

# TABLE OF CONTENTS

<b>NOTE ON THE SOUTH CAROLINA RULES OF PROFESSIONAL CONDUCT</b> .....	xxiii
<b>RESEARCH TOOLS ON LEGAL ETHICS AND PROFESSIONAL RESPONSIBILITY</b> .....	xxv
<b>NOTE ON AUTHORITIES CITED IN ANNOTATIONS, CURRENTNESS OF ANNOTATIONS, AND UPDATES</b> .....	xxvii
<b>LAWYER’S OATH</b>	
<b>South Carolina Appellate Court Rule 402(h)(3)</b> .....	1
<b>ADMISSION PRO HAC VICE AND APPEARANCES BY NON-SOUTH CAROLINA LAWYERS IN ARBITRATION, MEDIATION OR OTHER ALTERNATIVE DISPUTE RESOLUTION PROCEEDINGS IN SOUTH CAROLINA</b>	
<b>South Carolina Appellate Court Rule 404</b> .....	3
<b>SOUTH CAROLINA RULES OF PROFESSIONAL CONDUCT ANNOTATED</b>	
<b>South Carolina Appellate Court Rule 407</b> .....	7
Preamble: A Lawyer’s Responsibilities .....	7
Scope .....	9
Model Rule Comparison .....	11
<b>Rule 1.0 Terminology</b> .....	13
Comment .....	15
Model Rule Comparison .....	17
<b>Rule 1.1 Competence</b> .....	18
Comment .....	18
Model Rule Comparison .....	19
Cross-References .....	19
Annotations on Discipline .....	20
Annotations on Malpractice and Other Forms of Civil Liability .....	20
» Elements of Malpractice Action .....	21
» Standard of Care .....	23
» Requirement of Expert Testimony .....	25
» Relevance of Ethics Codes in Malpractice Actions .....	26
» Causation and Damages .....	27
» Waiver of Prospective Liability .....	28

Table of Contents

---

- » Defenses to Malpractice Claim – Statute of Limitations;  
Collateral Estoppel ..... 29
- » Liability to Client for Breach of Contract, Breach of  
Fiduciary Duty, and Other Liabilities ..... 31
- » Duty of Care to Certain Nonclients ..... 34
- » Assisting Unlawful Conduct ..... 38
- » Knowledge of Client’s Breach of a Fiduciary Duty ..... 39
- » Advocate’s Defamation Privilege ..... 39
- » Wrongful Use of Civil Proceedings: Malicious Prosecution,  
Abuse of Process ..... 40
- » Vicarious Liability ..... 42
- » Choice of Law in Legal Malpractice Cases ..... 43
- » Assignment of Malpractice Claims ..... 44
- » Competency and Technology ..... 45
- » Competency and Natural Disasters ..... 46
- Rule 1.2 Scope of Representation and Allocation of Authority  
Between Client and Lawyer ..... 46**
- Comment ..... 47
- Model Rule Comparison ..... 50
- Cross-References ..... 50
- Annotations ..... 50
  - » Formation of Client-Lawyer Relationship ..... 50
  - » Lawyer’s Duties to Prospective Client ..... 52
  - » Client-Lawyer Agreements ..... 52
  - » Termination of Lawyer’s Authority ..... 52
  - » Authority Reserved to Client ..... 53
  - » Authority Reserved to Lawyer ..... 54
  - » Lawyer’s Authority to Act for Client ..... 54
  - » Waiver of Client or Lawyer Duties (Limited Representation) ..... 55
  - » Counseling Illegal Conduct ..... 57
  - » Assisting Client Fraud ..... 57
  - » Counseling about Indeterminate or Uncertain Law ..... 58
- Rule 1.3 Diligence ..... 59**
- Comment ..... 59
- Model Rule Comparison ..... 60
- Cross-References ..... 60

## Table of Contents

---

Annotations .....	60
» Diligence and “Zeal” .....	60
» Promptness .....	61
<b>Rule 1.4 Communication</b> .....	61
Comment .....	62
Model Rule Comparison .....	64
Cross-References .....	64
Annotations .....	64
» Duty to Communicate with Client .....	64
» Duty to Consult with Client .....	65
» Duty to Inform Client of Settlement Offers .....	66
<b>Rule 1.5 Fees</b> .....	67
Comment .....	69
Model Rule Comparison .....	72
Cross-References .....	72
Annotations .....	72
» Client-Lawyer Fee Agreements .....	72
» Lawyer’s Fee in Absence of Agreement .....	73
» Fees on Termination .....	74
» Fee Payment Methods and Collection Procedures .....	75
» Fee Arbitration .....	75
» Forfeiture of a Lawyer’s Compensation .....	78
» Remedies and Burden of Persuasion in Fee Disputes .....	78
» Attorney-Fee Awards (Fee Shifting) .....	78
» Financing Litigation .....	81
» Reasonableness of a Fee Agreement .....	82
» Payment of Fees in Advance of Providing Services, including “Nonrefundable Fees” .....	85
» Special Requirements Concerning Contingent Fees .....	85
» Contingent Fees in Domestic Relations Matters .....	87
» Fee Splitting (Referral Fees) .....	87
» Billing for Contract Attorneys .....	88
» Fees Paid Under the South Carolina Indigent Defense Act .....	89
» Fee Reduction .....	89

## Table of Contents

---

<b>Rule 1.6 Confidentiality of Information</b> .....	89
Comment .....	90
Model Rule Comparison .....	97
Cross-References .....	97
Annotations on Duty of Confidentiality .....	97
» Definition of Protected Information .....	97
» Use of E-mail .....	98
» Technology and Confidentiality .....	99
» Privacy Protection for Filings: Rule 41.2, SCRCF .....	101
» Information Imparted in Lawyer Counseling Programs .....	101
» Disclosure to Advance Client Interests or With Consent .....	102
» Disclosure When Required by Law or Court Order .....	103
» Disclosure in Lawyer’s Self-Defense .....	104
» Disclosure in Fee Dispute .....	105
» Disclosure to Prevent a Crime .....	106
» Disclosure to Prevent Death or Serious Bodily Injury .....	106
» Disclosure to Prevent or Rectify Financial Loss .....	106
» Physical Evidence of Client Crime .....	107
» Disclosure of Conflicts Information When Lawyers Move Between Firms .....	107
» Confidentiality and Conflict of Interest .....	108
» Relationship of Duty of Confidentiality to Other Rules .....	109
Annotations on Attorney-Client Privilege .....	110
» Privileged Communications .....	110
» Privileged Persons .....	112
» Communications “Made in Confidence” .....	112
» Communications from Lawyer to Client .....	113
» Client Identity, Whereabouts, and Fee Arrangements .....	113
» Legal Assistance as Object of Communication .....	113
» Privilege for Governmental Clients .....	113
» Privilege of Co-Clients .....	114
» Common-Interest Arrangements .....	114
» Duration of Attorney-Client Privilege .....	114
» Waiver of Attorney-Client Privilege by Disclosure .....	115
» Waiver by Putting Assistance or Communication in Issue .....	115

Table of Contents

---

» Exception to Privilege for Client Crime or Fraud ..... 117

» Invoking the Privilege and Its Exceptions ..... 117

Annotations on Work Product Doctrine ..... 118

**Rule 1.7 Conflict of Interest: Current Clients** ..... 119

Comment ..... 120

Model Rule Comparison ..... 130

Cross-References ..... 130

Annotations ..... 130

» Basic Prohibition of Conflict of Interest ..... 130

» Direct Adversity Between Clients ..... 130

» Material Limitation on Representation ..... 131

» Sexual Relations with Spouse of Current Client ..... 133

» Client Consent to a Conflict of Interest:  
Non-Consentable Conflicts ..... 134

» Informed Consent ..... 134

» Positional Conflicts ..... 136

» Representing Parties with Conflicting Interests  
in Unrelated Civil Litigation ..... 136

» Insured-Insurer Conflicts ..... 137

» Conflicts of Interest in Criminal Litigation ..... 139

» Multiple Representation in Non-Litigated Matters ..... 141

» Conflicts of Interest in Representing Organizations ..... 143

» Lawyer with Fiduciary Obligations to Third Person ..... 144

» Of Counsel Relationships ..... 144

» Interlocutory Appeal ..... 144

**Rule 1.8 Conflict of Interest: Current Clients; Specific Rules** ..... 145

Comment ..... 147

Model Rule Comparison ..... 154

Cross-References ..... 155

Annotations ..... 155

» Sexual Relations with Clients ..... 155

» Business Transactions with Clients ..... 155

» Client Gifts to Lawyer ..... 159

» Litigation Expenses ..... 160

» Living and Medical Expenses ..... 161

Table of Contents

---

- » Compensation and Direction by Third Person ..... 162
- » Aggregate Settlements ..... 163
- » Prospective Limitation of Malpractice Liability ..... 163
- » Settlement of Malpractice Claim ..... 164
- » Opposing a Lawyer Relative ..... 164
- » Acquiring an Interest in Subject Matter of Representation ..... 165
- » Lawyer Liens ..... 166
- » Of Counsel Relationships ..... 167
- Rule 1.9 Duties to Former Clients ..... 168**
  - Comment ..... 168
  - Model Rule Comparison ..... 171
  - Cross-References ..... 171
  - Annotations ..... 171
    - » Duties of Loyalty and Confidentiality to Former Clients;  
the “Substantial Relationship” Test ..... 171
    - » Relevance of “Appearance of Impropriety” Standard ..... 176
    - » Removing Imputed Conflict of Migratory  
Lawyer or Staff Member ..... 177
    - » Of Counsel Relationships ..... 179
    - » Interlocutory Appeal ..... 179
- Rule 1.10 Imputation of Conflicts of Interest: General Rule ..... 179**
  - Comment ..... 180
  - Model Rule Comparison ..... 182
  - Cross-References ..... 182
  - Annotations ..... 182
    - » Definition of “Firm” ..... 182
    - » Imputed Disqualification Among Current Affiliated Lawyers ..... 183
    - » Removing Imputation by Screening ..... 184
    - » Disqualification of Firm after Disqualified Lawyer Departs ..... 185
    - » Client Consent ..... 185
    - » Of Counsel Relationships ..... 186
- Rule 1.11 Special Conflicts of Interest for Former and Current  
Government Officers and Employees ..... 186**
  - Comment ..... 187
  - Model Rule Comparison ..... 189
  - Cross-References ..... 190

Table of Contents

---

Annotations ..... 190

- » Representation of Another Client by Former Government Lawyer ..... 190
- » No Imputation to Firm if Former Government Lawyer Is Screened ..... 191
- » Use of Confidential Government Information ..... 191
- » Government Lawyer Participation in Matters Related to Prior Representation ..... 191
- » Government Lawyer Negotiating for Private Employment ..... 192

**Rule 1.12 Former Judge, Arbitrator, Mediator or Other Third-Party Neutral** ..... 192

Comment ..... 193

Model Rule Comparison ..... 194

Cross-References ..... 194

Annotations ..... 194

- » Former Judge, Law Clerk, or Third-Party Neutral Representing Client in Same Matter ..... 194
- » Negotiating for Future Employment ..... 195
- » Screening to Prevent Imputed Disqualification ..... 195

**Rule 1.13 Organization as Client** ..... 195

Comment ..... 197

Model Rule Comparison ..... 200

Cross-References ..... 201

Annotations ..... 201

- » Entity as Client ..... 201
- » Lawyer Serving as Officer or Director of an Organization ..... 201
- » Diverse Kinds of Entities as Organizations ..... 202
- » Preventing Injury to an Entity Client ..... 202
- » Fairness to Non-Client Constituents Within an Entity Client ..... 205
- » Representing Government Client ..... 205

**Rule 1.14 Client with Diminished Capacity** ..... 206

Comment ..... 206

Model Rule Comparison ..... 209

Cross-References ..... 209

Annotations ..... 209

- » Potential Conflicts in Representing a Client with Diminished Capacity ..... 209

Table of Contents

---

- » Maintaining Client-Lawyer Relationship with Client with Diminished Capacity ..... 209
- » Appointment of Guardian or Other Protective Action ..... 210
- » Competency to Waive Counsel in Criminal Cases ..... 211
- » Duty When Retained by Family of Person with Diminished Capacity ..... 211
- Rule 1.15 Safekeeping Property ..... 212**
  - Comment ..... 214
  - Model Rule Comparison ..... 217
  - Cross-References ..... 217
  - Annotations ..... 217
    - » South Carolina IOLTA Plan ..... 217
    - » South Carolina Client Security Fund ..... 218
    - » Status of Fee Advances ..... 219
    - » Surrendering Possession of Property ..... 220
    - » Disbursing Collected Funds ..... 221
    - » Liens ..... 222
    - » Files Relating to Representation ..... 222
    - » Commingling Property or Funds ..... 224
    - » Overdrafts ..... 225
    - » Fiduciary Responsibility; Recordkeeping ..... 226
    - » Notification of Owners ..... 228
    - » Supervision of Accounts ..... 228
    - » Dispute Over Entitlement to Funds or Property Held in Trust ..... 228
- Rule 1.16 Declining or Terminating Representation ..... 231**
  - Comment ..... 232
  - Model Rule Comparison ..... 233
  - Cross-References ..... 234
  - Annotations ..... 234
    - » Discharge by Client; When Court Approval Is Required ..... 234
    - » Withdrawal to Avoid Violation of Rule or Unlawful Conduct ..... 235
    - » Circumstances Justifying Discretionary Withdrawal ..... 235
    - » Responsibility of Contract Attorneys ..... 236
    - » Order by Tribunal to Continue Representation ..... 237
    - » Mitigating Harm to Client Upon Withdrawal ..... 237



## Table of Contents

---

<b>Rule 1.17 Sale of Law Practice</b> .....	238
Comment .....	239
Model Rule Comparison .....	242
Cross-References .....	242
Annotations .....	242
<b>Rule 1.18 Duties to Prospective Client</b> .....	243
Comment .....	244
Model Rule Comparison .....	245
Cross-References .....	245
Annotations .....	245
<b>Rule 1.19 Succession Planning</b> .....	246
Comment .....	247
Model Rule Comparison .....	248
Cross-References .....	248
Annotations .....	248
» Encouragement to Prepare Succession Plans .....	248
» Requirements for Succession Plans .....	248
» Discretionary Not Mandatory .....	249
<b>Rule 2.1 Advisor</b> .....	250
Comment .....	250
Model Rule Comparison .....	251
Cross-References .....	251
Annotations .....	251
» Non-Legal Factors in Giving Advice .....	251
» Offering Advice and Exercise of Independent Judgment .....	251
<b>Rule 2.2 [Reserved]</b> .....	252
<b>Rule 2.3 Evaluation for Use by Third Persons</b> .....	252
Comment .....	252
Model Rule Comparison .....	254
Cross-References .....	254
Annotations .....	254
» Undertaking an Evaluation for a Client .....	254
» Confidentiality of an Evaluation .....	255

Table of Contents

---

**Rule 2.4 Lawyer Serving as Third Party Neutral** ..... 255

    Comment ..... 255

    Model Rule Comparison ..... 257

    Cross-References ..... 257

    Annotations ..... 257

**Rule 3.1 Meritorious Claims and Contentions** ..... 259

    Comment ..... 259

    Model Rule Comparison ..... 259

    Cross-References ..... 260

    Annotations ..... 260

        » Non-Meritorious Assertions in Litigation ..... 260

        » Judicial Sanctions for Abusive Litigation Practice ..... 262

**Rule 3.2 Expediting Litigation** ..... 265

    Comment ..... 265

    Model Rule Comparison ..... 265

    Cross-References ..... 265

    Annotations ..... 265

        » Dilatory Tactics ..... 265

**Rule 3.3 Candor Toward the Tribunal** ..... 266

    Comment ..... 267

    Model Rule Comparison ..... 271

    Cross-References ..... 271

    Annotations ..... 271

        » False Statements to a Tribunal ..... 271

        » Disclosing Adverse Legal Authority ..... 274

        » False Evidence in Civil Proceedings ..... 274

        » False Evidence in Criminal Proceedings ..... 275

        » Right of Criminal Defendant to Testify or Represent  
            Himself or Herself ..... 277

        » Offering a Witness an Improper Inducement ..... 278

        » Duty to Reveal Criminal or Fraudulent  
            Conduct to the Tribunal ..... 278

        » Discretion to Withhold Evidence Believed to be False ..... 280

        » Duty of Disclosure in Ex Parte Proceedings ..... 280

Table of Contents

---

**Rule 3.4 Fairness to Opposing Party and Counsel** ..... 280

    Comment ..... 281

    Model Rule Comparison ..... 281

    Cross-References ..... 282

    Annotations ..... 282

        » Unlawful Destruction and Concealment of Evidence ..... 282

        » Falsifying Evidence ..... 283

        » Prohibited Inducements ..... 283

        » Knowing Disobedience to Rules of Tribunal ..... 284

        » Fairness in Pretrial Practice ..... 284

        » Improper Trial Tactics ..... 286

        » Advising Witness Not to Speak to Opposing Parties ..... 289

**Rule 3.5 Impartiality and Decorum of the Tribunal** ..... 289

    Comment ..... 290

    Model Rule Comparison ..... 290

    Cross-References ..... 291

    Annotations ..... 291

        » Improperly Influencing a Judge ..... 291

        » Improperly Influencing a Juror ..... 292

        » Improper Ex Parte Communication ..... 292

        » Intentional Disruption of a Tribunal ..... 295

**Rule 3.6 Trial Publicity** ..... 295

    Comment ..... 296

    Model Rule Comparison ..... 298

    Cross-References ..... 298

    Annotations ..... 298

        » Improper Extrajudicial Statements ..... 298

        » Permissible Statements ..... 299

        » Responding to Adverse Publicity ..... 300

**Rule 3.7 Lawyer as Witness** ..... 300

    Comment ..... 300

    Model Rule Comparison ..... 302

    Cross-References ..... 302

    Annotations ..... 302

        » Prohibition of Advocate as Witness ..... 302

Table of Contents

---

» Exceptions to Disqualification ..... 304

» An Affiliated Lawyer as Advocate (Imputed Disqualification) .... 306

**Rule 3.8 Special Responsibilities of a Prosecutor** ..... 307

    Comment ..... 307

    Model Rule Comparison ..... 309

    Cross-References ..... 309

    Annotations ..... 309

        » The Decision to Charge ..... 309

        » Efforts to Assure Accused’s Right to Counsel ..... 310

        » Seeking Waivers of Rights from Unrepresented Defendants ..... 311

        » Disclosing Evidence Favorable to the Accused ..... 311

        » Issuing a Subpoena to a Lawyer ..... 313

        » Making Extrajudicial Statements ..... 313

        » Monitoring Extrajudicial Statements  
            by Law Enforcement Officials ..... 313

        » The Prosecutor’s Obligation to Justice ..... 313

        » Authority to Prosecute Cases in Summary Courts ..... 314

        » Constitutional Authority of the Attorney General  
            to Prosecute Crimes ..... 314

        » Vindictive Prosecution ..... 315

**Rule 3.9 Advocate in Nonadjudicative Proceedings** ..... 315

    Comment ..... 316

    Model Rule Comparison ..... 316

    Cross-References ..... 316

    Annotations ..... 316

        » Duties of Advocate in Nonadjudicative Proceedings ..... 316

**Rule 4.1 Truthfulness in Statements to Others** ..... 318

    Comment ..... 318

    Model Rule Comparison ..... 319

    Cross-References ..... 319

    Annotations ..... 319

        » Truthfulness in Out-of-Court Statements ..... 319

        » Disclosure to Avoid Assisting Client Fraud ..... 321

**Rule 4.2 Communication with Person Represented by Counsel** ..... 321

    Comment ..... 321

    Model Rule Comparison ..... 323

Table of Contents

---

Cross-References ..... 323

Annotations ..... 323

    » Communication with a Represented Party ..... 323

    » “Represented Person” (Contact with an Agent or Employee of a Represented Entity) ..... 325

    » Communications Authorized by Law or Court Order ..... 327

**Rule 4.3 Dealing with Unrepresented Person ..... 327**

    Comment ..... 327

    Model Rule Comparison ..... 328

    Cross-References ..... 328

    Annotations ..... 328

        » Dealing with Unrepresented Person ..... 328

**Rule 4.4 Respect for Rights of Third Persons ..... 330**

    Comment ..... 330

    Model Rule Comparison ..... 331

    Cross-References ..... 331

    Annotations ..... 331

        » Disregard of Rights or Interests of Third Persons ..... 331

        » Inadvertently Sent Documents ..... 332

**Rule 4.5 Threatening Criminal Prosecution ..... 333**

    Comment ..... 333

    Model Rule Comparison ..... 333

    Cross-References ..... 333

    Annotations ..... 334

        » Threatening Prosecution ..... 334

**Rule 5.1 Responsibilities of Partners, Managers, and Supervisory Lawyers ..... 335**

    Comment ..... 335

    Model Rule Comparison ..... 337

    Cross-References ..... 338

    Annotations ..... 338

        » Duty of Partners (and Those with Comparable Managerial Authority) to Monitor Compliance with Professional Rules ..... 338

        » Monitoring Duty of Supervisory Lawyer ..... 339

        » Responsibility for the Conduct of Another Lawyer ..... 339

        » Responsibility for Contract Attorneys ..... 340

Table of Contents

---

**Rule 5.2 Responsibilities of a Subordinate Lawyer** ..... 340

    Comment ..... 341

    Model Rule Comparison ..... 341

    Cross-References ..... 341

    Annotations ..... 341

        » Independent Responsibility of a Subordinate Lawyer ..... 341

        » Reliance on a Supervisor’s Resolution  
           of Arguable Ethical Issues ..... 342

**Rule 5.3 Responsibilities Regarding Nonlawyer Assistants** ..... 342

    Comment ..... 343

    Model Rule Comparison ..... 343

    Cross-References ..... 344

    Annotations ..... 344

        » Duty to Establish Safeguards ..... 344

        » Duty to Control Non-Lawyer Assistants ..... 344

        » Responsibility for Misconduct of Non-Lawyer Assistants ..... 346

**Rule 5.4 Professional Independence of a Lawyer** ..... 346

    Comment ..... 347

    Model Rule Comparison ..... 347

    Cross-References ..... 348

    Annotations ..... 348

        » Sharing Fees with a Nonlawyer ..... 348

        » Forming a Partnership with Nonlawyers ..... 350

        » Third-Party Interference with a Lawyer’s  
           Professional Judgment ..... 351

        » Non-Lawyer Ownership in or Control of  
           Profit-Making Legal Services Organizations ..... 352

**Rule 5.5 Unauthorized Practice of Law; Multijurisdictional  
Practice of Law** ..... 352

    Comment ..... 353

    Model Rule Comparison ..... 357

    Cross-References ..... 358

    Annotations ..... 358

        » Practice of Law by Nonlawyers ..... 358

        » Legal Services Provided by Nonlegal  
           Service Providers (“NLSP”) ..... 363

Table of Contents

---

- » Assisting in the Unauthorized Practice of Law ..... 364
- » Admission and Residency Requirements  
for Out-of-State Lawyers ..... 366
- » Pro Hac Vice Admission ..... 368
- Rule 5.6 Restrictions on Right to Practice ..... 369**
  - Comment ..... 369
  - Model Rule Comparison ..... 369
  - Cross-References ..... 370
  - Annotations ..... 370
    - » Restrictions on Lawyers Leaving a Firm ..... 370
    - » Private Settlements Restricting a Lawyer’s Future Practice ..... 371
- Rule 5.7 Responsibilities Regarding Law Related Services ..... 372**
  - Comment ..... 372
  - Model Rule Comparison ..... 375
  - Cross-References ..... 375
  - Annotations ..... 375
    - » Applicability of Ethics Rules to Ancillary Business Activities ..... 375
- Rule 6.1 Voluntary Pro Bono Publico Service ..... 377**
  - Comment ..... 377
  - Model Rule Comparison ..... 378
  - Cross-References ..... 378
  - Annotations ..... 378
    - » Lawyer’s Moral Obligation to Engage in  
Public Interest Legal Service ..... 378
    - » Efforts to Deal with the Vast Unmet Need for Legal Services ..... 378
- Rule 6.2 Accepting Appointments ..... 379**
  - Comment ..... 379
  - Model Rule Comparison ..... 379
  - Cross-References ..... 380
  - Annotations ..... 380
    - » Duty to Accept Court Appointments Except for Good Cause ..... 380
    - » Constitutional Aspects of Appointments ..... 381
- Rule 6.3 Membership in Legal Services Organization ..... 382**
  - Comment ..... 382
  - Model Rule Comparison ..... 382
  - Cross-References ..... 382

Table of Contents

---

Annotations ..... 383

    » Conflicts of Interests of Lawyers Participating  
    in a Legal Services Organization ..... 383

**Rule 6.4 Law Reform Activities Affecting Client Interests ..... 383**

    Comment ..... 384

    Model Rule Comparison ..... 384

    Cross-References ..... 384

    Annotations ..... 384

        » Conflicts of Interests of Lawyers Participating  
        in Law Reform Organization ..... 384

**Rule 6.5 Nonprofit and Court Annexed Limited  
Legal Services Programs ..... 385**

    Comment ..... 385

    Model Rule Comparison ..... 386

    Cross-References ..... 387

    Annotations ..... 387

        » Conflicts of Interests of Lawyers Participating in Nonprofit  
        and Court Annexed Limited Legal Services Programs ..... 387

**Rule 7.1 Communications Concerning a Lawyer's Services ..... 388**

    Comment ..... 388

    Model Rule Comparison ..... 389

    Cross-References ..... 390

    Annotations ..... 390

        » Prior Law and the Commercial Speech Doctrine ..... 390

        » False, Deceptive, and Misleading Communications ..... 392

        » Violation of Lawyer's Oath of Office in Advertising ..... 395

        » Advertising by Out-of-State Lawyers ..... 395

        » Creating Unjustified Expectations ..... 396

        » Comparison with Other Lawyers ..... 397

**Rule 7.2 Advertising ..... 397**

    Comment ..... 399

    Model Rule Comparison ..... 402

    Cross-References ..... 402

    Annotations ..... 402

        » Permissible Forms of Lawyer Advertising ..... 402

        » Retaining Copy of Advertising Material ..... 405



Table of Contents

---

» Paying to Have Services Recommended ..... 405

» Identification of a Responsible Lawyer ..... 408

**Rule 7.3 Solicitation of Clients** ..... 408

    Comment ..... 411

    Model Rule Comparison ..... 414

    Cross-References ..... 414

    Annotations ..... 414

        » Prohibition of For-Profit In-Person Solicitation ..... 414

        » Regulation of Written and Recorded Solicitation ..... 416

        » Disclaimers for Written and Recorded Solicitation ..... 417

        » Solicitation by Prepaid and Group Legal Services Plans ..... 417

**Rule 7.4 Communication of Fields of Practice and Specialization** ..... 418

    Comment ..... 419

    Model Rule Comparison ..... 420

    Cross-References ..... 420

    Annotations ..... 420

        » Regulation of Claims of Certification and Specialization ..... 420

**Rule 7.5 Firm Names and Letterheads** ..... 421

    Comment ..... 422

    Model Rule Comparison ..... 422

    Cross-References ..... 422

    Annotations ..... 423

        » Firm Names and Trade Names ..... 423

        » Law Firms with Offices in More Than One Jurisdiction ..... 424

        » Use of the Name of a Public Official ..... 424

        » Misleading Designation as Partnership, etc. .... 424

**Rule 8.1 Bar Admission and Disciplinary Matters** ..... 425

    Comment ..... 425

    Model Rule Comparison ..... 425

    Cross-References ..... 426

    Annotations ..... 426

        » Bar Admission Agency ..... 426

        » Bar Admission Requirements ..... 426

        » False Statement of Material Fact in Connection  
            with Admission or Discipline ..... 427

Table of Contents

---

» Duty to Volunteer Information to Correct a Misapprehension ..... 427

» Timeliness of Response to Disciplinary Counsel ..... 427

**Rule 8.2 Judicial and Legal Officials** ..... 427

    Comment ..... 427

    Model Rule Comparison ..... 428

    Cross-References ..... 428

    Annotations ..... 428

        » False Statements About Judges or Other Legal Officials ..... 428

**Rule 8.3 Reporting Professional Misconduct** ..... 428

    Comment ..... 429

    Model Rule Comparison ..... 431

    Cross-References ..... 431

    Annotations ..... 431

        » Duty to Report Criminal Matters ..... 431

        » Mandatory Duty to Report Serious Misconduct ..... 431

        » Reporting the Serious Misconduct of a Judge ..... 433

        » Exception Protecting Confidential Information ..... 433

        » Civil Liability for Failing to Report Misconduct ..... 433

**Rule 8.4 Misconduct** ..... 434

    Comment ..... 434

    Model Rule Comparison ..... 435

    Cross-References ..... 435

    Annotations ..... 436

        » Violation of a Rule of Professional Conduct ..... 436

        » Commission of a Crime ..... 437

        » Dishonesty, Fraud, Deceit and Misrepresentation ..... 438

        » Conduct Prejudicial to the Administration of Justice ..... 442

        » Implying Ability to Influence Public Officials ..... 444

        » Assisting Judge or Official in Violation of Duty ..... 444

        » Discrimination in the Practice of Law ..... 444

        » Mitigating Factors ..... 444

**Rule 8.5 Disciplinary Authority; Choice of Law** ..... 445

    Comment ..... 446

    Model Rule Comparison ..... 448

    Cross-References ..... 448

## Table of Contents

---

Annotations .....	448
» Disciplinary Authority .....	448
» Choice of Law .....	449
<b>OVERVIEW OF THE SOUTH CAROLINA DISCIPLINARY SYSTEM .....</b>	<b>451</b>
Commission on Lawyer Conduct; Disciplinary Counsel; Commission Counsel .....	451
Complaints .....	452
Investigations .....	453
Sanction by Consent Prior to Formal Charges .....	454
Formal Charges .....	454
Sanction by Consent after Formal Charges .....	455
Discovery and Hearings .....	455
Supreme Court Proceedings .....	456
Public Access and Privilege .....	457
Range of Sanctions .....	458
Reciprocal Discipline .....	459
Reinstatement .....	460
<b>INTEREST ON LAWYER TRUST ACCOUNTS (IOLTA)</b>	
<b>South Carolina Appellate Court Rule 412 .....</b>	<b>463</b>
<b>RULES FOR LAWYER DISCIPLINARY ENFORCEMENT</b>	
<b>South Carolina Appellate Court Rule 413 .....</b>	<b>469</b>
Rule 1. Purpose .....	469
Rule 2. Terminology .....	469
Rule 3. The Commission on Lawyer Conduct .....	472
Rule 4. Organization and Authority of the Commission .....	473
Rule 5. Disciplinary Counsel .....	475
Rule 6. Commission Counsel .....	477
Rule 7. Grounds for Discipline; Sanctions Imposed; Deferred Discipline Agreement .....	477
Rule 8. Proof .....	479
Rule 9. Civil Rules Applicable .....	479
Rule 10. Right to Counsel .....	479
Rule 11. Ex Parte Contacts .....	480
Rule 12. Access to Disciplinary Information .....	480

## Table of Contents

---

Rule 13.	Immunity from Civil Suits .....	482
Rule 14.	Time, Service and Filing .....	483
Rule 15.	Oaths; Subpoena Power .....	484
Rule 16.	Lawyers Charged with or Convicted of a Crime .....	485
Rule 17.	Interim Suspension .....	486
Rule 18.	Notification to Complainant; Limited Right to Review .....	487
Rule 19.	Screening and Investigation .....	487
Rule 20.	Motion by Disciplinary Counsel to Re-Open Dismissed Complaints .....	491
Rule 21.	Discipline by Consent .....	491
Rule 22.	Formal Charges .....	493
Rule 23.	Answer .....	493
Rule 24.	Failure to Answer; Failure to Appear .....	493
Rule 25.	Discovery .....	494
Rule 26.	Hearing .....	496
Rule 27.	Review by Supreme Court .....	497
Rule 28.	Cases Involving Allegations of Mental or Physical Incapacity and/or the Inability to Participate in a Disciplinary Investigation or Assist in the Defense of Formal Proceedings .....	499
Rule 29.	Reciprocal Discipline and Reciprocal Incapacity Inactive Status .....	504
Rule 30.	Duties Following Disbarment, Suspension, or Permanent Resignation .....	506
Rule 31.	Order of Receivership .....	508
Rule 32.	Reinstatement Following a Definite Suspension of Less than Nine Months .....	511
Rule 33.	Reinstatement Following a Definite Suspension for Nine Months or More or Disbarment .....	512
Rule 34.	Employment of Lawyers Who Are Debarred, Disbarred, Suspended, Transferred to Incapacity Inactive Status, or Permanently Resigned in Lieu of Discipline .....	516
Rule 35.	Resignation in Lieu of Discipline .....	518
 <b>FINANCIAL RECORDKEEPING</b>		
	<b>South Carolina Appellate Court Rule 417 .....</b>	<b>521</b>
 <b>ADVERTISING AND SOLICITATION BY UNLICENSED LAWYERS</b>		
	<b>South Carolina Appellate Court Rule 418 .....</b>	<b>527</b>

Table of Contents

---

**INTERVENTION TO PROTECT CLIENTS**  
**South Carolina Appellate Court Rule 428** ..... 529

**CONDUCT DURING DEPOSITIONS**  
**South Carolina Rule of Civil Procedure 30(j)** ..... 531

**SEALING DOCUMENTS AND SETTLEMENT AGREEMENTS**  
**South Carolina Rule of Civil Procedure 41.1** ..... 533

**PRIVACY PROTECTION FOR FILINGS**  
**South Carolina Rule of Civil Procedure 41.2** ..... 537

**INDEX TO ANNOTATIONS** ..... 541