

[REDACTED]

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December 17, 2012

Office of Disciplinary Counsel  
P.O. Box 12159  
Columbia, S.C. 29211

To whom it may concern:

On Tuesday, December 11, 2012, a witness in the case of State v. [REDACTED] [REDACTED] contacted my office regarding a subpoena that he had received, which directed him to appear at the Solicitor's Office for an interview. In the box on the subpoena for "Courtroom," is typed "Solicitor's Office." The reverse side of the subpoena has been modified to state: "ADDITIONAL INSTRUCTIONS: Failure to appear in court pursuant to this subpoena constitutes contempt of court." The witness' name is [REDACTED], and he is the brother of the defendant. Mr. [REDACTED] told me that two other members of his family received identical subpoenas. The defendant's attorney is [REDACTED] of the Horry County Public Defender's Office.

The subpoena was served by a Solicitor's Office investigator named [REDACTED], and appears to have been issued by Assistant Solicitor [REDACTED] at the Fifteenth Circuit Solicitor's Office. I emailed Gregory Hembree, Mr. [REDACTED], and Jimmy Richardson, who is the incoming Circuit Solicitor, and asked for an explanation. The response from Mr. [REDACTED] was that he does not issue this type of subpoena. In a follow up phone call to Mr. [REDACTED], I was informed that when he appeared pursuant to the subpoena he was in fact questioned at the solicitor's office by Assistant Solicitor [REDACTED] and a solicitor's office investigator, and that there was no court appearance.

I bring this to disciplinary counsel's attention because improper use of the subpoena power appears to be an ongoing issue in the Fifteenth Circuit Solicitor's Office. Several years ago I was informed by a witness in a magistrate court case that former Assistant Solicitor [REDACTED] had mailed a subpoena to a witness in another state and then informed the witness that Horry County law enforcement would pick them up in that state if they did not appear in court. After that case was resolved, I met with Mr. [REDACTED] at the Horry County Solicitor's Office, he acknowledged that it had happened but assured me that he had discussed it with a supervisor, understood it was improper, and that it would not happen again.

In February of 2009, during the course of litigation in the case of State v. [REDACTED] and State v. [REDACTED], attorneys for the defendants questioned the Clerks of Court for Horry and Georgetown Counties, three solicitor's office investigators, and Circuit Solicitor Gregory Hembree, who testified under oath that the Fifteenth Circuit Solicitor's Office maintained stamps with the Clerk's signature in the Solicitor's Office which were kept by the Solicitor's Office investigators and secretaries, that they did not keep track of those stamps or who had possession of them, that they used those stamps to issue subpoenas without the Clerk's review or signature, that they allowed the Solicitor's Office investigators to issue subpoenas without supervision or review by prosecuting attorneys, that they issued subpoenas duces tecum before any case had been filed, that they issued subpoenas and sent them out of state without regard to the requirements for out of state subpoenas, that they failed to provide any training to prosecuting attorneys or support staff as to the issuance of subpoenas, and that they issued subpoenas commanding witnesses to appear at the Solicitor's Office for interrogation.

I have enclosed the full transcript from the February 2009 hearing in the "Five Rivers" case. The discussion of the issuance of subpoenas to witnesses to appear in the Solicitor's Office for interviews is on pages 443-444, and the admission that there had been no training regarding the issuance of subpoenas is found on page 433. I have also enclosed the subpoena that was provided to me by Mr. [REDACTED] in the case of State v. [REDACTED], and the correspondence with Assistant Solicitor [REDACTED].

Sincerely,

[REDACTED]

Attorney at Law