

1978 WL 35029 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 8, 1978

**\*1 RE: Motion for Summary Judgment in Civil Actions Tried in the Magistrate Courts**

Mr. Neal Forney  
Assistant Director  
South Carolina Court Administration  
P. O. Box 11788  
Columbia, S. C. 29211

Dear Mr. Forney:

In a recent letter to this Office you asked the following question:

Do magistrates have the authority to grant a motion for summary judgment in civil cases where there is not any contested material issue of fact in the case and the motion is based upon the pleadings, depositions, affidavits, and any other evidence that may have been received by the court?

The essential purpose of the summary judgment procedure is to determine whether there are any disputed and material issues of fact which necessitate a full formal trial on the merits. 73 Am. Jur.2d, Summary Judgment, Section 1. 'In most instances, however, such a remedy is regarded as being in derogation of the common law, and exists only under the authority of statutory enactments . . .' 49 C.J.S., Judgments, Section 219.

In light of the above, it seems doubtful that a motion for summary judgment is appropriate in magistrate court proceedings inasmuch as there is no express grant of authority to magistrates which authorizes them to entertain such motions. The only provision expressly granting authority to a court to entertain a motion for summary judgment is found in Circuit Rule 44.

With best wishes, I am

Very truly yours,

Charles H. Richardson  
Assistant Attorney General

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