support (which receives closer court scrutiny than does alimony), here the obligation had been set a mere six months before, not thirteen years before, as in Sharps. The latter case also has no application where the events that brought about the change were put in motion prior to the entry of a settlement agreement.

REVERSED.

BEATTY and KITTREDGE, JJ., concur.

[14] 342 S.C. 71, 535 S.E.2d 913 (2000).