CHAPTER 5

Attorneys‑at‑Law

ARTICLE 1

General Provisions

**SECTION 40‑5‑10.** Inherent power of Supreme Court to regulate practice of law; other powers cumulative.

The inherent power of the Supreme Court with respect to regulating the practice of law, determining the qualifications for admission to the bar and disciplining, suspending and disbarring attorneys at law is hereby recognized and declared. The authority conferred on that court in Sections 40‑5‑10 to 40‑5‑60 shall be deemed as cumulative thereto.

HISTORY: 1962 Code Section 56‑96; 1957 (50) 553.

**SECTION 40‑5‑20.** Supreme Court empowered to promulgate rules and regulations concerning practice of law; establishment of South Carolina State Bar.

The Supreme Court may from time to time prescribe, adopt, promulgate and amend such rules and regulations as it may deem proper (a) defining and regulating the practice of law, (b) determining the qualifications and requirements for admission to the practice of law, (c) prescribing a code of ethics governing the professional conduct of attorneys at law, (d) prescribing the procedure for disciplining, suspending, disbarring and reinstating attorneys at law, (e) organizing and governing an association to be known as the South Carolina State Bar which shall be composed of the attorneys at law of the State, and which shall act as an administrative agency of the Supreme Court of South Carolina for the purpose of improving the administration of justice, and (f) fixing an annual license fee for the practice of law in this State, the payment of which shall entitle but not require any attorney to be a member in the South Carolina State Bar and providing for the collection and the disbursement of such license fees. At such time as the South Carolina State Bar is established all offices, appointments or official duties heretofore delegated or given to the South Carolina Bar Association or any officer of the same by statute or appointment of the State of South Carolina or any branch thereof shall be vested in the South Carolina State Bar and its officers.

HISTORY: 1962 Code Section 56‑97; 1957 (50) 553; 1967 (55) 338.

**SECTION 40‑5‑40.** Supreme Court empowered to appoint boards to examine applicants, investigate complaints, and hear disciplinary proceedings; subpoena powers.

The Supreme Court may appoint boards or committees to examine all applicants for admission to the bar, and boards or committees to act as administrative agencies of the court for the purpose of investigating and reporting the violation of such rules and regulations as are adopted by the court and to hear all causes involving discipline, disbarment, suspension or reinstatement of attorneys and to make recommendations thereon to the Supreme Court. Such hearings shall be had under such procedure as may be established by the court. Any such administrative agency created by the Supreme Court shall have the power of subpoena for the purpose of aiding it in hearing cases of discipline, suspension or disbarment.

HISTORY: 1962 Code Section 56‑98; 1957 (50) 553.

**SECTION 40‑5‑50.** Filing of rules and regulations; effective date; conflict with other laws.

All rules and regulations promulgated and adopted under the terms of Sections 40‑5‑20 and 40‑5‑40 shall be filed with the clerk of the Supreme Court and shall not be effective until the lapse of three months after they are so filed. Upon such rules and regulations becoming effective, they shall supersede all laws or parts of laws in conflict therewith to the extent of the conflict.

HISTORY: 1962 Code Section 56‑99; 1957 (50) 553.

**SECTION 40‑5‑60.** General Assembly not precluded from prohibiting practice of law by any class.

Nothing in Sections 40‑5‑10 to 40‑5‑50 shall preclude the General Assembly from prohibiting the practice of law in this State by any class of individuals.

HISTORY: 1962 Code Section 56‑100; 1957 (50) 553.

**SECTION 40‑5‑70.** Additional provisions concerning Supreme Court rules and rules of the State Board of Law Examiners.

The justices of the Supreme Court may pass such rules as may be necessary to carry into effect the provisions of this chapter and from time to time amend such rules as occasion may require. The State Board of Law Examiners may also make rules for its conduct and government, not inconsistent with the provisions of law and subject to the approval of the Supreme Court.

HISTORY: 1962 Code Section 56‑101; 1952 Code Section 56‑101; 1942 Code Section 318; 1932 Code Section 318; Civ. P. '22 Section 274; Civ. C. '12 Section 3914; 1910 (26) 750.

**SECTION 40‑5‑80.** Citizen may prosecute or defend own cause.

This chapter may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires.

HISTORY: 1962 Code Section 56‑102; 1952 Code Section 56‑102; 1942 Code Section 326; 1932 Code Section 326; Civ. P. '22 Section 282; Civ. C. '12 Section 3922; Civ. C. '02 Section 2819; G. S. 2167; R. S. 2295; 1721 (7) 173; 1868 (14) 97; 2002 Act No. 307, Section 2.

ARTICLE 3

Admission to Practice Law

**SECTION 40‑5‑210.** State Board of Law Examiners.

There is hereby created a State Board of Law Examiners. The Board of Law Examiners shall be appointed by the Supreme Court and shall have such duties as the court shall prescribe. The number of members of the board and the terms of the members shall be set by the Supreme Court. To be eligible for appointment to the board, a person must be actively engaged in the practice of law in South Carolina and must have been an active member of the South Carolina Bar for at least seven years. Members shall be eligible for reappointment. Should a vacancy occur, the court shall fill the vacancy for the unexpired term. At least one member from each congressional district must be appointed by the Supreme Court.

HISTORY: 1962 Code Section 56‑111; 1952 Code Section 56‑111; 1942 Code Section 314; 1932 Code Section 314; Civ. P. '22 Section 270; Civ. C. '12 Section 3910; 1910 (26) 750; 1969 (56) 49; 2002 Act No. 307, Section 1.

**SECTION 40‑5‑220.** License granted only by Supreme Court; applications for licensure.

No original license to practice as an attorney, solicitor or counsellor shall be granted except by the Supreme Court. All applications for admission to the bar in the State shall be made by petition to the Supreme Court.

HISTORY: 1962 Code Section 56‑113; 1952 Code Section 56‑113; 1942 Code Sections 313, 314; 1932 Code Sections 313, 314; Civ. P. '22 Sections 269, 270; Civ. C. '12 Sections 3909, 3910; Civ. C. '02 Section 2812; G. S. 2161; R. S. 2288; 1878 (16) 472; 1910 (26) 750.

**SECTION 40‑5‑230.** Effect of article on disciplinary powers of courts.

Nothing in this article contained shall be construed to deprive the courts of this State of the power, as at present existing, of disbarring or otherwise punishing members of the bar.

HISTORY: 1962 Code Section 56‑128; 1952 Code Section 56‑128; 1942 Code Section 319; 1932 Code Section 319; Civ. P. '22 Section 275; Civ. C. '12 Section 3915; 1910 (26) 750.

ARTICLE 5

Regulation of Practice of Law

**SECTION 40‑5‑310.** Practicing law or soliciting legal cause of another without being enrolled as member of South Carolina Bar.

No person may either practice law or solicit the legal cause of another person or entity in this State unless he is enrolled as a member of the South Carolina Bar pursuant to applicable court rules, or otherwise authorized to perform prescribed legal activities by action of the Supreme Court of South Carolina. The type of conduct that is the subject of any charge filed pursuant to this section must have been defined as the unauthorized practice of law by the Supreme Court of South Carolina prior to any charge being filed. A person who violates this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both.

HISTORY: 1962 Code Section 56‑141; 1952 Code Section 56‑141; 1942 Code Section 312; 1932 Code Section 312; Civ. P. '22 Section 268; Civ. C. '12 Section 3908; Civ. C. '02 Section 2811; G.S. 2159; R. S. 2287; 1721 (7) 173; 1995 Act No. 7, Part II, Section 59; 2009 Act No. 38, Section 1.

**SECTION 40‑5‑320.** Practice of law by corporations and voluntary associations unlawful.

(A) It is unlawful for a corporation or voluntary association to:

(1) practice or appear as an attorney at law for a person other than itself in a court in this State or before a judicial body;

(2) make it a business to practice as an attorney at law for a person other than itself in a court or judicial body;

(3) hold itself out to the public as being entitled to practice law, render or furnish legal services, advise or to furnish attorneys or counsel, or render legal services in actions or proceedings;

(4) assume to be entitled to practice law or to assume, use, or advertise the title of lawyer, attorney, attorney at law, or equivalent terms in any language as to convey the impression that it is entitled to practice law or to furnish legal advice, services, or counsel; or

(5) advertise that it has, owns, conducts, or maintains a law office or an office for the practice of law or for furnishing legal advice, services, or counsel, either alone or together with, by, or through a person, whether a duly and regularly admitted attorney at law, or not.

(B) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

HISTORY: 1962 Code Section 56‑142; 1952 Code Section 56‑142; 1946 (44) 2575; 1993 Act No. 184 Section 224.

**SECTION 40‑5‑330.** Attorney may not argue more than two hours without court permission.

No attorney, solicitor or counsellor shall be allowed to occupy more than two hours of the time of the court in the argument of any cause, unless he shall first obtain the special permission of the court to do so.

HISTORY: 1962 Code Section 56‑143; 1952 Code Section 56‑143; 1942 Code Section 325; 1932 Code Section 325; Civ. P. '22 Section 281; Civ. C. '12 Section 3921; Civ. C. '02 Section 2818; G. S. 2166; R. S. 2294; 1868 (14) 97.

**SECTION 40‑5‑340.** Penalties for purchasing claims for suit.

If any attorney, solicitor or counsellor shall enter into any speculating practices, by purchasing or procuring to be purchased any note or other demand for the purpose of putting the same in suit, when otherwise the owner or holder thereof would not sue upon it, such attorney, solicitor or counsellor shall pay a fine of one hundred dollars and shall thereafter be incapable of practicing as such in any court until restored by the Supreme Court.

HISTORY: 1962 Code Section 56‑144; 1952 Code Section 56‑144; 1942 Code Section 324; 1932 Code Section 324; Civ. P. '22 Section 280; Civ. C. '12 Section 3920; Civ. C. '02 Section 2817; G. S. 2165; R. S. 2293; 1868 (14) 97.

**SECTION 40‑5‑350.** Soliciting legal business unlawful.

It is unlawful for a person or his agent, employee, or anyone acting on his behalf to:

(1) solicit or procure through solicitation, either directly or indirectly, legal business; or

(2) solicit or procure through solicitation a retainer, written or oral, or an agreement authorizing an attorney to perform or render legal services.

A person who violates a provision of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

HISTORY: 1962 Code Section 56‑145; 1952 Code Section 56‑145; 1946 (44) 2575; 1993 Act No. 184, Section 225.

**SECTION 40‑5‑360.** Splitting fees with lay persons unlawful.

It is unlawful for a person, partnership, corporation, or association to divide with or receive from, or to agree to divide with or receive from, an attorney or group of attorneys, whether practicing in this State or elsewhere, any portion of a fee or compensation charged or received by an attorney or any valuable consideration or reward as an inducement for placing or in consideration of having placed in the hands of an attorney, or in the hands of another person a claim or demand of any kind for the purpose of collecting the claim or bringing an action on the claim or of representing the claimant in the pursuit of any civil remedy for the recovery of the claim. This section does not apply to an agreement between attorneys to divide between themselves the compensation to be received.

A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

HISTORY: 1962 Code Section 56‑146; 1952 Code Section 56‑146; 1946 (44) 2575; 1993 Act No. 184 Section 226.

**SECTION 40‑5‑370.** Furnishing advice or service to debtor in debt pooling plan involving deposit for distribution to creditors as practice of law violation constitutes misdemeanor; penalty.

The furnishing of advice or services for compensation to a debtor in connection with a debt pooling plan pursuant to which the debtor deposits funds for the purpose of distributing them among his creditors shall be deemed to be the practice of law. Any person, other than one licensed to practice law in this State, who furnishes or offers to furnish such advice or services for compensation shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of five hundred dollars.

HISTORY: 1962 Code Section 56‑147; 1963 (53) 556.

**SECTION 40‑5‑380.** Pro bono work by attorneys employed by the State.

An attorney employed by any executive agency of the State may, with the permission of his agency head, represent without fees indigent clients referred by a pro bono program organized, sponsored, or endorsed by the South Carolina Bar. The pro bono service must be at no cost to the State, and may not conflict with the attorney's official duties or the interests of the State. The attorney shall use compensatory or annual leave for pro bono services performed during normal working hours. Practice by attorneys employed by the General Assembly or the Judicial Department shall be governed by such policies and rules as may be adopted by their respective employer.

HISTORY: 1989 Act No. 154, Section 1.

**SECTION 40‑5‑390.** Nonrefundable flat fee.

In any criminal case, an attorney may charge a nonrefundable flat fee.

HISTORY: 2003 Act No. 25, Section 2.

ARTICLE 7

Disciplinary Action Against Attorneys

**SECTION 40‑5‑510.** Removal, suspension, and imprisonment of attorneys for contempt or disorderly conduct.

Attorneys, solicitors and counsellors may be removed or suspended and also, in aggravated cases, imprisoned, not exceeding twenty‑four hours, by the several courts in which they have been admitted to practice, if, in the presence of such court, they are guilty of any disorderly conduct causing an interruption of business or amounting to an open and direct contempt to the court, its authority or person.

HISTORY: 1962 Code Section 56‑151; 1952 Code Section 56‑151; 1942 Code Section 322; 1932 Code Section 322; Civ. P. '22 Section 278; Civ. C. '12 Section 3918; Civ. C. '02 Section 2815; G. S. 2163; R. S. 2291; 1868 (14) 97.

**SECTION 40‑5‑520.** Additional causes of removal or suspension; hearing required.

Any attorney, solicitor or counsellor may be removed or suspended who shall be guilty of any deceit, malpractice or misbehavior, but not until a copy of the charges against him shall have been delivered to him by the clerk of the court in which the proceedings shall be had and an opportunity shall have been given him of being heard in his defense.

HISTORY: 1962 Code Section 56‑152; 1952 Code Section 56‑152; 1942 Code Section 323; 1932 Code Section 323; Civ. P. '22 Section 279; Civ. C. '12 Section 3919; Civ. C. '02 Section 2816; G. S. 2164; R. S. 2292; 1868 (14) 97.