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OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

February 25, 1998

The Honorable David H. Maring
Resident Judge
Fifteenth Judicial Circuit
104 Screven Street
Georgetown, SC 29440

Dear Judge Maring:

You have requested advice as to whether S.C. Code Ann. §9-8-120 (4) (Supp. 1996) prohibits the appointment of an individual as a special referee when that person is a retired Judge who is practicing law. This provision is part of the laws for the Judicial Retirement System, and provides in part that "[a] justice or judge drawing retirement compensation who engages in the practice of law may not serve as a justice or judge in any court in this State...." A previous Opinion of this Office concluded that an earlier version of this law did not apply to the appointment of special referees. (Ops. Atty. Gen. February 2, 1981)

Although the wording of §9-8-120 and other laws has changed since 1981, the Opinion does not appear to be affected. The Opinion was and is consistent with § 9-8-10 (1986) (16) that defines the word "Judge" for purposes of the chapter regarding judicial retirement as meaning "...a justice of the Supreme Court or a judge of the court of appeals, circuit or family court...."¹

¹ Although the definitions section set forth in §9-8-10 may not apply if "...a different meaning is plainly required by the context...", the 1981 opinion relied on the context of §9-8-120 and its references to judges other than referees to conclude that special referee appointments were not included.

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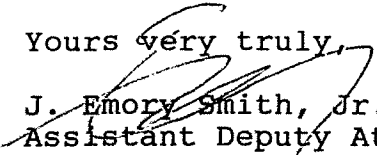
This definition does not reference special referees.² Rules regarding judicial conduct and disciplinary enforcement, both include special referees as judges, but those definitions are limited to those rules relating to conduct whereas §9-8-120 is written in the context of retirement. Rule 501 (Rule 2 (p)) and 502 (Application - Part A), SCACR.

The conclusion of the 1981 Opinion appears to be unchanged by subsequent laws and should be applicable here; however, you may wish to contact Court Administration and the Retirement System regarding this particular matter for any input that those offices may have.

This letter is an informal opinion. It has been written by the designated Assistant Deputy Attorney General and represents the opinion of the undersigned attorney as to the specific questions asked. It has not, however, been personally reviewed by the Attorney General nor officially published in the manner of a formal opinion.

If you have further questions, please let me know.

Yours very truly,


J. Emory Smith, Jr.

Assistant Deputy Attorney General

JESjr

² Although a special referee may have all the powers of a master-in-equity under §14-11-60 (Supp. 1997) and a master is a judge of the equity court, a division of the circuit court, but referees do not appear to be judges of the circuit court for purposes of §14-11-15. Section 14-11-60 provides for compensation of the referees by the parties whereas Chapter 8 of Title 9 addresses judicial retirement which is calculated in relation to salary for State service. §9-8-10(13).