



HENRY McMASTER
ATTORNEY GENERAL

September 22, 2006

Robert L. McCurdy, Staff Attorney
South Carolina Court Administration
1015 Sumter Street, Suite 200
Columbia, South Carolina 29201

Dear Mr. McCurdy:

In a letter to this office you questioned the proper county in which to file complaints in a magistrate's court.

Rule 4 of the Magistrate's Court Rules states that

A civil action may be filed in the appropriate magistrate's court having territorial jurisdiction in the county in which at least one defendant resides, except that civil actions against corporations may be filed in any county where such corporation shall have or shall usually keep an office or agent for the transaction of its usual and customary business.

Rule 2 of the Magistrate's Court Rules states that

(a) If no procedure is provided by these rules, the court shall proceed in a manner consistent with the statutory law applicable to magistrates and with circuit court practice rules in like situations but not inconsistent with these rules.

You also referenced S.C. Code Ann. § 15-7-30(C) which states in part that:

A civil action tried pursuant to this section against a resident individual defendant must be brought and tried in that county in which the:

- (1) defendant resides at the time the cause of action arose; or
- (2) most substantial part of the alleged act or omission giving rise to the cause of action occurred.

You questioned whether in a particular situation where subsection (C) of Section 15-7-30 may be applicable, would its provisions control or would Rule 4 prevail.

Regent Foster

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Article V, Section 4 of the State Constitution provides that

[t]he Supreme Court shall make rules governing the administration of all the courts of the State. Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in all such courts.

I presume that Rule 4 of the Magistrate's Court Rules was promulgated pursuant to such authority. See: Greenville Housing Authority of the City of Greenville v. Massey, 281 S.C. 618, 316 S.E.2d 722 (Ct.App. 1984).

A prior opinion of this office dated October 16, 1980 cited the decision of the State Supreme Court in State v. Cottingham et al., 224 S.C. 181, 77 S.E.2d 897 (1953) as to a conflict between statutory law and court rules. In Cottingham, the Court indicated that "[s]tatutes override rules of court, if in conflict." 77 S.E.2d at 900. Such is consistent with Article V, Section 4 which indicates that the court rule-making authority is "subject to the statutory law." Consistent with such, in the opinion of this office, as to any conflict between Rule 4 of the Magistrate's Court Rules and Section 15-7-30, it appears that the statute should probably be considered as prevailing.

You also cited a prior opinion of this office dated July 6, 2006 dealing with interpleader actions. The question had been raised as to the jurisdiction of a magistrate to hear an interpleader action when the defendant/buyer and defendant/seller are not located in the same county where the plaintiff/realtor is located. The opinion referenced Rule 4 and concluded that the interpleader action "...could be filed in the county in which at least one of the defendants reside." Consistent with the conclusions in this opinion, the provisions of Section 15-7-30 could be determined to be controlling where applicable.

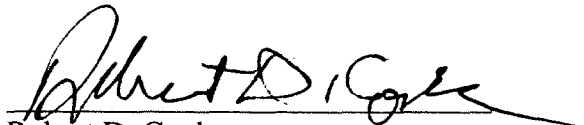
With kind regards, I am,

Very truly yours,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General