

SIDE-BY-SIDE

Article 1- General Provisions- Part 3

Existing Law	Bill # S. 1243
Article 1.Part 3.Scope, Jurisdiction, and Courts	Article 1.Part 3.
<p>SECTION 62-1-301. Territorial application.</p> <p>Except as otherwise provided in this Code, this Code applies to (1) the affairs and estates of decedents, missing persons, and persons to be protected domiciled in this State, (2) the property of nonresidents located in this State or property coming into the control of a fiduciary who is subject to the laws of this State, (3) incapacitated persons and minors in this State, (4) survivorship and related accounts in this State, and (5) trusts subject to administration in this State.</p> <p>REPORTER’S COMMENTS This section merely states that this Code applies to matters having a connection to this State by reason of a person’s domicile or the situs of property.</p> <p>SECTION 62-1-302. Subject matter jurisdiction; concurrent jurisdiction with family court.</p> <p>(a) To the full extent permitted by the Constitution, and except as otherwise specifically provided, the probate court has exclusive original jurisdiction over all subject matter related to:</p> <p>(1) estates of decedents, including the contest of wills, construction of wills, and determination of heirs and successors of decedents and estates of protected persons;</p> <p>(2) protection of minors, except that jurisdiction over the care, custody, and control of the persons of minors is governed by Section 62-5-201 and incapacitated persons, including the mortgage and sale of personal and real property owned by minors or incapacitated persons as well as gifts made pursuant to the South Carolina Uniform Gifts to Minors Act, Article 5, Chapter 5, Title 63, except that jurisdiction for approval of settlement of claims in favor of or against minors or incapacitated</p>	<p>SECTION 62-1-301.</p> <p>Except as otherwise provided in this Code, this Code applies to (1) the affairs and estates of decedents, missing persons, and persons to be protected domiciled in this State, (2) the property of nonresidents located in this State or property coming into the control of a fiduciary who is subject to the laws of this State, (3) incapacitated persons and minors in this State, (4) survivorship and related accounts in this State, and (5) trusts subject to administration in this State.</p> <p>REPORTER’S COMMENTS This section merely states that this Code applies to matters having a connection to this State by reason of a person’s domicile or the situs of property.</p> <p>SECTION 62-1-302.</p> <p>(a) To the full extent permitted by the Constitution, and except as otherwise specifically provided, the probate court has exclusive original jurisdiction over all subject matter related to:</p> <p>(1) estates of decedents, including the contest of wills, construction of wills, <u>determination of property in which the estate of a decedent or a protected person has an interest</u>, and determination of heirs and successors of decedents and estates of protected persons;</p> <p>(2) protection of minors, except that jurisdiction over the care, custody, and control of the persons of minors is governed by Section 62-5-201 and incapacitated persons, including the mortgage and sale of personal and real property owned by minors or incapacitated persons as well as gifts made pursuant to the South Carolina Uniform Gifts to Minors Act, Article 5, Chapter 5, Title 63, except that jurisdiction for approval of settlement of claims in favor of or against minors or</p>

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<p>persons is governed by Section 62-5-433;</p> <p>(3) trusts, inter vivos or testamentary, including the appointment of successor trustees;</p> <p>(4) the issuance of marriage licenses, in form as provided by the Bureau of Vital Statistics of the Department of Health and Environmental Control; record, index, and dispose of copies of marriage certificates; and issue certified copies of the licenses and certificates;</p> <p>(5) the performance of the duties of the clerk of the circuit and family courts of the county in which the probate court is held when there is a vacancy in the office of clerk of court and in proceedings in eminent domain for the acquisition of rights-of-way by railway companies, canal companies, governmental entities, or public utilities when the clerk is disqualified by reason of ownership of or interest in lands over which it is sought to obtain the rights-of-way; and</p> <p>(6) the involuntary commitment of persons suffering from mental illness, mental retardation, alcoholism, drug addiction, and active pulmonary tuberculosis.</p> <p>(b) The court's jurisdiction over matters involving wrongful death or actions under the survival statute is concurrent with that of the circuit court and extends only to the approval of settlements as provided in Sections 15-51-41 and 15-51-42 and to the allocation of settlement proceeds among the parties involved in the estate.</p> <p>(c) The probate court has jurisdiction to hear and determine issues relating to paternity, common-law marriage, and interpretation of marital agreements in connection with estate, trust, guardianship, and conservatorship actions pending before it, concurrent with that of the family court, pursuant to Section 63-3-530.</p> <p>(d) Notwithstanding the exclusive jurisdiction of the probate court over the foregoing matters, any action or proceeding filed in the probate court and relating to the following subject matters, on motion of a party, or by the court on its own motion, made not later than ten days following the date on which all responsive pleadings must be filed, must be removed to the circuit court and in these cases the circuit court shall proceed upon the matter de novo:</p> <p>(1) formal proceedings for the probate of wills and for the appointment</p>	<p>incapacitated persons is governed by Section 62-5-433 subject to Part 7, Article 5, and excluding jurisdiction over the care, custody, and control of a person or minor:</p> <p><u>(i) protective proceedings and guardianship proceedings under Article 5;</u></p> <p><u>(ii) gifts made pursuant to the South Carolina Uniform Gifts to Minors Act under Article 5, Chapter 5, Title 63;</u></p> <p>(3) trusts, inter vivos or testamentary, including the appointment of successor trustees;</p> <p>(4) the issuance of marriage licenses, in form as provided by the Bureau of Vital Statistics of the Department of Health and Environmental Control; record, index, and dispose of copies of marriage certificates; and issue certified copies of the licenses and certificates;</p> <p>(5) the performance of the duties of the clerk of the circuit and family courts of the county in which the probate court is held when there is a vacancy in the office of clerk of court and in proceedings in eminent domain for the acquisition of rights-of-way by railway companies, canal companies, governmental entities, or public utilities when the clerk is disqualified by reason of ownership of or interest in lands over which it is sought to obtain the rights-of-way; and</p> <p>(6) the involuntary commitment of persons suffering from mental illness, mental retardation, alcoholism, drug addiction, and active pulmonary tuberculosis.</p> <p>(b) The court's jurisdiction over matters involving wrongful death or actions under the survival statute is concurrent with that of the circuit court and extends only to the approval of settlements as provided in Sections 15-51-41 and 15-51-42 and to the allocation of settlement proceeds among the parties involved in the estate.</p> <p>(c) The probate court has jurisdiction to hear and determine issues relating to paternity, common-law marriage, and interpretation of marital agreements in connection with estate, trust, guardianship, and conservatorship actions pending before it, concurrent with that of the family court, pursuant to Section 63-3-530.</p> <p>(d) Notwithstanding the exclusive jurisdiction of the probate court</p>

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<p>of general personal representatives;</p> <p>(2) construction of wills;</p> <p>(3) actions to try title;</p> <p>(4) trusts;</p> <p>(5) actions in which a party has a right to trial by jury and which involve an amount in controversy of at least five thousand dollars in value; and</p> <p>(6) actions concerning gifts made pursuant to the South Carolina Uniform Gifts to Minors Act, Article 5, Chapter 5, Title 63.</p> <p>(e) The removal to the circuit court of an action or proceeding within the exclusive jurisdiction of the probate court applies only to the particular action or proceeding removed, and the probate court otherwise retains continuing exclusive jurisdiction.</p>	<p>over the foregoing matters, any action or proceeding filed in the probate court and relating to the following subject matters, on motion of a party, or by the court on its own motion, made not later than ten days following the date on which all responsive pleadings must be filed, must be removed to the circuit court and in these cases the circuit court shall proceed upon the matter de novo:</p> <p>(1) formal proceedings for the probate of wills and for the appointment of general personal representatives;</p> <p>(2) construction of wills;</p> <p>(3) actions to try title <u>concerning property in which the estate of a decedent or protected person asserts an interest;</u></p> <p>(4) trusts <u>matters involving the internal or external affairs of trusts as provided in Section 62-7-201, excluding matters involving the establishment of a 'special needs trust' as described in Article 5;</u></p> <p>(5) actions in which a party has a right to trial by jury and which involve an amount in controversy of at least five thousand dollars in value; and</p> <p>(6) actions concerning gifts made pursuant to the South Carolina Uniform Gifts to Minors Act, Article 5, Chapter 5, Title 63.</p> <p>(e) The removal to the circuit court of an action or proceeding within the exclusive jurisdiction of the probate court applies only to the particular action or proceeding removed, and the probate court otherwise retains continuing exclusive jurisdiction.</p> <p>(f) <u>Notwithstanding the exclusive jurisdiction of the probate court over the matters set forth in subsections (a) through (c), if an action described in subsection (d) is removed to the circuit court by motion of a party, or by the probate court on its own motion, the probate court may, in its discretion, remove any other related matter or matters which are before the probate court to the circuit court if the probate court believes the removal of such related matter or matters would be in the best interest of the estate or in the interest of judicial economy. For any matter removed by the probate court to the circuit court pursuant to this subsection, the circuit court shall proceed upon the matter de novo.</u></p>
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<p>This section clearly states the subject matter jurisdiction of the probate court. It should be noted that the probate court has “exclusive original jurisdiction” over the matters enumerated in this section. This means, when read with other Code provisions (such as subsection (c) of this section and Section 62-3-105), that matters within the original jurisdiction of the probate court must be brought in that court, subject to certain provisions made for removal to the circuit court by the probate court or on motion of any party.</p> <p>The language of this section is similar to Section 14-23-1150 of the 1976 Code, which, in item (a), provides that probate judges are to have jurisdiction “in all matters testamentary and of administration, including jurisdiction in such matters to declare rights, status, and other legal relations.</p> <p>SECTION 62-1-303. Venue; multiple proceedings; transfer.</p> <p>(a) Subject to the provisions of Section 62-3-201, where a proceeding under this Code could be maintained in more than one place in South Carolina, the court in which the proceeding is first commenced has the exclusive right to proceed.</p> <p>(b) If proceedings concerning the same estate, protected persons, ward, or trust are commenced in more than one court of South Carolina, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and, if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.</p> <p>(c) If a court finds that, in the interest of justice, a proceeding or a file should be located in another court of probate in South Carolina, the</p>	<p>This section clearly states the subject matter jurisdiction of the probate court. It should be noted that the probate court has ‘exclusive original jurisdiction’ over the matters enumerated in this section. This means, when read with other Code provisions (such as subsection (c) of this section and Section 62-3-105), that matters within the original jurisdiction of the probate court must be brought in that court, subject to certain provisions made for removal to the circuit court by the probate court or on motion of any party.</p> <p>The language of this section is similar to Section 14-23-1150 of the 1976 Code, which, in item (a), provides that probate judges are to have jurisdiction as provided in Sections 62-1-301 and 62-1-302, and other applicable sections of this South Carolina Probate Code.</p> <p>The 2012 amendments added ‘determination of property in which the estate of a decedent or protected person has an interest’ to subsection (a)(1), substantially rewrote subsections (a)(2), (d)(3), and (d)(4), and added subsection (f), which allows the probate court to remove any pending matter to circuit court in the event a party or the court removes a related matter pursuant to subsection (d), even if that pending matter is not otherwise covered by the removal provisions of (d).</p> <p>SECTION 62-1-303.</p> <p>(a) Subject to the provisions of Section 62-3-201, where a proceeding under this Code could be maintained in more than one place in South Carolina, the court in which the proceeding is first commenced has the exclusive right to proceed.</p> <p>(b) If proceedings concerning the same estate, protected persons, ward, or trust are commenced in more than one court of South Carolina, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and, if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.</p> <p>(c) If a court finds that, in the interest of justice, a proceeding or a file should be located in another court of probate in South Carolina, the</p>

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<p>court making the finding may transfer the proceeding or file to the other court.</p> <p>REPORTER’S COMMENTS This section provides that, where a proceeding could be held in more than one county under Section 62-3-201, the probate court in which the proceeding is first commenced has the exclusive right to proceed. If proceedings are commenced in more than one probate court, the court in which the proceeding was first commenced must continue to hear the matter unless it decides that venue is properly in another county, in which event it is to transfer the matter to that other county. Section 62-3-201 relates to testacy or appointment proceedings after death and grants venue to the county of the decedent’s domicile or, if the decedent was not domiciled in this State, to any county in which his property was located.</p> <p>This section also provides that venue with respect to a nonresident’s estate could be in any county where he owned property.</p> <p>SECTION 62-1-304. South Carolina Rules of Civil Procedure govern formal proceedings.</p> <p>The South Carolina Rules of Civil Procedure (SCRCP) adopted for the circuit court and other rules of procedure in this title govern formal proceedings pursuant to this title. A formal proceeding is a “civil action” as defined in Rule 2, SCRCP, and must be commenced as provided in Rule 3, SCRCP.</p> <p>REPORTER’S COMMENTS This section is essentially the same as Probate Court Rule 15, which states that “in all cases not provided for by any of the foregoing Rules, the Rules of the Circuit Court, so far as they can be made applicable, shall govern.”</p>	<p>court making the finding may transfer the proceeding or file to the other court.</p> <p>REPORTER’S COMMENTS This section provides that, where a proceeding could be held in more than one county under Section 62-3-201, the probate court in which the proceeding is first commenced has the exclusive right to proceed. If proceedings are commenced in more than one probate court, the court in which the proceeding was first commenced must continue to hear the matter unless it decides that venue is properly in another county, in which event it is to transfer the matter to that other county. Section 62-3-201 relates to testacy or appointment proceedings after death and grants venue to the county of the decedent’s domicile or, if the decedent was not domiciled in this State, to any county in which his property was located.</p> <p>This section also provides that venue with respect to a nonresident’s estate could be in any county where he owned property.</p> <p>SECTION 62-1-304.</p> <p>The South Carolina Rules of Civil Procedure (SCRCP) adopted for the circuit court and other rules of procedure in this title govern formal proceedings pursuant to this title. A formal proceeding is a ‘civil action’ as defined in Rule 2, SCRCP, and must be commenced as provided in Rule 3, SCRCP.</p> <p>REPORTER’S COMMENTS The 2010 amendment revised and essentially rewrote Section 62-1-304 in order to clarify that ‘formal proceedings’ are governed by and subject to the rules of civil procedure adopted for the circuit court [SCRCP] and other rules of procedure in this title and that the SCRCP also govern formal proceedings and commencement of same. See 2010 amendments to certain definitions in S.C. Code §62-1-201 and also see §§14-23-280, 62-1-304, and Rules 1 and 81, SCRCP; see also, Weeks v.</p>

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<p>SECTION 62-1-305. Records and certified copies.</p> <p>The court shall keep a record for each decedent, ward, protected person, or trust involved in any document which may be filed with the court under this Code, including petitions and applications, demands for notices or bonds, and of any orders or responses relating thereto by the probate court, and establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law, the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded. Certificates relating to letters must show the date of appointment.</p> <p>REPORTER’S COMMENTS This section requires that the probate court keep a record of all matters filed with the court and that records be so indexed and filed as to make them useful to those examining them. Further, the court is required to issue certified copies of documents on file. This section does not go into the detail of Sections 14-23-1100 and 14-23-1130 of the 1976 Code which list in some detail the records which must be kept by the probate court. These sections are not incompatible with Section 62-1-305. Probate Court Rule 1, pertaining to a calendar and to books denoting titles of all cases and transactions therein, is not disturbed by this section.</p>	<p>Drawdy, 495 S.E. 2d 454 (Ct. App. 1997) (the rules of probate court governing procedure address only a limited number of issues and in the absence of a specific probate court rule, the rules of civil procedure applicable in the court of common pleas shall be applied in the probate court unless to do so would be inconsistent with the provisions of the Code).</p> <p>SECTION 62-1-305.</p> <p>The court shall keep a record for each decedent, ward, protected person, or trust involved in any document which may be filed with the court under this Code, including petitions and applications, demands for notices or bonds, and of any orders or responses relating thereto by the probate court, and establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law, the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded. Certificates relating to letters must show the date of appointment.</p> <p>REPORTER’S COMMENTS This section requires that the probate court keep a record of all matters filed with the court and that records be so indexed and filed as to make them useful to those examining them. Further, the court is required to issue certified copies of documents on file. This section does not go into the detail of Sections 14-23-1100 and 14-23-1130 of the 1976 Code which list in some detail the records which must be kept by the probate court. These sections are not incompatible with Section 62-1-305. Probate Court Rule 1, pertaining to a calendar and to books denoting titles of all cases and transactions therein, is not disturbed by this section.</p>

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<p>SECTION 62-1-306. Jury trials.</p> <p>(a) If duly demanded, a party is entitled to trial by jury in any proceeding involving an issue of fact in an action for the recovery of money only or of specific real or personal property, unless waived as provided in the rules of civil procedure for the courts of this State. The right to trial by jury exists in, but is not limited to, formal proceedings in favor of the probate of a will or contesting the probate of a will.</p> <p>(b) If there is no right to trial by jury under subsection (a) or the right is waived, the court in its discretion may call a jury to decide any issue of fact, in which case the verdict is advisory only.</p> <p>(c) The method of drawing, summoning, and compensating jurors under this section shall be within the province of the county jury commission and shall be governed by Chapter 7 of Title 14 of the 1976 Code relating to juries in circuit courts.</p> <p style="text-align: center;">REPORTER’S COMMENTS</p> <p>This section confers a right to trial by jury in the probate court in the same kinds of proceedings in which the right to jury trial exists in the circuit court, namely, proceedings involving an issue of fact in an action for the recovery of money only or of specific real or personal property, Section 15-23-60 of the 1976 Code. If no right to trial by jury exists, the court may impanel a jury to decide any issue or fact on an advisory basis.</p> <p>Chapter 7 of Title 14 of the 1976 Code, relating to juries in the circuit court, governs the method of drawing, summoning, and compensating jurors.</p> <p>SECTION 62-1-307. Probate judge; powers.</p> <p>The acts and orders which this Code specifies as performable by the court may be performed either by the judge or by a person, including one or more clerks, designated by the judge by a written order filed and recorded in the office of the court.</p>	<p>SECTION 62-1-306.</p> <p>(a) If duly demanded, a party is entitled to trial by jury in any proceeding involving an issue of fact in an action for the recovery of money only or of specific real or personal property, unless waived as provided in the rules of civil procedure for the courts of this State. The right to trial by jury exists in, but is not limited to, formal proceedings in favor of the probate of a will or contesting the probate of a will.</p> <p>(b) If there is no right to trial by jury under subsection (a) or the right is waived, the court in its discretion may call a jury to decide any issue of fact, in which case the verdict is advisory only.</p> <p>(c) The method of drawing, summoning, and compensating jurors under this section shall be within the province of the county jury commission and shall be governed by Chapter 7 of Title 14 of the 1976 Code relating to juries in circuit courts.</p> <p style="text-align: center;">REPORTER’S COMMENTS</p> <p>This section confers a right to trial by jury in the probate court in the same kinds of proceedings in which the right to jury trial exists in the circuit court, namely, proceedings involving an issue of fact in an action for the recovery of money only or of specific real or personal property, Section 15-23-60 of the 1976 Code. If no right to trial by jury exists, the court may impanel a jury to decide any issue or fact on an advisory basis.</p> <p>Chapter 7, Title 14 of the 1976 Code, relating to juries in the circuit court, governs the method of drawing, summoning, and compensating jurors.</p> <p>SECTION 62-1-307.</p> <p>The acts and orders which this Code specifies as performable by the court may be performed either by the judge or by a person, including one or more clerks, designated by the judge by a written order filed and recorded in the office of the court.</p>

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<p>REPORTER'S COMMENTS</p> <p>This section provides that the acts performable by the court may be performed by the probate judge or by a person, including a clerk, appointed by the judge. This section does not conflict with Section 14-23-1030 (appointment of an associate judge), 14-23-1070 (appointment of a deputy), or 14-23-1090 (appointment of a clerk) of the 1976 Code, and these sections will still be applicable.</p> <p>SECTION 62-1-308. Appeals.</p> <p>Except as provided in subsection (g), appeals from the probate court must be to the circuit court and are governed by the following rules:</p> <p>(a) A person interested in a final order, sentence, or decree of a probate court and considering himself injured by it may appeal to the circuit court in the same county. The notice of intention to appeal to the circuit court must be filed in the office of the circuit court and in the office of the probate court and a copy served on all parties within ten days after receipt of written notice of the appealed from order, sentence, or decree of the probate court. The grounds of appeal must be filed in the office of the probate court and a copy served on all parties within forty-five days after receipt of written notice of the order, sentence, or decree of the probate court.</p> <p>(b) Within thirty days after the grounds of appeal has been filed in the office of the probate court, as provided in subsection (a), the probate court shall make a return to the appellate court of the testimony, proceedings, and judgment and file it in the appellate court. Upon final disposition of the appeal, all papers included in the return must be forwarded to the probate court.</p> <p>(c) When an appeal according to law is taken from any sentence or decree of the probate court, all proceedings in pursuance of the order, sentence, or decree appealed from shall cease until the judgment of the circuit court, court of appeals, or Supreme Court is had. If the appellant, in writing, waives his appeal before the entry of the judgment, proceedings may be had in the probate court as if no appeal</p>	<p>SECTION 62-1-308.</p> <p>Except as provided in subsection (g)<u>(1)</u>, appeals from the probate court must be to the circuit court and are governed by the following rules:</p> <p>(a) A person interested in a final order, sentence, or decree of a probate court and considering himself injured by it may appeal to the circuit court in the same county. The notice of intention to appeal to the circuit court must be filed in the office of the circuit court and in the office of the probate court and a copy served on all parties <u>not in default</u> within ten days after receipt of written notice of the appealed from order, sentence, or decree of the probate court. The grounds of appeal must be filed in the office of the probate court and a copy served on all parties within forty five days after receipt of written notice of the order, sentence, or decree of the probate court.</p> <p>(b) Within thirty days after the grounds of appeal has been filed in the office of the probate court, as provided in subsection (a), the probate court shall make a return to the appellate court of the testimony, proceedings, and judgment and file it in the appellate court. Upon final disposition of the appeal, all papers included in the return must be forwarded to the probate court <u>forty-five days after receipt of written notice of the order, sentence, or decree of the probate court, the appellant must file with the clerk of the circuit court a Statement of Issues on Appeal (in a format described in Rule 208(b)(1)(B), SCACR) with proof of service and a copy served on all parties.</u></p> <p>(c) <u>Where a transcript of the testimony and proceedings in the probate court was prepared, the appellant shall, within ten days after the</u></p>

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<p>had been taken.</p> <p>(d) When the return has been filed in the circuit court as provided in subsection (b), the court shall hear and determine the appeal according to the rules of law. The hearing must be strictly on appeal and no new evidence may be presented.</p> <p>(e) The final decision and judgment in cases appealed, as provided in this code, shall be certified to the probate court by the circuit court, court of appeals, or Supreme Court, as the case may be, and the same proceedings shall be had in the probate court as though the decision had been made in the probate court.</p> <p>(f) A judge of a probate court must not be admitted to have any voice in judging or determining an appeal from his decision or be permitted to act as attorney or counsel.</p> <p>(g) If the parties not in default consent either in writing or on the record at a hearing in the probate court, a party to a final order, sentence, or decree of a probate court who considers himself injured by it may appeal directly to the Supreme Court, and the procedure for the appeal must be governed by the South Carolina Appellate Court Rules.</p>	<p><u>date of service of the notice of intention to appeal, make satisfactory arrangements with the court or court reporter for furnishing the transcript. If the appellant has not received the transcript within forty-five days after receipt of written notice of the order, sentence, or decree of the probate court, the appellant may make a motion to the circuit court for an extension to serve and file the parties' briefs and Designations of Matter to be Included in the Record on Appeal, as provided in subsections (d) and (e).</u></p> <p><u>(d) Within thirty days after service of the Statement of Issues on Appeal, all parties to the appeal shall serve on all other parties to the appeal a Designation of Matter to be Included in the Record on Appeal (in a format described in Rule 209, SCACR) and file with the clerk of the circuit court one copy of the Designation of Matter to be Included in the Record on Appeal with proof of service.</u></p> <p><u>(e) At the same time appellant serves his Designation of Matter to be Included in the Record on Appeal, the appellant shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the circuit court one copy of the brief with proof of service. The appellant's brief shall be in a format described in Rule 208(b)(1), SCACR. Within thirty days after service of the appellant's brief, respondent shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the circuit court one copy of the brief with proof of service. The respondent's brief shall be in a format described in Rule 208(b)(2), SCACR. Appellant may file and serve a brief in reply to the brief of respondent. If a reply brief is prepared, appellant shall, within ten days after service of respondent's brief, serve one copy of the reply brief on all parties to the appeal and file with the clerk of circuit court one copy of the reply brief with proof of service. The appellant's reply brief shall be in a format described in Rule 208(b)(3), SCACR.</u></p> <p><u>(f) Within thirty days after service of the respondent's brief, the appellant shall serve a copy of the Record on Appeal (in a format described in subsections (c), (e), (f) and (g) of Rule 210, SCACR, except that the Record of Appeal need not comply with the requirements of Rule 267, SCACR) on each party who has served a brief and filed with the clerk of the circuit court one copy of the Record</u></p>

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	<p><u>on Appeal with proof of service.</u></p> <p>(g) <u>Except as provided in this section, no party is required to comply with any other requirements of the South Carolina Appellate Court Rules. Upon final disposition of the appeal, all exhibits filed separately (as described in Rule 210(f), SCACR), but not included in the Record on Appeal, must be forwarded to the probate court.</u></p> <p>(h) When an appeal according to law is taken from any sentence or decree of the probate court, all proceedings in pursuance of the order, sentence, or decree appealed from shall cease until the judgment of the circuit court, court of appeals, or Supreme Court is had. If the appellant, in writing, waives his appeal before the entry of the judgment, proceedings may be had in the probate court as if no appeal had been taken.</p> <p>(di) When the return has been filed in The circuit court, as provided in subsection (b), the court of appeals, or Supreme Court shall hear and determine the appeal according to the rules of law. The hearing must be strictly on appeal and no new evidence may be presented.</p> <p>(ej) The final decision and judgment in cases appealed, as provided in this code, shall be certified to the probate court by the circuit court, court of appeals, or Supreme Court, as the case may be, and the same proceedings shall be had in the probate court as though the decision had been made in the probate court. <u>Within forty-five days after receipt of written notice of the final decision and judgment in cases appealed, the prevailing party shall provide a copy of such decision and judgment to the probate court.</u></p> <p>(fk) A judge of a probate court must not be admitted to have any voice in judging or determining an appeal from his decision or be permitted to act as attorney or counsel.</p> <p>(gl) If the parties not in default consent either in writing or on the record at a hearing in the probate court, a party to a final order, sentence, or decree of a probate court who considers himself injured by it may appeal directly to the Supreme Court, and the procedure for the appeal must be governed by the South Carolina Appellate Court Rules.</p>

Existing Law	Bill # S. 1243
<p>REPORTER’S COMMENTS This section provides that appeals from the probate court are to the circuit court. Under Section 62-1-308(d), any appeal from the probate court is strictly on the record.</p> <p>SECTION 62-1-309. Election and term of judges.</p> <p>The judges of the probate court shall be elected by the qualified electors of the respective counties for the term of four years in the manner specified by Section 14-23-1020.</p> <p>REPORTER’S COMMENTS This section does not disturb Section 14-23-1040 of the 1976 Code which requires that a probate judge or an associate judge must be a qualified elector of the county in which he is to be a judge.</p>	<p>REPORTER’S COMMENTS This section provides that appeals from the probate court are to the circuit court. Under Section 62-1-308(i), any appeal from the probate court is strictly on the record.</p> <p>The 2012 amendments to this section were intended to clarify the process for appeals from the probate court. With these changes, (i) the form for the Statement of Issues on Appeal follows that form set forth in Rule 208(b)(1)(B); the use of briefs is specifically contemplated and the form of the briefs follows that set forth in Rule 208, SCACR; (iii) the appellant bears the burden of preparing the record on appeal; and (iv) the prevailing party bears the burden of providing the probate court with a copy of the final decision and judgment from the circuit court, court of appeals, or Supreme Court. While the 2012 amendments do incorporate certain provisions of the SCACR, paragraph (g) clarifies that not all provisions of the SCACR apply to appeals from probate court to circuit court.</p> <p>SECTION 62-1-309.</p> <p>The judges of the probate court shall be elected by the qualified electors of the respective counties for the term of four years in the manner specified by Section 14-23-1020.</p> <p>REPORTER’S COMMENTS This section does not disturb Section 14-23-1040 of the 1976 Code which requires that a probate judge or an associate judge must be a qualified elector of the county in which he is to be a judge.</p>