



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
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NOTICE

IN THE MATTER OF FRANK BARNWELL MCMASTER, PETITIONER

Petitioner was definitely suspended from the practice of law for thirty (30) months, retroactive to March 4, 2014. *In the Matter of Frank Barnwell McMaster*, 795 S.E.2d 853, 419 S.C. 37 (2017). Petitioner has now filed a petition seeking to be reinstated.

Pursuant to Rule 33(e)(2) of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413 of the South Carolina Appellate Court Rules, notice is hereby given that members of the bar and the public may file a notice of their opposition to or concurrence with the petition. Comments should be mailed to:

Committee on Character and Fitness
P. O. Box 11330
Columbia, South Carolina 29211

These comments should be received within sixty (60) days of the date of this notice.

Columbia, South Carolina
October 5, 2015



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

ADVANCE SHEET NO. 39
October 18, 2017
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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27706 - The State v. Alphonso Thompson	Pending
27716 - In the Matter of Justin B., Juvenile Under the Age of Seventeen	Pending
Order - Gregory L. Campbell v. The State	Denied 10/10/2017

EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI IN THE UNITED STATES SUPREME COURT

27722 - The State v. Ricky Lee Blackwell	Granted until 10/28/17
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PUBLISHED OPINIONS

None

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(Filed October 11, 2017)

2017-UP-370-State v. Timothy Wayne Johnson
(Filed October 11, 2017)

2017-UP-371-State v. Sara Elizabeth Hodson
(Filed October 11, 2017)

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2017-UP-381-State v. Arthuro Rios Torres

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2017-UP-386-State v. Joseph Umphlett

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2017-UP-392-State v. Jonathan Alexander Phillips

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2017-UP-397-Anthony Williams, Jr. v. S. C. Dep't of Corrections

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5510-State v. Stanley L. Wrapp Pending

5511-State v. Lance L. Miles Pending

5512-State v. Robert L. Moore Pending

5513-DIRECTV, Inc. v. S.C. Dep't of Revenue Pending

5514-State v. Robert Jared Prather Pending

5515-Lisa McKaughan v. Upstate Lung and Critical Care Pending

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2017-UP-315-State v. Taquan L. Brown Pending

2017-UP-342-State v. Bryant Christopher Gurley Pending

2017-UP-344-Brent E. Bentrin v. Wells Fargo Pending

2017-UP-354-Adrian Duclos v. Karen Duclos Pending

2017-UP-355-George Hood v. Jasper County Pending

2017-UP-356-State v. Damyon Cotton Pending

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5388-Vivian Atkins v. James R. Wilson, Jr. Pending

5391-Paggy D. Conits v. Spiro E. Conits Pending

5416-Allen Patterson v. Herb Witter Granted 09/29/17

5417-Meredith Huffman v. Sunshine Recycling Granted 09/29/17

5419-Arkay, LLC v. City of Charleston Pending

5430-Wilfred Allen Woods v. Etta Catherine Woods Denied 09/29/17

5431-Lori Stoney v. Richard Stoney Pending

5432-Daniel Dorn v. Paul Cohen Pending

5433-The Winthrop University Trustees v. Pickens Roofing Pending

5438-The Gates at Williams-Brice v. DDC Construction Inc. Pending

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2016-UP-138-McGuinn Construction v. Saul Espino	Granted 09/29/17
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2016-UP-320-State v. Emmanuel M. Rodriguez	Denied 09/29/17
2016-UP-330-State v. William T. Calvert	Denied 09/29/17
2016-UP-382-Darrell L. Goss v. State	Pending
2016-UP-392-Joshua Cramer v. SCDC (2)	Pending
2016-UP-395-Darrell Efird v. The State	Pending
2016-UP-402-Coves Darden v. Francisco Ibanez	Pending
2016-UP-404-George Glassmeyer v. City of Columbia (2)	Pending
2016-UP-408-Rebecca Jackson v. OSI Restaurant Partners	Pending
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2016-UP-430-State v. Thomas James	Pending
2016-UP-431-Benjamin Henderson v. Patricia Greer	Denied 09/29/17
2016-UP-436-State v. Keith D. Tate	Pending
2016-UP-447-State v. Donte S. Brown	Pending
2016-UP-454-Gene Gibbs v. Jill R. Gibbs	Granted 09/29/17
2016-UP-461-Melvin T. Roberts v. Mark Keel	Denied 09/29/17
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2016-UP-479-State v. Abdul Furquan	Denied 09/29/17
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2017-UP-015-State v. Jalann Williams	Pending

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2017-UP-037-State v. Curtis Brent Gorny	Pending
2017-UP-040-Jeffrey Kennedy v. Richland Sch. Dist. Two	Pending
2017-UP-043-Ex parte: Mickey Ray Carter, Jr. and Nila Collean Carter	Pending
2017-UP-046-Wells Fargo v. Delores Prescott	Pending
2017-UP-054-Bernard McFadden v. SCDC	Pending
2017-UP-059-Gernaris Hamilton v. Henry Scott	Pending
2017-UP-065-State v. Stephon Robinson	Pending
2017-UP-067-William McFarland v. Mansour Rashtchian	Pending
2017-UP-068-Rick Still v. SCDHEC	Pending
2017-UP-070-State v. Calvert Myers	Pending
2017-UP-071-State v. Ralph Martin	Pending
2017-UP-082-Kenneth Green v. SCDPPPS	Pending
2017-UP-096-Robert Wilkes v. Town of Pawleys Island	Pending

2017-UP-103-State v. Jajuan A. Habersham	Pending
2017-UP-108-State v. Michael Gentile	Pending
2017-UP-118-Skydive Myrtle Beach, Inc. v. Horry County	Pending
2017-UP-124-Rudy Almazan v. Henson & Associates	Pending
2017-UP-137-In the matter of Calvin J. Miller	Pending
2017-UP-139-State v. Jeffrey Lynn Chronister	Pending
2017-UP-145-Cory McMillan v. UCI Medical Affiliates	Pending
2017-UP-158-State v. Rion M. Rutledge	Pending
2017-UP-169-State v. David Lee Walker	Pending
2017-UP-192-David Johnson v. Mark Keel	Denied 09/29/17
2017-UP-193-John Gregory v. Mark Keel	Denied 10/02/17
2017-UP-194-Mansy McNeil v. Mark Keel	Denied 09/29/17
2017-UP-195-Edward Green v. Mark Keel	Denied 09/29/17
2017-UP-209-Jose Maldonado v. SCDC (2)	Pending
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2017-UP-229-Arrowpoint Capital v. SC Second Injury Fund	Pending
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2017-UP-279-Jose Jimenez v. Kohler Company	Pending
2017-UP-300-TD Bank v. David H. Jacobs	Pending

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Alvin R. Lundgren, Respondent.

Appellate Case No. 2017-000097

Opinion No. 27742

Heard August 16, 2017 – Filed October 18, 2017

DEBARRED

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

Alvin R. Lundgren, of Veyo, Utah, *pro se*.

PER CURIAM: In this attorney disciplinary matter, the Office of Disciplinary Counsel (ODC) filed formal charges against Respondent alleging he committed misconduct by violating the rules governing *pro hac vice* admission and serving improper subpoena and discovery requests. Respondent is not licensed to practice law in South Carolina.¹ Because Respondent failed to file any response to the formal

¹ Respondent has been admitted to the practice of law in Missouri, California, Utah, and Kansas. The Missouri Supreme Court indefinitely suspended Respondent from the practice of law in Missouri in 2000 for the unauthorized practice of law. Thereafter, the court reinstated Respondent's license to practice law; however, his Missouri license is currently inactive. In 2014, Respondent resigned from the California State Bar. On July 11, 2013, Respondent was disbarred by the District Court of Morgan County in Utah for misappropriation of client funds. Following Respondent's appeal, the Supreme Court of Utah upheld the disbarment. In May 2017, Respondent was disbarred by the Kansas Supreme Court.

charges, all the allegations contained therein are deemed admitted. Rule 24(a), RLDE, Rule 413, SCACR. Neither ODC nor Respondent filed exceptions to the recommendation and the matter is now before the Court for consideration. The sole issue before the Court is determining the appropriate sanction. We accept the recommendation from the Commission on Lawyer Conduct, and we find it appropriate to permanently debar Respondent in this state and order him to pay the costs of the investigation and subsequent proceedings.

FACTUAL BACKGROUND

The following facts are drawn from the formal charges against Respondent and are deemed admitted pursuant to Rule 24(a), RLDE, Rule 413, SCACR.

Respondent lives with his wife (Wife) in Utah, where he was licensed to practice law.² Wife previously lived in South Carolina with her first husband (Ex-Husband). Wife was divorced from Ex-Husband in 1993. Thereafter, Ex-Husband filed a defamation action against Wife in South Carolina. In February 2009, Respondent submitted an application for *pro hac vice* admission to the South Carolina Supreme Court Office of Bar Admissions in an effort to represent Wife in the defamation action. Respondent's local counsel filed the required application and a motion with the circuit court to allow Respondent to appear *pro hac vice*. However, Respondent filed various pleadings, motions, responses to motions, proposed orders, and letters to judges without the signature of his local counsel as required by Rule 404(f), SCACR.³ Ultimately, the parties mutually agreed to dismiss their claims.

In 2011, Wife sought to modify the Final Order and Decree of Divorce by amending certain language regarding Ex-Husband's retirement funds. In October 2012, Respondent submitted an application for *pro hac vice* admission to the South

² See note 1.

³ Rule 404, SCACR, has been amended since 2010. The citation here refers to the version of the rule in place at the time of Respondent's conduct. See Rule 404(f) (2010) ("The South Carolina attorney of record shall at all times be prepared to go forward with the case; sign all papers subsequently filed; and attend all subsequent proceedings in the matter, . . .").

Carolina Supreme Court Office of Bar Admissions to represent Wife in the divorce action. Respondent failed to file his application or a motion to appear *pro hac vice* with the family court prior to making an appearance as required by Rule 404(c), SCACR.⁴ In August of 2013, the family court issued a final order resolving the modification.

In December 2014, approximately a year and a half after the divorce action concluded, Respondent issued a subpoena to Ex-Husband's former employer, under the caption of the divorce action. In addition to issuing a subpoena in a dismissed case, Respondent improperly: (1) issued the subpoena without stipulation of the parties or court order upon written application, as required by Rule 25, SCRFC; (2) issued the subpoena to an out-of-state entity; (3) falsely stated in the subpoena that an action was pending in family court; (4) falsely certified in the subpoena that it was issued in compliance with Rule 45, SCRCF; and (5) failed to set forth in the subpoena the text required by Rule 45(c) and (d), SCRCF. Respondent then served a document entitled "Plaintiff's Request for Answers to Interrogatories, Admissions and Request for Production of Documents" on Ex-Husband and his counsel, again citing the divorce action. In addition to serving a discovery request in a dismissed case, Respondent improperly: (1) issued the discovery request without stipulation of the parties or court order upon written application, as required by Rule 25, SCRFC; (2) had direct contact with Ex-Husband, whom Respondent knew to be represented by counsel; (3) falsely stated in the discovery request that an action was pending in family court; and (4) falsely stated in the discovery request that it was issued in compliance with Rules 33, 34, and 36, SCRCF, and Rules 34 and 36 of the Utah Rules of Civil Procedure. In issuing the subpoena and discovery request, Respondent's conduct violated the South Carolina Family Court Rules, the South Carolina Rules of Civil Procedure, and Rules 3.4(d), 4.1, 4.2, 4.4(a), and 8.4(e), RPC, Rule 407, SCACR.

ODC filed formal charges on August 22, 2016. Respondent did not file an answer and was held in default by panel order dated November 3, 2016. The Hearing

⁴ Rule 404, SCACR, has been amended since 2012. The citation here refers to the version of the rule in place at the time of Respondent's conduct. *See* Rule 404(c) (2012) ("An attorney desiring to appear *pro hac vice* shall file with the tribunal in which the matter is pending, prior to making an appearance, an Application for Admission Pro Hac Vice . . .").

Panel convened and filed its Panel Report on December 9, 2016. Respondent was given notice of the proceeding but did not appear. After considering the aforementioned misconduct, the Hearing Panel determined Respondent is subject to discipline for violating the following Rules of Lawyer Discipline: Rule 7(a)(1) (violating the Rules of Professional Conduct or any other rules of this jurisdiction regarding professional conduct of lawyers) and Rule 7(a)(5) (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). Rule 413, SCACR. The Hearing Panel found Respondent violated Rule 404, SCACR, the South Carolina Rules of Civil Procedure, and the South Carolina Rules of Family Court and was therefore subject to discipline pursuant to Rule 7(a)(1) of Rule 413, SCACR.

DISCUSSION

Since Respondent failed to answer the formal charges, he is deemed to have admitted the allegations in the charges. Rule 24(a), RLDE, Rule 413, SCACR. Further, since he failed to appear for the panel hearing, Respondent is deemed to have admitted the factual allegations and to have conceded the merits of any recommendations considered at the panel hearing. Rule 24(b), RLDE, Rule 413, SCACR.

Pursuant to Rule 3(b), RLDE, Rule 413, SCACR, the Commission on Lawyer Conduct has jurisdiction over all allegations that a lawyer has committed misconduct. "Lawyer" is defined as "a lawyer not admitted in this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction." Rule 2(q), RLDE, Rule 413, SCACR. Accordingly, even though he is not admitted to practice law in South Carolina, Respondent is subject to the disciplinary authority of the Supreme Court of South Carolina and the Commission on Lawyer Conduct pursuant to Rule 8.5(a) of the South Carolina Rules of Professional Conduct, Rule 407, SCACR.

The authority to discipline lawyers and the manner in which the discipline is imposed is a matter within the Court's discretion. *In re Van Son*, 403 S.C. 170, 174, 742 S.E.2d 660, 662 (2013). The sole question remaining for the Court is whether to impose the Hearing Panel's recommended sanction. *Id.* ("When the respondent is in default the Court need only determine the appropriate sanction.").

Although not admitted to practice law in South Carolina, Respondent nevertheless engaged in the practice of law in this state. We agree with the Hearing Panel's consideration of aggravating factors, namely Respondent's lack of cooperation in the disciplinary investigation, failure to answer the formal charges, failure to appear at the disciplinary hearing, and prior disciplinary history. *In re Hall*, 333 S.C. 247, 251, 509 S.E.2d 266, 268 (1998) ("An attorney's failure to answer charges or appear to defend or explain alleged misconduct indicates an obvious disinterest in the practice of law. Such an attorney is likely to face the most severe sanctions because a central purpose of the disciplinary process is to protect the public from unscrupulous and indifferent lawyers."); *In re Jacobsen*, 386 S.C. 598, 607, 690 S.E.2d 560, 564 (2010) (recognizing disciplinary history is an appropriate consideration in imposing sanctions). Respondent presented no mitigating evidence.

Given the nature of Respondent's misconduct, his lack of participation in the disciplinary process, and absence of any mitigating factors, we adopt the sanctions recommended by the Hearing Panel and find it appropriate to permanently debar Respondent, prohibiting him from seeking any form of admission to practice law (including *pro hac vice* admission) in South Carolina and prohibiting him from advertising or soliciting legal services in the state. Further, we order that within thirty (30) days of the date of this opinion, he pay the costs of the investigation and prosecution of this matter in the amount of \$758.95 to the Commission on Lawyer Conduct.

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.

DEBARRED.

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

The Supreme Court of South Carolina

Re: Amendments to the South Carolina Electronic Filing
Policies and Guidelines

Appellate Case No. 2017-001882

ORDER

Pursuant to Art. V, § 4 of the South Carolina Constitution, we adopt the attached amendments to Sections 2, 4, and 11 of the South Carolina Electronic Filing Policies and Guidelines.

Based on recent system upgrades to the E-Filing System and the trial court Case Management System, an attorney E-Filer may now E-File on behalf of a person or entity who is a non-party. As a result, some current E-Filing exclusions, such as for a motion to quash a subpoena filed by a non-party, and for filings made on behalf of a person or entity who is a non-party, have been removed. Instructions for using the new feature are available on the E-Filing Portal page at <http://www.sccourts.org/efiling/>.

Section 4(d)(2) of the Policies and Guidelines has also been amended to include guidance concerning obtaining relief if a rejection by the clerk of court renders the filing untimely.

The amendments, which are set forth in the attachment to this Order, are effective immediately.

s/ Donald W. Beatty _____ C.J.

s/ John W. Kittredge _____ J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina
October 12, 2017

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 that may be filed *ex parte* in an existing case;
- (2) A filing that initiates a new case and exceeds 40 Megabytes when converted to PDF;
- (3) Settlements filed as new cases, including Minor Settlement and Death Settlement Proceedings, if initiated and filed by the defendant, rather than the plaintiff.

Paragraph (f) is added to Section 11 of the South Carolina Electronic Filing Policies and Guidelines, and provides:

(f) Adding Parties. An Authorized E-Filer may E-File a document on behalf of a person or entity who is not a party to an existing case by utilizing the E-Filing function that electronically adds the person or entity as a party to the case record. Authorized E-Filers may not utilize this function to add a party where a motion to intervene, motion to join a party, motion to substitute a party, motion to amend, or any other motion is required under the South Carolina Rules of Civil Procedure or statute. An Authorized E-Filer must include a document, such as an answer, response, or other pleading in any submission. Examples of proper use of the function include, but are not limited to:

- (1) a motion to quash a subpoena filed on behalf of a non-party;
- (2) initial filings made on behalf of insurers in cases involving underinsured motorist coverage;

(3) filings made on behalf of third party bidders in foreclosure matters;

(4) filings made by attorney guardians ad litem.

Rule 4(d)(2) of the South Carolina Electronic Filing Policies and Guidelines is amended by adding the following sentence:

If a document is rejected by the clerk of court and is therefore untimely, the party may seek appropriate relief from the court upon good cause shown, such as when the clerk of court erroneously rejected a filing or where a rejection was based on improper formatting.