Lions, Tigers, and Bears: Oh My! Updates on Legal Ethics and Professional Responsibility

- Professor Lisa Smith-Butler, Charleston School of Law
- Presentation to South Carolina Association of Counties
- Virtual South Carolina Local Government Attorneys' Institute
- November 18, 2022

Agenda

- Updates for 2022
  - United States Supreme Court
    - Mandatory Bar Dues
      - McDonald v. Firth
      - Taylor v. Heath
  - United States Court of Appeals for the Fourth Circuit
    - Appeal
      - John Hawkins v. South Carolina Commission on Lawyer Conduct
    - Public Reprimand
      - Federal Judge Joe Dawson
  - Supreme Court of South Carolina
    - Decisions & Orders
  - South Carolina Commission on Lawyer Conduct
    - Data
  - South Carolina Bar Ethics Advisory Opinions

Cases: United States Supreme Court

Mandatory Bar Dues

- One of the issues continuing to appear before the Court is the issue of mandatory bar dues and the constitutionality of those dues.
- Thirty-one states have mandatory bars. **See** Levin, Leslie C., *The End of Mandatory State Bars*, 109 GEO. L.J. Online 1 (2020.)

- Most states have mandatory bar associations that require attorneys to join in order to practice law within the state.
- These associations perform some regulatory functions, i.e., admissions, discipline, client protection funds, and opponents argue that they also engage in advocacy and influence.
- Opponents argue that mandatory bar associations violate their constitutional rights, particularly their First Amendment rights to free speech and association.

South Carolina Bar

- In 1983, Professor Theodore Schneyer stated:
  - “Since the first call for a unified bar in 1913, lawyers have ceaselessly debated whether they should be compelled to belong to an official state bar organization, how such organizations should be governed, and what their activities should be.” *See* Schneyer, Theodore J., *The Incoherence of the Unified Bar Concept: Generalizing from the Wisconsin Case*, 1983 AM. B. FOUND RES. J. 1, 1-2 (1983.)

The Debate: The Supreme Court Weighs In

- In 1961, the Court rejected a Wisconsin attorney's contention in *Lathrop v. Donohue*, 367 U.S. 820 (1961) that he could not be constitutionally compelled to join and pay dues to a state bar association that also spent its funds on attempting to influence legislation.
- The Court confronted this issue again in *Keller v. State Bar of California*, 496 U.S. 1 (1990) when California lawyers sued the State Bar of California, "…claiming its use of their membership dues to finance certain ideological or political activities to which they were opposed violated their rights under the First Amendment of the United States Constitution. The Supreme Court of California rejected this challenge on the grounds that the State Bar is a state agency and, as such, may use the dues for any purpose within its broad statutory authority. **We agree that lawyers admitted to practice in the State may be required to join and pay dues to the State Bar, but disagree as to the scope of permissible dues-financed activities in which the State Bar may engage."**

And Then….

- The United States Supreme Court decided *Janus v. AFSCME*, 138 S.Ct. 2448 (2018), holding that "[u]nder Illinois law, public employees are forced to subsidize a union, even if they choose not to join and strongly object to the position the union takes in collective bargaining and related activities. We conclude that this arrangement violates the free speech rights of nonmembers by compelling them to subsidize private speech on matters of substantial public concern." Id. at 2460.
- Justice Alito drafted the opinion for the majority in what was a 5 to 4 decision. Id. at 2487.

Can *Keller* Still Stand?

- After *Janus* and its reasoning, a debate ensued between law professors who argued that *Janus*, with its reasoning, effectively overturned *Keller*.
  - *See* Baude, William and Volokh, Eugene, *Compelled Subsidies and the First Amendment*, 132 HARV. L.REV. 171, 196-198 (2018) and Chermerinsky, Erwin, and Fisk, Catherine L., *Exaggerating the Effects of JANUS: A Reply to Professors Bauder and Volokh*, 132 HARV. L.REV. F. 42, 54-57 (2018.)

And yet....

- The United States Supreme Court has denied certiorari to the three most recent mandatory bar dues cases submitted before it.
- *See*
  - *McDonald v. Firth*, 142 S.Ct. 1442 (2022) (Texas).
  - *Taylor v. Heath*, 142 S.Ct. 1441 (2022) (Michigan).
  - *Jarchow v. State Bar of Wisconsin* 140 S.Ct. 1720 (2020) (Wisconsin.)

- Justice Thomas and Justice Gorsuch dissented from the denial of certiorari in *Jarchow*, stating that:
  - "We have admitted that ABOOD was erroneous and ABOOD provided the foundation for KELLER. In light of these developments, we should reexamine whether KELLER is still sound precedent." Id. at 1721.

Keep Watching!

Mandatory bar associations v. voluntary bar associations.

Cases: The United States Court of Appeals for the Fourth Circuit

The United States Court of Appeals for the Fourth Circuit

- The Fourth Circuit received an appeal from South Carolina lawyer, John Hawkins, on June 9, 2022 regarding the South Carolina Commission on Lawyer Conduct and its attempts to regulate his law firm's advertising.
- Hawkins argued that such regulation violated his First Amendment free speech rights and appealed his loss from the District Court of South Carolina.

The District Court: John Hawkins v. South Carolina Commission on Lawyer Conduct, 22 U.S. Dist. Lexis 28809 (D.S.C. 2022.)

- According to Judge Michelle Childs of the Federal District Court of South Carolina:
  - “Plaintiffs John Hawkins ("Hawkins") and HawkLaw, PA ("HawkLaw") (together, "Plaintiffs") filed this action against Defendants, the South Carolina Commission on Lawyer Conduct (the "Commission") and the South Carolina Office of Disciplinary Counsel (the "ODC") (collectively, "Defendants"), pursuant to **42 U.S.C. § 1983** challenging the constitutionality of South Carolina's Rules of Professional Conduct for attorneys and requesting declaratory and injunctive relief. Plaintiffs, a licensed South Carolina attorney and a law firm organized under the laws of South Carolina, allege that Defendants have implemented and attempted to enforce various rules regulating their commercial speech in violation of the **First** and **Fourteenth Amendments** . Specifically, Plaintiffs aver that **South Carolina Rule of Professional Conduct 7.1(e)** is facially unconstitutional and unconstitutional as applied to Plaintiffs; that portions of **Rule 7.2(a)** are facially unconstitutional and unconstitutional as applied to Plaintiffs' television advertisements; **Rule 7.1(c)** is facially unconstitutional and unconstitutional as applied to Plaintiffs' advertisements; and that Defendants' "selective enforcement" of **Rule 7.1** and **7.2** to particular advertisements is unconstitutional.”


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HAWK LAW

Judge Childs Dismisses:

- “For the above-mentioned reasons, the court finds that the state attorney disciplinary proceedings at issue fall with the province of the *Younger* abstention doctrine and the proceedings are judicial in nature, implicate important state interests, and provide adequate opportunity for Plaintiffs to raise their constitutional challenges. As such, principles of comity and federalism counsel the court's abstention from this matter.
- Based upon the foregoing, the court *GRANTS* Defendants' Motion to Dismiss based on the *Younger* abstention doctrine and *DISMISSES* this action. As a result, Plaintiffs' Motion to Compel and Defendants' Motion to Compel are moot.
- *IT IS SO ORDERED*.
- February 17, 2022”

Then….

- In early May of 2022, Judge Childs denied John Hawkin’s Motion for Reconsideration.
- On June 9, 2022, John Hawkins filed a Notice of Appeal with the United States Court of Appeals for the Fourth Circuit.
- On August 29, 2022, the Court, at John Hawkin’s request, dismissed the case.
- Next?

Keep your eyes on lawyer advertising

- In *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), the United States Supreme Court addressed the issue of whether the State Bar's regulation of attorney advertising violated the Sherman Act, the First Amendment, and the Fourteenth Amendment.
- The Court held:
  - "The constitutional issue in this case is only whether the State may prevent the publication in a newspaper of appellants' truthful advertisement concerning the availability and terms of routine legal services. We rule simply that the flow of such information may not be restrained, and we therefore hold the present application of the disciplinary rule against appellants to be violative of the First Amendment." Id. at 384.

In Re R.M.J., 455 U.S. 191 (1982.)

- In R.M.J., the Court further explained their reasoning in *Bates*, noting that *Bates* did not bar state regulation of attorney advertising, noting;
  - "The Court emphasized that advertising by lawyers still could be regulated. False, deceptive, or misleading advertising remains subject to restraint, and the Court recognized that advertising by the professions poses special risks of deception — 'because the public lacks sophistication concerning legal services, misstatements that might be overlooked or deemed unimportant in other advertising may be found quite inappropriate in legal advertising.' *Ibid.*... The Court suggested that claims as to quality or in-person solicitation might be so likely to mislead as to warrant restriction. And the Court noted that a warning or disclaimer might be appropriately required, even in the context of advertising as to price, in order to dissipate the possibility of consumer confusion or deception. '[T]he bar retains the power to correct omissions that have the effect of presenting an inaccurate picture, [although] the preferred remedy is more disclosure, rather than less.' *Id.,* at 375."

South Carolina Rules of Professional Conduct: Rule 407

- South Carolina continues to regulate lawyer advertising via Rule 407.
- Rules 7.1 – 7.5 deal with lawyer advertising and differ slightly from the ABA Model Rules of Professional Conduct.

More…

The United States Court of Appeals for the Fourth Circuit also issued a public reprimand to South Carolina's federal district court judge, Joe Dawson.

Why?

According to the Court, Judge Dawson accepted a $216,000.00 fee from his former employer, Charleston County, before taking the bench.

This sum was for " …his "institutional and historical knowledge and insight" and "nonlegal advice" over the next year…."

Judge Dawson failed to timely amend his financial filings and a complaint was lodged against him before he could do so, alleging a violation of Rule 6 of the Code of Judicial Conduct.

Decisions & Orders from The Supreme Court of South Carolina

The Supreme Court of South Carolina

- Since January 1, 2022, the Supreme Court of South Carolina has handled nineteen cases involving lawyer and judge misconduct.

During this time frame, January 1, 2022 – October 10, 2022, the Court:

- disbarred three attorneys;
- issued interim suspensions to four attorneys, three of whom were later reinstated;
- issued public reprimands to three attorneys;
- issued public reprimands and imposed fines on one attorney;
- suspended the license to practice law of three attorneys;
- incapacitated one attorney;
- found one attorney to be in criminal contempt, suspended the sentence, and imposed fines; and
- handled three orders regarding county judges.

Additionally…

- The Court also handled a case of bar admission in In The Matter of Anonymous Applicant for Admission to the South Carolina Bar and dealt with a Rule 11 sanction against a client in Kovach v. Whitley.

Richard Alexander Murdaugh, 437 S.C. 15 (2022.)

Perhaps the most publicized case of disbarment by the Supreme Court of South Carolina pertains to Richard Alexander Murdaugh.

Noting that Murdaugh had been placed on suspension in September of 2021, the Court disbarred him on July 12, 2022 after acknowledging that Murdaugh:

- "…has been indicted on more than eighty criminal charges arising from various ongoing investigations. Additionally, Respondent has admitted in various court proceedings and filings that he engaged in financial misconduct involving theft of money from his former law firm; that he solicited his own murder to defraud his life insurance carrier; and that he is liable for the theft of $4,305,000 in settlement funds."

- In addition to admitting to theft of clients' settlement funds and soliciting his own murder, Murdaugh has also been charged with the murder of his wife and son.
- As the Court noted, additional sanctions may be handed down at a later date as these allegations unfold.

Additional Disbarments

- *In the Matter of Christi Anne Misocky*, 435 S.C. 557 (2022.)
  - Misocky was disbarred in January of 2022.
  - Among the charges listed against her were that she
    - "…was arrested on two counts of forgery under state law….[She] was subsequently indicted on numerous federal criminal charges involving conspiracy, forgery, counterfeiting, and identity theft, and the state charges were eventually dismissed in favor of federal prosecution. The basis for the federal charges was that Respondent conveyed personal client information to two other individuals who used that information to make and pass counterfeit and forged securities in the names of the clients. These two other individuals deposited the money from the forged securities into a designated account from which Respondent paid them a percentage of the fraudulently obtained proceeds. Additionally, Respondent endorsed stolen checks; attempted to use another person's identity to facilitate a vehicle trade; possessed a fake driver's license and social security card and attempted to use them to purchase a car; purchased a different vehicle using a false identity; and possessed and passed two counterfeit checks with the intent to defraud a car dealership."
  - Misocky was held to have violated South Carolina's RULES OF PROFESSION CONDUCT 1.3, 1.4, 8.1(b), and 8.4(e).

H. Bright Lindler, 436 S.C. 53 (2022.)

- Lindler was disbarred in March of 2022 for:
  - misappropriating client funds;
  - failing to pay federal and state income taxes for six or seven years; and
  - failing to remit federal employment taxes for thirty-seven quarters between 2008-2020.

Interim Suspensions

- The Court issued interim suspensions for four South Carolina attorneys, reinstating three.
- See:
  - The attorney, Michael Dupree, in *Matter of Michael Dupree*, 436 S.C. 24 (2022) self reported alcohol abuse and an assault on his girlfriend in violation of Rules 8.4(b), 7(a)(1), and 7(a)(5). In turn he was suspended from the practice of law for 9 months. Reinstatement was later granted because of compliance with the conditions imposed during his suspension;
  - The attorney, Debra Moore Barry, in *Matter of Debra Moore Barry*, Case # 2021-001473, was placed on interim suspension in January of 2022. She requested that the suspension be lifted in September of 2022. It was, and she was reinstated;
  - Elizabeth Anne Perkins in *Matter of Elizabeth Anne Perkins*, Case # 22-000147, was placed on interim suspension; and
  - James Wilson in *Matter of James Wilson, Jr.,* 436 S.C. 248 (2022) received both an interim suspension and a public reprimand. Wilson was placed on interim suspension in 2021, and it was lifted in 2022. Wilson pled no contest to third degree simple assault for domestic violence and spent 30 days in jail. While he was suspended during this time, he also received a public reprimand from the Court for violating Rules 8.4(b), 8.4(e), 7(a)(1), and 7(a)(5.)

Public Reprimands

- In February of 2022, the Court publicly reprimanded two South Carolina attorneys, Charles Thomas Brooks, III, and David Alan Harley. Brooks was reprimanded for violating the rules regarding fees and the safekeeping of a client's property, specifically Rules 1.5(4), 1.15 (a), and 1.15(e.) Harley was reprimanded for failing to promptly respond to clients, failing to promptly provide an accounting of fees, and failing to respond to an Office of Disciplinary Counsel (ODC) requests, all violations of Rules 1.15(d), 1.3, and 8.1(b).
- The Court issued a public reprimand *In the Matter of Ralph James Wilson, Jr.*, in March of 2022 in addition to an earlier interim suspension. Wilson pled guilty to domestic violence and was publicly reprimanded for a violation of Rule 8.4(b) and 8.4(e.)

Public Reprimands and Fines

In April of 2022, the Court issued a public reprimand and imposed a $5,000.00 fine on Robert Guyton in *Matter of Robert S. Guyton*.

Guyton used 148 cashiers' checks, totaling $183,000.00 from 14 different LLCs to make political contributions to politicians. The contributions were in excess of those allowed by law. Guyton admitted that he violated S.C. CODE OF LAWS §8-13-1314 which in turn led to violations of the SOUTH CAROLINA RULES OF CONDUCT 8.4(A) AND 8.4(D).

Suspension of Licenses

- The following individuals were placed on interim suspension and their licenses to practice law were suspended "…until further order" of the court:
  - *Matter of Courtney N. Gilchrist,* 437 S.C. 88.
  - *Matter of David Charles Johnston*, 436 S.C. 497.
  - *Matter of Jeffrey Alton Phillips*, 437 S.C. 88.

Incapacitated

- *In the Matter of Johnny Simpson*, 436 S.C. 501, the Court announced:
  - "The Office of Disciplinary Counsel has petitioned the Court to place Respondent on incapacity inactive status pursuant to Rule 28(c) of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). The petition also seeks appointment of the Receiver to protect the interests of Respondent's clients pursuant to Rule 31, RLDE, Rule 413, SCACR.
  - IT IS ORDERED that Respondent is hereby placed on incapacity inactive status. Based on the record, the Court finds Respondent is unable to practice law or participate in the disciplinary investigation, and further proceedings under Rule 28(b), RLDE, are unnecessary at this time."

Criminal Contempt

- The Court found David Mark Foster, *In the Matter of David Mark Foster*, 437 S.C. 89 (2022), to be in criminal contempt of court for the unauthorized practice of law while he was on suspension. Id.
- The Court said:
  - "These deceptive statements, coupled with Respondent's misleading comments….constitute a clear pattern of deception. We therefore find Respondent has willfully engaged in the unauthorized practice of law while on interim suspension….[W]e found the Respondent guilty of criminal contempt of the Supreme Court of South Carolina."

Judges

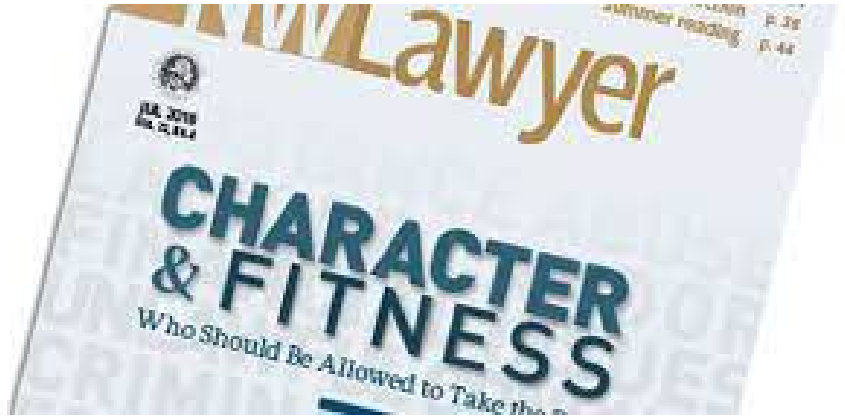
- The Court also publicly reprimanded three county magistrates for violating the rules of the CODE OF JUDICIAL CONDUCT. One was also suspended.
- The judges reprimanded were:
  - Danny Oran Barker, *In the Matter of Danny Oran Barker*, 436 S.C. 610, was reprimanded for violating Cannon 3F. This rule requires a judge to disclose a potential conflict of interest in the presence of the attorneys and parties, allowing both time to consider the potential conflict and deliberate outside of the judge's presence while recording agreements to waive the disqualification on the record. Barker's wife worked in the Sheriff's Office, and he typically rattled off a disclosure without giving parties time to think nor did he record it on the record;
  - Walter Rutledge Martin ,*In the Matter of Walter Rutledge Martin*, Case # 22-000885, was reprimanded for violating Cannon 2(A). The judge yelled at a plaintiff's attorney, advising him to "…take the f***ing wax out of his ears" and later publicly berated a scheduling clerk before the chief magistrate; and
  - Angel Catina Underwood, *In the Matter of Angel Catina Underwood*, 436 S.C. 497, was suspended and reprimanded for violating Cannon 2(a) of the JUDICIAL CODE. In this situation, the magistrate, using her judicial email and the Sheriff's Department Facebook page, blurred the lines of the authority and roles between the magistrate and the Sheriff's office. She received a six month suspension for this.

In the Matter of Anonymous Applicant for Admission to the South Carolina Bar, 304 S.C. 342 (2022.)

- The applicant for admission to the South Carolina Bar had a hearing with the Character & Fitness Committee to determine whether he should be admitted.
- The Committee ultimately recommended admission, saying “yes.”
- But the Supreme Court of South Carolina was troubled by two things:
  - The applicant’s lack of candor in his law school application; and
  - The applicant’s subsequent misrepresentation on social media, specifically LinkedIn, to indicate that he was an “associate attorney” prior to his admission to the bar.

Law School Application

- According to the Court:
  - “’Applicant responded ‘no’ when asked if he had "ever been charged, arrested, formally accused, or convicted of a crime other than a minor parking or traffic violation.’ Additionally, he respondent ‘no’ when asked if he had ‘ever been subjected to disciplinary action by any of the educational institutions’ he attended. Those responses were not truthful.’”
  - The Court noted that there were the following concerns:
    - Minor in possession of alcohol;
    - Hindering police;
    - Careless driving; and
    - Fraternity prank.



- The Committee stated:
- “In considering Applicant's character and fitness to practice law, the Committee noted the relatively minor nature of Applicant's infractions, most of which occurred about a decade ago while Applicant was young. However, the Committee also acknowledged Applicant's failure to disclose these infractions in his law school application was both more recent and more troubling. The Committee noted Applicant accepted full responsibility for his prior misconduct and appeared genuine in his regret for failing to disclose the matters.

- Additionally, the Committee found Applicant's disclosure—albeit late in the process—of the fraternity prank as an undergraduate student demonstrated ‘a sincere attempt to be completely candid with the Committee regarding his past misdeeds.’ In considering the totality of the information available, the Committee ultimately concluded Applicant possesses the requisite character and fitness to practice law.”

Regarding His LinkedIn Profile

- The Court said:
  - “When questioned by this Court about his decision to hold himself out as an attorney untruthfully, Applicant explained he was proud to learn he had passed the bar examination, and in that excitement, he changed his LinkedIn profile to reflect his achievement. Applicant admitted that, at the time he updated his profile, he was employed as a law clerk, that he was neither an associate nor an attorney, and that his representation on LinkedIn was false. Applicant acknowledged that his actions jeopardized not only his own prospects for bar admission, but also risked the law firm's reputation and could have misled members of the public…..When questioned by this Court about his decision to hold himself out as an attorney untruthfully, Applicant explained he was proud to learn he had passed the bar examination, and in that excitement, he changed his LinkedIn profile to reflect his achievement. Applicant admitted that, at the time he updated his profile, he was employed as a law clerk, that he was neither an associate nor an attorney, and that his representation on LinkedIn was false. Applicant acknowledged that his actions jeopardized not only his own prospects for bar admission, but also risked the law firm's reputation and could have misled members of the public. “

What Happened?

- The Court concluded with an acknowledgement that it had been seeing a large increase in the number of bar applicants who failed to disclose information on their law school applications that was plainly required to be disclosed.
- It also noted the growing prevalence of social media and the need for caution as to what was said on it.
- Because of the Court's concerns about these issues, it published its opinion while allowing the applicant to remain anonymous.
- It withheld bar admission for one year for the applicant.

Kovach v. Whitley, Case # 2021-000174 & South Carolina Rules of Civil Procedure, Rule 11

- In *Kovach*, the Court addressed the issue of the propriety of imposing a sanction, pursuant to South Carolina Rules of Civil Procedure, Rule 11, against an attorney's client.

What Happened?

- Amy Kovach was fired from her job with Berkely County Public School District.
- Why?
- She pled guilty to misconduct in office and public misuse of funds.
- Why?
- Kovach believed that she was the victim of warring political factions in the school.
- She consulted an employment attorney and filed a grievance complaint with the school district and a civil lawsuit against those she considered responsible for her issues.

The Court Said:

- “Specifically, Respondents initially only requested a sanction be imposed against Kovach's attorney. However, prior to the sanctions hearing, Respondents amended their motion for sanctions to include a claim against Kovach and her attorney. Nonetheless, other than emphasizing the factual inconsistencies between Kovach's complaint and her guilty plea, Respondents had little (if anything) to say about Kovach's fault in filing the complaint.”

- “Rather, Respondents focused almost exclusively on the attorney's fault, arguing, among other things, that
  - (1) "The attorney's pen in this case is twice as dangerous as [] Kovach's lies because she has a higher duty as a lawyer. She has an ethical duty.";
  - (2) "[T]he lawyer with the pen is the one that can cause the most damage and has the ability to stop it.";
  - (3) "Lawyers have clients show up all the time wishing to strike out at people that have caused them problems. . . . “ We [attorneys] have a higher duty. We have a higher burden. That's why we have Rule 11. That's why we have the sanctions that are available for filing frivolous claims. Lawyers have a duty to investigate claims before they strike out like a client would and file suit against a bunch of people . . .."; (4) "Clients come here and tell you all kinds of things. We [attorneys] do a reasonable investigation and find out that's not true, that didn't happen, it didn't happen on that day and this is the person who didn't do it to you. I can't represent you and I can't file suit.";
  - (5) "[O]nly the lawyer had the ability to step back, and the lawyer chose to go blindly forward . . . .";
  - (6) "You don't have a blank slate as a lawyer to file frivolous causes of action just because your client wants retaliation. . . . [Kovach's attorney] forgot those principles when she filed suit, struck out, and said I'll just grab as many people as I can, defame as many people as I can because I'm a lawyer and I'm allowed to do that because lawyers can file anything in a pleading and get away with it."; and
  - (7) "Lawyers are held to a higher standard.“”

And…

- The Supreme Court of South Carolina reversed the Rule 11 sanctions against the petitioner/client, Amy Kovach, holding that:
  - “We find the imposition of a sanction against Kovach was an abuse of discretion. Kovach was represented by an experienced attorney who carefully and independently vetted Kovach's allegations and claims before determining she had a viable cause of action against Respondents. Although Rule 11 allows for the possibility of sanctions against a client,.. it primarily speaks in terms of an attorney's professional responsibilities… Rule 11 is not intended to be used as a weapon against a client represented by counsel, whose job it is to be knowledgeable of the law and advise a lay client on the best course of action…. Given the attorney's investigation prior to filing the complaint, and a complete lack of evidence that Kovach harassed or otherwise coerced her attorney into filing the complaint, we see no factual basis on which to justify an award of sanctions against Kovach…. We therefore reverse the sanction against Kovach….”

Data: The South Carolina Commission on Lawyer Discipline, 2021-2022

South Carolina Commission on Lawyer Discipline

- For its most recent annual report for 2021-2022, the South Carolina Commission on Lawyer Discipline reported the following:
  - **818 complaints were pending** as of June 30, 2021;
  - **1,571 complaints were received** between July 1, 2021 and June 30, 2022.
  - There were a total of **2,389 complaints made or pending** during the annual report timeframe.
  - **984 of the complaints were dismissed** while **142 complaints were not** dismissed.
  - **1,126 complaints were dismissed for the reporting year, leaving 1,263 pending.**

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kovach v. whitley - Google Searc

Kovach v. Whitley | Cases | South

SC Judicial Branch

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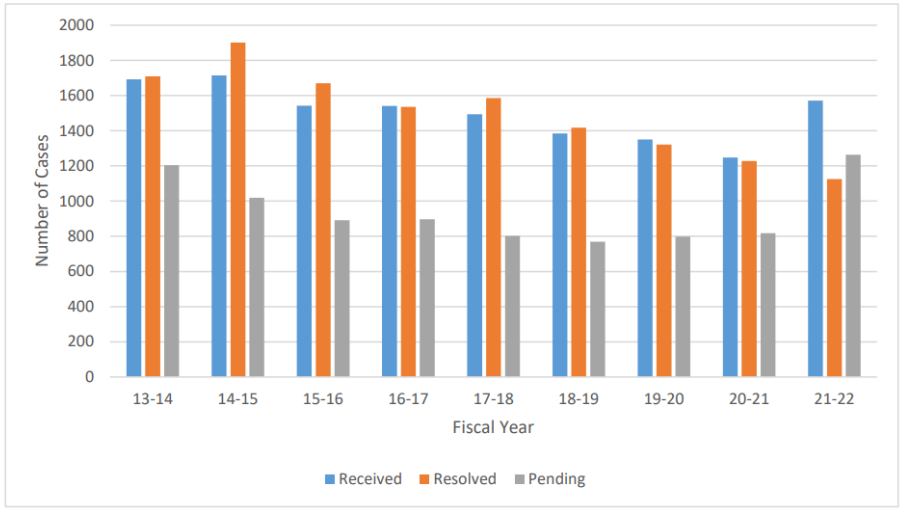
Total Complaints Resolved	**1126**
Total Complaints Pending as of June 30, 2022	**1263**



Practice Type

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Against What Type of Practice Were Complaints Made?

- Law Firms 41.59%
- Solo Practitioners 31.17%
- Public Defenders 10.86%
- Prosecutors 7.39%
- Unknown 3.03%
- Other Government 2.67%
- Guardian Ad Litem 1.34%
- Not Practicing 1.16%
- Other Practice Types .79%

Who Complained?

Clients 53.34%	Opposing Party 18.88%	Attorney 4.27%	Citizen 4.19%	Family/Friend of Client 3.21%
Bank 3.03%	Unknown 1.78%	Court Reporter/Other 3rd Party 1.69%	Disciplinary Counsel 1.60%	Self Report 1.34%
	Prospective Client 1.07%	Family/Friend of Opposing Party 1.07%	Other Sources, Each Less than 1% 4.55%	

What Did They Complain About?

• Communication	17.20%
• Dishonesty/Deceit/Misrepresentation	17.10%
• Neglect/Lack of Diligence	16.21%
• Unknown	6.41%
• Other Conduct	4.90%
• Lack of Competence	4.63%
• Trust Account Issue	4.63%
• Scope of Representation	3.29%
• Civility	2.94%
• Conflict of Interest	2.85%
• Fees	2.49%

Complaints Continued

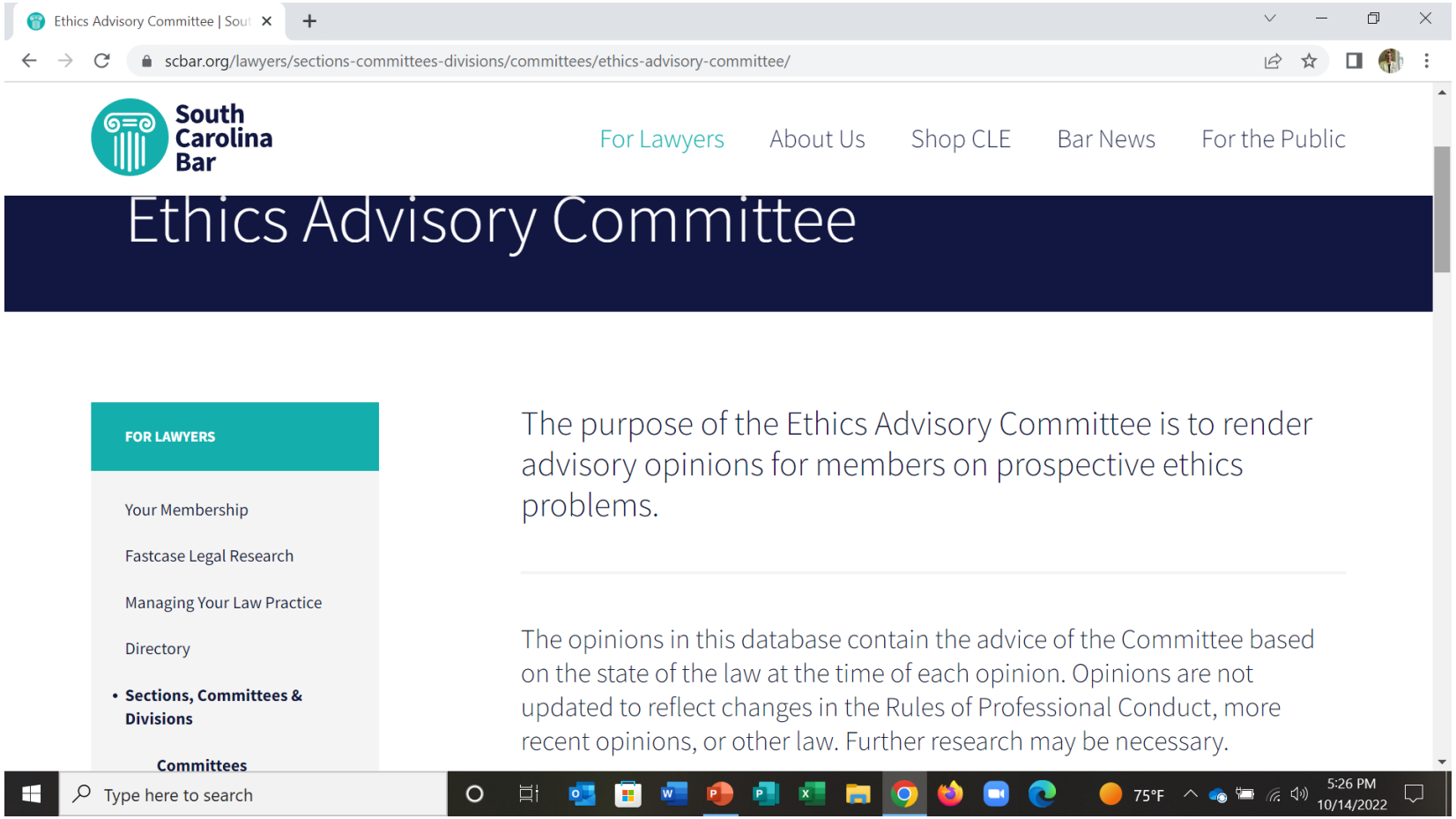
Failure to Pay 3rd Party	2.23%
Failure to Deliver Client File	2.14%
Confidentiality	1.96%
Declining/Terminating Representation	1.96%
Unauthorized Practice of Law	1.60%
Other Litigation Misconduct	1.51%
Discovery Abuse	1.25%
Criminal Conduct	1.16%
Advertising Misconduct	1.07%
Other Allegations, Each Less than 1%	1.04%

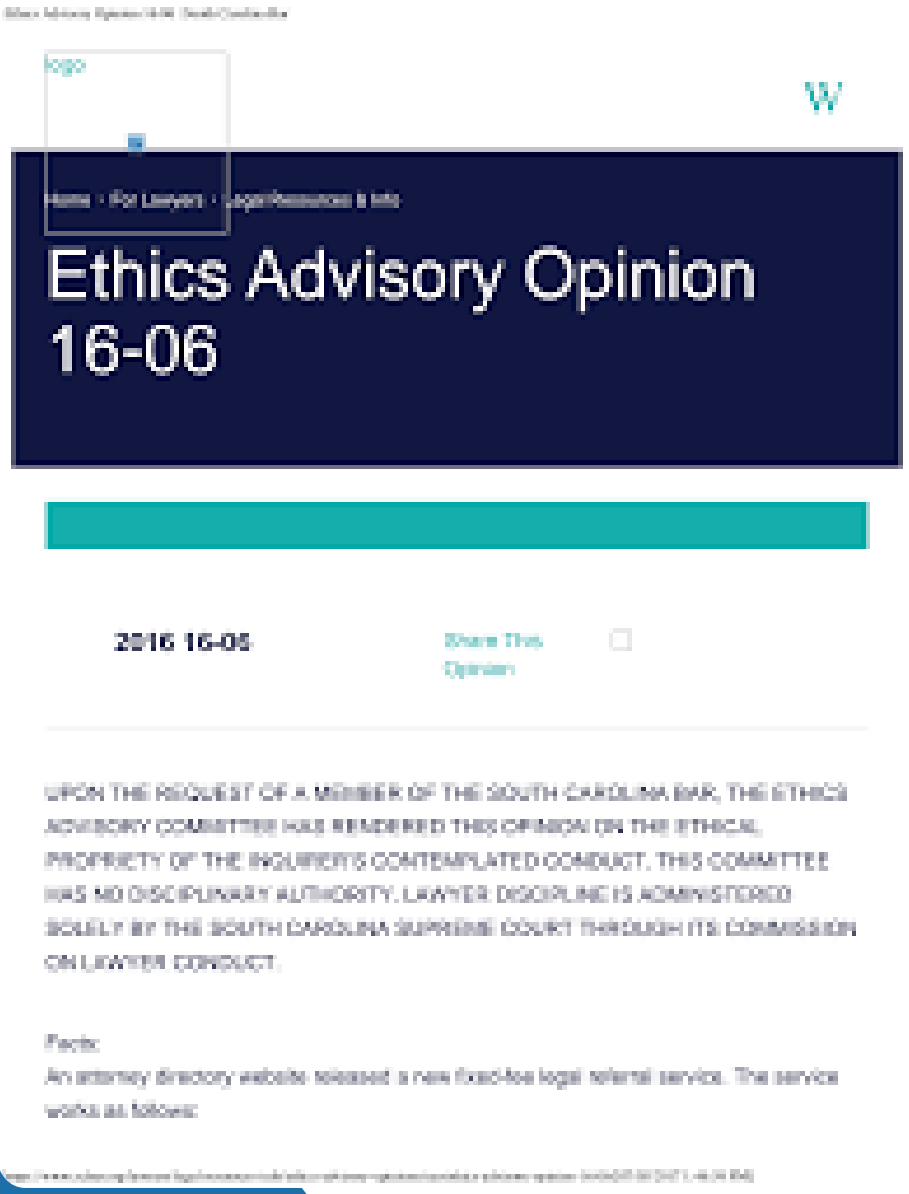
What Type of Cases Generated Complaints?

• Criminal	34.02%
• Domestic	18.25%
• General Civil	6.95%
• Real Estate	6.23%
• Probate/Estate Planning	5.7%
• Personal Injury/Property Damage	5.08%
• Not Client Related	4.81%
• Unknown	4.36%
• Post-Conviction Relief	2.23%
• Debt Collection/Foreclosure	2.05%
• Employment	1.51%
• Worker’s Compensation	1.42%
• Bankruptcy	1.16%
• Other Case Types, Each Less Than 1%	6.23%

South Carolina Bar: Ethics Advisory Opinions 2022

The South Carolina Bar: The Ethics Advisory Committee





Ethics Advisory Committee & The Opinions

- The Ethics Advisory Committee is composed of active members of the South Carolina Bar who are appointed by the Bar President.
- The Committee's purpose is to issue opinions on "...ethical propriety of the inquirer's contemplated conduct not relating to a pending matter."
- South Carolina's Rules of Professional Conduct, Rule 407, is "the standard for advisory opinions."

Contents

- The website for the Ethics Advisory Opinions provides the full text of all ethics advisory opinions issued since 1990.
- The site can be searched by year, keyword, or both.
- The site contains an FAQ list of frequently asked questions that the Committee receives.
- The most often asked question appears to be a question regarding the length of file retention.

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Ethics Advisory Opinion 22-06

2022 22-06

The Ethics Advisory Committee addressed whether the inquirer could limit the scope of representation to assisting in the preparation of pleadings and whether the inquirer would be required to include a disclosure such as "Prepared with the Assistance of Counsel" on any documents that inquirer

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In 2022….

- To date, the Ethics Advisory Committee has issued 6 advisory opinions.

Opinion 22-01: Prospective Clients: Rule 1.18

- **Question Presented:**
  - "Does Lawyer have an ethical obligation to maintain the confidentiality of the information provided by the Sender since it was provided in the course of seeking legal advice?"
- **Summary:**
  - No. There is no ethical obligation because the sender of the email was not a prospective client as defined by Rule 1.18.

The Opinion States

- **Opinion:**
  - "It is clear from the facts that the Sender is neither a current client nor a former client of Lawyer. The answer to the question of Lawyer's confidentiality obligations to the Sender depends upon whether the Sender is a "prospective client" of Lawyer pursuant to Rule 1.18. Rule 1.18(a) reads:
    - "A person who engages in mutual communication with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client only when there is a reasonable expectation that the lawyer is likely to form the relationship." Comment 2 to Rule 1.18 is instructive on these facts and reads: "Not all persons who communicate information to a lawyer are entitled to protection under this Rule. …A person who communicates information unilaterally to a lawyer without any reasonable expectation that the lawyer is willing to discuss the 2 possibility of forming a client-lawyer relationship is not a "prospective client" within the meaning of paragraph (a)."

Opinion 22-01 Continued

- “These facts call for a clear application of Comment 2 to Rule 1.18. While Rule 1.18 imposes certain confidentiality requirements and other protections for the benefit of prospective clients, the Sender’s unilateral email message to Lawyer did not elevate the Sender to prospective client status since the Sender could not have had a reasonable expectation that Lawyer was likely to form a client-lawyer relationship. On these facts, the Sender does not meet the definitional test of “prospective client”; hence, the Sender is not entitled to the benefits afforded to prospective clients pursuant to Rule 1.18, and Lawyer has no ethical obligation to maintain the confidentiality of the information provided by the Sender.”

Opinion 22-02: Advertising on Expertise.com: Rules 7.4(b) and 7.2(c)

- **Questions:**
  - "If an attorney or law firm pays for a featured placement on Expertise.com, does that attorney violate Rule 7.4(b) by holding the law firm and its attorneys out as experts by virtue of the website's name?
  - Does paying for a featured placement on Expertise.com violate Rule 7.2(c)? "

Opinion: 22-02

- **Opinion:**
  - "Lawyer may not participate in any way in marketing via Expertise.com. As this committee, and several others around the country, have discussed in previous opinions, actively participating in an online business listing at a website whose stock language violates the advertising rules is itself a violation of the advertising rules. See, e.g., S.C. Bar Eth. Adv. Op. 09-10 (2009) (a lawyer who adopts, endorses, or claims an online directory listing takes responsibility under the Rules for all content of the listing and general content of the directory itself, regardless of who created the material). While Opinion 09-10 focused more on rule violations in the form of improper comparative language contained in client testimonials and endorsements submitted to the website, the same reasoning applies to content created by the host that violates some other rule, like 7.4(b). Regardless of the creator of the offending content and regardless of which rule it offends, it is the committee's view that a lawyer may not adopt, endorse, claim, or contribute to any online listing that contains language or other material that would violate the Rules if created and disseminated directly by the lawyer. See 7.2(b) ("(b) A lawyer is responsible for the content of any advertisement or solicitation placed or disseminated by the lawyer…") and 8.4(a) (misconduct to violate rules "or do so through the acts of another"). In this case, the website's name and URL violate Rule 7.4 in that Expertise.com contains a form of the word "expert," which is prohibited. Brief review of the website content further reveals reference to "the best local experts."

Opinion 22-03: Conflicts of Interest: Present & Former Clients: Rules 1.6 and 1.9

- **Questions Presented:**
  - "1. Does Inquirer have a duty, as an officer of the court, to report this event to the appropriate authorities to prevent the University president and possibly himself, since he presently has no official institutional capacity from committing a criminal act (e.g., conspiracy to cover-up possible criminal activity) pursuant to Rule 1.6(b)(1)? Or might the information now be considered generally known under Rule 1.9(c)(1)?
  - 2. Does Inquirer have a duty to advise the current president to report what he heard from the retiring employee to local authorities or to the U.S. Department of Education?
  - 3. Is Inquirer prevented from disclosing anything he heard at the meeting with the president and the retiring employee – as he was not then serving as counsel to either the retiring employee or the institution but was serving as institution counsel at the time the event occurred--pursuant to Rule 1.9(c)(1), because what he heard is information to the disadvantage of his former client (the institution)? "

Summary of 22-03

- “The Rules of Professional Conduct impose no duty upon Inquirer to report this event. In the absence of a current attorney-client relationship with either the Institution or its president, Inquirer has no duty to provide legal advice to the president. Inquirer is prohibited under Rule 1.9 from using or disclosing the information unless it has become generally known as provided in 1.9(c)(1) or the institution provides informed consent as provided in Rule 1.6(a).”

Opinion 22-04: Fees and Safekeeping Property: Rules 1.5 and 1.15

- **Question Presented:**
  - "May Lawyer charge an amount to cover administrative costs associated with stop-payment fees and trust account check reissuance and re-mailing fees for checks that remain outstanding for more than thirty (30) days after issuance?"
- **Summary:**
  - "Yes, Lawyer may charge a check recipient an amount to cover administrative measures undertaken to resolve the outstanding check, which includes expenses incurred such as stop payment fees and postage fees, provided the amount charged is not unreasonable."

Opinion 22-05: Rules 1.0, 1.1, 1.2, 1.4, 1.6, 1.16, 2.1, 3.1, 3.4, and 8.4

- **Questions Presented:**
  - “1. May I continue to represent my client, John Doe?
  - 2. I realize I must tell the truth if the issue comes up, but do I need to disclose this information now?
  - 3. Will I be violating client confidentiality or attorney-client privilege by disclosing the information?”

Summary of Opinion 22-05

- **Summary:**
  - “Inquirer may continue to represent the client unless the client intends to use the forged document or make use of its existence in the litigation in any way. The Rules of Professional Conduct require disclosure of information, including potentially confidential or privileged information, in very few circumstances. They do, in Rule 1.6 provide circumstances under which a lawyer may disclose communications normally considered confidential. The Committee does not express opinions on questions of law, such as whether specific conduct constitutes a violation of federal or state criminal statutes. Any South Carolina licensed attorney whose client engages in or is planning to engage in conduct that may be criminal should carefully review all applicable state and federal law to determine the legality of the activity for purposes of advising the client and determining whether disclosure is allowed under Rule 1.6. If, however, a lawyer determines a client has engaged in conduct that falls under Rule 1.6(b), the lawyer may – but is not required to – disclose such without violating the Rules. While Rule 1.6(b), does not address the timing of disclosure, the public policy behind the exceptions to the general rule of confidentiality suggest that, if disclosure is made, it should be within a time frame that will allow the other party to take advantage of it for mitigation or prevention purposes. If asked about the receipt/release, Inquirer must respond truthfully.”

Opinion 22-06: Scope of Representation: Rule 1.2(c)

- **Questions Presented:**
  - "1. May Lawyer limit the scope of representation to assist in preparation of pleadings that will be signed and submitted directly by Client, under client's name exclusively, without participating further in Client's legal proceedings in Family Court?
  - 2. Must Lawyer place the Family Court on notice of Lawyer's limited representation of Client via inclusion of a disclosure such as "Prepared with the Assistance of Counsel" on any documents that Lawyer helps draft, or otherwise?"

Summary of Opinion 22-06

- **Summary:**
  - “1. Yes, Lawyer may limit the scope of representation of Client in the Family Court if such limitation is reasonable under the circumstances and the Client gives informed consent.
  - 2. No. When limited representation is reasonable under the circumstances, Lawyer is not required to make an affirmative disclosure of any sort regarding Lawyer’s limited assistance. However, Lawyer may voluntarily do so, and reserves the right to require such disclosure as a condition of providing limited services to Client.”

Thank you for your time and attention!

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