

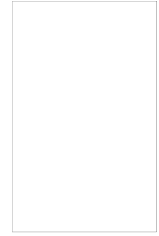


Ethics: Professionalism, Civility, and Social Media

WILLIAM M. BLITCH, JR.

SC OFFICE OF DISCIPLINARY COUNSEL

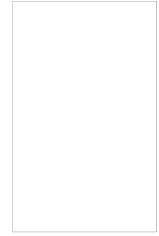
Purposes of Discipline Systems



- ▶ The regulation of the conduct of lawyers is critical to preserving the integrity of the legal profession and enhancing public confidence in the judicial system.

Rule 1, RLDE, Rule 413, SCACR

Purposes of Discipline Systems

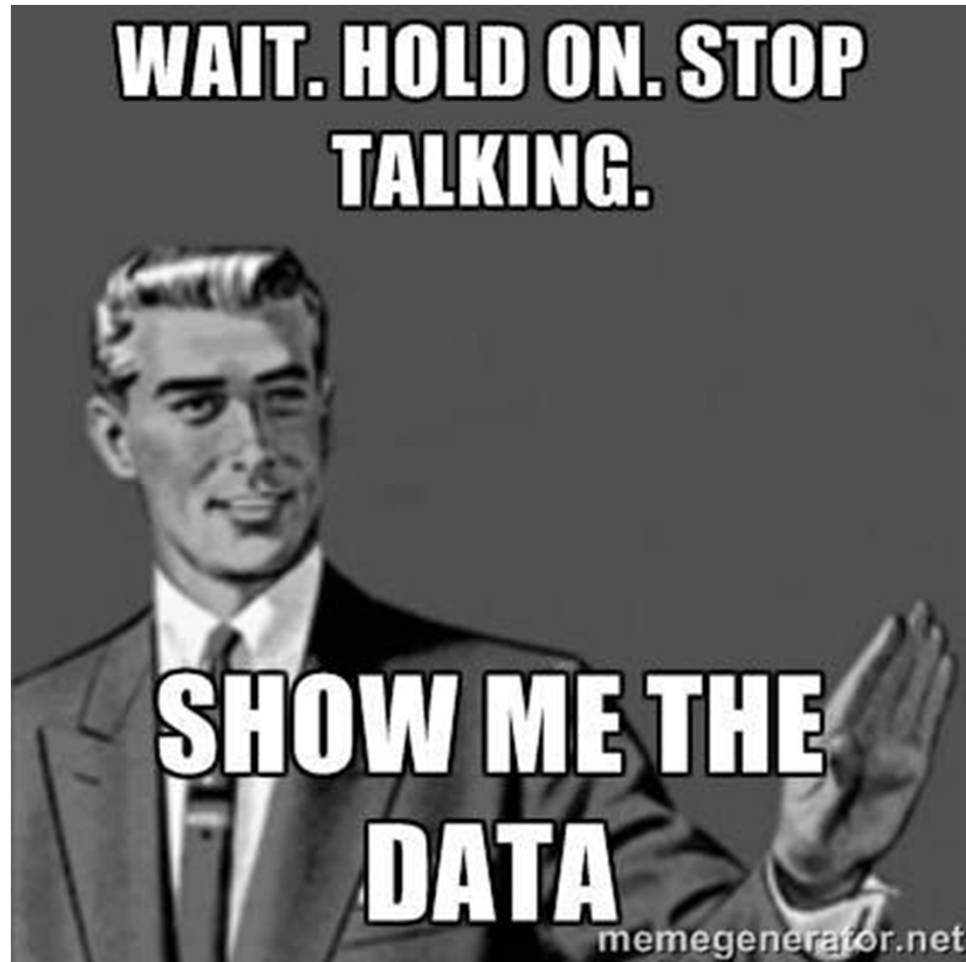


Lawyer Discipline

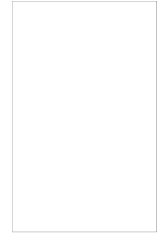
Not for punishment, but serves:

- ▶ Protection of the public
- ▶ Protection of the legal profession
- ▶ Protection of the courts
- ▶ Protection of the administration of justice
- ▶ Fostering public confidence in self-policing system
- ▶ Protection of the legal system's reputation

The Stats

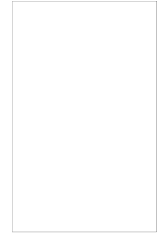


Lawyer Complaints



COMPLAINTS PENDING & RECEIVED:		
Complaints Pending June 30, 2023	1893	
Complaints Received July 1, 2023-June 30, 2024	2055	
Total Complaints Pending and Received		3948

Judicial Complaints



COMPLAINTS PENDING & RECEIVED:		
	22-23	23-24
Complaints Pending June 30	108	143
Complaints Received July 1 - June 30	432	558
Total Complaints Pending and Received	540	701

Disposition of Lawyer Complaints

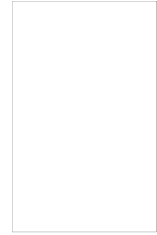


DISPOSITION OF COMPLAINTS:		
Dismissed:		
By Disciplinary Counsel after initial review	714	
By Disciplinary Counsel after investigation (lack of evidence)	620	
By Commission Investigative Panel	66	
By Commission Counsel	6	
Total Dismissed		1406

Disposition of Lawyer Complaints

Not Dismissed:		
Closed But Not Dismissed	4	
Closed Due to Death of Lawyer	21	
Deferred Discipline Agreement	0	
Letter of Caution Investigative Panel	29	
Letter of Caution Disciplinary Counsel	8	
Admonition Issued by Investigative Panel	19	
Admonition Issued by Supreme Court	3	
Public Reprimand	3	
Definite Suspension	12	
Disbarment	7	
Permanent Resignation in Lieu of Discipline	0	
Total Not Dismissed		96

Practice Type



Law Firm	39.41%
Solo practice	26.03%
Public Defender	12.32%
Prosecutor	10.52%
Other Government	5.26%
Unknown/Unspecified	3.60%
DSS	Less Than 1%
Guardian ad litem	Less Than 1%

Source of Lawyer Complaints



	Client	46.34%
	Opposing Party	28.96%
	Family/Friend of Client	4.53%
	Citizen	4.39%
	Attorney/Opposing Counsel	2.00%
	Unknown	1.93%
	Bank	1.80%
	Other—about 14 additional categories	10.05%

Underlying Case Type



Criminal	37.35%
Domestic	18.51
General Civil	7.59%
Probate/Estate Planning	7.19%
Real Estate	5.46%
Personal Injury/Property Damage	5.26%
Not Client or Case Related	4.39%
Property Contract Dispute	2.06%
Other	12.19%

Alleged Misconduct



Complaint	Percentage
Legal Issues Only	18.84%
Dishonesty/Deceit/Misrepresentation	16.78%
Inadequate Communication	14.85%
Neglect/Lack of Diligence	11.25%
Unknown	11.12%
Other Litigation Conduct	3.26%
Trust Account Conduct	3.20%
Scope of Representation	2.80%
Civility	1.80%
Other Conduct (Over 20 categories)	16.10%

Complaints and Procedures



www.sccourts.org

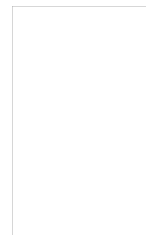


[ABOUT](#)[COURTS](#)[CALENDARS](#)[OPINIONS & ORDERS](#)[RESOURCES](#)[QUICK LINKS](#)

Resources

General Public	Judicial Community	Legal Community
Ayuda en Español	Annual Reports	Advance Sheets
Court Access	Case Records	AIS
Court Education	CDR Codes	Case Records
Expungement Application Process	Court of Appeals Opinions	Circuit Court Filing Fees
Family Court Public Portal	Court Calendar	Court of Appeals Opinions
How to become a Court Reporter	Court Forms	Court Rosters
How Judges are Elected	Court Rules	Court Rules
How to obtain a transcript	Judicial Advisory Opinions	E-Filing
Juror Information	Orders Search	Expungement Information
Magistrate Eligibility Exam Information	Rule 610 Requests	Family Court Attorney Portal
Online Payments	SC Code of Laws	Family Court Filing Fees
Petition For Order of Protection	Supreme Court Opinions	Interest Rate on Judgments
SC Courts Mental Health Initiative	Terms of Court	Opinion Search
SC Bar Member Directory	The Annual Judicial Conference	Business Court Pilot Program
Self Help Resources		Supreme Court Opinions
SRL Simple Divorce Packets		Supreme Court Orders
SRL Child Support Modification Packets		Terms of Court
SRL Visitation Packets		

<https://www.sccourts.org>



IV. Rules Governing the Practice of Law



- 401 Student Practice
- 402 Admission to Practice Law
- 403 Trial Experiences
- 404 Admission Pro Hac Vice
- 405 Limited Certificate of Admission for In-House Counsel
- 406 Disposition of Fees
- 407 Rules of Professional Conduct
 - Preamble A Lawyer's Responsibilities
 - Scope
 - CLIENT-LAWYER RELATIONSHIP
 - RULE 1.0 Terminology
 - RULE 1.1 Competence
 - RULE 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer
 - RULE 1.3 Diligence
 - RULE 1.4 Communication
 - RULE 1.5 Fees
 - RULE 1.6 Confidentiality of Information
 - RULE 1.7 Conflict of Interest: Current Clients
 - RULE 1.8 Conflict of Interest: Current Clients: Specific Rules
 - RULE 1.9 Duties to Former Clients
 - RULE 1.10 Imputation of Conflicts of Interest: General Rule

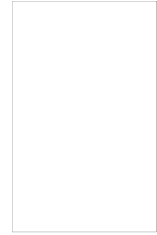
CRIMINAL
FAMILY
PROBATE
MAGISTRATE
ADR
EVIDENCE
E-FILING
PRINT VERSION

Rule 2(e), RLDE



- ▶ **Complaint:** Information in any form from any source received by disciplinary counsel that alleges or from which a reasonable inference can be drawn that a lawyer committed misconduct or is incapacitated. If there is no written complaint from another person, disciplinary counsel's written statement of the allegations constitutes the complaint.

Rule 19(a), RLDE



- ▶ Disciplinary counsel shall evaluate all information coming to disciplinary counsel's attention by complaint or from other sources that alleges lawyer misconduct, incapacity, or the inability to participate in a disciplinary investigation or assist in the defense of formal proceedings due to a physical or mental condition. If the information would not constitute misconduct, incapacity, or the inability to participate in a disciplinary investigation or assist in the defense of formal proceedings if it were true, disciplinary counsel shall dismiss the complaint or, if appropriate, refer the matter to another agency.

Rule 19(a), RLDE



- ▶ If the information raises allegations that would constitute lawyer misconduct, incapacity, or the inability to participate in a disciplinary investigation or assist in the defense of formal proceedings if true, disciplinary counsel shall conduct an investigation.
- ▶ This is a VERY LOW BAR for opening a matter. If the allegations are presumed to be true (not if we believe them) and they would be misconduct then under the Rule we must open.

Rule 19(b), RLDE



- ▶ Disciplinary counsel shall conduct all investigations.
- ▶ Disciplinary counsel may issue subpoenas pursuant to Rule 15(b), conduct interviews and examine evidence to determine whether grounds exist to believe the allegations of complaints.
- ▶ Disciplinary counsel shall issue and serve a notice of investigation to the lawyer with a copy of the complaint or information received requesting that the lawyer serve a written response.
- ▶ Response due in 15 days. Can be extended 30 days by my office and by Commission for additional time.

Response to NOI



Rule 8.1, RPC – Disciplinary Matters – A lawyer in connection with a disciplinary matter shall not:

- (a) Knowingly make a false statement of material fact; or
- (b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from a disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

Response to NOI



- ▶ **DO NOT IGNORE THE NOI**
- ▶ Should a lawyer or judge ignore or fail to respond to the NOI, ODC sends a *Treacy* letter, which is a reference to *Matter of Treacy*, 277 S.C. 514, 290 S.E.2d 240 (1982).
- ▶ Failure to respond is, in and of itself, grounds for a sanction – even absent a separate provable case of misconduct.

Response to NOI



- ▶ The Respondent was granted the right to practice law in South Carolina by the Supreme Court. Both the Hearing Panel and the Executive Committee, as well as the Commission itself serve as arms of this Court. **Failure to respond to any of these is the equivalent of a refusal to respond to the Supreme Court.** We look with disdain upon the attitude of the Respondent towards those who were charged with the duty of investigating the Complaint of [the Complainant]. His lack of respect for constituted authority is consistent with his lack of understanding of his duty to his client. His action and lack of action in dealing with the Board of Commissioners is clearly misconduct unbecoming an attorney and is reason for sanction.

Response to NOI



- ▶ **Be thorough in your response.**
- ▶ **Cover all allegations and address all Rules alleged to have been violated.**
- ▶ **Attach any and all necessary information, documentation, evidence, etc. to support your response.**
- ▶ **This is one case where more is better.**



Internet is a Busy Place



- ▶ According to Internet Marketing Company LocaliQ:
 - ▶ 20.8k active users on LinkedIn
 - ▶ 66k photos and videos shared on Instagram
 - ▶ 350k tweets sent on X
 - ▶ 2.1 Million active Facebook users
 - ▶ 16.2 Million texts sent
 - ▶ 231 Million emails sent
 - ▶ 625 Million videos watched on TikTok
 - ▶ 3.5 Billion Snapchats created

▶ **EVERY MINUTE**

Civility and Professionalism



Civility and Professionalism

- ▶ Civility and Social Media do not always mix
- ▶ “More civility and greater professionalism can only enhance the pleasure lawyers find in practice, increase the effectiveness of our system of justice, and improve the public's perception of lawyers.”
 - ▶ Sandra Day O'Connor, Professionalism, 76 Wash. U. L.Q. 5, 8 (1998).
 - ▶ Words repeated by our Supreme Court after expressing concern for the “growing problem” of “the manner in which attorneys treat one another.” *In re Anonymous* (2011).

Lawyer's Oath



- ▶ I do solemnly swear (or affirm) that:
- ▶ I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been appointed, and that I will, to the best of my ability, discharge those duties and will preserve, protect, and defend the Constitution of this State and of the United States;
- ▶ I will maintain the respect and courtesy due to courts of justice, judicial officers, and those who assist them;
- ▶ To my clients, I pledge faithfulness, competence, diligence, good judgment, and prompt communication;

Lawyer's Oath



- ▶ To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications;
- ▶ I will not pursue or maintain any suit or proceeding which appears to me to be unjust nor maintain any defenses except those I believe to be honestly debatable under the law of the land, but this obligation shall not prevent me from defending a person charged with a crime;
- ▶ I will employ for the purpose of maintaining the causes confided to me only such means as are consistent with trust and honor and the principles of professionalism, and will never seek to mislead an opposing party, the judge, or jury by a false statement of fact or law;

Lawyer's Oath



- ▶ I will respect and preserve inviolate the confidences of my clients, and will accept no compensation in connection with a client's business except from the client or with the client's knowledge and approval;
- ▶ I will maintain the dignity of the legal system and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;
- ▶ I will assist the defenseless or oppressed by ensuring that justice is available to all citizens and will not delay any person's cause for profit or malice;

In re Traywick, 433 S.C. 484 (2021)

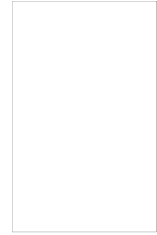
- ▶ Lawyer posted racist, sexist and homophobic statements regarding various groups and individuals on his public Facebook page.
- ▶ In his Facebook profile, Lawyer identified himself as a lawyer and referenced his law firm.
- ▶ The Court found twelve statements troubling and specifically addressed two statements, including one regarding George Floyd.
- ▶ The Court held the Lawyer's comments tended to bring the legal profession into disrepute and **violated the letter and the spirit of the Lawyer's Oath.**
- ▶ Definite suspension of six months (retroactive), plus one hour of diversity education, an anger management assessment, an evaluation with LHL, one year of CLC monitoring and payment of costs.

Rule 1.1 Competence



- ▶ Ignorance is no defense
 - ▶ A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
 - ▶ To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including a **reasonable understanding of the benefits and risks associated with technology the lawyer uses to provide services to clients or to store or transmit information** related to the representation of a client, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.
 - ▶ Comment 8

Rule 1.1 and AI



- ▶ Generative Artificial Intelligence
 - ▶ ABA Formal Opinion 512
 - ▶ “To competently use a GAI tool in a client representation, lawyers need not become GAI experts. Rather, lawyers must have a reasonable understanding of the capabilities and limitations of the specific GAI technology that the lawyer might use.”
 - ▶ Reliance on AI, without performing your own independent research and verification, would not be diligent, competent representation.
 - ▶ “Competent representation presupposes that lawyers will exercise the requisite level of skill and judgment regarding all legal work. In short, regardless of the level of review the lawyer selects, the lawyer is fully responsible for the work on behalf of the client.”

Rule 1.6 Confidentiality of information

- ▶ (a) A lawyer **shall not reveal** information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
- ▶ A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation.
 - ▶ Comment 2

Rule 1.6 and Social Media

- Blog Posts or Social Media Forums are prime areas in which confidentiality is forgotten

If you would not (or could not) tell
it to The State Newspaper,
then do not tell it to the world on
social media!

ONCE YOU POST

**IT'S OUT THERE TO INFINITY AND
BEYOND**

makeameme.org

Rule 3.5 Impartiality and Decorum of the Tribunal



- ▶ A lawyer shall not:
 - ▶ (a) seek to influence a judge, juror, member of the jury venire or other official by means prohibited by law;
 - ▶ (b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;
 - ▶ (c) communicate with a juror or member of the jury venire after discharge of the jury if:
 - ▶ (1) the communication is prohibited by law or court order;
 - ▶ (2) the juror has made known to the lawyer a desire not to communicate; or
 - ▶ (3) the communication involves misrepresentation, coercion, duress or harassment;
 - ▶ (d) engage in conduct intended to disrupt a tribunal

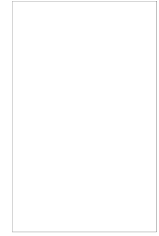
Rule 3.5 and Social Media

- ▶ Posting negative or critical comments regarding an ongoing matter may implicate multiple aspects of Rule 3.5 (as well as 1.6).
- ▶ See *In re McCool*, 172 So.3d 1058 (La. 2015)
 - ▶ Respondent posted online petitions and other information seeking to influence decisions of judges, particularly seeking recusal of judge.
 - ▶ Respondent posted commentary on how judges were handling cases, many times including false or misleading statements
 - ▶ Court found: “The clear intent of respondent's online campaign was an attempt to influence the judges' future rulings in the respective cases, and to do so through improper *ex parte* communication directed at the judges.”
 - ▶ Resulted in Disbarment

In Re Phillips, 443 S.C. 505 (2024)

- ▶ Respondent, an assistant solicitor though not involved in the trial, communicated directly with a friend who was serving on a jury in a criminal matter.
- ▶ In one text message exchange, Respondent urged the friend “Don’t go feeling sorry for him now!” In another exchange, Respondent told the friend, “Keep in touch. Don’t say anything so you don’t have the question tomorrow and get us both in a lot of trouble!”
- ▶ Resulted in Definite Suspension of 6 months
- ▶ See also In re Nelson, 406 S.C. 201 (2013) (texted with cousin on jury)

The Call Emma Rule



Emma Dean

Executive Director

(803) 799-6653, Ext. 144

Rule 5.1 (d), RPC



- ▶ Partners and lawyers with comparable managerial authority who reasonably believe that a lawyer in the law firm may be suffering from a significant impairment of that lawyer's cognitive function shall take action to address the concern with the lawyer and may seek assistance by reporting the circumstances of concern pursuant to Rule 428, SCACR.

Rule 428, SCACR



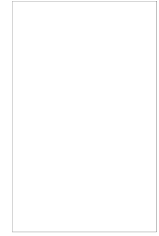
- ▶ **(a)** The Executive Director of the South Carolina Bar, upon receipt of a written report or referral pursuant to Rule 5.1, RPC, Rule 407, SCACR; pursuant to Canon 3, CJC, Rule 501, SCACR; or from a member of the South Carolina Bar expressing concern about cognitive impairment of another lawyer shall take such actions as he or she deems advisable. Upon the Executive Director's recommendation, the President of the Bar may appoint one or more Attorneys to Intervene. The Attorneys to Intervene shall attempt to meet with the lawyer alleged to be impaired and, if in the best interest of both the lawyer and the public, propose a course of conduct to be followed.

Rule 8.3(f), RPC



- Inquiries or information received by the South Carolina Bar Lawyers Helping Lawyers Committee or an equivalent county bar association committee regarding the need for treatment for alcohol, drug abuse or depression, or by the South Carolina Bar law office management assistance program or an equivalent county bar association program regarding a lawyer seeking the program assistance, shall not be disclosed to the disciplinary authority without written permission of the lawyer receiving assistance. Any such inquiry or information shall enjoy the same confidence as information protected by the attorney-client privilege under applicable law.

Lawyers Helping Lawyers



- ▶ <https://www.scbar.org/for-lawyers/membership/member-benefits/lawyers-helping-lawyers/>
- ▶ 5 Free Counseling Sessions
- ▶ Resources on Managing Stress and Anxiety
- ▶ Lending Library of Additional Resources

Lawyers Helping Lawyers

- ▶ **Help a colleague**

- ▶ **Suspect mental health**

- ▶ **Depression, stress, anxiety**

- ▶ **Suspect substance abuse**

- ▶ **Drugs or alcohol**

- ▶ **Call or email director Beth Padgett or Briana Suhr**

- ▶ **beth.padgett@scbar.org**

- ▶ **briana.suhr@scbar.org**

- ▶ **803-576-3801**

Questions?

