

1979 WL 43577 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 10, 1979

*1 The Honorable Louis E. Condon
Master In Equity
County of Charleston
Courthouse
Charleston, SC 29401

Dear Judge Condon:

I am in receipt of your recent letter regarding my letter of August 23, 1979, to the Honorable Jasper Cureton regarding consent in default cases. The Act state in part that:

Any of the issues in an action, whether of fact or law or both, may be referred upon the written consent of the parties, . . . The issues may also be referred by the clerk in default cases. In all cases, whether or not the parties are in default, the parties may agree and stipulate in the order of reference or by separate stipulation that the master may enter a final judgment in the cause.

It is our reading of this language that the Legislature has provided a way for a master in equity to make a binding judgment if all parties agree. A master in equity can make a binding judgment in a default case only when all the parties, including defaulting parties, agree. The Legislature has not provided in this Act for the typical default case where the defaulting party is not before the court. Therefore, the circuit court would have the jurisdiction to hear a default case where all of the parties are not before the court. South Carolina Code of Laws, 1976, §§ 15-1-200; 15-35-310; Circuit Court Rule 37.

Very truly yours,

Treva G. Ashworth
Senior Assistant Attorney General

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