

Public Comments Submitted:

Adam J. Russo

Beverly H Whitfield

R. Brady Vannoy

Christopher A. Grubbs

David Mathews

Doward Harvin

Howard W. Anderson III

W. James Hoffmeyer

Jennifer Davis

Marsh A. Julian

Mark Desser

Michael E. Atwater

Patrick J. McLaughlin

Commission on Prosecution Coordination

Robert Louis Bank, Jr.

Robert J. Butcher

South Carolina Bar Practice and Procedure Committee

South Carolina Victim Assistance Network

South Carolina Association of Criminal Defense Lawyers

Susannah Ross

Nathaniel Brady

From: adam russo
To: [Rule13comments](#)
Subject: Proposed Rule 13 change
Date: Wednesday, November 1, 2017 3:46:02 PM

I wholeheartedly endorse the proposed changes. It is desperately needed for defense attorneys to have the capability to issue their own subpoenas.

--

Adam J. Russo, Esq.

Drennan Law Firm, LLC
1350B Chuck Dawley Blvd
Mount Pleasant, SC 2946;
[\(843\)609-2970](#) Phone)
[\(843\)830-5733](#) (24 Hr. Emergency)

From: [Whitfield, Beverly](#)
To: [Rule13comments](#)
Subject: subpoenas
Date: Wednesday, November 1, 2017 2:52:56 PM

I think the attorney's for General Session should sign the subpoenas. Basically I check to make sure all the boxes are correct and sign, it is of no concern to me and would take one more burden off the Clerk.

Sincerely,

Beverly H Whitfield

Clerk of Court

Oconee County

P.O.Box 678

Walhalla, S.C. 29691

bwhitfield@oconeesc.com

direct dial: 864-638-4283



R. Brady Vannoy, *Esquire*
Michael H. Murphy, III, *Esquire*
Grover C. Seaton, III, *Of Counsel*

105 Carolina Avenue
Moncks Corner, SC 29461

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Email of sender: brady@vannoymurphy.com

November 7, 2017

Via Email Only rule13comments@sccourts.org

Rules Clerk
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

RE: Comments Regarding Amendment to Rule 13(a)-Subpoena in a Criminal Case

Dear Sir/Madam,

I have been a licensed member of the South Carolina Bar since November of 2007. Over the past ten years, my practice has been focused on criminal defense. I am writing the Court in favor of amending Rule 13(a) to allow for attorneys to personally issue subpoenas and subpoenas *duces tecum*. I have read the proposed amendment and accompanying note published on November 1, 2017 and I am providing my comments below.

I believe this amendment justified and believe it would alleviate a burden on lawyers in criminal cases to seek approval from a clerk before getting a subpoena. I would encourage adding language that clarifies (1) what constitutes proper service; (2) a contempt provision for non-compliance; and (3) that no party may issue a subpoena for the statement of a witness or their appearance anywhere other than a court sanctioned event. I would also add that the current subpoena format needs revision to accommodate *duces tecum* requests that do not involve a court appearance.

Thank you for your consideration in this matter.

I remain

Very Respectfully,

A handwritten signature in blue ink, appearing to read "R. Brady Vannoy", is written over a printed name. The signature is stylized with large loops and a long horizontal stroke extending to the left.

R. Brady Vannoy, Esquire

RBV / rbv

Enclosures: as stated

CC:

**OFFICE OF THE PUBLIC DEFENDER
13th JUDICIAL CIRCUIT
Greenville County Courthouse
305 East North Street (Rm 123)
GREENVILLE, SOUTH CAROLINA 29601**

John I. Mauldin
Public Defender

TEL (864) 467-8522
FAX (864) 467-8521

November 3, 2017

To Whom it may concern,

I am writing in response to the request for comment on the proposed rule change to Rule 13, SCRCP. I am greatly in favor of the proposed amendment. Having practiced in both civil and criminal law, I can say that it was a very valuable tool being able to sign and send subpoenas as an attorney, rather than having to get the subpoena signed by the clerk of court. I believe the change would greatly help in the defense of my clients.

Please feel free to contact me with any questions. Thank you for taking my comment.

Sincerely,

S/Christopher A. Grubbs

13th Circuit Assistant Public Defender

From: Mathews, David
To: [Rule13comments](#)
Subject: potential subpoena change
Date: Friday, November 3, 2017 12:39:23 PM

When I practiced civil law, I issued plenty of subpoenas. As long as we are required to issue them in good faith, I see no reason why I shouldn't be able to do it as a Public Defender.

David Mathews
Colleton County Division
14th Circuit Public Defender's Office
319 North Lucas Street
Walterboro, SC 29488
(843)549-1633

From: Attorney Doward Harvin
To: [Rule13comments](#)
Subject: Written comments
Date: Wednesday, November 1, 2017 4:47:43 PM

I am greatly in favor of the rule change!

Doward Harvin
SC Bar 77933

Sent from my iPhone

**Law Office of
Howard W. Anderson III, LLC**

Howard W. Anderson III
Managing Attorney
Licensed in AK, GA, IL, IN, NC, SC, & TN
Howard@hwalawfirm.com
SC Circuit Court Arbitrator & Mediator

Via Email Only to rule13comments@sccourts.org

November 2, 2017

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

Re: Support of Proposed Amendment to Rule 13, SCRCrimPro

Dear Chief Justice Beatty and Associate Justices:

I write in support of the proposed amendment to Rule 13, SCRCrimPro. Amending the Rule to allow attorneys to sign subpoenas in criminal cases—as they already do in civil cases—would help promote efficiency in criminal cases.

While Clerk issued-subpoenas are easily obtained for the solicitors and public defenders, whose offices are located in the courthouses where they practice, it can be burdensome for members of the private bar, like myself. Indeed, I have had to request continuances due to an inability to obtain (with sufficient time for me to serve) witnesses when the trial rosters are late being published, as they sometimes are.

If the rule change proceeds as proposed, South Carolina would join our neighboring states, both of which already permit attorneys to sign subpoenas in criminal cases. N.C. Gen. Stat. § 15A-801; O.C.G.A. § 24-13-21(d). As a member of the Georgia and North Carolina bars, I can report that I have heard of no problems with attorney-issued subpoenas.

If I can provide anything further in support of the proposal, please let me know.

Sincerely,

Howard W. Anderson III
SC Bar #100329

LAW OFFICE OF W. JAMES HOFFMEYER

Professional Corporation
125 WARLEY STREET
FLORENCE, SOUTH CAROLINA 29501
(843) 664-0009
(843) 664-0105 fax
jim@hoffmeyerlaw.com

W. James Hoffmeyer
Attorney at Law

November 3, 2017

South Carolina Courts

Re: Proposed amendment to Rule 13(a) of the South Carolina Rules of Criminal Procedure

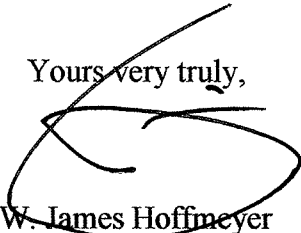
To whom it may concern:

The amendment to Rule 13(a) of the South Carolina Rules of Criminal Procedure that has been suggested is crucial in adequately representing defendants in General Sessions Court. Criminal defense attorneys need the ability to issue subpoenas and subpoenas *duces tecum* in order to obtain often vital information for the adequate representation of our clients. These criminal defendants have their liberty at stake and the ability to properly investigate and prepare a case is difficult in many situations without the ability to subpoena information. Also, making sure witnesses are under subpoena and have ample notice of the need to be in Court will be much easier with this rule change. I also practice in Common Pleas and have always been able to issue subpoenas in what are sometimes relatively minor cases pending in Common Pleas and while it is important to those cases, the ability to issue subpoenas is even more important when someone is facing criminal charges in General Sessions.

Thank you for considering my comments.

With kind regards, I am,

Yours very truly,



W. James Hoffmeyer

WJH/frb

From: Jennifer Davis [<mailto:DavisJe@rcgov.us>]
Sent: Thursday, November 2, 2017 8:57 AM
To: Rule13comments <Rule13comments@sccourts.org>
Subject: rule 13 comments

Jennifer Davis
Deputy Public Defender
Richland County
803-765-2592 ext 120

This is a very necessary change and would allow attorneys the tools they need in preparing for cases and trials. As officers of the court, an attorney should be allowed to issue subpoenas so that they are able to fully and completely represent their clients and to do so as needed. I fully support this addition and cannot think of any negative policy implications in allowing it.



CITY PROSECUTOR

TEL: (843) 676-8633

FAX: (843) 669-7714

November 21, 2017

Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

Re: Rule 13(a), SCRCrimP

Dear Chief Justice and Associate Justices:

Currently, as the rule stands and as the proposed amendment states, the subpoena power, whether it be in the hands of the clerk alone or the attorneys of record, is only allowed in General Sessions. However, this does nothing to address the myriad of offenses in Magistrate's Courts and the Municipal Courts. Defense attorneys have a broad subpoena power that extends to the entire state, when it comes to obtaining evidence to levy a defense for their client. Yet, prosecutors and assistant solicitors practicing in lower courts do not have such authority. All they can do is request that a witness testify at trial or produce needed evidence. For instance, technology plays a huge role in today's world. Security cameras are prevalent in almost every locale. However, businesses are hesitant to turn over video evidence of crimes without a subpoena. Even regional and state government agencies will balk at a voluntary submission of security tapes.

This video evidence is needed almost every day in shoplifting cases, traffic collisions, and larceny cases, among others. Denying prosecutors and lower courts the subpoena and subpoena duces tecum power denies justice to citizens and businesses located within the lower courts' jurisdiction. I understand that many view these lower courts as inferior in more ways than jurisdiction. But, without these courts, General Sessions would grind to a halt. Therefore, it is important to equip these courts and their prosecuting officers the tools necessary to execute their role in the justice system. Please take this comment into consideration, as you decide upon adopting the amendment.

With kind regards, I remain

Sincerely,

A handwritten signature in blue ink, appearing to read "Marsh A. Julian".

Marsh A. Julian

Dear Sir or Madam:

I write to express my support of the proposed amendment to Rule 13, which would allow defense attorneys to issue subpoenas in criminal matters.

Thank you,
Mark Desser
Attorney at Law
SC Bar 12963

**MICHAEL E. ATWATER, ESQ.
4740 CEDAR SPRINGS ROAD
COLUMBIA, SOUTH CAROLINA 29206
TEL: (803) 782-5136
EMAIL: matwater1@sc.rr.com**

November 1, 2017

Supreme Court of South Carolina

RE: Comments Regarding Proposed Amendment to Rule 13, SCRCrimPro

Dear Sir/Madame:

I believe that the proposed amendment to allow attorneys to issue subpoenas in criminal proceedings is reasonable, necessary, and long overdue.

I have had many occasions over the years when the name of a necessary witness only became known very close to the trial date and the acquisition of a criminal subpoena from the Clerk of Court was time consuming and cumbersome.

Additionally, this procedure as opposed to the practice where a stack of Subpoenas are signed "in blank" is more desirable because it prevents non-attorney staff from filling out and sending subpoenas which were signed by the Clerk "in blank" without attorney review.

My singular concern is that the language of the rule does not address the issuance of subpoenas for a criminal trial in magistrate or municipal court. I believe that it should apply to all criminal proceedings. By having the specific language relating to General Sessions Court, it could be read to exclude all other jurisdictions.

With sincere regards,

/s/MICHAEL E. ATWATER
Michael E. Atwater, Esq.

WUKELA LAW FIRM

Steve Wukela, Jr.
Benjamin D. Moore
Christi B. McDaniel
Stephen J. Wukela
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403 Second Loop Road
P.O. Box 13057
Florence, SC 29504-3057

November 20, 2017

(843) 669-5634
FAX (843) 669-5150

Submitted Via Email: Rule13comments@sccourts.org

To whom it may concern:

**Comments on Proposed Rule 13(a) of the
South Carolina Rules of Criminal Procedure changes**

Please accept this written submission as comments in support of the proposed Rule 13(a) of the South Carolina Rules of Criminal Procedure changes that will allow attorneys to issue and sign subpoenas and subpoenas *duces tecum* in General Sessions matters. As an attorney who practices both civil litigation and criminal defense work, it has always baffled me why I am allowed to issue subpoenas as an officer of the court for some of my clients, but not for others. Additionally, I would note that I am familiar with the South Carolina Attorney General's Office on more than one occasion taking a position on the record that criminal defendants have no right to use subpoenas *duces tecum* to obtain evidence by which to defend themselves. Fortunately, the judges in those cases did not give that argument much weight, understanding that it would be ridiculous for a defendant to have to go through the State in order to obtain evidence for their defense.

This proposed rule change will clarify the rights of persons accused of crimes and will put the criminal defense bar on equal footing with their civil law colleagues.

With kind regards, I am

WUKELA LAW FIRM



PATRICK J. MCLAUGHLIN

PJM/jen

STATE OF SOUTH CAROLINA
Commission on Prosecution Coordination

ISAAC McDUFFIE STONE III, CHAIRMAN
SOLICITOR, FOURTEENTH JUDICIAL CIRCUIT

WILLIAM W. WILKINS III, VICE-CHAIRMAN
SOLICITOR, THIRTEENTH JUDICIAL CIRCUIT

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SOLICITOR, SIXTEENTH JUDICIAL CIRCUIT

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DAVID M. ROSS
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DIRECTOR, DEPARTMENT OF PUBLIC SAFETY

GREG HEMBREE
SENATOR, DISTRICT NO. 28
SENATE JUDICIARY COMMITTEE

November 21, 2017

VIA EMAIL ONLY (rule13comments@sccourts.org)

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

Re: Comments on Proposed Amendments to Rule 13, SCRCrimP

Dear Mr. Shearouse,

On behalf of the South Carolina Commission on Prosecution Coordination, with the input and agreement of the Solicitors' Association of South Carolina, Inc., I am submitting this letter opposing the proposed amendment to Rule 13, SCRCrimP, and requesting instead that the Court clarify the issuance and use of subpoenas under the existing Rule by either adding new language to the Note to Rule 13 or by issuing an order.

**Proposed Changes May Make It Easier for Lawyers
to Use Subpoenas *Duces Tecum* in Violation of the Rule**

Rule 13 provides for the use of subpoenas to compel the attendance of witnesses and to compel witnesses to bring documentary evidence with them to court. A review and comparison of Rule 13 with Rule 45, SCRPC, reveal very distinctive differences between the two, with Rule 45 clearly providing for the use of subpoenas *duces tecum* to command the production of documentary and other tangible items separate and apart from any trial, hearing or other court proceeding. On the other hand, Rule 13 provides for the use of subpoenas *duces tecum* only for the production of documentary evidence and only by a person when attending a court proceeding in General Sessions Court as a witness.

Therefore, in the absence of express statutory authority, it is improper for prosecutors and defense attorneys to use subpoenas *duces tecum* for investigative purposes, *i.e.*, before criminal charges have been initiated and the General Sessions Court has jurisdiction over the charges, and without a court proceeding being scheduled. *See* Rule 13, SCRCrimP; *State v. Williams*, 301 S.C. 369, 370-371, 392 S.E.2d 181, 182 (1990) (state conceded that subpoena *duces tecum* used by law enforcement to obtain Williams' blood alcohol test results from hospital before Williams was arrested was defective). *See also Op. S.C. Atty. Gen.* (April 5, 2005) (Opinion discussing authority of magistrate to issue a subpoena *duces tecum* in which the South Carolina Attorney General concluded the lack of the specific authority to issue a subpoena *duces tecum* means that a summary court judge is not authorized to issue one.) There are two statutes that allow for the use of subpoenas by prosecutors and/or defense attorneys to obtain information for investigatory purposes rather than for production at a court proceeding.¹

- (1) a court, prosecuting attorney, defense attorney, or law enforcement officer involved in the investigation or prosecution of an alleged violation of S.C. Code Section 56-5-2945 may obtain information regarding tests performed pursuant to Section 56-5-2946 upon subpoena (Section 56-5-2946(C)); and
- (2) the Clerk of the State Grand Jury, upon request of the Attorney General or his designee, has the authority to issue subpoenas and subpoenas *duces tecum* for investigative purposes (Section 14-7-1680).

Subpoenas allowed under either of these statutes must still comply with any applicable state or federal laws controlling access to records. *See, e.g., State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713 (2017). For example, access to medical records requires compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the regulations promulgated pursuant to the Act. *See, e.g.,* 45 C.F.R. §§164.512(e) (permitted disclosures for judicial and administrative proceedings; subpoenas allowed under certain circumstances involving notice, protective orders, or assurances) and/or (f) (conditions for disclosure of protected health information to law

¹ In addition, while the legislature has provided for investigatory subpoenas in a number of non-criminal investigation settings, it has authorized the use of such in a few other instances where the investigation is conducted by law enforcement and/or prosecutors. Such limited instances include the following.

- In the discharge of its statutory duties to investigate child deaths in South Carolina, SLED's Department of Child Fatalities has statutory authority to obtain investigatory subpoenas for testimony and production of documents, books, papers, correspondence, memoranda, and other relevant records. Section 63-11-1970 (see also Section 63-11-1960).
- In SLED's discharge of the duties of its Vulnerable Adults Investigation Unit, "the clerks of court shall issue a subpoena or subpoena *duces tecum* to any state, county, or local agency, board, or commission or to any representative of any state, county, or local agency, board, or commission or to a provider of medical care to compel the attendance of witnesses and production of documents, books, papers, correspondence, memoranda, and other relevant records to the discharge of the unit's duties." Section 43-35-550.

enforcement for law enforcement purpose).

Despite the restrictions on the use of subpoenas *duces tecum* in criminal cases, they are subject to improper use by attorneys as the result of either ignorance or intention. The Solicitors are concerned that the proposed amendment would make it easier for criminal practitioners to improperly use subpoenas, particularly subpoenas *duces tecum*.²

**Instead of Amending Rule 13, the Court Should Issue an Order or Add Language
to the Note Clarifying the Issuance and Use of Subpoenas**

The primary issue that both prosecutors and defense attorneys have with Rule 13 is the ability to obtain a subpoena, which is not because of the Rule 13 requirement that a subpoena be issued by the Clerk of Court³, but instead by the county-to-county variation in the way the Clerks of Court issue subpoenas.

- Some Clerks of Court make pre-signed or photocopies of signed blank subpoenas available for attorneys to pick up and use as they wish.
- Some Clerks of Court insist on personally signing all subpoenas after they have been completed.
 - This process is the most problematic as the elected Clerk of Court is not always available.
- Some Clerks of Court allow one or more other designated person in the office to sign subpoenas after they have been completed.
 - In the smaller counties, this process is problematic because a designated person is not always available when the Clerk's Office is open.

If this Court were to include language in the Note to Rule 13 clarifying the process by which the Clerks of Court are to issue subpoenas and – in addition to an order or other directive to the Clerks of Court – emphasize that employees in a Clerk's Office other than the elected Clerk of Court may

² Moreover, in light of recent ethics opinions, we are concerned about the ethics implications of the improper use of subpoenas. See *In the Matter of Fabri*, 418 S.C. 384, 793 S.E.2d 306 (2016) (Fabri's failure to comply with civil and family court rules governing the use of subpoenas in family court matters constituted conduct prejudicial to the administration of justice in violation of Rule 8.4(e), SCRProfC); S.C. Bar Eth. Adv. Comm. Op. 01-05 (efforts to obtain or serve improper subpoena may violate Rule 8.4(g), SCRProfC, and another prosecutor's knowing use of information obtained by another's improper subpoena would result in violation of Rules 5.1(c)(1) and 8.4(a)).

³ The provision in Rule 13 requiring subpoenas to be issued by the Clerks of Court is similar to the provisions of the federal subpoena rule. See Rule 17(a), FRCrP ("The clerk must issue a blank subpoena – signed and sealed – to the party requesting it, and that party must fill in the blanks before the subpoena is served.").

sign a subpoena and that some such person should be available during all business hours, such would alleviate the need for the proposed amendment.

In addition, the Association urges the Court to provide further guidance to the Bar by adding language to the Note to reiterate the restrictions on the use of subpoenas and subpoenas *duces tecum*. Here is an example of language we feel would be helpful to lawyers.

In the absence of express statutory authority otherwise, prosecutors and defense attorneys may only use subpoenas and subpoenas *duces tecum* once the General Sessions Court has jurisdiction over a defendant and charge. Subpoenas *duces tecum* may only be used to require documentary evidence to be produced in court. *See State v. Williams*, 301 S.C. 369, 370-371, 392 S.E.2d 181, 182 (1990).

Nothing in this Rule authorizes the use of a subpoena or subpoena *duces tecum* when other state or federal law requires a court order or other process.

If the Court determines that it is inappropriate to add language to the Note addressing the issuance and use of subpoenas without amending the Rule, we ask the Court to issue an order clarifying the issuance and use of subpoenas and subpoenas *duces tecum* in General Sessions Court.

NEW Matter: Rule 13 Amendment to Protect Crime Victims

Having responded to the Court's call for comments on the proposed changes to Rule 13, the Association takes this opportunity to request the Court to consider addressing the use of subpoenas *duces tecum* in criminal cases to obtain personal and confidential, and often irrelevant, information about a crime victim without notice to the State or the victim. To ensure that such subpoenas are used lawfully, that personal and confidential information about a victim are accessed only when appropriate, that such information is not further disseminated, and that a victim's rights are not violated, the Association encourages the Court to require that any such subpoenas be issued only upon court order. The Association submits the following amendment to Rule 13(a).

(a) Issuance of Subpoenas.

- (1) Upon the request of any party, the clerk of court shall issue subpoenas or subpoenas *duces tecum* for any person or persons to attend as witnesses in any cause or matter in the General Sessions Court. The subpoena shall state the name of the court, the title of the action, and shall command each person to whom it is directed to attend and give testimony, or otherwise produce documentary evidence at time and place therein specified. The subpoena shall also set forth the name of the party requesting the appearance of such witness and the name of counsel for the party, if any.

- (2) A subpoena requiring the production in court of documents containing personal or confidential information about a victim may be served on a third party only by court order.
- (a) Before entering the order and unless there are exceptional circumstances, the court shall require giving notice to the victim and prosecution so that, if desired, a motion to quash or modify the subpoena or other objection may be made.
- (b) If a motion or objection is made, the court shall hold a hearing.
- (c) Any court order issued allowing the use of a subpoena duces tecum must prohibit the parties from using or disclosing the documents and any information contained therein for any purpose other than the litigation or proceeding for which such documents were requested, prohibit the provision of a copy of such documents to the defendant, and require the return to the person from whom the documents were obtained or destruction of the documents (including all copies made) at the end of the litigation or proceeding.
- (3) Nothing in this Rule authorizes the use of a subpoena or subpoena duces tecum when other state or federal law requires a court order or other process.

This language is based on Rule 17(c)(3), FRCP, with the inclusion of some of the protective measures provided for in 45 C.F.R. §164.512. We feel that the inclusion of this language will not infringe upon a defendant's ability to obtain relevant and material evidence and will, by requiring a judicial determination in this one instance before the issuance of a subpoena *duces tecum*, ensure that victim's rights are protected as required by South Carolina constitutional and statutory law.

Thank you for the opportunity to submit these comments to the Court. Please contact me if you or the Court have any questions or need further information.

Sincerely,



David M. Ross
Executive Director

Regarding Proposed Rule Amendment to Rule 13(a) of the South Carolina Rules of Criminal Procedure:

As a practicing Assistant Public Defender in Richland County, trial preparation is a large part of my job. Frequently, the issuance of a subpoena is the only thing that will guarantee the attendance of key witnesses in court. While I try to issue subpoenas early, it is sometimes impossible to prepare for all contingencies. Sometimes new developments in a case occur the Friday before trial after 5:00pm, when the Clerk of Court is unavailable. These new developments can arise from Defense investigations. More often, the need for a last minute subpoena is the result of new information provided by an Assistant Solicitor or Assistant Attorney General. Having the power to subpoena witnesses over weekends or after 5pm on weekdays would easily remedy some of the problems that come with receiving new information on the eve of trial. This amendment to the rules would improve my ability to effectively represent my clients as a trial lawyer.

Thank you for your consideration.

Robert Louis Bank, Jr.
Assistant Public Defender
Richland County Public Defender's Office
1701 Main Street
Columbia, SC 29201

From: Robert Butcher
To: [Rule13comments](#)
Subject: Rule 13(a), SCRCrim.P
Date: Wednesday, November 1, 2017 1:27:11 PM

This is an excellent and long needed rule change. Sometimes my staff or I have to drive several hours each way to have a subpoena signed by the clerk of court. I have also had problems with the clerks informing the assistant solicitors about the names of persons I was subpoenaing for trial. This occurred in Kershaw about six or seven years ago.

Robert J. Butcher

221 Glenwood Drive
Manning, South Carolina 29102

Post Office Box 486
Manning, South Carolina 29102

Phone: (803) 432-7599
Facsimile: (803) 432-7466
E-mail: rbutcher@camdensc-law.com
Website: www.camdensc-law.com



TO: The Supreme Court of South Carolina
FROM: Jonathan Lounsberry, Chair
Practice and Procedure Committee
Date: November 21, 2017
RE: Proposed Amendments to Rule 13(a), SCRCrimP

The Practice and Procedure Committee of the South Carolina Bar supports the Court's modification to the Bar's proposed amendment to Rule 13(a), SCRCrimP. Should you wish to discuss this matter further or if the Committee could be of any future assistance, please do not hesitate to contact me.

With highest regards, I remain

Very respectfully yours,

A handwritten signature in blue ink, appearing to read "Jonathan W. Lounsberry", written over the printed name.

JONATHAN W. LOUNSBERRY

Comments Regarding Proposed Amendment of Rule 13(a) of the South Carolina Rules of Criminal Procedure

The South Carolina Victim Assistance Network is concerned how this rule change would affect victims and their privacy. All victims have a constitutional right to privacy, as well as constitutional rights to be treated fairly, with dignity and respect, and to be free from intimidation and harassment. It is crucial that victims are not victimized through the judicial process and are protected from subpoenas that exploit their privacy and are irrelevant to the proceedings.

As such, the South Carolina Victim Assistance Network advocates that all subpoenas involving victims and their personal or confidential information should be issued only under court order, similar to the Federal Rules of Criminal Procedure, Rule 17(c)(3). Victims should be notified of any request for their personal information and should be informed that in addition to the right to be present at the hearing, victims have a right to counsel. Documents and information requested of a victim should be shown to be relevant to the proceedings with specificity. A judge should determine if the request of the moving party is material and should only grant a subpoena for the victim's information after a hearing at which the victim is present and has a right to be heard and represented by counsel. If subpoenas are issued with no regard to the relevance or specificity of materials sought and with zero oversight, it is inevitable that victims' rights will be trampled. By requiring a court order for a victim's personal or confidential information, it will ensure that the rights of both the defendant and victim are secured, and due process is available to all.



South Carolina Association Of Criminal Defense Lawyers

November 20, 2017

Daniel E. Shearouse
Clerk of Court,
Supreme Court of South Carolina
P.O. Box 11330
Columbia, South Carolina 29211

**Re: Request for Written Comments on the Proposal to Amend Rule 13(a)
of the South Carolina Rules of Criminal Procedure**

Dear Mr. Shearouse:

Please accept this written comment on behalf of the South Carolina Association of Criminal Defense Lawyers (SCACDL) in support of the South Carolina Bar's proposal to amend Rule 13(a) of the South Carolina Rules of Criminal Procedure. Specifically, SCACDL supports the proposed amendment to permit lawyers to issue and sign subpoenas and subpoenas *duces tecum* in criminal cases.

As the President of SCACDL, I write to express this organization's support for the rule change that would allow lawyers defending persons in criminal cases the same compulsory process rights as lawyers pursuing monetary compensation in civil cases.

Furthermore, the South Carolina Attorney General's Office has previously taken the position in some cases that a criminal defendant does not have the right to use a subpoena *duces tecum* to obtain evidence. This is in violation of a criminal defendant's due process right to have an opportunity to present a meaningful and complete defense.

Notably, this proposed rule change will clarify any ambiguity in South Carolina regarding a criminal defendant's right to compulsory process and will allow criminal defense lawyers to use the same methods as their civil colleagues in pursuing justice.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Dayne Phillips". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Dayne Phillips
President,
South Carolina Association of Criminal Defense Lawyers
803-807-0234 (cell)

From: Susannah Ross
To: [Rule13comments](#)
Subject: Rule 13 (a) SCCrimP
Date: Thursday, November 2, 2017 1:51:51 PM

I fully support amending Rule 13 (a) SCCrimP to allow attorneys to issue subpoenas in criminal cases.

Thank-you

--

Susannah Ross
Ross and Enderlin, PA
330 E. Coffee St.
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From: NATHANIEL BRADY [<mailto:BRADYN@rcgov.us>]
Sent: Friday, November 3, 2017 9:23 AM
To: Rule13comments <Rule13comments@sccourts.org>
Subject: Comment Supporting Rule 13 Change

Good morning,

Please find attached my comment in support of the Rule 13 Rule change regarding criminal subpoena powers.

Thank you,

Nate Brady
Assistant Public Defender
Richland County Public Defender
1701 Main St. Ste. 103
Columbia, SC 29201
Phone: (803) 765-2592
Fax: (803) 748-5018

Please approve this change. I believe that—aside from providing a valuable tool to attorneys on both sides of the aisle—it will streamline cases, reduce docket clutter, and eliminate much wasted time for judges and attorneys.