



South Carolina State Conference of the NAACP et al v. Wilson, Docket No. 2:23-cv-01121 (D.S.C. Mar 21, 2023), Court Docket

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## Multiple Documents

Part	Description
1	Main Document
2	Exhibit A - Eviction Prevention Legal Advice Training

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

SOUTH CAROLINA STATE CONFERENCE OF  
THE NAACP; MARVIN NEAL; ROBYNNE  
CAMPBELL; DE'ONTAY WINCHESTER,

*Plaintiffs,*

v.

ALAN WILSON, in his official capacity as  
Attorney General of South Carolina;

*Defendant.*

Case No.: 2:23-cv-01121-DCN

**Complaint for Declaratory and  
Injunctive Relief**

**INTRODUCTION**

1. Every day, hundreds of tenants in South Carolina receive notice from their local magistrate's court that their landlord has initiated eviction proceedings against them. They have a short window to respond—only ten days to request a hearing before they default on the eviction action and lose their homes. The legal process is daunting and confusing for most tenants, and these tenants typically don't know where—or don't have anywhere—to turn for help. They are too poor to pay for a lawyer, and there are too few pro bono lawyers in South Carolina to provide them with free legal representation. As a result, the vast majority of tenants never get the legal help they need, fail to request a hearing, and are unable to exercise their legal rights in the eviction process. The consequences are devastating, adding up to an eviction crisis across the State of South Carolina.

2. Plaintiffs in this case—the South Carolina State Conference of the National Association for the Advancement of Colored People (the “South Carolina NAACP”), which is

the oldest civil rights organization in South Carolina; Robynne Campbell; Marvin Neal; and De’Ontay Winchester—would like to provide guidance to help these tenants exercise their rights and stay in their homes.

3. The South Carolina NAACP has developed a training program to equip and certify advocates like Ms. Campbell, Mr. Neal, and Mr. Winchester to provide some of the guidance that South Carolina tenants so desperately need. The program would train advocates to advise tenants that they should request a hearing on their eviction action; help tenants determine how and when to request that hearing; and, when appropriate, identify certain defenses the tenant might be able to raise. This free advice has been vetted by attorneys with expertise in housing law and is designed to be accurate, helpful, and complementary to existing legal services.

4. Overall, the training program would help ensure that low-income South Carolinians understand and are able to exercise their legal rights and are therefore less likely to default on or avoidably lose their eviction actions.

5. But South Carolina bars Plaintiffs from working together in this way to help tenants and mitigate the State’s eviction crisis. The State’s prohibition against the unauthorized practice of law makes it a felony for any person to “practice law . . . unless he is enrolled as a member of the South Carolina Bar.”<sup>1</sup> In a series of sweeping decisions, the South Carolina Supreme Court has held that even extremely simple guidance about the law is considered legal advice that qualifies as the unauthorized practice of law, even if it is free and beneficial. The State regularly enforces its prohibition on the unauthorized practice of law, so Plaintiffs cannot

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<sup>1</sup> S.C. Code Ann. § 40-5-310 (2009).

provide the limited advice laid out in the South Carolina NAACP's training program without risking prosecution and severe criminal sanctions.

6. Plaintiffs bring this action to ensure that they can provide the help that tenants in their communities need. No significant state interest is advanced by preventing Plaintiffs' provision of free, accurate, and limited legal advice to a population that currently has few legal services available to it. Instead, the prohibition restricts the assistance available to tenants and impairs Plaintiffs' rights to speak and associate to advocate for greater access to the courts, in violation of the First Amendment.

7. This Court should declare that the application of South Carolina's unauthorized practice of law rules to Plaintiffs' proposed activities would violate the Constitution, and it should permanently enjoin South Carolina from enforcing its rules against Plaintiffs in such an unconstitutional manner.

### **PARTIES**

8. Plaintiff South Carolina NAACP is a nonprofit, nonpartisan membership organization in South Carolina. The South Carolina NAACP has over 12,000 members and comprises nearly 50 branches across the State. The South Carolina NAACP was chartered in 1939 and is the oldest civil rights group in South Carolina.

9. The South Carolina NAACP advocates to ensure that all people are able to exercise their rights and access the courts. Throughout its history, the South Carolina NAACP has used collective action to redress unjust housing conditions in South Carolina and create greater housing stability for low-income individuals, including by setting up eviction prevention services and advocacy campaigns.

10. Moreover, the South Carolina NAACP has long been a leader in the fight for the very associational and expressive freedoms at issue in this action. The South Carolina NAACP brought one of the suits consolidated in the seminal *Brown v. Board of Education* ruling.<sup>2</sup> It was this ruling, and the South Carolina NAACP’s role in bringing it about, that led South Carolina to join a number of southern states in passing new rules ostensibly governing the practice of law that were designed to make it harder for the NAACP to educate its members and bring desegregation cases.<sup>3</sup> When the Supreme Court ultimately concluded that analogous attorney practice rules in Virginia violated the First Amendment, it emphasized that the NAACP’s legal work was vital to “vindicate the legal rights” of Black Americans and served as “a means for achieving the lawful objectives of equality of treatment.”<sup>4</sup>

11. Plaintiff Marvin Neal is the Third Vice President of the South Carolina NAACP. Until the start of this year, he was the President of the Georgetown Branch of the South Carolina NAACP. As part of his work on behalf of the Georgetown Branch and in his role as a community leader, Mr. Neal conducts outreach to low-income tenants and tries to help tenants who are facing eviction. Mr. Neal does everything he can to prevent evictions in his community, but he is not a lawyer, so he is careful to steer clear of providing anything that may be construed as legal advice because of South Carolina’s broad ban on the unauthorized practice of law.

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<sup>2</sup> *Briggs v. Elliott*, 103 F. Supp. 920 (E.D.S.C. 1952), *rev’d sub nom. Brown v. Bd. of Educ.*, 349 U.S. 294 (1955).

<sup>3</sup> 2 Race Rel. L. Rep. 854 (1957) (new barratry law); *see also* Walter F. Murphy, *The South Counterattacks: The Anti-NAACP Laws*, 12 W. Pol. Q. 371, 374 (1959).

<sup>4</sup> *NAACP v. Button*, 371 U.S. 415, 428–29 (1963) (holding ban on soliciting legal business could not be applied to NAACP’s activities); *see also In re Primus*, 436 U.S. 412 (1978) (applying *Button* to South Carolina’s practice of law rules).

12. Plaintiff De’Ontay Winchester is the President of the Georgetown Branch of the South Carolina NAACP. Mr. Winchester is a licensed clinical social worker. In his work and in his volunteer efforts as an NAACP leader, Mr. Winchester has provided direct, nonlegal assistance to tenants who are facing eviction, but he avoids providing any advice that may be construed as the unauthorized practice of law under South Carolina’s broad restriction.

13. Plaintiff Robynne Campbell volunteers with the Columbia Branch of the South Carolina NAACP. She has received training to serve as a housing navigator, a position in which she helps low-income tenants by connecting them with rental assistance programs, referring them to legal services providers, and providing them with basic information about the eviction process. Ms. Campbell is also a trained mediator, and she often engages in court-watching. Ms. Campbell has herself previously faced eviction actions as a tenant. Like Mr. Neal and Mr. Winchester, she does everything she can to prevent unfair evictions, but she is careful not to share any information that could be construed as legal advice under South Carolina’s broad prohibition on the unauthorized practice of law.

14. Mr. Neal, Mr. Winchester, and Ms. Campbell are ready and eager to receive the South Carolina NAACP’s training and serve as Housing Advocates, as soon as they receive assurance that they will not be prosecuted for the unauthorized practice of law.

15. Defendant Alan Wilson is the Attorney General of the State of South Carolina. Attorney General Wilson bears official responsibility for the enforcement of South Carolina law, including the prohibition on the unauthorized practice of law. Because the injunctive relief sought by Plaintiffs would run against his office, Attorney General Wilson is named as a defendant in his official capacity.

## JURISDICTION AND VENUE

16. Plaintiffs' claims are brought under 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States Constitution.

17. This Court has jurisdiction to hear Plaintiffs' claims pursuant to 28 U.S.C. § 1331 and § 1343. This Court also has jurisdiction under the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02.

18. Venue is proper in the United States District Court for the District of South Carolina under 28 U.S.C. § 1391(b)(2) because a substantial part of the acts that gave rise to this lawsuit have occurred or will occur in this judicial district. This District is also an appropriate venue under 28 U.S.C. § 1391(b)(1) because Defendant resides in this judicial district.

19. Venue is proper in the Charleston division under Local Rule 3.01 because a substantial portion of the events or omissions giving rise to the claims occurred in this division.

## FACTS

### A. South Carolina tenants' urgent need for legal support

20. South Carolina has one of the highest eviction rates in the country. According to court records, North Charleston has the highest eviction rate among large cities in the nation, and Columbia has the eighth highest.<sup>5</sup> In several counties in South Carolina, more than one out of ten tenants are evicted every year.<sup>6</sup> And at the state level, South Carolina's eviction rate is worse

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<sup>5</sup> *Top Evicting Large Cities in the United States*, Eviction Lab, <https://perma.cc/7HN5-DDUA> (last visited Mar. 20, 2023).

<sup>6</sup> Braley Dodson, *South Carolina Eviction Laws Creating Power Imbalance Between Renters, Landlords*, WBTW News 13 (Apr. 12, 2022, 5:38 AM), <https://perma.cc/JQ4K-RTQ6>.



than that of every other state in the country except one.<sup>7</sup>

21. Tenants who face eviction in South Carolina almost always do so alone and without legal representation. According to a report by the South Carolina Access to Justice Commission, landlords filed nearly 150,000 eviction actions in South Carolina in 2019. Tenants, the defendants in these actions, were unrepresented in more than 99% of these cases.<sup>8</sup>

22. A number of factors contribute to the near-total inability of South Carolina tenants facing eviction proceedings to access legal counsel. Most acutely, tenants who face an eviction action are typically poor and unable to afford a lawyer. This is especially true for Black tenants in South Carolina, who are disproportionately low-income and overburdened by their rent.<sup>9</sup>

23. South Carolina does not have enough legal services lawyers to provide free or low-cost legal services to tenants with legal needs.

24. For example, despite the around-the-clock efforts of the lawyers at South Carolina Legal Services—South Carolina’s only statewide legal services provider and a longstanding partner of the South Carolina NAACP—capacity constraints forced South Carolina Legal Services to turn away an average of more than 2,000 people each year between 2017 and 2019.<sup>10</sup> There simply are not enough legal aid lawyers to meet the demand.

25. Overall, according to data compiled by the National Center for Access to Justice, South Carolina has one of the worst access-to-justice scores in the country.<sup>11</sup>

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<sup>7</sup> *National Eviction Map*, Eviction Lab, <https://perma.cc/72BA-MTBR> (last visited Mar. 20, 2023).

<sup>8</sup> Elizabeth Chambliss et al., S.C. Access to Just., *Measuring South Carolina’s Justice Gap* 5 (2021), <https://perma.cc/BR8P-9JX4>.

<sup>9</sup> See, e.g., Dodson, *supra* note 6.

<sup>10</sup> Chambliss et al., *supra* note 8.

<sup>11</sup> Nat’l Ctr. for Access to Just., *Justice Index*, <https://perma.cc/K3AR-XVXF> (last visited Mar. 20, 2023).

26. The comprehensive February 2023 South Carolina Statewide Legal Needs Assessment, commissioned by the South Carolina Access to Justice Commission, the South Carolina Bar, and the NMRS Center on Professionalism at the University of South Carolina School of Law, was issued in response to concerns about “people’s dire need for legal help, and the gap between the needs and the resources available to assist them.”<sup>12</sup> One of its key conclusions put it simply: “There are too many people in need of civil legal services and not enough services to go around.”<sup>13</sup> This gap between legal need and available services is most acute in the area of housing law, especially for tenants facing eviction.<sup>14</sup>

27. In South Carolina, the consequences of not having access to legal representation are immediate and severe for many tenants.

28. South Carolina has an extremely cheap and fast formal eviction process. Filing for an eviction in South Carolina costs \$40—nearly one-third the national average of \$112.<sup>15</sup>

29. Under South Carolina law, once a landlord files to evict a tenant, the local magistrate—the presiding judge in most South Carolina eviction actions—must immediately issue what is commonly called a “rule to vacate or show cause” order: a notice to the tenant that requires “the tenant forthwith to vacate the premises occupied by him or to show cause why he should not be ejected before the magistrate within ten days after service of a copy of such rule upon the tenant.”<sup>16</sup>

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<sup>12</sup> Bruce Rich et al., Univ. N.C. Greensboro, *South Carolina Legal Needs Assessment 2022* 3–4 (2023), <https://perma.cc/WU9J-KB54>.

<sup>13</sup> *Id.* at 3.

<sup>14</sup> *Id.* at 5–6, 25.

<sup>15</sup> Lillian Leung et al., *Serial Eviction Filing: Civil Courts, Property Management, and the Threat of Displacement*, 100 Soc. Forces 316, 334 (2020).

<sup>16</sup> S.C. Code Ann. § 27-37-20 (1976).

30. Unlike many states where tenants are automatically afforded an opportunity to contest an eviction action in court, tenants in South Carolina forfeit their opportunity to make their case if they do not affirmatively request a hearing within ten days.<sup>17</sup>

31. If a tenant fails to request a hearing within that time period, the tenant defaults on the eviction action, and “the magistrate shall issue a warrant of ejectment and the tenant shall be ejected by his regular or special constable or by the sheriff of the county.”<sup>18</sup>

32. As many as 90% of tenants default by failing to request a hearing after their landlord files an eviction action.<sup>19</sup> In other words, every year, thousands of tenants forfeit their legal rights and lose their homes without any further process by failing to act within ten days. This high rate of default occurs even though tenants can usually obtain a hearing on their eviction action just by calling their local magistrate court and requesting one.

33. Some tenants either do not know that they must request a hearing or do not understand how to do so. Low-income tenants are often unfamiliar with the legal system; many face language barriers or have low levels of literacy.<sup>20</sup> The formal court notice they receive contains phrases and words that they may not understand. And the order—telling them that they are on the precipice of losing their housing—almost certainly causes anxiety about the risks they

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<sup>17</sup> *Id.*

<sup>18</sup> S.C. Code Ann. § 27-37-40 (1976).

<sup>19</sup> See Thad Moore, *SC’s Only Major Attempt to Fix North Charleston’s Eviction Crisis Isn’t Enough*, Post & Courier (Feb. 8, 2023), <https://perma.cc/VS45-T9BB> (noting that, before a pilot program, tenants requested hearings in “fewer than a tenth of eviction filings” in one court).

<sup>20</sup> See Mekonnen Firew Ayano, *Tenants Without Rights: Situating the Experiences of New Immigrants in the U.S. Low-Income Housing Market*, 28 *Geo. J. on Poverty L. & Pol’y* 159, 189 (2021) (“Even in standard tenancies, low-income tenants burdened with little education or language barriers are often uninformed of their rights, and so suffer numerous abuses at the hands of their landlords.”); see also Judiciary Comm., Conn. Gen. Assembly, *Report of the Task Force to Improve Access to Legal Counsel in Civil Matters* 12 (2016), <https://perma.cc/3A67-MSUJ>.

face.

34. Even if they are aware they should request a hearing, many tenants do not know what to do after they request a hearing. They are often unfamiliar with what defenses are available to them.

35. Many tenants *do* have winning cases. Landlords often fail to provide proper notice to the tenant to terminate the tenant's lease; they fail to maintain habitable housing; and they mistakenly or even fraudulently claim that their tenants owe rent that the tenants have already paid.

36. Even without legal representation, there are simple, effective ways that tenants can prevail on these defenses if they can get into court. Tenants can, for example, demonstrate that their landlords did not provide them with proper notice because, in most cases, South Carolina law requires landlords to give tenants written notice before they try to evict their tenants.

37. There are no legal disadvantages for tenants who exercise their rights and request a hearing, and requesting a hearing may also help tenants resolve their problems outside of court. Requesting a hearing typically slows down the fast-moving eviction process by a week or two, which may give tenants a crucial opportunity to come up with back-owed rent, negotiate with their landlord, or find adequate alternative housing. This added time also gives tenants a greater opportunity to find and receive legal representation from lawyers who can help these tenants contest their cases.

38. South Carolina tenants' inability to receive the assistance they need to access the courts and exercise their rights has severe consequences not only for each of these tenants but also for their communities and for South Carolina more broadly.

39. Evictions trigger a cascade of negative consequences, ranging from mental health problems,<sup>21</sup> to diminished employment opportunities for adults,<sup>22</sup> to educational disruptions for children.<sup>23</sup> And having an eviction record makes it even harder to obtain housing moving forward, as landlords may reject applicants based on previous eviction filings.<sup>24</sup>

40. The high rates of eviction in South Carolina consolidate poverty and strain community and neighborhood resources.

41. The effects of eviction actions and evictions are particularly consequential for Black renters, who are disproportionately low-income and more likely to be the subjects of eviction actions and to be evicted.<sup>25</sup> Studies from other parts of the country have shown that Black women, in particular, face extremely high rates of eviction.<sup>26</sup> The concentration of evictions in Black neighborhoods is just one legacy of discriminatory housing policies, such as redlining, that have historically excluded Black Americans from home ownership.<sup>27</sup>

42. These imbalances create an urgent problem—for the tenants who are unable to access the courts and exercise their rights, for the communities they live in, and, overall, for

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<sup>21</sup> See Hugo Vasquez-Vera et al., *The Threat of Home Eviction and Its Effects on Health Through the Equity Lens: A Systematic Review*, 175 Soc. Sci. & Med. 199, 199–208 (2017).

<sup>22</sup> See Matthew Desmond & Carl Gershenson, *Housing and Employment Insecurity Among the Working Poor*, 63 Soc. Probs. 46, 46–67 (2016).

<sup>23</sup> See Kathleen Ziol-Guest & Ariel Kalil, *Frequent Moves in Childhood Can Affect Later Earnings, Work, and Education*, MacArthur Found. (Mar. 2014), <https://perma.cc/HB45-SJBS>.

<sup>24</sup> See ACLU, *No Eviction Without Representation: Evictions' Disproportionate Harms and the Right to Counsel* 3–4, <https://perma.cc/UH3Z-6ZLU>.

<sup>25</sup> See Peter Hepburn et al., *Racial and Gender Disparities Among Evicted Americans*, 7 Socio. Sci. 649, 653 (2020).

<sup>26</sup> Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 Am. J. Socio. 88, 121 (2012) (explaining that eviction and incarceration operate in tandem—as “[B]lack men are *locked up* while [B]lack women are *locked out*—to propagate economic disadvantage and social suffering in America’s urban centers”).

<sup>27</sup> See Max Blau, *Black Southerners Are Bearing the Brunt of America’s Eviction Epidemic*, Stateline (Jan. 18, 2019), <https://perma.cc/39DS-KEX9>.

South Carolina's civil legal system, which is rendered less fair and just. This systemic failing is a particularly harsh example of what scholars, service providers, and policymakers have called a civil justice crisis around the country.

**B. Plaintiffs are ready to provide free, accurate, and limited advice to tenants to help them respond to their eviction actions**

43. Plaintiffs are willing and able to provide limited but highly valuable assistance to tenants who face eviction actions, and to help these tenants access the courts and respond to these actions. These tenants are often the members or constituents whom the South Carolina NAACP represents and serves. For Mr. Neal, Ms. Campbell, and Mr. Winchester, many are friends or neighbors. But South Carolina law prevents Plaintiffs from helping.

44. Plaintiffs want to provide tenants in South Carolina who face an eviction action with free, accurate, and limited advice that would be construed under South Carolina law as the unauthorized practice of law. The South Carolina NAACP has prepared a carefully crafted certification program for volunteers, including Mr. Neal, Ms. Campbell, and Mr. Winchester, to provide this advice. The program is designed to ensure that low-income South Carolinians better understand their rights, are able to request a hearing on their eviction action, and, when appropriate, can effectively raise defenses related to the landlord's provision of notice and other limited issues.

45. The South Carolina NAACP would train and certify advocates to: (1) confirm that the tenant they are helping has an eviction action filed against them; (2) advise the tenant that they should request a hearing and, based on the text of the eviction notice and checking relevant court records, explain how and when to do so; and (3) provide the tenant with narrow additional

advice about the hearing by flagging certain defenses the tenant might be able to raise.<sup>28</sup> The advocates also would be trained to make clear that they are providing only limited legal guidance and that they cannot represent tenants in court proceedings.

46. By providing limited legal guidance—how to request a hearing, when to request a hearing, and potential defenses to raise at that hearing—Plaintiffs strive to create greater housing stability for low-income tenants and help reduce the number of unnecessary or wrongful evictions. Even in cases where they ultimately would not be able to prevent an eviction, Plaintiffs would help tenants gain time to figure out their rights and arrange alternative housing possibilities by ensuring that tenants know to, and know how to, request a hearing on their eviction action and avoid defaulting.

47. Plaintiffs also seek to improve the integrity and fairness of the civil legal system in their communities. Because low-income tenants so rarely contest their eviction actions, many are unjustly or unnecessarily evicted, typically without ever getting their day in court. By providing accurate and limited legal guidance, Plaintiffs can help guarantee that otherwise unrepresented tenants at least have a chance to appear in court and have their claims heard.

48. The South Carolina NAACP has prepared a detailed training plan to ensure that the advice its certified advocates give is accurate and sufficiently straightforward for a nonlawyer to provide, while still broadly helpful to many tenants facing eviction. In drafting the training, representatives of the South Carolina NAACP consulted with legal services providers in South Carolina. The Deputy Director of South Carolina Legal Services, who formerly led the organization's housing division, has reviewed the training to confirm that it is accurate and

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<sup>28</sup> See Housing Advocate Training, attached as Exhibit A to this Complaint.

helpful.

49. The training also ensures that certified advocates do not provide legal advice or legal services that go beyond their training. To receive their certification, South Carolina NAACP members and advocates must sign a form attesting to the fact that they will provide only the limited legal guidance they have been trained to provide. They also must agree to keep tenants' information confidential, to refuse any payment for the help they provide, and to check for conflicts of interest before providing any advice.

50. Similarly, each tenant who requests assistance from a certified nonlawyer will be required to confirm that they understand the nature and limited scope of the advice they are receiving and that they will report any issues or concerns to the South Carolina NAACP. The South Carolina NAACP will follow up with tenants to assess outcomes and ensure that the advice they received was helpful and accurate.

51. Providing this advice would not replace efforts to help tenants seek legal representation. If anything, it would increase access to lawyers. The training is designed to complement legal services. Helping tenants maximize the time they have before being evicted increases tenants' opportunities to receive legal representation before it is too late. And, as a part of their training, the South Carolina NAACP's members and advocates will be instructed to help tenants sign up for free legal help from South Carolina Legal Services or other low- or pro-bono law firms.

52. Providing this limited legal advice to individuals facing eviction also would complement the nonlegal assistance and advice Plaintiffs already offer tenants.

53. The South Carolina NAACP runs a variety of programs directed specifically at preventing evictions. In Columbia, South Carolina, the South Carolina NAACP helps run a



housing navigator program that connects low-income tenants who are experiencing housing issues with legal and nonlegal services. Housing navigators, who are, with few exceptions, nonlawyer community volunteers, are trained to provide tenants with information about the eviction process, to help tenants sign up for rental assistance programs and financial benefits, and to refer individuals with legal needs to South Carolina Legal Services. Ms. Campbell is one of the program's navigators. She has worked with several tenants, helping connect them to various financial assistance programs and explaining the eviction process to them.

54. In the second half of 2022, the South Carolina NAACP and its branches also operated a program around the State aimed at preventing evictions by helping eligible renters sign up for South Carolina's emergency rental assistance program and connecting those facing eviction with legal services. The South Carolina NAACP trained its leaders to host pop-up clinics and hired and trained housing navigators to work directly with tenants. The program assisted more than 3,000 tenants in South Carolina. The South Carolina NAACP has continued this work by helping its branches provide support for these tenants while they await additional rental assistance. Mr. Neal and Mr. Winchester have participated in the South Carolina NAACP's efforts as volunteers by helping to run pop-up clinics at their branch in Georgetown, South Carolina.

55. With more tenants losing their homes each month, the South Carolina NAACP urgently seeks to provide its training in order to stem the tide of unnecessary evictions. The South Carolina NAACP would immediately begin recruiting and training advocates, including Mr. Neal, Ms. Campbell, and Mr. Winchester. If they were allowed to participate, Mr. Neal, Ms. Campbell, and Mr. Winchester would immediately enroll in the training program and begin providing this advice to the tenants whom the South Carolina NAACP serves.

**C. South Carolina’s prohibition on the unauthorized practice of law unnecessarily prevents Plaintiffs from providing this limited legal advice**

56. The only thing preventing Plaintiffs from providing greater assistance to tenants facing eviction is South Carolina’s sweeping prohibition on the unauthorized practice of law.

57. South Carolina law bars any person from engaging in the practice of law “unless he is enrolled as a member of the South Carolina Bar.”<sup>29</sup> Unlike many other states, South Carolina has defined its prohibition on the unauthorized practice of law solely through a series of case-by-case adjudications. These decisions have taken a broad approach to the question of what qualifies as the practice of law, precluding nonlawyers from communicating even basic, relevant advice about the law to individuals to assist them in protecting their rights. For example, the South Carolina Supreme Court has said that conducting presentations on the law and answering questions posed by the general public,<sup>30</sup> referring someone to particular legal language,<sup>31</sup> or offering even “a few words of explanation” to help someone understand a document<sup>32</sup> qualifies as the practice of law.

58. Also unlike many other states, South Carolina’s unauthorized practice of law statute makes it a felony punishable by up to five years of imprisonment for a nonlawyer to practice law.<sup>33</sup> So long as the South Carolina Supreme Court has defined “the type of conduct” at issue as the unauthorized practice of law, the State can bring felony charges.<sup>34</sup> In South Carolina, the prohibition on the unauthorized practice of law is regularly enforced.

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<sup>29</sup> S.C. Code Ann. § 40-5-310 (2009).

<sup>30</sup> *E.g., Doe v. Condon*, 532 S.E.2d 879, 880 (S.C. 2000).

<sup>31</sup> *Linder v. Ins. Claims Consultants, Inc.*, 560 S.E.2d 612, 622 (S.C. 2002).

<sup>32</sup> *State v. Buyers Serv. Co.*, 357 S.E.2d 15, 19 (S.C. 1987).

<sup>33</sup> S.C. Code Ann. § 40-5-310 (2009).

<sup>34</sup> *Id.*

59. Plaintiffs understand that they would violate South Carolina’s prohibition on the unauthorized practice of law by providing any advice to individual tenants about how these tenants should respond to their eviction actions.

60. Were the South Carolina NAACP to begin training its members and advocates to become certified to provide limited legal guidance to tenants, the South Carolina NAACP would face the prospect of immediate criminal prosecution. And, because they are not lawyers, Mr. Neal, Ms. Campbell, and Mr. Winchester would similarly risk immediate prosecution as soon as they started helping tenants by providing that limited legal advice.

61. The threat of prosecution or other repercussions under South Carolina’s blanket prohibition on the unauthorized practice of law chills Plaintiffs and prevents them from providing tenants facing eviction with the basic help these tenants so desperately need.

62. Because of this prohibition, the South Carolina NAACP does not currently allow its volunteers to provide even limited legal guidance. Instead, the South Carolina NAACP trains nonlawyers like Mr. Neal, Ms. Campbell, and Mr. Winchester to provide tenants with general information about the eviction process in South Carolina. They cannot tell tenants whether or when they should request a hearing, or what they should do in response to an eviction action.

63. Mr. Neal, Ms. Campbell, and Mr. Winchester have all observed on multiple occasions tenants facing eviction who did not understand their legal rights and did not understand how or why to request a hearing. But they knew that South Carolina law prohibited them from giving these tenants the basic advice they needed.

64. This limitation on providing even basic suggestions to tenants disrupts Plaintiffs’ ability to assist South Carolinians in asserting their rights. All told, the broad reach of South Carolina’s prohibition on the unauthorized practice of law prevents Plaintiffs from providing

helpful and accurate advice and from working together to prevent evictions.

**D. Preventing Plaintiffs from providing this limited legal advice does nothing to protect the public and actively disservices South Carolina tenants facing eviction**

65. By prohibiting Plaintiffs from coming together with tenants to have conversations that would help those tenants understand and assert their legal rights, South Carolina is restricting association and speech protected by the First Amendment.

66. Restricting Plaintiffs’ ability to train nonlawyers to provide limited, accurate, and free advice does not advance the State’s interests. It harms South Carolina residents by preventing them from receiving the advice they need to access the courts and exercise their rights.

67. South Carolina’s prohibition of the “type of conduct” involved in Plaintiffs’ activities—i.e., nonlawyers advising individual members of the public on their legal rights outside of court—stands in sharp contrast to the State’s allowance of conduct that requires far more legal expertise from nonlawyers in other contexts.

68. For example, in certain circumstances, nonlawyer law enforcement officers in South Carolina may *prosecute* individual cases.<sup>35</sup>

69. Even more strikingly, magistrates—the judges who actually review and adjudicate eviction actions—do not need to be lawyers. Indeed, a majority of them are not.<sup>36</sup> So Plaintiffs cannot provide tenants with limited legal advice to help them access the courts, but a nonlawyer may adjudicate their case and order them evicted.

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<sup>35</sup> See *In re Unauthorized Prac. of L. Rules Proposed by S.C. Bar*, 422 S.E.2d 123, 125 (S.C. 1992).

<sup>36</sup> Christel Purvis, *Should I Stay or Should I Go? South Carolina’s Nonlawyer Judges*, 73 S.C. L. Rev. 1145, 1146 (2022).

70. Moreover, other States allow nonlawyers to provide legal help in similar contexts. Indeed, “[f]rom the founding of the Colonies until today nonlawyers have participated with lawyers in the giving of advice and assistance to others on matters involving the law.”<sup>37</sup>

71. In Delaware and New York, for example, nonlawyers are allowed to provide tenants who are facing eviction with legal advice and assistance that goes far beyond the guidance Plaintiffs seek to provide. In Delaware, the state’s supreme court has authorized nonlawyer employees of Delaware’s legal services providers to act as “Qualified Tenant Advocates” and represent tenants in eviction actions.<sup>38</sup> As a part of their work, these Qualified Tenant Advocates are broadly authorized to “engage in such activities as are necessary or appropriate to prosecute or defend the action, including but not limited to providing advice regarding defenses” and even appearing in court.<sup>39</sup>

72. New York City similarly allows trained nonlawyers to act as navigators and assist “unrepresented litigants in the City’s Housing and Civil Courts” by providing these litigants with information, assisting them in “accessing and completing court-required simplified forms,” attending settlement negotiations, and even responding to questions from judges.<sup>40</sup> According to a comprehensive evaluation of New York City’s navigator program, “assistance from appropriately trained and supervised individuals without formal legal training is associated with changes in a range of outcomes, including both legal and real-life outcomes,” like an increase in litigants asserting valid defenses and a greater share of litigants feeling as if “they were able to

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<sup>37</sup> ABA, *Nonlawyer Activity in Law-Related Situations: A Report with Recommendations* 1 (1995).

<sup>38</sup> Del. Sup. Ct. R. 57.1.

<sup>39</sup> *Id.*

<sup>40</sup> Rebecca L. Sandefur & Thomas M. Clarke, Pub. Welfare Found., *Roles Beyond Lawyers* 3 (2016), <https://perma.cc/C24N-PC4P>.

tell their side of the story.”<sup>41</sup> By making the legal process more accessible to unrepresented litigants, programs like this one are likely to increase faith in the justice system.

73. Thousands of nonlawyers also provide a range of legal services to individuals who are involved in federal agency proceedings.<sup>42</sup> These nonlawyers help individuals with administrative filings, provide counsel, and even appear before administrative judges.

74. The staggering amount of unmet legal need, including and especially for unrepresented tenants facing eviction, has led groups like the American Bar Foundation and the American Academy of Arts and Sciences to call for allowing nonlawyers to help individuals with legal problems by providing free, accurate, and carefully limited legal advice—just what Plaintiffs wish to do.

75. In fact, the first recommendation of a recent report from the American Academy of Arts and Sciences is to “[d]edicate a consequential infusion of financial and human resources to closing the civil justice gap, and seek a significant shift in mindset—extending beyond lawyers the duty and capacity to assist those with legal need—to make genuine strides toward ‘justice for all.’”<sup>43</sup>

76. As the report recognized, “because lawyers alone will not be able to solve the crisis in civil justice, they should not be the only professionals allowed to provide information, assistance, and advocacy. With appropriate training and support, people without law degrees can

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<sup>41</sup> *Id.* at 4.

<sup>42</sup> *See Sperry v. Florida ex rel. Fla. Bar*, 373 U.S. 379, 404 (1963) (holding that states cannot restrict the practice of law by nonlawyers before federal agencies where such practice is authorized by federal law); *see also* U.S. Dep’t of Just., Comment Letter on Policy Recommendations Proposed by North Carolina Justice for All Project (Feb. 14, 2023), <https://perma.cc/7TEW-Z83V>.

<sup>43</sup> Am. Acad. Arts & Scis., *Civil Justice for All* 10 (2020), <https://perma.cc/6T3U-NQ5Y>.

help to assist tens of thousands of people facing eviction, food insecurity, job loss, domestic violence, and other serious problems.”<sup>44</sup>

77. Plaintiffs—who already provide nonlegal advice to prevent evictions by, for example, helping tenants sign up for rental assistance—can step into this gap and help prevent evictions by providing friends, neighbors, and members of their communities with accurate and limited legal advice about how to respond to an eviction action.

78. Accordingly, Plaintiffs bring this action to ensure that they may exercise their rights to associate and share information to prevent unnecessary evictions and redress injustices in South Carolina’s legal system.

## CAUSES OF ACTION

### Count I

#### Free Speech (42 U.S.C. § 1983)

79. Plaintiffs incorporate by reference every allegation in the preceding paragraphs as if set forth fully here.

80. The First Amendment’s free speech clause, which applies to the states through the Fourteenth Amendment, prohibits the government from “abridging the freedom of speech.” U.S. Const. amend. I.

81. This means that South Carolina “generally ‘has no power to restrict expression because of its message, its ideas, its subject matter, or its content.’” *Barr v. Am. Ass’n of Pol.*

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<sup>44</sup> *Id.*

*Consultants, Inc.*, 140 S. Ct. 2335, 2346 (2020) (plurality opinion) (quoting *Police Dep’t of Chi. v. Mosley*, 408 U.S. 92, 95 (1972)).

82. The limited legal advice that Plaintiffs wish to provide is protected speech. *See, e.g., Holder v. Humanitarian L. Project*, 561 U.S. 1, 27 (2010) (classifying “advice derived from ‘specialized knowledge,’” including advice on legal matters, as speech); *NAACP v. Button*, 371 U.S. 415, 428–29 (1963) (holding that NAACP lawyers advising individuals to bring suit were engaged in “modes of expression . . . which [the State] may not prohibit, under its power to regulate the legal profession”). By prohibiting Plaintiffs from communicating that advice, South Carolina is regulating “speech as speech.” *Nat’l Inst. of Fam. & Life Advoc. v. Becerra*, 138 S. Ct. 2361, 2373–74 (2018) (internal quotation marks omitted).

83. Here, South Carolina’s application of its prohibition on the unauthorized practice of law would impede Plaintiffs’ right to free expression by criminalizing accurate, non-commercial speech that would advance Plaintiffs’ goal of preventing unjust evictions.

84. With respect to Plaintiffs’ proposed speech, South Carolina’s broad prohibition does not advance an adequate state interest with sufficient precision to withstand constitutional scrutiny.

85. Instead, the application of South Carolina’s unauthorized practice of law rules to outlaw Plaintiffs’ proposed speech serves only to “prohibit[] speech and expression upon which courts must depend for the proper exercise of judicial power.” *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 545 (2001). Plaintiffs are harmed by the denial of their First Amendment rights, and tenants facing eviction are harmed by the denial of access to the free and accurate legal advice that could help them access the courts.



## Count II

### Freedom of Association (42 U.S.C. § 1983)

86. Plaintiffs incorporate by reference every allegation in the preceding paragraphs as if set forth fully here.

87. The First Amendment’s protection of the freedom of association, which applies to the states through the Fourteenth Amendment, covers “cooperative, organizational activity” in which organizations and individuals use “lawful means to achieve legitimate political ends.” *Button*, 371 U.S. at 430 (1963).

88. Associating with others to help individuals exercise their rights and petition the government is protected by the freedom of association. The Supreme Court has specifically held that “collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment.” *In re Primus*, 436 U.S. 412, 426 (1978) (quoting *United Transp. Union v. State Bar of Mich.*, 401 U.S. 576, 585 (1971)).

89. As applied to Plaintiffs, South Carolina’s prohibition on the unauthorized practice of law—interpreted by the South Carolina Supreme Court to prohibit nonlawyers from providing even the most basic legal advice—prevents Plaintiffs from using collective action to provide tenants with valuable advice about their legal rights and ensure they have meaningful access to South Carolina’s courts in their eviction proceedings.

90. South Carolina’s broad prohibition impedes Plaintiffs’ right to associate. With respect to Plaintiffs’ proposed association, the prohibition does not advance an adequate state interest with sufficient precision to withstand constitutional scrutiny. As the Supreme Court has previously instructed South Carolina, “broad rules framed to protect the public and to preserve respect for the administration of justice must not work a significant impairment of the value of

associational freedoms.” *In re Primus*, 436 U.S. at 426 (citation and internal quotation marks omitted).

91. Instead of furthering a state interest, South Carolina’s prohibition here harms the public by preventing Plaintiffs from providing accurate and helpful advice that would allow more people to vindicate their rights and meaningfully access the courts.

### **REQUEST FOR RELIEF**

Plaintiffs respectfully request that this Court enter judgment in their favor and:

- 1) Declare that the application of South Carolina’s unauthorized practice of law prohibition to Plaintiffs’ activities violates Plaintiffs’ expressive and associational rights under the First and Fourteenth Amendments.
- 2) Issue a preliminary and permanent injunction enjoining Defendants—including their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction—from taking any action that would prevent Plaintiffs from providing the free, accurate, and limited legal advice described herein.
- 3) Award Plaintiffs reasonable costs and attorneys’ fees pursuant to 42 U.S.C. § 1988 and other applicable laws; and
- 4) Grant Plaintiffs such other relief the Court deems just and proper.

Respectfully submitted,

**WYCHE, P.A.**

/s/ James E. Cox, Jr.

James E. Cox, Jr. (D.S.C. I.D. No. 13054)  
200 E. Broad St., Suite 400  
Post Office Box 728  
Greenville, SC 29602-0728  
Direct Dial: 864-242-8212  
Telecopier: 864-235-8900

E-Mail: [jcox@wyche.com](mailto:jcox@wyche.com)

Glynnis Hagins\*  
Joe Schottenfeld\*  
NAACP  
4805 Mt. Hope Drive  
Baltimore, MD 21215  
Tel: (410) 580-5777  
[ghagins@naacpnet.org](mailto:ghagins@naacpnet.org)  
[jschottenfeld@naacpnet.org](mailto:jschottenfeld@naacpnet.org)

Elise M. Baranouski\*  
Joseph W. Mead\*  
INSTITUTE FOR CONSTITUTIONAL ADVOCACY  
AND PROTECTION  
Georgetown University Law Center  
600 New Jersey Ave., N.W.  
Washington, D.C. 20001  
(202) 661-6728  
[eb1326@georgetown.edu](mailto:eb1326@georgetown.edu)  
[jm3468@georgetown.edu](mailto:jm3468@georgetown.edu)

Ben Gifford\*  
INSTITUTE FOR CONSTITUTIONAL ADVOCACY  
AND PROTECTION  
Georgetown University Law Center  
PO Box 211178  
Brooklyn, NY 11221  
(202) 661-6728  
[bg720@georgetown.edu](mailto:bg720@georgetown.edu)

*Attorneys for Plaintiffs*

*\*Application for admission pro hac vice  
forthcoming*

Dated: March 21, 2023

# EXHIBIT A

# Housing Advocate Eviction Advice Training Manual

## Overview and Introduction

Thank you for joining the South Carolina NAACP's efforts to help low-income tenants exercise their rights and prevent evictions.

This training guide is designed to certify you as a Housing Advocate who can provide limited and free legal advice to tenants in South Carolina who face eviction. The guide will help you understand the program and the responsibilities you will have as a Housing Advocate.

This program exists to help create a continuum of legal support for tenants who cannot afford a lawyer in South Carolina. Very few tenants in South Carolina have legal representation when their landlords try to evict them. And many tenants are evicted without having a chance to appear in court to defend themselves. This program aims to support these tenants by training you to provide them with accurate advice about (1) requesting a hearing on their eviction action and (2) some of the ways they can defend themselves in the legal proceeding.

This program will not train you to become a lawyer. Instead, you will complement and help existing legal services. The advice you can provide is limited, so it is important that you refer the tenants you work with to the legal services providers listed in Appendix 4.

Together, we believe that we can help tenants who face evictions and shift the imbalances in South Carolina's legal system that contribute to high eviction rates. Not everyone you help will avoid being evicted, but the limited legal advice you provide will help them exercise their rights to have a better chance and more time to retain their housing.

### I. Obligations of a Housing Advocate

As a Housing Advocate, you will join the NAACP's mission to advance equality and ensure access to justice. Black tenants in South Carolina experience eviction at a disproportionately high rate. Your role as a Housing Advocate is to assist the tenants you work with by providing free, accurate, and limited legal advice to help these tenants request a legal hearing on their eviction actions and prepare for that hearing.

To join in this work, you must agree to the following requirements:

1. You will assist the tenants you work with free of charge. You may not request or require any form of payment or gratuity from them, their family, or their friends.
2. Before providing any advice, you will make it clear to the tenants you help that you are not a lawyer and that the advice that you are permitted to provide is limited to (1) advice on how to request a hearing and (2) advice on some of the defenses, primarily notice issues, that they may wish to raise during their hearing.
3. You will provide free legal advice only in the manner and form set forth in this training guide. In all cases, that will include referring the tenants you work with to legal services

providers who may be able to provide them with additional legal advice or legal representation.

4. You agree to review this training manual and attend a training session, virtually or in person, offered by the NAACP. You must also attend regular meetings to check in with NAACP staff.
5. You accept and agree to the terms outlined in the Housing Advocate Agreement (Appendix 1) and will return it to the NAACP. Doing so will confirm that you understand your obligations and are participating in the NAACP Housing Advocates Program for the purpose of providing free help to South Carolina tenants so that they may exercise their civil legal rights and avoid being evicted.

***Reminder: Before participating in the program, you must sign and return the Housing Advocate Form.***

To ensure that your work meets the highest standards, you must also agree to comply with the following requirements, which are similar to requirements for lawyers providing pro bono advice:

1. Conflicts of Interest: You will not work with a tenant if you know at the time of providing limited legal advice that you have a conflict of interest. You will not provide the tenant with financial assistance or enter into any business transactions with them.
  - The NAACP does not expect you to check for conflicts of interest. But if you are speaking with a tenant and realize that you may have a conflict of interest—e.g., you are friends with the tenant’s landlord, you are related to the tenant’s landlord, or a close family member serves as the property manager for the tenant’s landlord—you must tell the tenant that there may be a conflict of interest and that you are not able to provide any further advice.
  - You should not tell the tenant what the specific conflict is, but you may explain what a conflict is generally.
  - Once you identify a potential conflict, immediately notify NAACP staff that you are unable to assist the tenant, so that staff can reassign that tenant to another Advocate.
2. Informed Consent: You must receive the tenant’s informed consent in writing to be able to provide limited legal advice. To do so, you must explain and have the tenant sign the Tenant Informed Consent Form (Appendix 2).
3. Confidentiality: You must not reveal information related to a tenant’s circumstances, situation, or the advice you provided to the tenant, unless you are speaking with NAACP Housing Navigator staff.

To ensure that you fully comply with these requirements, you must adhere to the rules above concerning conflicts, receive informed consent from the tenants you work with and protect those tenants’ confidentiality. You must contact NAACP staff at any point at which you have questions with respect to your duties and obligations.

Accuracy and appropriate limits are critical to the SC NAACP’s efforts to ensure that low-income tenants can exercise their legal rights. If you fail to comply with any of these requirements, the SC NAACP will immediately suspend your involvement in the Housing Advocate Program, which will mean that you will no longer be certified to provide the limited legal advice described in this manual. Additionally, you may face prosecution for violating South Carolina’s prohibition on the unauthorized practice of law and/or liability under other criminal or civil statutes.

## **II. Background - The Eviction Process and Key Terms**

Landlords and tenants in South Carolina are bound by South Carolina’s Residential Landlord and Tenant Act (the “Act”). Importantly, the Act establishes the only legal means and process through which a landlord may evict a residential tenant from that tenant’s residence. To help you advise the tenants you work with, this training manual describes the different legal reasons a landlord may seek to evict a tenant and each step of the legal eviction process.

### **A. Key Terms**

#### **a. Who is a tenant?**

The law defines a tenant as a person who can occupy a unit of rental property based on a rental agreement. To evict a tenant, the landlord must have a rental agreement with the tenant, though the agreement does not have to be written unless the lease is going to last more than one year.

People living in the rental unit without the tenant’s or property owner’s consent and who are not listed on the rental agreement—or covered under an oral rental agreement—are likely going to be considered “trespassers,” not tenants, and may be removed through a different process called “Summary Ejectment of Trespassers.”<sup>1</sup> The process to eject a trespasser happens more quickly than an eviction.

[N.B. You will only be authorized to work with tenants who are facing a formal eviction action. If a tenant has a court-issued “Summary Ejectment of Trespassers,” please have the tenant contact one of the legal services providers immediately. If the tenant owns a mobile home but rents a lot or land from someone else, please have the tenant contact one of the legal services providers, as other laws may apply. If the tenant is in a rent-to-own or an agreement to purchase the rental unit from the landlord, please have the tenant contact one of the legal services providers.]

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<sup>1</sup> You might encounter a situation in which a person is not occupying the rental property under an agreement with either the actual tenant or the landlord but who, at the time they moved into the property, had the consent of the tenant or the property owner to live there. For example, a family member who owns the property permits another family member, such as a child, to live there but without a rental agreement and then subsequently withdraws permission for the family member occupying the unit to remain. The law is not settled as to whether these occupants are trespassers or what the law calls a “tenant at will.” Refer these individuals to legal services providers who can evaluate their status.

**b. Who or what is a landlord?**

A landlord is a person or entity that rents property to a tenant. The landlord may own the property or may be leasing or subleasing the property from the owner. The landlord is also responsible for managing the property. The landlord can manage the property or delegate the responsibility to a property management group authorized to act on its behalf.

**c. What is a rental agreement?**

A rental agreement is an agreement, either written or oral, between the landlord and tenant. The agreement establishes the obligations of each party regarding the rental, use, and maintenance of the property.

**B. Causes for an Eviction Action**

**Non-Payment of Rent**

The law says a landlord can start the eviction process if a tenant does not pay rent within five days of the date rent is due. Before a landlord can try to evict a tenant for not paying rent, the landlord must provide a written notice about the non-payment. The notice must tell the tenant they will end the lease if the tenant does not pay within five days of the due date.

The landlord does not have to send written notice about late rent if the five-day rule is clearly set out in the lease or if they have given the tenant written notice regarding the five-day rule on a prior occasion.

**Breaking the Rental Agreement**

A landlord can seek eviction if a tenant does not follow the rules of the lease, the South Carolina landlord-tenant law, or other rules that apply. The rules of the rental agreement must be reasonable. Most rules about keeping the property clean or the premises safe will be considered reasonable. If a tenant breaks a rule in the lease, the landlord still must notify the tenant in writing that the tenant broke the rule and instruct the tenant that the tenant has 14 days to correct the violation. This can include violations such as keeping an unauthorized pet, permitting an unauthorized guest to stay in the property, or making too much noise at uncommon hours.

*Keeping the Property Clean and Free of Damage*

Even if it is not written in a lease, a tenant must keep the premises free of any health or safety hazards. If a tenant fails to do so, the landlord may provide a written notice identifying the issues and explaining that the rental agreement will terminate if the tenant does not clean the property, repair it, or pay for any property damage within 14 days. A tenant who refuses to take the necessary action within the given time period may be evicted.

*Landlord Access*



After giving twenty-four hours' notice, the landlord may enter the property to make repairs or inspections during reasonable hours. If it is an emergency situation, the landlord does not have to give notice. (An example of an emergency situation is if a pipe is leaking or if there is a fire.) The landlord also does not have to give twenty-four hours' notice if the landlord is performing regularly scheduled services (e.g. changing air filters regularly) or if the tenant has requested a service. The tenant may not change the locks, even if the landlord accesses the unit against the tenant's reasonable wishes. The landlord may seek to evict a tenant who unreasonably refuses to let the landlord access the premises.

### *Use of the Property*

The property may not be used as anything other than a living space unless the lease permits it. Additionally, a tenant can be evicted for allowing or permitting criminal activity on the property, even if the lease agreement does not specifically prohibit criminal activity. In this case, the landlord is not required to provide notice to cure.

### **End of the Lease Agreement**

Every lease, whether written or verbal, has a term (i.e., a period of time that the lease lasts). If a lease term expires, and has not been renewed, a landlord may seek to evict a tenant who does not leave the apartment, even if all rent has been paid.

Some lease agreements renew automatically for an additional period of time if the landlord or the tenant does not take action. Tenants should check their lease carefully for renewal rules. If there is not a renewal rule and the tenant wants to stay in the unit, they can ask to renew the lease. If the tenant wants to leave at the end of their lease term, they must be sure to give the landlord proper written notice ahead of time.

If the lease term expires and the landlord and tenant do not agree to a new lease, but the tenant continues to pay rent and the landlord continues to accept rent, by law the lease term converts into a month-to-month term.

For a week-to-week lease, the tenant or the landlord can end the lease by giving seven days' written notice before the end of the lease term. For a month-to-month lease, the tenant or landlord can end the lease by giving one month's written notice before the end of the lease term.

A landlord usually can refuse to renew a lease for any reason whatsoever at the end of a lease term. But a landlord cannot refuse to renew a rental agreement for an illegal reason, like unlawful discrimination based on a protected characteristic or to get back at a tenant for complaining to the landlord or to a codes enforcement officer about the landlord's failure to make repairs or maintain the property.

### **C. Steps in the Eviction Process**

#### **1. Landlord provides notice**

A landlord usually begins the eviction process by providing written notice to the tenant of the reason why the landlord will seek eviction: for example, violating a term of a lease, failure to pay rent, or the lease has expired and will not be renewed. As discussed further below, there are some circumstances in which the landlord does not need to provide a separate written notice—for example, if the tenant’s lease agreement clearly sets out the five-day rule to pay rent.

## **2. Landlord files in court**

A landlord must file an Application for Ejectment in the magistrate’s court to have a tenant legally evicted. A landlord cannot legally force a tenant to leave any other way, like changing the door locks, turning off the power, or putting a tenant’s property outside.

## **3. Landlord provides notice of court proceeding, called “Rule to Vacate or Show Cause.”**

The law says that a tenant should receive a legal eviction notice that they are about to be evicted. This eviction paper is called a Rule to Vacate or Show Cause (also referred to as a “Rule to Show Cause”). The landlord must take steps to make sure the tenant receives this paper. In practice, what typically happens is that the landlord pays a fee to the magistrate at the same time that the landlord files the Application for Ejectment. The magistrate’s constable then serves the Rule to Show Cause on the tenant.

This notice should be given in person to the tenant or another adult in the tenant’s household. However, a process server can post this paper on a tenant’s door and then mail a copy after they’ve made at least two attempts to effect in-person service.

If a tenant has not paid rent and has been absent from the unit, without explanation, for 15 days after the rent was due, the rental unit can be considered abandoned. In that case, the law says a copy of the Rule to Show Cause may simply be posted on the tenant’s door rather than delivered to a person.

## **4. Tenant requests a hearing**

Once a tenant receives the Rule to Show Cause, the tenant has only *10 days to request a hearing*. If the tenth day falls on a weekend or county holiday, the deadline to request a hearing rolls over to the next working day. The tenant must let the court know that they want to explain why they should not be evicted to the magistrate. Most magistrate courts allow a tenant to request a hearing by calling the clerk of court, but a few courts require a written hearing request from the tenant. The Rule to Show Cause specifies how a tenant may request a hearing.

This is also the time to request a jury trial, if a tenant wants a jury to decide the case instead of the judge. Jury trial requests must be made in writing. If the tenant facing eviction for nonpayment of rent requests a jury trial, the judge will set a hearing to collect past due rent and to order the tenant to continue paying rent before setting the date for the jury trial. At present, in Greenville, Kershaw, Lexington, and Richland counties, a request for a jury trial should also cause the case to be sent to mediation before trial.

The tenant should look carefully at the Rule to Show Cause because the magistrate may have already set a hearing date.

### **5. Court schedules a hearing**

The court will schedule a hearing to allow both the landlord and the tenant to tell their sides of the story. Sometimes the “Rule to Show Cause” will have a hearing date on it. Otherwise, the court will schedule a hearing once the tenant requests it.

It is important that the tenant appear at the hearing. The tenant should bring any witnesses with them to court, as well as any evidence that they would like to present. The landlord (or their lawyer) will have the chance to ask questions of the tenant and any witnesses. The tenant (or their lawyer, if they have one) will also have the chance to ask questions of the landlord and any witnesses. The judge or jury will make a decision based on the information presented.

If the tenant is still living in the unit while the court case is going on, they will still have to pay rent. The judge may ask the tenant to pay rent to the court instead of the landlord until the case is over.

### **6a. Tenant prevails**

If the court rules in favor of the tenant, the tenant may continue residing at the property. The tenant should continue to pay rent, including any back rent that is owed, and follow other rules. If the landlord has taken steps to prevent the tenant from accessing the property, the tenant can seek additional relief from the court.

[N.B. You should refer the tenant to legal services providers if the landlord has taken steps to bar the tenant from the property, such as by changing the locks, turning off utilities, or removing the tenant’s property.]

### **6b. Tenant loses and receives a writ of ejectment**

If the verdict is for the landlord, the magistrate will issue an order called a “writ of ejectment” within 5 days, and the tenant shall be ejected by a Deputy Sheriff of the County. The Deputy Sheriff who carries out the writ of ejectment presents a copy of the writ to the tenant, and gives the tenant an opportunity to vacate voluntarily. The law says that a tenant only has twenty-four hours to vacate after being presented with the writ of ejectment. This is called the set out date. Some deputies, however, will extend this time and will write the final set out date on the writ of ejectment. If the writ of ejectment has been given to the tenant, but the tenant is uncertain about when the Deputy Sheriff intends to come back to the property and set the tenant out, the tenant can call the Sheriff’s Department. If the tenant refuses to vacate or the premises appear unoccupied, the Deputy Sheriff may enter the rental unit by force if necessary, using the least destructive means possible, in order to eject the tenant. The Deputy Sheriff may also supervise the landlord or landlord’s agent while the landlord or their agent removes the tenant’s belongings from the property. The Deputy Sheriff may use discretion in delaying the removal of ill or elderly tenants.

### **6c. Tenant and landlord settle, or magistrate gives tenant more time**

The tenant and landlord can settle the case either before or at the hearing. Sometimes, the tenant will promise the landlord that the tenant will voluntarily move out within a set amount of time, and the landlord will agree to withdraw the eviction action. In other cases, the landlord and tenant might agree to become current on rent payments or address the issue prompting the landlord to file the eviction action. If the landlord and tenant settle, the tenant never receives a writ of ejection.

In rare cases, the tenant can avoid a writ of ejection by asking the magistrate for more time. If, for example, the tenant will be able to pay all the back-owed rent within a day or two, the tenant might be able to request a short extension to pay off the rent. If the magistrate grants the extension, the tenant is required to pay the rent before the deadline set by the magistrate. But magistrates rarely grant extensions over the landlord's objection.

### **7. Appeal**

Both the tenant and the landlord have the right to appeal the decision that the judge or jury makes in the case. An appeal is filed with the circuit court. If the tenant loses their eviction case but wants to stay in the rental property and disagrees with the decision to evict them, they must file an appeal with the circuit court within thirty days of the date that the magistrate court announced the decision. Practically speaking, the tenant should appeal before the set out date. To stay, or halt, the physical ejection, the tenant also must file a document called an undertaking. The undertaking is the tenant's promise to continue paying rent to the landlord as it becomes due after the appeal is filed. They must continue to pay rent. If a tenant does not pay rent in full within five days of the due date, the landlord can inform the court of this, and the court can dismiss the appeal.

### **8. Permanent Listing on Public Index**

Regardless of the outcome of the tenant's case, the eviction filing will remain on the Public Index indefinitely. The eviction filing becomes public as soon as the landlord files an Application for Ejection. It is possible that the eviction filing may make the tenant's search for future housing more difficult. It is generally better, however, for the Public Index to show the case as dismissed or settled, rather than a decision against the tenant.

## **III. Your Role as an Advocate**

As a trained Advocate, your role will be (1) to help the tenants you work with understand the eviction proceedings they face, (2) to provide them with the limited legal advice described below concerning requesting a hearing and notice issues, and (3) to connect them to other services, including potential legal representation. To do this work, follow these steps:

#### Step 1: Assess whether you can help the tenant.

1. Check to see whether the tenant is facing a formal eviction.

To start, you must confirm that the tenant you are working with is facing a possible eviction. To do so, check to see if the tenant has received a Rule to Vacate or Show Cause. This order should have been served on the tenant (or another adult in tenant’s household) in person, but it may have been nailed or taped to the tenant’s door and sent via mail if the tenant was not present to receive it on the first two service attempts.

- If she has not received a “Rule to Vacate or Show Cause” order, but her landlord has changed the locks, turned off a utility, or claimed that she’s not allowed to enter her residence, then her landlord is attempting to illegally evict her. **You should immediately refer her to the legal services organizations listed in Appendix 4.**

Once you’ve determined whether the tenant has received a “Rule to Vacate or Show Cause” order, **review the order to determine on what basis the tenant you are working with is being evicted.** There are three options: (1) failure to pay; (2) lease violation; or (3) end of lease term. The tenant’s landlord must check the corresponding box or boxes on the “Rule to Vacate or Show Cause” order. Look to see which box(es) the landlord checked. Most tenants are evicted for failure to pay their rent. But figuring out why the tenant is being evicted will help you determine what advice to give.

You should only assist tenants renting from private landlords. If the tenant receives a housing choice voucher, lives in public housing, or lives in other housing subsidized by the federal government please refer her to one of the legal services providers.

## 2. Determine when the tenant received notice of the eviction.

Next, **determine, as close as possible, when the tenant was served with the Rule to Vacate or Show Cause.** A tenant only has ten days after being served with a Rule to Show Cause in which to request a hearing. If a tenant does not request a hearing within that 10-day window, then she will likely automatically lose her case by default. So it is very important that you try to figure out when the tenants you work with were served.

As a starting point, ask the tenant when and how they received the Rule to Show Cause. They might, for example, have been personally served with the order on a specific day. Or they might remember that they returned home two days before meeting with you to find the order on their door. That means that they were served at least two days ago. To best determine when the tenant was served, you should ask the tenant whether it’s possible that they received the order before the date they remember.

- To check to see when the tenant was served, you should (1) review the Rule to Show Cause to see if it has a date of service, and (2) follow the instructions in Appendix 6 to check South Carolina’s Public Index, the state’s online repository of legal filings, to see whether the court has listed the date when the tenant was served. In many cases, neither the order nor the Public Index will include the date of service. But, if either does, use that date.

- Importantly, figuring out when the tenant was served is not the same as figuring out when the tenant *realized* they had been served the Rule to Show Cause, or when they decided to reach out for help. What matters is when the tenant personally received the notice or when the notice was put on the tenant’s door.

Many tenants will not know or remember exactly when they were served with the Rule to Show Cause. As discussed further below, you will have to advise them to be careful. If you’re able to help them, the advice you will provide is an attempt to give them as much time as possible to request a hearing, prepare a defense, and negotiate with their landlord or, if needed, look for alternative housing. But, if they request a hearing after the 10-day window has passed, they will likely not have a chance to appear to contest their eviction action.

- Make sure that the tenant is not already beyond the 10-day window, has already had a hearing, or does not already have a Writ of Ejectment. If any of these is the case, the tenant is too far along in the eviction process, and you are unable to provide legal advice. **You should direct the tenant to the legal services organizations listed in Appendix 4 and advise the tenant to look for alternative housing.**

#### Step 2: Confirm the limited scope of your representation.

If you are able to assist the tenant—meaning that there is still time for the tenant to request a hearing, or the tenant requested a hearing that has yet to happen—then you should inform them that you can provide free and limited legal advice. That advice will help explain how and when the tenant should request a hearing on the eviction action, and it will help the tenant prepare for that hearing. You should also share with the tenant that you are providing this legal advice to help them access the courts and exercise their rights. You should be clear that you can only provide narrow advice, but that requesting a hearing can give the tenant an opportunity to be heard and provide the tenant with more time.

Before giving limited legal advice, you must have the tenant read and sign the Tenant Informed Consent Form (Appendix 2) so that the NAACP can track all tenants who have been given legal advice and follow up with these tenants to ensure that the advice they received was helpful and consistent with this Guide.

#### Step 3: Advise the tenant about requesting a hearing.

1. Determine how the tenant should request a hearing.

**Begin by determining *how* the tenant should request a hearing.** To do so, review the tenant’s Rule to Show Cause. That document will tell you how the tenant needs to request a hearing. In nearly all cases, the tenant can do so just by calling the magistrate’s office and saying they would like a hearing. But in some rare instances a tenant must send a request in writing to the magistrate or request a hearing in person. The Rule to Show Cause will tell the tenant—and you—how she should request a hearing.

2. Advise the tenant when she should request a hearing.

Next, **advise the tenant *when she should request a hearing on the eviction action.*** Again, this advice is based on how long ago the tenant was served with the “Rule to Vacate or Show Cause” order. Tenants only have 10 days in which to request a hearing, so you must make sure that they do not wait too long.

- If the tenant is unsure or believes they are close to the 10<sup>th</sup> day, then you should advise her to request a hearing immediately.

But, if the tenant knows when they were served with a “Rule to Vacate or Show Cause” order, then you should advise her to wait until the end of the ten-day period to request a hearing. If the tenant just received the eviction notice and feels comfortable waiting, advise the tenant to call to request a hearing on the 8th or 9th day from the date of service. But you must caution the tenant that waiting too long could cause her to lose her opportunity to have a hearing.

- For example, if the tenant’s date of service is September 8, the tenant must request a hearing before close of business on September 18. Thus, the tenant could request a hearing on September 16 or 17 to maximize the time the tenant has to raise the necessary funds or find alternative housing.

Keep in mind that the tenant has ten calendar days to request a hearing, **not ten business days**. Even though the court is closed on weekends and holidays, those days count towards the ten days the tenant has to request a hearing. If the 10th day falls on a weekend or holiday, the tenant will have until the following business day to request a hearing.

If you are meeting with the tenant during the day, you can sit with the tenant as the tenant makes the phone call and help them follow the script in Appendix 3.

Step 4: Advise the tenant about the hearing.

1. Determine whether the tenant has received proper notice from the landlord to terminate the lease. Remember, this notice is separate and different from the Rule to Show Cause. The Rule informs the tenant that an eviction action is pending against her and instructs her to respond. But the notice from the landlord must inform the tenant that the lease will be terminated. The notice from the landlord is often called a “Notice to Vacate.” It can sound similar to a Rule to Vacate or Show Cause. Be careful to distinguish between the two because they serve different purposes and have different legal consequences. You should ask to see the notice and read it before deciding what kind of notice it is or what it means.

Review the tenant’s lease with the tenant. If the tenant does not have a written lease, **you should immediately refer the tenant to a legal services provider.**

- If the tenant does have a lease, the lease will help you understand whether the tenant received proper notice from the tenant’s landlord. If the tenant did not receive any notice

from the landlord about terminating the lease, or received an inadequate notice, then that might be a defense against the eviction action that the tenant should present to the magistrate at the hearing.

- Remember, each type of eviction has different notice requirements for landlords.

For failure to pay cases, landlords cannot start to evict tenants who have fallen behind on rent until more than 5 days have passed from when the tenant owed rent. Check the lease to see when the rent was due.

- Compare when the rent was due with when the Rule to Show Cause order says the landlord filed to evict the tenant. The landlord cannot file to evict before the sixth day after the rent was due. [For example, if the tenant’s rent due date was March 1, the tenant has until March 6 to pay her rent. If the Rule to Show Cause was issued before close of business on March 6, the landlord brought the eviction action too early.]
- If, however, the landlord claims the tenant owes more than a single month’s rent, then you should ask the tenant whether the tenant is more than a month behind on paying rent. If that’s the case, then the landlord would not need to wait 5 days from the tenant’s most recent due date.

[Note: If the tenant is committing or allowing unlawful activity to be committed on the premises of the tenant’s rental unit, then the landlord may move to evict the tenant without waiting until the sixth day after the tenant’s rent was due.]

- The landlord must also provide written notice before moving to evict a tenant who is behind on rent. Often, that notice will be included as a lease provision. The lease may state: “If you do not pay your rent on time, this is your notice. If you do not pay your rent within five days of the due date, the landlord can start to have you evicted. You will get no other notice as long as you live in this rental unit.” If the lease does not include this language, or a substantially similar provision, then the landlord must provide the tenant with a separate written notice before the landlord files to evict.
- Also, if the five-day notice to pay rent is written into the lease, it must be conspicuous. This means that the notice cannot look the exact same as the rest of the language in the lease. For example, to be conspicuous, the **notice should be bolded**, WRITTEN IN ALL CAPS,----- set out as a standalone statement-----, or some combination of these. If you are uncertain whether the notice is conspicuous or not, refer the tenant to a legal service provider to examine the lease.
- If the lease does not include a provision providing advanced notice, or if the notice is not conspicuous in the lease, then ask the tenant whether the landlord provided separate written notice. If the landlord did not do so, then the tenant did not have proper notice.
- But a landlord only needs to provide a tenant notice once during the tenant’s residency. So, even if the landlord does not include advance notice in the tenant’s lease, the landlord does not need to provide the tenant separate written notice again if the landlord has already done



so. If, however, the landlord and tenant enter into a new lease, then the landlord would have to give the tenant notice again to begin terminating that new lease.

If the tenant received improper notice—either because the landlord did not wait more than five days before trying to evict the tenant for failure to pay or because the landlord did not provide any written notice of the five-day rule—then you should advise the tenant that the tenant may have a defense that they should present to the magistrate.

For lease violations other than non-payment of rent, landlords must provide tenants with written notice at least 14 days before filing to evict so that the tenant may attempt to cure the violation. Ask the tenant if they have a copy of any letters or notifications from the landlord about possible lease violations.

- If the landlord did not provide the tenant with 14 days’ notice, the landlord did not provide proper notice.
- If the landlord did not state what the tenant did to breach the lease, then the notice is not proper.
- If the notice does not instruct the tenant to clean, repair, or replace the damaged item, or not to commit another violation of a lease provision that they have violated in the past (e.g. unauthorized pets, guests, or noise), then the notice is not proper.
- There is no special language that the landlord must use, but the notice must (1) inform the tenant of what they did or are doing to violate the lease and (2) inform them if they do not clean, repair, replace or stop breaching the lease, then the lease will terminate in fourteen days.
- But, if the tenant is committing or allowing unlawful activity to be committed on the premises of the tenant’s rental unit, then the landlord may move to evict the tenant without providing notice 14 days in advance.
- The notice to cure can specify a time to cure of less than 14 days if the tenant is violating the lease in a manner that affects health and safety or the physical condition of the property and the landlord considers the violation to be an emergency. In emergency situations, the landlord does not need to give the tenant written notice 14 days before filing to evict. Instead, the landlord can provide notice to the tenant of the issue and then file to evict if the tenant does not remedy the issue as promptly as conditions require. For example, if the tenant’s actions or inactions are creating immediate health and safety hazards (e.g. a threat of fire or other serious injury), the notice might require the tenant to comply in less than 14 days. Again, the “Rule to Vacate or Show Cause” order will specify the ground[s] on which the landlord is moving to evict the tenant.

If the tenant received improper notice, then you should advise the tenant that the tenant may have a defense that they should present to the magistrate.

For end of lease terms, the landlord must provide the tenant with 30 days' written notice to vacate the property before filing to evict the tenant if the lease is a month-to-month lease, or 7 days' written notice if the lease is week-to-week.

[N.B. For leases that are not month-to-month or week-to-week, the lease simply expires when the lease says it expires, and no additional written notice is required under the Act. But the tenant's lease may include additional notice requirements related to the end of a lease term.]

Review the tenant's lease, and ask the tenant if they have a copy of any written communications telling the tenant that the lease was ending.

- If the tenant has a month-to-month lease, and the landlord did not provide the tenant with 30 days' written notice to vacate before filing to evict the tenant, the landlord did not provide proper notice.
- If the tenant has a week-to-week lease, and the landlord did not provide the tenant with 7 days' written notice to vacate before filing to evict the tenant, the landlord did not provide proper notice.
- If the landlord verbally told the tenant to leave in a month-to-month or week-to-week tenancy, but did not do so in writing, the landlord did not provide proper notice.

If the tenant received improper notice, then you should advise the tenant that the tenant may have a defense before the magistrate or at the trial.

## 2. Discuss the tenant's options and flag additional defenses.

Now that you have explained to the tenant how (and, in most cases, when) to request a hearing and have determined whether the landlord provided proper notice to terminate the lease, **you should discuss the tenant's options.**

Many tenants may want to fight their eviction actions because they believe they are being evicted unjustly. But some just want a few more days to find alternative housing and move out. If that is the case, you should advise them to contact their landlord and try to negotiate a deal under which the landlord will stop the eviction action if the tenant agrees to move out by a certain date. This is often in the landlord's interest because it can help ensure that the tenant moves out. It's also often in the tenant's interest because it gives the tenant more time and can cause the landlord to drop the eviction action.

- Note: Having an eviction filed against a tenant can make it harder for the tenant to find alternative housing. Having a negative outcome in that action—e.g., a default judgment or having a magistrate rule against the tenant after a hearing—can make it even harder. If the landlord agrees to withdraw the eviction action so that the tenant can move out, the tenant should still request a hearing, if within the ten days to reply, to avoid the possibility that the landlord fails to inform the court about the agreement and the magistrate court issues a default judgment against the tenant anyway. After coming to an agreement with the

landlord, the tenant also should check with the magistrate's office to make sure that the magistrate does not enter judgment against the tenant. The ideal outcome for the tenant for an eviction that appears in the Public Index is either "dismissed" (the preferred outcome) or "settled" (the second best outcome). A tenant might ask whether the eviction can be "removed" from their record. The short answer is "no," because eviction actions are not sealed.

Similarly, if the tenant you're working with is being evicted because of failure to pay rent and cannot pay that rent, and the landlord has given her a proper five-day notice to pay, then you should tell her that she will likely lose her eviction action. In that case, the tenant should try to negotiate with the landlord. She could, for example, ask the landlord to agree to a payment plan or offer to move out on a certain date. But she should also try to find alternative housing.

If the tenant you are working with would like to contest the eviction action, you should tell the tenant to make sure to attend the hearing. The hearing's an important opportunity for the tenant to present their side of the case and explain to the magistrate why they should not be evicted.

Depending on the tenant's circumstances, **you should provide her with the following advice:**

- If she is being evicted for failure to pay rent but has paid the landlord, she should bring any proof of payment, like a copy of a check, and tell the magistrate judge. She should organize the proof of payment in chronological order and bring three printed copies of any evidence she has—one copy for the court, one copy for her landlord, and one copy for her.
- Even if she has only partially paid the landlord and will be able to pay the landlord in full soon, she should explain that to the magistrate judge and request an extension. The magistrate might still rule against the tenant, but the magistrate could also provide her with a short extension.
- If the magistrate rules against the tenant but the tenant can find alternative housing in a short amount of time, the tenant should ask the magistrate to give the tenant a set number of days to relocate before issuing a writ of ejectment—the court order requiring the tenant to leave, which goes on the Public Index. If the tenant is able to relocate during that time, she might be able to avoid a writ of ejectment being issued against her.

Again, these are not necessarily full defenses. If the tenant is in breach of the lease and the landlord has given all required notices, the magistrate will likely still rule against the tenant. But explaining the situation will help the tenant exercise her rights and potentially win or have more time to find alternative housing.

[N.B. If the tenant is being evicted for failure to pay rent or a lease violation but has living conditions that affect whether it is possible for the tenant to live in her apartment, immediately refer her to a legal services provider. The tenant may have what is called a "counterclaim." A counterclaim is different than a defense. She may need to write down and put it into an answer if

she wants the magistrate court to consider that issue. You should not advise a tenant about how to file a counterclaim.]

Once you've provided her with this specific advice, you should walk through the general advice for tenants provided by the South Carolina Supreme Court (Appendix 5).

Step 5: Answer questions within the scope of this training and refer the tenant to legal services and other resources.

The tenant you are working with may have a lot of questions. You must be careful not to answer legal questions that go beyond this training. For example, you cannot advise the tenant on how to sue their landlord.

The tenant may also have more general questions about the hearing, like “will I win?” You should not provide the tenant with false confidence. Outcomes are very difficult to predict. Even if, for example, the tenant has been improperly served, the tenant could still lose—you do not know how the magistrate will rule. You should always advise the tenant to try to prepare in case they lose and are evicted.

Remember: You can only provide the tenant with the limited legal advice described in this training guide. A legal services lawyer, for example, might be able to provide them with additional legal advice or full representation. You should tell them to contact the legal services organizations in Appendix 4. You should also ask them if they are OK with you passing their contact information along directly to these legal services organizations, so that those organizations can also reach out to them.

Finally, you should also mention the additional resources listed in Appendix 4. Eviction is a legal process, but financial and other social services can help the tenant avoid being evicted or find the resources they need to retain stable housing.

### Appendix 1 – Housing Advocate Agreement

Before you are permitted to provide limited legal advice as part of the NAACP Housing Advocate Program, you must attest to the following:

1. I am providing limited legal advice on how to request an eviction hearing and notice defenses with the specific, narrow mission of helping South Carolinians on the verge of eviction exercise their legal rights before the magistrate’s Court.
2. I promise to assist the tenant free of charge and will not request or require any form of payment or gratuity from them, their family, or their friends.
3. I promise that I will provide free legal advice only in the manner and form determined in the Training Guide. I understand that if I provide legal advice outside of the scope of the Training Guide, I may be engaging in the unauthorized practice of law or violating other legal prohibitions, and I understand the consequences of doing so.
4. I agree to comply with similar requirements to lawyers who provide pro bono advice. I promise to cease providing legal advice if there is any risk that it will not be in the tenant’s best interest in accordance with the following rules:
  - a. Conflicts of Interest: I will not work with a tenant if I know at the time of providing limited legal advice that I have a conflict of interest or the appearance of a conflict (e.g. I am friends with the tenant’s landlord).. I will not provide the tenant with any financial assistance or enter business transactions with them.
  - b. Informed Consent: I will receive the tenant’s informed consent in writing to be able to provide limited legal advice. To do so, I must explain and have the tenant sign the Tenant Informed Consent form (Appendix 2).
  - c. Confidentiality: I will not reveal information relating to a tenant’s circumstances, situation, or any legal advice provided to the tenant.
5. I have reviewed this training manual and attended a training session offered by the NAACP. I recognize that if I fail to abide by the terms outlined in this Affidavit and by the NAACP, I can be removed as an Advocate and may face other penalties, such as penalties for engaging in the unauthorized practice of law.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Phone Number/Email Address

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## Appendix 2 – Tenant Informed Consent

Thank you for your interest in the SC NAACP Housing Navigator Program, a program created in response to South Carolina’s ongoing eviction crisis. The NAACP is committed to racial and economic justice. The SC NAACP has an ongoing mission to help people protect their housing and exercise their legal rights through access to the courts.

By working with a Housing Advocate, you are entering into an agreement with the SC NAACP. This agreement describes the Advocate’s role in providing you with free, limited legal advice and assistance related to an eviction proceeding and helping you request a hearing.

**Advocate’s Role:** The Advocate is not a lawyer or an employee of the court. The Advocate is a volunteer tasked with providing you with free advice to help you exercise your right to a hearing in an eviction proceeding.

**Scope of Legal Advice:** The Advocate can provide only limited legal advice about a possible eviction, requesting a hearing, and certain notice defenses so that you can present your side of the case before the Magistrate’s Court. You may have to represent yourself in court. The Advocate will not be able to attend court with you, and neither will anyone from the SC NAACP. But the Advocate will assist you as you call the court to request a hearing, and the Advocate will help refer you to legal services organizations that may be able to provide you with additional legal advice or representation.

***Neither the SC NAACP nor the Advocate assume any liability arising out of or relating to the outcome of your case.***

**Cost:** The limited advice you receive is free of charge. You will not be asked to pay anything; you should not offer any tips or services to the Advocate. If for any reason you are asked to pay, please contact the SC NAACP immediately.

**Duration and Follow-up:** The Advocate role is limited to this meeting, but the SC NAACP may contact you in the future.

**Limitations:** The Advocate may decline to provide you with advice and direct you to seek legal counsel if your case is too complex or outside of the scope of their ability to provide limited legal advice. For example, the Advocate cannot assist you if you receive a housing voucher or live in public housing, if you do not have a written lease, or if you have already missed your opportunity to request or attend a hearing on your eviction action.

By signing this form, you acknowledge that you have been informed of your rights and consent to receive limited legal advice concerning your eviction proceeding.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Phone Number/Email Address

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



## **Appendix 4 – Alternate/Additional Resources**

The following resources may help you with your eviction proceeding.

### **Find a Lawyer or Get Legal Help**

- South Carolina Legal Services Intake Form:  
<https://www.lawhelp.org/sc/online-intake>
  - You can also call South Carolina Legal Services at 1-888-346-5592.
  - South Carolina Legal Services has income eligibility requirements.  
You can access the most updated income guidelines on their website.
- SC Bar: Get Legal Help: <https://www.scbar.org/public/get-legal-help/>

### **Self-Help: Learn the Law**

- Learn the Law: Residential Eviction Defense:  
<https://www.learnthelaw.org/group/502/classroom/2291>
- Learn the Law: D.I.Y. Residential Eviction Defense:  
<https://www.learnthelaw.org/group/502/classroom/2293/868>

### **Facing Housing Discrimination?**

- Complete the SC Fair Housing Act Complaint Form:  
[https://schac.sc.gov/sites/schac/files/Documents/Public%20Accommodations/4Fair%20Housing%20Initial%20Inquiry%20Questionnaire%20FOR%20INTERNET%20\(2\).pdf](https://schac.sc.gov/sites/schac/files/Documents/Public%20Accommodations/4Fair%20Housing%20Initial%20Inquiry%20Questionnaire%20FOR%20INTERNET%20(2).pdf) (SC Fair Housing Act complaint form PDF)
- <https://sc.accessgov.com/humanaffairs/Forms/Page/humanaffairs/fairhousing/0> (SC Fair Housing Act complaint online submission)
- HUD Housing Discrimination Hotline Toll-free Number: 1-800-669-9777

**You can always contact United Way of South Carolina by visiting [sc211.org](http://sc211.org) or calling 211 to help you find additional resources.**



## Appendix 5 – Court Preparation/Proceedings

The South Carolina Supreme Court’s website provides “Instructions for Eviction Hearings.” This document explains how eviction hearings work. It can be found at <https://www.sccourts.org/forms/pdf/SCCA733B.pdf>.

### Before the Hearing

- Gather your evidence. Make sure you prepare to bring three copies of everything to court with you—one copy for you, one for your landlord, and one for the court.
  - Your evidence must be printed out. Organize your proof of payment in chronological order (by date) and bring the three copies to court with you.
- Magistrates will not look at any photographs or documents stored on your phone. Write down your arguments. You may want to write down your arguments about why you should not be evicted from your home. Use your evidence in your arguments. By writing down what you plan to say to the court, you will already be familiar with your arguments when the judge asks for you to share your side of the case.
- Practice your arguments. You may want to practice your argument presentation out loud by yourself, in front of the mirror, and in front of family and friends.
- Write your court date down on your calendar. You don’t want to miss your court date, so make sure that you write down your court date in a place that you will remember or set a reminder in your phone.
- Request an interpreter. If you have hearing or language access concerns and have not already, call the court to request an interpreter as soon as you know your hearing date. Then, the court will know to have an interpreter present on the hearing date.
- Scout the location. If you have time, you may want to visit the courthouse and/or the courtroom before your hearing.

### The Hearing Day

- Be prepared. Bring the three copies of your evidence and your court documents, including your Rule to Vacate or Show Cause and a copy of your

answer/hearing request if it is in writing. You may want to put all your documents in a file folder to stay organized. You may also want to bring paper and pens so that you can take notes.

- Dress nicely. Present yourself as though you were going to a job interview. Avoid wearing t-shirts, tank tops, jeans, sunglasses, and torn or ripped clothing. Also, avoid exposing too much skin. Court is a formal space, and you should dress respectfully.
- Arrive early. Give yourself plenty of time to get to court. Make sure to consider traffic, weather, and parking. If you are taking public transportation, check the schedules to see if you should plan to leave earlier than usual. Running late can increase anxiety, and you want to remain calm and composed so that you can confidently share your side of the case with the court. You will also have to go through a security check, so avoid bringing weapons or dangerous items to court.
- Respect the court. Once you are in court, turn off your cell phone, or at least make sure that it is silenced. Avoid looking at it while the judge is hearing your case. You should remain quiet in the courtroom and address the court when the judge asks you to speak.
- Speaking in court. Speak slowly, clearly, and loud enough to be heard. You do not need to yell. But you want to avoid mumbling or speaking softly. Address the judge as “Your Honor.” Don’t curse or use offensive language. Answer yes or no questions audibly; don’t shake or nod your head. Your words may be recorded by a court reporter as part of the official court record.
- Jury trial. If you requested a jury trial, you should contact South Carolina Legal Services of a legal services provider for legal assistance and an attorney. If you are unable to get an attorney, you may want to review one of the Learn the Law resources in Appendix 5 to help you prepare for your trial.
- Before leaving. Make sure you understand what happens next. If you had a hearing, the judge will likely rule at the end of the case. If you had a jury trial, the jury must return a verdict. The judge will likely tell you whether you won or lost before you leave and will give you directions on what to do next. If not, make sure you ask about next steps.
- What a Writ of Ejectment means. If you lose, the judge must issue a Writ of Ejectment within 5 days after ruling for the landlord. The Writ will be served

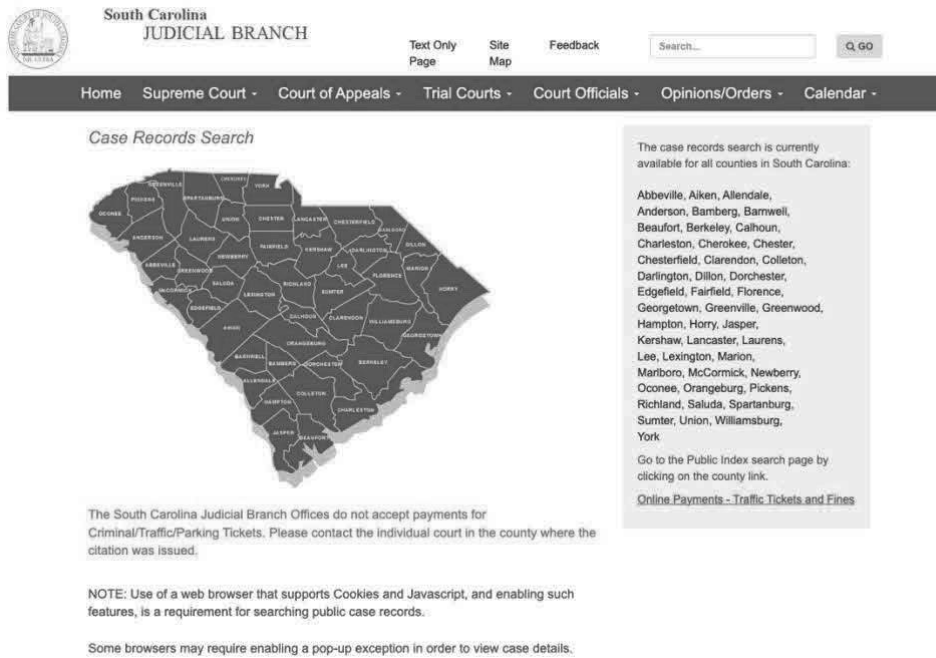
on you in person or will be posted on your front or back door. Once it is served, you will have 24 hours to leave the property.

- *Remember if you do not show up in court, the magistrate will enter a default judgment, and you will lose your case.*

## Appendix 6 – Accessing and Using the Public Index

To help a tenant determine whether they were served and when they were served with the Rule to Vacate or Show Cause, you can use the Public Index on the South Carolina Courts website. The Public Index can be accessed at <https://www.sccourts.org/casesearch/>.

Once you reach the website, you should see a county map and a list of all 46 counties. Ask the tenant what county their address is located in, and click the county from the map or the list of counties. For example, you can click on Chesterfield County by using either the map or the county list.



South Carolina  
JUDICIAL BRANCH

Text Only Page Site Map Feedback Search... Q, GO

Home Supreme Court - Court of Appeals - Trial Courts - Court Officials - Opinions/Orders - Calendar -

Case Records Search

The case records search is currently available for all counties in South Carolina:

Abbeville, Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Dorchester, Edgefield, Fairfield, Florence, Georgetown, Greenville, Greenwood, Hampton, Horry, Jasper, Kershaw, Lancaster, Laurens, Lee, Lexington, Marion, Marlboro, McCormick, Newberry, Oconee, Orangeburg, Pickens, Richland, Saluda, Spartanburg, Sumter, Union, Williamsburg, York

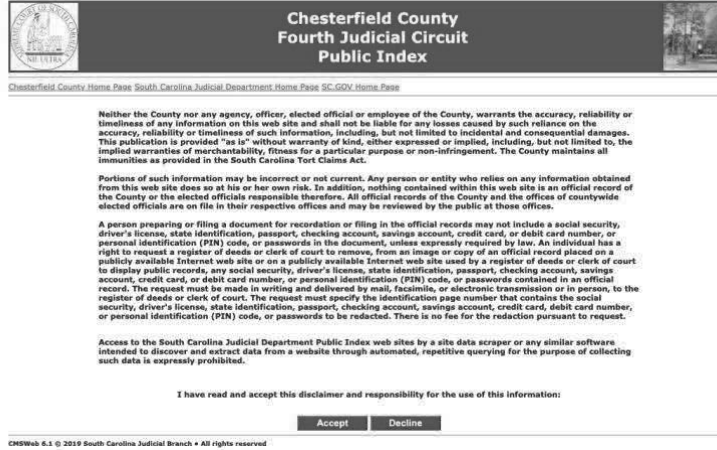
The South Carolina Judicial Branch Offices do not accept payments for Criminal/Traffic/Parking Tickets. Please contact the individual court in the county where the citation was issued.

NOTE: Use of a web browser that supports Cookies and Javascript, and enabling such features, is a requirement for searching public case records.

Some browsers may require enabling a pop-up exception in order to view case details.

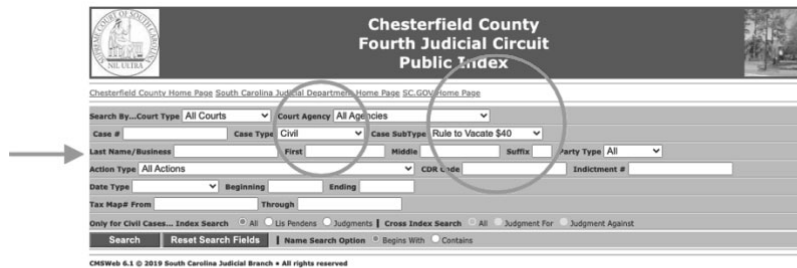
[Online Payments - Traffic Tickets and Fines](#)

After clicking the county, a disclaimer will appear. The disclaimer acknowledges that the information may not be accurate, reliable, or timely. The disclaimer explains that you are using the data provided at your own risk. The disclaimer also states that you may not misuse the website by data scraping. The first time you use the website, you may want to read the disclaimer for yourself. Click the “accept” button to proceed to the data index.



If the tenant has the Rule to Vacate or Show Cause, you can type the case number into the index, and once you press enter or click the “search” button, you should see the tenant’s precise case. On the Rule to Vacate or Show Cause, the case number is the “Civil Case Number in the Magistrate’s Court.”

If the tenant does not have the Rule to Vacate or Show Cause, you can search for the tenant’s case by using their last name. You can also search for the tenant’s full name. You may want to refine the search if the tenant has a common name. You can refine the search by choosing case type and case subtype. For example, most eviction actions are filed under case type “Civil” and case subtype “Rule to Vacate \$40” or “Rule to Vacate \$45.” Note that several Rule to Vacate prices exist in the case subtype category, so you may want to click through all of them if you do not immediately find the tenant’s case.



You can also refine the search by selecting a range of dates. To choose the dates, you must select the date type, then use the calendar to select the beginning and ending dates when the landlord might have filed the Application for Ejectment. You may want to generally select dates within the last month, including today’s date. That way, you will be able to see all actions filed recently.

Chesterfield County  
Fourth Judicial Circuit  
Public Index

Chesterfield County Home Page South Carolina Judicial Department Home Page SC.GOV Home Page

Search By...Court Type: All Courts Court Agency: All Agencies

Case # Case Type: Civil Case SubType: Rule to Vacate \$40

Last Name/Business: First Middle Suffix Party Type: All

Action Type: All Actions CDR Code Indictment #

Date Type: Actions Filed Beginning: 09/01/2022 Ending: 11/14/2022

Tax Map# From Through

Only for Civil Cases... Index Search: All Litigations Judgments Cross Index Search: All Judgment For Judgment Against

Search Reset Search Fields Name Search Option Begins With Contains

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Once you find the tenant's case, click on the case number.

Chesterfield County  
Fourth Judicial Circuit  
Public Index

Chesterfield County Home Page South Carolina Judicial Department Home Page SC.GOV Home Page

Search By...Court Type: All Courts Court Agency: All Agencies

Case # Case Type: Civil Case SubType: Rule to Vacate \$40

Last Name/Business: First Middle Suffix Party Type: All

Action Type: All Actions CDR Code Indictment #

Date Type: Actions Filed Beginning: 09/01/2022 Ending: 11/14/2022

Tax Map# From Through

Only for Civil Cases... Index Search: All Litigations Judgments Cross Index Search: All Judgment For Judgment Against

Name	Party Type	Case Number	Filed Date	Case Status	Disposition Date	Type	Subtype	Judgment #	Court Agency
Ahe, John	Defendant	2022CV13101064	10/18/2022	Disposed	11/10/2022	Civil	Rule to Vacate \$40	2022CV13101064	Chesterfield County Central Court
Ashworth, Brandy & Jerry	Defendant	2022CV13101010	10/31/2022	Pending		Civil	Rule to Vacate \$40		Chesterfield County Central Court
Asset Property Mgmt	Plaintiff	2022CV131010087	04/27/2022	Dismissed	10/14/2022	Civil	Rule to Vacate \$40	2022CV131010087	Chesterfield County Central Court
Atkinson, Randy	Plaintiff	2022CV131010090	09/08/2022	Disposed	10/11/2022	Civil	Rule to Vacate \$40	2022CV131010090	Chesterfield County Central Court
Atkinson, Randy	Plaintiff	2022CV131010099	09/16/2022	Disposed	10/11/2022	Civil	Rule to Vacate \$40	2022CV131010099	Chesterfield County Central Court
Atkinson, Randy	Plaintiff	2022CV131010097	09/16/2022	Settled	10/20/2022	Civil	Rule to Vacate \$40	2022CV131010097	Chesterfield County Central Court

By clicking on the case number, you should see information related to the tenant's case. Towards the top of the page, you should see the case name in big, bold, blue letters. You should also see case information (case number, case type, status, etc.). You can check the case's status (answer, dismissed, scheduled, etc.).

Chesterfield County  
Fourth Judicial Circuit  
Public Index

Chesterfield County Home Page South Carolina Judicial Department Home Page SC.GOV Home Page

Switch View

**Chesterfield County Farms Lic VS Drew Bittlesome**

Case Number: 2022CV13101064 Court Agency: Chesterfield County Central Court Filed Date: 10/17/2022

Case Type: Civil Case Sub Type: Rule to Vacate \$40 File Type:

Status: Pending Assigned Judge: Malton, John Kennedy

Disposition: Disposition Date:

Original Source Doc: Original Case #:

Judgment Number: Court Reporters:

Case Parties | Judgments | Tax Map Information | Associated Cases | Actions | Financials


Click the icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Bittlesome, Drew	436 Rudolph Sikes Road Paganland SC 29728				Defendant		10/17/2022
Chesterfield County Farms Lic	P O Box 811 Bennettsville SC 29812				Plaintiff		10/17/2022


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Below the case information, you should see a horizontal row of tabs that include Case Parties, Judgments, Tax Map Information, Associated Cases, Actions, and Financials. To access the service date, click on the "Actions" tab. A list of actions should appear. If the service date is posted, the word "service" should be under the "Description" column. The result may also show "Service of RTV" or something similar, like proof of service or notice/notification of service.

Check the “Begin Date” column, and that date should be the date that the Rule to Vacate or Show Cause was served on the tenant. In the Index, you may also see a “Description” that shows the date the Rule to Vacate or Show Cause was mailed.



**Richland County  
Fifth Judicial Circuit  
Public Index**



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Richland County Home Page Online Payments Public Index City of Columbia Municipal Ct S.G. Judicial Department Summary Ct Dockets

Switch View

**Howard E Mccartha vs Savannah Almy**

Case Number:	2022CV4010502573	Court Agency:	Dutch Fork Magistrate	Filed Date:	09/26/2022
Case Type:	Civil	Case Sub Type:	Rule to Vacate \$40	File Type:	
Status:	Scheduled	Assigned Judge:	Scott, Michael David	Disposition Judge:	
Disposition:		Disposition Date:		Disposition Judge:	
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

---

Case Parties | Judgments | Tax Map Information | Associated Cases | Actions | Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Mccartha, Howard E	Civil Court	Event		11/22/2022-15:00		
Mccartha, Howard E	Civil Court	Event		11/09/2022-11:00	11/22/2022-17:00	
Mccartha, Howard E	Archived Court Summons	Filing		11/09/2022-00:00		
Mccartha, Howard E	Archived Court Summons	Filing		10/26/2022-00:00		
Mccartha, Howard E	RTV	Filing		10/20/2022-00:00		
Mccartha, Howard E	Service/Posted Non Service RTV	Filing		10/20/2022-00:00		
Mccartha, Howard E	RTV	Action		10/16/2022-10:15		
Mccartha, Howard E	RTV Documents	Filing		09/26/2022-10:33		
Mccartha, Howard E	Archived RTV	Filing		09/26/2022-00:00		

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If the Public Index search yields unclear results for the date of service, caution the tenant that the tenant, unless the tenant is sure of when she was served with the Rule to Show Cause or Vacate, she should request a hearing as quickly as possible.

Please note that not every county posts a service date to the Public Index, but you can still search to see whether any information exists on the Public Index that can help the tenant. Additionally, you can walk the tenant through these steps so that the tenant can also use the Public Index.





### Appendix 8 – Rule to Vacate or Show Cause

Below is a sample of a blank Rule to Vacate or Show Cause that legally notifies a tenant to vacate or request a hearing.

STATE OF SOUTH CAROLINA ) ) COUNTY OF _____ )	_____ CIVIL CASE NUMBER IN THE MAGISTRATE'S COURT
_____ ) PLAINTIFF(S) ) VS. ) _____ ) DEFENDANT(S) )	RULE TO VACATE OR SHOW CAUSE (Eviction)

**TO [Defendant(s)]:** [Landlord] is asking this Court to evict you from the property located at \_\_\_\_\_, because they claim that:

- You have failed to pay rent when due or demanded in the amount of \$\_\_\_\_\_.
- The terms of your tenancy or occupancy have ended.
- You have violated the terms or conditions of your lease by: \_\_\_\_\_

You, \_\_\_\_\_, the defendant and lessee of the premises listed above, and all others are ordered to vacate the premises immediately pursuant to S.C. Code Ann. §27-37-10 **OR** to contact Magistrate \_\_\_\_\_, SC \_\_\_\_\_, PHONE: \_\_\_\_\_ within ten (10) days of receiving this notice, for the purpose of scheduling a hearing to show why you should not be evicted from these premises.

**FAILURE TO VACATE THE PREMISES OR RESPOND WITHIN TEN (10) DAYS MAY RESULT IN THE ISSUANCE OF A WRIT OF EJECTMENT.**

Dated: \_\_\_\_\_  
 \_\_\_\_\_  
**MAGISTRATE JUDGE**

Personally appeared before me, the undersigned deponent who, being duly sworn, says that s/he is a person over 18 years of age not a party or attorney in this action and that s/he attempted to serve the Rule to Vacate or Show Cause on [Defendant(s)] on the following dates/times:

	DATE	TIME	INITIALS	DATE OF SERVICE	
1.	_____	_____	_____	TIME OF SERVICE	_____
2.	_____	_____	_____	SETTLED/DATE	_____
3.	_____	_____	_____	VACANT/DATE	_____

SWORN to and Subscribed before me )  
 This \_\_\_\_\_ Day of \_\_\_\_\_, \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 \_\_\_\_\_ )  
**NOTARY PUBLIC OR JUDGE** )

\_\_\_\_\_  
**SIGNATURE OF SERVER**

On \_\_\_\_\_, I deposited a copy of this document in the United States Mail in an envelope addressed to the Defendant(s) above with first class postage affixed thereto.