

SALLY WIGGINS SPETH
ATTORNEY AT LAW

1727 Hollywood Drive
Columbia, South Carolina 29205

Telephone: (803) 771-7737

November 21, 2008

The Honorable Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
1231 Gervais Street
Columbia, SC 29201

Re: ABA Recommendations on Discipline

Dear Dan:

I make the following comments to the ABA recommendations for lawyer discipline:

Recommendation 2 - Oversight: I am unsure if a committee is the answer, but the Commission needs some sort of teeth to force the appointed volunteers to do their work timely. Commission Counsel should help. Training is vital, should be mandatory, and CLE credit should be given. Commission Counsel should be able to help here also.

Recommendation 3 - More Discretion to ODC: In the past, ODC has gotten a Full Investigation on a bare bones "he said-she said" complaint and response without any preliminary investigation. A Full Investigation gave subpoena power and the right to require the Respondent to appear and answer questions under oath, which made it easy for ODC but was unfair to the innocent lawyer. A full, proper preliminary investigation often obviates the need of a burdensome Full Investigation for both sides, and a Full Investigation should never be used to initially nose around. That is the purpose of requiring a preliminary investigation. See comments to Recommendations 4 and 5 below. Lastly, ODC's use of "demand subpoenas" is improper, probably unconstitutional, and should immediately cease. For the foregoing reasons, increased discretion to go forward causes concern, but increased discretion to dismiss does not.

Recommendation 4 - Complainant Rights: This is an excellent recommendation and will greatly enhance the preliminary investigation without the time and expense of ODC or an ATA. Let the Complainant see the response and rebut it, and let the Respondent see the rebuttal and respond since these two know more about the matter than anyone. A decision can then be made about whether to proceed forward.

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Recommendation 5 - Attorneys to Assist: ATAs are vital to the preliminary investigation. An ATA knows the reputation of the lawyer beforehand, and he meets face to face with the Complainant and the Respondent and witnesses if necessary. All are local and can come to him. He can weed through the "he said-she said" in short order and report back. Rather than eliminating them, I suggest adding more so the caseload will be more manageable to these appointed volunteers, and that some teeth be added to avoid delays. Most ATAs take this assignment seriously and are honored to assist the Court in this way. Those who do not should be promptly unappointed. ATAs should be instructed that they are neutral, much as the old Board members were.

Recommendation 6 - Trustees: Trustees should be neutral and independent, not trained and monitored by ODC who is fiercely adverse to Respondents.

Recommendation 8 - Discovery: I agree the use of a sanction range in consent agreements should cease.

I make the following comment to the ABA recommendations on judicial discipline:

Recommendation 5: If a justice is complained about, all of the Supreme Court should be recused and a special prosecutor and commission should be appointed to investigate and decide the matter.

Sincerely,

Sally Wiggins Speth

SWS/ll

By Hand Delivery and E-Mail