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SC Court of Appeals

# Appellate Practice in South Carolina Third Edition

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## CHAPTER 11: INVOKING THE POWER OF THE APPELLATE COURTS

In cases where a party tries to file both a post-trial motion and a notice of appeal, one or the other will be inappropriate depending on whether the motion is timely and permissible." *Elam*, 361 S.C. 9, 602 S.E.2d 772. As such, the appellant bears the responsibility of deciding whether it is appropriate to file either a 203(e) motion or a notice of appeal under the facts of each case. *Id.* The *Elam* court cautioned parties "not to attempt to avoid this responsibility by the simple expedient of filing both." *Id.*; but see *Hudson v. Hudson*, 290 S.C. 215, 349 S.E.2d 341 (1986) (dismissing notice of appeal without prejudice as premature when there was a timely post-trial motion pending before the lower court).

When post-trial motions are involved, the notice of appeal should contain the date of the receipt of the written notice of the order granting or denying the post-trial motion. Rule 203(e)(1)(C), SCACR.

In the event a timely post-trial motion is filed simultaneous with or subsequent to the filing of a notice of appeal, the appellant should notify the clerk of the appellate court in writing. *Hudson*, 290 S.C. 215, 349 S.E.2d 341. Upon receipt of such notice, the appeal will be dismissed without prejudice. *Id.* Any party can file a notice of appeal within ten days after receipt of written notice of entry of the order disposing of the post-trial motion. *Id.* A second filing fee will not be collected from a party who has previously appealed. *Id.* However, a notice of appeal need not be filed so long as post-trial motions are pending. See *id.*; see also *Otten v. Otten*, 287 S.C. 166, 349 S.E.2d 207 (1985). This way, all ancillary matters can be timely heard, and decided, if necessary, in an efficient and wholesale manner, and not in a piecemeal fashion. *Holmes v. E. Cooper Cmty. Hosp., Inc.*, 408 S.C. 138, 758 S.E.2d 483 (1998).

### e. Effect of Form Order or Judgment

When a form or other short order or judgment indicates that a more complete order or judgment is to follow, a party is not required to appeal until after receipt of written notice of entry of the more complete order or judgment. Rule 203(b)(1), SCACR; *Doe v. Berkeley Publishers*, 322 S.C. 307, 471 S.E.2d 731 (Ct. App. 1996) *rev'd on other grounds*, 329 S.C. 412, 496 S.E.2d 636 (1998).

### f. Considerations for Criminal Appeals

#### i. Timing Generally

In criminal appeals, after a guilty plea, a trial resulting in a conviction, or a proceeding resulting in the revocation of probation, an appealing party must serve notice of appeal on all respondents within ten days after the court imposes or imposes a sentence. Rule 203(b)(2), SCACR. In all other cases, the appealing

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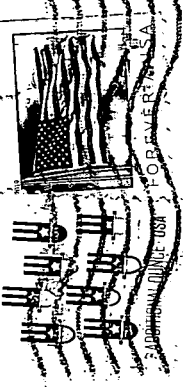
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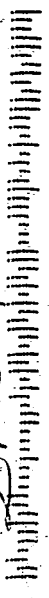
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