

Commencing an Action: South Carolina

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A Q&A guide to commencing an action in South Carolina. This Q&A addresses the requirements for drafting and filing initiating papers, serving process and amending the complaint. Answers to questions can be compared across a number of jurisdictions (see [Commencing an Action: State Q&A Tool](#)).

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Overview of Commencing an Action

1. What are the applicable rules for commencing an action?

The South Carolina Rules of Civil Procedure is the main body of law governing South Carolina civil procedure. The key provisions related to commencing an action are found in:

- Rule 3 (Commencement of Action).
- Rule 4 (Process).
- Rule 8 (General Rules of Pleading).
- Rule 9 (Pleading Special Matters).
- Rule 10 (Form of Pleadings).
- Rule 11 (Signing of Pleadings).

Article V of the South Carolina Constitution governs the jurisdiction of the courts.

2. Generally, in which trial level court must an action be commenced? Please address:

- *Monetary thresholds for trial level courts.*
- *Territorial limits for trial level courts.*

Generally, actions are commenced in the Circuit Court, which has original jurisdiction in all civil cases unless a lower court has exclusive jurisdiction. When reviewing civil matters, the Circuit Court is known as the Court of Common Pleas.

The Family Court has exclusive, original jurisdiction over matters involving domestic relations.

The Probate Court has exclusive, original jurisdiction over:

- Probate matters.
- Trusts.
- Commitment of persons against their will.

The Magistrate's Court has concurrent civil jurisdiction with the Circuit Court on small claims up to \$7,500 and all landlord-tenant cases regardless of the amount at issue.

Monetary Thresholds

The only monetary threshold is the \$7,500 limit in the Magistrate's Court.

Territorial Limits

South Carolina has 16 judicial circuits. Each judicial circuit covers several of the 46 counties in South Carolina. For example, the Fifth Judicial Circuit covers Richland and Kershaw counties and the Ninth Judicial Circuit covers Charleston and Berkeley counties.

Actions are filed by county. Therefore, to start an action in the Fifth Judicial Circuit, a party must file a summons and complaint with the Clerk of the Court of either Richland or Kershaw County.

3. What documents must be prepared to commence an action? Are there official forms for the initiating papers?

Documents

To commence an action, a plaintiff must file a summons and complaint with the Clerk of Court for the county where the action is brought ([S.C. R. Civ. P. 3\(a\)](#)). The plaintiff must also file a civil action cover sheet to commence an action.

Official Forms

Official forms for the summons and civil action cover sheet are available at the [website](#) of the South Carolina

Judicial Department. There is no official form for the complaint.

4. Is an action commenced by serving or filing the initiating papers? If an action is commenced by service, by when must the complaint or other pleadings be filed?

A party commences a civil action in South Carolina by filing a summons and complaint with the Clerk of the Court. The summons and complaint must be properly served within the statute of limitations. If the summons and complaint are not served within the statute of limitations, actual service must be completed no later than 180 days after filing the summons and complaint. ([S.C. R. Civ. P. 3\(a\)](#).)

5. How are the initiating papers filed? Please address:

- *Whether the papers are filed electronically or by hard copy.*
- *Any fees for filing the initiating papers, and in what form those fees must be paid.*

Filing Initiating Papers

The plaintiff files initiating papers by delivering a hard copy to the Clerk of Court for the county in which the action is brought.

State courts in South Carolina currently do not provide for electronic filing.

Filing Fees

The filing fee is \$150, which the plaintiff can pay to the Clerk of Court by check drawn on a law firm account. To confirm other acceptable payment methods, plaintiffs should contact the Clerk of Court of the county in which the action is being brought.

Initiating Papers

6. What are the contents that must be included in the summons?

The summons must include:

- The plaintiff's signature or the signature of the plaintiff's attorney.
- The name of the state and county.
- The name of the court.
- The file number of the action.
- The names of the parties.

- The time within which the defendant must appear and defend (generally 30 days).

([S.C. R. Civ. P. 4\(b\)](#).)

The summons must also be directed to the defendant and state the name and address of the plaintiff's attorney, if any. If the plaintiff is unrepresented by counsel, the summons must include the plaintiff's address.

The summons must notify the defendant that in case of a failure to respond, a judgment by default will be rendered against the defendant for the relief demanded in the complaint ([S.C. R. Civ. P. 4\(b\)](#)).

7. What are the contents that must be included in the complaint?

The complaint must contain:

- A short and plain statement of the grounds including facts and statutes on which the court's jurisdiction depends, unless the court already has jurisdiction to support it.
- A short and plain statement of the facts showing that the plaintiff is entitled to relief.
- A prayer or demand for judgment for the relief sought.

([S.C. R. Civ. P. 8\(a\)](#).)

The complaint must also contain a caption including:

- The name of the state and county.
- The name of the court.
- The title of the action.
- The file number and a designation as in [Rule 7\(a\) of the South Carolina Rules of Civil Procedure](#).

([S.C. R. Civ. P. 10\(a\)](#).)

The complaint must be signed by at least one attorney of record who is admitted to practice law in South Carolina. The complaint must also include the attorney's address and telephone number. A party who is not represented by an attorney must sign the pleading, motion, or other papers and state its address. ([S.C. R. Civ. P. 11\(a\)](#).)

8. Must the plaintiff certify or swear to the complaint?

Unless a rule or a statute specifically states otherwise, South Carolina does not require that pleadings be verified or be accompanied by an affidavit ([S.C. R. Civ. P. 11\(a\)](#)). For example, [Rule 9\(i\) of the South Carolina Rules of Civil Procedure](#) provides the rules for verification for actions on an account.

9. *What is the applicable pleading standard? Please address any:*

- *Key distinctions from [Federal Rules of Civil Procedure 8](#).*
- *Different pleadings requirements for particular claims (for example, fraud).*

State Pleading Standard

A complaint must contain:

- A short and plain statement of the grounds including facts and statutes on which the court's jurisdiction depends, unless the court already has jurisdiction to support it.
- A short and plain statement of the facts showing that the plaintiff is entitled to relief.
- A prayer or demand for judgment for the relief sought.

([S.C. R. Civ. P. 8\(a\)](#).)

Key Federal Distinctions

South Carolina is a fact-pleading jurisdiction, while the Federal Rules of Civil Procedure require notice pleading.

Pleading Requirements for Particular Claims

Capacity

It is not necessary to state in the pleading:

- The capacity of a party to sue or be sued.
- The authority of a party to sue or be sued in a representative capacity.
- The legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court.

([S.C. R. Civ. P. 9\(a\)](#).)

If a party wishes to raise an issue as to any of the above matters, the party must make a specific negative averment, which must include supporting particulars that are within the pleader's knowledge. ([S.C. R. Civ. P. 9\(a\)](#).)

Fraud, Mistake, Condition of Mind

In a pleading alleging fraud or mistake, the facts constituting the fraud or mistake must be stated with particularity. Malice, intent, knowledge, and other mental conditions, however, may be stated generally, without particularity.

([S.C. R. Civ. P. 9\(b\)](#).)

Conditions Precedent

Allegations that conditions precedent occurred or were performed may be made generally. A denial of the performance or occurrence, however, must be stated specifically, with particularity. ([S.C. R. Civ. P. 9\(c\)](#).)

Official Document or Act

In pleading an official document or official act it is sufficient to aver that the document was issued or the act was done in compliance with law ([S.C. R. Civ. P. 9\(d\)](#)).

Judgment

A judgment may be averred without showing jurisdiction to render it, if the judgment is from:

- A domestic or foreign court.
- A judicial or quasi-judicial tribunal.
- A board or officer.

([S.C. R. Civ. P. 9\(e\)](#).)

Time and Place

For the purpose of testing the sufficiency of a pleading, averments of time and place are material and are considered like all other averments of material matter ([S.C. R. Civ. P. 9\(f\)](#)).

Special Damage

Items of special damage in a pleading must be specifically stated ([S.C. R. Civ. P. 9\(g\)](#)).

Libel or Slander

In an action for libel or slander, the complaint does not need to state the extrinsic facts of the defamatory matter out of which the claim arose.

The complaint may allege generally that the libel or slander concerning the plaintiff was published or spoken. In that case, the opposing party may, in its answer, allege both:

- The truth of the matter charged as defamatory.
- Any mitigating circumstances reducing the amount of damages.

The opposing party may provide evidence of mitigating circumstances. ([S.C. R. Civ. P. 9\(h\)](#).)

Verification of Account

In an action on an account, the plaintiff must either:

- Attach a verified copy of the account to the pleading.
- Verify the pleading if the items of the account are included in the pleadings.

(S.C. R. Civ. P. 9(i).)

10. Please address the circumstances, if any, where a complaint is not part of the initiating papers, including what papers are filed instead of a complaint.

South Carolina does not have any circumstances where a complaint is not part of the initiating papers.

11. Please discuss any prerequisites for filing certain claims (for example, filing a complaint against a government entity).

In medical malpractice actions, the plaintiff must file a notice of intent (NOI) to file suit and an expert affidavit before filing a summons and complaint. If mandatory mediation does not resolve the matter, the plaintiff may file the summons and complaint. (S.C. Code 15-79-125.)

For other professional negligence actions involving professions listed in subsection G of [Section 15-36-100 of the South Carolina Code](#), the plaintiff must file an affidavit of an expert witness as part of the complaint. The affidavit must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit. (S.C. Code 15-36-100.)

For claims arising under a statutory scheme that includes administrative review, a party may have to exhaust all administrative remedies before bringing an action in circuit court (*McSwain v. Charleston County Bd. of Trustees*, 735 S.E.2d 492, 497 (S.C. 2012)).

Service of Process

12. When must the defendant be served with process? Can the time to serve the defendant be lengthened?

Serving the Defendant with Process

The summons and complaint must be served within the statute of limitations in any manner prescribed by law. If they are not served within the statute of limitations, actual service must be accomplished within 120 days after filing. (S.C. R. Civ. P. 3(a) and S.C. Code § 15-3-20.)

Additional Time for Service

South Carolina law does not provide additional time to serve process.

13. What documents must be served?

The summons and complaint must be served together ([S.C. R. Civ. P. 4\(d\)](#)).

14. Who may serve process? Is a license or other certification required?

Process may be served by anyone who is:

- At least 18 years old.
- Not a party or attorney in the case.

([S.C. R. Civ. P. 4\(c\)](#).)

No license or certification is required.

15. What are the methods for service within the state?

Service on Individuals

An individual other than a minor under the age of 14 years or an incompetent person may be served by:

- Personal delivery.
- Leaving a copy of the summons and complaint at the individual's home with a person of suitable age and discretion.
- Delivery to an agent authorized by appointment or law to receive service of process.

([S.C. R. Civ. P. 4\(d\)\(1\)](#).)

Service on Minors and Incompetent Persons

The following persons may be served by personal delivery:

- A minor under the age of 14 years.
- A person judicially declared incapable of conducting his own affairs.
- An incompetent person.

([S.C. R. Civ. P. 4\(d\)\(2\)](#).)

A copy of the summons and complaint must also be delivered to the guardian or committee of the person. If there is no guardian or committee within South Carolina, the copies must also be delivered to either:

- A parent or other person having the care and control of the person.
- Any competent person with whom the person resides or in whose service the person is employed.

(S.C. R. Civ. P. 4(d)(2).)

If service is made on a minor between the ages of 14 and 18 who lives with a parent or guardian, a copy of the summons and complaint must also be served on the parent or guardian, if the parent or guardian resides within South Carolina (S.C. R. Civ. P. 4(d)(2)).

Service on Confined Persons

Imprisoned persons or persons confined in a state hospital or similar institution, within or outside of South Carolina, may be served by delivering a copy of the summons and complaint to the confined person personally (S.C. R. Civ. P. 4(d)(2)). The service must be made by the sheriff of the county in which the person is imprisoned or confined. Instead of the sheriff, however, personal service to imprisoned persons and patients in state hospitals or similar institutions may be made by either:

- The superintendent of the institution.
- The director of the prison system.
- Assistants duly designated by the superintendent or the director in writing for the purpose of making service of process.

(S.C. R. Civ. P. 4(d)(2).)

Service on confined or imprisoned persons must also conform to South Carolina laws related to the duties of the director of a state mental health facility (S.C. Code 15-9-510).

Service on Corporations and Partnerships

Corporations, partnerships, and other unincorporated associations subject to suit under a common name may be served by delivering a copy of the summons and complaint to:

- An officer.
- A managing or general agent.
- Any other agent authorized by appointment or by law to receive service of process. If the agent is authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(S.C. R. Civ. P. 4(d)(3).)

Service on the State

The state may be served by delivering a copy of the summons and complaint to the [South Carolina Attorney General \(S.C. R. Civ. P. 4\(d\)\(4\)\(A\)\)](#).

When another official is designated to be served by the statute permitting the action, service must be made by delivering a copy of the summons and complaint to that official and sending a copy of the summons and complaint by registered or certified mail to the Attorney General at Columbia (S.C. R. Civ. P. 4(d)(4)(A)).

In any action attacking the constitutionality of a South Carolina statute when the state, officer or agency is not made a party, a copy of the summons and complaint must be sent by registered or certified mail to the Attorney General (S.C. R. Civ. P. 4(d)(4)(B)).

Service on an officer or agency of the state may be made by delivering a copy of the summons and complaint to the officer or agency and by sending a copy of the summons and complaint by registered or certified mail to the Attorney General at Columbia (S.C. R. Civ. P. 4(d)(5)).

If the agency is a corporation the copy must be delivered according to the rules regarding service on a corporation (see [Service on Corporations and Partnerships](#)).

Service on a municipal corporation, county, or other governmental or political subdivision subject to suit, may be made by either:

- Delivering a copy of the summons and complaint to the chief executive officer or clerk.
- Serving the summons and complaint in the manner prescribed by statute for the service of a summons and complaint or any like process on any such defendant.

(S.C. R. Civ. P. 4(d)(6).)

Statutory Service

Service on an individual or business entity is also sufficient if the summons and complaint are served in the manner prescribed by statute (S.C. R. Civ. P. 4(d)(7)).

[Sections 15-9-210 to 15-9-750 of the South Carolina Code](#) list several statutory service provisions.

Service by Certified Mail

Service of a summons and complaint on an individual or business entity may be made by the plaintiff or by any person authorized to serve process, including a sheriff or deputy, by registered or certified mail, return receipt requested and delivery restricted to the addressee (S.C. R. Civ. P. 4(d)(8)).

Service is effective on the date of delivery as shown on the return receipt. Service under this method must not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing the acceptance by the defendant. Any default or judgment by default must be set aside if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person. (S.C. R. Civ. P. 4(d)(8).)

If the defendant refuses delivery of the process or if the process is returned undelivered, the plaintiff must serve

the papers by another method authorized by the South Carolina Rules of Civil Procedure (S.C. R. Civ. P. 4(d)(8)).

Service by Commercial Delivery Service

Service of a summons and complaint on an individual or business entity may be made by the plaintiff or by any person authorized to serve process by a commercial delivery service that meets the requirements of [Section 7502\(f\)\(2\) of Title 26 of the United States Code](#).

Service is effective on the date of delivery as shown in the delivery record of the commercial delivery service (S.C. R. Civ. P. 4(d)(9)).

Service under this method must not be the basis for the entry of a default or a judgment by default unless the record contains a delivery record showing the acceptance by the defendant that includes an original signature or electronic image of the signature of the person served. Any default or judgment by default must be set aside if the defendant demonstrates to the court that the delivery receipt was signed by an unauthorized person. (S.C. R. Civ. P. 4(d)(9).)

If the defendant refuses delivery of the process or if the process is returned undelivered, the plaintiff must serve the papers by another method authorized by the South Carolina Rules of Civil Procedure (S.C. R. Civ. P. 4(d)(9)).

16. What are the methods for service outside the state?

Service may be made on any party outside of South Carolina in the same manner as service inside the state.

South Carolina law also provides for service by publication in certain cases ([S.C. Code 15-9-710](#)).

17. Are there any days on which service of process is restricted (for examples, Sundays or holidays)?

In South Carolina, there are no days on which service of process is restricted.

However, civil process may be served on Sundays only if the person is not going to or from or attending a regularly or specially scheduled church or religious service ([S.C. R. Civ. P. 5\(b\)\(2\)](#)).

18. What are the consequences for ineffective service of process?

A court may dismiss the action if a party raises ineffective service of process as a defense ([S.C. R. Civ. P. 12\(b\)](#)).

19. How are any defects in serving process cured?

A plaintiff can cure defective service by re-serving process in compliance with the service rules (see [S.C. R. Civ.](#)

P. 4).

In response to a motion regarding ineffective service, a court may also direct a party to cure any defects in serving process. Defects in service are waived if not raised by motion or responsive pleading ([S.C. R. Civ. P. 12\(h\)\(1\)](#)).

20. Must proof of service be process be filed? Please address:

- *Any required form of proof of service (for example, affidavit, affirmation, or declaration).*
- *Any information required in the proof of service.*
- *When the proof of service must be filed.*

In South Carolina, proof of service must be filed.

Required Form

If the sheriff or his deputy serves the pleading, a certificate must be filed as proof of service. If any other person serves the pleading, that person must file an affidavit as the proof of service. ([S.C. R. Civ. P. 4\(g\)](#).)

For service by publication, the printer or publisher must file an affidavit as proof of service. An affidavit of mailing must also be made by the party or its attorney if mailing of process is permitted or required by law. ([S.C. R. Civ. P. 4\(g\)](#).)

Failure to make proof of service does not affect the validity of the service ([S.C. R. Civ. P. 4\(g\)](#)).

Required Information

The proof of service must state:

- The date, time, and place of service.
- The name and address of the person actually served, if known. If not known, then the date, time, and place of service and a description of the person actually served.

([S.C. R. Civ. P. 4\(g\)](#).)

If service was by mail, the person serving process must:

- State in the proof of service the date and place of mailing.
- Attach a copy of the return receipt or returned envelope if received by the person showing whether the mailing was accepted, refused, or otherwise returned.

([S.C. R. Civ. P. 4\(g\)](#).)

If the mailing was refused, the return must also make proof of any further service on the defendant ([S.C. R. Civ.](#)

[P. 4\(d\)\(8\)](#)). The return along with the receipt or envelope and any other proof must be promptly filed by the clerk with the pleadings and become a part of the record (S.C. R. Civ. P. 4(g)).

If service was by commercial delivery service, the person initiating the service of process must make an affidavit identifying the process or other documents served. The person must attach to the affidavit a delivery record of the commercial delivery service that includes:

- The date, time, and place of delivery.
- The name of the person served.
- An original signature or electronic image of the signature of the person served.

The affidavit and delivery record and any other proof must be promptly filed by the clerk with the pleadings and be a part of the record. (S.C. R. Civ. P. 4(g).)

When Proof Must Be Filed

Proof of service must be filed within ten days after service of the summons and complaint ([S.C. R. Civ. P. 5\(d\)](#)).

Amending the Complaint

21. Can the complaint be amended after it has been filed, but before it has been served?

A party may amend its pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served ([S.C. R. Civ. P. 15\(a\)](#)).

22. Can the complaint be amended after it has been filed and served? If so:

- *When can this be done as of right?*
- *When must a plaintiff seek a court order to amend the complaint?*

Amendment as of Right

A party may amend the complaint once as a matter of course at any time before or within 30 days after a responsive pleading is served ([S.C. R. Civ. P. 15\(a\)](#)).

Court Order for Amending the Complaint

After the 30-day period has elapsed, a party may only amend the complaint with leave from the court or by written consent of the adverse party ([S.C. R. Civ. P. 15\(a\)](#)).

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