

1980 WL 120823 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 14, 1980

*1 Melvin B. McKeown, Jr., Esquire
Spratt, McKeown & Spratt
Attorneys at Law
P. O. Drawer 299
York, SC 29745

Dear Mr. McKeown:

You have requested an Opinion from this office concerning whether a Probate Judge may be appointed as a Master in Equity by the Governor or as a Special Referee by the Circuit Court. Your letter indicates that the present Probate Judge for Yorks County is a member of the South Carolina Bar.

Several prior Opinions issued by this office make it clear that a Probate Judge may not serve as a full-time Master in Equity. I am enclosing copies of these Opinions, which indicate that, although there may be certain circumstances under which a Probate Judge may serve as a temporary Master in Equity, it is not permissible for one individual to be appointed to both positions on a full-time basis at the same time. This conclusion is based upon the fact that such a dual appointment would quite clearly violate the dual office-holding prohibition set forth in [Article XVII, Section 1A, of the South Carolina Constitution](#).

Your second question concerns the propriety of a Probate Judge serving as a Special Referee pursuant to Section 14-11-60 and [Section 15-31-140, 1976 Code of Laws of South Carolina](#) (as amended). This office has previously issued an Opinion concluding that the position of Special Referee for a particular case does not constitute an office because an individual serving in that capacity does not do so on a continuing basis. Therefore, this type of appointment would not violate the dual officeholding provisions of the Constitution.

As noted in your letter, the only other possible prohibition to a Probate Judge serving as a Special Referee would be the Code of Judicial Conduct, Rule 33 of the Supreme Court Rules. You have specifically inquired as to whether Canon 5 would prohibit such a temporary appointment. This Canon states that, 'a Judge should regulate his extra judicial activities to minimize the risk of conflict with his judicial duties'. [Section 14-11-60, 1976 Code of Laws of South Carolina](#) (as amended), provides that a Special Referee shall 'be clothed with all the powers of a Master'. The general powers of a master, which are set forth in [Section 14-11-90, 1976 Code of Laws of South Carolina](#) (as amended), make it clear that the Master, and therefore the Special Referee, act in a judicial capacity. Therefore, it does not appear that Canon 5 is really directed at this type of appointment.

Even if Canon 5 was applicable to this situation, it would not prohibit such an appointment provided that the appointment did not interfere with the normal duties of the Probate Judge. The specific sections in this Canon and the commentary contained therein demonstrates that the underlying concern of this section of the Code of Judicial Conduct is the avoidance of any conflict, whether of interest or of time, with the duties of a Judge. However, so long as the occasional appointment of a Probate Judge as a Special Referee on a case-by-case basis does not hinder the ability of the Probate Judge to complete his duties in the Probate Court, no such conflict would exist.

*2 It is, therefore, the Opinion of this office that a Probate Judge may not simultaneously hold the position of Master in Equity. However, a Probate Judge may be appointed as a Special Referee so long as such appointment does not conflict with his judicial responsibilities in the Probate Court.

Sincerely,

Keith M. Babcock
Assistant Attorney General

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