



ALAN WILSON
ATTORNEY GENERAL

September 17, 2013

Joan Elizabeth Winters, Esquire
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P.O. Box 127
Chester, South Carolina 29706

Dear Ms. Winters,

In your capacity as attorney for Chester County, you seek an opinion concerning the process for having a magistrate removed from office for incapacity or misconduct as well as the process by which the number of magistrates in a county is decreased. Specifically, you ask what is the process by which an individual may seek to have a magistrate removed from office for a physical or mental disability or for a violation of the Code of Judicial Conduct. You also ask whether a magistrate commits misconduct by engaging in an intimate relationship with the chief law enforcement officer of the county in which they serve. Finally, noting that the number of magistrates in a county may be decreased by written agreement between the county's governing body and the county's Senate delegation pursuant to S.C. Code § 22-2-40(C), you ask when such an agreement becomes effective and whether the agreement may eliminate a specific magistrate.

Law/Analysis

As your letter indicates, S.C. Code § 22-1-30(A) provides that "[a] magistrate may be suspended or removed by order of the Supreme Court pursuant to its rules for incapacity, misconduct, or neglect of duty...." The judiciary is governed by Rules 501 to 511 of the South Carolina Appellate Court Rules (SCACR). Rule 502, SCACR, is entitled "Rules for Judicial Disciplinary Enforcement." Rule 1 of Rule 502, SCACR states provides that "[t]hese rules provide the procedure for resolving allegations that a judge has committed ethical misconduct or that a judge suffers from a physical or mental condition which adversely affects the judge's ability to perform judicial functions." Rule 3 of Rule 502, SCACR, creates the Commission on Judicial Conduct which "has jurisdiction over judges regarding allegations that misconduct occurred before or during service as a judge and regarding allegations of incapacity during service as a judge...." The Supreme Court also appoints an attorney to serve as disciplinary counsel with the authority and duty, *inter alia*, to "receive and screen complaints." Rule 502, SCACR, Jud. Disc. Enf., Rule 5. As for allegations of incapacity, Rule 28 of Rule 502, SCACR, provides that "[a]n incapacity proceeding may be initiated by complaint, by a claim of inability to defend in a disciplinary proceeding, or by an order of involuntary commitment or adjudication of incompetency."

The definitions of various terms as they are used in Rule 502, SCACR, are found in Rule 2. A "complaint" is defined as "information in *any form* from *any source* received by the Commission that alleges or from which a reasonable inference can be drawn that the judge committed misconduct or is

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incapacitated." *Id.* (emphasis added). Consistent with this definition, the S.C. Judicial Department's website advises as follows with regards to filing a complaint with the Commission on Judicial Conduct:

There are no forms or other special requirements to file a complaint, but some things are necessary for both judicial and lawyer complaints. Any complaint filed with either the Commission on Judicial Conduct or the Commission on Lawyer Conduct needs to be in writing and signed by the person making the complaint. In your complaint, it is always helpful to provide as much detail as possible about what took place and the reason for your complaint. If you have any documents that support your complaint or help explain what happened then please include copies of the documents with your complaint letter. Finally, please be sure to fully identify the judge or lawyer and to include a full address and phone number where you can be reached.

<http://sccourts.org/discCounsel/howToFile.cfm>.

Thus, any individual may file a complaint with the Commission on Judicial Conduct alleging that a magistrate has committed misconduct or is incapacitated by complying with the simple requirements mentioned above. Any additional questions as to filing a complaint should be directed to the Office of Disciplinary Counsel. You can contact them by phone at (803) 734-2038 or in person at their office located at 1015 Sumter Street, Suite 309, Columbia, South Carolina 29201.

You also ask whether the Code of Judicial Conduct, Rule 501, SCACR, is violated if a magistrate is engaged in an intimate relationship with the chief law enforcement officer of the same county. The question of whether a judge has violated the Code of Judicial Conduct is beyond the scope of an opinion of this Office. See *Op. S.C. Att'y Gen.*, 1999 WL 98763 (Aug. 26, 1999) ("The question of whether a member of the judiciary has a conflict of interest is a matter outside the jurisdiction of this Office"); 2011 WL 2214061 (May 25, 2011) (advising that a magistrate cannot serve in same county in which spouse is employed by Solicitor based on opinions issued by Advisory Committee on Standards of Judicial Conduct). Thus, any person who believes a magistrate's conduct violates the Code of Judicial Conduct may file a complaint as mentioned above. Any judge who wishes to inquire as to whether his conduct is in compliance with the Code of Judicial Conduct may request advice from the Advisory Committee on Standards of Judicial Conduct. See Rule 503 SCACR ("There is hereby created an Advisory Committee on Standards of Judicial Conduct. The purpose of the Committee shall be to render advisory opinions to inquiring judges concerning the propriety of contemplated judicial and nonjudicial conduct.").

Your other questions concern subsection (C) of § 22-2-40 which states, in its entirety:

(A) The General Assembly shall provide for the number and location of magistrates in each county. The provisions of this chapter shall not be construed to prevent more than one magistrate from being assigned to the same jury area.

(B) In each county, one or more magistrates may be designated by the Governor with the advice and consent of the Senate as ministerial magistrates for the purpose of carrying out the following responsibilities:

(1) to issue criminal warrants;

(2) to approve and accept written bonds in criminal matters, or in lieu of written bonds to approve and accept cash bonds;

(3) to order the release of prisoners when proper and adequate bonds have been duly posted; and

(4) to transfer any such warrant and written or cash bond to a magistrate having proper jurisdiction.

Ministerial magistrates shall be available at nighttime and on weekends during such hours as may be designated by the chief magistrate.

(C) Notwithstanding the provisions of subsection (A), Section 22-1-10(A), or Section 22-8-40(C) and (D), **the number, location, and full-time or part-time status of magistrates in the county may be increased or decreased from the required and permissive provisions in Section 22-8-40(C) and (D) as provided in Section 22-1-30(B), or by filing with court administration a written agreement between the members of the Senate delegation for the county and the county governing body; however, a magistrate's compensation must not be decreased during his term in office.**

§ 22-2-40 (emphasis added).

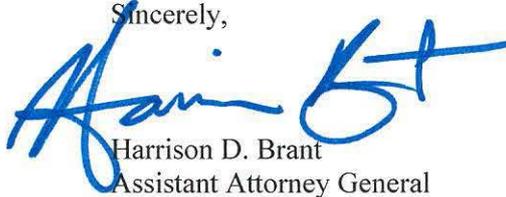
You ask when an agreement to decrease the number of magistrates in a county under § 22-2-40(C) above takes effect. In our view, the essential issue raised by this question is whether such an agreement may take effect some time before the terms of the magistrates in the county expire. Article V, § 26 of the South Carolina Constitution grants the General Assembly the power to provide for the terms of office of magistrates subject to the limitation that "[t]he terms of office must be uniform throughout the State." Consistent with this power, the General Assembly has provided that magistrates are appointed "in each county of the State for a term of four years and until their successors are appointed and qualified" § 22-1-10(A). If an agreement under § 22-2-40(C) becomes effective any time before the four year terms the magistrates in the county were appointed to serve expire then the terms of one or more magistrates in the county would be cut short. While an agreement under § 22-2-40(C) may decrease "the number, location, and full-time or part-time status of magistrates in the county," nothing in the language of that provision indicates such an agreement may alter or cut short the four year term of any magistrate. The sole authority to alter the terms of magistrates lies with the General Assembly pursuant to Article V, § 26. Furthermore, any attempt to shorten the terms of one or more magistrates in the county would contravene the requirement in Article V, § 26 that the terms of all magistrates be uniform throughout the State. Accordingly, it is our opinion that an agreement under § 22-2-40(C) to decrease the number of magistrates in a county takes effect after the expiration of the four-year terms the current magistrates in the county were appointed to serve.

You also ask whether an agreement under § 22-2-40(C) may be used to eliminate a specific magistrate from the county. The use of an agreement for such a purpose would essentially be an attempt to select or determine the persons who serve as magistrates in the county. The constitutional authority to appoint each magistrate in each county of this State rests solely with the Governor, with the advice and

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consent of the Senate. See S.C. Const. Art. V, § 26 ("The Governor, by and with the advice and consent of the Senate, shall appoint a number of magistrates for each county as provided by law"). Thus, once the number of magistrates in a county is decreased by agreement pursuant to § 22-2-40(C), the sole authority to determine the individuals who will fill the residual magisterial positions rests with the Governor. Accordingly, an agreement made pursuant to § 22-2-40(C) may not be used to eliminate a particular magistrate.

Sincerely,



Harrison D. Brant
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General