Richland County Bar Association

Annual Ethics CLE

Friday, October 23, 2026

8:00 am – 12:00 pm

The Honorable Karen J. Williams Courtroom

Joseph F. Rice School of Law

University of South Carolina

2026 Richland County Bar Association Annual Ethics CLE

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TIME SCHEDULE/AGENDA:

Friday, October 23, 2026

Course # 962774

AGENDA

8:15 – 8:30 am	***Introduction – Setting the Ethical Stage*** Justice Letitia Hamilton Verdin, South Carolina Supreme Court
8:30 – 9:15 am	***The Good, the Bad & the Unethical: 2026 in Review*** Michael J. Virzi, Esquire, Virzi Law Firm
9:15 – 10:00 am	***Artificial Intelligence, Real World Problems*** Anthony D'Elia, Adjunct Faculty, Joseph F. Rice School of Law, University of South Carolina
10:00 – 10:15 am	***Break***
10:15 – 11:15 am	***Beyond "I'm Fine": Lawyer Well-Being and Ethical Practice*** Jill Smith, LISW - CP/S, Nicole Deems, Ed.S, LMFT/S, LAC/S, CS, RYT & Jenniffer Weller-White, LISW - CP/S, LAC/S, NCAAC, CS - Jill Smith + Associates Counseling
11:15 – 12:00 pm	***Crossing Lines: Ethics in Immigration Practice*** Charles A. Phipps, Attorney at Law, Immigration and Nationality Law

FACULTY BIOS

Anthony D'Elia serves as an adjunct professor of law at the University of South Carolina School of Law, teaching technology and the law. He is a frequent speaker on ethical and professional issues regarding technology and law and has spoken internationally, nationally, and locally on artificial intelligence. Tony works as Staff Counsel for the South Carolina Administrative Law Court. Previously, he has served as the Chief Privacy Officer for the State of South Carolina; Data Privacy and Cyber Counsel for Blue Cross Blue Shield of South Carolina; as the Chief Information Security Officer and Assistant General Counsel for the South Carolina Department of Natural Resources. D'Elia clerked for Chief Judge James E. Lockemy at the South Carolina Court of Appeals and is a combat veteran of the war in Afghanistan.

Charles A. Phipps is a solo practitioner in Columbia, South Carolina. For the past 21 years, Mr. Phipps has represented clients in front of the U.S. Immigration Courts, the Board of Immigration Appeals, and U.S. Citizenship and Immigration Service. He is a graduate of the George Washington University School of Law.

Jill Smith, LISW-CP/S has been a therapist for more than 26 years and has held onto one belief: people heal best when they feel truly understood. That belief is the heartbeat of Jill Smith and Associates Counseling, the practice Jill founded. The practice has grown into a trusted home for therapy across Columbia, Lexington, and Blythewood. Jill has spent her career sitting with people at the hardest and most hopeful moments of their lives: couples trying to find their way back to each other, individuals carrying the weight of trauma, families looking for answers for the young people they love. Along the way, she has built a team of skilled, compassionate clinicians who share her commitment to care that is both deeply human and grounded in proven approaches, from Emotionally Focused Therapy for couples to EMDR for trauma to psychological testing for children and young adults. JSA Counseling is built on the belief that the top therapists stay in consultation, supervision and training. The company actively mentors the next generation of therapists, and the brand is about trust, collaboration and excellence. Therapists hold themselves to core values starting with this one: bring more curiosity and less judgement to every interaction.

FACULTY BIOS

JSA Counseling is proud to have been recognized by Free Times Best of Columbia, Metropolitan Magazine Best of Columbia, and Lexington Life Magazine. But the real measure of success is simpler: every person who walks through the door leaves a little lighter than when they arrived.

Justice Letitia Hamilton Verdin was born in Seneca, SC. Her mother taught at her junior high school, and her father was her high school principal. Justice Verdin graduated from Furman University in 1992 with a Bachelor of Science in Biology. She also attended Clemson University for graduate school, studying Biochemistry. She received her Juris Doctor from the University of South Carolina in 1997. While in law school, she was selected to be a member of the Moot Court Bar and National Moot Court competition team. She was also named the Outstanding Student Volunteer at the University of South Carolina School of Law for her work with domestic violence victims.

After graduating from law school, she served as an Assistant Solicitor in the Office of the 13th Circuit Solicitor and, later, the Office of the 8th Circuit Solicitor. In this position, Justice Verdin prosecuted domestic violence cases and crimes against children. She also acted as the head of the Family Court unit for juvenile prosecution in both circuits. In 2000, she became an Associate Attorney with Clarkson, Walsh, Rheney, & Turner, P.A. in Greenville. In this position, she practiced governmental and general civil liability defense, criminal defense, and family law. In 2005, she returned to prosecution at the Office of the 13th Circuit Solicitor.

In 2008, Justice Verdin was elected to the Family Court as a resident judge in the Thirteenth Judicial Circuit. Then, in 2011, the South Carolina Legislature elected her to the Circuit Court for the Thirteenth Judicial Circuit. As a Circuit Court judge, she served as President of the Circuit Judges' Association, Chairperson of Judicial Standards, member of the Circuit Judges' Advisory Council, and member of the Commission on Continuing Legal Education.

In 2023, she was elected to the Court of Appeals, and in 2024, the South Carolina Legislature elected her to be an Associate Justice of the South Carolina Supreme Court. Justice Verdin is a member of Liberty Fellowship and has taught as an adjunct professor at the Charleston School

of Law. She is married to Chuck Verdin, a probate, estate, and corporate attorney in Greenville and they have twin sons, Zack and Eli.

Michael Virzi is a solo practitioner based in Columbia, SC, and Raleigh, NC, focusing on lawyer ethics, malpractice, and grievance defense for the past 20 years. He has taught Professional Responsibility at the University of South Carolina Joseph F. Rice School of Law for 15 years and has taught other courses in law practice and professionalism. Michael worked for several years as an Assistant Disciplinary Counsel in the South Carolina Supreme Court's Office of Disciplinary Counsel and has served on the Bar's Professional Responsibility Committee since 2011, including two years as Chair, and the Ethics Advisory Committee since 2003, including three years as Chair. Michael also served on the Board of Governors of the South Carolina Association for Justice for four years as Chair of the Ethics Committee and on the South Carolina Bar's House of Delegates from 2020 until 2026. Michael is a frequent local and national speaker and law school guest lecturer on the topics of ethics, malpractice, and lawyer discipline, and his work has led to appearances on Court TV and feature roles in true crime documentaries on HBO, Discovery ID, and Oxygen True Crime. He is a member of the ABA Center for Professional Responsibility, the Association of Professional Responsibility Lawyers, the South Carolina Association of Ethics Counsel, and Phi Delta Phi. He graduated *cum laude* from the University of South Carolina School of Law in 2000, after which he initially practiced primarily business litigation before joining the Office of Disciplinary Counsel.

Ethics 2026 – Year in Review

By Michael Virzi

Richland County Bar CLE

October 23, 2026

REQUEST FOR WRITTEN COMMENTS

September 10, 2026

Private equity firms—groups of investors that, among other activities, pool money and acquire ownership interests in business entities—have been expanding into the practice of law in many jurisdictions. In response, several states have imposed restrictions on private equity investment in the practice of law. Rule 5.4 of the Rules of Professional Conduct, which is found in Rule 407 of the South Carolina Appellate Court Rules, specifically prohibits fee-sharing with nonlawyers, forbids nonlawyers from owning or managing law firms, and requires a lawyer's professional judgment to remain independent. This Court is considering whether an amendment to Rule 5.4 is needed to protect the public from interference into the attorney-client relationship and to clarify and more explicitly restrict lawyers and law firms from entering into arrangements that attempt to evade Rule 5.4's prohibitions and requirements, as these arrangements threaten a lawyer's professional responsibilities, including but not limited to exercising independent professional judgment and maintaining client confidentiality.

The Supreme Court is seeking written comments from interested parties regarding potential clarification of the Rule. The current version of Rule 5.4 can be found here. Persons or entities desiring to submit written comments should submit their comments to the following email address, Rule5.4comments@sccourts.org, on or before September 29, 2026. Comments should be submitted as an attachment to the email as either a Microsoft Word document or an Adobe PDF document. Comments need not be limited to the text of the existing Rule.

RULE CHANGES

RLDE Rule 19

The Court adopted three changes to the procedural rules for lawyer discipline:

1. ODC can no longer cram down a Letter of Caution. Now ODC can issue LOCs only with the consent of the responding lawyer. The Commission retains the authority to issue them on behalf of the Court.

2. When ODC seeks authorization from the Commission to file Formal Charges against a lawyer, that authorization expires in 90 days. If Formal Charges are not filed within 90 days of authorization:
    - The Commission shall so inform the court, and
    - ODC may seek renewal of authorization by showing "compelling circumstances"

3. 450 days after the initial filing of the Complaint, a responding lawyer is entitled to have the Commission review the matter at its next bi-monthly meeting.
    - The Commission can do anything with the file that it already had the authority to do (dismiss, issue an LOC or confidential admonition, authorize Formal Charges, or remand to ODC for further investigation)
    - If the Commission remands the case for further investigation, it can also issue a scheduling order.
    - This provision takes effect January 2, 2027, but is retroactive to cases previously filed.

*same changes in **RJDE**

DISCIPLINARY OPINIONS

April 22, 2026
6-month suspension

Respondent was drunk in a bar and banging loudly on a bathroom door. When asked to leave by a security guard, she hit him in the face. Security video footage shows Respondent then grabbed a glass and attempted to throw it at another patron. Outside, police arrived and she attempted to pull away from the investigating officer several times. Once Respondent was placed in handcuffs, she refused to get in the patrol car. When an officer attempted to speak with Respondent again and asked her to sit inside the patrol car, she refused, stepped on the officer's toe, then struck the officer in the genitals with her knee.

Respondent pled guilty to resisting arrest and entered a plea of no contest to second-degree assault and battery. She was sentenced to ninety days in prison, suspended upon her successful completion of the Adult Multi-Disciplinary Treatment Court Program (MDC).

February 18, 2026
6-month suspension
responding to online review, faking covid results for continuances, falsely notarizing

Respondent tested positive for Covid and used a photo of the test results as the basis of obtaining opposing counsel's consent to a continuance of a scheduled hearing. However, the photo was taken 43 days before the hearing. She then continued for the next 13 months to use the same photo to get permission from two other lawyers in two other cases, as if it were a current positive test result, in one case 15 months after the photo was taken.

"Parents who don't listen to their attorneys, do not win custody battles," and "Parents who post affairs during marriage on social media, do not win custody cases." The second statement was accompanied by a photograph of the client and another person (presumably the client's paramour).

Submitted a client affidavit that was signed by the client's mother and notarized by Respondent's husband at a later date. Respondent informed the client's new attorney that the improperly signed affidavit needed to be corrected, rather than informing the court herself as she should have done.

April 22, 2026
Public reprimand for flirting, kissing, & cuddling w/clients

Respondent denied Client A's allegations that he pursued her romantically, but he admitted that he went to restaurants with her and kissed her at his office after hours one night. Text messages showed "a personal, more intimate relationship existed between the two than would be appropriate in the context of an attorney-client relationship, particularly in a divorce matter."

Respondent also "engaged in kissing, cuddling, and other intimate acts short of sexual intercourse" with another client. After the client's husband confronted her about her whereabouts, Respondent encouraged her to delete all text messages between them from her phone.

May 27, 2026
30-day non-retroactive suspension for losing temper on a judge

After a judge denied his young associate's continuance request, Respondent came to the courthouse, angrily yelling, asking where to find the Magistrate, and arguing with the Assistant Solicitor. As they walked toward chambers, the Assistant Solicitor said the judge was on the phone. Respondent banged on the judge's door, demanded she get off the phone, and walked into chambers without permission. Respondent "spoke to the Magistrate in an angry, loud, and disrespectful tone, which could be heard in the courtroom. Respondent spoke over the Magistrate who was on the phone, demanded the Magistrate grant him a continuance, and made derisive remarks about the quality of the court." The judge said she would hear Respondent on the record, so he left and slammed her door. On the record, Respondent continued arguing with the judge, repeatedly interrupted her, acted belligerent towards her, and "displayed a lack of decorum before the victim, victim advocate, law enforcement, counsel, and court staff."

May 27, 2026
Disbarment for walking away

Respondent shut down law practice, stopped returning client calls, did not respond to ODC's Notice of Investigation, answer the Formal Charges, or show up for his own disciplinary trial.

May 27, 2026
Public reprimand (reciprocal)
Using discovery to embarrass opposing party constituent

Respondent sent interrogatories asking irrelevant questions about the sexual and romantic relationships of an opposing party's board member. After being sanctioned by the court for the interrogatories, Respondent filed a motion to reconsider with an attached affidavit by his client detailing additional "salacious hearsay allegations" about the same person, for which the court sanctioned Respondent a second time.

August 12, 2026
18-month suspension, retroactive
Fraudulently obtaining Covid-relief loan from SBA

Respondent applied for and received a $150,000 Economic Injury Disaster Relief loan from the Small Business Administration, based on a false statement of prior business income. Respondent also failed to self-report her 2022 federal fraud indictment. She did quickly repay the loan with interest to complete a Pre-Trial Diversion program, resulting in dismissal of the federal charges. The court made the suspension retroactive, after four years on interim suspension.

August 12, 2026
Public reprimand
Inaction on two client matters

Respondent was paid retainers to begin work for two clients (one divorce, one bankruptcy) but stopped performing work on the matters and failed to respond to client calls, emails, or text messages for many months.

August 12, 2026
1-year suspension
Failing to competently handle two client matters; failing to respond to ODC

Respondent handled two matters incompetently, failing to correct mistakes or communicate with clients. He also failed to register a usable email address in the Court's AIS system and failed to respond to ODC's notices and follow-up requests for information. Respondent claimed to have responded to ODC by email but was unable to produce any documentation to support that claim.

August 12, 2026
6-month suspension
Incompetently handling two adoption matters

Respondent failed to supervise a contract paralegal in two adoption matters, in which the paralegal failed to competently perform the contracted services. Respondent had two prior public reprimands involving lack of competent and diligent representation.

September 2, 2026
Public reprimand
Failing to issue title insurance after a real estate closing

Respondent accepted payment to issue title insurance as part of a real estate refinance transaction several months before closing her law practice to work for a non-profit organization. She inadvertently failed to issue the policy and later failed to respond to the client's inquiries. As a part of the disciplinary agreement, Respondent agreed to make full restitution to the client for the amount she was paid to issue the policy.

S.C. BAR ETHICS ADVISORY OPINIONS

SC EAO 25-02
Sharing Fees with an Arizona ABS Law Firm

The Committee opined that a South Carolina lawyer may not ethically serve as local co-counsel with a non-lawyer owned firm or Alternative Business Structure ("ABS") that provides legal services in a jurisdiction where such ABS's and non-lawyer-owned law firms are allowed. Sharing fees with a non-lawyer owned entity is tantamount to improperly sharing legal fees with a non-lawyer.

Following opinions from Texas and Maryland and recent rule amendments in Georgia, the Committee also concluded that a South Carolina lawyer may also not own a portion of a law firm that is partially owned by non-lawyers, even if it is operating in a jurisdiction where non-lawyer ownership of law firms is permitted.

SC EAO 26-01
Conducting a Closing Without a Title Search

The Committee opined that lawyer may ethically conduct a residential real estate closing and supervise recordation and disbursement of funds even if no title search is performed and no title opinion given because the lender does not require one. The Committee reasoned that, although certify title based on a title search is the practice of law according to South Carolina caselaw, the

closing attorney is not assisting in the unauthorized practice of law if one of the steps of a real estate transaction that is the practice of law simply does not occur.

The Committee declined to answer whether the lawyer has responsibility to the borrower or lender for any later-discovered title defects that a title search would have revealed, as that is a question of the standard of care, not requirements of the Rules of Professional Conduct.

SC EAO 26-02
Choosing a trust account bank based on financial incentives

A lawyer does not violate the Rules of Professional Conduct or appellate court rules by choosing an eligible IOLTA institution based on a lender's financial incentive to the lawyer, provided all trust accounting and IOLTA rules are complied with and the arrangement does not compromise the security or administration of client funds or the exercise of the lawyer's professional judgment. The incentive here is based on the average daily balance of the lawyer's trust account. Following a similar opinion from New York, the Committee concluded that arrangement would not violate the Rule 1.15(g) prohibition on using or pledging trust funds for the lawyer's benefit.

ABA ETHICS ADVISORY OPINIONS

ABA Formal Opinion 515
Reporting a Client's Crime when the Lawyer is the Victim

"Rule 1.6(b)(5) permits a lawyer to make disclosures 'to the extent the lawyer reasonably believes necessary . . . to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client.' To the extent that the lawyer initiates a civil claim … to seek redress for harm caused by the client's crime, such as the return of stolen property, the lawyer may make reasonably necessary disclosures under this exception. But the exception would not justify initially reporting to law enforcement authorities, since a criminal investigation or prosecution is not a controversy between the lawyer and the client."*

> *Here, the ABA cites here to two prior opinions that stated that neither a negative online review nor a client's claim of ineffective assistance of counsel is a "controversy between the lawyer and the client."

[citing the "rules of reason" language from the Scope of the RPC]: "Lawyers might readily assume that, if a client commits a crime against them or their employees or associates, they can report the crime to law enforcement authorities and appropriate others, notwithstanding the confidentiality duty under Rule 1.6(a). The Committee concludes that they would be correct, even though, in many situations, no express exception to the confidentiality duty will apply. That is because, in this situation, the Committee believes an implicit exception applies.

While rare, the Committee has in the past identified an implicit exception to the duty of confidentiality in a recurring situation, such as this one, that was not considered by the drafters of the Model Rules or of prior ethics codes."**

> **Here, the ABA cites to a prior opinion that stated that a lawyer may disclose confidential client information to a neutral third-party "conflict mediator" to resolve potential conflicts of interest with a new firm when a lawyer seeks to change employment.

ABA Formal Opinion 516
Terminating the Attorney-Client Relationship

This opinion broadly deals with several aspects of terminating the attorney-client relationship. It first notes that lawyers do not need any reason to terminate a relationship as long as it will not have a materially adverse effect on the client. The opinion then identifies several scenarios where withdrawal would likely cause material adverse effects:

- In transactional matters, where delay might jeopardize a deal's completion or value
- When no other available lawyer is capable of completing the representation within the necessary timeframe
- When timing is objectively critical
- When the withdrawing lawyer has unique abilities or knowledge that cannot be readily transferred
- When a successor lawyer would need to duplicate substantial work, significantly increasing costs

The opinion notes that lawyers may be able to remediate adverse effects by helping the client find substitute counsel, collaborating with successor counsel, or returning or foregoing fees for work that must be duplicated. The opinion then identifies circumstances where withdrawal is unlikely to have a materially adverse effect:

- Early in the representation, before substantial work has been performed
- When co-counsel can complete the remaining work without disruption
- When the representation is substantially complete, with only ministerial tasks remaining
- When there is no imminent pending deadline or urgent matter at the time of withdrawal

The opinion states that Rule 1.16 does not protect clients from disappointment and that the lawyer's motivation is irrelevant. It specifically states that a lawyer may ethically withdraw from representing a client simply to represent another client with adverse interests. The opinion explains that the "Hot Potato Doctrine" does not come from the Rules of Professional Conduct but from the common law duty of loyalty; thus dropping a "hot potato" client might result in disqualification but should not result in discipline.

ABA Formal Opinion 520
Providing Information After Terminating Representation

Lawyers often completely fulfill their obligations under Model Rule 1.16(d) to protect client interests upon termination of the representation by surrendering the file upon request and refunding unearned advanced fees and unexpended costs. However, in some situations, a lawyer must comply with requests for information from successor counsel or a former client. Ordinarily, such a request will require a response when the requested information was acquired by the lawyer during the course of the representation, is unavailable from other sources and is important to the client's interests in the matter in which the lawyer formerly represented the client.

Rule 1.16(d) does not require a lawyer to take steps to acquire information, research and generate written responses or provide further legal services to the client in response to a request for information. The question considered by this opinion is whether the lawyer may also have an obligation to provide certain unrecorded information acquired in the course of the terminated representation. Specifically, the opinion addresses whether the former lawyer has any obligation under Rule 1.16(d) to respond to a request for information that is not memorialized in file materials, including information explaining or elaborating on the materials contained in a previously surrendered file. Neither the text nor the comment to Rule 1.16 explicitly addresses this question.

Lawyers do not have an obligation under Rule 1.16(d) to provide information that is readily accessible elsewhere or by other means. For example, if the lawyer has surrendered the file according to the law of the jurisdiction, and the former client is asking for information readily available from the court system's website, the lawyer would have no obligation to provide the information.

The opinion states that it is sometimes necessary for a lawyer who terminated, or is terminating, a representation to convey information that was not recorded and maintained in the client's file. This duty is limited, however, by the provision that complying with the request actually be necessary "to protect the client's interests" in the matter undertaken by the lawyer and that compliance be "reasonably practicable."

AI Ethics: LLM Bias

Created by:

Tony D’Elia

October 23, 2026

My Assumptions

Some background knowledge of ML and LLMs

Now and Later

Nonexhaustive

User Agency over input

User agency over output

Why does bias matter ethically?

- **South Carolina**
- [8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including a reasonable understanding of the benefits **and risks** associated with technology the lawyer uses to provide services to clients or to store or transmit information related to the representation of a client

- **Model Rule**
- [8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits **and risks** associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Risks



Neural Networks are Opaque



Bias



Hallucinations



Privacy and Confidentiality


AI Bias

What is AI Bias

A disproportionate weight or inclination for or against a person, group, idea, or thing. In AI the occurrence of biased results can occur due to human biases that skew the original training data or AI algorithm—leading to distorted outputs and potentially harmful outcomes.


Distorted outputs

Key Takeaways

Causes	Examples	Mitigation
There is no one cause for all AI bias	Bias in AI is both common and difficult to spot	Mitigation should start with individual ownership and control

Causes

Training Data

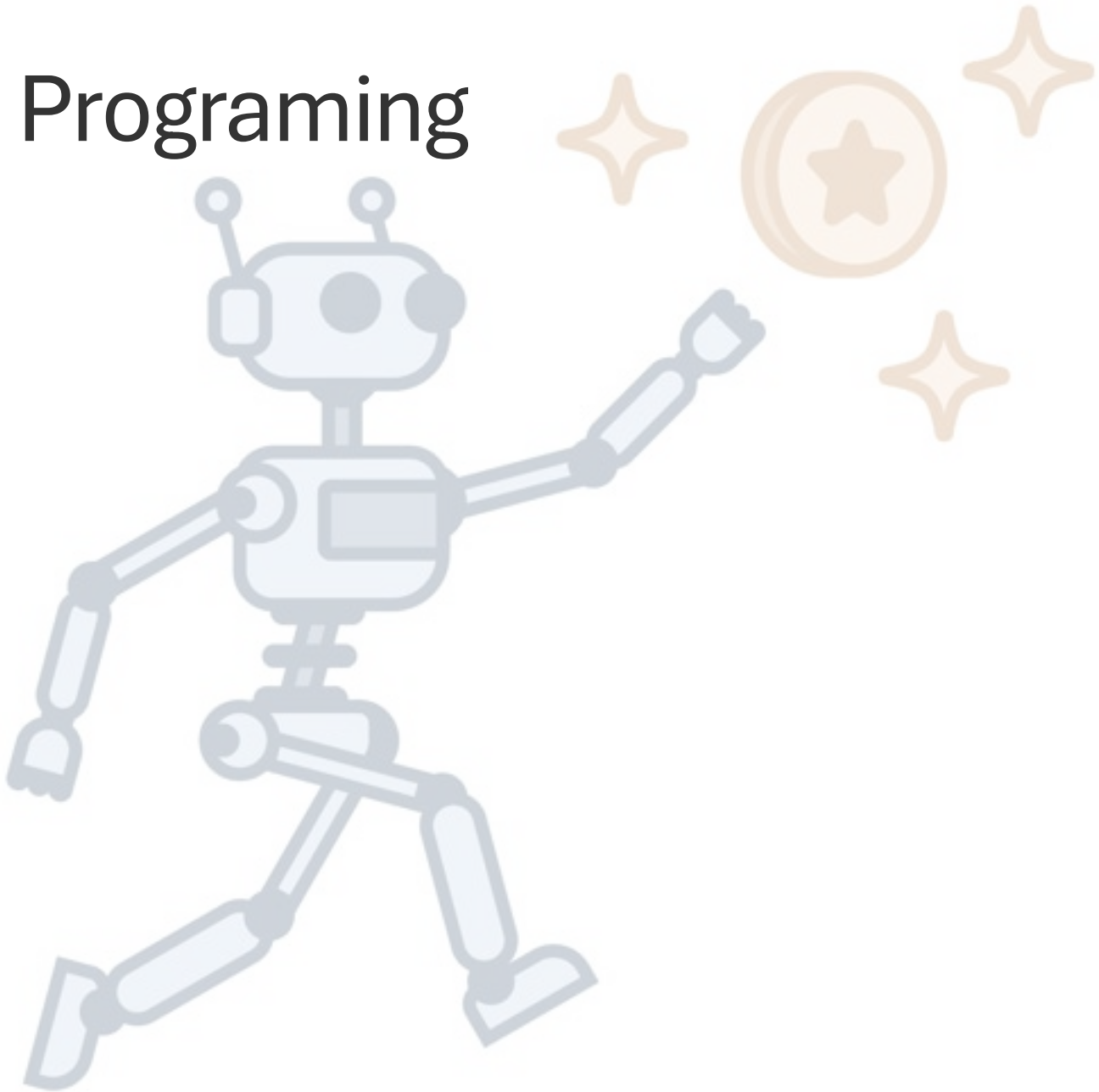
- Bad Data
- Mischaracterize data
- Loops

Programing

Programing errors

Reinforcement

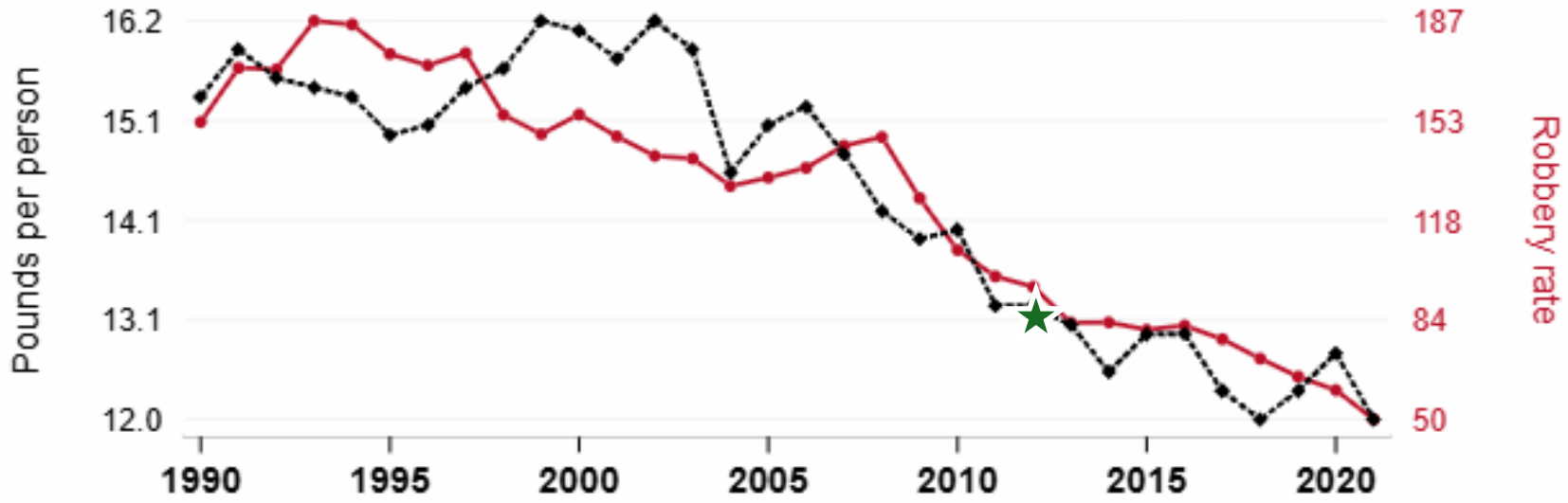
Correlation bias



Ice cream consumption

correlates with

Robberies in South Carolina



Per capita consumption of Regular Ice Cream Frozen products in the US · Source: USDA

The robbery rate per 100,000 residents in South Carolina · Source: FBI Criminal Justice Information Services

1990-2021, r=0.901, r²=0.812, p<0.01 · tylervigen.com/spurious/correlation/17943

★

Ice-Cream Leads Police to SC Robbery Suspect

Charleston Police were able to nab a burglary suspect when they linked gelato in his possession to the same Italian-style ice cream that had been stolen from a store.

A Time Warp



The Individual

How we:

- Ask (prompt)
- Evaluate
- Act

Probabilistic machine

Maybe she’s born with it, Maybe it’s . . .



I’m going to make him an offer he can’t …



Examples



“White man working”



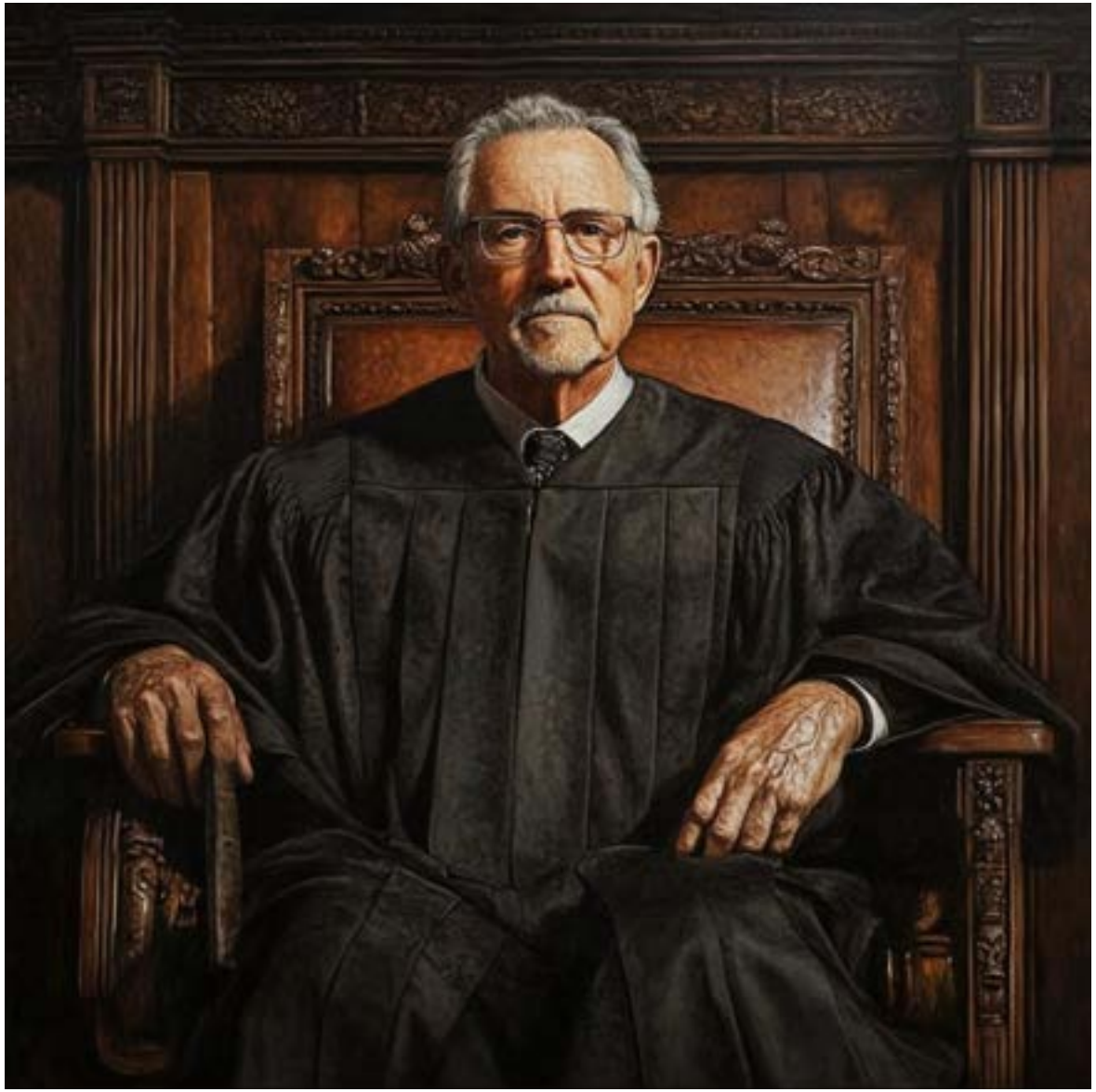
“Hispanic man working”

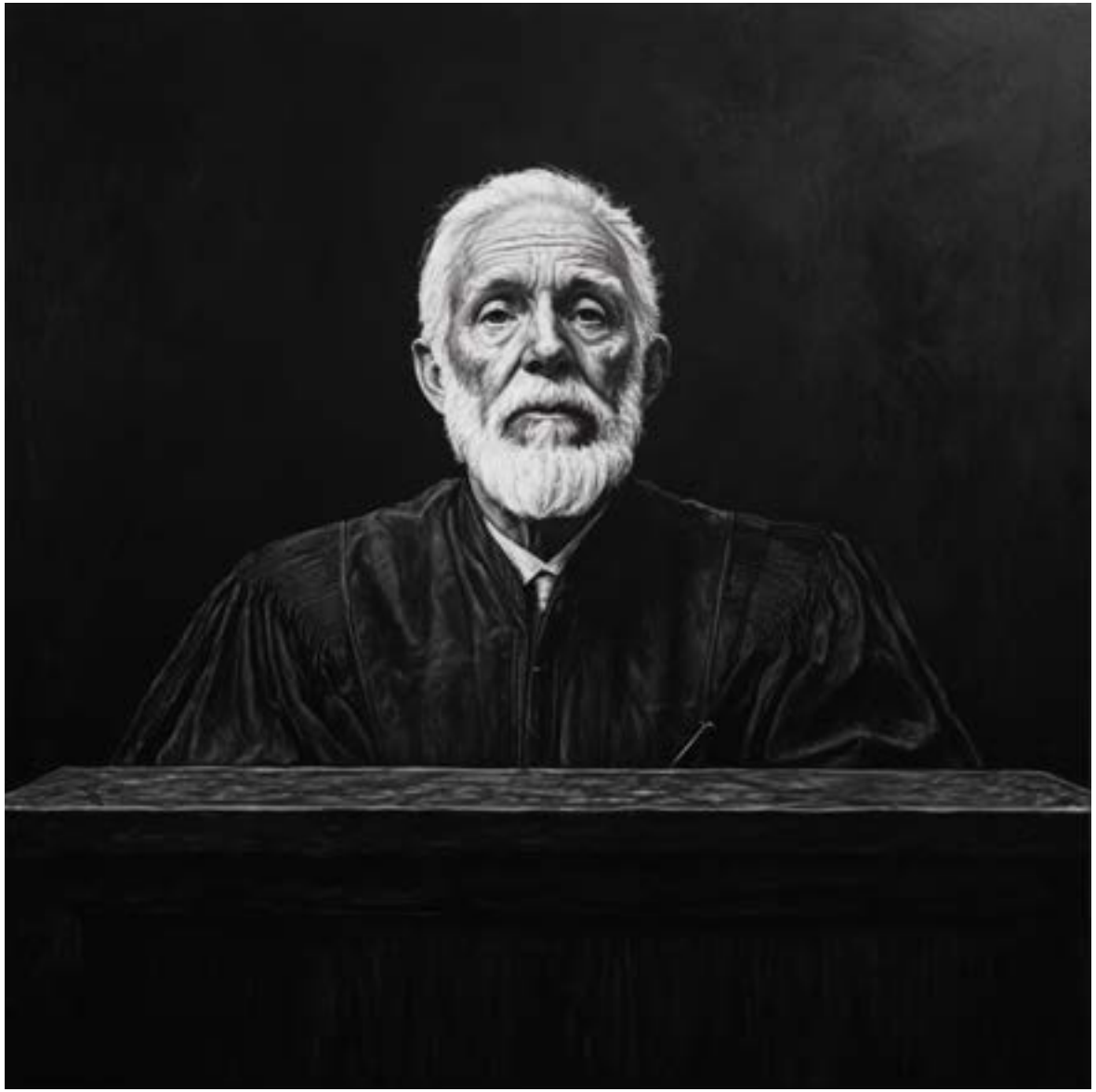


“A lawyer”



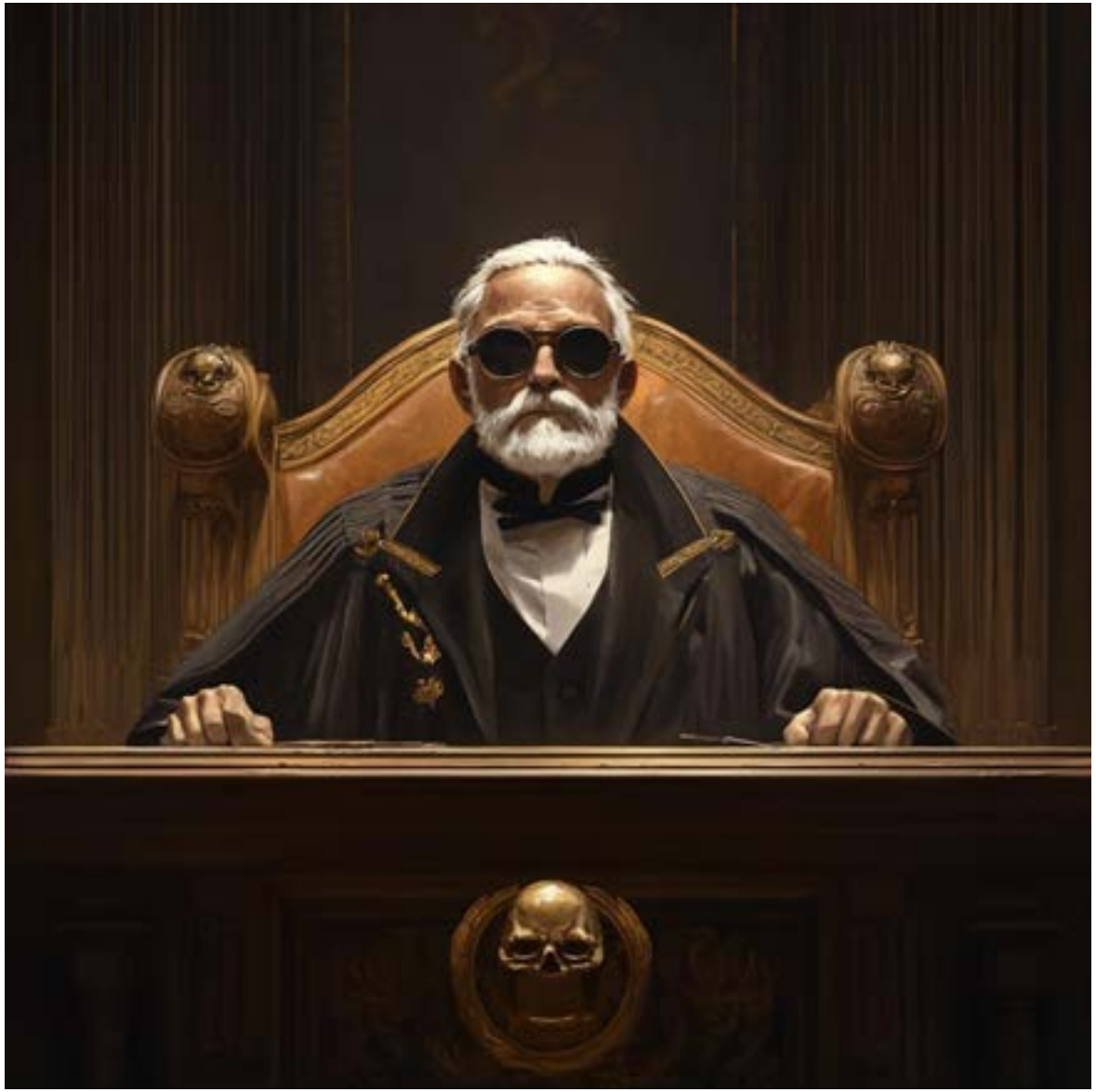




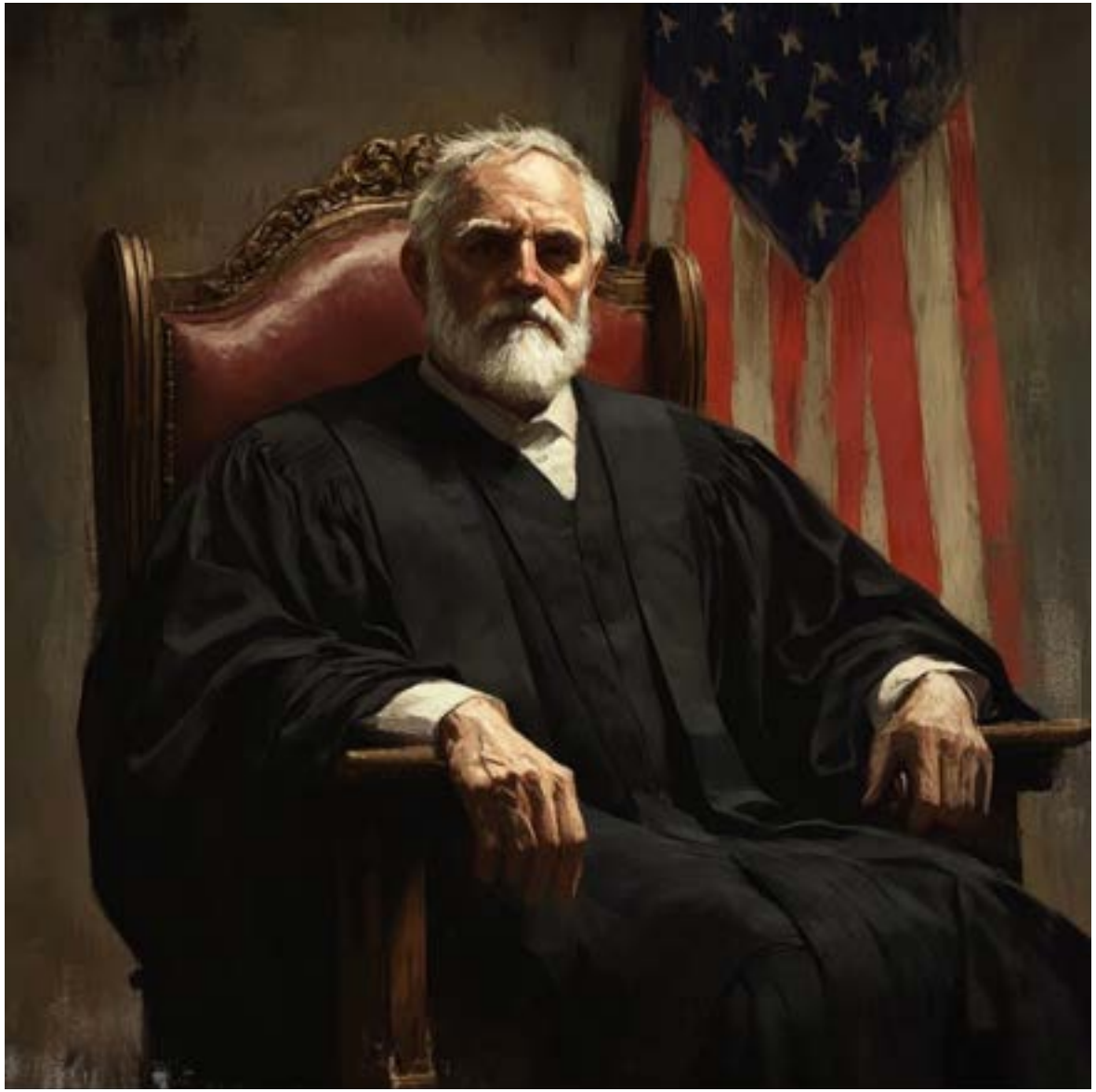




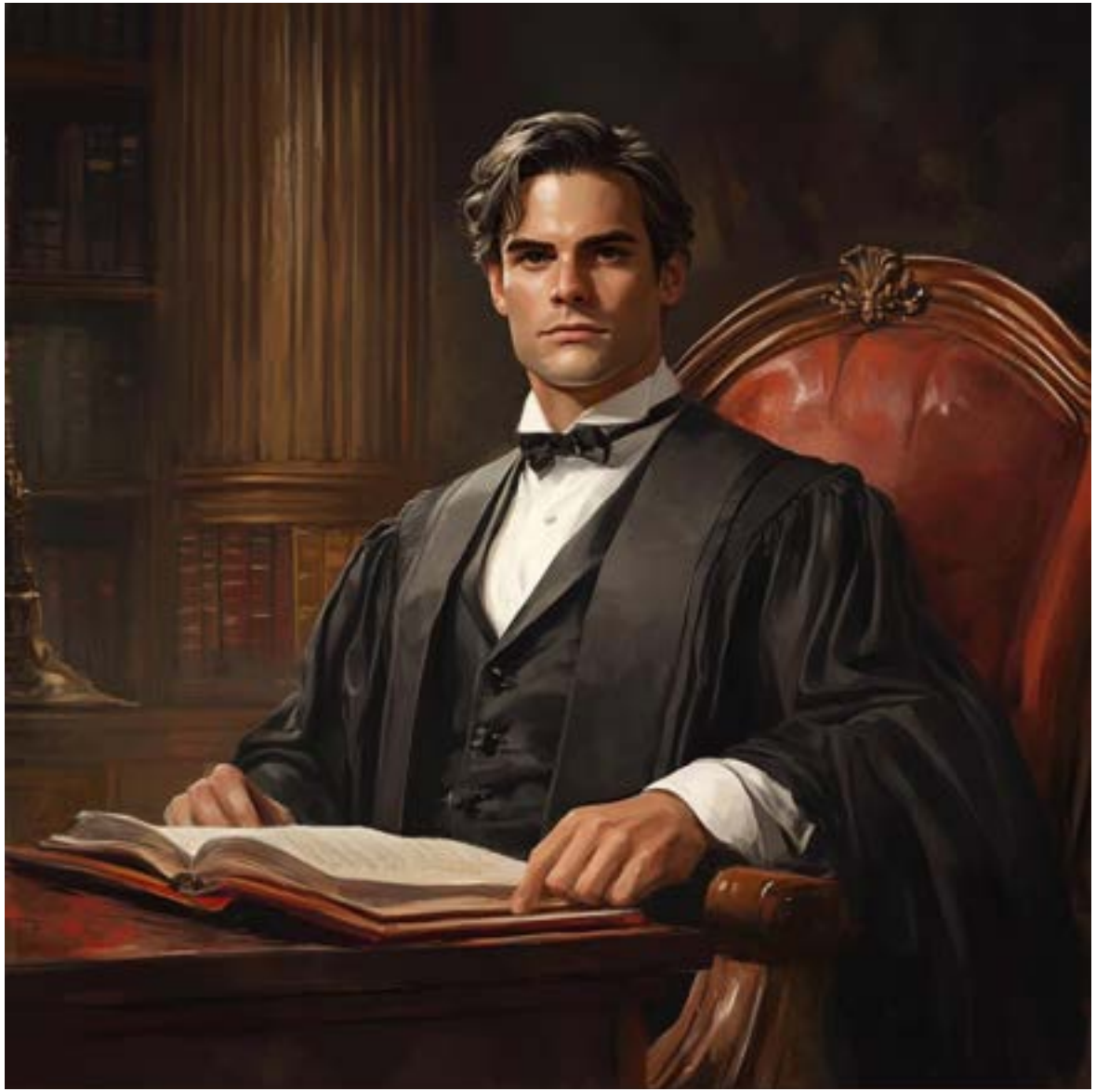


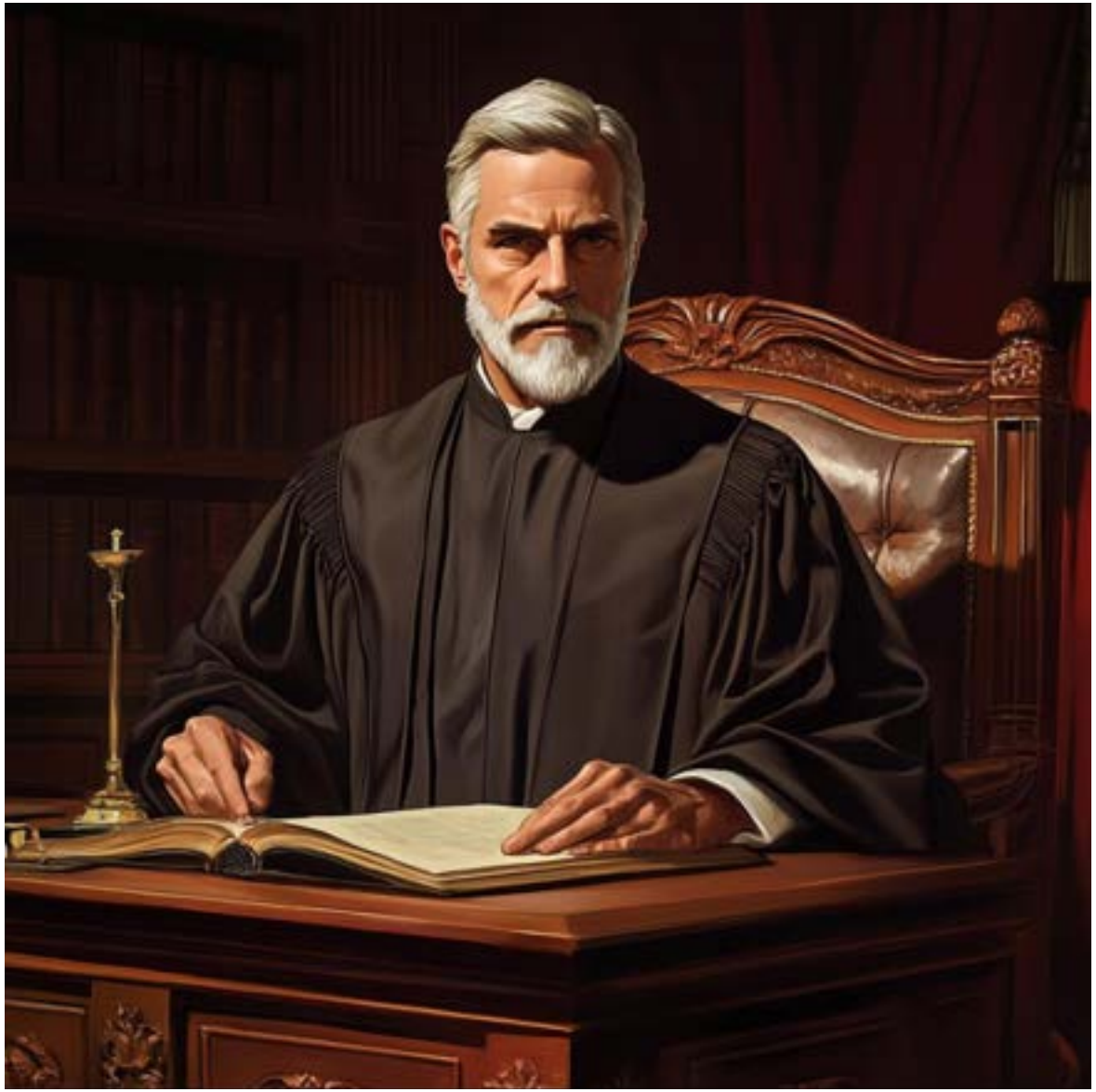


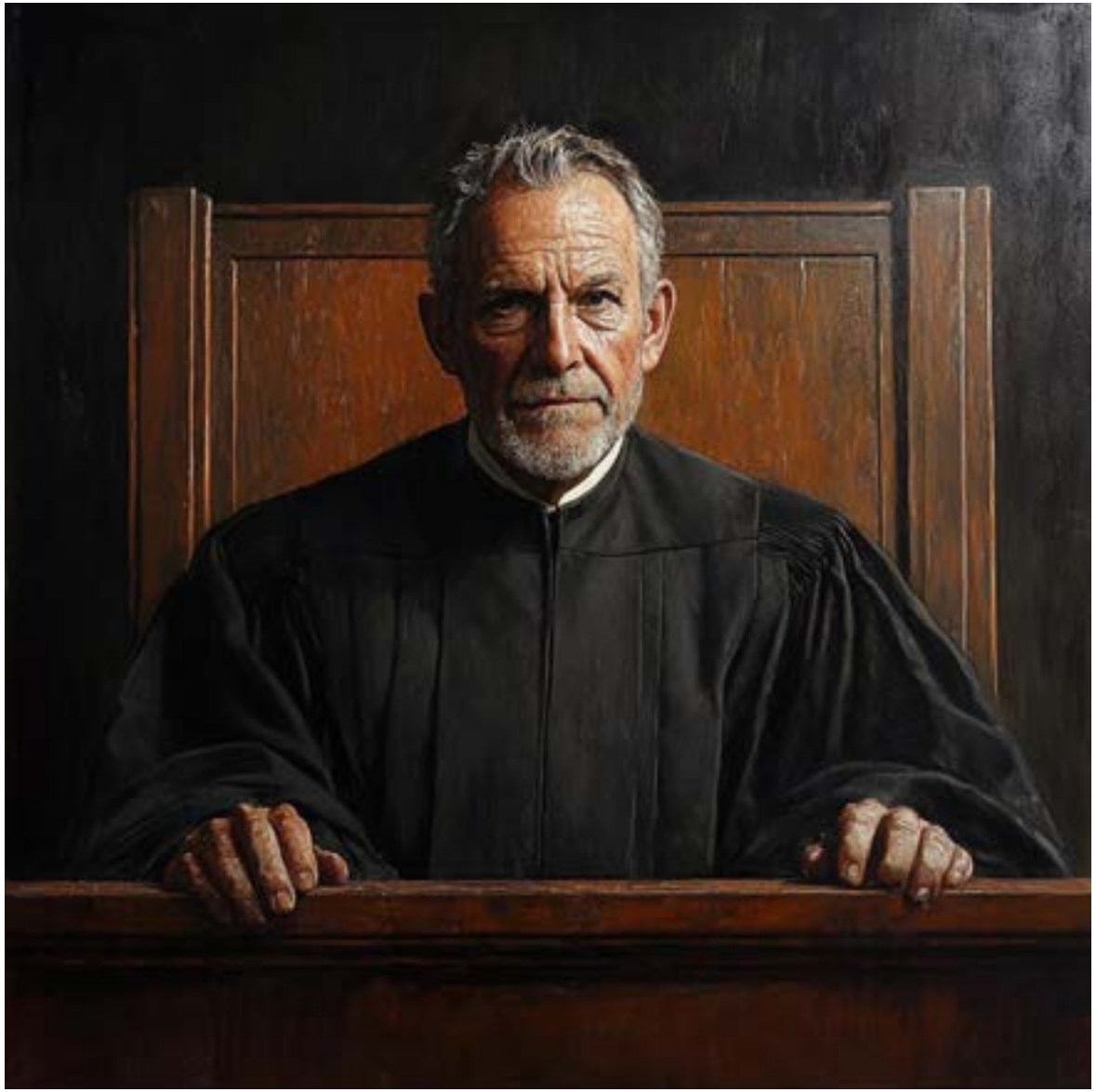


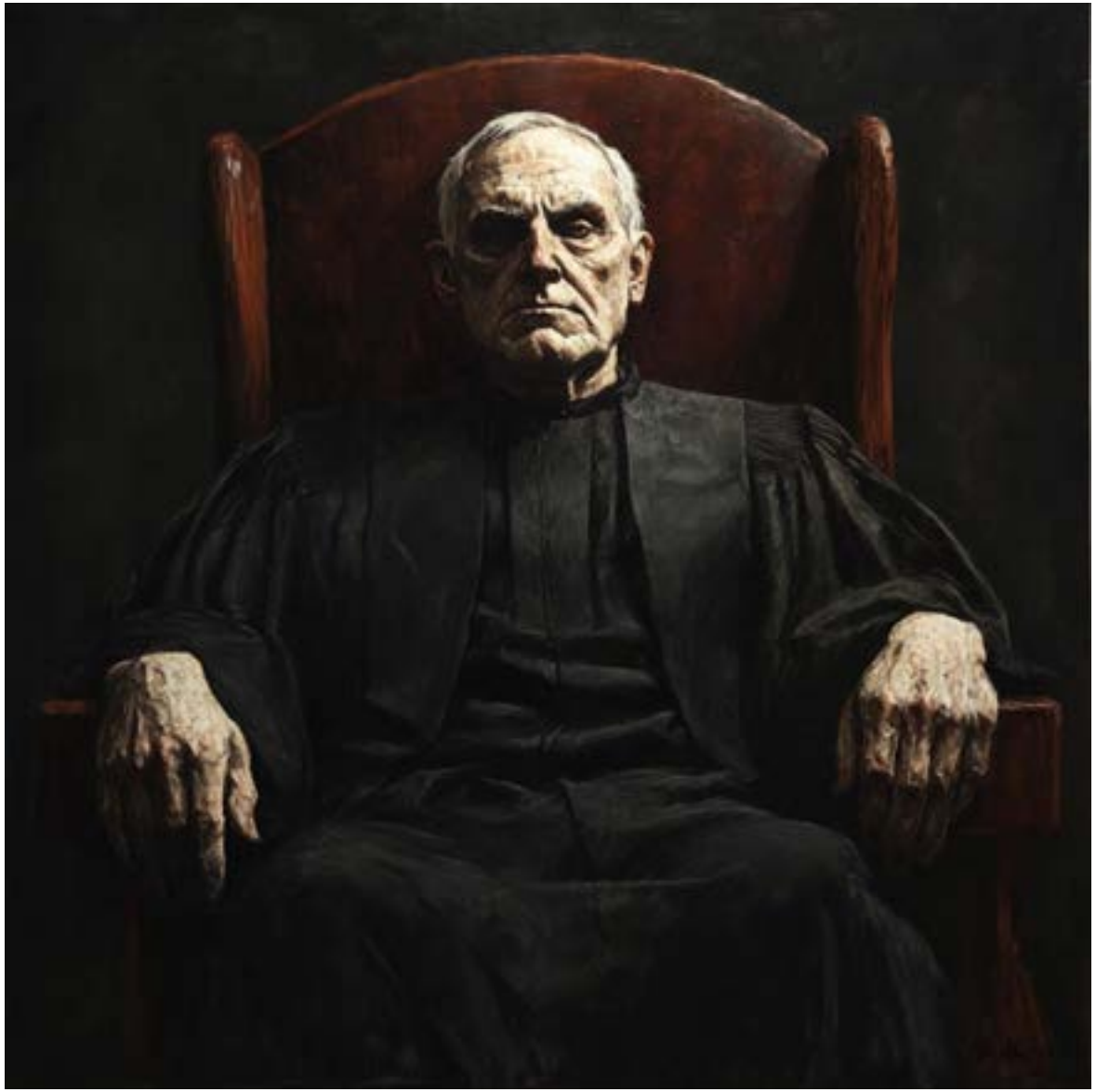










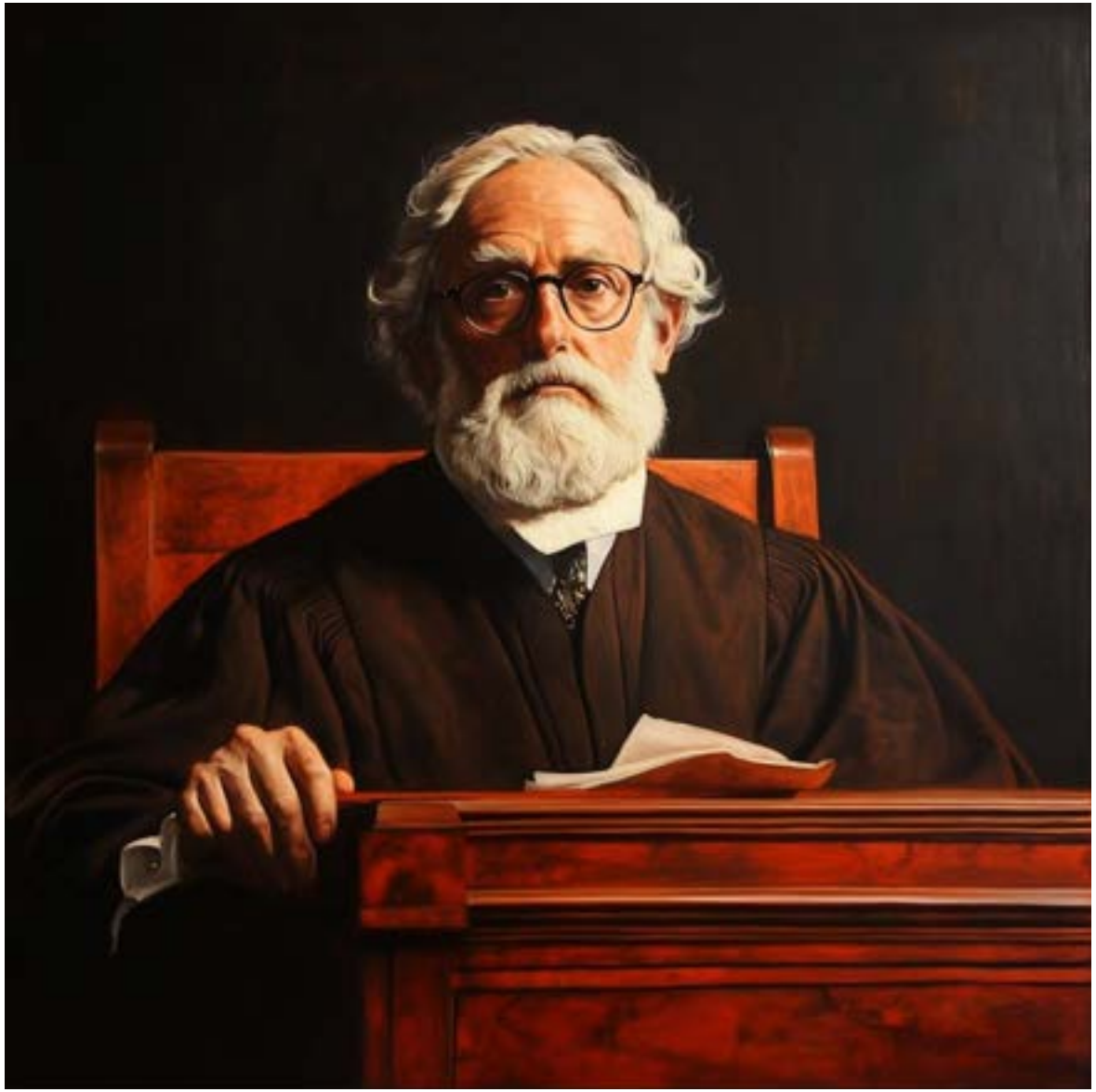






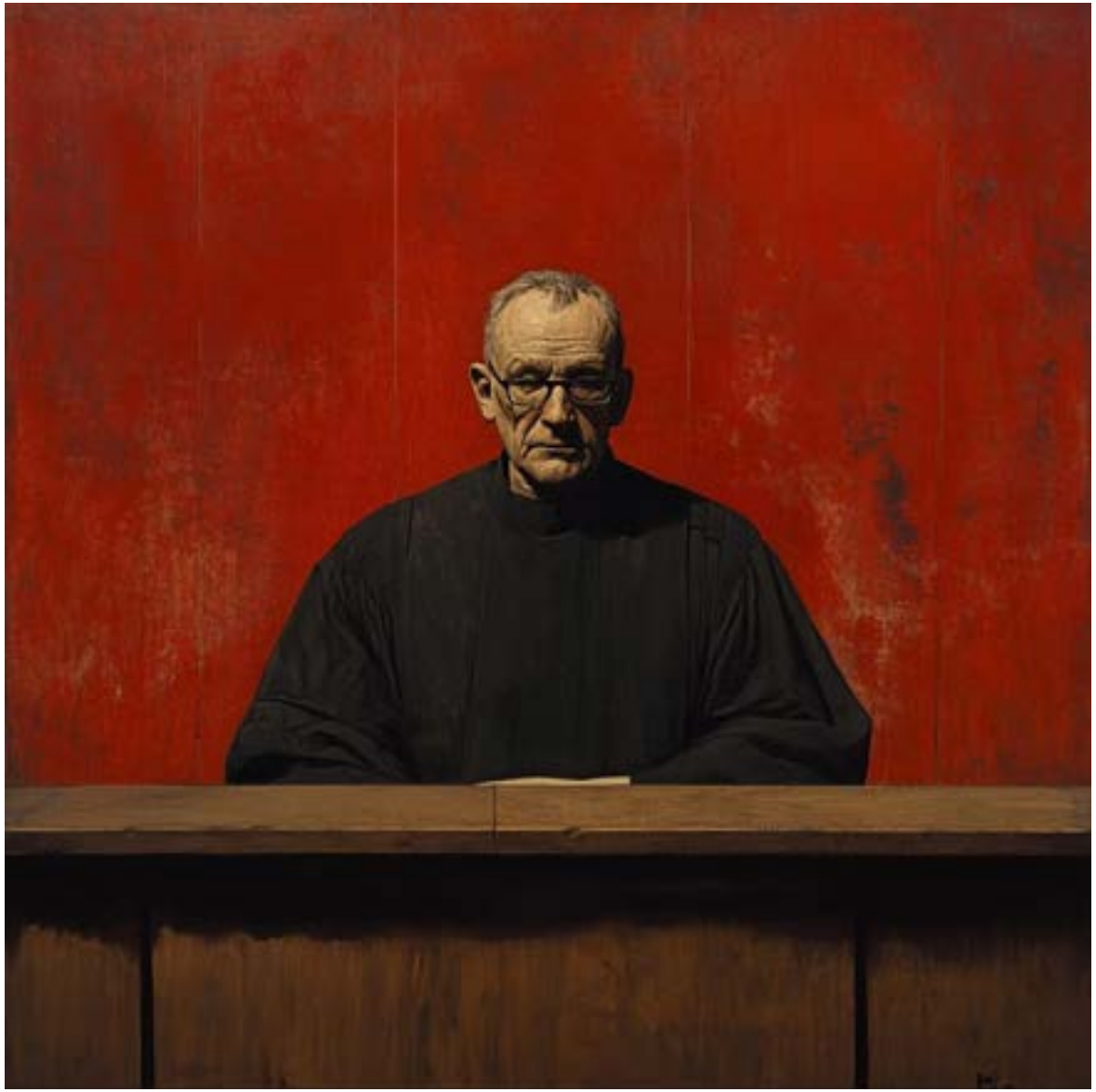


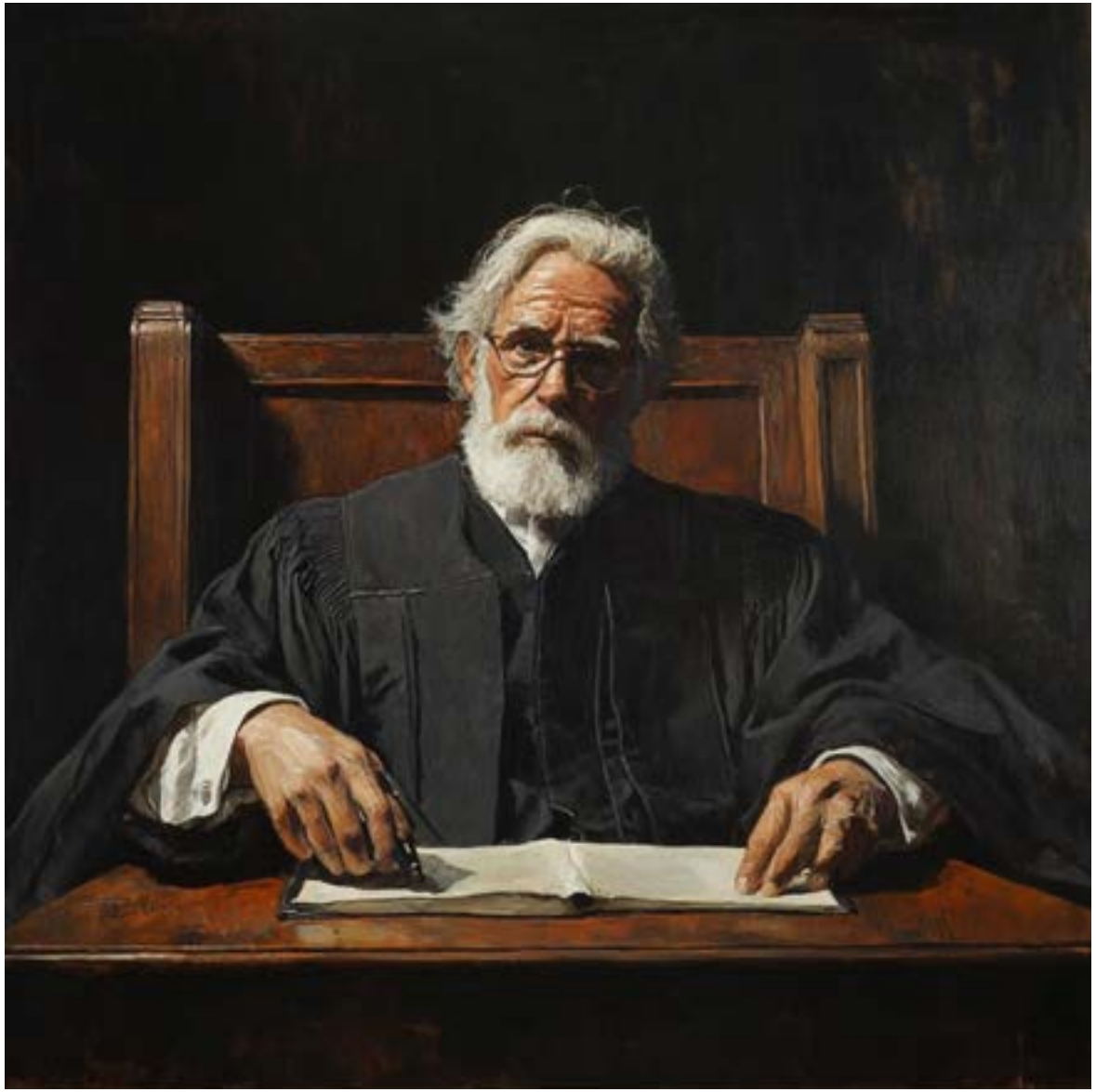


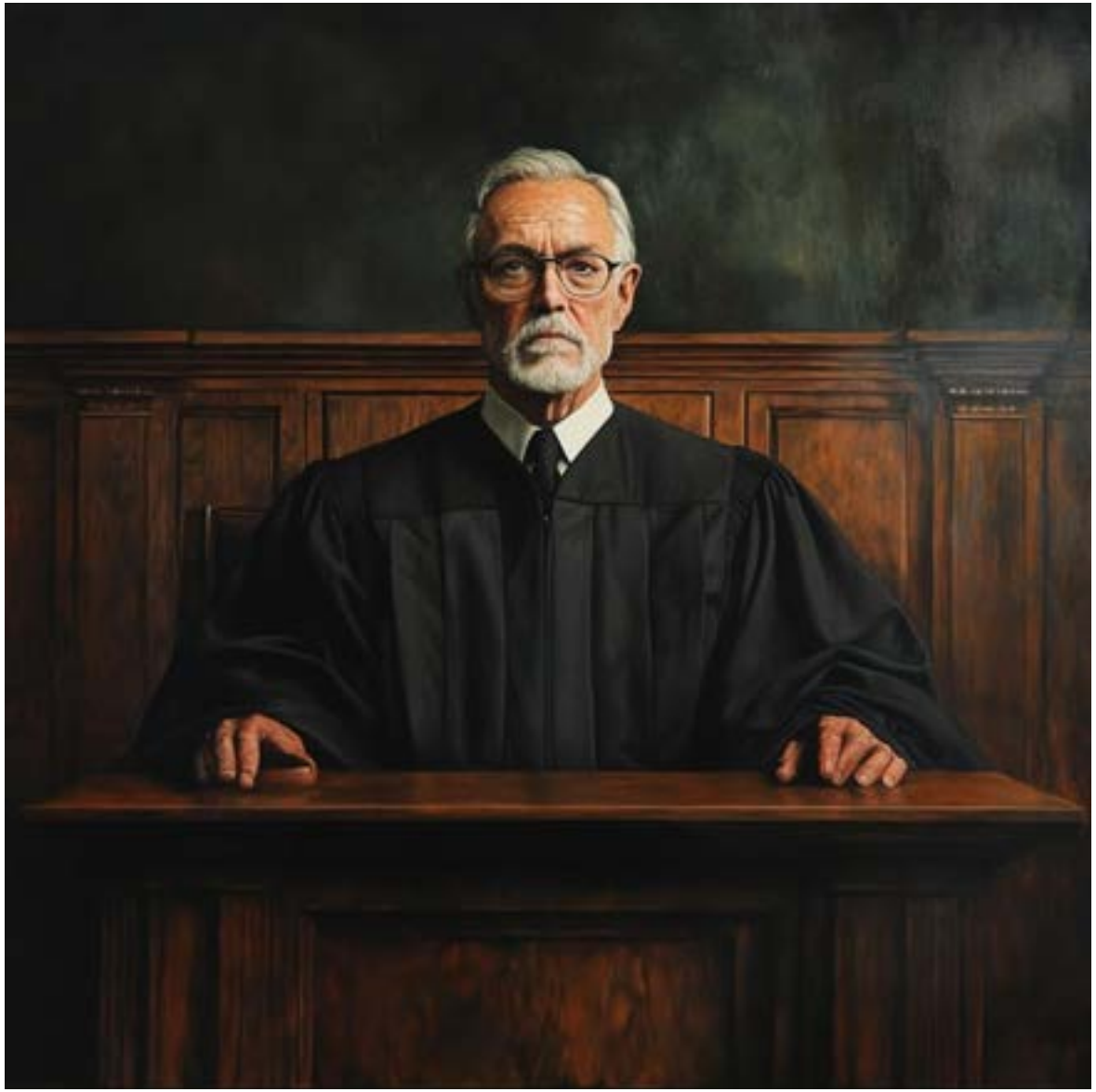












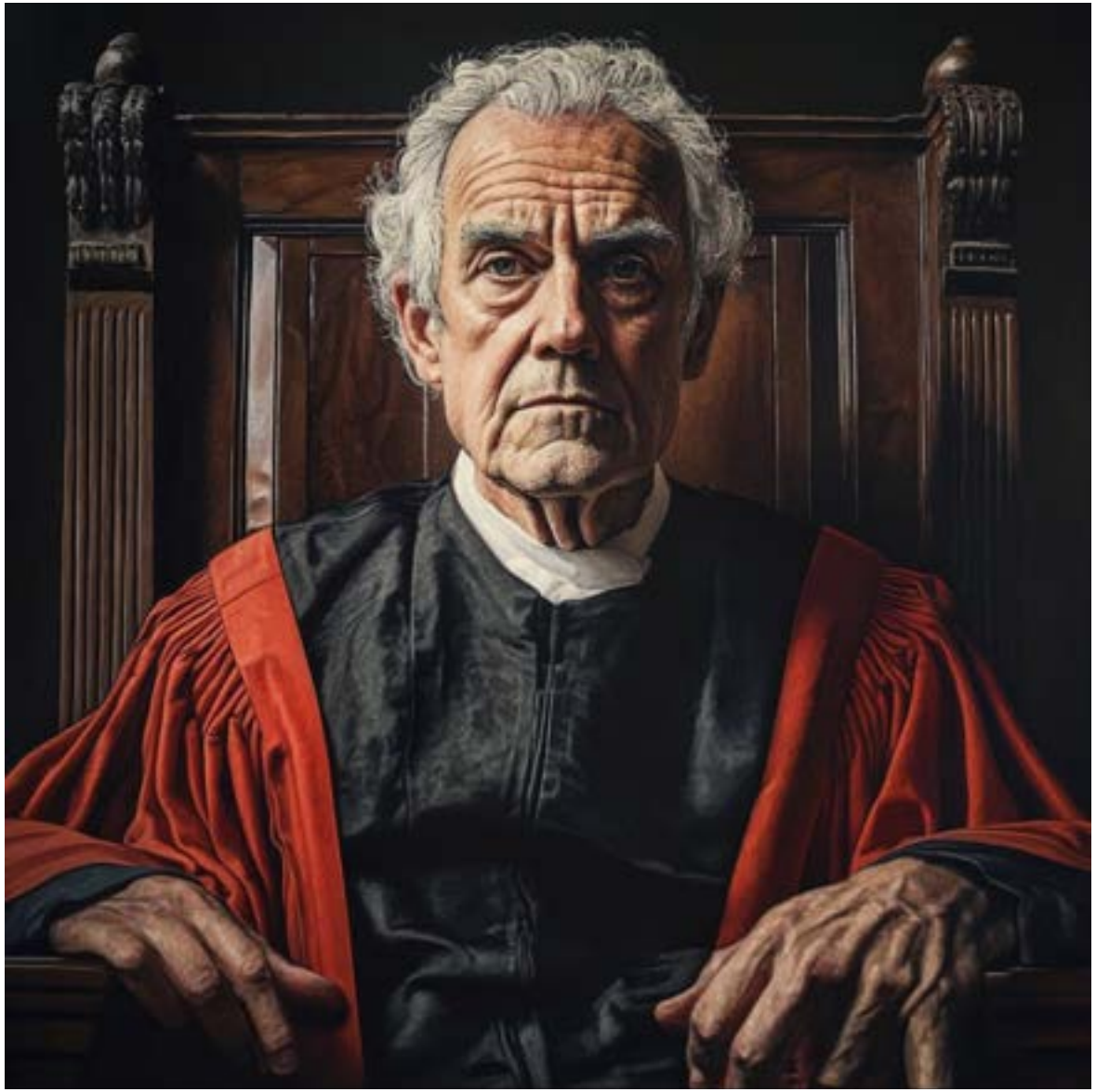




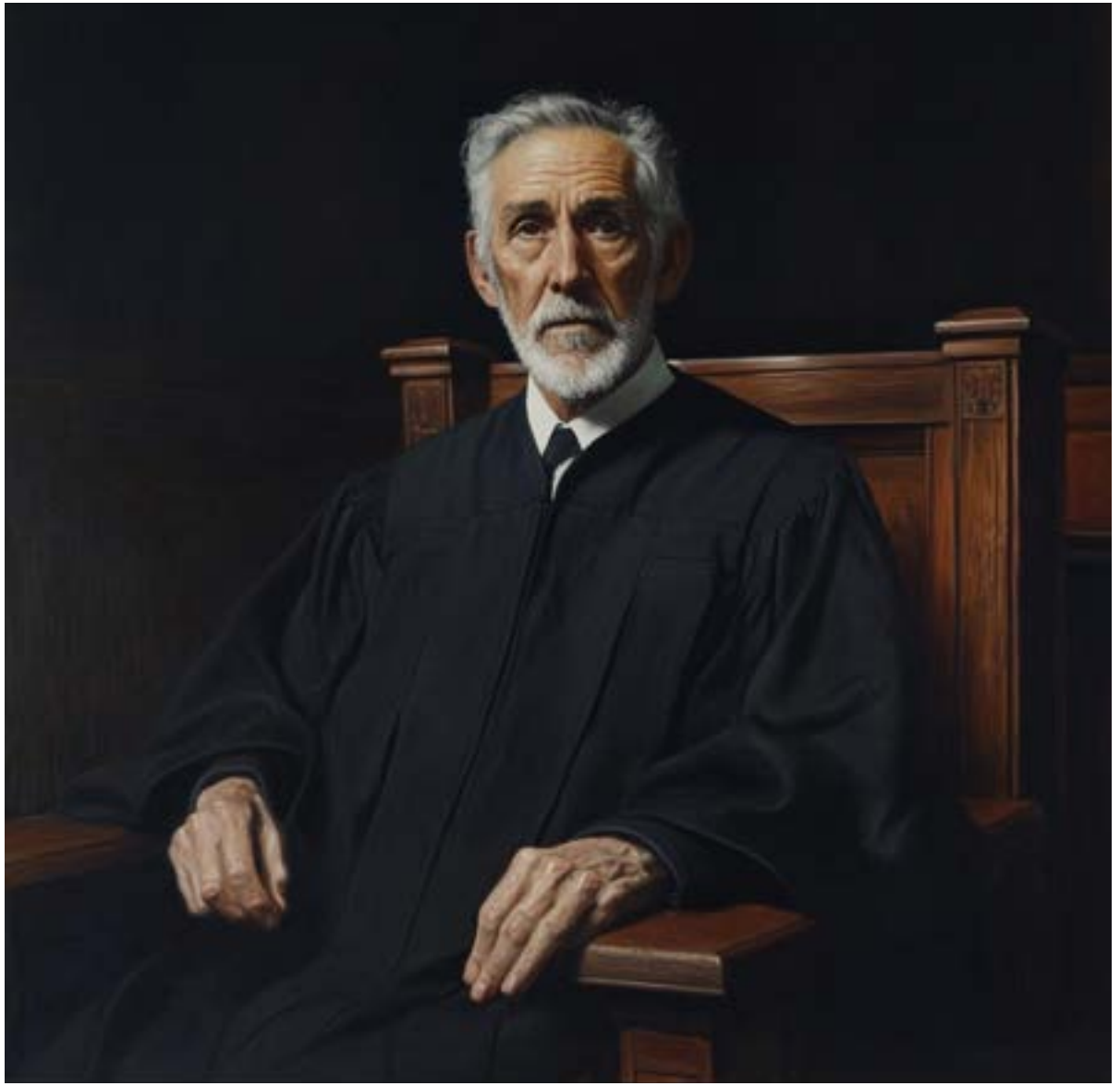












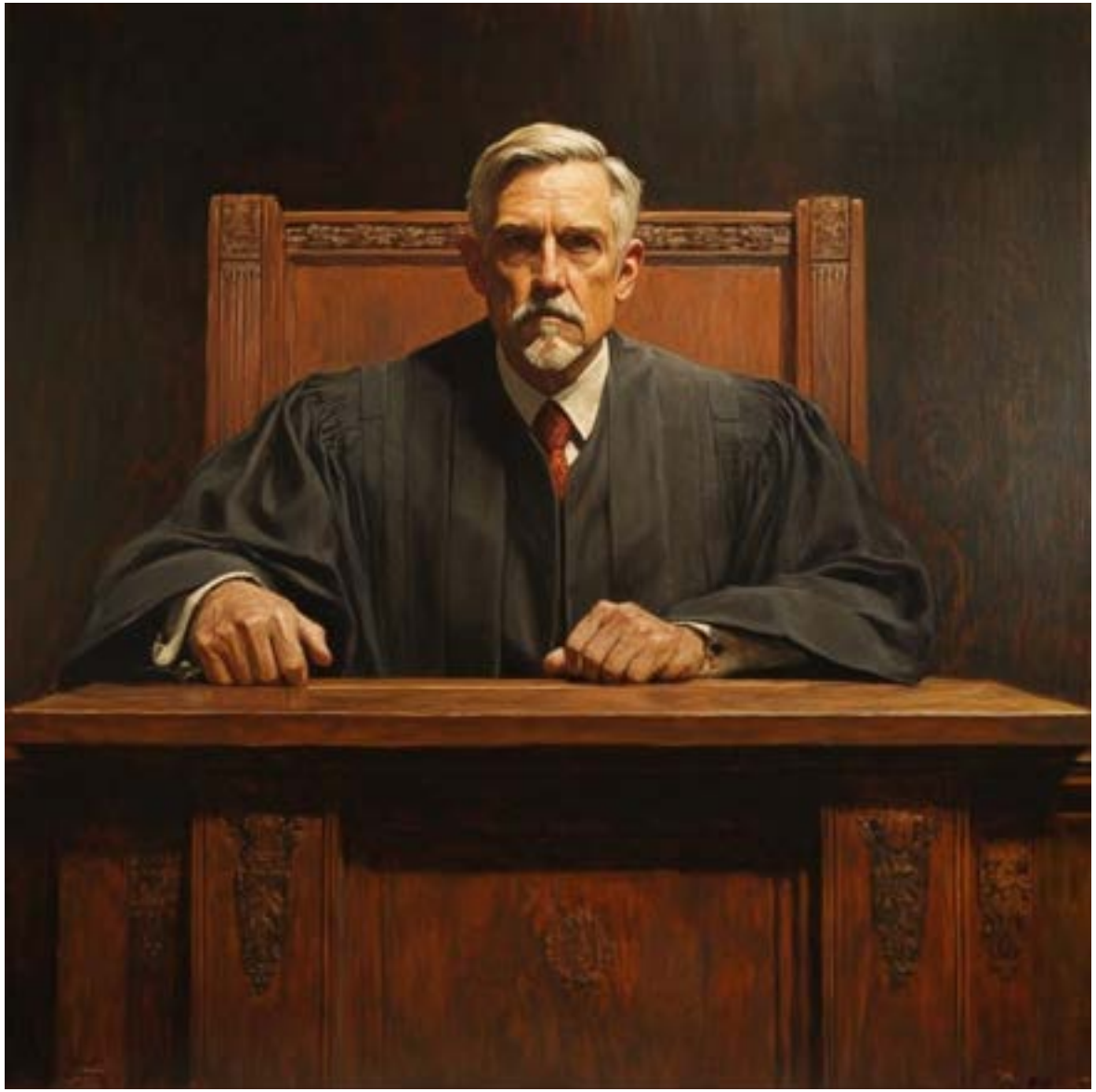










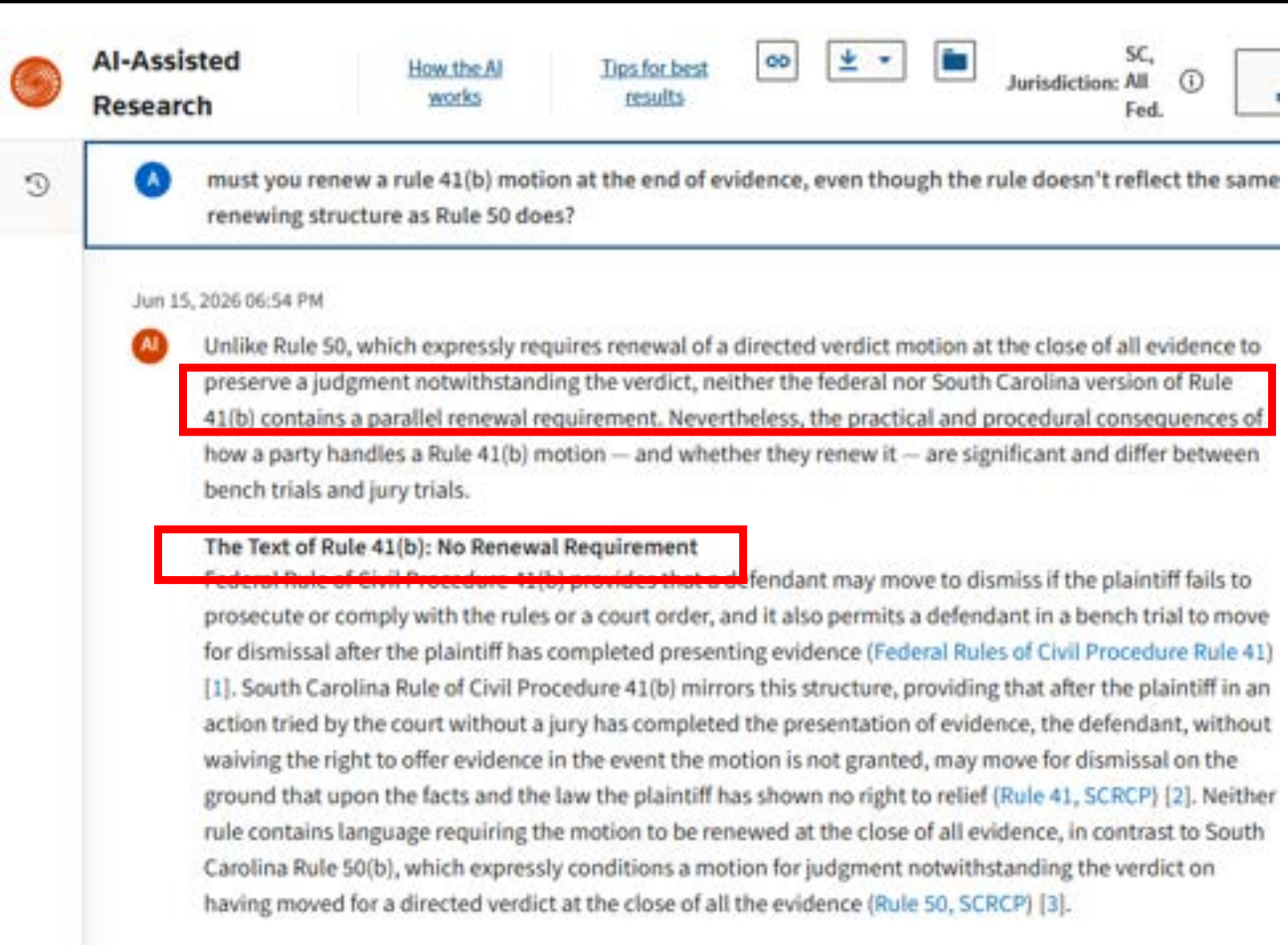


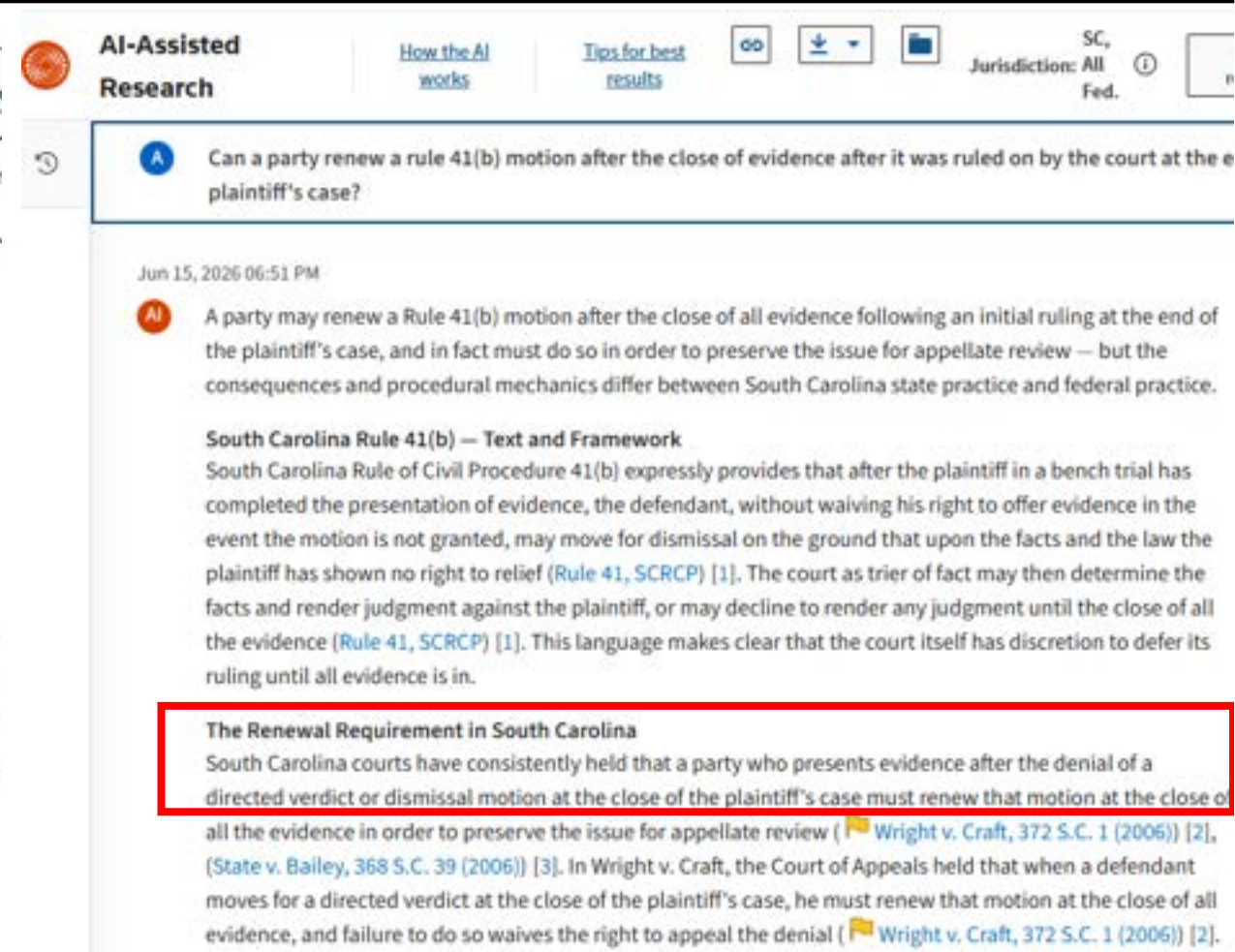






CoCounsel – How you ask changes results





Case Evaluation

Your potential client, **NAME**, of 15 College St, **City**, SC **Zip**, (**County**) installed a Wi-Fi-enabled "EcoFlow SmartSprink" irrigation system. It automatically adjusts watering based on weather data. After a software update, the system allegedly malfunctioned and ran continuously for 18 hours overnight.

The next morning, they found:

- A flooded yard
- A collapsed retaining wall 10-foot-high retaining wall
- Water intrusion into the crawlspace
- Dead shrubs from overwatering
- A $1,900 water bill

They want to sue **EcoFlow**, the manufacturer.

EcoFlow claims the malfunction was not their fault. Their logs show that the system received a "manual override" command at 1:12 a.m. The system behaved "as designed"

Our potential client insists they were asleep and never touched the app.

Proving the company caused the malfunction may require expert testimony.

Evidence:

- Security camera footage shows no one outside that night
- A neighbor claims their EcoFlow system glitched after the same update
- EcoFlow's customer service email to the Potential Client says, "We are aware of isolated issues with the latest firmware," but does not admit fault.

James Smith, Columbia, 29105, Richland County

James Smith, Orangeburg, 29115, Orangeburg County

Muhammad Talisa, Columbia, 29205, Richland County

Muhammad Talisa, Orange, 29115, Orangeburg County

Comparison Statistics

James expected a case return 9.31% more than Muhammad

9.31%

James in Richland County

13.72%
more

James in Orangeburg County

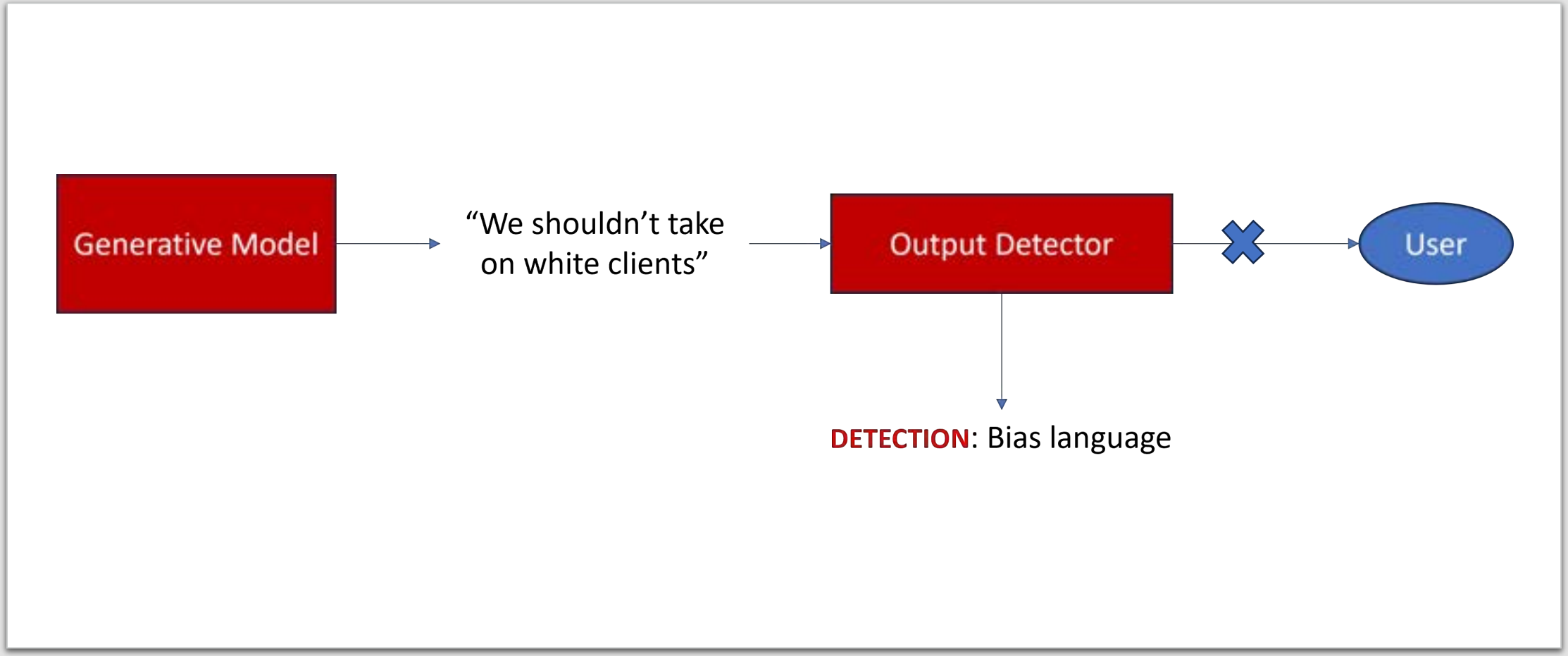
4.11%
more

Richland County over Orangeburg County

11.09%
more


Mitigation

Guardrails


Generative Model
“We shouldn’t take on white clients”
Output Detector
User
DETECTION: Bias language



Curation and Pruning



Individual Accountability

Prompting

Governance

Oversight


The Skeptic

Well-Being, Substance Use & the Legal Profession

Ethics, Risk, and Resources for a Healthier Practice

Presented by:
Jill Smith, LISW-CP/S, Nicole Deems, Ed.S, LMFT/S, LAC/S, CS, RYT,
& Jenniffer Weller-White, LISW-CP/S, LAC/S, NCAAC, CS

JILL SMITH + associates
COUNSELING

What You'll Take Away



Know the data

Describe what research shows about attorney well-being and substance use, and why the profession is at elevated risk.



Apply the rules

Identify the ethical duties triggered when strain or impairment affects your practice or a colleague's.



Respond well

Recognize warning signs, use practical resets, and connect yourself or others with confidential help.

Why This Belongs in an Ethics Hour

Competence isn't only what you know. It's the condition of the person applying it.

— Professional ethics ask for knowledge, skill, thoroughness, and preparation. Every one of those is part of being a working human being.

01

The Research

What lawyers report, and why the profession is at higher risk

What the Research Shows



Screened positive for problematic drinking

Reported symptoms of depression

Reported symptoms of stress

Reported symptoms of anxiety

Rates were highest among lawyers in their first ten years of practice. Source: Krill, Johnson & Albert, Journal of Addiction Medicine (2016), ~12,800 U.S. attorneys.

Why Lawyers?

- **Time as the product:** billable hours make rest feel like lost revenue
- **Adversarial by design:** high stakes, and losses are public
- **Secondhand trauma:** clients' worst days, with no debriefing
- **Perfectionism:** spotting what could go wrong doesn't switch off
- **Always reachable:** phones blur the office and the kitchen table
- **Culture:** professional life often centers on alcohol
- **Self-reliance and stigma:** fear that asking for help hurts a career

Burnout and substance use are often predictable responses to work conditions, not character flaws or moral failings.

02

Ethics & Professional Responsibility

Impairment rarely announces itself. It shows up first as a missed deadline, a short temper, an unreturned call.

Where Well-Being Meets the Rules

1.1 Competence
Strain shows up as shortcuts, missed issues, thin research

1.3 Diligence
Procrastination, missed deadlines, neglected matters

1.4 Communication
Avoided calls and unanswered client email

1.16 Withdrawal
Mandatory when a condition materially impairs representation

5.1 Supervision
Partners must make reasonable efforts to ensure compliance

8.3 Reporting
Duty to report, with an exception for LAP participation



Keep in mind

The rules address effects on clients, not the condition itself. Treatment and recovery are often mitigating.

How Strain Usually Unfolds

1

Early

- Sleep shifts
- Irritability with staff and family
- More caffeine, more alcohol
- Dreading the inbox

2

Building

- Missed internal deadlines
- Avoiding certain files or clients
- Pulling away from colleagues
- Numbing out on weekends

3

Crisis

- Misstating case status to clients
- Trust account shortcuts
- Health or family breaking down
- Thoughts of escape or self-harm

Most people move left to right slowly, and every step feels explainable. Help works best in the early column.

03

Staying in the Window

Regulation, well-being, and small resets that fit a legal workday

Your Window for Good Judgment

Too revved up	Fight or flight: the scorched-earth email, rigid positions, can’t stop prepping
In the window	Clear thinking, flexible strategy, steady with clients and opposing counsel
Shut down	Numb, foggy, scrolling instead of drafting, “I’ll deal with it Monday”

Concept: “window of tolerance,” Daniel J. Siegel. Chronic stress narrows the window; sleep, connection, and movement widen it.

Six Dimensions of Lawyer Well-Being



Occupational

Satisfaction, growth, and a sense of control in the work



Emotional

Recognizing and managing feelings, including the hard ones



Physical

Sleep, movement, nutrition, and care with substances



Intellectual

Curiosity and learning beyond the next deadline



Social

Real connection, belonging, and people to call



Spiritual

Meaning and purpose, however you define them

National Task Force on Lawyer Well-Being, The Path to Lawyer Well-Being (2017)

Small Resets That Fit a Legal Workday

1

Long exhale

Before a hard call: in for four, out for six to eight, three rounds. A long out-breath signals safety.

2

Close the loop

Between files, write the next step on paper, then stand up. The mind lets go of what's captured.

3

Protected hour

One hour a day with email closed: deep work, a walk, or lunch away from the desk. Guard it.

4

Honest check-in

Once a week, tell one person outside the case how you're really doing. Isolation is the risk factor.

04

Recognizing & Responding

Warning signs, real scenarios, and checking in

Warning Signs to Notice



In the work

Missed deadlines, declining quality, unreturned calls, and client complaints.



In behavior

Irritability, withdrawal from colleagues, unexplained absences, and defensiveness.



Red flags

Impairment in court, trust account irregularities, or alcohol on the breath at work.

How to Check In with a Colleague

1

Pick the moment

Private, unhurried, and not in a crisis

2

Lead with care

Name what you've seen, without labels

3

Listen

Don't diagnose, argue, or push

4

Offer help

Share the LHL number and follow up

Words to Try

> *I've noticed you've seemed really stretched lately, and I care about how you're doing. Is everything okay?*
>
> **— A caring way to open the conversation**

What Firms and Leaders Can Do



Events

Make alcohol optional, and debrief after hard cases



Policy

A non-punitive path to treatment, and LAP info at onboarding



Modeling

Leaders talk openly, and stop rewarding exhaustion



Coverage

Backup attorneys and real leave protect clients and the lawyer

Small structural changes make asking for help feel normal. Meet disclosure with support, not sidelining.

Confidential Help

- Lawyers Helping Lawyers (LHL) 1-855-321-4384
- 24/7/365 Free and confidential for lawyers, judges, & law students - 5 free sessions yearly!
- SAMHSA National Helpline: 1-800-662-4357
- 988 Suicide & Crisis Lifeline: call or text 988
- Directory of State Lawyer Assistance Programs: americanbar.org
- Your employee assistance program: short-term counseling and referrals
- JSA Counseling: 803-814-5559 · jsacounseling.com

Help is one call away.

Contacting your Lawyers Assistance Program is confidential support, not a report to the bar.

Questions?

Thank you for being here!

Columbia · Lexington · Blythewood

jsacounseling.com · 803-814-5559



JILL SMITH + associates

COUNSELING

Crossing Lines:
Ethics in Immigration Practice

October 23, 2026

Charles A. Phipps
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Areas where I see crossover

- Criminal defense
- Family law
- Real estate
- Business
- Licensing
- Income tax
- Staff members helping with immigration
- Trying to start an immigration practice or just help someone with an immigration issue

Core Concepts of Immigration Law

Nonimmigrants: People in the United States temporarily. This includes:

- tourists
- students
- temporary workers
- asylum seekers and refugees
- people with DACA
- people with Temporary Protected Status (TPS)
- humanitarian parolees (formerly: Ukraine, Venezuela)
- people in U status

Core Concepts of Immigration Law

Lawful Permanent Residents

U.S. Citizens (through birth or naturalization)

- De-naturalization

Let’s Talk ICE for a Minute

Relevant Rules of Professional Responsibility

Rule 1.1. Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Relevant Rules of Professional Responsibility

Rule 5.3. Responsibilities regarding non-lawyer assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

Criminal Law
Padilla v. Kentucky

130 S. Ct. 1473 (2010): "When the [immigration] law is not succinct and straightforward . . . a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry a risk of adverse immigration consequences. But when the deportation consequence is truly clear, as it was in this case, the duty to give correct advice is equally clear."

Review: Padilla v. Kentucky

Is your client a lawful permanent resident?

Does your client have DACA?

Does your client have no immigration status?

Does your client have the possibility of adjusting to permanent resident status in the future?

Review: Padilla v. Kentucky

What are the charges? What is the maximum sentence as defined by the charging statute? What is the possible or likely sentence for your client?

What is your plea offer, if any?

Other Situations

- E-verify requirements under SC law. S.C. Code § 41-8-20.
- Licensure requirement under SC AG opinion.
- Real estate.
- Trying to start an immigration practice or add to your practice.
- Income tax.
- Staff members helping with immigration.

Crossing Lines:
Ethics in Immigration Practice

October 23, 2026

Charles A. Phipps

Core Concepts of Immigration Law

I. Nonimmigrants: People in the United States temporarily. This includes:

- tourists
- students
- temporary workers
- asylees and refugees
- people with DACA
- people with Temporary Protected Status (TPS)
- Humanitarian Parolees (Ukraine, Venezuela)
- people in U status.

II. Lawful Permanent Residents (LPR) are allowed to live and work in the United States permanently (with certain exceptions and limitations). An LPR cannot vote, register to vote, or claim to be a citizen of the United States, but an LPR may serve in the U.S. military and must pay U.S. income taxes.

III. U.S. Citizens. U.S. citizens may vote in local, state, and national elections. A person might be a U.S. citizen through birth or naturalization.

IV. Major federal entities:

- Department of Homeland Security (DHS)
- U.S. Citizenship and Immigration Services (CIS)
- U.S. Customs and Immigration Enforcement (ICE)
- Customs and Border Protection (CBP)
- Executive Office for Immigration Review, U.S. Department of Justice (EOIR)

V. Punishment for unlawful presence. A person who is unlawfully present in the United States for one year or more and then departs the United States is inadmissible for 10 years. INA § 212(a)(9)(B)(i)(II). A person who enters the U.S. without inspection is unlawfully present. INA § 212(a)(6)(B)(ii).

VI. The Detention and Removal Process.

A. The charging documents: Notice to Appear, Notice of Rights, Arrest Warrant, etc.

B. Immigration Hold/Immigration Detainer. "Upon a determination by the Department [of Homeland Security] to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the Department." 8 C.F.R. § 287.7(d).

C. Immigration Bonds.

D. Forms of compelled departure from the United States:

(1) Voluntary return: The foreign national waives the right to a hearing in front of an immigration judge and agrees to be returned to the country of origin.

(2) Voluntary departure. The Immigration Judge grants the person the right to depart the United States at his or her own expense within a designated number of days.

(3) Removal. A decision of an Immigration Judge ordering the removal of a non-citizen from the United States. It usually must be executed within 30 days, unless an administrative appeal is pending. After 30 days, a person with a removal order is subject to detention.

(4) Expedited removal. No right to a hearing in front of an Immigration Judge. The order is issued and executed by agents of the Department of Homeland Security.

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Selected Cases, Laws, and Opinions

Criminal

Padilla v. Kentucky, 130 S. Ct. 1473 (2010). "When the [immigration] law is not succinct and straightforward . . . a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry a risk of adverse immigration consequences. But when the deportation consequence is truly clear, as it was in this case, the duty to give correct advice is equally clear."

Rodriguez v. State, 907 S.E.2d 153 (S.C. Ct. App. 2024). "Because plea counsel's advice that Petitioner *might* be deported was deficient, the PCR court correctly found deficient performance."

Business

S.C. Code § 41-8-20(B): "All private employers who are required by federal law to complete and maintain federal employment eligibility verification forms or documents must register and participate in the E-Verify federal work authorization program, or its successor, to verify the work authorization of every new employee within three business days after employing a new employee. A private employer who does not comply with the requirements of this subsection violates the private employer's licenses."

S.C. Code § 41-8-30: "A private employer who knowingly or intentionally employs an unauthorized alien violates the private employer's licenses."

Professional and Occupational Licenses

March 3, 2014, Attorney General Opinion opines that DACA status "does not give an individual lawful status in the United States . . .", thus LLR should deny professional and occupational licenses to individuals with DACA status.

Real Property Tax Assessment

From Richland County Assessor's web page (https://www.richlandcountysc.gov/Property-Business/Property-Valuation/Legal-Residence)

"Per South Carolina Code of Laws 12-43-220 (c)(1), the Legal Residence exemption applies to owner-occupied homes, reducing the assessment ratio from 6% to 4%, and exempting the school operating millage, which significantly lowers property taxes. Eligibility depends on meeting residency and ownership requirements. . . ."

"Non-citizens may qualify if they meet residency requirements and have proper documentation from USCIS. We accept approved forms I-130, I-140, I-485, or a permanent residence card. Individuals without a permanent residence card must apply annually until they receive permanent residence status."

Relevant Rules of Professional Responsibility

Rule 1.1. Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Comment

Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. *In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.*

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. *A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.*

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

Retaining or Contracting With Other Lawyers

[6] Before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the provision of legal services to a client, the lawyer must reasonably believe that the service of the other lawyer(s) will contribute to the competent and ethical representation of the client, and the lawyer may be required to obtain the informed consent of the client under other Rules. See also Rules 1.2 (allocation of authority), 1.4 (communication with client), 1.5(e) (fee sharing), 1.6 (confidentiality), and 5.5(a) (unauthorized practice of law). The reasonableness of the decision to retain or contract with other lawyers outside the lawyer's own firm will depend upon the circumstances, including the education, experience and reputation of the nonfirm lawyers; the nature of the services assigned to the nonfirm lawyers; and the legal protections and professional conduct rules of the jurisdictions in which the services will be performed, particularly relating to confidential information.

[7] When lawyers from more than one law firm are providing legal services to the client on a particular matter, the lawyers ordinarily should consult with each other and the client about the scope of their respective representations and the allocation of responsibility among them. See Rule 1.2. When making allocations of responsibility in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

Maintaining Competence

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including a reasonable understanding of the benefits and risks associated with technology the lawyer uses to provide services to clients or to store or transmit information related to the representation of a client, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

RULE 5.3: Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer, including a suspended lawyer employed pursuant to Rule 34, RLDE, Rule 413, SCACR, shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Federal Law on Representation on Immigration Matters

8 C.F.R. § 292.1(a): A person may represent another individual on an immigration matter only if the representative is an attorney, a law student acting under the supervision of a licensed attorney, or an accredited representative.

8 C.F.R. § 292.2: Accredited representatives must work for a non-profit or other charitable organization that charges nominal fees.

8 C.F.R. § 292.4(a). A notice of representation (Form G-28) must be filed with USCIS when an individual is represented.

8 C.F.R. § 1.2. A non-attorney may provide limited assistance in the preparation of forms, but only if the person’s remuneration is nominal and the person does not hold himself or herself out as qualified in legal matters or in immigration and naturalization procedure.

ALAN WILSON
ATTORNEY GENERAL

March 3, 2014

Melina Mann, General Counsel
South Carolina Department of Labor, Licensing and Regulation
Post Office Box 11329
Columbia, South Carolina 29211-1329

Dear Ms. Mann:

Attorney General Alan Wilson has referred your letter dated October 31, 2013 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issue: Is an individual who has been granted Deferred Action for Childhood Arrivals ("DACA" or "deferred action") status eligible for a South Carolina professional or occupational license?

Short Answer: Based on the current law at this time and the position of the federal government, this Office believes a court will most likely find an individual who has been granted Deferred Action for Childhood Arrival (DACA) status should be denied a professional or occupational license in South Carolina.

Law/Analysis:
Before this Office begins its analysis of your question, we note that the issue of immigration is a national issue dictated by our government. It is rapidly changing. Our United States Supreme Court recently stated:

> The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens. See *Toll v. Moreno,* 458 U.S. 1, 10, 102 S.Ct. 2977, 73 L.Ed.2d 563 (1982); see generally S. Legomsky & C. Rodríguez, Immigration and Refugee Law and Policy 115–132 (5th ed. 2009). This authority rests, in part, on the National Government's constitutional power to "establish an uniform Rule of Naturalization," U.S. Const., Art. I, § 8, cl. 4, and its inherent power as sovereign to control and conduct relations with foreign nations, see *Toll, supra,* at 10, 102 S.Ct. 2977 (citing *United States v. Curtiss–Wright Export Corp.,* 299 U.S. 304, 318, 57 S.Ct. 216, 81 L.Ed. 255 (1936)).

Arizona v. U.S., 132 S.Ct. 2492, 2498 (2012). Therefore, we will answer your question to the best of our knowledge based on the current law as we understand it.[1]

DACA is a term that was announced June 15, 2012 in a memorandum by the Secretary of Homeland Security. Arizona Dream Act Coalition v. Brewer, 945 F.Supp.2d 1049 (D.Ariz. 2013). The Secretary announced DACA pursuant to prosecutorial discretion to defer the removal action of an individual not lawfully present in the United States. Id. The Arizona United States District Court stated the following in the Arizona Dream case concerning Arizona's denial of state-issued driver's licenses to DACA individuals:

> Plaintiffs initially appeared to argue that Arizona's policy was preempted because it conflicted with Secretary Napolitano's discretionary decision to grant deferred status to those who qualify under the DACA program. Plaintiffs identified several ways in which the Arizona policy conflicted with the purposes of the DACA program, arguing that the policy "impermissibly undermines the federal goal of permitting [DACA recipients] to remain and work in the United States, and to be full, contributing members of society." Doc. 30 at 23. In response to this argument, Defendants argued that Secretary Napolitano's memorandum could have no preemptive effect. Defendants are correct.
>
> The memorandum does not have the force of law. Although the Supreme Court has recognized that federal agency regulations "with the force of law" can preempt conflicting state requirements, *Wyeth*, 555 U.S. at 576, 129 S.Ct. 1187, federal regulations have the force of law only when they prescribe substantive rules and are promulgated through congressionally-mandated procedures such as notice-and-comment rulemaking. *See River Runners for Wilderness v. Martin*, 593 F.3d 1064, 1071 (9th Cir.2010) (citing *United States v. Fifty–Three (53) Eclectus Parrots*, 685 F.2d 1131, 1136 (9th Cir.1982)). **Secretary Napolitano's memorandum does not purport to establish substantive rules (in fact, it says that it does not create substantive rights) and it was not promulgated through any formal procedure. As a result, the memorandum does not have the force of law and cannot preempt state law or policy.**
>
> Perhaps as a result of this reality, Plaintiffs clarified their conflict preemption argument in their reply memorandum, asserting that the Arizona policy "conflicts with *Congress's* decision to grant discretion to the Executive Branch to enforce the immigration laws[.]" Doc. 99 at 15 (emphasis in original). Unfortunately for Plaintiffs, this preemption argument also fails. Conflict preemption exists when a state law or policy "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Arizona*, 132 S.Ct. at 2501. The "purpose of Congress is the ultimate touchstone[.]" *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485, 116 S.Ct. 2240, 135 L.Ed.2d 700 (1996) (quotation marks and citations omitted). Plaintiffs have identified no purpose of Congress with which the Arizona driver's license policy conflicts.

[1] At the time this Opinion is written, it is this Office's understanding that U.S. Senate bill S. 744, 133 (Cong. 2013) is pending and that the latest version of the bill includes the Coons amendment language concerning professional licenses.

> Plaintiffs characterize Defendants' driver's license policy as an attempt to decide "that DACA recipients are *not* authorized to be present" in the United States, an attempt that "undermines Congress' intent that the federal government alone have discretion to make these decisions." Doc. 99 at 16 (emphasis in original). The Court does not agree, however, that the Arizona policy constitutes an attempt to decide which aliens may remain in the United States. **The policy concerns driver's licenses. Unlike the Arizona policy that was found to be conflict-preempted in *Arizona*, the driver's license policy does not concern the arrest, prosecution, or removal of aliens from the State or the Nation. The Court cannot find that issuance or denial of driver's licenses "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" in delegating immigration authority to DHS. *See Hines*, 312 U.S. at 67, 61 S.Ct. 399.**
>
> Plaintiffs argue that Defendants' driver's license policy undermines Congress's intent that the federal government decide who can work in the United States. Plaintiffs' submit that Defendants' policy stands as an obstacle to this federal objective because driving is frequently necessary to work. But Plaintiffs cite no authority to show that work was one of the objectives Congress had in mind when it delegated immigration authority to DHS. **And to the extent Plaintiffs rely on the purposes of the DACA program, they are looking to a nonbinding policy of a federal agency, not the intent of Congress which is the touchstone of conflict preemption analysis. What is more, the Court certainly cannot impute the intentions of the DACA program to Congress when Congress itself has declined repeatedly to enact legislation that would accomplish the goals of the DACA program. *See, e.g.*, DREAM Act of 2011, S. 952, H.R. 1842, 112th Cong. (2011).**
>
> ....
>
> Even DHHS classifies DACA recipients as not "lawfully present" for purposes of certain benefits. Plaintiffs in some respects are like the undocumented aliens in *Plyler*, whom the Court described as enjoying an "inchoate federal permission to remain," 457 U.S. at 226, 102 S.Ct. 2382, but there are material distinctions from the *Plyler* undocumented aliens as well.

Id. at 1059-1060, 1063-1064 (emphasis added).

As stated by the Department of Homeland Security, "[d]eferred action DOES NOT provide an individual with lawful status." U.S. Citizenship & Immigration Services, https://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process (or www.uscis.gov, click on Humanitarian, click on Consideration of Deferred Action for Childhood Arrivals Process) (February 25, 2014) (emphasis added); Dept. of Homeland Security, https://www.dhs.gov/deferred -action-childhood-arrivals (or www.dhs.gov/deferred-action, click on frequent questions) (February 25, 2014) (emphasis added). As quoted from Homeland Security's website,

> About Deferred Action for Childhood Arrivals
> Q1: What is deferred action?

A1:Deferred action is a **discretionary determination to defer removal action** of an individual as an act of **prosecutorial discretion. Deferred action does not confer lawful status upon an individual.** In addition, although an individual whose case is deferred will not be considered to be accruing unlawful presence in the United States during the period deferred action is in effect, deferred action does not excuse individuals of any previous or subsequent periods of unlawful presence.
Under existing regulations, an individual whose case has been deferred is eligible to receive employment authorization for the period of deferred action, provided he or she can demonstrate "an economic necessity for employment." DHS can terminate or renew deferred action at any time at the agency's discretion.

....

Q6: If my case is deferred, am I in lawful status for the period of deferral?
A6: **No.** Although action on your case has been deferred and **you do not accrue unlawful presence during the period of deferred action, deferred action does not confer any lawful status.**
There is a significant difference between "unlawful presence" and "unlawful status." Unlawful presence refers to a period an individual is present in the United States (1) without being admitted or paroled or (2) after the expiration of a period of stay authorized by the Department of Homeland Security (such as after the period of stay authorized by a visa has expired). Unlawful presence is relevant only with respect to determining whether the inadmissibility bars for unlawful presence, set forth in the Immigration and Nationality Act at Section 212(a)(9), apply to an individual if he or she departs the United States and subsequently seeks to re-enter. (These unlawful presence bars are commonly known as the 3- and 10-Year Bars.)
The fact that you are not accruing unlawful presence does not change whether you are in lawful status while you remain in the United States. Because you lack lawful status at the time DHS defers action in your case, you remain subject to all legal restrictions and prohibitions on individuals in unlawful status.

Q7: Does deferred action provide me with a path to permanent residence status or citizenship?
A7: **No. Deferred action is a form of prosecutorial discretion that does not confer lawful permanent resident status or a path to citizenship. Only the Congress, acting through its legislative authority, can confer these rights.**

....

Q13: Is passage of the DREAM Act still necessary in light of the new process?
A13: Yes.The Secretary of Homeland Security's June 15th memorandum allowing certain people to request consideration for deferred action is the most recent in a series of steps that DHS has taken to focus its enforcement resources on the removal of individuals who pose a danger to national security or a risk to public safety. Deferred action does not provide lawful status or a pathway to citizenship. As the President has stated, individuals who would qualify for the DREAM Act deserve certainty about

> their status. Only the Congress, acting through its legislative authority, can confer the certainty that comes with a pathway to permanent lawful status.

Dept. of Homeland Security, Deferred Action for Childhood Arrivals, https://www.dhs.gov/deferred-action-childhood-arrivals (or www.dhs.gov/deferred-action, click on frequent questions) (February 25, 2014) (emphasis added). DACA status by the Department of Homeland Security does not have the force of law and cannot preempt state law. Arizona Dream Act Coalition v. Brewer, 945 F.Supp.2d 1049 (D.Ariz. 2013).[2]

Therefore, we can conclude deferred action (DACA) status does not give an individual lawful status in the United States according to our federal government. Hence, let us examine a pertinent South Carolina law regarding licenses. South Carolina Code Section 8-29-10 requires a verification of lawful presence for every agency or political subdivision in South Carolina issuing a state or local public benefit. The statute states:

> (A) Except as provided in subsection (C) of this section or where exempted by federal law, on or after July 1, 2008, every agency or political subdivision of this State shall verify the lawful presence in the United States of any alien eighteen years of age or older who has applied for state or local public benefits, as defined in 8 USC Section 1621, or for federal public benefits, as defined in 8 USC Section 1611, that are administered by an agency or a political subdivision of this State.
>
> (B) The provisions of this article shall be enforced without regard to race, religion, gender, ethnicity, or national origin.
>
> ....

S.C. Code § 8-29-10 (1976 Code, as amended). The verification for lawful presence pursuant to S.C. Code Section 8-29-10 requires an applicant to meet three requirements, which state if an applicant is not a U.S. citizen or legal permanent resident eighteen or older, he must be:

a. a qualified alien (or nonimmigrant) under the Federal Nation Immigration & Nationality Act, Public Law 82-414;
b. who is at least 18 yrs. old; and
c. **who is lawfully present in the United States.**

S.C. Code § 8-29-10(D) (emphasis added). As previously mentioned, the Department of Homeland Security has already clarified lawful status is not given to an individual under DACA. Department of Homeland Security, supra. However, let us examine 8 U.S.C. Section 1621 concerning state and local public benefits. The federal law states:

> (a) In general
> Notwithstanding any other provision of law and except as provided in subsections (b) and (d) of this section, **an alien who is not--**
> **(1) a qualified alien (as defined in section 1641 of this title),**

[2] See also Saldana v. Lahm, 2013 WL 5658233 (not reported in F.Supp.2d) (D.Neb. 2013).

(2) a nonimmigrant under the Immigration and Nationality Act [8 U.S.C.A. § 1101 et seq.], or
(3) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C.A. § 1182(d)(5)] for less than one year,
is not eligible for any State or local public benefit (as defined in subsection (c) of this section).
...

(c) "State or local public benefit" defined
(1) Except as provided in paragraphs (2) and (3), for purposes of this subchapter the term "State or local public benefit" means--
(A) any grant, contract, loan, **professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; and**
(B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.
(2) Such term shall not apply--
(A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99-239 or 99-658 (or a successor provision) is in effect;
(B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C.A. § 1101 et seq.] qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Secretary of State, after consultation with the Attorney General; or
(C) to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States.
(3) Such term does not include any Federal public benefit under section 1611(c) of this title.
(d) State authority to provide for eligibility of illegal aliens for State and local public benefits
A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) of this section only through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility.

8 U.S.C. § 1621 (emphasis added). This federal statute makes it clear a professional license may not be

issued by a State or local government to an alien who is not one of three exceptions (qualified pursuant to 8 U.S.C. § 1641, a nonimmigrant pursuant to U.S.C. § 1101, or an alien who is paroled pursuant to 8 U.S.C. § 1182(d)(5) for less than one year)[3] unless there is a specific State law enacted after August 22, 1996 granting such eligibility. It is this Office's understanding there is no such State law in South Carolina authorizing public benefits such as professional licenses for aliens do not lawful status in the United States.

Furthermore, let us examine the definition of qualified alien pursuant to federal law Section 1641. It states:

> (a) In general
> Except as otherwise provided in this chapter, the terms used in this chapter have the same meaning given such terms in section 101(a) of the Immigration and Nationality Act [8 U.S.C.A. § 1101(a)].
>
> (b) Qualified alien
> For purposes of this chapter, the term "qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is--
> **(1)** an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C.A. § 1101 et seq.],
> **(2)** an alien who is granted asylum under section 208 of such Act [8 U.S.C.A. § 1158],
> **(3)** a refugee who is admitted to the United States under section 207 of such Act [8 U.S.C.A. § 1157],
> **(4)** an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C.A. § 1182(d)(5)] for a period of at least 1 year,
> **(5)** an alien whose deportation is being withheld under section 243(h) of such Act [8 U.S.C. 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act [8 U.S.C. 1231(b)(3)] (as amended by section 305(a) of division C of Public Law 104-208),
> **(6)** an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act [8 U.S.C. 1153(a)(7)] as in effect prior to April 1, 1980; or
> **(7)** an alien who is a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980).

8 U.S.C. § 1641.

Moreover, the United States Department of Justice filed an amicus brief in 2013 supporting the denial of a professional law license to an alien who immigration status is under the deferred action status. The Brief for the United States of America as Amicus Curiae before the Supreme Court of Florida regarding a license to practice law stated:

> Congress made certain categories of aliens ineligible, absent an affirmative state enactment conferring eligibility, for "any grant, contract, loan, professional license, or

[3] This Office is going to presume for purposes of your question that all licenses issued by the South Carolina Department of Labor, Licensing and Regulations would be included in 8 U.S.C. § 1621.

commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government." 8 U.S.C. § 1621(c). A license to practice law is a "professional license." The narrow issue of statutory construction before the Cort is therefore whether a state bar license is "provided by an agency of a State or local government or by appropriated funds of a State or local government." *Id.* As explained below, because this Court is funded through appropriations, the licenses that it issues are "provided ... by appropriated funds of a State." *Id.* Under federal law, undocumented aliens are therefore ineligible for these licenses absent the "enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility." *Id.* § 1621(d).

In the PRWORA, Congress created two parallel provisions that address issuance of licenses and benefits by federal and state agencies. ... In the second provision, which is at issue here, Congress set a default rule (alterable by states) that makes certain aliens ineligible for *state* public benefits, similarly defined to include "any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government." *Id.* § 1621(c).

These provisions were plainly designed to preclude undocumented aliens from receiving commercial and professional licenses issued by States and the federal government. Their sweeping language demonstrates that Congress intended to act comprehensively in prohibiting receipt of such benefits by undocumented aliens, and they should be construed in a manner that furthers that evident purpose. We are aware of no commercial or professional license that is not provided by an agency, provided by appropriated funds, or both.

...

[II.] B. The notion of "deferred action' has no bearing on the question presented here. The term "deferred action" refers to the exercise of prosecutorial discretion by DHS as to aliens who are subject to removal from the United States. As the U.S. Supreme Court has explained, "[a]t each state [of the deportation process] the Executive has discretion to abandon the endeavor, and at the time [the Illegal Immigration Reform and Immigrant Responsibility Act] was enacted the [Immigration and Naturalization Service] had been engaging in a regular practice (which had come to be known as 'deferred action') of exercising that discretion for humanitarian reasons or simply for its own convenience." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483-84 (1999).

Although an alien who has been granted deferred action may apply for work authorization, *see* 8 C.F.R. § 274a.12(c)(14), deferred action is not an immigration status or category described in 8 U.S.C. § 1621(a). Neither deferred action nor employment authorization has any bearing on an individual's eligibility for state and local benefits under 8 U.S.C. § 1621.

> Exempting additional categories of aliens from the operation of 8 U.S.C. § 1621 would require new legislation. Congress is currently considering proposed legislation that would make substantial changes to the immigration laws. *See* S. 744, 113 (Cong. 2013). Such legislation could alter the operation of 8 U.S.C. § 1621. *Cf.* Coons Amendment 10 to S. 744, filed in Senate Judiciary Committee (2013) (proposing that "[a]l individual who is authorized to be employed in the United States may not be denied a professional, commercial, or business license on the basis of his or her immigration status.").

Florida Board of Bar Examiners RE: Question as to Whether Undocumented Immigrants are Eligible for Admission to the Florida Bar brief for the United States of America as Amicus Curiae by Stuart F. Delery (Case No. SC 11-2568) (filed May 20, 2013) (emphasis added).[4]

Nevertheless, this Office maintains that the South Carolina Department of Labor, Licensing, and Regulation ("LLR") is charged with the protection of the public through the regulation of professional and occupational licenses and the administration of boards of practitioners. S.C. Code § 40-1-40. LLR governs according to statute and regulatory authority. S.C. Code § 41-3-10, et al. Additionally, this Office points out the South Carolina General Assembly also maintains the power to regulate when needed, as stated below:

> (C) If the General Assembly determines that a particular profession or occupation should be regulated or that a different degree of regulation should be imposed on the regulated profession or occupation, it shall consider the following degrees of regulation in the order provided and only shall regulate the profession or occupation to the degree necessary to fulfill the need for regulation:
>
> (1) If existing common law and statutory causes of civil action or criminal prohibitions are not sufficient to eradicate existing harm or prevent potential harm, the General Assembly first may consider making statutory changes to provide stricter causes for civil action and criminal prosecution.

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[4] It is worth noting regarding Social Security benefits, 8 CFR 1.3 (a)(4)(vi) states:

> (a) Definition of the term an "alien who is lawfully present in the United States." For the purposes of 8 U.S.C. 1611(b)(2) only, an "alien who is lawfully present in the United States" means:
>
> ...
>
> (4) An alien who belongs to one of the following classes of aliens permitted to remain in the United States because DHS has decided for humanitarian or other public policy reasons not to initiate removal proceedings or enforce departure:
>
> ...
>
> (vi) aliens in deferred action status;

While there may be multiple other statutes addressing deferred action, it is this Office's understanding the Department of Justice's amicus brief clarifies that deferred action is related to immigration enforcement and does not allow an individual to receive state or local benefits such as a professional license, as stated above, and thus we will not address the numerous other sources of laws, regulations and authorities.

(2) If it is necessary to determine the impact of the operation of a profession or occupation on the public, the General Assembly may consider implementing a system of registration.
(3) If the public requires a substantial basis for relying on the professional services of the practitioner, the General Assembly may consider implementing a system of certification.
(4) If adequate regulation cannot be achieved by means less than licensing, the General Assembly may establish licensing procedures.

(D) In determining the proper degree of regulation, if any, the General Assembly shall determine:
(1) whether the practitioner, if unregulated, performs a service to individuals involving a hazard to the public health, safety, or welfare;
(2) what the opinion of a substantial portion of the people who do not practice the particular profession, trade, or occupation is on the need for regulation;
(3) the number of states which have regulatory provisions similar to those proposed;
(4) whether there is sufficient demand for the service for which there is no regulated substitute, and this service is required by a substantial portion of the population;
(5) whether the profession or occupation requires high standards of public responsibility, character, and performance of each individual engaged in the profession or occupation, as evidenced by established and published codes of ethics;
(6) whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that the practitioner has met minimum qualifications;
(7) whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous, or irresponsible members of the profession or occupation;
(8) whether current laws which pertain to public health, safety, and welfare generally are ineffective or inadequate;
(9) whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety, and welfare;
(10) whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

S.C. Code § 40-1-10 (C), (D) (1976 Code, as amended).

Conclusion: Therefore, this Office believes except where State or federal law directs otherwise, South Carolina LLR regulates professional and occupational licenses (noting the South Carolina General Assembly may also intervene). Thus, it appears while deferred action (DACA) is a matter of prosecutorial discretion being implemented by the federal government, DACA does not give an individual "lawful status," and does not carry the force of law; the federal government makes it clear it sees DACA as a separate issue from receiving state and local benefits such as a professional license pursuant to 8

U.S.C. § 1621.[5] Based on such an interpretation by the same administration that issued the DACA status in its prosecutorial discretion and based on State law, this Office believes a court will find that such a license should be denied to an individual in DACA status. However, this Office is only issuing a legal opinion. Until a court, the federal government or the legislature further specifically address the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter at this time. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,

Anita S. Fair

Anita S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General

[5] This opinion is limited to the question asked, which concerns professional and occupational licenses only.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Alma C. Defillo, Respondent.

Appellate Case No. 2014-001077

Opinion No. 27431
Submitted July 29, 2014 – Filed August 13, 2014

DISCIPLINE IMPOSED

Lesley M. Coggiola, Disciplinary Counsel, and Barbara M. Seymour, Deputy Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

Alma C. Defillo, of Jacksonville, Florida, pro se.

PER CURIAM: Respondent is licensed to practice law in Florida; she is not licensed to practice law in South Carolina. In November 2013, the Office of Disciplinary Counsel (ODC) filed Formal Charges against respondent alleging she operated a law firm and offered legal services in South Carolina. In addition, ODC alleged that respondent advertised and solicited clients in South Carolina in violation of Rule 7, RPC, Rule 413, SCACR, and Rule 418, SCACR. Respondent did not answer the Formal Charges, was found to be in default, and is therefore deemed to have admitted the factual allegations made in those charges. See Rule 24(a), RLDE, Rule 413, SCACR. Following an evidentiary hearing in which respondent did not appear, the Hearing Panel issued a Panel Report recommending the Court sanction respondent for her misconduct. Neither ODC nor respondent filed exceptions to the Panel Report. The matter is now before the Court for consideration.

Facts

Matter I

In 2012, respondent opened an office in Greenville, ostensibly to handle federal immigration matters. Respondent had no law partners or associates who were licensed in South Carolina except for a period of approximately fourteen days in August 2012. Respondent offered to provide legal services in South Carolina using methods specifically targeted at potential clients in South Carolina, including a law firm website, business cards, print advertisements, and radio commercials as discussed below.

In connection with her representation of two clients in federal immigration matters, respondent sent letters to judges for the state circuit court in Greenville, requesting certification that the clients were crime victims. The letterhead contained the phrase "Attorneys and Counselors at Law" when, in fact, respondent had no partners or associates at the times the letters were written. Respondent's letterhead included her Greenville office address without indicating the jurisdictional limitations on her ability to practice law.

Respondent advertised her law firm through the use of a website available to residents of South Carolina. Included on the website are references to respondent's Greenville office. Respondent's website contains material misrepresentations and omits facts necessary to make the contents considered as a whole not materially misleading. On her website, respondent advertises her office in Greenville but fails to state that she is not licensed to practice law in South Carolina or to otherwise set forth the jurisdictional limitations on her practice in this state. Further, respondent's website is not limited to the promotion of her federal immigration practice as she advertises her experience in both criminal and family law and offers to "analyze the facts of [her prospective client's] case by applying current…State Laws."

In addition to false and misleading statements regarding offers to practice in this jurisdiction, respondent repeatedly refers to the firm's "lawyers" and "attorneys" when, in fact, respondent is a sole practitioner with no partners, only sporadically employing associates in her law firm.

Respondent's website compares her services with other lawyers' services in a way that cannot be factually substantiated by stating her law firm is "unique" because she and her staff are fluent in Spanish and English. Additionally, respondent includes forms of the words "specialist" and "expert" on her website even though she is not a specialist certified by this Court.

Respondent promotes her law firm by distributing printed business cards. The business cards advertise her office in Greenville without disclosing the fact that respondent is not licensed to practice law in South Carolina or disclosing the geographical limitation of her law practice in this state.

Respondent promotes her law firm by publication of print advertisements in Spanish-language magazines and other periodicals distributed in South Carolina. Respondent's print media advertisements lists her office in Greenville without disclosing the fact that she is not licensed to practice law in South Carolina or disclosing the jurisdictional limitations on her practice in this state.

Respondent promotes her law firm by broadcasting commercials on Spanish-language radio stations in South Carolina. Respondent's radio commercials include reference to her office in Greenville without disclosing the fact that she is not licensed in South Carolina or disclosing the geographical limitations of her practice of law in this state.

Matter II

Respondent initially cooperated with the disciplinary investigation by timely submitting her responses to the notice of investigation and ODC's subpoena for her client files and record of advertising dissemination. However, respondent failed to submit a response to the supplemental notice of investigation served on her on April 5, 2013.

As a result of her failure to submit a response to the supplemental notice of investigation, ODC issued a notice for respondent to appear for an interview on May 23, 2013. Respondent contacted ODC and requested the interview be postponed. Pursuant to that request, ODC issued an amended notice to appear, setting the interview for May 31, 2013. Respondent failed to appear, although her husband called ODC thirty-two minutes before the scheduled interview time to state respondent would not be attending the interview due to a court appearance in Georgia. Respondent's husband was asked to instruct respondent to contact ODC after her court appearance in Georgia to reschedule the interview. As a result of

respondent's failure to contact ODC pursuant to this instruction, ODC issued a third notice to appear, setting the interview for July 2, 2013. Respondent did not appear on July 2, 2013, and has not contacted ODC with regard to this disciplinary matter since that time.

Respondent made the following false or misleading statements in her response to the initial notice of investigation that she submitted to ODC:

> My practice is limited to Immigration Law.
>
> I have [not] portrayed myself to practice any other law but federal immigration law.
>
> At no time I have portrayed myself to represent residence [sic] of South Carolina with any legal services other than those that are exclusively related to immigration law.
>
> I solely practice federal immigration law.

The Hearing Panel found respondent's conduct violated the following Rules of Professional Conduct, Rule 407, SCACR[1]: Rule 5.5(b)(2) (lawyer who is not admitted in this jurisdiction shall not hold out to public or otherwise represent that lawyer is admitted to practice law in this jurisdiction); Rule 7.1(a) (lawyer shall not make false, misleading, or deceptive communications about lawyer or lawyer's services: communication violates this rule if it contains a material misrepresentation of fact or law, or omits fact necessary to make statement considered as a whole not materially misleading); Rule 7.1(c) (lawyer shall not make false, misleading, or deceptive communications about lawyer or lawyer's services: communication violates this rule if it compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated); Rule 7.4(b) (lawyer who is not certified as a specialist by the Supreme Court of South Carolina may not advertise or publicly state lawyer is a "specialist" or "expert"); Rule 7.5(a) (lawyer shall not use firm name, letterhead or other professional designation that is false, misleading, or deceptive); Rule 7.5(b) (law firm with

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[1] The Rules of Professional Conduct, Rule 407, SCACR, are applicable as respondent's advertising and solicitation specifically targeted prospective clients in South Carolina. See Rule 418(b), SCACR (any advertising or solicitation by unlicensed lawyer shall comply with Rules 7.1 through 7.5 of RPC when advertising or solicitation is targeted to potential client in this state).

offices in more than one jurisdiction shall indicate jurisdictional limitations of lawyers not licensed to practice in the jurisdiction where the office is located); Rule 7.5(d) (lawyer may state or imply that lawyer practices in a partnership or other organization only when that is the fact); and Rule 8.1(b) (in connection with disciplinary matter, lawyer shall not knowingly fail to respond to lawful demand from disciplinary authority).

The Hearing Panel further found respondent is subject to discipline pursuant to the following Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1) (it shall be ground for discipline for lawyer to violate Rules of Professional Conduct or other rules of this jurisdiction regarding professional conduct of lawyers) and Rule 7(a)(3) (it shall be ground for discipline for lawyer to willfully violate valid order of Commission or hearing panel, willfully fail to appear personally as directed, or knowingly fail to respond to lawful demand from disciplinary authority to include request for response or appearance).

Discussion

The Commission and this Court have jurisdiction over all allegations that a lawyer has committed misconduct. The term "lawyer" includes "a lawyer not admitted in this jurisdiction if the lawyer …offers to provide any legal services in this jurisdiction [and] anyone whose advertisement or solicitations are subject to Rule 418, SCACR." Rule 2(q), RLDE. Further, Rule 418, SCACR, titled "Advertising and Solicitation by Unlicensed Lawyers" defines "unlicensed lawyer" as an individual "admitted to practice law in another jurisdiction but…not…in South Carolina." Rule 418(a). The rule also provides for jurisdiction over allegations of misconduct by unlicensed lawyers, procedures for determining charges of misconduct, and for sanctions. Rule 418(c) and (d). Accordingly, even though she is not admitted to practice law in South Carolina, respondent is subject to discipline in this state.

As noted above, since respondent failed to answer the Formal Charges, she is deemed to have admitted the allegations in the charges. See Rule 24(a), RLDE. Further, since she failed to appear for the Panel Hearing, respondent is deemed to have admitted the factual allegations and to have conceded the merits of any recommendations considered at the Panel Hearing. See Rule 24(b), RLDE. Finally, since respondent did not file a brief taking exception to the Hearing Panel's report, she has accepted the findings of fact, conclusions of law, and the Hearing Panel's recommendations. See Rule 27(a), RLDE.

The authority to discipline lawyers and the manner in which the discipline is imposed is a matter within the Court's discretion. In the Matter of Berger, 2014 WL 1386688 (2014); In the Matter of Van Son, 403 S.C. 170, 742 S.E.2d 660 (2013). When the lawyer is in default, the Court need only determine the appropriate sanction. Id.

The misconduct in this matter is similar to that in In the Matter of Van Son, id., where a lawyer who was not admitted in this state sent solicitation letters to at least two South Carolina residents and, thereafter, failed to cooperate with ODC's investigation. In addition to other sanctions, the Court barred the lawyer from admission in this state and from advertising or soliciting clients in South Carolina for a period of five years.

In the current matter, not only did respondent target residents of South Carolina through various forms of advertising including radio communications and print media, but she also held herself out as licensed to practice law in this state, welcomed clients with criminal and family law concerns, and sent letters on behalf of clients addressed to state court judges. Further, when she did participate in the disciplinary investigation, respondent made false statements of material fact concerning the extent of her practice and the extent of her advertising in South Carolina to ODC. Since then, respondent has failed to cooperate in the disciplinary investigation and to appear for the hearing. In the Matter of Hall, 333.S.C. 247, 251, 509 S.E.2d 266, 268 (1998) ("An attorney's failure to answer charges or appear to defend or explain alleged misconduct indicates an obvious disinterest in the practice of law. Such an attorney is likely to face the most severe sanctions because a central purpose of the disciplinary process is to protect the public from unscrupulous or indifferent lawyers.").

We find it appropriate to permanently debar respondent from seeking any form of admission to practice law in this state (including pro hac vice admission) without first obtaining an order from this Court allowing her to seek admission. Further, we prohibit respondent from advertising or soliciting business in South Carolina without first obtaining an order from this Court allowing her to advertise or solicit business in this state. Before seeking an order from this Court to either allow her to seek admission or to advertise or solicit, respondent shall complete the South Carolina Bar's Legal Ethics and Practice Program Ethics School and Advertising School. Respondent shall pay the costs of the investigation and prosecution of this matter by ODC and the Commission within thirty (30) days of the date of this order.

DISCIPLINE IMPOSED.

TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.