

## CHAPTER 1 General Office Procedures

### 1.1 Opening and Distribution of Mail

The objective of an efficient mail receiving operation is to sort, open and distribute mail as quickly and accurately as possible. To promote consistency, you may wish to formulate a written policy or guidelines clearly informing staff of mail protocol. Instructions for the following should be included:

Identification of any mail that **should not be opened**, such as items marked "**personal**" / "**confidential**".

Retention of envelopes.

Date and time stamping of mail.

The proper processing of checks/cash.

Return/forwarding of mail sent to the clerk's office in error.

### 1.2 File Stamping

All papers filed with the Clerk of Court must be file stamped to provide a record of when the document was received. Because the date and time of filing can be important to subsequent events, this information must be posted clearly on the documents. This procedure must be accomplished by using an electric date and time stamp machine or a hand stamp. Care should be taken so that the stamp does not cover any of the typed or written material in the document.

### 1.3 Receipt of Initiating and Other Documents

**1.3.1 Initiating Documents** - Depending on the type of action, these will include:

Review for appropriate format and required signatures.

Verify that the documents filed are originals. Reference: S.C. Code §14-17-510.

Verify that appropriate fees are attached pursuant to § 8-21-310 and §14-1-204.

File stamp the document (and copies, if attached).

Assign a case number (see **Assigning Case Numbers**) and enter information on computer system

Return the copy (ies) of the filed document, if provided by attorney or relevant party, with the case number added, to the attorney or party who filed the papers. If certified copies are requested, prepare them as noted in Preparing Copies.

### 1.3.2 Subsequent Documents

Once a new case has been filed, other pleadings and papers will be received in connection with that case. Some examples include: answer, counterclaim, motions, affidavits and correspondence. Documents are usually filed directly with the Clerk of Court, although from time to time documents may be presented directly to the court, to be delivered to the clerk for filing as soon as possible following such presentation. The filing of each document must be recorded before being added to the case jacket.

Review the document for appropriate format and required signatures.

submitting it and request that this information be provided. Some courts, where filings are light, may elect to look up case numbers or call the attorney for the information.

Verify that the document is an original and that sufficient copies, if required, are provided (see **Chapter 5**, **Chapter 6** and **Chapter 7** for specific requirements in criminal, civil and Family Court matters).

If a fee is required (example: lis pendens, not filed with the original papers) verify that the fee is attached.

Make copies of the documents and distribute as required (see **Chapter 5**, **Chapter 6** and **Chapter 7** for distribution in criminal, civil and Family Court matters).

Record filing in CMS..

If the document modifies any information previously reported to Court Administration in CMS, record the changed information on the computer system and transmit the modified information via electronic transfer to Court Administration.

## 1.4 Financial Aspects of Case Initiation

It is critical for personnel who receive and process case initiating documents to readily recognize the case type and associated filing fees or other costs that must be collected at the commencement of the case. Attorneys who regularly practice in the court are well aware of the required filing fees, but it is still incumbent on the clerk's office to verify the appropriate amount. Following such verification, one of the following actions will occur: issuance of a receipt, posting of the amount to the attorney's individual account, or passing the remittance to the bookkeeper for receipt and posting. In rare instances, filing fees may be waived (**Chapter 7** and **Chapter 8**).

### 1.4.1 Receipts

Depending upon local practice, receipts for filing fees may be prepared by the case processing clerk or a cashier. In larger courts, the issuance of receipts for all funds in the clerk's office is often centralized in a cashing operation to ensure consistent and accurate accounting procedures are followed.

Insure that the amount remitted is the correct amount. If an underpayment is received, it is strongly recommended that the document not be filed until the appropriate fee or an order granting a motion for leave to proceed in forma pauperis is provided. Return the document to the person intending to file it and inform them of the appropriate filing fee. (See also **6.3.1**)

If an overpayment is received, the clerk may accept the filing and return the excess amount. In the alternative, the entire payment may be returned with a request for the correct amount to be remitted. You may wish to consult with your county treasurer as to the preferred method in your county.

Prepare the receipt - receipts should be pre-numbered or computer-generated. The minimum information acceptable is: date, amount, case number, and from whom received. Additional information which may be desired is: case name, form of payment, check number and the initials of the staff person issuing the receipt.

Annotate the case number and/or receipt number on the check.

Stamp the backs of all checks before depositing.

### 1.4.2 Attorney Accounts

Fees should be remitted for each case when filed. Some counties, however, permit attorneys and law firms to accumulate filing fees based on ledger cards or books kept by the clerk's office. Periodic bills for the accumulated amount are prepared and sent to the firms. Although this practice is strongly discouraged, if it is the local practice, it is important to keep timely records and to ensure that the procedure is understood by all parties. Abuses such as delayed payment after billing should not be tolerated.

## 1.5 Assigning Case Numbers

In 1974 a uniform case numbering system was adopted for cases filed in South Carolina courts. Each case number identifies the year (two digits), court (CP, GS, DR, or JU), county (numeric code) and sequential number of that case within a given calendar year. For example, case number 2012-CP-40-000147 would be the 147th Common Pleas case filed during 2012 in Richland County (#40 on the county code list). (See **Chapter 7** for County Code List.)

Case numbers are assigned when a case initiating document is filed. The case number is entered on the original and all copies of that document returned to the filing attorney or party. It is crucial that careful control be exerted over the assignment of case numbers so that no two cases are given the same number and that no case number is skipped.

New case numbers are **not** assigned to cases that are continued. (See **Chapters 5, 6 and 7** for criminal, civil and Family Court situations.)

Cases remanded from the Court of Appeals, Supreme Court or Bankruptcy Court for re-trial in Common Pleas, General Sessions or Family Court retain the original case number and are restored using the restored date process in CMS and FCCMS.

CMS can assign numbers as new case information is entered on the system.

## 1.6 Establishing and Maintaining Case Jackets

The case file folder, or case jacket, is the central repository for all documents filed in a court case. It is important to establish an active filing system that provides ready access to files when needed. This affords appropriate security and ensures positive file control whenever case jackets are removed from the clerk's office by other court staff or judges.

### 1.6.1 Case Jackets

There is no standard for the case jacket used in the clerk's offices and a wide variety of folders and envelopes are used. The jacket and other filing supplies should be selected based on the envisioned use of the file throughout the life of the court case. The folder should be of a suitable weight considering the amount of handling envisioned. At the very least, the folder should be of letter size because **Rule 10(d)** of the South Carolina Rules of Civil Procedure requires letter size (8-½" x 11") documents to be filed in the courts. Legal size filing equipment can usually be easily modified to accommodate orderly filing of letter size folders. Folders may be color coded by case type or be of the standard manila color and color coded with tabs. File folders should have a factory installed two inch file fastener normally in the number two position. Only the amount of material the folder is designed for (one-half to three-fourths of an inch) should be placed in a folder before a second folder is initiated. Capacity is determined by the "score" marks on the lower front of the folder. Pre-numbered file folders are desirable if the quantity of each case type can be estimated for the year. The case title can be typed on a self-adhesive label and be placed on the front of the folder.

Comment: Some courts use extensive amounts of printing on case jackets and often these data blocks are ignored or not consistently used. Placing notes and annotations on the front of the jacket does provide a quick review of case status, however, such notes and annotations should not be considered an official record. Entries on the face of the folder should be made consistently.

### Tasks:

Select the next pre-numbered case jacket.

Affix self adhesive label with case name to the upper right hand corner of the jacket.

Place case initiating documents on file fastener.

### 1.6.2 Placing Subsequent Documents in the Case Jacket

A document should be placed in the jacket immediately or within one day after receipt. If an office images and indexes documents, the time frame should be completed within 3 business days for the documents to be placed in the file. Procedures should ensure accurate and consistent filing.

#### Tasks:

Check for the correct case name and number.

If a clerk's initials are required after performing a function such as indexing or docketing, check for the initials.

Fasten the case papers in the jacket according to the filing date, the most recent on top. (Reverse chronological order is normally preferred because the items that are most frequently reviewed are the items most recently filed.)

Insert a cross-reference sheet in the case jacket to note the location of papers and exhibits that are filed in a special location, such as confidential, financial statement, psychological reports, etc.

If an additional jacket is needed due to the volume of material, place the same case number on the second jacket and designate it as Number 2 of 2 and place it behind the first jacket which should then be marked Number 1 of 2.

### 1.6.3 Jacket Control

Access to the case jacket by non-clerical personnel should be established in written procedures that are carefully monitored and enforced by all court personnel. Not being able to find a jacket when needed is one of the most frustrating--but correctable--problems facing courts. Case jackets, except sealed and confidential files, are generally public records and may be made available to the public. The following guidelines for making records available are recommended:

#### Tasks:

Fulfill a request to see a record only if the requesting party knows the name of the case or case number. (Any other requests, such as for general research, should be granted only with the approval of the clerk or deputy, in accordance with any special requirements.)

Case jackets (i.e. case file folders) should be viewed by the public or parties only in the Clerk of Court office suite. They should not be removed from the clerk of court office suite.

Confidential cases can be reviewed in the clerk's office only by persons allowed access.

Jacket control should be enforced by consistently replacing the checked out jacket with an out card or an out folder. (This device indicates exactly who has the case jacket and when they took it.) CMS also provides a mechanism for tracking case files.

For specific policies on Information Access see section **1.13**.

### 1.6.4 Active Filing System

There are several options to consider concerning how active court cases are filed, what equipment to use, and the location and arrangement of the filing equipment in the office.

The most common filing system for court cases is a sequential arrangement by case number and year. Some courts, however, strictly separate active cases and disposed cases. The system to be used should be worked out for each case type based on the most efficient method for each clerk's office.

**Tasks:**

Define who in the clerk's office (or others) can pull case jackets.

Define and limit the persons responsible for refiling. (Refiling should be controlled to reduce misfiling.)

**1.6.5 Inactive Records Storage**

Once case records are closed and considered for moving to an inactive record storage area, they are normally removed from filing equipment and boxed. Immediate access required for the active jackets is not required once records have been closed for a short period of time except for cases entered on the judgment roll. Those cases for which a judgment is not enrolled should be considered for storage in an inactive storage area.

**Tasks:**

Box case jackets.

Clearly label boxes. (Include case numbers, date boxed, retention code, assigned shelf space number.)

Move boxed records to inactive storage location.

When a jacket is retrieved from a box, replace it with a cross reference sheet or out card with date removed and purpose, i.e., review or reopened.

Replace jackets in same place in box upon completion of review or new disposition.

**1.7 Judicial Case Management System and Data Transmission**

South Carolina's Circuit and Family Courts employee automated case management systems to maintain the court's records and to transmit caseload information to the South Carolina Judicial Department as required by Rule 78(a), SCRPC. In the past, physical docket sheets were used to record case information and transmit data; however, automated case management systems have eliminated the need for docket sheets. The statewide implementation of the Judicial Case Management System in the Circuit and Magistrate Courts was completed in 2011. Every clerk of court in South Carolina now records its Circuit Court records through the uniform system. Family Court records are maintained by several different automated system vendors. For the purpose of having a common reference, the electronic case record of the Judicial Case Management System used by the Circuit Courts will be referred to within the manual as CMS, and the electronic case record of a Family Court automated case management system will be referred to as EDS.

The CMS and EDS will provide the process for clerks of court to report data to Court Administration. Ideally, data should be transmitted on a daily basis; however, local procedures will determine who and how often data is transmitted. Data should be transmitted at a minimum of once a month.

**1.8 Preparing and Distributing Notices**

Throughout the life of all court cases, the clerk's office is the focal point for communication of planned and scheduled events. Proper and timely communication to the parties, witnesses, counsel, and concerned agencies is crucial to the functioning of the judicial system. The attorneys representing parties and the solicitor have primary responsibility for the preparation, distribution or service of notices for hearings and trials. It may often be necessary to give appropriate and accurate information to pro se litigants so that the process and procedures for noticing are followed correctly.

NOTE: In some types of cases when the parties cannot be found after diligent efforts, service by publication in the local newspaper can be made. Requirements for proof of service by publication are specified in **Rule 4**

Time standards specify periods of time within which certain actions must occur. By using time standards, the courts can determine how long cases are taking to reach disposition and identify cases that are not progressing in a normal fashion. Failure to comply with these standards has varying effects on different types of cases.

### The following standards are in effect in South Carolina:

#### 1.9.1 Arrest Warrants

Pursuant to **Rule 3(a)** of the SC Rules of Criminal Procedure, within 15 days of arrest the magistrate (or any other official authorized to issue a warrant), shall forward to the Clerk of Court the original arrest warrant, bond document, and other papers pertaining to the case. Pursuant to (b) of this Rule, the Clerk of Court shall, within 2 business days from the receipt of the warrant from the issuing official, forward a copy of the arrest warrant to the solicitor.

#### 1.9.2 Preliminary Hearings

To be held within 10 days of the date of demand except for good cause shown.

*Exceptions: Hearing is not to be held if defendant is indicted by the grand jury or waives indictment before preliminary hearing is held.*

#### 1.9.3 Indictments

Indictment on arrest should be prepared by the solicitor within 90 days of receipt of the arrest warrant from the Clerk of Court. The indictment shall be filed with the Clerk of Court.

*Exceptions: By order for extension for 90 day period.*

#### 1.9.4 General Sessions Cases

180 days from arrest to disposition.

Reference: **Chapter 5**

#### 1.9.5 Common Pleas Cases

Pursuant to **Rule 40, SCRCP** (as amended 2007), the following time standards are quoted, verbatim:

### RULE 40 GENERAL DOCKET, TRIAL ROSTERS, AND CALL OF CASES FOR TRIAL

#### (a) Dockets and Trial Rosters; Designation by Party.

**(1) Clerk to Maintain Docket and Trial Rosters.** The Clerk of Court shall maintain: (1) a General Docket of all cases filed in the Circuit Court; (2) a Jury Trial Roster of all cases transferred from the General Docket wherein the case is, by agreement of counsel, scheduling order, or expiration of time, deemed ready for jury trial; (3) a Nonjury Docket of all nonjury matters including all motions filed in the Circuit Court.

**(2) Pleading or Motion to Designate Type of Matter.** At the time of filing of a complaint or responsive pleading thereto, the party shall inform the clerk, or the pleadings shall state in the caption, subject to Rule 38(b), whether the matter is to be heard by a jury or to be heard by the court as a nonjury matter. In the absence of such statement the clerk shall file it as a nonjury matter, subject to a motion to transfer to the appropriate docket. All motions relating to discovery matters, scheduling orders or emergency matters shall state in the caption: Priority Matter.

#### (b) General Docket, Transfer of Cases to Jury Trial Roster; Call of Cases Only From Jury Trial Roster;

**Order of Call.** The clerk initially shall place all cases in which a jury has been requested on the General

had no earlier than 30 days from the date the case first appears on the Jury Trial Roster. Cases shall be called for trial in the order in which they are placed on the Jury Trial Roster, unless the court in a Scheduling Order has set a date certain for the trial, or, after the case has been set on the Jury Trial Roster, the court, upon motion, grants a continuance as provided in (i) below. The first 20 cases on the Jury Trial Roster at the opening of court on the first day of a term, excluding those previously dismissed, continued or otherwise resolved before the opening of that term of court, may be called for trial. For each additional judge sitting during that term of court an additional 20 cases are subject to call. All other cases may be called for trial in that term only upon no less than 24 hours notice. Notwithstanding the foregoing, no action may be called for trial until 180 days after service of the last pleading which adds a new party to the action, unless all parties consent in writing.

**(c) Transfer to Jury Trial Roster by Agreement.** A case may be moved from the General Docket to the Jury Trial Roster at any time by agreement of all counsel of record. If agreement is reached, counsel shall notify the clerk in writing who shall immediately transfer the case to the Jury Trial Roster.

**(d) Transfer to Jury Roster Within Six to Nine Months of Filing.**

**(1) Agreement or Objection.** No earlier than 180 days after the date the case was filed, any party may file and serve upon all other parties a Request to Transfer that case from the General Docket to the Jury Trial Roster. Within 10 days of the service of the Request to Transfer all other parties shall file and serve either an Agreement to Transfer, or, an Objection to the Request to Transfer. Absent a timely filing indicating a position, the same shall be waived. If all parties have agreed to the transfer, the requesting party shall notify the clerk in writing of the agreement and the clerk shall place the case on the Jury Trial Roster, and it may be called for trial as provided in paragraph (b). If any party files an Objection to Transfer, the case may not be transferred to the Jury Trial Roster within 9 months of filing of the complaint except by agreement or as provided in (d)(2) below.

**(2) Objection Shall State Proposed Date of Transfer.** Any party who objects to the transfer to the Jury Trial Roster shall also state in its Objection to Transfer whether it will consent to the transfer of the case to the Jury Trial Roster within 9 months of the date of the filing of the complaint, and the date on which it will consent to the transfer. Absent a timely filing indicating a position, the same shall be waived. If all non-moving parties specify a date within 9 months of the filing of the action on which the case may be transferred, the requesting party shall notify the clerk in writing of the agreement to transfer the case to the Jury Trial Roster on the latest date specified by any party that is less than 9 months after filing.

**(e) Transfer to Jury Roster Nine Months to Twelve Months After Filing.**

**(1) Request and Response.** No earlier than 9 months after the case was filed, any party in any case on the General Docket may file or re-file and serve upon all other parties a Request to Transfer to the Jury Trial Roster. Within 10 days of the service of the Request to Transfer all non-moving parties shall file and serve either an Agreement to Transfer on the date requested, or a Request for a Scheduling Order as provided in (e)(2) below. No other response is permitted. Absent a timely filing indicating a position, the same shall be waived. If all counsel of record have agreed to the transfer, the moving party shall notify the clerk in writing of the agreement, and the clerk shall place the case on the Jury Trial Roster and it may be called for trial as provided in (b).

**(2) Mandatory Scheduling Order.** If any party requests a Scheduling Order, that party, and all other parties, within 10 days thereafter, shall file and serve a Response to the Request for a Scheduling Order which shall include: (1) all matters deemed relevant by counsel that may be raised in a Pre-Trial Hearing under Rule 16, SCRPC, including all motions outstanding, and all dispositive motions to be filed; (2) all discovery remaining to be completed or other discovery matters governed by Rule 26(f), SCRPC, Discovery Conference; (3) any other matter affecting the trial date, including the disposition of all previous requests to transfer the case to the Jury Trial Docket; and (4) the date on which all pre-trial matters shall be completed and the case ready for trial. The clerk shall promptly set the request for a Scheduling Order for a hearing before the Chief Judge for Administrative Purposes which shall take priority as provided in (h) below, at which time the Chief Judge for Administrative Purposes shall review the matter and, in its discretion, set a date on which the case is to be transferred to the Jury Trial Roster, and must set a date before which the

**(f) Automatic Transfer.** The clerk shall review the General Docket and shall transfer to the Jury Trial Roster all cases which have remained on the General Docket for 12 months and in which the court has not entered a Scheduling Order setting the date when the case is to be transferred to the Jury Trial Roster or in which there is no pending motion for a Scheduling Order in the file. The clerk shall notify counsel of record of the transfer, but publication of the Jury Trial Roster also shall be deemed notice of the automatic transfer.

**(g) Motion to Strike From Jury Trial Roster.** A party may move to strike a case from the Jury Trial Roster if upon timely motion that party establishes that it did not consent to the transfer as represented to the clerk, or that at the time the case was automatically transferred under (f) above, there was in effect a scheduling order setting another date for the transfer, or a pending motion for such order.

**(h) Nonjury Docket; Priority of Matters.** The clerk shall immediately transfer all matters designated as nonjury matters from the General Docket to the Nonjury Docket. All motions on the Motions Calendar and motions filed in any case shall be immediately placed on the Nonjury Docket. The Chief Judge for Administrative Purposes, in cooperation with the clerk, is responsible for setting all matters on the Nonjury Docket for disposition. Motions may be scheduled for hearing at any time after the period for notice of the motion required by these rules. Priority in scheduling hearings on nonjury matters and scheduling motions at any other time shall be given to all motions designated Priority Matter which includes emergency matters, discovery motions, and all requests for Scheduling Orders as specified in (a)(2) above. Provided, however, that no contested nonjury action may be called for trial on the merits until 120 days after the filing of the summons and complaint, or the last pleading that adds a new party to the action, unless agreed to in writing by all parties.

**(i) Continuance.**

**(1) For Cause.** As actions are called, counsel may request that the action be continued. If good and sufficient cause for continuance is shown, the continuance may be granted by the court. Ordinarily such continuances shall be only until the next term of court. Each scheduled calendar week of circuit court shall constitute a separate term of court.

**(2) For Absence of Witness.** No motion for continuance of trial shall be granted on account of the absence of a witness without the oath of the party, his counsel or agent, to the following effect, to wit: That the testimony of the witness is material to the support of the action or defense of the party moving; that the motion is not intended for delay; but is made solely because the party cannot go safely to trial without such testimony; that there has been due diligence to procure the testimony of the witness or of such other circumstances as will satisfy the court that the motion is not intended for delay. In all such cases where a subpoena has been issued, the original shall be produced, with proof of service, or the reason why not served, endorsed thereon, or attached thereto; or, if lost, the same proof shall be offered with additional proof of the loss of the original subpoena. A party applying for such postponement on account of the absence of a witness shall set forth under oath in addition to the foregoing matters what fact or facts he believes the witness if present would testify to, and the grounds for such belief.

**(j) Case Stricken From Docket by Agreement.** A party may strike its complaint, counterclaim, cross-claim or third party claim from any docket one time as a matter of right, provided that all parties adverse to that claim, counterclaim, cross-claim or third party claim agree in writing that it may be stricken, and all further agree that if the claim is restored upon motion made within 1 year of the date stricken, the statute of limitations shall be tolled as to all consenting parties during the time the case is stricken, and any unexpired portion of the statute of limitations on the date the case was stricken shall remain and begin to run on the date that the claim is restored. A party moving to restore a case stricken from the docket shall provide all parties notice of the motion to restore at least 10 days before it is heard. Upon being restored, the case shall be placed on the General Docket and proceed from that date as provided in this rule.

**(k) Alternate Method of Transfer to Jury Roster.** Notwithstanding any other provision of this rule, any party may file and serve on all other parties a Request to Transfer that case from the General Docket to the Jury Trial Roster no earlier than 120 days after the case was filed. The Request must certify that the party is

Request to Transfer, any party may file a Response to the Request. If the Response opposes the transfer, it shall indicate in what respect the case is not ready for trial. Once the time to file Responses has expired, the clerk shall promptly set the Request for Transfer for a hearing before the Chief Judge for Administrative Purposes. The hearing shall be given priority as provided by subdivision (h) of this rule. After a hearing, the Chief Judge may, as a matter of discretion, transfer the case to the Jury Trial Roster.

**Note:**

This Rule 40 is substantially a compendium of present Circuit Court Rules governing preparation of trial rosters, setting the order of cases for trial, and granting postponement or continuance. The Federal rule simply directs that the District Courts shall provide local rules on these matters. See also Rule 79 as to clerks of court maintaining calendars (File Book).

**Note to 1986 Amendment:**

The amendment to Rule 40(b)(2), SCRCP, permits the clerk to place actions on the appropriate trial roster 120 days after filing, and assures that counsel will have at least 120 days from the date of filing of the original summons and complaint, or the last pleading which brings in a new party, before the case can be tried so that there will be adequate time to prepare the case. Assertion of new claims between existing parties does not extend the time automatically.

**Note to 1994 Amendment:**

Rule 40, SCRCP, addresses problems in the scheduling of cases and substantially revises the way jury cases are called for trial. Previously, under Rule 40(b)(2) a case could not be called for trial for 120 days after it was filed or the last party was joined. This short period and the lack of specific procedures meant that attorneys could not predict accurately when a case would be called, and some were called without adequate notice or opportunity to complete discovery. Former Rule 40(c)(3) often was used to dismiss and refile many of these cases causing confusion in the docket and the status of those cases.

This rule addresses these problems and provides counsel an adequate time to prepare for trial, yet prevents unnecessary delay by fixing a time when the case must be placed on the Jury Roster. The rule has four parts. First, the rule sets the procedure for placing a case on the Jury Roster and provides a minimum period within which it cannot be called without the consent of the parties, and also a time when it must be scheduled for trial. Second, the rule establishes procedures for the call of cases on the Jury Roster during a term of court. Third, the rule provides that Priority Motions, those involving emergency matters, motions for scheduling orders and discovery motions, must be given precedence when hearings are scheduled. Prompt resolution of these motions speeds trial preparation. Fourth, the procedure in former Rule 40(c)(3) used to dismiss a case has been revised and limited.

Rule 40(a), SCRCP, establishes the dockets and rosters and describes how cases are filed initially. All cases are placed on the General Docket. Rule 40(b). Counsel must inform the clerk or the pleadings must state whether it is a jury or nonjury matter. Rule 40(a)(2). However, the time for demanding a jury remains governed by Rule 38. Jury cases remain on the General Docket until transferred by consent, Scheduling Order or expiration of time. Rule 40(b). Nonjury cases are transferred immediately to the Nonjury Docket. Rule 40(h). In the absence of a designation as jury or nonjury, the matter is placed on the Nonjury Docket, subject to a motion to transfer. Rule 40(a)(2), SCRCP. At any time the case can be transferred to the Jury Trial Roster with the consent of all parties.

The first major section is paragraphs (c)-(h) which governs the transfer of a case from the General Docket to the Jury Trial Roster. The rule divides the pre-trial period into three parts. Rule 40(d) governs the first year after the case is filed. During that period the case can be transferred only with the consent of all parties. Rule 40(c) and (d)(1). The rule, however, establishes a way to determine if the case may be transferred to the Jury Roster within a year of its being filed. Six months after the filing of the case any party may file and serve a Request for Transfer. A Response is mandatory within 10 days and a failure to do so is deemed consent to the transfer. Rule 40(d)(1). The Response to a Request to Transfer is either consent or an objection to the transfer. If objecting, a party must also state whether it consents to a transfer within a year

determined if the case can be immediately transferred, or transferred within a year of filing. If the parties consent but suggest different dates for transfer within the first year, the latest date controls. Rule 40(d)(2). The moving party notifies the clerk of court of the date of transfer. Rule 40(d)(1). A transfer made without consent or in violation of the rule may be challenged under Rule 40(g). If any party objects to a transfer on any date within the first year it remains on the General Docket. Rule 40(d)(1).

Rule 40(e) governs transfers between one year and eighteen months after the case is filed. A Request to Transfer filed during this period results either in a transfer to the Jury Trial Roster or a Scheduling Order issued by the Chief Judge for Administrative Purposes. In either event scheduling now comes under the control of the court. Any party may file a Request to Transfer after one year. Rule 40(e)(1). Only two responses are permitted. A consent to the transfer or a Request for a Scheduling Order. A failure to respond is deemed consent. If there is consent the moving party notifies the clerk and the case is transferred. Rule 40(e)(1). A transfer made without consent or in violation of the rule may be challenged by a motion to strike from the Jury Roster. Rule 40(g). If no party requests a transfer the case remains on the general docket and may not be transferred without the consent of all parties.

A Request for a Scheduling Order requires that each party file and serve within 10 days a Response to a Request for a Scheduling Order which is a detailed statement describing the status of the case so the court has enough information to set an appropriate time to place the case on the Jury Trial Roster. The Response to a Request for a Scheduling Order shall contain all matters that may be raised at a pre-trial hearing, all outstanding motions, the remaining discovery, all matters that affect the trial date, and the date on which the case will be ready for trial. The Request for a Scheduling Order is a Priority Matter and must be so designated on the motion. Rule 40(a)(2). Priority Matters are given precedence whenever motions and non-jury matters are scheduled. Rule 40(h). At the hearing on the Scheduling Order the Chief Judge for Administrative Purposes can set a date for the case to be transferred to the Jury Roster, set a date certain for trial, or set a date before which it cannot be called for trial. The Scheduling Order can be amended by any judge acting as Chief Administrative Judge to take into account subsequent developments.

After eighteen months every case is subject to the control of the court regardless of the actions of counsel. Rule 40(f) requires automatic transfer of any case which is not subject to a Scheduling Order, or has a pending motion for a Scheduling Order. The clerk should notify counsel of the transfer but publishing the Jury Trial Roster is deemed notice of the transfer.

Rule 40(b) is the second major section of the rule and governs the call of cases on the Jury Roster. The principal features of this paragraph are provisions providing adequate notice of when the case may be called for trial. Cases are called in the order in which they appear on the Jury Roster. But a case must be on the Jury Roster for 30 days before it may be called for trial. More importantly, the rule restricts the number of cases that are subject to trial on the first day of a term of court. The Jury Roster at the opening of the first day of the term of court fixes the number that may be immediately called. The first twenty cases on the Jury Trial Roster that, before the opening of that term of court, have not been dismissed, continued or otherwise resolved, may be called immediately. All cases after the first twenty require at least 24 hours before they may be called for trial. For each additional judge sitting in a term, another twenty cases are subject to immediate call. Once called the court may in its discretion grant a continuance as provided in Rule 40(i) which is the same as former Rule 40(b)(1) and (2). Or, a party may strike the case from the docket by agreement under Rule 40(j) which is more restrictive than the former Rule 40(c)(3).

The third major section of the Rule addresses motion practice to ensure that certain ones are promptly scheduled and resolved to prevent unnecessary delay in trial preparation. Rule 40(h) designates certain motions as priority matters including emergency matters, discovery motions and Requests for a Scheduling Order. Counsel must so designate those motions when filing them. Rule 40(a)(2). All motions are placed on the Nonjury Docket, and the Chief Judge and clerk of court must give the Priority Motions preference when scheduling the nonjury matters or setting motions for hearing at any other time. Counsel generally must give 10 days notice to opposing counsel of any motion, as in Rule 6(d) and 56(c), and once that period has expired, motions may be called at any time. Nonjury trials, however, may not be called for trial until 120 days after filing or the joinder of the last party to the action as is the current practice.

Appeal: 14-2360 Doc: 52-2 Filed: 07/07/2016 Pg: 11 of 29

previously found in Rule 40(c)(3). Rule 40(j) now requires all adverse parties to consent to the dismissal in writing, but, the consent also operates to toll the statute of limitations for one year after the case is stricken from the docket as to each consenting party. Any remaining portion of the statute of limitations begins to run one year after the case was stricken unless the case has previously been restored to the General Docket. A party moving to restore a case must give 10 days notice of the motion, and upon being restored the case is placed on the General Docket where it proceeds as a newly filed action on the General Docket. A case can also be dismissed voluntarily under Rule 41(a).

#### **Note to 1998 Amendment:**

This amendment added subsection (k) to the rule. It provides an alternative procedure for transferring a case to the jury roster and is based on a March 14, 1995 order of the South Carolina Supreme Court.

#### **Note to 2001 Amendments:**

Rule 40(d), (e)(1), (f), and (k) are amended to shorten the time period before cases move to the Jury Trial Roster.

#### **Note to 2007 Amendment:**

The last sentence of Rule 40(b), SCRCPC, establishes a minimum period of time following the joinder of a new party during which the action may not be called for trial without the consent of all parties. The 2007 amendment extends this period from 120 days to 180 days, and measures this period from the date the newly joined party is served with process, rather than the filing date of the pleading adding the new party. As before, the 180 day exclusion may be waived with the consent of all parties.

#### **1.9.6 Orders of Reference**

Order of Reference to be made within 6 months of initial filing.

Order of Reference to be filed with clerk within 5 days of date of order.

Case to be transferred to master or referee within 5 days of filing.

Matter shall be heard within 60 days of the date of filing with the master or referee.

Exception: Time periods for the Order of Reference and the filing of reports may be extended by Chief Judge upon showing of exceptional circumstances.

Note: Pursuant to Rule 53(e), SCRCPC, when a matter has been referred, any appeal from any order or judgment issued by the master or special referee shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Reference: **Chapter 6**

#### **1.9.7 365 Day Benchmark in Family Court**

The 365 Day Benchmark is a tool designed to move family court cases forward to completion and dismiss pending cases which have had no activity and no intent to further the action. The links below reference a Chief Justice memo which clarifies the Family Court Benchmark **order** dated May 9, 2006 and a list of guidelines for the clerks' offices and the Chief Administrative Judge. The 365 Day Benchmark should not be used to dismiss DSS abuse and neglect and juvenile cases.

Cases properly stricken under the 270 Administrative Strike order can be restored. Procedures for restoring those cases are located in Chapter 7 of the manual at Section **7.10.3**. Cases dismissed pursuant to the 365 Day Benchmark may not be restored unless the case was dismissed improperly or in error.

## 1.10 Order Processing

Orders signed by the judge authorize, direct or prohibit certain actions by the parties involved. All orders must be filed with the Clerk of Court. The clerk is responsible for delivering the Notice of Entry of Judgment to parties according to the provisions of **Rule 77(d), SCRPC**.

In specified circumstances the clerk may sign certain types of orders (i.e., orders of reference by consent, cases of default, and foreclosure.)

### Tasks:

File stamp order.

Prepare or complete the Form 4C/4F notice of judgment pursuant to Rule 77(d), SCRPC

Prepare required and/or requested copies.

Record order on computer system.

File original order in case jacket.

Distribute notice of entry of judgment as necessary – **Rule 77(d), SCRPC**.

If the order disposes of part or all of case, make appropriate entries in CMS. Transmit data to Court Administration.

Take other action as required by order. For example, Order of Reference--send file to master. Order of Judgment--determine if it must be entered on judgment rolls. (See **1.18**)

### 1.10.1 Orders that Include Information to Enroll in the Judgment Index

The Form 4C-Judgment in a Civil Case form must be attached to all Common Pleas orders that include information to enroll in the judgment index. The Form 4F-Judgment in a Family Court Case must be attached to all Family Court orders that include information to enroll in the judgment index. The clerk will review the Form 4C or Form 4F to determine the judgment information to be indexed, and the clerk is not responsible for reading the order to determine judgment index information.

Form 4C and Form 4F are not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SCRPC (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

The section "For the Clerk of Court Office Use Only" should be completed by the clerk. as it has been with the previous version of Form 4.

Form 4C is not required to be attached to Transcripts of Judgment, Confession of Judgment, or the PPP Civil Judgment form.

For additional information regarding Form 4C and Form 4F, you may review the instructions included with the **Form 4C and Form 4F** in the forms section of this website.

### Tasks:

- When the clerk receives an order that includes judgment enrollment information for the judgment index, he or she should verify that a Form 4C or Form 4F is attached.

- The clerk will file the Form 4C or Form 4F with the order.

## 1.11 Appeals

Appeals from judgments, orders and decrees in the Circuit and Family Courts are initiated by the parties directly with the appellate court. The Clerk of Court receives a copy of the Notice of Intent to Appeal (or Notice of Appeal) which is clocked in and filed in the jacket of the case from which the appeal was taken. Further involvement in the appeal by the Clerk of Court follows on order from the appellate court.

### Tasks:

#### ***Upon receipt of copy of Notice of Intent to Appeal:***

File stamp notice.

If appeal is from a judgment that was enrolled, note appeal in Judgment Roll. (See **1.18.2**)

File Notice in case jacket. NOTE: Some courts pull jackets of cases on appeal and file them in a separate location during the appeal.

#### ***Upon Order for materials from appellate court:***

File stamp order.

Assemble requested materials (e.g., evidence, exhibits, original pleadings, etc.).

Send materials to appellate court or give to that court's representative.

Send receipt with materials for appellate court to sign and return.

File receipt in case jacket when received.

Return materials to original location when returned by appellate court.

File order in case jacket.

#### ***Upon notification of a judgment by appellate court:***

File stamp the remittitur and judgment.

If original judgment was enrolled, note result of appeal in Judgment Roll.

Take action ordered by appellate court.

If the case is remanded from the Court of Appeals or Supreme Court for re-trial in Common Pleas, General Sessions or Family Court retain the original case number and restore the case using the restored date process in CMS and FCCMS.

File decision in case file.

## 1.12 Exhibits: Their Acceptance, Storage, and Disposition

Records or articles known as exhibits are introduced as evidence in court proceedings to support litigation. No matter what form the exhibit takes, it should be properly controlled and carefully monitored until returned or destroyed pursuant to an order of the court. Each exhibit should be considered a one of a kind item that is irreplaceable if lost, stolen or misplaced. Exhibits often are not appropriate for storage with the case file because of the difference in the control, disposition and relative importance of the exhibits. In South

**PLEASE NOTE:** The **2008 Post Conviction DNA Procedures Act** provides that for certain offenses, evidence should be preserved until the convicted person is released from incarceration, dies while incarcerated or is executed. If the person was convicted or adjudicated on a guilty or *nolo contendere* plea, the evidence must be preserved for seven years from the date of sentencing, or until the person is released from incarceration, dies while incarcerated or is executed—whichever occurs first, S.C. Code § 17-28-320 (B). A January 9, 2009 memorandum from SC Court Administration provides a summary of the 2008 Post Conviction DNA Procedures Act and may be accessed by clicking on the link above.

Reference: **Chapter 3**

**Tasks:**

After completion of a day's proceedings the court reporter must turn over exhibits to the Clerk of Court for safe keeping. A receipt should be furnished to the court reporter. (This could be an annotated copy of the exhibit list.)

Court reporters must not release any exhibit that was entered and accepted as evidence to any person other than the clerk. The clerk has responsibility for exhibits once received.

**Other Tasks:**

Storage of exhibits during trial.

During the trial, exhibits should be kept locked in a secure file in the clerk's office or the courtroom. (Narcotics, weapons, money, and valuables, or sensitive material should be guarded or secured in a file cabinet during court recesses and lunch hours.)

Rejected exhibits and others to be withheld from the jury should be kept separate.

If the attorneys or a judge takes an exhibit from the clerk or the court reporter during the trial, a note should be made of the number of the exhibit and the person who has it.

Note: In special circumstances, if there are very large or bulky exhibits to be entered in the trial, special procedures should be encouraged, such as the attorneys stipulating that photographs or samples of the exhibits will be suitable. This will preclude storage problems of large narcotics seizures, automobile fenders, etc. The clerk is responsible for exhibits which have been received until their authorized destruction or return.

The clerk's office, exhibit storage and exhibits should be well controlled in a safe and secure room separate from the case files or, in the case of contraband, valuables, and money in a safe.

Exhibits may be kept in numerical order by case type or indexed on a card system with the location and destruction or return date indicated.

Note: The goal of the exhibit storage system should be to return or destroy exhibits as soon as practical and legally feasible and also to identify those exhibits that may need to be kept for a long period of time pending long-term felony sentences or a protracted appeals process. (See **Chapter 3** and **Rule 606**, SCACR, for additional information)

SLED Regulation 73-140 governs the preparation of Controlled Substance Evidence for Destruction and allows for all controlled substance evidence and paraphernalia to be returned to the seizing officer or to the authorized representative of the seizing officer's law enforcement agency after the conclusion of the trial or plea.

The clerk of court shall prepare a transfer document which shall contain at least the following information:

(1) The court case number

(2) The court case caption (State v. defendant's name)

(3) A description of the controlled substance evidence and paraphernalia being returned to the law enforcement agency representative or seizing officer.

(4) Printed name and signature of the Clerk of Court or clerk's staff member relinquishing the controlled substance evidence and paraphernalia.

(5) Printed name and signature of the law enforcement officer or law enforcement employee receiving the controlled substance evidence and paraphernalia.

After the above-described Transfer Document is signed by both parties, the controlled substance evidence and paraphernalia shall be turned over to the law enforcement officer or employee for transportation, storage or destruction. The Clerk of Court shall maintain a copy of the Transfer Document in the case file or with any other exhibits retained by the court in relation to that case.

**Reference:** S.C. Code of Regulations **73-140**, Preparation of Controlled Substance Evidence for Destruction

### 1.13 Information Access

Much of the information filed in the Clerk of Court offices is of interest to the public. ***With few exceptions, these are public records which may be viewed on request.*** Some degree of control, however, must be exercised over when and where materials may be reviewed.

Judgment rolls are in great demand by title searchers, while individual case files may be of interest to individuals or the media. In any event, these are all official records of the court, and the Clerk of Court is responsible for their integrity.

#### 1.13.1 Public Access

As a general rule, the public should not have direct access to active case jackets, and access to closed records should be monitored. In no event should case jackets be removed from the courthouse. Except for review by judges or use in court, case jackets should not be allowed to leave the clerk's office. Records should be retrieved by a staff member, signed out to the individual, and reviewed in a designated area of the clerk's office pursuant to **§ 14-17-570 SC Code**.

#### 1.13.2 Restricted Access

The following records are not subject to general public review and should be filed in a locked file cabinet or restricted access file room:

**Sealed Records include:**

**Abortion for Minors [§ 44-41-34(D)]**

**Adoptions [ § 63-9-780(B)]**

**Termination of Parental Rights (§ 63-7-2600)**

**ACCESS TO SEALED RECORDS REQUIRES A COURT ORDER.**

Confidential Records include:

Abuse and Neglect (S.C. Code § 63-7-1990)

Juvenile Delinquency (S.C. Code § 63-19-2010) - This is covered in the section on Juveniles.

**ACCESS TO CONFIDENTIAL RECORDS IS LIMITED TO THOSE WITH A LEGITIMATE INTEREST IN THE PROCEEDING.**

See 7.18.1 for a discussion of the special issues connected with access to Family Court records.

### 1.13.3 Providing Copies

The clerk's office is frequently requested or required to provide copies of documents and records to the court or to the public. Policies for charging for public copies are set locally, but should be published and applied uniformly. Fees for certified copies are set by statute.

**Regular copies.** Depending on the arrangement of the office, copies may be made by members of the public or by a staff person. Procedures should be established so that documents to be copied are returned promptly to their original location.

**Certified copies.** Certified copies require official notation on the document that the copy is a true copy of the original. To prepare certified copies:

Verify that the document being copied is an original document.

Make a copy of the document.

Verify that all pages of the document were copied.

Apply certification stamp to document. Enter Clerk of Court's signature and initials of processing clerk.

Enter date of certification.

Affix seal to document.

Collect certification fee.

Issue receipt for fee.

### 1.14 Reporting Requirements

The development of the statewide information system has reduced the burden upon the Clerks of Court for reporting various types of information to other agencies. Some direct reporting requirements remain, however, for both financial and non-financial aspects of the clerks' responsibilities.

#### 1.14.1 Non-Financial

Report	To	Timing
Certificates reporting divorces and annulments	Division of Vital Statistics	W/in 30 days of the filing of the decree
Certificates of Adoption (Not handled by child placing agency)	Division of Vital Statistics	W/in 30 days of the filing of the decree

#### 1.14.2 Financial

Monies received by the Clerk of Court are disbursed to a number of different offices and agencies. Monthly reports accounting for various portions of these monies accompany these disbursements. Chapter 2 discusses the details of these transactions.

The Clerk of Court performs various functions or services not directly related to court case activity, but important to state regulation of businesses or services provided to the public. In this capacity, the Clerk of Court's office provides a central repository for certain types of public information. These functions usually include providing the necessary forms, recording appropriate information, maintaining public access to the recorded information, and forwarding copies of recorded forms to the issuing agency.

In addition to state licenses, individual counties may also require licenses that the clerk issues, such as rolling store, hawkers and peddlers, and dance halls. Procedures for these county licenses are not included in this manual. Clerk required to issue local licenses may wish to develop and include those procedures in a local appendix.

### 1.15.1 License Issuing

a. Pawnbroker Licenses: Individuals operating as pawnbrokers must be licensed as such by the state in addition to being licensed by the state as a retail establishment.

#### Tasks:

Ask to see retail license.

Verify that it is current.

Ask for a copy of the license and permit bond. Bond must be for a pawnbroker's license covering the period of the license, dated and signed.

Ask for a copy of the insurer's power of attorney.

Type Pawnbroker's License.

Have Clerk of Court sign license.

Affix seal.

b. Bail bondsmen and Runners: Statewide regulation of bail bondsmen is assisted by the maintenance of records in the Clerk of Court's office based on the bondsman's activity in the county. Different records are maintained for bondsmen who reside in, have their primary place of business in, or are doing business in the county.

*County of Residence:* Bondsmen must register annually with the Clerk of Court in their county of residence. All Insurance Commission decisions concerning a bondsman's license will be filed in that county.

#### Tasks:

Maintain register of bondsmen residing in the county.

Register a certified copy of current power of appointment yearly for security bondsmen.

Maintain file of Insurance Commission decisions.

*Primary Place of Business:* All professional bondsmen must maintain a deposit with the Clerk of Court where his primary place of business is located. Deposit requirements include:

Minimum deposit \$5,000

First \$10,000 must be secured by a passbook savings account or a certificate of deposit.

Amounts over \$10,000 may be secured by equity in real estate if approved by Clerk of Court.

Individual bond may not exceed ½ amount on deposit.

Deposit must equal at least ¼ of total bonds outstanding on first day of each month.

**Tasks:**

Maintain deposit records for each bondsman.

Reconcile deposit and bondsman's liability monthly (by the 16th).

Send deficiency notice to bondsman if deposit is insufficient.

Notify solicitor and Insurance Commission if additional liability occurs during period of deficiency.

If bondsman fails to meet obligation, clerk, with power of attorney from bondsman, may satisfy obligation from sale or transfer of securities.

Monies received by the clerk from the Insurance Commissioner should be transmitted to the County Treasurer and deposited to the credit of and for the full benefit of the office of the Clerk of Court.

*Doing business in county:* Bondsmen doing business in the county must file certain records with the clerk annually or as the information filed changes.

**Tasks:**

File certified copy of bondsman's license.

File list of bondsman's runners (by July 2 of each year). File amended list if additional runners are used.

File written notice, with reasons for termination, if a runner is terminated.

File power of attorney or revocation of power of attorney for each bondsman.

Register a certified copy of current power of appointment yearly for security bondsmen.

Collect annual fee of \$150 from professional and surety bondsmen, unless county is not primary place of business. In such case, collect annual fee of \$100.

Monies collected from individual bondsmen should ". . . be paid directly to and retained by the clerk . . ." [§ 38-53-100(d)a]

### 1.15.2 Registering Commissions

a. Notaries public are licensed by the Secretary of State. Notaries must register with the Clerk of Court in any county in which they wish to work as a notary public.

The Clerk of Court should maintain a supply of petitions to be appointed Notary Public and applications for change of name of Notary Public for distribution as requested.

**Tasks:**

Registration:

Ask notary for certificate.

Enter information from certificate into Notary Public book:

Name

## Address

Have notary sign next to their name in the book.

File stamp back of certificate, countersign under clerk's name.

Affix seal to the certificate.

Verification: Verification that an individual is a registered notary is sometimes requested. When such a request is received the Notary Public book is consulted.

b. Appointed Officials: Appointed officials, such as deputy clerks and constables, must register their commissions with the Clerk of Court. The Public Officials book provides information on the registration requirements for each type of appointment, and serves as a reference for the clerk in these matters.

## Tasks:

Consult Public Officials book.

Complete appropriate form.

Sign form for clerk.

Affix seal.

## 1.16 Court Security

At one time, court security was a matter of concern only during high-risk or controversial trials. However, in recent years, court security has become a daily concern to everyone who works in or around the court in most jurisdictions around the country. Security incidents are not only sensational headline seeking events and disasters, but also daily occurrences which could disrupt court activity such as medical emergencies, fires, and minor disturbances in the hallways.

Court security can be defined as the procedures, technology, and architectural features needed to ensure both the safety of people and property within the courthouse and nearby grounds and the integrity of the judicial process. Security is needed on a daily basis, not just during special trials, but must not be so visible as to become repressive.

Establishment of a local committee comprised of representatives of the court, local law enforcement agencies and others with responsibility for or concerns about court security can be a useful mechanism for planning, implementing and improving security measures. One person should be responsible for overall courthouse security, usually from a local law enforcement agency. However, involvement of the clerk's office is central to the effectiveness of any security plan because the clerk's staff and bailiffs are present in the offices and courtrooms where incidents are likely to occur.

Familiarity with a security plan by all personnel can foster a security conscious attitude that will allow many types of incidents to be taken care of in the normal course of business. Plans should be designed to facilitate an immediate and appropriate response to any sudden and extraordinary situation, as well as to address routine security concerns for personnel and funds in the courthouse. Emergency planning should address responses to fire, bomb threats, major medical emergencies, prisoner escapes, floods, either from bursting pipes or weather; disturbances in the courtroom or public areas and hostage situations.

The effectiveness of the emergency and general security plans depends on how current they are, whether or not they are practiced by court personnel, and whether or not they are understood by everyone working in the system. Documented emergency plans are a component of good management and may save lives and prevent or reduce injuries. They also avoid liability and support operations during or after an emergency situation.

**General:**

Clerk office personnel should be aware of courthouse security, emergency and contingency plans.

Training in emergency procedures should be provided to clerks office personnel.

**Clerks Office:**

Clear policies should be developed addressing:

Security of Funds.

Response to robbery and burglary.

Records security and access to files.

Personal security procedures for self defense and risk avoidance such as working after hours.

Dealing with hostile individuals.

Procedures for bomb threats.

Basic rules for hostage situations.

**Courtroom Security:**

Bailiffs and clerks should be instructed on signs of potential disturbances.

Emergency procedures for notification of law enforcement agency should be established and practiced.

Emergency evacuation procedures for fire and bomb threats should be established.

**Corridors and Public Areas:**

All personnel should be instructed in signs of a potential disturbance and who to notify.

**1.17 Forms Management**

Forms are the tools of the trade in the clerk's office. They comprise a large percentage of the communication to and from the court. Proper management of forms can help ensure an orderly workflow and a more efficiently run court system in general. A good forms management program can stem the proliferation of unnecessary forms, help to improve forms design, and control costs. As a starting point a catalog or list of all the forms used in the court should be developed, and a record kept of the quantities used.

Many of the forms used in the Circuit and Family Courts are designed by Court Administration. These forms are accessible on the Judicial Department's website at [www.sccourts.org/forms/](http://www.sccourts.org/forms/).

Because the needs of each court require the development of additional forms for local use, a similar listing of local forms should be developed and updated periodically.

Similar listings should be compiled for county or state agency forms used.

**Tasks:**

Develop a list of all forms used in the clerk's office by type of form.

Organize each category. One approach might be by type of form or user: Internal Administration, Financial Forms, Form provided to Attorneys Forms, provided to the public.

Assign a number to each form that doesn't have one.

Develop a history file for each form.

Place a copy of each form in a file or notebook.

Document the ordering history and cost for each form. (This should help in timely ordering of the correct quantity.)

Establish periodic review of forms.

Change local forms as needed--consolidate or redesign. Contact Court Administration if a form used locally may be appropriate for statewide use.

Send helpful comments to Court Administration and other offices which provide forms when improvement ideas emerge.

Once the basic steps have been taken, other opportunities to improve efficiency and cost effectiveness of the forms program become evident. These include the establishment of policies and procedures for purchasing forms, monitoring the use of the forms, and periodic review of each form for needed changes or possible improvements.

Forms analysis is simply a process of asking critical questions about each form used. Good analysis leads to better forms design. A sample **Forms Design Questions and Checklist** follows this chapter for reference.

### 1.18 Judgments

In every court action, a judgment is rendered that dismisses the action against a party or finally determines the rights of a party to the action. The judgment may take the form of an order or a decree. When multiple claims or multiple parties are involved in one action, there may be more than one judgment rendered before the entire action is resolved.

For a discussion of the types of judgments see **Chapters 5, 6 and 7**.

Once rendered, a judgment must be entered by the clerk. Entry of judgment is accomplished through the use of the Entry of Judgment form. Pursuant to S.C. Code § 15-35-510, the clerk of court must keep, among the records of the court, a book for the entry of judgments, to be called the "abstract of judgments." The entry of judgment is recorded in the Case Management System pursuant to S.C. Code § 14-17-595, which provides that a public record required to be kept by a clerk of court including, but not limited to, a book, journal, index, paper, writing, written record, and written findings may be maintained in a computer system provided that a paper or microfilm record must be maintained on all permanently valuable records.

Enrolling a judgment is a separate procedure that is required when the judgment affects title to or lien upon property. Enrolling the judgment provides notice to those individuals who may want to determine whether property is or may be encumbered.

Not all judgments must be enrolled. For example, the court may order that a particular judgment should not be enrolled. Additionally, the following types of cases generally will not affect title to property and we recommend that they should not be enrolled:

Dismissals and non suits (See **SCRCP Rule 41**).

Settlements (unless made upon order of the court which requires future payment of a sum of money or affects title to real or personal property)

Cases stricken pursuant to **SCRCP Rule 40(i)**

Declaratory judgments and injunctions.

Name changes.

Child custody only.

Other final judgments not awarding money or clearly not affecting the title to real or personal property.

Note: When in doubt as to whether real or personal property is affected, the final judgment should be enrolled.

In addition, the following cases represent confidential and sealed records and should not be entered in the judgment rolls:

Abortion for Minors

Termination of parental rights.

Juvenile delinquency matters from Family Court.

Adoptions.

Abuse and Neglect.

**See Chapter 7 concerning confidentiality of Family Court records.**

### 1.18.1 Entry of Judgment

Unless otherwise ordered by the court, all judgments are to be entered. Note that § 15-35-350 permits the filing and entry of a "confession of judgment" without the prior filing of a summons and complaint and service. Entering a judgment pursuant to Rule 58, SCRCP, is a separate procedure from enrolling a judgment on the Index of Judgments.

#### Tasks:

Fill out the Entry of Judgment Form (see **Chapters 5, 6** and **7**)

Make copies and mail to all parties affected by the judgment.

Record mailing information on computer.

File original entry of judgment form in case jacket.

Reference: **SCRCP Rule 58; Rule 77(d).**

### 1.18.2 Enrolling a Judgment

Unless otherwise ordered by the court, if the judgment affects real or personal property it must be enrolled.

#### Tasks:

Use the original case number to enroll judgment. If a General Sessions or Family Court judgment is being enrolled in Common Pleas Court, assign such judgments a CP number.

Write that number on the judgment.

Record the number and case name in the index.

Include the following information: case name, nature of judgment, date of entry of judgment, costs as allocated.

Reference: **SCRCP 78(b); Chapter 2.**

### **1.18.3 Transcript of Judgment**

From time to time the Clerk of Court is called upon to issue or file a transcript of judgment. A transcript of judgment is a certification by the person issuing it, that a judgment has been entered in his/her court and reflects the entries on that court's docket book. By filing a transcript of judgment from the magistrate court in the circuit court, or from one circuit court in another circuit, notice of that judgment is on record to serve as public notice of the judgment.

#### **A. Issuing a Transcript of Judgment**

##### **Tasks:**

Receive a request for a Transcript of Judgment by letter or form.

Verify that the information reported is correct as reflected in the Judgment Roll and includes:

Name of prevailing party.

Name of party against whom judgment is entered.

Amount of judgment entered.

Title of court granting judgment.

Date judgment was granted.

Certify the document.

Return to requestor.

No fee is charged.

#### **B. Filing a Transcript of Judgment from Another Court**

##### **Tasks:**

Review Transcript to assure the following is included:

Name of prevailing party.

Name of party against whom judgment is entered.

Amount of judgment entered.

Title of court granting judgment.

Date judgment was granted.

Collect filing fee for transcripts from magistrate or federal courts, but not from other circuit courts.

File stamp transcript.

Enroll the judgment. (See **1.18.2**)

## C. Filing and Enrolling Foreign Judgments

A copy of a foreign judgment authenticated in accordance with an act of Congress or the statutes of this State may be filed with the Clerk of Court of any county in which the judgment debtor resides or owns real or personal property. Along with the foreign judgment, an affidavit of the judgment creditor or his attorney must be filed with the clerk stating that the judgment is final, that it is unsatisfied in whole or in part indicating the amount remaining unpaid on the judgment, and whether the judgment is further contested.

### **Upon receipt of a foreign judgment with affidavit and appropriate filing fee:**

#### **Tasks:**

Date stamp originals and one copy of foreign judgment and affidavit.

Assign Common Pleas case number following procedures outlined in **Section 1.5** of this manual.

Provide stamped copy (with assigned case number) to attorney or filing party.

Create case jacket following procedures outlined in **Section 1.6** of this manual.

If the affidavit states that the judgment is uncontested and final, enroll the judgment into the judgment index and dispose the case. The clerk should not sign an execution until the expiration of thirty days from the date that the notice of filing was filed with the clerk of court in accordance with S.C. Code §15-35-930. Please note that the judgment cannot be indexed if it is contested until it is resolved.

### **1.18.4 Satisfaction of Judgments**

File stamp satisfaction.

Note on Abstract of Judgments the date satisfaction was filed.

File satisfaction form in case jacket.

## **1.19 Change of Venue and Transfer of Case**

### **1.19.1 Change of Venue**

Change of Venue may be ordered because the action was filed in the wrong location originally, or because for some reason a fair trial cannot be had in the county where filed. (See also **3.1.3**)

### **Upon receipt of order to change venue:**

#### **Tasks:**

File stamp order.

Make certified copies of all documents in case jackets and place in chronological order in the case jacket. If making certified copies is impractical, an order of the court may be requested to eliminate this requirement. (See **1.13.3**)

Make computer entry showing case status.

Gather any evidence entered in case.

Forward original case documents and evidence, together with a certified copy of the order and a transmittal acknowledging receipt for use by receiving court, to the court as directed in the order.

**Upon receipt of case forwarded to your court:****Tasks:**

Consider order for change of venue as the case initiating document and treat it as a new case.

Assign the next available case number.

Use the date the case was received in your court as the filing date. If the order transferring venue requires that the case be tried according to its filing date in the county of origin, make appropriate arrangements to assure the case will appear on the trial roster out of numerical sequence.

If transmittal was sent by original county, return it to that county.

Process as any other case filed in your court except that:

If case transferred is a General Sessions case, the costs and expenses of the trial will be paid by county where the Bill of Indictment was found.

Proceeds from any fines imposed will be directed to the clerk having original jurisdiction.

**1.19.2 Transfer of Case to Another County or Magistrate's Court**

Occasionally, a case that was filed in a particular circuit court may not be heard there. Instead, it may be sent to the magistrate court if that court also has jurisdiction in the matter, or it may be transferred to another county if a transfer of case is ordered. When either of these circumstances arise, the Clerk of Court must forward the records to the appropriate office. It is recommended that the county transferring the case request a receipt from the receiving county. These cases shall continue to use their originating county's case number, and upon completion of the trial, all documents and exhibits shall be transferred to the originating county.

**1.19.3 Remanding Warrant to Magistrate Court**

When it is determined that a criminal case should be sent back to the magistrate for prosecution, the solicitor advises the clerk in writing that a case has been "remanded" disposition and an explanation of the action taken that makes the case able to be tried in magistrates court. This may vary by circuit.

**Tasks:**

Transmit information to Court Administration using the appropriate disposition.

Pull original warrant and related papers from pending file.

Return original warrant and related papers to originating magistrate.

**1.19.4 Transferring Civil to Magistrate Court**

If the Chief Administrative Judge orders a civil case be transferred from circuit court to magistrate court, the Clerk of Court must close the circuit court case and send the case materials to the other court.

**Tasks:**

File stamp order.

Make one certified copy of order, plus sufficient copies to distribute to parties or their attorneys.

Mail copies to parties or attorneys to notify them the case has been transferred.

Enter information onto computer.

Enter date of transfer as disposition date.

Mark the Transfer disposition block.

Send information to Court Administration electronically during next scheduled transmission.

File case jacket with closed cases.

#### **Send to chief magistrate:**

Certified copy of the Order.

Original pleadings.

Other case documents or exhibits.

### **1.19.5 Federal Court Transfers**

A case may be transferred from the U.S. District Court to the Circuit Court to be disposed. A U.S. District Court judge will sign an order to transfer or remand the case to the trial court level. When the Federal Court remands a case to the Circuit Court, the county clerk of court will receive, as an attachment to an e-mail, a copy of the remand order and the Notice of Electronic Filing (NEF). Attorneys of record are responsible for supplementing the state record with all documents filed in Federal Court.

Beginning September 1, 2005 attorneys who remove cases from the Circuit Court to the Federal Court must e-file the case records as an attachment to the Petition for Removal. As a result of Electronic Case Filing (ECF), there is no longer a need for the county clerks of court to send a copy of the records to the Federal Courts.

#### **Tasks:**

Print and file stamp transfer order received from the Federal Court.

Assign CP Case number.

Collect \$150 filing fee unless case was previously filed in the Circuit Court. The fee may be assessed at the time the attorney of record provides the hard copy of the file from the Federal Court.

### **1.20 Freedom of Information Act**

#### **(Title 30, Code of Laws of South Carolina 1976)**

Access to public records is provided for by the South Carolina Freedom of Information Act, Title 30 of the Code of Laws of South Carolina, 1976.

**"(c) "Public record" includes** all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body. Records such as income tax returns, medical records, hospital medical staff reports, scholastic records, adoption records, records related to registration, and circulation of library materials which contain names or other personally identifying details regarding the users of public, private, school, college, technical college, university, and state institutional libraries and library systems, supported in whole or in part by public funds or expending public funds, or records which reveal the identity of the library patron checking out or requesting an item from the library or using other library services, except non-identifying administrative and statistical reports of registration and circulation, and other records which by law are required to be closed to the public are not considered to be made open to the public under the

Appeal: 14-2360 Doc: 52-2 Filed: 07/07/2016 Pg: 27 of 29  
of a written request, concluded that the public interest was best served by not disclosing them. Nothing herein authorizes or requires the disclosure of records of the Board of Financial Institutions pertaining to applications and surveys for charters and branches of banks and savings and loan associations or surveys and examinations of the institutions required to be made by law."

SC Code of Laws § 30-4-20, Definitions.

----- Excerpt from page 19289

**S.C. Code § 30-4-40 sets out matters which are specifically exempt from disclosure.** You may wish to obtain a copy of this code section and place it within easy access of this chapter.

Be aware that the following Family Court actions are statutorily exempt from disclosure: child abuse and neglect (§ 63-7-1990), adoption (§ 63-9-780), juvenile records (§ 63-19-2020), abortion for minors (§ 44-41-34(d)) and termination of parental rights (§ 63-7-2600). Please refer to **Chapter 7** for more detailed information.

**Fees for searching for or making copies of records:** § 30-4-30(b) reads, in part: "The public body may establish and collect fees not to exceed the actual cost of searching for or making copies of records ... The records must be furnished at the lowest possible cost to the person requesting the records." You may wish to familiarize yourself with this section in its entirety, and consult with your county administrator to determine if a county policy of charges has been established.

## 1.21 Public Relations

"Public Relations" is the technique of developing and keeping goodwill with the people you serve. Being aware of how the clerk's office, and the judicial system in general, is perceived by lawyers, lay persons and even other government entities and professional organizations, is primary to maintaining good public relations.

Work life becomes second nature to most of us. We learn the routines and the "language" of the field we're in; it is easy to forget how confusing and intimidating the judicial system was when we first entered into it. Remembering those first days of uncertainty, and even fear, can go a long way in enabling clerk and their staff to maintain patience when in contact with the general public. Individuals have various responses to the court system: fear, awe, hostility, respect, indifference, and confusion. Providing assistance and instruction in a professional and pleasant manner creates not only a positive public image, it also creates an atmosphere of cooperation.

There may be occasions when the clerk or staff come into contact with representatives of the media. An understanding of which records are confidential and those which are not is essential on the part of the clerk's office. Generally, most records are public information. Exceptions are those records specifically identified by statute and any record which has been ordered sealed by a judge. If there is *any* question regarding the confidentiality of a record, contact your chief administrative judge or South Carolina Court Administration.

In Family Court the following are confidential records: adoptions (§ 63-9-780), abuse and neglect (§ 63-7-1990), termination of parental rights (§ 63-7-2600), abortion for minors (§ 44-41-34(d)), and juvenile records (§ 63-19-2020).

In circuit court the following are confidential records: expungements and abortions for minors.

## 1.22 Court Interpreter Procedural Guidelines

The following procedures are provided as general guidelines when a deaf person or a non-English speaking person, who is a juror, witness, or a party to a legal proceeding is in need of an interpreter:

1. The clerk of court is to complete an order of appointment for an interpreter, SCCA/262, and obtain the

3. Once the interpreter's services have been rendered, it is the interpreter's responsibility to complete a timesheet, SCCA/264, and also the Request for Payment, SCCA/263.
4. The timesheet, SCCA/264, should detail the actual hours spent interpreting at the completion of the court proceeding. Interpreters will be compensated for mileage but not for travel time.
5. The interpreter should have the completed Request for Payment form, SCCA/263, ready to be signed by the judge at the completion of the hearing, trial, or plea. It may be necessary for the clerk of court to be a conduit between the judge and the interpreter in order to obtain the judge's signature.
6. The clerk of court should mail the original or a certified true copy of these forms to Court Administration.
7. The clerk of court should retain a copy or the original of these forms for the court's record.

The amount of payment that the court interpreter will receive is set by the May 20, 2004 order of the Chief Justice (\$25.00 per hour for non-certified foreign language interpreters, \$45.00 per hour for certified foreign language interpreters, and \$45.00 for deaf/sign language). The Judicial Department will not compensate for amounts in excess of the rates set forth by the order of the Chief Justice. Any fee incurred from the services provided by the interpreter that exceeds the amounts per hour set forth by the above referenced order will be the responsibility of the County.

### 1.23 Self Audit Procedures

Self-audits are a very important part of maintaining accurate data and should be performed at least once a month. In order to perform a self-audit within your county, the Self-Audit Report will need to be accessed from the County Stats Self-Audit Portal. Once you have logged into Citrix with your username and password, select the Reports tab to access the Self-Audit Reports for Common Pleas and General Sessions cases.

#### Circuit Courts

The Common Pleas and General Sessions Self-Audit Reports identifies cases with discrepancies in disposition information in addition to cases that are in the Case Management System (CMS) but have not been reported to the South Carolina Judicial Department (SCJD). The cases listed in the Self-Audit Report must be re-reported to the SCJD once the correct disposition is verified. For General Sessions Cases, where the disposition code reported to the SCJD is inaccurate and later corrected, it is the responsibility of the Clerk of Court to contact SLED to provide the correct disposition.

#### Family Courts

To perform a Self-Audit for Family Court cases, compare the Family Court Pending Cases Over 365 Days Report that has been generated from the County Stats Self-Audit Portal SCJD website to the list of cases in your respective county. Cases that are disposed in your system should not show pending on the SCJD report. If a record is identified that the SCJD report shows as pending but it has ended, check the confirmation report to see if there is an error message. If the confirmation report does not indicate an error for that record, retransmit the record. You can also see when your files were transmitted, statistics for each transmission, and any errors documented in the File Log by selecting the File Log tab.

A confirmation report is sent after each transmission. If a case has an error, it **will not** be updated in the SCJD system. Please correct and re-report any errors with your next transmission. After data from all counties has been transmitted for the month, SCJD generates monthly reports of caseload data for each circuit, by county. Please be sure that a confirmation report is received after each transmission. Not all transmissions from the clerk of court to the SCJD are successful and the file may not be received. Receipt of a confirmation report will ensure that the transmission was successful and the data was transmitted to SCJD.

The Clerks of Court are to verify that self-audits have been completed for Common Pleas, General Sessions, and Family Court Cases. To verify that a self-audit has been completed, select the Verification Tab and enter

be submitted to Court Administration.

We encourage you to transmit your reports daily; however, if you are unable to transfer each day, please be sure to transfer the reports by the monthly due date indicated on the County Caseload Reports Schedule.

### **1.24 Signature Stamps**

Rule 11 of the SC Rules of Civil Procedure requires that every pleading, motion or other paper of a party represented by an attorney shall be signed in his individual name by at least one attorney of record who is an active member of the South Carolina Bar, and whose address and telephone number shall be stated. A party who is not represented by an attorney shall sign his pleading, motion or other paper and state his address.

From time to time the clerk of court may receive a document that has a signature stamp in place of an original signature. Rule 11, SCRCP, does not indicate that the signature must be an original signature. The clerk should accept any filing that has a signature stamp as well as a filing with an original signature.

No. 14-2360, viewed 7/5/2016