

FORMAL PROCEEDING

Any action needing to be determined or resolved by the Probate Judge is considered a **formal proceeding**. It is recommended that an attorney assist with all formal proceedings.

◆ Step One - Filing

To begin an action, the person [Petitioner/Plaintiff] making a written request [Petition/Complaint] for the Judge's determination will file initial pleadings [**Summons & Petition/ Complaint; §62-1-201(15)**] and \$150 **filing fee**.

The Summons uses the civil format. For some actions form Petitions are available. When a form Petition is not available, the attorney will create the Petition/Complaint, following the format outlined in the *South Carolina Rules of Civil Procedure*. The attorney may also wish to attach supplemental pleadings to the form Petition outlining further information regarding the issues.

For decedent's cases, a death certificate will also be required if not previously filed.

◆ Step Two - Service

Once the Summons & Petition have been filed at the Probate Court, the Petitioner is required to have a copy of the pleadings **served on all interested persons** [Respondents/ Defendants]. Service shall be made personally by a disinterested party (file Affidavit of Service) or by certified mail (file green card signed by designated party). If serving the parties by regular mail, they will need to sign an Acceptance of Service.

◆ Step Three - Answer

The Respondents/Defendants will then have 30 days to file their response [**Answer**] with the Court and shall serve a copy on the Petitioner's attorney.

If 30 days from the initial filing have passed and no Answers are received, the Respondents/Defendants are then considered in default. The Petitioner's attorney will prepare an Affidavit of Default.

◆ Step Four - Hearing

After the above 30 days have passed or once the Answers have been filed, the **hearing is to be set** 120 days from the initial filing date. If all parties are in agreement to set the hearing earlier, the hearing can be set, keeping in mind that a 20-day notice of the hearing is required. The Petitioner's attorney shall mail notice of the hearing to the Respondents/Defendants or their attorneys and file a copy of the Notice of Hearing [FORM 326ES] and Proof of Delivery [FORM 120PC] with the Probate Court. Voluntary appearance at the hearing is a waiver of notice.

For further information, refer to the *South Carolina Rules of Civil Procedure*.

Hon. Debora A. Faulkner, Probate Judge
Greenville County Probate Court
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Greenville, SC 29601
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