IN-HOUSE COUNSEL
ETHICS AND THE IN-HOUSE COUNSEL

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Prior to 2017, the authority to practice law in South Carolina arose in three circumstances: (1) a license to practice law from the Supreme Court of South Carolina; (2) authorization *pro hac vice* under Rule 404, SCACR; or (3) a limited certificate for admission under Rule 405, SCACR. *Lexington Law Firm v. SC Dept. of Consumer Affairs*, 382 S.C. 580, 587 n. 2, 677 S.E.2d 591, 594 n. 2 (2009). In 2017, the Supreme Court adopted Rule 430, SCACR, which provides for a limited certificate to practice for the attorney-spouse of an active-duty military person on Permanent Change of Station orders stationed in South Carolina. The current version of Rule 430 is attached to these materials.

These materials are concerned primarily with rules governing "in-house" counsel and lawyers admitted under a limited certificate pursuant to Rule 405. The appendix also contains a copy of Rule 430, which governs a Limited Certificate of Admission for Military Spouse Attorneys.

What is an "In-House Counsel"?

In-house counsel have been described as "that Centaur-like half lawyer half businessperson" who "embody an uneasy combination of conflicting traits: a cautious eye toward risk analysis and an aggressive, roll-the-dice attitude toward business decisions." Albert L. Vreeland, II, Jennifer L. Howard, *The Care and Feeding of In-House Counsel*, 67 Ala. Lawyer 340 (Sept. 2006). According to Georgetown Law School's Web Site, "An in-house lawyer is employed by a corporation. The corporation may have one attorney or a large legal department." https://www.law.georgetown.edu/careers/career-planning/private-sector-settings/in-house-counsel.cfm

And the Association of Corporate Counsel describes the role in the United States as follows:

> In-house counsel in the United States are responsible for a wide range of legal and business duties. The scope of legal work is broader than in private practice and involves both straightforward legal tasks as well as proactive risk management. It often requires familiarity with a variety of areas of the law, including contracts, intellectual property, labor/employment, litigation, tax, antitrust, ERISA, corporate/securities and privacy matters, among others.
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> The position also requires business acumen. By using their knowledge of a company's business and its corporate culture, in-house counsel operate at a lower cost than outside attorneys. They proactively assess and manage risks and deal with the routine legal matters a corporation confronts. Then, when necessary, in-house counsel leverage the use of outside attorneys by focusing the scope of outside research and work.
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> In the U.S., the communication between an attorney and a client, including a corporation, is privileged and protected from discovery when the purpose of the communication is to seek or receive legal advice. The rule applies whether the communication is with in-house counsel or an outside attorney. (This contrasts with the approach used in many European countries, discussed below, where communications with in-house counsel are generally not entitled to the same protection as communications with outside legal advisors.) However, the privilege exists only when a communication is made for the purpose of obtaining legal advice; communications for any other reason are not privileged. This can create

> confusion because in-house counsel are often involved in business tasks that extend beyond pure legal duties. Accordingly, in-house counsel should be familiar with when the privilege applies and educate the management and other employees of their company about when it may not apply and how it can be lost.

The Role of In-House Counsel: Global Distinctions, Assoc. of Corp. Counsel. http://www.acc.com/legalresources/quickcounsel/troicgd.cfm.

Rule 410, SCACR, creates the South Carolina Bar. The Rule sets forth "Membership Classes" and includes certain "limited memberships," including in-house counsel. Rule 410(h)(2), SCACR. Those persons are permitted a limited certificate of admission to practice law in South Carolina pursuant to Rule 405, SCACR. Rules 405 and 410 are discussed in the materials below. The materials also discuss Rule 430, SCACR, which provides for limited certificates of admission for military spouse attorneys.

Also, Rule 5.5, RPC, permits multi-jurisdictional practice by lawyers licensed in other jurisdictions under specific circumstances. That Rule, and additional rules impacting in-house counsel, are also discussed below.

The Rules

Various portions of the Appellate Court Rules impact in-house counsel. These materials address certain portions of the Rules of Professional Conduct (RPC), the Appellate Court Rules governing limited admission, statutory authority, and the Rules for Lawyer Disciplinary Enforcement (RLDE). These are by no means the end of the story -- because an in-house counsel falls within the jurisdiction of the Office of Disciplinary Counsel, then every rule applicable to a lawyer who is regularly admitted in South Carolina applies to a lawyer who acts as corporate in-house counsel within this jurisdiction. See Rule 2(q), RLDE, Rule 413, SCACR (defining "lawyer" to include "a lawyer not admitted in this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction").

Rule 1.6, RPC -- Confidentiality

The basic rule of confidentiality requires that a "lawyer may not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is implicitly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b)." Rule 1.6(a), RPC, Rule 407, SCACR. So when will this apply to in-house counsel, who is an employee of the corporation but who is also a lawyer ostensibly advising the entity on a legal course of action?

The answer lies in Rule 1.6(b), which provides:

> (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
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> (1) to prevent the client from committing a criminal act;
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> (2) to prevent reasonably certain death or substantial bodily harm;

> (3) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
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> (4) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
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> (5) to secure legal advice about the lawyer's compliance with these Rules;
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> (6) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
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> (7) to comply with other law or a court order; or
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> (8) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

Rule 1.6(b), RPC. Note that the lawyer "may" reveal the information although there is no requirement under South Carolina's version of the rule that the lawyer do so. Still, providing competent service to the organization may require in-house counsel to reveal information meeting the Rule 1.6(b) tests. This decision is informed by Rule 1.13(b), (c), (d) and (e), which provide:

> (b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if,

> (1) despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and
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> (2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

Rule 1.13, RPC (discussed below in more detail).

For a discussion of rules implicated by discussions between a lawyer and the law firm's in-house counsel, see Nathan M. Crystal, *Communications with Law Firm In-House Counsel: Does the Privilege Apply?* 25-SEP S.C. Lawyer 11 (Sept. 2013).

Rule 1.13, RPC -- Organization as Client

This is the primary rule governing lawyers an organization employs as in-house counsel. This rule defines the lawyer's client and the duties owed to that client apart from its constituents. The Rule provides:

> (a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if,

> (1) despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and
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> (2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is

required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

Comment

The Entity as the Client

[1] An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents. Officers, directors, employees and shareholders are the constituents of the corporate organizational client. The duties defined in this Comment apply equally to unincorporated associations. "Other constituents" as used in this Comment means the positions equivalent to officers, directors, employees and shareholders held by persons acting for organizational clients that are not corporations.

[2] When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by Rule 1.6. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by Rule 1.6. This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 1.6.

[3] When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province. Paragraph (b) makes clear, however, that when the lawyer knows that the organization is likely to be substantially injured by action of an officer or other constituent that violates a legal obligation to the organization or is in violation of law that might be imputed to the organization, the lawyer must proceed as is reasonably necessary in the best interest of the organization. As defined in Rule 1.0(h), knowledge can be inferred from circumstances, and a lawyer cannot ignore the obvious.

[4] In determining how to proceed under paragraph (b), the lawyer should give due consideration to the seriousness of the violation and its consequences, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Ordinarily, referral to a higher authority would be necessary. In some circumstances, however, it may be appropriate for the lawyer to ask the constituent to reconsider the matter; for example, if the circumstances

involve a constituent's innocent misunderstanding of law and subsequent acceptance of the lawyer's advice, the lawyer may reasonably conclude that the best interest of the organization does not require that the matter be referred to higher authority. If a constituent persists in conduct contrary to the lawyer's advice, it will be necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. If the matter is of sufficient seriousness and importance or urgency to the organization, referral to higher authority in the organization may be necessary even if the lawyer has not communicated with the constituent. Any measures taken should, to the extent practicable, minimize the risk of revealing information relating to the representation to persons outside the organization. Even in circumstances where a lawyer is not obligated by Rule 1.13 to proceed, a lawyer may bring to the attention of an organizational client, including its highest authority, matters that the lawyer reasonably believes to be of sufficient importance to warrant doing so in the best interest of the organization.

[5] Paragraph (b) also makes clear that, when it is reasonably necessary to enable the organization to address the matter in a timely and appropriate manner, the lawyer must refer the matter to higher authority, including, if warranted by the circumstances, the highest authority that can act on behalf of the organization under applicable law. The organization's highest authority to whom a matter may be referred ordinarily will be the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions the highest authority reposes elsewhere, for example, in the independent directors of a corporation.

Relation to Other Rules

[6] The authority and responsibility provided in this Rule are concurrent with the authority and responsibility provided in other Rules. In particular, this Rule does not limit or expand the lawyer's responsibility under Rules 1.6, 1.8, 1.16, 3.3 or 4.1. Paragraph (c) of this Rule supplements Rule 1.6(b) by providing an additional basis upon which the lawyer may reveal information relating to the representation, but does not modify, restrict, or limit the provisions of Rule 1.6(b)(1)-(7). Under paragraph (c) the lawyer may reveal such information only when the organization's highest authority insists upon or fails to address threatened or ongoing action that is clearly a violation of law, and then only to the extent the lawyer reasonably believes necessary to prevent reasonably certain substantial injury to the organization. It is not necessary that the lawyer's services be used in furtherance of the violation, but it is required that the matter be related to the lawyer's representation of the organization. If the lawyer's services are being used by an organization to further a crime or fraud by the organization, Rules 1.6(b)(3) and 1.6(b)(4) may permit the lawyer to disclose confidential information. In such circumstances Rule 1.2(d) may also be applicable, in which event, withdrawal from the representation under Rule 1.16(a)(1) may be required.

[7] Paragraph (d) makes clear that the authority of a lawyer to disclose information relating to a representation in circumstances described in paragraph (c) does not apply with respect to information relating to a lawyer's engagement by an organization to investigate an alleged violation of law or to defend the organization or an officer, employee or other person associated with the organization against a claim arising out of an alleged violation of law. This is necessary in order to enable organizational clients to enjoy the full benefits of legal counsel in conducting an investigation or defending against a claim.

[8] A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraph (b) or (c), or who withdraws in circumstances that require or permit the lawyer to take action under either of these paragraphs, must proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

Government Agency

[9] The duty defined in this Rule applies to governmental organizations. Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these Rules. See Scope [18]. Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government may be the client for purposes of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulation. This Rule does not limit that authority. See Scope.

Clarifying the Lawyer's Role

[10] There are times when the organization's interest may be or become adverse to those of one or more of its constituents. In such circumstances the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual,

and that discussions between the lawyer for the organization and the individual may not be privileged.

[11] Whether such a warning should be given by the lawyer for the organization to any constituent individual may turn on the facts of each case.

Dual Representation

[12] Paragraph (g) recognizes that a lawyer for an organization may also represent a principal officer or major shareholder.

Derivative Actions

[13] Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated associations have essentially the same right. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over management of the organization.

[14] The question can arise whether counsel for the organization may defend such an action. The proposition that the organization is the lawyer's client does not alone resolve the issue. Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board. In those circumstances, Rule 1.7 governs who should represent the directors and the organization.

Rule 1.13, RPC, Rule 407, SCACR.

For a thorough treatment of the amendments to Rule 1.13 following Enron's bankruptcy, *see* William E. Matthews, *et al.*, *Conflicting Loyalties Facing In-House Counsel: Ethical Care and Feeding of the Ravenous Multi-Headed Client*, 37 St. Mary's L.J. 901 (2006) (noting that following the amendments and the enactment of Sarbanes-Oxley in 2003, "the SEC and Congress now view in-house counsel as the gatekeepers of corporate integrity" who must "report up" or "report out").

Note that Rule 1.13(f) creates a duty to warn a constituent that the lawyer represents the organization, not the individual constituent. This is especially critical when the organization's

interest may be at odds with the constituent's interests. The lawyer should also "report up" or "report out" when the lawyer learns the constituent has violated the law or has engaged in serious conduct likely harmful to the corporation. If the constituent will not reconsider, and the lawyer cannot obtain relief by "reporting up" or "reporting out," then the lawyer may resign to avoid enabling the behavior.

Rules 1.7, 1.8 and 1.9, RPC -- Conflicts of Interests

Conflicts of interest may arise for any lawyer serving in the role of in-house counsel. For example, in-house counsel's compensation may impact his or her independence when providing advice to the corporation. Rules 1.7, 1.8 and 1.9 are implicated.

Rule 1.7 provides:

> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
>
> > (1) the representation of one client will be directly adverse to another client; or
> >
> > (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
>
> (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
>
> > (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
> >
> > (2) the representation is not prohibited by law;
> >
> > (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
> >
> > (4) each affected client gives informed consent, confirmed in writing.

Rule 1.7, RPC, Rule 407, SCACR. The Comments explain:

> [1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests…
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> …
>
> [10] The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could materially limit the lawyer's representation of the client. In addition, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See Rule 1.8 for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also Rule 1.10 (personal interest conflicts under Rule 1.7 ordinarily are not imputed to other lawyers in a law firm).

Rule 1.7, Comments [1], [10]. If in-house counsel's advice would be different based upon his or her own personal situation, then the attorney must either (1) divest himself or herself of the benefit creating the conflict, or (2) not participate in the decision-making process. In any event, full disclosure to the employer relieves much of the conflict, and where the employer obtains independent advice and gives written consent, any potential conflict would be resolved.

Rule 5.5, RPC -- Unauthorized Practice of Law

In-house counsel must be authorized to practice law in the state in which counsel has an office and, if different, in the state where counsel advises the company. Rule 5.5, RPC, Rule 407, SCACR. The Rule provides further:

(d) A lawyer admitted in another United States jurisdiction, and not debarred, disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

Rule 5.5(d), RPC. The Comments explain:

[15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in another United States jurisdiction, and is not debarred, disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is admitted to practice law in another jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[16] Paragraphs (d)(1) applies to a lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, *i.e.*, entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. **The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work.**

[17] If an employed lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education.

[18] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent.

> [19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).
>
> [20] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 1.4(b).
>
> [21] Paragraphs (c) and (d) do not authorize communications advertising legal services in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services in this jurisdiction is governed by Rules 7.1 to 7.5.

Rule 5.5, Comments [15]-[21] (bold added). *See also* S.C. Code Ann. § 40-5-320 (1993 & Cum. Supp.) (limits the practice of law by corporations in South Carolina).

In some contexts the use of in-house counsel may constitute the unauthorized practice of law. *See* Montalvo, Eric, *Comment: Are You in Good Hands?: Is the Use of In-House Counsel Right for South Carolina Insurance Defense*, 59 S.C. Law Rev. 615 (2008).

Nearly thirty years ago the SC Bar's Ethics Advisory Committee opined that an in-house counsel for an insurance carrier was permitted to take a statement under oath where required under policy provisions. S.C. Ethics Adv. Op. No. 89-07A (1989 WL 608446) (approximate date supplied by West). The Committee also opined that the lawyer could "subsequently appear and defend on behalf of the insurance carrier in a direct action suit." *Id.* In separate opinions the Committee reached the same conclusion about in-house counsel in a UIM claim, S.C. Ethics Adv. Op. No. 89-07B (1989 WL 608446) (approximate date supplied by West) and in a UM claim (provided there are no subrogation rights against the uninsured individual). S.C. Ethics Adv. Op. No. 89-07C (1989 WL 608446) (approximate date supplied by West). In either circumstance the lawyer must disclose to the insured the lawyer's status as an employee of the company.

These opinions were issued under the old Disciplinary Rules, and they are likely correct. A caveat, however, is that under current Rules before the lawyer may appear, the lawyer must be admitted to practice in South Carolina. Furthermore, if the lawyer is admitted under a limited certificate, then the lawyer may not appear unless under the supervision of a regular member of the South Carolina Bar.

Rule 5.6, RPC -- Restrictions on Right to Practice

The Ethics Advisory Committee has opined that a corporate in-house counsel may not sign an agreement not to compete which would prohibit the lawyer from working for a similar corporation for two years. Such an agreement would violate Rule 5.6(a), RPC, which provides "A lawyer shall not participate in offering or making: (a) a partnership or employment agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement...." SC Ethics Adv. Op. No. 00-11 (2000) (2000 WL 1532863). The Comments explain:

> An agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Paragraph (a) prohibits such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm.

Rule 5.6, Comment [1].

The Committee added, however, that the Corporation would not be without recourse to protect its trade secrets disclosed to an employee lawyer. The Opinion states:

> First of all, Rule 1.6 mandates that "A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation...." "The confidentially rule applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source." Comment to Rule 1.6. Fully consistent with Rule 1.6 and Rule 5.6, the corporation could insist that a lawyer employee

sign a confidentially agreement promising to preserve the corporation's trade secrets as a condition to employment. *But see Carolina Chemical Company, Inc. v. Muckenfuss*, 322 S.C. 289, 471 S.E.2d 721 (Ct. App. 1996) (holding that a contractual provision, which prohibited former employee from disclosing trade secrets and defined trade secrets so broadly that virtually all information an employee acquired during employment fell within its definition, was unenforceable as a matter of law).

Other ethical rules are also implicated. Pursuant to Rule 1.7(a), a lawyer may not represent a client if the representation of that client will be directly adverse to another client unless the lawyer reasonably believes the representation will not adversely affect the relationship with the other client and each client consents after consultation. Similarly, Rule 1.7(b) provides that a lawyer may not represent a client if the representation of that client may be materially limited by the lawyer's responsibility to another client or to a third person unless the lawyer reasonably believes the representation will not be adversely affected and the client consents after consultation. In addition, Rule 1.9(c) precludes a lawyer who formerly represented a client from using information relating to the early representation to the disadvantage of the former client except as allowed by Rules 1.6 or 3.3.

Under the law pertaining to trade secrets, a former employee may be enjoined from threatened misappropriation of trade secrets even in the absence of a written confidentiality agreement or agreement not to compete. Pursuant to an emerging doctrine, a former employee may be enjoined from working for a competitor "when the employee's new duties entail the inevitable disclosure, or unauthorized use of, the former employer's trade secrets. In determining whether disclosure of the former employer's trade secrets is 'inevitable,' courts will consider the degree of competition between the former and present employer, the nature of the employee's new duties, and evidence of good or bad faith on the part of the employee and the new employer." 15 Z. Cavitch, *Business Organizations*, Section 235.04[3] (Matthew Bender 2000). *See also PepsiCo, Inc. v. Redmond*, 54 F.3d 1262 (7th Cir. 1995). Thus, pursuant to the law of trade secrets, and consistent with the provisions of Rules 1.6, 1.7, and 1.9, in some circumstances, accepting employment with one employer may preclude certain other subsequent employment. Rule 5.6 is not so broad as to change that result. Moreover, the lawyer may enter into an appropriate confidentiality agreement even if it has some impact on the lawyer's future employment opportunities.

S.C. Ethics Adv. Op. 00-11.

Rules Governing Limited Admission to Practice Law

Rule 405, SCACR, is the primary rule governing limited admission in South Carolina. The Rule is attached to these materials, below. The Rule outlines the qualifications for admission which mirror the qualifications for general admission to practice with the exception of taking the UBE in South Carolina. The certificate provides for a limited scope of practice as outlined in Rule 405(e):

> An attorney issued a limited certificate of admission to practice law may represent his employer:
>
> (1) before any State agency in an administrative proceeding if authorized by the agency's regulations;
>
> (2) before the magistrate's court in civil proceedings upon presentation of a copy of the certificate to the court;
>
> (3) before any other South Carolina court or tribunal only if:
>
> > (A) he associates as co-counsel a member of the South Carolina Bar licensed under Rule 402. The associated attorney shall be present at all trials, hearings, depositions, and other proceedings, and shall be required to sign all pleadings, motions, and other documents required to be signed by an attorney; and
> >
> > (B) a copy of the certificate is presented to the court or other tribunal.

The certificate also does not preclude the attorney from appearing *pro se* or from fulfilling the duties as a member of the military reserves or National Guard. Rule 405(f).

Note that an attorney receiving a limited certificate of admission is subject "to all duties and obligations of regular members of the South Carolina Bar and to all rules on the practice of law," including Rule 407, SCACR (the RPC), Rule 413, SCACR (the Rules for Lawyer Disciplinary Enforcement), Rule 410, SCACR (setting forth SC Bar dues), and Rule 419, SCACR (permitting administrative suspension for failing to comply with CLE requirements).

Rule 405(g). (*i*). Also, if the attorney engages in the practice of law in excess of the scope of the limited certificate, the attorney may be subject to discipline under Rule 413, revocation of the certificate, or contempt of the Supreme Court.

The Rule also permits the attorney to provide pro bono legal services if the attorney:

(1) is associated with an approved legal services organization which receives, or is eligible to receive, funds from the Legal Services Corporation or is working on a case or project through the South Carolina Bar Pro Bono Program;

(2) performs all activities authorized by this rule under the supervision of an attorney (Supervising Attorney) who is a regular member of the South Carolina Bar employed by, or participating as a volunteer for, the legal services organization or the South Carolina Bar Pro Bono Program and who assumes professional responsibility for the conduct of the matter, litigation, or administrative proceeding in which the attorney participates; and

(3) neither asks for nor receives compensation of any kind for the legal services provided to the client.

Rule 405(m). The Rule sets forth the pro bono services the lawyer may provide. Rule 405(n).

Termination of the certificate is governed by Rules 405(j)(involuntary termination), (k)(resignation) and (*l*) (surrender).

A brief review of rules governing the unauthorized practice of law is in order. In the early 1990s, the Supreme Court considered a set of proposed rules the South Carolina Bar submitted governing the unauthorized practice of law. The proposed rules "attempt[ed] to define and delineate the practice of law, and to establish clear guidelines so that professionals other than attorneys [could] ensure they do not inadvertently engage in the practice of law." *In re Unauthorized Practice of Law Rules*, 309 S.C. 304, 305, 422 S.E.2d 123, 124 (1992). Although the Court praised the Bar's work, the Court determined it best not to adopt the proposed rules but to decide the unauthorized practice of law on a case by case basis. *Id.*

The Court, however, clarified certain practices that would not be the unauthorized practice of law. The Court stated:

> First, we recognize the validity of the principle found in S.C. Code Ann. § 40–5–80 (1986)[1]: any individual may represent another individual before any tribunal, if (1) the tribunal approves of the representation and (2) the representative is not compensated for his services. We have refused, however, to allow an individual to represent a business entity under the statute. *See State ex rel. Daniel v. Wells*, 191 S.C. 468, 5 S.E.2d 181 (1939). **We modify *Wells* today to allow a business to be represented by a non-lawyer officer, agent or employee, including attorneys licensed in other jurisdictions and those possessing Limited Certificates of Admission pursuant to Rule 405, SCACR, in civil magistrate's court proceedings.** Such representation may be compensated and shall be undertaken at the business's option, and with the understanding that the business assumes the risk of any problems incurred as the result of such representation. The magistrate shall require a written authorization from the entity's president, chairperson, general partner, owner or chief executive officer, or in the case of a person possessing a Limited Certificate, a copy of that Certificate, before permitting such representation.
>
> Second, we hold that State agencies may, by regulation1, authorize persons not licensed to practice law in South Carolina, including laypersons, Certified Public Accountants (CPAs), attorneys licensed in other jurisdictions and persons possessing Limited Certificates of Admission, to appear and represent clients before the agency. These regulations are presumptively valid and acts done in compliance with the regulations are presumptively not the unauthorized practice of law. We recognize, however, that such an agency practice could be abused, and reserve the authority to declare unenforceable any regulation which results in injury to the public.
>
> Third, our respect for the rigorous professional training, certification and licensing procedures, continuing education requirements, and ethical code required of Certified Public Accountants (CPAs) convinces us that they are entitled to recognition of their unique status. We hold that CPAs do not engage in the unauthorized practice of law when they render professional assistance, including compensated representation before agencies and the Probate Court, that is within their professional expertise and qualifications. We are confident that allowing CPAs to practice in their areas of expertise, subject to their own professional regulation, will best serve to both protect and promote the public interest.
>
> We also take this opportunity to reaffirm the rule that police officers may prosecute traffic offenses in magistrate's court and in municipal court. Only the

[1] The legislature amended this statute in 2002 to remove this permission. The statute now provides "This chapter may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires."

> arresting officer may prosecute the case, although if the officer is new or inexperienced, he may be assisted at trial by one of his supervisors. *State v. Sossamon*, 298 S.C. 72, 378 S.E.2d 259 (1989); *see also State ex rel. McLeod v. Seaborn*, 270 S.C. 696, 244 S.E.2d 317 (1978).
>
> Finally, we recognize that other situations will arise which will require this Court to determine whether the conduct at issue involves the unauthorized practice of law. We urge any interested individual who becomes aware of such conduct to bring a declaratory judgment action in this Court's original jurisdiction to determine the validity of the conduct. We hope by this provision to strike a proper balance between the legal profession and other professionals which will ensure the public's protection from the harms caused by the unauthorized practice of law.

Id. at 305-307, 422 S.E.2d at 124-125 (emphasis added). See also *State v. Barlow*, 372 S.C. 534, 643 S.E.2d 682 (2007) (under *In re Unauthorized Practice* and *State ex rel. McLeod v. Seaborn*, Court held probation agent may present a probation revocation case to the circuit court and does not engage in the unauthorized practice of law in doing so). The order in *In re Unauthorized Practice* marked the first time the Court referenced Rule 405.

The Court subsequently explained *Wells* further by declining to expand its holding "to allow a non-lawyer to represent a corporation in circuit or appellate courts. Thus, a corporation may appear *pro se* only in magistrate's court." *Renaissance Enterprises v. Summit Teleservices*, 334 S.C. 649, 653, 515 S.E.2d 257, 259 (1999).

Several provisions of the South Carolina Code of Regulations permit entitles to be represented by attorneys who possess a Limited Certificate under Rule 405. *See*, *e.g.*, S.C. Code Ann. Reg. 103-805(B) (2019) (SCPSC hearings; "Representation of Entities. Except as otherwise provided in S.C. Code Ann. Regs. 103-805(E), any entity including, but not limited to, a corporation, partnership, limited liability company, or professional association, must be represented by an attorney admitted to practice law in South Carolina, or an attorney possessing a Limited Certificate of Admission pursuant to Rule 405, SCACR."); S.C. Code Ann. Reg. 103-

805(E) (outlining several "unopposed matters" in which an entity may proceed without counsel); S.C. Code Ann. Reg. 126-158(B)(2019) (SCDHHS hearings; "Representation in Proceedings. A business entity, an agency, or an organization may elect to be represented by a non-attorney in an administrative hearing with the approval of the presiding hearing officer; non-lawyer persons including Certified Public Accountants, an officer of a corporation, or an owner of an interest in the business entity must present proof of unanimous consent of the owners or officers of the business entity before being allowed to proceed as representatives. *Attorneys licensed in other jurisdictions must obtain a Limited Certificate of Admission, or such other leave as required by the South Carolina Supreme Court, before being allowed to proceed as representatives.* This regulation in no way limits a person's right to self-representation, or to be represented by an attorney, or to be represented by a non-attorney of his or her own choosing, when such non-attorney representation is allowed by law.") (emphasis added); S.C. Code Ann. Reg. 19-446 (2019) (SC Budget & Control Board; "Persons not licensed to practice law in South Carolina, including laypersons, Certified Public Accountants, attorneys licensed in other jurisdictions, *persons possessing Limited Certificates of Admission*, architects, and engineers, may appear and represent clients in protests, contract disputes and other proceedings before the Chief Procurement Officers.") (emphasis added).

Rule 405 therefore provides a mechanism for a lawyer admitted to practice elsewhere to be admitted for limited reasons in South Carolina without having to successfully achieve the appropriate cut score on the UBE for this State.

Conclusion

As one commentator noted, in-house counsel often "find themselves in a conflicting dual role between business partner and corporate watch dog, constantly on the lookout for unethical or questionable behavior. Finding the right balance is not easy." Y. Nicole Montgomery, *The Ethical Challenges Facing In-House Counsel*, 49-DEC Houston Lawyer p. 20 (Nov./Dec. 2011). Some might characterize these remarks as understatements. Balancing the roles requires diligence and adherence to the special rules governing the delicate yet important relationships between the lawyer, the employer, and the outside counsel. John Dean and his cohort, Cleveland lawyer James Robenalt, famously asked about the Watergate scandal "how in God's name could so many lawyers get involved in something like this?" after counting 21 lawyers involved, including President Nixon, Attorney General John Mitchell, White House Domestic Affairs Advisor John Ehrlichman, White House special counsel Charles Colson, Nixon lawyer Herbert Kalmbach, and Egil "Bud" Krogh, who headed the "Plumbers" unit involved in the break-in. Each of these lawyers forgot who his client was (the presidency) and instead served the desires of the individual (the president). Much of what is now found in Rule 1.13 directly followed an analysis of the failings of the Watergate lawyers.

For a discussion of the role of in-house counsel for governmental agencies, see Elizabeth Chambliss and Dana Remus, *Nothing Could be Finer?: The Role of Agency General Counsel in North and South Carolina*, 84 Fordham L. Rev. 2039 (Apr. 2016).

Also, for a thoughtful discussion of the role of in-house corporate counsel, see Evan Slavitt, *Nobody Cheers for the Umpires: Lessons for the General Counsel from Baseball* 26-Mar S.C. Lawyer 34 (Mar. 2015).

RULE 405
LIMITED CERTIFICATE OF ADMISSION
TO PRACTICE LAW IN SOUTH CAROLINA

(a) Qualifications for Admission. The Supreme Court may issue a limited certificate of admission to practice law in South Carolina to any person who:

(1) is at least twenty-one (21) years of age;
(2) is a person of good moral character;
(3) has received a JD or LLB degree from a law school which was approved by the Council of Legal Education of the American Bar Association at the time the degree was conferred;
(4) has been admitted to practice law in the highest court of another state or the District of Columbia;
(5) is a member in good standing in each jurisdiction where he is admitted to practice law;
(6) has not been disbarred or suspended from the practice of law and is not the subject of any pending disciplinary proceeding in any other jurisdiction;
(7) is employed in the legal department or under the supervision of the legal department of a corporation, company, partnership, or association (business employer) which does not provide legal services in South Carolina to the public or its employees. If not a South Carolina corporation, company, partnership or association, the business employer must be qualified or otherwise lawfully engaged in business in South Carolina;
(8) performs most of his duties for the business employer in South Carolina and has his principal office in South Carolina; and
(9) provides legal services in South Carolina solely for the business employer or the parent or subsidiary of such employer.

(b) Application. An attorney desiring a limited certificate of admission to practice law shall file with the Clerk of the Supreme Court an application in duplicate on a form prescribed by the Supreme Court. The application shall be accompanied by a certificate of good standing from each jurisdiction in which the attorney has been admitted to practice law, a non-refundable application fee of $400 and a statement signed by a representative of the attorney's business employer stating that the attorney and the business employer meet the requirements of subsections (a)(7) to (9) above.

(c) Reference to the Committee on Character and Fitness. Any questions concerning the fitness or qualifications of an attorney applying for a limited

certificate of admission to practice law may be referred by the Court to the Committee on Character and Fitness for a hearing and recommendation.

(d) Confidentiality. The confidentiality provisions of Rule 402(n), SCACR, shall apply to all files and records of the Board of Law Examiners, the Committee on Character and Fitness, and the Clerk of the Supreme Court relating to an application for a limited certificate to practice law under this rule.

(e) Scope of Practice. An attorney issued a limited certificate of admission to practice law may represent his employer:

(1) before any State agency in an administrative proceeding if authorized by the agency's regulations;

(2) before the magistrate's court in civil proceedings upon presentation of a copy of the certificate to the court;

(3) before any other South Carolina court or tribunal only if:

(A) he associates as co-counsel a member of the South Carolina Bar licensed under Rule 402. The associated attorney shall be present at all trials, hearings, depositions, and other proceedings, and shall be required to sign all pleadings, motions, and other documents required to be signed by an attorney; and

(B) a copy of the certificate is presented to the court or other tribunal.

(f) Certain Activities Permitted. An attorney granted a limited certificate of admission to practice law is not prevented from appearing in any matter pro se or from fulfilling the duties of a member of the reserve components of the armed forces or the National Guard.

(g) Rights and Obligations. The performance of legal services in this State by an attorney issued a limited certificate of admission to practice law shall be deemed the active engagement in the practice of law and shall subject the attorney to all duties and obligations of regular members of the South Carolina Bar and to all rules on the practice of law, including the Rules of Professional Conduct, Rule 407, SCACR, and the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR. The attorney shall pay the fee specified by Rule 410, SCACR, and shall be subject to suspension under Rule 419, SCACR, for failing to pay those license fees or for failing to comply with continuing legal education requirements.

(h) Unauthorized Practice. If an attorney granted a limited certificate engages in the practice of law in excess of that permitted by this rule, the attorney may be

subject to discipline under Rule 413, SCACR, revocation of the limited certificate by the Supreme Court, or being held in contempt of the Supreme Court for engaging in the unauthorized practice of law.

(i) Misconduct and Incapacity. Except as otherwise provided in this rule, the procedures provided by Rule 413, SCACR, shall be used for resolving allegations that the attorney has committed ethical misconduct or suffers from a physical or mental condition which adversely affects the attorney's ability to practice law. If, however, the Supreme Court imposes a definite suspension or disbarment, or transfers the attorney to incapacity inactive status, the limited certificate shall be terminated as provided below. Unless otherwise ordered by the Court, the attorney may not seek to be readmitted as an attorney under this rule or any other rule until the period of suspension has expired or, in the case of disbarment, until five years after the date of the opinion or order imposing the disbarment.

(j) Termination of Certificate. The limited certificate of admission to practice law shall terminate if:

(1) The limited certificate is revoked by the Supreme Court under (h) above.
(2) The attorney is admitted to practice law in South Carolina under Rule 402, SCACR, or is granted another limited certificate of admission to practice law under this or any other rule, or is licensed as a foreign legal consultant under Rule 424, SCACR.
(3) The attorney is suspended or disbarred in this or any other jurisdiction. This does not include interim suspensions under Rule 17 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR, or a similar rule in another jurisdiction. For an administrative suspension under Rule 419, SCACR, the attorney may seek reinstatement as provided in that rule.
(4) The attorney fails at any time to be a member of the bar in good standing before the highest court of at least one other state or the District of Columbia.
(5) The attorney ceases to be an employee of the business employer.

(k) Resignation. Any request by an attorney licensed under this rule shall be processed as provided by Rule 409, SCACR.

(l) Surrender of Certificate. Upon the termination of the limited certificate of admission to practice law or the acceptance of a resignation, the attorney shall immediately surrender the certificate to the Clerk of the Supreme Court. The

failure to immediately surrender the certificate upon termination or the acceptance of a resignation may subject the attorney to discipline under Rule 413, SCACR, or to being held in contempt of the Supreme Court.

(m) Eligibility to Provide Pro Bono Legal Services. An attorney granted a limited certificate to practice law under this rule may, subject to the limitations contained in section (n) below, provide pro bono legal services if the attorney:

(1) is associated with an approved legal services organization which receives, or is eligible to receive, funds from the Legal Services Corporation or is working on a case or project through the South Carolina Bar Pro Bono Program;
(2) performs all activities authorized by this rule under the supervision of an attorney (Supervising Attorney) who is a regular member of the South Carolina Bar employed by, or participating as a volunteer for, the legal services organization or the South Carolina Bar Pro Bono Program and who assumes professional responsibility for the conduct of the matter, litigation, or administrative proceeding in which the attorney participates; and
(3) neither asks for nor receives compensation of any kind for the legal services provided to the client.

(n) Authorized Pro Bono Legal Services. In representing a client through an approved legal services organization or the South Carolina Bar Pro Bono Program, the attorney may:

(1) appear in any court or before any tribunal in this State if the client consents, in writing, to that appearance and the Supervising Attorney has given written approval for the appearance. The written consent and approval must be filed with the court or tribunal and must be brought to the attention of the judge or presiding officer prior to the appearance;
(2) prepare pleadings and other documents to be filed in any court or before any tribunal in this State on behalf of the client. Such pleadings shall also be signed by the Supervising Attorney; and
(3) otherwise engage in the practice of law as is necessary for the representation of the client.

(o) Conduct Prior to December 31, 1989. Notwithstanding any other provision of this Rule, the performance of legal services in this State solely for the corporation, company, partnership, or association prior to December 31, 1989, shall be deemed to have been the authorized practice of law in this State for all purposes if, at the

time of the performance of the legal services, the attorney met the requirements of section (a) above.

Last amended by order dated May 7, 2012, effective January 1, 2013.

Limited Certificate of Admission for Military Spouse Attorneys

The South Carolina Military Spouse JD Network petitioned the Supreme Court to adopt a rule permitting Military Spouse Attorneys to be issued a limited certificate of admission in South Carolina. In April 2016, the Court granted the motion. *In re Limited Certificate of Admission for Military Spouse Attorneys*, 416 S.C. 17, 785 S.E.2d 373 (2016) (in "recognition of the hardships faced by Military Spouse Attorneys, who mush frequently relocate when their service member spouses are ordered transferred to new locations," the Court adopted Rule 430, SCACR). The order amended Rules 403 (Trial Experiences) and 410 (South Carolina Bar), SCACR, to reflect adoption of Rule 430.

The Court amended Rule 430 in March 2017 to reflect changes associated with adoption of the Uniform Bar Exam in 2017 (elimination of Bridge the Gap in favor of a state-specific course of study). The Rule now provides:

RULE 430
LIMITED CERTIFICATE OF ADMISSION
FOR MILITARY SPOUSE ATTORNEYS

(a) Purpose. The purpose of this rule is allow military spouse attorneys to obtain a limited certificate to practice law to represent clients before a court or administrative tribunal in South Carolina.

(b) Qualifications for Admission. The Supreme Court may issue a limited certificate of admission to practice in South Carolina to any person who:

(1) is at least twenty-one (21) years of age;
(2) is a person of good moral character;
(3) has received a JD or LLB degree from a law school which was approved by the Council of Legal Education of the American Bar Association at the time the degree was conferred;
(4) has been admitted to practice law in the highest court of another state, the District of Columbia, or a territory of the United States;
(5) is a member in good standing in each jurisdiction where the attorney is admitted to practice law;
(6) has not been disbarred or suspended from the practice of law and is not the subject of any pending disciplinary proceeding in any other jurisdiction;
(7) is the dependent spouse of an active duty service member of the United States Uniformed Services as defined by the Department of Defense (or, for

the Coast Guard when it is not operating as a service in the Navy, by the Department of Homeland Security) and the service member is on Permanent Change of Station (PCS) orders stationed in South Carolina;
(8) has never failed the South Carolina Bar Examination;
(9) is physically residing in South Carolina;
(10) has completed the Course of Study on South Carolina Law specified by Rule 402(c) of the South Carolina Appellate Court Rules. The Course of Study may not be taken prior to the filing of a complete application with the Clerk of the Supreme Court. An applicant who has completed the Bridge the Gap program administered by the South Carolina Bar prior to March 29, 2017, may use this completion to satisfy the requirement of this subsection; and
(11) has completed or has registered for and will attend within the first year of practice an Essential Series Course administered by the South Carolina Bar.

(c) Application. An attorney desiring a limited certificate of admission to practice law under this rule shall file an application with the Clerk of the Supreme Court. This application shall be on a form approved by the Supreme Court. The application shall be accompanied by:

(1) a certificate of good standing from each jurisdiction in which the attorney has been admitted to practice law;
(2) a copy of his or her United States Uniformed Services Identification and Privilege Card evidencing marriage to the active duty service member; and
(3) a copy of the active duty service member spouse's orders.

No filing fee shall be required for the application.

(d) Reference to the Committee on Character and Fitness. Any questions concerning the fitness or qualifications of the attorney may be referred by the Supreme Court to the Committee on Character and Fitness for a hearing and recommendation.

(e) Confidentiality. The confidentiality provisions of Rule 402(n), SCACR, shall apply to all files and records of the Committee on Character and Fitness, and the Clerk of the Supreme Court relating to a limited certificate to practice law under this rule.

(f) Scope of Representation and Adherence to Rules. An attorney issued a limited certificate under this rule and meeting the requirements of Rule 403, SCACR, may represent clients before a court or administrative tribunal of this State in any proceeding. In providing representation, the attorney shall comply with the rules of practice and procedure applicable to the court or tribunal, and shall adhere to the South Carolina Rules of Professional Conduct and any other ethical rules applicable to this matter. The attorney shall also comply with the continuing legal education requirements of Rule 408, SCACR, and the mandatory mentorship requirements of Rule 425, SCACR. Attorneys issued a limited certificate shall pay a licensing fee as provided in Rule 410(j)(8), SCACR. The failure to do so may result in administrative suspension under Rule 419, SCACR.

(g) Unauthorized Practice. If an attorney granted a limited certificate engages in the practice of law in excess of that permitted by this rule, the attorney may be subject to discipline under Rule 413, SCACR, a revocation of the limited certificate by the Supreme Court, or being held in contempt of the Supreme Court for engaging in the unauthorized practice of law.

(h) Misconduct and Incapacity. Except as otherwise provided in this rule, the procedures provided by Rule 413, SCACR, shall be used for resolving allegations that the attorney has committed ethical misconduct or suffers from a physical or mental condition which adversely affects the attorney's ability to practice law. If, however, the Supreme Court imposes a definite suspension or disbarment, or transfers the attorney to incapacity inactive status, the limited certificate shall be terminated as provided in (i) below. Unless otherwise ordered by the Court, the lawyer may not seek to be readmitted under this rule or any other rule until the period of suspension has expired, or, in the case of disbarment, until five years after the date of the opinion or order imposing the disbarment.

(i) Termination of Certificate. A limited certificate issued under this rule is valid for a maximum of five years from the date of issuance. The limited certificate of admission to practice law shall terminate if:

(1) The limited certificate is revoked by the Supreme Court under (h) above.
(2) The attorney is suspended or disbarred in this or any other jurisdiction. This does not include interim suspensions under Rule 17 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR, or a similar rule in another jurisdiction. For an administrative suspension under Rule 419, SCACR, the attorney may seek reinstatement as provided in that rule.

(3) The attorney is admitted to practice in South Carolina under another rule.
(4) The attorney fails the South Carolina Bar Examination.
(5) The attorney is denied admission to practice in South Carolina under another rule.
(6) The attorney's spouse is no longer on active duty or is no longer assigned to a military installation located in South Carolina. Attorneys have six months from the date of the issuance of a spouse's permanent change of station (PCS) orders, retirement orders or other separation from the active military service to surrender the Certificate.

(j) Resignation. Any request by an attorney licensed under this rule shall be processed as provided by Rule 409, SCACR.

(k) Surrender of Certificate. Except as provided in paragraph (i)(6), upon the termination of the limited certificate or acceptance of a resignation, the attorney granted the limited certificate shall surrender the certificate to the Clerk of the Supreme Court. The failure to surrender the certificate upon termination or the acceptance of a resignation may subject the attorney to discipline under Rule 413, SCACR, or to being held in contempt of the Supreme Court.

Amended by Order dated March 29, 2017.