

December 21, 2009

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

Re: Amendment of Rules 6 and 7, SCRCP

Dear Mr. Shearouse:

We offer our strong support for the alternative amendments to Rules 6 and 7, SCRCP, prepared by the Court staff. In our view, adoption of the Court staff's alternative amendments would significantly improve motions practice in state courts because these amendments would encourage parties to clearly identify and brief the factual and legal issues and provide trial court judges with the opportunity to adequately prepare before hearings. Adoption of the proposed rules may also have the attendant benefit of improving appellate practice because the parties will be required to more thoroughly brief issues at the trial level.

In their current form, the alternative amendments proposed are quite sound. We offer a few minor suggestions that may further refine the alternative amendments:

(1) We suggest that under proposed Rule 7(b)(3), the time-period for the service and filing of the return be extended to 15 days, from the current proposed 10-day period. A 15-day period would allow a more reasonable period of time for parties to prepare adequate responses – particularly when more substantial motions are involved.

(2) We suggest that Rule 7(b)(4) be modified to allow the service of reply briefs 7 days after the service of the return. Under the proposed alternative, the time for the filing and service of the return is linked to the filing and service of the motion. For the sake of consistency, the filing and service of the reply should be linked to filing and service of the return. More significantly, linking the reply to the return would eliminate the unfair advantage that the moving party appears to have under the proposed amendments. Under the Court staff's proposed alternative amendments, "the moving party may serve and file a reply no later than two (2) days prior to the hearing." If there is – as will likely be in most cases – a long lag of time between the filing of the return and the scheduling of a hearing, then the moving party will be at a significant time advantage in preparing reply arguments. The playing field would be leveled by

connecting the reply brief's filing and service to the date of the return, rather than linking it to the date of the hearing.

(3) We respectfully encourage the Supreme Court to consider the addition of the following subsection:

“Rule 7(b)(9): The requirements set forth in these rules may not be altered by the court except by motion and upon a showing of the existence of compelling circumstances.”

We believe the above language or a similar, strongly-worded provision is necessary to make clear that the motions requirements may not be ignored or modified absent compelling circumstances. Otherwise, trial judges may routinely waive the requirement as a matter of local practice, thereby defeating the presumed intent of the rules.

(4) There appears to be a typo in Rule 7(b)(5)(E): The phrase “required by” appears twice and seems to be redundant.

Thank you for the opportunity to offer the above comments. We believe that adoption of the Court staff's alternative proposal will signal a marked improvement in motions practice in South Carolina.

With highest regards,

Vance J. Bettis

Shahin Vafai

Encl. (7 copies)