Court News ...

2020-03-20-01

The Supreme Court of South Carolina

RE: Operation of the Appellate Courts During the Coronavirus Emergency

Appellate Case No. 2020-000447

ORDER

(a) Purpose. The purpose of this order is to provide guidance on the continued operation of the Supreme Court of South Carolina (Supreme Court) and the South Carolina Court of Appeals (Court of Appeals) during the current coronavirus (COVID-19) emergency. As used in this order, the phrase "Appellate Court" shall refer to both the Supreme Court and the Court of Appeals. The measures contained in this order are intended to allow essential operations to continue while minimizing the risk to the public, litigants, lawyers and court employees.

In the past, the South Carolina Judicial Branch has shown great resilience in responding to hurricanes, floods, and other major disasters, and this Court is confident that the same will be true in this emergency. This emergency, however, differs from these prior emergencies in many aspects. The current emergency will significantly impact every community in South Carolina while the prior emergencies, although potentially horrific for the individuals and communities directly impacted, did not. The impact of the prior emergencies could be minimized or avoided by traveling away from the site of the disaster; this is not the case for the current emergency. Further, in the prior emergencies, the circumstances giving rise to the emergency involved a single event with a beginning and a predictable end. This is not the case for the coronavirus, and even conservative estimates indicate the direct impacts of this pandemic will continue for many months

In light of the extraordinary challenges presented by the current emergency, this Court finds it necessary to supplement and, in some situations, to alter significantly, the current practices regarding the operation of the Appellate Courts. In the event of a conflict between this order and the South Carolina Appellate Court Rules (SCACR), this order shall control.

(b) Oral Arguments and Hearings Before the Appellate Courts. All oral arguments currently scheduled before the Appellate Courts are cancelled. If it becomes appropriate to schedule oral arguments in a case or to hold a hearing on a matter while this emergency continues, the Supreme Court or the Court of Appeals will consider alternate methods of conducting the arguments or hearing, such as video conferencing or telephone conferencing, to minimize the risk to the participants.

(c) Filing Methods. During this emergency, filings may be made with the Appellate Courts using the methods listed below. This includes filings made with the Office of Bar Admissions.

(1) Delivering Documents to the Supreme Court. Pursuant to Rule 262(a)(1), SCACR, the Supreme Court intends to continue to accept the delivery of documents for filing at the Supreme Court Building. Currently, persons desiring to hand deliver documents are being allowed to enter the Lobby of the Supreme Court Building to make the delivery. If it becomes necessary to curtail public access to the Lobby, it is anticipated a drop box will be placed at the rear doors of the Supreme Court Building so that filings may continue to be made. If the Supreme Court Building is closed as a result of this emergency (see discussion in (i) below), documents will not be accepted for delivery at the Supreme Court Building until the building is reopened. Since the use of a private carrier such as FedEx or United Parcel Service is not defined as mailing under Rule 262, SCACR 1 parties are warned that deliveries sent by private carriers may not occur if the Supreme Court Building is closed. Documents delivered to the Court will be subject to the quarantine period specified in (h) below.

(2) Delivering Documents to the Court of Appeals. In an order supplementing this order (see (m) below), the Court of Appeals may issue guidance regarding the delivery of documents to the Court of Appeals at the Calhoun Building under Rule 262(a)(1), SCACR.

(3) Mailing Documents by United States Mail. This is provided for by Rule 262(a)(2), SCACR. Once received by the Appellate Court, documents mailed to the Appellate Court will be subject to the quarantine period specified in (h) below.

(4) Faxing Documents. Rule 262(a)(2), SCACR, allows for a document to be filed by electronically transmitted facsimile copy so long as a copy is immediately sent by U.S. Mail. While this order remains in effect, the requirement for a copy to be sent by U.S. Mail is suspended. In the event, the facsimile copy is not sufficiently legible, the clerk of the Appellate Court may require the party to provide a copy by mail. The fax number for the Supreme Court is 803-734-1499, and the fax number for the Office of Bar Admissions is 803-734-0394. The fax number of the Court of Appeals is 803-734-1839. While this method is well suited for relatively small documents or when the filer believes that expedited consideration is necessary, depending primarily upon the limitations of the sending fax machine, it may not be possible to send large documents, such as a record on appeal, in a single transmission. If it becomes necessary to split a document into multiple parts to make the fax transmission, a separate cover sheet should be used on each part to identify the document (i.e., Brief of Appellant, Part 1 of 4). In the event the document requires a filing fee, a check or money order for the fee must be mailed to the Appellate Court within five (5) days of the filing; the case name and the Appellate Case Number, if known, should be listed on the check or money order. A document transmitted and received by the facsimile on or before 11:59:59 p.m., Eastern Standard Time, shall be considered filed on that day.

(5) Electronic Filing. While an upgrade to the Appellate Court Case Management System is under way which will ultimately include electronic filing (e-filing), e-filing is not currently available in the Appellate Courts. The South Carolina Judicial Branch is actively working on several options which will allow large PDFs to be filed electronically with an Appellate Court during this emergency. If this becomes available, this order will be amended to reflect this additional filing method.

(d) Reduction of Copies to Be Filed. Effective immediately, a document filed with the Supreme Court or Court of Appeals need not be accompanied by any additional copies. If submitted in paper, the document shall be submitted unbound and unstapled. In the event the Appellate Court determines that additional copies are needed, they will be requested from the lawyer or party submitting the document.

(e) Filing of the Appendix under Rule 242, SCACR. In cases seeking review of a decision of the Court of Appeals, Rule 242, SCACR, requires the petitioner to file two copies of an Appendix. This requirement is suspended. Instead, the necessary documents to comprise the Appendix will be obtained from the electronic records of the case before the Court of Appeals.

(f) Signatures of Lawyers on Documents. While this order remains in effect, a lawyer may sign documents using "s/[typed name of lawyer]," a signature stamp, or a scanned or other electronic version of the lawyer's signature. Regardless of form, the signature shall still act as a certificate under Rule 267(b), SCACR, that the lawyer has read the document; that to the best of the lawyer's knowledge, information, and belief there is good ground to support it; and that the document is not interposed for delay.

(g) Service of Documents. The methods of service listed below may be used to serve documents on opposing counsel or a party.

(1) Service by Delivery. While this method is permitted under Rule 262(b), SCACR, this method of service is discouraged during this emergency since it increases the potential for exposure to the virus.

(2) Service by Mail. This is provided for by Rule 262(b), SCACR.

(3) Service Using AIS E-mail Address. During this emergency, this Court authorizes a lawyer admitted to practice law in this state to serve a document on another lawyer admitted to practice law in this state using the lawyer's primary e-mail address listed in the Attorney Information System (AIS). For attorneys admitted pro hac vice, service on the associated South Carolina lawyer under this method of service shall be construed as service on the pro hac vice attorney; if appropriate, it is the responsibility of the associated lawyer to provide a copy to the pro hac vice attorney. For documents that are served by e-mail, a copy of the sent e-mail shall be enclosed with the proof of service, affidavit of service, or certificate of service for that document. Lawyers are reminded of their obligation under Rule 410(g), SCACR, to ensure that their AIS information is current and accurate at all times.

(4) Service in Actions under Rule 245, SCACR. The requirement under Rule 245(c) that the summons and complaint be served in the manner specified by Rule 4 of the South Carolina Rules of Civil Procedure is suspended. In the event a respondent fails to file a return or other response to the petition and the Supreme Court agrees to entertain the action in its original jurisdiction, the Court may require the summons and complaint to be served in the manner specified by Rule 4.

(h) Quarantine of Incoming Paper Documents. To protect the safety of the staff of the Appellate Courts, incoming paper documents, whether delivered or mailed to the Court, will be subject to a 48-hour quarantine period once they are physically received by the Court.2 Once the quarantine period has ended, these documents will be date stamped with the date on which they were received, and court staff will then process the documents. In light of this delay, remittiturs under Rule 221, SCACR, will not be sent until it is determined that no petition for rehearing or motion for reinstatement was actually received in the quarantined documents received on the last day of the period provided by Rule 221.

(i) Outgoing Correspondence. The Appellate Courts have greatly reduced the number of employees working in the Supreme Court Building and the Calhoun Building to lessen the potential for exposure to the virus. As a result, the Appellate Courts will not have sufficient staffing to continue the current practice of sending all outgoing correspondence (including letters, orders and opinions) by U.S. Mail. Therefore, while the Appellate Courts will continue to send paper correspondence by U.S. Mail to persons who are self-represented, correspondence to a lawyer admitted to practice in this state will only be sent to that lawyer's primary e-mail address in AIS. Correspondence will not be sent to attorneys admitted pro hac vice; instead, it will be the responsibility of the associated South Carolina lawyer to pass any correspondence on to the pro hac vice attorney.

(j) Public Access Appellate Court Buildings.

(1) Supreme Court Building. Until further order of this Court, the public will not be allowed to enter the Supreme Court Building. This restriction does not apply to persons entering the building to make filings in the Lobby under (c)(1) above. If appropriate, the Chief Justice or the Clerk of the Supreme Court may authorize entry.

(2) Calhoun Building. In an order supplementing this order (see (m) below), the Court of Appeals, in coordination with the Office of Court Administration, may issue guidance regarding public access to the Calhoun Building.

(k) Closure of the Supreme Court and Court of Appeals Buildings. In the event a directive is received to close the Supreme Court and Calhoun Buildings, it is anticipated that this will result in the closure days being treated as "holidays" in the computation of time under Rule 263(a), SCACR. This is consistent with prior practice when a hurricane or other disaster has resulted in the closure of the Appellate Court Buildings. The restriction on public access in (j) above is not a closure of either building, and does not affect the computation of time under Rule 263(a), SCACR.

(l) Extensions of Time and Forgiveness of Procedural Defaults.

(1) Extensions of Time. Both the Supreme Court and Court of Appeals are aware that this crisis will increase the need for extensions to be granted. While this order remains in effect, no filing fee will be required for a motion for an extension. Further, since it is important for lawyers and self-represented litigants appearing before the Appellate Courts to have time to take actions to protect themselves and their families, the due dates for all Appellate Court filings due on or after the effective date of this order are hereby extended for twenty (20) days. Lawyers and litigants are warned that this extension does not extend the time to serve a notice of appeal under Rules 203, 243, and 247, SCACR.

(2) Forgiveness of Procedural Defaults Since March 13, 2020. In the event a party to a case or other matter pending before an Appellate Court was required to take certain action on or after March 13, 2020, but failed to do so, that procedural default is hereby forgiven, and the required action shall be taken within twenty (20) days of the date of this order. If a dismissal order has been issued based on this default, the clerk of the Appellate Court shall rescind that dismissal order. This forgiveness does not apply to the failure of a party to timely serve the notice of appeal under Rules 203, 243, and 247, SCACR.

(m) Supplemental Order by the Court of Appeals. The Court of Appeals may issue an order supplementing this order. This order is not effective until approved by the Chief Justice.

(n) Effective Date. This order is effective immediately. It shall remain in effect until modified or rescinded by this Court.

[1] *Cf. South Bridge Props., Inc. v. Jones*, 292 S.C. 198, 355 S.E.2d. 535 (1987) (delivery to a third party mailing service is not mailing).

[2] One scientific study has reported that the coronavirus can live for up to 24 hours on cardboard. https://www.medrxiv.org/content/10.1101/2020.03.09.20033217v1.full.pdf

s/Donald W. Beatty C.J.
s/John W. Kittredge J.
s/Kaye G. Hearn J.
s/John Cannon Few J.
s/George C. James, Jr. J.

Columbia, South Carolina
March 20, 2020