

# **Types of courts, cases heard, and who represents prosecution and defense**

Table 1. Court types, cases heard in each, and who represents the prosecution and defense.<sup>19</sup>

## SUPREME COURT

**Cases heard**

Appeals from Circuit Court and Family Court. The Supreme Court has exclusive jurisdiction over certain types of appeals, and may grant a writ of certiorari to review decisions of the Court of Appeals.<sup>20</sup>

**Prosecution (State)**

*Attorney:* Attorney General, solicitor, or other prosecutor or prosecution attorney<sup>21</sup>

*Paid by:* Attorney General, solicitor, or other prosecution office

**Defendant (Individual)**

*Attorney for Indigent in criminal, Post-conviction Relief (PCR), Sexual Violent Predator (SVP), and family court cases:* S.C. Commission on Indigent Defense (SCCID) atty., other appointed atty., municipal or county contract atty., or volunteer

*Paid by:* SCCID or, in summary court, municipalities/counties (volunteers not paid)  
*Attorney for Non-Indigent in all cases:* Private attorney  
*Paid by:* Defendant or someone else on his behalf

## COURT OF APPEALS

**Cases heard**

Appeals from the Circuit Court and Family Court proceedings for which jurisdiction over appeals does not lay within the exclusive jurisdiction of the Supreme Court

**Prosecution (State)**

*Attorney:* Attorney General, solicitor, or other prosecutor or prosecution attorney

*Paid by:* Attorney General, solicitor, or other prosecution office

**Defendant (Individual)**

*Attorney for Indigent in criminal, PCR, SVP, and family court cases:* SCCID attorney, other appointed attorney, municipal or county contract attorney, or volunteer attorney

*Paid by:* SCCID or, for summary court cases, municipalities and counties (volunteers not paid)  
*Attorney for Non-Indigent in all cases:* Private attorney  
*Paid by:* Defendant or someone else on his behalf

## CIRCUIT COURT

**Cases heard**

In the Court of General Sessions (the “criminal side” of the Circuit Court), the court addresses criminal offenses over which it either has exclusive jurisdiction or over which it shares jurisdiction (“concurrent jurisdiction”) with the summary court. In the Court of Common Pleas (the “civil side” of the Circuit Court), the court addresses PCR applications, post-sentencing applications for orders of protections, SVP petitions, criminal asset forfeiture matters, and appeals from summary court conviction.

COURT OF GENERAL SESSIONS		COURT OF COMMON PLEAS	
Criminal Cases		Post-Conviction Relief (PCR)	
<b>Prosecution (State)</b>	<b>Defendant (Individual)</b>	<b>Prosecution (State)</b>	<b>PCR Applicant (Individual)</b>
<i>Attorney:</i> Solicitor or Attorney General <sup>22</sup>	<i>Attorney for Indigent:</i> Rule 608 contract attorney, other appointed or volunteer attorney	<i>Attorney:</i> Attorney General	<i>Attorney for Indigent:</i> Rule 608 contract attorney, other appointed or volunteer attorney
<i>Paid by:</i> State, county, and/or other sources	<i>Paid by:</i> SCCID (volunteers not paid) <i>Attorney for Non-Indigent:</i> Private attorney	<i>Paid by:</i> Attorney General	<i>Paid by:</i> SCCID (volunteers not paid) <i>Attorney for Non-Indigent:</i> Private attorney
		Sexually-Violent Predator (SVP)	
		<b>Prosecution (State)</b>	<b>SVP Respondent (Individual)</b>
	<i>Paid by:</i> Defendant or someone on his behalf	<i>Attorney:</i> Attorney General	<i>Attorney:</i> 608 contract attorney
		<i>Paid by:</i> Attorney General	<i>Paid by:</i> SCCID
		Asset Forfeiture Cases	
Requests for Search Warrants/Orders		<b>Prosecution (State)</b>	<b>Defendant (Individual or Innocent Owner)</b>
<b>Prosecution (State/County)</b>	<b>Defendant, Suspect, or Other (Individual)</b>	<i>Atty:</i> Solicitor or contract attorney	<i>Atty:</i> Private attorney
<i>Attorney:</i> Law enforcement (occasionally solicitor)	N/A	<i>Paid by:</i> Solicitor, county, city, or law enforcement	<i>Paid by:</i> Defendant or someone on his behalf
<i>Paid by:</i> Law enforcement or solicitor		Summary Court (Magistrate/Municipal Court) Appeals	
		<b>Prosecution (State, County, or Municipality)</b>	<b>Defendant (Individual)</b>
		<i>Attorney:</i> Solicitor or municipal atty	<i>Attorney:</i> New or same as in Summary Court
		<i>Paid by:</i> State, county, or municipality	<i>Paid by:</i> Same as in Summary Court (or if new attorney, the defendant or someone on his behalf)

## FAMILY COURT

### Cases heard<sup>23</sup>

Juvenile Delinquency Cases-Criminal Offenses and Status Offenses

#### Juvenile Delinquency Actions

##### Prosecution (State)

*Attorney:* Solicitor

*Paid by:* Solicitor

##### Defendant (Juvenile)

*Atty for Indigent:* Public Defender, Rule 608 contract attorney, other appointed or volunteer attorney

*Paid by:* Public Defender or SCCID (volunteers not paid)

*Attorney for Non-Indigent:* Private attorney

*Paid by:* Defendant or someone on his behalf

## SUMMARY COURTS

### MAGISTRATE (COUNTY) COURT

#### Cases heard (Trial or Plea)

Criminal offenses as set by state statute generally carrying no more than 90 days and/or a fine, including traffic offenses that occur in the unincorporated areas of the county, as well as violations of county ordinances

##### Prosecution (State/County)

*Attorney:* Solicitor, county prosecutor, or law enforcement

*Paid by:* Solicitor, county, or law enforcement

##### Defendant (Individual)

*Attorney for Indigent:* Public Defender, Rule 608 contract attorney, appointed or volunteer attorney

*Paid by:* Public Defender (if county has contracted with PD), SCCID (Rule 608 contract attorney), or county (volunteer attorneys not paid)

*Attorney for Non-Indigent:* Private attorney

*Paid by:* Defendant or someone on his behalf

#### Bond Settings and Preliminary Hearings for General Sessions Cases

##### Prosecution (State/County)

*Attorney:* Solicitor, county prosecutor, or law enforcement

*Paid by:* Solicitor, county, or law enforcement

##### Defendant (Individual)

*Atty for Indigent:* Public Defender, Rule 608 contract attorney, appointed or volunteer attorney

*Paid by:* Public Defender (if county has contracted with PD), SCCID (Rule 608 contract attorney), or county (volunteer attorneys not paid)

*Attorney for Non-Indigent:* Private attorney

*Paid by:* Defendant or someone on his behalf

#### Requests for Arrest and Search Warrants

##### Prosecution (State/County)

*Attorney:* Law enforcement (rarely solicitor)

*Paid by:* Law enforcement or solicitor

##### Defendant, Suspect, or Other (Individual)

N/A

### MUNICIPAL (CITY/TOWN) COURT

#### Cases heard

Criminal offenses as set by state statute generally carrying no more than 90 days and/or a fine, including traffic offenses, that occur within the city/town, as well as violations of municipal ordinances.

##### Prosecution (State or Municipality)

*Attorney:* Solicitor, city prosecutor, or law enforcement

*Paid by:* Solicitor, city, or law enforcement

##### Defendant (Individual)

*Attorney for Indigent:* Public Defender, Rule 608 contract attorney, appointed or volunteer attorney

*Paid by:* Public Defender (if city has contracted with PD), SCCID (Rule 608 contract attorney), or city (volunteer attorneys not paid)

*Attorney for Non-Indigent:* Private attorney

*Paid by:* Defendant or someone

Table 1 includes information on the different courts in South Carolina that address crimes, types of cases heard by each court and who represents the prosecution and defense in each court. Below is a brief background, from the South Carolina Judicial Department, on each of the different courts, as well as the prosecution and defense.<sup>1</sup>

## **Supreme Court**

*Who are the justices?*

The Supreme Court is composed of a Chief Justice and four Associate Justices who are elected by the S.C. General Assembly for a term of ten years. The terms are staggered and a justice may be re-elected to any number of terms. (See Art. V, S.C. Constitution).

*What cases do they hear?*

The Supreme Court of South Carolina is the State's highest tribunal. The court has both original and appellate jurisdiction, but generally acts only in its appellate capacity. The Supreme Court renders decisions based on lower court transcripts, briefs, and oral arguments. In addition to hearing and deciding cases, the court also has rulemaking authority for the unified judicial system, including ethics regulations for judges and controlling admissions to and disciplining of the S.C. Bar.

## **Court of Appeals**

*Who are the judges?*

The Court of Appeals consists of a Chief Judge and eight associate judges who are elected to staggered terms of six years each. The Court sits either as three panels of three judges each or as a whole, and it may hear oral arguments and motions in any county in the State.

*What cases do they hear?*

Most appeals from the Circuit Court and the Family Court will be heard by the Court of Appeals. Exceptions are when the appeal falls within any of the classes of appeals that the Supreme Court can hear directly from the circuit or family courts<sup>2</sup>, or when the appeal is certified for determination by the Supreme Court.

## Circuit Court

*Who are the judges?*

The state is divided into sixteen judicial circuits. Each circuit has at least one resident judge who maintains an office in the judge's home county within the circuit. Circuit judges serve the sixteen circuits, on a rotating basis, with court terms and assignments determined by the Chief Justice through Court Administration. Circuit Court judges are elected to staggered terms of six years.

*What cases do they hear?*

Directly under the Supreme Court and the Court of Appeals is the Circuit Court, the State's court of general jurisdiction. It has a civil court (the Court of **Common Pleas**) and a criminal court (the Court of **General Sessions**). In addition to its general trial jurisdiction, the Circuit Court has limited appellate jurisdiction over appeals from the Probate Court, and Summary Courts (Magistrate and Municipal Courts), as well as appeals from the Administrative Law Judge Division over matters relating to state administrative and regulatory agencies.

## Family Court

*Who are the judges?*

At least two family court judges are elected for staggered six year terms to each of the sixteen judicial circuits, with 58 judges (including six at-large judges) who rotate primarily from county to county within their resident circuits. They are assigned to other circuits based upon caseload requirements as directed by the Chief Justice.

*What cases do they hear?*

The Family Courts have exclusive jurisdiction of all matters involving domestic or family relationships. They are the sole forum for the hearing of all cases concerning marriage, divorce, legal separation, custody, visitation rights, termination of parental rights, adoption, support, alimony, division of marital property, and change of name. These courts also generally have exclusive jurisdiction over minors under the age of seventeen. S.C. Code Ann. § 63-3-510 provides that the family court "shall have exclusive original jurisdiction and shall be the sole court for initiating action" concerning a child who "is alleged to have violated or attempted to violate any State or local law or municipal ordinance."

S.C. Code Ann. § 63-19-1210 provides that if, "during the pendency of a criminal or quasi-criminal charge . . . it is ascertained that the child was under the age of seventeen years at the time of committing the alleged offense, it is the duty of the circuit court immediately to transfer the case, together with all papers, documents, and testimony connected therewith, to the family court." Each summary court judge should contact the family court office in the judge's county and arrange with family court personnel such procedures as will expedite and insure the orderly transfer of juvenile cases to the family court.

## Summary Courts

Magistrate (County) Court and Municipal (City/Town) Court, are the Summary Courts.

### Magistrates Court

*Who are the judges?*

There are approximately 311 magistrates in South Carolina, each serving the county for which he or she is appointed. They are appointed by the Governor upon the advice and consent of the Senate for four year terms and until their successors are appointed and qualified. (Art. V, § 26, S.C. Const., and S.C. Code Ann. § 22-1-10). Anyone seeking an initial appointment as magistrate must pass an eligibility examination before they can be recommended to the Governor by the senatorial delegation. S.C. Code Ann. § 22-2-5. Magistrates must also attend an orientation program, pass a certification examination within one year of their appointment, and attend a specified number of trials prior to conducting a trial.

*What cases do they hear?*

Magistrates have criminal trial jurisdiction over all offenses which are subject to the penalty of a fine not exceeding \$500.00 or imprisonment not exceeding 30 days, or both.<sup>3</sup> Some traffic and criminal statutes grant the summary courts greater jurisdiction. These statutes will specify that the magistrate court can try cases with a higher penalty provision. Examples include, but are not limited to, domestic violence, third degree third offense driving under suspension; and forgery, no dollar amount involved.<sup>4</sup> In addition, magistrates may hear cases transferred from general sessions, the penalty for which does not exceed one year imprisonment or a fine of \$5,500, or both, upon petition by the solicitor and agreement by the defendant.<sup>5</sup> Magistrates are responsible for setting bail, conducting preliminary hearings, and issuing arrest and search warrants. Unlike circuit courts and probate courts, magistrate courts are not courts of record. Proceedings in magistrates' courts are summary.<sup>6</sup>

### Municipal Court

*What is it?*

The council of each municipality may establish, by ordinance, a **municipal court** to hear and determine all cases within its jurisdiction. Such courts are part of the unified judicial system. It should be noted, however, that a municipality may, upon prior agreement with county governing body, prosecute its cases in magistrate court, in lieu of establishing its own municipal court. In addition, the council may establish, by ordinance, a municipal court, and contract with the county governing authority for the services of a magistrate to serve as its municipal judge.

Approximately 200 municipalities in South Carolina have chosen to create municipal courts.

*Who are the judges?*

The term of a municipal judge is set by the council of the municipality, but cannot exceed four years. Municipal Judges appointed on or after May 24, 2004, must be appointed for a set term of not less than

two years but not more than four years. All municipal judges, including ministerial recorders<sup>7</sup>, are required to complete a training program or pass certification or recertification examinations, or both, within one year of taking office.<sup>8</sup> The examination will be offered three times each year. Members of the South Carolina Bar are exempt from the examination; however, they are required to attend the orientation program. Each municipal judge and ministerial recorder must pass a recertification examination within eight years after passing the initial certification examination and at least once every eight years thereafter.

#### *What cases do they hear?*

Municipal courts have jurisdiction over cases arising under ordinances of the municipality, and over all offenses which are subject to a fine not exceeding \$500.00 or imprisonment not exceeding 30 days, or both, and which occur within the municipality. The powers and duties of a municipal judge are the same as those of a magistrate, with regard to criminal matters; however, municipal courts have no civil jurisdiction.

### **The Prosecution**

#### *Who are they?*

According to the State Constitution, the Attorney General is the chief prosecutor of the State.<sup>9</sup> The Attorney General, besides acting as the State's chief prosecutor, also represents the State in civil litigation, and issues opinions regarding the interpretation of law.<sup>10</sup>

Prosecution in circuit court is carried out by a circuit solicitor and the solicitor's assistant. In addition, a solicitor, if directed by the Attorney General, may represent the State in a civil proceeding.

Prosecution of misdemeanor traffic and criminal violations in the summary courts (Magistrate (County) and Municipal (City/Town) Courts) may be made by the arresting officer or a supervisory officer assisting the arresting officer.<sup>11</sup> County attorneys may prosecute violations of county ordinances in magistrates courts.

State law allows a citizen to prosecute his own cause, if he so desires.<sup>12</sup>

### **The Defense**

When a magistrate or municipal judge calls a criminal case for disposition and determines that a prison sentence is likely to be imposed following a conviction, the accused, if unable to retain counsel due to financial inability, is entitled to a court appointed attorney upon proof of indigency.<sup>13</sup> The court may appoint the public defender to represent the accused. A criminal defendant's initial appearance before a court, where he learns the charge against him and his liberty is subject to restriction, marks the initiation of adversary judicial proceedings that trigger the Sixth Amendment right to counsel.<sup>14</sup>

Once appointed, the public defender must represent the accused as far as the case is pursued in South Carolina's courts unless he is permitted to withdraw for good cause.<sup>15</sup> Further, court rules provides a uniform method of managing the appointment of lawyers to serve as counsel for indigent persons in the circuit and family courts pursuant to statutory and constitutional mandates.<sup>16</sup> However, those court rules

apply only to circuit and family courts, and do not apply to representation of indigents in magistrate and municipal courts.

Criminal indigency appeals are generally handled by the Office of Appellate Defense which operates under the direction of the S.C. Commission of Appellate Defense.

If a municipality has or elects to have an optional municipal court system, it must provide adequate funds for representation of indigents.<sup>17</sup> No public defender shall be appointed in any such court unless the municipality and the office of the circuit public defender have reached an agreement for indigent representation and no funds allocated to the Commission of Indigent Defense shall be used to provide compensation for appointed counsel in municipal courts.

State law allows a citizen to defend his own cause, if he so desires.<sup>18</sup>

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<sup>1</sup> South Carolina Judicial Department, Overview of SC Judicial System, <https://www.sccourts.org/OverviewofSCJudicialSystem.cfm> (accessed July 18, 2018).

<sup>2</sup> 1) the death penalty, 2) public utility rates, 3) significant constitutional issues, 4) public bond issues, 5) election laws, 6) an order limiting the investigation by a state grand jury, and 7) an order of a family court relating to an abortion of a minor.

<sup>3</sup> S.C. Code Ann. § 22-3-550

<sup>4</sup> S.C. Code Ann. § 16-25-20(D)(1); S.C. Code Ann. §56-1-460(d); S.C. Code Ann. § 16-13-10(C)

<sup>5</sup> S.C. Code Ann. § 22-3-545

<sup>6</sup> S.C. Code Ann. § 22-3-730

<sup>7</sup> S.C. Code Ann. Section 14-25-115 provides "[t]he council of a municipality may establish the office of ministerial recorder and appoint one or more full-time or part-time ministerial recorders, who shall hold office at the pleasure of the council. Before entering upon the discharge of the duties of the office of ministerial recorder, the person appointed shall take and subscribe the prescribed oath of office and shall be certified by the municipal judge as having been instructed in the proper method of issuing warrants and setting and accepting bonds and recognizances. Ministerial recorders shall have the power to set and accept bonds and recognizances and to issue summonses, subpoenas, arrest warrants, and search warrants in all cases arising under the ordinances of the municipality, and in criminal cases as are now conferred by law upon magistrates. Ministerial recorders shall have no other judicial authority."

<sup>8</sup> See S.C. Code Ann. § 14-25-15 and Rule 509, SCACR.

<sup>9</sup> Art. V, § 20, S.C. Const.

<sup>10</sup> S.C. Code Ann. § 1-7-10 et seq.

<sup>11</sup> See, e.g. *State v. Messervy*, 258 S.C. 110, 187 S.E.2d 524 (1972); *State ex rel McLeod v. Seaborn*, 270 S.C. 696, 244 S.E.2d 317 (1978); Supreme Court Order In re: Unauthorized Practice of Law Rules Proposed by the South Carolina Bar, September 21, 1992.

<sup>12</sup> S. C. Code Ann. § 40-5-80

<sup>13</sup> Rule 602(a), SCACR

<sup>14</sup> *Rothgery v. Gillespie County, Tex.*, 554 U.S. 191 (2008).

<sup>15</sup> Rule 602(e)(1), SCACR. Article 5 of Chapter 3, Title 17 of the South Carolina Code of Laws provides for Circuit and County Public Defenders.

<sup>16</sup> Rule 608, SCACR

<sup>17</sup> Proviso 61.12 of the South Carolina General Appropriations Act

<sup>18</sup> S. C. Code Ann. § 40-5-80

<sup>19</sup> S.C. House of Representatives, House Legislative Oversight Committee, "Letter from SCCPC to Oversight Subcommittee (July 16, 2018)," under "Committee Postings and Reports," under "House Legislative Oversight Committee," under "Prosecution Coordination Commission," and under "Correspondence," [http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ProsecutionCoordination/Letter%20from%20SCCPC%20to%20Oversight%20Subcommittee%20with%20attachments%20\(July%2016,%202018\).pdf](http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ProsecutionCoordination/Letter%20from%20SCCPC%20to%20Oversight%20Subcommittee%20with%20attachments%20(July%2016,%202018).pdf) (accessed July 18, 2018). Chart 1.

<sup>20</sup> The party who appeals the judgement of the lower court (which would either be a conviction or an adjudication of guilt or, if the State is appealing, an adverse ruling by trial court – the prosecution has a very limited right to appeal) is referred to as the "Appellant," and the other party is referred to as the "Respondent."

<sup>21</sup> While the Attorney General handles the overwhelming majority of criminal appeals in the Supreme Court and Court of Appeals for the State, municipal and county attorneys often handle their appeals and the Solicitors will occasionally handle an appeal. In Circuit Court, municipal and county attorneys handle the appeals of the cases they prosecute and the Solicitors handle the appeals of the cases they, as well some of those law enforcement, prosecute.

<sup>22</sup> The Attorney General's Office prosecutes its Statewide Grand Jury cases in the General Sessions Court; it also occasionally prosecutes cases conflicted out of a Solicitor's Office (although those cases most usually are conflicted out to a different Solicitor's Office).

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<sup>23</sup> While neither criminal nor quasi-criminal in nature, indigent defendants in child abuse/neglect removal and termination of parental rights cases instigated by the South Carolina Department of Social Services (SCDSS) in the Family Court are provided an attorney by the State. The money to pay for the attorneys in these civil cases is appropriated by the General Assembly to SCCID, which does not provide direct representation, but pays contract attorneys to represent these individuals. The State in these cases is represented by SCDSS attorneys.