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The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

June 21, 1995

The Honorable R. L. McElveen  
Magistrate, Lake City District  
Post Office Box 1463  
Lake City, South Carolina 29560

Re: Informal Opinion

Dear Judge McElveen:

Attorney General Condon has referred your letter to me for reply. You have asked what happens when magistrates fail to pass the test for their certification.

S.C. Code Ann. Sec. 22-1-10(e) provides as follows:

[n]otwithstanding any other provision of law relating to the terms and qualifications of magistrates:

- (1) All magistrates shall complete a training program or pass certification or recertification examinations, or both pursuant to standards established by the Supreme Court of South Carolina. The examination must be offered at least three times each year.

Subsections (a), (b) and (c) set forth a schedule for magistrates in the various counties. Subsection (d) states:

[e]very magistrate shall pass a recertification examination within eight years after passing the initial certification examination, and at least once every eight years thereafter.

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Non-compliance is addressed in Subsection (2). Such provision is as follows:

[i]f any magistrate does not comply with these training or examination requirements, his office is declared vacant on the date the time expires, or when he is notified, as provided in subsection (D), whichever is earlier.

Subsection (D) provides:

[u]pon written notification of the Supreme Court or its designee to the affected magistrate and the Governor of the failure of the magistrate to complete the training program or pass the certification examination required pursuant to subsection (c), the magistrate's office is declared vacant, the magistrate does not hold over, and the Governor shall appoint a successor in the manner provided by law. (emphasis added).

This procedure is governed by Rule 509, SCACR (South Carolina Appellate Court Rules). I am enclosing copies of Rule 509 as well as a sample letter from the Board of Magistrate Certification. If you have any additional questions, I suggest you might contact Bob McCurdy at Court Administration. His telephone number is (803) 734-1800. His mailing address is Post Office Box 50447, Columbia, SC 29250.

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

With kind regards, I am

Very truly yours,



Robert D. Cook  
Assistant Deputy Attorney General

RDC/an  
Enclosures