



HENRY McMASTER  
ATTORNEY GENERAL

September 19, 2008

The Honorable Thomas E. Taylor  
Magistrate  
8150 Augusta Road  
Piedmont, South Carolina 29673

Dear Magistrate Taylor:

In a letter to this office you referenced the provisions of S.C. Code Ann. § 27-37-30 regarding service of process in an ejectment proceeding. Such provision states:

(A) The copy of the rule provided for in Section 27-37-20 may be served in the same manner as is provided by law for the service of the summons in actions pending in the court of common pleas or magistrates courts of this State. The methods of service described in subsections (B) and (C) may be used as alternatives to the method of service described in this subsection.

(B) When no person can be found in possession of the premises, and the premises have remained abandoned, as defined in Section 27-40-730 for residential rental agreements and in Section 27-35-150 for nonresidential rental agreements, for a period of fifteen days or more immediately before the date of service, the copy of the rule may be served by leaving it affixed to the most conspicuous part of the premises.

(C) When service as provided in subsection (A) has been attempted unsuccessfully two times in the manner described in item (1), a copy of the rule may be served by affixing both it and documentation of the two service attempts to the most conspicuous part of the premises and mailing a copy of the rule in the manner described in item (2):

(1) Each of the two attempts to serve the defendant must be separated by a minimum of forty-eight hours and must occur at times of day separated by a minimum of eight hours. The person attempting to serve the rule must document the date and time of the attempts by affidavit or by certificate in the case of a law enforcement officer. On

the first unsuccessful attempt to serve the rule, a copy of the rule must be affixed to the most conspicuous part of the premises. On the second unsuccessful attempt to serve the rule, the documentation of the two attempts to serve the rule must be attached to the copy of the rule when it is affixed to the most conspicuous part of the premises.

(2) For mailing by ordinary mail to be considered to complete service under this item, it must be accomplished by placing a copy of the rule and documentation of the prior attempts at service in an envelope in the presence of the clerk of the magistrates court. The clerk is responsible for verifying that the envelope is addressed to the defendant at the address shown in the rule as the rental premises of the defendant or another address for receipt of mail furnished in writing by the tenant to the landlord, that the envelope contains the necessary documents, and that the clerk has placed the sealed and stamped envelope in the United States mail. The clerk's verification must be made a part of the record in the case, and service by ordinary mail is not considered complete without the clerk's verification. A fee as provided for in Section 8-21-1010(14) must be collected by the magistrate or his clerk for the verification and mailing in this item.

(3) Mailing of the rule constitutes service when the requirements of items (1) and (2) have been met and ten days have elapsed from the time of mailing. If these requirements have been met, the specified time period for the tenant to show cause why he should not be ejected as provided in Section 27-37-20 begins to run on the eleventh day after mailing. However, if the tenant contacts the magistrates court prior to the eleventh day, the specified time period for the tenant to show cause as provided in Section 27-37-20 must begin to run at the time of contact.

In your letter you questioned the procedure for service when no one is at home at a residence. Referencing subsection (C)(1), you have asked whether there must be two attempts utilizing subsection (A) prior to posting a "rule to vacate" on a door.

In your question, since you address subsection (A), I assume that you are distinguishing your situation from subsection (B) which applies to premises when no one is in possession and the premises "have remained abandoned." Therefore, subsection (B) provides an alternative procedure for service in abandonment situations as opposed to subsection (A) which appears to apply to premises that are not abandoned but are simply situations when no one appears to be at home at the premises.

The Honorable Thomas E. Taylor  
Page 3  
September 19, 2008

As referenced in a prior opinion of this office dated May 3, 1995, “[t]he purpose of any service of process...is to obtain jurisdiction of the person...No court has jurisdiction to render judgment against a defendant who has not been properly served with process.” Subsection (A) of Section 27-37-30 provides for service “...in the same manner as is provided by law for the service of the summons in actions pending in the court of common pleas or magistrates courts of this State.” Subsection (C) provides that “[w]hen service as provided in subsection (A) has been attempted unsuccessfully two times in the manner described in item (1), a copy of the rule may be served by affixing both it and documentation of the two service attempts to the most conspicuous part of the premises and mailing a copy of the rule in the manner described in item (2).” Therefore, in the opinion of this office, in answer to your question, there must be two attempts using the provisions of subsection (A) prior to posting the “Rule to Vacate” on the door.

With kind regards, I am,

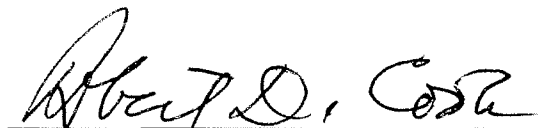
Very truly yours,

Henry McMaster  
Attorney General



By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General