

# *Reviewing the Records*

## *Volume 4*



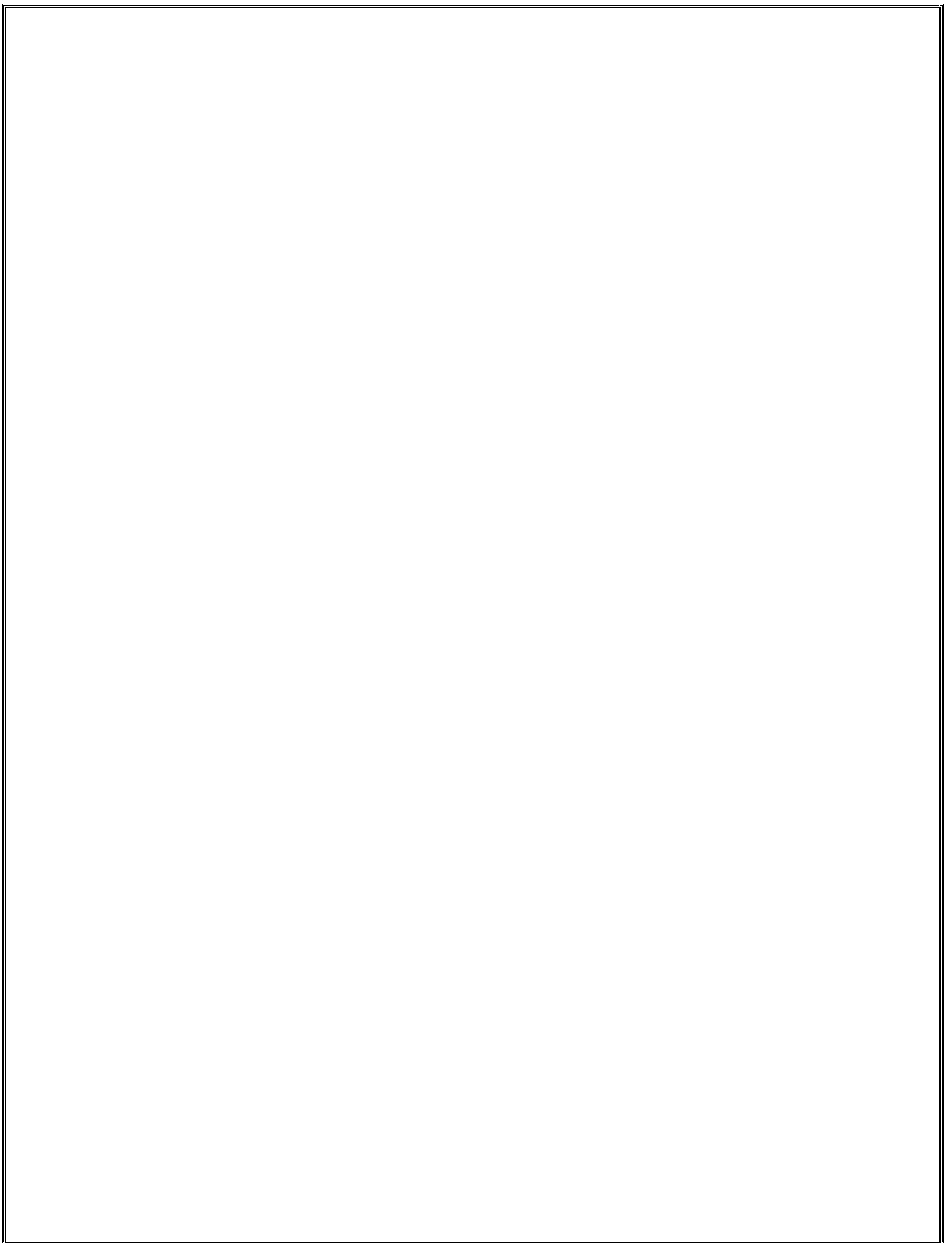
*South Carolina Supreme Court Seat Four*  
*South Carolina Administrative Law Court Seat One*  
*March 2009*

**SC BIPEC**



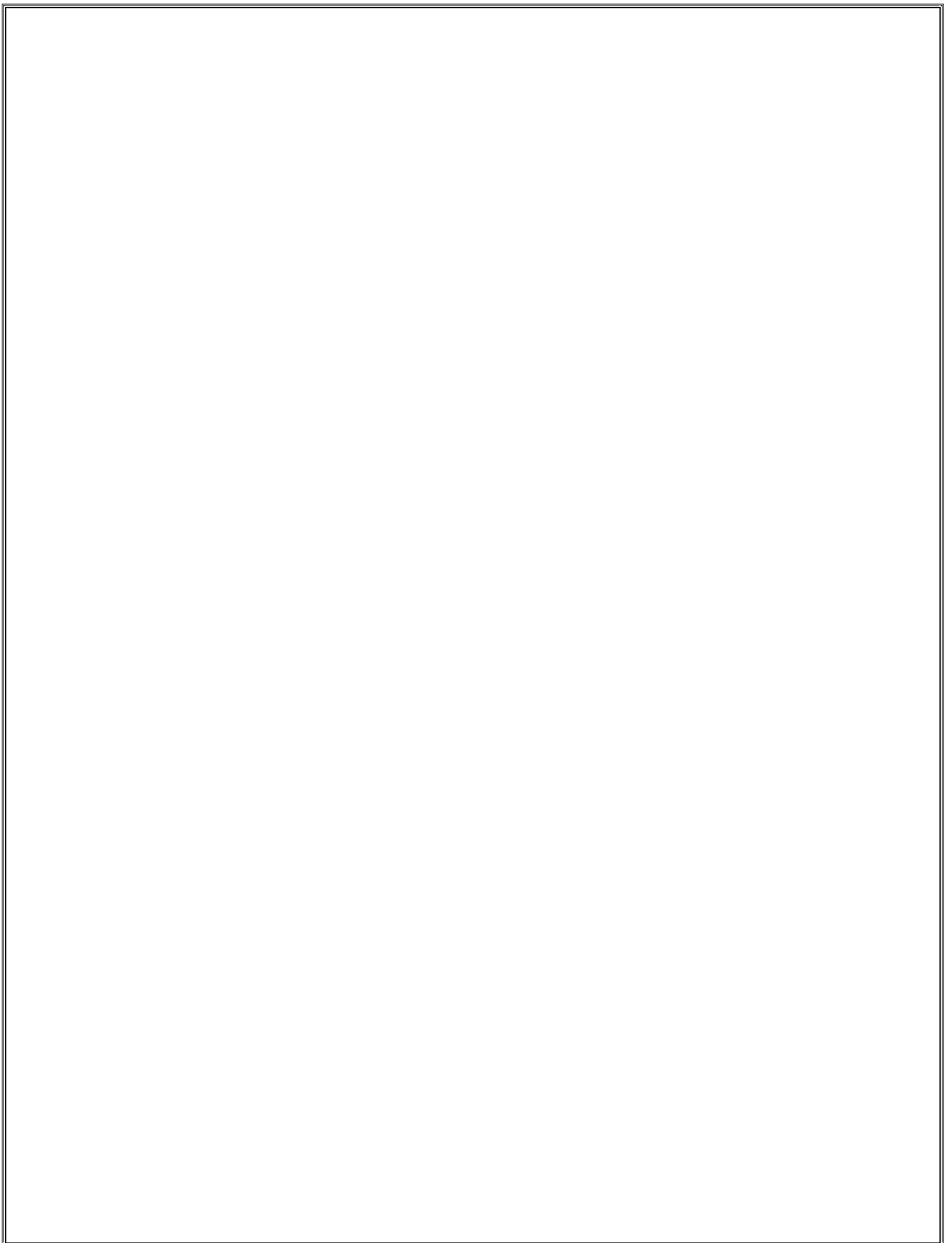
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# **I. Introduction**



## **I. Introduction**

The economic impact of Supreme Court and Administrative Law Court decisions is significant in determining the success or failure of aspiring individuals, businesses, industries and South Carolina as a whole.

Business and industry leaders and responsible policymakers share the goals of attaining a robust economy and abundant opportunities for their respective employees and constituents. This report is an attempt to assist them in their efforts to gain a better understanding of the five candidates for Seat Four on the South Carolina Supreme Court and the two candidates for Seat One on the South Carolina Administrative Law Court.

This review assesses a sampling of each judge's decisions (where available), bar evaluations and professional associations. The judicial decisions, by definition, will vary because of the purview of the different courts employing these candidates. The cases cited include decisions authored by the respective judges individually and those where they participated on a panel of judges. The judicial decisions included in this review were chosen because of their effect on the South Carolina economy.

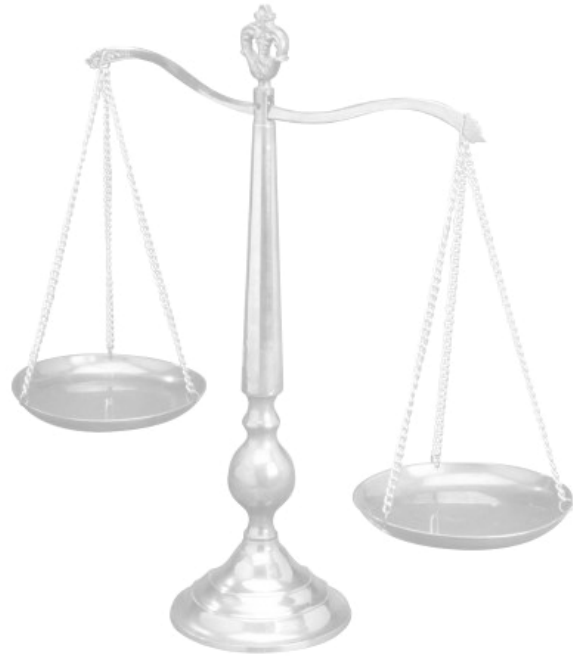
This review is limited in scope and intent and is in no way an effort to advocate for the legislative elections of one candidate over another. The association involved in the formulation of this review is the South Carolina Business and Industry Political Education Committee (SC BIPEC).





## **II. Supreme Court Seat Four**





## **A. Judicial Biographies and Cases**



## Supreme Court Seat Four



### **Judge John C. Few** South Carolina Circuit Court

John Cannon Few is a Circuit Judge of the Thirteenth Judicial Circuit, comprising Greenville and Pickens Counties. He was born in Anderson on April 9, 1963. His father, J. Kendall Few, is a trial lawyer in Greenville and his mother, Belva Beasley Few, is a real estate agent in Greenwood.

He grew up in Greenwood and finished Greenwood High School in 1981. He attended college at Duke University. During his junior year, he served as Duke's athletic mascot, the Blue Devil. In 1985, he was graduated from Duke with a Bachelor of Arts degree in English and Economics.

Judge Few then attended the University of South Carolina School of Law where he was a member of The Order of Wig and Robe, The Order of the

Coif, and the South Carolina Law Review on which he served as Student Works Editor. He received his Juris Doctor degree in 1988.

From 1988 through 1989, he served as law clerk to The Honorable G. Ross Anderson, Jr., United States District Judge. From 1989 until 1997 he was in partnership with his father and from 1998 until 2000, he practiced law in Greenville. Judge Few has been admitted to practice in all Courts of South Carolina, the United States District Court for the District of South Carolina, the United States Court of Appeals for the Fourth Circuit, and the United States Supreme Court. On February 9, 2000, he was elected Circuit Court Judge and he began service in that capacity on July 1, 2000. He was reelected on February 15, 2006 for a term ending in 2012.

Judge Few has been active in teaching law. He has been a member of the Faculty at the National Judicial College in Reno, Nevada, since 2005. In 2008, he was named an Adjunct Professor of Law at the Charleston School of Law, where he has taught Advanced Evidence. He has also given and moderated numerous Continuing Legal Education Seminars in South Carolina and several other states. In 1996, he gave a speech entitled *Citizen Participation in the Legal System*, for which he was awarded First Place in the American Bar Association's nationwide Edward R. Finch Law Day speech contest. Judge Few is a Fellow in the Liberty Fellowship Class of 2008.

His daughter Reed is a student at Duke University and he has a daughter named Anna and a son named Cannon. The Fews are members of First Presbyterian Church in Greenville.

# Supreme Court Seat Four

## JUDGE JOHN C. FEW

### Eminent Domain Case Descriptions

#### **Cobb v. South Carolina Department of Transportation (SCDOT), 618 S.E.2d 299**

When the Department closed off a public street, reducing the value of homeowner's property, the homeowners brought an inverse condemnation suit against the agency. Judge Few denied the department's motion to transfer the case to the non-jury docket. The department appealed. The South Carolina Supreme Court (Supreme Court) upheld the ruling, but clarified that a right to jury trial in an inverse condemnation action was based on statutory not constitutional law.

#### **State Ports Authority (SCSPA) v. Jasper County, 629 S.E.2d 624**

The SCSPA sought a judicial declaration that Jasper County was preempted from independently developing a port along the Savannah River and exercising condemnation powers to do so. The Supreme Court held that the SCSPA's enabling act did not preclude the county from independently developing a port and exercising eminent domain. However, the Supreme Court ultimately held that the SCSPA's eminent domain power trumped the county's eminent domain power. Since the SCSPA wanted to develop a port in the same location that the county was considering, the SCSPA should prevail. Judge Few, as acting Justice, agreed with the majority on the issue of eminent domain preemption. However, Judge Few disagreed with the majority regarding the county's power to independently develop a port. Finding the SCSPA enabling act to preempt such action, Judge Few would have preferred the Supreme Court issue an injunction preventing the county from moving forward.

## **Employment Case Descriptions**

### **Doe v. ATC, Inc., 624 S.E.2d 447**

The mother of a disabled woman sued a Medicaid bus driver and his employer because the driver engaged in improper sexual advances. At trial, Judge Few entered a \$1,000 verdict against the driver, but he dismissed the claim against the employer. The South Carolina Court of Appeals (Court of Appeals) agreed that the mere fact that the employee had previously made an unwanted sexual advance towards a coworker failed as a matter of law to establish employer liability for negligent retention.

### **Grant v. Mount Vernon Mills, Inc., 634 S.E.2d 15**

A woman was fired from her job without receiving the warnings outlined in the company's employee handbook. She brought various federal civil rights and state contract claims in federal court. The federal judge failed to grant relief and sent the case to state court to settle her contract claims. There, Judge Few found for the company because the employee handbook did not alter the "at-will" nature of her employment; the termination policies only applied to hourly workers not salaried employees; and the fact that some of the woman's colleagues received warnings did not give her a right to a similar procedure. The Court of Appeals affirmed.

## **Insurance Case Description**

### **Pitts v. Jackson National Life Insurance Company, 574 S.E.2d 502**

A certified class sued an insurance company on several grounds for selling allegedly over-priced policies and neither mentioning nor offering existing products offering the same coverage for less expense. Judge Few dismissed several of the company's claims and entered summary judgment for the insurance company on the remainder of the claims. The Court of Appeals upheld Judge Few's decision, finding that since no fiduciary relationship existed between the insurance company and plaintiffs, the company had no duty to disclose; plaintiffs failed to show fraud; and plaintiffs were not entitled to equitable relief.

## **Landlord Tenant Case Description**

### **Tobias v. Rice, 665 S.E.2d 216**

A lessee sued his landlord for breaching a lease agreement and failing to honor an alleged oral option purchase agreement. Due to miscommunications with her attorney, the property owner did not appear at her court date. Consequently, Judge Few entered a default judgment in favor of the lessees and ordered the property owner to sell the rental units to the lessee. The Court of Appeals held that Judge Few did not abuse his discretion by ruling that her absence was inexcusable and that the lessees, since they did not seek a default judgment, were not required to provide property owner with three days notice.

## **Local Government Case Descriptions**

### **Foothills Brewing Concern, Inc. v. City of Greenville, 660 S.E.2d 264**

A group of restaurant and bar owners sued the City of Greenville over its indoor smoking ban ordinance. Judge Few overturned the ordinance because in his view the South Carolina Clean Indoor Air Act preempted the ban. He relied on the principle that local governments may not criminalize conduct addressed, yet not criminalized under state law. However, the Supreme Court reversed and held that the state law did not preempt the entire field of indoor smoking, so the city was within its authority to pass the ordinance.

### **Sloan v. Greenville County, 590 S.E.2d 338**

A concerned taxpayer brought an action against the county for failure to properly follow procurement procedures. Judge Few found that the taxpayer had standing to sue and held that the county properly followed the rules with respect to two of the challenged projects but not the third project. Both parties appealed. The Court of Appeals agreed with Judge Few's judgment.

### **Sloan v. Greenville County, 670 S.E.2d 663**

A citizen sought a determination that the county's procurement ordinance required a written explanation when the county used the sealed "proposal" method over the statutorily preferred "bidding" method. While the case was pending before Judge Few, the county removed the preference for the "bidding" method. The county argued that due to its corrective action, the case was now moot. Judge Few disagreed and held that the old ordinance did in fact require a written explanation. The Court of Appeals reversed Judge

Few on this point because there was no urgency to decide this issue and judges are generally prohibited from deciding speculative or academic questions.

## **Real Estate Case Descriptions**

### **Brannon v. Palmetto Bank, 638 S.E.2d. 105**

The Brannon's obtained a residential mortgage from Palmetto Bank. The mortgage agreement required the homeowners to obtain insurance for the home and stipulated that the bank had a right to receive indemnity payments to pay off the mortgage. When the home burned down, the Brannon's collected an insurance check and deposited it in a new account at the bank. When the bank used the funds to pay off the old mortgage, the Brannon's sued. Judge Few found the bank liable for breach of contract and conversion, but the Court of Appeals reversed his decision because the mortgage agreement authorized the bank to use the funds to pay off the mortgage.

### **Dykeman v. Wells Fargo Home Mortgage, 2009 WL 294745**

Wells Fargo failed to record a homeowner's first mortgage as satisfied after the homeowners refinanced with the company, paying off the first mortgage. A state statute allows homeowners to recover damages when a mortgage company fails to record a satisfaction upon a homeowner's request. At trial, Judge Few strictly interpreted the statutory request requirement and found in favor of Wells Fargo because in his view, the homeowner failed to make a sufficient request. The Supreme Court agreed with Judge Few that the homeowner could not base a claim on the theory of an "implied" request.

### **The Huffines Company, LLC v. Lockhart, 617 S.E.2d 125**

A property owner refused to pay a brokerage commission and the broker sued. Judge Few held that the property owner fraudulently breached the brokerage agreement and awarded damages without submitting the case to the jury. However, the Court of Appeals reversed because there were sufficient contested facts for sending the question of breach to the jury.

## **Tort Case Descriptions**

### **Shelton v. L.S. & K Inc., 648 S.E.2d 307**

A vehicle exiting a Burger King parking lot struck a pedestrian. The pedestrian sued Burger King alleging that the restaurant's negligent

maintenance of the parking lot and surrounding landscaping caused the injury. Judge Few granted summary judgment in favor of the restaurant because the plaintiff failed to provide expert testimony to establish the appropriate standard of care for parking lot and landscape maintenance. The Court of Appeals agreed with Judge Few that plaintiffs in negligence actions have the burden of proving what constitutes the relevant standard of care as a prerequisite to going forward and showing that the defendant violated said standard.

**Underwood v. Coponen, 625 S.E.2d 236**

A motorist ran a stop sign and collided with another driver allegedly because tree limbs partially covered the sign. The latter sued the property owner's estate claiming that failure to trim the trees caused the accident. Judge Few dismissed the claim and the Court of Appeals upheld his decision because the driver did not rely on the property owner's trimming, and therefore the estate owed no duty of care towards the injured driver.

**Youmans v. SCDOT, 670 S.E.2d 1**

The mother of a deceased teenage motorist brought a wrongful death suit against SCDOT for failing to properly maintain the road and the median slope. At trial, the jury returned a large verdict in favor of the plaintiff. Judge Few invoking the "thirteenth juror doctrine" ordered a new trial because the jury deliberation was too brief. The Court of Appeals reversed, recognizing the legitimacy of the "thirteenth juror doctrine" but finding that Judge Few's justification for invoking the doctrine was lacking.

**Unauthorized Practice of Law Case Description**

**The Roof Doctor Inc. v. Birchwood Holdings Ltd., 622 S.E.2d 746**

A contractor brought suit over a company's failure to pay. With the consent of all parties, a non-lawyer employee represented the company's interests before the magistrate. After a verdict for the contractor and a reduction of damages based on the company's successful counterclaim, the contractor requested a new trial, alleging that the employee's unauthorized practice of law invalidated the proceeding. On appeal to the Circuit Court, Judge Few upheld the magistrate's decision to allow the employee representation. The Court of Appeals agreed and refused to address the unauthorized practice of law question because the issue represented a peripheral matter to the case at hand.

## **Workers' Compensation Case Descriptions**

### **Reed-Richards v. Clemson University, 638 S.E.2d 77**

An administrative assistant with Clemson University fell on the job and suffered serious neurological injury. The Workers' Compensation Commission (Commission) awarded her lifetime benefits because of the paraplegia exception to the normal \$500 per week benefit limit. A medical expert before the commission noted that as a result of her "incomplete paraplegia" she was indeed a paraplegic. Judge Few sustained the Commission's order. The Court of Appeals agreed with Judge Few by refusing to apply a layman's interpretation of the adjective "incomplete" to qualify the expert's analysis.

### **Skinner v. Westinghouse Electric Corporation, 668 S.E.2d 795**

The Commission awarded over \$100,000 in benefits to a worker suffering from asbestos-related ailments. Westinghouse appealed the final order to Circuit Court but failed to serve the Commission within 30 days of the decision. Judge Few ruled that his court lacked subject matter jurisdiction because the rules of procedure mandated serving the Commission within 30 days. The Supreme Court reversed because the workers' compensation statute did not require the Commission to be served within 30 days but only required that the appeal be made within 30 days.

### **Thompson v. Cisson Construction Company, 659 S.E.2d 171**

A worker suffered an on-the-job injury to his knee and back. His recovery was plagued by severe psychological distress and he was prescribed heavy painkillers. The worker later died of a prescription drug overdose and his mother sought death benefits. The Commission awarded her sizable benefits finding that the suicide was caused by physiological trauma that flowed from the jobsite injury. His employer appealed. Judge Few reversed the Commission's award because the worker exhibited willful intention to commit suicide, and therefore the suicide did not flow from the jobsite injury. The Court of Appeals agreed, holding that willful suicide (as opposed to spontaneous or impulsive suicide) broke the chain of causation and negated employer liability.

**Wilkinson v. Palmetto State Transportation Company, 683 S.E.2d 109**

A truck driver was involved in a fatal accident and his dependants received death benefits from the employer's workers' compensation carrier. The employer appealed the order claiming that the driver was an independent contractor, not an employee. Judge Few disagreed and upheld the Commissions' order. The Court of Appeals agreed that despite the existence of an agreement between the employer and the driver that an independent contract relationship existed, the employer exercised control over the manner in which the driver's work was done. Thus an employer-employee relationship existed as a matter of law.

## **Supreme Court Seat Four**



### **Chief Judge Kaye G. Hearn** South Carolina Court of Appeals

Chief Judge Kaye G. Hearn has served as a member of the South Carolina Court of Appeals since her election on March 21, 1995. On June 21, 1999, she was elected Chief Judge. From 1986 until her election to the Court of Appeals, she served as Family Court Judge for the Fifteenth Judicial District, comprising Horry and Georgetown Counties. She was the chief administrative judge in the Fifteenth Circuit from 1987 until her election to the Court of Appeals. During her tenure as family court judge, she served as treasurer, vice-president, and president of the South Carolina Conference of Family Court Judges.

Prior to going on the bench, Judge Hearn was a trial lawyer with the firm of Stevens, Stevens, Thomas, Hearn, and Hearn. Immediately upon graduation from law school, she was law clerk to The Honorable Julius B. Ness, Associate Justice of the South Carolina Supreme Court.

Judge Hearn received her Bachelor of Arts degree, cum laude, from Bethany College in 1972, and her Juris Doctor degree, cum laude, from the University of South Carolina School of Law in 1977. She received a Master of Laws degree from the University of Virginia's Graduate Program for Judges in May 1998.

Judge Hearn is a past member of the South Carolina Board of Bar Examiners, the Continuing Legal Education (CLE) Commission, and the University of South Carolina Law School's Partnership Board. Currently, she is a member of the Nelson Mullins Riley & Scarborough Professionalism Committee, the Chief Justice's Commission on the Profession and the Alternative Dispute Resolution Commission. Since the Fall of 2006, Judge Hearn has been an adjunct professor at Charleston Law School and she is a frequent lecturer at CLE programs. Judge Hearn contributed a chapter on comparative negligence to the South Carolina Bar's Damages treatise. In 2004, Judge Hearn was the South Carolina Trial Lawyers' portrait honoree. She is also actively involved with the Council of Chief Judges of Courts of Appeal, a nationwide network of chief judges of intermediate state courts, for which Judge Hearn served as President from 2005 to 2006.

Judge Hearn is married to South Carolina Representative George M. Hearn, Jr., a Conway attorney. They have one daughter, Kathleen, who attends Wofford.

# Supreme Court Seat Four

## CHIEF JUDGE KAYE G. HEARN

### Arbitration Case Descriptions

#### **Buice v. WMA Securities, 668 S.E.2d 430**

Investors in life insurance policies sued a securities broker and a securities agent for breach of contract and fraud. The trial judge denied the defendant's motion to compel arbitration because the defendants no longer belonged to the industry group the investment contract referenced as establishing the arbitration proceedings. Judge Hearn, writing for the Court of Appeals, agreed that defendants could not compel arbitration but disagreed that the arbitration clause was ambiguous.

#### **Hatcher v. Edward D. Jones & Company, 666 S.E.2d 294**

After an investor's retirement account was improperly transferred to another account where it was subsequently plundered, the investor sued the firm. The trial judge denied the company's motion to compel arbitration because the firm's alleged tortious activities were completely independent of the investment contract containing the arbitration clause. Writing for the Court of Appeals, Judge Hearn agreed that despite the strong federal and state policy favoring arbitration, negligence and unfair trade practices claims stemming from the theft were not subject to arbitration. However, all the claims arising out of the investment contract itself (i.e. breach of contract, breach of fiduciary duty) were subject to the agreement's arbitration clause.

#### **Partain v. Upstate Automotive Group, 662 S.E.2d 426**

An automobile purchaser brought an unfair trade practices suit against a dealership for allegedly delivering a different vehicle than upon which the parties agreed. At trial, the dealership filed a motion to compel arbitration, relying on language in the sales contract. The trial judge denied the motion on the grounds that the claim was independent of the underlying contract calling for arbitration. However, the Court of Appeals, Judge Hearn concurring, reversed due to the strong federal and state policy favoring arbitration and the fact that the unfair trade practices claim did in fact fall within the scope of the sales contract.

## **Corporate Case Description**

### **Blackburn v. TKT and Associates Inc., 2009 WL 294806**

Two of the four partners of a medical equipment company filed for corporate dissolution. The trial judge refused to dissolve the company, instead ordering a buyout of the complaining partners. The court appointed a corporate appraiser to value the shares, but the plaintiffs objected to the report because their former partners' salaries were not adjusted in the analysis. Judge Hearn, writing for the Court of Appeals, held that the report was valid because no devaluation of salaries was required by the trial judge's order.

## **Eminent Domain Case Descriptions**

### **McNair v. Fairfield County, 665 S.E.2d 830**

A property owner filed a complaint challenging the county's right to condemn land for an expansion of the county's airport. After the county failed to respond to discovery requests, the landowner moved for sanctions. The trial judge granted the motion and dismissed the county's condemnation action with prejudice. Judge Hearn, writing for the Court of Appeals upheld the sanctions because the trial judge's dismissal, based on the county's repeated failure to comply with pre-trial directives, was soundly within his discretion.

### **SCDOT v. Hood, 2008 WL 5510889**

The Department, wanting to condemn a property owner's land for a highway project, brought an action to determine the property's value. The trial judge submitted the question of value to the jury and the judge entered a \$100,000 jury verdict. The Court of Appeals, Judge Hearn concurring, reversed and remanded because the trial court improperly admitted into evidence an expired and unexercised option contract as evidence of value.

### **SCDOT v. M&T Enterprises, 667 S.E.2d 7**

The Department, wishing to condemn a strip of land for a road project, reached an agreement on price with the landlord and long-term tenant. However, the landlord and tenant disagreed as to how the condemnation proceeds were to be allocated under the lease agreement. At trial, the landlord was awarded the entire amount. The Court of Appeals upheld the

decision because the lease agreement did not entitle the tenant to abatement in rent, and errors in valuation methodology did not merit a reversal. However, Judge Hearn, believing the case to be equitable in nature would have either awarded the tenant compensation or given the tenant a new trial to employ the proper valuation technique.

## **Employment Case Description**

### **Morgan v. South Carolina Budget and Control Board (SCBCB), 659 S.E.2d 263**

After years of public service in both South Carolina and North Carolina, Morgan sought to increase his non-qualified service credit in the Retirement System. He disagreed with how the purchase price was calculated and argued the price should not have been calculated based on his highest salary years. The Administrative Law Judge (ALJ) affirmed the Retirement System's determination and the Circuit Court affirmed. The Court of Appeals, Judge Hearn concurring, held that the agency properly calculated the price and that Morgan failed to demonstrate justifiable reliance on prior manifestations by the agency.

## **Environmental Case Description**

### **Terry v. South Carolina Department of Health and Environmental Control (SCDHEC), 660 S.E.2d 291**

In 1992, the Coastal Council (predecessor to Ocean and Coastal Resource Management) issued a dock master plan permit to a developer of a subdivision bordering the Ashley River. The permit specified the number of private and public docks authorized in the subdivision. Ten years later, a landowner applied for an individual dock permit but was summarily denied since the request exceeded the original developer's permitted number of docks. The ALJ upheld the denial and was affirmed by both the Appellate Panel and Circuit Court. Writing for the Court of Appeals, Judge Hearn upheld the agency decision because the 1992 permit was controlling and minor additions to the existing docks, which the Ocean and Coastal Resource Management (OCRM) authorized, did not render the original permit malleable.

## **Insurance Case Descriptions**

### **Estate of Carr v. Circle S Enterprises, Inc., 664 S.E.2d 83**

To obtain a more favorable interest rate, a mother purchased a car for her daughter in the mother's name, but the daughter made the monthly payments. The monthly payments included a credit life insurance premium, which the dealer allegedly required the mother to obtain. After the mother passed away, the daughter stopped making payments on the loan, based on the dealer's alleged promise that the policy would pay off the car loan. However, after the mother's death, the dealership informed the daughter that the insurance contract was never valid to begin with, and the car was subsequently repossessed. The trial court dismissed all claims against the dealership, finding that the mother's estate did not suffer a loss. However, the Court of Appeals, Judge Hearn concurring, reversed because the estate had in fact suffered a compensable loss and therefore several questions relating to the transaction should have been sent to the jury.

### **Zurich American Insurance Company v. Tolbert, 662 S.E.2d 606**

A BMW employee participated in a vehicle-leasing program with the company. According to the lease, BMW would supply the vehicle along with an insurance policy. The employee was involved in an accident with a minimally-insured motorist while the employee was driving his other vehicle. BMW's insurer brought a declaratory judgment action seeking a declaration that the employee did not qualify as an insured for the purposes of an uninsured motorist. The trial judge entered summary judgment for the insurance company. Writing for the Court of Appeals, Judge Hearn upheld the policy provision withholding uninsured motorist coverage while the insured was driving his own car. However, Judge Hearn sent the case back to trial finding the jury should have decided whether the covered automobile's being out of service extended the policy to the employee's substitute vehicle.

## **Landlord Tenant Case Description**

### **Tobias v. Rice, 665 S.E.2d 216**

A lessee sued a property owner alleging breach of a lease agreement and failure to honor a purported oral option purchase agreement. Due to miscommunications with her attorney, the property owner did not appear at her court date. Circuit Court entered a default judgment in favor of the

lessees and ordered the property owner to sell the rental units in question. The Court of Appeals, Judge Hearn concurring, held that the Circuit Court did not abuse its discretion by ruling that the owner's absence was inexcusable and that the lessees, since they did not seek a default judgment, were not required to provide property owner with three days notice.

## **Legal Malpractice Case Description**

### **Spence v. Wingate, 663 S.E.2d 70**

The wife of a decedent retained an attorney to help coordinate her ailing husband's estate in his declining years. After her husband died, the same attorney was appointed to probate the estate. Soon thereafter, The proceeds of his life insurance policy were split between the wife and her sons. The wife brought a legal malpractice action against the attorney alleging breach of fiduciary duty arising out of his previous attorney-client relationship with her. At trial, the attorney won a motion for summary judgment. The Court of Appeals affirmed the finding that attorney owed wife no fiduciary duty in the probate matter. However, Judge Hearn filed a dissenting opinion, writing that the majority relied too hastily on a technical procedural point and that sufficient facts existed for a jury to find that a fiduciary relationship did in fact exist.

## **Local Government Case Description**

### **Quail Hill, LLC v. County of Richland, 665 S.E.2d 194**

An authorized county official gave a developer permission to develop land for manufactured homes. After the property had been developed and lots sold, the county informed the developer that his use represented a zoning violation. At that time an official assured the developer that the planning commission would recommend a zoning amendment. As it turns out, the commission in fact, recommended denying such an amendment. The developer brought several legal and equitable claims, including an inverse condemnation claim, against the county. The trial court dismissed all claims in favor of the county. However, the Court of Appeals, Judge Hearn concurring, found that although the developer failed to establish a case on the inverse condemnation claim, the other claims were not barred by sovereign immunity.

## **Medical Malpractice Case Description**

**Thomas v. Dootson, DMD, 659 S.E.2d 253**

During an oral procedure, a patient's mouth was severely burned by a malfunctioning drill. The patient sued the doctor for malpractice. The trial judge directed a verdict in favor of the doctor. The Court of Appeals, Judge Hearn concurring, reversed because: the jury should have decided whether the doctor was on notice prior to the procedure that the drill was overheated; no expert testimony was needed to establish standard of care; and testimony from a surgical technician that the doctor had been warned was not inadmissible hearsay.

**Products Liability Case Description**

**Moore v. Barony House Restaurant, LLC, 2008 WL 5479613**

While crossing a public road at night in a golf cart, a catering company employee was struck by an oncoming vehicle. The employee later died and his estate brought strict liability and negligence claims against the golf cart manufacturer. The trial court granted summary judgment for the manufacturer on all claims. The Court of Appeals, Judge Hearn concurring, upheld the trial judge's decision that: the golf cart was not defective or unreasonably dangerous due to the lack of lighting or reflective equipment; failure to warn against nighttime operation did not give rise to liability; and the driver assumed the risk by operating a golf cart at night on a public road.

**Real Estate Case Description**

**Madren v. Bradford, 661 S.E.2d 390**

Property owners entered into a real estate contract with buyers that specified a closing date. However, the buyers in securing financing for the home were required by the bank to secure an appraisal. The appraisal was delayed past the closing date because of promised improvements by property owners. When the improvements were complete, the buyers backed out and the sellers brought a damages action. After a bench trial, damages were awarded. The Court of Appeals, Judge Hearn concurring, held that buyers waived their right to rely on the closing date because they agreed to extend additional time for the improvements and appraisal.

## **Tort Case Descriptions**

### **Hartfield v. McDonald, 671 S.E.2d 380**

After visiting three bars one night, a drunk driver struck a car at an intersection injuring the motorist. The motorist's conservator sued all three of the establishments the drunk driver had visited on the night of the accident. The trial judge granted summary judgment in favor of the first bar that the driver had visited that evening. Judge Hearn, writing for the Court of Appeals, held that summary judgment was appropriate because no direct evidence existed that the man was served a drink while visibly intoxicated at the first bar.

### **Hollins v. Wal-Mart Stores, Inc., 2008 WL 5273108**

A woman and her minor daughter were shopping at Wal-Mart. While the mother was away, an employee of the store groped the girl and masturbated in her presence. The mother brought a negligent retention action against the store based on the employee's prior sexual misconduct. The trial judge excluded evidence pertaining to an off the job arrest outside another Wal-Mart store in the wake of a similar sexual episode. Writing for the Court of Appeals, Judge Hearn upheld the exclusion because the mother was unable to prove Wal-Mart's awareness of the arrest.

## **Workers' Compensation Case Descriptions**

### **Ardis v. Combined Insurance Company, 669 S.E.2d 628**

An insurance sales representative attended a company-sponsored sales conference out of state. In the middle of the night, the hotel caught fire and the employee died of smoke inhalation. The Commission awarded the employee's beneficiaries burial expenses and a lump sum award. On appeal, the trial court affirmed the commission's award. Subsequently, the Court of Appeals, Judge Hearn concurring, affirmed the trial court's decision because the injury arose out of an employment relationship and his trip, although involving some personal pursuits, was predominantly a business trip.

### **Floyd v. C.B. Askins & Company Contractors, 2009 WL 367546**

A construction worker suffered serious brain injury after a bulldozer accident. The Commission awarded him lifetime benefits of approximately 1,000 weeks. After 250 weeks, the worker died from a non-accident related cause. The worker's wife claimed the balance of benefits and the

Commission granted them. On appeal, the trial judge upheld the award but refused to award the company's carrier a credit for attorney's fees forwarded to the wife. The Court of Appeals, Judge Hearn concurring, reversed and held that since the wife agreed to credit the attorney's fees a deduction was proper.

**Turner v. SCDHEC, 661 S.E.2d 118**

State employee fell and hurt her back while exiting the SCDHEC building during a fire drill. The Commission awarded benefits up until the date of maximum medical improvement. The employee appealed this order and the Circuit Court judge affirmed the order. Writing for the Court of Appeals, Judge Hearn held that sufficient evidence existed to support the Commission's findings, but modified the order so that the employee could receive benefits for a longer period of time.

## **Supreme Court Seat Four**



### **Judge Deadra L. Jefferson** South Carolina Circuit Court

Judge Deadra L. Jefferson was born in Charleston, South Carolina. Her parents are Mr. and Mrs. Joe L. Jefferson.

She attended the public schools of Charleston and received a Bachelor of Arts degree in both Politics and English in 1985 from Converse College. She attended the University of South Carolina School of Law from 1986 to 1989, receiving her Juris Doctor degree in 1989. That same year, she was admitted to practice law in South Carolina. She is admitted to practice in all South Carolina Courts and the United States District Court for the District of South Carolina.

After completing law school, Judge Jefferson clerked for the Honorable Richard E. Fields, Judge for the Circuit Courts of South Carolina, Ninth Circuit, from 1989 through 1990. After completing her tenure with Judge Fields, she entered private practice with the law firm of McFarland and Jenkins and continued with the law firm of McFarland and Associates until her election in 1996 as Resident Family Court Judge. She served in that capacity from 1996 to 2001.

Judge Jefferson was elected to the position of Resident Circuit Judge for the Ninth Judicial Circuit on May 30, 2001. She has served continuously in this position.

Judge Jefferson is a member of the South Carolina Bar Association, Charleston County Bar Association, South Carolina Circuit Court Judges Association and the South Carolina Women Lawyers Association. She has participated as a presenter in several CLE and Joint Continuing Legal Education (JCLE) seminars.

Judge Jefferson is active in her community and is a member of the Charleston South Carolina Chapter of the Links, Inc. She has received numerous community and professional honors. She is an active member of the Life Center of Charleston.

# Supreme Court Seat Four

## JUDGE DEADRA L. JEFFERSON

### Arbitration Case Description

#### **The Housing Authority of the City of Columbia v. Cornerstone Housing LLC, 588 S.E.2d 617**

A contractor entered into two contracts with the city's housing authority to renovate a public-housing project. Each contract contained arbitration clauses. After a dispute, the developer sought to compel arbitration and the housing authority sought an injunction to prevent arbitration. The trial judge dismissed the housing authority's complaint in light of the arbitration clauses. The Court of Appeals, Judge Jefferson sitting as acting Judge, affirmed the trial court's order finding that a valid arbitration agreement existed. In light of the strong policy favoring arbitration, the Court of Appeals ruled that despite the contracts' failure to specify a time period for arbitral disputes, the matter was still subject to arbitration. Furthermore, allegations that the contractor was not licensed and that the second contract was not valid failed to block arbitration.

### Government Case Description

#### **Sloan v. Hardee, 640 S.E.2d 457**

A citizen and a public interest organization sought an injunction from the Supreme Court to prevent three commissioners of the SCDOT from serving consecutive terms. The Supreme Court granted the injunction because statutory law clearly prohibited this practice. Judge Jefferson participated as acting Supreme Court Justice in this case.

### Media Law Case Description

#### **Metts v. Mims, 635 S.E.2d 640**

A newspaper published a comment from a county council member alleging that public employees had been performing free yard services for a private citizen. The citizen sued both the newspaper and the council member for libel. At trial, Judge Jefferson granted the citizen's discovery motion to

compel the newspaper to produce its financial records. However, the newspaper refused to turn over the records and filed for summary judgment on First Amendment grounds. The citizen moved to hold the newspaper in contempt and another trial judge granted the contempt motion but imposed no sanction. Thereafter, yet another judge ruled on the newspaper's motion for summary judgment and found in favor of the newspaper. The Court of Appeals upheld the grant of summary judgment because the trial court was authorized to rule on the summary judgment motion despite the contempt order and the citizen failed to prove "actual malice" on behalf of the newspaper.

## **Medical Malpractice Case Description**

### **Ardis v. Sessions, 633 S.E.2d 905**

A patient brought a medical malpractice action against a chiropractor for allegedly aggravating her back injuries. After trial, Judge Jefferson entered a jury verdict in favor of the chiropractor. However, the Court of Appeals reversed and remanded because Judge Jefferson improperly instructed the jury on the issue of professional standard of care. Specifically, Judge Jefferson erred by instructing the jury that a violation of professional standards required evidence of "bad faith" judgment. According to prior case law, the burden of proving "bad faith" is too arduous for injured patients.

## **Negligence Case Description**

### **Fickling v. City of Charleston, 643 S.E.2d 110**

A pedestrian sued the city after she tripped on a city sidewalk and sustained serious injuries. While the City of Charleston owned the sidewalk, the State of South Carolina owned the right of way where the incident occurred. During pre-trial, Judge Jefferson dismissed the claim on the grounds that the city had no duty to inspect and repair the sidewalk. The Court of Appeals agreed that injured pedestrians could not base a negligence claim on statutory law requiring municipalities to maintain sidewalks. However, the Court of Appeals reversed the dismissal on the issues of the city's control over the sidewalk and the city's constructive notice, arguing that sufficient facts existed for sending those questions to the jury.

## **Statute of Limitations Case Descriptions**

### **EFCO Corporation v. Renaissance on Charleston Harbor, LLC, 635 S.E.2d 922**

A supplier of windows and other building materials filed two mechanics' liens against a developer for failing to pay for work done. When the supplier brought an action to foreclose on the two liens, the developer moved for summary judgment as to the first lien. At trial, Judge Jefferson granted the developer's motion for summary judgment as to the first lien, because the supplier failed to timely enforce the lien. The Court of Appeal affirmed the grant of summary judgment for the first lien because statutory law provides that an action to enforce a mechanics' lien must be commenced within six months after the work is completed or else the lien dissolves. Additionally, the Court of Appeals found that Judge Jefferson properly awarded the developer attorney's fees because the developer was a "prevailing party," and the existence of other pending claims was not relevant to the attorney's fees question.

### **Home Port Rentals, Inc. v. Moore, 632 S.E.2d 862**

In 1989, the United States District Court for the District of South Carolina entered a judgment against Moore in favor of the company. The company tried to execute a judgment but was not able to locate Moore until 1999. In 2000, the company filed a declaratory judgment action seeking a determination that the judgment was still valid. Judge Jefferson held that the judgment was no longer valid because it had exceeded the ten-year statute of limitations. The Court of Appeals along with the South Carolina Supreme Court affirmed, finding that the time Moore resided outside of South Carolina failed to toll the running of the statute of limitations.

## **Workers' Compensation Case Description**

### **Spivey v. Carolina Crawler, 624 S.E.2d 435**

A worker who suffered brain injuries and other ailments agreed to settle his workers' compensation claim with his employer's carrier. They entered into a so-called "clincher" agreement, effectively settling the workers' compensation claim. The worker's mother who had been appointed his *Guardian ad Litem* subsequently challenged the agreement. The Commission claimed that it lacked jurisdiction to hear a challenge to the "clincher" agreement. Similarly, Judge Jefferson informed the mother that

her court lacked jurisdiction, and recommended that she re-file before the Commission because it did in fact have jurisdiction. The Court of Appeals agreed with Judge Jefferson that her court lacked jurisdiction and that the matter should be resolved before the commission.

## Supreme Court Seat Four



### **Judge Arthur E. Morehead, III** South Carolina Family Court

Judge Arthur E. Morehead, III is a native South Carolinian who was born in Columbia on September 6, 1946. He is the son of Nelle Lipscomb Morehead and the late A.E. "Buddy" Morehead, Jr. He grew up in Newberry, graduated from Newberry High School, and received his Bachelor's degree in Political Science from The Citadel in 1968. While a cadet at The Citadel, he was a class officer his junior and senior years and served on Battalion Staff and the Honor Committee. He graduated with academic honors and as a Distinguished Military Student while lettering in football and baseball. After two years of active duty as an officer in the United States Army, he received his Juris Doctor degree from the University of South Carolina School of Law in 1973. He again graduated with honors and was inducted into the Order of Wig and Robe.

Upon graduation from Law School, Judge Morehead entered private practice in Columbia with the law firm of Nelson, Mullins, Grier and Scarborough. He remained there until 1976 when he moved to Florence to form the firm of Swearingen and Morehead with E.S. "Skip" Swearingen. He practiced in Florence until elected to the Family Court Bench where served continuously until January, 2000, when he was appointed by the Chief Justice to the position of an Acting Judge on the South Carolina Court of Appeals. He served on the Court of Appeals until returning to the Family Court Bench in 2000. Judge Morehead also served another term on the Court of Appeals in 2003.

During his twelve years of private practice, he was admitted to practice in all South Carolina Courts, the United States District Court for the District of South Carolina and the Fourth Circuit Court of Appeals. He was active with the South Carolina Bar serving as the Sixth District Representative with the Young Lawyers' Division, the Lawyer Referral Committee and the Practice and Procedures Committee. He taught Business Law at Francis Marion University for eight years. With the Judiciary, Judge Morehead has served as President of the Family Court Judges Association. He has also served on the Governor's Juvenile Justice Task Force and was Chairman of the Twelfth Judicial Circuit Youth Council. He was instrumental in organizing a Parent and Children in Transition program for divorcing parents with children. For eight years, he represented the Judiciary on the Commission on Continuing Legal Education and Specialization and presently, by appointment of the Chief Justice, is serving as Chair of the Family Court Judges' Advisory Committee.

Active around the state and local community, he has been involved with the American Legion Palmetto Boys State program since 1963 having served as Director for seventeen years. He has served on the Board of Directors of the South Carolina Athletic Hall of Fame and as President of the Florence Kiwanis Club being selected Kiwanian of the Year. He is active in the community theatres in the area both on stage and behind the scenes.

As a member of St. Anthony's Roman Catholic Church, he has previously been a Cantor, served on the Parish Council and as Chairman of the School Board. He has also served under two Bishops on the Diocesan Pastoral Council.

Judge Morehead is married to the former Elaine Dempsey. They have two children: a son, Arthur who practices law in Charlotte; and a daughter, Anne Meree who works for the Director of National Intelligence in Washington. They are blessed with three grandchildren: Ben, Laura and Max.

# **Supreme Court Seat Four**

## **JUDGE ARTHUR E. MOREHEAD, III**

This review assesses a sampling of each judge's decisions (where available), bar evaluations and professional associations. The judicial decisions, by definition, will vary because of the purview of the different courts employing these candidates. The judicial decisions included in this review were chosen because of their effect on the South Carolina economy.

Judge Morehead is a Family Court Judge and in that capacity he has not ruled on cases that impact business and industry in South Carolina.

## **Supreme Court Seat Four**



### **Judge H. Bruce Williams** South Carolina Court of Appeals

Judge H. Bruce Williams was born in Columbia, South Carolina in 1956. His parents are Edna Harris and H. Lanier Williams.

He attended public schools in Columbia and received a bachelor's degree in 1978 from Wofford College. While at Wofford, he served as Student Body President. He graduated from the University of South Carolina Law School in 1982.

After graduating from law school, he entered private practice in Columbia until 1995. He served as a part-time Associate Town Judge in Irmo, South

Carolina from 1992 until 1995. He served two terms on the Board of the South Carolina Trial Lawyers Association for the Family Law Section.

Judge Williams served as President of the Columbia Kiwanis Club. While a member of the Kiwanis Club, he volunteered as advisor to the Columbia High School Key Club from 1983 until 1995.

The South Carolina General Assembly elected Judge Williams to the position of Resident Family Court Judge for the Fifth Judicial Circuit in May 1995. In 2004, Judge Williams was elected to the South Carolina Court of Appeals.

During his tenure as a Family Court Judge, Judge Williams has served as President of the South Carolina Conference of Family Court Judges in 1999-2000, as well as Secretary-Treasurer in 1998-1999. He has presided over the Richland County Juvenile Drug Court since its inception in January of 1998.

He is a member of the South Carolina Bar. He is admitted to practice in all South Carolina Courts, as well as the United States District Court for South Carolina. He is married and has two children.

# Supreme Court Seat Four

## JUDGE H. BRUCE WILLIAMS

### Arbitration Case Description

#### **New Hope Missionary Baptist Church v. Paragon Builders, 667 S.E.2d 1**

A church entered into a building agreement with a contractor. When the contractor sought to enforce the contract, the church filed a declaratory judgment action seeking to adjudicate the contract invalid for a variety of reasons. The contractor responded with a motion to compel arbitration as set forth in the contract. The trial judge denied the motion since the validity of the contract itself was being questioned. The Court of Appeals, Judge Williams concurring, reversed due to the strong policy favoring arbitration; the severability of arbitration clauses from the underlying contract; and the church's failure to undermine the arbitration clause's validity.

### Attorney Fees Case Description

#### **Williams v. Middleton, 649 S.E.2d 57**

An employee and his former employer sued one another over an unpaid commission. The jury found against the employer on all claims and awarded the employee his commission. The trial judge also determined that the employee was entitled to attorney's fees and, after a round of litigation on that matter, the judge finally decided on fees totaling \$35,000. The Court of Appeals, Judge Williams concurring, upheld the award despite the absence of a written fee agreement between the employee and his attorney, deeming the amount to be reasonable.

### Contract Case Description

#### **Walton v. Mazda of Rock Hill, 657 S.E.2d 67**

A dealership sold a customer a vehicle and a warranty. Subsequently, the dealership entered into an asset purchase program with two men. The two then sold the customer's contract to a new dealership they were starting. When the new dealership failed to service the customer's automobile under

the warranty, the customer sued. A magistrate entered summary judgment for the dealership's successors in interest and the Circuit Court affirmed. In a per curiam opinion, Judge Williams and his colleagues affirmed the grant of summary judgment because the successors did not agree to assume the original dealership's liabilities and no fraud or other exception existed so as to reverse the ordinary presumption of non-successor liability.

## **Environmental Case Description**

### **Neal v. Brown, 649 S.E.2d 164**

After a coastal waterfront lot was subdivided into three smaller lots, an owner of one lot applied for an individual dock permit. OCRM granted the permit and the ALJ affirmed the issuance. Taking up the neighbor's appeal, the Coastal Zone Management Appellate Panel (Panel) reversed the ALJ because the lot failed to meet the minimum lot acreage requirement. The Circuit Court affirmed the Panel. However, the Court of Appeals, Judge Williams concurring, reversed because the landowner's lot had not been truly subdivided so as to fail the minimum acreage requirement. Additionally, the Court of Appeals found that the Circuit Court had exceeded its authority by making new findings of fact on matters not taken up on agency review.

## **Insurance Case Descriptions**

### **Coakley v. Horace Mann Insurance Company, 609 S.E.2d 537**

Two teenagers were involved in an accident leaving one paralyzed. The disabled victim's mother sought to obtain funds for a special needs trust from the insurance policy covering the wrecked car in addition to three other policies owned by the driver's mother. The trial judge found that excess liability coverage enabled the three policies to contribute but capped the amount at \$350,000 as per previous agreement of the parties. Writing for the Court of Appeals, Judge Williams upheld the full capped amount and found that ample evidence supported the trial court's finding that the excess coverage provision was triggered by the son's ownership of the car and his non-dependent status. Furthermore, the anti-stacking provision did not apply to the excess coverage provisions.

**Cook v. State Farm Automobile Insurance Company, 656 S.E.2d 784**

A child was injured in a one-vehicle accident and her mother brought an action to determine whether the child was covered by his grandfather's underinsured motorist policy. The mother argued that since the child lived with his grandfather, the child was covered as a "relative resident" as set forth in the policy. However, the trial judge disagreed and granted summary judgment in favor of the insurance company. Judge Williams, writing for the Court of Appeals, agreed with the dismissal because the child lived with his mother in a dwelling adjacent to, but not part of, the grandfather's residence. Therefore, the child did not qualify as a resident relative under the grandfather's policy.

**Enos v. Doe, 669 S.E.2d 619**

After an evening of drinking, a woman sat down in the passenger's seat of her vehicle and went to sleep. Later that evening, completely unaware of what was happening, her vehicle was involved in an accident. Unable to determine the culprit of the hit and run, she sought a determination that she was entitled to uninsured motorist benefits under her policy. However, the trial judge directed a verdict in favor of her insurance company. The Court of Appeals, Judge Williams concurring, agreed that strict compliance with the "John Doe" statute requires claimant to present an affidavit from someone other than the owner or operator of the insured vehicle.

**Ex Parte: United Services Automobile Association, 614 S.E.2d 652**

A driver, insured as a permissive user, sued to establish entitlement to "stack" uninsured motorist benefits. The trial judge granted the insurance company's motion to dismiss. The Court of Appeals, Judge Williams concurring, affirmed because the mere fact that she was listed as an "operator" on the declarations page of the insurance contract failed to establish her as a Class I insured with the right to stack.

**Myers v. National States Insurance Company, 606 S.E.2d 486**

A woman's life insurance policy lapsed and was later reinstated. The policyholder died shortly after the policy was reinstated. When her beneficiary's claim was denied, the beneficiary sued. The trial judge entered judgment in favor of the insurance company. Judge Williams, writing for the Court of Appeals, upheld the judgment because there was sufficient evidence that the woman failed to disclose certain medical conditions on the reinstatement form, thus rendering the reinstatement and the underlying policy null and void.

## **Medical Malpractice Case Descriptions**

### **Wogan v. Kunze, 623 S.E.2d 107**

After her husband died from cancer, his wife sued several doctors for failing to file Medicare claims for various expensive cancer prescription drugs. The trial judge granted summary judgment for the doctors on all claims. The Court of Appeals, Judge Williams concurring, agreed and held that the Medicare statute conferred no private cause of action; failure to file did not breach fiduciary duty owed to patient; and failure to file did not qualify as an unfair trade practice.

### **Snaveley v. Amisub of South Carolina, Inc., 665 S.E.2d 222**

A doctor diagnosed a patient with Hepatitis B. The patient's relatives shared this information with her employer, who subsequently fired the patient. The patient brought suit against the hospital for breach of patient-physician confidentiality. The trial judge granted summary judgment in favor of the hospital and the patient appealed. The Court of Appeals, Judge Williams concurring, agreed with the trial judge's dismissal because the patient implicitly consented to disclosure to the relatives, hence waiving the privilege, because she allowed them to accompany her during the examination and the disclosure was limited to the relatives.

## **Negligence Case Descriptions**

### **Kent v. SCDOT, 666 S.E.2d 921**

A tractor-trailer collided with a passenger car on a detour road. The injured motorists brought suit against the SCDOT. During trial, an expert for the department introduced inadmissible evidence that the truck driver received a citation after the accident for failing to yield right of way. The trial judge imposed contempt sanctions against the expert and granted the injured motorists a new trial stating that as a frequent court expert he should have known that evidence of the ticket was inadmissible. Judge Williams, writing for the Court of Appeals, reversed the contempt order finding insufficient evidence of a willful violation of a court order but upheld the trial judge's granting a new trial.

**Nash v. Tindall Corporation, 650 S.E.2d 81**

When a pedestrian walkway collapsed at Lowes Motor Speedway in North Carolina, a South Carolina citizen injured in the accident brought suit both in South Carolina and North Carolina. The trial judge in Spartanburg County granted summary judgment in favor of the manufacturer of the concrete supports. The Court of Appeals, Judge Williams concurring, upheld the trial judge's application of North Carolina's statute of repose, since North Carolina was the location of the accident thus barring the South Carolina suit.

**O'Leary-Payne v. R.R. Hilton Head, Island Inc., 638 S.E.2d 96**

While taking out the trash, an employee tripped over a metal pipe protruding from the ground, causing serious injury. The employee sued her employer's lessor who had agreed to maintain the premises. At trial, the jury returned a multi-million dollar verdict in the employee's favor. The Court of Appeals, Judge Williams concurring, upheld the verdict and disagreed that the employee was required to provide expert testimony because the pipe obviously represented a dangerous, poorly maintained condition. Additionally, the lessor was precluded from blaming third parties for the condition during closing arguments because no evidence was introduced on these points during trial.

**Real Estate Case Descriptions**

**Chastain v. Hiltabidle, 2008 WL 5545317**

After a two-day rain flooded a recently purchased property, the purchasers sued seller and the realty company for negligence, claiming that they misrepresented the extent of the property's water hazards. The disclosure statement had revealed past water hazards experienced during major storm events and noted that the property was situated in a federal flood plain. At trial, a summary judgment was granted in favor of the realtor. Judge Williams, writing for the Court of Appeals, upheld the trial judge's order, holding that the realtor had no duty to disclose latent defects in the property and that the buyers failed to prove that realtor had knowledge of issues beyond those stated in the disclosure statement.

**Hambrick v. GMAC Mortgage Corporation 634 S.E.2d 5**

Homebuyers sued their mortgage company, alleging that the company engaged in the unauthorized practice of law. Under South Carolina law,

various aspects of a real estate closing require the services of a licensed lawyer. The trial judge dismissed the mortgagors' suit. The Court of Appeals, Judge Williams concurring, upheld because while the unauthorized practice of law is prohibited, private citizens cannot bring actions to enforce these claims.

**Hilton Head Plantation Property Owners' Association, Inc. v. Donald, 651 S.E.2d 614**

A homeowners' association brought a quiet title action seeking to clarify ownership of property bordering the marsh in its favor. The state answered and the Circuit Court special referee found that the state owned the land. The Court of Appeals, Judge Williams concurring, agreed holding that based on the public trust doctrine, the state held presumptive title to property below the mean high tide line. The association's accretion arguments failed because the developer's dredging activities rendered the accretion unnatural.

**The Huffines Company, LLC v. Lockhart, 617 S.E.2d 125**

A property owner refused to pay a brokerage commission and the broker sued. The trial judge held that the property owner fraudulently breached the brokerage agreement and awarded damages without submitting the case to the jury. The Court of Appeals, Judge Williams concurring, reversed because contested facts demanded sending the question of breach to the jury.

**M&M Group v. A.L. Holmes, 666 S.E.2d 262**

A commercial property owner entered into a sales contract with a buyer. When the buyer missed the "time is of the essence" closing date, the seller sued for breach of contract. The trial court granted summary judgment in favor of the buyer. The Court of Appeals, Judge Williams concurring, upheld the trial court order because according to the contract, the buyer's performance was contingent upon his obtaining financing. The Court found that the buyer mounted a good faith effort to obtain such financing, but to no avail. Therefore, his non-performance was excused.

**McLaughlin v. W. Williams, 665 S.E.2d 667**

A homebuyer sued seller and real estate agency after discovering water intrusion two months after closing. The trial judge granted summary judgment in favor of all defendants and the buyer appealed. Judge Williams, writing for the Court of Appeals, affirmed the summary judgment decisions. Based on inspections performed prior to closing, the buyer was put on notice

of water hazards, and therefore, the buyer could not have justifiably relied on the incomplete disclosure statement.

## **Securities Case Description**

### **Cowburn v. Leventis, 619 S.E.2d 437**

An attorney persuaded his client to invest in “cash for title” contracts. The investments were part of a giant Ponzi scheme. The client sued his attorney and the bank. The trial judge granted summary judgment in favor of both defendants. The Court of Appeals, Judge Williams concurring, affirmed the trial court’s decision with respect to the fraud, breach of fiduciary duty, and negligence causes of action. However, the Court of Appeals overturned the grant of summary judgment on the Uniform Securities Act claim, arguing that the investor had pled sufficient facts to send the case to the jury.

## **Statute of Limitations Case Description**

### **Watters v. Terminix Service Inc., 658 S.E.2d 110**

In 1997, a buyer purchased a home after receiving a termite and moisture level report from Terminix. In 2002, he brought a suit against the company for failing to disclose certain moisture damage issues. The trial judge dismissed the suit because the statute of limitations had run. The Court of Appeals, Judge Williams concurring, held that either a 1997 letter that the buyer’s attorney wrote to Terminix or the discovery of the damage triggered the running of the three year limitations period.

## **Workers’ Compensation Case Descriptions**

### **Earl v. HTH Associates, Inc., 627 S.E.2d 760**

A company learned that it was no longer required to maintain workers’ compensation insurance. When the company attempted to cancel the policy, a duplication error in the computer system resulted in another identical policy remaining in effect. When an employee injured himself on the job, the Commission determined that the policy remained in effect and awarded benefits. The trial judge affirmed the order. The Court of Appeals, Judge Williams concurring, also affirmed because the cancelation was ineffective and the policy remained in effect at the time of accident.

**Jones v. Harold Arnold's Sentry Buick, 656 S.E.2d 772**

An employee suffered a fall on the job injuring his back and lower body. However, the Commission refused to award benefits because his employer successfully raised the affirmative defense of employee intoxication. On appeal, the trial judge affirmed the denial of benefits. Judge Williams, writing for the Court of Appeals, upheld the denial and held that there was sufficient evidence to establish employee intoxication when the accident took place.

**McGriff v. Worsley Companies Inc., 654 S.E.2d 856**

A convenience store employee was cleaning the exterior of the station when he identified an employment applicant across the street at an intersection. The employee crossed the street to inform the applicant about the status of the employment application with the store. While the employee was returning to the store an oncoming car struck him. The Commission awarded benefits and the Circuit Court upheld the award. The Court of Appeals, Judge Williams concurring, upheld because there was sufficient evidence to support a compensable injury and the Commission's reliance on witness testimony was proper.

**Peoples v. Henry Company, 611 S.E.2d 527**

An employee seriously injured his Achilles tendon while on the job. The Commission awarded him benefits, compensating for a 68 percent permanent partial disability to his right lower extremity. The trial judge affirmed the award. The Court of Appeals, Judge Williams concurring, upheld the award because there was sufficient evidence that the employee's entire right foot was injured, not only part of his right foot as his employer and his insurer had maintained.

**Thompson v. Cisson Construction Company, 659 S.E.2d 171**

A worker suffered an on-the-job injury, seriously injuring his knee and back. His recovery was plagued by severe psychological distress and he was prescribed heavy painkillers. The worker later died of a prescription drug overdose and his mother sought death benefits. The Commission awarded her sizable benefits, finding that the suicide was caused by physiological trauma that flowed from the jobsite injury. His employer appealed and the Circuit Court reversed the Commission's award on the grounds that since the worker exhibited willful intention to commit suicide the suicide did not flow from the jobsite injury. The Court of Appeal, Judge Williams concurring,

agreed holding that willful suicide (as opposed to spontaneous or impulsive suicide) broke the chain of causation and lifted employer liability.



## **B. Judicial Evaluation Surveys**



## Judicial Evaluation Surveys

Each year, the South Carolina Bar conducts a Judicial Evaluation Survey of South Carolina judges who have completed all or one-half of their current terms. Judges are evaluated on their legal skills, impartiality, judicial temperament, industry and promptness. Bar members evaluate the judges using a scale of 1 to 4 with 4 being excellent; 3, good; 2, satisfactory; and 1, deficient. Members are asked to evaluate only those judges with whom they have had sufficient professional experience to make an informed evaluation. The Judicial Evaluation Survey is a separate evaluation from the Judicial Qualifications Committee Reports that rate judicial candidates based on interviews with lawyers and others. Only the percentage of “excellent” responses for each of the selected categories is reproduced below.

### Current Candidates

#### A. Knowledge and Application of Rules of Evidence and Procedure Law

Judge John C. Few	67.20%
Chief Judge Kaye G. Hearn	75.30%
Judge Deadra L. Jefferson	35.20%
Judge Arthur E. Morehead, III	78.30%/ 80.90%*
Judge H. Bruce Williams	81.60%

#### B. Knowledge and Application of Substantive Law

Judge John C. Few	66.90%
Chief Judge Kaye G. Hearn	73.60%
Judge Deadra L. Jefferson	34.60%
Judge Arthur E. Morehead, III	80.10%
Judge H. Bruce Williams	84.20%

#### C. Fair and Effective Settlement Skills

Judge John C. Few	56.80%
Chief Judge Kaye G. Hearn	N/A**
Judge Deadra L. Jefferson	39.60%
Judge Arthur E. Morehead, III	N/A
Judge H. Bruce Williams	82.90%

**D. Absence of Bias or Prejudice in Criminal Cases**

Judge John C. Few	62.20%
Chief Judge Kaye G. Hearn	77.80%
Judge Deadra L. Jefferson	56.10%
Judge Arthur E. Morehead, III	N/A
Judge H. Bruce Williams	N/A

**E. Attentiveness to Arguments**

Judge John C. Few	N/A
Chief Judge Kaye G. Hearn	77.50%
Judge Deadra L. Jefferson	N/A
Judge Arthur E. Morehead, III	N/A
Judge H. Bruce Williams	N/A

**F. Clarity of Written Opinions**

Judge John C. Few	N/A
Chief Judge Kaye G. Hearn	69.20%
Judge Deadra L. Jefferson	41.70%
Judge Arthur E. Morehead, III	N/A
Judge H. Bruce Williams	N/A

**G. Usefulness of Opinions to Bench and Bar**

Judge John C. Few	N/A
Chief Judge Kaye G. Hearn	67.10%
Judge Deadra L. Jefferson	N/A
Judge Arthur E. Morehead, III	N/A
Judge H. Bruce Williams	N/A

**H. Absence of Favoritism toward Plaintiff (Civil Only)**

Judge John C. Few	58.50%
Chief Judge Kaye G. Hearn	71.00%
Judge Deadra L. Jefferson	50.20%
Judge Arthur E. Morehead, III	N/A
Judge H. Bruce Williams	N/A

**I. Absence of Favoritism toward Defendant (Civil Only)**

Judge John C. Few	61.50%
Chief Judge Kaye G. Hearn	75.80%
Judge Deadra L. Jefferson	53.70%
Judge Arthur E. Morehead, III	N/A
Judge H. Bruce Williams	N/A

**J. Absence of Bias or Prejudice in Juvenile Cases**

Judge John C. Few	N/A
Chief Judge Kaye G. Hearn	N/A
Judge Deadra L. Jefferson	N/A
Judge Arthur E. Morehead, III	80.2%
Judge H. Bruce Williams	81.40%

**K. Absence of Favoritism toward Mother/Wife**

Judge John C. Few	N/A
Chief Judge Kaye G. Hearn	N/A
Judge Deadra L. Jefferson	N/A
Judge Arthur E. Morehead, III	71.10%
Judge H. Bruce Williams	81.70%

**L. Absence of Favoritism toward Father/Husband**

Judge John C. Few	N/A
Chief Judge Kaye G. Hearn	N/A
Judge Deadra L. Jefferson	N/A
Judge Arthur E. Morehead, III	74.00%
Judge H. Bruce Williams	80.30%

**M. Not influenced by Identities of Lawyers**

Judge John C. Few	52.40%
Chief Judge Kaye G. Hearn	62.70%
Judge Deadra L. Jefferson	43.60%
Judge Arthur E. Morehead, III	69.50%
Judge H. Bruce Williams	80.30%

**N. Not Influenced by Identities of Litigants**

Judge John C. Few	60.80%
Chief Judge Kaye G. Hearn	67.90%
Judge Deadra L. Jefferson	45.60%
Judge Arthur E. Morehead, III	73.60%
Judge H. Bruce Williams	87.80%

**O. Avoidance of Sexual, Racial and Ethnic Bias**

Judge John C. Few	73.30%
Chief Judge Kaye G. Hearn	81.50%
Judge Deadra L. Jefferson	55.30%
Judge Arthur E. Morehead, III	77.60%
Judge H. Bruce Williams	89.30%

**P. Judicial Temperament and Demeanor in General**

Judge John C. Few	59.20%
Chief Judge Kaye G. Hearn	76.40%
Judge Deadra L. Jefferson	53.10%
Judge Arthur E. Morehead, III	N/A
Judge H. Bruce Williams	87.00%

**Q. Courtesy to Litigants and Witnesses**

Judge John C. Few	64.60%
Chief Judge Kaye G. Hearn	N/A
Judge Deadra L. Jefferson	58.20%
Judge Arthur E. Morehead, III	67.30%
Judge H. Bruce Williams	87.00%

**R. Courtesy to Lawyers**

Judge John C. Few	61.20%
Chief Judge Kaye G. Hearn	78.30%
Judge Deadra L. Jefferson	54.60%
Judge Arthur E. Morehead, III	66.90%
Judge H. Bruce Williams	87.00%

**S. Promptness in Making Judicial Decisions**

Judge John C. Few	61.80%
Chief Judge Kaye G. Hearn	N/A
Judge Deadra L. Jefferson	39.00%
Judge Arthur E. Morehead, III	76.60%
Judge H. Bruce Williams	82.90%

**T. Punctuality and Diligence**

Judge John C. Few	67.10%
Chief Judge Kaye G. Hearn	N/A
Judge Deadra L. Jefferson	N/A
Judge Arthur E. Morehead, III	N/A
Judge H. Bruce Williams	82.90%

**U. Fair and Efficient Trial Management and Docket Control**

Judge John C. Few	64.70%
Chief Judge Kaye G. Hearn	N/A
Judge Deadra L. Jefferson	44.20%
Judge Arthur E. Morehead, III	76.40%
Judge H. Bruce Williams	82.90%

\*Judge Morehead is the only candidate with two separate categories. He scored 80.90% on the Application of Rules of Procedure and a 78.30% on Application of Rules of Evidence.

\*\*N/A- Not Available in the South Carolina Bar Association's *Judicial Evaluation Survey*.





## **C. Professional Associations**



## **Professional Associations**

The Judicial Screening Committee asked each candidate to list the Bar Associations to which each applicant was a member while in private practice. Such associations include “neutral” Bar Associations (e.g. South Carolina Bar, American Bar Association) as well as associations that limit memberships or appeals to members representing plaintiffs (e.g. South Carolina Trial Lawyers Associations) or corporate defendants (e.g. Defense Trial Lawyer Associations). Such memberships are listed below.

### **Judge John C. Few**

- South Carolina Bar
- Greenville County Bar

### **Chief Judge Kaye G. Hearn**

- South Carolina Bar
- South Carolina Bar Association
- Council of Chief Judges
- South Carolina Trial Lawyers Association

### **Judge Deadra L. Jefferson**

- South Carolina Bar
- Charleston County Bar Association
- S.C. Circuit Court Judges Association
- S.C. Women Lawyer’s Association

### **Judge Arthur E. Morehead, III**

- South Carolina Bar
- Florence County Bar Association
- South Carolina Conference of Family Court Judges
- Family Court Judges’ Advisory Committee to the Chief Justice

### **Judge H. Bruce Williams**

- South Carolina Bar
- Richland County Bar
- S.C. Association of Drug Court Professionals

Judge Few last reported his professional associations to the Judicial Merit Selection Commission in 2008.

Chief Judge Hearn last reported her professional associations to the Judicial Merit Selection Commission in 2009.

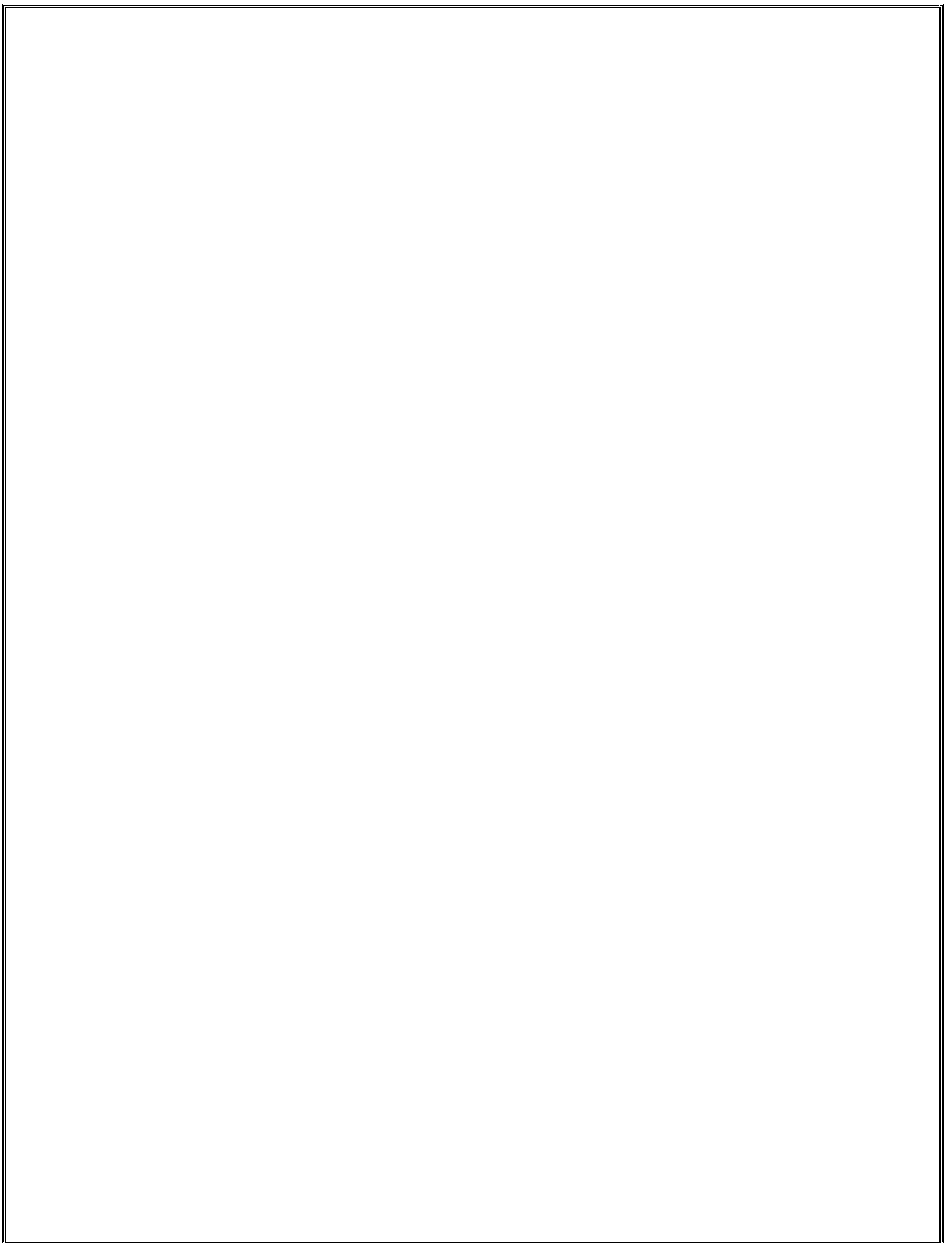
Judge Jefferson last reported her professional associations to the Judicial Merit Selection Commission in 2008.

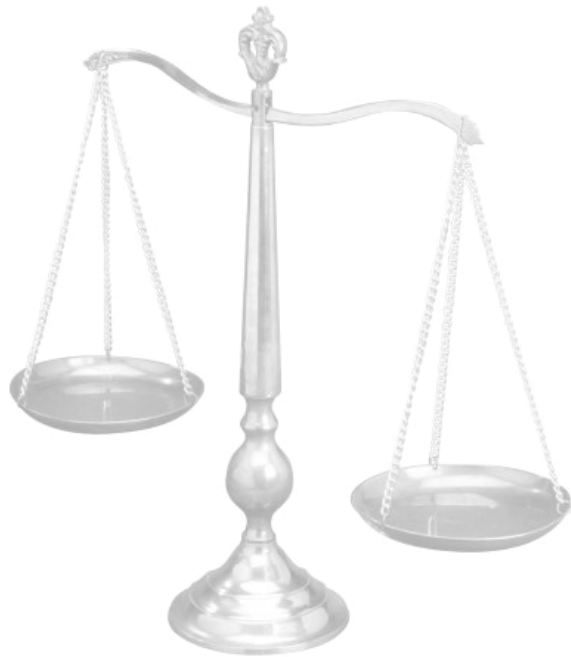
Judge Morehead last reported his professional associations to the Judicial Merit Selection Commission in 2008.

Judge Williams last reported his professional associations to the Judicial Merit Selection Commission in 2007.



## **II. Administrative Law Court Seat One**





## **A. Judicial Biographies and Cases**



# **Administrative Law Court Seat One**



## **Judge Ralph King “Tripp” Anderson, III South Carolina Administrative Law Court**

Judge Anderson was born in Florence, South Carolina, to Ralph K., Jr. and the late Loretta Anderson. Judge Anderson graduated cum laude from Frances Marion University with a Bachelor of Arts degree in 1980. Judge Anderson has since been selected as one of Francis Marion University’s most distinguished alumni.

Judge Anderson received his Juris Doctor in 1984 from the University of South Carolina School of Law and was admitted to the South Carolina Bar in 1984. Judge Anderson served as Assistant Attorney General for the State of South Carolina from 1984 until 1995.

Judge Anderson was elected to Administrative Law Court, Seat Six, in 1994 and has served in that capacity since that time.

# **Administrative Law Court Seat One**

## **JUDGE RALPH KING “TRIPP” ANDERSON, III**

### **Employment Case Descriptions**

#### **Simpson v. SDCOC Industries 2007 WL 1290591 (D.S.C.)**

As a participant in the prison industries program, a prisoner was paid between 35¢ and 75¢ per hour for over 300 hours of training. After learning of a law requiring that prisoners be paid no less than the prevailing private wage for a given line of work, a prisoner petitioned the prison for additional payment for the training hours. The prison denied the prisoner’s repeated claims and he filed an appeal with the ALJ. The ALJ sent the prevailing wage claim back to the prison authorities and ordered various procedural requirements to be followed in the future hearing. He also denied the prisoners request for damages under the Payment of Wages Act.

#### **Polly v. Jacobs v. SCBCB, Docket Number 08-ALJ-30-0311-CC**

A former state employee’s disability retirement application was denied by the Retirement System because the former employee was not in service at the time she filed her application. The Retirement System moved for summary judgment. The ALJ confirmed the board’s finding that “in service” meant the applicant must file while still employed. There is no exception when the employee is not aware of her termination. The ALJ ordered the denial.

#### **Claude Thomas v. SCBCB, Docket Number -8-ALJ-30-0163-AP**

A former state employee was denied his claim for long-term disability benefits under the Basic Long Term Disability Income Benefit Plan (Plan) by the Employees Insurance Program (EIP). On appeal, the ALJ held that although the former employee presented a doctor’s disability determination, there was still ample evidence to support the denial. The disability determination was submitted without documenting support; the former employee infrequently visited that doctor; the denial was based on two medical opinions from two separate doctors denying the disability; no doctor

ever established limitations or restriction based on the former employees physical or mental condition; and the former employee submitted no records of any mental status examination. The ALJ affirmed the EIP's decision.

**Alexander Bradley v. South Carolina Department of Corrections (SCDOC), 07-ALJ-30-0466-AP**

A department employee was terminated after the department found that the employee used unnecessary or excessive force in restraining an inmate. The ALJ held a sergeant's account of the incident to be essentially the same as the inmate's account. The employee verbally antagonized the inmate, pushed him with an open hand and struck the inmate in the shoulder area three or four times without provocation from the inmate. Additionally, this incident was the first of three incidents he was reprimanded for that day; the other two resulted in suspension. The ALJ found there was sufficient evidence to support the department's decision to terminate the employee.

**Environmental Case Description**

**Brownlee v. SCDHEC 372 S.C. 119, 641 S.E.2d 45**

Two owners of marsh-front property sought permits to extend docks across a tributary to reach the main channel of the Bohicket River. According to OCRM, the tributary was deemed a navigable waterway. Since regulations prohibited docks from crossing navigable waterways, OCRM denied the permits. The landowners appealed to the ALJ. The ALJ found the tributary to be non-navigable because a dock farther up stream rendered entering or leaving the tributary impossible most of the time and ordered OCRM to grant the permits. The dock responsible for this obstruction had been in violation of a standing OCRM order of removal for over a decade. Since the department failed to enforce the regulations, OCRM "finds itself in the position of trying to pull its chestnuts from a fire it set." The ALJ required OCRM to either enforce the standing order so as to make the tributary navigable again (which would justify their original denial) or grant the applicants' permits based on the non-navigability of the tributary. The Court of Appeals reversed the OCRM appellate boards' reversal of Judge Anderson's order and sent the matter back to OCRM to proceed with either of Judge Anderson's two alternative courses of action.

## **Professional Licensing Case Descriptions**

### **Reese J. Purvis, Jr., R.N. v. South Carolina Department of Labor, Licensing and Regulations (SCDLLR), Docket Number 08-ALJU-11-0216-AP**

A nurse was sanctioned by the South Carolina State Board of Nursing (Board) after being arrested for trafficking in cocaine and resisting arrest as well as lying on his renewal application regarding prior termination from a job. The nurse was fined \$500 by the Board. After an evaluation by the Recovering Professionals Program (RPP) the President of the Board further sanctioned the nurse with a period of probation in which he was limited in his practice. The ALJ held the fine was asserted in the recitation of the sanction made in the motion and did not constitute a final order. The final order came after the President of the Board signed a written order with findings of fact and conclusions of law. Thus, the fine and the probation sanctions were found appropriate.

### **Brett Russell, P.T. v. SCDLLR, Docket Number 08-ALJ-11-0016-AP**

A physical therapist was sanctioned for soliciting and receiving gifts and loans from a patient in excess of \$17,000. The therapist admitted his violation, but appealed the sanctions imposed. The ALJ held the Board was justified in fining the therapist \$1,000 under section 40-45-120, which allows a penalty of not more than \$2,000 per violation and a total not exceeding \$10,000. Furthermore, the therapist stipulated he received around \$14,000 from the patient but this value was inconsistent with the evidence. The ALJ remanded the case to the board for proper valuation of the sum received by the therapist.

### **SCDLLR, South Carolina Manufactured Housing Board v. Angela Chastain, f/k/a/ Angela Brown, f/k/a/ Angle Brown-Neal**

A licensed manufactured home retail dealer was charged with federal crimes related to selling manufactured homes. The dealer agreed to surrender her license. Later, the dealer was allegedly acting without a license and the Housing Board sought to stop her from such action and also impose a fine. The dealer contested the Housing Board's allegations. She argued the Manufactured Housing Code did not govern the homes she was selling and thus those sales did not constitute action as a dealer. She also argued that to be in violation of the Manufactured Housing Code she must have sold at least two homes without a license within a twelve-month period. The ALJ

agreed with the dealer. Only one of the homes the dealer sold was indeed a manufactured home. The other homes sold by the dealer were only fixtures on real property and thus not manufactured homes. The ALJ held the dealer was not in violation

## **State and Local Taxation Case Description**

### **Mel Walters v. South Carolina Department of Revenue (SCDOR), 08-ALJ-17-0307-CC**

A taxpayer appealed the department's finding that he was not entitled to a release of liens filed against him for outstanding tax liabilities. The ALJ held that liens and levies may be comparable in certain contexts but they were not equivalent for purposes of section 12-58-120(4) which affords a taxpayer relief from a levy issued against him when such a levy creates an economic hardship due to the taxpayer's financial condition. The ALJ also held the department did not file the liens against the taxpayer in error because the noted discrepancy in the lien was due to the taxpayer's own failure to file a sales tax return for several tax periods. Thus the taxpayer is also denied a release of the lien. The ALJ distinguished the taxpayer's lien and the notice of tax lien and held that the taxpayer is not entitled to have his lien notices modified as a result of the adjustment in the amount of tax owed (the lien). There was no evidence of fraud or bad faith to otherwise justify waiving the lien. The ALJ granted the department's motion for summary judgment and did not release the taxpayer from the lien.

# **Administrative Law Court Seat One**



## **Judge Carolyn C. Matthews** **South Carolina Administrative Law Court**

Judge Matthews was born in Columbia, South Carolina, to the late Walter Richardson and Martha Cook Matthews. Judge Matthews graduated from Furman University with a Bachelor of Arts degree in 1972.

Judge Matthews received her Juris Doctor degree in 1978 from the University of South Carolina School of Law where she was awarded membership in the Order of Wig and Robe and received the American Jurisprudence Award in Torts. Judge Matthews began her legal career as a Supreme Court Staff Attorney from 1978 until 1981. From 1981 until 1982 Judge Matthews was as a law clerk for Supreme Court Justice George T. Gregory, Jr. Judge Matthews was an Assistant Attorney General for the State of South Carolina from 1982 until 1986. Judge Matthews served as Counsel for the South Carolina House of Representatives Judiciary Committee from 1986 until 1988. Judge Matthews entered private practice when she joined

Nelson Mullins Riley & Scarborough as a Partner from 1988 until 1996. Judge Matthews was a Partner at Woodward Cothran and Herndon from 1996 until 1998. She served in the South Carolina Bar House of Delegates from 1998 until 1999. Judge Matthews served as Chair of the Richland County Bar Legal Services Committee from 1996 until 1999. From 1995 until 2001 Judge Matthews served on the Board of Directors for the South Carolina Women Lawyers Association. In 1993, Judge Matthews became a graduate of Leadership South Carolina.

Judge Matthews was elected to Administrative Law Court, Seat Three, in 1999 and has served since that time.

# **Administrative Law Court Seat One**

## **JUDGE CAROLYN C. MATTHEWS**

### **Employment Case Descriptions**

#### **Brenda Hinson-Austin v. SCBCB, Docket Number 07-ALJ-30-0210-AP**

The Employee Insurance Program (EIP) denied a schoolteacher's long-term disability benefits. The ALJ held that there was ample evidence to support EIP's decision to deny the teacher's claim for benefits. Although the teacher received treatment for depression, pain and fatigue related to arthritis, the medical records and opinions presented clearly allowed a reasonable person to conclude that her conditions did not cause her to be unable to perform the material duties of her occupation. There was no evidence asserting the combination of her physical and mental condition to have caused an inability to perform. There was evidence that the teacher's depression was improving and no doctor determined the teacher's condition to be severe or disabling. The ALJ upheld the denial.

#### **SCDLLR v. Tom Sawyer Company, Docket Number 01-ALJ-11-0544-CC**

A public relations firm was found in violation of the South Carolina Payment of Wages Act for failing to pay wages due two employees on the regular payday. The firm's office coordinator resigned on payday while the firm's owner was out of town. The paychecks were not issued until about three weeks after they were due. The ALJ found the firm was not in violation because it did not employ more than five employees at the time of the delayed payment and the act only applied to those with more than five employees.

### **Environmental Case Descriptions**

#### **Cooks Mountain, LLC and Yancey McLeod v. SCDHEC, et al, Docket Number 99-ALJ-07-0363-CC**

SCDHEC approved a solid waste management company's permit modification. The ALJ held the permit was not for a new facility; it did not

expand the permitted yearly rate of disposal; and it did not expand the total permitted waste capacity. Thus SCDHEC did not violate the statute prohibiting a permit for the construction of a new solid waste management facility or expansion where such permit does not comply with local zoning, land use and other applicable local ordinances. Furthermore, SCDHEC did not have to show the new permit complied with local ordinances because it did not violate the statute.

**Cross Keys Against National Garbage Org. et al v. SCDHEC et al, Docket Number 00-ALJ-07-0373-CC**

A solid waste management company was granted a permit from SCDHEC for a new facility. Petitioners and local concerned citizens responded in opposition. The ALJ found the petitioners presented no evidence that the alleged disturbances to be caused by the facility could actually become a reality. Petitioners also failed to present evidence demonstrating the lack of need for the landfill and that the facility would not conform to the surrounding area. SCDHEC showed that it had considered the surrounding area and found that there were no zoning regulations or ordinances to guide its decision and none to prevent the location of the facility. The ALJ determined that the department had adequately demonstrated the need for a landfill facility. The regulations in affect at the time of the permit issuance were to be applied in light of no retroactive provision in the new regulations. There were no ordinances preventing the facility at the time of the permit issuance. The department presented sufficient expert and documentary testimony to establish the facility would not cause the impacts alleged by the petitioners. Petitioners failed to show any adverse impact of the comment time period on their opportunity to comment upon or challenge the permit. SCDHEC provided ample opportunity for comment and an extensive hearing process so as to satisfy due process requirements for the petitioners and the petitioners failed to show they were prejudiced by any technical error made by SCDHEC in granting the permit.

**Faith Cathedral Fellowship, Inc. v. SCDHEC, Docket Number 03-ALJ-07-0346-CC**

A company running public water systems was found to be in violation of the State Primary Drinking Water Regulations. As shown in a sanitary survey, the company failed to seal the outside well casing; to install/maintain the check valve and blow-off on the well head piping; to install/maintain a flow meter; to provide valves for the isolation of tanks to ensure proper operation; and to initiate or maintain a viable cross-connection control program. The

company could not verify that improvements were properly implemented or that the operation and maintenance continued. These failures led the ALJ to affirm the administrative order; order a civil penalty of \$2,500; and to a further order to pay \$2,663 in annual water fees and penalties due up to the date of the order.

**Haiyan Lin v. SCDHEC, Docket Number 99-ALJ-07-0382-CC**

A property owner refused to enter into a consent order and refused to clean his property after the department determined the property's soil was contaminated. The owner was ordered to cease disposal of all petroleum and other waste products into the environment; ensure proper recycling of such waste; test all wastes contaminating the soil; submit analysis of the test results; dispose of all contaminated soils properly; and pay a civil penalty of \$6,600. On appeal, the ALJ found that although the owner was not responsible for the violations because the previous occupier of the property had contaminated the soil, he had constructive knowledge of the contamination and had possession of the property for several years. The owner could not escape liability. The order was upheld.

**Isle of Palms Water and Sewer Commission v. SCDHEC, Docket Number 06-ALJ-07-0025-CC**

Two wastewater collection entities were issued National Pollutant Discharge Elimination System (NPDES) permits with flow restrictions. The entities appealed the permit restrictions. The ALJ found because flow is not identified as a pollutant in the statutes or regulations and SCDHEC was never given specific authority to regulate it with NPDES permits, it must promulgate authority in order to do so. The limits on the two permits were ordered to be removed. The ALJ also noted the legislature made it clear that SCDHEC does not have the authority to impose limits on flow and that flow limits are unnecessary for entities such as these. The fecal standards must comport with the classification of the particular waterway and was not applicable in this case. The ALJ ordered the flow limits removed; the fecal coliform limits modified; and remanded the permits to SCDHEC for modification.

**Mark A. Hubbard v. SCDHEC, Docket Number 02-ALJ-07-0205-CC**

A property owner applied for a septic tank system which was denied because the soil conditions were not suitable for a septic tank. The owner appealed. The ALJ found that the owner's seasonal high water table was shallower than typically required but that the owner had done all that was asked of him

to artificially deepen the seasonal high water table. The department was unjustifiably relying on a memorandum outlining rainfall requirements for validating well monitoring figures used to qualify a septic tank system. Such reliance was unwarranted because it was a memorandum and not a regulation. The owner was granted the permit.

**Robert P. Corley and Judy D. Corley v. SCDHEC, Docket Number 03-ALJ-07-0012-CC**

An animal feeding operation was granted permits for the construction and operation of five broiler houses. Property owners adjacent to the proposed site objected to the permits on the grounds the facility would interfere with their property; the facility would threaten the water quality nearby; and that SCDHEC failed to provide public notice of the facility application. The ALJ found that notice was inadequate because no notice was posted on the perimeter of the proposed site or in close proximity to the site as required by SCDHEC regulations; no one contacted the adjacent property owners informing them of the facility's application; the original public notice did not list the number of proposed barns, which was later reduced without notice to the public and the setback of the proposed barns from adjacent property lines was reduced by 200 feet; the notices were printed on plain white paper with standard type, which does not conform with SCDHEC regulation; the department had failed to consider enumerated mandatory factors in its site evaluation; and SCDHEC could not establish that it complied with a regulatory mandate to prevent an increase in air pollution. The ALJ remanded for further review and notice pursuant to the order.

**SCDHEC v. Ronald E. Hughey, Keowee Falls RV Park, Oconee County, Docket Number 00-ALJ-07-0190-CC**

The department issued an order finding that an RV park failed to obtain the required permit before initiating land disturbing activities. The RV Park appealed. The ALJ held the evidence did not show the land disturbing activities involved more than five acres, which would have brought it under regulations requiring a permit. The order was dismissed and no civil penalty incurred by the RV Park.

**SCDHEC v. Tin Products, Inc. et al, Docket Number 00-ALJ-07-0353-CC**

A chemical manufacturing facility appealed a SCDHEC order finding that the facility had: constructed a waste water treatment facility without a permit; operated its waste water facilities by an unlicensed individual;

improperly disposed of solid wastes from its facility; failed to properly manage hazardous waste from its property; and caused an unauthorized release of harmful matter which caused damage to the environment. The department imposed a penalty of \$4,048,100 for these violations. The ALJ found the following: the facility unlawfully discharged harmful matter indirectly through one of its treatment plants into state waters damaging fish and aquatic life; failed to contain spills; used an uncertified laboratory; failed to preserve samples; failed to update best management practices plan; and disposed of sludge at an unapproved facility. Furthermore, it failed to maintain inadequate aisle space for all unobstructed movement of equipment and personnel in an emergency; failed to appropriately label hazardous waste; improperly stored hazardous waste without a permit; handled a hazardous waste container in a manner which could have ruptured or caused a leak; failed to inspect areas where containers were stored; and failed to accurately identify hazardous waste. However, the ALJ found the facility was not operated by an unlicensed individual because there was no evidence that this individual indeed operated the pretreatment system for an extended period. The penalty was reduced to \$2,862,500 in light of no evidence that an unlicensed individual operated the facility.

**Tin Products, Inc. v. SCDHEC et al., Docket Number 00-ALJ-07-0339-CC**

A chemical manufacturing facility was denied a septic tank for domestic wastewater. The ALJ held the prepared plans and specifications were fully protective of the public health and environment; the proposed septic tank system would eliminate the possibility of sewage being contaminated by residual organotins in existing piping; the facility would use a backstop measure of collecting and analyzing the effluent prior to final discharge; and any butylyin compounds detected would be treated with an oxidizing agent to eliminate these compounds. The ALJ ordered that the facility could install its system.

**Professional Licensing Case Descriptions**

**Joel Aubrey Smith, P.E., PLS #08672 v. SCDLLR, Docket Number 00-ALJ-11-0669-AP**

An engineer licensed by the State Board of Registration for Professional Engineers and Land Surveyors drilled monitoring wells without a well driller's license and fraudulently signed the name of a former employee and

licensed well-driller certifying the proper drilling of the wells. The ALJ found the board's findings regarding the engineer's violation of state law and regulations were supported by substantial evidence despite the engineer's assertion that his actions were taken as a last resort to comply with the contract. Additionally, the imposition of sanctions was not arbitrary and capricious. However, the ALJ found a \$6,000 fine was unduly harsh in light of suspension and probation for the engineer and reduced it to \$1,000. The ALJ further held that the engineer violated statutes that were in effect at the time of the violation and those statutes were appropriately used to evaluate the engineer's behavior despite newer, similar laws.

**Anthony R. Giordano v. SCDLLR, et al, Docket Number 00-ALJ-11-0688-AP**

An applicant seeking licensure to work as a salesperson of manufactured homes was denied such license. The ALJ found there was substantial evidence to support that the applicant had wrongfully worked as a manufactured home salesperson without a license. This was based on a criminal background check that exposed he had been convicted seven times for breach of trust with fraudulent intent and had also signed purchase agreements, promise sheets and had assigned loans. The applicant admitted these actions during his testimony to the board. Furthermore, the ALJ found the board rationally denied the applicant a license although the applicant claimed that he had overcome a gambling addiction which had led to his previous problems. The board appropriately applied its discretion to determine that the applicant's actions constituted promoting, offering for sale or selling a manufactured home. The fact that the applicant did not know a falsification of a previous license application would prejudice a subsequent application was of no consequence in light of the other evidence presented.

**Jimmy Landy Gardner, D.D.S. v. SCDLLR, Docket Number 01-ALJ-11-0517-AP**

A dentist's license was suspended for one year and the dentist was on probation for four years after the board found that he represented a danger to the public due to his unacceptable treatment of a patient. After probation, the dentist reapplied for licensure and was denied by order from the board. The ALJ remanded the matter back to the board without reaching the merits but instructed the board to hear the dentist's case and facts so as to not violate the dentist's due process rights requiring his opportunity to be heard at a meaningful time and meaningful manner.

**Annemarie Karen Kreutner, v. SCDLLR, Docket Number 01-ALJ-07-0533-AP**

A physician was charged with violations of the board's Practice Act pursuant to her treatment of a patient in an attempt to terminate a pregnancy. The physician failed to perform an ultrasonic examination during the course of the treatment. The patient later delivered a stillborn child. The board found that the physician violated the act and sanctioned the physician accordingly but did not suspend her license pending further order of the board. The physician appealed to the board arguing that the patient received her ultimate goal—an abortion. However, the ALJ noted the patient also suffered a subsequent infection; the physician's expert never reviewed the fetal autopsy report; and two other witnesses presented by the physician presented conflicting stories about why the patient did not want an ultrasound. The ALJ found: the physician had not met the requisite standard of care; she received a fair hearing; she failed to preserve for review the propriety of arguments made by the board's counsel; and that the sanctions imposed by the board should be affirmed (\$5,000 fine plus costs and license in a probationary status for two years).

**William F. Bolt, M.D. v. SCDLLR, Docket Number 01-ALJ-11-0566-AP**

The Medical Disciplinary Commission found a physician in violation of the standard of care. The ALJ heard the appeal and remanded the case to the Board to set forth a detailed explanation of the findings of fact. The board complied and the physician brought a second appeal. Again, the case was remanded deleting certain facts from the final order and requiring the board to modify its holding accordingly. On a third appeal, the ALJ held: there was a reasonable probability that the facts as related in the orders were supported by the testimony and documents where the entire record compiled by the Hearing Panel was given to the board; an expert doctor witness testified to the facts as asserted in the order; and the physician's own expert testified to the validity of the facts asserted in the order. The reliable, probative and substantial evidence in the whole record supported the Board's findings adequately. The board's decision to sanction was upheld.

**Roger E. Adler, MD #11260 v. SCDLLR, Docket Number 99-ALJ-11-0449-AP**

The board revoked the license of a physician after finding that the physician had improper sexual relations with two patients and had prescribed a controlled substance to another patient in the absence of a physician-patient

relationship. The ALJ held that the board did not abuse its discretion in admitting evidence of the sexual relationships because the physician admitted the conduct and that the passage of time did not hinder the physician's defense. Furthermore, the ALJ affirmed the sanction of revocation despite the distance in time of the sexual relations and the imposition of the sanction. The issue with regard to the controlled substance was not raised on appeal and thus the ALJ confirmed the Board's findings.

**Hiba O. Osman, M.D. v. SCDLLR, Docket Number 05-ALJ-11-0384-AP**

The State Board of Medical Examiners (Board) publicly reprimanded a physician for performing a c-section without adequate resources, failing to have surgery on standby in the event of an emergency, and failing to provide complete written informed consent to a patient. The Board also prevented the physician from the practice of surgical obstetrics until later review. The physician appealed. The ALJ affirmed the public reprimand, but removed the Board's remaining sanction due to the Board's delay in deciding the physician's sanctions as well as the Board's unwillingness to allow the physician a hearing before she had to leave the country.

## **Small and Minority Business Case Descriptions**

**Jenner & Tyler Construction, Inc. v. SCDOT, Docket Number 02-ALJ-19-0095-CC**

The department denied a construction company's application for certification as a Disadvantaged Business Enterprise (DBE). SCDOT accepted that the construction firm met the requirements of a DBE as to individual disadvantaged and business size but contended the company did not meet the requirement for ownership and control by the minority owner. The ALJ held that out of two possible owners, the less financially sound individual had the experience and knowledge in the specific area of the business and continuously made a real and substantial contribution to the company. That individual embodied the idea of a DBE and thus should be considered an owner of the company. The DBE certification was granted.

**JBK Trucking, Inc. v. SCDOT, Docket Number 01-ALF-19-0428-CC**

A trucking company sought certification as a Disadvantaged Business Enterprise (DBE), which was denied. One of the potential owners appealed the denial. The ALJ held that although this individual worked full-time for another employer, that other employment does not conflict with the

individuals' management responsibilities with the trucking company. Thus, the individual fit the profile of an owner worthy of DBE certification.

**Strock Enterprises, Inc. v. SCDOT, Docket Number 02-ALJ-19-0015-CC**

A construction firm sought Disadvantaged Business Enterprise (DBE) certification and was denied. The ALJ affirmed the SCDOT. Although the alleged owner possessed 52 percent of the outstanding stock, she did not possess the requisite control over the company. Her daily duties did not relate to the construction and renovation of buildings which were the firm's principal business activities.

## **State and Local Taxation Case Descriptions**

**Anonymous Taxpayers v. South Carolina Department of Revenue (SCDOR), Docket Number 03-ALJ-17-0484-CC**

The department denied taxpayers' claims for a refund of their 1996-1998 income taxes. The ALJ held that taxpayers were late in appealing their refunds, and estoppel could not be applied against the government to allow the taxpayers to rely on erroneous conduct of a DOR employee. The DOR actions however could not be upheld because the taxpayers were not seeking a refund but rather a credit to the 1996 overpayment to their 1997 tax liability. South Carolina law permitted a taxpayer to apply for a credit or refund within three years after a tax return and the taxpayers were within the time limit. The ALJ granted the taxpayers' request for a 1996 and 1997 credit and credit for the 1997 and 1998 overpayments.

**Sonoco Products Company v. SCDOR, Docket Number 03-ALJ-17-0440-CC**

The department held a manufacturing facility's office headquarters were on the site of or contiguous to the manufacturing facility so as to subject the office headquarters to the same assessment ratio as the manufacturing facility. This resulted in an increase of 4.5 percentage points in the assessment ratio. Upon appeal, the ALJ held the office headquarters were indeed contiguous to the manufacturing facility because there were no intervening landowners between the location of the manufacturing facility and the office headquarters. The DOR's assessment ratio was upheld.

**Orangeburg County Assessor v. S&F Investments, Docket Number 01-ALJ-17-0191-CC**

A county assessor challenged the county board's valuation of a piece of property upon which a fast-food restaurant was located. The ALJ affirmed the county board's valuation based on the standard of what a knowledgeable and prudent purchaser would pay for the land, or the fair market value standard. The ALJ further found the county board appropriately valued the reproduction cost of the restaurant as well as the cost of other improvements to the real property. Lastly, the ALJ held that the sales comparison comparables and the income capitalization comparables presented by the county assessor were unreasonable because the comparables were too different from the subject property in location, size, and quality of construction. The county board's fair market valuation was affirmed.





## **B. Judicial Evaluation Surveys**



# Judicial Evaluation Surveys

Each year, the South Carolina Bar conducts a Judicial Evaluation Survey of South Carolina judges who have completed all or one-half of their current terms. Judges are evaluated on their legal skills, impartiality, judicial temperament, industry and promptness. Bar members evaluate the judges using a scale of 1 to 4 with 4 being excellent; 3, good; 2, satisfactory; and 1, deficient. Members are asked to evaluate only those judges with whom they have had sufficient professional experience to make an informed evaluation. The Judicial Evaluation Survey is a separate evaluation from the Judicial Qualifications Committee Reports that rate judicial candidates based on interviews with lawyers and others. Only the percentage of “excellent” responses for each of the selected categories is reproduced below.

## Current Candidates

### A. Knowledge and Application of Rules of Evidence and Procedure

#### Law

Judge Ralph King "Tripp" Anderson	77.40%
Judge Carolyn C. Matthews	56.70%

### B. Knowledge and Application of Substantive Law

Judge Ralph King "Tripp" Anderson	73.80%
Judge Carolyn C. Matthews	55.60%

### C. Fair and Effective Settlement Skills

Judge Ralph King "Tripp" Anderson	68.20%
Judge Carolyn C. Matthews	56.00%

### D. Absence of Favoritism toward State Agency

Judge Ralph King "Tripp" Anderson	79.30%
Judge Carolyn C. Matthews	60.90%

**E. Absence of Favoritism toward Citizen**

Judge Ralph King "Tripp" Anderson	75.80%
Judge Carolyn C. Matthews	63.30%

**F. Not influenced by Identities of Lawyers**

Judge Ralph King "Tripp" Anderson	71.40%
Judge Carolyn C. Matthews	52.20%

**G. Not influenced by Identities of Litigants**

Judge Ralph King "Tripp" Anderson	72.50%
Judge Carolyn C. Matthews	56.70%

**H. Avoidance of Sexual, Racial and Ethnic Bias**

Judge Ralph King "Tripp" Anderson	82.90%
Judge Carolyn C. Matthews	73.90%

**I. Judicial Temperament and Demeanor in General**

Judge Ralph King "Tripp" Anderson	81.00%
Judge Carolyn C. Matthews	67.00%

**J. Courtesy to Litigants and Witnesses**

Judge Ralph King "Tripp" Anderson	82.40%
Judge Carolyn C. Matthews	76.90%

**K. Courtesy to Lawyers**

Judge Ralph King "Tripp" Anderson	79.70%
Judge Carolyn C. Matthews	73.70%

**L. Promptness in Making Judicial Decisions**

Judge Ralph King "Tripp" Anderson	69.40%
Judge Carolyn C. Matthews	47.30%

**M. Punctuality and diligence**

Judge Ralph King "Tripp" Anderson	79.30%
Judge Carolyn C. Matthews	52.70%

**N. Fair and Efficient Trial Management and Docket Control**

Judge Ralph King "Tripp" Anderson	75.00%
Judge Carolyn C. Matthews	50.00%



## **C. Professional Associations**



## **Professional Associations**

The Judicial Screening Committee asked each candidate to list the Bar Associations to which applicant was a member while in private practice. Such associations include “neutral” Bar Associations (e.g. South Carolina Bar, American Bar Association) as well as associations which limit memberships or appeals to members representing plaintiffs (e.g. SC Trial Lawyers Associations) or corporate defendants (e.g. Defense Trial Lawyer Associations). Such memberships are listed below.

### **Ralph King “Tripp” Anderson, III**

- South Carolina Bar

### **Carolyn C. Matthews**

- South Carolina Bar
- Richland County Bar
- South Carolina Women Lawyers Association





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**South Carolina Business & Industry Political Education Committee**

**Office • 1122 Lady Street, Suite 820 • Columbia, SC 29201**

**Mailing • PO Box 12047 • Columbia, SC 29211**

**(803) 254-0476 • Fax (803) 256-2525 • [www.scbipec.com](http://www.scbipec.com)**

*The Legislative and Political Research Arm of South Carolina Business and Industry*