

[REDACTED]

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March 27, 2013

Office of Disciplinary Counsel  
P.O. Box 12159  
Columbia, S.C. 29211  
Sent via mail and fax at 803-734-1964

In Re: Lawyer: [REDACTED], Esquire  
Case Number: 12-DE-L-1577

To whom it may concern:

I am in receipt of your office's letter dated February 27, 2013, which appears to state: 1) form language explaining why the office of disciplinary counsel does not give advice regarding legal disputes or intervene in cases; and 2) there is no evidence of the allegations in my original letter to disciplinary counsel.

Further, the letter states that I may request a review of this decision by an investigative panel of the Commission on Lawyer Conduct by filing a written request before March 29, 2013. I do request a panel review, for the following reasons.

The actions complained of were unrelated to any case that I am currently involved in. It came to my attention when the witness who received the attached subpoena contacted my office; the witness' brother is the defendant in the case and he is represented by attorney [REDACTED] at the Horry County Public Defender's Office. I also provided this information to [REDACTED].

The conduct complained of clearly happened. The attached subpoena speaks for itself. The witness states that there were three identical subpoenas issued and served on three witnesses on the same day. Further, former Circuit Solicitor Greg Hembree has admitted similar misconduct in sworn testimony as well as the fact that no training has ever been provided to this office's staff on what is or is not an appropriate subpoena. It is my understanding that non-lawyer staff including investigators and law enforcement personnel regularly issue subpoenas without attorney supervision. This was also admitted by several witnesses in the transcript that was provided to your office.

I have no desire to harm [REDACTED] and I am not aware of any other instances of misconduct on his part; however, there is no vehicle to address the abuse of subpoenas by assistant solicitors and law enforcement under their supervision other than through your office.

I reference Ethics Advisory Opinion No. 01-05, which states that it is unethical for an attorney to issue a subpoena prior to their being an active arrest warrant or a true billed indictment, or to use information gained from such a subpoena. Although that is not the specific misconduct involved in the attached subpoena, it is or was a regular practice in the Fifteenth Circuit Solicitor's Office that was proven and admitted in the transcript that was provided along with my original letter to your office. I also reference In Re Boyce, 639 S.E.2d 44 (S.C. 2006), where an attorney in private practice was reprimanded when her paralegal issued an improper subpoena in the attorney's name.

I am asking for a review of your office's decision because I am certain that if an investigator in my office issued a subpoena for a witness to appear in my office, that I would be admonished in some fashion. I am also asking for a review of your office's decision because I believe that abuse of the subpoena power is widespread among solicitor's offices and law enforcement in our state, and your office's decision sends the message that such conduct is sanctioned.

Sincerely,

[REDACTED]

Attorney at Law