

1978 WL 35064 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 28, 1978

*1 Richard A. Harpootlian
Deputy Solicitor
Fifth Judicial Circuit
1311 Marion Street
Columbia, South Carolina 29201

Dear Mr. Harpootlian:

Attorney General McLeod has asked me to respond to your recent request for information. In particular you have asked whether or not there is a conflict between [Code Section 40-5-80](#) of the 1976 South Carolina Code of Laws and Rule 14 of the South Carolina Supreme Court's Rules for the Examination and Admission of Persons to Practice Law in South Carolina.

[Section 40-5-80](#) reads as follows:

Citizens not prevented from appearing in person or for others without reward.

This chapter shall not be construed so as to prevent a citizen from prosecuting or defending its own cause, if he so desires, or because of another, with leave of the Court first had and obtained; provided, that he declare on oath, if required, that he neither has accepted nor will accept or take any fee, gratuity, or reward on account of such prosecution or defense or for any other matter relating to the cause.

The language of Rule 14 of the Supreme Court Rules for the Examination and Admission of Persons to Practice Law in South Carolina, reads as follows:

Admission pro se; Student Practice

Nothing contained in these rules shall be construed as preventing a citizen not licensed to practice law from prosecuting or defending his own cause, if he so desires, but he may not prosecute or defend the cause of another; provided, however, that this rule shall not prevent law students authorized under the Student Practice Rule from appearing on behalf of a citizen or the State in accordance with the provisions of that Rule.

These rules shall take effect ninety (90) days after promulgation by order of the Court. Upon becoming effective, the rules herein prescribed shall supercede all rules of this Court in conflict therewith to the extent of the conflict.

Another Code provision which is important to consider is [Code Section 40-5-10](#) which reads as follows:

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 disbaring 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.

[Code Section 40-5-80](#) was first enacted into law in 1868. Rule 14 of the Supreme Court Admission Rules was made effective February 10, 1975.

Based on an analysis of the relevant statutory provisions and rules, it is the Opinion of this Office that the Supreme Court possesses the inherent power to regulate the practice of law in South Carolina. Therefore, the Supreme Court Rule 14, which narrows Code Section 40-5-80, amends 40-5-80 by implication. Therefore, until and unless Rule 14 is challenged or amended, it would control the circumstances under which an unlicensed individual may represent another person as an attorney.

*2 As an aside, I would note that you asked in your letter whether or not a member of the Solicitor's Office who has taken the South Carolina Bar Exam but has not been admitted to practice could conduct preliminary hearings, under supervision, with the prior consent of the Court. It would be the Opinion of this Office that under either Supreme Court Rule 14 or Code Section 40-5-80 that such representation would be prohibited. The reason for this is that in both cases the individual is receiving compensation in the form of salary from the Solicitor's Office for representation of a client as an attorney. Such conduct is prohibited by [Code Section 40-5-80](#). Also, the individual is not a law student authorized under the Student Practice Rule to appear on behalf of a citizen of the State in accordance with the provisions of that Rule. Therefore, under either the Code Section or the Rule, employees of your office are not authorized to conduct preliminary hearings until they are admitted to practice law.

Sincerely,

George C. Beighley
Assistant Attorney General

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