

Chapter 4: South Carolina Court of Appeals¹

History

The South Carolina Court of Appeals began operation in the fall of 1983. Its creation by the South Carolina General Assembly arose from the perception that the state Supreme Court was suffering under an unmanageable backlog of appeals. As a result, appellate litigants were enduring long delays before their cases could reach finality in the Supreme Court.

The Court of Appeals began as a statutory court. In 1984, South Carolina voters approved a proposed amendment to make the Court of Appeals a constitutional court. In 1985, the General Assembly ratified the amendment, thus placing the authority for the Court of Appeals within the South Carolina Constitution.

The Court of Appeals had come into existence as a six-member court and until 1996 received all its cases on assignment from the Supreme Court, where appeals continued to be filed and docketed. In 1996, the General Assembly increased the number of Court of Appeals judges to nine and accepted rules changes that directed the filing of appeals in the Court of Appeals, rather than in the Supreme Court.

Structure

The nine members of the South Carolina Court of Appeals sit in panels of three judges, and the action of a panel is the action of the Court. In rare instances of exceptional importance, the Chief Judge and the eight Associate Judges may sit *en banc*, that is, as one full court of nine judges.

The Court of Appeals judges are elected by the General Assembly to six-year terms.

The Court of Appeals is based in Columbia, but is authorized to hear cases in any county in the state. Under this authority, the Court regularly schedules terms of Court in other counties.

Jurisdiction

The jurisdiction of the Court of Appeals is appellate only; that is, a case must originate elsewhere, such as in Circuit Court, and be brought to the Court of Appeals by a notice of appeal in the manner prescribed by the Appellate Court Rules.

The Court of Appeals has jurisdiction to consider appeals in all but a few categories of cases. Chief among these excluded categories are death-penalty appeals, which are within the exclusive appellate jurisdiction of the Supreme Court.

All Court of Appeals judges are elected to six-year terms by the General Assembly. Terms of office are staggered so that stability of the court is maintained.

¹ Ken Richstad and Paul Horne, Jr. are the contributing editors for this chapter.

Case-Deciding Procedures

A single judge of the Court of Appeals may rule on a motion filed during the course of an appeal. Only a panel of three judges, or the Court en banc, may decide the merits of an appeal.

After a case is fully briefed, it is assigned by the Clerk's Office to a panel of judges for consideration, with one judge given primary responsibility for producing the eventual written decision. These judges may decide to hold oral argument, but may also decide that the case does not require oral argument. If the judges decide the case does not require oral argument, the case is submitted, that is, taken under consideration without oral argument.

The Decision

The Court issues a written decision in each appeal. These decisions are commonly known as opinions. A decision must address all points raised, except those points that the Court determines are manifestly without merit. In the great majority of cases, a decision by the Court of Appeals will be issued within 45 days of hearing or submission. No specific deadline is imposed on the Court of Appeals for the issuance of its opinions.

Decisions are of two kinds: published and unpublished. This terminology can be misleading, because both kinds of opinion actually are published, in that they are made public. In legal terms, however, the denotation "Published" means that the decision receives wide distribution, is printed in the official reports of the Court, and, most significantly, stands as precedent for future decisions. A decision that stands as precedent serves as guidance to judges, lawyers, and others in understanding and interpreting the law of South Carolina. By contrast, decisions denominated "Unpublished" do no more than declare the rights of the parties in the particular case being decided. They have no precedential value, and the Appellate Court Rules strictly prohibit any attempt to cite these unpublished decisions as precedent.

The decision to issue a published or unpublished opinion is committed to the panel issuing the decision. Generally, an opinion that decides a case by applying clear and settled principles of law will not be a published decision.

After the Decision

Following the issuance of a decision, a litigant may petition for rehearing. The petition for rehearing is presented to the same panel that issued the decision. That panel reviews the points raised in the petition for rehearing. If the petition for rehearing is granted, the panel may schedule oral argument. As an alternative, the panel may reconsider the case without oral argument and issue a new opinion.

If the petition for rehearing is denied, the party may petition the Supreme Court and ask it to review the decision of the Court of Appeals.

Members of the Court

In May 2012, the members of the Court were, in order of seniority, with the year of first election:

Chief Judge John C. Few, 2010

Judge Thomas E. Huff, 1996

Judge Paul E. Short, Jr., 2004

Judge H. Bruce Williams, 2004

Judge Paula H. Thomas, 2007

Judge Daniel F. Pieper, 2007

Judge Aphrodite Konduros, 2008

Judge John D. Geathers, 2008

Judge James E. Lockemy, 2008