

TABLE OF CONTENTS

Preface	i
Preface to Second Edition	iii
Preface to Third Edition	v
Table of Contents	xi
PART I: THE ORGANIZATION OF SOUTH CAROLINA’S COURTS	1
INTRODUCTION	3
I. Structure of the Unified Judicial System	3
II. Uniformity of the Unified Judicial System	5
III. Appellate Court Rules and Overview of the Process	6
CHAPTER 1 - THE SUPREME COURT OF SOUTH CAROLINA	9
I. Introduction	9
II. Organization and Powers	9
A. Members of the Supreme Court.....	9
1. Composition.....	9
2. Election and Terms.....	9
3. Seniority.....	9
4. Quorum to Hear and Decide Cases.....	10
5. Powers of Individual Justices.....	10
B. Jurisdiction and Authority.....	10
1. Appellate Jurisdiction.....	10
2. Original Jurisdiction.....	13
3. Writs, Certification, and Orders.....	14
4. Rule-Making Authority.....	15
5. Administrative Authority.....	16
6. Administrative Powers of the Chief Justice.....	17

TABLE OF CONTENTS

III. Operation of the Supreme Court.....17

 A. Terms of Court and Other Business.....17

 B. Internal Organization.....18

 C. Internal Procedures upon the Filing of an Appeal.....19

CHAPTER 2 - THE SOUTH CAROLINA COURT OF APPEALS.....21

I. Introduction.....21

II. Organization and Powers.....22

 A. Members of the Court of Appeals.....22

 1. Composition.....22

 2. Election and Terms.....22

 3. Seniority.....22

 4. Quorum to Hear and Decide Cases.....23

 5. Powers of Individual Judges.....23

 B. Jurisdiction and Authority.....24

 1. Appellate Jurisdiction.....24

 2. Writs and Orders.....25

 C. Relationship to South Carolina Supreme Court.....25

 1. Docketing Functions.....25

 2. Decisions Subject to Review.....26

III. Operations of the Court of Appeals.....26

 A. Terms of Court.....26

 B. Internal Organization and Procedures.....26

CHAPTER 3 - OTHER SOUTH CAROLINA COURTS.....29

I. Circuit Court.....29

 A. Organization and Terms of Court.....29

 B. Jurisdiction.....30

 C. Appellate Review.....31

II. Family Court.....31

 A. Organization.....31

 B. Jurisdiction.....32

C. Appellate Review.....	32
III. Masters-in-Equity and Special Referees.....	33
IV. Probate Court.....	35
A. Organization.....	35
B. Jurisdiction.....	35
C. Appellate Review.....	37
V. Magistrates Court.....	37
A. Generally.....	37
B. Jurisdiction.....	37
C. Appellate Review.....	39
VI. Municipal Court.....	39
A. Organization.....	39
B. Jurisdiction.....	40
C. Appellate Review.....	41
VII. Other Courts.....	41
A. Administrative Law Court.....	41
B. Business Court.....	41
C. Therapeutic Courts.....	41
1. Drug Court.....	42
2. Mental Health Court.....	42
3. Other Therapeutic Courts.....	42
 PART II: JUDICIAL REVIEW IN SOUTH CAROLINA.....	 43
 CHAPTER 4 - REVIEW OF JUDICIAL DECISIONS.....	 45
I. Circuit Court Review of Inferior Courts.....	45
A. Introduction.....	45
B. Appeals from Magistrates Court.....	46
1. Civil Cases.....	46
a. General Provisions.....	46
b. Procedure to Perfect the Appeal.....	46
c. Appellate Process and Scope of Review.....	49

TABLE OF CONTENTS

d. Review of Default Judgments.....	51
e. Award and Recovery of Costs.....	51
2. Criminal Cases.....	53
a. General Provisions.....	53
b. Procedure to Perfect the Appeal.....	53
c. Bail.....	55
d. Effect of Paying Fine.....	55
e. Appellate Process and Scope of Review.....	55
C. Appeals from Municipal Courts.....	56
1. General Provisions.....	56
2. Procedures to Perfect the Appeal.....	57
a. Notice of Appeal.....	57
b. Return.....	57
3. Scope of Review.....	57
D. Appeals from Probate Court.....	58
1. General Provisions.....	58
2. Procedure to Perfect the Appeal.....	59
a. Notice of Appeal.....	59
b. Statement of Issues on Appeal.....	60
c. Transcript.....	60
d. Designation of Matter.....	60
e. Briefs.....	60
f. Record on Appeal.....	61
g. Return to the Circuit Court.....	61
h. Exhibits.....	61
3. Scope of Review.....	61
E. Administrative Appeals.....	62
II. Review of Appellate Decisions of the Circuit Court and Decisions of Masters-in-Equity and Referees.....	62
A. Appeals from Circuit Court.....	62
B. Appeals from Masters-in-Equity and Special Referees.....	62

CHAPTER 5 - REVIEW OF ADMINISTRATIVE LAW DECISIONS.....65

I. General Considerations.....65

A. Introduction.....65

B. Creation and Function of South Carolina
Administrative Agencies.....66

C. Judicial Review of Agency Decisions Generally.....66

II. The Administrative Law Court.....67

A. Introduction.....67

B. Promulgation of Agency Regulations.....68

1. General Authority.....68

2. General Procedures.....69

3. Legislative Review.....69

4. Judicial Review of Promulgation or
Application of Regulations.....69

C. Contested Case Proceedings.....70

1. In General.....70

2. General Procedures.....71

3. Motion for Reconsideration.....72

4. Judicial Review.....73

D. Appellate Proceedings in the ALC.....73

1. General Authority.....73

2. Agency Decisions Subject to Appellate Review by the ALC.....74

3. Appellate Jurisdiction vs. Contested Case Jurisdiction.....74

4. Procedures.....74

a. In General.....74

b. Notice of Appeal and Filing Fee.....75

c. Stay of Decisions.....76

d. Preparation of Transcript.....76

e. Record on Appeal.....76

f. Preparation and Submission of Briefs.....78

g. Discovery and Evidence.....79

TABLE OF CONTENTS

h. Dismissal of Appeal.....	79
i. Oral Argument.....	80
j. Scope of Review.....	80
k. Final Decision.....	81
5. “Special Appeals” under <i>Al-Shabazz v. State</i>	81
6. Judicial Review.....	84
III. Judicial Review of Administrative Law Decisions.....	84
A. Where to Appeal.....	84
B. Appealability of Administrative Decisions.....	85
1. In General.....	85
2. Exhaustion of Administrative Remedies.....	86
a. General Rule.....	86
b. Exceptions.....	86
3. Finality.....	88
4. Issue Preservation.....	89
C. Parties to the Appeal.....	89
D. Procedures in Appeals to the Court of Appeals.....	90
1. Timing.....	90
2. Effect of Motions for Reconsideration and Petitions for Rehearing on Timing to File the Notice of Appeal.....	91
a. From the ALC.....	91
b. From the Agency.....	92
c. Effect of Form Order.....	92
3. Notice of Appeal.....	92
a. Service.....	92
b. Filing.....	93
c. Contents.....	94
d. Effect of Serving and Filing a Notice of Appeal.....	95
4. Cross-Appeals.....	96
5. Other Appellate Procedures.....	96

TABLE OF CONTENTS

E. Judicial Review and Decision-Making.....96

 1. Standard and Scope of Review and Disposition.....96

 a. Errors of Law.....97

 b. Substantial Evidence.....97

 c. Arbitrary or Capricious or Abuse of Discretion.....99

 2. Disposition.....99

 3. Review by Supreme Court.....99

F. Procedures Specific to Appeals from the
Workers’ Compensation Commission.....100

G. Specific Procedure in Direct Appeals to the Supreme Court.....101

 1. Elections.....101

 2. Public Service Commission.....102

H. Procedure in Appeals to the Circuit Court.....102

 1. In General.....102

 2. Procedures.....102

 a. Notice of Appeal.....102

 b. Contents of Petition.....103

 c. Other Procedures.....103

I. Judicial Deference.....103

J. Other Mechanisms to Obtain Judicial Review.....105

PART III: GENERAL APPELLATE ISSUES.....107

CHAPTER 6 - JURISDICTION.....109

I. The Concept of Jurisdiction.....109

II. Subject Matter Jurisdiction.....110

 A. Generally.....110

 B. Specific Topics Relating to Subject Matter Jurisdiction.....111

 1. Territorial Jurisdiction.....111

 2. Jurisdictional Facts.....112

 3. Issues not Implicating Subject Matter Jurisdiction.....113

 a. Issue Preservation.....114

TABLE OF CONTENTS

b. Res Judicata / Collateral Estoppel.....	114
c. Indictments.....	114
d. Venue.....	114
e. Sentencing.....	114
f. State Grand Jury.....	116
g. Burden of Proof.....	117
h. Statute of Limitations.....	117
III. Personal Jurisdiction.....	117
A. General Jurisdiction.....	118
B. Specific Jurisdiction.....	118
IV. Jurisdictional Distinctions in Statutes.....	120
V. Appellate Jurisdiction.....	121
A. Appellate Jurisdiction vs. Subject Matter Jurisdiction.....	121
B. Conferring Appellate Jurisdiction: The Notice of Appeal.....	121
C. Releasing Appellate Jurisdiction: The Remittitur.....	122
CHAPTER 7 - JUSTICIABILITY.....	125
I. The Concept of Justiciability: A Case or Controversy.....	125
II. Standing.....	126
A. In General.....	126
B. Standing by Statute.....	126
C. Constitutional Standing.....	127
D. Associational Standing.....	128
E. Taxpayer and “Public Interest” Standing.....	129
F. Standing to Appeal.....	131
1. Civil Cases.....	131
2. Criminal Cases.....	132
a. Appeal by the State.....	132
b. Appeal by the Defendant.....	133
c. Appeal by Third Parties.....	133
III. Ripeness.....	133

IV. Mootness	134
A. In General.....	134
B. Exceptions.....	135
1. Capable of Repetition but Evading Review.....	136
2. Imperative and Manifest Urgency in Matters of Important Public Interest.....	137
3. Affecting Future Events.....	138
C. Criminal and Post-Conviction Relief Cases.....	138
 CHAPTER 8 - APPEALABILITY OF JUDGMENTS AND ORDERS	 139
I. The Concept of Appealability	139
II. Constitutional Basis for Appealability	139
III. Statutory Basis for Appealability	140
IV. Appealable Judgments and Orders	142
A. Final Judgments and Orders.....	142
B. Immediately Appealable Interlocutory Orders.....	143
1. Judgments “Involving the Merits”.....	143
2. Orders “Affecting a Substantial Right”.....	144
C. “Finality” Considerations for Appeal of Orders.....	145
1. Final Orders in Special or Collateral Proceeding under Section 14-3-330(3).....	145
2. Interlocutory Orders Concerning Injunctions or Receivers under Section 14-3-330(4).....	145
3. Review “In the Interest of Judicial Economy” or “Holding in Abeyance”.....	146
4. Ex Parte Orders.....	146
V. Appealability of Specific Civil Matters	146
A. Jurisdiction and Venue.....	147
1. Subject Matter Jurisdiction.....	147
2. Personal Jurisdiction.....	147
3. Venue.....	147

TABLE OF CONTENTS

B. Pleadings and Motions.....148

 1. Motions to File a Late Answer.....148

 2. Motions under Rule 12, SCRCF.....148

 a. Insufficiency of Process or Service.....148

 b. Failure to State a Claim.....148

 c. Failure to Join a Necessary Party
 and Duplicative Legal Actions.....149

 d. Judgment on the Pleadings.....149

 e. More Definite Pleading.....149

 f. Striking of Pleading.....150

 g. Forum Non Conveniens.....150

 h. Statute of Limitations.....150

 3. Amendment of Pleadings.....151

C. Parties.....151

 1. Impleader.....151

 2. Substitution of Party.....151

 3. Intervention.....151

 4. Class Actions.....152

D. Discovery.....152

 1. General Rule.....152

 2. Orders Compelling Discovery or Refusing
 to Compel Discovery.....153

 3. Objections to Requests for Admission.....154

 4. Orders Bifurcating Discovery.....154

 5. Discovery of Confidential Matters.....154

 6. Attorney-Client Privilege.....155

 7. Orders Directing Discovery of Non-Parties.....155

E. Reference and Mode of Trial.....155

 1. Order of Reference.....155

 2. Mode of Trial.....156

 3. Motion to Disqualify Counsel.....157

F. Conduct of Trial.....	157
1. Continuance.....	157
2. Disqualification of Judge.....	157
3. Severance.....	157
4. Docketing.....	158
5. Stay.....	158
6. Admission of Evidence.....	158
7. Motion <i>in Limine</i>	158
8. Additional Testimony.....	159
9. Dismissal of Action and Nonsuit.....	159
10. Directed Verdict and JNOV.....	159
11. Submission of Issue to Jury.....	159
12. Amendment of Findings.....	160
13. Mistrial.....	160
14. Settlements.....	160
G. Judgments and Remedies.....	160
1. Certification under Rule 54(b).....	160
2. Default Judgment.....	161
3. Summary Judgment.....	162
4. New Trial.....	163
5. “Thirteenth Juror” Doctrine.....	163
6. New Trial <i>Nisi Remittitur</i>	163
7. Relief from Judgment.....	163
8. Stay of Judgment.....	164
9. Injunction.....	164
10. Mandamus.....	165
11. Consent Order.....	165
H. Miscellaneous Civil Matters.....	165
1. Appointment of Administrator.....	165
2. Dissolution of Attachment.....	166
3. Contempt.....	166

TABLE OF CONTENTS

4. Liens / Lis Pendens.....	166
5. Freedom of Information Act (FOIA).....	166
6. Removal.....	166
VI. Appealability of Specialized Civil Matters.....	167
A. Arbitration.....	167
B. Masters’ Judgments.....	168
C. <i>In Forma Pauperis</i>	169
D. Motion to Withdraw PCR Application.....	169
VII. Appealability of Specific Criminal Matters.....	169
A. Appeals by the State.....	169
1. General Rule.....	169
2. Quashing of Indictment.....	170
3. Bail.....	170
4. Preliminary Hearing.....	170
5. Withdrawal of Plea Offer.....	170
6. Disqualification of Prosecuting Attorney.....	170
7. Jury Selection.....	170
8. Suppression of Evidence.....	170
9. Judgment of Acquittal through Fraud or Collusion.....	171
10. Directed Verdict of Not Guilty.....	171
11. New Trial.....	171
B. Appeals by the Defendant.....	172
1. General Rule.....	172
2. Trial <i>in Absentia</i>	172
3. Bail.....	172
4. Immunity under Protection of Persons and Property Act, S.C. Code Ann. §§ 16-11-410 to -450 (Supp. 2014).....	172
5. Quashing of Indictment.....	172
6. Transfer of Jurisdiction.....	173
7. Suppression of Evidence.....	173
8. Double Jeopardy.....	173

9. Commitment to Department of Mental Health.....	173
10. Court-Ordered Surgery.....	173
11. Escape.....	173
C. Appealability of Third-Party Actions.....	174
1. DNA Testing.....	174
2. Victims.....	174
VIII. Appealability of Specific Family Court Matters.....	174
A. General Considerations.....	174
B. Adjudication of Delinquency.....	174
C. Emergency Removal.....	175
D. Unsealing Divorce Record.....	175
E. Orders <i>Pendente Lite</i>	175
F. Orders for Adoption.....	175
G. Attorneys’ Fees.....	175
H. Reopening Divorce.....	176
I. Orders for Emergency Removal.....	176
J. Waiver of Jurisdiction to Court of General Sessions.....	176
IX. Appealability of Administrative Decisions.....	176
A. General Considerations.....	176
B. Remand.....	177
CHAPTER 9 - ISSUE PRESERVATION.....	183
I. Introduction.....	183
II. Issue Preservation and Pleadings.....	184
III. Issue Preservation at Trial.....	185
A. Four Basic Requirements.....	185
1. Raised to and Ruled upon by the Trial Court.....	185
a. Post-Trial Motions.....	188
b. Exceptions.....	190
2. Raised by Appellant.....	193
3. Raised in a Timely Manner.....	193
4. Raised with Specificity.....	195

TABLE OF CONTENTS

B.	Preservation of Particular Matters.....	197
1.	Objections to Evidence, Testimony, and Arguments.....	197
a.	Motions <i>in Limine</i>	199
b.	Proffer of Excluded Evidence.....	200
2.	Objections Related to the Jury.....	201
a.	Jury Selection.....	201
b.	Jury Charges.....	202
3.	Opening and Closing Arguments.....	205
4.	Indictments.....	205
5.	Directed Verdict Motions.....	207
IV.	Presentation of Issues on Appeal.....	208
A.	Briefs.....	208
B.	Record on Appeal.....	209
C.	Petition for Rehearing.....	210
D.	Petition for a Writ of Certiorari to the Court of Appeals.....	210
E.	Certiorari to Review Post-Conviction Relief Actions.....	211
V.	Related Doctrines.....	212
A.	The “Two-Issue” Rule.....	212
B.	“Law of the Case” Doctrine.....	214
C.	Res Judicata and Collateral Estoppel.....	216
1.	Res Judicata.....	216
2.	Collateral Estoppel.....	217
CHAPTER 10 - STANDARD AND SCOPE OF REVIEW.....		221
I.	The Concept of the Standard and Scope of Review.....	221
A.	Constitutional and Statutory Considerations.....	222
1.	The Supreme Court.....	222
2.	The Court of Appeals.....	223
3.	The Circuit Court.....	223
B.	Common Terms.....	224
1.	De novo.....	224
2.	Abuse of Discretion.....	224

3. Any Evidence.....	225
4. Clearly Erroneous.....	225
C. Question of Law or Question of Fact?.....	226
II. Standard and Scope of Review in Civil Cases.....	226
A. General Considerations.....	226
B. <i>Townes</i> Framework.....	226
1. The Standard of Review for Actions at Law	227
a. Cases Tried Before a Jury.....	227
b. Cases Tried by a Judge.....	227
c. Cases Tried by a Master or Special Referee.....	227
2. The Standard of Review for Actions in Equity.....	227
a. Cases Tried Before a Jury.....	227
b. Cases Tried by a Judge.....	228
c. Cases Tried by a Master or Special Referee.....	228
3. The “Two Judge” Rule.....	228
C. A Case at Law or a Case in Equity?.....	229
1. The “Main Purpose” Rule.....	229
2. Division of Scope of Review in Single Case.....	230
3. Recognized Actions at Law.....	231
4. Recognized Actions in Equity.....	231
D. Specialized Standards of Review.....	232
1. Administrative Agencies.....	232
2. Workers’ Compensation Commission.....	233
3. Arbitration.....	234
4. Attorney and Judicial Discipline.....	235
5. Constitutionality of Statutes.....	235
6. Contempt.....	236
7. Declaratory Judgment.....	236
8. Elections.....	236
9. Involuntary Civil Commitment.....	237
10. Mandamus.....	238

TABLE OF CONTENTS

11. Minors and Incompetent Persons.....	238
12. Post-Conviction Relief.....	238
13. Public Policy Decisions.....	239
14. Public Service Commission.....	239
15. Stipulated Facts.....	240
16. Termination of Teachers.....	240
17. Recusal.....	240
18. Zoning.....	241
E. The Scope of Review for Particular Rulings in Civil Trials.....	243
1. Pleadings and Motions.....	243
a. Motion to Set Aside Default.....	243
b. Motion for Judgment on the Pleadings.....	243
c. Motion to Amend Pleadings.....	244
d. Rule 12(b)(6) Dismissal.....	244
e. Motion to Strike.....	245
f. Motion for Summary Judgment.....	245
g. Pre-Trial Motions.....	246
h. Motions to Join Parties.....	246
2. Discovery.....	247
a. Orders Compelling or Denying Discovery.....	247
b. Sanctions.....	247
c. Privilege.....	249
3. At Trial.....	249
a. Admission of Evidence.....	249
b. Expert Witnesses.....	249
c. Cross-Examination.....	250
d. Jury Instructions.....	250
e. Directed Verdict and JNOV.....	251
f. Nonsuit.....	252
g. New Trial Motions.....	252
h. Relief from Judgment.....	254

4. Judgment.....	254
a. Certification of Judgment under Rule 54(b).....	254
b. Awards of Costs under Rule 54(d) & (e).....	255
c. Default Judgment under Rule 55.....	255
d. Relief from Judgment under Rule 60(b).....	255
5. Miscellaneous Civil Matters.....	256
a. Temporary Injunctions.....	256
b. Sealing Documents and Settlement Agreements.....	256
c. Stays.....	256
III. The Scope of Review in Criminal Cases.....	257
A. General Considerations.....	257
B. Review <i>in favorem vitae</i> and Standard of Review in Death Penalty Cases.....	257
C. The Scope of Review for Particular Pre-Trial Matters.....	258
1. Probable Cause and Reasonable Suspicion.....	258
2. Severance and Separate Trials.....	259
3. Competency.....	259
4. Finding of Indigence.....	260
5. Determination of Attorneys' Fees for Representation of Indigents.....	260
6. Change of Venue / Transfer of Jurisdiction.....	261
7. Quashing Indictment.....	262
8. Bail.....	262
9. Continuance.....	262
10. Suppression of Evidence.....	263
11. Waiver of Right to Counsel.....	263
12. Relieving Counsel.....	264
13. Withdrawal of Plea Offer.....	264
14. Pre-Trial Identification.....	264
D. The Scope of Review for Particular Matters at Trial.....	264
1. General Considerations.....	264
2. Jury Selection.....	265

TABLE OF CONTENTS

3. Sequestration of Witnesses.....	266
4. Admissibility of Evidence.....	266
5. Videotaped or Closed-Circuit Testimony.....	267
6. Expert / Scientific Testimony.....	267
7. Issues under <i>Brady v. Maryland</i>	268
8. Scope of Cross-Examination.....	268
9. Recess / Suspension.....	268
10. Participation by Trial Judge.....	268
11. Closing Arguments.....	269
12. Mistrial.....	270
13. Directed Verdict.....	270
14. Judgment of Acquittal.....	271
15. New Trial.....	271
16. Revocation of Probation and Violating Conditions of Suspended Sentence.....	272
IV. The Scope of Review in Appeals from Other Courts within the Unified Judicial System.....	273
A. Family Court.....	273
B. Probate Court.....	274
C. Magistrates Court or Municipal Court.....	274
V. Miscellaneous Standards of Review.....	276
A. Novel Issues.....	276
B. Jurisdictional Facts.....	276
VI. The Doctrine of “Harmless Error”.....	276
A. Criminal Cases.....	276
B. Civil Cases.....	278
VII. The Doctrine of “Cumulative Error”.....	278

PART IV: GENERAL PROCEDURES IN SOUTH CAROLINA
APPELLATE COURTS.....281

CHAPTER 11 - INVOKING THE POWER OF THE APPELLATE COURTS.....283

I. Terminology.....283

II. The Appeal.....283

A. Counsel’s Obligation to Perfect the Appeal.....283

 1. Withdrawal Procedures in Civil Cases.....284

 2. Withdrawal Procedures in Criminal Cases.....284

 3. Withdrawal in Non-Meritorious Appeals
under *Anders v. California*.....286

 4. Petitions for Dismissal and to be Relieved as Counsel
under *Johnson v. State* in PCR Cases.....288

 5. Civil Applications of *Anders* Procedures.....289

B. The Notice of Appeal.....289

 1. General Considerations.....289

 2. Contents of the Notice of Appeal.....290

 3. Service of the Notice of Appeal.....292

 a. Serving the Parties.....292

 b. Jurisdictional Considerations.....292

 c. Considerations for Civil Appeals.....293

 d. Effects of Post-Trial Motions.....294

 e. Effect of Form Order or Judgment.....297

 f. Considerations for Criminal Appeals.....297

 g. Effect of Post-Trial Motions.....298

 h. Considerations for Administrative Appeals.....299

 4. Filing of the Notice of Appeal.....300

 a. Time and Place of Filing.....300

 b. Materials to Accompany Filed Notice of Appeal.....302

C. Cross-Appeals.....303

D. Consolidation of Appeals.....304

TABLE OF CONTENTS

E. Transfer of Appeals.....	304
1. Certification by Supreme Court.....	304
2. Improperly Filed Cases.....	305
III. Petitions for Review by Certiorari.....	305
A. Certiorari to the Court of Appeals.....	305
1. General Considerations.....	305
2. General Procedures.....	306
a. Contents.....	306
b. Filing and Service of Petition and Appendix.....	307
B. Certiorari to Review Post-Conviction Relief Applications.....	309
1. General Procedures.....	309
2. Notice of Appeal.....	309
3. Successive / Untimely Applications.....	309
4. Service and Filing of Petition and Appendix.....	311
5. Content of Petition and Appendix.....	312
6. Return and Reply.....	312
7. Bail Pending Appellate Review.....	313
8. Review under <i>White v. State</i>	313
a. In General.....	313
b. Special Procedures for <i>White v. State</i> Review.....	314
9. Review under <i>Austin v. State</i>	315
10. Transfer of Cases to the Court of Appeals.....	317
C. Common Law Writs of Certiorari.....	317
1. General Considerations.....	317
2. Procedures.....	318
IV. Actions in the Original Jurisdiction of the Supreme Court.....	319
A. General Considerations.....	319
1. Procedures.....	321
a. Service and Filing of Pleadings.....	321
b. Discovery, Fact-Finding, and Briefing.....	321

2. Extraordinary Writs in the Original Jurisdiction.....	322
a. General Considerations.....	322
b. Mandamus.....	323
c. Quo Warranto.....	326
d. Prohibition.....	328
e. Injunction.....	329
f. Habeas Corpus.....	329
V. Attorney Disciplinary Proceedings.....	331
A. General Considerations.....	331
B. Grounds for Discipline and Sanctions.....	332
C. Briefs of Disciplinary Counsel and Respondent.....	333
D. Supplementary Filings and Oral Argument.....	333
E. Stay for Further Proceedings.....	333
F. Decision by the Court.....	333
G. Rehearing.....	334
H. Recusal.....	334
VI. Certification of Questions of Law.....	334
A. General Considerations.....	334
B. Scope of Certification and Procedure.....	335
C. Action by the Supreme Court.....	335
D. <i>Pro Hac Vice</i> Admission.....	335
E. Briefs.....	336
F. Oral Argument.....	336
G. Disposition by Supreme Court.....	336
H. Certification by South Carolina Appellate Courts.....	337
VII. Filing Fees.....	337
A. In General.....	337
B. Proceeding <i>In Forma Pauperis</i>	337

TABLE OF CONTENTS

CHAPTER 12 - MATTERS PENDING APPEAL.....339

I. Introduction.....339

II. Residual Jurisdiction in the Lower Court.....339

III. Automatic Stays in Civil Actions.....340

A. The General Rule.....340

B. Exceptions to the General Rule.....340

1. Exceptions under Rule 241, SCACR.....340

a. Money Judgments.....341

b. Judgments Directing the Assignment or Delivery of Documents or Personal Property.....341

c. Judgments Directing the Execution of Conveyances or Other Instruments.....341

d. Judgments Directing the Sale or Delivery of Possession of Real Property.....342

e. Judgments Directing the Sale of Perishable Property.....342

f. Family Court Orders Regarding a Child or Requiring Payment of Support for a Spouse or Child.....342

g. Workers' Compensation Awards.....343

h. Appeals from an Order Granting an Injunction or Temporary Restraining Order.....343

i. Family Court Orders Awarding Temporary Suit Costs or Attorneys' Fees.....343

j. Family Court Orders Regarding a Child or Requiring Payment of Support for a Spouse or Child.....343

k. Injunctions or Restraining Orders.....343

l. Ejectment Orders.....343

m. Appeals from Administrative Tribunals.....344

2. Other Exceptions under Statutes and Case Law.....344

3. Disputes Concerning the Application of Automatic Stays.....344

IV. Granting of Supersedeas and Lifting of Automatic Stay.....346

A. Basis for Granting of Supersedeas and Lifting Automatic Stay.....346

B. Procedures for Obtaining Lift of Stay or Supersedeas.....347

1. Where Made and Appellate Review of Decision.....347

2. Filing and Service of the Petition.....	347
3. Form and Content of the Petition.....	348
4. Ex Parte Orders or Supersedeas.....	348
5. Appellate Review.....	349
V. Stays in Criminal Cases.....	349
A. The General Rule.....	349
B. Stays in Confinement Cases versus Non-Confinement Cases.....	349
C. Stays in Capital Cases.....	350
VI. Appeal Bonds / Sureties.....	352
A. Civil Matters.....	352
1. General Considerations.....	352
2. Procedure.....	353
B. Criminal Matters.....	355
1. Bail in Criminal Cases.....	355
2. Bail in Post-Conviction Relief Cases.....	356
C. Substitution of Parties.....	356
D. Amicus Curiae Brief.....	357
E. Arbitration of Appeals.....	357
1. General Considerations.....	357
2. Procedure.....	357
F. Agreements and Settlements.....	358
G. Arrangements for Transcript of Proceedings.....	359
1. General Considerations.....	359
2. Civil and Criminal Appeals.....	359
3. Administrative Appeals.....	360
4. Appellant’s Duty with Respect to the Transcript.....	361
CHAPTER 13 - MOTIONS AND PETITIONS IN THE APPELLATE COURTS.....	363
I. General Considerations.....	363
II. Procedural Requirements.....	363
A. Motions and Petitions.....	364
1. Contents.....	364

TABLE OF CONTENTS

2. Form.....364

 a. Caption.....364

 b. Signatures.....365

 c. Paper and Type Size.....365

 d. Margins and Bindings.....366

 e. Covers.....366

 f. Compliance.....366

3. Filing Requirements and Fees.....366

B. Returns and Replies.....367

C. Procedures and Dispositions.....367

D. Frivolous Motions.....368

III. Specific Motions and Petitions.....368

 A. Motion for Costs.....369

 B. Motion to Exceed Page Limits.....369

 C. Motion to Strike Portions of the Record.....369

 D. Motion to Supplement the Record or the Appendix.....370

 E. Motion to File Amicus Curiae Brief.....370

 F. Motion to Consolidate.....370

 G. Motion to Transfer Appeal to Supreme Court.....370

 H. Motion to Argue Against Precedent.....371

 I. Suggestion for Hearing or Rehearing En Banc
 Before the Court of Appeals.....371

 J. Petition for Rehearing.....371

 K. Motion to Dismiss or Withdraw Appeal.....372

 L. Petition for Stay and Supersedeas in Civil Actions.....372

 M. Petition for Stay and Bail in Criminal Cases.....373

 N. Petition for Bail in PCR Matters.....373

 O. Motion for Reinstatement or Motion to Recall the Remittitur.....373

 P. Petition for Dismissal upon Agreement or
 Settlement by the Parties.....374

 Q. Motion for Extension of Time.....375

R. Motion for Expedited Appeal.....	375
S. Motion to Withdraw / Be Substituted / Be Added as Counsel or Guardian <i>ad Litem</i>	376
T. Motion for Substitution of Parties.....	377
U. Motion for Sanctions.....	377
V. Motion to Proceed <i>in Forma Pauperis</i>	377
W. Motion for Leave to Move for a New Trial.....	378
X. Motion for Remand.....	378
Y. Motion to Intervene.....	378
Z. Motion to Seal Documents and Settlement Agreements and Requests to Redact.....	378
AA. Petitions in the Supreme Court’s Original Jurisdiction.....	379
BB. Other Motions.....	379
CHAPTER 14 - CONCLUDING THE APPEAL.....	381
I. Introduction.....	381
II. Appellate Court Decision-Making Process.....	382
A. Preparation of the Opinion.....	382
1. Memorandum and Unpublished Decisions.....	382
2. Published Decisions.....	384
3. Per Curium Decisions.....	384
B. Dispositions.....	385
1. Affirmance.....	385
2. Modification.....	385
3. Reversal.....	385
4. Remand.....	386
5. Dismissal.....	387
C. Retroactive / Prospective Application of Decisions.....	387
1. Civil Cases.....	387
2. Criminal and Post-Conviction Relief Cases.....	389
D. Precedential Value.....	390

TABLE OF CONTENTS

III. Petitions for Rehearing.....391

 A. General Considerations.....391

 B. Rehearing En Banc.....392

 1. Suggestion for Rehearing En Banc.....392

 2. Decision to Hold Rehearing En Banc.....392

IV. The Remittitur.....393

 A. Nature and Effect of Issuance.....393

 B. Time of Issuance.....393

V. Recovery of Costs and Interest on Judgments.....394

 A. Standard Costs.....394

 1. Assessment of Costs.....394

 2. Procedure for Obtaining Costs.....396

 B. Costs When Writ of Certiorari Granted.....397

 1. Assessment of Costs.....397

 2. Procedure for Obtaining Costs.....398

 C. Other Costs.....398

 1. By Statute.....399

 2. Original Jurisdiction.....399

 D. Interest on Judgments Pending Appeal.....400

VI. Agreements and Settlements.....401

VII. Review by the United States Supreme Court.....401

PART V: THE TOOLS OF APPELLATE ADVOCACY.....403

CHAPTER 15 - THE RECORD ON APPEAL.....405

I. The “Designation of Matter”.....405

 A. Purpose of the Designation and Its Relationship to the Record.....405

 B. Service, Filing, and Certification of the Designation.....405

 C. Content.....406

II. The Record Itself.....406

 A. Purpose and Responsibility for Preparation.....406

 B. Required Contents.....407

C. Technical Requirements for the Contents.....	408
1. Title Page.....	408
2. Index.....	410
3. Orders, Judgments, Decrees, and Decisions.....	411
4. Pleadings and Related Matters.....	411
5. Transcript of Proceedings.....	412
6. Special Considerations for Motions, Objections, Rulings, and Proffers.....	413
7. Exhibits.....	414
8. Certificate of Counsel.....	415
D. Form of the Record.....	415
1. Binding and Margins.....	415
2. Page Numbering.....	416
3. Paper and Type Size.....	417
E. Service and Filing of the Record.....	417
F. Supplementing the Record.....	417
G. Transfer of Physical Evidence or Exhibits from the Lower Court to the Appellate Court.....	419
H. Privacy and Ethical Issues.....	419
1. Redaction.....	419
2. Public Access to Appellate Court Records.....	420
III. Appendix in Post-Conviction Relief Cases.....	420
IV. Record on Appeal as Effective Advocacy.....	421
A. The Record on Appeal for the Appellate Advocate.....	421
1. The Reasons for the Record.....	421
2. The Record on Appeal for Factual Recitation.....	422
3. For Concentration of Thought and Writing.....	422
4. For Preparation and Presentation of Oral Argument.....	422
5. For Credibility.....	423

TABLE OF CONTENTS

CHAPTER 16 - THE APPELLATE BRIEF.....425

I. Introduction.....425

II. Technical Requirements for Initial Briefs.....425

 A. Service and Filing of Initial Brief.....425

 1. Appellant’s Initial Brief.....425

 2. Respondent’s Initial Brief.....426

 3. Appellant’s Reply Brief.....426

 B. Contents of the Initial Brief.....426

 1. Cover Page.....427

 2. Table of Contents.....427

 3. Table of Cases, Statutes, and other Authorities.....428

 4. Statement of Issues on Appeal.....428

 5. Statement of the Case.....429

 6. Statement of Facts.....431

 7. Argument.....432

 8. Conclusion.....432

 C. Form of the Initial Brief.....433

 1. Paper and Type Size.....433

 2. Margins, Binding, and Cover.....433

 3. Length of Briefs.....434

 4. Caption.....434

 5. Citations to Authority.....434

 6. References to the Record on Appeal.....434

 7. Signature.....435

 D. Other Considerations for the Initial Brief.....435

 1. Joint Briefs.....435

 2. Supplemental Citations.....435

 E. Considerations for the Respondent’s Initial Brief.....435

 1. Discretionary Contents.....435

 2. Service and Filing.....436

F. Appellant’s Reply Brief.....	436
1. Purpose.....	436
2. Service and Filing.....	437
3. Tone of the Reply Brief.....	437
III. Technical Requirements for Final Briefs.....	437
A. Contents of Final Briefs.....	437
1. Conversion of References to Record on Appeal.....	437
2. Correction of Clerical Errors.....	438
3. Certificate.....	438
B. Cover, Bindings, and Margins.....	438
C. Service and Filing.....	438
IV. The Amicus Curiae Brief.....	439
V. The Appellate Brief as Effective Advocacy.....	439
A. The Strategy of Writing the Appellate Brief.....	440
1. The Purpose of the Appellate Brief.....	440
2. Thinking Like the Reader.....	440
3. “The Theory of the Case”.....	441
B. Choosing the Issues.....	441
1. Preserved Issues.....	441
2. Limiting the Issues on Appeal.....	442
3. Ordering the Issues on Appeal.....	442
C. Stating the Issues on Appeal.....	443
D. Stating the Facts of the Case.....	443
E. Researching the Law.....	444
F. Organizing the Arguments.....	447
1. The Structure of the Argument.....	448
2. The Body of the Argument.....	448
a. The Basic Position on an Issue.....	449
b. Presentation of the Applicable Law.....	449
c. The Use of the Law and the Facts.....	450
d. The Resolution of the Issues.....	452

TABLE OF CONTENTS

G. Writing and Editing the Appellate Brief.....	452
1. The Style of Writing.....	452
a. The Use of Words.....	452
b. The Tone of the Brief.....	454
c. The Length of the Brief.....	454
2. Editing.....	455
a. The Goal of Editing.....	455
b. The Process of Editing the Brief.....	455
c. Proof Reading the Brief.....	457
H. Special Considerations for the Respondent’s Brief.....	457
1. The Character of the Respondent’s Brief.....	457
2. Alternative Reasons to Affirm.....	458
CHAPTER 17 - THE ORAL ARGUMENT.....	461
I. Introduction.....	461
II. Technical Requirements for Oral Argument.....	461
A. Pre-Argument Requirements.....	461
B. Requirements for the Argument Itself.....	463
III. The Oral Argument as Effective Advocacy.....	464
A. Nature and Purpose of the Oral Argument.....	464
1. The Scope of Appellate Argument.....	464
2. The Court’s Expectations.....	464
3. The Advocate’s Expectations.....	464
B. The Advocate’s Approach to the Oral Argument.....	464
C. Preparing for Oral Argument.....	469
1. Understanding the Case.....	469
2. Mastering the Appellate Materials	469
a. The Record on Appeal.....	469
b. The Written Arguments.....	469
c. The Principal Authorities.....	469
3. Preparation for Questions.....	472

TABLE OF CONTENTS

4. Developing Materials for the Oral Argument.....	473
a. The Argument Notebook.....	473
b. The Argument Outline.....	473
5. Dividing the Argument.....	474
6. Practicing the Argument.....	474
D. The Advocate’s Presentation of the Argument.....	475
1. The Knowledge of the Premises and Procedures.....	475
2. The Style of Delivery.....	476
a. General Tone.....	476
b. The Use of Written Materials.....	477
3. Courtroom Etiquette.....	478
4. Responding to Questions.....	480
E. Considerations for the Respondent’s Oral Argument.....	482
F. Considerations for the Appellant’s Rebuttal Argument.....	483
APPENDICES.....	485
APPENDIX A: SOUTH CAROLINA APPELLATE COURT RULES (PARTS I & II).....	487
APPENDIX A1: TABLE OF COMPARATIVE RULES (APPENDIX A, APPENDICES TO PART II, SCACR).....	541
APPENDIX B: QUESTIONS OF LAW OR QUESTIONS OF FACT?.....	547
APPENDIX C: ACTIONS AT LAW OR ACTIONS IN EQUITY?.....	555
APPENDIX D: SAMPLE INDEX.....	569
(on accompanying CD)	
APPENDIX E: SAMPLE BRIEFS.....	571
(on accompanying CD)	
TABLE OF AUTHORITIES.....	573
A. CONSTITUTIONAL PROVISIONS.....	575
B. STATUTES.....	575

TABLE OF CONTENTS

C. CASES.....585

D. RULES.....634

E. OTHER AUTHORITIES.....646

INDEX.....649