

Your Guide to Magistrate's Court



Provided by the SC Bar Public Services Division
with appreciation to the Lexington County Magistrates
for their assistance in updating this manual.

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Chapter I

MOST FREQUENTLY ASKED QUESTIONS

What is Magistrate's Court?

Magistrate's Court is a court of law. You may file a civil lawsuit in Magistrate's Court if:

- You believe that you or your property has been injured or damaged.
- The value of that injury or damage is \$7500.00 or less.
- You have a landlord/tenant dispute.
- You need a restraining order to protect you from harassment or stalking.

How do you file a lawsuit in Magistrate's Court?

If you believe that you or your property has been injured or damaged, you need a restraining order or you have a landlord/tenant dispute, you may decide to file a lawsuit in Magistrate's Court. Your belief that you or your property has been damaged or injured is called a **Claim**. To file the lawsuit, follow these steps:

- Identify the county where the person lives or company does business that you claim injured or damaged you or your property. You will need to file your lawsuit in that county. There are Magistrate's Courts in each county. You can find the number for Magistrate's Court in the "County Government" section of your phone book or online at www.sccourts.org/magistrate-court/magistratemap.cfm.
- Explain to the Magistrate's Court what you are claiming and why. You can do this in writing or orally.
- In that explanation or statement, you must identify who you claim injured you or your property. You may identify an individual, many individuals or an organization. Every party you identify must be related in some way to the injury that you are claiming.
- Decide whether you want to attach to the statement any documents or papers that support your claim. If you have questions, you may ask the Magistrate's Court personnel.
- You must pay a filing fee when you file the Complaint. Fees vary depending on the type of action being filed.

How will you know if you have been sued in Magistrate's Court?

You will know that you have been sued in Magistrate's Court when you receive a document called a **Complaint**. A Complaint is a short written statement filed by the person suing you. The person who filed the suit is called a **Plaintiff**. The Plaintiff first files the Complaint with the Magistrate's Court. The Complaint then is sent to you. You are called the **Defendant**.

What should you do if you are sued in Magistrate's Court?

If you receive a Complaint, you may take certain actions in order to defend your position:

- Explain your position to the Magistrate's Court. You can do this in writing or orally. The office will explain the procedure of the court and help you prepare papers related to your action, if the court determines such help is required.
- You need to explain your position within the 30-day period following your receipt of the Complaint. To determine when the 30-day period ends, count 30 days beginning the day after you receive the Complaint. In other words, if you receive the Complaint on a Monday, day one of the 30-day period will be the next day, or Tuesday.
- If you believe that you have a claim against the Plaintiff that relates to his or her claims against you, you may explain to the Magistrate's Court what you are claiming and why. You can do this in writing or orally.
- Not all claims can be brought in Magistrate's Court. For example, only claims valued at \$7500.00 or less can be brought in Magistrate's Court. Therefore, if the value of your claim against the Plaintiff is more than \$7500.00, you must agree to accept no more than \$7500.00 if you want to bring the claim in Magistrate's Court. If you agree to accept \$7500.00 or less, you cannot sue the Plaintiff for the amount over \$7500.00 at a later time.

What happens if you are sued and you decide to not respond within 30 days?

If you receive a Complaint and decide not to defend your position within 30 days, the Magistrate's Court will enter a **Default Judgment**. In other words, the Plaintiff will win the lawsuit. This means that the Plaintiff will be entitled to the money or relief that he or she claims that you owe him or her.

What happens if the Magistrate's Court enters a default judgement against you?

If the Magistrate's Court enters a Default Judgment, then:

- The Magistrate's Court will notify you that you have lost the lawsuit.

- The Magistrate’s Court may order you to pay the person who won the lawsuit.
- The Magistrate’s Court may order you to pay the total amount due at one time or in **installments**. If the Magistrate’s Court orders you to pay in installments, you will not need to pay the total amount at one time. Instead, the Magistrate’s Court will allow you to make smaller payments over a specific period of time, rather than one large payment. These smaller payments are called **installment payments**.
- If the Magistrate’s Court orders you to make installment payments and you fail to make an installment payment, the total amount of the judgment will become due immediately. In other words, the Magistrate’s Court will not allow you to continue making smaller payments. Instead, you will have to make one large payment.
- If you do not pay the total amount due, you may suffer legal consequences. An example of the legal consequences is a negative effect on your credit.

How will you know if the defendant files a claim against you after you have sued the defendant?

You will know that the person you sued has filed a claim against you when you receive a document called a **Counterclaim**. A Counterclaim is a short written statement filed by the Defendant. The Defendant first files the Counterclaim with the Magistrate’s Court. The Counterclaim then is sent to you.

What should you do if the defendant files a countersuit against you?

If the Defendant files a Counterclaim against you:

- You should file a reply to the Counterclaim thirty days after you receive it. To determine when the 30-day period ends, count 30 days beginning the day after you receive the Counterclaim. In other words, if you receive the Counterclaim on a Monday, day one of the 30 day period will be the next day, or Tuesday.
- If the Counterclaim is valued by the Defendant at \$25 or less, you must respond within five days.
- You also will need to appear at trial to defend your position.

How do you know where to go for the trial and when to go there?

The Magistrate’s Court will contact you to tell you the date and location of the trial. The Magistrate’s Court will contact both the Plaintiff and the Defendant. Contact is usually in writing. You need to keep the court aware of your mailing address.

What can you do if you know that you will not be able to go to Magistrate’s Court on the day that trial is scheduled?

Once you know the date and location of the trial, you should decide whether you will be able to go to trial on that date. You must have an important and valid reason for not being able to go to Magistrate’s Court. If you do have an important and valid reason, you must contact the Magistrate’s Court to get permission to get the trial rescheduled or **continued**. Usually, you can only get permission to reschedule once.

What happens if the Defendant files a Counterclaim against you and you fail to appear at trial?

If the Defendant files a Counterclaim against you, you should appear at trial to argue your claims against the Defendant and to defend your position. If you do not appear at trial, the Magistrate’s Court will dismiss your claims against the Defendant. In other words, you will not win the lawsuit. Additionally, if you do not appear at trial, the Magistrate’s Court will rule in favor of the Defendant. In other words, the Defendant may win his or her claims against you. This means that the Defendant will be entitled to the money or relief that he or she claims that you owe him or her.

What happens if the Plaintiff and Defendant do not appear for trial?

If the Plaintiff and the Defendant fail to appear for trial, then the Magistrate’s Court will dismiss all the claims that were filed. In other words, neither the Plaintiff nor the Defendant will win. Additionally, if the Magistrate’s Court dismisses the claims, the lawsuit will no longer exist.

Are you entitled to a jury trial?

If you want a jury trial, you must send a written request for a jury trial to the Magistrate’s Court at least five working days before the original scheduled court date. In some cases you may be required to attend a mediation program prior to your jury trial being scheduled. Mediation is an attempt to effect a peaceful settlement between the parties with the help of a

trained neutral party.

What happens at trial?

You and your opponent will appear before the Magistrate Judge at the same time in the courtroom.

If you are the Plaintiff:

- You will explain your claims and your position first.
- You may ask questions to any witnesses whom you believe will support your position.
- You may give the Magistrate Judge any documents or things that you believe will support your position if admissible.
- You may ask the Defendant questions that relate to your claims.
- If you do not have an attorney or if the Defendant does not have an attorney, the Magistrate Judge may relax the rules for the parties.

If you are the Defendant:

- You will explain your position and any claims that you may have after the Plaintiff explains his or her claims and position.
- You also may ask questions to any witnesses whom you believe will support your position.
- You also may give the Magistrate Judge any documents or things that you believe will support your position if admissible.
- You may ask the Plaintiff questions that relate to your position and your claims.
- If you do not have an attorney or if the Plaintiff does not have an attorney, the Magistrate Judge may relax the rules for the parties.

Anything that the Plaintiff, the Defendant and the witnesses say will be **under oath**. In other words, if any individual does not tell the truth, that individual may have committed perjury. After you and your opponent have explained your positions, either the Magistrate Judge or the jury will review the information. As soon as the Magistrate Judge or the jury finishes reviewing the information, the Magistrate Judge or the jury will decide the outcome of the lawsuit. The Magistrate Judge will tell both parties at the same time in the courtroom who won the case. This is called the **verdict**.

What happens if you believe that a person will help your position but you do not believe that the person will come to trial?

You may believe that a person or many people have information that will support your position. You may ask anyone to come to trial to be a **witness**. A witness will answer questions asked to him or her by you, the opposing party and the Magistrate Judge. Some people you want to be witnesses will not come to trial if you ask them. If someone refuses to be a witness, you may contact the Magistrate's Court. The Magistrate's Court may have the power to **issue a subpoena** to force the person to come to trial. You will be required to pay a fee for the subpoena, and your witness a fee for their attendance.

What happens if you disagree with the final decision?

You may not agree with the final decision. This final decision is called a **judgment**. If you disagree with the judgment, you may file a motion for a new trial within five days from the date you receive notice of the judgment. You do not have to file a motion for new trial. Instead, you may appeal to the circuit court to review the decision. The appeal will need to be filed at the county courthouse with the clerk of court. There is a fee for filing an appeal.

How do you appeal a judgment in Magistrate's Court?

In order to appeal a judgment in Magistrate's Court, you must:

- Send a Notice of Appeal to the clerk of circuit court in the county where the Magistrate's Court is located.
- Send a Notice of Appeal to the Magistrate who heard the case.
- Send a Notice of Appeal to your opponent.
- Send all Notices of Appeal within 30 days after you receive notice of the judgment.

If you appeal the case, will you be able to have a jury trial?

No, your appeal only will be heard by a circuit court judge.

What advice can the judge/court give me?

Court officials, judges and court clerks cannot give you legal advice or advise you on how to prepare your legal documents.

Do I need an attorney?

The law allows you to represent yourself as an individual in court. However, the laws and rules that govern courts can be complicated. Only an attorney can advise you of your legal rights, provide legal advice and act on your behalf. If you choose to proceed without an attorney, court officials and court clerks cannot give you legal advice or advise you on how to prepare your legal documents. You will need to do your own research in order to prepare your case.

Chapter II

DEFINITIONS

Abandonment	Give up title or right to property	Installment payments	Smaller payments made over a specific period of time, rather than one large payment
Accounts	Statement of money owed, including the reason that the money is owed	Mediation	An attempt to reach a peaceful settlement between the parties with the help of a trained neutral party
Affidavit	Written or printed statement of facts made voluntarily and willingly under oath	Judgment	Final decision of the lawsuit
Attachment	Act of taking someone's property in order to satisfy or pay for a judgment	Oath	Promise by a person making a statement to Magistrate's Court that the statement is true
Bond undertaking	Written agreement or promise to pay money or to take some action where another person fails to pay money or to take some action	Plaintiff	The person who filed the lawsuit
Claim	Your belief that you or your property has been damaged or injured	Predistress hearing	Hearing before the Magistrate Judge in which tenant or person renting property can prove why his or her personal property should not be taken to satisfy the debt owed to the landlord
Complaint	A short written statement filed by the person bringing the lawsuit	Subpoena	Document or paper that requires a person to appear at a specific time and place to give testimony
Continuance	To continue or reschedule a trial or a hearing	Sureties	Plural of surety; person who agrees to pay money or to take some action when another person fails to pay money or to take some action
Counterclaim	A short written statement filed by the Defendant that makes a claim against the Plaintiff	Testimony	Spoken evidence presented to Magistrate's Court by a person under oath
Default judgment	Final decision in a lawsuit that is entered when a party fails to respond to a claim filed against him or her	Trial	A formal meeting in the court in which evidence is presented to a judge or a jury so that decisions can be made according to the law.
Defendant	The person being sued	Venue	County or place where injury occurred or where trial will occur
Distrain	Seizure of goods or property to satisfy delinquent or late rent payments	Verdict	Outcome of the lawsuit or who won the case
Evidence	Information given personally, drawn from a document, or in the form of material objects, tending or used to establish facts	Witness	A person who makes a statement in a court about what he or she knows or has seen
Ejectment	Legal word used to describe the process of returning possession of property to the person who is entitled to possess the property		
Guardian ad litem	Person appointed by Magistrate's Court to represent an infant or incompetent person		

Chapter III

FORMS

Additional forms are online at www.sccourts.org/forms

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)
)
_____)
PLAINTIFF(S))
)
VS.)
)
_____)
DEFENDANT(S))

CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

SUMMONS

TO THE DEFENDANT _____

YOU ARE SUMMONED and required to answer the allegations of the attached complaint and present any appropriate counterclaims/crossclaims to the attached Complaint within _____ days from the first day after receipt of this summons. Your answer must be received by the Magistrate's Court located at:

_____, SC _____

If you fail to answer within the prescribed time, a judgment by default may be rendered against you for the amount or other remedy requested in the attached complaint, plus interest and costs. If you desire a jury trial, you must request one within five (5) days before the date of trial. If no jury trial is timely requested, the matter will be heard and decided by the Judge.

Given under my hand, this _____ day of _____, _____.

MAGISTRATE

STATE OF SOUTH CAROLINA)
)
 COUNTY OF _____)
)
 _____)
 PLAINTIFF(S))
)
 VS.)
)
 _____)
 DEFENDANT(S))

 CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

AFFIDAVIT OF DEFAULT

Plaintiff, _____, personally appearing before me, who being duly sworn, states that a summons and complaint in this action were served on the defendant, _____, on _____ which required that defendant answer or appear within thirty (30) days from the date of service; that defendant failed to appear or answer as required and is now in default.

Sworn to before me this)
 _____ day of _____, 2____)
)
 _____)
 Magistrate or Notary Public for South Carolina)
)
 My Commission expires _____)

 Plaintiff/Defendant (or his attorney)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF _____)
)
 _____)
 PLAINTIFF(S))
 VS.)
)
 _____)
 DEFENDANT(S))

 CIVIL CASE NUMBER
 IN THE MAGISTRATE'S COURT
 AFFIDAVIT AND ITEMIZATION
 OF ACCOUNTS

Plaintiff, _____, personally appearing before me, who, being duly sworn, states that he is the plaintiff in this action, and that the itemization of accounts which follows is true and correct.

He further states that no part of the sum included in the itemization below has been paid or satisfied in any fashion, and is today due and owed to him.

ITEMIZATION OF ACCOUNTS

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
TOTAL	\$ _____

(Copies of bills, papers or other proof of any of the above accounts should be attached to this document.)

Sworn to and Subscribed before me)
 this _____ day of _____, 2____.)
)
 _____)
 Magistrate or Notary Public for South Carolina)
)
 My Commission expires _____)

 PLAINTIFF (or his attorney)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF _____)
)
 _____)
 PLAINTIFF)
 _____)
 STREET ADDRESS)
 _____)
 CITY, STATE ZIP)
 _____)
 TELEPHONE)
 VS.)
 _____)
 DEFENDANT(S))
 _____)
 STREET ADDRESS)
 _____)
 CITY, STATE ZIP)
 _____)
 TELEPHONE)

 CIVIL CASE NUMBER
 IN THE MAGISTRATE'S COURT

COUNTERCLAIM

The defendant states he has a claim against the plaintiff in the amount of \$_____. The counterclaim arose out of the same transaction or occurrence as the plaintiff's claim as a result of the following events:

The defendant states that the information contained in the counterclaim is true and correct to the best of his knowledge. Defendant understands that should he be successful in this action and obtain judgment, and if plaintiff does not appeal within thirty days, this judgment becomes final. The defendant cannot commence another action involving the same parties and issues.

I state under penalty of perjury that the above is correct and truthful.

Dated: _____

 Signature of Defendant (or his attorney)

KEEP A COPY OF THIS COUNTERCLAIM AND BRING IT TO COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF _____)
)
 _____)
 PLAINTIFF)
)
 _____)
 STREET ADDRESS)
)
 _____)
 CITY, STATE ZIP)
)
 _____)
 TELEPHONE)
 VS.)
)
 _____)
 DEFENDANT(S))
)
 _____)
 STREET ADDRESS)
)
 _____)
 CITY, STATE ZIP)
)
 _____)
 TELEPHONE)

 CIVIL CASE NUMBER
 IN THE MAGISTRATE'S COURT

ANSWER

On _____ I was served with a Complaint requiring me to answer within thirty days from the date of service. My Answer, which is hereby filed with the _____ Magistrate Court, is as follows:

CHECK ONE:

A. I contest the jurisdiction of the court based on the following: (use additional pages if necessary)

B. I admit everything in the complaint and do not want a trial.

C. I admit that I am responsible, but not for the total amount claimed by the Plaintiff(s) because: (use additional pages if necessary) _____

D. I deny that I am responsible at all because: (use additional pages if necessary)

You must file this document with the Court within thirty days.

THE DEFENDANT STATES THAT THE INFORMATION CONTAINED IN THIS ANSWER IS TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE.

Dated: _____

 Signature of Defendant (or his attorney)

KEEP A COPY OF THIS ANSWER AND BRING IT TO COURT

INSTRUCTIONS TO DEFENDANT

1. If you do not wish to oppose plaintiff's claim, you may:

- a. Contact plaintiff and make an out-of-court settlement with the plaintiff before the trial date and file with the magistrate's court a dismissal of the case signed by the plaintiff, or
- b. Make no answer to the complaint. In that case, the plaintiff may be given a default judgment against you in the amount specified in the complaint.

2. If you wish to oppose the claim:

- a. You must file an answer with the magistrate's court within the time specified within the summons. Your answer may be made in writing in a form approved by the magistrate, or your answer may be made orally to the magistrate's court if you appear in person.
- b. You will be notified of the time and date of the trial. You must appear at that time. Should you fail to appear, the plaintiff may be given a default judgment against you in the amount specified in the complaint.
- c. At the time for your trial, you must bring with you all books, papers, witnesses and evidence you have to establish your defense.
- d. At your request the court will issue a subpoena for any witnesses you may need (you must order the subpoena as soon as possible and before the trial date). You will be required to pay a fee for the subpoena, and your witness a fee for their attendance.

3. If you desire a jury trial, you must request one within five days from the date set for trial. If no jury trial is timely requested, the matter will be heard and decided by the magistrate.

4. If you have a claim against the plaintiff that grows out of the same transaction or occurrence as the plaintiff's claim, you may file a counterclaim. The counterclaim must be filed with the magistrate within the time specified in the summons for answering. The counterclaim must be made in writing in a form approved by the magistrate, or it may be made orally to the magistrate's court if you appear in person. Your counterclaim will be tried at the same time as the plaintiff's claim if it does not exceed the jurisdiction of the magistrate to hear.

5. If you have a claim against the plaintiff that does not grow out of the same occurrence or transaction as the plaintiff's claim, you may file a claim (complaint) against the plaintiff. This claim would be heard separate and apart from the plaintiff's claim against you.

6. If you are a member of the Armed Services of the United States, please advise the court upon receipt of this summons.

7. If you are under 18 years of age, please advise the court upon receipt of this summons.

8. If you are a prisoner in any municipal, county, state or federal jail or prison, please advise the court upon receipt of this summons.

9. You may be represented by an attorney but are not required to have one. The magistrate's court will explain the procedure of the court and will help you prepare papers related to your action if you require such assistance. The court cannot, however, represent you or provide you with an attorney. If you are a business and are going to be represented by a Non-Lawyer, a Non-Lawyer Authorization Form must be included with your Answer/Counterclaim (See 33-1-103 SC Code of Laws).

STATE OF SOUTH CAROLINA)
)
 COUNTY OF _____)
)
 _____)
 PLAINTIFF)
)
 _____)
 STREET ADDRESS)
)
 _____)
 CITY, STATE ZIP)
)
 _____)
 TELEPHONE)
 VS.)
)
 _____)
 DEFENDANT(S))
)
 _____)
 STREET ADDRESS)
)
 _____)
 CITY, STATE ZIP)
)
 _____)
 TELEPHONE)

 CIVIL CASE NUMBER
 IN THE MAGISTRATE'S COURT

COMPLAINT

I, _____, the plaintiff in this civil action do make the following claims:

1. I believe the defendant, _____, is a resident of _____ County, and resides at _____ within Judge _____'s magisterial jurisdiction or this Complaint is properly filed in _____ County.

2. I make this complaint on the following:

(Attached supplement if necessary.)

3. I believe, because of the above information, that I am entitled to and do request a judgment for \$ _____ and/or other relief as below requested:

including any costs resulting in this action.

I state under penalty of perjury that the above is correct and truthful, except those based on my information and belief.

Dated: _____

 Signature of Plaintiff (or his attorney)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF _____)
)
 _____)
 PLAINTIFF(S))
)
 VS.)
)
 _____)
 DEFENDANT(S))

 CIVIL CASE NUMBER

 IN THE MAGISTRATE'S COURT

 AFFIDAVIT AND COMPLAINT
 (Claim & Delivery)

Plaintiff, _____ personally appearing before me, who being duly sworn, states the following:

1. The plaintiff is the owner, or is entitled to possession, of the property described below. (Give detailed description of each item):

2. The property described above is being wrongfully withheld by the defendant, _____.
3. To the best knowledge of the plaintiff, the property is being withheld by the defendant because:

4. The property was/was not (circle one) taken from the ownership or possession of the plaintiff due to any tax, fine or assessment (and if so seized, it should not have been by virtue of its exempt status).
5. The actual value of the above described property is: (Itemize and give total if more than one item involved.)
 *TOTAL \$ _____.
 That this amount has been determined in the following manner, to wit:

6. That the Notice of Right to Cure as required by Section 37-5-110 and Section 37-5-111, Code of laws of South Carolina, 1976, as amended, has been given on _____ (is not required).

DATED: _____

Sworn to before me,
 this _____ day of _____, 2____.

 Magistrate or Notary Public for South Carolina) Plaintiff (or his attorney or agent)
)
 My Commission expires _____)

FOR COURT USE ONLY
ENDORSEMENT OF DISPOSSESSION

Based upon the showing of plaintiff made by affidavit and:
 ("hearing held and date" or "no other")

the court hereby directs the constable to immediately take possession of the above described personal property from the defendant and to:

- retain protective possession of the personal property until otherwise instructed by the Court.
- deliver possession of the personal property to _____

IT IS SO ORDERED.

Dated: _____ Magistrate

STATE OF SOUTH CAROLINA)
)
 COUNTY OF _____)
)
 _____)
 PLAINTIFF(S))
 VS.)
)
 _____)
 DEFENDANT(S))

 CIVIL CASE NUMBER
 IN THE MAGISTRATE'S COURT
 APPLICATION FOR
 EJECTMENT
 (Eviction)

I, _____, plaintiff in this action, state that I am the landlord-lessor of premises within the jurisdiction of Magistrate _____ which is described as: (address and description of premises – apartment, house, etc.)

I further state that, with regard to the above described premises, a landlord-tenant relationship exists between myself and the defendant _____, the tenant-lessee, as evidenced by the following: (Attach lease papers or other written proof.)

Grounds for this ejectment are one or more of the following:
 The tenant fails or refuses to pay the rent when due or when demanded; or
 The term of tenancy or occupancy has ended; or
 The terms or conditions of the lease have been violated as follows: _____

Sworn to before me)
 this _____ day of _____, 20____.)
)
 _____)
 Magistrate or Notary Public for South Carolina)
)
 My Commission expires _____)

 PLAINTIFF (or his attorney)

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

IN THE MAGISTRATES COURT

_____))
_____))
_____))
PLAINTIFF(S))
VS.)
_____))
_____))
_____))
DEFENDANT(S))

COMPLAINT AND MOTION
FOR RESTRAINING ORDER
(Harassment and Stalking)

CIVIL CASE NUMBER

The Plaintiff alleges:

1. The Plaintiff lives in _____ County.
2. The Defendant lives at _____, which is in _____, _____.
3. The Harassment First or Second Degree or Stalking occurred in _____, _____.
4. Plaintiff further alleges that the following conduct occurred by the defendant on the times, dates, and places listed below, and such conduct falls within the definition of:
 HARASSMENT, FIRST DEGREE (§16-3-1700 (A)), or
 HARASSMENT, SECOND DEGREE (§ 16-3-1700 (B)), or
 STALKING (§ 16-3-1700 (C)).
5. _____, 20_____, at _____ O'clock, A.M./P.M. (circle one), at _____, _____, which is in _____, _____, the conduct complained of occurred when the defendant:

On _____, 20_____, at _____ O'clock, A.M./P.M. (circle one), at _____, _____, which is in _____, _____, the conduct complained of occurred when the defendant:

On _____, 20_____, at _____ O'clock, A.M./P.M. (circle one), at _____, which is in _____, the conduct complained of occurred when the defendant:

(State details of harassment/stalking and other facts and circumstances upon which relief is sought above. Attach additional sheets if necessary.)

6. Plaintiff requests: (Check one or more)

- a. That the defendant be enjoined from abusing, threatening to abuse, or molesting the plaintiff or members of the plaintiff's family.
- b. That the defendant be enjoined from entering or attempting to enter the plaintiff's place of residence, employment, education, or other location.
- c. That the defendant be enjoined from communicating or attempting to communicate with the plaintiff in a way that would violate Article 17, Chapter 16 of the 1976 South Carolina Code of Laws, as amended.

SWORN to and Subscribed before me)
)
This ___ day of _____, 20_____.)
)
_____)
Notary Public for South Carolina)
My Commission expires: _____)

_____)
Signature of Plaintiff or Person Filing
on Behalf of Plaintiff

NOTICE: THE NON-PREVAILING PARTY IN THIS ACTION IS ASSESSED A FILING FEE OF EIGHTY DOLLARS (\$80.00). THE COURT MAY HOLD A PERSON IN CONTEMPT OF COURT FOR FAILURE TO PAY THIS FILING FEE. §16-03-170(D).

NOTICE TO DEFENDANT: YOU HAVE THE RIGHT TO EMPLOY COUNSEL TO REPRESENT YOU.

Chapter IV

ADMINISTRATIVE AND PROCEDURAL RULES FOR MAGISTRATE'S COURT

SCOPE AND PURPOSE

These rules govern civil procedure in the magistrate's courts. They are to be known and cited as the "South Carolina Rules of Magistrates Court." They shall be construed to secure the just, speedy, and inexpensive determination of every civil case within the jurisdiction of the magistrate's court. All civil actions in the magistrate's court shall be conducted in such a manner as to do substantial justice between the parties according to the rules of substantive law. Provided, however, the time limits for taking any actions under these rules shall not apply where different time limits are specified by statute.

RULE 1 DEFINITIONS

"Amendment" means making a change in a complaint, answer, or counterclaim.

"Answer" means the paper filed by the party responding to the complaint.

"Complaint" means the paper containing the claim filed by the plaintiff.

"Counterclaim" means the paper containing a claim by a defendant against a plaintiff.

"Court" means the judge of the magistrate's court.

"Default" means failure to respond to the complaint or failure to appear at trial.

"Defendant" means the party against whom the plaintiff has filed a complaint.

"Execution" means enforcement of the judgment.

"Judgment" means the decision of the court on the case.

"Party" means either a plaintiff or a defendant.

"Plaintiff" means the party filing the complaint.

"Subpoena" means an order of the court requiring a witness to attend and testify at a specified place and time.

"Summons" means the paper issued by the court which orders the defendant to respond to the complaint.

"Working day" means a day which is not a Saturday, Sunday, or legal holiday under state or federal law.

RULE 2

APPLICATION OF STATUTORY LAW AND CIRCUIT COURT PRACTICE IN ABSENCE OF RULE

These rules shall govern all civil suits in the magistrate's court. If no procedure is provided by these rules, the court shall proceed in a manner consistent with the statutory law applicable to magistrates and with circuit court practice in similar situations but not inconsistent with these rules.

RULE 3

COMPUTATION OF TIME PERIODS

In computing any period of time prescribed or allowed by these rules, by order of the court, or by any applicable statute, the day of the act, event, or default after which the designated period begins to run is not to be included. The last day of the period so computed is to be included in the period unless it is not a working day, in which event the period runs until the end of the next day which is a working day. When the period of time prescribed or allowed is less than seven days, Saturdays, Sundays, and holidays shall be excluded in the computation. A half holiday shall be construed as a working day.

RULE 4

FILING CIVIL ACTION; ACTION AGAINST CORPORATION; LONG ARM STATUTE

(a) A civil action may be filed in any magistrate's court in the county in which at least one defendant resides or where the most substantial part of the cause of action arose, except that civil actions against domestic corporations may be filed in the county where such corporation shall have its principal place of business.

(b) A civil action may be filed in any magistrate's court in the county in which the plaintiff resides or where the cause of action arose when the defendant does not reside in this State and jurisdiction is based upon S.C. Code Ann. § 36-2-803.

RULE 5 COMPLAINT

(a) A suit is commenced by filing with the magistrate's court a short and plain written statement of the facts showing what the plaintiff claims and why the claim is made. Provided, however, upon a personal appearance, the plaintiff may make an oral statement which shall be reduced to writing. The court or court personnel shall assist the plaintiff in reducing the statement to writing if the court determines assistance is required. This statement shall be called a complaint. A plaintiff may combine as many claims as the plaintiff has against a defendant in one case and may sue more than one defendant in one case if the claim involves all of the defendants.

(b) The plaintiff shall state on the complaint the address to which the court may mail notices and correspondence concerning the case. If the plaintiff's mailing address changes, the plaintiff must advise the court in writing. The court may notify the plaintiff of all proceedings incident to the case by mailing the notice by regular mail to the plaintiff at the address provided.

(c) A plaintiff who desires to file an action without costs shall file a motion for leave to proceed in *forma pauperis*, together with the complaint proposed to be filed and an affidavit showing the plaintiff's inability to pay the fee required to file the action. If the motion is granted, the plaintiff may proceed without further application and file the complaint in the court without payment of filing fees.

RULE 6 SUMMONS; SERVICE

(a) Upon the filing of the complaint and a copy with any attachments for each defendant, the court shall issue a summons. A copy of the original summons, along with a copy of the complaint and any attachments, shall be served on each defendant.

(b) The summons shall contain the name of the State and county, the name of the court, the file number of the action, and the names of the parties, be directed to the defendant, and shall state the time within which these rules require the defendant to file an answer and any counterclaim, and shall notify the defendant that in case of failure to do so, judgment by default will be rendered against the defendant for the relief demanded in the complaint.

(c) Service of the summons may be made by the sheriff, the sheriff's deputy, a magistrate's constable, or by any other person not less than eighteen (18) years of age, who is not an attorney in or a party to the action. Service of all other process shall be made by the sheriff or the sheriff's deputy, a magistrate's constable, or any other duly constituted law enforcement officer, or by any person designated by the court who is not less than eighteen (18) years of age and who is not an attorney in or a party to the action.

(d) The summons and complaint must be served together. The plaintiff shall furnish the person making service with as many copies as are necessary. Voluntary appearance made by the defendant is equivalent to personal service. Service shall be made as follows:

(1) Individuals. Upon an individual other than a minor under the age of fourteen (14) years or an incompetent person, by delivering a copy of the summons and complaint to the individual personally or by leaving copies of the summons and complaint at the individual's dwelling house or usual place of abode with a resident of suitable age and discretion, or by delivering a copy to an agent authorized by appointment or by law to receive service of process.

(2) Minors and Incompetents. Upon a minor under the age of fourteen (14) years, a person judicially declared incapable of conducting the person's own affairs, or an incompetent person, by delivering a copy of the summons and complaint to the minor or incompetent person personally and also a copy to (a) the person's guardian or committee or, if there is no guardian or committee within the State, upon (b) a parent or other person having care and control of the person, or (c) any competent person with whom the person resides or (d) by whom the person is employed. If the individual upon whom service is made is a minor between the ages of fourteen (14) and eighteen (18) who lives with a parent or guardian, a copy of the summons and complaint shall also be served upon the parent or guardian if the parent or guardian resides within the State. Service on persons confined shall also conform to the provisions of S.C. Code Ann. § 15-9-510.

(3) Corporations and Partnerships. Upon a corporation, a partnership, or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process, and if the agent is one authorized by statute to receive service and the statute requires it, by also mailing a copy to the defendant.

(4) Governmental Subdivision. Upon a municipal corporation, county, or other governmental or political subdivision subject to suit in the magistrates court, by delivering a copy of the summons and complaint to the governmental subdivision's

chief executive officer or clerk, or by serving the summons and complaint in the manner prescribed by statute for the service of summons and complaint or any similar process upon this type of defendant.

(5) Statutory Service. Service upon a defendant of any class referred to in paragraph (d)(1) or (d)(3) of this rule is also sufficient if the summons and complaint are served in the manner prescribed by statute.

(6) Service by Certified Mail. Service of a summons, complaint, and any appropriate attachments upon a defendant of any class referred to in paragraph (d)(1) or (d)(3) of this rule may be made by certified mail, return receipt requested and delivery restricted to the addressee. Service is effective upon the date of delivery as shown on the return receipt. Service pursuant to this paragraph shall not be the basis for the entry of a default judgment unless the record contains a return receipt showing the acceptance by the defendant. Any default judgment shall be set aside pursuant to Rule 12 if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person. If delivery is refused or is returned undelivered, service shall be made as otherwise provided by these rules.

(7) Service by Commercial Delivery Service. Service of a summons, complaint, and any appropriate attachments upon a defendant of any class referred to in paragraph (d)(1) or (d)(3) of this subdivision of this rule may be made by a commercial delivery service which meets the requirements to be considered a designated delivery service in accordance with 26 U.S.C. § 7502(f)(2). Service is effective upon the date of delivery as shown in the delivery record of the commercial delivery service. Service pursuant to this paragraph shall not be the basis for the entry of a default judgment unless the record contains a delivery record showing the acceptance by the defendant, which includes an original signature or electronic image of the signature of the person served. Any default judgment shall be set aside pursuant to Rule 12 if the defendant demonstrates to the court that the delivery record was signed by an unauthorized person. If delivery of the process is refused or is returned undelivered, service shall be made as otherwise provided by these rules.

(e) Same: Other Service. Whenever a statute or an order of the court provides for service of a summons and complaint, or an order upon a party not an inhabitant or found within the county of the court's jurisdiction, service shall be made under the circumstance and in the manner prescribed by the statute, rule, or order.

(f) Territorial Limits of Effective Service. All process other than a subpoena may be served anywhere within the territorial limits of the State and, when a statute so provides, beyond the territorial limits of the State. A subpoena may be served within the county of the court's jurisdiction. Nothing in this subdivision is meant to extend the jurisdiction of the magistrate's court beyond the limits otherwise established by law.

(g) Proof and Return. The person serving the process shall promptly make proof of service and deliver it to the court. If served by the sheriff, the sheriff's deputy, or a magistrate's constable, proof of service shall be made by certificate. If served by any other person, the person shall make an affidavit of service. If served by publication, the printer or publisher shall make an affidavit of publication, and an affidavit of mailing shall be made to the party or the party's attorney if mailing of process is permitted or required by law. Failure to make proof of service does not affect the validity of service. The proof of service shall state the date, time, and place of service and a description of the person actually served. If service was by mail, the person serving process shall show in the proof of service the date and place of mailing, and attach a copy of the return receipt or the returned envelope showing whether the mailing was accepted, refused, or otherwise returned. If the mailing was refused, the return shall also show proof of any further service on the defendant pursuant to paragraph (d)(6) of this rule. The return along with the receipt or envelope and any other proof shall be promptly filed with the court with the pleadings and become a part of the record. If service was by commercial delivery service, the person initiating the service of process shall make an affidavit identifying the process or other documents served and shall attach to the affidavit a delivery record of the commercial delivery service which shall contain the date, time, and place of delivery, the name of the person served, and include an original signature or electronic image of the signature of the person served. The affidavit and delivery record and any other proof shall be promptly filed with the court with the pleadings and become a part of the record.

(h) Proof of Service Outside the State. When the service is made outside of the State, the proof of service may be made by affidavit before:

- (1) Any person in this State authorized to make an affidavit;
- (2) A commissioner of deeds for this State;
- (3) A notary public who shall affix to the proof of service an official seal;
- (4) A clerk of court of record who shall certify the same by an official seal; or,
- (5) If made outside the limits of the United States, a consul, vice-consul, or consular agent of the United States who shall use in the certificate an official seal.

(i) Amendment. At any time in its discretion and upon terms it deems just, the court may, by written order, allow any process or proof of service to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(j) Acceptance of Service. No other proof of service shall be required when acceptance of service is acknowledged in writing and signed by the person served or the person's attorney and delivered to the court. The acknowledgement shall state the place and date service is accepted.

(k) Dismissal of Summons and Complaint. Subject to the provisions of any statute, rule, or order, a magistrate may dismiss a summons and complaint against any or all defendants without prejudice to the plaintiff if service of process cannot be obtained within one hundred twenty (120) days of the filing of the complaint.

RULE 7

ANSWER AND COUNTERCLAIM; TIME FOR FILING

(a) The defendant may reply to the plaintiff's complaint by filing a written statement in a form approved by the magistrate or by personally appearing and making an oral statement. This reply shall be called an "answer." If the defendant personally appears within the specified time period and makes an oral answer, it shall be reduced to writing. The court or court personnel shall assist the defendant in reducing the answer to writing if the court determines assistance is required. The defendant's answer may deny in total or in part any or all of the material allegations made in the plaintiff's complaint, and/or allege any new matter constituting a defense. The court shall deliver a copy of the answer to the plaintiff in a manner provided for in Rule 8.

(b) A defendant shall file an answer and any appropriate counterclaims with the court within thirty (30) days from the first day after the date of service. When service is by some other means, as provided for in Rule 6, the defendant shall file the answer and any appropriate counterclaims with the court within the time period designated by the statute, rule, or order, and the time period shall be stated in the summons.

RULE 8

DELIVERY AND FILING OF PLEADINGS AND OTHER PAPERS

(a) Delivery: When required. Every order, pleading after the original summons and complaint, written motion, written notice, appearance, demand, offer of judgment, or similar documents shall be delivered to each of the parties unless otherwise ordered by the court.

(b) Same: How Made. Whenever under these rules delivery of documents is required to be made upon a party represented by an attorney, delivery of the documents shall be made to the attorney unless otherwise ordered by the court. Delivery of a document to a party shall be made by delivering it to that party or by mailing it to the party's last known address or, if no address is known, by filing it with the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the office of the attorney or the party with a clerk or other person in charge of the office; or, if there is no one in charge, leaving it at the party's usual place of abode with a resident of suitable age and discretion; or mailing it to the last known address of that party. Delivery by mail of all pleadings and papers after service of the original summons and complaint is complete upon mailing.

(c) Service or Delivery on Sunday. Civil process may be served on Sundays, provided that no person may be served going to or from or attending a regularly or specially scheduled church or religious service on Sunday.

RULE 9

COUNTERCLAIM

(a) At any time within the time period specified in these rules for answering the complaint, the defendant may assert a counterclaim which grows out of the same transaction or occurrence as the plaintiff's claim by filing a written statement in a form approved by the magistrate or by personally appearing and making an oral statement. If the defendant personally appears within the specified time period and makes an oral counterclaim, it shall be reduced to writing. The court or court personnel shall assist the defendant in reducing the counterclaim to writing if the court determines assistance is required. The counterclaim shall be delivered to the plaintiff by the court in a manner provided for in Rule 8. The claims contained in the counterclaim shall be deemed denied by the plaintiff and no answer or reply is required to be filed by the plaintiff in response to a counterclaim filed by the defendant.

(b) The defendant in a counterclaim may waive the excess of the claim over the jurisdictional maximum to bring it within the jurisdiction of the magistrate's court. If the defendant elects to waive a portion of the counterclaim, a separate action for the remainder of the claim may not be maintained. If the defendant does not waive the excess, the entire action shall be trans-

ferred to the circuit court of the county to be considered and tried as if the action had been originally filed in the circuit court as provided for in Rule 13(j), SCRPC.

RULE 10

TRIAL DATE; NOTICE; FAILURE TO ANSWER

- (a)** Upon the filing of an answer by the defendant, the magistrate shall set the date of trial and deliver notice of the trial date to both parties in a manner provided for in Rule 8.
- (b)** If the defendant has failed to answer within the time period specified by these rules, the magistrate shall set a hearing date and shall deliver notice of the hearing date to both parties in a manner provided for in Rule 8 when the hearing is necessary for the entering of a default judgment in a manner consistent with Rule 11. At the default hearing, the defendant may participate only by cross-examining witnesses and objecting to evidence.

RULE 11

DEFAULT JUDGMENT; DISMISSAL OF ACTION; DAMAGES

- (a)** If the defendant does not answer the complaint within the time period specified by these rules or answers within the specified time period but fails to appear at the time set for trial, judgment may be given for the plaintiff by default if the amount of the claim is liquidated. If the claim is unliquidated, and the defendant fails to answer within the time period specified by these rules or answers within the specified time period but then fails to appear at the time set for trial, judgment may be given to the plaintiff by default as in the case of liquidated claims if (1) the plaintiff itemizes the account and attaches an affidavit that it is true and correct and that no part of the sum sued for has been paid by discount or otherwise and (2) a copy of the account and affidavit was served with the summons on the defendant. In all other cases when the defendant fails to appear or answer, the plaintiff cannot recover without proving damages.
- (b)** If the plaintiff does not appear at trial, or if neither the plaintiff nor the defendant appears at the time and place specified for trial, the court may enter an order dismissing the action.
- (c)** If the defendant has filed a counterclaim against the plaintiff and the plaintiff fails to appear at the time set for trial, judgment may be given for the defendant by default if the claim is liquidated. If the claim is unliquidated, and the plaintiff fails to appear at the time set for trial, judgment may be given to the defendant by default as in the case of liquidated demands if (1) the defendant itemizes the account and attaches an affidavit that it is true and correct and that no part of the sum sued for has been paid by discount or otherwise and (2) a copy of the account and affidavit is filed with the answer and is delivered to the plaintiff as provided for in Rule 8. In all other cases when the plaintiff fails to appear, the defendant cannot recover on a counterclaim without proving damages.
- (d)** If a default hearing is conducted at the time set for trial because either the plaintiff or the defendant failed to appear, no further notice need be given of the default hearing, provided both parties were properly delivered notice of the time set for trial in a manner provided for in Rule 8.
- (e)** For good cause shown, the court may set aside a default or a default judgment in accordance with Rule 12.

RULE 12

RELIEF FROM JUDGMENT OR ORDER

- (a)** Clerical mistakes and errors arising from oversight or omission in judgments, orders, or other parts of the record may be corrected by the court at any time of its own initiative or on the motion of any party and after any notice that the court orders. During the pendency of an appeal, leave to correct the mistake must be obtained from the appellate court.
- (b)** On motion and upon terms that are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 19; (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3), not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision does not affect the finality of a judgment or suspend its operation. This rule does not limit the

power of the court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. During the pendency of an appeal, leave to make the motion must be obtained from the appellate court. The procedure for obtaining any relief from judgment shall be by motion as prescribed in these rules, by appeal, or by an independent action.

RULE 13

CONDUCT OF TRIAL; JURY TRIALS; WITNESSES; SUBPOENAS

- (a) Trials should be conducted in an informal manner and the South Carolina Rules of Evidence shall apply but shall be relaxed in the interest of justice. In the trial of a civil action, in which one or both parties are unrepresented by legal counsel, the court shall question the parties and witnesses in order to assure that all claims and defenses are fully presented.
- (b) Notice of the fact that court personnel will explain to all parties the procedure of the magistrate's court and will assist them, if such assistance is required, to fill out all forms that may be necessary or appropriate shall be conspicuously posted in the magistrates office in the following form:

NOTICE TO ALL PARTIES IN CIVIL ACTIONS

THIS OFFICE WILL EXPLAIN THE PROCEDURE OF THE COURT, AND WILL HELP YOU PREPARE PAPERS RELATED TO YOUR ACTION, IF THE COURT DETERMINES SUCH HELP IS REQUIRED.

- (c) If either party wants a jury trial, it must be requested in writing at least five (5) working days prior to the original date set for trial.
- (d) All testimony shall be given under oath or affirmation.
- (e) The court shall have the power to issue subpoenas to compel the attendance of witnesses. The court may 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.

RULE 14

AMENDMENT OF COMPLAINTS, ANSWERS, AND COUNTERCLAIMS; CONTINUANCES

The court shall be lenient in the allowance of changes or amendments to complaints, answers, and counterclaims, and in granting continuances of trials for good cause shown when necessary to serve the ends of justice. However, except in unusual circumstances, no party shall be allowed more than one continuance in any case and all continuances must have the specific approval of the court. Continuances shall be for as short a period as possible, and, where feasible, the wishes of the party not requesting the continuance shall be considered in scheduling a new hearing date. Raising a claim, defense, or counterclaim for the first time at trial shall constitute grounds for a continuance when necessary to serve the ends of justice.

RULE 15

EXCHANGE OF INFORMATION BETWEEN PARTIES; SETTLEMENT

- (a) Recognizing the unique nature of the court's jurisdiction and the need for a speedy determination of actions filed in the court, the prompt voluntary exchange of information and documents by parties prior to trial is encouraged, but in no event shall the court require such exchange.
- (b) The court, with both parties present, shall confer with the parties before any trial whenever it appears that a conference might simplify the issues, shorten the trial, or lead to a voluntary exchange of information which might promote settlement. The court in its discretion may order that a list of exhibits a party intends to offer into evidence at the trial be furnished to the opposing party and/or that the opposing party be given a reasonable opportunity to copy or examine the exhibits.

RULE 16

DIRECTED VERDICT; JUDGMENT NOTWITHSTANDING THE VERDICT

- (a) At the close of evidence offered by a party, if the case presents only questions of law, the court may direct a verdict on its own motion or on motion of either party. The order of the court granting a directed verdict is effective without any assent of a jury.
- (b) If, at the close of all the evidence, a directed verdict is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised during the trial of the case if the case is being tried before a jury. If a jury verdict is returned, the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if a directed verdict had been granted. A jury verdict is final if no motion for a new trial or judgment notwithstanding the verdict is filed with the court within ten (10) days of the rendering of the jury verdict and the court has not on its own motion ordered a new trial or directed a verdict notwithstanding the jury verdict.

However, in cases involving landlords and tenants under Chapters 37 and 40, Title 27 of the South Carolina Code, a jury verdict is final if no motion for a new trial or judgment notwithstanding the verdict is filed with the court within five (5) days of the rendering of the jury verdict and the court has not on its own motion ordered a new trial or directed a verdict notwithstanding the jury verdict.

RULE 17

COSTS; NOTICE OF JUDGMENT; ENFORCEMENT

- (a)** The party recovering judgment shall also recover those costs provided for by law, which shall not be included when determining the jurisdictional amount of the court.
- (b)** The court shall deliver written notice of judgment to all parties or their attorneys using the procedure described in Rule 8, except that no written notice need be delivered to a party if the judgment is announced at the trial in the presence of that party or the party's attorney.
- (c)** The process to enforce a judgment for the payment of money shall be by writ of execution and shall be conducted as provided by law.
- (d)** Upon payment in full, the judgment creditor shall file a statement of collection with the magistrate's court and with the Clerk of the Circuit Court, if the judgment had been previously filed with the Clerk of the Circuit Court.

RULE 18

APPEALS

- (a)** All appeals of judgments rendered by the magistrate's court shall be to the circuit court of the county where the judgment was rendered. Within thirty (30) days after delivery of written notice of judgment to the parties or their attorneys, a party wishing to appeal shall serve on the respondent and file a notice of appeal containing a statement of the grounds for appeal with the magistrate rendering the judgment and with the Circuit Court of the County where the judgment was rendered. If the judgment is announced at the trial in the presence of the parties or their attorneys, the notice of appeal shall be served and filed within thirty (30) days of the date the judgment is announced. At the time of the filing of the notice of appeal, the appropriate filing fee shall be paid by the appellant to the clerk of the circuit court to which the appeal is taken, unless a motion for leave to proceed *in forma pauperis* and an affidavit showing the appellant's inability to pay the fee required to appeal the action accompanies the filing of the notice of appeal. The right of appeal from a judgment exists for thirty (30) days after the denial of a motion for a new trial.
- (b)** Within thirty (30) days of the date of filing of the notice of appeal with the Circuit Court, the magistrate shall file the return to the notice of appeal with the Clerk of the Circuit Court for the county wherein the judgment was rendered, together with the record, a statement of all proceedings in the case, and, if necessary, the testimony taken at trial. Upon motion for good cause shown, the Circuit Court may allow a definite extension of time in which to file the return.
- (c)** Pursuant to Rule 75, SCRPC, upon receipt of the magistrate's return, the clerk of the Circuit Court to which the appeal is taken shall give notice in writing to the parties that the return has been filed.

RULE 19

NEW TRIAL; AMENDMENT OF JUDGMENTS

- (a)** A new trial may be granted to all or any of the parties and on all or part of the issues for any of the reasons for which new trials previously have been granted in the courts of this state. On motion for a new trial in an action tried without a jury, the court may open the judgment, if one has been entered, may take additional testimony, may amend findings of fact and conclusions of law, may make new findings and conclusions, and may direct the entry of a new judgment.
- (b)** The motion for a new trial shall be made in writing and filed with the court no later than ten (10) days after notice of the judgment. However, a motion for a new trial in cases involving landlords and tenants under Chapters 37 and 40, Title 27 of the South Carolina Code, must be filed within five (5) days after notice of the judgment. The court shall notify all opposing parties that the motion has been filed and shall provide those parties a copy of the motion in a manner provided for in Rule 8.
- (c)** Not later than ten (10) days after entry of judgment, the court, on its own initiative, may order a new trial for any reason for which it might have granted a new trial on motion of a party. However, the court may order a new trial under this paragraph not later than five (5) days after entry of judgment in cases involving landlords and tenants under Chapters 37 and 40, Title 27 of the South Carolina Code. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds for granting a new trial.

(d) A motion to alter or amend the judgment shall be filed no later than ten (10) days after notice of the judgment, except that in cases involving landlords and tenants under Chapters 37 and 40, Title 27 of the South Carolina Code, the motion shall be filed no later than five (5) days after notice of the judgment. The court shall notify all opposing parties that the motion has been filed and shall provide those parties a copy of the motion in a manner provided for in Rule 8.

(e) Except by consent of the parties, argument on a motion for a new trial or to alter or amend the judgment shall be heard by the magistrate before whom the trial was held. However, the motion may, in the discretion of the court, be decided on briefs filed by the parties without oral argument.

RULE 20

OFFER OF JUDGMENT; CONSEQUENCES OF NON-ACCEPTANCE

(a) Offer of Judgment. No later than ten (10) days prior to trial, either party may serve upon the adverse party an offer to allow judgment to be taken against the party for the money or property or to the effect specified in the offer with costs accrued to the date of the offer. If, within ten (10) days after service of the offer, or at least five (5) days prior to the trial date, whichever date is earlier, the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the court shall enter judgment. An offer that is not accepted shall be deemed rejected and evidence of the offer is not admissible except in a proceeding to determine costs.

(b) Consequences of Non-Acceptance. If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until the entry of the judgment; (2) if the offeror is a plaintiff, eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of judgment; or (3) if the offeror is a defendant, reduction from the judgment or award of eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of the judgment.

(c) This rule shall not abrogate the contractual rights of any party concerning the recovery of attorney's fees or other monies in accordance with the provision of any written contract between the parties to the action.

RULE 21

BUSINESS REPRESENTATION

A business, as defined by S.C. Code Ann. § 33-1-103, may be represented in a civil magistrates court proceeding by a non-lawyer officer, agent, or employee, including attorneys licensed in other jurisdictions and those possessing Limited Certificates of Admission pursuant to Rule 405, SCACR. The representation may be compensated and shall be undertaken at the business's option and with the understanding that the business assumes the risk of any problems incurred as the result of the representation. The court shall require a written authorization from the entity's president, chairperson, general partner, owner, or chief executive officer, or in the case of a person possessing a Limited Certificate, a copy of that certificate, before permitting the representation.

RULE 22

ARGUMENTS ON MOTIONS AND AT TRIAL

The moving party upon a motion shall have the right, at that party's option, to both open and close argument, and the plaintiff shall have the option to have the right to open and close argument upon the trial; except that a party admitting the adverse party's claim in his pleading, and taking upon him the burden of proof, shall have the same privilege. The party having the right to open shall be required to open in full, and in reply may respond in full but may not introduce any new matter.

RULE 23

SUBPOENAS

(a) Any magistrate, on the application of any party to a cause pending in the magistrates court, shall issue a subpoena citing any person whose testimony may be required in the cause to appear and give evidence. The Court may 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. Every subpoena shall state the name of the court, and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place specified.

(b) A subpoena may be served by the sheriff of any county in which the witness may be found, by the sheriff's deputy, by a constable of the court, or by any other person who is not a party and is not less than eighteen (18) years of age. Service of a subpoena upon a person named in the subpoena shall be made as provided by Rule 6 and Rule 8 (c).

(c) No subpoena shall require a witness to appear in any proceeding not held within the county where that witness resides.

(d) Failure by any person without adequate excuse to obey a subpoena served upon the person may be deemed in contempt of court from which the subpoena issued.

(e) A witness subpoenaed to attend a proceeding under these rules shall receive for each day's attendance and for the time necessarily occupied in going to and returning from the proceeding \$25.00 per day and mileage in the same amount as provided by law for official travel of State officers and employees.

(f) In case it shall appear to the satisfaction of any magistrate that the attendance of any witness whose testimony may be required in any case pending before the magistrate cannot be had because of just cause for the witness' absence, extreme age, sickness or infirmity, or when the witness does not reside in the county of the court's jurisdiction, the magistrate may take the examination of such witness or cause it to be done by another magistrate or other officer authorized by law to administer oaths, to be used in evidence on the trial of the case. All parties to the cause shall have notice of the examination so that they may examine or cross-examine the witness. When the examination is made by another, it shall be recorded and sealed, with the title of the case endorsed, and conveyed by a disinterested person to the magistrate authorizing it or mailed postage pre-paid to that magistrate.

RULE 24 FORMS

The use of the included forms in the magistrate's court is recommended. The magistrate's court shall make these forms available without charge to any person who is a litigant in an action before the court. Subject to the approval of the Supreme Court, the Office of Court Administration shall make amendments to these forms and add forms as is deemed appropriate. (Forms are located on page 8 and at www.sccourts.org/forms).

Public services available from the South Carolina Bar:

Lawyer Referral Service

If you need a lawyer, contact the
SC Bar Lawyer Referral Service
from 9 a.m.–5 p.m.
Monday through Friday. Call 1-800-868-2284;
if you are in Richland or Lexington Counties, call 799-7100

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