



**OPINIONS**  
**OF**  
**THE SUPREME COURT**  
**AND**  
**COURT OF APPEALS**  
**OF**  
**SOUTH CAROLINA**

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**ADVANCE SHEET NO. 5**

**January 30, 2006**  
**Daniel E. Shearouse, Clerk**  
**Columbia, South Carolina**  
[www.sccourts.org](http://www.sccourts.org)

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2005-UP-556-Russell Corp. v. Gregg	Pending

**THE STATE OF SOUTH CAROLINA**  
**In The Supreme Court**

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In the Matter of Newberry  
County Magistrate Mark E.  
English, Respondent.

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Opinion No. 26100  
Submitted January 4, 2006 – Filed January 23, 2006

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**PUBLIC REPRIMAND**

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Henry B. Richardson, Jr., Disciplinary Counsel, of Columbia, for  
the Office of Disciplinary Counsel.

Mark E. English, of Newberry, pro se.

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**PER CURIAM:** In this judicial disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RJDE, Rule 502, SCACR. In the agreement, respondent admits misconduct and consents to the imposition of an admonition, public reprimand, or a definite suspension for thirty (30) days pursuant to Rule 7(b), RJDE, Rule 502, SCACR. The facts as set forth in the agreement are as follows.

**FACTS**

At the time of the submission of the agreement and, on the occasion of the occurrences discussed hereafter, respondent was a



Newberry County magistrate. Respondent has since tendered his resignation as a Newberry County Magistrate effective at midnight on December 31, 2005.

### Matter I

For quite some time and long prior to respondent's magisterial appointment, it was standard practice in the Newberry County Magistrate's Court for a representative of the Sheriff's Department to appear at bench trials in criminal cases in lieu of the appearance of the arresting officer and/or complaining witness(es) and to have the Sheriff's Department representative (who had no first hand knowledge of the case) testify for the State by reading the information from the incident report. If the defendant contested the charge, the case would be continued until the arresting officer and/or the complaining witness(es) could be present.<sup>1</sup> Respondent represents he followed the procedure described above as it was used by his predecessors and other Newberry County magistrates.

After discussing the Newberry County Magistrate Court's procedure and related legal principles with ODC, respondent now recognizes that the Magistrate's Court was, in effect, depriving pro se defendants of the constitutionally guaranteed right to confront their accusers. Respondent warrants that, in the future, he will cease allowing defendants to plead guilty or be convicted solely on the basis of incident reports.

ODC does not contend that it is judicial misconduct for a judge to allow hearsay testimony into a proceeding where there is no objection, even in cases where a defendant is pro se, but, instead, contends that fundamental principles of jurisprudence require some

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<sup>1</sup>The Newberry County Magistrate's Court recognized that, if the defendant was represented by counsel, counsel would likely offer a hearsay objection to the admission of information in the incident report (unless the report was introduced by the officer who prepared the report) and the objection would have to be sustained.































































**THE STATE OF SOUTH CAROLINA**  
**In The Supreme Court**

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Marty K. Avant, Employee,                      Claimant,

v.

Willowglen Academy,  
Employer, and United  
Heartland and Travelers  
Property Casualty Co., Carriers,  
of which United Heartland is              Petitioner,  
  
and Travelers Property  
Casualty Co. is                                      Respondent.

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ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

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Appeal From Williamsburg County  
L. Henry McKellar, Circuit Court Judge

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Opinion No. 26102  
Heard October 18, 2005 – Filed January 30, 2006

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**AFFIRMED**

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Roy A. Howell, III and Kirsten L. Barr, both of Trask & Howell,  
LLC, of Mount Pleasant, for Petitioner.

Johnnie W. Baxley, III, of Wilson, Jones, Carter & Baxley, LLC, of  
Mt. Pleasant, for Respondent.









The General Assembly has delegated certain authority over assigned-risk insurance to the Director of the Department of Insurance.<sup>3</sup> South Carolina Code section 38-73-540(A)(1)<sup>4</sup> states that “any mechanism designed to implement” the assigned-risk agreement executed by the state’s insurers “must be submitted in writing to the director or his designee for approval prior to use, together with such additional information as the director or his designee may reasonably require.” The Code does not require that the implementation mechanism be promulgated as a regulation. Rather, the mechanism attains the force of law when it is approved by the Director of the Department of Insurance.

Moreover, the provisions of the Plan prevail over the workers’ compensation regulations. Code section 38-73-540 specifically addresses assigned-risk insurance and the mechanism for implementing assigned-risk agreements, whereas the regulations address workers’ compensation generally. The principle that more specific rules prevail over general ones applies, and the Plan is the product of a more specific statute. See Mims v. Alston, 312 S.C. 311, 313, 440 S.E.2d 357, 358-59 (1994) (applying the principle). The Plan controls with respect to issues it addresses.

In comparison, the Court of Appeals held that the Plan “should be read in conjunction with [the Workers’ Compensation Act] and its regulations and be accorded effect under the facts of this case given [the Plan] addresses matters where the Act is silent.” Avant, 356 S.C. at 189, 588 S.E.2d at 129 (quoted with approval in Rodriguez, 363 S.C. at 88, 610 S.E.2d at 492). Because this passage could be interpreted to mean that the Plan fills gaps in the workers’ compensation regulations, we clarify that the regulations fill gaps in the Plan. As discussed below, the Plan resolves the issues in this case, so there is no need to resort to the workers’ compensation regulations.

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<sup>3</sup> Whether the delegation is lawful is not an issue before us.

<sup>4</sup> S.C. Code Ann. § 38-73-540(A)(1) (2002).

































**THE STATE OF SOUTH CAROLINA**  
**In The Court of Appeals**

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Civil Action No.: 2001-CP-32-  
0711 Carolina Water Service,  
Inc., Appellant,

v.

Lexington County Joint  
Municipal Water and Sewer  
Commission, Respondent.

Civil Action No.: 2001-CP-32-  
0819 Town of Lexington, Appellant,

v.

Lexington County Joint  
Municipal Water and Sewer  
Commission, Respondent.

Civil Action No.: 2001-CP-32-  
1527 Carolina Water Service,  
Inc., Appellant,

v.

Lexington County Joint  
Municipal Water and Sewer  
Commission, Respondent.

Civil Action No.: 2001-CP-32-  
1534 Town of Lexington, Appellant,

v.





























































