



HENRY McMASTER
ATTORNEY GENERAL

August 30, 2010

A. Cruickshanks, IV, Esquire
Office of the County Attorney
Laurens County
PO Box 786
Clinton, SC 29325

Dear Mr. Cruickshanks:

We received your letter requesting an opinion of this Office concerning associate probate judges. You asked whether it is “permissible for Judge Hocker to continue his judicial duties as Associate Probate Judge for Laurens County and to serve as Associate Probate Judge in another county.”

As a way of background, you provided that “Judge Hocker has been serving as Associate Probate Judge for Laurens County for the past twenty-six (26) years. He is routinely appointed by the South Carolina Supreme Court to preside over cases across the state in recusal situations. He does this without compensation other than mileage reimbursement at times. Recently, Lancaster County Probate Court and Judge Hocker have reached an agreement for Judge Hocker to serve as Associate Judge on a regular basis (three (3) days a month) for compensation. Other counties *may* want to use Judge Hocker in this capacity as well. Judge Hocker contacted Court Administration concerning this matter, and they felt that an opinion from your office would be necessary. Judge Hocker, of course, will continue to serve as Associate Probate Judge for Laurens County.”

This opinion will address prior opinions, relevant statutes and caselaw to answer the question posed above.

Law/Analysis

In South Carolina, a probate court is established in each county. According to the S.C. Code of Laws, the probate court “must be located at the county seat and must be open for the transaction of its business at all reasonable hours. The probate court of each county is part of the unified judicial system of this State.” S.C. Code § 14-23-1010. Probate Judges are “elected by the qualified electors of the respective counties for the term of four years” S.C. Code § 62-1-309. See also, S.C. Code § 14-23-1020.

Probate Judges may also have “one or more associate judges of probate in any county whose governing body appropriates the funds therefor. Associate judges of probate shall be appointed by the judge of probate to serve at his pleasure for a term coterminous with his term. The associate judges have jurisdiction to hear and decide all matters assigned to them by the judge which are within the jurisdiction of the court. The judge is accountable and responsible for all acts of his associates within the scope of their duties.” S.C. Code § 14-23-1030.

Only United States citizens who are also citizens of South Carolina may hold the office of Probate Judge or Associate Probate Judge. Each individual must also be at least 21 years old, be a **qualified elector for the county in which he is to be a judge**, and either have a 4 year bachelor’s degree or 4 years’ experience as an employee in a probate judge’s office in this State. S.C. Code § 14-23-1040 (emphasis added).

No person may be a qualified elector in more than one county; hence, it would be impossible to officially serve as an Associate Probate Judge in one’s home county and in another county.

One may not serve as an Associate Probate Judge in two counties. However, the “probate court of each county is part of the unified judicial system of this State,”¹ and in the spirit of promoting the underlying purposes and policies,² associate probate judges may be allowed to travel to different counties when appropriate jurisdiction is given. Nevertheless, probate and associate probate judges should be cautious when handling compensation from other counties as “[a]ll such fees and costs received under the provisions of this article [S.C. Code of Laws, Title 8, Chapter 21, Article 7] by such officials of any county shall be accounted for and paid into the general fund of the county as directed by the governing body thereof.” In the Matter of John Land Johnson, 302 S.C. 532, 533, 397 S.E.2d 522, 523 (1990). See, S.C. Code § 8-21-760 (“ . . . Any remuneration received by a probate judge for performing duties assigned by the Department of Mental Health must be remitted by the probate judge to the county treasurer for deposit into the general fund of the county.”).

Conclusion

It is the opinion of this Office that a court would likely find that Judge Hocker or any other Associate Probate Judge can only serve as the Associate Probate Judge for his or her home county, in this instance Laurens County. An Associate Probate Judge must be a “qualified elector of the county in which he is to be a judge;” therefore, it would be impossible to serve as an Associate Probate Judge for two counties.

¹ S.C. Code § 14-23-1010.

² S.C. Code § 62-1-102

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Nevertheless, probate judges and associate probate judges have been permitted to hold court in other counties during recusal situations³ and for commitment hearings.⁴ Appropriate jurisdiction must be given for a probate or associate probate judge to handle matters outside of his or her home county.

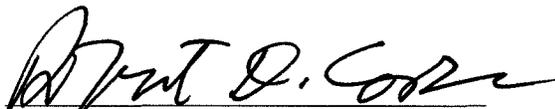
Sincerely,

Henry McMaster
Attorney General



By: Leigha Blackwell
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General

³ S.C. Code § 14-23-1080 states that “[n]o judge or associate judge shall sit in any case in which he has a vested interest, or in which he is biased or prejudiced in favor of or against any interested party, or in which he has been counsel or a material witness, or in the determination of any cause or proceeding in the administration or settlement of any estate under a will that he has prepared, or of any estate of any person in which he is interested as heir, legatee, executor, administrator, guardian or trustee. In every such case the Chief Justice of the Supreme Court shall appoint a special judge to sit in the matter.”

⁴ Chief Justice Ness signed an Order on December 15, 1986 explaining that “many probate judges and some associate probate judges travel to mental health or alcohol/drug treatment facilities for the purpose of holding Judicial Commitment hearings.” He further explains the “some probate judges are unable to travel to these facilities for such hearings and require the appointment of some other probate judge or associate probate judge.” Therefore, “it is ordered that all probate judges and associate probate judges are hereby given jurisdiction to hold judicial commitment hearings in mental health or alcohol/drug treatment facilities. It is further ordered that any probate judge or associate probate judge may be appointed as special probate judge for a particular commitment hearing.” Order of the Supreme Court of South Carolina on appointment of special probate judge for commitment hearing (December 15, 1986) (on file with author).