

7891 Literary



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

January 5, 2005

The Honorable Thomas Ed Taylor
Summary Court Judge
8150 Augusta Road
Piedmont, South Carolina 29673

Dear Magistrate Taylor:

In a letter to this office you questioned whether a magistrate may deny a civil process server the right to serve civil process, particularly a summons and complaint and matters relating to landlord and tenant, as long as the process server meets the requirements of law.

Rule 4(c) of the Rules of Civil Procedure provide that

Service of summons may be made by the sheriff, his deputy or by any other person not less than eighteen (18) years of age, not an attorney in or a party to the action. Service of all other process shall be made by the sheriff or his deputy or any other duly constituted law enforcement officer or by any person designated by the court who is not less than eighteen (18) years of age and not an attorney in or a party to the action, except that a subpoena may be served as provided in Rule 49.

Rule 81 of these Rules states that

These rules, or any of them, shall apply to every trial court of civil jurisdiction within this state, within the limits of the jurisdiction and powers of the court provided by law, and the procedure therein shall conform to these rules insofar as practicable. They shall apply insofar as practicable in magistrate's courts, probate courts, and family courts to the extent they are not inconsistent with the statutes and rules governing these courts....

Rule 4(c) is applicable to a magistrate's courts inasmuch as I am unaware of any rule or other provision particular to a magistrate's court that provides a contrary rule of service generally.

Consistent with Rule 4(c) service may be made by any individual not less than eighteen years of age who is not an attorney or a party to an action, unless, of course, specific authority provides for service by a particular individual for particular types of actions, such as a constable or deputy sheriff for claim and delivery actions. See: Op. Atty. Gen. dated April 11, 2003. As to your

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particular question concerning whether a magistrate may have a blanket policy of denying a civil process server the right to serve civil process where that individual is otherwise qualified pursuant to Rule (4)(c) or any other applicable provision, in my opinion, denial may be had for reasons of sufficient facts or good cause. Otherwise, Rule 4(c) or any other applicable provision providing for service would apply.

With kind regards, I am,

Very truly yours,



Charles H. Richardson

Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook

Assistant Deputy Attorney General