

PROPOSED

Rule 608 Appointment of Lawyers for Indigents

(a) **Purpose.** This rule provides a uniform method of appointing lawyers to serve as counsel or guardians ad litem (GALs) for indigent persons in the circuit and family courts.

(b) **Terminology.** The following terminology is used in this rule:

(1) **Active Member:** Any active member of the South Carolina Bar as defined by the Bylaws of the Bar. For the purpose of this rule, a person holding a limited certificate to practice law in South Carolina shall not be considered an active member.

(2) **Appointment Year:** The period from July 1 to June 30.

(3) **Supreme Court:** The Supreme Court of South Carolina.

(4) **Larger Counties:** Aiken, Beaufort, Charleston, Florence, Greenville, Horry, Lexington, Richland, Spartanburg and York.

(5) **Counties Needing Assistance:** Any county not listed above.

(6) **Indigent:** any person who is financially unable to employ counsel. In making a determination whether a person is indigent, all factors concerning the person's financial condition to include income, debts, assets and family situation should be considered. A presumption that the person is indigent shall be created if the person's net family income is less than or equal to the Poverty Guidelines established and revised annually by the United States Department of Health and Human Services and published in the Federal Register.¹ Net income shall mean gross income minus deductions required by law.

(7) **Death Penalty Case:** this includes any criminal case in which the solicitor has given notice of the intent to seek the death penalty and any post-conviction relief action challenging a death sentence.

¹ The current Poverty Guidelines may be found at <http://aspe.hhs.gov/poverty/00fedreg.htm>.

CONTENTS

SUPREME COURT OF SOUTH CAROLINA

PUBLISHED OPINIONS AND ORDERS

	Page
25234 - In the Matter of Ronald Lawrence Nester	23
25235 - In the Matter of L. Michael Allsep	26
25236 - Alicia Boan v. John Blackwell and Donald Blackwell	29
25237 - Catherine Anderson v. Baptist Medical Center and Palmetto Hospital Trust Fund	34
25238 - Anothy Monoz, et al. v. Green Tree Financial Corp., et al.	45
ORDER - Amendment to Rule 32, Rules for Lawyer Disciplinary Enforcement and Rule 413, SC Appellate Court Rules	55

UNPUBLISHED OPINIONS

None

PETITIONS - UNITED STATES SUPREME COURT

25108 - Sam McQueen v. S.C. Dept. of Health and Environmental Control	Pending
25112 - Teresa Harkins v. Greenville County	Pending
25130 - State v. Wesley Aaron Shafer, Jr.	Granted 09/26/00
25161 - State v. Jimmy Clifton Locklair	Denied 01/08/01
2000-OR-861 - Jasper N. Buchanan v. S.C. Department of Corrections, et al.	Denied 01/08/01
2000-OR-862 - Jasper N. Buchanan v. S.C. Department of Corrections, et al.	Denied 01/08/01

PETITIONS FOR REHEARING

2000-MO-147 - State v. Johnnie Johnson	Pending
2000-MO-148 - State v. Tony Leonard	Pending
2000-MO-149 - Stephen Thomas Drotar v. State	Pending

2001-MO-001 - Joseph Turner, III v. State	Pending
2001-MO-002 - Joyce Miller v. Johnny Miller	Pending
2001-MO-005- State v. Celester McCollum	Pending

THE SOUTH CAROLINA COURT OF APPEALS

PUBLISHED OPINIONS

3285	Triple E, Inc. v. Hendrix and Dail, Inc.	57
3286	First Palmetto Savings Bank v. Patel	66
3287	State v. John Thomas Robinson	73
3288	Bob Jones University v. Strandell	77

UNPUBLISHED OPINIONS

2001-UP-025	Griffith v. Griffith (Charleston, Judge Frances P. Segars-Andrews)
2001-UP-026	Phillips v. Phillips (Dorchester, Judge Frances P. Segars-Andrews)
2001-UP-027	Swinton Creek Nursery v. Edisto Farm Credit (Berkeley, Judge James E. Lockemy)
2001-UP-028	Baker v. Quinn (Greenville, Judge James R. Barber, III)
2001-UP-029	Stubbs v. Bi-Lo (Greenville, Judge James E. Lockemy)

PETITIONS FOR REHEARING

3256 - Lydia v. Horton	Pending
3259 - Lyerly v. American National	Pending
3261 - Trittech v. Hall	Pending

3262 - Quinn v. The Sharon Corp.	Pending
3263 - SC Farm Bureau v. S.E.C.U.R.E.	(2) Pending
3264 - R&G Construction v. Lowcountry Regional	Pending
3267 - Jeffords v. Lesesne	Pending
3270 - Boddie-Noell v. 42 Magnolia Partners	Pending
3271 - Gaskins v. Southern Farm	Pending
3272 - Watson v. Chapman	Pending
3273 - Duke Power v. Laurens Elec.	Pending
3274 - Pressley v. Lancaster County	Pending
3276 - State v. Florence Evans	Pending
2000-UP-590 - McLeod v. Spigner	Pending
2000-UP-634 - State v. David B. Harrell, Jr.	Pending
2000-UP-651 - Busbee v. Benton	Pending
2000-UP-656 - Martin v. SCDC	Pending
2000-UP-674 - State v. Christopher Odom	Pending
2000-UP-684 - State v. Rodney Elliott	Pending
2000-UP-706 - State v. Spencer Utsey	Pending
2000-UP-707 - SCDSS v. Rita Smith	Pending
2000-UP-717 - City of Myrtle Beach v. Eller Media	Pending
2000-UP-719 - Adams v. Eckerd Drugs	Pending
2000-UP-721 - State v. Clarence Martino	Pending
2000-UP-724 - SCDSS v. Poston	Pending
2000-UP-729 - State v. Dan Temple, Jr.	Pending

2000-UP-732 - State v. Enoch Anderson	Pending
2000-UP-738 - State v. Mikell Pinckney	Pending
2000-UP-739 - State v. Ben Eaddy	Pending
2000-UP-740 - State v. Stephen J. Green	Pending
2000-UP-741 - Center v. Center	Pending
2000-UP-745 - State v. Sissy Marie Sanders	Pending
2000-UP-753 - State v. Tony Gilliard	Pending
2000-UP-758 - Odom v. The Insurance Company	Pending
2000-UP-763 - Franklin v. Winn-Dixie	Pending
2000-UP-766 - Baldwin v. Peoples	Pending
2000-UP-769 - DiTomasso v. Wal-Mart	Pending
2000-UP-771 - State v. William Michaux Jacobs	Pending
2000-UP-775 - State v. Leroy Bookman, Jr.	Pending
2000-UP-776 - Rutland v. Yates	Pending
2000-UP-781 - Michael Cooper v. State	Pending
2000-UP-783 - State v. Clayton Benjamin	Pending
2000-UP-784 - State v. Katari Miller	Pending
2001-UP-002 - Gibson v. Cain	Pending
2001-UP-015 - Milton v. A-1 Financial Service	Pending

PETITIONS - SOUTH CAROLINA SUPREME COURT

2000-OR-062 - Ackerman v. 3-V Chemical	Pending
3059 - McCraw v. Mary Black Hospital	Pending

3069 - State v. Edward M. Clarkson	Pending
3093 - State v. Alfred Timmons	Pending
3102 - Gibson v. Spartanburg Sch. Dist.	Pending
3116 - Loadholt v. SC Budget & Control Board	Pending
3126 - Hundley v. Rite Aid	Pending
3128 - St. Andrews PSD v. City of Charleston	Pending
3156 - State v. Gary Grovenstein	Pending
3160 - West v. Gladney	Pending
3161 - Gordon v. Colonial Ins.	Pending
3162 - Paparella v. Paparella	(2) Pending
3173 - Antley v. Shepherd	Pending
3176 - State v. Franklin Benjamin	Pending
3178 - Stewart v. State Farm Mutual	Pending
3183 - Norton v. Norfolk	Pending
3189 - Bryant v. Waste Managment	Pending
3190 - Drew v. Waffle House, Inc.	Pending
3192 - State v. Denise Gail Buckner	Pending
3195 - Elledge v. Richland/Lexington	Pending
3197 - State v. Rebecca Ann Martin	Pending
3200 - F & D Electrical v. Powder Coaters	Pending
3204 - Lewis v. Premium Investment	Pending
3205 - State v. Jamie & Jimmy Mizzell	Pending
3214 - State v. James Anthony Primus	Pending

3215 - Brown v. BiLo, Inc.	Pending
3216 - State v. Jose Gustavo Castineira	Pending
3217 - State v. Juan Carlos Vasquez	Pending
3218 - State v. Johnny Harold Harris	Pending
3220 - State v. Timothy James Hammitt	Pending
3221 - Doe v. Queen	Pending
3225 - SCDSS v. Wilson	Pending
3231 - Hawkins v. Bruno Yacht Sales	Pending
3234 - Bower v. National General Ins. Co.	Pending
3236 - State v. Gregory Robert Blurton	(2) Pending
3240 - Unisun Ins. v. Hawkins	Pending
3241 - Auto Now v. Catawba Ins.	Pending
3249 - Nelson v. Yellow Cab Co.	Pending
3257 - State v. Scott Harrison	Pending
99-UP-652 - Herridge v. Herridge	Pending
2000-UP-054 - Carson v. SCDNR	Pending
2000-UP-059 - State v. Ernest E. Yarborough	Pending
2000-UP-075 - Dennehy v. Richboug's	Pending
2000-UP-137 - Livengood v. J&M Electric Services	Pending
2000-UP-145 - Stephen Ellenburg v. State	Pending
2000-UP-220 - Lewis v. Inland Food Corp.	Pending
2000-UP-260 - Brown v. Coe	Pending
2000-UP-277 - Hall v. Lee	Pending
2000-UP-288 - Kennedy v. Bedenbaugh	Pending

2000-UP-291 - State v. Robert Holland Koon	Pending
2000-UP-341 - State v. Landy V. Gladney	Pending
2000-UP-354 - Miller v. Miller	Pending
2000-UP-373 - Metal Trades v. SC Second Injury Fund	Pending
2000-UP-382 - Earl Stanley Hunter v. State	Pending
2000-UP-386 - Wood v. Wood	Pending
2000-UP-426 - Floyd v. Horry County School	Pending
2000-UP-441 - Harrison v. Bevilacqua	Pending
2000-UP-481 - Hall v. Keels	Pending
2000-UP-491 - State v. Michael Antonio Addison	Pending
2000-UP-500 - State v. Daryl Johnson	Pending
2000-UP-503 - Joseph Gibbs v. State	Pending
2000-UP-509 - Allsbrook v. Estate of Roberts	Pending
2000-UP-512 - State v. Darrell Bernard Epps	Pending
2000-UP-516 - Dearybury v. Dearybury	Pending
2000-UP-523 - Nationwide Ins. v. Unisun Ins.	Pending
2000-UP-528 - Ingram v. J & W Corporation	Pending
2000-UP-533 - Atlantic v. Hawthorne & Mundy	Pending
2000-UP-540 - Charley v. Williams	Pending
2000-UP-544 - Cox v. Murrell & Cox	Pending
2000-UP-546 - Obstbaum v. Obstbaum	Pending
2000-UP-547 - SC Farm Bureau v. Chandler	Pending
2000-UP-550 - McKittrick v. Sheriff Chrysler	Pending
2000-UP-552 - County of Williamsburg v. Askins	Pending

2000-UP-560 - Smith v. King	Pending
2000-UP-564 - State v. John P. Brown	Pending
2000-UP-588 - Durlach v. Durlach	Pending
2000-UP-593 - SCDOT v. Moffitt	Pending
2000-UP-596 - Liberty Savings v. Lin	Pending
2000-UP-601 - Johnson v. Williams	Pending
2000-UP-603 - Graham v. Graham	Pending
2000-UP-606 - Bailey v. Bailey	Pending
2000-UP-631 - Margaret Gale Rogers v. State	Pending
2000-UP-648 - State v. Walter Alan Davidson	Pending
2000-UP-649 - State v. John L. Connelly	Pending

PETITIONS - UNITED STATES SUPREME COURT

1999-UP-418	Bartell v. Francis Marion University	Denied
-------------	--------------------------------------	--------

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Ronald
Lawrence Nester, Sr., Respondent.

Opinion No.25234
Submitted December 7, 2000 - Filed January 16, 2001

PUBLIC REPRIMAND

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

Desa A. Ballard, of Columbia, for respondent.

PER CURIAM: In this attorney disciplinary matter, respondent and Disciplinary Counsel have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR. In the Agreement, respondent admits misconduct and consents to a public reprimand. We accept the Agreement and impose a public reprimand. The facts as admitted in the Agreement are as follows.

Facts

Respondent attached a voice activated tape recorder to the telephone at his residence. Over a period of several weeks, respondent recorded all telephone calls to and from his house without knowledge and

consent of the parties. This resulted in the recording of several conversations in which respondent was not a party.

Respondent failed to reveal the existence of these audio tapes during the discovery portion of domestic litigation between respondent and his estranged wife. Respondent submitted a “self-report” to Disciplinary Counsel in which he failed to disclose that he recorded conversations with anyone other than his wife.

Law

By his conduct, respondent has violated the following provisions of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1)(violating the Rules of Professional Conduct); 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); and Rule 7(a)(6)(violating the oath of office taken upon admission to practice law in this state).

Respondent has also violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 3.4 (unlawfully obstructing another party’s access to evidence); Rule 8.1 (knowingly making a false statement of material fact, failing to disclose a fact needed to correct a misapprehension, or failing to respond to a lawful demand for information regarding a disciplinary matter); Rule 8.4(a) (violating the Rules of Professional Conduct); Rule 8.4(b) (committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer); Rule 8.4(d) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); and Rule 8.4(e) (engaging in conduct prejudicial to the administration of justice).

Conclusion

Respondent has fully acknowledged that his actions were in violation of the Rules of Professional Conduct. Moreover, he has not been previously sanctioned for misconduct. We therefore accept the Agreement

for Discipline by Consent and reprimand respondent for his conduct in this matter.

PUBLIC REPRIMAND.

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

Respondent represented a client who was involved in foreclosure proceedings against real estate owned by third parties. The third parties filed for bankruptcy.

Respondent made numerous misrepresentations to his client, and to his client's son and daughter, regarding the status of the bankruptcy proceeding, including misrepresentations related to the filing of the Proof of Claim, the filing of a motion to lift the automatic stay, the scheduling of hearings, the execution of a consent agreement, and the receipt of payment from the bankruptcy trustees. Respondent also failed to file an objection to the Bankruptcy Plan which led to the plan being approved and his client's foreclosure rights being materially impaired. After the client terminated respondent's representation, respondent continued in his representation of the client by delivering a copy of a consent agreement to the third parties' lawyer.

Respondent also failed to disclose to his client the fact that at the same time that he was representing his client, the third parties' lawyer was personally representing respondent in an ongoing legal matter. Finally, respondent failed to respond to inquiries and requests for information from the Office of Disciplinary Counsel.

Law

By his conduct, respondent has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (a lawyer shall provide competent representation to a client); Rule 1.2 (a lawyer shall abide by a client's decisions concerning the objectives of representation, and shall consult with the client as to the means by which they are to be pursued); Rule 1.3 (a lawyer shall act with reasonable diligence in representing a client); Rule 1.4 (a lawyer shall keep clients reasonably informed about the status of their cases, promptly comply with clients' reasonable requests for information, and explain matters to clients to the extent reasonably necessary for them to make informed decisions regarding representation); Rule 1.7 (a lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a

third person, or by the lawyer's own interests); Rule 1.16 (a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the lawyer is discharged); Rule 3.2 (a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client); Rule 4.1 (in the course of representing a client a lawyer shall not knowingly make a false statement of material fact to a third person); Rule 8.1(b) (a lawyer in connection with a disciplinary matter shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority); Rule 8.4(a) (misconduct for a lawyer to violate the Rules of Professional Conduct); Rule 8.4(d) (misconduct to engage in conduct involving misrepresentation); and Rule 8.4(e) (misconduct to engage in conduct that is prejudicial to the administration of justice).

Respondent has also violated the following provisions of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1) (violating the Rules of Professional Conduct); Rule 7(a)(3) (knowingly failing to respond to a lawful demand from a disciplinary authority to include a request for a response); 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).

Conclusion

We accept the Agreement for Discipline by Consent and suspend respondent from the practice of law for sixty (60) days. Respondent has also tendered his resignation to the South Carolina Bar. The resignation will be accepted at the conclusion of the sixty day suspension. Within fifteen days of the date of this opinion, respondent shall file an affidavit with the Clerk of Court showing that he has complied with Rule 30, RLDE, Rule 413, SCACR.

DEFINITE SUSPENSION.

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

