

## 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**) and \$150 **filing fee**.

The Summons uses the civil format. For some actions form Petitions are available (i.e., Formal Probate, Formal Appointment, Petition for Allowance of Claims, Petition to Remove P.R., etc.). 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 a created Supplemental Petition 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 **serve a copy on all interested persons** (Respondents/Defendants) and file a Certificate or Affidavit of Service with the Court within 10 days. Service shall be made by certified mail or personally by a disinterested party.

### ➤ **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 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 serve notice of the hearing upon the Respondents/Defendants or their attorneys and file a copy of the Notice of Hearing [Form #110PC] 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*.