

1981 WL 158191 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 17, 1981

*1 The Honorable Billy L. Eaddy
South Carolina House of
Representatives
314-C Blatt Building
Columbia, South Carolina 29211

Dear Representative Eaddy:

I am responding on behalf of the Attorney General to your letter dated March 6, 1981, by which you have requested an opinion from this Office pertaining to the constitutional posture of your proposed legislation, House Bill No. 2425. The Precise issue you have asked is whether or not a party in Family Court who requests a jury trial for issues involving divorce, alimony, support, division of real and personal property of the marriage, or any such related matter, may be constitutionally denied such a jury trial?

The Seventh Amendment to the Constitution of the United States provides that:

‘In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, then according to the rules of the common law.’

It must be noted that the Seventh Amendment of the Federal Constitution is applicable only to the federal courts. [Xepapas v. Richardson](#), 149 S.C. 52, 146 S.E. 686 (1929). Consequently, the only constitutional provision pertinent to the issue you have presented by your opinion request is [Article I, Section 14 of the Constitution of South Carolina](#).

[Article I, Section 14 of the State Constitution](#) provides, in pertinent part that,

‘the right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury.’

There are two caveats to the applicability of [Article I, Section 14 of the State Constitution](#) to the issue of jury trials for matters such as divorce, alimony, support, division of real and personal property of the marriage, and other such related matters. First, the right of trial by jury is only applicable to those cases in which a jury trial was required at the time of the adoption of the Constitution. [McGlohon v. Harlan](#), 254 S.C. 207, 174 S.E.2d 753 (1970); [Richards v. City of Columbia](#), 227 S.C. 538, 58 S.E.2d 683; [State v. Gibbes](#), 109 S.G. 135, 95 S.E. 346.

In a review of the law of divorce, alimony and support and the division of real and personal property in South Carolina, it is apparent that such matters were largely creatures of the legislature, and thus there was not a guaranteed constitutional right to trial by jury at the time of the adoption of the Constitution. The present posture of South Carolina law—as enacted by the General Assembly—has established that matters pertaining to marriage, divorce, alimony and support, and the division of real and personal property of the marriage shall be heard before the Court without a jury. [§ 14-21-810, et seq., Code of Laws of South Carolina \(1976\)](#); [§ 20-7-10, et seq., Code of Laws of South Carolina \(1976\)](#); [Family Court Rules, Rule 24](#).

*2 Secondly, there are two general modes of trial within the State of South Carolina, trials by Court and trials by jury. To the Court belongs all issues of law and all cases of chancery, and to the jury all questions of fact in cases of law of the recovery of

money or of any specific real or personal property. [Collier v. Green](#), 224 S.C. 367, 137 S.E.2d 277 (1964); [Meetze v. Charlotte, Columbia and Augusta Ry. Co.](#), 23 S.C. 1. However, [Article I, Section 14](#), which is the constitutional declaration that ‘the right of jury trial shall remain inviolate’ does not apply to cases within the equitable jurisdiction of the Court. [Pelfrey v. Bank of Greer](#), 220 S.C. 691, 244 S.E.2d 315 (1978); [Luken v. Wichman](#), 5 S.C. 411 (1874).

The law of South Carolina is clear that an action for divorce is within the equity jurisdiction of the court. [Todd v. Todd](#), 242 S.C. 263, 130 S.E.2d 552 (1963); [Mincey v. Mincey](#), 224 S.C. 520, 80 S.E.2d 123 (1954). Consequently, in the State of South Carolina the courts in a divorce proceeding may exercise full equity powers, which includes the power to settle disputed claims to real and personal property. [Piana v. Piana](#), 239 S.C. 367, 123 S.E.2d 247 (1961).

It is thus submitted that issues pertaining to matters involving divorce, alimony, support, and divisions of real and personal property of the marriage, and any such related matters, fall within the purview of the equity jurisdiction of the Court, and thus a party is not presently entitled, as a matter of right, to a resolution of such issues by trials by jury.

In lieu of the aforementioned arguments, it is the opinion of this Office that a party who presently requests a trial by jury for the resolution of issues pertaining to divorce, alimony, support, division of real and personal property of the marriage, and any other related matters is not constitutionally entitled to such a trial as a matter of right. Any provisions for trials by jury in such matters are creatures of the General Assembly, and the current legislative intent has precluded jury trials for the aforementioned issues. § 14-21-810, et seq., [Code of Laws of South Carolina \(1976\)](#); [Family Court Rules, Rule 24](#).

It is further the opinion of this Office that since resolution of issues pertaining to divorce, alimony, support, division of real and personal property of the marriage, and any other related matters are creatures of the General Assembly, the General Assembly has the authority to so provide for trials by jury should it choose to do so. Of course, such a move would require the repeal of the present statutory intent of the General Assembly which has precluded the option of trial by jury.

Sincerely yours,

Wayne G. Carter, Jr.
Staff Attorney

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