

The South Carolina Association of Ethics Counsels' \* (SCAEC)  
Comments on the American Bar Association's (ABA)  
Report on Lawyer Regulation System

*Recommendation 1 – The Court Should Increase Public Representation on the Lawyer Conduct Commission and Streamline the Functions of the Investigative Panels*

The SCAEC supports this recommendation.

*Recommendation 2 – The Court Should Create an Oversight Committee for the Commission on Lawyer Conduct*

The SCAEC takes no position on this recommendation.

*Recommendation 3 – The Court Should Amend the Rules to Provide Increased Discretion to Disciplinary Counsel*

The SCAEC supports this recommendation.

*Recommendation 4 – Complainants Should Be Provided with the Lawyer's Response to their Grievance and Should Have a Limited Appeal of Dismissals by Disciplinary Counsel*

The SCAEC opposes this recommendation.

*Recommendation 5 – The Court Should Phase Out Attorneys to Assist*

The SCAEC opposes this recommendation. The ABA's recommendation appears to be premised upon the Office of Disciplinary Counsel's receiving more funding for resources and staff. The SCAEC believes that although the ABA's recommendation is ideal, it is not realistic. According to the state's budget office, South Carolina currently allocates less than .5 percent of its total budget to the judicial branch. That, coupled with recent budget cuts, makes it unlikely that the Office of Disciplinary Counsel will receive the kind of budget necessary to allow it to phase out attorneys to assist. The SCAEC believes that the continued use of volunteer attorneys to assist in investigating complaints is not only necessary to streamline disciplinary proceedings, but is also desirable because it productively uses the varied experience of South Carolina lawyers and provides the Office of Disciplinary Counsel with attorneys who are knowledgeable in areas of law relevant to a particular complaint.

*Recommendation 6 – The Court Should Revise the Rule for Appointment of Attorneys to Protect Client's Interests to Ensure Efficient Use of Resources*

The SCAEC supports this recommendation. The SCAEC is all too cognizant that recent budget cuts make appointing attorneys a more viable option than hiring additional personnel.

*Recommendation 7 – The Court Should Amend the Discovery Rules to Permit More Liberalized Discovery and Provide for Pre-Hearing Conferences*

The SCAEC opposes this recommendation unless the last paragraph of the recommendation is amended to allow for discovery after an investigation is completed.

*Recommendation 8 – Discipline on Consent Should Be Encouraged at All Stages of the Proceedings*

The SCAEC supports paragraph two of the recommendation and agrees that documents setting forth the agreement for discipline on consent should not only state the factual basis for the admitted misconduct, but also should indicate the connection between those facts and the specific Rule violation or violations at issue.

The SCAEC opposes paragraph three of the recommendation and supports continuing the current practice that permits proposing a range of sanctions in matters of discipline by consent rather than proposing only one sanction in such matters.

*Recommendation 9 – The Court Should Adopt Specific Procedures Relating to Deferred Discipline Agreements*

The SCAEC supports that a deferred disciplinary agreement should not be a sanction.

*Recommendation 10 – Records or Evidence of Dismissed Complaints Should be Expunged After an Appropriate Period of Time*

The SCAEC takes no position on this recommendation.

*Recommendation 11 – The Court Should Amend the Rules to Provide that Disciplinary Counsel are Responsible for Handling Reinstatement/Readmission Cases*

The SCAEC is against this recommendation and instead supports that Commission Counsel handle matters before the Character and Fitness Board.

*Recommendation 12 – The Court Should Eliminate Indefinite Suspensions and Provide for Automatic Reinstatement for Suspensions of Less than Nine Months*

The SCAEC opposes this recommendation and believes that indefinite suspensions are a necessary and effective way to resolve complaints of lawyer misconduct.

*Recommendation 13 – The Court Should Consider Adopting Probation as a Sanction and also a Rule Setting Forth Procedures for its Imposition and Revocation*

The SCAEC does not find this recommendation necessary, and on that basis is opposed to it.

*Recommendation 14 – The Court Should Adopt a Rule for Random Audit of Trust Accounts and Approve a Curriculum Proposed by Disciplinary Counsel for a Trust Account School*

The SCAEC opposes this recommendation.

*Recommendation 15 – The Court Should Adopt a Rule Providing for Written Notice to Clients of Payment in Third-Party Settlements*

The SCAEC opposes this recommendation.

*Recommendation 16 – The Court Should Oversee the Formation of a Formal Annual Budget Process for Disciplinary Counsel’s Office to Ensure Adequate Staffing and Funding*

The SCAEC takes no position on this recommendation.

*Recommendation 17 – Disciplinary Counsel and Staff Should Receive Formal Training*

The SCAEC takes no position on this recommendation.

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\* The South Carolina Association of Ethics Counsel (SCAEC) was created in 2001 and is a voluntary, non-profit organization comprised of practitioners whose practices include, but are not limited to, legal ethics. The SCAEC seeks to improve the lawyer disciplinary system and its effectiveness for the benefit of both the public and practitioners.