

**THE SOUTH CAROLINA
LITIGATION HANDBOOK
SECOND EDITION**

TABLE OF CONTENTS

Chapter 1: You’ve Got A New Client, Now What?	1
• Client Intake Form (Attorney-Client Privilege).....	2
• Data Inventory Form.....	4
Chapter 2: Causes of Actions and Remedies	9
• Abuse of process.....	10
• Adverse possession.....	10
• Animal injury liability.....	10
• Assault.....	12
• Battery.....	12
• Breach of confidentiality.....	12
• Breach of contract.....	13
• Breach of contract accompanied by fraudulent act.....	13
• Breach of fiduciary duty.....	14
• Civil conspiracy.....	15
• Constructive fraud.....	15
• Consumer Protection Code violation.....	16
• Conversion.....	16
• Defamation.....	16
• Dram Shop liability.....	17
• False imprisonment.....	17
• Forcible entry and detainer.....	18

Table of Contents

• Fraud and misrepresentation.....	18
• Insurance bad faith.....	19
• Intentional infliction of emotional distress.....	20
• Interference with contractual relationship - existing and prospective contract.....	21
• Invasion of privacy.....	22
• Inverse condemnation.....	23
• Loss of consortium.....	24
• Malicious prosecution.....	25
• Mandamus, Writ of.....	25
• Medical malpractice.....	26
• Money had and received.....	27
• Negligence.....	28
• Negligent entrustment.....	28
• Negligent infliction of emotional distress.....	29
• Negligent misrepresentation.....	30
• Negligent supervision.....	31
• Premises liability.....	32
• Private nuisance.....	32
• Products liability.....	32
• Promissory estoppel.....	33
• Quantum Meruit.....	33
• Racketeer Influenced and Corrupt Organizations Act (RICO).....	34
• Sherman Act § 1 Claim – Trusts in Restraint of Trade (Federal Antitrust Act).....	34
• Sherman Act § 2 Claim – Monopolizing Trade (Federal Antitrust Act).....	35
• Slander of title.....	35
• Trade Secrets Act Violation (South Carolina Act).....	36
• Trespass.....	37
• Unapproved Use of Registered Mark (Trademark).....	38
• Unfair Trade Practice action violation.....	38
• Waste.....	39
• Wrongful Death Act.....	40

Table of Contents

Chapter 3: Damages, Fees, Costs, and Interest	43
• Actual damages.....	43
• Attorney’s fees.....	43
• Business damages.....	44
• Contractual damages.....	44
• Court costs.....	45
• Exemplary/punitive damages.....	46
• Interest.....	47
• Nominal damages.....	47
• Personal injury damages.....	48
• Personal property damages.....	49
• Real property damages.....	51
Chapter 4: Defenses	55
• Accord and Satisfaction.....	55
• Arbitration and Award.....	55
• Assumption of Risk.....	55
• Condonation.....	56
• Contributory Negligence.....	56
• Discharge in bankruptcy.....	56
• Duress.....	56
• Fraud.....	56
• Illegality.....	57
• Injury by fellow servant.....	57
• Laches.....	57
• License.....	58
• Misrepresentation.....	58
• Mistake.....	58
• Payment.....	58
• Plene administravit or the administration of the estate is closed.....	58
• Recrimination.....	59

Table of Contents

• Release.....	59
• Res judicata.....	59
• Statute of Frauds.....	59
• Unclean Hands.....	60
• Waiver.....	60
• Rule 12(b).....	61
• Punitive damages.....	61
Chapter 5: Filing Deadlines.....	65
I. Pleadings.....	67
• Rule 3(a), SCRCPP / Rule 4(m), FRCP: Service of summons and complaint.....	67
• Rule 5(d): Proof of service of summons and complaint.....	67
• Rule 5(d), SCRCPP / Rule 5(d)(A), FRCP: Filing of papers.....	67
• Rule 12(a), SCRCPP / Rule 12(a)(1)(A)(i), FRCP: Answer after service of summons and complaint.....	67
• Rule 12(a), SCRCPP / Rule 12(a)(1)(B), FRCP: Answer to a cross-claim.....	67
• Rule 12(a), SCRCPP / Rule 12(a)(1)(B), FRCP: Reply/Answer to a counterclaim.....	68
• Rule 12(e), SCRCPP / Rule 12(e), FRCP: Motion for a more definitive statement - if motion granted.....	68
• Rule 12(f), SCRCPP / Rule 12(f), FRCP: Motion to strike.....	68
• Rule 14(a), SCRCPP / Rule 14(a)(1), FRCP: Third-party practice.....	69
• Rule 15(a), SCRCPP / Rule 15(a)(1)-(2), FRCP: Amendments.....	69
• Rule 15(a), SCRCPP / Rule 15(a)(3): Response to Amended Pleading.....	70
II. Discovery.....	71
• Rule 26(f), SCRCPP / Rule 26(f)(1), FRCP: Discovery conference.....	71
• Rule 26(f)(2), FRCP: Discovery conference report.....	71
• Rule 26(f), SCRCPP: Motions regarding discovery disputes or discovery conference.....	71
• Rule 30(b), SCRCPP / Rule 30(b)(1), FRCP: Taking oral deposition.....	71
• Rule 30(e), SCRCPP / Rule 30(e)(1), FRCP: Changes to deposition.....	71
• Rule 30(j), SCRCPP: Motion for protective order for actions in deposition.....	72

Table of Contents

• Rule 30(j), SCRCP: Provide documents prior to deposition.....	72
• Rule 31(a), SCRCP / Rule 31(a)(5), FRCP: Cross questions for deposition upon written answers.....	72
• Rule 31(a), SCRCP / Rule 31(a)(5), FRCP: Redirect questions on cross questions for deposition upon written answer.....	72
• Rule 31(a)(5), FRCP: Recross questions on redirect questions for deposition upon written answer.....	72
• Rule 32(a), SCRCP: Excerpts from deposition to be used at trial.....	72
• Rule 32(d), SCRCP / Rule 32(d)(3)(C), FRCP: Objections to written form of deposition question upon written answer.....	73
• Rule 33(a), SCRCP / Rule 33(b)(2), FRCP: Response to interrogatories.....	73
• Rule 34(b), SCRCP / Rule 34(b)(2)(A), FRCP: Response to request for production.....	73
• Rule 36, SCRCP / Rule 36(a)(3), FRCP: Response for request for admission.....	73
III. Trial Matters.....	74
• Rule 38(b), SCRCP / Rule 38(b)(1), FRCP: Demand for jury trial.....	74
• Rule 45(b), SCRCP / Rule 45, FRCP: Service of subpoena.....	74
• Rule 45(c), SCRCP / Rule 45(d)(2)(B), FRCP: Objections to contents of subpoena.....	74
• Rule 50(e), SCRCP: JNOV.....	75
• Rule 50(b), FRCP: Renewed JMOL.....	75
• Rule 52(b), SCRCP / Rule 52(b), FRCP: Amendment to judgment.....	75
• Rule 54(d), SCRCP / Rule 54(d)(1)-(2), FRCP: Costs/Attorney’s fees.....	75
IV. Summary Judgment.....	76
• Rule 56(a), SCRCP / Rule 56(b), FRCP: Moving for summary judgment.....	76
• Rule 56(c), SCRCP: Service of summary judgment motion.....	76
• D.S.C. Local Rule 7.06: Response to motion for summary judgment.....	76
• D.S.C. Local Rule 7.07: Replies to responses.....	77
V. Appeals.....	78
• Rule 59(b), SCRCP / Rule 59(b), FRCP: Motion for new trial.....	78
• Rule 59(c), SCRCP / Rule 59(c), FRCP: Motion for new trial based on affidavits.....	78

Table of Contents

• Rule 59(d), SCRCF / Rule 59(d), FRCP: Motion for new trial by the court.....	78
• Rule 59(e), SCRCF / Rule 59(e), FRCP: Motion to amend a judgment.....	79
• Rule 60(a), SCRCF / Rule 60(a), FRCP: Motion to amend a judgment for clerical mistake.....	79
• Rule 62(a), SCRCF / Rule 62(a), FRCP: Execution of judgments.....	79
• Rule 65(b), SCRCF / Rule 65(b)(2), FRCP: Temporary restraining order.....	79
• Rule 68, SCRCF / Rule 68(a), FRCP: Offer of judgment.....	80
• Rule 74, SCRCF / Rule 4, FRAP: Notice of appeal.....	80
Chapter 6: Discovery Objections.....	83
• Rule 26(a)(i), SCRCF: Unreasonably cumulative/duplicative.....	83
• Rule 26(a)(i), SCRCF: Obtainable from other sources - more convenient/ less burdensome/less expensive.....	83
• Rule 26(a)(ii), SCRCF: Opportunity to obtain information from other means.....	83
• Rule 26(a)(ii), SCRCF / Rule 33(a), SCRCF / Rule 34(b), SCRCF: Fails to allow reasonable time to comply.....	83
• Rule 26(a)(iii), SCRCF: Burden/expense outweighs benefit.....	84
• Rule 26(b)(1), SCRCF: Information not relevant to pending action.....	84
• Rule 26(b)(3), SCRCF: Trial preparation materials.....	84
• Discovery seeks production/disclosure of information/documents created/generated after and/or as result of filing lawsuit.....	84
• Rule 26(b)(5), SCRCF: Privileged information.....	84
• Rule 26(b)(5), SCRCF: Information protected by attorney work product doctrine.....	84
• Rule 26(c), SCRCF: Information is in nature of trade secret.....	84
• Rule 26(c), SCRCF: Information sought to annoy, embarrass, oppress, unduly burden.....	85
• Rule 33(b), SCRCF: General interrogatories exceeds 50 questions.....	85
• Rule 33(d), SCRCF: Calls for opinion/conclusions.....	85
• Rule 34(a), SCRCF: Not within possession/control.....	85
• Request too broad/vague/unspecific.....	85
• Discovery seeks to impose upon party a duty to ascertain or secure information not in possession, custody, or control.....	85

Table of Contents

• Discovery seeks information relating to or in possession of entities other than party.....	85
• Discovery response may cause violation of various court orders.....	85
• Trade Secret documents.....	86
Chapter 7: Evidentiary Cheat Sheet.....	89
I. Objections.....	89
• SCRE 401, SCRE 402: Relevant and Irrelevant Evidence.....	89
• SCRE 403: Probative value outweighed by unfair prejudice.....	89
• SCRE 404(b): Evidence of other crimes; common scheme, plan, intent, motive.....	89
• SCRE 406: Evidence of habit/routine.....	89
• SCRE 407: Subsequent remedial measures.....	89
• SCRE 408: Compromise and Offers to Compromise.....	90
• SCRE 409: Payment of Medical and Similiar Expenses.....	90
• SCRE 410: Pleas, Plea Discussions, and Related Statements.....	90
• SCRE 411: Liability Insurance.....	91
• SCRE 801, 802: Definitions/Hearsay Rule and Exceptions.....	91
II. Hearsay Exceptions.....	92
A. Declarant Availability Immaterial.....	92
• SCRE 803(1): Present Sense Impression.....	92
• SCRE 803(2): Excited Utterance.....	92
• SCRE 803(3): Then Existing Mental/Emotional/Physical Condition.....	92
• SCRE 803(4): Statements - Purpose of Medical Diagnosis/Treatment.....	92
• SCRE 803(5): Recorded Recollection.....	93
• SCRE 803(6) & (7): Records of Regularly Conducted Activity/Absence of Entry in Record.....	93
• SCRE 803(8) & (10): Public Records and Reports/Absence of.....	94
• SCRE 803(9): Records of Vital Statistics.....	94
• SCRE 803(12): Marriage, Baptismal, Similiar Certificates.....	94
• SCRE 803(13): Family Records.....	95

Table of Contents

• SCRE 803(14) & (15): Records of Documents Affecting Interest in Property/ Statements in Documents Affecting Interest in Property.....	95
• SCRE 803(16): Statements in Ancient Documents.....	95
• SCRE 803(17): Market Reports, Commercial Publications.....	95
• SCRE 803(18): Learned Treatises.....	96
• SCRE 803(19): Reputation - Personal or Family History.....	96
• SCRE 803(20): Reputation - Boundaries or General History.....	96
• SCRE 803(21): Reputation as to Character.....	96
• SCRE 803(22): Judgment of Previous Conviction.....	97
• SCRE 803(23): Judgment - Personal, Family, General History or Boundaries.....	97
B. Declarant Unavailable.....	97
• SCRE 804(b)(1): Former Testimony.....	98
• SCRE 804(b)(2): Belief of Impending Death.....	98
• SCRE 804(b)(3): Statement Against Interest.....	98
• SCRE 804(b)(4): Statement of Personal or Family History.....	99
III. Witnesses - Impeachment.....	99
• SCRE 608(a): Opinion and Reputation Evidence of Character.....	99
• SCRE 608(c): Evidence of Bias.....	100
• SCRE 609(a)(1), (b), & (c): General Rules.....	100
• SCRE 609(d): Juvenile Adjudication.....	100
Chapter 8: The More the Merrier: Litigating Counterclaims, Crossclaims, and Third-Party Claims.....	103
• SCRCP 13(a): Compulsory Counterclaim - Opposing Party.....	103
• SCRCP 13(b): Permissive Counterclaim - Opposing Party.....	104
• SCRCP 13(g): Crossclaim - Co-Party.....	104
• SCRCP 14(a): Third-Party Claim (Defendant) - Third Party.....	104
• SCRCP 14(b): Third-Party Claim (Plaintiff) - Third Party.....	106
Appendix A: South Carolina Venue Map.....	109