

Frequently Asked Questions (FAQs) in South Carolina Circuit and Family Courts

WARNING: You are strongly encouraged to seek the advice of an attorney in any legal matter. If you move forward without an attorney, it may negatively affect your legal rights. If you have questions about your legal rights or the law that affects your case, please talk with an attorney.

DISCLAIMER: The general information provided in these FAQs is not legal advice, cannot be cited as legal authority, and cannot replace the advice of an attorney licensed in South Carolina. The information in these FAQs is accurate as of the date of publication. If you decide to bring a lawsuit in a South Carolina court without an attorney, you are responsible for researching the law on your own. Please note that the presiding judge in each case decides what law applies in that case.

General Questions:

Do I need an attorney?

The law allows you to represent yourself as an individual in court. However, the laws and rules that govern courts can be complicated. Only an attorney can advise you of your legal rights, provide legal advice, and act on your behalf.

If you choose to proceed without an attorney, court officials and court clerks cannot give you legal advice or advise you on how to prepare your legal documents. You will need to do your own research in order to prepare your case.

Can you refer me to an attorney?

No, but we can provide the number of the South Carolina Bar Lawyer Referral Service at 1-800-868-2284 (toll free) and South

Carolina Legal Services Telephone Intake Service (LATIS) at 1-888-346-5592 (toll free).

Do you have forms I can fill out for my case?

The court-approved forms and packets are available online at:

- <http://www.sccourts.org/forms>
- <http://www.sccourts.org/forms/indexSelfHelp.cfm>.

What are the filing fees?

The filing fee for a new case or action is \$150.00. The filing fee for any additional written motion is \$25.00 each. A motion is a formal request, usually in writing, asking a judge to issue an order or ruling in a lawsuit.

What if I cannot afford to pay the \$150.00 filing fee?

If you cannot afford to pay the initial \$150 filing fee, you may file a motion called the “Motion and Affidavit to Proceed *In Forma Pauperis*” asking the judge to waive the filing fees. You must file this motion along with the Complaint you are trying to file. [Rule 3\(b\) of the South Carolina Rules of Civil Procedure](#) provides general information about filing *In Forma Pauperis*. You can find Rule 3(b), SCRCF [online](#).

- If your case is a civil case in the Circuit Court, the “Motion and Affidavit to Proceed *In Forma Pauperis*” form is [SCCA405CP](#).
- If your case is a Family Court case, the “Motion and Affidavit to Proceed *In Forma Pauperis*” form is [SCCA405F](#).

You must have your “Motion and Affidavit to Proceed *In Forma Pauperis*” notarized. **When you sign this motion in front of the notary, you are swearing under oath that you cannot pay the fees.**

The judge may or may not grant your motion.

- If the judge grants your motion, then you do not have to pay filing fees, but you are still responsible for other court costs, including court reporter's costs and copying costs.
- If the judge does not grant your motion, you may have to pay the filing fee at your hearing or trial.

Do I have to appear in court?

If you receive a Subpoena or a "Rule To Show Cause" to appear in court, then you **must** appear in Court.

In all cases it is in your best interest to go to your trial or hearing. If you do not appear, you may lose your case because you are not there. You cannot appeal if you lose your case because you did not show up.

What do I say in court?

When you appear in Court, listen carefully to the judge and ask the judge's permission before you speak. You must stand when speaking to the judge, unless you are physically unable. When you speak to the judge, start by saying "Your Honor." Always speak directly to the judge, and speak loudly and clearly.

Remember that only one person can speak at a time. Avoid arguing or interrupting another person. Control your emotions as much as possible.

- Don't talk while other people are talking in court.
- Don't shake your head or sigh loudly when you don't like what somebody else says. You will have your chance to talk.
- When it's your turn to talk, stay calm.

- Talk loudly enough for everyone to hear you. Remember that the court reporter is making a written record of what you say.
- Don't yell or curse.

What do I wear to court?

You do not need to buy new clothing for court, but dress respectfully.

- Don't wear shorts, short skirts, flip flops, low-cuts tops, sleeveless shirts, or shirts with inappropriate words or images on them.
- Dress neatly.

Are there any additional things I need to know before I appear in court?

- Don't wear a hat or head covering in the courtroom, unless for religious or medical reasons.
- Don't drink, eat, smoke, or chew gum while in the courtroom.
- Don't bring drugs or alcohol into the courthouse. Don't use drugs or alcohol before you come to court.
- Don't bring guns, knives, or any other kind of weapon to court with you. Please note that there are metal detectors at the courthouses and deputies will search your bags when you go through the security check-point.
- Don't bring your cell phone or electronic devices such as blackberries, iPods and other MP3 players to court. Some counties prohibit them in Court and will hold them in a room while you are in court. If you are allowed to bring your cell phone to the court, turn it off before you walk into

the courtroom. If your phone rings or disturbs the proceedings, court officials may take your device and you may have to pay a fine.

- Arrive on time.
- Arrange for childcare prior to coming to court.
- Encourage all witnesses to arrive early for the hearing or trial.
- Bring all evidence you intend to present.
- Stand up when the judge enters or leaves the room and remain standing until the judge leaves or says you can sit down.
- Because each county is different, make sure you follow any additional rules specific to that court.

Who is the judge in my case?

The judge's name becomes available during each week of court.

May I speak with the judge in my case?

Judges cannot talk with you about your case unless all sides are present. Therefore, the **only** time to speak to a judge is during your hearing or trial.

What is a docket?

The docket is the list of cases to be tried in a certain timeframe.

When will my case be heard?

It is difficult to determine when your case will be scheduled for trial. Many factors determine when a case will go to trial: the number of parties involved; the complexity of the issue(s); the

time it takes for each side to investigate the claims; and the number of cases already on the court's docket.

Rule 40 of the South Carolina Rules of Civil Procedure provides general information about the times for trials. You can find [Rule 40 of the South Carolina Rules of Civil Procedure online](#).

How do I get copies of files?

The Clerk of Court's office has your case file. You will need to contact the Clerk of Court's office in the county where the trial was held for copies. They will make copies of the file for you for a fee.

NOTE: If you would like a copy of a transcript, you must contact the court reporter. The court reporter will make a copy of the transcript for you for a fee.

Circuit Court: Frequently Asked Questions

Should I file in Magistrate or Circuit Court?

State law states that if the amount in controversy is \$7,500 or less, then that action belongs in Magistrate Court. If the amount is more than \$7,500, then that action must be filed in Circuit Court.

How do I file a Summons and Complaint?

If you would like to file a new legal action, then you must file a Summons and Complaint. A Summons and Complaint are legal documents that start a legal action. A Summons lets the individual know that he/she needs to answer the Complaint. A Complaint explains what happened or why the person is suing. An example Summons is available [online](#). There is not an example Complaint available online. Once you file the Summons and Complaint, you become the “Plaintiff” in the action.

Rule 8(a) of the South Carolina Rules of Civil Procedure provides information about what needs to be included in a Complaint. You can find Rule 8(a) of the South Carolina Rules of Civil Procedure [online](#).

To file a Summons and Complaint, you will need to:

- Complete a Civil Action Coversheet which is available [online](#); and
- Give the Clerk of Court the original Summons and Complaint for filing; and

- Complete Service of Process for each person being sued; and
- Keep a copy of the Summons and Complaint for your file; and
- Pay a Filing Fee of \$150.00 by money order or cash. Some counties accept credit cards. Please check with your County Clerk of Court to find out how to pay.

How do I “serve” papers?

After you have properly filed the Summons and Complaint with the court, you are ready to serve papers. Serving papers is also known as service of process. Service of process is necessary because it lets the opposing party know that he or she is being sued.

When the opposing party is served, they receive a copy of the Coversheet, Summons, and Complaint. [Rules 4 and 5 of the South Carolina Rules of Civil Procedure](#) covers Service of Process.

Service of Process can be done in one of four ways:

- 1) **Sheriff’s Department:** The Sheriff’s Department in the county where each Defendant lives or works can serve process for you. A list of the South Carolina Sheriffs’ Departments and their addresses can be found at www.sheriffsc.com. There will be a fee associated with this service unless the court has granted your *In Forma Pauperis* motion.

After the sheriff or deputy serves the papers, he or she must complete a notarized affidavit that the party has or has not been served and return it to you. File the original affidavit with the Clerk of Court’s office where the case is filed. If the

sheriff or deputy was unable to serve the party, you can attempt to serve by another method.

- 2) **Private Process Server:** You can find a list of private process servers in the telephone book. A private process server will charge a fee to serve papers.

After the process server serves the papers, he or she must prepare an affidavit that they completed service of process. This affidavit must be notarized. File the affidavit with the Clerk of Court's office where the case is filed.

- 3) **U.S. Mail:** You can send the papers you wish to serve by Certified Mail, Restricted Delivery, Return Receipt Requested. After you get the return receipt card (green card) back from the U.S. Post Office, you should complete an affidavit in front of a notary that states the date you mailed the documents and the address you used. If this case is a Family Court case, you can use the "Affidavit of Mailing" form found at [SCCA406](#). The notary must witness you sign the affidavit or "Affidavit of Mailing."

Attach the return receipt card (green card) to the notarized affidavit or "Affidavit of Mailing" and file it with the Clerk of Court's office.

If you do not receive a return receipt card (green card) back or it is returned unsigned, you can try to serve the opposing party by another method.

- 4) **Publication:** After you have tried and been unable to serve someone by the County Sheriff's Department, private process server, **and** U.S. Mail, you may prepare and file a "Petition for Order by Publication." For more information, see the next question.

How do I serve someone when I don't know where they live?

The South Carolina Code provides information about how to complete service of process when you do not know where someone lives. This section is called "Service By Publication Or Out Of State," and it starts at S.C. Code Ann. [§ 15-9-710](#).

After you have tried and been unable to serve someone by U.S. Mail, private process server, **and** by the County Sheriff's Department, you may prepare and file a "Petition for Order by Publication" with the Court. When you file this Petition, you are asking the Court to allow you to put a notice in the newspaper that will alert the person who you are trying to sue that you have tried to serve papers on them by all three of these methods:

1. United States Certified Mail Restricted Delivery; and
2. Personal delivery by a private process server to the last known address; and
3. Personal delivery by the County Sheriff Department in the county where the person lived last.

If the Court agrees that you have done a good job of attempting service, also known as "due diligence," then the Court will sign an "Order for Service by Publication." This Order gives you permission to announce the suit in a specific newspaper. This is known as "Service by Publication."

What do I do if I am served with a Summons and Complaint?

If you are served with a Summons and Complaint, then you are being sued and you are known as the "Defendant." Make sure you read through the Summons and Complaint very carefully. Do what the Summons says. You must typically prepare an

Answer, which is a legal document that responds to the Summons and Complaint.

NOTE: There are certain motions that can be made in place of an Answer. Please review the South Carolina Rules of Civil Procedure to determine if one of these motions is right for your case.

When do I need to file an Answer?

You must serve a copy of the Answer on the people who sued you, or their lawyer if they are represented, **no later than 30 days** after you receive the Summons and Complaint. You must file the original with the Clerk of Court's office where the Complaint was originally filed. Keep a copy for yourself.

NOTE: At the top of the Complaint, you will see a number that starts XX-CP-XX-XXXX. Make sure you put the same number on the Answer. [Rule 8\(b\) of the S.C. Rules of Civil Procedure](#) contains additional information about what needs to be included in an Answer.

How do I file a judgment from Magistrate's Court?

To file a judgment from Magistrate's Court, you need the original transcript or the original paperwork from the magistrate judge who heard your case.

File the original transcript or original paperwork with the Clerk of Court's office in the same county and pay a \$10.00 filing fee.

How do I file a Foreign Judgment?

A Foreign Judgment is a judgment from a court outside South Carolina.

The South Carolina Code provides information about how to file a foreign judgment. This section of the South Carolina Code is called “Uniform Enforcement of Foreign Judgments,” and it starts at S.C. Code Ann. [§ 15-35-900](#).

To file a Foreign Judgment:

- You need to pay a \$150.00 filing fee; and
- You need to complete a Civil Action Coversheet which is available [online](#); and
- You will need an Authenticated Copy, also known as an Exemplified Copy, of the judgment from the original court. **NOTE:** A certified copy is not enough. When you contact the original court, ask for an Authenticated or Exemplified Copy; and
- You will need to make a written affidavit or sworn statement stating all of the following:
 - 1) The “Judgment is Final,” which means that the case is over with; and
 - 2) The Judgment “Remains Unsatisfied,” which means the judgment has not been paid; and
 - 3) The judgment is “Not Contested,” which means that no further action is pending and it is not on Appeal.
- You will also need to serve the papers on the debtor, the person who owes the debt.

How do I collect an unpaid judgment?

An Execution of Judgment is the document that allows the Sheriff's Department to try to collect the judgment.

The South Carolina Code provides information about how to execute a judgment. This section of the South Carolina Code is called “Executions and Judicial Sales Generally,” and it starts at S.C. Code Ann. [§ 15-39-10](#).

After a judgment has been on file in the Clerk of Court's office for 10 days, you may prepare an Execution of Judgment. There is not a set form for an Execution of Judgment. The Clerk of Court must sign the Execution of Judgment.

Take the original to the Civil Service Department or Division of the Sheriff's office for service.

NOTE: If there is an appeal in your case and a court has granted a “stay,” you may not be able to execute your judgment.

Family Court: Frequently Asked Questions

How do I get an increase in child support?

If your case is a South Carolina Department of Social Services (DSS) case, contact the DSS Child Support Enforcement Division. In all other cases, you must file a “Support Complaint” ([SCCA431](#)), check the box marked “increase support,” and pay the \$150 filing fee.

How can I reduce my child support payments?

If you have had a substantial change in circumstances and would like to ask the Court to reduce your child support payments, you can file a “Support Reduction Complaint” ([SCCA451](#)). You must serve the Family Court Coversheet, the Support Reduction Complaint, Summons and Notice, Financial Declaration and Verification on the custodial parent. You must also pay the \$150 filing fee.

When can I stop paying child support?

You may stop paying child support when you receive a signed order from a family court judge ending your responsibility to pay child support.

You can request to stop your child support payments because your child is emancipated (e.g., your child has turned 18, is married, becomes self-supporting, etc.). Emancipation is defined by S.C. Code Ann. [§ 63-3-530\(17\)](#). You must provide the Court with proof of emancipation, which may include a birth certificate, marriage license, graduation commencement program, etc.

NOTE: In some counties you may have to file a “Motion and Affidavit in Support of Termination of Child Support Based on Emancipation” ([SCCA440](#)) along with the

documentation. This form is available on the South Carolina Judicial Department's website, www.sccourts.org.

If you are requesting to stop your child support payments because you have reconciled with the Custodial Parent, the Custodial Parent can file a Motion and Order to Dismiss Support ([SCCA442](#)), but **only** if money is not owed to the State for prior public assistance (welfare/Medicaid). If funds are owed to the State, the Custodial Parent should contact his/her DSS Case Worker.

How do I get custody of my child?

Getting custody of a child is a complex and difficult legal process. You are strongly urged to speak to an attorney regarding any custody issues. The section of the South Carolina Code that explains custody is called "Child Custody and Visitation," and it begins at S.C. Code Ann. [§ 63-15-10](#).

How do I get or modify visitation?

To get "Visitation" or a "Modification of Visitation" requires paperwork filed in the Family Court. The paperwork includes a Family Court Coversheet, Summons, and Complaint, and you must pay a \$150 fee to file it with the Court. You must also follow the South Carolina Rules of Civil Procedure to serve the Summons and Complaint on the defendant properly.

If you still have questions, additional contacts include:

- The South Carolina Bar's Lawyer Referral Service (LRS) at **1-800-868-2284** statewide (toll free), **(803) 799-7100** (Richland and Lexington Counties) or online at http://www.sccourts.org/public_services/find_a_lawyer/lrs/;
- The South Carolina Legal Aid Telephone Intake Service (LATIS) at **1-888-346-5592** (toll free); or

- The South Carolina Center for Fathers and Families at <http://www.scfathersandfamilies.com/>

How do I file for divorce?

To protect your legal rights, you are strongly urged to talk with an attorney if you plan to file for divorce. If you choose to file for divorce without an attorney, the South Carolina Supreme Court has approved the “Self-Represented Litigant Simple Divorce Packet.” The packet with instructions is available online at:

<http://www.sccourts.org/forms/indexSRLdivorcepacket.cfm>.

Please read the instruction in the divorce packet carefully to determine if the packet is appropriate for your situation. Keep in mind that you will be required to pay the \$150 filing fee when you file for divorce.

NOTE: Some counties require mediation, which is a process that encourages communication between the parties so they can reach an agreement. The Family Court Coversheet includes a list of counties that require mediation.

How do I get an emergency hearing if my case involves domestic abuse?

Judges can grant emergency hearings in many types of family court actions. If your case involves domestic abuse, you must file a “Petition for Order of Protection” ([SCCA425](#)), which can be found at the Clerk of Court’s office or on the South Carolina Judicial Department’s website:

<http://www.sccourts.org/forms/searchFormTitle.cfm>.

On Page 2 of the “Petition for Order of Protection,” check box “L” which reads “hold an emergency hearing within 24 hours.” You do not have to pay a fee to file this petition.

NOTE: Some counties have domestic violence shelters and organizations to help you complete this process. Check with your local law enforcement office or South Carolina Coalition Against Domestic Violence and Sexual Assault (SCCADVASA) at:
<http://www.sccadvasa.org/members.aspx>.

How do I file for a name change for my child or myself?

The requirements for name change are found at S.C. Code Ann. [§ 15-49-20](#). In the case of name change for a minor child, you should consult an attorney. In all other cases, you must file an action for a name change by filing the Family Court Coversheet and paying the \$150 filing fee. You must also provide the Court with the following documents:

- The results of a fingerprint and criminal background check by the South Carolina Law Enforcement Division (SLED); and
- A sworn statement or affidavit stating whether you are under an order to pay child support or alimony; and
- A screening statement from SLED stating whether you are on the sex offender registry; and
- A screening statement from DSS stating whether you are on the Central Registry on Child Abuse and Neglect.

How can I get DNA testing?

If you need a DNA test to establish paternity in a child support matter, you may contact the DSS Office of Child Support Enforcement for assistance. Otherwise, there are several locations in South Carolina where you can have a DNA test. Contact your local health department to learn where you can get the test. Often there is a fee for this service.

Has a bench or arrest warrant been taken out on me?

Check with your local law enforcement office or visit your county Clerk of Court's office to learn if a bench or arrest warrant was issued against you.

Resources

- If you do not understand the information in these FAQs, you may want to contact an attorney.
- To find an attorney who practices law in this area, please contact the South Carolina Bar's Lawyer Referral Service (LRS) at 1-800-868-2284 (toll free). LRS offers a referral by the location and by type of law. The lawyers who sign up with LRS are in good standing with the South Carolina Bar and must maintain malpractice insurance coverage. The lawyers also agree to a 30-minute consultation for no more than \$50. After the 30-minute consultation, the fees will be the lawyers' normal fees. Once you receive a referral, you will be expected to contact the lawyer by telephone to make an appointment.
- If you cannot afford an attorney, you may contact the South Carolina Legal Aid Telephone Intake Service (LATIS) at **1-888-346-5592** (toll free) or **803-744-9430** (Columbia area). Eligibility for assistance will depend on your income and assets and the type of problem you have. The income limit to be eligible for LATIS is 125% of the Federal poverty level, which changes every year in April. There is also an asset (money in bank accounts, property, etc.) limit. Additionally, the problem you have must be within the list of problems with which LATIS can help.