

1980 S.C. Op. Atty. Gen. 152 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-100, 1980 WL 81982

Office of the Attorney General

State of South Carolina

Opinion No. 80-100

October 16, 1980

***1 SUBJECT: Courts, Statutes, Family Court, Rules of Court.**

By the enacting of [§ 14-21-860, SOUTH CAROLINA CODE OF LAWS \(1976\)](#), the General Assembly intended to provide the Family Court with an alternative method for acquiring jurisdiction in support cases by issuance of either a Summons or a Rule to Show Cause. The choice is a matter of discretion for the Family Court regardless of contrary provisions found in the general law and rules of Court.

To: Honorable David H. Maring
Chief, Judge
Family Court
Fifteenth Judicial Circuit

QUESTION:

When is a 'twenty days' Summons required in support cases in light of [§ 14-21-860](#) and [Family Court Rule 5](#)?

STATUTES:

[§§ 14-21-860, 15-9-10, SOUTH CAROLINA CODE OF LAWS \(1976\)](#).

CASES:

[South Carolina Electric and Gas Company, et al. vs. South Carolina Public Service Authority, 54 SE2d 777, 215 S.C. 193 \(1949\)](#); [Criterion Insurance Company vs. Hoffman, 188 SE2d 459, 258 S.C. 282 \(1972\)](#); [State vs. Cottingham, 77 SE2d 897, 224 S.C. 181 \(1953\)](#); [Spartanburg County vs. Pace, 29 SE2d 333, 204 S.C. 322 \(1944\)](#).

OTHER MATERIALS CITED:

21 [Corpus Juris Secundum 'Courts' § 177](#); 82 [Corpus Juris Secundum 'Statutes' § 369](#); Rules Five and Six, [Rules of Practice for the Family Courts of South Carolina](#); [Article V, § 4, Constitution of the State of South Carolina](#).

DISCUSSION:

In order to answer your question it is necessary to recognize and resolve two fundamental conflicts in the rules and statutes which provide for Family Court procedures. First, Family Court Rules Five and Six require actions to be initiated with a Summons and Petition similar to those used in the Circuit Courts. This appears to be a recognition on the part of the Supreme Court of [§ 15-9-10, CODE](#), which provides generally that civil actions in all Courts of record in South Carolina must be initiated by the service of a Summons. On the other hand, [§ 14-21-860, CODE](#), provides for the alternative in support cases of issuing a Summons or a Rule to Show Cause.

The first conflict to be resolved is that between the statutes. [Code Section 15–9–10](#) is a general statute found in that part of the Code which provides for the civil remedies and procedures in all of our Courts of record. [Section 14–21–860](#) is a special statute found in the Family Court Act. When a special statute conflicts with a general statute the special statute must prevail. [South Carolina Electric and Gas Company et al vs. South Carolina Public Service Authority, 54 SE2d 777, 215 S.C. 193 \(1949\)](#); [Spartanburg County vs. Pace, 29 SE2d 333, 204 S.C. 322 \(1944\)](#); [Criterion Insurance Company vs. Hoffman, 188 SE2d 459, 258 S.C. 282 \(1972\)](#); 82 *Corpus Juris Secundum*, 'Statutes', § 369. This is true *a fortiori* when the special statute is enacted later in point of time. *Corpus Juris Secundum, supra*; [South Carolina Electric and Gas Company et al. vs. South Carolina Public Service Authority, supra](#). The inescapable conclusion which must be drawn from this reasoning is that the first conflict is to be resolved in favor of the Family Court Act.

*2 A similar analysis disposes of the second conflict, that between the Family Court Act and the rules of Court cited above. The Supreme Court promulgated these rules pursuant to its administrative authority. However, this rule-making power is subject to statutory law. [Article V, § 4, Constitution of the State of South Carolina](#); [State vs. Cottingham, 77 SE2d 897, 224 S.C. 181 \(1953\)](#); 21 *Corpus Juris Secundum*, 'Courts', § 177. Although rules Five and Six specifically mandate pleadings similar to those used in Circuit Court, including the 'twenty days' Summons, the alternative found in the Family Court Act will prevail.

CONCLUSION:

Regardless of the contrary provisions found in the general law and the rules of Court, it is within the discretion of the Family Court to issue either a Summons or a Rule to Show Cause at the commencement of a support case.

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