The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
(803) 734-1080
FAX (803) 734-1499

N O T I C E

IN THE MATTER OF BRIAN DUMAS, PETITIONER

Brian Dumas, who was disbarred on July 20, 1992, has petitioned for readmission as a member of the Bar pursuant to the provisions of Rule 33 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR.

The Committee on Character and Fitness has scheduled a hearing in this regard on Friday, November 2, 2001, beginning at 10:30 a.m., in the Court Room of the Supreme Court Building, 1231 Gervais Street, Columbia, South Carolina.

Any individual may appear before the Committee in support of, or in opposition to, the petition.

D. Cravens Ravenel, Chairman
Committee on Character and Fitness
P. O. Box 11330
Columbia, South Carolina 29211

Columbia, South Carolina

October 2, 2001

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
(803) 734-1080
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N O T I C E

IN THE MATTER OF JAMES C. "TEE" FERGUSON, PETITIONER

James C. "Tee" Ferguson, who was indefinitely suspended on May 9, 1994, retroactive to September 22, 1992, has petitioned for readmission as a member of the Bar pursuant to the provisions of Rule 33 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR.

The Committee on Character and Fitness has scheduled a hearing in this regard on Friday, November 2, 2001, beginning at 12:30 a.m., in the Court Room of the Supreme Court Building, 1231 Gervais Street, Columbia, South Carolina.

Any individual may appear before the Committee in support of, or in opposition to, the petition.

D. Cravens Ravenel, Chairman
Committee on Character and Fitness
P. O. Box 11330
Columbia, South Carolina 29211

Columbia, South Carolina
October 2, 2001

The Supreme Court of South Carolina

In the Matter of William
H. Godbold, III, Respondent.

ORDER

By order dated April 28, 1999, respondent was placed on interim suspension and Samuel Pardue Greer, Esquire, was appointed, pursuant to Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. In the Matter of Godbold, 335 S.C. 171, 516 S.E.2d 434 (1999). We hereby relieve Mr. Greer of his appointment and appoint Walter Keith Martens, Esquire, to assume responsibility for respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office accounts respondent may maintain. Mr. Martens shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. Mr. Martens may make disbursements from respondent's trust account(s), escrow account(s), operating account(s), and any other law office

accounts 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 Walter Keith Martens, 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 Walter Keith Martens, 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. Marten's office.

IT IS SO ORDERED.

s/James E. Moore J.
FOR THE COURT

Columbia, South Carolina

October 5, 2001

The Supreme Court of South Carolina

RE: Appendix A to Part II of the South Carolina Appellate Court Rules

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O R D E R

The attached is substituted for Appendix A to Part II of the South Carolina Appellate Court Rules.

IT IS SO ORDERED.

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.

Columbia, South Carolina
October 12, 2001

PART II
APPENDIX A

TABLE OF COMPARATIVE RULES

This Table indicates the source or the most similar provision(s) under the former Supreme Court Rules for each of the Rules in the 100 and 200 series.

SCACR	TITLE	SOURCE OR FORMER RULE
101	SCOPE AND TITLE	None
102	EFFECTIVE DATE AND REPEALER	None
201	RIGHT TO APPEAL	
	(a) Judgments and Orders Subject to Appeal	Rule 72, SCRCP
	(b) Who May Appeal	S.C. Code § 18-1-30
202	DESIGNATION OF PARTIES	S.C. Code § 18-1-120
203	NOTICE OF APPEAL	
	(a) Notice	Sup. Ct. Rule 1, § 1B
	(b) Time for Service	Sup. Ct. Rule 1, § 1A
	(c) Cross-Appeals	None
	(d) Filing	Sup. Ct. Rule 1, § 1C S.C. Code § 14-8-200
	(e) Form and Content	Sup. Ct. Rule 1, § 1E
204	TRANSFER OF CASES	S.C. Code §§ 14-8-210(b), and 14-8-260
205	EFFECT OF APPEAL	Sup. Ct. Rule 18, §3
206	CASES INVOLVING MULTIPLE NOTICES OF APPEAL	None, but prior practice
207	TRANSCRIPT OF PROCEEDINGS	
	(a) Ordering the Transcript	Sup. Ct. Rule 1, § 2A-B
	(b) Delivery of Transcript	Sup. Ct. Rule 1, § 2A
	(c) Extension for Court Reporter	Sup. Ct. Rule 1, § 2D
	(d) Notice of Extension	Sup. Ct. Rule 1, § 2E
	(e) Failure to Receive Transcript	Sup. Ct. Rule 1, § 2F

	(f) Failure to Comply	Sup. Ct. Rule 1, § 2G
	(g) Duty of Appellant	None
208	INITIAL BRIEFS	
	(a) Time for Serving and Filing Initial Briefs	Sup. Ct. Rule 8, § 9
	(b) Content	Sup. Ct. Rules 1, § 3A; 4, § 3A; and 8 §§ 2-4
209	DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL	None, but see Sup. Ct. Rule 1, § 3
210	RECORD ON APPEAL	
	(a) Time for Service	Sup. Ct. Rule 1, § 4
	(b) Time for Filing	Sup. Ct. Rule 1, § 4
	(c) Content	Sup. Ct. Rule 4
	(d) Title	Sup. Ct. Rule 4, § 2
	(e) Index	Sup. Ct. Rule 4, § 2
	(f) Exhibits	Sup. Ct. Rule 4, § 5
	(g) Certificate of Counsel	Sup. Ct. Rule 4, § 2
	(h) Review Limited to Record on Appeal	Sup. Ct. Rule 8, § 7
211	FINAL BRIEFS	None
212	SUPPLEMENTAL RECORD	Sup. Ct. Rule 2
213	AMICUS CURIAE BRIEF	None, but prior practice
214	CONSOLIDATION	Sup. Ct. Rule 26
215	SUBMISSION WITHOUT ORAL ARGUMENT	Sup. Ct. Rule 29
216	NOTICE OF ORAL ARGUMENT	Sup. Ct. Rule 22
217	MOTION TO ARGUE AGAINST PRECEDENT	Sup. Ct. Rule 8, § 10
218	ORAL ARGUMENT	Sup. Ct. Rules 10, 12, and 13
219	HEARING OF CASES BY THE COURT OF APPEALS EN BANC	S.C. Code § 14-8-90

220	OPINIONS	
	(a) Opinions	None, but prior practice
	(b)(1) Decisions by Court (Sup. Ct.)	Sup. Ct. Rule 23 and S.C. Code § 18-9-280
	(b)(2) Decisions by Court (Ct. App.)	S.C. Code § 14-8-250
	(c) Affirmance on Any Ground Appearing In Record	Sup. Ct. Rule 4, § 8.
221	REHEARING AND REMITTITUR	
	(a) Rehearing	Sup. Ct. Rule 17, § 2
	(b) Remittitur	Sup. Ct. Rule 17, § 1
	(c) Rehearing of Motions	None, but prior practice
222	COSTS ON APPEAL	Sup. Ct. Rule 38
223	ARBITRATION OF APPEALS	None, but allowed by prior order of the Supreme Court
224	MOTIONS AND PETITIONS GENERALLY	
	(a-e) Applicability, etc.	Sup. Ct. Rule 16
	(f) Reply	None
	(g-h) Failure to Comply, etc.	Sup. Ct. Rule 16
	(i) Authority of an Individual Judge or Justice	S.C. Const. Art. V, § 20
225	STAY AND SUPERSEDEAS IN CIVIL ACTIONS	Sup. Ct. Rules 18, § 3B; and 41
226	CERTIORARI TO THE COURT OF APPEALS	Sup. Ct. Rule 55
227	CERTIORARI TO REVIEW POST-CONVICTION RELIEF ACTIONS	Sup. Ct. Rule 50(9)
228	CERTIFICATION OF QUESTIONS OF LAW	Sup. Ct. Rule 46
229	ORIGINAL JURISDICTION OF THE SUPREME COURT	Sup. Ct. Rule 20
230	STAY IN CRIMINAL CASES	
	(a) Stays Pending Appeal	None, but prior practice
	(b) Stays of Sentences After Affirmance	Sup. Ct. Rule 28

231	DISMISSAL AND REINSTATEMENT	Sup. Ct. Rules 1, §§ 5 and 6; 8, § 9; and 18, § 2
232	AGREEMENTS AND SETTLEMENTS	Sup. Ct. Rule 15
233	FILING AND SERVICE	
	(a) Filing	None, but prior practice
	(b) Service	Sup. Ct. Rule 1, § 8; Rule 5(b)(1), SCRCP
234	TIME	
	(a) Computation	Rule 6(a), SCRCP
	(b) Extending and Diminishing Time Prescribed By these Rules	Sup. Ct. Rule 18, § 1
235	SUBSTITUTION OF ATTORNEYS OR GUARDIANS	Sup. Ct. Rule 3, § 1
236	SUBSTITUTION OF PARTIES	Sup. Ct. Rule 3, § 2
237	SUBSEQUENT APPLICATIONS FOR RELIEF	Sup. Ct. Rule 30
238	FORM OF PAPERS	
	(a) Captions	Sup. Ct. Rule 4, § 2
	(b) Signatures	Rule 11(a), SCRCP
	(c)-(f) Paper and Type Size, etc.	Sup. Ct. Rule 5
239	CITATION OF SOUTH CAROLINA AUTHORITY	Sup. Ct. Rule 8, §§ 11-12
240	FRIVOLOUS APPEAL, PETITIONS, MOTIONS OR RETURNS	None
241	FORMS	Sup. Ct. Rule 39

The Supreme Court of South Carolina

RE: Forms for Part II of the South Carolina Appellate Court Rules

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O R D E R

The attached is substituted for Appendix C to Part II of the South Carolina Appellate Court Rules.

IT IS SO ORDERED.

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.

Columbia, South Carolina

October 12, 2001

PART II
APPENDIX C

FORMS

This Appendix contains forms which may be used for Rules 201-241, SCACR. These forms are in the nature of examples which can be modified to meet the needs of a particular case. In the forms, optional language is shown in brackets.

Form 1.	Notice of Appeal in a Civil Case
Form 2	Notice of Appeal for a Cross Appeal in a Civil Case
Form 3.	Notice of Appeal From Common Pleas Regarding a Conviction in Magistrates or Municipal Court
Form 4.	Notice of Appeal From a Sentence Imposed by the Court of General Sessions
Form 5.	Notice of Appeal From the Family Court in a Juvenile Delinquency Matter
Form 6.	Proof of Service of a Notice of Appeal
Form 7.	Letter to the Appellate Court Clerk Filing the Notice of Appeal
Form 8.	Letter to Clerk of Lower Court Filing Notice of Appeal
Form 9.	Agreement to Order Less Than the Entire Transcript
Form 10.	Letter Ordering Transcript From Court Reporter
Form 11.	Notice That Transcript Has Not Been Timely Received
Form 12.	Brief of Appellant
Form 13.	Designation of Matter to be Included in the Record on Appeal
Form 14.	Record on Appeal
Form 15.	Certificate of Counsel in Final Brief
Form 16.	Itemized Statement of Costs
Form 17.	Petition for a Writ of Certiorari to the Court of Appeals
Form 18.	Petition for a Writ of Certiorari in Post-Conviction Relief Actions
Form 19.	Appendix in Post-Conviction Relief Actions

(Editor's Note: Due to their length, the individual forms have not been included in this Advance Sheet. The forms are available on the Judicial Department Website at www.judicial.state.sc.us under the link Rules and Forms.)

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

October 15, 2001

ADVANCE SHEET NO. 36

Daniel E. Shearouse, Clerk
Columbia, South Carolina

www.judicial.state.sc.us

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2001-UP-365 - Gaither v. Blue Cross Blue Shield	Pending

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Dallas
Dale Ball, Respondent.

Opinion No. 25367
Submitted September 18, 2001 - Filed October 15, 2001

INDEFINITE SUSPENSION

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

J. Leeds Barroll, IV, of Columbia, for respondent.

PER CURIAM: In this attorney disciplinary matter, respondent and Disciplinary Counsel entered into an agreement pursuant to Rule 21, RLDE, Rule 413, SCACR. In the agreement, respondent admits misconduct and consents to the imposition of any sanction set forth in Rule 7(b), RLDE, Rule 413, SCACR. An investigative panel of the Commission on Lawyer Conduct considered the agreement and voted unanimously to recommend acceptance of the agreement and imposition of an indefinite suspension. The

agreement was submitted to this Court. Thereafter, respondent requested oral argument because he did not agree with the proposed sanction.

Rule 21(d), RLDE, which addresses discipline by consent, does not provide for oral argument. Instead, Rule 21(d) states that if the investigative panel submits an Agreement for Discipline by Consent to the Court, the Court shall either reject the agreement or issue a decision disciplining the lawyer which shall be based on the agreement. Moreover, paragraph eleven of the agreement at issue specifically states, "the parties hereto waive any and all rights to oral arguments in connection with this matter." We therefore deny respondent's request for oral argument, accept the agreement as entered into by respondent, and find an indefinite suspension is appropriate under the circumstances.[1]

Facts

The facts as stated in the agreement are as follows.

I. Personal Injury Settlement Matter

Respondent received $75,000 in proceeds pursuant to the settlement of a personal injury claim on behalf of a client. The settlement order required respondent to pay attorneys' fees and costs, guardian ad litem fees, a health insurance subrogation claim and medical expenses from the settlement proceeds. The remainder was to be paid to the court or a duly appointed conservator for the client.

Respondent paid all attorneys' fees and costs associated with representation of the client. He also successfully negotiated reductions in several of the medical bills and in the health insurance subrogation claim, leaving $9,467.58 of the settlement proceeds remaining. Respondent did not

[1]We note that an indefinite suspension is within the range of sanctions set forth in Rule 7(b), RLDE, and to which respondent agreed.

pay the remaining funds to the court or a duly appointed conservator.

Thereafter, the client retained the services of another attorney to investigate and file a legal malpractice action against respondent. Respondent was advised by his defense counsel not to disburse the remaining proceeds from the settlement until certain issues in the legal malpractice action were resolved. Approximately six months after the action was filed, respondent paid the remaining proceeds, plus interest, to the client.

Respondent also failed to pay a bill from the Medical College of Georgia in the amount of $11,256.66 for services rendered to the client. Respondent paid the bill after the client instituted the legal malpractice action.

On several occasions between the time of the settlement and the time respondent paid the Medical College of Georgia, the amount of funds in his trust account fell below the amount of the remaining settlement proceeds and the amount of the unpaid medical bill, which should have been in respondent's trust account. Respondent is unable to account for the shortages of funds. Moreover, respondent did not maintain a ledger for the client.

II. Mismanagement of Trust Account

From January 1995 through December 1999, respondent did not reconcile his trust account on a monthly basis, nor did he review his bank statements or his accountant's reconciliations of the account. Respondent also failed to supervise his accountant's work.

As a result, respondent is unable to produce complete and accurate accounting records for that period of time. He is also unable to account for all attorney's fees earned, reimbursement of expenses, deposits received on behalf of his clients, and disbursements made on behalf of his clients since 1995. He has failed to maintain ledgers of receipts and disbursements since 1995.

On a number of occasions, respondent made payments to his creditors directly out of his trust account, but represents those payments were made out of funds in the trust account that he estimated were or would have been owed him as attorney's fees. He maintained no records to identify which client funds were the source of the payments.

Respondent represents that all clients have received funds owed to them and that no client funds have been misappropriated, but acknowledges his handling of the trust account resulted in negative balances from time to time which required him to deposit personal funds into the account. He has retained the services of a certified public accountant to bring his accounting practices into compliance with Rule 417, SCACR. He is also having his trust account audited in order to identify funds contained therein and to whom those funds belong. Respondent maintains he will promptly pay any shortfall identified as a result of the audit. Respondent has also agreed to provide Disciplinary Counsel with copies of all correspondence, audits and reports from all accountants assisting with the reconciliation of his trust account.

Law

Respondent admits that he has violated Rules 7(a)(1) (violating the Rules of Professional Conduct), (5) (engaging in conduct tending to pollute the administration of justice or to bring the courts or the legal profession into disrepute; engaging in conduct demonstrating an unfitness to practice law), and (7) (wilfully violating a valid court order) of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR. He has also admits he has violated Rules 1.3 (failing to act with reasonable diligence and promptness in representing a client) and 1.15 (failing to safeguard a client's property) of the Rules of Professional Conduct, Rule 407, SCACR. Finally, he admits that his actions violate Rule 417, SCACR, which sets forth requirements for financial recordkeeping by attorneys.

Conclusion

Although respondent has paid all funds owed in the personal injury settlement matter and has taken actions to remedy the problems with his trust account, we find the facts set forth in the agreement warrant an indefinite suspension from the practice of law. 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.

INDEFINITE SUSPENSION.

TOAL, C.J., MOORE, WALLER, BURNETT and PLEICONES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Appellant,

v.

David M. Potts, Respondent.

Appeal From York County
J. C. Nicholson, Jr., Circuit Court Judge

Opinion No. 25368
Heard September 25, 2001 - Filed October 15, 2001

REVERSED

Attorney General Charles M. Condon, Chief Deputy Attorney General John W. McIntosh, and Senior Assistant Attorney General Charles H. Richardson, of Columbia; and Solicitor Thomas E. Pope, of York, for appellant.

John A. O'Leary, of O'Leary Associates, P.A., of Columbia, for respondent.

JUSTICE PLEICONES: The State appeals a circuit court's determination that criminal defendants being tried before a jury in magistrate's court have the right to personally confront all potential jurors prior to exercising their statutorily-granted peremptory challenges. Finding that Respondent's rights had been violated, the circuit court granted him a new trial. We reverse.

FACTS/ PROCEDURAL HISTORY

David M. Potts ("Respondent") was charged with driving under the influence and pleaded not guilty to that offense. He demanded a jury trial in magistrate's court. Prior to his trial date, the magistrate delivered a list of the names of thirty potential jurors to defense counsel, as well as to the State's representative. The list contained the names of thirty jurors, and each juror's age, race, and gender; it provided no other information.

Before trial the court required the parties to exercise their peremptory strikes on the paper list. Prior to exercising these challenges neither Respondent nor the State had the benefit of face to face contact with the potential jurors. From the list provided, Respondent struck four jurors and the State excused one. The remaining twenty-five jurors were summoned for trial, and six of them were ultimately seated to hear the case against Respondent. After hearing the evidence, the jury found Respondent guilty as charged.

Respondent appealed his conviction, challenging the manner in which the jury was empaneled. The circuit court reversed his conviction, holding that Respondent's "right to personally confront potential jurors was violated by selecting a jury from a paper list, absent the physical presence of the jurors." From this decision, the State appeals.

ISSUE

Does a defendant in magistrate's court have a right to view potential

jurors face to face prior to exercising peremptory challenges?

ANALYSIS

The procedures for selecting and empaneling juries in magistrate's court are outlined in S.C. Code Ann. §§ 22-2-10, et seq. (1989 and Supp. 2000).

Respondent's jury was selected using the method for empaneling jurors prescribed in S.C. Code Ann. § 22-2-80 (1989). At the time of Respondent's trial,[1] that section provided:

> In all cases except as provided in Section 22-2-90 in a magistrate's court in which a jury is required, a jury list shall be selected in the following manner:
>
> A person appointed by the magistrate who is not connected with the trial of the case for either party shall draw out of Compartment A of the jury box thirty names and the list of names so drawn shall be delivered to each party or to the attorney for each party.

Two code sections address the exercise of peremptory challenges in magistrate's court proceedings. Section 22-2-100 provides that

> The names drawn pursuant to . . . § 22-2-80 . . . shall be placed in a box or hat and individual names randomly drawn out one at a time until six jurors and four alternates are selected. Each party shall have a maximum of six peremptory challenges as to primary jurors and four peremptory challenges as to alternate jurors and such other challenges for cause as the court

[1]Respondent was tried on November 23, 1998. Subsequently, the legislature amended Section 22-2-80, effective May 1, 2000. Sections 22-2-100 and 22-2-110 have not been amended since Respondent's trial.

may permit. . . .

Finally, Section 22-2-110 requires that "[p]arties shall exercise peremptory challenges in advance of the trial date, and only persons selected to serve and alternates shall be summoned for the trial."

Respondent distills from dicta in Lewis v. United States, 146 U.S. 370, 13 S. Ct. 136, 36 L. Ed. 1011 (1892), and Pointer v. United States, 151 U.S. 396, 14 S. Ct. 410, 38 L. Ed. 208 (1894), that a defendant, as a component of his 6th Amendment right to be present during all critical stages of trial, has a constitutional right to be brought face to face with each potential juror prior to exercising peremptory challenges.

While those cases do intimate that the right to face to face contact with prospective jurors is an integral component of the right to meaningful exercise of a defendant's peremptory challenges, neither case addresses the issue before this Court.

More recent decisions of the United States Supreme Court ("USSC"), however, undermine Respondent's contention that peremptory challenges are of a constitutional dimension, and suggest that a defendant is entitled to no more and no less than that which the legislature grants.

In Ross v. Oklahoma, 487 U.S. 81, 108 S. Ct. 2273, 101 L. Ed. 2d 80 (1988), the USSC "recognized that peremptory challenges are not of constitutional dimensions. They are a means to achieve the end of an impartial jury." Id. at 88, 108 S. Ct. at 2278, 101 L. Ed. 2d at 90 (internal citations omitted). The Court continued,

> It is true that we have previously stated that the right to exercise peremptory challenges is 'one of the most important of the rights secured to the accused.' Indeed, the Swain Court cited a number of federal cases and observed: 'The denial or impairment of the right is reversible error without a showing of prejudice.' But even assuming that the Constitution were to impose this same

> rule in state criminal proceedings, petitioner's due process challenge would nonetheless fail. Because peremptory challenges are a creature of statute and are not required by the Constitution, it is for the State to determine the number of peremptory challenges allowed and to define their purpose and the manner of their exercise. As such, the 'right' to peremptory challenges is 'denied or impaired' only if the defendant does not receive that which state law provides.

Id. at 89, 108 S. Ct. at 2278-79, 101 L. Ed. 2d at 90-91 (citations omitted; emphasis supplied). See also Edmonson v. Leesville Concrete Co., 500 U.S. 622, 111 S. Ct. 2077, 114 L. Ed. 2d 660 (1991) (There is no constitutional obligation to allow peremptory challenges. They are permitted only when the government, by statute or decisional law, deems it appropriate to allow them.)

Even before the decision in Ross, we observed that

> [t]here is no constitutional right, state or federal, to *any* peremptory challenges; it rests entirely within the province of the legislature. . . .
>
> > 'Generally speaking, peremptory challenges arise from the exercise of a privilege granted by the legislative authority. They are allowed by legislatures as an act of grace, rest entirely within the discretion of legislatures, can be exercised as a matter of right only to the extent allowed by statute, and must be taken subject to the legislative limitations placed upon the manner of their exercise.'
>
> Thus, the legislature's discretion in the matter of peremptory challenges is circumscribed only by the necessity of granting the accused a fair and impartial trial.

State v. Bailey, 273 S.C. 467, 469, 257 S.E.2d 231, 232 (1979), cert. denied, 444 U.S. 1083, 100 S. Ct. 1039, 62 L. Ed. 2d 768 (1980) (internal citations omitted; emphasis in original).

Ross and Bailey establish that it is the legislature's prerogative to prescribe the manner in which peremptory challenges are to be exercised. In addition, these cases require that a defendant complaining of the manner in which peremptory challenges were exercised show that the statute granting him peremptory challenges was violated, or that the jury which tried him was not impartial.

Respondent has failed to make either of these showings. The procedure for empaneling jurors employed at his trial comported with South Carolina law. Nothing in § 22-2-80 requires that the jurors be brought face to face with the accused prior to the accused's exercise of peremptory challenges. Thus, Respondent has not shown that the procedure employed at his trial violated the provisions of that statute. Respondent makes no claim that the jury empaneled in his trial was not impartial, nor has he shown that he was deprived of any right granted by the Constitution of this state or of the United States.

CONCLUSION

Because Respondent has not shown that the statutes governing the jury selection process in magistrate's court were violated, and because he makes no claim that his jury was not impartial, we REVERSE the order of the circuit court reversing Respondent's conviction.

TOAL, C.J., MOORE, WALLER and BURNETT, JJ., concur.

The Supreme Court of South Carolina

In the Matter of Samuel
Pardue Greer, Respondent.

O R D E R

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

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 William Mark White, 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 accounts respondent may maintain. Mr. White shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. Mr. White may make disbursements from respondent's trust

account(s), escrow account(s), operating account(s), and any other law office accounts 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 William Mark White, 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 William Mark White, 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. White's office.

s/James E. Moore J.
FOR THE COURT

Columbia, South Carolina

October 5, 2001

The Supreme Court of South Carolina

In the Matter of Kimla C. Johnson, 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, and seeking the appointment of an attorney to protect clients' interests pursuant to Rule 31, RLDE, Rule 413, SCACR.

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

IT IS FURTHER ORDERED that Grady Larry Beard, 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 accounts respondent may maintain. Mr. Beard shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. Mr. Beard may make disbursements from respondent's trust

account(s), escrow account(s), operating account(s), and any other law office accounts 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 Grady Larry Beard, 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 Grady Larry Beard, 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. Beard's office.

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.

Columbia, South Carolina
October 11, 2001

The Supreme Court of South Carolina

ORDER

Pursuant to Article V, § 4 of the South Carolina Constitution, Rule 408(a)(2), SCACR, is amended by striking out the number "65" and inserting the number "60." Further, the following amendments are made to the Regulations for Mandatory Continuing Legal Education for Judges and Active Members of the South Carolina Bar, Appendix C to Part IV, SCACR, to make them internally consistent, to make them consistent with Rules 408 and 419, SCACR, to increase the late filing fee and the reinstatement fee, to amend the definition of an "amended report," to give the Commission on Continuing Legal Education and Specialization authority to proportionally increase a lawyer's continuing legal education (CLE) requirements for a succeeding year when a waiver or modification is granted, to add provisions for awarding CLE credit for teaching and legal writing, and to delete redundant provisions, certain dates and references to sub-appendices which

are outdated and can be obtained from the Commission.

These amendments shall be effective immediately.

IT IS SO ORDERED.

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.

Columbia, South Carolina

October 12, 2001

APPENDIX C
REGULATIONS FOR MANDATORY CONTINUING LEGAL EDUCATION FOR JUDGES AND ACTIVE MEMBERS OF THE SOUTH CAROLINA BAR

I. Purpose

These Regulations implement Rules 408, 419, and 504, SCACR.

II. Requirements

A. Active Members of the South Carolina Bar.

1. Except as otherwise provided in Regulation III, each active member of the South Carolina Bar, as defined in the By-Laws of the South Carolina Bar, shall complete a minimum of 14 hours of accredited continuing legal education (CLE) each calendar year.

2. At least 2 of the 14 hours shall be devoted to legal ethics/professional responsibility (LEPR). LEPR shall include, but not be limited to, instruction focusing on the Rules of Professional Conduct as they relate to law firm management, malpractice avoidance, lawyer fees, legal ethics, and the duties of lawyers to the judicial system, the public, clients and other lawyers.

3. An active member who accumulates in excess of 14 hours credit in a calendar year may carry a maximum of 14 hours forward to the next calendar year, of which a maximum of 2 hours may be LEPR credit (earned LEPR credit in excess of the required 2 hours may be applied to CLE requirements and/or carried forward not to exceed the maximum of 14 hours).

B. Judicial Members.

1. Minimum Requirements.

Judicial members specified in Rule 504(a), SCACR, shall complete a minimum of 15 hours of accredited judicial continuing legal education (JCLE) each calendar year. JCLE credit accumulated in any calendar year in excess of 15 hours may be carried forward to the next calendar year; provided, however, that not more than 30 hours credit may be carried forward to the next calendar year.

2. Mandatory Attendance at Designated Educational Activities.

Without regard to any JCLE credit accumulated pursuant to the requirements of Regulation II(B)(1), judicial members shall attend any educational activity designated as mandatory by the Supreme Court of South Carolina or the Commission on Continuing Legal Education and Specialization (Commission). "Educational activity" means any seminar, program, conference, roundtable, or other activity which has been accredited for JCLE purposes and which has been designated mandatory for judicial members. Attendance at an educational activity may be designated as mandatory for all judicial members or only for certain specified categories of judicial members (for example: mandatory for probate judges only).

III. Exemptions

The following shall be exempt from the requirements of Regulation II:

A. Active members of the South Carolina Bar who are at least 60 years old, who have been admitted to practice law for 30 or more years and who submit to the Commission affidavits establishing that fact and requesting exemption (exempt status pursuant to this provision shall apply to both the CLE and LEPR requirements);

B. Certified specialists who comply with the CLE requirements of their specialty; provided, however, that at least 2 hours of the CLE credits completed by certified specialists shall be devoted to LEPR and that any certified specialist who completes more than 2 hours of LEPR credit may carry forward to the next calendar year up to 2 hours of such credit.

C. Newly admitted lawyers in the year in which they are licensed .

D. For JCLE requirements imposed by Regulation II(B), judicial members in the year in which they are sworn into office, provided they have satisfied the CLE requirements for active members of the South Carolina Bar.

IV. Hours and Accreditation

A. General.

One (1) hour of accredited CLE means 60 minutes of instruction as teacher or student at any CLE program which has been accredited by the Commission or which is sponsored or co-sponsored by an accredited organization. A list of currently accredited sponsors can be obtained from the Commission.

B. Application for Accredited Sponsor Status.

A sponsor wishing to apply for sponsor accreditation shall submit to the Commission:

1. An application for status as an accredited sponsor of CLE activities (forms available from the Commission);

2. Copies of written materials described in that application form; and

3. Any further information the Commission requires.

Except for accredited sponsors designated by the Commission, sponsor accreditation must be renewed every 5 years; provided, however, that sponsor accreditation may be withdrawn for cause at any time after 60 days notice to the sponsor and the South Carolina Bar.

C. Accreditation of Courses Sponsored by Non-accredited Sponsors.

CLE courses presented by sponsors which have not been granted sponsor accreditation will be considered for accreditation on an individual basis. An application for accreditation of a program may be obtained from the Commission and must be submitted to the Commission by the sponsor or by a lawyer who desires credit for attending the program. Except as provided in IV(D), the Commission will consider applications for the retroactive as well as prospective accreditation of programs.

D. In-House CLE.

In-house CLE, which is defined as CLE courses, training, programs, etc., sponsored or offered by law firms (individually or collectively), corporate legal departments, and similar organizations (but excluding public/governmental organizations and their subdivisions, agencies, etc.) primarily for the education of their members and employees, may be approved for credit under the rules and regulations applicable to other sponsors, subject to the following additional conditions:

1. The courses shall be submitted for approval on a course-by-course rather than an approved-sponsor basis;

2. The courses, including all written material related thereto, must be filed with an application for accreditation on or before the date on which the course is to be held;

3. The courses must be attended by at least 5 lawyers, not

including the instructors; and

4. Not more than one-half of the approved credits for any reporting period may be earned through in-house programs.

E. Client Seminars.

Client seminars, which are defined as educational activities sponsored by a law firm in which the target audience is clients or potential clients of the sponsoring law firm, shall not be accredited even though the educational activities otherwise satisfy the accreditation standards specified in Regulation V. For this purpose, a law firm may be a professional corporation, professional association, partnership, sole practitioner or any other association of lawyers engaged in the private practice of law.

F. Fees.

Fees for the processing of applications for accreditation of individual programs or applications for accredited sponsor status and fees for other applications and purposes shall be as specified by the Commission.

G. Enhanced Credit for Teaching.

Upon application to the Commission, enhanced CLE credit may be earned through teaching at an accredited CLE activity. Information regarding the enhanced credit, including qualifications for the credit, the formula for calculating the credit, and exceptions to the credit, may be obtained from the Commission.

H. CLE Credit for Legal Writing.

Upon application to the Commission, CLE credit may be earned through authorship of articles or books concerning substantive or procedural law which are published or accepted for publication in approved third party publications. Information about this credit may be obtained from the

Commission.

V. Accreditation Standards

The following standards will be considered by the Commission in the granting, denying, or withdrawal of accreditation of sponsors, programs, or parts of programs:

A. Courses must have significant intellectual or practical content;

B. Subject matter must deal primarily with the theory, practice, or ethics of law and the legal profession;

C. Courses must be directed to and intended for an audience of lawyers or judges;

D. Faculty members must be qualified by practical or academic experience to teach the subject;

E. High quality written materials must be distributed to participants;

F. Suitable classroom or laboratory setting must be provided for participants;

G. Ethical considerations pertaining to the subject matter should be included in the program;

H. Audio-visual or media presentations otherwise meeting the standards of A through G are acceptable provided a faculty member is in attendance, or available by telephone hook-up, to comment and answer questions;

I. A list of course/program attendees must be kept and retained for 2 years to assist the Commission in verifying course attendance; and

J. A written report of attendees shall be submitted to the Commission within 30 days of the course/program.

VI. Reports and Fees

A. Active Members.

On forms prepared by the Commission and available through its offices (or a reasonable facsimile), each active member of the South Carolina Bar not exempt from Regulation II(A) shall, not later than January 1 of each year, file with the Commission a sworn annual report of compliance for the preceding calendar year and pay an annual filing fee of $20.00. Any active member submitting a report of compliance after January 1 shall pay, in addition to the annual filing fee, a late filing fee of $50.00. Beginning January 1, 2003, the late filing fee shall be doubled for any member who files after the filing deadline and who has filed late and paid a late filing fee on any prior occasion.

B. Judicial Continuing Legal Education (JCLE).

On forms prepared by the Commission and available through its offices (or a reasonable facsimile), each judicial member specified in Rule 504(a), SCACR, shall, not later than April 15 of each year, file with the Commission an annual report of compliance for the preceding educational period and pay an annual filing fee of $20.00. Any judicial member submitting a report of compliance after April 15 shall pay, in addition to the annual filing fee, a late fee of $50.00.

C. Amended Reports of Compliance.

For the purposes of these Regulations, an amended report of compliance is one that seeks to change a report of compliance previously submitted to the Commission. A report of compliance may be amended within 1 year from the date that the original report was received by the Commission or 1 year from the filing deadline for the original report,

whichever date is later. An amended report shall be executed in the same manner as the report it is amending and shall be accompanied by the filing fees specified for such original report, to include late filing fees if appropriate.

D. Revenue From Filing and Other Fees.

The fees specified in these Regulations and fees paid by certified specialists shall be used only to defray operating expenses of the Commission and its staff and may be adjusted by the Commission from time to time in order to produce the actual income required for the expenditures, plus a reasonable reserve fund.

VII. Non-compliance

A. Active Members.

1. Automatic Suspension. An active member of the South Carolina Bar who is neither exempt nor excused from the requirements of Regulation II(A) and/or VI(A) and who has failed to comply with these requirements by January 31 shall be automatically suspended from the practice of law.

2. Notice of Suspension. Notice of suspension will be provided to suspended members, the Clerk of the South Carolina Supreme Court, and to the judge or judges of the judicial circuit in which any suspended lawyer principally practices and/or maintains a principal residence. Suspended members will also be advised that unless they comply and are reinstated by the Commission by March 1, their names will be published in the Advance Sheets.

3. Publication of Names of Suspended Lawyers. The names of suspended lawyers who have not been reinstated by March 1 shall be provided to the Clerk of the South Carolina Supreme

Court for publication in the Advance Sheets.

B. Judicial Members.

Any judicial member specified in Rule 504(a), SCACR, who is not exempt from the requirements of Regulation II(B)(1), II(B)(2), and/or VI (B) and who is in violation thereof shall be notified of the violation by certified mail at the judicial member's last known address. The judicial member shall then have 60 days after the date the notice was mailed to file an affidavit responding to the notice. Any response may include documents establishing that the judicial member concerned has cured the deficiency. If any judicial member fails to respond to the notice of violation or if after considering a judicial member's response the Commission believes the judicial member is still in violation of Rule 504, SCACR, and these Regulations, the Commission shall report the matter to the South Carolina Supreme Court for action as deemed appropriate by the Court .

VIII. Petition for Reinstatement

A. Reinstatement by the Commission.

An active member of the South Carolina Bar who has been suspended for failure to comply with these Regulations may petition the Commission for reinstatement. Petitions for reinstatement by the Commission must be received by the Commission not later than April 1. Each petition for reinstatement shall be accompanied by proof that the petitioner is then in compliance and that a reinstatement fee of $100.00 plus filing fees and late fees have been paid. If the petitioner is found to be in compliance by the Commission, to include payment of all fees, the petition shall be granted and the Commission will notify the petitioner, the Clerk of the South Carolina Supreme Court, and the judge or judges of the judicial circuit in which the petitioner principally practices and/or maintains a principal residence. The Commission shall inform the petitioner of the curative actions necessary for reinstatement if the petition is found not to be in compliance.

B. Reinstatement After April 1.

Petitions received after April 1 will be returned to the petitioner who will be informed that the petition for reinstatement must be filed with the Clerk of the South Carolina Supreme Court.

C. Notice to the Clerk of South Carolina Supreme Court.

Promptly after April 1, the Commission shall provide to the Clerk of the South Carolina Supreme Court the names of all lawyers who remain suspended.

IX. Waivers and Extensions

A. Waivers.

In individual cases involving extraordinary hardship or extenuating circumstances, the Commission may waive or modify the requirements of Regulation II(A) or extend the requirements of Regulation VI(A). When appropriate, and as a condition for any such waiver or modification, the Commission may proportionally increase the member's requirements for the succeeding calendar year. For example, if a member receives a waiver of 6 hours credit for one calendar year, the requirement for the following calendar year may be increased by 6 hours.

B. Extensions.

The Commission has no authority to extend the deadlines for compliance reporting or automatic suspension and all requests for such extensions made to the Commission will be denied.

X. Reconsideration

Any judicial member or active member of the South Carolina Bar or

any sponsor aggrieved by a decision or action of the Commission may request reconsideration. A request for reconsideration must be submitted to the Commission (a) in writing, (b) within 30 days from the mailing of notice of the decision to the requesting judge or active member of the South Carolina Bar or sponsor or the publication of notice of the action in the South Carolina Bar News (or successor publication), and (c) may be accompanied by supporting evidence or documentation including affidavits. The request for reconsideration may, but need not, include a demand for a hearing. If a hearing is demanded, the judicial member, active member, or sponsor requesting the hearing will be heard by the Commission or by a committee appointed by the Commission for that purpose and may present evidence and argument in support of the request for reconsideration.

XI. Appeals

Any person aggrieved by the operation of these Regulations and who has exhausted all other remedies available hereunder, may petition the South Carolina Supreme Court for redress; provided, however, that any appeal must be submitted to the Court, in writing, not later than 30 calendar days after notice of final action by the Commission is mailed (via United States Postal Service) to the individual concerned.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Louis V. Vick, Jr.,

Respondent,

v.

South Carolina Department of Transportation,

Appellant.

Appeal From Charleston County
Daniel E. Martin, Sr., Circuit Court Judge
Roger M. Young, Master-in-Equity

Opinion No. 3393
Heard September 6, 2001 - Filed October 15, 2001

AFFIRMED

Christopher L. Murphy, of Stuckey Law Offices, of Charleston; and Assistant Chief Counsel Glennith C. Johnson, of Columbia, for appellant.

Joseph S. Brockington, of Charleston, for respondent.

HEARN, C.J.: Louis V. Vick, Jr. brought this inverse condemnation action against the South Carolina Department of Transportation (SCDOT), alleging damage to a private road. The matter was referred to the

master-in-equity to address the issue of ownership of the property, reserving the issue of damages if the road was found to be private for a jury trial. After the master found Vick owned the road, a jury awarded him $134,261.52, and the circuit court awarded attorney fees and costs. We affirm.

FACTS

Pumpkin Lane is a 15-foot-wide, dead-end road near the Town of Mount Pleasant. It is approximately 980 feet long and runs in a straight line beside five residential lots. The road and surrounding property were originally part of a tract conveyed to Vermell Ola Wiggins. In 1954, she subdivided the property into five lots. On a plat prepared at that time (Wiggins Plat), Pumpkin Lane was named "Vermell Ole [sic] Wiggins Drive."

Around 1980, Vick made a verbal agreement with Benjamin Wiggins, Vermell's husband, to purchase all of the lots on Pumpkin Lane over time. By 1988, Vick owned three of the five lots. He purchased the fourth lot in 1989 and the fifth in 1997. In 1996, Vick received and recorded a quitclaim deed to Pumpkin Lane from Benjamin Wiggins as Vermell's heir.

In the late 1980s, SCDOT made plans for construction of the Mark Clark Expressway, including placing two concrete pipes under Pumpkin Lane to remove water that was expected to drain along the expressway. Installation of the pipes began in 1990.[1] When the project was completed, the contractors realized they had mistakenly placed the pipes partially under Vick's lots, instead of under Pumpkin Lane as detailed in the plans. As a result, SCDOT condemned a five-foot-wide strip of land on each of the lots for which Vick was paid $15,000.

In addition to the improper pipe placement, Vick noticed a deterioration in the condition of Pumpkin Lane. Before the construction, the road had a gravel surface. SCDOT resurfaced the road with dirt. Portions of the road caved in and deep potholes developed due to problems with the

[1] Vick contends the date of the taking was May 29, 1990.

underground pipes. Vick purchased a dump truck and brought in fill material to repair the road after he unsuccessfully tried to persuade SCDOT to do so.

In 1997, Vick brought this action, alleging he was entitled to compensation because the improper installation of the pipes damaged his road and caused a diminution in the value of his property. Vick also sought attorney fees and costs. By consent order of reference, the case was bifurcated and the parties agreed to have the master hear the issue of ownership, with any damages to be tried before a jury. The master found Pumpkin Lane was privately owned by Vick and that it had not been dedicated to the public. In September 1999, a damages trial was held, and the jury awarded Vick actual damages of $134,261.52. After the verdict, SCDOT moved for a new trial or remittitur, arguing the verdict was outside the range of the evidence. The circuit court denied the motions and awarded Vick attorney fees of $41,425.00 and costs of $2,678.58. SCDOT appeals.

DISCUSSION

I. Implied Dedication

SCDOT contends the master erred in failing to find Pumpkin Lane was impliedly dedicated for public use because the Wiggins Plat showed a small road running along five lots. We disagree.

The determination of whether a road has been dedicated to public use is one in equity. Mack v. Edens, 320 S.C. 236, 239, 464 S.E.2d 124, 126 (Ct. App. 1984). Therefore, this court may find facts in accordance with its own view of the preponderance of the evidence. Id.

Real property interests are normally conveyed by deed or will. Shia v. Pendergrass, 222 S.C. 342, 348, 72 S.E.2d 699, 701 (1952). In situations where title is claimed by dedication rather than an actual conveyance, the actions of the parties "must be so unequivocal and positive as to leave little doubt that it was the intention of the owner to dedicate the same to the public use." Id. To perfect a claim of dedication, a party must show two elements: (1) the owner's clear and unmistakable intention to dedicate the property to public use, and (2)

acceptance of that property by the public. Tupper v. Dorchester County, 326 S.C. 318, 326, 487 S.E.2d 187, 191-92 (1997). We find the master properly applied these principles in finding there was no implied dedication.[2]

South Carolina law recognizes two types of implied dedication– "one where the question of implied dedication arises from the sale of land with reference to maps or plats; the other when the dedication arises . . . from an abandonment to or acquiescence in public use." Shia, 222 S.C. at 347, 72 S.E.2d at 701. Here, SCDOT contends the former applies.

We find the Wiggins Plat alone does not conclusively manifest an intent to dedicate the road to the public, particularly in light of the fact that nearly all of the deeds Wiggins prepared conveying the lots merely granted the buyer an easement for ingress and egress over the road. This necessarily gives rise to the inference that she intended to retain ownership. Although the Wiggins Plat may have created a private right of easement between Wiggins and the purchasers, the fact that Wiggins allowed this small group to use the road did not vest any rights in the public at large or convey an offer of the road to the county. There is a "clearly defined distinction between the rights acquired by the public through dedication effected by platting and sale, and the private rights acquired by the grantees by virtue of the grant or covenant contained in a deed

[2] SCDOT argues that the master used the wrong burden of proof in ruling on this issue, claiming "[w]hen a dedication is made by deed or plat, as in the instant case, not only is the burden of proof far less than 'clear, convincing, and unequivocal' by the party asserting an implied dedication, but once such a grant is shown, the burden of proof then shifts to the other party" and citing Corbin v. Cherokee Realty Co., 229 S.C. 16, 91 S.E.2d 542 (1956), and Home Sales, Inc. v. City of North Myrtle Beach, 299 S.C. 70, 382 S.E.2d 463 (Ct. App. 1989). We disagree. As we read these cases in their entirety, they do not lessen the standard nor do they shift the burden of proof in cases of dedication by deed or plat.

which refers to a plat, or bounds the property upon a street through the grantor's lands." Outlaw v. Moise, 222 S.C. 24, 31, 71 S.E.2d 509, 512 (1952) (citation omitted). The Outlaw court further found:

> [W]here lands are platted and sales are made with reference to the plat, the acts of the owner in themselves merely create private rights in the grantees entitling the grantees to the use of the streets and ways laid down on the plat or referred to in the conveyance. But these rights are purely in the nature of private rights founded upon a grant or covenant, and no public rights attach to such streets or lands until there has been an express or implied acceptance of the dedication evidenced either by general public use or by the acts of the public authorities.

Id. Therefore, we find a plat alone is not determinative of implied dedication where there is evidence of the grantor's contrary intent.

Even if the plat constituted some indicia of intent to dedicate the property to the public, "[o]ur inquiry does not stop [t]here, however. After an owner expresses an intent to dedicate property to the public by a plat, the public must accept the dedication to make it complete." Van Blarcum v. City of N. Myrtle Beach, 337 S.C. 446, 451, 523 S.E.2d 486, 489 (Ct. App. 1999). "No formal acceptance by the public of an offer of dedication is necessary, and acceptance of the offer may be implied by the public's or public authority's continuously utilizing or maintaining the property in some fashion." Id.

Acceptance will not be implied by operation of law as asserted by SCDOT. When property is subdivided and sold according to a plat showing streets or roads, "the grantees acquire a private easement in the streets, but the easement does not become a public easement until there has been an express or implied acceptance of the dedication, evidenced either by general public use or by acts of the public authorities." Giles v. Parker, 304 S.C. 69, 73, 403 S.E.2d 130, 132 (Ct. App. 1991); see also Walker v. Guignard, 293 S.C. 247, 248, 359 S.E.2d 528, 529 (Ct. App. 1987) (holding although a designation of a street on

a plat may have been an offer of dedication, "there was never any acceptance, without which the purported dedication would not be complete").

In this case, the evidence shows no public acceptance. Aside from the buyers of the five lots, there was no evidence of general use by the public or of acceptance or maintenance by city or county authorities. The former deputy attorney for Charleston County testified there was no public dedication by Wiggins or an acceptance by the public or any governmental entity, and she believed Pumpkin Lane was a private road. She stated that Wiggins named the road after herself and called it a private drive. She also noted that a 1992 letter from Charleston County denied Vick's requests to maintain the road on the basis it was private property.

Accordingly, we affirm the master's finding there was no implied dedication of Pumpkin Lane.

II. Interest

SCDOT next contends the circuit court committed reversible error in charging the jury on interest.[3] At oral argument, SCDOT conceded Vick's entitlement to an award for interest and merely disputed how that award should be determined. SCDOT contends the South Carolina Eminent Domain Procedures Act (Act) should control and therefore it was error for the trial judge to charge the jury on interest. We disagree.

The Act, a uniform procedure for condemnation proceedings enacted in 1987, expressly requires interest be paid at the rate of eight percent yearly on the sum found to be just compensation, accruing from the date of filing of the condemnation notice to the date of the verdict or judgment. S.C.

[3] During its instructions, the circuit court charged the jury as follows: "I charge you that the requirement that just compensation shall be paid is comprehensive and includes all elements and no specific command to include interest is necessary when interest or its equivalent is a part of such compensation."

Code Ann. § 28-2-420(A) (1991). The Act is the exclusive procedure for condemnation by a governmental entity. S.C. Code Ann. § 28-2-60 (1991) ("The provisions of this chapter shall constitute the exclusive procedure whereby condemnation may be undertaken in this State."); see Godwin v. Carrigan, 227 S.C. 216, 225, 87 S.E.2d 471, 475 (1955) (holding the provision for exclusivity "contemplates that the exclusiveness shall only apply to those cases or situations which are embraced within the machinery of the condemnation statutes.").

This case, however, is a common law action brought by the landowner for inverse condemnation, rather than a condemnation action. See 27 Am. Jur. 2d Eminent Domain § 829 (1996) ("The term 'inverse condemnation' describes an action grounded, not on statutory condemnation power, but on the constitutional proscription against the taking or damaging of property for public use without just compensation."). As explained by our supreme court: "One basic difference between condemnation and inverse condemnation is that in condemnation proceedings, the governmental entity is the moving party, whereas, in inverse condemnation, the property owner is the moving party." S.C. State Highway Dep't v. Moody, 267 S.C. 130, 136, 226 S.E.2d 423, 425 (1976). Unlike condemnation actions where interest is set by statute, the right to prejudgment interest in inverse condemnation actions stems from the just compensation clauses of the United States and state constitutions. 27 Am. Jur. 2d Eminent Domain § 902 (1996); see also Aetna Life & Cas. Co. v. City of Los Angeles, 216 Cal. Rptr. 831, 839 (Cal. Ct. App. 1985) (finding award of prejudgment interest mandated by "the Fifth Amendment of the United States Constitution prohibiting the taking of private property for public use without just compensation").

A plaintiff is generally entitled to interest in property cases. 11 S.C. Juris. Damages § 8(a) (1992); see E. I. Du Pont De Nemours & Co. v. Lyles & Lang Constr. Co., 219 F.2d 328, 342 (4th Cir. 1955). This court noted in a condemnation case that "[t]he purpose of awarding interest is to compensate the landowner for the delay in the monetary payment that occurred after the property has been taken." S.C. Dep't of Transp. v. Faulkenberry, 337 S.C. 140, 149, 522 S.E.2d 822, 826 (Ct. App. 1999). The addition of prejudgment interest is designed to pay the landowner for the time value of money that should have

been received at the time of the taking and is an element of just compensation. Id.

We find this principle is equally applicable in an action for inverse condemnation; however, unlike government condemnations, the legislature has not set a rate or method for determining interest in inverse condemnation actions. South Carolina case law implies that interest recoverable in inverse condemnation actions is an issue to be charged to the jury for its determination as a measure of damages. See S.C. State Highway Dep't v. Miller, 237 S.C. 386, 392, 117 S.E.2d 561, 564 (1960) (stating, "[a]ssuming, without deciding," that interest was recoverable, "it was the duty of the respondents to call the matter of interest on the award to the attention of the trial [j]udge and request an instruction upon such so that the jury could, by their verdict, determine what was 'just compensation'."). Moreover, "[t]he court may even consider the market rate of interest rather than the statutory legal rate, if that will be required to compensate the plaintiff fully." 11 S.C. Juris. Damages § 8(a); see E. I. DuPont De Nemours & Co., 219 F.2d at 342. Therefore, we affirm the circuit judge's charge.[4]

III. New Trial/Remittitur

SCDOT next asserts the circuit court erred by not granting its motion for a new trial or remittitur because the verdict exceeded the scope of the evidence. We disagree.

"The trial judge *alone* has the power to grant a new trial *nisi* when he finds the amount of the verdict to be merely inadequate or excessive." O'Neal v. Bowles, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (1993). The jury's determination of damages is entitled to substantial deference. Rush v.

[4] Interestingly, we note the apparent rate of interest applied by the jury was less than the eight percent provided in the Act. If the jury used the highest value Vick assigned to his damages in reaching their verdict of $134,261.52, the interest component of that award is $53,411.52 spread over a period of 9.25 years, or approximately 7.14 percent yearly.

Blanchard, 310 S.C. 375, 379, 426 S.E.2d 802, 805 (1993). The denial of a new trial motion is within the discretion of the trial court, and absent an abuse of discretion, it will not be reversed on appeal. Cock-N-Bull Steak House, Inc. v. Generali Ins. Co., 321 S.C. 1, 9, 466 S.E.2d 727, 731 (1996). When a defendant's request to remit a verdict is denied, an appellate court will reverse only if the refusal to remit was controlled by an error of law or a new trial absolute should have been granted. Knoke v. S.C. Dep't of Parks, Recreation & Tourism, 324 S.C. 136, 141, 478 S.E.2d 256, 258 (1996).

At trial, Vick presented two methods for calculating the damage to Pumpkin Lane.[5] The first method was based on the diminution in value to the entire tract consisting of Pumpkin Lane and the five lots. Vick testified this property was worth $388,437, and the improper installation caused a twenty percent diminution in value, resulting in a net damage amount of $77,687. Vick's second method of computing damages was based on the damage to Pumpkin Lane alone. Vick testified the road was 15 feet wide and had a value of $5.50 per square foot. He stated the length of road directly in front of the lots

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[5] SCDOT objected to Vick's testimony as to the value of all of the property, arguing he was not entitled to damages for the diminution of surrounding property because it did not impact the other properties and, further, some of the lots were not owned by him when the pipes were first installed. Moreover, SCDOT raises as an additional issue on appeal that the circuit court erred in allowing evidence of the diminished value of all of the lots when he only owned three of the lots when the plans were announced in 1988. We disagree. We note that the taking here did not occur until after the pipes were laid in 1990. By the time of trial, Vick owned all of the real property in question in fee simple and therefore possessed any rights that his predecessor in interest may have had. See 63C Am.Jur.2d Property § 11 (1997) ("'[R]eal property' includes land, possessory rights to land, and that which is appurtenant to the land."). A landowner may always testify to the value of his or her property except in extreme cases where "the landowner's want of qualification is so complete that his testimony is entirely worthless." Seaboard Coastline R.R. v. Harrelson, 262 S.C. 43, 46, 202 S.E.2d 4, 4-5 (1974). Accordingly, we find Vick's testimony was proper.

was 688 feet, resulting in a figure of $56,760. Using the entire length of Pumpkin Lane (980 feet), the figure would be $80,850.

On appeal, SCDOT asserts the court erred in denying its motions for a new trial or remittitur because the verdict falls outside the highest measure of damages Vick presented. We disagree. If the jury's award included compensation for interest or its equivalent since the date of the taking, the amount of damages is within the range of the evidence. Having found the charge on interest was proper, we find no abuse of discretion in the circuit court's refusal to grant a remittitur or new trial.

IV. Attorney Fees

Lastly, SCDOT contends Vick waived any right to attorney fees and costs because he did not follow the provisions of S.C. Code Ann. § 28-2-510 (1991). It alternatively argues the amount of attorney fees awarded is excessive in light of Vick's attorney's affidavit. We disagree.

We find these issues are not preserved for our review.[6] As to Vick's entitlement to attorney fees, SCDOT never raised to the circuit court that Vick

[6] Vick's prayer for relief in his complaint included a request for attorney fees and costs. The master, in his order ruling on SCDOT's and Vick's motions to reconsider, ruled that Vick was entitled to attorney fees and costs pursuant to S.C. Code Ann. § 28-2-510(A) (1991). At trial, both attorneys advised the circuit court that "the parties have agreed that the issue of attorneys' fees should be handled by affidavit after the trial itself." After the trial, Vick's attorney submitted an affidavit stating he had worked for Vick in the past at an hourly rate of $130, but in this case the fee agreement called for a one-third contingency fee. He stated that he spent 137.2 hours on this matter, plus 59.1 hours by an associate, and 7.7 hours of paralegal time. The circuit court awarded Vick $41,425.00 in attorney fees and $2,678.58 for costs. SCDOT made no motion for reconsideration of the circuit court order to challenge either Vick's entitlement to attorney fees or the way that award was calculated.

was not entitled to attorney fees for failure to follow section 28-2-510. Rather, the parties appeared to stipulate during the damages trial that the matter would be handled by affidavit at the conclusion of the trial. Thus, this issue cannot be raised for the first time on appeal. Talley v. S.C. Higher Educ. Tuition Grants Comm., 289 S.C. 483, 487, 347 S.E.2d 99, 101 (1986) (alleged error must be raised to and ruled upon by trial judge to preserve issue for appellate review).

To the extent SCDOT asserts the attorney fees are excessive because they exceed the amount that would be due on an hourly basis, this issue also was not preserved for the same reasons discussed above. In any event, the award was not error. "Where an attorney's services and their value are determined by the trier of fact, an appeal will not prevail if the findings of fact are supported by any competent evidence." Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 384, 377 S.E.2d 296, 297 (1989). In determining an award of attorney fees, the court should consider the following six factors: "(1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services." Jackson v. Speed, 326 S.C. 289, 308, 486 S.E.2d 750,760 (1997). The circuit judge's order in this case shows that he considered these factors in determining a figure he believed constituted reasonable compensation. We find these findings are supported by the evidence in the record and affirm the award of attorney fees and costs.

CONCLUSION

We affirm the master's determination that Pumpkin Lane has not been dedicated to public use. We also affirm the verdict rendered in the damages trial and the circuit court's entry of judgment, including its award of attorney fees and costs.

AFFIRMED.

CURETON and HOWARD, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Randy L. Hillman,

Appellant,

v.

Robert Eugene Pinion and Pamela Denise Gent, Personal Representatives for the Estate of Brenda Dodd Hillman, Deceased,

Respondents.

Appeal From Oconee County
Barry W. Knobel, Family Court Judge

Opinion No. 3394
Heard September 4, 2001 - Filed October 15, 2001

AFFIRMED

H. Jeff McLeod, of Anderson, for appellant.

W. Robert Owens, Jr., of Walhalla, for respondents.

HEARN, C.J.: Randy L. Hillman (Husband) appeals a family court order denying his motion for relief from a consent order which dismissed with prejudice his domestic action against Brenda Dodd Hillman (Wife). We affirm.

FACTS AND PROCEDURAL HISTORY

The parties married in December 1990. In July 1997, Husband brought an action for a divorce on the grounds of physical cruelty or habitual drunkenness, and equitable division of marital property. Wife answered, denying Husband's entitlement to a divorce on these grounds, and counterclaimed for a divorce on the ground of physical cruelty and equitable division of marital property.

On July 25, 1997, the family court issued a temporary order granting Wife possession of the marital home. The issue of whether the home was marital property subject to equitable distribution was held in abeyance pending a later hearing. The action was administratively struck from the family court roster on May 21, 1998.

Prior to the final hearing, Wife died testate. In September 1999, Husband's attorney initiated a proposed consent order to dismiss the case with prejudice. Wife's attorney consented to the dismissal and, by consent order dated December 1, 1999, the court dismissed the action with prejudice. Neither party appealed the order of dismissal.

In January 2000, Husband's new attorney filed a motion with the family court seeking: (1) substitution of Husband's attorney; (2) relief from the order of dismissal pursuant to Rule 60, SCRCP; and (3) substitution of the personal representative of Wife's estate for Wife. Husband's position was that the dismissal should be set aside pursuant to Rule 60 because all the parties were operating under the mistaken belief that during the pendency of a divorce action, the death of one party to the action rendered the action moot. On January 31, 2000, the family court entered a consent order relieving Husband's original

attorney and substituting Husband's new attorney.[1] Although the court noted the equitable distribution claims did not automatically abate on Wife's death, the court nonetheless denied the motion for relief and the motion to substitute the personal representative of Wife's estate for Wife. The court reasoned Husband's prior attorney acted within his authority in stipulating to a dismissal and was not formally relieved from the case until January 31, 2000. Husband filed a motion for reconsideration which was denied. This appeal followed.

STANDARD OF REVIEW

Motions for relief under Rule 60(b) are within the trial court's discretion, and this court will not reverse the trial court absent an abuse of discretion. Tri-County Ice & Fuel Co. v. Palmetto Ice Co., 303 S.C. 237, 242, 399 S.E.2d 779,782 (1990); Coleman v. Dunlap, 303 S.C. 511, 513, 402 S.E.2d 181, 183 (Ct. App. 1991). An abuse of discretion arises when the trial court was controlled by an error of law or when the order is without evidentiary support. Goodson v. Am. Bankers Ins. Co., 295 S.C. 400, 402, 368 S.E.2d 687, 689 (Ct. App. 1988).

DISCUSSION

Husband asserts the trial court should have granted his motion for relief from judgment on the ground of mistake. He claims his attorney mistakenly believed Wife's death abated the action for equitable apportionment and based on that mistake, Husband's attorney improperly sought to dismiss the case. Therefore, Husband asserts that Rule 60(b)(1), SCRCP entitles him to relief. We disagree.

Rule 60(b)(1), SCRCP provides that this court may relieve a party from a final judgment or order if the judgment or order was induced by mistake, inadvertence, surprise, or excusable neglect. This rule is an appropriate remedy

[1] We have substituted the personal representatives of Wife's estate for Wife as a party to this action.

for good faith mistakes of fact if all other applicable factors are met. See Columbia Pools, Inc. v. Galvin, 288 S.C. 59, 61, 339 S.E.2d 524, 525 (Ct. App. 1986).[2] However, a party may not generally use Rule 60(b)(1) as a vehicle for relief from a mistake of law.[3] See Savage v. Cannon, 204 S.C. 473, 30 S.E.2d 70 (1944); see generally 11 Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 2858 (1973) (stating that an appellant is not entitled to relief under Rule 60(b)(1) for ignorance of the rules or ignorance of the law).[4]

The mistake Husband asserts entitles him to relief under Rule 60(b)(1), SCRCP is the parties' mistaken assumption that Wife's death abated the equitable apportionment action. This court has held that the death of one party to an action does not abate an action for equitable distribution. Hodge v. Hodge, 305 S.C. 521, 525, 409 S.E.2d 436, 439 (Ct. App. 1991); but cf. Louthian & Merritt, P.A. v. Davis, 272 S.C. 330, 251 S.E.2d 757 (1979) (holding that the death of a party abates a divorce action). However, because this is a mistake of law, not fact, we find this is not the type of mistake, surprise, inadvertence, and excusable neglect generally contemplated by Rule 60(b)(1). See Savage, 204 S.C. at 477, 30 S.E.2d at 71; Columbia Pools, 288 S.C. at 61, 339 S.E.2d at 525.

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[2] Columbia Pools arose under S.C. Code Ann. § 15-27-130 (1976) which was later repealed and replaced by Rule 60, SCRCP. See Sijon v. Green, 289 S.C. 126, 127, 345 S.E.2d 246, 247 (1986).

[3] Many other state courts and federal courts have addressed this issue and held that Rule 60(b)(1) only applies to errors of fact. See Chang v. Smith, 778 F.2d 83 (1st Cir. 1985); Flint v. Howard, 464 F.2d 1084 (1st Cir. 1972); U.S. v. Erdoss, 440 F.2d 1221 (2d 1971); Andrews v. Time, Inc., 690 F. Supp. 362 (E.D. Penn. 1988); Swam v. United States, 327 F.2d 431 (7th Cir. 1964); Kingsbury v. Brown, 92 P.2d 1053 (Idaho 1939); Johnson-Olson Floor Coverings, Inc. v. Branthaver, 236 N.E.2d 903 (Ill. App. 2d Dist.1968); Carty v. Toro, 57 N.E.2d 434 (Ind. 1944).

[4] Savage arose under § 495 (1942) which was later repealed and replaced by Rule 60, SCRCP.

Further, Husband's attorney initiated the dismissal. The acts of an attorney are directly attributable to and binding on his client. Greenville Income Partners v. Holman, 308 S.C. 105, 107, 417 S.E.2d 107, 108 (Ct. App. 1992); Mitchell Supply Co. v. Gaffney, 297 S.C. 160, 375 S.E.2d 321 (Ct. App. 1988). The general rule is that the neglect of the attorney is the neglect of the client, and no mistake attributable to an attorney can be successfully used as a ground for relief, unless it would have been excusable if attributable to the client. Simon v. Flowers, 231 S.C. 545, 99 S.E.2d 391 (1957). The family court granted the order of dismissal on Husband's own motion and therefore any error the court committed in granting the motion was of Husband's own making. Husband will not be heard to complain on appeal of an error he voluntarily committed before the trial court. State v. Babb, 299 S.C. 451, 455, 385 S.E.2d 827, 829 (1989) (noting a party cannot be heard to complain of an error his own conduct induced). Accordingly, we affirm the family court's denial of Husband's motion for relief from judgment on the ground of mistake.

Husband also asserts Wife's attorney lacked authority to consent to the dismissal and therefore the dismissal is void. We disagree.

After Wife's death, her attorney in the family court action immediately began representing her estate, and a notice to creditors was published. This notice was before the family court at the time of dismissal and is included in our record on appeal. The notice to creditors denotes Wife's attorney as the attorney for Wife's estate. Further, at the hearing to reopen the family court case, Wife's attorney stated that he immediately began representing Wife's estate at Wife's death per an agreement with the personal representative of Wife's estate and Husband's original attorney. We find that under the facts of this case, Wife's attorney's authority did not terminate at Wife's death.[5]

[5] We note, however, that generally an attorney's authority to act for his or her client ends at that client's death. Carver v. Morrow, 213 S.C. 199, 48 S.E.2d 814 (1948); Bunch v. Dunning, 106 S.C. 300, 91 S.E. 331 (1917). Our holding, that Wife's attorney's authority continued after Wife's death, does not alter this general rule, but rather is limited to the specific facts of this case.

Rather, Wife's attorney had authority to consent to the dismissal order because he was representing Wife's estate and all parties had notice of this representation. Because Wife's attorney had authority to consent to the dismissal, Husband's argument is unavailing.

Husband further contends the family court's order dismissing the action with prejudice is void because the court did not acquire jurisdiction over Wife's estate before ordering the dismissal. We disagree.

Rule 25, SCRCP provides:

> If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided by Rule 4 for the service of summons. If substitution is not made within a reasonable time, the action may be dismissed as to the deceased party.

The plain language of Rule 25 suggests the family court need not obtain jurisdiction over a deceased party's estate to dismiss the deceased party from an action. In fact, the rule specifically provides for the dismissal of a deceased party where substitution of the proper parties does not occur within a reasonable amount of time. Therefore, Husband's argument is unavailing.

For the foregoing reasons, the decision of the family court is

AFFIRMED.

CURETON and HOWARD, JJ., concur.