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CHAPTER 17.

 CLERKS OF COURTS

ARTICLE 1.

 OFFICE; ELECTION; QUALIFICATION; VACANCIES

**SECTION 14‑17‑10.** Election for clerk of court of common pleas

There shall be an election for clerk of the court of common pleas in each county by the qualified voters thereof at each alternate general election, reckoning from the election in the year 1960.

**SECTION 14‑17‑20.** Clerk of court of common pleas to be clerk of all courts of record.

The clerk of the court of common pleas elected in each county pursuant to Section 14‑17‑10 is ex officio clerk of the court of general sessions, the family court, and all other courts of record in the county except as may be provided by the law establishing the other courts.

**SECTION 14‑17‑30.** Vacancies; when probate judge shall act.

In the event of any vacancy in the office of clerk the Governor shall have full power to fill it by appointment as provided in Section 4‑11‑20. Until such vacancy be filled by appointment or election the judge of probate of the county shall take charge of the office and all of the papers therein, discharge the duties and receive the fees thereof, and be subject to all its liabilities as provided by law.

**SECTION 14‑17‑40.** Bond.

Before receiving their commissions the several clerks shall enter into bond, to be approved, recorded and filed as prescribed in Sections 8‑3‑130 to 8‑3‑150 in the penal sum of ten thousand dollars.

**SECTION 14‑17‑50.** Official oaths; commission shall be read and entered in journal.

The clerk before entering on the duties of his office shall, in addition to the oath of office prescribed by the Constitution, take the oaths required of such officer by Section 8‑3‑20. Said oaths must be endorsed upon the commission, subscribed by the officer and attested by a magistrate or notary public of the county for which the clerk shall have been elected or appointed. At the opening of the first term of the court which may be held thereafter the clerk shall produce his commission, with the endorsement aforesaid, and after the same has been read in open court shall make a fair entry thereof in the journals of the court.

**SECTION 14‑17‑60.** Deputy.

The clerk may appoint a deputy or deputies to be approved by the court of common pleas, a record of whose appointment shall be made in the clerk’s office. Before entering on the duties of his appointment such deputy must take the oath prescribed by the Constitution. When so qualified the deputy may do and perform any and all of the duties appertaining to the office of his principal. Such appointment shall be evidenced by a certificate thereof, signed by the clerk, and shall continue during his pleasure. He may take such bond and security from his deputy as he shall deem necessary to secure the faithful discharge of the duties of the appointment but shall in all cases be answerable for the neglect of duty or misconduct in office of his deputy.

**SECTION 14‑17‑70.** Procurement of seal and blank books.

Each clerk’s office shall be furnished with a seal of office and such blank books for the various records as may be needed from time to time, to be procured by the clerk and the expenses thereof defrayed by the governing body of the county.

ARTICLE 3.

 GENERAL DUTIES AND POWERS

**SECTION 14‑17‑210.** Clerk shall have charge of courthouse; penalty for keeping courthouse open at night.

Every clerk shall have charge of the courthouse within his county, open the same when required for public use and at all other times keep it closed. For every night any courthouse shall be kept open the clerk shall be liable to a penalty of five dollars for the use of the county, to be recovered by indictment.

**SECTION 14‑17‑220.** Clerk shall keep constant attendance at office and discharge all duties.

Every clerk shall, except on public holidays, give constant attendance, either personally or by deputy, in his office, which shall be kept in a room provided for that purpose in the courthouse. He shall discharge all the duties required by law or the rules of court, from time to time, or that may be incident to the office.

**SECTION 14‑17‑230.** Clerks may act as attorneys and solicitors in other counties.

Clerks may act as attorneys and solicitors in all the courts in the State, except in the courts of their respective counties, provided they shall have complied with the requirements of law regulating the admission of persons to practice as attorneys, solicitors and counselors in the courts of this State.

**SECTION 14‑17‑240.** Clerk shall not act as sheriff or deputy sheriff.

Clerks shall not act as sheriffs or deputy sheriffs, except as provided by Section 23‑11‑100.

**SECTION 14‑17‑250.** General powers of clerks; proceedings under orders to be filed.

Clerks may administer oaths and take depositions, affidavits and renunciations of dower. The clerk of any county in which the office of master does not exist may, by consent of parties, sign orders of reference in vacation and may also, upon proper proceedings filed, grant orders for the partition of real or personal estate and for the admeasurement of dower in cases where the right of partition or dower is not contested or the same has been ascertained by a decree of the court. All proceedings under such orders shall be filed at the next succeeding term of the court for the adjudication of the presiding judge, until which adjudication all equities of the parties shall be reserved.

**SECTION 14‑17‑260.** Clerk shall issue all processes and sign all judgments.

The clerk shall

(a) issue every execution, bench warrant or other process issuable or directed to be issued by the courts of sessions, in the name of the Attorney General or solicitor of the circuit, (b) issue all rules and notices ordered in the common pleas, (c) attest in his own name under the seal of the court, all writs and processes issued either in the common pleas or sessions and (d) sign officially all judgments and state the time when each is signed and entered.

**SECTION 14‑17‑270.** Clerk shall witness and approve security for costs; form of undertaking.

Whenever security for costs may be ordered to be given or may be tendered by any plaintiff in vacation or in term time the clerk shall witness the signature of the surety and shall, in the first instance, judge of the sufficiency of the security. The form of the undertaking shall be according to law or the rule of the court on that subject if there be no law.

**SECTION 14‑17‑280.** Clerk shall permit entry of satisfaction of judgments and mortgages.

The clerk or the register of deeds, as the case may be, in whose office any judgment or mortgage may be of record, on the receipt of the fees, shall permit any judgment creditor or his or her attorney or any mortgagee, as the case may be, to enter satisfaction thereof. Or if any judge shall order satisfaction of any such judgment or mortgage the clerk shall enter of record such satisfaction accordingly.

**SECTION 14‑17‑290.** Clerk shall enter renewals and satisfactions of executions.

Whenever any execution shall be returned for renewal or as satisfied by any sheriff the clerk shall enter such renewal or satisfaction in the appropriate column of the abstract book and in case of satisfaction shall enter the same on the original record. It shall not be lawful for the clerk to affix the seal of the court to any renewed execution unless the one previously issued shall have been delivered to him or unless authorized by a judge’s order.

**SECTION 14‑17‑300.** Clerk shall execute laws respecting jurors.

The clerk shall diligently and uprightly put in execution the laws in force directing the drawing, balloting, empaneling and summoning of jurors, so far as his cooperation may be required.

**SECTION 14‑17‑310.** Clerk shall make out roll of jurors and constables in attendance; certificates.

Immediately after the adjournment of any court of common pleas and general sessions the clerk thereof shall (a) make out a roll of the grand jurors, petit jurors and constables who shall have attended the same, exhibiting the name, time of service and amount due each juror and constable and the term at which the service was performed, (b) enter the same on the journals of the court of the term when such service shall be performed, (c) forthwith transmit to the governing body of the county a certified copy of such roll and (d) furnish each juror and constable with a certificate, in the following form:

STATE OF SOUTH CAROLINA: I, A. B. Clerk of the Court of Common Pleas and General Sessions for \_\_\_\_\_\_\_\_\_\_ County, in the said State, do certify that \_\_\_\_\_\_\_\_\_\_ attended as a \_\_\_\_\_\_\_\_\_\_ juror (or actually served as a constable, as the case may be) for said county \_\_\_\_\_\_\_\_\_\_ days at \_\_\_\_\_\_\_\_\_\_ Term, A. D. \_\_\_\_\_\_\_\_\_\_, and is entitled to receive for the same \_\_\_\_\_\_\_\_\_\_ dollars, and \_\_\_ cents.

Such certificate shall be signed by the clerk of court, who shall issue the same, and be countersigned by the sheriff of the county. All certificates so issued and executed shall be valid.

**SECTION 14‑17‑320.** Repealed by 1989 Act No. 29, Section 1, eff April 3, 1989.

**SECTION 14‑17‑325.** Clerk shall report disposition of each case in court of general sessions.

Every clerk of court shall report the disposition of each case in the Court of General Sessions to the State Law Enforcement Division within thirty days of disposition. The disposition report must be in a format approved by representatives of the State Law Enforcement Division and the office of court administration. With the approval of the State Law Enforcement Division and the office of court administration, this reporting requirement may be satisfied by use of General Sessions docket information transmitted to the office of the court administration.

**SECTION 14‑17‑330.** Clerk shall keep record of all persons elected to office.

Each of the clerks of courts of the various counties in this State shall keep a book in his office in which he shall record the name of each person elected to any office, together with the date of their election whenever such facts are obtainable. Such book shall be furnished by the governing body of the county, without cost to the clerk of court.

**SECTION 14‑17‑340.** Clerk shall administer oaths to magistrates and transmit list of magistrates’ names to Secretary of State.

The clerk shall administer the oaths of office required to be taken by magistrates appointed within his county, on their application, within ninety days after such appointment. On the first day of November, annually, he shall transmit a list of the names of magistrates who have qualified during the preceding year to the office of the Secretary of State at Columbia.

**SECTION 14‑17‑350.** Clerk shall administer oath of constables; failure of constable to appear.

The clerk shall administer the oaths of office required by law to be taken by a constable, on his entering into bond, as prescribed, to be filed in the office of the clerk, of the sufficiency of the surety to which the clerk shall judge. The constable shall furnish a genuine signature of his name in the book prescribed, whereupon the clerk shall furnish an official certificate of such qualification. When any constable summoned in writing by the sheriff to attend court shall fail to appear, according to the summons, such default shall be noted by the clerk and such other proceedings had as in cases of jurors in default or as the court may order.

**SECTION 14‑17‑360.** Clerk shall furnish official certificates to certain officers.

When any sheriff, coroner, magistrate or constable shall be required to obtain the official certificate of any clerk to his contingent account, specifying any matters required by law to be certified, the clerk shall furnish such certificates, according to the facts, upon application and payment of fees.

**SECTION 14‑17‑370.** Clerk shall furnish certificates of liens on property of certain sureties.

The clerk shall furnish, free of charge, to the governing body of the county, when required, an official certificate of all liens that may be of record in his office on the property of any individual who may be offered as surety to the bond of any public officer, whether by judgment, mortgage or otherwise.

ARTICLE 5.

 BOOKS, PAPERS AND RECORDS

**SECTION 14‑17‑510.** Record of court proceedings; filing papers; preservation of papers and property.

The clerk shall make a full, fair and correct entry and record of the proceedings of the courts and other matters pertaining to his office in the various books required to be kept, conforming to the mode prescribed by law, order of the court or usage of the office. He shall file in their proper order original papers in causes instituted or other authorized proceedings and preserve with care all papers, books and furniture pertaining to or connected with his office.

**SECTION 14‑17‑520.** Procurement of filing cases.

The office of every clerk shall be furnished with suitable cases with proper partitions for filing papers, under appropriate labels.

**SECTION 14‑17‑530.** Filing and endorsement of papers.

The original papers of record in each cause wherein judgment may be signed or confessed or decree may be entered shall be filed according to the number of enrollment in the book of abstracts of judgments or decrees, placing all the papers in each cause together. Original papers in the sessions shall be filed according to the term at which they were disposed of, alphabetically arranged for each term according to defendants’ names, all relating to the same cause together. Other papers required to be returned to or kept in the office shall be endorsed with the character, date of filing and number on file, numbering each kind from one onward and keeping all relating to the same matters together under the same number, and shall be filed according to date and number in appropriate boxes with suitable labels, put up in packages and dated according to the year in which they may be filed. Upon the envelope or card there shall be an endorsement of the description or kind of papers therein and reference to number under the following heads: Bonds in attachment, bonds of constables, certificates from the Supreme Court, appeals, commissions, inquests by the coroner, reports, etc., de lunatico inquirendo, naturalization, venire facias, dower, partition, escheats, affidavits, attachments for contempt and rules and sessions papers disposed of to be transferred after judgment when authorized. The following endorsements shall be made upon the record when the proceedings warrant it:

(1) On the judgment roll, the date when filed, number on docket, date and amount of judgment in figures, amount of taxed cost, judgment when signed, execution, date of issuing and, at the top at some conspicuous place, the number roll;

(2) On bills of indictment, the date and character of filing by grand jury, number on docket, arraignment, verdict or other disposition, date, amount of tax costs, execution, date of issuing and kind; and

(3) On all papers returned by magistrates in the sessions their character and date of filing.

On every execution before it leaves the clerk’s office, shall be endorsed, near the top, the number roll or, if in the sessions, the term under which the case is filed and, in all instances when an execution is returned for renewal, the fact and date of such renewal shall be endorsed on the execution so returned and on the renewed execution shall be endorsed the date when first execution was lodged in the sheriff’s office.

All original papers in dower, partition of real estate and inquisitions shall be filed according to number roll, the papers pertaining to each case being placed together and the number roll plainly endorsed on the envelope or outside paper and also the book and page of record.

**SECTION 14‑17‑540.** Books, calendars and records to be kept by clerks.

The books to be used by the several clerks, which shall be well bound and of good materials, shall be as follows:

(1) A “Court of Common Pleas Journal” shall contain

(a) a full account of the proceedings of court from the opening to the adjournment, excluding motions refused,

(b) a short statement of each case called and the manner of its disposition and every order of reference, each under a general order as far as may be,

(c) a record of the names of jurors composing each jury and all changes therein, designating the jury who may try each cause under the title thereof, together with an exact copy of their verdict,

(d) whether the cause was upon trial before jury or judge or by default and if in default whether in proof or reference and all assessments, each in words at length and not in figures,

(e) awards confirmed,

(f) confessions of judgment during court,

(g) final judgments and

(h) copies of all orders passed, motions granted and other matters specially ordered by the court to be entered;

(2) A “Court of General Sessions Journal” which shall be kept in a separate volume, after like manner as far as may be and including the finding of the grand juries on bills given out, with their other presentments, and sentences of the court on parties convicted; orders of escheat; fines imposed; and other matters specially ordered for entry by the court;

(3) “Indexes to the Respective Journals of the Common Pleas and General Sessions” which shall be alphabetically arranged at the end of each volume and shall always be brought up by the first day of each succeeding term;

(4) “Rules” in which shall be entered every case on filing the complaint, showing, in separate columns, the names of parties, plaintiff’s attorney, defendant’s attorney, date of filing complaint, date of answer, demurrer, replication and other pleadings and date of order for judgment;

(5) “Calendars” for civil causes, sessions and contingent, to be kept in separate volumes for the use of the court and a bar calendar in a single volume, to be made on and before the meeting of the court, the calendars to be kept up as the pleadings are made up or cases occur during the term for both the court and the bar; the sessions calendar shall contain, separately arranged, cases of the previous term under the title “Traverses” and cases under the present term under the title “Calendar”; the contingent calendar shall contain, in the sessions, all the rules, bills found in which defendants have not been arrested, and cases struck off, but in which nol. pros. has not been entered, to be called on motion of the solicitor; the calendars shall show, in separate columns, the number of the cause, number of term, names of parties, cause of action, plaintiff’s attorney, defendant’s attorney and, in the sessions, the prosecutor’s name and the race to which each person indicted in such court belongs, the order of the last court and the place for the event of suit, to be entered by the judge;

(6) “Abstracts of Judgments” in which shall be entered each case wherein judgment may be signed, including each case in dower, partition and escheat, after judgment or final order, with separate columns showing the number of enrollment, names of parties, cause of action, attorney, date of judgment, amount of judgment, time of bearing interest, how judgment obtained, costs (separating attorney, clerk, sheriff, witnesses and total), kind of execution, date of issuing execution, sheriff’s return thereon and satisfaction, together with an index by the names of defendants and a cross index by the names of plaintiffs, each alphabetically arranged and kept in separate volumes with the number of enrollment of judgment;

(7) A “Sessions Index” by names of defendants, alphabetically arranged, together with the offense charged, disposition of the case, term when ended and number on file;

(8) “Pleadings and Judgments” in which shall be entered, at length, the complaint, answer and judgment in each cause wherein judgment may have been signed and also the proceedings in dower, partition and escheat when the final order and judgment of the court shall have been had, with an index to the names of plaintiffs; provided, that such records in Edgefield County may be photostated by the clerk of court and filed for record in a loose‑leaf binder;

(9) “Confessions of Judgment before Clerk” in which shall be entered such proceedings kept with reference to the number of enrollment in book of abstracts, instead of page, together with an index to this particular volume in the names of defendants;

(10) “Fines and Forfeitures” in which shall be entered the names of all persons fined by the court or whose recognizance may be estreated, with separate columns showing names, cause of fine, when fined, by whom fined, amount of fine, to whom due, when collected, by whom collected, why not collected, when paid over and to whom paid over;

(11) “Magistrates’ and Constables’ Roll” in which shall be entered the name of each magistrate and constable on taking the oaths of office, representing in separate columns the names, date of qualification, office, expiration of term, a genuine signature and, in the case of a constable, the names of the sureties to his bond, with an index of each name, alphabetically arranged.

(12) “Book of Orders Appointing Receivers of Judgment Debtors”;

(13) “Miscellaneous Index” in which shall be entered, alphabetically, the names of all aliens who have taken any step towards naturalization; all persons concerning whom proceedings de lunatico inquirendo may be instituted; the names of aliens naturalized; certificates and papers concerning corporations; and all matters required by law to be recorded and not otherwise provided for, referring to papers on file by number and label; and

(14) “A Record Book of Pardons” in which shall be recorded the names of persons pardoned in the county, arranged alphabetically, the offenses for which they were convicted, the date of conviction and the date of pardon.

**SECTION 14‑17‑550.** Entries on and preservation of calendars.

No cause shall be entered on the calendar except by the clerk or his deputy, nor by him until the pleadings are made up. The calendars for the court shall be regularly preserved as a record of the court.

**SECTION 14‑17‑560.** Size of books required to be kept.

The books mentioned in Section 14‑17‑540 shall be of the following sizes, respectively:

(1) Court of common pleas journal, general sessions journal, rules and fines and forfeitures, each of the size denominated “Demi,” the journals containing not less than six quires each and the other books not less than three quires each;

(2) Calendars, sessions index, confessions of judgment before clerk, magistrates’ and constables’ roll, book of orders appointing receivers of judgment debtors and miscellaneous index, each of the size denominated “Board Cap,” the first named containing not less than two quires and the remaining books not less than four quires each;

(3) Pleadings and judgments in a volume not less than the size denominated “Medium,” containing not less than six quires;

(4) Abstract of judgments of the size denominated “Super Royal,” containing not less than four quires; and

(5) Indexes to the preceding volumes of the size denominated “Long Demi,” containing not less than six quires.

**SECTION 14‑17‑570.** Books and records shall remain in clerk’s office; inspection; copies.

The clerk shall not in any case permit either the books or records to be removed from his office, though he shall at all times permit either party to a suit, or his agent or attorney, to inspect or copy, during the pendency of suit, any papers pertaining thereto without charge or to furnish on application certified copies thereof on payment of fees per copy sheet.

**SECTION 14‑17‑580.** Clerk is responsible for books, papers, and other property; transfer to successor.

Every clerk shall be held responsible for the books, papers and furniture in his office. Upon his retiring from office or upon his death, he or his representative shall be bound to transfer the same to his successor immediately after such successor has entered upon the duties of his office, under a penalty of one thousand dollars and imprisonment not exceeding one year for failure so to do.

**SECTION 14‑17‑590.** Receipt for books, papers and furniture of office.

Before surrendering such books, papers and furniture, the clerk so retiring from office or his representative shall be entitled to require from such successor, who, under like penalty, shall be bound to execute the same, a receipt in writing therefor which shall specify the number, title and condition of every book, the number of records, as appears by the enrollment, and such other classification as it may be convenient to adopt from the arrangement of the office, all the packages of papers in office and the description and condition of each article of furniture. A duplicate of such receipt shall also be given and shall, by the clerk so retiring from office or his representatives, be filed in the office of the governing body of the county and every clerk having retired from office or his representative shall be liable to an action, in the name of the county, for damages to any books, papers and furniture which shall be proven to have been in his possession and shall not appear, by such receipt, to have been transferred to his successors or, having been so transferred, shall appear to have been, through neglect, injured during his continuance in office.

**SECTION 14‑17‑595.** Clerks of court may maintain records on computers; paper or microfilm records required in certain instances.

Notwithstanding the provisions of this article or any other provision of law, a public record required to be kept by a clerk of court including, but not limited to, a book, journal, index, paper, writing, written record, and written findings may be maintained in a computer system provided that a paper or microfilm record must be maintained on all permanently valuable records.

**SECTION 14‑17‑600.** Judges shall require clerks to comply with Sections 14‑17‑540 and 14‑17‑550.

The circuit judge shall require the clerks of court to comply with the requirements of Sections 14‑17‑540 and 14‑17‑550.

ARTICLE 7.

 ACCOUNTS AND DISPOSITION OF MONEY

**SECTION 14‑17‑710.** Accounts against county for fees in State cases.

In all cases the clerk shall render his account against the county for fees in State cases under oath, to be taken and subscribed before the judge, magistrate or other office authorized to administer an oath. In such statement the nature of the services shall be fully set forth and, if in the sessions, the name of the party, offense and termination thereof. He shall not be entitled to receive any fees from the county in any case in which the defendant is convicted unless he makes oath that the costs in such case have not been recovered out of the defendant and that the defendant is unable to pay costs. And he must, in all cases, further make oath that all fines and penalties theretofore collected by him have been faithfully and fully paid over to the county treasurer.

**SECTION 14‑17‑720.** Disposition of certain fines, penalties, and taxes.

All fines and penalties imposed and collected by the circuit court of general sessions in criminal causes shall be forthwith turned over by the clerk of such court to the county treasurer of the county wherein the same are imposed; provided, that when, by law, any person is entitled as informer to any portion of the fine or penalty imposed and collected the same shall be immediately paid over to him. They shall also pay, monthly, to the county treasurers of their respective counties, for the use of the State, all such moneys as may have come into their hands as taxes from persons representing, publicly, plays and shows within the limits of their counties.

**SECTION 14‑17‑725.** Collection cost imposed on installment payments of fines or restitution.

Where criminal fines, assessments, or restitution payments are paid through installments, a collection cost charge of three percent of the payment also must be collected by the clerk of court, magistrate, or municipal court from the defendant and transferred to the county treasurer or city treasurer, as appropriate, for deposit to credit of the county or municipal general fund.

**SECTION 14‑17‑730.** Penalty for not paying over funds, fines and forfeitures; penalty for failure to give notice to county.

If any clerk fail to pay over fines and forfeitures received by him or any moneys paid to him by order or permission of the court within five days after demand of the person entitled to receive the same, he shall forfeit and pay five per cent per month until the same shall be paid over, to be recovered, together with such amount received, by action on his official bond, besides being liable to rule and attachment as for contempt. If he shall fail to give to some member of the governing body of the county the notice required by law to be given he shall forfeit and pay double the amount so detained without notice.

**SECTION 14‑17‑740.** Annual accounts of fines and forfeitures; suit to recover upon failure to account.

The clerk shall return to the governing body of the county, on or before the last day of October in every year, an account, upon oath, in duplicate, of all fines and forfeitures inflicted in his court during the preceding year and of the amounts had and received by him and of the manner in which such fines were disposed of, under penalty of two hundred dollars, to be recovered against any clerk for default herein by action. The governing body of the county shall request the Attorney General or solicitor, as the case may be, to sue for and recover such sum of every clerk that may fail to render such account.

**SECTION 14‑17‑750.** Clerk shall report all moneys collected; penalty for failure to report.

Every clerk of the court is required, on the first Wednesday in each month or within ten days thereafter, to make in writing to the auditor and treasurer of his county a full and accurate statement of all moneys collected on account of licenses, fines, penalties and forfeitures during the past month on pain of indictment and, in case of conviction, of being fined not more than one hundred dollars or imprisoned not more than two months or both, at the discretion of the court.

**SECTION 14‑17‑760.** Clerk shall account for moneys at each session of common pleas.

At each stated session of the court of common pleas the clerk thereof shall present an account to the court of all moneys remaining therein or subject to the order thereof, stating particularly on account of what cause or causes such moneys are deposited, which account and the vouchers thereof shall be filed in court.