

## CHAPTER 7

### Case Processing Procedures in the Family Court

#### 7.0 Introduction

A uniform statewide Family Court was established in South Carolina by statute in 1976 and implemented July 1, 1977. All matters involving domestic and family relationships, and those involving minors who are neglected or abused or those under the age of seventeen who are alleged to have violated a state law or municipal ordinance are within the Family Court's jurisdiction. In certain instances, however, juvenile cases may be tried in other courts.

The Clerk of Court is responsible for maintaining the records of the Family Court in the manner designated by Court Administration. Within this record keeping function are maintenance of the docket sheets, submission of statistical reports, distribution of forms to indigents, and receipt and disbursement of alimony and child support. (See **this order** about the clerks no longer responsible for accepting additional payments.)

Unlike the Circuit Court where most records are available for public inspection, many Family Court records are considered confidential and may be inspected only with special permission. Juvenile delinquency, adoption, termination of parental rights, abuse and neglect, and any sealed records must be kept in a secure location with carefully controlled access.

A significant portion of the Clerk of Court's responsibility in the Family Court involves the collection and disbursement of alimony and child support. Because of the high volume of funds received and disbursed, special attention must be paid to security for the funds and the individuals who handle them.

The broad jurisdiction of Family Court results in greater diversity in case processing procedures than in either Common Pleas or General Sessions. In fact, the Family Court procedures in various instances may resemble each of these. General domestic relations matters, such as divorce or custody, may resemble Common Pleas processing, except that hearings rather than trials are held. Juvenile matters bear more resemblance to General Sessions processing than domestic relations processing, but they are civil, not criminal proceedings, and do not involve a jury.

Furthermore, Family Court involvement does not necessarily end with an order at the conclusion of a hearing. In areas such as custody and support, the court could be involved with a case for many years. For this and other reasons, individual case files are cross referenced.

In this manual, Chapter 7 is separated into parts. The first part of the chapter covers domestic relations (DR) cases, and the second part describes the procedures in juvenile (JU) cases. You may access the forms used in domestic relations and juvenile cases clicking **here**.

#### 7.1 Description of Case Types

Family Court cases are classified as either juvenile (JU) or domestic relations (DR), but within the domestic relations category there are certain types of cases that have unique processing requirements. These include child support, domestic abuse, and adoption.

##### 7.1.1 Domestic Relations

Domestic relations cases involve matters concerning domestic or family relationships. Divorce, legal separation, custody, visitation rights, termination of parental rights, adoption, support, alimony, division of marital property, and change of name cases are all considered domestic relations cases. Each is filed with the Family Court and heard by a Family Court Judge. These general proceedings are open to the public unless closed by a Family Court Judge upon motion of a party or by statute. In actions dissolving marital

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agencies of these changes. These cases are assigned a DR case number. Special care must be taken to isolate the confidential DR cases.

### 7.1.2 Child Support

Although categorized as a domestic relations case, child support actions have several characteristics different from other domestic relations cases. The majority of the cases are IV-D cases [both TANF (Temporary Assistance to Needy Families) and non-TANF] filed by the Department of Social Services (DSS) upon assignment of support rights.

Child support cases may involve not only the establishment of an order for support, but also collecting and disbursing support payments, monitoring compliance with required payment schedules, and instituting enforcement actions when necessary. Requests for modifications of a support order, however, constitute new actions unless the request is made by motion in a pending action before the court. See the **Motion Fee List, A. 23**.

On June 12, 1995, South Carolina established an Administrative Process law for establishing and enforcing paternity and child support. Under this law, the Child Support Enforcement Division (CSED) of the Department of Social Services also has jurisdiction to establish paternity and establish and enforce child support in IV-D cases. No case is docketed by the Clerk of Court until an order has been established by the Child Support Enforcement Division. See **7.16** for specific procedures regarding AP cases. The specific procedures required during the extended life of a child support case are included at **7.13**. Some of these proceedings are considered continuations of old cases, others are considered new cases. For new cases, the payment of an additional filing fee is required and new case numbers are assigned. (New proceedings: e.g., action for increase or reduction in child support. Old cases: e.g., action for enforcement of an existing support order.)

### 7.1.3 UIFSA Cases

Effective July 14, 1994, South Carolina became a UIFSA (Uniform Interstate Family Support Act) state. In a UIFSA case, one parent lives in South Carolina and the other does not. Under UIFSA the states agree to cooperate in enforcing support obligations when one of the parties lives within the state. The main change brought about by UIFSA which replaced URESA is the concept of "one order at one time" system. There is very little change in the way child support orders were established under URESA, and the way they are established under UIFSA. **Section 7.15** describes special procedures when the plaintiff/petitioner lives in South Carolina. When the defendant/respondent lives in South Carolina, the case is processed as any other new case. DSS generally files UIFSA cases in the Family Court.

Reference: § 63-17-2900 et seq.

### 7.1.4 Interstate Custody Cases

The Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) promotes interstate cooperation in child custody matters and helps to avoid the problem of "child snatching." Since the development of statewide Nature of Action Codes, these files should receive a "DR" docket number, the proper nature of action code, and be transmitted to Court Administration. Updates to the UCCJEA in 2007 no longer require cross-indexing of these orders; however, clerks may continue to maintain a registry if it is helpful to the office staff.

No filing fee is required in these cases.

Reference: § 63-15-358

### 7.1.5 Domestic Abuse

Under the "Protection from Domestic Abuse Act" enacted in 1984, abused family or household members, including persons who have a child in common, and a male and female who are cohabiting or formerly have cohabited, may apply to the Family Court for an Order of Protection. Special forms, designed by Court

affirmative relief is sought, such as temporary child support or child custody, only a Family Court judge may grant relief. When requested, emergency hearings may be granted and held within 24 hours. Specific requirements for processing these cases are found at **7.17.4**.

### **7.1.6 Adoptions**

Papers and records pertaining to adoption are not accessible to the public, and special care must be taken with the processing, record keeping, and case jacket security of each case. Case files are sealed and no judgment roll entry shall be made. Additionally, notification to the Bureau of Vital Statistics is required for changing the name on the birth certificate. Procedures for adoptions are discussed in **7.17.1**.

### **7.1.7 Juvenile Abuse and Neglect**

The Family Court has exclusive jurisdiction over proceedings concerning abused and neglected children. (Title 20, Article 9). In these matters, the court can order investigations, remove children from the home, serve process, conduct confidential hearings, review and approve treatment plans, approve placement of children after removal, and conduct annual reviews of placement status.

Reference: S. C. Code § 63-7-1660 et seq.

Parents and guardians of children who neglect, mistreat, or abandon them also are subject to felony prosecution in the Circuit Court. Cruelty to children is prosecuted as a misdemeanor in the magistrate's court.

Reference: S. C. Code §§ 63-5-70 and 63-5-80.

Prior to a finding in Family Court or a conviction in General Sessions Court, the Department of Social Services may petition the family court for an order directing that any individual named as perpetrator be entered in the Central Registry of Child Abuse and Neglect. The Department of Social Services must file a petition and a written case summary stating facts sufficient to establish that the person named abused or neglected the child and that the person would present a significant risk of committing physical or sexual abuse or willful or reckless neglect if placed in a position that involves care of or substantial contact with children. The department must serve a copy of the petition and summary on the person named as perpetrator. The name, address, and telephone number of the clerk of court or the clerk's designee must be stated in the petition. If, within 5 days of service, the person named as perpetrator requests a hearing, the court must schedule a hearing on the merits of the allegations in the petition and summary to be held no later than five working days following the request. If a hearing is requested, and the perpetrator qualifies, the clerk of court must appoint an attorney to represent the perpetrator in the hearing.

Reference: S. C. Code §§ 63-7-1930(A) and 63-7-1620.

In all child abuse and neglect proceedings:

(1) Children must be appointed a guardian ad litem by the family court. A guardian ad litem serving on behalf of the South Carolina Guardian ad Litem Program or Richland County CASA must be represented by legal counsel in any judicial proceeding pursuant to S. C. Code § 63-11-530(C).

(2) The family court may appoint legal counsel for the child. Counsel for the child may not be the same as counsel for:

(a) the parent, legal guardian, or other person subject to the proceeding;

(b) any governmental or social agency involved in the proceeding;

(c) the child's guardian ad litem.

(3) Parents, legal guardians, or other persons subject to any judicial proceeding are entitled to legal counsel.

Reference: S. C. Code § 63-7-1620.

### 7.1.8 Abortion for Minors - Judicial Consent

An unemancipated minor (under the age of 17) who lacks consent from a parent, legal guardian, grandparent, or someone standing in loco parentis to her, is required by S. C. Code§ 44-41-31 to obtain judicial consent before receiving an abortion. The Clerk of Court must process these cases quickly and confidentially. (See **7.17.5** for detailed procedures.)

## 7.2 File Stamping

All papers filed with the Family Court must be file stamped immediately 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 may be accomplished by using an electric date and time stamp or a hand stamp.

### Tasks:

- File stamp the document in a location where the stamp will not cover any of the typed or written material in the document.
- If stamped by machine, add in ink clerk's initials.
- If stamped by hand stamp, add in ink:

date

time (hour and minutes)

clerk's initials.

## 7.3 Case Initiation

Properly designed procedures for receiving and recording case initiating documents are basic to establishing case files for each action filed with the Family Court.

### 7.3.1 Initiating Documents

Domestic relations actions are initiated with the filing of a summons and complaint or petition by an individual, attorney or social service agency. A Family Court Coversheet should be included with the summons and complaint or petition when they are filed with the Family Court.

Filing fees or an affidavit of indigency must accompany all domestic filings, except case types that are exempt from the filing fee requirement. When an affidavit is filed rather than a fee, the clerk must accept the summons and complaint or petition. The court will determine later whether a fee should be assessed.

### 7.3.2 Assigning Case Numbers

Since 1974 a uniform case numbering system has been used for cases filed in South Carolina courts. Each case number identifies the year (four digits), court (DR), county (numeric code), and sequential number of that case within a given calendar year. For example: case number 98-DR-40-0147 would be the 147th Domestic Relations case filed during 1998 in Richland County (#40 on the county code list). See the **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.**

example, if the complainant files for separate maintenance, this case will be given a number. If the complainant then files another complaint asking for a divorce, this would be considered a new and separate case from the separate maintenance action. The matter of the divorce is a new matter. It should, therefore, receive a new number.

Complaints to modify any final order (including support, custody, or visitation) are considered new cases. This is because the action raises a new matter and would result in a change of an existing order. **All new actions should be assessed a filing fee unless the case type is exempt from the filing fee requirement.**

Actions which request only that an existing order be enforced, without changing the terms of the existing order and without raising a new matter, are not considered new actions. All papers and Rules to Show Cause pertaining to enforcement actions should be filed in the case file with the existing order. Fees should not be imposed on enforcement actions unless a fee is listed for the type of motion that is filed. See the **Motion Fee list**.

New case numbers **are not** assigned to cases that are continued.

Cases remanded from the Court of Appeals or Supreme Court for retrial in Family Court retain the original case number with the addition of an "A" to the end of the number.

Cases in Family Court restored to active status pursuant to an Order to Restore retain the original case number (and original file date) with the addition of an "R" to the end of the number.

Depending upon the volume of filings in the Family Court, one of several approaches to case number control may be appropriate:

- A manually maintained notebook in which each case number is entered, with clerk's initials, as it is assigned.
- Case jackets can be pre-numbered to be taken in sequence by clerks processing new cases. This procedure is helpful in busy offices when several clerks are responsible for opening new cases.
- An automated system can assign numbers as new case information is entered on the system.

#### Tasks:

- Verify that both the summons and complaint or petition are presented.
- Verify that the appropriate fees are attached, if a fee is required.
- Review documents for required signatures (plaintiff, petitioner, or attorney).
- File stamp originals and copies presented.
- Assign DR case number as appropriate and write it on both the summons and the complaint or petition.
- Conform copies. Affix seal (if needed).
- Return copies to plaintiff or petitioner for service.
- Write receipt for fee unless Affidavit of Indigency is filed. Give (or mail) original receipt to plaintiff or petitioner; or if billing for fees is permitted, follow local procedure for posting fee to attorney's account.
- Create a case file.

#### Optional information:

Previous case numbers.  
Plaintiff's (or petitioner's) attorney.  
Papers filed and date filed.

- If the case is a registration case, index in the foreign order registry (i.e., foreign support and custody decrees) (§ 63-17-3640).

### 7.3.3 Filing Fees

Filing fees are required for most cases filed in Family Court. These fees are required or waived pursuant to

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\$25.00 filing fee which is paid when a Notice of Motion and Motion (commonly referred to as a motion) is filed in a civil action.

## A. Case Initiation Filing Fees

The fee to initiate most actions in the Family Court is \$150.00. S. C. Code § 8-21-310(11)(a) states that the filing fee is \$100.00. S. C. Code § 14-1-204 requires that an additional filing fee of \$50.00 be imposed on filings in Family and Circuit Court. Thus, the total cost for initiating most Family Court actions is \$150.00.

Please note that there are some types of actions that do not require the \$150.00 filing fee.

Listed below are the most common types of actions that are initiated in the Family Court and the fee that should be charged pursuant to statute.

### **\$150 Filing Fee Required**

- Divorce, Annulment, and Separate Support and Maintenances Actions
- Support Actions (Child Support, Alimony, and Modification of Child and/or Spousal Support)
- Child Custody/Visitation Actions
- Name Change and Correction of Birth Record Actions
- Domestic and Foreign Adoption Actions
- Post Dissolution Equitable Distribution Actions
- Paternity Actions
- Non-DSS Termination of Parental Rights Actions

### **\$100 Filing Fee Required**

- Registration of Foreign Divorce Decrees (fee waived if custody or support is addressed in the decree)

### **Filing Fee Not Required**

- DSS Abuse and Neglect Actions
- Juvenile Delinquency Actions
- Protection from Domestic Abuse Actions
- Registration of Foreign Custody Orders (Note: Order must be a certified copy pursuant to S.C. Code §63-15-358(2))
- Criminal Appeals from Magistrate or Municipal Court [S. C. Code § 18-21-321(11)]
- Post-Conviction Relief Cases (S. C. Code § 17-27-20)
- Petitions by Minors for Judicial Consent for Abortion [S. C. Code § 44-41-34(B)]
- Cases restored after being ended in error
- Cases granted a new trial before appeal to the Supreme Court or Court of Appeals
- Cases remanded by way of appeal from Supreme Court, Court of Appeals, or Federal Court
- Change of Venue Cases (from Family Court to Family Court)
- Satisfaction of Judgment
- Cases filed accompanied by an order granting a Motion for Leave to Proceed in Forma Pauperis [Rule 3(b)(1), SCRCP].
- Note: No fee is charged to a defendant or respondent for filing an answer, return or other papers in any civil action or proceeding, in a court of record (S. C. Code § 8-21-310(12)).
- Registration of Foreign Divorce Decrees addressing support or custody
- Registration of Foreign Support Orders
- Cases filed when a party is represented by an attorney working on behalf of or under the auspices of a legal aid society, a legal services or other nonprofit organization, or the South Carolina Pro Bono Program (written certification from the attorney required) pursuant to Rule 3(b)(2), SCRCP.

## B. Motion Fees

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every motion made in Family Court. The motion fee applies to all motions, including motions filed with the original complaint, unless otherwise determined to be exempt. Please access the below January 15, 2003 memorandum to review the list of the most commonly filed motions which require the \$25.00 motion fee and the most commonly filed motions which are exempt from the \$25.00 motion fee.

## Chief Justice Toal's December 22, 2010 Memorandum and Motion Fee List

### C. Motion and Order Information Form and Coversheet

The Motion and Order Information Form and Coversheet is to be submitted with every motion or proposed order filed with the clerk of court or presented to a judge at chambers and shall remain as an attachment to the motion or proposed order, or copy of the same, as proof of payment, or in the alternative, as instruction for payment. Please note that a motion coversheet is necessary on all motions and proposed orders, regardless of whether a motion fee is to be assessed or not assessed.

### Court Administration November 14, 2003 Memorandum

**Motion Fee Disputes:** When there is a motion fee dispute between the attorney and the clerk, the judge is to make the final decision as to whether the fee should be assessed. The clerk should check the appropriate box on SCC 233F - Motion and Order Information Form and Coversheet when there is a motion fee dispute between the attorney and the clerk.

### D. Tasks for Filing Fees and Motion Fees:

- Determine whether a filing fee is required, and, if so, the proper amount.
- If a fee is paid, issue a receipt for the filing fee and record amount paid.
- If the fee is required, but not attached, return the document to the filing party and advise that the fee is required.
- If the required filing fee is not paid **and** SCCA 405F, Motion and Affidavit to Proceed in Forma Pauperis" [Rule 3(b), SCRCP] is attached to the pleadings, assign a case number and forward the documents to the judge for determination of indigency.
- If the motion is granted, continue processing the case as usual.
- If the motion is denied, provide a copy of the order denying the motion to the filing party, along with instructions that the appropriate filing fee must be paid by the date specified in the order to prevent case dismissal.
- If the filing party files a motion and disputes the \$25 fee, check "contested" on the SCCA 233, Motion and Order Information Form and Cover Sheet and forward to the judge for evaluation.

**Please note:** If a Motion and Affidavit to Proceed in Forma Pauperis is filed with the Summons and Complaint, the clerk must assign a case number **before** forwarding the documents to the judge for determination of indigency.

### 7.4 EDS (Electronic Docket Sheet) and Data Transmission

South Carolina's Circuit and Family Courts employ 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), SCRCP**. 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. Case management systems vary in design statewide. Of forty-six counties, many different vendors are employed for the purposes of design and programming of the automated systems. For the purpose of having a common reference, the electronic case record of an automated case management system will frequently be referred to within this manual as an Electronic Docket Sheet or EDS.

### 7.5 Case Updating

Between the time a case is filed and the time it is disposed of, additional papers may be received, motions acted upon, etc. The Clerk of Court must record all filings and ensure that the papers are added to the case

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attorney. Some courts place cases on a status conference docket after three or four months if a hearing has not otherwise been requested. New DSS cases are scheduled on DSS days.

### 7.5.1 Subsequent Filings

When additional papers are received for an active case, they must be file stamped, placed in the case jacket, and action taken if appropriate. Answers, counterclaims, financial statements, and affidavits of service are examples of subsequent filings.

#### Tasks:

- Review papers for case number and proper signature. If signature is required and missing, return for signature.

If docket number is missing, return to the sender so that the docket number can be added.

**Note:** Depending on the size of the court and local practice, some courts will call the attorneys and ask that they come to the office to add the needed signature or number. It is generally not recommended that clerk's office staff add case numbers to papers.

- File stamp document.
- Make copy.
  - Return copy to filing party.
- If hearing is requested in writing, schedule on docket and send hearing notices accordingly.  
(See section on **Family Court Docket**.)
- If order of dismissal is received, process the dismissal.  
(See section on **Dispositions**.)
- List document filed and the filing date in your case management system.
- If the following items are changed or added, update in the case management system:

- Case name
- Filing date
- Case number
- Disposition date, judge, and type.

### 7.5.2 Placing Subsequent Documents in the Case Folder

A document should be placed in the case jacket immediately or within one day after receipt. 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 with 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 papers, 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.

## 7.6 Financial Aspects of Case Initiation

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filing fees that must be collected. Attorneys who regularly practice in the court are aware of the required filing fees, but it is still incumbent on the clerk's office to verify. In some cases, filing fees may be waived.

### 7.6.1 Receipts

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

#### Tasks:

- Ensure that the amount remitted is the correct amount.
- If an underpayment is received, use discretion depending on the filing party and either accept the filing and inform the filer of the amount due, return the entire package with the fee or inform the filer and hold for the balance.

If an overpayment is received, the clerk may accept the filing and return the excess fee.

- Prepare Receipt.
  - Minimum information: date, amount, case number, and from whom received and initials of clerk.
  - Additional (optional) information: case name, form of payment, check no.
- Process payor's copy of receipt.
  - Hand over if in person.
  - Mail if other documents are being returned or place in attorney's box if approval of attorney obtained.
  - Place in case file, give to payor upon request; destroy when case is closed or destroy payor's copy since returned check will serve as proof of payment.
- Annotate case number and/or receipt number on check.
- Stamp back of check and deposit.

### 7.6.2 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 not encouraged, if it is the local practice, it is important to keep timely and accurate records and to ensure that the procedure is understood by all parties.

See Chapter on Financial Operations for more detail on fees, processing distribution, deposits, etc.

### 7.7 Family Court Docket

If not otherwise prepared by the judge's secretary, the Clerk of Court, at the direction of the Chief Administrative Judge of the Family Court, prepares a docket of all domestic relations matters to be heard by the court. Cases are placed on the docket upon written request of one of the parties.

#### Tasks:

- Prepare docket including:
  - Name of the court.
  - Name of the judge.
  - Name of the court reporter.
  - Time of the hearing.
  - Case number.
  - Case name.
  - Issues (type of action).
  - Plaintiff's attorney.

Space to record the disposition/decision.

- Make copies of docket.

Distribute to:

Judge

Attorneys representing parties

Optional distribution:

DSS

Guardians ad litem

Solicitor

**Note: If the docket is posted, only the docket number should be shown in juvenile hearings, TPR, abuse and neglect, adoptions and abortions for minors to assure confidentiality of these matters.**

## 7.8 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 rules of court describe when notices are necessary to fulfill this responsibility. 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 cases when the defendant 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(g), SCRPC**.

### 7.8.1 Subpoenas

Pursuant to **Rule 45, SCRPC**, the clerk is directed to "issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney as officer of the court may also issue and sign a subpoena on behalf of a court in which the attorney is authorized to practice." Please note that, due to the very nature of pro se litigation, the signature of the clerk is still required in those actions.

#### 7.8.1 (A) Subpoenas for Depositions in Out-of-State Actions in Family Court Cases

When an action in another state requires a deposition to be taken in this state, upon satisfaction of court rule requirements a subpoena may be issued in this state for such purposes. This matter is specifically addressed by **Rule 28, SCRPC**, which provides for the payment of a filing fee of \$50.00 set by order of the Chief Justice, effective March 1, 2003.

When a subpoena is issued in a family court matter, pursuant to Rule 28, SCRPC, the clerk of court shall assign the subpoena a DR number. The subpoena should be filed along with the required filings from the court directing the deposition or production of documents, as indicated by Rule 28. Once entered into the system, the cases should be opened and closed immediately since it is likely no further action will be necessary by the court issuing the subpoena. The judge code that should be used to close this case is the code for the Clerk of Court, 2099 for systems that accept a 4-digit judge code and 099 for those systems that accept 3-digit judge codes.

### 7.8.2 Notices

Once a hearing has been scheduled for a specific date on the Family Court docket, notices are sent to all attorneys or parties involved. This task may be handled by the clerk or the judge's secretary upon direction of the judge. These notices should include:

Name of the case.

Name of the person notified.

Time and place of the hearing.

Case number.

Time allotted for hearing (optional).

Phone number to use if any changes occur (optional).

Specific courtroom or general Family Court designation (optional).

### Tasks:

- Prepare and sign notice.
- Make copies for each attorney or party as appropriate.  
**Note:** Local practice may include telling the attorney to notify the client.
- Distribute copies.  
Mail or place in courtroom mailbox for local attorneys. Use interoffice if available for other county offices. You may email notices where available unless a statute requires otherwise.
- Place original in case jacket.

### 7.8.3 Continuances

Continuances may be granted by the judge for good cause upon motion by a party, or upon the Court's own motion.

### 7.8.4 Pre-trial Conference

In domestic relations cases (normally divorce actions) the judge may require that a pre-trial conference be held. The judge will enter an order scheduling the conference and advising the parties of the types of information to bring or to exchange prior to the conference. In some courts, this is done by a standing order that all cases requiring more than two (2) hours be scheduled for a pre-trial conference. A form for filing a pre-trial brief may be required. Following the conference, an order will be issued by the judge confirming the outcome of the conference.

### Tasks:

- Enter Order for Pre-trial Conference. If based on a standing order, simply schedule the pre-trial conference.
- Send copies of notice to each attorney or party.
- Note conference date on docket.
- Record entry of order and mailing of the notice on the docket sheet.
- Following the conference, enter the Pre-trial Order. Make copies. Distribute to attorneys.

### 7.8.5 Hearings

Most hearings in domestic relations cases are open to the public unless closed by the judge or statute. In domestic relations cases, the clerk may have to be present in the courtroom. In DSS and other contempt cases, the clerk will call the cases and will prepare bench warrants for parties or witnesses who fail to appear after proper service. In support enforcement cases, the clerk may be called upon to testify to the calculation of arrearages and may be asked to prepare the order. In all contempt hearings, it is recommended that a clerk be present to avoid problems interpreting orders. Judges may order the presence of clerk's office personnel at such hearings.

In all domestic relations cases, a judgment form must be completed when the court renders a decision in a case (**SCRCP 58**). Orders issued by the Court will be entered by the clerk following the hearing.

**Note:** The tasks listed below include those the clerk might do during court. Depending on local practice and the preference of the judge, however, some of the tasks may be performed by the judge (e.g., calling cases,

**Tasks:**

- Pull case jackets and place in the sequence listed on the docket.  
Attach judge's memorandum, if used locally, to case jacket.
- Deliver files to the judge or the courtroom.
- Call cases.  
Inform judge of any special circumstances that may be involved in specific cases.
- Swear witnesses.
- Prepare bench warrants as directed by the judge.
- Collect payments, costs as directed by the judge, or have bailiff escort individual to appropriate location in accounting office to make payment. Issue receipt for any funds collected in the courtroom.
- File papers presented in court.  
If true attested copy is required, conform the copy to the original.
- Following court, enter any orders issued by the judge. Use Form 4F as necessary.

**7.9 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 who distributes copies to the appropriate parties.

**Tasks:**

- File stamp order.
- Prepare required and/or requested copies.
- Record order on docket sheet.
- File original order in case jacket.
- Mail copies to parties via regular mail.  
Record mailing on docket sheet.
- If order disposes of part or all of case, make appropriate entries on docket sheet.  
Mail docket sheet or send information electronically to Court Administration.
- Take other action as required by order. For example:  
Order of Judgment--determine if it must be entered on Judgment Rolls.

*Support*

Enter support orders into the history section of the case record on the computer.

Establish payment file for new support orders.

Update payment file when a support order is modified.

*Court Costs*

If court costs or a payment on the arrearage are to be paid, note date by which the payment is due on the case history. If not paid by that date, issue a Bench Warrant.

- Update case information in computer system as necessary.

**7.10 Dispositions**

Cases in the Family Court may be disposed of in a variety of ways and at various stages of the case. At the time of disposition, the official records on the case must be closed, the case jacket moved to the appropriate storage area, and, if appropriate, the final judgment enrolled. The list of disposition codes used in Family Court is listed below:

- 2 – Stricken from docket (270 Day Order) -- rescinded by Order March 1, 2006
- 3 – Dismissed/withdrawn
- 4 – Other (explain in Status Notes)
- 5 – Transferred out of state
- 6 – Disposed of by trial or hearing
- 7 – Administrative process DSS-OCSE only

### 7.10.1 Types of Dispositions

A Family Court case may be disposed of by agreement of the parties at some point after the case is filed; a motion to dismiss by one of the parties may be granted; or the judge may render a Judgment and Order following a hearing.

#### A. 270 Day Administrative Order (Rescinded by Order March 1, 2006)

Prior to March 1, 2006, the Clerk of Court was required to remove from the pending docket any domestic relations or juvenile case that had not been disposed of or had a final order entered within 270 days from the date it was filed. Any cases which were previously stricken under the old rule may be restored to the docket only upon written order of the Chief Administrative Judge, obtained after written application is made and good cause shown. The order to restore must set the case for final hearing at a time and date certain.

- Continue to file papers for any case that is stricken. If a final order is filed, update computer screen with appropriate disposition information. Notify Court Administration of corrected final disposition information. **It is not necessary to restore a case if a final order is received.**
- If the case is later restored, enter the case in the computer, using the original case filing date and case number with an "R" suffix added to it.

#### B. Dismissed/Withdrawn

An action may be dismissed by the judge or by a stipulation of dismissal or withdrawn by the parties prior to the conclusion of a trial or hearing. The case is recorded as a summary disposition upon receipt of order of dismissal/withdrawal.

**PLEASE NOTE:** If a case is dismissed by the clerk by mistake, (e.g., a rule to show cause should have been dismissed, and the clerk inadvertently dismissed the case), the clerk can prepare a simple order, have it signed by the judge, and reinstate the case in their records. NO ACTION IS NEEDED FOR COURT ADMINISTRATION IF THE CORRECTION IS MADE BEFORE THE ELECTRONIC TRANSFER IS COMPLETED.

#### Tasks:

- Record as disposed/withdrawn.
- Enter code for clerk as Judge at Disposition.

#### C. UIFSA Cases

Once the initiating process of a UIFSA case is completed, and the case is forwarded to the responding jurisdiction (where defendant resides) the case is considered disposed, and the docket sheet should be ended.

#### Tasks:

- Enter disposition information on docket sheet.
  - Enter code for clerk as judge.
  - Mark "transferred out of state" block.
  - Enter date of transfer as disposition date.

**Tasks:**

- Process order/judgment/decree.  
(See section on judgments)
- With decree of divorce

The divorce decree shall contain the social security numbers of the parties. Verify that SCDHEC-682 (Report of Divorce or Annulment of Marriage) accompanies the final decree and is complete, except for the clerk's signature. **Please Note: The Divorce Decree may be filed without the DHEC form, but the form must be received by the clerk and sent to DHEC no later than thirty days following the filing of the final decree, pursuant to S.C. Code § 20-3-230.**

Sign DHEC-682, or forward to personnel responsible for completing and mailing form.

Mail to Office of Vital Records and Public Health Statistics in Columbia within thirty (30) days.

Reference: S.C. Code § 20-3-230.

- With Adoptions

Verify that DHEC-671 (Certificate of Adoption) has been submitted with appropriate sections completed.

For agency adoptions, attorney presents form with Part II completed; for other adoptions, attorney presents form with Parts I and II completed.

Complete Part III, Certification of Clerk of Court.

Forward DHEC-671 to:

Submitting attorney for agency adoption.

State Registrar of Vital Statistics, Department of Health and Environmental Control for other adoptions.

Transmit within 30 days of the filing of the final decree.

Reference: S.C. Code § 63-9-790.

- With Name Change

Make certified copy of Order.

Return certified copy of Order to petitioner to forward to State Registrar of Vital Statistics, DHEC.

- Send copy of **Form 4** (judgment form) to the parties.

**7.10.2 Closing Case Records**

Once a case has been disposed of, regardless of the method, the case records must be closed. Court Administration must be advised of the type of disposition, and the file itself moved to the proper ended file storage area.

**Tasks:**

- End case in computer system.  
Record date the order was filed with the clerk's office as the date of final disposition.

If there was a summary disposition (i.e., no hearing), record the code for Clerk of Court. If the solicitor disposed of the case, use the solicitor's code.

- File case jacket in appropriate place.

### 7.10.3 Procedures for Restoring Family Court Cases

DSS cases often have a Consent Order ending the case. This should be considered as a Final Order. If the case has been struck, **do not restore**; simply modify the disposition information.

Cases struck need a request to have the case put back on the active docket. This **requires an order signed by the Chief Judge for Administrative Purposes, with date and time certain** within the order. Attorneys should be notified of the date and time the case will be heard when they present the request for the case to be restored to the Clerk.

If a case is struck and somehow makes it on the roster, or is heard and the Clerk receives a Final Order, **the Clerk will need an Order to Restore before the final disposition can be recorded.**

To restore a case disposed of as follows:

- 1) Struck by 270 day rule (Rescinded by Order March 1, 2006) - use original filing date, original case number, "R" suffix
- 2) Struck in error - use original information, no suffix
- 3) Remanded from higher court - use original information, "A" suffix
- 4) Request to enforce original order (supplemental proceeding) - use original information, no suffix (do not reopen, do not report to SCCA)
- 5) Modifications to the original order (and **change** to an order) - new filing date and new case number

If a case has been struck, the Clerk should continue to file papers with the case as they come in. The 270 day rule (Rescinded by Order March 1, 2006) **only** removed the case from the active docket, it does not interfere with the filing of Motions, etc. **Temporary orders do not end a case.**

### 7.10.4 365 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. An **Administrative Order** was issued on August 27, 2014 and includes guidelines for the clerks' offices and the Chief Administrative Judge. The 365 Day Benchmark should not be used to dismiss DSS abuse and neglect 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.

### Memo from Chief Justice 365 Guidelines, including notice to attorneys

### 7.11 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. Once rendered, a judgment must be entered by the clerk. Entry of judgment is accomplished through the use of the Judgment in a Family Court Case Form (**Form 4F**).

Enrolling a judgment is a separate procedure that is required when the judgment affects title to property or places a lien upon property. Enrolling the judgment provides notice to those individuals who may want to determine whether the property is or may be encumbered. Generally if a case does not affect title to

Unless otherwise ordered by the court, all judgments are to be entered.

### Tasks:

- If the clerk receives an order without Form 4F attached, the clerk should complete the Judgment in a Family Court Case Form (**Form 4F**) and attach a copy of the order to **Form 4F**. The clerk is not responsible for completing the "Information for the Judgment Index/Transcript of Judgment" portion of the form.
- Make copies and mail to all parties affected by the judgment.
- Record mailing information.
- File original entry of judgment form in case jacket.

Reference: **Rule 58; Rule 77(d), SCRPC.**

### 7.11.2 Enrolling a Judgment

Unless otherwise ordered by the court, if the judgment affects real or personal property it must be enrolled. Generally, most family court orders affect property rights and should be enrolled. However, some family court orders rarely have impact on real or property; therefore, it is recommended that the following categories of cases should **not** be placed on the judgment roll, unless specifically ordered by the court:

Name changes  
Orders affecting child custody only.

Moreover, some orders are confidential and access to information about them is limited. Accordingly, the following categories of ended family court cases **should not** be abstracted or indexed in the judgment roll:

Abortion for Minor  
Abuse and Neglect  
Adoptions  
Juvenile Delinquency matters  
Termination of Parental Rights

See Section concerning confidentiality of Family Court Records.

### Tasks:

- Information listed in the "Information for the Judgment Index/Transcript of Judgment" section of **Form 4F** should be recorded in the judgment index.

In non-Case Management counties, assign the next sequential JR number to the judgment or use original case number. When enrolling Family Court judgments in Common Pleas Court in Case Management counties, assign such judgments a CP number

Write that number on the judgment.

Record the number and case name in the index.

- Enroll an abstract of the judgment in the Judgment Roll book. Include the following information:

Case name.  
Nature of judgment.  
Date of Entry of Judgment.

### 7.11.2 (A) Enrolling Separate Orders for Child and Spousal Support to Judgment

Separate orders for child and spousal support should not be automatically indexed to the judgment rolls. **A judgment should be entered only when a judge orders an amount into judgment or when specifically authorized by statute. A judgment lien may be imposed against the obligor's personal or real property in the amount of the arrearage as applicable in 63-17-1440 (A) and 63-17-2710.**

### 7.11.3 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.

#### A. Issuing a Transcript of Judgment

##### Tasks:

- Received 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 party against whom judgment is entered.
  - Amount of judgment entered.
  - Title of court granting judgment.
  - Date judgment was granted.
- File stamp transcript.
- Enroll the judgment.
- Create Judgment Roll file or file by Judgment Roll number in Transcript of Judgment file according to local practice.

### 7.11.4 Filing and Enrolling Foreign Judgments - S.C. Code § 15-35-900

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/her 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:
  - Date stamp original and one copy of foreign judgment and affidavit.
  - Assign Domestic Relations case number following procedures outlined previously in this manual

- Create case file following procedures outlined previously in this manual.
- File proof of service of notice of filing when received. Since no foreign judgment may be indexed if contested until resolved, and no execution or enforcement may issue upon the judgment until the expiration of thirty (30) days from the date upon which notice of filing is served in accordance with S.C. Code § 15-35-930, suspend file for thirty (30) days from date of service of notice of filing.
- If a motion contesting the entry is filed by the judgment debtor, file the papers accordingly. If the judgment creditor then moves for enforcement of the judgment, place motions on the Motion Calendar. Complete docket sheet as outlined previously in this manual or send information electronically.
- If no motion is filed within thirty (30) days of the date of service, enroll judgment.

### 7.11.5 Satisfaction of Judgments

- File stamp satisfaction.
- Note on Abstract of Judgments the date satisfaction was filed.
- File satisfaction form in case jacket.

### 7.12 Post Disposition Activities

A "final" disposition in a Family Court case does not necessarily mean that no further activity will occur on that case. Particularly in the areas of support, custody, and visitation, circumstances may change and changes in or enforcement of the final order may be sought by one of the parties.

It is important to distinguish between the types of requests that constitute continuations of the original case, and those that are considered to be new cases. A request to enforce the original case is a continuation. The original case number will be used, and no additional fee will be collected. Similarly, a case restored under the 270 Day Order (Rescinded by Order March 1, 2006) or returned to the trial court subsequent to an appeal is considered a continuation. **For these cases, add an "R" or an "A" suffix, respectively, to the original case number.**

Generally, a request for a modification of the original order, such as an increase or decrease in support or a change in visitation, constitutes a new case. **A new case number will be assigned, a cross reference to the original action noted in the jacket and on the index cards, and an additional filing fee will be collected.**

**A case that is refiled after a judge has refused to restore it under the 270 Day Order (Rescinded by Order March 1, 2006) is a new case: with a new number and a new filing fee.**

#### 7.12.1 Enforcement of Court Orders - Rule to Show Cause

If an order entered by the court is violated, a rule to show cause is issued by the judge or the Clerk of Court. The person addressed in the rule must return to the court and explain why he or she failed to comply with the order. Failure to appear as required can lead to the issuance of a bench warrant.

See **7.13.5** for the effect of **Rule 24, SCRPC** in cases of child support and alimony paid through the Clerk of Court.

#### Tasks:

- Prepare affidavit of failure to comply with previous order of the court.
- Prepare Rule to Show Cause to the defendant (respondent) in the case including:

location

date

time

when he/she is to appear in court.

- If party fails to appear.

### **Issue Bench Warrant if directed to do so by the judge.**

If party appears:

Prepare and enter orders as directed by the judge.

## **7.13 Child and Spousal (Alimony) Support Matters**

Support matters account for a substantial part of the Family Court workload. From petitions to establish support, through monitoring payment, to enforcement and collection of any arrearage, the tasks involved are numerous and exacting. To assist with this task, Family Courts have automated their support record keeping functions.

Because automated systems vary, the discussion that follows will be in terms of tasks, rather than the specific mechanics involved. For example, reference will be made to updating a payment history upon payment of a week's or month's support amount, rather than giving detailed instructions on which screen to access and the location of that screen for entering the payment.

### **7.13.1 Child Support and Alimony Payment Records**

Once an order of support or alimony is entered, and the determination made that payments will be made through a court, a case payment record must be established and monitored.

**PLEASE NOTE: All child support orders (administrative or judicial) must set forth the social security numbers of both parents. S.C. Code § 63-17-480.**

### **7.13.2 Temporary Orders for Child Support**

S.C. Code § 63-17-330 requires that the Family Court issue, upon motion of either party, a temporary order of support pending an administrative or judicial determination of paternity, if the defendant has signed a voluntary acknowledgment of paternity or if there is other clear and convincing evidence that the defendant is the child's parent.

#### **Tasks:**

- Review order for support or alimony to determine the amount and frequency of payments.
- Establish a case file including:

Name of obligor;  
Name of obligee;  
Addresses of each  
Names of child(ren) covered by order;  
Amount of payment;  
Frequency/due dates for payments;  
Payment history to record dates and amounts of payments.

**PLEASE NOTE:** Both the obligor and obligee in a child support or paternity action, whether judicial or administrative must provide the following information to the court:

- (1) residence address;
- (2) mailing address;
- (3) telephone number;
- (4) social security number;
- (5) driver's license number; and
- (6) name, address, and telephone number of employer.

S.C. Code § 63-17-460 provides that bills for paternity testing or for prenatal and postnatal health care of the mother and child must be admitted without the necessity of third party foundation testimony. Bills are **prima facie** evidence of the amounts incurred for the services or for testing, and that the amounts were reasonable, necessary, and customary. Copies of bills must be furnished to the adverse party at least ten (10) days before an administrative or judicial hearing.

Both parties must notify the court of any changes to the above-referenced information within ten (10) days of the effective date of the change. S.C. Code § 63-17-450.

#### 7.13.4 Payments

As payments are received, they must be receipted, recorded, posted to the proper account, and deposited. Additionally, the proper procedure must be initiated for writing and sending a check to the obligee.

##### Tasks:

- Verify sufficient identifying information is on the payment to post it to the proper account. Discard or retain envelopes according to local procedures.
- Post payment to account.
- Write receipt, indicating type of payment: cash or check. (Optional - also show check or money order number.) Give or mail receipt to obligor.
- Process payment for deposit.
- Initiate procedure for issuing check to obligee.

#### 7.13.5 Enforcement

**Rule 24, SCRFC**, directs that the clerks review child support and/or alimony payments made through the Clerk of Court **at least once a month**. During this review, all cases in which a payment is over **five (5) working days late** must be identified, and a Rule to Show Cause issued by the clerk.

**NOTE:** While this requirement will mean that a Rule to Show Cause will be issued for any payment over five (5) days late **at this time of the monthly review**, it does not require that a Rule to Show Cause be issued any time a payment is not received within five days of being due.

If the sheriff or court-designated process server is unable to locate the obligor after diligent search, the clerk may make affidavit of failure to locate (**Form SCCA 438**) and present it to the court. The court, in its discretion, may issue an order placing the case on inactive status (**Form SCCA 439**) excusing the clerk from monitoring compliance with **Rule 24, SCRFC**, while providing methods for re-activating the case, and for preserving payment records.

#### 7.13.6 Bench Warrants

S.C. Code § 63-17-390 authorizes the court to issue a bench warrant for a defendant in various situations.

1. Defendant refuses to obey an order for support, and the court is satisfied by competent proof thereof, the court may, with or without notice, issue a warrant to commit the defendant to jail until the order is obeyed or the defendant is discharged by law. In some counties, especially the smaller counties, which have family court only one or two times per month, the court will set a **cash bond** and require the defendant to appear at the next term of court rather than keeping the defendant in jail until he or she can appear before the judge.
2. Defendant is ruled into court on a Rule to Show Cause and after service of the RTSC does not appear.
3. A bench warrant may also be issued if the process server or deputy sheriff determines, after several attempts to serve the defendant are made, that the defendant is evading service and so testifies under oath to the judge.

- Issue bench warrant at the direction of the judge. Bench warrants may be completed by the clerk or in DSS child support cases by the DSS attorney or representative.
- Bench warrant must be signed by the judge or the clerk.
- Bench warrant is filed with clerk's office prior to service.
- Bench warrant is sent to sheriff for service.

Served Bench Warrants, and those dismissed by the court, are returned to the clerk and filed in the appropriate case file.

Unserved Bench Warrants, or certified copies of the warrants, remain in the custody of the sheriff or other appropriate law enforcement agency until they are served, or recalled, or dismissed by the court.

At the beginning of each quarter, i.e., January 1, April 1, July 1, and October 1, the sheriff will report in writing to the Clerk of Court, the status of all unserved bench warrants which were pending during the previous quarter. The Clerk of Court will provide a copy of this quarterly report to the Chief Administrative Judge of the circuit.

### 7.14 Income Withholding (Wage Withholding)

Income withholding provides a mechanism for automatic, direct payments of support to the Family Court. Since 1994, income withholding is used in all cases. In Department of Social Services (DSS) IV-D cases, income withholding has been used since 1990. When used in cases of delinquent obligors, income withholding provides an additional remedy for the collection of the delinquent amount. However, the use of income withholding should not preclude **Rule 24, SCRFC** procedures (See **7.13.5** above).

S.C. Code § 63-17-1410(7) defines an Order for Support as "any order of a court or an administrative agency of competent jurisdiction which provides for periodic payments of funds for the support of a child or maintenance, of a spouse or former spouse and support of a child, whether temporary or final, whether incidental to a proceeding for divorce, separation, separate maintenance, paternity, guardianship, or otherwise and includes any order providing for a modification of support payment or an arrearage or reimbursement of support."

S.C. Code § 63-17-1420(B) stipulates that all orders (IV-D and non-IV-D) for support entered or modified in the State before October 1, 1996, if not otherwise subject to wage withholding, **are subject to withholding, if a delinquency occurs, without the need for a judicial or administrative hearing.** These orders must be construed to contain this provision even if the provision has been omitted from a written order. This section means that, regardless of when the order is entered, **a hearing is never required** to implement withholding if a delinquency occurs.

S.C. Code § 63-17-1420 outlines the procedures involved in effecting income withholding for Department of Social Services (DSS) IV-D cases and for Clerk of Court (non-IV-D) cases. DSS has developed a set of forms for use in income withholding procedures. These forms incorporate the statutory requirements of information to be provided to the individuals involved. Each form should be completed carefully to ensure compliance with statutory elements.

Support orders from other jurisdictions can serve as the basis for entry of an income withholding order to a payor within South Carolina.

**All Clerk of Court (Non-IV-D) cases in which support orders were issued or modified after January 3, 1994, are subject to immediate wage withholding without an arrearage requirement unless the court orders otherwise.**

Prerequisites for income withholding order in Clerk of Court (Non-IV-D) cases issued or modified **before January 3, 1994** include:

Amount of overdue support payment equals at least one (1) month's support obligation; or

Court orders immediate income withholding upon specific written findings; and

Original support order or modification of that order must include support of child, or maintenance of a spouse or former spouse **and** support of a child.

**(Note: an award of alimony alone does not provide the basis for income withholding within the state.)**

**Department of Social Services (IV-D) cases issued or modified after October 31, 1990 - IMMEDIATE WAGE WITHHOLDING - NO DELINQUENCY REQUIREMENT.**

Immediate income withholding upon issuance or modification of a support order after October 31, 1990 without regard to delinquency requirement unless good cause is demonstrated to the satisfaction of the court; or

Obligee makes a written request to the Clerk of Court that income withholding be implemented without regard to delinquency requirement (Notice of Intent to Require Income Withholding); and

Original support order or modification of that order must include support of child, or maintenance of a spouse or former spouse **and** support of a child.

**(Note: an award of alimony alone does not provide the basis for income withholding within the state.)**

Prerequisites for income withholding order in Department of Social Service (IV-D) cases issued or modified on or prior to October 31, 1990 include:

Amount of overdue support payment equals at least one (1) month's support obligation; or

Obligor petitions and the court orders immediate income withholding; or

Court orders immediate income withholding upon specific written findings; and

Original support order or modification of that order must include support of child, or maintenance of a spouse or former spouse **and** support of a child.

**(Note: an award of alimony alone does not provide the basis for income withholding within the state.)**

**7.14.1 Procedures to Follow in Cases in which IMMEDIATE INCOME WITHHOLDING Applies:**

**Tasks:**

- Verify that order includes support of a child.
- Prepare Notice of Intent to Require Income Withholding.
- File stamp Notice of Intent to Require Income Withholding.
- Mail Notice of Intent to Require Income Withholding by first class mail to obligor at last known address or place of employment.
- Complete Certificate of Mailing.  
File stamp Certificate of Mailing.
- Fifteen (15) days after mailing notice to obligor, prepare and serve Notice to Withhold together with a Payor's Answer on payor unless a Petition to Stay Service is received from the obligor.

**If a Petition to Stay Service is filed by the obligor within ten (10) days of the mailing of the Notice, a hearing must be held within thirty (30) days of its filing. The Clerk of Court must notify interested parties as to the date, time, and place of the hearing.**

The Notice to Withhold shall:

- a. Direct the payor to withhold the amount of the obligor's support payment plus 5% court costs.

toward the arrearage until the arrearage is paid in full.

c. Direct the payor to notify the Clerk of Court if health insurance is available to the obligor for the child for whom child support is being withheld.

d. State the rights, responsibilities, and liabilities of the payor under the section. **Ex. The payor shall pay the amount withheld to the clerk within ten (10) working days of the date income is withheld.**

#### 7.14.2 Procedures to be Followed in Cases in which a DELINQUENCY IS REQUIRED:

##### Tasks:

- Verify that the order includes support of a child.
- Verify that at least one of the prerequisites for income withholding is applicable.
- Prepare Notice of Delinquency.

The Notice of Delinquency must include the current support obligation and payment toward the arrearage. If no modification order exists which establishes the amount to be paid toward the arrearage, **the payment toward the arrearage may be calculated by multiplying one (1) support payment by .20 (20%).**

#### 7.14.3 Direct Pay Cases

**PLEASE NOTE: IN A DIRECT PAY CASE, THE OBLIGEE MAY INITIATE INCOME WITHHOLDING BY SIGNING THE NOTICE OF DELINQUENCY.**

**In a direct pay case, whenever wage withholding procedures take effect, the order to pay directly to the obligee is superseded by the withholding process, and the employer (payor) must pay the support through the court. S.C. Code § 63-17-1430(B).**

If an obligee seeks income withholding based on written request, signature of the obligee is required on the Notice of Delinquency.

- File stamp Notice of Delinquency.
- Mail Notice of Delinquency by first class mail to obligor at last known address or place of employment.
- Complete Certificate of Mailing.  
File stamp Certificate of Mailing.
- Fifteen (15) days after mailing notice to obligor, prepare and serve Notice to Withhold together with a Payor's Answer on payor unless a Petition to Stay Service is received from the obligor.

If a Petition to Stay Service is filed by the obligor within ten (10) days of the mailing of the Notice, a hearing must be held within thirty (30) days of its filing. The Clerk of Court must notify interested parties as to the date, time, and place of the hearing.

The Notice of Delinquency shall:

- a. Direct the payor to withhold the amount of the obligor's support payment, plus 5% court costs.
- b. Direct the payor to withhold an additional amount toward any arrearage until the arrearage is paid in full.
- c. Direct the payor to notify the clerk if health insurance is available to the obligor for the child for whom child support is being withheld.
- d. State the rights, responsibilities, and liabilities of the payor under the section.

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DSS must notify the court so that the clerk can request that child support be withheld from the unemployment benefits of the obligor if a delinquency occurs.

#### 7.14.4 Changes that Affect the Notice to Withhold

The clerk must notify the payor of changes that affect the Notice to Withhold by sending a Clerk's Notice of Modification, Suspension, Reduction or Termination of Income Withholding or a copy of an Order of Modification, Suspension or Termination of Income Withholding. Examples include:

##### Reduction of Withholding

Upon satisfaction of an arrearage, the clerk is to notify the payor to stop collecting the additional amount for the arrearage.

##### Suspension of Withholding

When the clerk cannot deliver the income withheld to obligee.

##### Resumption of Withholding

When the clerk relocates the obligee and serves notice to reinstate to the payor.

##### Termination of Withholding

Upon petition by obligor and order of the court when there is no longer a current order of support and all arrearages have been paid.

#### 7.15 UIFSA

The Uniform Interstate Family Support Act which was effective July 14, 1994, replaced URESA in South Carolina. UIFSA (S.C. Code § 63-17-2900 et seq.) provides a mechanism for enforcing child support obligations when obligee and obligor live in different states. Jurisdiction conferred for support enforcement under this statute does not confer jurisdiction for other purposes. (S.C. Code § 63-17-3340).

UIFSA provides for **direct wage withholding**. S.C. Code § 63-17-3510 effective June 10, 1997 provides "[a]n income withholding order issued in another state may be sent by first-class mail to the person or entity defined as the obligor's employer. . . without first filing a petition or comparable pleading or registering the order with a tribunal in this State." S.C. Code § 63-17-3560 provides the procedures an obligor should follow to contest the validity or enforcement of an out of state income withholding order. Code sections are found in the Cumulative Supplement.

Under UIFSA, the Clerk of Court has different duties depending upon whether the action is an incoming UIFSA, an outgoing UIFSA, a private case (Non-DSS), or a DSS case. An order from another state may also be sent to South Carolina for Registration for Enforcement. Registration of Foreign Support Orders is covered in the following section.

#### OUTGOING UIFSA (INITIATING TRIBUNAL) - Non-DSS Cases

##### Tasks:

- Open DR file.
- Prepare documents for mailing to responding jurisdiction.

Forward 3 copies of complaint and accompanying documents to:

(1) responding tribunal or support enforcement agency in responding state; or

(2) state information agency of responding state with

b. receipt be acknowledged.

**NOTE: No filing fee or other costs for Non-IV-D outgoing UIFSA actions.**

- Mail to responding jurisdiction.
- Close case file.
- Upon notification of entry of a support order, or collection of support payments, prepare a payment case file.
- As payments are forwarded from the responding court, follow routine procedures for receipting, posting, depositing, and disbursing payments. **DO NOT TAKE OUT 5% COURT COSTS.**

**OUTGOING UIFSA - DSS CASES**

**Please Note: Almost all UIFSA cases are IV-D which will come through DSS.**

**Tasks:**

- Open DR File.
- Assign a case number.
- Return documents to DSS for DSS to mail the documents to the responding jurisdiction.
- Close case file.
- Upon notification of entry of a support order, or collection of support payments, prepare a payment case file.
- As payments are forwarded from the responding court, follow routine procedures for receipting, posting, depositing, and disbursing payments. **DO NOT TAKE OUT 5% COURT COSTS.**

**INCOMING UIFSA - RESPONDING TRIBUNAL - Non-DSS CASES**

**Tasks:**

- A UIFSA petition from another court should include the following:
  1. Child Support Enforcement Transmittal
  2. Uniform Support Petition
  3. Paternity Affidavit (if paternity is an issue in the case)
  4. General Testimony

If required materials are not included, contact initiating court to request missing items.

- File complaint and notify plaintiff by first-class mail where and when it was filed.
- Open case jacket, as for any other DR case.
- Attempt to locate obligor.

If obligor is located in another state or county, forward papers from the initiating court to the court where the obligor is located.

Notify the initiating court of this action.

- Close case file in your court.

**IF OBLIGOR IS FOUND IN YOUR JURISDICTION, PROCESS AS A REGULAR SUPPORT CASE.**

- Upon entry of an order by your court:

Send copy of support order by first-class mail to the plaintiff and the defendant and to the initiating court (tribunal), if any.

Collect payments under this order and pay to the Clerk of Court in the initiating court. Five (5%) per cent court costs shall be collected on any support collected in South Carolina.

If requested by initiating court, furnish certified statements of payments made by the obligor.

## **INCOMING UIFSA - RESPONDING TRIBUNAL - DSS CASES**

### **Tasks:**

- File complaint.
- Open case jacket, as for any other DR case.
- Serve copy of summons with all attached documents on the obligor.
- If unable to locate obligor, return documents with affidavit of non-service to DSS.
- Close file in your court.

## **IF OBLIGOR IS FOUND IN YOUR JURISDICTION, PROCESS AS A REGULAR SUPPORT CASE.**

- Upon entry of an order by your court:

Collect payments under this order and pay to the Clerk of Court in the initiating court. Five (5%) per cent court costs shall be collected on support collected in South Carolina.

If requested by initiating court, furnish certified statement of payments made by the obligor.

### **7.15.1 Registration of Foreign Support Orders**

Effective July 14, 1994, South Carolina passed the Uniform Interstate Family Support Act (UIFSA). Under UIFSA, when a foreign support order is registered in South Carolina, the support order **cannot** be modified or changed by South Carolina unless specific conditions are met. These conditions are set out in S.C. Code § 63-17-3830 and are very limited. The general rule is an order registered on or after July 14, 1994, cannot be modified or changed by the South Carolina courts.

To register a support order or income withholding order of another state, the following documents are needed:

- (1) a letter of transmittal requesting registration and enforcement.

**PLEASE NOTE: THIS FORM IS RETAINED BY DSS IN REGISTRATIONS SENT THROUGH THAT AGENCY.**

- (2) two copies, including one certified copy, of all orders to be registered and any modifications of the orders:

- (3) a sworn statement signed by the party seeking registration or a certified statement by the custodial of the records showing the amount of any arrearage;

- (4) the name of the obligor and, if known:

- a. the obligor's address and social security number;
- b. the name and address of the obligor's employer and any source of income of the obligor; and
- c. a description and the location of property of the obligor in this State not exempt from execution; and

- (5) the name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.

### **Tasks:**

**NO FILING FEE IS REQUIRED.**

- Open case file.
- Notify non registering party (the obligor) of the registration by personal service or mail (first-class, certified, or registered). Notice **must include copy of registered order and accompanying documents. PLEASE NOTE: IN DSS CASES, DSS TAKES CARE OF THIS TASK. NO ACTION IS REQUIRED BY THE CLERK.**

Notice must inform the non-registering party (obligor):

(1) Motion to contest validity or enforcement of registered order must be filed within 20 days after date of mailing or personal service of the notice;

(2) Amount of arrearage;

(3) Order will be confirmed if motion to contest not filed within 20 days.

**(4) Registered order enforceable as of date of registration.**

Reference: S.C. Code § 63-17-3710.

- File order and proceed to do wage withholding, or rule to show cause, etc. It is not necessary to wait the 20 days to confirm registration of order. **If the obligor objects within the time limit, this stays the wage withholding, or rule, etc.**

**If obligor requests a hearing to contest the validity or enforcement of the registered order, the clerk must schedule the matter for hearing and give notice to the parties by first-class mail of the date, time, and place of the hearing.**

**7.16 Administrative Process**

Under Administrative Process (AP), the Child Support Enforcement Division of the Department of Social Services (DSS) has jurisdiction to establish paternity and establish and enforce child support in IV-D cases. Orders are established by CSED, and then filed with the Clerk of Court's office. All orders shall contain the social security number of the parties.

If a consent order is entered at the negotiation conference between CSED and the obligor, a copy of the consent order and proof of service is filed with the Clerk of Court. S.C. Code § 63-17-750(B).

**Tasks:**

- Clerk date stamps the order and assigns a case (docket) number.
- Clerk initiates wage withholding.

If no agreement is reached at the negotiation conference, CSED files the notice of financial responsibility and proof of service with the clerk's office and requests a court hearing.

If the obligor sends CSED a written request for a court hearing, CSED files the written request for a hearing, the notice of financial responsibility, and proof of service with the clerk's office and requests the court set a hearing.

- Clerk sets hearing and notifies CSED of the court date. CSED sends notice to the obligor and obligee.

If an obligor fails to appear for a negotiation conference or fails to reschedule the conference or does not serve CSED with a written request for a court hearing, CSED shall issue an order of default. **The order of default must be approved by the court.**

**Court. S.C. Code § 63-17-760(B).**

- **Clerk date stamps order and assigns a docket number.**

**No court order for judgment or verified entry of judgment is required for the Clerk of Court to certify past-due amounts of child support to the Internal Revenue Service or State Department of Revenue and Taxation for purposes of intercepting a federal or state tax refund or credit bureau reporting.**

Reference: S.C. Code § 63-17-710 et seq.

### **7.16.1 Administrative Liens**

S.C. Code § 63-17-2710 authorizes the Department of Social Services, Child Support Enforcement Division (CSED) or the Family Court to establish child support arrearage liens whenever the amount due is \$1,000.00 or more. The liens will be registered in the office of the Register of Deeds or the Register of Mesne Conveyances (RMC) in any county in the State where the obligor owns property. A special index for the liens must be maintained by the RMC offices of each county. The liens will encumber all real and personal property.

The lien expires upon termination of the current child support obligation and full payment of all unpaid child support or upon release of the lien by the CSED. The liens are effective for six (6) years and may be extended for an additional six (6) year period. "Expiration of the lien does not terminate the underlying order or judgment of child support."

The Child Support Enforcement Division of the Department of Social Services will provide the procedures for indexing the liens to the RMC offices.

### **7.16.2 Administrative Subpoenas and Subpoena Duces Tecum**

S.C. Code § 63-17-850 authorizes the Department of Social Services to issue an administrative subpoena or subpoena *duces tecum*. DSS may assess a civil fee of per occurrence for failure to obey a subpoena or subpoena *duces tecum*. Under S.C. Code § 63-3-530(43) the Family Court is authorized to enforce the subpoenas and the fines.

### **7.17 Special Procedures**

Several case types have special filing or processing requirements. Although some have been mentioned previously, they are grouped here for convenient reference.

#### **7.17.1 Adoptions**

Papers pertaining to adoptions are **confidential and should always be kept in a secure location.**

Adoptions are not recorded in the Judgment Roll.

Following approval of an adoption, certain records which carry the adoptee's name must be changed. To have the name changed:

#### **Tasks:**

- File stamp original Order and Certificate of Name Change and amendment of Birth Record.
- Prepare certified copy of order for petitioner to send to State Registrar of Vital Statistics, DHEC.
- Complete Part III, Certification of Clerk of Court, of Certificate of Adoption, or forward to personnel responsible for these forms. Forward to S. C. Department of Health and Environmental Control, Vital Records.

Reference: S.C. Code § 63-9-790.

In June 1997, the legislature enacted procedures one must follow to obtain a Certificate of Foreign Birth from the State of South Carolina for a child born in a foreign country who was not a United States citizen at birth and whose adoption was finalized in a foreign country.

Court Administration and the DHEC have developed forms and guidelines for the facilitation of domesticating foreign adoptions. These forms must be made available to the public upon request at all county Clerks of Court offices and at DHEC offices (S.C. Code § 63-9-910).

The court shall review the required documentation required by statute and, upon finding such documentation satisfactory, shall issue an order stating that the documentation required has been submitted, is satisfactory and that the foreign adoption must be recognized and domesticated in South Carolina. The court shall transmit the order and the certificate of adoption to the State Registrar of Vital Statistics. Unless the court deems otherwise, a hearing is not required.

Foreign adoptions are not recorded in the judgment roll.

As with domestic adoptions, these matters are confidential and should always be kept in a secure location.

### 7.17.3 Change of Name

A person who desires to change his or her name may petition the Family Court in the appropriate circuit. The petition should set forth the reasons for the change, his or her age, place of residence and birth, and the name by which he or she desires to be known. Effective July 20, 2002, Section 15-49-20 amended the requirements for requesting a legal name change in family court. Now persons seeking to change their names must provide to the court the results of a fingerprint and criminal background check, an affidavit as to whether they are under an order to pay child support or alimony, a statement from SLED stating whether they are on the sexual offender registry, and a statement from DSS as to whether they are on the Central Registry on Child Abuse and Neglect. This requirement does not apply when parents are seeking to change names of children, or to adults who are changing their name upon marriage or are seeking to return to maiden or previous married names in divorce actions.

In the case of a parent who wishes to change the name of his or her minor child, a petition should be filed with the Family Court. The other parent, if there is one, must be named as a party in the action. If there is no other parent, then the child must be named as a party unless waived by the court. The court shall appoint a guardian ad litem to represent the child.

Reference: S.C. Code §§ 15-49-10 and 15-49-20.

The filing fee in an action for change of name is \$150.00 unless an Affidavit of Indigency is filed with the petition. If an Affidavit of Indigency is filed with the petition, see section under Domestic Relations Cases in Forma Pauperis.

Reference: S.C. Code §§ 15-49-30 and 8-21-310(11)(a).

**Note: Each name change should be handled by a separate petition and should receive a separate number, even if the name changes are requested for several members of the same family. Therefore, a filing fee would be required for each petition.**

### 7.17.4 Domestic Abuse

The civil action of Petition for Order of Protection was established in 1984. It is now available to household members including spouses, former spouses, persons who have a child in common, and a male and female who are cohabiting or formerly have cohabited. (SC Code of Laws 20-4-20).

This civil remedy is in addition to criminal charges such as assault, battery, and criminal domestic violence (to name a few) that can be filed through the summary courts or court of general sessions. The criminal

The clerks do not screen petitions for relief and must accept any petition a petitioner wishes to file. The clerk may, however, inform the individual that relief usually is not granted unless physical abuse, sexual abuse, or the threat of physical abuse has occurred, and that there are penalties for filing false petitions.

These cases are assigned a DR case number. **NO FILING FEE IS CHARGED FOR A PETITION FOR AN ORDER FOR PROTECTION. THERE IS ALSO NO FEE FOR SERVICE.**

#### A. Jurisdiction and Venue

The Family Court has primary jurisdiction in the civil action. However, because domestic abuse protection is available 24 hours a day, special arrangements are provided for periods beyond the normal business hours or if the court is not in session. At these times, a magistrate can act upon an emergency protective order request; or another family court within the county's judicial circuit that is in session may grant further relief.

Petitions for protection from domestic abuse should be filed in the county in which:

- (1) the alleged act of abuse occurred;
- (2) the petitioner resides or is sheltered, unless the petitioner is a nonresident of the State;
- (3) the respondent resides, unless the respondent is a nonresident of the State;
- (4) the parties last resided together.

#### B. Forms

The forms and procedures used by individuals seeking protection from domestic abuse have been designed to expedite access to the court and a determination of the relief sought. There are separate forms for the Family Court and the Magistrate's Court.

The forms used in the Family court include:

- Summons (SCCA 421)
- Affidavit of Service (SCCA 402F)
- Petition for Order of Protection (SCCA 425)
- Order #1 - Protection from Domestic Abuse Act (SCCA 426A,426B)
- Family Court Order Denying Relief (SCCA 426DENIAL)
- Petition for Citation for Contempt (SCCA 427)
- Rule to Show Cause (SCCA 428)

Additional forms are used by the magistrates when they provide the initial contact with the petitioner during hours when the Family Court is closed. These forms include:

- Petition for Order of Protection (for use in Magistrate's Court) (SCCA 744)
- Order (for use by Magistrates Protection from Domestic Abuse Act (SCCA 745)
- Magistrate's Order Denying Relief (SCCA 746)
- Motion and Affidavit for Emergency Hearing (SCCA 742)
- Transmittal Form for Documents, Protection from Domestic Abuse Cases (SCCA 747)

Any final action taken by a Magistrate will be forwarded to the Family Court on the next business day with a special certificate of transmittal (SCCA 424).

#### C. Hearings

Emergency hearings, when requested by a special petition, are held within 24 hours of service of the summons and petition upon the defendant.

Hearing may be held anywhere in the circuit.

Schedule emergency hearings according to the procedures developed by the Chief Administrative Family Court judge.

Should the court deny a motion for an emergency hearing, or such a hearing is not requested, the petitioner may request and the court shall grant a hearing with fifteen days of the filing of the petition.

If no special request for a hearing is made, schedule the matter in the same manner as for a temporary hearing on child support, etc.

The court shall have a copy of the petition served upon the respondent at least five (5) days prior to the hearing.

#### D. Service of Process

The sheriff is responsible for service of process in these cases. Explain local procedures to the petitioner, as determined by the Chief Administrative Family Court Judge.

**PLEASE NOTE: THERE IS NO CHARGE FOR SERVICE IN DOMESTIC ABUSE CASES.**

#### E. Orders

An Order of Protection must be for a fixed time **not less than 6 months or more than one (1) year**. It may be extended or terminated by order of the court upon motion of either party showing good cause and notice to other party.

To ensure that those affected by orders issuing from these proceedings are notified, the following procedures should be followed:

##### Tasks:

- File original order.
- Make certified copies, without charge, of the Order for Protection for distribution to all persons, agencies listed in Item J. of the Order (SCCA 426).

This should include:

Petitioner  
Respondent  
Local law enforcement agencies with jurisdiction in area of petitioner's residence and employment.

- Mail or serve copies.

Reference: S.C. Code § 20-4-80.

#### F. Reconciliation

If the parties reconcile, a dismissal order may be issued by the court, **without a hearing if the petitioner appears personally at the clerk's office, shows proper identification, and signs a written request to dismiss the order based on the reconciliation.** § 20-4-70(A).

#### 7.17.5 Abortion for Minor - Judicial Consent

An unemancipated minor (under the age of 17) who lacks consent from a parent, legal guardian, grandparent, or someone standing in loco parentis to her, is required by S.C. Code § 44-41-31 to obtain judicial consent before receiving an abortion. This petition may be filed in the Family Court or the Court of

#### A. Have Minor Fill out and File Petition

Provide the minor with a set of instructions (SCCA 460) and a petition for an order concerning an abortion for a minor (SCCA 461). If she needs assistance in completing the petition, refer her to the Adoption and Birth Parent Services Division of the Department of Social Services or, if she so desires, go ahead and appoint an attorney to represent her.

#### [See paragraph B.(3).]

This procedure requires protection of anonymity of the minor. It is recommended that you not ask the minor her name, and that you talk with her in a private office. File the petition in the name "**Jane Doe.**" Upon filing of a sealed declaration of identity, stamp the case number on the original declaration of identity. Make a certified copy of the declaration and give this copy to the minor. File the original in a sealed envelope. The entire file must also be kept under seal at all times.

The petition contains a statement of indigency. If the minor checks that paragraph, **no filing fee is required.**

The hearing must be held within seventy-two (72) hours of the time of the filing the petition; therefore, advise the minor to file in the court that will be most readily accessible to her, either the Family Court or the Court of Common Pleas. Assign a DR number to cases filed in Family Court, and a CP number to cases filed in Circuit Court. If neither court is in session, contact the Chief Administrative Judge. He/she should provide you with direction on scheduling the hearing in another county in your circuit or assigning a judge to your county within the seventy-two (72) hour time limit. If the site of the hearing is changed to another county in your circuit, call the Clerk of Court in that county while the minor is present and obtain the following information:

1. Time, date, and place for hearing.
2. Name, address, and telephone number of guardian ad litem;
3. Name, address, and telephone number of attorney (if the minor requests legal assistance).

Use this information to complete the notice of hearing form (SCCA 462; see paragraph B). Forward certified copies of all the documents in the file to the Clerk of Court of the new hearing site. Special arrangements (i.e., sheriff's service) may be required to insure delivery of the documents in time for the hearing.

#### B. Complete Notice of Hearing Form (SCCA 462)

The form should indicate the following:

1. Time and Date for Hearing. The seventy-two (72) hour time limitation may be extended only upon request of the minor, S.C. Code § 44-41-32 gives these cases precedence over other matters pending before the court. If at all possible, try to schedule the hearing for the next business day. The 72-hour period is an **outside** limit, designed to allow hearings on Mondays for cases filed on Fridays.
2. Name of Guardian Ad Litem Appointed. If the minor has a preference, telephone that person and verify acceptance. Inform him/ her of the time, date, and place of the hearing and schedule an appointment for the guardian to meet with the minor. If the minor has no preference, appoint a guardian ad litem as directed by your Chief Administrative Circuit or Family Court Judge. Call the GAL to verify acceptance of appointment and availability, and notify that person of the appointment and the time, date, and place of the hearing. You may assist the minor in setting up an appointment for the GAL to meet with the minor. Follow this up by mailing the guardian a copy of the notice and the petition.

3. Name of Attorney Appointed. If the minor asks for an attorney in her petition, the Clerk of Court shall appoint her an attorney as directed by the Chief Administrative Family or Circuit court judge. Telephone

the appointment and the time, date, and place of the hearing. You may assist the minor in setting up an appointment for the attorney to meet with the minor. Follow this up by mailing the attorney a copy of the notice and the petition.

4. Name of Person Designated to Receive Notice on Behalf of Minor. If the minor, in her petition, designates a person of her choosing to receive notice, fill in Item Four (4) of SCCA 462 and mail a copy of the notice and petition to that person. Please note that the minor may choose **not** to be served with papers herself or through a designated person.

#### C. Hearings Closed to Public

All hearings concerning this procedure must be closed to the public. Family Courts have experience with closure of hearings, but Courts of Common Pleas may not. In a Court of Common Pleas, arrange for a suitable courtroom, remind the bailiff to clear the courtroom, schedule the matter before calling the roster, etc. Likewise, all records concerning these cases must be sealed. In a Court of Common Pleas, follow the procedure in this manual regarding confidentiality and the sealing of Family Court records.

#### D. Order of the Court

Provide the presiding judge with an "Order Concerning Abortion for Minor" (SCCA 463). The court must rule on the merits within the seventy-two (72) hour time limit; therefore, the judge will likely make his or her decision in open court. If the judge chooses to use the form order, at the conclusion of the hearing obtain the completed form and immediately serve copies of the Order on all interested parties. Personal delivery is strongly recommended.

#### E. Appeals

Notice of intent to appeal must be filed by the minor within seventy- two (72) hours from the date the Order is received. Provide her with Form SCCA 465 (Notice of Intent to Appeal). Upon this filing, the Clerk of Court should immediately notify S.C. Court Administration by telephone so that Court Administration can request the court reporter to prepare a transcript within ten (10) days. The court reporter will forward the transcript directly to the Supreme Court. The clerk will prepare certified copies of all documents in the file and forward them to the Clerk of the Supreme Court immediately upon receipt of notice from the minor. If the minor is not represented, strongly recommend that she obtain counsel for the appeal to the S.C. Supreme Court.

The Clerk of Court may appoint counsel if she cannot afford one. Notify the attorney by telephone, make an appointment for the minor to see her attorney, and follow up with a letter to the attorney. An attorney appointed to represent the minor at trial must continue representation through appeal unless otherwise relieved by the court. If the minor wishes to prepare a memorandum of law or a brief, it should be filed with the Supreme Court within ten (10) days of filing the Notice of Intent to Appeal.

### 7.18 Confidentiality in the Family Court

The sensitive and personal nature of matters handled in the Family Court require special handling of the records and proceedings of the court. Specific Code provisions detail who may have access to certain records and hearings. Strict adherence to these provisions is required of the clerk.

#### 7.18.1 Court Records

Two levels of confidentiality exist for certain Family Court records: those that are required to be sealed and those that are deemed to be confidential. Records which are sealed should be filed in a locked cabinet or maintained in a restricted access file area along with the confidential records.

#### Sealed Records include:

**Adoptions [S.C. Code § 63-9-780(B)]****Termination of Parental Rights (S.C. Code § 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.

Reference: S.C. Code §§§§ 63-7-2600, 63-9-780(B), 63-7-1990, 63-19-2010.

**7.18.2 Persons Who May Have Access to Confidential Family Court Records****Access to Sealed Records****Adoption**

Those with court order from the court in which decree of adoption was entered.

**Termination of Parental Rights**

Those with court order only.

**Abortions for Minor**

Not stated in statute (S.C. Code § 44-41-34), but probably with court order only.

**Access to Confidential records****Abuse and Neglect**

Appropriate Staff:

State Department of Social Services  
Local Child Protective Services Agencies  
Ombudsman of the Office of the Governor  
Solicitor.

Any person or agency having legal responsibility or authorization to care for, treat, or supervise the child or the child's family.

Multidisciplinary evaluation teams empaneled by the agencies.

Law enforcement agencies investigating suspected cases of abuse and neglect.

Family Courts conducting child abuse and neglect or child protective proceedings.

Any person engaged in bona fide research purpose with written permission of and with any limitations imposed by the State Director of the Department of Social Services. Person appointed as child's guardian ad litem pursuant to S.C. Code § 63-7-1620.

Child's attorney.

**7.18.3 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

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.

Verify that all pages of the document were copied.

Make a copy of the document.

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.

#### 7.18.4 Hearings

Although the State Constitution provides that "All courts shall be public," special statutory provisions have been made to permit or require exclusion of the public from certain Family Court hearings.

S.C. Code § 63-3-530(27) authorizes the Family Court to exclude the public from the courtroom in proper cases.

S.C. Code § 63-3-590 requires exclusion of the general public from all cases with children and permits the judge to admit only those with a direct interest in the case or in the work of the courts. The constitutionality of this section has been upheld in *Ex Parte Columbia Newspapers, Inc.*, [333 S. E.2d 337 (S. Ct. 1985)].

S.C. Code § 44-41-34(D) requires exclusion of the public from hearings concerning abortions for minors.

#### 7.18.5 Abortion for Minors - Procedures for Processing

Pursuant to S.C. Code § 44-41-32, "Every minor has the right to petition the court for an order granting her the right to obtain an abortion without the consent required in S.C. Code § 44-41-31(1)." This section continues to set out the following procedures for such a request:

(1) The minor may prepare and file a petition in either the circuit or family court. The petition may be filed in the name of Jane Doe to protect the anonymity of the minor.

(2) The Adoption and Birth Parent Services Division of the Department of Social Services, upon request of the minor, must provide assistance to the minor in preparing and filing the petition. Preparation and filing of the petition must be completed within forty-eight hours after the request. The Department of Social Services shall promulgate regulations establishing the procedures to be followed in providing this assistance.

**(3) Upon the filing of the petition, the court shall appoint a guardian ad litem for the minor, taking into consideration the preference of the minor. The minor may participate in court proceedings on her own behalf, but the court shall advise her that she has a right to court-appointed counsel and shall provide her with counsel upon her request.**

**(4) All proceedings pursuant to this section must be given precedence over other matters pending before the court.**

(5) The court shall hold a hearing and rule on the merits of the petition **within seventy-two hours of the filing of the petition.** This time may be extended upon the request of the minor

minor, the nature and possible consequences of the abortion and of the alternatives to the abortion; and other evidence that the court may find useful in determining whether the minor should be granted the right on her own behalf to consent to the abortion or whether the abortion is in the best interest of the minor. "

## 7.19 Domestic Relations Cases In Forma Pauperis

When SCCA 405F, Motion and Affidavit to Proceed In Forma Pauperis is filed, the clerk must establish a case number and case file before presenting the motion to the judge for consideration. If the motion is denied and payment of filing fees and other associated fees are not paid on or before the due date set by the court, the case may be dismissed without further order of the court. Clerks should use disposition code "3" to properly end the case.

You may [click here](#) to view the administrative order approving the use of the revised SCCA 405F.

### 7.19.1 Filing for Divorce by Indigent Plaintiffs

If a litigant files an affidavit of indigency along with a domestic relations action, **NO FILING FEE SHOULD BE COLLECTED**. It is not necessary for that litigant to obtain a court order to proceed in forma pauperis (without payment of a filing fee). On March 25, 1992, the S.C. Supreme Court issued an Order in the case of Ex Parte: John Wayne Rice. In its order, the Court ruled that the Family Court must allow an indigent plaintiff to proceed without costs, which includes service of process. To do otherwise, is to deny the petitioner due process. *Boddie vs. Connecticut*, 401 U. S. 371, 91 S. Ct. 780 (1971) requires that states permit indigent persons to bring domestic actions without payment of court fees.

The clerk may notify the Family Court judge that the action was filed in forma pauperis, so that the judge may inquire into the facts of indigency at a later scheduled hearing. If the judge determines that the person is capable of paying the fee, he can direct that the fee be paid to the clerk.

### 7.19.2 Service of Process - NO FEE FOR INDIGENT PLAINTIFFS

No fee for service shall be charged an indigent plaintiff. The clerk is advised to forward a copy of the summons and complaint filed by the indigent plaintiff directly to the sheriff for service. A copy of the affidavit of indigency may be attached to the copy of the papers.

### 7.19.3 Change of Name by Indigent Plaintiff

The filing fee and service of process fee must also be waived in cases in which an indigent plaintiff files a petition to change his or her name.

### 7.19.4 Pro Se Litigants in Family Court

In Ex Parte: John Wayne Rice, the court also ruled that "if petitioner established he was indigent, the Family Court had to allow him to represent himself in any marital litigation." Therefore, the plaintiff must be allowed to proceed without an attorney.

## 7.20 Appeals

Appeals from judgments, orders, and decrees in Family Court are initiated by the parties directly to the appellate court. The Clerk of Court receives a copy of the Notice of Intent to Appeal which must be filed and later files the original Transcript of Record, copies of which will be filed with the Clerk of the Court of Appeals.

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:

If appeal is interlocutory, enter disposition information, showing date of appeal as disposition date.

If appeal is from a judgment that was enrolled, note appeal in Judgment Roll.

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 receipt of Transcript of Record for filing:

File stamp the Transcript of Record.

Certify one copy as a true copy of the original and return it to the filing party.

File original Transcript of Record in the designated location.

- 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.

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 Judgment.

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

Take action ordered by appellate court.

If remanded, reactivate case.

--Use original case number with "A" added to the end of the case number.

--The case will then be placed at the top of the docket.

File decision in case jacket.

## 7.21 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 non-financial aspects of the Family Court clerk's responsibilities.

### 7.21.1 Non-Financial

Report

To

Timing

Certificates reporting divorces/annulments

Reference: S.C. Code § 20-3-230.  
Administrative Order from 1987.

- \* Certificates of Adoption (not handled by child placing agency) Division of Vital Statistics Within 30 days of filing the decree.

Reference: S.C. Code § 63-9-790.

## 7.22 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.

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

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. In South Carolina it is the responsibility of the court reporter to mark exhibits during a trial and annotate the exhibit index, list, or log.

On August 6, 1997, the S. C. Supreme Court issued an Order adding **Rule 606**, SCACR concerning the Retention and Disposition of Exhibits in the Circuit and Family Courts to the South Carolina Appellate Court Rules.

### 7.23.1 Maintenance of Exhibits During a Trial

Although the exhibits should be maintained by the court reporter during the trial, during court recesses and lunch hours, any narcotics, weapons, money, or other valuables should be turned over to the Clerk of Court to be secured in a locked file cabinet. These exhibits should be returned to the court reporter prior to the trial resuming. An annotated copy of the exhibit list may be used to transfer such exhibits.

### 7.23.2 Transfer of Exhibits

The Clerk of Court must receive all exhibits which have been introduced as evidence after the completion of a day's proceedings or at the completion of a trial. A receipt should be used to establish the transfer from the court reporter to the Clerk of Court. (A copy of the exhibit list would suffice.) The clerk has responsibility for the exhibits once received.

### 7.23.3 Storage of Exhibits

The clerk should place exhibits in a secure room used exclusively for the retention of exhibits, immediately after receiving the exhibits from the court reporter. Exhibits must be stored in an area that is secure. All exhibits from the same case should be stored together. Many clerks place all exhibits from one case in a heavy envelope, record the case number on the envelope, and file it numerically. Some clerks also record the case caption on the envelope.

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a securable lid. The box must clearly identify the case number. No other evidence should be placed in the box.

There must be extremely restricted access to the exhibit storage area. The number of staff members responsible for access to the storage area should be as small as possible. **No unauthorized person should be left unattended in the exhibit room.**

#### 7.23.4 Removal of Exhibits

When a request to remove an exhibit is made, the clerk (or an appointed staff member) should retrieve the requested exhibits. A list of the exhibits removed should be completed with a notation as to the date of removal, the requesting individual, the staff member who made the removal, and, if appropriate, the destination of the exhibits (i.e., to the Supreme Court on appeal). The list should remain with the inventory list in the exhibit room during the time of review. The list should be completed **whenever** exhibits are removed from the exhibit room, regardless of the reason for their removal. Clerks may use **SCCA 497 – Exhibit of File Release** to manage this process.

When the exhibits are placed back in the exhibit room, notations should be made on the list prepared when the exhibits were removed which reflect the date of return, the inventory check, and the name of the person to whom the exhibits were returned.

#### 7.23.5 Viewing of Exhibits

When a request is made by an individual to view exhibits, they should be viewed in a public area that is supervised by the clerk's staff. This does not apply when exhibits are physically transferred to another location. Physical transfer of any exhibit should be well documented and closely monitored. When the review is complete and the exhibits are returned, they should be examined in conjunction with the inventory list to make sure that all of the exhibits are in order and all are accounted for; the exhibits should be taken directly to the exhibit room and placed in their proper order.

#### 7.23.6 Return of Exhibits to Submitting Party (See **SCACR RULE 606**)

When ordered by the court, exhibits may be returned to the submitting party 60 days after final judgment has been entered, and the time for appeal has elapsed. If an appeal was sought and has been decided, the exhibits may be returned 60 days after the remittitur is sent by the appellate court.

The clerk shall return exhibits to the submitting party in the following method:

(a) The clerk should prepare the paperwork necessary authorizing the return or destruction of the exhibit subject to notice being provided to the submitting party. Clerks may use **SCCA 498 – Notice of Exhibit/Property Destruction** to notify the submitting party and use **SCCA 499 – Exhibit Disposition** when the exhibit or property is reclaimed, destroyed, or delivered to the party by the Clerk of Court.

(b) Prepare a notice of the order and mail it to the attorney who submitted the exhibits. This notifies the attorney that the exhibits will be destroyed if they are not picked up within 30 days.

(c) If the notice is returned as undeliverable, the clerk will make every reasonable effort to locate the attorney (by telephone, through the South Carolina Bar, etc.) and shall send a subsequent notice to the attorney or party at the proper address.

(d) If the notice is returned as undeliverable and attempts by the clerk to locate the party have been unsuccessful, when 30 days have elapsed since the notice was sent, the clerk may complete an affidavit and proposed order for disposal of the exhibits and submit it to the Chief Administrative Judge for approval and signature.

(e) Disposition of Unclaimed Exhibits. Except as otherwise provided by law or order of the court,

clerk may destroy the exhibit.

(f) A record of exhibits which have been disposed of should be maintained. This should include the case number, case name, date notice sent, date of disposal, and description of exhibits.

## 7.24 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 disaster, 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.

### Tasks:

- General:

Clerk's office personnel should be aware of courthouse security, emergency and contingency plans. Training in emergency procedures should be provided to clerk's office personnel.

- Clerk's 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

Procedure 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.

## 7.25 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 Family Courts are designed by Court Administration. Some are preprinted and mailed in bulk to the clerks. Samples of others are provided for printing in the county. **The forms section is located here.**

Because of 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
  - Forms provided to Attorneys
  - Forms provided to the Public.

## 7.26 Transfer of Cases

Occasionally, a case that was filed in a particular Family Court may not be heard there. Instead, it may be sent to a family court in another county if a judge recuses himself, or if the defendant is a resident of another county. When either of these circumstances arise, the Clerk of Court must forward the records to the appropriate office.

### Tasks:

- Upon receipt of order to transfer the case to another court:

File stamp order.

Enter order in the computer.

Make docket entry showing case status.

Forward original case documents, 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 transferred into your court:

Consider order for transfer 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 transmittal was sent by original county, return it to that county.

Process as any other case filed in your court.

## 7.27 Juvenile Cases

Juvenile cases include allegations of violations of state law or municipal ordinances by individuals under the age of seventeen. They are initiated by petitions filed by the Department of Juvenile Justice (DJJ) and prosecuted by the solicitor. Hearings are closed to the public, and the Clerk of Court has such in court responsibilities for these actions as may be required by the Chief Administrative or Presiding Judge. Further, S.C. Code § 56-1-745 et seq. requires that the driver's license of any person convicted of certain offenses be revoked or suspended, and the **Clerk of Court is responsible for the confiscation of the driver's license and/or notification to the South Carolina Department of Public Safety if no license is available.**

### Confidentiality

Juvenile records are confidential and are assigned a JU case number. However, when a juvenile is bound over to the jurisdiction of the circuit court, the confidentiality provisions do not apply. Reference: S.C. Code § 63-19-2040.

### Case Initiation

Juvenile cases are initiated by filing a petition with the Family Court. In some counties, a petition, summons, and notice are filed. No filing fee is required for juvenile petitions.

S.C. Code § 63-19-1030(B) sets forth the requirements for the juvenile petition.

The petition and all subsequent court documents must be entitled:

"In the Family Court of County.

In the Interest of , a child under seventeen years of age."

The petition must be verified and may be upon information and belief. It shall set forth plainly:

- (1) the facts which bring the child within the purview of this article;
- (2) the name, age, and residence of the child;
- (3) the names and residences of the child's parents;
- (4) the name and residence of a legal guardian, if there is one, of the person or persons having custody of or control of the child, or of the nearest known relative if no parent or guardian can be found. If any of these facts are not known by the petitioner, the petition shall state that.

county (numeric code), sequential number of that case within a given calendar year. For example: case number 98-JU-40-0150 would be the 150th juvenile case filed during 1998 in Richland County (#40 on the county code list).

Case numbers are assigned when a case-initiating document is filed. In juvenile cases, this is a petition. The case number is entered on the original and all copies of the document.

Juvenile delinquency cases should be numbered separately from domestic relations cases. **In juvenile delinquency matters, each charge should receive a separate number.** This is necessary because each charge is disposed of separately. All charges should be recorded under status notes in the computer system. However, the clerk may place all documents pertaining to the same individual within one case file. The clerk must be sure to reference all case numbers on the outside of the case file.

Truancy cases brought against either the student or his parents should receive "JU" numbers.

### 7.28 Juvenile Court Docket

If not otherwise prepared by the judge's secretary, the Clerk of Court, at the direction of the Chief Judge of the Family Court, prepares a docket of all domestic relations matters to be heard by the court. Juvenile cases are usually scheduled by the solicitor. The solicitor schedules the JU cases on the days reserved for JU matters. Most courts set aside certain days or blocks of time in which these matters are to be heard (for example: every Thursday).

#### Tasks:

- Distribute copies of docket to:
  - Judge
  - Attorneys representing parties
  - DJJ
  - Solicitor
  - Guardians ad litem (if applicable)

**NOTE: If a docket is posted, Juvenile hearings should either be deleted from the docket or be shown by case number only to assure confidentiality of the matters.**

### 7.29 Continuances

Continuances may be granted by the judge for good cause upon motion by a party, or upon the court's own motion.

### 7.30 Hearings

Hearings in Juvenile cases are generally closed to the public and only persons who have a direct interest in the case or the work of the court may be admitted. In Juvenile cases, it is not uncommon for the Clerk of Court to have no in court duties. The solicitor, Department of Juvenile Justice representative, or the judge will provide the necessary information or papers to the clerk following the hearing. The judge's secretary frequently sends out orders.

#### Tasks:

- If a juvenile is adjudicated for any offense for which his driver's license will be revoked, suspended, or issuance delayed:

Collect driver's license or if there is no clerk in the courtroom, have someone in the courtroom collect the license (i.e. solicitor, DJJ or the judge.)

If officer is present, request the pink and yellow copies of the ticket, if a ticket was issued.

### 7.31 Dispositions

When a case has been disposed of in a Juvenile matter, the official records on the case must be closed, and the case jacket moved to the appropriate storage area.

270 Day Administrative Order (Rescinded by Order March 1, 2006)

A case that has been stricken by the Clerk of Court may be restored to the docket only upon written order of the Chief Administrative Judge, obtained after written application is made and good cause shown.

- Continue to file papers for any case that is stricken. If a final order is filed, update docket sheet or computer screen with appropriate disposition information. Notify Court Administration of corrected final disposition information.

**It is not necessary to restore a case if a final order is received.**

- If the case is later restored, complete a new docket sheet or enter the case in the computer, using the original case filing date and case number with an "R" suffix added to it.

#### 7.31.1 Closing Case Records

Once a case has been disposed of, the case records must be closed. Court Administration must be advised of the disposition, and the file itself moved to the proper ended file storage area.

#### Tasks:

- End case.

Record date the order was filed with the clerk's office as the date of final disposition.

Enter code for judge who signed final order as the judge at disposition.

If the solicitor disposed of the case, use the solicitor's code.

Place original docket sheet in ended cases file in case number order.

- Place case jacket in appropriate ended cases files.

### 7.32 Expungement of Juvenile Records

When allowed by statute (S.C. Code § 63-19-2050), an individual may petition the court "for an order destroying all official records relating to: (1) being taken into custody; (2) the charges filed against the child; (3) the adjudication; and (4) disposition."

Current statutory provisions apply to juveniles "adjudicated delinquent for having committed a status or a nonviolent offense...However, a person may not petition the court if he has a prior adjudication for an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult. In addition, the court must not grant the order unless it finds that the person who is seeking to have the records destroyed is at least eighteen years of age, has successfully completed any dispositional sentence imposed, and has not been subsequently charged with any criminal offense."

If expungement is approved by the court, the clerk must remove all reference to the expunged action from the court records. If there are no court records to expunge, the clerk may place the signed order in a file and store it in a confidential, locked, restricted area with other orders to expunge.

#### Tasks:

- solicitor and fee pursuant to S.C. Code § 8-21-310(21), if applicable. File stamp, etc.
- Review order and record to determine the specific charges involved.
  - Physically destroy all file documents, except the order of expungement, relating to the particular charge (s) or conviction(s).
  - Obliterate or blot out all references related to the case, such as those found on indices, journals, etc. For EDS, be sure that once all information relating to the identity of the successful petitioner is removed from the EDS by:
    - replacing the name field with "EXPUNGED, MONTH YEAR"  
For Example: EXPUNGED, MARCH 1999
    - Address and City fields should be filled in with "Z"  
For Example: Address: ZZZZZZZZZZZZZZ City: ZZZZZZZZZZZZ
    - Zip Code should be replaced with "99999"
    - Social Security Number should be replaced with "888-88-8888"
    - Driver's License number should be replaced with "999999999"
    - Transmit modified record to Court Administration to update the state's database
  - Provide the solicitor's office with the number of requested certified copies of the order. The solicitor's office will distribute all copies as necessary.
  - File original order with other orders of expungement in a locked, restricted access file.

NOTE: An internal index also may be kept under lock and key for retrieval purposes in the event a question is later raised as to whether a particular criminal record should have been destroyed.

### 7.33 Reporting Juvenile Traffic or Wildlife Offense Adjudications

S.C. Code § 63-3-520 of the Code of Laws of South Carolina requires that family courts "report to the Department of Public Safety all adjudications of a juvenile for moving traffic violations and other violations that affect the juvenile's privilege to operate a motor vehicle including, but not limited to, controlled substance and alcohol violations as required by other courts of this State pursuant to S.C. Code § 56-1-330 and shall report to the Department of Natural Resources adjudications of the provisions of Title 50."

#### Tasks:

- The Clerk of Court is responsible for reporting juvenile adjudications to the appropriate agency. The reporting documents for the Department of Public Safety are the pink and yellow copies of the uniform traffic ticket. The reporting documents for the Department of Natural Resources are the green and yellow copies of the Arrest Report and Trial Summons. These documents will not usually be available as juvenile cases are initiated in the family court by petition not by ticket or summons.

### 7.34 Confidentiality in Juvenile Cases

The sensitive and personal nature of juvenile cases require special handling of the records and proceedings of the court.

#### 7.34.1 Court Records

Juvenile records are confidential. Records should be filed in a locked cabinet or maintained in a restricted access file area. Access to confidential records is **limited to those with a legitimate interest in the proceeding.**

Reference: S.C. Code § 63-19-2010.

#### 7.34.2 Persons Who May Have Access to Confidential Family Court Records

Delinquency proceedings - court records

Persons having a legitimate interest with judge's consent.

Anyone with an order from the judge.

Anyone defending against an action initiated by the juvenile.

Solicitor.

### 7.34.3 Hearings

Special statutory provisions have been made to permit or require exclusion of the public from cases involving children. § 63-3-530 (27) authorizes the Family Court to exclude the public from the courtroom in proper cases.

S.C. Code § 63-7-590 requires exclusion of the general public from all cases with children and permits the judge to admit only those with a direct interest in the case or in the work of the courts. The constitutionality of this section has been upheld in *Ex Parte Columbia Newspapers, Inc.*, [333 S.C.2d 337 (S.Ct. 1985)].

### 7.35 Appeals

Appeals from the decision of the family court judge in juvenile matters are directed to the South Carolina Court of Appeals. The fact that an appeal has been applied for or is pending before the Court of Appeals does not suspend the order of the Family Court regarding the child, and the child remains in the custody of the court, person, institution or agency to which the child has been committed. Reference: S.C. Code § 63-5-580.

The Clerk of Court receives a copy of the Notice of Intent to Appeal which must be filed and later files the original Transcript of records, copies of which will be filed with the Clerk of the Court of Appeals. 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 interlocutory, complete docket sheet disposition information, showing date of appeal as disposition date.

File Notice in case jacket.

- Upon receipt of Transcript of Record for filing:

File stamp the Transcript of Record.

Certify one copy as a true copy of the original and return it to the filing party.

File original Transcript of Record in the designated location.

- 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.

File receipt in case jacket when received

File order in case jacket.

- Upon notification of a judgment by appellate court:

File stamp the judgment.

### 7.36 Post Conviction Relief (PCR)

When an application for post-conviction relief is filed in a juvenile action, it is filed in the Family Court. The action will be heard in the Family Court of the county in which the conviction took place. Although a filing fee is required for PCR cases, the fee may be waived if the Application for Post-Conviction Relief is accompanied by a signed and notarized Application to Proceed Without Payment of Cost and Affidavit in Support Thereof.

Reference: S.C. Code § 63-3-640.

**Note: Unless the Attorney General's Office advises to the contrary, a PCR application in a juvenile case will be handled in the same manner as other PCR applications with the exception it will be filed in Family Court and will be given a DR number.**

#### Application for Post-Conviction Relief

A five page form prescribed by Rule 71.1, SCRPC and provided by the clerks of court, is required to initiate all PCR actions. These forms are provided to the clerks by Court Administration. The Attorney General's Office will schedule the case to be heard.

#### Tasks:

- Verify that the proper form has been used.
- Verify that filing fee is attached or that the waiver section of the application has been completed.
- Forward a copy to the Attorney General and the Solicitor.

**Note: When forwarding the copy of the PCR application to the Attorney General, please flag the application to indicate that it is a juvenile matter.**

### 7.37 Child Support Payments for Juveniles Detained in Custody of DJJ

The parents of a juvenile committed by the court to the custody of an approved local detention facility or the Department of Juvenile Justice (DJJ) may be ordered to pay child support as the court directs according to the "child support guidelines promulgated by the Department of Social Services (DSS) to cover in whole or in part the support and treatment of the child." If the parents of the child are not living together, the court will pursue child support from both parents. If a "parent willfully fails and refuses to pay the amount ordered the court may proceed against the parent for contempt." S.C. Code § 63-19-1680.

### 7.38 Crime Victim's Rights

Effective October 1, 1997, the Victim's and Witness's Bill of Rights was amended. Under the amended law, the "family courts must return to a victim personal property recovered or taken as evidence as expeditiously as possible...." Photographs and lists of the property including serial numbers and unique identifying characteristics should be substituted as evidence when possible. S.C. Code § 16-3-1545(E).

In family court, "the prosecuting agency must make reasonable efforts to provide victims and prosecution witnesses waiting areas separate from those used by the defendant and defense witnesses." S.C. Code § 16-3-1550(C).