

December 23, 2009

The Honorable Daniel E. Shearouse  
Clerk of Court  
Supreme Court of South Carolina  
Columbia, SC 29211

Re: Written Comments Regarding Proposed Amendments to the South Carolina Rules of Civil Procedure, Motions Practice

Honorable Mr. Shearouse:

In response to the South Carolina Supreme Court's request for written comments dated December 9, 2009, on the above-referenced proposed amendments, please consider the comments set forth below.

**Alternative Proposed Amendment to Rule 7(b), SCRPC:**

The proposed alternative language for Rule 7(b) provides for more efficiency and notice in motions practice for two reasons (except as noted below):

1. The requirement of a supporting memorandum (or similar narrative within the body of the motion) at the time of the filing of the motion serves to notify the Court and opposing counsel of the legal and/or factual basis of such motion enabling an informed response by counsel as well as ultimately, an informed decision by the Court.

2. The time limitations provide adequate opportunity for the response and reply while assuring the motion moves forward for resolution except as noted below.

However, the proposed amendment to Rule 7(b)(4) provides that "the moving party may serve and file a reply no later than two (2) days prior to the hearing." The undersigned submits that in practice two (2) days is not a sufficient time for a reply. Oftentimes the nonmoving party may well fail to receive the reply and be unable to adequately represent her client at the motion's hearing because she is "surprised" by new arguments made in the reply. This issue could very well be remedied by amending the time for a reply to "five (5) days prior to the hearing." Alternatively, the Court may consider amending Rule 5(b)(1), SCRPC, to add Rule 5(b)(1)(a), SCRPC : Service of motions, supporting memorandum, affidavits, responses and a reply as provided in Rule 7(b), SCRPC, may, in addition to service by mail and personal service, be made by way of electronic mail ) (E-mail), where the attorney or party (if pro se) have provided an E-mail address to the Court in pleadings previously filed in the same action." The addition of service by E-mail may well avoid the delays in receipt of the document served by the attorney or party. Adoption of this method also recognizes and incorporates into the rules what many attorneys already do in practice.

I thank you in advance for the opportunity to submit comments. Merry Christmas and Happy Holidays!

Yours truly,

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