

Chapter 3: South Carolina Supreme Court¹

The South Carolina Supreme Court is the state's highest court. Five justices make up the Court. They are elected to 10-year terms by the General Assembly.

As South Carolina's court of last resort, the Supreme Court has exclusive appellate jurisdiction over seven classes of case appeals and has discretion to entertain other appeals. The Supreme Court may also hear cases that have not been heard in a lower court, known as original jurisdiction actions. In addition to its case-deciding function, the Supreme Court has administrative and regulatory authority over all South Carolina courts and the practice of law in the state. The Chief Justice, who is chosen by the General Assembly, is the administrative head of the judicial system and exercises administrative authority according to procedures adopted by the Supreme Court and General Assembly

The South Carolina Supreme Court provides litigants with a resolution of the matter from the highest court in the state and interprets and develops the law of this state. The Supreme Court's published decisions serve as binding precedent on all other courts in this state and, therefore, serve as a framework for how cases will be decided in the future, providing stability and predictability in the law.

Original Jurisdiction

In its original jurisdiction, the Supreme Court may allow actions to be commenced in the Supreme Court and may issue mandamus, certiorari, and other extraordinary writs. Normally, this only occurs when the case involves significant public interest or other unusual circumstances. Finally, the Supreme Court can agree to answer questions of law certified to it by a federal court or the highest court of another state when South Carolina law may be determinative of the action pending in the other jurisdiction.

Direct Appellate Role

In its appellate capacity, it has exclusive jurisdiction to hear appeals from the Circuit Court which includes a sentence of death; a Circuit Court order setting a public utility rate; a judgment involving a constitutional challenge to a state statute or local ordinance; a judgment of the Circuit Court involving public bond indebtedness; a judgment of the Circuit Court pertaining to an election; an order limiting the investigation by a State Grand Jury; and an order of the Family Court relating to an abortion by a minor. Additionally, on its own motion or a motion of a party or the Court of Appeals, the Supreme Court may certify an appeal pending before the Court of Appeals for decision by the Supreme Court.

Origination of South Carolina Supreme Court

The South Carolina Constitution outlines the development of the South Carolina Supreme Court in Article V, § 1, 2, 3, 4 and 5 as follows:

¹ Betsy Goodale and Paul Horne, Jr. are the contributing editors for this chapter.

ARTICLE V. THE JUDICIAL DEPARTMENT

SECTION 1. Judicial power vested in certain courts.

The judicial power shall be vested in a unified judicial system, which shall include a Supreme Court, a Court of Appeals, a Circuit Court, and such other courts of uniform jurisdiction as may be provided for by general law. (1985 Act No. 9, eff February 26, 1985.)

SECTION 2. Supreme Court.

The Supreme Court shall consist of a Chief Justice and four Associate Justices, any three of whom shall constitute a quorum for the transaction of business. The Chief Justice shall preside, and in his absence the senior Associate Justice. In all cases decided by the Supreme Court, the concurrence of three of the Justices shall be necessary for a reversal of the judgment below. (1985, Act No. 9, eff February 26, 1985.)

SECTION 3. Election of members of Supreme Court.

The members of the Supreme Court shall be elected by a joint public vote of the General Assembly for a term of ten years, and shall continue in office until their successors shall be elected and qualified, and shall be classified so that the term of one of them shall expire every two years. In any contested election, the vote of each member of the General Assembly present and voting shall be recorded. (1985 Act No. 9, eff February 26, 1985.)

SECTION 4. Powers of Chief Justice; rules; admission to practice of law and discipline of persons admitted.

The Chief Justice of the Supreme Court shall be the administrative head of the unified judicial system. He shall appoint an administrator of the courts and such assistants as he deems necessary to aid in the administration of the courts of the State. The Chief Justice shall set the terms of any court and shall have the power to assign any judge to sit in any court within the unified judicial system. Provided, each county shall be entitled to four weeks of court each year and such terms therefor shall be provided for by the General Assembly. Provided, further, that the Chief Justice shall set a term of at least one week in any court of original jurisdiction in any county within sixty days after receipt by him of a resolution of the county bar requesting it. The Supreme Court shall make rules governing the administration of all the courts of the State. Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in all such courts. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted. (1985 Act No. 9, eff February 26, 1985.)

SECTION 4A. Submission of Supreme Court rules to judiciary committees; disapproval by General Assembly.

All rules and amendments to rules governing practice and procedure in all courts of this State promulgated by the Supreme Court must be submitted by the Supreme Court to the Judiciary Committee of each House of the General Assembly during a regular session, but not later than the first day of February during each session. Such rules or amendments shall become effective ninety calendar days after submission unless disapproved by concurrent resolution of the General Assembly, with the concurrence of three-fifths of the members of each House present and voting. (1985 Act No. 8, eff February 26, 1985.)

SECTION 5. Jurisdiction of Supreme Court.

The Supreme Court shall have power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus, and other original and remedial writs. The Court shall have appellate jurisdiction only in cases of equity, and in such appeals they shall review the findings of fact as well as the law, except in cases where the facts are settled by a jury and the verdict not set aside. The Supreme Court shall constitute a court for the correction of errors at law under such regulations as the General Assembly may prescribe. (1985 Act No. 9, eff February 26, 1985.)

Administrative Function

Beyond deciding cases, the Supreme Court administers the entire South Carolina court system. In this capacity, the Court works to ensure that the South Carolina court system operates fairly and efficiently. The Court's administrative role has many facets, including:

- Budgeting for the entire unified judicial system.
- Long-range planning to chart the future of the state courts to ensure the expeditious handling of judicial matters.
- The Chief Justice, as the administrative head of the Judicial Branch, is responsible for administering the courts, setting the terms of court and assigning judges to preside at those terms.
- Adopting rules to simplify proceedings and promote the speedy and fair resolution of disputes.
- Setting standards for security, facilities, and staffing for courthouses throughout the state.
- Developing standards to ensure that jurors are treated well and that their time is not wasted.
- Identifying appropriate ways to use court-connected alternative dispute resolution (for example, a mediator might help disputing parties come to their own resolution), which may be less costly for consumers and may improve consumer satisfaction with the justice system.

Regulatory Function

Another important function of the Supreme Court is to regulate the legal profession and the conduct of the judiciary in South Carolina.

The Office of Bar Admissions is responsible for processing applications of individuals seeking admission to practice law in South Carolina. Additionally, it processes requests to be certified as lead counsel in death penalty cases, requests for approval of trial experiences required before a lawyer may appear alone in the trial of a case, applications for out-of-state attorneys to appear in South Carolina courts *pro hac vice*, and requests for certificates of good standing for members of the South Carolina Bar who are seeking to be admitted in other states. Finally, it assists the Board of Law Examiners in conducting the South Carolina Bar Examination and assists the Committee on Character and Fitness as it determines whether each applicant has the requisite character to be a member of the South Carolina Bar. The Board of Law Examiners and the Committee on Character and Fitness ensure that lawyers have the requisite legal knowledge, skills, and character to

competently and ethically handle the legal affairs of the citizens of South Carolina. The Court's Commission on Continuing Legal Education and Specialization monitors lawyers' compliance with South Carolina's continuing legal education requirements.

The Rules of Professional Responsibility and the Rules for Lawyer Disciplinary Enforcement govern the conduct of attorneys in the state while the Code of Judicial Conduct and Rules for Judicial Disciplinary Enforcement govern judges' conduct. The Office of Disciplinary Counsel investigates and prosecutes complaints involving allegations of misconduct or incapacity on the part of lawyers licensed to practice law in South Carolina and of judges who are part of the state unified judicial system. Matters handled by the Office of Disciplinary Counsel are filed with and processed through either the Commission on Lawyer Conduct or the Commission on Judicial Conduct. Matters not directly decided by either of these commissions are decided by the Supreme Court. The purpose of the disciplinary system is to protect citizens from attorneys or judges who, because of flaws in their character or skills or because of mental or physical incapacity, could pose a danger to the public if they are allowed to continue practicing law or presiding over court proceedings.

[What do the statutes say about the kinds of cases the South Carolina Supreme Court will decide? - Handout](#)

Case-Deciding Function

A primary function of the Supreme Court is to ensure independent, open, fair, and efficient resolution of disputes in accordance with the federal and state constitutions and laws. Cases come to the Supreme Court in a number of ways:

- A party who has lost a case in the Court of Appeals may file a petition for review.
- Any party may ask the Supreme Court to bypass the Court of Appeals and take a case.
- The Court of Appeals may ask the Supreme Court to take a case by certification, which means that the Court of Appeals received an appeal of a case, but because that court believed the case met the Supreme Court's criteria for accepting a case asked the Supreme Court to take the case directly.
- A party may begin a case of statewide significance in the Supreme Court (these are called original jurisdiction actions).

In an average year, the South Carolina Supreme Court receives approximately 1,700 petitions for review. These are requests from individuals, groups, businesses, agencies, and others that the Court hear a case.

Step 1: Conference

The Court holds a Conference twice a month to decide which cases it will review. The Court considers the petition for a writ of certiorari, the return filed by the respondent and the record of the lower court proceedings in each case. The criteria a case must meet in order to be heard by the South Carolina Supreme Court are set out in South Carolina Appellate Court Rule 226. The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:

- (1) Where there are novel questions of law.

- (2) Where there is a dissent in the decision of the Court of Appeals.
- (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
- (4) Where substantial constitutional issues are directly involved.
- (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Because the Supreme Court has absolute discretion to decide which cases it hears, a case may meet none of the above criteria and yet the Court may choose to hear it.

When the Court agrees to decide a case, the parties are asked to file written arguments, called briefs. Once the briefs are filed, the case is assigned to a justice and set for oral argument. Oral argument is to the Supreme Court what a trial is to a Circuit Court. But unlike a trial, oral argument does not involve the presentation of evidence or witnesses because the facts of the case are no longer in question (they were established in the lower courts). Instead, oral argument consists of carefully timed presentations by attorneys for each party. The time allotted for presentation of cases varies according to the complexity of the case; however, in most cases, each side is allowed ten minutes to present their argument and the appellant or petitioner is allowed an additional five minutes for reply or rebuttal. Parties may request additional time for oral argument, but this is rare.

[South Carolina Supreme Court: From Notice of Appeal to Opinion - Handout](#)

Step 2: Pre-Argument Memoranda

After the cases are assigned, each justice's law clerk prepares an in-depth memorandum on those cases assigned to his/her justice. The purpose of the memorandum is to research and analyze the issues in the case. Prior to oral argument, each justice receives a copy of the memorandum.

Step 3: Oral Argument

The attorneys may use their time to clarify the arguments set forth in the briefs or discuss developments in applicable law which have occurred subsequent to the filing of the briefs. During the presentation, the justices ask questions of the attorneys.

The attorney for the appellant or petitioner (the party seeking review of the lower court decision) is the first to speak. The Clerk of Court for the Supreme Court monitors the time for the attorney's oral argument by the use of a timer on the podium. Generally, ten minutes is allotted for initial argument and five minutes for rebuttal. When the time reserved for argument has expired, attorneys are generally to terminate their arguments immediately. However, if the court has asked a number of questions, the Chief Justice will often give the attorney additional time to complete the argument.

The attorney for the respondent, the party who won in the lower court, speaks next, and the same procedure is followed. The only difference is that the attorney for the respondent does not get to make a rebuttal.

The attorney for the appellant or petitioner then takes the podium for a five-minute rebuttal.

Oral arguments are audio recorded and are available from the Clerk of Court upon request. Once a month SCETV films a case as part of the Court's Case of the Month Program and that recording is available on the Court's website.

Step 4: Decision Conference²

Following each day's oral arguments, the Court meets in closed conference. The assigned justice gives his/her analysis and recommendation, the Court discusses the case, and each member of the Court casts a preliminary vote, usually in descending order of seniority and beginning with the justice who has given the recommendation. When possible, the Court reaches a decision in each of the cases argued that day, but any decision is tentative until the opinion is issued.

Immediately after the Court reaches its tentative decision in a case, the assigned justice prepares an opinion.

[South Carolina Supreme Court Diagram - Handout](#)

² The *Tootsie the Goldfish* exercise (Chapter 2) gives students an introduction to decision making.

Step 5: Issuing an Opinion

After the justices agree on an opinion, it is issued, or filed with the Office of the Clerk of the Supreme Court, and made available to the parties in the case and to the public. Every opinion is posted to the South Carolina Judicial Department website when issued. All concurring and dissenting opinions are simultaneously issued. Until a decision is issued, any justice may reconsider his or her vote on the case.

Step 6: Publishing an Opinion

South Carolina Supreme Court opinions are officially published in *South Carolina Reports*.

Step 7: Reconsideration

Reconsideration, in the sense of a re-hearing of a case, is seldom granted. A change of decision on reconsideration will ensue only when the Court has overlooked controlling legal precedent or important policy considerations or has overlooked or misconstrued a controlling or significant fact appearing in the record.

Famous Cases Decided by the South Carolina Supreme Court

There have been many cases decided by the South Carolina Supreme Court over the years. Below are a number of important cases decided by the South Carolina Supreme Court that have had an impact on the state. All but two of the cases have been determined since 1969.

Ahrens v. South Carolina, 392 S.C. 340, 709 S.E.2d. 54 (2011): Working retirees who chose to return to work for the State after retiring brought this case challenging the requirement that they make employee contributions to the Retirement Systems. The South Carolina Supreme Court held that the forms signed by the working retirees indicating that they would not be required to make contributions did not create a contract between the State and the retiree. The Court determined that the statutes that initially allowed retired members to return to work without making contributions could be amended to require the working retirees to make such contributions. As a result, the State Retirement Systems will continue to collect and retain employee contributions from working retirees.

<http://www.judicial.state.sc.us/opinions/displayOpinion.cfm?caseNo=26966>

Turner v. Rogers, 131 S. Ct. 2507, 180 L.Ed.2d 452 (2011): An indigent father appeared in family court without a lawyer for failing to pay child support. The judge held the father in contempt and sentenced him to 12 months in jail unless he paid the nearly \$6,000 arrearage. The father appealed, arguing that he had a constitutional right to an appointed lawyer before being sentenced to one-year imprisonment for civil contempt. The South Carolina Supreme Court held that the father did not have a constitutional right to a lawyer because he could avoid the sentence by paying his outstanding child support. The U.S. Supreme Court vacated the South Carolina Supreme Court's ruling and remanded the case. The United States Supreme Court held that the Due Process Clause did not require provision of counsel at the father's civil contempt proceeding, but in this case, the father's incarceration did violate the Due Process Clause. The Due Process Clause does not automatically require the provision of counsel in this type of proceeding even though the father faced incarceration for up to one year. In particular the Due Process Clause does not require the provision of counsel where the opposing party to whom support funds are owed is not represented by counsel and South Carolina provides alternative procedural safeguards that are the equivalent to adequate notice of the importance of his ability to pay, fair opportunity

to present, and to dispute relevant information, and court findings. This father's Due Process rights were violated because he did not receive either counsel or the benefit of alternative procedural safeguards such as clear notice that his ability to pay would constitute the critical question in his contempt proceeding, a form, or the equivalent, designed to gather information about this financial circumstances, and a court finding that he was able to pay his arrearage.

<http://www.supremecourt.gov/opinions/10pdf/10-10.pdf>

Seagars-Andrews v. Judicial Merit Selection Comm'n, 387 S.C. 109, 691 S.E.2d 453 (2010): Pursuant to the South Carolina constitution, justices and judges are elected by the General Assembly. The Judicial Merit Selection Commission (JMSC) is charged with evaluating the qualifications and fitness of all judicial candidates for election and re-election. Only candidates found to be qualified by the JMSC can be submitted to the General Assembly for consideration. This opinion established that the South Carolina Supreme Court could not intervene in decisions made by the JMSC absent an unconstitutional exercise by the JMSC of its powers. To intervene in the JMSC's decisions would violate separation of powers.

<http://www.sccourts.org/LawRelatedEducation/AllPrograms/TeachersandtheCourts/scsupreme/Seagars.aspx>

Sanford v. South Carolina State Ethics Comm'n, 385 S.C. 483, 685 S.E.2d 600 (2009): A writ of mandamus can be issued by the Supreme Court to enforce a legal right. Governor Sanford petitioned the South Carolina Supreme Court for a writ of mandamus directing the State Ethics Commission to comply with statute and regulations regarding confidentiality. The Governor asserted that the State Ethics Commission should not be permitted to publicly disseminate any investigatory reports about its ethics complaints against the Governor. The Speaker of the House also petitioned for a writ of mandamus to direct the State Ethics Commission to issues all of its investigations materials. The Supreme Court denied the petitions and did not issue the writs because neither the Governor nor the Speaker of the House met the requirements for a mandamus.

<http://www.sccourts.org/opinions/displayOpinion.cfm?caseNo=26741>

Whaley v. CSX Transp., Inc., 362 S.C. 456, 609 S.E.2d 286 (2005): This opinion clarifies where venue is proper or where an action may be brought when a corporation is the defendant.

<http://www.sccourts.org/opinions/displayOpinion.cfm?caseNo=25935>

Sloan v. Sanford, 357 S.C. 431, 593 S.E.2d 470 (2004): In one of many cases brought by Edward Sloan, a concerned taxpayer/citizen, the Supreme Court held that a constitutional provision which prohibits the Governor from holding "any office or other Commission (except in the militia) under the authority of this State, or of any other power" does not prohibit the Governor from serving in the Air Force Reserve.

<http://www.sccourts.org/opinions/displayOpinion.cfm?caseNo=25783>

State ex rel. Condon v. Hodges, 349 S.C. 232, 562 S.E.2d 623 (2002): Established when the Attorney General is authorized to bring an action against the Governor.

<http://www.sccourts.org/opinions/displayOpinion.cfm?caseNo=25451>

Simmons v. Tuomey Regional Med. Ctr., 341 S.C. 32, 533 S.E.2d 312 (2000): Imposes a nondelegable duty on hospitals with regard to physicians who practice in their emergency rooms.

<http://www.sccourts.org/opinions/htmlfiles/SC/25143.htm>

Drummond v. Beasley, 331 S.C. 559, 503 S.E.2d 455 (1998): This case is one of a number of cases that have come to the South Carolina Supreme Court focusing on the Governor's veto power. This particular case established that the Governor may only veto those parts of legislation labeled by the legislature as items or sections and may return vetoes with multiple items or sub-items included within a single objection in appropriation bills.

<http://www.sccourts.org/opinions/displayOpinion.cfm?caseNo=24798>

Whitner v. State, 328 S.C. 1, 492 S.E.2d 777 (1997), cert. denied 523 U.S. 1145, 118 S.Ct. 1857, 140 L.Ed.2d 1104 (1998): In this controversial case, the South Carolina Supreme Court held that a viable fetus is a "child" within the meaning of the child abuse and endangerment statute, and therefore the mother could be charged under the statute for ingesting crack cocaine during the third trimester of pregnancy, causing the baby to be born with cocaine metabolites in its system.

<http://www.sccourts.org/LawRelatedEducation/AllPrograms/TeachersandtheCourts/scsupreme/Whitner.aspx>

American Heart Ass'n v. County of Greenville, 331 S.C. 498, 489 S.E.2d 921 (1997): In a dispute over the will of "Shoeless Joe" Jackson, a famous professional baseball player, the Court held the will was public record and subject to retention by the County or State; therefore, Mrs. Jackson could not pass ownership of the will to a charity.

<http://www.sccourts.org/opinions/displayOpinion.cfm?caseNo=24685>

Silverman v. Campbell, 326 S.C. 208, 486 S.E.2d 1 (1997): In this case, the South Carolina Supreme Court held Article VI, section 2 ("No person who denies the existence of the Supreme Being shall hold any office under this Constitution) and Article XVII, section 4 ("No person who denies the existence of a Supreme Being shall hold any office under this Constitution) of the South Carolina Constitution violated the First Amendment and the Religious Test of the United States Constitution by barring persons who denied the existence of a "Supreme Being" from holding office. At that time, only two states, North Carolina and South Carolina, required a religious test for public office.

<http://www.sccourts.org/opinions/displayOpinion.cfm?caseNo=24622>

In the Matter of (Twila) Decker, 322 S.C. 215, 471 S.E.2d 462 (1995): This opinion upheld a finding of contempt against a reporter for The State newspaper who refused to reveal a confidential source who had provided information for an article on a pending murder trial.

<http://www.sccourts.org/LawRelatedEducation/AllPrograms/TeachersandtheCourts/scsupremeDecker.aspx>

Lucas v. South Carolina Coastal Council, 309 S.C. 424, 424 S.E.2d 484 (1992): This opinion and its predecessor, which was reversed by the United States Supreme Court, **Lucas v. South Carolina Coastal Council**, 304 S.C. 376, 404 S.E.2d 895 (1991), reviewed by 505 U.S. 1003, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992), address compensation of property owners affected by the Beachfront Management Act.

<http://www.sccourts.org/LawRelatedEducation/AllPrograms/TeachersandtheCourts/scsupreme/Lucas.aspx> http://www.oyez.org/cases/1990-1999/1991/1991_91_453

Ex parte Island Packet, 308 S.C. 198, 417 S.E.2d 575 (1992): This opinion addresses the public's First Amendment right of access and when denial of access through the closure of court proceedings in a criminal case is appropriate.

<http://www.scbare.org/LawRelatedEducation/AllPrograms/TeachersandtheCourts/scsupreme/IslandPaket.aspx>

Nelson v. Concrete Supply Co., 303 S.C. 243, 399 S.E.2d 783 (1991): The South Carolina Supreme Court abrogated the doctrine of contributory negligence in favor of comparative negligence for all causes of action arising on or after July 1, 1991. Under the doctrine of comparative negligence, negligence by the plaintiff does not automatically bar recovery by the plaintiff, provided his negligence is not greater than that of the defendant.

<http://www.scbare.org/LawRelatedEducation/AllPrograms/TeachersandtheCourts/scsupreme/Nelson.aspx>

State v. Shaw, 273 S.C. 194, 255 S.E.2d 799 (1979): In this opinion, the South Carolina Supreme Court found the current statutory death penalty procedure constitutional. In 1976, in **State v. Rumsey**, 267 S.C. 236, 226 S.E.2d 894 (1976), the Court had found the earlier version of the statute, which provided for mandatory imposition of the death penalty upon a finding of murder committed in specified circumstances, was unconstitutional.

<http://www.scbare.org/LawRelatedEducation/AllPrograms/TeachersandtheCourts/scsupreme/Shaw.aspx>

<http://www.scbare.org/LawRelatedEducation/AllPrograms/TeachersandtheCourts/scsupreme/Rumsey.aspx>

Mickle v. Blackmon, 252 S.C. 202, 166 S.E.2d 173 (1969): South Carolina's leading products liability case, credited with "starting the tort liability revolution."

<http://www.scbare.org/LawRelatedEducation/AllPrograms/TeachersandtheCourts/scsupreme/Mickle.aspx>

Tyger River Pine Co. v. Maryland Casualty Co., 170 S.C. 286, 170 S.E. 346 (1933): Established the "Tyger River Doctrine" under which an insured can bring a bad faith claim against an insurer for refusal to settle a claim within policy limits.

<http://www.scbare.org/LawRelatedEducation/AllPrograms/TeachersandtheCourts/scsupreme/Tyger.aspx>