CHAPTER 5

Attorneys‑at‑Law

CROSS REFERENCES

Impersonating a lawyer, penalties, see Section 16‑17‑770.

ARTICLE 1

General Provisions

**SECTION 40‑5‑10.** Inherent power of Supreme Court to regulate practice of law; other powers cumulative.

 The inherent power of the Supreme Court with respect to regulating the practice of law, determining the qualifications for admission to the bar and disciplining, suspending and disbarring attorneys at law is hereby recognized and declared. The authority conferred on that court in Sections 40‑5‑10 to 40‑5‑60 shall be deemed as cumulative thereto.

HISTORY: 1962 Code Section 56‑96; 1957 (50) 553.

CROSS REFERENCES

Practice of law by justices and judges, see SC Const, Art 5, Section 16.

Rules governing the practice of law, see South Carolina Appellate Court Rules (SCACR), 401 et seq.

Library References

Attorney and Client 3, 32(3).

Westlaw Topic No. 45.

C.J.S. Attorney and Client Sections 10, 41, 60.

RESEARCH REFERENCES

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S.C. Jur. Attorney and Client Section 4, Unauthorized Practice of Law.

LAW REVIEW AND JOURNAL COMMENTARIES

A business lawyer looks at the internet. John P. Freeman, 49 S.C. L. Rev. 903 (Summer 1998).

Lawyer advertising and solicitation: the birth of the Marlboro Man. Wade H. Logan, 42 S.C. L. Rev. 859 (Summer 1991).

Attorney General’s Opinions

Discussion of whether a company or officer engages in the unauthorized practice of law by taking actions pursuant to Section 29‑15‑10. S.C. Op.Atty.Gen. (May 15, 2017) 2017 WL 2292983.

NOTES OF DECISIONS

In general 1

Federal courts 2

1. In general

Generally, the “practice of law,” which the Supreme Court has the power to regulate, includes the preparation of pleadings, and other papers incident to actions and special proceedings, and the management of such actions and proceedings on behalf of clients before judges and courts, and the practice of law extends to activities which entail specialized legal knowledge and ability; other than these general statements, there is no comprehensive definition of the “practice of law,” and, instead, what constitutes the practice of law must be decided on the facts and in the context of each individual case. Rogers Townsend & Thomas, PC v. Peck (S.C. 2017) 419 S.C. 240, 797 S.E.2d 396. Attorney and Client 12(4); Attorney and Client 12(5); Attorney and Client 12(7); Attorney and Client 36(1)

The assignment of a legal malpractice claim between adversaries in litigation in which the alleged malpractice arose is prohibited. Skipper v. ACE Property and Cas. Ins. Co. (S.C. 2015) 413 S.C. 33, 775 S.E.2d 37. Assignments 24(1)

Lenders do not engage in the unauthorized practice of law by preparing and mailing loan modifications to borrowers and recording the executed documents without participation of a licensed attorney. Crawford v. Central Mortg. Co. (S.C. 2013) 404 S.C. 39, 744 S.E.2d 538. Attorney and Client 12(9)

“Practice of law” is not confined to litigation but extends to activities in other fields that entail specialized legal knowledge and ability. Crawford v. Central Mortg. Co. (S.C. 2013) 404 S.C. 39, 744 S.E.2d 538. Attorney and Client 12(4)

Jurisprudence on the unauthorized practice of law is driven by the public policy of protecting consumers. Crawford v. Central Mortg. Co. (S.C. 2013) 404 S.C. 39, 744 S.E.2d 538. Attorney and Client 12(1)

Whether an activity constitutes the practice of law remains flexible and turns on the facts of each case. Crawford v. Central Mortg. Co. (S.C. 2013) 404 S.C. 39, 744 S.E.2d 538. Attorney and Client 12(4)

Generally understood definition of the “practice of law” embraces the preparation of pleadings, and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts. Crawford v. Central Mortg. Co. (S.C. 2013) 404 S.C. 39, 744 S.E.2d 538. Attorney and Client 12(5); Attorney and Client 12(7)

A non‑attorney may represent a business entity in the probate court to make an estate claim and subsequently petition for allowance of the claim without engaging in the unauthorized practice of law. Medlock v. University Health Services, Inc. (S.C. 2013) 404 S.C. 25, 743 S.E.2d 830. Attorney and Client 12(12)

It is the character of the services rendered, and not the denomination of the tribunal where the services are rendered, that determines whether such services constitute the practice of law. Medlock v. University Health Services, Inc. (S.C. 2013) 404 S.C. 25, 743 S.E.2d 830. Attorney and Client 12(4)

Generally understood definition of the “practice of law” embraces the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts. Medlock v. University Health Services, Inc. (S.C. 2013) 404 S.C. 25, 743 S.E.2d 830. Attorney and Client 12(7)

The Supreme Court’s purpose in regulating the practice of law is to protect the public from the negative consequences of erroneously prepared legal documents or inaccurate legal advice given by persons untrained in the law. Housing Authority of City of Charleston v. Key (S.C. 2002) 352 S.C. 26, 572 S.E.2d 284, 109 A.L.R.5th 767, certiorari denied, certiorari denied 123 S.Ct. 1593, 538 U.S. 932, 155 L.Ed.2d 330. Attorney And Client 12(4); Attorney And Client 12(7)

2. Federal courts

States have both a duty and right to regulate practice of professions within their borders and federal courts should not interfere with such internal regulations unless regulations invidiously discriminate against certain class of citizens or otherwise are in no way reasonably related to ensuring character and competence of their professionals. Moore v. Supreme Court of South Carolina (D.C.S.C. 1977) 447 F.Supp. 527, affirmed 577 F.2d 735, certiorari denied 99 S.Ct. 574, 439 U.S. 984, 58 L.Ed.2d 655. Federal Courts 2627(2)

**SECTION 40‑5‑20.** Supreme Court empowered to promulgate rules and regulations concerning practice of law; establishment of South Carolina State Bar.

 The Supreme Court may from time to time prescribe, adopt, promulgate and amend such rules and regulations as it may deem proper (a) defining and regulating the practice of law, (b) determining the qualifications and requirements for admission to the practice of law, (c) prescribing a code of ethics governing the professional conduct of attorneys at law, (d) prescribing the procedure for disciplining, suspending, disbarring and reinstating attorneys at law, (e) organizing and governing an association to be known as the South Carolina State Bar which shall be composed of the attorneys at law of the State, and which shall act as an administrative agency of the Supreme Court of South Carolina for the purpose of improving the administration of justice, and (f) fixing an annual license fee for the practice of law in this State, the payment of which shall entitle but not require any attorney to be a member in the South Carolina State Bar and providing for the collection and the disbursement of such license fees. At such time as the South Carolina State Bar is established all offices, appointments or official duties heretofore delegated or given to the South Carolina Bar Association or any officer of the same by statute or appointment of the State of South Carolina or any branch thereof shall be vested in the South Carolina State Bar and its officers.

HISTORY: 1962 Code Section 56‑97; 1957 (50) 553; 1967 (55) 338.

CROSS REFERENCES

Rules governing the practice of law, see South Carolina Appellate Court Rules (SCACR), Rule 401 et seq.

Library References

Attorney and Client 3, 32(3).

Westlaw Topic No. 45.

C.J.S. Attorney and Client Sections 10, 41, 60.

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An analysis of current theories of liability. Susan Taylor Wall, Joseph R. Weston, 45 S.C. L. Rev. 857 (Summer 1994).

Annual Survey of South Carolina Law: Administrative Law. 38 S.C. L. Rev. 8 (Autumn 1986).

Attorney liability for assisting clients with wrongful conduct: Established and emerging bases of liability. J. Randolph Evans, Ida Patterson Dorvee, 45 S.C. L. Rev 803 (Summer 1994).

Expanding duties of attorneys to “non‑clients”: Reconceptualizing the attorney‑client relationship in entity representation and other inherently ambiguous situations. Nancy J. Moore, 45 S.C. L. Rev. 659 (Summer 1994).

Expert witness testimony in legal malpractice cases. Wilbrn Brewer, Jr., 45 S.C. L. Rev. 727 (Summer 1994).

From offense to defense: Defending legal malpractice claims. Laura Callaway, Carl B. Epps, III, Steven E. Williford. 45 S.C. L. Rev 771 (Summer 1994).

The fundamentals of professionalism. L. Ray Patterson, 45 S.C. L. Rev. 707 (Summer 1994).

Recovery for emotional distress damages in attorney malpractice actions. D. Dusty Rhoades, Laura W. Morgan, 45 S.C. L. Rev. 837 (Summer 1994).

Risk management for lawyers. William H. Fortune, Dulaney O’Roark, 45 S.C. L. Rev. 617 (Summer 1994).

NOTES OF DECISIONS

In general 1

1. In general

Because the South Carolina Bar is authorized by Section 40‑5‑20 and is organized and governed by Supreme Court Rule 48, the Fee Disputes Board operates as a part of the judicial branch of the government under the Supreme Court, and is thus not an “agency” subject to the provisions of the Administrative Procedures Act, Sections 1‑23‑310 to 1‑23‑400. Kores Nordic (USA) Corp. v. Sinkler, Gibbs & Simons (S.C.App. 1985) 284 S.C. 513, 327 S.E.2d 365.

**SECTION 40‑5‑40.** Supreme Court empowered to appoint boards to examine applicants, investigate complaints, and hear disciplinary proceedings; subpoena powers.

 The Supreme Court may appoint boards or committees to examine all applicants for admission to the bar, and boards or committees to act as administrative agencies of the court for the purpose of investigating and reporting the violation of such rules and regulations as are adopted by the court and to hear all causes involving discipline, disbarment, suspension or reinstatement of attorneys and to make recommendations thereon to the Supreme Court. Such hearings shall be had under such procedure as may be established by the court. Any such administrative agency created by the Supreme Court shall have the power of subpoena for the purpose of aiding it in hearing cases of discipline, suspension or disbarment.

HISTORY: 1962 Code Section 56‑98; 1957 (50) 553.

CROSS REFERENCES

Rules governing the practice of law, see South Carolina Appellate Court Rules (SCACR), 401 et seq.

Library References

Attorney and Client 3, 47.1, 48.

Westlaw Topic No. 45.

C.J.S. Attorney and Client Sections 10, 73, 89, 92 to 95.

LAW REVIEW AND JOURNAL COMMENTARIES

An analysis of current theories of liability. Susan Taylor Wall, Joseph R. Weston, 45 S.C. L. Rev. 857 (Summer 1994).

Attorney liability for assisting clients with wrongful conduct: established and emerging bases of liability. J. Randolph Evans, Ida Patterson Dorvee, 45 S.C. L. Rev. 803 (Summer 1994).

Expanding duties of attorneys to “non‑clients”: reconceptualizing the attorney‑client relationship in entity representation and other inherently ambiguous situations. Nancy J. Moore, 45 S.C. L. Rev. 659 (Summer 1994).

The fundamentals of professionalism. L. Ray Patterson, 45 S.C. L. Rev. 707 (Summer 1994).

Recovery for emotional distress damages in attorney malpractice actions. D. Dusty Rhoades, Laura W. Morgan, 45 S.C. L. Rev. 837 (Summer 1994).

A venerable profession enters the global economy: South Carolina lawyers and the General Agreement on Trade in Services (GATS). Eve Ross, 57 S.C. L. Rev. 969 (Summer 2006).

Attorney General’s Opinions

The 1990 Americans with Disabilities Act would probably not prohibit the South Carolina Supreme Court Committee on Character and Fitness from asking questions to applicants about their mental health history. 1992 S.C. Op.Atty.Gen. 160, 1992 S.C. Op.Atty.Gen. No. 92‑75, (Dec. 3, 1992) 1992 WL 575681.

NOTES OF DECISIONS

In general 1

Jurisdiction 2

1. In general

The authority to discipline attorneys and the manner in which the discipline is given rests entirely with the Supreme Court. In re Gibbs (S.C. 2002) 349 S.C. 261, 562 S.E.2d 639. Attorney And Client 36(1); Attorney And Client 59.4

2. Jurisdiction

The Supreme Court was without jurisdiction in disciplinary proceeding to address attorney’s allegations of criminal conspiracy involving litigation in which he was involved, where the matter was pending in federal court. In re Gibbs (S.C. 2002) 349 S.C. 261, 562 S.E.2d 639. Attorney And Client 57

**SECTION 40‑5‑50.** Filing of rules and regulations; effective date; conflict with other laws.

 All rules and regulations promulgated and adopted under the terms of Sections 40‑5‑20 and 40‑5‑40 shall be filed with the clerk of the Supreme Court and shall not be effective until the lapse of three months after they are so filed. Upon such rules and regulations becoming effective, they shall supersede all laws or parts of laws in conflict therewith to the extent of the conflict.

HISTORY: 1962 Code Section 56‑99; 1957 (50) 553.

Library References

Attorney and Client 3, 32(3), 47.1.

Westlaw Topic No. 45.

C.J.S. Attorney and Client Sections 10, 41, 60, 73, 89.

**SECTION 40‑5‑60.** General Assembly not precluded from prohibiting practice of law by any class.

 Nothing in Sections 40‑5‑10 to 40‑5‑50 shall preclude the General Assembly from prohibiting the practice of law in this State by any class of individuals.

HISTORY: 1962 Code Section 56‑100; 1957 (50) 553.

CROSS REFERENCES

Constitutional provision regarding admission to practice of law, see SC Const, Art 5, Section 4.

Library References

Attorney and Client 4, 7.

Westlaw Topic No. 45.

C.J.S. Attorney and Client Sections 15 to 22.

Attorney General’s Opinions

There is no law licensing para‑legals to practice law in South Carolina. 1977 S.C. Op.Atty.Gen. 86, 1977 S.C. Op.Atty.Gen. No. 77‑94, (April 4, 1977) 1977 WL 24436.

**SECTION 40‑5‑70.** Additional provisions concerning Supreme Court rules and rules of the State Board of Law Examiners.

 The justices of the Supreme Court may pass such rules as may be necessary to carry into effect the provisions of this chapter and from time to time amend such rules as occasion may require. The State Board of Law Examiners may also make rules for its conduct and government, not inconsistent with the provisions of law and subject to the approval of the Supreme Court.

HISTORY: 1962 Code Section 56‑101; 1952 Code Section 56‑101; 1942 Code Section 318; 1932 Code Section 318; Civ. P. ‘22 Section 274; Civ. C. ‘12 Section 3914; 1910 (26) 750.

CROSS REFERENCES

Court rules, see South Carolina Appellate Court Rules, Rule 101, SCACR et seq.

Library References

Attorney and Client 4, 32(3), 47.1.

Westlaw Topic No. 45.

C.J.S. Attorney and Client Sections 15 to 18, 41, 60, 73, 89.

**SECTION 40‑5‑80.** Citizen may prosecute or defend own cause.

 This chapter may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires.

HISTORY: 1962 Code Section 56‑102; 1952 Code Section 56‑102; 1942 Code Section 326; 1932 Code Section 326; Civ. P. ‘22 Section 282; Civ. C. ‘12 Section 3922; Civ. C. ‘02 Section 2819; G. S. 2167; R. S. 2295; 1721 (7) 173; 1868 (14) 97; 2002 Act No. 307, Section 2.

Library References

Attorney and Client 11, 62.

Westlaw Topic No. 45.

C.J.S. Attorney and Client Sections 23 to 40, 195 to 197.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney and Client Section 4, Unauthorized Practice of Law.

S.C. Jur. Divorce Section 75, Ability to Proceed Pro Se.

Attorney General’s Opinions

An individual who would appear as counsel on behalf of another in proceedings before the Alcoholic Beverage Control Commission must be an attorney licensed by the South Carolina Supreme Court unless the court has granted leave to the individual to so appear on behalf of another and the individual has complied with the other requirements of Section 40‑5‑80 of the Code. 1987 S.C. Op.Atty.Gen. 146, 1987 S.C. Op.Atty.Gen. No. 87‑57, (June 10, 1987) 1987 WL 245466.

NOTES OF DECISIONS

Appeals in criminal matters 2

Corporations 3

Due process 1

Police officers 4

State agency representatives 5

1. Due process

A trial court in a civil proceeding is not always required to obtain a knowing and voluntary waiver of counsel from every litigant who wishes to exercise his right to represent himself. State v. Policao (S.C.App. 2013) 402 S.C. 547, 741 S.E.2d 774. Trial 21

Separation proceeding, where one or both parties has invoked state’s assistance in determining marital equities, does not involve deprivation of liberty interests mandating due process right to attorney under State or Federal Constitution, and thus, trial court was not required to obtain knowing and voluntary waiver of counsel from husband who wished to exercise his right to represent himself. U.S.C.A. Const.Amend. 14. Washington v. Washington (S.C. 1992) 308 S.C. 549, 419 S.E.2d 779.

2. Appeals in criminal matters

Defendant did not have a federal or state constitutional right to proceed pro se on appeal of death sentence; request to proceed pro se was not made in a timely fashion, appellate counsel had no duty to raise every non‑frivolous issue presented by record, but instead had discretion to exercise reasonable professional judgment, defendant was represented by two very experienced capital appeals litigators, and any mistake appellate counsel may have made in determining viable issues for briefing could have been resolved on postconviction relief. State v. Roberts (S.C. 2005) 364 S.C. 583, 614 S.E.2d 626. Sentencing And Punishment 1788(4)

Statute which addressed appearing in person for others without compensation did not allow inmate to assist other inmates with the preparation of post‑conviction relief petitions; statute expressly required that a person appearing for another obtain leave of court first, and there was no evidence that inmate sought leave of court prior to giving advice and assisting other inmates with petitions for post‑conviction relief. State v. McLauren (S.C.App. 2002) 349 S.C. 488, 563 S.E.2d 346. Attorney And Client 12(7)

3. Corporations

A lender does not have a pro se right to prepare documents when it is a party, for purposes of the unauthorized practice rules. Appellate Court Rule 407, Rules of Prof.Conduct, Rule 5.5(b). Doe v. McMaster (S.C. 2003) 355 S.C. 306, 585 S.E.2d 773.

The right of a corporation to practice law by completing real estate loan documents, for purposes of the unauthorized practice rules, is not co‑extensive with an individual’s right. Appellate Court Rule 407, Rules of Prof.Conduct, Rule 5.5(b). Doe v. McMaster (S.C. 2003) 355 S.C. 306, 585 S.E.2d 773.

Non‑lawyer cannot represent a corporation in circuit or appellate courts, but corporation may appear pro se in magistrate’s court. Renaissance Enterprises, Inc. v. Summit Teleservices, Inc. (S.C. 1999) 334 S.C. 649, 515 S.E.2d 257. Attorney And Client 12(6)

Filing of answer and prosecution of appeal for corporation by its nonattorney president was unauthorized practice of law. Travelers Ins. Co. (NC) v. Roof Doctor, Inc. (S.C.App. 1997) 325 S.C. 614, 481 S.E.2d 451. Attorney And Client 12(6)

A business may be represented in civil Magistrate’s Court proceedings by a non‑lawyer officer, agent or employee, including an attorney licensed in another jurisdiction or possessing a Limited Certificate of Admission pursuant to Rule 405, SCACR, without constituting the unauthorized practice of law; such representation may be compensated, but with the understanding that the business assumes the risk of any problems incurred as the result of such representation. In re Unauthorized Practice of Law Rules Proposed by South Carolina Bar (S.C. 1992) 309 S.C. 304, 422 S.E.2d 123. Attorney And Client 12(6); Attorney And Client 12(22)

4. Police officers

Police officers may prosecute traffic offenses in Magistrate’s Court and in Municipal Court without constituting the unauthorized practice of law, provided that only the arresting officer may prosecute the case; however, if the officer is new or inexperienced, he may be assisted at trial by one of his supervisors. In re Unauthorized Practice of Law Rules Proposed by South Carolina Bar (S.C. 1992) 309 S.C. 304, 422 S.E.2d 123.

5. State agency representatives

State agencies may, by regulation, authorize persons who are not licensed to practice law in South Carolina to appear and represent clients before the agency without constituting the unauthorized practice of law, including laypersons, certified public accountants, attorneys licensed in other jurisdictions, and persons possessing Limited Certificates of Admission pursuant to Rule 405, SCACR. In re Unauthorized Practice of Law Rules Proposed by South Carolina Bar (S.C. 1992) 309 S.C. 304, 422 S.E.2d 123. Attorney And Client 12(8)

ARTICLE 3

Admission to Practice Law

**SECTION 40‑5‑210.** State Board of Law Examiners.

 There is hereby created a State Board of Law Examiners. The Board of Law Examiners shall be appointed by the Supreme Court and shall have such duties as the court shall prescribe. The number of members of the board and the terms of the members shall be set by the Supreme Court. To be eligible for appointment to the board, a person must be actively engaged in the practice of law in South Carolina and must have been an active member of the South Carolina Bar for at least seven years. Members shall be eligible for reappointment. Should a vacancy occur, the court shall fill the vacancy for the unexpired term. At least one member from each congressional district must be appointed by the Supreme Court.

HISTORY: 1962 Code Section 56‑111; 1952 Code Section 56‑111; 1942 Code Section 314; 1932 Code Section 314; Civ. P. ‘22 Section 270; Civ. C. ‘12 Section 3910; 1910 (26) 750; 1969 (56) 49; 2002 Act No. 307, Section 1.

CROSS REFERENCES

Constitutional provisions regarding admission to practice of law, see SC Const, Art 5, Section 4.

Practice of law by justices and judges, see SC Const, Art 5, Section 16.

Rules of Board of Law Examiners, see South Carolina Appellate Court Rules, Part 4, App. A, SCACR.

Library References

Attorney and Client 7.

Westlaw Topic No. 45.

C.J.S. Attorney and Client Sections 19 to 22.

Attorney General’s Opinions

A person who simultaneously holds the positions of board member for a City Housing Authority and member of the State Board of Law Examiners would violate the constitutional prohibition on dual office holding. S.C. Op.Atty.Gen. (Oct. 8, 2003) 2003 WL 22378700.

**SECTION 40‑5‑220.** License granted only by Supreme Court; applications for licensure.

 No original license to practice as an attorney, solicitor or counsellor shall be granted except by the Supreme Court. All applications for admission to the bar in the State shall be made by petition to the Supreme Court.

HISTORY: 1962 Code Section 56‑113; 1952 Code Section 56‑113; 1942 Code Sections 313, 314; 1932 Code Sections 313, 314; Civ. P. ‘22 Sections 269, 270; Civ. C. ‘12 Sections 3909, 3910; Civ. C. ‘02 Section 2812; G. S. 2161; R. S. 2288; 1878 (16) 472; 1910 (26) 750.

CROSS REFERENCES

Authority of the South Carolina Law Enforcement Division to accept fingerprints of applicants for admission to the bar and to exchange certain records with the Board of Law Examiners, see Section 23‑3‑45.

Constitutional provisions regarding admission to practice of law, see SC Const, Art 5, Section 4.

Persons convicted of barratry being barred from practice of law, see Section 16‑17‑20.

Rules governing the practice of law, see South Carolina Appellate Court Rules (SCACR), Rule 401 et seq.

Library References

Attorney and Client 5 to 9.

Westlaw Topic No. 45.

C.J.S. Attorney and Client Sections 11 to 14, 19 to 22.

LAW REVIEW AND JOURNAL COMMENTARIES

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From offense to defense: Defending legal malpractice claims. Laura Callaway, Carl B. Epps, III, Steven E. Williford. 45 S.C. L. Rev 771 (Summer 1994).

Risk management for lawyers. William H. Fortune, Dulaney O’Roark, 45 S.C. L. Rev. 617 (Summer 1994).

**SECTION 40‑5‑230.** Effect of article on disciplinary powers of courts.

 Nothing in this article contained shall be construed to deprive the courts of this State of the power, as at present existing, of disbarring or otherwise punishing members of the bar.

HISTORY: 1962 Code Section 56‑128; 1952 Code Section 56‑128; 1942 Code Section 319; 1932 Code Section 319; Civ. P. ‘22 Section 275; Civ. C. ‘12 Section 3915; 1910 (26) 750.

CROSS REFERENCES

Attorney disciplinary procedures, see South Carolina Appellate Court Rules, Rule 413, SCACR, Lawyer Disciplinary Enforcement, Rule 1 et seq.

Courts generally, see S.C. Code Section 14‑1‑10 et seq.

Removal of attorneys for causes other than contempt, see Section 40‑5‑520.

Library References

Attorney and Client 32, 34 to 61.

Westlaw Topic No. 45.

C.J.S. Attorney and Client Sections 4 to 5, 41 to 130.

ARTICLE 5

Regulation of Practice of Law

**SECTION 40‑5‑310.** Practicing law or soliciting legal cause of another without being enrolled as member of South Carolina Bar.

 No person may either practice law or solicit the legal cause of another person or entity in this State unless he is enrolled as a member of the South Carolina Bar pursuant to applicable court rules, or otherwise authorized to perform prescribed legal activities by action of the Supreme Court of South Carolina. The type of conduct that is the subject of any charge filed pursuant to this section must have been defined as the unauthorized practice of law by the Supreme Court of South Carolina prior to any charge being filed. A person who violates this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both.

HISTORY: 1962 Code Section 56‑141; 1952 Code Section 56‑141; 1942 Code Section 312; 1932 Code Section 312; Civ. P. ‘22 Section 268; Civ. C. ‘12 Section 3908; Civ. C. ‘02 Section 2811; G.S. 2159; R. S. 2287; 1721 (7) 173; 1995 Act No. 7, Part II, Section 59; 2009 Act No. 38, Section 1.

CROSS REFERENCES

Constitutional provisions regarding admission to practice of law, see SC Const, Art 5, Section 4.

Constitutional provisions regarding practice of law by justices and judges, see SC Const, Art 5, Section 16.

Corporations, unauthorized practice, designated principle of corporation or partnership exempted, see Section 33‑1‑103.

Removal or suspension of attorneys, see Section 40‑5‑510.

Rules governing the practice of law, see S.C. Appellate Court Rules, SCACR 401 et seq.

Library References

Attorney and Client 11.

Westlaw Topic No. 45.

C.J.S. Attorney and Client Sections 23 to 40.

RESEARCH REFERENCES

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32 ALR 6th 531 , Matters Constituting Unauthorized Practice of Law in Bankruptcy Proceedings.

Encyclopedias

S.C. Jur. Attorney and Client Section 4, Unauthorized Practice of Law.

Treatises and Practice Aids

77 Causes of Action 2d 701, Cause of Action for Damages Against Consumer Online Document Preparation Provider, Based on Unauthorized Practice of Law.

LAW REVIEW AND JOURNAL COMMENTARIES

Into the matrix:The future of the unauthorized practice of law in real estate closings following Matrix Financial Services Corp. v. Frazer. Neil C. Robinson, III, 63 S.C. L. Rev. 1001 (Summer 2012).

What does and what does not constitute the unauthorized practice of law in a residential real estate transaction in South Carolina. Luther C. Kissam, IV, 40 S.C. L. Rev. 733 (Spring 1989).

Attorney General’s Opinions

Discussion of whether the county auditor may present a case before the magistrate’s court as a representative of the county and whether that would constitute the unauthorized practice of law. S.C. Op.Atty.Gen. (March 26, 2013) 2013 WL 1695517.

Section 40‑5‑310 should be construed as authorizing an individual to practice law in this State if that individual has been admitted and sworn as an attorney in South Carolina. S.C. Op.Atty.Gen. (Nov. 22, 2005) 2005 WL 3352843.

An individual who would appear as counsel on behalf of another in proceedings before the Alcoholic Beverage Control Commission must be an attorney licensed by the South Carolina Supreme Court unless the court has granted leave to the individual to so appear on behalf of another and the individual has complied with the other requirements of Section 40‑5‑80 of the Code. 1987 S.C. Op.Atty.Gen. 146, 1987 S.C. Op.Atty.Gen. No. 87‑57, (June 10, 1987) 1987 WL 245466.

Persons representing individuals (other than themselves) or organizations before the Public Service Commission must be licensed South Carolina attorneys or attorneys associated with a licensed South Carolina attorney. 1978 S.C. Op.Atty.Gen. 239, 1978 S.C. Op.Atty.Gen. No. 78‑207, (Dec. 15, 1978) 1978 WL 22675.

The prosecution of traffic and nontraffic cases in magistrate’s court constitutes the practice of law and such prosecutions by an investigator for a solicitor’s office who is not an attorney would be unlawful; the presentation of the State’s case in a preliminary examination by the investigator would be proper. 1978 S.C. Op.Atty.Gen. 221, 1978 S.C. Op.Atty.Gen. No. 78‑195, (Nov. 16, 1978) 1978 WL 22663.

Public adjusters, not licensed as attorneys, engage in the unauthorized practice of law in their activities which go beyond the mere appraisal of the actual losses or damages an insured has sustained. An activity which is found to constitute the unauthorized practice of law cannot constitutionally be sanctioned by the General Assembly without infringing on the judicial branch of the State government. 1977 S.C. Op.Atty.Gen. 308, 1977 S.C. Op.Atty.Gen. No. 77‑384, (Dec. 7, 1977) 1977 WL 24721.

NOTES OF DECISIONS

In general 1

Paralegals 2

Police officers 3

Title searches 4

1. In general

Pro se tax protester could not represent third parties in action against Internal Revenue agents challenging seizure of property, as such representation constituted unauthorized practice of law. Stout v. Robnett, 2000, 107 F.Supp.2d 699. Attorney And Client 12(18)

A mortgage refinance process does not constitute unauthorized practice of law as long as a licensed South Carolina attorney is involved at each critical stage and exercises independent professional judgment, including making corrections if necessary, at the key points throughout the transaction. Boone v. Quicken Loans, Inc. (S.C. 2017) 803 S.E.2d 707. Attorney and Client 12(11)

Examination of title and preparation of abstracts were performed under supervision of licensed attorney, and thus did not constitute unauthorized practice of law by online mortgage lender and title insurer engaged in mortgage refinance transactions; even though non‑lawyer created abstract, attorney always personally reviewed abstractor’s report and only issued title certificate if he was confident of its legal sufficiency. Boone v. Quicken Loans, Inc. (S.C. 2017) 803 S.E.2d 707. Attorney and Client 12(11)

Legal instruments utilized in mortgage refinance transactions by online mortgage lender and title insurer were adequately reviewed, and corrected if necessary, by licensed attorneys prior to closings, and thus preparation of documents did not constitute unauthorized practice of law; even though lender and insurer were primarily responsible for preparing loan documents, closing attorneys reviewed the documents for accuracy and compliance with the law prior to closing. Boone v. Quicken Loans, Inc. (S.C. 2017) 803 S.E.2d 707. Attorney and Client 12(11)

Mortgage refinance transactions were closed with appropriate attorney supervision, and thus closings did not constitute unauthorized practice of law by online mortgage lender and title insurer; licensed attorney who had previously reviewed closing documents for accuracy and legal sufficiency was physically present at each closing to answer questions and to instruct borrowers in the manner in which to execute the closing documents. Boone v. Quicken Loans, Inc. (S.C. 2017) 803 S.E.2d 707. Attorney and Client 12(11)

Attorneys authorized and supervised recording of all necessary documents and disbursement of funds in mortgage refinance transactions, and thus online mortgage lender and title insurer did not commit unauthorized practice of law at this stage of closing transactions; attorneys were required to verify that loan proceeds were properly disbursed and that all necessary documents were recorded properly in correct county. Boone v. Quicken Loans, Inc. (S.C. 2017) 803 S.E.2d 707. Attorney and Client 12(11)

Nonlawyer, who acted on behalf of judgment holder in the collection of the debt, engaged in the unauthorized practice of law; nonlawyer prepared pleadings, including “Motion for Supplementary Proceedings,” and “Execution Against Judgment,” nonlawyer managed the collection action on behalf of judgment holder before judges and courts by filing Motion in the Equity Division of the Circuit Court and appearing there on behalf of the judgment holder, nonlawyer developed a strategy to use in collecting the debt and, in furtherance of this strategy, sent letters to debtor that were designed to induce him to pay the judgment, and nonlawyer represented on the signature line of the “Execution Against Judgment” that he was acting as “Plaintiff’s Attorneys.” Roberts v. LaConey (S.C. 2007) 375 S.C. 97, 650 S.E.2d 474. Attorney And Client 12(19)

Supreme Court would not dismiss appeal, in probate matter, filed by nonlawyer personal representative of estate, and instead would allow personal representative a reasonable amount of time to retain counsel to continue with the appeal; personal representative had represented the estate in three previous appellate proceedings, which had led her to believe, erroneously, that such representation by a nonlawyer was acceptable. Brown v. Coe (S.C. 2005) 365 S.C. 137, 616 S.E.2d 705, clarified 365 S.C. 664, 620 S.E.2d 323. Attorney And Client 12(25); Executors And Administrators 455

Filing, by nonlawyer personal representative of estate, of notice of appeal on behalf of estate, and personal representative’s preparation of appellate briefs that would be required to further perfect the appeal, constituted the “practice of law,” and thus, such functions had to be performed by a person admitted to practice law. Brown v. Coe (S.C. 2005) 365 S.C. 137, 616 S.E.2d 705, clarified 365 S.C. 664, 620 S.E.2d 323. Attorney And Client 12(12)

The goal of the prohibition against the unauthorized practice of law is to protect the public from incompetent, unethical, or irresponsible representations. Brown v. Coe (S.C. 2005) 365 S.C. 137, 616 S.E.2d 705, clarified 365 S.C. 664, 620 S.E.2d 323. Attorney And Client 12(1)

The statute prohibiting the practice of law without being admitted and sworn prohibited inmate from assisting another inmate with the filing of a petition for post‑conviction relief, even though inmate would not actually appear in court if he assisted another inmate with a petition; the practice of law included the preparation and filing of documents. State v. McLauren (S.C.App. 2002) 349 S.C. 488, 563 S.E.2d 346. Attorney And Client 12(5); Attorney And Client 12(7)

Statute which addressed appearing in person for others without compensation did not allow inmate to assist other inmates with the preparation of post‑conviction relief petitions; statute expressly required that a person appearing for another obtain leave of court first, and there was no evidence that inmate sought leave of court prior to giving advice and assisting other inmates with petitions for post‑conviction relief. State v. McLauren (S.C.App. 2002) 349 S.C. 488, 563 S.E.2d 346. Attorney And Client 12(7)

Defendant was not entitled to a directed verdict, in prosecution for practicing law without being admitted and sworn; defendant referred to himself as jailhouse lawyer, five other inmates testified about inmate’s assistance to themselves or others, and inmate grievance coordinator testified that he was aware that inmate assisted other inmates with legal work. State v. McLauren (S.C.App. 2002) 349 S.C. 488, 563 S.E.2d 346. Attorney And Client 12(26)

The policy of prohibiting laymen from practicing law is not for the purpose of creating a monopoly in the legal profession, nor for its protection, but to assure the public adequate protection in the pursuit of justice by preventing the intrusion of incompetent and unlearned persons in the practice of law. State ex rel. Daniel v. Wells (S.C. 1939) 191 S.C. 468, 5 S.E.2d 181. Attorney And Client 12(1)

It is the character of the services rendered, and not the denomination of the tribunal before whom such services are rendered, which controls in determining whether such services constitute the practice of law. State ex rel. Daniel v. Wells (S.C. 1939) 191 S.C. 468, 5 S.E.2d 181. Attorney And Client 12(4)

Where respondent, who was a paid representative of an insurance company engaged in writing insurance under the Workmen’s Compensation Act, had on numerous occasions appeared before the individual commissioners of the South Carolina Industrial Commission and had conducted hearings before such commissioners, in the course of which he filed pleadings, stated grounds, examined and cross‑examined witnesses and made arguments, such action of respondent constituted the practice of law. State ex rel. Daniel v. Wells (S.C. 1939) 191 S.C. 468, 5 S.E.2d 181.

2. Paralegals

Paralegal who prepared pleadings and appeared in court on behalf of clients engaged in unauthorized practice of law, even though he did not accept fee and did not sign pleadings. Housing Authority of City of Charleston v. Key (S.C. 2002) 352 S.C. 26, 572 S.E.2d 284, 109 A.L.R.5th 767, certiorari denied, certiorari denied 123 S.Ct. 1593, 538 U.S. 932, 155 L.Ed.2d 330. Attorney And Client 12(24)

A defendant’s advertisement in the yellow pages in which he held himself out as a paralegal was an unlawful solicitation. State v. Robinson (S.C. 1996) 321 S.C. 286, 468 S.E.2d 290.

3. Police officers

Practice of assigning supervisory officers of highway patrol to assist arresting officers in the prosecution of misdemeanor traffic violations in the magistrates’ courts does not constitute the unlawful practice of law in violation of this section or former Supreme Court Rules concerning the South Carolina Bar, Rule 4. State ex rel. McLeod v. Seaborn (S.C. 1978) 270 S.C. 696, 244 S.E.2d 317.

4. Title searches

Examining titles and preparing title abstracts constitute practicing law and therefore such activities must be conducted or supervised by licensed attorneys. Watson, Ex parte (S.C. 2003) 356 S.C. 432, 589 S.E.2d 760. Attorney And Client 12(11)

**SECTION 40‑5‑320.** Practice of law by corporations and voluntary associations unlawful.

 (A) It is unlawful for a corporation or voluntary association to:

 (1) practice or appear as an attorney at law for a person other than itself in a court in this State or before a judicial body;

 (2) make it a business to practice as an attorney at law for a person other than itself in a court or judicial body;

 (3) hold itself out to the public as being entitled to practice law, render or furnish legal services, advise or to furnish attorneys or counsel, or render legal services in actions or proceedings;

 (4) assume to be entitled to practice law or to assume, use, or advertise the title of lawyer, attorney, attorney at law, or equivalent terms in any language as to convey the impression that it is entitled to practice law or to furnish legal advice, services, or counsel; or

 (5) advertise that it has, owns, conducts, or maintains a law office or an office for the practice of law or for furnishing legal advice, services, or counsel, either alone or together with, by, or through a person, whether a duly and regularly admitted attorney at law, or not.

 (B) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

HISTORY: 1962 Code Section 56‑142; 1952 Code Section 56‑142; 1946 (44) 2575; 1993 Act No. 184 Section 224.

CROSS REFERENCES

Corporations or unincorporated associations being convicted of barratry, see Sections 16‑17‑30, 16‑17‑40.

Rules governing the practice of law, see South Carolina Appellate Court Rules (SCACR), Rule 401 et seq.

Library References

Attorney and Client 37.1.

Corporations 508.

Westlaw Topic Nos. 45, 101.

C.J.S. Attorney and Client Sections 61, 67.

C.J.S. Corporations Section 796.

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Treatises and Practice Aids

Fletcher Cyclopedia Law of Private Corporations Section 2524, Professional Services‑Law Practice.

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 3:1, Document Preparation and Closing Practices (State v. Buyers Service Co., Inc.).

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:15, Document Preparation.

LAW REVIEW AND JOURNAL COMMENTARIES

Are you in good hands?: Is the use of in‑house counsel right for South Carolina insurance defense? Eric Montalvo, 59 S.C. L. Rev. 615 (Spring 2008).

Into the matrix:The future of the unauthorized practice of law in real estate closings following Matrix Financial Services Corp. v. Frazer. Neil C. Robinson, III, 63 S.C. L. Rev. 1001 (Summer 2012).

Attorney General’s Opinions

A paralegal may not represent himself as an attorney to those requesting legal representation, as such is an unauthorized practice of law. 1977 S.C. Op.Atty.Gen. 263, 1977 S.C. Op.Atty.Gen. No. 77‑331, (Oct. 25, 1977) 1977 WL 24670.

NOTES OF DECISIONS

In general 1

1. In general

Public reprimand was appropriate sanction for attorney’s misconduct of assisting collection agency in performing activities that constituted the unauthorized practice of law. In re Zenner (S.C. 2002) 348 S.C. 499, 560 S.E.2d 406. Attorney And Client 59.8(1)

Attorney committed misconduct by assisting collection agency in the unauthorized practice of law, where collection agency held itself out to debtors as being part of attorney’s law firm, collectors were attorney’s employees, and collectors offered legal advice. In re Zenner (S.C. 2002) 348 S.C. 499, 560 S.E.2d 406. Attorney And Client 37.1

Commercial title company, which also assists homeowners in purchasing residential real estate, engaged in unlawful practice of law by preparing deeds, notes and other instruments related to mortgage loans and transfers of real property, even though forms were standard and required no creative drafting, and by preparing title abstracts for persons other than attorneys, although company conduct title examinations and prepare abstracts for benefit of attorneys, because examination of titles requires expert legal knowledge and skill; however, commercial title company could continue its practice of handling real estate and mortgage loan closings with restriction that no legal advice be given to parties during closing sessions, and if parties to transaction raise legal question at closing, company should stop proceeding and instruct them to consult their attorneys, and commercial title company may also continue its practice of mailing or hand‑carrying instruments to courthouse for recording, as physical transportation or mailing of documents to courthouse cannot be considered practice of law, unless this step takes place as part of real estate transfer as in this respect it is aspect of conveying and effecting legal rights, as appropriate sequence of recording is critical in order to protect purchaser’s title to property, such that instructions given to court clerk or register as to manner of recording, if given by lay person for benefit of another, must be given under supervision of attorney. State v. Buyers Service Co., Inc. (S.C. 1987) 292 S.C. 426, 357 S.E.2d 15.

**SECTION 40‑5‑330.** Attorney may not argue more than two hours without court permission.

 No attorney, solicitor or counsellor shall be allowed to occupy more than two hours of the time of the court in the argument of any cause, unless he shall first obtain the special permission of the court to do so.

HISTORY: 1962 Code Section 56‑143; 1952 Code Section 56‑143; 1942 Code Section 325; 1932 Code Section 325; Civ. P. ‘22 Section 281; Civ. C. ‘12 Section 3921; Civ. C. ‘02 Section 2818; G. S. 2166; R. S. 2294; 1868 (14) 97.

CROSS REFERENCES

Conduct of attorney in argument before jury, see South Carolina Rules of Civil Procedure (SCRCP), Rule 43.

Library References

Criminal Law 2075.

Trial 112.

Westlaw Topic Nos. 110, 388.

C.J.S. Criminal Law Sections 1687, 1713.

C.J.S. Trial Sections 291 to 294.

NOTES OF DECISIONS

Civil cases 1

Criminal cases 2

Multiple defendants 3

1. Civil cases

A trial judge has the discretion to limit oral argument to less than 2 hours in civil matters. Roof v. Kimbrough (S.C.App. 1988) 297 S.C. 156, 375 S.E.2d 318, certiorari denied 298 S.C. 308, 380 S.E.2d 172. Trial 112

2. Criminal cases

SC Const, Art 1, Section 18 (now Art 1, Section 14) together with this section [Code 1962 Section 56‑143], gives to a party accused of crime two hours, as a matter of right, in which to argue his defense before a jury. State v Ballenger (1943) 202 SC 155, 24 SE2d 175. State v McIntire (1952) 221 SC 504, 71 SE2d 410, commented on in 5 SCLQ 611 (1953).

It is error to limit argument to one hour in murder case. State v Cash (1927) 138 SC 167, 136 SE 222. State v McIntire (1952) 221 SC 504, 71 SE2d 410, commented on in 5 SCLQ 611 (1953).

This section [Code 1962 Section 56‑143] leaves the court discretionary power to fix a shorter time limit in criminal cases. State v Blackstone (1920) 113 SC 528, 101 SE 845. State v McIntire (1952) 221 SC 504, 71 SE2d 410, commented on in 5 SCLQ 611 (1953).

Section 40‑5‑330 limits oral argument to a maximum of two hours unless the trial judge authorizes additional time. This statute does not give a criminal defendant the absolute right to argue for two hours, and the trial judge has the discretion to limit oral argument to some lesser period of time. In a forgery case which was relatively straightforward and uncomplicated, where the entire transcript of the proceedings before the lower court did not exceed seventy‑five pages, there was no abuse of discretion in limiting argument to twenty minutes. State v. El (S.C. 1985) 286 S.C. 560, 335 S.E.2d 544. Criminal Law 2075

3. Multiple defendants

In a trial of twenty‑two defendants for conspiracy, it was error to allow each of the seven lawyers representing the defendants only five minutes in which to make his reply argument. State v. McIntire (S.C. 1952) 221 S.C. 504, 71 S.E.2d 410.

**SECTION 40‑5‑340.** Penalties for purchasing claims for suit.

 If any attorney, solicitor or counsellor shall enter into any speculating practices, by purchasing or procuring to be purchased any note or other demand for the purpose of putting the same in suit, when otherwise the owner or holder thereof would not sue upon it, such attorney, solicitor or counsellor shall pay a fine of one hundred dollars and shall thereafter be incapable of practicing as such in any court until restored by the Supreme Court.

HISTORY: 1962 Code Section 56‑144; 1952 Code Section 56‑144; 1942 Code Section 324; 1932 Code Section 324; Civ. P. ‘22 Section 280; Civ. C. ‘12 Section 3920; Civ. C. ‘02 Section 2817; G. S. 2165; R. S. 2293; 1868 (14) 97.

CROSS REFERENCES

Attorney Rules of Professional Conduct, see South Carolina Appellate Court Rules, Rule 407, SCACR, Rules of Prof. Conduct, Rule 1.0 et seq.

Crime of barratry, see Section 16‑17‑10 et seq.

Library References

Attorney and Client 32(7), 33, 37.1.

Westlaw Topic No. 45.

C.J.S. Attorney and Client Sections 57 to 58, 61, 67, 153.

NOTES OF DECISIONS

In general 1

1. In general

This section [Code 1962 Section 56‑144] does not expressly declare void the “speculating practices” therein referred to, but imposes penalties upon an attorney who shall enter into them. Cooke v. Pool (S.C. 1886) 25 S.C. 593.

**SECTION 40‑5‑350.** Soliciting legal business unlawful.

 It is unlawful for a person or his agent, employee, or anyone acting on his behalf to:

 (1) solicit or procure through solicitation, either directly or indirectly, legal business; or

 (2) solicit or procure through solicitation a retainer, written or oral, or an agreement authorizing an attorney to perform or render legal services.

 A person who violates a provision of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

HISTORY: 1962 Code Section 56‑145; 1952 Code Section 56‑145; 1946 (44) 2575; 1993 Act No. 184, Section 225.

CROSS REFERENCES

Attorney Rules of Professional Conduct, see South Carolina Appellate Court Rules, Rule 407, SCACR, Rules of Prof. Conduct, Rule 1.0 et seq.

Crime of barratry, see Section 16‑17‑10 et seq.

Library References

Attorney and Client 32(9), 33, 37.1.

Westlaw Topic No. 45.

C.J.S. Attorney and Client Sections 45 to 46, 61, 67, 87, 153.

LAW REVIEW AND JOURNAL COMMENTARIES

Lawyer advertising and solicitation: the birth of the Marlboro Man. Wade H. Logan, III, 42 S.C. L. Rev. 859 (Summer 1991).

**SECTION 40‑5‑360.** Splitting fees with lay persons unlawful.

 It is unlawful for a person, partnership, corporation, or association to divide with or receive from, or to agree to divide with or receive from, an attorney or group of attorneys, whether practicing in this State or elsewhere, any portion of a fee or compensation charged or received by an attorney or any valuable consideration or reward as an inducement for placing or in consideration of having placed in the hands of an attorney, or in the hands of another person a claim or demand of any kind for the purpose of collecting the claim or bringing an action on the claim or of representing the claimant in the pursuit of any civil remedy for the recovery of the claim. This section does not apply to an agreement between attorneys to divide between themselves the compensation to be received.

 A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

HISTORY: 1962 Code Section 56‑146; 1952 Code Section 56‑146; 1946 (44) 2575; 1993 Act No. 184 Section 226.

CROSS REFERENCES

Attorney Rules of Professional Conduct, see South Carolina Appellate Court Rules, Rule 407, SCACR, Rules of Prof. Conduct, Rule 1.0 et seq.

Fees of attorneys for service in workers’ compensation proceedings, see Section 42‑15‑90.

Library References

Attorney and Client 32(7), 33, 37.1, 151.

Westlaw Topic No. 45.

C.J.S. Attorney and Client Sections 57 to 58, 61, 67, 153, 363 to 367, 388.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney and Client Section 33, Splitting of Fees.

**SECTION 40‑5‑370.** Furnishing advice or service to debtor in debt pooling plan involving deposit for distribution to creditors as practice of law violation constitutes misdemeanor; penalty.

 The furnishing of advice or services for compensation to a debtor in connection with a debt pooling plan pursuant to which the debtor deposits funds for the purpose of distributing them among his creditors shall be deemed to be the practice of law. Any person, other than one licensed to practice law in this State, who furnishes or offers to furnish such advice or services for compensation shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of five hundred dollars.

HISTORY: 1962 Code Section 56‑147; 1963 (53) 556.

CROSS REFERENCES

Rules governing the practice of law, see South Carolina Appellate Court Rules (SCACR), Rule 401 et seq.

Library References

Attorney and Client 11(2.1).

Westlaw Topic No. 45.

C.J.S. Attorney and Client Sections 26 to 28, 30, 32.

**SECTION 40‑5‑380.** Pro bono work by attorneys employed by the State.

 An attorney employed by any executive agency of the State may, with the permission of his agency head, represent without fees indigent clients referred by a pro bono program organized, sponsored, or endorsed by the South Carolina Bar. The pro bono service must be at no cost to the State, and may not conflict with the attorney’s official duties or the interests of the State. The attorney shall use compensatory or annual leave for pro bono services performed during normal working hours. Practice by attorneys employed by the General Assembly or the Judicial Department shall be governed by such policies and rules as may be adopted by their respective employer.

HISTORY: 1989 Act No. 154, Section 1.

Library References

Attorney and Client 132.

Westlaw Topic No. 45.

C.J.S. Attorney and Client Sections 371 to 377.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney and Client Section 35, Pro Bono Representation.

**SECTION 40‑5‑390.** Nonrefundable flat fee.

 In any criminal case, an attorney may charge a nonrefundable flat fee.

HISTORY: 2003 Act No. 25, Section 2.

Library References

Attorney and Client 137.

Westlaw Topic No. 45.

C.J.S. Attorney and Client Section 346.

ARTICLE 7

Disciplinary Action Against Attorneys

**SECTION 40‑5‑510.** Removal, suspension, and imprisonment of attorneys for contempt or disorderly conduct.

 Attorneys, solicitors and counsellors may be removed or suspended and also, in aggravated cases, imprisoned, not exceeding twenty‑four hours, by the several courts in which they have been admitted to practice, if, in the presence of such court, they are guilty of any disorderly conduct causing an interruption of business or amounting to an open and direct contempt to the court, its authority or person.

HISTORY: 1962 Code Section 56‑151; 1952 Code Section 56‑151; 1942 Code Section 322; 1932 Code Section 322; Civ. P. ‘22 Section 278; Civ. C. ‘12 Section 3918; Civ. C. ‘02 Section 2815; G. S. 2163; R. S. 2291; 1868 (14) 97.

CROSS REFERENCES

Attorney disciplinary procedures, see South Carolina Appellate Court Rules, Rule 413, SCACR, Lawyer Disciplinary Enforcement, Rule 1 et seq.

Attorney Rules of Professional Conduct, see South Carolina Appellate Court Rules, Rule 407, SCACR, Rules of Prof. Conduct, Rule 1.0 et seq.

Constitutional provision regarding discipline of persons admitted to practice law, see SC Const, Art 5, Section 4.

Library References

Attorney and Client 37.1, 43.

Contempt 2 to 82.

Disorderly Conduct 140.

Westlaw Topic Nos. 45, 93, 129.

C.J.S. Attorney and Client Sections 61, 67, 83.

C.J.S. Contempt Sections 2 to 149.

C.J.S. Disorderly Conduct Sections 1 to 4.

C.J.S. Parent and Child Section 241.

RESEARCH REFERENCES

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LAW REVIEW AND JOURNAL COMMENTARIES

An analysis of current theories of liability. Susan Taylor Wall, Joseph R. Weston, 45 S.C. L. Rev. 857 (Summer 1994).

Attorney liability for assisting clients with wrongful conduct: Established and emerging bases of liability. J. Randolph Evans, Ida Patterson Dorvee, 45 S.C. L. Rev. 803 (Summer 1994).

Disciplinary Proceedings. 25 S.C. L. Rev. 416.

Due process in lawyer disciplinary cases: from the cradle to the grave. Wilburn Brewer, Jr., 42 S.C. L. Rev. 925 (Summer 1991).

Expanding duties of attorneys to “non‑clients”: reconceptualizing the attorney‑client relationship in entity representation and other inherently ambiguous situations. Nancy J. Moore, 45 S.C. L. Rev. 659 (Summer 1994).

The fundamentals of professionalism. L. Ray Patterson, 45 S.C. L. Rev. 707 (Summer 1994).

Recovery for emotional distress damages in attorney malpractice actions. D. Dusty Rhoades, Laura W. Morgan, 45 S.C. L. Rev. 837 (Summer 1994).

NOTES OF DECISIONS

In general 1

1. In general

A judge in chambers has no power to suspend or disbar an attorney from practicing in the courts. State v. Nathans (S.C. 1897) 49 S.C. 199, 27 S.E. 52. Attorney And Client 36(2)

An attorney cannot be adjudged guilty of contempt because, after the entry of an order enjoining the creditors of a corporation from prosecuting any actions against it, in a proceeding in which he represented a creditor of the corporation, he advises and brings an action in another court against the corporation on behalf of another client, who was a nonresident and not bound by the injunction. State v. Nathans (S.C. 1897) 49 S.C. 199, 27 S.E. 52.

**SECTION 40‑5‑520.** Additional causes of removal or suspension; hearing required.

 Any attorney, solicitor or counsellor may be removed or suspended who shall be guilty of any deceit, malpractice or misbehavior, but not until a copy of the charges against him shall have been delivered to him by the clerk of the court in which the proceedings shall be had and an opportunity shall have been given him of being heard in his defense.

HISTORY: 1962 Code Section 56‑152; 1952 Code Section 56‑152; 1942 Code Section 323; 1932 Code Section 323; Civ. P. ‘22 Section 279; Civ. C. ‘12 Section 3919; Civ. C. ‘02 Section 2816; G. S. 2164; R. S. 2292; 1868 (14) 97.

CROSS REFERENCES

Attorney disciplinary procedures, see South Carolina Appellate Court Rules, Rule 413, SCACR, Lawyer Disciplinary Enforcement, Rule 1 et seq.

Attorney Rules of Professional Conduct, see South Carolina Appellate Court Rules, Rule 407, SCACR, Rules of Prof. Conduct, Rule 1.0 et seq.

Constitutional provision regarding discipline of persons admitted to practice law, see SC Const, Art 5, Section 4.

Legal professional liability insurance joint underwriting association, see Section 38‑81‑210 et seq.

Persons convicted of barratry being barred from practice of law, see Section 16‑17‑20.

Library References

Attorney and Client 37.1, 38, 48, 52.

Westlaw Topic No. 45.

C.J.S. Attorney and Client Sections 61, 67 to 70, 76 to 79, 82 to 83, 86 to 89, 92 to 95, 97 to 98.

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Expert witness testimony in legal malpractice cases. Wilburn Brewer, Jr., 45 S.C. L. Rev. 727 (Summer 1994).

From offense to defense: Defending legal malpractice claims. Laura Callaway, Carl B. Epps, III, Steven E. Williford. 45 S.C. L. Rev 771 (Summer 1994).

The fundamentals of professionalism. L. Ray Patterson, 45 S.C. L. Rev. 707 (Summer 1994).

Recovery for emotional distress damages in attorney malpractice actions. D. Dusty Rhoades, Laura W. Morgan, 45 S.C. L. Rev. 837 (Summer 1994).

Risk management for lawyers. William H. Fortune, Dulaney O’Roark, 45 S.C. L. Rev. 617 (Summer 1994).

NOTES OF DECISIONS

In general 1

Limitations 2

Nature of acts warranting disbarment 3

1. In general

For additional related cases, see State v Holding (1821) 12 SCL 379. Adm’ors of Hynman v Washington (1923) 13 SCL 493. Watson v Citizens’ Sav. Bank (1874) 5 SC 159.

Under South Carolina law, purchaser was not liable to debtor for its purchase of debtor’s former residence at foreclosure sale, even if purchaser was aware of debtor’s lawsuit against mortgage service company, absent allegation that purchaser violated any duty to debtor. Hunt v. Mortgage Electronic Registration, 2007, 522 F.Supp.2d 749. Mortgages And Deeds Of Trust 2057

Attorney’s conduct in falsely representing to client that action had been filed on client’s behalf, failing to communicate with client regarding status of case, failing to follow client’s instructions, failing to return client’s file, failing to return fees, converting retainer fees to her own use, falsely representing amount of time spent on client’s case, failing to cooperate with Office of Disciplinary Counsel’s investigation, failing to advise client of expiration of statute of limitations, falsely representing to client that case was being litigated, depositing retainer fees into non‑trust account, failing to pay judgment obtained against her by client, and failing to withhold and pay taxes from her employee’s paychecks warranted 20‑month suspension. In re Davis (S.C. 2002) 348 S.C. 199, 559 S.E.2d 573. Attorney And Client 59.13(3)

An attorney is always subject to the court’s control. His admission to practice carries with it the imprimatur of the court and is prima facie a certificate of good moral character. In a proceeding for disbarment the court undertakes to ascertain “whether the lawyer accused is no longer worthy to bear the court’s imprimatur.” State v. Jennings (S.C. 1931) 161 S.C. 263, 159 S.E. 627.

This section [Code 1962 Section 56‑152] does not take away or limit the inherent common‑law power of courts to suspend or disbar any attorney for gross misconduct not falling within their terms. State v. Jennings (S.C. 1931) 161 S.C. 263, 159 S.E. 627.

The purpose of suspension or disbarment is the removal of unfit persons from the profession. The primary purpose is not punishment but protection of the courts and the public from contamination with one who has proved himself unworthy. State v. Jennings (S.C. 1931) 161 S.C. 263, 159 S.E. 627. Attorney And Client 37.1

2. Limitations

The statute of limitations has never been held to apply to a disbarment proceeding. State v. Jennings (S.C. 1931) 161 S.C. 263, 159 S.E. 627. Attorney And Client 46

Courts generally regard with disfavor disbarment proceedings after a great lapse of time, and properly so. State v. Jennings (S.C. 1931) 161 S.C. 263, 159 S.E. 627.

3. Nature of acts warranting disbarment

Attorney’s misconduct in falsely reporting to client that his case had been dismissed on summary judgment, when in fact the case had been administratively dismissed for noncompliance with arbitration requirements, followed by attorney’s creation of false summary judgment order with a forged signature of judge, warranted disbarment, retroactive to the date of attorney’s interim suspension, with consideration of any future petition for reinstatement contingent upon completion of professional ethics school. In re Taylor (S.C. 2013) 405 S.C. 27, 747 S.E.2d 174. Attorney and Client 59.14(1)

Disbarment was warranted as disciplinary sanction, where attorney’s current misconduct included failure to properly maintain client escrow account, lack of diligence in client matters, submission of improper documents to courts, and failure to make timely payments to court reporters, and his prior disciplinary history included an indefinite suspension for offering a witness money to drop criminal charges against client, false notarization of document submitted to court, failure to properly maintain client escrow account, lack of diligence in client matters, and filing of untimely or improper pleadings with courts. In re Gaines (S.C. 2002) 348 S.C. 208, 559 S.E.2d 577, rehearing denied. Attorney And Client 59.14(1); Attorney And Client 59.14(2)

Attorney’s commingling of client’s funds with own and requesting undocumented loans from naive clients in breach of fiduciary duty constituted misconduct warranting indefinite suspension from practice of law. Matter of Kirven (S.C. 1976) 267 S.C. 669, 230 S.E.2d 899.

Recommendation of disbarment, and findings made, were fully warranted by record and will be confirmed, and attorney will be disbarred, where panel found that attorney had pled nolo contendere to an indictment for failure to file state income tax returns, was sentenced and fined, that attorney had received and appropriated clients’ funds to his own use and commingled these trust funds with his own personal funds and had failed and neglected to properly account for the moneys belonging to these clients, and that attorney had failed to properly perform legal services for clients, after having been retained by these clients to do so, and having been substantially paid in some cases. Matter of Towles (S.C. 1975) 265 S.C. 556, 220 S.E.2d 646.

The acts charged against an attorney to warrant his disbarment or suspension must be of such a character as to show that their commission was with a bad or fraudulent motive, and they must be supported by a clear preponderance of the evidence. The conduct must be so gross as to show a want of integrity, moral turpitude, depravity of character, or dishonesty. State v. Jennings (S.C. 1931) 161 S.C. 263, 159 S.E. 627.

An attorney, acting as a guardian of the estate of a minor, executed to himself as guardian certain mortgages, resulting in the devastation of his ward’s estate. This was a gross betrayal of a fiduciary relationship and grounds for disbarment. State v. Jennings (S.C. 1931) 161 S.C. 263, 159 S.E. 627.

An attorney built up a business of loaning money and making investments for clients. Such investments, and also assignments and suits instituted or defended, were made in the attorney’s own name. But such actions, although involving treating his client’s money as his own while demonstrating a reprehensible laxity worthy of severe condemnation, were held not to be sufficient grounds for disbarment. State v. Jennings (S.C. 1931) 161 S.C. 263, 159 S.E. 627.

Disciplining attorney for soliciting business through advertisements containing nondeceptive illustrations and legal advice violates attorney’s First Amendment rights. Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio, 1985, 105 S.Ct. 2265, 471 U.S. 626, 85 L.Ed.2d 652.