

## **Frequently Asked Questions (FAQs) in South Carolina Circuit 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.

### **Circuit Court 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. [Rule 4](#) and [Rule 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 <http://sheriffsc.org>. 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 \$100.00 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.

## 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.