

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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JUN 25 2018

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Robert E. Watson, Master-in-Equity

Opinion No. 5488 (S.C. Ct. App. filed May 24, 2017)

South Carolina Lawyers Weekly,
by and through its principal, Dolan Publishing Company, ... Petitioner,

v.

Scarlett Wilson, Solicitor of the Ninth Judicial Circuit,
An elected public official, ... Respondent.

APPENDIX

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
R. MARKLEY JENNIS JR., CIRCUIT COURT JUDGE
Trial Court Case No.: 2015-CP-10-5757
Appellate Case No. 2016-000555

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AUG 10 2016

SC Court of Appeals

South Carolina Lawyers Weekly,
by and through its principal, Dolan Publishing Company,

Appellant,

vs.

Scarlett Wilson, Solicitor Of the Ninth Judicial Circuit,
An elected public official.

Respondent.

RECORD ON APPEAL

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Certificate of Counsel

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

South Carolina Lawyers Weekly,
By and through its principal,
Dolan Publishing Company,

Plaintiff,

v.

Scarlett Wilson, Solicitor of the Ninth
Judicial Circuit, an elected public official,

Defendant.

IN THE COURT OF COMMON PLEAS

Case No. 2015-CP-10-5757

ORDER

FILED
2016 FEB 10 PM 12:00
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter has come before this Court pursuant to the Defendant's Motion to Dismiss. This Court carefully considered the notions and memoranda filed by the parties prior to the hearing of the motions on January 7, 2016, in Charleston. Based upon the motion and memoranda and consideration of the argument at the hearing, this Court grants the Motion and dismisses this case. The reasons for this ruling are discussed below.

BACKGROUND

Plaintiff requested that the Defendant Wilson produce any records relating to disciplinary complaints against her or action taken against her as a member of the Bar. Ms. Wilson denied the request stating that she is not, personally, a "public body" under FOIA, that her personal records are not "public records," that they are exempt from disclosure and for the other reasons set forth in her response of July 28, 2015. Her letter noted that grievances had been filed against her by some people who disagree with her and that the Office of Disciplinary Counsel had recommended their dismissal. Accordingly, no formal charges have been filed against her.

GROUND S FOR DISMISSAL

At the outset, Ms. Wilson contends that she is not a "public body." Under the Freedom of Information Act, rights to inspect or copy public records are limited to those of a "public body." S.C. Code Ann. §30-4-30(a) ("[a]ny person has a right to inspect or copy any public record of a public body"). "'Public body' means any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined . . ." §30-4-20(a). Ms. Wilson contends that this rule applies to agencies rather than individuals. Ms. Wilson asserts that the documents that Lawyers Weekly seeks are those belonging to her, personally, rather than to the Solicitor's Office. She contends that the Rules for Lawyer Disciplinary Enforcement governing those documents apply to lawyers rather than to public bodies citing Rule 2, RLDE, Rule 413, SCACR. A "lawyer" is "anyone admitted to practice law in this state . . ."

This Court need not reach this issue because even if Ms. Wilson were a public body subject to FOIA, the documents Lawyer's Weekly seeks are not "public records" under that statute. Even if they were public records, they would also be exempt under FOIA. These grounds are discussed below.

Under FOIA, "[p]ublic record" includes all . . . documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body. . . ." §30-4-20. The definition expressly states that "other records which by law are required to be closed to the public are not considered to be made open to the public under the provisions of this act." RLDE Rule 12 closes the documents at issue to the public as discussed below.

Lawyers Weekly wrongly asserts that Rule 12 only limits the disclosure of documents by the Commission on Lawyer Conduct and the Office of Disciplinary Counsel. Instead, the Rule makes the documents at issue here non-public because formal charges have not been filed. RLDE Rule 12 of Rule 413 prohibits the Commission on Lawyer Conduct, the Office of Disciplinary Counsel and the Supreme Court and their staffs from revealing the existence of a complaint against lawyer "while the matter remains confidential," except as provided in that law. Copy attached along with 2015 amendment. During that period of confidentiality, the complaint is expressly non-public. Rule 12(b)(If formal charges are filed against the lawyer, the matter "shall become public 30 days after the filing of the answer" to the charges (emphasis added)). The Rule limits the circumstances under which the Commission on Lawyer Conduct is authorized to release the documents. Rule 12(c)(protection of person or public, violation of criminal law, etc.).

Whether the lawyer may release the documents during the period of confidentiality is discretionary with him or her. Rule 12(d) states that a lawyer "may reveal" the filing of a complaint by a client to establish good cause for withdrawal as counsel, and if the complaint is confidential, the Rule states that the "lawyer may elect to give opposing counsel notice of the motion only without revealing the existence of the complaint." (emphasis added). The court will seal the record or delete references to the complaint from the record if the lawyer requests that records related to the motion be sealed. Rule 12(d). More generally, the lawyer may sign a waiver for the Commission to release the complaint. Rule 12(c)(3). Accordingly, under the Rule, the Complaint and related documents are not public during the period of confidentiality, and the lawyer may not be compelled to disclose them. Therefore, Ms. Wilson may not be compelled to release the documents at issue.

1001/3

This reading is in accord with an Opinion of the Office of the Attorney General which determined that complaints and related documents were not subject to FOIA. *Ops. Atty. Gen.* June 24, 1981, No. 81-60, 1981 WL 96586. Although the Opinion predated the current RLDE, the pertinent parts of FOIA remain the same. That Opinion determined that disciplinary files are not "public records" under §30-4-20(c) because they are "records which by law are required to be closed to the public" under the former Rule on Disciplinary Procedure section 20A. As noted in that Opinion, "[t]he rules of the South Carolina Supreme Court carry the force and effect of law. See, §§30-4-20(c). 40-5-20 and 40-5-50" The Opinion further concluded that the files would also be exempt from disclosure under section 30-4-40(4) ("[m]atters specifically exempted from disclosure by statute or law") and under 30-4-40(2) ("unreasonable invasion of privacy").

Although the FOIA request at issue in the Opinion was directed to the former Board of Commissioners, the conclusion would be the same as to the Ms. Wilson.¹ The documents are not public because no formal charges have been filed, and even if they were, they are exempt from disclosure. The records are closed to the public under Rule 12 and may not be opened under FOIA as set forth in the definition of public record. Nothing in this Rule or FOIA indicates that a person may make a FOIA request of a lawyer to produce complaints closed to the public under Rule 12. Such documents are even beyond the power of a Judge to release under the above provisions of that Rule.

¹ Although this Opinion is not binding upon this Court, it "should not be disregarded without cogent reason." *S.C. Dept. of Social Services v. Johnson*, 688 S.E.2d 588, 593, 386 S.C. 426, 436 (S.C.App.,2009) quoting *Price v. Watt*, 280 S.C. 510, 513 n. 1, 313 S.E.2d 58, 60 n. 1 (Ct.App.1984). *Johnson* found that referencing an opinion of the Attorney General "instructive" as to the application of a statute. That Opinion regarding FOIA is certainly consistent with the state of the law today and instructive on the issue.

2007/4

The Complaint contends that Ms. Wilson waived confidentiality by referring generally to the filing of grievances against her and their dismissal. Nothing in Rule 12 creates a waiver of confidentiality except, as noted above, when the Lawyer signs a waiver for the Commission on Lawyer Conduct to release documents. Rule 12(c)(3). Ms. Wilson's general reference in her letter to Lawyers Weekly is not a waiver under Rule 12 and does not alter the non-public nature of the documents under Rule 12. "A waiver is a voluntary and intentional abandonment or relinquishment of a known right." *Janasik v. Fairway Oaks Villas Horizontal Property Regime*, 415 S.E.2d 384, 387, 307 S.C. 339, 344 (S.C.,1992). Certainly, Ms. Wilson's letter had no intent whatsoever to waive confidentiality when she invoked the Rules on Lawyer Disciplinary Enforcement in her response letter and made quite clear that she believed, and correctly so, that the documents sought are not public.

Even if the documents were "public records," they are exempt from disclosure. Under §30-4-40(a), "[a] public body may but is not required to exempt from disclosure the following information: . . .

(2) Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy. . .

(4) Matters specifically exempted from disclosure by statute or law.

The Complaints and related documents are expressly exempt under Rule 12, and therefore are exempt from disclosure under §30-4-40(a)(4). This conclusion was reached by the above Attorney General's Office Opinion, and it is still the law.

Further, the disclosure of the records would also be an unreasonable invasion of personal privacy under §30-4-40(a) because Rule 12 protects against disclosure of complaints against a lawyer unless formal charges are made and none were filed here. The provisions of Rule 12

PAW 5

directing a court to take steps to prevent disclosure when a lawyer is withdrawing from representation, certainly indicate an intent to make the matter private.

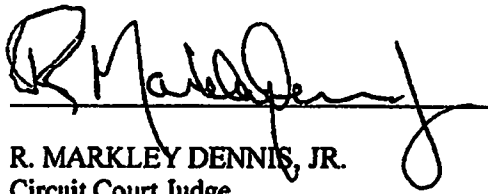
CONCLUSION

Plaintiff seeks documents of Ms. Wilson that are beyond the scope of FOIA and are expressly non-public under the Appellate Court rules. Therefore, this case must be dismissed.

For all of the foregoing reasons, IT IS ORDERED THAT the Defendant's Motion to Dismiss be granted and that the Motion for Summary Judgment of the Plaintiffs be denied.

AND IT IS SO ORDERED.

February 9, 2016
Charleston, South Carolina


R. MARKLEY DENNIS, JR.
Circuit Court Judge

Encl 6

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

South Carolina Lawyers Weekly,
By and through its principal,
Dolan Publishing Company,

Plaintiff(s)

vs.

Scarlett Wilson, Solicitor of the Ninth Judicial
Circuit, an elected public official,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP - 10- 5757

FILED
2015 OCT 26 PM 2:17
CLERK OF COURT
BY

Submitted By: Desa Ballard

Address: Post Office Box 6338, West Columbia, SC 29171

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NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

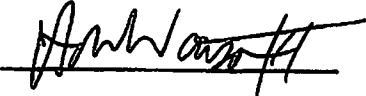
- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|--|---|
| ☐ Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | ☐ Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -NI-
☐ Notice/ File Med Mal (230)
☐ Other (299) | ☐ Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | ☐ Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| ☐ Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | ☐ Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☒ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | ☐ Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | ☐ Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| ☐ Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660) | | |

Appendix 0010

☐ Sexual Predator (510)

Submitting Party Signature: 

Date: 10-21-15

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Appendix 0011

ROA 009

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

- 1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.**
- 2. The initial ADR conference must be held within 300 days after the filing of the action.**
- 3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)**
- 4. Cases are exempt from ADR only upon the following grounds:**
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;**
 - b. Requests for temporary relief;**
 - c. Appeals**
 - d. Post Conviction relief matters;**
 - e. Contempt of Court proceedings;**
 - f. Forfeiture proceedings brought by governmental entities;**
 - g. Mortgage foreclosures; and**
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.**
- 5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.**
- 6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.**

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

South Carolina Lawyers Weekly,)
By and through its principal,)
Dolan Publishing Company,)

PLAINTIFF)

VS.)

Scarlett Wilson, Solicitor)
Of the Ninth Judicial Circuit,)
An elected public official,)

DEFENDANT)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Case No. 2015-CP-10-_____

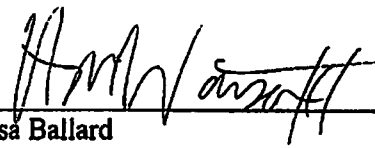
SUMMONS

(Non-Jury)

FILED
2015 OCT 26 PM 2:17
JULIE J. KEMSTRONG
CLERK OF COURT
BY _____

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the plaintiff's counsel at her office at P.O. Box 6338, West Columbia, South Carolina 29171, within thirty (30) days after the service hereof, exclusive of the day of service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.


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ATTORNEYS FOR PLAINTIFF

October 21, 2015

Appendix 0013

ROA 011

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

South Carolina Lawyers Weekly,)
By and through its principal,)
Dolan Publishing Company,)

PLAINTIFF)

VS.)

Scarlett Wilson, Solicitor)
Of the Ninth Judicial Circuit,)
An elected public official,)

DEFENDANT)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Case No. 2015-CP-10-_____

COMPLAINT
(Non-Jury)

SUIT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF UNDER THE
FREEDOM OF INFORMATION ACT

FILED
2015 OCT 26 PM 2:18
JULIE J. ARMSTRONG
CLERK OF COURT

Plaintiff, seeking relief from this court, complains against the Defendant and alleges:

1. Plaintiff is a corporation organized and existing under the laws of a State other than South Carolina which publishes a variety of newspapers for subscribers, some of which are distributed in South Carolina.
2. Defendant is an elected official of the State of South Carolina, serving as Solicitor of the Ninth Judicial Circuit, elected by the electorate of the Ninth Judicial Circuit. She is a full-time employee of the State of South Carolina and has such duties as are assigned to her by law in the State of South Carolina, including the duty to receive and administer county funds within her circuit.
3. In order to hold her elected office, defendant is required to be a member of the South Carolina Bar, licensed to practice law in South Carolina.

4. On information and belief, defendant does not maintain a private practice of law and has no private clients. Any legal services she provides are provided as a public officer of the State.
5. Defendant is a public official and her office constitutes a "public body" as defined by the South Carolina Freedom of Information Act (FOIA), S.C. Code Ann. §§ 30-4-10, *et seq.* (Rev. 2007).
6. FOIA states its purpose expressly with § 30-4-15:

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

7. On information and belief, Defendant is required by S.C. Code Ann. § 30-4-20 to maintain all books, papers, and other documentary materials regardless of physical form or characteristics prepared, owned, or used in the possession of or retained by a public body.
8. Any records received by Defendant from the Office of Disciplinary Counsel or the Commission on Lawyer Conduct which relate to her conduct as a public official are required to be maintained in accordance with the Public Records Act of South Carolina and as such are "public records."
9. On or about July 10, 2015, Plaintiff made request to Defendant to inspect and copy any records relating to any disciplinary complaints made against her or

action taken with respect to her as a member of the [South Carolina] bar. A copy of the FOIA request is attached hereto and incorporated by reference as **Exhibit A**.

10. The records requested by Plaintiff are "public records" under the FOIA, and by law they must be made available for inspection and copying by persons requesting such, unless the records, or portions of the records, are exempt from mandatory disclosure by law.
11. Defendant answered the request, acknowledged that the FOIA required that her office maintain public records and permit inspection by the public, subject to exceptions set forth therein. A copy of Defendant's FOIA response is attached hereto and incorporated by reference as **Exhibit B**.
12. Defendant's answer to the request was on her official letterhead, not personal letterhead maintained by her privately, and on information and belief was prepared either by her or someone acting on her behalf who is an employee of the State or County. As a result, the document provided to Plaintiff as **Exhibit B** is a public document as defined under state law.
13. Notwithstanding the FOIA requirement that public records be made available for inspection and copying, Defendant refused the request for public records she is required to have maintained.
14. Defendant set forth four purported exemptions to justify her refusal to produce the public documents requested.

15. Reason one was that "Ms. Wilson is not personally a 'public body'. Likewise her personal records regarding such matters are not included under the definition of a 'public record' of a 'public body' as contemplated by Section 30-4-20." That reason is incorrect and does not provide an applicable exemption from disclosure pursuant to Plaintiff's lawful request.

16. Defendant is a public official whose only legal services are provided in her capacity as a public official. She does not provide legal services in private matters. Any documents from the Office of Disciplinary Counsel and/or the Commission on Lawyer Conduct received by her relate wholly to her conduct in her capacity as a public official and are thus public documents.

17. The public has an interest in being informed regarding regulatory complaints made against public officials, including those who are elected directly by the electorate, and the disposition thereof.

18. By virtue of her holding public office, any documents prepared by Defendant to respond to any inquiries from the Office of Disciplinary Counsel, using her public office resources and/or staff, and/or prepared on official letterhead of her office, are public documents subject to FOIA. Similarly, such documents as relate to her performance as a public official are public documents subject to FOIA.

19. Reason two advanced by Defendant to support her refusal to comply with the FOIA request was that Rule 12 of the Rules on Lawyer Disciplinary Enforcement (Rule 413, SCACR) provide confidentiality of the requested materials. That reason is unjustified and based on an improper application of the cited rule, which does not provide an exemption from disclosure for defendant.

Appendix 0017

20. The only limitation on disclosure provided by Rule 12 relates to staff and officials with the Office of Disciplinary Counsel and/or the Commission on Lawyer Conduct, which are offices of the South Carolina Supreme Court. The South Carolina Supreme Court is charged by state constitution with the obligation to regulate the practice of law and the conduct of practitioners who are licensed to practice law.
21. Reason two also asserted that the information sought was of a personal nature and therefore exempt from disclosure pursuant to § 30-4-40(a)(2). That reason is likewise incorrect and does not provide an exemption from disclosure for the reasons discussed regarding her first claimed exemption.
22. Reason three asserted that denial was premised on the request having been made for matters specifically exempted from disclosure by statute or law, citing to § 40-4-40(a)(4). In making that assertion, Defendant did not reference any statute or law which purportedly acted as a specific exemption from disclosure for the requested public documents. Notwithstanding that deficiency, that reason is incorrect and does not provide an exemption from disclosure as no such statute or law is applicable.
23. Reason four asserted that disclosure of the requested public documents would violate the attorney-client privilege, citing to § 30-4-40(a)(7). No explanation was provided as to what "client" was involved, or the nature and extent of any supposed confidential communications of a professional nature between attorney and client, as would be necessary to even potentially constitute a privileged

communication. Thus none of the documents requested are protected by attorney-client privilege.

24. After refusing to disclose the actual documents requested, defendant nevertheless described the nature and content of at least some of the documents, referencing the existence of grievances that had been filed against her "at the behest of disgruntled criminal defense lawyers who disagree with her management of the Solicitor's Office and in some cases dealing with her handling of cases."

25. Defendant's statement acknowledges that she has documents in her possession that are responsive to the FOIA request. Any documents received by Defendant which relate to her handling of the management of her office and in the handling of closed cases would be public documents under FOIA.

26. Defendant went further, however, and indicated that "the South Carolina Office of Disciplinary Counsel thoroughly investigated these matters and recommended dismissal of all of these charges. Furthermore, Independent Investigative Panels of the Commission on Lawyer Conduct considered these matters and have *never* found that she engaged in any ethical misconduct."

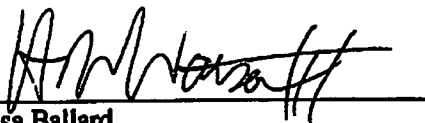
27. In so doing, Defendant waived any claim to confidentiality or inability to disclose the records themselves that she might have otherwise been able to assert as to the public documents sought in the FOIA request.

28. The exemption asserted by Defendant for denying Plaintiff's request for access to public records in its possession is at variance with the exemptions from mandatory disclosure permitted under the FOIA for law enforcement and public

safety agencies, S.C. Code Ann., section 30-4-40(a)(3), and in disregard of decisions of the Supreme Court of South Carolina and the South Carolina Court of Appeals construing those statutory exemptions.

29. Defendant's wrongful denial of Plaintiff's request for access to public records is a wrongful denial of requests by citizens for access to public records in the possession of Defendant. The very format of Defendant's response confirms the public nature of the documents sought, and the need for public disclosure instead of selective, arbitrary disclosure of portions thereof.
30. Plaintiff is informed and believes that it is entitled to an order declaring that Defendant's denial of Plaintiff's request for access to public records for the reason stated is a violation of the FOIA.
31. A violation of the FOIA is an irreparable injury for which no adequate remedy at law exists, and Defendant's violation establishes the appropriate threshold for injunctive relief pursuant to S.C. Code § 30-4-100.
32. Plaintiff is informed and believes that it is entitled to an order permanently enjoining and restraining Defendant from continuing to violate the FOIA by asserting exemptions from mandatory disclosure that are not authorized by law, and failing and refusing to provide Plaintiff access to the public records it seeks in this action.
33. Plaintiff is informed and believes that in the event it prevails in whole or in part it is entitled to recover reasonable attorney fees and costs associated with this action.

WHEREFORE, Plaintiff prays that this Court find that Defendant has violated the South Carolina Freedom of Information Act by wrongfully denying access to public records in its possession; enter an order declaring that Defendant has violated the Freedom of Information Act, and that such a violation constitutes an irreparable injury for which no adequate remedy at law exists; enter an order permanently enjoining and restraining Defendant from continuing to violate the Freedom of Information Act by asserting exemptions from mandatory disclosure not contained in the Freedom of Information Act, and from continuing to withhold from Plaintiff those public records requested by it; award Plaintiff its reasonable attorney fees and the costs of this action; and grant such other relief as may be appropriate.



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ATTORNEYS FOR PLAINTIFF

October 21, 2015

From: Phillip Bantz
Sent: Friday, July 10, 2015 9:37 AM
To: wilsons@scsolicitor9.org
Subject: FOIA Request

Solicitor Wilson,

This is a request under South Carolina's Freedom of Information Act for an opportunity to inspect and copy any records relating to any disciplinary complaints made against you or action taken with respect to you as a member of the bar. The FOIA provides you with 15 working days to issue a written response to this request.

Respectfully,

Phillip Bantz

Staff Writer

North Carolina Lawyers Weekly

South Carolina Lawyers Weekly

Telephone: 910-791-3320

Toll free: 800-876-5297 ext. 2950

phillip.bantz@nclawyersweekly.com

www.nclawyersweekly.com

www.sclawyersweekly.com



State of South Carolina

Charleston County
101 Meeting Street, Suite 400
Charleston, SC 29401
Phone (843) 958-1900
Fax (843) 958-1905



Berkeley County
300-B California Avenue
Moncks Corner, SC 29461
Phone (843) 723-3800 ext 4529
Fax (843) 719-4588

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

To: Phillip Bantz
From: Solicitor's Office, Ninth Judicial Circuit
Re: FOIA Request Response
Date: July 28, 2015

We are in receipt of your FOIA request and hereby respond within the mandated period.

The South Carolina Freedom of Information Act (FOIA) requires that this office, as a public body, make available to the public, upon request, any "public record" kept during the normal course of our business (with exceptions expressed in the statute). See S.C. Code Ann. §30-4-30 (1976).

While broad in scope, the South Carolina's outlines several specific exceptions to its mandate of disclosure. S.C. Code Ann. §30-4-40(a)(4) states that "matters specifically exempted from disclosure by statute or law" are exempt from FOIA disclosure.

Your request is hereby denied on the following grounds. Your request is regarding Scarlett Wilson's personal status as a member of the South Carolina Bar. While the Solicitor's Office is a "public body" and subject to FOIA, Ms. Wilson is not personally a "public body." Likewise, her personal records regarding such matters are not included under the definition of a "public record" of a "public body" as contemplated by §30-4-20 (1976).

Even if Ms. Wilson and these records were considered "public," we invoke the following exemptions.

- §30-4-40(a)(2) / Rule 413, SCACR Lawyer Disciplinary Enforcement, Rule 12 (*Information of a Personal Nature / Access to Disciplinary Enforcement*)
- §30-4-40(a)(4) (*Matters specifically exempted from disclosure by statute or law*)
- §30-4-40(a)(7) (*Material that would violate attorney-client relationships*)

In the last year a number of grievances have been filed against Ms. Wilson by or at the behest of disgruntled criminal defense lawyers who disagree with her management of the Solicitor's Office and in some cases with her handling of cases. The South Carolina Office of Disciplinary Counsel thoroughly investigated these matters and recommended dismissal of all of these charges. Furthermore, Independent Investigative Panels of the Commission on Lawyer Conduct considered these matters and have *never* found that she engaged in any ethical misconduct. Moreover, she has never been sanctioned or disciplined.

ROA 021



STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

South Carolina Lawyers Weekly, etc.,)
Plaintiff,)

vs.)

Scarlett Wilson, Solicitor, etc.,)
Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-5757

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Desa Ballard, Esquire

Harvey M. Watson, III, Esquire, Bar No. _____

Address:

Ballard & Watson

Post Office Box 6338

West Columbia, SC 29171

Phone: 803-796-9299

Fax 803-796-1066

E-mail: desab@desaballard.com

harvey@desaballard.com

Other: _____

Defendant's Attorney:

J. Emory Smith, Bar No. 5262
[counsel for Judges]

Address:

Office of the Attorney General

P.O. Box 11549

Columbia, SC 29211

Phone: 803-734-3680 Fax 803-734-3677

E-mail: esmith@scag.gov

Other: See attached sheet

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss

Estimated Time Needed: 15 minutes

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$** _____

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

Appendix 0024

ROA 022

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

South Carolina Lawyers Weekly,
By and through its principal,
Dolan Publishing Company,

Plaintiff,

v.

Scarlett Wilson, Solicitor of the Ninth
Judicial Circuit, an elected public official,

Defendant.

IN THE COURT OF COMMON PLEAS

Case No. 2015-CP-10-5757

MOTION TO DISMISS

Without waiving any jurisdictional or other defenses to this complaint, the Defendant Scarlett Wilson, Solicitor, moves for the dismissal of the Complaint herein pursuant to Rule 12(b)(1) and(6), SCRCF, in that, this Court lacks jurisdiction over the subject matter, and Plaintiff has failed to state facts sufficient to constitute a cause of action because the request at issue is not subject to the Freedom of Information Act (S.C. Code Ann. §30-4-10, *et seq*) and enforceable for reasons that include the following:

1. The request at issue was made of the Solicitor in her official capacity but the documents sought belong to Ms. Wilson in her personal or individual capacity.
2. For the purposes of this request, at least, the Solicitor is not a "public body" under §30-4-20(a).
3. The documents sought are not records of the Office of the Solicitor.
4. The documents sought are not "public records" under §30-4-20(c).
5. The documents sought are confidential under RLDE Rule 12, SCACR Rule 413.
6. Even if, *arguendo*, the documents were public records, they would be exempt from

Appendix 0026

ROA 024

disclosure under §30-4-40(a)(2)(unreasonable invasion of personal privacy) and §30-4-40(a)(4)(exempt from disclosure by law) because of the applicability of Rule 12 of Rule 413.

7. Even if, *arguendo*, the documents were public records, any information therein which would violate attorney-client privilege or work product would be exempt from disclosure pursuant to §30-4-(a)(7).

For the foregoing reasons, the Defendant respectfully requests that this case be dismissed.

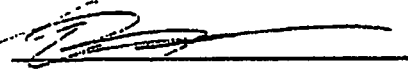
Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

J. EMORY SMITH, JR.
Deputy Solicitor General
S.C. Bar No. 5262

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BY: 

Counsel for the Solicitor

November 20, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

South Carolina Lawyers Weekly,)
By and through its principal,)
Dolan Publishing Company,)

PLAINTIFF)

vs.)

Scarlett Wilson, Solicitor)
Of the Ninth Judicial Circuit,)
An elected public official.)

DEFENDANT)

IN THE COURT OF COMMON PLEAS

**MEMORANDUM IN OPPOSITION TO
MOTION TO DISMISS**

Plaintiff South Carolina Lawyers Weekly, by and through its principal Dolan Publishing Company respectfully submits this Memorandum in Opposition to Motion to Dismiss. For the reasons set forth below, Defendant's Motion to Dismiss should be denied. This case presents novel issues of law and is not appropriate for determination on motion to dismiss.

INTRODUCTION

This is a suit pursuant to the S. C. Freedom of Information Act, S.C. Code Ann. §§ 30-4-10, *et seq.* Defendant is named in her capacity as a public official. See Paragraph 5 of the complaint in this action:

5. Defendant is a public officer and her office constitutes a "public body" as defined by the South Carolina Freedom of Information Act (FOIA), S.C. Code Ann. §§ 30-4-10, *et seq.* (Rev. 2007).

Defendant moved for dismissal pursuant to Rule 12(b)(1), asserting that this court lacks subject matter jurisdiction over the action, and Rule 12(b)(6), failure to state a cause of action. The motion does not set forth any legal authority for its position. It simply denies that defendant

is a public official, and for some reason, this case should not be allowed to proceed. The subject matter jurisdiction issue is not addressed in the motion. Defendant's motion must be denied.

FACTUAL BACKGROUND

Plaintiff is a news organization which publishes and distributes South Carolina Lawyer's Weekly, a weekly newspaper reporting on legal events of interest in South Carolina and elsewhere. Plaintiff submitted a request under FOIA to the Defendant on July 10, 2015. (See Exhibit A to Complaint). Defendant answered the request on her official letterhead on July 28, 2015. (See Exhibit B to Complaint). In her response, she acknowledged that FOIA "requires this office, as a public body, make available to the public, upon request, any 'public record' kept during the normal course of business..." She went on to assert that the documents sought belonged to her in her individual capacity. Even if that were so, by answering the FOIA complaint on her official letterhead, using public resources. Defendant acknowledged it was a public matter, and waived any argument about her status as a private individual.

PROCEDURAL HISTORY

The summons and complaint was filed on October 26, 2015. Rather than answer the complaint, Defendant, represented by the Office of the South Carolina Attorney General, filed this motion to dismiss on November 20, 2015. The issues raised by the Attorney General, on behalf of the Defendant, include the same grounds set forth by the Defendant in her response to the FOIA request dated July 28, 2015.

ARGUMENT

The South Carolina Attorney General is a Constitutional Officer of the State. South Carolina Constitution Article VI, Section 7. He is required by statute to provide a defense to "any officer or employee of the State. . ." among others if the "act [which forms the basis of the claim



is] done or omitted in the course of his employment. . .” S.C. Code § 1-7-50. Before doing so, the Attorney General or his designee is required to conduct an investigation to satisfy himself that the public employee was “acting in good faith, without malice and in the course of his employment” before providing a defense. S.C. Code § 1-7-60.

While the information learned by the Attorney General during the investigation is confidential, S.C. Code § 1-7-70, the fact that the AG is appearing for the defendant may be considered to be a judicial admission that defendant is a public employee and the subject matter of the suit falls within her public duties. See United States v. Blood, 806 F.2d 1218, 1221 (4th Circuit 1985) (“generally statements by an attorney concerning a matter within his employment maybe admissible against the retaining client”); see also Meyer v. Berkshire Life Ins. Co., 372 F.3d 261, 264-65 (4th Cir. 2004)(“judicial admissions are not... limited to affirmative statements that a fact exists. They also include intentional and unambiguous waivers that release the opposing party from its burden to prove the facts necessary to establish the waived conclusions of law.”)¹

Setting aside the fact of representation by the Attorney General, the Defendant herself made herself a public officer for purposes of the inquiry raised here when she responded to the FOIA request using public resources. See Exhibit B to Complaint. Weston v. Carolina Research & Development Foundation, 303 S.C. 398, 401 S.E.2d 161 (1991) (defendant’s receipt of public funds “is sufficient grounds alone to find the organization is a ‘public body’ under FOIA, regardless of any other factors.”)

Lastly, a determination of whether the Defendant is a “public officer” and therefore subject to FOIA cannot be decided on a motion to dismiss. Instead “a judicial determination” that [a litigant] is subject to FOIA “can only be resolved after the parties have engaged in discovery.”

¹ Blood and Meyer are cited in the South Carolina Court of Appeals’ unpublished decision in McCray v. Valle, Unpublished Opinion No. 2014-UP-313 (August 6, 2014).

Disabato v. South Carolina Association of School Administrators, 404 S.C. 433, 746 S.E.2d 329, 334 (2013).

The court's obligation is to strictly construe the FOIA "in favor of disclosure." Perry v. Bulloch, 409 S.C. 137, 761 S.E.2d 251 (2014). Defendant claims she is not a public figure for purposes of a FOIA request, yet she answered the FOIA request using public resources. At a minimum, a motion to dismiss must be denied. It may well be that her status as a public figure has already been admitted and can be determined as a matter of law, especially when all inferences are drawn in favor of the non-movant. That need not be decided at this point, but denial of the motion to dismiss is appropriate and necessary at this time.

CONCLUSION

For the reasons set forth above, South Carolina Lawyer's Weekly, by and through its principal Dolan Publishing Company, respectfully requests this Court deny Defendant's Motion to Dismiss.

Respectfully submitted,



Desa Ballard
Harvey M. Watson III

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ATTORNEY FOR PLAINTIFF

January 4, 2016

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

South Carolina Lawyers Weekly,
By and through its principal,
Dolan Publishing Company,

Plaintiff,

v.

Scarlett Wilson, Solicitor of the Ninth
Judicial Circuit, an elected public official,

Defendant.

IN THE COURT OF COMMON PLEAS

Case No. 2015-CP-10-5757

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS**

This action should be dismissed because it seeks personal, confidential records of Scarlett Wilson through the Freedom of Information Act, but that law applies to public agencies, not individuals, and excludes records that by law are closed to the public such as those sought by Lawyers Weekly.

BACKGROUND

Plaintiff requested that Ms. Wilson produce any records relating to disciplinary complaints against her or action taken against her as a member of the Bar. Complaint, ¶ 9, and Attachment A to Complaint. Ms. Wilson denied the request because she is not, personally, a "public body" under FOIA, because her personal records are not "public records," because they are exempt from disclosure and for the other reasons set forth in her response of July 28, 2015. Exhibit B to Complaint. Her letter noted that grievances had been filed against her by some people who disagree with her and that the Office of Disciplinary Counsel had recommended their dismissal. Accordingly, no formal charges have been filed against her.

Appendix 0032

ROA 030

ARGUMENT

I

MS. WILSON IS NOT A "PUBLIC BODY" SUBJECT TO FOIA

Under the Freedom of Information Act, rights to inspect or copy public records are limited to those of a "public body." S.C. Code Ann. §30-4-30(a) ("[a]ny person has a right to inspect or copy any public record of a public body"). "Public body" means any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined . . ." §30-4-20(a). This rule applies to agencies rather than individuals. While, as noted by Ms. Wilson, the Solicitor's Office is a public body subject to FOIA, Ms. Wilson, herself, is not a public body. The documents that Lawyers Weekly seeks are those belonging to Ms. Wilson, personally, rather than the Solicitor's Office. The Rules for Lawyer Disciplinary Enforcement governing those documents apply to lawyers rather than to public bodies. A complaint, under the RLDE is "information . . . that alleges . . . that a lawyer committed misconduct." Rule 2, RLDE, Rule 413, SCACR. A "lawyer" is "anyone admitted to practice law in this state . . ." Therefore, any complaint against Ms. Wilson is against her, individually, rather than a public body, and is not a record of the Solicitor's Office.

II

The Records Sought Are Confidential and Non-Public

Under FOIA, "[p]ublic record" includes all . . . documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body. . . ." §30-4-20. Not only is Ms. Wilson, not a public body, the documents themselves are not public. The definition expressly states that "other records which by law are

required to be closed to the public are not considered to be made open to the public under the provisions of this act.” RLDE Rule 12 closes these records to the public as discussed below.

Lawyers Weekly wrongly asserts that the Rule only limits the disclosure of documents by the Commission on Lawyer Conduct and the Office of Disciplinary Counsel. Instead, the Rule makes the documents at issue here non-public because formal charges have not been filed.¹ RLDE Rule 12 of Rule 413 prohibits the Commission on Lawyer Conduct, the Office of Disciplinary Counsel and the Supreme Court and their staffs from revealing the existence of a complaint against lawyer “while the matter remains confidential,” except as provided in that law. Copy attached along with 2015 amendment. During that period of confidentiality, the complaint is expressly non-public. Rule 12(b)(If formal charges are filed against the lawyer, the matter “shall become public 30 days after the filing of the answer” to the charges (emphasis added)). The Rule limits the circumstances under which the Commission on Lawyer Conduct is authorized to release the documents. Rule 12(c)(protection of person or public, violation of criminal law, etc.).

Whether the lawyer may release the documents during the period of confidentiality is discretionary with him or her. Rule 12(d) states that a lawyer “may reveal” the filing of a complaint by a client to establish good cause for withdrawal as counsel . . .” and if the complaint is confidential, the Rule states that the “lawyer may elect to give opposing counsel notice of the motion only without revealing the existence of the complaint.” (emphasis added). The court will seal the record or delete references to the complaint from the record if the lawyer requests that records related to the motion be sealed. Rule 12(d). More generally, the lawyer may sign a waiver for the Commission to release the complaint. Rule 12(c)(3). Accordingly, under the

¹ Rule 12 of the Rules for Judicial Disciplinary Enforcement, Rule 502, SCACR, contains similar provisions regarding the confidentiality of complaints against judges.

Rule, the Complaint and related documents are not public during the period of confidentiality, and the lawyer may not be compelled to disclose them. Therefore, Ms. Wilson may not be compelled to release the documents at issue.

This reading is in accord with an Opinion of the Office of the Attorney General which determined that complaints and related documents were not subject to FOIA. *Ops. Atty. Gen.* June 24, 1981, No. 81-60, 1981 WL 96586 (copy attached). Although the Opinion predated the current RLDE, the pertinent parts of FOIA remain the same. That Opinion determined that disciplinary files are not "public records" under §30-4-20(c) because they are "records which by law are required to be closed to the public" under the former Rule on Disciplinary Procedure section 20A. As noted in that Opinion, "[t]he rules of the South Carolina Supreme Court carry the force and effect of law. See, §§30-4-20(c), 40-5-20 and 40-5-50" The Opinion further concluded that the files would also be exempt from disclosure under section 30-4-40(4) ("[m]atters specifically exempted from disclosure by statute or law") and under 30-4-40(2) ("unreasonable invasion of privacy").

Although the FOIA request at issue in the Opinion was directed to the former Board of Commissioners, the conclusion would be the same as to the Ms. Wilson.² The documents are not public because no formal charges have been filed, and even if they were, they are exempt from disclosure. The records are closed to the public under Rule 12 and may not be opened under FOIA as set forth in the definition of public record. Nothing in this Rule or FOIA indicates that a person may make a FOIA request of a lawyer to produce complaints closed to the public under

² Although this Opinion is not binding upon this Court, it "should not be disregarded without cogent reason." *S.C. Dept. of Social Services v. Johnson*, 688 S.E.2d 588, 593, 386 S.C. 426, 436 (S.C.App.,2009) quoting *Price v. Watt*, 280 S.C. 510, 513 n. 1, 313 S.E.2d 58, 60 n. 1 (Ct.App.1984). *Johnson* found that referencing an opinion of the Attorney General "instructive" as to the application of a statute. That Opinion regarding FOIA is certainly consistent with the state of the law today and instructive on the issue.

Rule 12. Such documents are even beyond the power of a Judge to release under the above provisions of that Rule.

The Complaint contends that Ms. Wilson waived confidentiality by referring generally to the filing of grievances against her and their dismissal. Nothing in Rule 12 creates a waiver of confidentiality except, as noted above, when the Lawyer signs a waiver for the Commission on Lawyer Conduct to release documents. Rule 12(c)(3). Ms. Wilson's general reference in her letter to Lawyers Weekly is not a waiver under Rule 12 and does not alter the non-public nature of the documents under Rule 12. "A waiver is a voluntary and intentional abandonment or relinquishment of a known right." *Janasik v. Fairway Oaks Villas Horizontal Property Regime*, 415 S.E.2d 384, 387, 307 S.C. 339, 344 (S.C., 1992). Certainly, Ms. Wilson's letter had no intent whatsoever to waive confidentiality when she invoked the Rules on Lawyer Disciplinary Enforcement in her response letter and made quite clear that she believed, and correctly so, that the documents sought are not public.

III

**EVEN IF THE COMPLAINT WERE PUBLIC RECORDS, THEY WOULD BE
EXEMPT FROM DISCLOSURE UNDER §30-4-40(A)(4)(EXEMPT FROM
DISCLOSURE BY LAW) AND §30-4-40(A)(2)(UNREASONABLE INVASION OF
PERSONAL PRIVACY) DUE THE APPLICABILITY OF RULE 12**

Under §30-4-40(a), "[a] public body may but is not required to exempt from disclosure the following information: . . .

(2) Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy. . .

(4) Matters specifically exempted from disclosure by statute or law.

The Complaint and related documents are expressly exempt under Rule 12, and therefore are exempt from disclosure under §30-4-40(a)(4), even if, *arguendo*, they were public records.

This conclusion was reached by the above Attorney General's Office Opinion, and it is still the law.

Further, the disclosure of the records would also be an unreasonable invasion of personal privacy under §30-4-40(a) because Rule 12 protects against disclosure of complaints against a lawyer unless formal charges are made and none were filed here. The provisions of Rule 12 directing a court to take steps to prevent disclosure when a lawyer is withdrawing from representation, certainly indicate an intent to make the matter private.

IV

EVEN IF, *ARGUENDO*, THE DOCUMENTS WERE PUBLIC RECORDS, ANY INFORMATION THEREIN WHICH WOULD VIOLATE ATTORNEY-CLIENT PRIVILEGE OR WORK PRODUCT WOULD BE EXEMPT FROM DISCLOSURE PURSUANT TO §30-4-(A)(7).

This ground need not be reached unless, *arguendo*, the documents were found to be subject to FOIA. Any privileged documents or privileged information in documents would have to be redacted.

CONCLUSION

Plaintiff seeks documents of the Solicitor that are beyond the scope of FOIA and are expressly non-public under the Appellate Court rules. Therefore, this case must be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

[Signature block continues next page]

J. EMORY SMITH, JR.
Deputy Solicitor General
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csmith@scag.gov

BY: 

Counsel for the Defendant

January 4, 2016

 **KeyCite Red Flag - Severe Negative Treatment**
Enacted Legislation Amended by 2015 SOUTH CAROLINA COURT ORDER 0018 (C.O. 0018),

Code of Laws of South Carolina 1976 Annotated
South Carolina Appellate Court Rules
IV. Rules Governing the Practice of Law
Rule 413. Rules for Lawyer Disciplinary Enforcement
III. General Provisions

Rule 413, SCACR, Lawyer Disciplinary Enforcement, Rule 12

RULE 12. ACCESS TO DISCIPLINARY INFORMATION

Currentness

(a) **General Rule.** Except as otherwise provided in these rules or ordered by the Supreme Court, the members of the Commission, the staff of the Commission, disciplinary counsel, the staff of disciplinary counsel, the members of the Supreme Court and the staff of the Supreme Court shall not in any way reveal the existence of the complaint, while the matter remains confidential, except to persons directly involved in the matter and then only to the extent necessary for a proper disposition of the matter. A violation of this provision may be punished as a contempt of the Supreme Court.

(b) **When Misconduct Proceedings Become Public.** When formal charges are filed regarding allegations of misconduct, the formal charges, any answer, and all other documents related to the proceedings that were filed with or issued by the Commission following the filing of the formal charges shall become public 30 days after the filing of the answer or, if no answer is filed, 30 days after the expiration of the time to answer under Rule 23. Thereafter, except as otherwise provided by these rules or the Supreme Court, all subsequent records and proceedings relating to the misconduct allegations shall be open to the public inclusive of a letter of caution or admonition issued after the filing of formal charges. If allegations of incapacity are raised during the misconduct proceedings, all records, information, and proceedings relating to these allegations shall be held confidential.

(c) **Permissive Disclosure by Commission.** The Commission may, however, disclose information at any stage of the proceedings:

(1) when the chair, vice-chair or a panel of the Commission has determined that there is a need to notify another person to protect that person or to notify a government agency in order to protect the public or the administration of justice;

(2) to appropriate law enforcement officials when the chair, vice-chair or a panel of the Commission determines that it is in possession of reliable information indicating that a person has violated the criminal laws of this State, any other state, the District of Columbia, or the United States;

(3) upon waiver in writing by the lawyer;

(4) to persons from whom and entities from which it appears that a lawyer has misappropriated monies or other property when the chair or vice-chair or a panel of the Commission has determined that the disclosure of the information will tend to prevent further misappropriation or likely facilitate restitution, recovery, or compensation from the Lawyers' Fund for Client Protection, insurance coverage, title insurance, or other sources; or,

RULE 12. ACCESS TO DISCIPLINARY INFORMATION, SC R A CT RULE 413 Rule 12

(5) to the appropriate disciplinary authority in any jurisdiction in which a lawyer is admitted to practice law or has applied for admission to practice law concerning a matter where there is evidence the lawyer committed misconduct under lawyer or judicial disciplinary rules of that jurisdiction or where a lawyer receives any sanction under Rule 7(b).

(d) **Disclosure Necessary for Withdrawal as Counsel.** When it is necessary to obtain the permission of a tribunal to withdraw from representation, a lawyer may reveal the fact that the client filed a complaint with the Commission to help establish good cause for withdrawal. If the motion to be relieved includes a reference to the existence of a complaint which is confidential under this rule, the lawyer may elect to give opposing counsel notice of the motion only, without revealing the existence of the complaint. If the lawyer's motion to be relieved is accompanied by a request that the records relating to the motion be sealed, the tribunal shall take steps to prevent disclosure of the existence of the complaint to any other person. After deciding the motion to be relieved, the tribunal shall insure that either the record is sealed or that all references to the complaint are deleted from the record available to the public. No members of the tribunal or its staff who learn of the existence of the complaint shall reveal that fact to any other person.

(e) **Protective Orders.** In order to protect the interests of a complainant, witness, third party, or respondent, the chair of the hearing panel may, upon application of any person and for good cause shown, issue a protective order prohibiting the disclosure of specific information otherwise privileged or confidential and direct that the proceedings be conducted in a manner to preserve the confidentiality of the information that is the subject of the application.

(f) **Work Product and Deliberations.** Disciplinary counsel's work product, Commission deliberations, and records of the Commission's deliberations shall not be disclosed.

(g) **Permissive disclosure by the parties.** Either party may disclose in proceedings before a hearing panel statements and other evidence, gathered prior to the matter becoming public after the filing of formal charges, that were subject to discovery under Rule 25 to the extent admissible under South Carolina Rules of Civil Procedure or South Carolina Rules of Evidence.

(h) **Disclosure to Lawyers Helping Lawyers.** Commission counsel, disciplinary counsel, or a member of the staff of the Commission or disciplinary counsel, may disclose the existence of a complaint to a representative of the South Carolina Bar Lawyers Helping Lawyers Committee regarding the lawyer's need for treatment for substance abuse or a mental health issue. Disclosure under this rule shall be limited to the existence of the complaint and the issue(s) of concern and shall not reveal the nature or details of the complaint unless such disclosure is necessary for the committee to proceed.

Credits

[Adopted effective January 1, 1997. Amended effective March 6, 1997; September 1, 2003; January 1, 2010; January 28, 2013; October 9, 2013; November 12, 2014.]

<For annotated materials relating generally to Rule 413, see annotations contained in SC R A CT RULE 413 Rule 34.>

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Appellate Court Rule 413, Lawyer Disciplinary Enforcement, Rule 12, SC R A CT RULE 413 Rule 12

Current with amendments received through October 1, 2015.

End of Document

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2015 SOUTH CAROLINA COURT ORDER 0018 (C.O. 0018)

COURT RULES

NOTICE: Rules and related materials supplied by the courts are included in this database. Because all changes may not have been supplied, the court clerk should be consulted to determine current rules. Stricken material is indicated by Text .

SC ORDER 0018

C.O. 0018

COURT RULES

Effective: Effective November 12, 2015 to Effective November 12, 2015

STATE OF SOUTH CAROLINA
APPELLATE COURT RULES

Effective November 12, 2015

The Supreme Court of South Carolina

Re: Proposed Rule Revisions Submitted by the Office of Commission Counsel

Appellate Case No. 2015-000504

ORDER

On behalf of the Commission on Lawyer Conduct and the Commission on Judicial Conduct, the Office of Commission Counsel has submitted a number of proposed rule amendments to various South Carolina Appellate Court Rules that involve lawyer and judicial discipline and the Rules of Professional Conduct.

We grant the proposed amendments that: (1) add Commission Counsel to the persons who may communicate with Disciplinary Counsel regarding a matter; (2) clarify that the Commission on Lawyer Conduct or the Commission on Judicial Conduct may direct Disciplinary Counsel to disclose certain information; and (3) delete an incorrect reference in the comments to Rule 3.5, RPC, Rule 407, SCACR. We decline to adopt the remainder of the proposed rule amendments.

Pursuant to Article V, § 4, of the South Carolina Constitution, we hereby amend Rules 407, 413, and 502, SCACR, as set forth in the attachment to this order.

These amendments are effective immediately.

Columbia, South Carolina

November 12, 2015

Rule 11. RLDE. Rule 413. SCACR. is amended to provide:

<< SC R A CT RULE 413 Rule 11 >>

RULE 11. EX PARTE CONTACTS

Members of the Commission and Commission counsel shall not engage in ex parte communications regarding a case, except that before making a determination to file formal charges in a case pursuant to Rule 19(d)(4), Commission counsel and members

of the investigative panel assigned to that case may communicate with disciplinary counsel as required to perform their duties in accordance with these rules, and the chair and vice-chair may entertain requests for permissive disclosure pursuant to Rule 12(c) made by disciplinary counsel without notice to the lawyer. Where disciplinary counsel makes a request to the chair or vice-chair pursuant to either Rule 12(c) or 19(b) without notice to the lawyer, the request shall so state and set forth the reason that notice is not being given. Ex parte communications shall include any communication which would be prohibited by Section 3B(7) of the Code of Judicial Conduct, Rule 501, SCACR, if engaged in by a judge.

Rule 11, RJDE, Rule 502, SCACR, is amended to provide:

<< SC R A CT RULE 502 J DISC ENF Rule 11 >>

RULE 11. EX PARTE CONTACTS

Members of the Commission and Commission counsel shall not engage in ex parte communications regarding a case, except that before making a determination to file formal charges in a case pursuant to Rule 19(d)(4), Commission counsel and members of the investigative panel assigned to that case may communicate with disciplinary counsel as required to perform their duties in accordance with these rules and the chair and vice chair may entertain requests for permissive disclosure pursuant to Rule 12(c) made by disciplinary counsel without notice to the judge. Where disciplinary counsel makes a request to the chair or vice chair pursuant to either Rule 12(c) or 19(b) without notice to the judge, the request shall so state and set forth the reason that notice is not being given. Ex parte communications shall include any communication which would be prohibited by Section 3B(7) of the Code of Judicial Conduct, Rule 501, SCACR, if engaged in by a judge.

Rule 12(c), RLDE, Rule 413, SCACR, is amended to provide:

<< SC R A CT RULE 413 Rule 12 >>

(c) **Permissive Disclosure by Commission.** The Commission may, however, disclose information, or direct disciplinary counsel to disclose information, at any stage of the proceedings:

...

Rule 12(c), RJDE, Rule 502, SCACR, is amended to provide:

<< SC R A CT RULE 502 J DISC ENF Rule 12 >>

(c) **Permissive Disclosure by Commission.** The Commission may, however, disclose information, or direct disciplinary counsel to disclose information, at any stage of the proceedings:

...

Comment 1 to Rule 3.5, RPC, Rule 407, SCACR, is amended to provide:

<< SC R A CT RULE 407 RPC Rule 3.5 >>

Comment

[1] Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the Code of Judicial Conduct, Rule 501, SCACR, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions. The South Carolina version of paragraph (a) differs from the Model Rule in its reference to a "member of the jury venire" rather than "prospective juror" since any person technically could be the latter.

SC ORDER 15-0018

End of Document

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1981 S.C. Op. Atty. Gen. 86 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-60, 1981 WL 96586

Office of the Attorney General

State of South Carolina

Opinion No. 81-60

June 24, 1981

***1 SUBJECT: Public Information; Complaints Against Attorneys**

A grievance file of the Board of Commissioners on Grievances and Discipline is not public information unless the proceeding has been made public at the request of the respondent attorney or the investigation is predicated upon a conviction of the attorney for a crime or upon public discipline imposed upon the attorney in another jurisdiction.

TO: Board of Commissioners on Grievances and Discipline

QUESTION PRESENTED:

Whether materials from the files of the Board of Commissioners on Grievances and Discipline must be made available to the complaining party or other interested person under the Freedom of Information Act?

OPINION:

The South Carolina 'Freedom of Information Act' (FOIA), provides in Section 30-4-30 of the 1976 Code that '[a]ny person has the right to inspect or copy any public record of a public body, except as otherwise provided by § 30-4-40 . . .'. A 'public body' is defined as 'any department of the State, any state board, commission, agency and authority, any public or governmental body . . .', Section 30-4-20(a), 1976 Code. The Board of Commissioners on Grievances and Discipline would fall within this definition and, therefore, the FOIA would be applicable to the Board.¹ The question, therefore, is whether: (1) the Board's grievance files are 'public records'; and/or (2) are they exempt from disclosure under Section 30-4-40.

Section 30-4-20(e), in defining 'public records', provides, *inter alia*, that:

Records such as income tax returns, medical records, hospital medical staff reports, scholastic records, adoption records, and other records which by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of this chapter. . . . (Emphasis added.)

In this regard, the South Carolina Supreme Court's Rule on Disciplinary Procedure, Section 20A, provides:

All records and proceedings involving allegations of misconduct by an attorney shall be confidential and shall not be disclosed unless:

(1) The Respondent shall in writing request that they be public;

(2) The investigation is predicated upon a conviction of the respondent for a crime or upon public discipline imposed upon the Respondent in another jurisdiction, in which case the entire file pertaining to the crime or the public discipline, other than the work product and internal memoranda of the disciplinary agency, shall be public.

The rules of the South Carolina Supreme Court carry the force and effect of law. See, Sections 40-5-20 and 40-5-50, 1976 Code. Therefore, since Section 20 closes the Board's grievances files to the public, such files are not 'public records' within the meaning of Section 30-4-20(c).

Furthermore, it should be noted that Section 3-4-40(2) and (4) exempts from disclosure:

(2) Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of privacy, including, but not limited to, information as to gross receipts contained in application for business licenses.

*2 (4) Matters specifically exempted from disclosure by statute or law.

It would appear that grievance files would be exempt under these provisions even if they were 'public records'.

Richard B. Kale, Jr.
Senior Assistant Attorney General

Footnotes

1 The federal 'Freedom of Information Act, 5 U.S.C. § 551, et seq., is not applicable, since the Board of Commissioners on Grievances and Discipline is not an agency of the United States Government as defined in 5 U.S.C. § 551(1).

1981 S.C. Op. Atty. Gen. 86 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-60, 1981 WL 96586

End of Document

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

South Carolina Lawyers Weekly,)
By and through its principal,)
Dolan Publishing Company,)

PLAINTIFF)

vs.)

Scarlett Wilson, Solicitor)
Of the Ninth Judicial Circuit,)
An elected public official,)

DEFENDANT)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Case No.: 2015-CP-10-5757

MOTION FOR RECONSIDERATION

FILED
2016 FEB 29 PM 12:15
JULIE J. ARTHUR, CLERK OF COURT
BY _____

Plaintiff moves this Court for an order reconsidering its order in this case dated February 9, 2016, filed February 10, 2016, and received by counsel for Plaintiff on February 18, 2016. Pursuant to Rule 59(e), it is respectfully asserted that the court's order is in error for the following reasons:

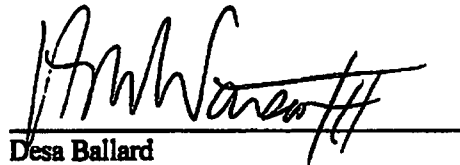
1. The trial judge verbally ruled that the Defendant was a public body, and the written order expressly disclaims any ruling on that issue. While the ruling is not final until the written order is issued, Plaintiff believes the court intended to include this finding in its ruling.
2. The court erred in including in its written order, as a basis for granting the Defendant's motion, a discussion of Rule 12 of the Rules of Lawyer Disciplinary Enforcement (RLDE), Rule 413, SCACR. That was not part of the court's preliminary verbal ruling and Defendant is informed and believes that the court did not intend its written ruling to address Rule 12, RLDE.

3. The court erred in concluding that S.C. Code Ann. § 30-4-40(a)(2) provided the Defendant with an exclusion from a request under the Freedom of Information Act. It was undisputed that the subject matter of the documents requested did not relate to Defendant's personal conduct, but instead addressed her conduct in her capacity of a public official. Therefore, the cited exclusion did not apply.
4. The signed order erred in concluding that Rule 12, RLDE prohibited disclosure of the requested documents in a Freedom of Information request. Rule 12's confidentiality provisions only apply to officers and employees of the Commission on Lawyer Conduct and the Office of Disciplinary Counsel. The restriction is not intended or effective in shielding any documents not otherwise subject to disclosure or making them "confidential." Rule 12 is not intended to, and does not, have any effect on a FOIA production request.
5. The trial court erred in failing to find that Defendant waived any confidentiality that might have been available to her, either via Rule 12, RLDE or any statutory provision. The written response to the Plaintiff's FOIA request constituted a waiver of confidentiality of the subject matter because the Defendant disclosed selected information regarding the character and content about the documents requested. Having selectively disclosed the contents of the requested documents, Defendant has waived any right to rely upon an exclusion that would otherwise be available by rule or statute.
6. The court erred in ruling that the documents sought were "beyond the scope of FOIA" and were "expressly non-public under the Appellate Court Rules."
7. The court erred in failing to grant summary judgment in favor of the Plaintiff, based on

the admissions contained in the FOIA documents and pleadings.

8. The court erred in ruling that the documents requested by the Plaintiff were personal documents of the Defendant, because the Defendant responded to the request in her official capacity with official support, thereby acknowledging that the materials requested were held by her in her public capacity.

Respectfully submitted,



Desa Ballard
Harvey M. Watson III

BALLARD & WATSON
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desaballard.com

ATTORNEY FOR PLAINTIFF

February 25, 2016

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON)

CASE NO.: 2015-CP-10-5757

South Carolina Lawyers Weekly, By and
through it's principal, Dolan Publishing
Company

MOTION AND ORDER INFORMATION

Plaintiff,)

FORM AND COVERSHEET

vs.)

Scarlett Wilson, Solicitor of the Ninth Judicial
Circuit, an elected public official

Defendant.)

Plaintiff's Attorney:

Desa Ballard, Bar No. 498

Address:

Ballard & Watson, Attorneys at Law
PO Box 6338 West Columbia, SC 29171
Phone: (803)796-9299 Fax _____
E-mail: desab@desaballard.com Other: _____

Defendant's Attorney:

J. Emory Smith, Jr., Bar No. 5262

Address:

Office of the Attorney General
PO Box 11549 Columbia, SC 29211
Phone: (803)734-3680 Fax _____
E-mail: esmith@scag.gov Other: _____

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

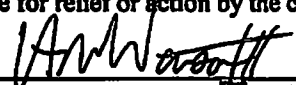
Court Reporter Needed: ☐ YES/ ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☒ Plaintiff / ☐ Defendant

2-25-16

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order.

☐ Other: _____

JUDGE CODE _____

Date: _____

Appendix 0049

ROA 047

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
South Carolina Lawyers Weekly,	)	CASE NO. 2015-CP-10-5757
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	
	)	
Scarlett Wilson,	)	
	)	
DEFENDANT.	)	

January 7, 2016

Charleston, South Carolina

B E F O R E:

The Honorable R. Markley Dennis

A P P E A R A N C E S:

Desa Ballard, Esquire
For the Plaintiff

J. Emory Smith, Esquire
For the Defense

Phyllis Norton, CVR-Master, Nationally Certified Verbatim Court Reporter
636 Long Point Road, Unit G, #74, Mt. Pleasant, South Carolina 29464
PNorton@sccourts.org

Appendix 0051

ROA 049

1 THE COURT: Are both sides here on South Carolina
2 Lawyers Weekly versus Scarlett Wilson?

3 MS. BALLARD: Yes, Your Honor.

4 THE COURT: Okay. Good. Come forward. All memorandum
5 filed in conjunction with this memorandum incorporated fully
6 for purposes of review and each one may rely on their
7 respective positions.

8 MS. BALLARD: Thank you, Your Honor. Desa Ballard for
9 the plaintiff.

10 THE COURT: Thank you, Ms. Ballard.

11 MR. SMITH: And Emory Smith for the defendants, Your
12 Honor.

13 THE COURT: Thank you, Mr. Smith. Good to see both of
14 you again. Okay.

15 Mr. Smith, I think this is your motion; is it not?

16 MR. SMITH: It is, Your Honor. Your Honor, Lawyers
17 Weekly submitted a Freedom of Information Act request of
18 Solicitor Wilson for any documents related to the attorney
19 disciplinary complaints made against her. She responded.
20 Denied the request for reasons that are similar to those
21 that I have included in our motion to dismiss.

22 THE COURT: Right.

23 MR. SMITH: She also related that the grievances have
24 been filed against her by people who disagree with her. The
25 Office of Disciplinary Counsel has recommended their

1 dismissal. No formal charges have been filed against her.

2 We believe that this request is not proper under FOYA
3 for a number of reasons. First of all, FOYA applies to
4 public bodies and Ms. Wilson is not a public body. She is
5 an officer ---

6 THE COURT: But you would agree with me she is an
7 officer representative of the Solicitor's Office and is the
8 solicitor?

9 MR. SMITH: She is, Your Honor. But these are personal
10 documents of hers. They are not documents of the
11 Solicitor's Office.

12 THE COURT: Well, let me ask a question. Because I
13 noted that. Do these not relate to her performing her
14 duties as a solicitor though?

15 MR. SMITH: Well, Your Honor, we don't have the
16 complaints before us so ---

17 THE COURT: I understand ---

18 MR. SMITH: --- we don't know.

19 THE COURT: I understand that.

20 MR. SMITH: I have not seen them myself, Your Honor.
21 But I think it would not matter because ---

22 THE COURT: Well ---

23 MR. SMITH: --- under the ---

24 THE COURT: Well, let me just state this. Obviously
25 maybe this is a wrong assumption on my part and you can

1 please correct me, but if it went to the Office of
2 Disciplinary Counsel it had to be in her role as an
3 attorney.

4 She can't practice law in any capacity I don't
5 believe other than the solicitor, so that is my assumption
6 that that -- that it would be in conjunction with that.

7 MR. SMITH: Well, it may, Your Honor. But our position
8 would be that it does not make a difference as a matter of
9 law ---

10 THE COURT: Yeah, I ---

11 MR. SMITH: --- because that rule applies to lawyers in
12 their individual capacities. And if there was an intent to
13 make those documents public simply because that lawyer is
14 also a public official then it can say so, but it does not.

15 It closes them to the public. It makes them non
16 public. It is not just a matter of whether the Commission
17 on Lawyer Conduct and the Office of Disciplinary Counsel and
18 the Supreme Court are restrained. It is non public, period.

19 THE COURT: And the reason I asked the questions, I
20 don't disagree with your argument concerning the nature of
21 the Office of Disciplinary Counsel; my point was I didn't --
22 I think for purposes -- this is a motion to dismiss, number
23 one, so it is based on the pleadings I assume.

24 MR. SMITH: Yes.

25 THE COURT: So I really and truly don't see any problem

1 because I think it is the officer and that may well be
2 proper for a FOYA. Just because she is a solicitor and an
3 individual I don't think doesn't -- didn't -- doesn't stop
4 me from ordering it.

5 Getting to the next level though the next level is what
6 it is about. And that is where I focus my -- in reading
7 your memorandum that to me is the part that I would like you

8 to focus on is to whether or not that is really public
9 matter or whether or not that is -- is it not privileged ---
10 private matters until certain things occur. That is what I
11 understand.

12 MR. SMITH: Well, our proposition would be that
13 regardless of whether it is about her duties as a solicitor
14 or not, a claim could be made against a lawyer ---

15 THE COURT: Sure.

16 MR. SMITH: --- for conduct that occurs outside of the
17 practice of law ---

18 THE COURT: I understand.

19 MR. SMITH: --- such as lawyer's commission of a
20 crime ---

21 THE COURT: Correct.

22 MR. SMITH: --- unrelated to the practice of law. But
23 our position is that FOYA closes -- exempts from the
24 definition of public documents, public records, those
25 documents that are closed to the public as a matter of law.

1 And grievous complaints until formal charges are made and
2 they are answered in the 30 days that run are non public
3 under the rule.

4 It is not just that these -- that the Office of
5 Disciplinary Counsel can't release it; it is non public. It
6 is within the discretion of the lawyer himself or herself as
7 to whether they are released before then.

8 If a lawyer is representing a client who has made a
9 complaint against him or her and that lawyer believes that
10 he or she should withdraw from representations the lawyer
11 doesn't have to let opposing counsel see that complaint. He
12 can just simply make that request. He can ask the judge to
13 seal the record.

14 THE COURT: I assure you I am familiar with that one.
15 Because it happens not frequently but it is not a rarity in
16 a criminal case to have someone especially in appointed
17 counsel's situation. So I see that frequently. I
18 understand that.

19 MR. SMITH: So regardless of what these complaints are
20 about - and as I noted the solicitor has said that the
21 dismissal had been recommended, there's no formal charges -
22 they are closed to the public. They are non public under
23 that rule. And FOYA says that documents that are closed to
24 the public as a matter of law that rule is a law are not
25 public records under FOYA. It is also specific ground for

1 exemption under that rule too. We have got a 1981 Attorney
2 General's Office opinion ---

3 THE COURT: Right.

4 MR. SMITH: --- that I attached ---

5 THE COURT: Yeah.

6 MR. SMITH: --- that reached the same conclusion. It
7 is not about a solicitor but about the fact that these
8 complaints were not subject to FOYA.

9 If the legislature had disagreed with that
10 interpretation, or the Supreme Court, they could have
11 modified either the rule or the FOYA statute. And that has
12 not occurred since then. That has been the rule since then.
13 I am not aware of any instance in which a public official
14 has been required by FOYA to produce complaints against
15 them.

16 So our position is is that they are closed to the
17 public by this rule, they are not public records under the
18 FOYA statute, and that because these are records personal to
19 her this -- she is an officer, is not a public body under
20 that rule. That just applies to agencies. Personal records
21 of hers are not records of the agency and so therefore it is
22 not subject to FOYA.

23 THE COURT: Okay. Thank you, Mr. Smith.

24 MR. SMITH: And if I may just briefly.

25 THE COURT: Sure.

1 MR. SMITH: Just a few points in Ms. Ballard's
2 memorandum.

3 THE COURT: Well, why don't you do this. I will allow
4 you to respond to hers. You don't have to address that now.
5 I will give you a chance to reply to Ms. Ballard's argument.

6 Ms. Ballard.

7 MR. SMITH: Thank you, Your Honor.

8 THE COURT: Be delighted to hear from you.

9 MS. BALLARD: Thank you very much, Your Honor.

10 THE COURT: Yes, sir.

11 MS. BALLARD: I would refer you to the complaint
12 itself ---

13 THE COURT: Okay.

14 MS. BALLARD: --- which attached is Exhibit B was Ms.
15 Wilson's response to the FOYA request that was served upon
16 her by the -- by my client, South Carolina Lawyers Weekly.

17 Her response is dated July 28th, 2015. And she
18 specifically says that the grievances that have been filed
19 against her - I am reading from the final paragraph - had to
20 do, quote, with her management of the Solicitor's Office and
21 in some case -- in some cases with her handling of cases,
22 unquote.

23 THE COURT: Okay.

24 MS. BALLARD: So Ms. Wilson has acknowledge that the
25 documents about which complaints were filed related to ---

1 THE COURT: I don't -- I really don't have to --
2 because I don't have personal a problem -- if the only issue
3 was whether or not she is a public body there is no question
4 what I would do. I mean I think she is. Okay?

5 MS. BALLARD: Yes, Your Honor.

6 THE COURT: For purposes of a FOYA request.

7 MS. BALLARD: Yes, Your Honor.

8 THE COURT: What I would like for you to address is
9 really the nature of what you are seeking. And I just --
10 how -- how -- how do you -- how it is you are entitled to
11 that?

12 MS. BALLARD: I will be happy to address that, Your
13 Honor.

14 THE COURT: Okay.

15 MS. BALLARD: Ms. Wilson is relying on Rule 12 of the
16 Rules of Lawyer Disciplinary Enforcement. And as much as
17 Emory and I have great respect for each I think he is
18 misconstruing Rule 12.

19 Rule 12 has no application to the lawyer herself. Rule
20 12 by its very definition only addresses restrictions that
21 are on the Supreme Court, the Commission on Lawyer Conduct,
22 and the Office Of Disciplinary Counsel.

23 By definition any lawyer against whom a complaint is
24 filed at any stage of the proceedings can buy a Billboard on
25 26 and publish the fact that a grievance has been filed

1 against them. The individual lawyers are under no
2 prohibition whatsoever to reveal the existence of a
3 grievance with them.

4 THE COURT: Well, I don't quarrel with that. I mean we
5 have already stated I see that, as I have already alluded
6 to, frequently and have heard a number of them.

7 But it is the content that we are talking about. It is
8 not just that the grievance was filed. It is what was
9 filed. And that is the part that I -- I just don't know how
10 that is subject to a FOYA.

11 MS. BALLARD: Well, if it had to do with her management
12 of the Solicitor's Office she is an elected official and by
13 virtue of her status as a lawyer also being an elected
14 official if she is doing something for a private client I
15 think that is a different matter; but if she has had a
16 complaint filed against her arising out of her public duties
17 that she performs not as a private lawyer but as an elected
18 public official, by definition those documents have to be
19 public. She answered this FOYA request on her official
20 letterhead.

21 THE COURT: Oh, I understand that.

22 MS. BALLARD: She used State resources or County
23 resources, depending on how they are funded, to answer this
24 question.

25 And she actually in addition to saying you can't have

1 these documents she then went on to say by the way they
2 exist and this is what they are about.

3 So even if she has any protection under FOYA she has
4 waived the protection under FOYA by disclosing that portion
5 of the proceedings that she felt like she could disclose
6 which were favorable to her without disclosing the entire
7 content of the public documents that we are requesting.

8 The other point that I made in my memo, Your Honor, is
9 that the Attorney General's Office is required before they
10 appear on behalf of a public official to investigate the
11 matter. And the Attorneys General's Office is prohibited
12 from appearing in front of -- or representing any public
13 official unless they have determined that the conduct in
14 question arose in the course and scope of her official
15 duties. So the fact that the Attorney General's Office is
16 even here representing the solicitor ---

17 THE COURT: Well, we really don't need to stress that
18 because I have already said I don't question what it is. I
19 mean ---

20 MS. BALLARD: Well, if she is a public official ---

21 THE COURT: Yeah.

22 MS. BALLARD: --- and these documents were received by
23 her related to complaints about her conduct as a public
24 official I think that answers the question.

25 THE COURT: Well, I appreciate that. And you and I may

1 have to agree to disagree.

2 MS. BALLARD: Thank you, Your Honor.

3 THE COURT: All right. I don't quarrel with that. I
4 think we need -- I mean I have read the Attorney General's
5 opinion and if necessary we may be framing an issue that
6 needs to be addressed.

7 I understand there is certainly -- I think I mentioned
8 it yesterday about my family has been involved, my father
9 specifically in wanting to do things in - I will use the
10 proper term - executive session, when they really didn't
11 need to be.

12 It just lends itself to the suspicion and really
13 jumping to conclusions that people do that you are hiding
14 something. And I understand that.

15 But by the same token there are certain things that I
16 think at least as I see them need to be preserved until the
17 court tells me otherwise. And that will be matters that are
18 filed with the Office of Disciplinary Counsel that were
19 dismissed. And I -- I mean we have the same situation.

20 And so if the court wants to say yep lawyer you are
21 protected but if you could go and you are off and you assume
22 an office - it is a public office - that protection doesn't
23 continue. Because that is what you are saying really in
24 essence.

25 I understand you think she by her actions she has

1 waived it. I don't think by disclosing that a grievance has
2 been filed that is permitted. As I recall when I was
3 practicing you used to not could say that even.

4 MS. BALLARD: That is true. The rules changed ---

5 THE COURT: But it changed.

6 MS. BALLARD: --- in 1991.

7 THE COURT: But I don't think that that -- now it
8 becomes discretionary again. I just don't think it is a
9 public matter. I don't think it is a matter that needs to
10 be disclosed; and it is protected for the reasons stated in
11 your brief, Mr. Smith.

12 So I don't want to focus on that she is not a public
13 body. I mean I think -- I think she is subject to that part
14 of it from the standpoint of a FOYA request. But I just
15 don't think the material they are entitled to it so ---

16 MS. BALLARD: Your Honor, for the record could I
17 respond to two points ---

18 THE COURT: Sure. Absolutely.

19 MS. BALLARD: --- in a 1981 Attorney General's
20 opinions?

21 THE COURT: Sure. Well, you can respond. But that is
22 really and truly we all know it is for guidance. It is not
23 binding on me. It is not binding on you. It won't be
24 binding on the reviewing court. They are going to make a
25 determination.

1 So I appreciate that. I am just -- one thing I have
2 learned is -- when I -- as I have stated before -- you all
3 remember him well too, and I can remember hearing him speak,
4 and Justice Ness would somewhere in his conversation would
5 always say I may be wrong but never in doubt. And I used
6 to ---

7 MS. BALLARD: His exact quote was I may be in error but
8 I am never in doubt.

9 THE COURT: Well, the one thing I have come to
10 realize ---

11 MS. BALLARD: Yes, sir.

12 THE COURT: --- now I understand. I used to think it
13 was pretty presumptuous as a lawyer. But when I took this
14 job I began to understand he is right.

15 You know I -- y'all may be -- you may be right, but
16 today I am not in doubt about what I am doing. I am
17 comfortable with my decision. And if the court says Judge
18 you have made a mistake, I will try to learn from that. But
19 I thank you for that.

20 MS. BALLARD: I appreciate your guidance on the issue,
21 Your Honor. Thank you very much.

22 THE COURT: Thank you so much, Ms. Ballard. Good to
23 see you as well.

24 And Mr. Smith I think probably for the protection of
25 everything if you will prepare an order.

RULE ON DISCIPLINARY PROCEDURE Par. 20

granted by the Court upon a showing by clear and convincing evidence that the attorney's disability has been removed and he is fit to resume the practice of law. Upon the application, the Court may take or direct action as it deems necessary or proper to a determination of whether the attorney's disability has been removed, including a direction for an examination of the attorney by qualified medical experts as the Court shall designate. In its discretion, the Court may direct that the expense of the examination be paid by the attorney.

G. If an attorney has been transferred to disability inactive status by an Order in accordance with paragraph C above, and thereafter in proceedings duly taken, he has been judicially declared to be competent, this Court may dispense with further evidence that his disability has been removed and may direct his reinstatement to active status upon terms as are deemed proper and advisable.

H. The filing of a petition for reinstatement to active status by an attorney transferred to disability inactive status or any other petition or motion based upon a mental or medical condition shall constitute consent to divulge his medical records. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician, and hospital or other institution by whom or in which the attorney has been examined or treated since his transfer to disability inactive status and he shall furnish to this Court written consent to each to divulge such information and records as requested by Court appointed medical experts.

PARAGRAPH 20. CONFIDENTIALITY

A. All records and proceedings involving allegations of Misconduct by an attorney shall be confidential and shall not be disclosed unless:

- (1) The Respondent shall in writing request that they be public;
- (2) The investigation is predicated upon a conviction of the Respondent for a crime or upon public discipline imposed upon the Respondent in another jurisdiction, in which case the entire file pertaining to the crime or the public discipline, other than the work product and internal memoranda of the disciplinary agency, shall be public.

B. All proceedings involving allegations of disability on the part of an attorney shall be kept confidential until and unless the Supreme Court enters an Order transferring the Respondent to disability inactive status pursuant to paragraph 19 of the Rule in which case paragraphs 19D & E shall apply.

C. Proceedings involving allegations of misconduct by or the disability of an attorney frequently require the disclosure of otherwise confidential or privileged information concerning the complainant or the witness. In order to protect the interests of the complainant or the witness, the hearing panel to whom formal prosecution of an allegation of misconduct or disability of an attorney is assigned, or the Executive

Committee in matters considered by it, may, upon application and for good cause shown, issue a protective order prohibiting the disclosure of such information and direct that the proceedings be so conducted as to implement the order.

D. No persons whomsoever in any way connected with a matter before the Board, or otherwise, including witnesses, counsel, counsel's secretaries, Respondent, Board members, judicial officers, Board employees, reporters or investigators, shall mention the existence of any such proceeding, nor disclose any information pertaining thereto or discuss any testimony or evidence therein except to persons directly involved, and then only to such extent as necessary for a proper disposition of the matter. Any proceeding before the Board may be made public upon written request of the Respondent.

E. Violation of this provision shall be deemed contempt of this Court and punishable as such. All persons attending any proceedings or taking part in any matter hereunder shall be advised of this provision upon the commencement thereof. All records and correspondence held by members of the Board at the conclusion of their respective terms of office shall be carefully screened by them. They shall deliver all essential records and correspondence, so held, to the Board for filing with the permanent records of the Board, and destroy all nonessential records having no permanent or continuing effect.

F. The Board through the Chairman may disclose relevant information that is otherwise confidential to agencies authorized to investigate the qualifications of judicial candidates, to agencies investigating qualifications for admission to practice, to law enforcement agencies investigating qualifications for government employment, and to such other agencies as designated by the Court. If the Board through the Chairman decides to answer a request for relevant information, and if the attorney who is the subject of the request has not signed a waiver permitting the requesting agency to obtain confidential information, the Board through the Chairman shall send to the attorney at his last known address a notice that information has been requested and by whom, together with a copy of the information that the Board proposes to release to the requesting agency. The Board through the Chairman shall inform the subject attorney that the information shall be released at the end of eight days unless the attorney obtains a court order restraining such disclosure.

G. The Board through the Chairman or his designee shall transmit notice of all public discipline imposed on an attorney or the transfer to inactive status due to disability of an attorney to the National Discipline Data Bank maintained by the American Bar Association.

H. All participants in the proceedings shall conduct themselves so as to maintain the confidentiality mandated by this Rule.

RULE ON DISCIPLINARY PROCEDURE Par. 22

L. When it is necessary to obtain the permission of a tribunal to withdraw from representation, an attorney may reveal the fact that the client has filed a grievance to help establish good cause for withdrawal. If the motion to be relieved includes a reference to the grievance, the attorney shall serve a copy of the motion on the client, but shall give opposing counsel only notice of the motion, without revealing the existence of the grievance. The motion to be relieved shall be accompanied by a request that the records relating to the motion be sealed. The tribunal shall take steps to prevent the disclosure of the existence of the grievance to any other person. After deciding the motion to be relieved, the tribunal shall insure that either the record on the motion is sealed or that all references to the grievance are deleted from any record available to the public. All members of the tribunal and staff who learn of the existence of the grievance shall not reveal that fact to any other person.

[Amended effective May 16, 1989.]

PARAGRAPH 21. SERVICE OF NOTICES, ETC.

Wherever in this Rule provision is made for the service of any notice, order, report or other paper or copy thereof upon any complainant, or Respondent or petitioner in connection with any proceeding involving a grievance or a petition for reinstatement, service may be made upon counsel of record for complainant, Respondent, or petitioner, either personally, by registered mail or by certified mail, return receipt requested.

PARAGRAPH 22. CLERK IS AGENT FOR SERVICE OF NOTICES ON NON-RESIDENT ATTORNEYS

Service of any notice provided for in this Rule upon any non-resident Respondent who has been admitted to the practice of law pursuant to the Rules of this Court, or upon any resident Respondent who, having been so admitted, subsequently becomes a non-resident or after due diligence cannot be found at his usual abode or place of business in this state, may be made by leaving with the Clerk of the Court a true and attested copy of such notice and any accompanying documents and by sending to the Respondent, by registered mail, a like, true, and attested copy, with an endorsement thereon of the service upon the said Clerk, addressed to such Respondent at his last known address.

The postmaster's receipt for the payment of such registered postage shall be attached to and made a part of the return of service of such notice by the Board. The Chairman of the Board or the Court before which there was pending any proceeding in which notice has been given as provided in this section may order such continuance as may be necessary to afford the Respondent reasonable opportunity to appear

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
R. MARKLEY JENNIS JR., CIRCUIT COURT JUDGE
Trial Court Case No.: 2015-CP-10-5757
Appellate Case No. 2016-000555

South Carolina Lawyers Weekly,
by and through its principal, Dolan Publishing Company,

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Appellant SC Court of Appeals

VS.

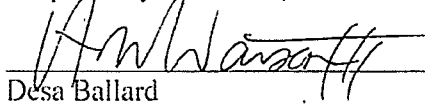
Scarlett Wilson, Solicitor Of the Ninth Judicial Circuit,
An elected public official.

Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,



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ATTORNEYS FOR APPELLANT

July 26, 2016

Appendix 0068

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
R. MARKLEY JENNIS JR., CIRCUIT COURT JUDGE
Trial Court Case No. 2015-CP-105757
Appellate Case No. 2016-000555

South Carolina Lawyers Weekly,
by and through its principal, Dolan Publishing Company,

Appellant,

vs.

Scarlett Wilson, Solicitor Of the Ninth Judicial Circuit,
An elected public official,

Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. THE TRIAL COURT ERRED IN FAILING TO FIND THAT DEFENDANT IS A PUBLIC OFFICER AND HER OFFICE IS A PUBLIC BODY AND THEREFORE SUBJECT TO THE FREEDOM OF INFORMATION ACT.
2. THE TRIAL COURT ERRED IN ITS INTERPRETATION OF AND RELIANCE ON RULE 12 OF THE RULES OF LAWYER DISCIPLINARY ENFORCEMENT (RLDE), RULE 413, SCACR, WHICH HAS NO BEARING ON THE DETERMINATION OF WHETHER A DOCUMENT IS, OR IS NOT, A PUBLIC DOCUMENT UNDER FOIA.
3. THE TRIAL COURT ERRED IN CONCLUDING THAT S.C. CODE ANN. § 30-4-40(A)(2) PROVIDED THE DEFENDANT WITH AN EXCLUSION FROM A REQUEST UNDER THE FREEDOM OF INFORMATION ACT. IT WAS UNDISPUTED THAT THE SUBJECT MATTER OF THE DOCUMENTS REQUESTED DID NOT RELATE TO DEFENDANT'S PERSONAL CONDUCT, BUT INSTEAD ADDRESSED HER CONDUCT IN HER CAPACITY OF A PUBLIC OFFICIAL. THEREFORE, THE CITED EXCLUSION DID NOT APPLY.
4. THE TRIAL COURT ERRED IN FAILING TO FIND THAT DEFENDANT WAIVED ANY CONFIDENTIALITY THAT MIGHT HAVE BEEN AVAILABLE TO HER UNDER RULE OR STATUTE. THE COURT ERRED IN RULING THAT THE DOCUMENTS SOUGHT WERE "BEYOND THE SCOPE OF FOIA;" WERE "EXPRESSLY NON-PUBLIC UNDER THE APPELLATE COURT RULES," AND WERE "PERSONAL DOCUMENTS" OF THE RESPONDENT.

STATEMENT OF THE CASE

On or about July 10, 2015, Appellant made request to Respondent to inspect and copy any records relating to any disciplinary complaints made against her or action taken with respect to her as a member of the South Carolina Bar. The request was made pursuant to S. C. Code Ann. Section 30-4-10 *et seq.*, hereafter "the Act." Respondent answered the request on her official letterhead, acknowledging that her office was subject to the Act, but declining to produce the records on four (4) bases:

1. Respondent asserted she was not a public body and she is not a public official.
2. The documents were confidential pursuant to Rule 12 of the Rules on Lawyer Disciplinary Enforcement (RDLE) and the documents were personal in nature.
3. The documents were exempt from disclosure under the Act.
4. Production would violate the attorney-client privilege.

Respondent made a motion to dismiss the action, citing the above grounds. The matter was heard by the Honorable J. Markley Dennis Jr., who granted the motion. A motion for reconsideration was filed, and was also denied. This appeal follows.

ARGUMENTS

Issue One

THE TRIAL COURT ERRED IN FAILING TO FIND THAT DEFENDANT IS A PUBLIC OFFICER AND HER OFFICE IS A PUBLIC BODY AND THEREFORE SUBJECT TO THE FREEDOM OF INFORMATION ACT.

Respondent Scarlet Wilson is an elected official of the State of South Carolina, serving as Solicitor of the Ninth Judicial Circuit, elected by the electorate of the Ninth Judicial Circuit. She is a full-time employee of the State of South Carolina and has such duties as are assigned to her by law in the State of South Carolina, including the duty to receive and administer county funds within her circuit. (R. p. 12 ¶ 2).

In order to hold her elected office, Respondent is required to be a member of the South Carolina Bar, licensed to practice law in South Carolina. (R. p. 12 ¶ 3). Respondent does not maintain a private practice of law and has no private clients. Any legal services she provides are provided as a public officer of the State. (R. p. 13 ¶ 4). Respondent is a public official and her office constitutes a “public body” as defined by the Act. S.C. Code Ann. Section 30-4-10 *et seq.* (Rev. 2007).

In the hearing in this matter, the trial judge specifically noted that Respondent “is an officer representative of the Solicitor’s Office and is the solicitor.” (R. p. 51, lines 6-8). The court also noted that Respondent “can’t practice law in any capacity... other than the solicitor.” (R. p. 52, lines 4-6). The trial judge also observed that “it is the officer and that may well be proper” under the Act. (R. p. 52, line 25 – 53, line 4).

Respondent also acknowledged in her response to Appellant’s request, that the Act “requires that this office, as a public body, make available to the public... any ‘public record’ kept during the normal course of our business.” (R. p. 21). The trial judge specifically said if

“the only issue was whether or not she is a public body, there is no question what I would do. I mean, I think she is.” (R. p. 57, lines 2 – 4).

Nonetheless, the trial judge’s written order declined to address this issue, concluding that the order “need not reach this issue” and went on to deny the relief requested on other grounds. (R. p. 7).

It is respectfully asserted that a ruling that the Respondent is a public official, and therefore generally subject to the Act, is a determination that is accurate as a matter of law. The Supreme Court has noted that the provisions of the Act “must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials...” Stephen George Brock v. Town of Mount Pleasant, Opinion No. 27621 (filed April 13, 2016), quoting Wallace v. City of York, 276 S.C. 694, 281 S.E.2d 487, 488 (1981).

While the trial court’s order assumed that Respondent was a public official for purposes of the Act, Respondent urges that an express finding of the character of the Respondent’s role is necessary for a full discussion of the issues presented here.

The trial court erred in failing to find, as a matter of law, that Respondent was a public official and her office is a public office.

Issue Two

THE COURT TRIAL COURT ERRED IN ITS INTERPRETATION OF AND RELIANCE ON RULE 12 OF THE RULES OF LAWYER DISCIPLINARY ENFORCEMENT (RLDE), RULE 413, SCACR, WHICH HAS NO BEARING ON THE DETERMINATION OF WHETHER A DOCUMENT IS, OR IS NOT, A PUBLIC DOCUMENT UNDER FOIA.

The trial court agreed with Respondent’s argument that Rule 12 of the Rules on Lawyer Disciplinary Enforcement (RLDE) operate to make the documents requested “confidential.”

Specifically, the trial judge said that “Rule 12 closes the documents at issue to the public.” (R. p. 2) (emphasis added).

Rule 12 of the RLDE, contained in Rule 413, SCACR, has no application in requests under the Freedom of Information Act. Specifically, the Rule reads:

... [T]he members of the Commission, the staff of the Commission, disciplinary counsel, the staff of disciplinary counsel, the members of the Supreme Court and the staff of the Supreme Court shall not in any way reveal the existence of the complaint, while the matter remains confidential...

Rule 12, RLDE.

By definition, the RLDE apply only to “the procedure for resolving allegations that a lawyer has committed ethical misconduct... .” Rule 1, RLDE. Noticeably absent from Rule 12 is any prohibition that the complainant, the responding lawyer, any witness, or any other person with knowledge of proceedings before the Commission other than the specific persons mentioned in Rule 12 are subject to any obligation of confidentiality. Any person involved in or who has knowledge of a grievance proceeding other than the persons specified in the rule are not prohibited in any way from divulging the existence of a matter under the RLDE. Indeed, any attempt to silence the complainant, the responding lawyer, or witnesses, would certainly fall under a First Amendment challenge. See City of Beaufort v. Baker, 315 S.C. 146, 432 S.D.2d 470 (1993), *c.f.*, Disabato v. SC Ass’n. of School Adm’rs., 404 S.C. 433, 746 S.E.2d 329 (2013).

Moreover, Rule 12 does not say that any document is confidential; instead it placed a prohibition on certain categories of persons from divulging the existence of proceedings which are occurring or have occurred under the RLDE. Section 12(b) of the Rule specifically provides when the files maintained by the persons named in Section (a) become public. But in the hands of anyone other than the persons to whom the prohibition of Section (a) applies, the documents always are, and always have been, public documents. Stated differently, there is no rule which prohibits the

complainant, the responding lawyer, or any person other than those specifically identified in Section (a) from disclosing the documents or widely disseminating them.

Court rules, such as the RLDE, are enacted by the South Carolina Supreme Court pursuant to Article V, Section 4¹ of the South Carolina Constitution. The Court's powers are limited to enacting rules "governing the practice and procedure in all [state] courts." That article also provides that the "Supreme court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted." Id.

The Supreme Court's rule-making authority does not empower it to enact rules which change the meaning of statutes. The separation of powers doctrine simply would not permit a court rule to modify the meaning of a statutory scheme. See SC Public Interest Forum v. SC Transp. Infrastructure Bank, 403 S.C. 640, 744 S.E.2d 521 (2013). As Appellant argued below, "Rule 12 by its very definition only addresses restrictions that are on the Supreme Court, the Commission on Lawyer Conduct, and the Office of Disciplinary Counsel." (R. p. 57, lines 19-22). "By definition any lawyer against whom a complaint is filed at any state of the proceedings can buy a billboard on 26 and public the fact that a grievance has been filed against them." (R. p. 57, line 23 – p. 58, line 1).

The trial judge erred in concluding that Rule 12 of the RLDE changes the nature of documents held by a public official and "makes the documents... non-public because formal charges have not been filed." (R. p. 3). The Act is a self-contained Act, not amended or restricted by procedural rules which govern the operation of the state courts and the discipline of lawyers.

¹ The 1973 amendments to Article V, Section 4 were accompanied by substantive changes to the structure and operation of the judicial system which "eliminated the balkanization of our [judicial system]." Cort Indus. Corp. v. Swirl, 264 S.C. 142, 146, 213 S.E.2d 445 (1975). The Supreme Court subsequently noted that the amendments had created a prohibition on the General Assembly making changes to the unified court system. State ex rel. McLeod v. Knight, 264 S.C. 532, 216 S.E.2d 190 (1975). In 1985, the Supreme Court and the General Assembly reached a historic agreement which led to the repeal of statutes enacted by the General Assembly which governed procedure in the unified court system, leaving procedural matters governing the state courts to the Supreme Court's exclusive authority. See Stokes v. Denmark Emergency Med. Servs., 315 S.C. 263, 433 S.E.2d 850 (1993).

Having concluded that Rule 12 made the documents sought here “non-public,” the trial court cited Rule 12(d) in support of his conclusion that a lawyer (who is subject to a complaint before the Commission) “may reveal” the filing of complaint. Having said that, however, the trial judge again permitted Rule 12 to modify the obligations of a public official under the Act. “Accordingly, under the Rule, the Complaint and related documents are not public during the period of confidentiality” and “the lawyer may not be compelled to disclose them.” (R. p. 3) (emphasis added). Again, the trial judge erroneously concluded that the procedural rules governing complaints filed with the Commission can alter a public officials obligations under FOIA². Such a construction is legal error, and is actually prohibited by the separation of powers doctrine.

The trial judge erroneously concluded that he lacked the “power” to release documents which were requested of the respondent in this proceeding. Again, his error is in believing that Rule 12 has any effect on the statutory obligations set forth in the Act. His decision should be reversed, and remanded to order production of the documents in question.

Issue Three

THE COURT ERRED IN CONCLUDING THAT S.C. CODE ANN. § 30-4-40(A)(2) PROVIDED THE DEFENDANT WITH AN EXCLUSION FROM A REQUEST UNDER THE FREEDOM OF INFORMATION ACT. IT WAS UNDISPUTED THAT THE SUBJECT MATTER OF THE DOCUMENTS REQUESTED DID NOT RELATE TO DEFENDANT’S PERSONAL CONDUCT, BUT INSTEAD ADDRESSED HER CONDUCT IN HER CAPACITY OF A PUBLIC OFFICIAL. THEREFORE, THE CITED EXCLUSION DID NOT APPLY.

The trial judge also erred in concluding that the requested documents were exempt from disclosure under Section 30-4-40(a). That provision exempts from disclosure under the Act

² The Court also cited to a 1981 opinion of the Attorney General which has become moot by virtue of the entire restructuring both of the unified judicial system in 1973 and the exclusive allocation to the Supreme Court in 1985 of the right to establish procedure for the courts and for the practice of law.

“information of a personal nature where the public disclosure thereof would constitute an unreasonable invasion of personal privacy.”

As pleaded in the complaint, any records received by the [Respondent] from the Office of Disciplinary Counsel or the Commission on Lawyer conduct which relate to her conduct as a public official are required to be maintained in accordance with the Public Records Act... ” (R. p. 13 ¶ 8) (emphasis added). It is respectfully asserted that any complaints which relate to the fitness of the Respondent to carry out the duties of her public office are legitimate matters of public inquiry under the Act and are not exempt from disclosure pursuant to 30-4-40(a) as an invasion of personal privacy.

Because the matter was decided on a motion to dismiss, the well-pleaded allegations of the complaint are construed liberally, and the court assumes the matters alleged to be true. United Educ. Distribs. LLC v. Educ. Testing Servs., 350 S.C. 7, 564 S.E.2d 324 (Ct.App. 2002). Moreover, based on the complaint itself, Respondent admitted that the documents sought related to her conduct as a public official.

In the last year a number of grievances have been filed against [Respondent] by or at the behest of disgruntled criminal defense lawyers who disagree with her management of the Solicitor’s Office and in some cases with her handling of cases.

(R. p. 21).

This is not a situation in which the conduct forming the factual basis for the claim under the Act relates to Respondent’s personal conduct. Had the complaint related to her conduct as a private citizen, a different result may be required. Here, however, it is undisputed that the complaints which are sought specifically relate to the Respondent’s job as a public official.

The act is “remedial in nature” and should be “liberally construed” to carry out the purpose mandated by the legislature. Quality Towing Inc. v. City of Myrtle Beach, 345 S.C. 163, 547 S.E.2d 862 (2001). “Consistent with the [Act’s] goal of broad disclosure, the exemptions from its

mandates are to be narrowly construed.” Burton v. York County Sheriff’s Dep’t, 358 S.C. 339, 348, 594 S.E.2d 888 (Ct.App. 2004). The Act “creates an affirmative duty on the part of public bodies to disclose information.” Id. citing Bellamy v. Brown, 305 S.C. 291, 295 408 S.E.2d 219, 221 (1991).

The Act governs the public disclosure of the activities of public bodies. Lambries v. Saluda Cnty. Council, 409 S.C. 1, 760 S.E.2d 785 (2014). “The essential purpose of FOIA is to protect the public from secret government activity.” Id. at 789. Where, as here, it is undisputed that the Respondent’s actions as a public official are the subject of the inquiry, the purposes of the Act are especially urgent.

The trial court’s ruling seems to take the mandate that a solicitor be a lawyer in order to carry out her public duties, and use it as a sword to prevent inquiry into the ethical operations of her office, somehow making them private and not a subject of public inquiry. Such a conclusion turns the very purpose of the Act on its head.

It is because Respondent is a public official that public inquiry into the operation of her public office, using public funds, is subject to disclosure under the act. Just because the Respondent personally may be subject to discipline as a result of her public activities, she should not have the benefit of the shield of “private” information provided by the exemption.

This is not a case in which the Respondent’s private conduct is at issue. It is undisputed that the complaints which are the subject of Appellant’s request all related to Respondent’s conduct in her elected capacity. She admits that.

Construing the exemption of “personal” information broadly, as the Court must, it is clear that the trial court erred in agreeing, as a matter of law, that the documents sought were protected by the exemption.

Issue Four

THE TRIAL COURT ERRED IN FAILING TO FIND THAT DEFENDANT WAIVED ANY CONFIDENTIALITY THAT MIGHT HAVE BEEN AVAILABLE TO HER UNDER RULE OR STATUTE.

Appellant argued that, even if Respondent might be entitled to protection from production under the Act, she waived her right to do so by virtue of her decision to disclose some information about the documents sought. Specifically, respondent admitted that there had been “a number of grievances” filed against her and discussed the subject matter of those grievances. (R. p. 21). She went on to disclose that

The South Carolina Office of Disciplinary Counsel thoroughly investigated these matters and recommended dismissal of all these charges. Furthermore, Independent Investigative Panels of the commission on Lawyer Conduct considered these matters and have *never* found that she engaged in any ethical misconduct. Moreover, she has never been sanctioned or disciplined.

(R. p. 21).

Respondent disclosed some of the content of the requested documents, but she picked and chose exactly what portions of information she wanted to publicize. She withheld the documents from which the public could form its own conclusions about the nature of the complaints and the action which was taken. Furthermore, she used public resources, *i.e.*, her letterhead and presumably her staff, to prepare and transmit her response to the FOIA request.

Again, erroneously relying upon Rule 12, RLDE, the trial judge concluded that Respondent’s “general reference” to the content of the requested documents did not “alter the non-public nature of the documents... .” (R. p. 5). Inexplicably, the trial judge also concluded that Respondent “had no intent whatsoever to waive confidentiality” in her written response. *Id.*

As argued above, Rule 12 has no application in proceedings under the Act, and it specifically limits its application to particular persons who are employees or officers of the Supreme

Court. It does not alter the nature of the documents which otherwise are “public documents” within the meaning of the Act.

The trial judge correctly stated that “waiver” is a voluntary relinquishment of a known right. However, in deciding upon the Respondent’s “intent”, the trial judge permitted himself to decide an issue of fact, which could not be decided as a matter. “The determination of whether one’s actions constitute waiver is a question of fact.” Sanford v. SC State Ethics Comm’n, 385 S.C. 483, 685 S.E.2d 600, 607 (2009). In Sanford, the Supreme Court made a determination regarding waiver because the action was brought within its original jurisdiction, and it was within the Court’s province to “make findings of fact” on matters before it. Id.

Appellant asserted that the undisputed facts permitted the trial judge to conclude that a waiver had occurred as a matter of law, because there was no evidence to the contrary. Appellant pointed out:

1. The response to the FOIA request was on official letterhead;
2. The response was prepared using resources of a public office, *i.e.*, letterhead and perhaps staff; and computer equipment; and
3. Disclosed the contents of the very documents she refused to produce.

As in Sanford, “the only reasonable interpretation... was that it was an intentional relinquishment of the right to confidentiality, and therefore a valid – and complete – waiver.” Id. at 608. Here, the Respondent described the fact that the documents existed, and the content of the documents, but then attempted to claim the documents were exempt from disclosure.

Respondent’s own actions indicate she understood the legal significance of the Act. Her response specifically cited it. (R. p. 21). Having opened the door and let out only what she wanted to let out, Respondent cannot now close the door and claim “privacy” or “confidentiality” of the

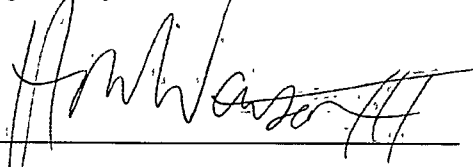
documents.

The trial judge erred in failing to conclude that Respondent has waived her right to withhold the requested documents from disclosure.

CONCLUSION

For the reasons set forth above, the trial judge erred in granting the Respondent's Motion to Dismiss. Appellant seeks an order of this Court reversing the trial judge and remanding the matter for further proceedings. In the alternative, Appellant seeks an order reversing the trial judge and remanding for entry of an order mandating the Respondent to produce the documents requested under the Act.

Respectfully submitted,



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August 9, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
R. MARKLEY JENNIS JR., CIRCUIT COURT JUDGE
Trial Court Case No.: 2015-CP-10-5757
Appellate Case No. 2016-000555

South Carolina Lawyers Weekly,
by and through its principal, Dolan Publishing Company,

Appellant,

vs.

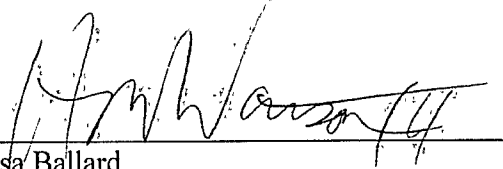
Scarlett Wilson, Solicitor Of the Ninth Judicial Circuit,
An elected public official,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 211(b), SCACR.

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Appendix 0085

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
R. MARKLEY JENNIS JR., CIRCUIT COURT JUDGE
Trial Court Case No.: 2015-CP-10-5757
Appellate Case No. 2016-000555

South Carolina Lawyers Weekly,
by and through its principal, Dolan Publishing Company,

Appellant,

vs.

Scarlett Wilson, Solicitor Of the Ninth Judicial Circuit,
An elected public official,

Respondent.

FINAL REPLY BRIEF

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REPLY TO RESPONDENT'S ISSUE ONE

Respondent's argument that Solicitor Wilson is not a public body because she is an individual is nonsensical, especially where Solicitor Wilson used her public office to respond to the Freedom of Information Act (FOIA) request, and when she admitted that her office was subject to FOIA. (R. p. 21).

Solicitor Wilson lists her public office address on the South Carolina Supreme Court's Attorney Information System (AIS). Rule 409(e) of the South Carolina Appellate Court Rules (SCACR) requires that members of the Bar list their contact information with AIS, which is implemented by the South Carolina Judicial Department¹. Solicitor Wilson could certainly have chosen to list her home address as her contact information; however, she did not. She identified herself on AIS as being an agent of a public body and designating her public office as the place at which she could be served with documents. *Id.*

Solicitor Wilson is an agent of a public office, employed in a public office, used public resources to respond to the FOIA request, and thereby admitted her status as a public officer. *See* additional discussion, Issue Three.

Moreover, Solicitor Wilson acknowledges that her office is a "public body" and therefore subject to FOIA. The very definition of "public body" expressly includes "representatives of departments within the executive branch of state government." S.C. Code Ann. Section 30-4-20(a). The act is clear: a "person" includes an "organization." *Id.* at (b). Solicitor Wilson is an

¹ The mandate of the Rule exists "for the purpose of notifying and serving the member." Rule 409(e), SCACR. By listing her office address in the AIS, Solicitor Wilson acknowledged her status as a public official; any service of a legal document would have to be made to her at the address designated. This case does not present a situation in which a public officer received a document at her office and took it home because it dealt with private and personal matters. To the contrary, Solicitor Wilson used the FOIA response to scold lawyers who had filed complaints against her with disciplinary authorities using the prestige of her official letterhead.

elected official. The records she chooses to receive in her official capacity become public records as defined in Section 30-4-20(c).

Ms. Wilson holds her office only because she is a licensed attorney in South Carolina; she could not otherwise hold the office. S.C. Code Ann. Section 1-7-310 (“A solicitor must be licensed to practice law by the South Carolina Bar at the time of his election and throughout his term”). Indeed, her defense in this action is being provided by the Attorney General’s office pursuant to S.C. Code Ann. Section 1-7-60, which requires an investigation to insure that the subject matter of the lawsuit address an action of a “public officers or employee [who] was acting... in the course of his employment” before the Attorney General can provide a defense in a civil action. *See also* S.C. Code Ann. Section 1-7-50 (“In the event that any officer or employee of the State, or of any political subdivision thereof, be prosecuted in any action, civil or criminal...by reason of any act done or omitted in good faith in the course of employment, it is made the duty of the Attorney General... to appear and defend the action...”). If Solicitor Wilson is a private individual for purposes of this action, she could not be represented by the Attorney General. Her brief does not address this issue.

The South Carolina Code also clearly identifies Solicitor Wilson as a “public officer.” Section 8-1-10 defines a “public officer” as an “officer of the state... whose duties are defined by law.” The duties of a solicitor are clearly defined by law in S.C. Code Ann. Section 1-7-320. Solicitor Wilson is required to be a full-time employee of the state; therefore she may not maintain a private practice of law while she serves as solicitor. Section 1-7-325. All of her duties as a lawyer are therefore activities of a public officer.

Solicitor Wilson’s position is disingenuous. She acknowledges she holds a public office and that she works in a public body, but she somehow thinks that she retains her private, personal

status while she performs her public duties. That argument might be persuasive if the documents sought in this action related to Solicitor Wilson's private affairs. However, it is acknowledged that the documents requested relate exclusively to actions and omissions she performed in her capacity as a public officer, the only capacity in which she has acted or can act.

It is respectfully asserted that the issue presented, *i.e.*, whether an elected public official who is acting within the scope of her official, statutorily-imposed duties, retains her status as a private individual while she is carrying out those duties, is a legal question that begs for an answer.

Because FOIA is remedial in nature, it must be liberally construed to carry out the purposes mandated by the General Assembly. Burton v. York County Sheriff's Dep't, 358 S.C. 339, 594 S.E.2d 888 (Ct.App. 2004). Any doubts about whether Solicitor Wilson is a public body under the purposes of FOIA must be construed in favor of her being determined to be such a public body for purposes of the FOIA request.

REPLY TO RESPONDENT'S ISSUE TWO

Solicitor Wilson asserts that the documents received by her are not public records. It is possible that Solicitor Wilson could have received documents received from the Commission on Lawyer Conduct and/or Disciplinary Counsel at her personal, private address and could have responded personally. However, she listed her public office for her contact information in AIS, and presumably the documents were mailed to her at her public office address, addressed to her with her public title. She certainly answered this FOIA request on her official letterhead, thereby acknowledging (implicitly at least) that the documents in question were maintained by her at her public office.

Solicitor Wilson does not dispute that the documents in question relate to inquiries into her conduct as a public official (as opposed to her private actions).

The 1981 opinion of the Attorney General recited by Solicitor Wilson is not persuasive on this issue. It predated the current rules of Lawyer Disciplinary Enforcement (RLDE), Rule 413, SCACR, and was issued at a time when disciplinary proceedings remained confidential at all times unless or until the Supreme Court determined to impose discipline on a licensed lawyer. Rule 12 was first enacted in 1997, well after the referenced Attorney General opinion was issued. The rule in place at the time was far more restrictive than current Rule 12, as prior rules stated that no one, even “witnesses, counsel, counsel’s secretaries... shall mention the existence of any such proceeding.” Rule 20(D) of the “Rules on Disciplinary Procedure” (repealed by adoption of the RLDE). (R. p. 64). Even those directly involved in any capacity, including witnesses and counsel, could not discuss amongst themselves the issues involved except as necessary. Reminder as to the breadth and nature of such an expansive prior rule was required to be stated to any person attending any proceeding, and violations were deemed contempt of the Supreme Court. Rule 20(E). (R. p. 64).

Additionally, the dated Attorney General opinion did not address the character of documents that were sent to or received by a public official in her official capacity and which were responded to using public resources and in an official capacity. Certainly, there was nothing in the 1981 opinion which suggested that the documents in question addressed the acts or omission of an elected official while acting within the scope of her public duties.

To the extent that Solicitor Wilson and the trial judge rely upon S.C. Code Ann. Section 30-4-40(a)(2) (which exempts from disclosure of “information of a personal nature where the public disclosure thereof would constitute an unreasonable invasion of personal privacy”) the trial judge could not possibly have had a basis to determine the content of the requested documents related to such private and personal matters without a review of the documents in question. He could not know the content of the documents requested at a motion to dismiss stage.

Certainly, by granting the motion to dismiss, the trial judge erred in concluding as a matter of law that any document embraced by Rule 12 falls within the exemption set forth in Section 30-4-40(a)(2), regardless of its content and without any determination that it would constitute “an unreasonable invasion of personal privacy.” At a minimum, a factual inquiry would be necessary to determine whether the content of the documents did, in fact, constitute information that would “constitute an unreasonable invasion of personal privacy.”

REPLY TO RESPONDENT’S ISSUE THREE

Solicitor Wilson continues to hide behind the language of Rule 12, RLDE, which is wholly inapplicable here, in support of her argument that there cannot be a waiver of confidentiality. For the reasons already addressed, Rule 12 gives Solicitor Wilson no grounds to withhold the requested documents. The Rule expressly governs only the actions of employees of the Office of Disciplinary Counsel and the Commission on Lawyer Conduct. The Rule is a prohibition only upon conduct by certain actors, not a designation of the nature of a document.

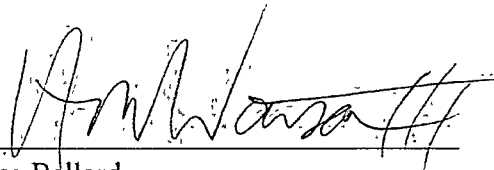
Solicitor Wilson acknowledged, on her official letterhead, the existence of the documents requested and the subject matter addressed by the content of those documents, before asserting that the documents were “private” and “personal.” She cannot open the door and then slam it shut without consequences. She cannot disclose what she chooses for her benefit about the documents and then shield the remaining content from public scrutiny. She argues (and the trial judge found) that she had no intent to waive confidentiality. There was no evidence whatsoever of her intent, or lack thereof, to support this conclusion. In fact, the only evidence is the FOIA response itself, which talks about the existence and content of the requested documents; if anything, the language of the FOIA response supports a waiver.

It is impossible to rule on a matter of the Solicitor's intent in the absence of any evidence which supports that finding of intent. Solicitor Wilson used the opportunity to respond to the FOIA request to chastise her critics by describing what she believed to be petty complaints by disgruntled attorneys, and in so doing, acknowledged the existence and content of complaints against her. If she had intended to claim confidentiality, she had no right to speak.

CONCLUSION

For the reasons set forth in the Appellant's Brief, and having addressed Respondent's arguments herein, the order of the trial judge should be reversed and the matter should proceed in its ordinary course.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Harvey M. Watson III", written over a horizontal line.

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August 9, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
R. MARKLEY JENNIS JR., CIRCUIT COURT JUDGE
Trial Court Case No.: 2015-CP-10-5757
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South Carolina Lawyers Weekly,
by and through its principal, Dolan Publishing Company,

Appellant,

vs.

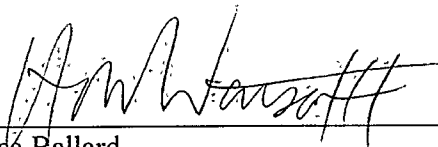
Scarlett Wilson, Solicitor Of the Ninth Judicial Circuit,
An elected public official,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Reply Brief complies with Rule 211(b), SCACR.

Respectfully submitted,

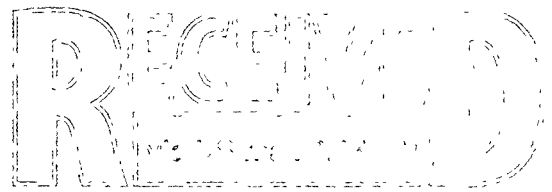


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August 9, 2016

Appendix 0095



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court Of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2016-000555

South Carolina Lawyers Weekly, by and through its principal,
Dolan Publishing Company. Appellant,

v.

Scarlett Wilson, Solicitor of the Ninth Judicial Circuit
An elected public official, ... Respondent,

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES

1. Whether this Court needs to address the question of whether a solicitor is a “public body” under the Freedom of Information Act, and if so, whether a solicitor is a public body?
2. Whether the documents sought are confidential under RLDE Rule 12 of Rule 413, SCACR?
3. Whether the documents are exempt from disclosure under S.C. Code Ann. §§30-4-40(A)(2) and (4) due to the applicability of Rule 12?
4. Whether Ms. Wilson waived the confidentiality associated with the documents?

STATEMENT OF THE CASE

Appellant’s Complaint contends that the Solicitor violated the Freedom of Information Act by declining to comply with its request for documents. Record (R. p. 8). (Complaint). Appellant’s FOIA request emailed to “Solicitor Wilson” was for “any records relating to any disciplinary complaints made against you or action taken with respect to you as a member of the bar.” R. p. 20 (Ex. A. to Complaint). The response stated that the Solicitor’s Office is a “public body” under FOIA §30-4-20(a), but that Ms. Wilson is not personally a public body. R. p. 21 (Ex. B. to Complaint). It said that her personal records regarding the matters requested are not public records under §30-4-20(c). The response further contended that even if otherwise covered by FOIA, the documents were exempt under §§30-4-40(a)(2) (information of a personal nature), (4) (matters exempt from disclosure by law and (7) (matters violative of attorney client privilege). The response also noted that the Office of Disciplinary Counsel had recommended dismissal of the charges against her and that she had never been found to have engaged in ethical misconduct.

Ms. Wilson moved to dismiss the Complaint on the same grounds noted above in the response to the FOIA request and also adding that the documents sought belonged to her in her personal capacity and were not records of the Office of the Solicitor. (R. p. 22). At the oral argument concerning the Motion on January 7, 2016, in Charleston, the Court granted the Motion. R. pp. 60, l. 25 - p. 62, l. 25).

In his written order, the Honorable Markley Dennis found that he did not need to reach the issue of whether the Solicitor, herself, is a "public body" under §30-4-20(a) because the documents that Lawyer's Weekly seeks are not "public records" under §30-4-20(c). (R. p. 2, *et seq.*). He found that the documents were not public during the period of confidentiality under Rule 12 and that, even if they were "public," they are exempt from disclosure under §§30-4-40(a)(2) and (4). Judge Dennis ruled that Ms. Wilson did not waive confidentiality. By Order dated February 29, 2016, and filed March 8 (R. p. 7), Judge Dennis denied Appellant's Motion for Reconsideration (R. p. 44). This appeal then followed.

ARGUMENT

I

THE COURT NEED NOT REACH THE ISSUE OF WHETHER MS. WILSON IS A “PUBLIC BODY” SUBJECT TO FOIA BUT IF IT DOES DO SO, SHE IS NOT A PUBLIC BODY

Under the Freedom of Information Act, rights to inspect or copy public records are limited to those of a “public body.” S.C. Code Ann. §30-4-30(a) (“[a]ny person has a right to inspect or copy any public record of a public body”). “Public body” means any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined” §30-4-20(a). This issue need not be reached because the documents that Appellant seeks are not public records under §30-4-20(c).

Should this Court want to address this issue, Ms. Wilson’s position that she is not a “public body” is well supported by the statute. She is not a “department” within the State. This rule applies to agencies rather than individuals. While, as noted by Ms. Wilson, the Solicitor’s Office is a public body subject to FOIA, Ms. Wilson, herself, is not a public body. This position is not hypertechnical. The documents that Lawyers Weekly seeks are not the records of the Solicitor’s Office, a public body, as to which the Solicitor is in charge. The records at issue are those belonging to Ms. Wilson, personally, rather than to the Solicitor’s Office. The Rules for Lawyer Disciplinary Enforcement governing those documents apply to lawyers, personally, rather than to public bodies. A complaint, under the RLDE is “information . . . that alleges . . . that a lawyer committed misconduct.” Rule 2, RLDE, Rule 413, SCACR. A “lawyer” is “anyone admitted to practice law in this state” Therefore, any complaint against Ms. Wilson is against her, individually, rather than a public body, and is not a record of the

Solicitor's Office.

II

THE RECORDS ARE NOT PUBLIC RECORDS UNDER §30-4-20(C) OR ARE EXEMPT FROM DISCLOSURE UNDER §§30-4-40(A)(2) AND (4)

Under FOIA, “[p]ublic record” includes all . . . documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body. . . .” §30-4-20. Not only is Ms. Wilson, not a public body, the documents themselves are not public. The definition expressly states that “other records which by law are required to be closed to the public are not considered to be made open to the public under the provisions of this act.” RLDE Rule 12 closes these records to the public as discussed below.

Lawyers Weekly wrongly asserts that the Rule only limits the disclosure of documents by the Commission on Lawyer Conduct and the Office of Disciplinary Counsel. Instead, the Rule makes the documents at issue here non-public because formal charges have not been filed.¹ RLDE Rule 12 of Rule 413 prohibits the Commission on Lawyer Conduct, the Office of Disciplinary Counsel and the Supreme Court and their staffs from revealing the existence of a complaint against a lawyer “while the matter remains confidential,” except as provided in that law. During that period of confidentiality, the complaint is expressly non-public. Rule 12(b) (If formal charges are filed against the lawyer, the matter “shall become public 30 days after the filing of the answer” to the charges (emphasis added)). The Rule limits the circumstances under which the Commission on Lawyer Conduct is authorized to release the documents. Rule 12(c)(protection of person or public, violation of criminal law, etc.).

¹ Rule 12 of the Rules for Judicial Disciplinary Enforcement, Rule 502, SCACR, contains similar provisions regarding the confidentiality of complaints against judges.

Whether the lawyer may release the documents during the period of confidentiality is discretionary with him or her. Rule 12(d) states that a lawyer “may reveal the filing of a complaint by a client to establish good cause for withdrawal as counsel . . .” and if the complaint is confidential, the Rule states that the “lawyer may elect to give opposing counsel notice of the motion only without revealing the existence of the complaint.” (emphasis added). The court will seal the record or delete references to the complaint from the record if the lawyer requests that records related to the motion be sealed. Rule 12(d). More generally, the lawyer may sign a waiver for the Commission to release the complaint. Rule 12(c)(3). Accordingly, under the Rule, the complaint and related documents are not public during the period of confidentiality, and the lawyer may not be compelled to disclose them. Therefore, Ms. Wilson may not be compelled to release the documents at issue.

This reading is in accord with an Opinion of the Office of the Attorney General which determined that complaints and related documents were not subject to FOIA. *Ops. Atty. Gen.* June 24, 1981, No. 81-60, 1981 WL 96586. (R. p. 41). Although the Opinion predated the current RLDE, the pertinent parts of FOIA remain the same. That Opinion determined that disciplinary files are not “public records” under §30-4-20(c) because they are “records which by law are required to be closed to the public” under the former Rule on Disciplinary Procedure section 20A. As noted in that Opinion, “[t]he rules of the South Carolina Supreme Court carry the force and effect of law. *See*, §§30-4-20(c). 40-5-20 and 40-5-50” The Opinion further concluded that the files would also be exempt from disclosure under section 30-4-40(a)(4) (“[m]atters specifically exempted from disclosure by statute or law”) and under 30-4-40(a)(2) (“unreasonable invasion of privacy”).

Although the FOIA request at issue in the Opinion was directed to the former Board of Commissioners, the conclusion would be the same as to Ms. Wilson.² The documents are not public because no formal charges have been filed, and even if they were, they are exempt from disclosure. The records are closed to the public under Rule 12 and may not be opened under FOIA as set forth in the definition of public record. Nothing in this Rule or FOIA indicates that a person may make a FOIA request of a lawyer to produce complaints closed to the public under Rule 12. Such documents are even beyond the power of a judge to release under the above provisions of that Rule.

Appellant claims that this application of Rule 12 impermissibly changes the statutory scheme of FOIA. To the contrary, FOIA contemplates such provisions in exempting matters from disclosure under §30-4-40(a) that constitute “(2) [i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy. . . [and] (4) Matters specifically exempted from disclosure by statute or law.” As noted above, the Appellate Court Rules are rules of law and Rule 12 makes clear that the records are private unless disclosed under the provisions of the Rule. Accordingly, Rule 12 makes the documents non-public or at least makes them subject to §30-4-40’s exemptions for unreasonable invasions of personal privacy and matters exempt by law.

Appellant contends that the documents are not subject to §30-4-40(a)(2) as invasions of personal privacy because the response to the FOIA stated that the complaints had been filed by

² Although this Opinion is not binding upon this Court, it “should not be disregarded without cogent reason.” *S.C. Dept. of Social Services v. Johnson*, 688 S.E.2d 588, 593, 386 S.C. 426, 436 (S.C. App., 2009) quoting *Price v. Watt*, 280 S.C. 510, 513 n. 1, 313 S.E.2d 58, 60 n. 1 (Ct.App. 1984). *Johnson* found that referencing an opinion of the Attorney General “instructive” as to the application of a statute. That Opinion regarding FOIA is certainly consistent with the state of the law today and instructive on the issue.

those who “disagree with her management of the Solicitor’s Office and in some cases with her handling of cases.” (R. p. 21). That the complaints may relate to Ms. Wilson’s work as Solicitor does not alter the fact that Rule 12 does not limit confidentiality according to whether the complaints relate to public or private work. Disciplinary complaints potentially subject a lawyer, in his or her personal capacity, to the processes of the Rules for Lawyer Disciplinary Enforcement. Rule 12 contains protections for lawyers therein as to confidentiality. They apply here regardless of the nature of the complaint. The complaints become public only as provided in the Rule. Moreover, even if the documents were not subject to the exemption for “personal privacy,” they are still exempt by law under §30-4-40(a)(4).

III

MS. WILSON DID NOT WAIVE CONFIDENTIALITY

Appellant contends that Ms. Wilson waived confidentiality by referring generally to the filing of grievances against her and their dismissal and doing so on Solicitor’s Office letterhead. Nothing in Rule 12 creates a waiver of confidentiality except, as noted above, when the lawyer signs a waiver for the Commission on Lawyer Conduct to release documents. Rule 12(c)(3). The general reference in the response to Lawyers Weekly is not a waiver under Rule 12 and does not alter the non-public nature of the documents under Rule 12. “A waiver is a voluntary and intentional abandonment or relinquishment of a known right.” *Janasik v. Fairway Oaks Villas Horizontal Property Regime*, 415 S.E.2d 384, 387, 307 S.C. 339, 344 (S.C., 1992). Certainly, the response had no intent whatsoever to waive confidentiality when it invoked the Rules on Lawyer Disciplinary Enforcement and made quite clear that the Solicitor believed, and correctly so, that the documents sought are not public.

Lawyer Disciplinary Enforcement and made quite clear that the Solicitor believed, and correctly so, that the documents sought are not public.

CONCLUSION

For all of the foregoing reasons, this Court should affirm the Orders of Judge Dennis.

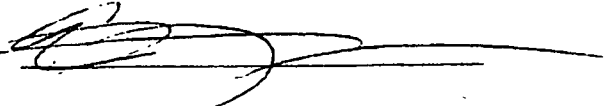
Respectfully submitted.

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By: 

August 10, 2016

Attorneys for Respondent Scarlett Wilson

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

South Carolina Lawyers Weekly, by and through its
principal, Dolan Publishing Company, Appellant,

v.

Scarlett Wilson, Solicitor of the Ninth Judicial Circuit, an
elected public official, Respondent.

Appellate Case No. 2016-000555

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 5542
Heard October 5, 2017 – Filed March 14, 2018

AFFIRMED

Desa Ballard and Harvey M. Watson, III, both of Ballard
& Watson, Attorneys at Law, of West Columbia, for
Appellant.

Attorney General Alan McCrory Wilson, Solicitor
General Robert D. Cook, and Deputy Solicitor General J.
Emory Smith, Jr., all of Columbia, for Respondent.

LOCKEMY, C.J.: In this action pursuant to the Freedom of Information Act (FOIA), South Carolina Lawyers Weekly (Appellant) asserts the circuit court erred in refusing to compel Scarlett Wilson, as Solicitor of the Ninth Judicial Circuit, to produce any disciplinary complaints against her. Appellant argues the circuit court

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erred by: (1) failing to find Wilson is a public officer and her office is a public body subject to FOIA; (2) relying on Rule 12 of the Rules of Lawyer Disciplinary Enforcement to determine the requested documents are not required to be disclosed; (3) finding the documents were exempt from FOIA pursuant to S.C. Code Ann. § 30-4-40(a) (2007 & Supp. 2017); and (4) failing to find Wilson waived her right to confidentiality. We affirm.

FACTS

On July 10, 2015, Phillip Bantz, a staff writer for South Carolina Lawyers Weekly sent a FOIA request to Solicitor Wilson's official email address requesting "any records relating to any disciplinary complaints against you or action taken with respect to you as a member of the bar."

The Ninth Circuit Solicitor's Office (the Solicitor's Office) responded, on official letterhead, and denied Bantz's request. The office noted, "In the last year a number of grievances have been filed against Ms. Wilson by or at the behest of disgruntled criminal defense lawyers The South Carolina Office of Disciplinary Counsel thoroughly investigated these matters and recommended dismissal of all of these charges."

In denying the FOIA request, the Solicitor's Office noted that "[w]hile the Solicitor's Office is a 'public body' and subject to FOIA, Ms. Wilson is not personally a 'public body.'"

The Solicitor's Office further asserted that, were Solicitor Wilson a 'public body,' the documents requested would be exempt from disclosure under several FOIA exemptions. First, the Solicitor's Office asserted the documents were exempt from disclosure because they are information of a personal nature. *See* S.C. Code Ann. § 30-4-40(a)(2) (Supp. 2017). The Solicitor's Office also claimed the documents were specifically exempted from disclosure by statute or state law by Rule 12 of the South Carolina Rules for Lawyer Disciplinary Enforcement (RLDE), which requires disciplinary complaints remain private. *See* S.C. Code Ann. § 30-4-40(a)(4) (2007). Finally, the Solicitor's Office argued the requested documents included information protected by the attorney-client relationship. *See* S.C. Code Ann. § 30-4-40(a)(7) (2007).

Appellant subsequently filed a declaratory judgment action requesting the court declare Solicitor Wilson a public body and any documents she possessed

pertaining to her disciplinary records must be made available. Appellant asserted Solicitor Wilson is a public official whose only legal services are provided in her capacity as a public official. Accordingly, Appellant argued "Any documents from the Office of Disciplinary Counsel and/or the Commission on Lawyer Conduct received by her relate wholly to her conduct in her capacity as a public official and are thus public documents."

Appellant also asserted the exemptions Solicitor Wilson claimed were inapplicable in this case. According to Appellant, any reliance by the Solicitor's Office on Rule 12, RLDE, is inappropriate in this case because the Rule only dictates that members and staff of the Commission on Lawyer Conduct, disciplinary counsel and its staff, and the members and staff of the Supreme Court should not reveal the existence of a complaint. Appellant also argued the Solicitor's Office revealed the existence and content of some of the complaints against Solicitor Wilson in its response to the FOIA request, waiving Wilson's claim to confidentiality.

After a hearing, the circuit court filed its order granting Solicitor Wilson's motion to dismiss on February 10, 2016. The circuit court did not reach the issue of whether Solicitor Wilson is a public body, but rather found the documents were not 'public records' pursuant to the FOIA. The court found the documents were protected from disclosure under Rule 12, RLDE, and as such were exempted from disclosure under section 30-4-40(a)(4). The court also found Solicitor Wilson had not waived her right to confidentiality of the disciplinary complaints by referring to them generally in her response because "Ms. Wilson's letter had no intent whatsoever to waive confidentiality when she invoked the Rules on Lawyer Disciplinary Enforcement in her response letter and made quite clear she believed, and correctly so, that the documents sought are not public." The circuit court also found the requested documents were exempt from disclosure because of their personal nature. This appeal followed.

LAW

"Determining the proper interpretation of a statute is a question of law, and this [c]ourt reviews questions of law de novo." *Lambries v. Saluda Cty. Council*, 409 S.C. 1, 7, 760 S.E.2d 785, 788 (2014) (quoting *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008)).

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Id.* at 10, 760 S.E.2d at 789 (quoting *Charleston Cty. Sch. Dist.*

v. State Budget & Control Bd., 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993)). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Id.* at 10-11, 760 S.E.2d at 790 (quoting *Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 148, 694 S.E.2d 525, 530 (2010)).

"What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." *Id.* (quoting *Media Gen.*, 388 S.C. at 148, 694 S.E.2d at 530). "Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Id.* (quoting *Media Gen.*, 388 S.C. at 148, 694 S.E.2d at 530).

The legislature, in passing the FOIA statute found, in part, "it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials." S.C. Code Ann. §30-4-15 (2007). In order to achieve its objective, the General Assembly directed, "provisions of [the FOIA] must be construed as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay." *Id.* Accordingly, the FOIA should be liberally construed to carry out the General Assembly's purpose. *Campbell v. Marion Cty. Hosp. Dist.*, 354 S.C. 274, 281, 580 S.E.2d 163, 166 (Ct. App. 2003).

The Freedom of Information Act defines a public body as

any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina

Public Service Authority and the South Carolina State
Ports Authority.

S.C. Code Ann. § 30-4-20(a) (2007). The FOIA further defines a public record as including "all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body." § 30-4-20(c) (2007).

"A person has a right to inspect, copy, or receive an electronic transmission of any public record of a public body, except as otherwise provided by Section 30-4-40, or other state and federal laws, in accordance with reasonable rules concerning time and place of access." S.C. Code Ann. § 30-4-30(A)(1) (Supp. 2017).

There are exceptions, however. "Matters specifically exempted from disclosure by statute or law" may be exempt from disclosure if the public body decides not to produce them. S.C. Code Ann. § 30-4-40(a)(4). Furthermore, "[i]nformation of a personal nature where the public disclosure thereof would constitute an unreasonable invasion of personal privacy" is also exempted. S.C. Code Ann. § 30-4-40(a)(2).

Information of a personal nature shall include, but not limited to, information as to gross receipts contained in applications for business licenses, information relating to public records which include the name, address, and telephone number or other such information of an individual or individuals who are handicapped or disabled when the information is requested for person-to-person commercial solicitation of handicapped persons solely by virtue of their handicap, and any audio recording of the final statements of a dying victim in a call to 911 emergency services.

S.C. Code Ann. § 30-4-40(a)(2).

ANALYSIS

Initially, Appellant asserts Solicitor Wilson waived her right to confidentiality of the requested documents by referring to their existence in her FOIA response. We disagree.

"Waiver is a question of fact for the finder of fact." *Parker v. Parker*, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994). "Waiver is a voluntary and intentional abandonment or relinquishment of a known right." *Id.*

Appellant argues the circuit court erred in deciding Solicitor Wilson had not intended to waive confidentiality because no evidence supports that finding. Appellant claims the evidence supporting waiver included (1) the response to the FOIA request was on official letterhead; (2) the response was prepared using resources of a public office; and (3) the response disclosed the contents of the documents not produced. We do not agree with Appellant that Solicitor Wilson "picked and chose" what content to disclose in her FOIA response. Solicitor Wilson revealed the existence of disciplinary complaints and revealed the source of certain of those complaints. She did not reveal anything further about the content of those complaints; therefore she did not waive any objection to disclosing that content.

Appellant also asserts the circuit court erred in finding Rule 12, RLDE, provides the documents requested were not disclosable under FOIA. Again, we disagree.

"The Supreme Court may . . . prescribe, adopt, promulgate and amend such rules and regulations as it may deem proper . . . (d) prescribing the procedure for disciplining, suspending, disbaring and reinstating attorneys at law" S.C. Code Ann. § 40-5-20 (2011).

All rules and amendments to rules governing practice and procedure in all courts of this State promulgated by the Supreme Court must be submitted by the Supreme Court to the Judiciary Committee of each House of the General Assembly Such rules or amendments shall become effective ninety calendar days after submission unless disapproved by concurrent resolution of the General Assembly

S.C. Const. Art. V, § 4A. "Upon such rules and regulations becoming effective, they shall supersede all laws or parts of laws in conflict therewith to the extent of the conflict." S.C. Code Ann. § 40-5-50 (2011).

Rule 12 is a general rule regarding access to attorney disciplinary information. Except as otherwise provided, the members of the Commission on Lawyer Conduct and its staff, the Office of Disciplinary Counsel and its staff, and the Supreme Court and its staff are prohibited from revealing the existence of a complaint while the matter remains confidential. Rule 12(a), RLDE, Rule 413 SCACR. A violation of the rule is punished as a contempt of the Supreme Court. Rule 12(a), RLDE, Rule 413, SCACR.

Rule 12 also provides guidance for when attorney disciplinary information becomes public.

When formal charges are filed regarding allegations of misconduct, the formal charges, any answer, and all other documents related to the proceedings that were filed with or issued by the Commission following the filing of the formal charges shall become public 30 days after the filing of the answer or, if no answer is filed, 30 days after the expiration of the time to answer under Rule 23. Thereafter, except as otherwise provided by these rules or the Supreme Court, all subsequent records and proceedings relating to the misconduct allegations shall be open to the public inclusive of a letter of caution or admonition issued after the filing of formal charges.

Rule 12(b), RLDE, Rule 413, SCACR.

Based on the plain language of Rule 12(b), complaints filed with the Office of Disciplinary Counsel do not become public documents until formal charges are filed and 30 days have passed after the filing of an answer, or in the absence of an answer, 30 days after the time to file an answer has expired. This rule, which was submitted to and not rejected by the General Assembly carries the force of law. *See* S.C. Code § 40-5-50 (2011). Therefore, because Rule 12(b) indicates lawyer disciplinary complaints do not become public until after formal charges are filed, and no formal charges were filed against Solicitor Wilson, those complaints are not public documents, and are not required to be disclosed pursuant to FOIA.

Appellant asserts this reading of Rule 12 violates the separation of powers doctrine because it allows a Supreme Court rule to modify the meaning of a statutory scheme. We disagree. Instead, Rule 12 provides privacy protection for attorney disciplinary complaints, and their disclosure cannot be compelled until formal charges are filed.¹ The General Assembly, through appropriate procedures, approved Rule 12. That consent was sufficient to satisfy any separation of powers requirements.

CONCLUSION

Based on the foregoing, the order of the circuit court is

AFFIRMED

HUFF and HILL, JJ., concur.

¹ Having determined the requested documents are not public records required to be disclosed under the FOIA, we decline to reach Appellant's remaining arguments that Solicitor Wilson is a public body as defined by the statute or that the exception in section 30-4-40(a)(2) should not apply. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (noting an appellate court need not review remaining issues when a determination of prior issues is dispositive).

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

South Carolina Lawyers Weekly, By and through its
principal, Dolan Publishing Company, Appellant,

v.

Scarlett Wilson, Solicitor of the Ninth Judicial Circuit, an
elected public official, Respondent.

Appellate Case No. 2016-000555

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 5542
Heard October 5, 2017 – Filed March 19, 2018

AFFIRMED

Desa Ballard and Harvey M. Watson, III, both of Ballard
& Watson, Attorneys at Law, of West Columbia, for
Appellant.

Attorney General Alan McCrory Wilson, Solicitor
General Robert D. Cook, and Deputy Solicitor General J.
Emory Smith, Jr., all of Columbia, for Respondent.

LOCKEMY, C.J.: In this action pursuant to the Freedom of Information Act (FOIA), South Carolina Lawyers Weekly (Appellant) asserts the circuit court erred in refusing to compel Scarlett Wilson, as Solicitor of the Ninth Judicial Circuit, to produce any disciplinary complaints against her. Appellant argues the circuit court erred by: (1) failing to find Wilson is a public officer and her office is a public

Appendix 0115

body subject to FOIA; (2) relying on Rule 12 of the Rules of Lawyer Disciplinary Enforcement to determine the requested documents are not required to be disclosed; (3) finding the documents were exempt from FOIA pursuant to S.C. Code Ann. § 30-4-40(a) (2007 & Supp. 2017); and (4) failing to find Wilson waived her right to confidentiality. We affirm.

FACTS

On July 10, 2015, Phillip Bantz, a staff writer for South Carolina Lawyers Weekly sent a FOIA request to Solicitor Wilson's official email address requesting "any records relating to any disciplinary complaints against you or action taken with respect to you as a member of the bar."

The Ninth Circuit Solicitor's Office (the Solicitor's Office) responded, on official letterhead, and denied Bantz's request. The office noted, "In the last year a number of grievances have been filed against Ms. Wilson by or at the behest of disgruntled criminal defense lawyers The South Carolina Office of Disciplinary Counsel thoroughly investigated these matters and recommended dismissal of all of these charges."

In denying the FOIA request, the Solicitor's Office noted that "[w]hile the Solicitor's Office is a 'public body' and subject to FOIA, Ms. Wilson is not personally a 'public body.'"

The Solicitor's Office further asserted that, were Solicitor Wilson a 'public body,' the documents requested would be exempt from disclosure under several FOIA exemptions. First, the Solicitor's Office asserted the documents were exempt from disclosure because they are information of a personal nature. *See* S.C. Code Ann. § 30-4-40(a)(2) (Supp. 2017). The Solicitor's Office also claimed the documents were specifically exempted from disclosure by statute or state law by Rule 12 of the South Carolina Rules for Lawyer Disciplinary Enforcement (RLDE), which requires disciplinary complaints remain private. *See* S.C. Code Ann. § 30-4-40(a)(4) (2007). Finally, the Solicitor's Office argued the requested documents included information protected by the attorney-client relationship. *See* S.C. Code Ann. § 30-4-40(a)(7) (2007).

Appellant subsequently filed a declaratory judgment action requesting the court declare Solicitor Wilson a public body and any documents she possessed pertaining to her disciplinary records must be made available. Appellant asserted Solicitor Wilson is a public official whose only legal services are provided in her

capacity as a public official. Accordingly, Appellant argued "Any documents from the Office of Disciplinary Counsel and/or the Commission on Lawyer Conduct received by her relate wholly to her conduct in her capacity as a public official and are thus public documents."

Appellant also asserted the exemptions Solicitor Wilson claimed were inapplicable in this case. According to Appellant, any reliance by the Solicitor's Office on Rule 12, RLDE, is inappropriate in this case because the Rule only dictates that members and staff of the Commission on Lawyer Conduct, disciplinary counsel and its staff, and the members and staff of the Supreme Court should not reveal the existence of a complaint. Appellant also argued the Solicitor's Office revealed the existence and content of some of the complaints against Solicitor Wilson in its response to the FOIA request, waiving Wilson's claim to confidentiality.

After a hearing, the circuit court filed its order granting Solicitor Wilson's motion to dismiss on February 10, 2016. The circuit court did not reach the issue of whether Solicitor Wilson is a public body, but rather found the documents were not 'public records' pursuant to the FOIA. The court found the documents were protected from disclosure under Rule 12, RLDE, and as such were exempted from disclosure under section 30-4-40(a)(4). The court also found Solicitor Wilson had not waived her right to confidentiality of the disciplinary complaints by referring to them generally in her response because "Ms. Wilson's letter had no intent whatsoever to waive confidentiality when she invoked the Rules on Lawyer Disciplinary Enforcement in her response letter and made quite clear she believed, and correctly so, that the documents sought are not public." The circuit court also found the requested documents were exempt from disclosure because of their personal nature. This appeal followed.

LAW

"Determining the proper interpretation of a statute is a question of law, and this [c]ourt reviews questions of law de novo." *Lambries v. Saluda Cty. Council*, 409 S.C. 1, 7, 760 S.E.2d 785, 788 (2014) (quoting *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008)).

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Id.* at 10, 760 S.E.2d at 789 (quoting *Charleston Cty. Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993)). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no

right to impose another meaning." *Id.* at 10-11, 760 S.E.2d at 790 (quoting *Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 148, 694 S.E.2d 525, 530 (2010)).

"What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." *Id.* (quoting *Media Gen.*, 388 S.C. at 148, 694 S.E.2d at 530). "Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Id.* (quoting *Media Gen.*, 388 S.C. at 148, 694 S.E.2d at 530).

The legislature, in passing the FOIA statute found, in part, "it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials." S.C. Code Ann. §30-4-15 (2007). In order to achieve its objective, the General Assembly directed, "provisions of [the FOIA] must be construed as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay." *Id.* Accordingly, the FOIA should be liberally construed to carry out the General Assembly's purpose. *Campbell v. Marion Cty. Hosp. Dist.*, 354 S.C. 274, 281, 580 S.E.2d 163, 166 (Ct. App. 2003).

The Freedom of Information Act defines a public body as

any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority.

S.C. Code Ann. § 30-4-20(a) (2007). The FOIA further defines a public record as including "all books, papers, maps, photographs, cards, tapes, recordings, or other

documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body." § 30-4-20(c) (2007).

"A person has a right to inspect, copy, or receive an electronic transmission of any public record of a public body, except as otherwise provided by Section 30-4-40, or other state and federal laws, in accordance with reasonable rules concerning time and place of access." S.C. Code Ann. § 30-4-30(A)(1) (Supp. 2017).

There are exceptions, however. "Matters specifically exempted from disclosure by statute or law" may be exempt from disclosure if the public body decides not to produce them. S.C. Code Ann. § 30-4-40(a)(4). Furthermore, "[i]nformation of a personal nature where the public disclosure thereof would constitute an unreasonable invasion of personal privacy" is also exempted. S.C. Code Ann. § 30-4-40(a)(2).

Information of a personal nature shall include, but not limited to, information as to gross receipts contained in applications for business licenses, information relating to public records which include the name, address, and telephone number or other such information of an individual or individuals who are handicapped or disabled when the information is requested for person-to-person commercial solicitation of handicapped persons solely by virtue of their handicap, and any audio recording of the final statements of a dying victim in a call to 911 emergency services.

S.C. Code Ann. § 30-4-40(a)(2).

ANALYSIS

Initially, Appellant asserts Solicitor Wilson waived her right to confidentiality of the requested documents by referring to their existence in her FOIA response. We disagree.

"Waiver is a question of fact for the finder of fact." *Parker v. Parker*, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994). "Waiver is a voluntary and intentional abandonment or relinquishment of a known right." *Id.*

Appellant argues the circuit court erred in deciding Solicitor Wilson had not intended to waive confidentiality because no evidence supports that finding. Appellant claims the evidence supporting waiver included (1) the response to the FOIA request was on official letterhead; (2) the response was prepared using resources of a public office; and (3) the response disclosed the contents of the documents not produced. We do not agree with Appellant that Solicitor Wilson "picked and chose" what content to disclose in her FOIA response. Solicitor Wilson revealed the existence of disciplinary complaints and revealed the source of certain of those complaints. She did not reveal anything further about the content of those complaints; therefore she did not waive any objection to disclosing that content.

Appellant also asserts the circuit court erred in finding Rule 12, RLDE, provides the documents requested were not disclosable under FOIA. Again, we disagree.

"The Supreme Court may . . . prescribe, adopt, promulgate and amend such rules and regulations as it may deem proper . . . (d) prescribing the procedure for disciplining, suspending, disbaring and reinstating attorneys at law" S.C. Code Ann. § 40-5-20 (2011). "The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted." S.C. Const. Art. V, § 4. When rules promulgated by the Supreme Court pursuant to section 40-5-20 become effective, "they shall supersede all laws or parts of laws in conflict therewith to the extent of the conflict." S.C. Code Ann. § 40-5-50 (2011).

Rule 12 is a general rule regarding access to attorney disciplinary information. Except as otherwise provided, the members of the Commission on Lawyer Conduct and its staff, the Office of Disciplinary Counsel and its staff, and the Supreme Court and its staff are prohibited from revealing the existence of a complaint while the matter remains confidential. Rule 12(a), RLDE, Rule 413 SCACR. A violation of the rule is punished as a contempt of the Supreme Court. Rule 12(a), RLDE, Rule 413, SCACR.

Rule 12 also provides guidance regarding when attorney disciplinary information becomes public.

When formal charges are filed regarding allegations of misconduct, the formal charges, any answer, and all other documents related to the proceedings that were filed with or issued by the Commission following the filing of the formal charges shall become public 30 days after the

filing of the answer or, if no answer is filed, 30 days after the expiration of the time to answer under Rule 23. Thereafter, except as otherwise provided by these rules or the Supreme Court, all subsequent records and proceedings relating to the misconduct allegations shall be open to the public inclusive of a letter of caution or admonition issued after the filing of formal charges.

Rule 12(b), RLDE, Rule 413, SCACR.

Based on the plain language of Rule 12(b), complaints filed with the Office of Disciplinary Counsel do not become public documents until formal charges are filed and 30 days have passed after the filing of an answer, or in the absence of an answer, 30 days after the time to file an answer has expired. Because Rule 12(b) indicates lawyer disciplinary complaints do not become public until after formal charges are filed, and no formal charges were filed against Solicitor Wilson, any complaints would not be public documents, and Solicitor Wilson would not be required to be disclose them pursuant to FOIA.

Appellant asserts this reading of Rule 12 violates the separation of powers doctrine because it allows a Supreme Court rule to modify a statutory scheme. We disagree. Instead, Rule 12 provides privacy protection for attorney disciplinary complaints, and their disclosure cannot be compelled until formal charges are filed.¹ The General Assembly, through section 40-5-50, provided court rules, including rules regarding lawyer discipline, carry the force of law. S.C. Code Ann. § 40-5-50 ("Upon such rules and regulations becoming effective, they shall supersede all laws or parts of laws in conflict therewith to the extent of the conflict."). We find the General Assembly's decision to allow court rules to carry the force of law satisfies any potential separation of powers issues.

CONCLUSION

¹ Having determined the requested documents are not public records required to be disclosed under the FOIA, we decline to reach Appellant's remaining arguments that Solicitor Wilson is a public body as defined by the statute or that the exception in section 30-4-40(a)(2) should not apply. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (noting an appellate court need not review remaining issues when a determination of prior issues is dispositive).

Based on the foregoing, the order of the circuit court is

AFFIRMED

HUFF and HILL, JJ., concur.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
R. MARKLEY JENNIS JR., CIRCUIT COURT JUDGE

Trial Court Case No.: 2015-CP-10-5757
Appellate Case No. 2016-000555

RECEIVED
APR 03 2018
SC Court of Appeals

South Carolina Lawyers Weekly,
by and through its principal, Dolan Publishing Company Petitioner,

vs.

Scarlett Wilson, Solicitor of the Ninth Judicial Circuit,
An elected public official, ... Respondent.

PETITION FOR REHEARING

Appellant/Petitioner South Carolina Lawyer Weekly, asks this Honorable Court to reconsider its ruling in the referenced matter, which was issued as Opinion No. 5542 on March 19, 2018.¹ This petition is filed pursuant to Rule 221(a), SCACR.

It is respectfully asserted that the Court of Appeals erred in its decision in the following respects:

1. The Court of Appeals erred in determining that Solicitor Wilson did not, as a matter of law, waive her right to assert the confidentiality of the documents she disclosed in her response to the FOIA. The Court noted what Solicitor Wilson did reveal ("the

¹ The original opinion was initially issued on March 14, 2018, was withdrawn that same date *sua sponte*, amended and reissued on March 19, 2018.

clb

existence of the complaints” and “the source of those complaints”), but according to this Court, “did not reveal anything about the content of those complaints.” The Record on Appeal reflects otherwise. In her response to the initial FOIA request, Solicitor Wilson referred to the content of the grievances as dealing with “her management of the Solicitor’s Office and in some case with her handling of cases.” (ROA p. 21). She thus directly revealed that the complaints in question were relating to her professional responsibility as solicitor, and not her conduct as a private person. Important, substantive content of the documents is thus known only because Solicitor Wilson revealed it, and in doing so waived any confidentiality.

2. This Court erred in ruling, as a matter of law, that Solicitor Wilson’s waiver could be decided as a matter of law. This Court correctly rules that the issue of waiver “is a question of fact for the finder of fact,” however, it failed to reverse and remand, which would have allowed the finder of fact to make its own findings on the issue of waiver.
3. The Court of Appeals erred in concluding that a Rule “prescribing the procedure for disciplining, suspending, disbarring and reinstating attorneys at law...” as contained in Rule 12 of the Rules on Lawyer Disciplinary Enforcement (RLDE), Rule 413, SCACR, can be used to define the character of a document that is otherwise not protected by statutory law, *i.e.*, the Freedom of Information Act². The language of Rule 12 constrains the conduct of certain persons, it does not characterize the nature

² To the extent the Court’s opinion intended to state that Rule 12, RLDE, operated to make the requested documents “information of a personal nature where the public disclosure thereof would constitute an unreasonable invasion of privacy” under S.C. Code Ann. Section 30-4-30(A)(1) the Court’s opinion did not do that. Instead, it relied exclusively on Rule 12 to determine that the documents themselves were not “public records” and there therefore not subject to FOIA. The Court of Appeals did not decide whether Section 30-4-40(a)(2) applied to the documents in question, nor did it decide that the information of a personal nature where the public disclosure thereof would constitute an unreasonable invasion of privacy. If the Court intended to so rule, that ruling would have been in error; neither the Court of Appeals nor the circuit court examined the contents of the documents in question.

of documents. Rule 12 provides that certain persons ("the Supreme Court, the members of the Commission, the staff of the Commission, disciplinary counsel, the staff of disciplinary counsel, the members of the Supreme Court, and the staff of the Supreme Court") "shall not in any way reveal" the pendency of a proceeding being investigated by the Office of Disciplinary Counsel and/or pending before the Commission on Lawyer Conduct. Nothing in Rule 12 changes the nature of the documents or information on file with Disciplinary Counsel to make them confidential; it merely identifies who cannot reveal the existence of a proceeding. Notably, any other person, including the lawyer against whom a disciplinary matter is pending, is not prohibited from revealing the existence of the proceeding or the nature thereof. Solicitor Wilson did, in fact, reveal the existence of the proceeding(s), as she was freely permitted to do.

Additionally, a rule enacted by the Supreme Court, *i.e.*, part of the judicial branch of government, cannot be used to determine whether a document is protected from disclosure pursuant to a statute, *i.e.*, FOIA. Allowing the judicial department to enact procedural rules that affect the construction of statutes would violate the separation of powers. The judicial department cannot pass rules that undo what the General Assembly has established via the Freedom of Information Act. In other words, a court rule of procedure cannot affect the substantive law set forth in the Freedom of Information Act.

4. The Court erred in construing Rule 12 of the RLDE as changing the character of a document on file with an entity of the judicial department. Rule 12 relates to a "proceeding" or a "matter" and not to documents (although it does reference the word

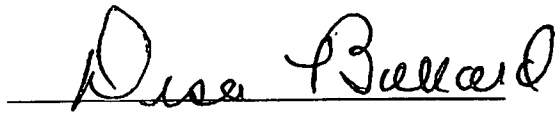


“record” and is, to that extent, perhaps ambiguous). Therefore, the Court erred in allowing a procedural rule governing a disciplinary matter at the judicial department to determine whether documents are or are not “public records” under FOIA. *See* Op.No. 5541, footnote 1 (“Having determined the requested documents are not public records...”).

5. The Court of Appeals erred in its construction and application of the separation of powers doctrine to these facts. In its opinion, the Court stated that the General Assembly “provided court rules, including rules regarding lawyer discipline, carry the force of law” (without citation of authority) and therefore speculated that the General Assembly had decided “to allow court rules to carry the force of law.” Such a determination (which is outside the scope of the rules of statutory construction) does not solve the separation of powers issues.
6. The Court of Appeals erred in failing to decide the issue of whether Solicitor Wilson is a public body (Issue One) or Issue Three. In footnote 1, the Court declared that it need not decide Issue One because its ruling on the other issues on appeal “is dispositive,” citing Futch v. McAllister Towing of Georgetown, 356 S.C. 598, 518 S.E.2d 591. (1999). The opposite is true. Since the Court of Appeals affirmed on two of the issues Appellant raised on appeal³, it had to decide the other, unanswered questions (Issue One and Three), either one of which would have required reversal of the trial court’s decision.

³ The Court, respectfully, did not rule on Appellant/Petitioner’s Issue One (is Solicitor Wilson a public official”) nor did it rule on Issue Three (the documents in question are exempt from disclosure pursuant to S.C. Code Ann. Section 30-4-40(a)(2)).





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ATTORNEYS FOR PETITIONER

April 3, 2018

Appendix 0127

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
R. MARKLEY JENNIS JR., CIRCUIT COURT JUDGE
Trial Court Case No.: 2015-CP-10-5757
Appellate Case No. 2016-000555

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SC Court of Appeals

South Carolina Lawyers Weekly,
by and through its principal, Dolan Publishing Company..... Petitioner,

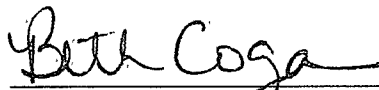
vs.

Scarlett Wilson, Solicitor of the Ninth Judicial Circuit,
An elected public official,..... Respondent.

PROOF OF SERVICE

I, Beth Cogan, an employee with Ballard & Watson, Attorneys at Law, do hereby
certify that on, April 3, 2018, I served a copy of the **Petition for Rehearing** in the above-
captioned case on the following individual by electronic mail and by United States Mail,
with sufficient first-class postage affixed, addressed as follows:

**J. Emory Smith, Jr., Esquire
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, South Carolina 29211**


Beth Cogan, Paralegal

April 3, 2018
West Columbia, South Carolina

Appendix 0128



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court Of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2016-000555

South Carolina Lawyer's Weekly, by and through its principal,
Dolan Publishing Company. Appellant,

v.

Scarlett Wilson, Solicitor of the Ninth Judicial Circuit
An elected public official, ... Respondent,

**RETURN OF RESPONDENT
TO PETITION FOR REHEARING**

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Appellant has failed to show that this Court has overlooked or misapprehended any points pertinent to this appeal. Therefore, Appellant's Petition for Rehearing must be denied under Rule 221, SCACR.

ARGUMENT

I

THIS COURT PROPERLY DETERMINED THAT RESPONDENT DID NOT WAIVE CONFIDENTIALITY

Appellant contends this Court erred in finding that Respondent "did not reveal anything about the content of [the] complaints." What the Court said was correct: "Solicitor Wilson revealed the existence of disciplinary complaints and revealed the source of certain of those complaints. She did not reveal anything further about the content of those complaints." The response to the FOIA request stated generally that "a number of grievances have been filed against Ms. Wilson by or at the behest of disgruntled criminal defense lawyers who disagree with her management of the Solicitor's Office and in some cases with her handling of cases." R. p. 21. This statement in the response was about the source of the complaints: disgruntled defense lawyers who disagree with her. It did not reveal the substance of the complaints themselves. Moreover, the FOIA response quite clearly asserted Rule 12 confidentiality.

In this Petition, Appellant argues for the first time that this Court should have remanded to allow the fact finder to make its own findings on waiver. Contrary to this argument Appellant now makes, Lawyers Weekly asserted in its brief that the lower court erred in failing to decide that waiver had occurred as a matter of law. Appellant argued that "the undisputed facts permitted the trial judge to conclude that a waiver had occurred as a matter of law. . . ." and "erred in failing to

conclude that Respondent has waived her right to withhold the requested documents from disclosure.” (Brief at pp. 11 & 12 – emphasis as written).

The lower court properly determined that no waiver had occurred based upon Rule 12, RLDE, and the letter itself. R., p. 5 (“Nothing in Rule 12 creates a waiver of confidentiality except when the Lawyer signs a waiver for the Commission . . . Certainly, Ms. Wilson’s letter had no intent whatsoever to waive confidentiality when she invoked the Rules on Lawyer Disciplinary Enforcement in her response letter and made quite clear that she believed, and correctly so, that the documents sought were not public.”) Appellant simply disagreed with the lower court’s decision. No basis exists for further consideration by the Circuit Court or this Court.

II

The Court Of Appeals Properly Determined That Rule 12 Controls As To The Confidentiality Of The Documents

Appellant’s grounds 3 - 5 rehash arguments already covered in briefing and rejected by this Court’s Opinion. Appellant contends that Rule 12 constrains people and proceedings rather than documents and that the Rule cannot control FOIA. Appellant briefed those arguments, and this Court properly ruled differently.

Rule 12 does speak directly to the documents themselves in stating that the “documents . . . shall become public 30 days after the filing of the answer” or as otherwise provided if no answer is filed. Before then, the documents are non-public.

Rule 12 most certainly does lawfully affect FOIA. FOIA expressly exempts “[m]atters specifically exempted from disclosure by statute or law” §30-4-40(a)(4). Rule 12 is such a “law” as this Court recognized. Appellant fails to cite §40-5-50 which states that “[u]pon such rules and

regulations becoming effective [including rules adopted under §40-5-20 regarding lawyer discipline], they shall supersede all laws or parts of laws in conflict therewith to the extent of the conflict.” These provisions make Rule 12 a law and therefore, matters controlled by it are exempt from disclosure under FOIA. As this Court stated, “the General Assembly’s decision to allow court rules to carry the force of law satisfies any potential separation of powers issues.”

III

THIS COURT WAS NOT REQUIRED TO RULE ON ISSUES THAT WERE NOT DISPOSITIVE OR NECESSARY FOR ITS DECISION

Appellant makes the peculiar argument that this Court should have addressed issues that would not have affected the conclusion that this case should be dismissed. Even if, *arguendo*, the Respondent were a public agency, the case would still be subject to dismissal because the documents are not public. Even if, *arguendo*, the documents were not an “invasion of personal privacy” under §30-4-40(2), they would still be exempt from disclosure by law under §30-4-40(4).

CONCLUSION

For the foregoing reasons, this Court should deny the Petition for Rehearing.

Respectfully submitted,

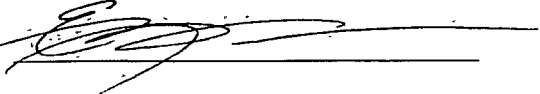
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By: 

April 9, 2018

Attorneys for Respondent Scarlett Wilson



The South Carolina Court of Appeals

South Carolina Lawyers Weekly, By and through its
principal, Dolan Publishing Company, Appellant,

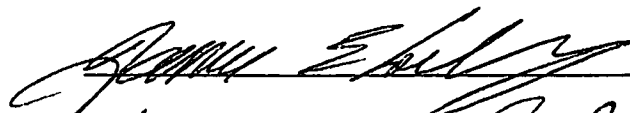
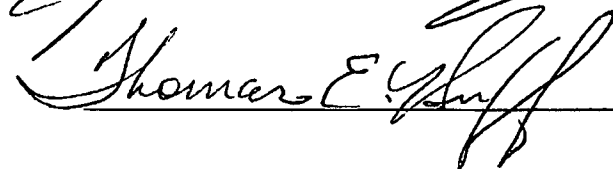
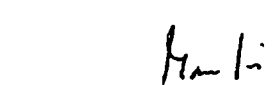
v.

Scarlett Wilson, Solicitor of the Ninth Judicial Circuit, an
elected public official, Respondent.

Appellate Case No. 2016-000555

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.
 J.
 J.

Columbia, South Carolina

cc:

Desa Ballard, Esquire

Harvey M. Watson, III, Esquire

J. Emory Smith, Jr., Esquire

FILED

May 24, 2018

Appendix 0134

Alan McCrory Wilson, Esquire
Robert D. Cook, Esquire
The Honorable R. Markley Dennis, Jr.