

8092 Liberty



HENRY McMASTER
ATTORNEY GENERAL

February 1, 2006

The Honorable Eugene Cooper
Chief Magistrate, Florence County
180 North Irby Street, MSC-W
Florence, South Carolina 29501

Dear Magistrate Cooper:

In a letter to this office you questioned whether posting service of process on a defendant's home is allowed in service of papers in claim and delivery actions brought in magistrates' courts. The procedure for claim and delivery actions is set forth in S.C. Code Ann. §§ 22-3-1310 et seq. Claim and delivery actions may be described as four different situations: claim and delivery upon a showing of danger of destruction or concealment (Section 22-3-1380); claim and delivery upon showing of waiver of a pre seizure hearing (Section 22-3-1360); claim and delivery for immediate dispossession (Section 22-3-1330) and claim and delivery for possession (Section 22-3-1310). I am assuming that you are referencing a situation where a pre seizure hearing is allowed inasmuch as you cited Section 22-3-1410 which refers to service of notice of a pre seizure hearing.

Section 22-3-1410 states that

The constable to whom the affidavit, endorsement, notice of pre seizure hearing and summons shall be delivered, shall, without delay, serve upon the defendant a copy of the affidavit, notice and summons, by delivering them to him personally, but, if he cannot be found, to the agent of the defendant in whose possession the property shall be found and, if neither can be found, by leaving such copies at his place of business or the last or usual place of abode of the defendant with some person of suitable age and discretion. He shall forthwith make a return of his proceedings thereon and the manner of serving the documents to the magistrate who issued the summons. Upon the magistrate endorsing upon the affidavit a direction requiring the constable to take the property, the constable to whom the affidavit and endorsement

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is delivered shall forthwith take the property described in the affidavit, if he can find it in the county, and shall keep it in his custody.

Therefore, such provision addresses situations where a preseizure hearing is to be held. Such provision is specific in stating that service may be made by personally serving the defendant personally or the defendant's agent "in whose possession the property shall be found" but if neither of these individuals can be found, service is made by leaving a copy of the pleadings at the defendant's place of business or at "the last or usual place of abode of the defendant with some person of suitable age and discretion."

As to service, reference has been made to the provisions of S.C. Code Ann. § 22-9-90 which states

The service by a constable of all process in the nature of a notice for personal appearance shall be by delivering to the party a copy of the process or by leaving it at his best-known place of residence.

In my opinion, such provision is not applicable to service of pleadings in a claim and delivery action. As stated in an opinion of this office dated October 13, 2005, "...where a specific statute and a general statute concerning the same subject matter are inconsistent with one another, the specific act will usually control." Also, as stated in an opinion dated September 15, 2003, "...more specific and more recent legislation tends to be more controlling with respect to earlier more general legislation." See also Yahnis Coastal, Inc. v. Stroh Brewery, 295 S.C. 243, 368 S.E.2d 64 (1988); Criterion Insurance Co. v. Hoffman, 258 S.C. 282, 188 S.E.2d 459 (1972). In my opinion, Section 22-9-90 is a statute providing for service generally while Section 22-3-1410 is a statute specific as to service in claim and delivery proceedings where notice of a preseizure hearing is being provided. Also, Section 22-3-1410, while an "old" statute, having been enacted in 1870 is more recent than Section 22-9-90 which was enacted in 1839.

As to any question regarding the applicability to service in claim and delivery actions of the Rules of Civil Procedure which by Rule 4 provides for the manner of service of process, Rule 81 states that such Rules "...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 those courts." Inasmuch as Section 22-3-1410 specifically provides for the manner of service in a claim and delivery action in a magistrate's court, in my opinion the rules regarding service of process established by the Rules of Civil Procedure would be inapplicable to claim and delivery actions. See: Op. Atty. Gen. dated January 5, 2005.

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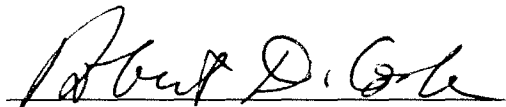
If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General

cc: Mr. G. Edward Dixon