

1979 WL 43527 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 16, 1979

\*1 Honorable Kathryn F. Sanders

Judge

Probate Court

McCormick County

County Courthouse

McCormick, SC 29848

Dear Judge Sanders:

This letter is to confirm my earlier telephone conversation with you concerning your authority to exercise the powers of both the master-in-equity and the probate judge.

In 1918 the General Assembly enacted Act 377 [1918 (30) 710] which authorized the judge of the probate court in McCormick County to exercise the powers of the master. (This Section was later codified in the 1962 Code of Laws at Section 15-501; it was not re-codified in the 1976 Code of Laws as it was deemed local legislation). In 1976 the General Assembly enacted legislation to make uniform the judicial system. Act No. 690 [1976 (59) 1859]. Article V of that Act concerned the probate courts. Section 15 of Article V sets out the jurisdiction of the probate court. This jurisdiction is intended to be the exclusive jurisdiction of all of the probate courts in the State.

The title to Act No. 690 of the 1976 Acts and Joint Resolutions states that this is an Act that will among other things ‘. . . establish probate courts of uniform jurisdiction in each county and to provide for the jurisdiction and operation of such courts . . .’ Obviously, the intent of the General Assembly was to enact legislation that would apply uniformly throughout the State.

73 Am. Jur. 2d Statutes, Section 412 states:

Where a statute is intended to cover all the ground of prior ones on the same subject and revises the entire law on the subject, all prior conflicting laws will be repealed even though they are special acts. See also 1A Southerland, Section 23.15.

73 Am. Jur. 2d Statutes, Section 417 statutes that:

There is no rule which prohibits the repeal by implication of a special or specific act by a general or broad one. Thus, a special or specific act must yield to the later general or broad act where there is a manifest legislative intent that the general act shall be of universal application notwithstanding the prior special or specific act.

The title to the 1976 Act clearly states that the intent of the Act is to make the probate courts and their jurisdiction uniform.

In the 1976 Act the office of master-in-equity was to be abolished as of July 1, 1979. This office was reestablished in the 1979 Act which further provided for a Uniform Court System. (Act bearing ratification number 238, signed July 16, 1979, by the Governor). The title to the 1979 Act states in part that this Act will ‘. . . establish a uniform system of master-in-equity courts in each county of this State and to provide for the operation and jurisdiction of such courts . . .’

Part II of the 1979 Act proceeds to establish provisions that will create a uniform master-in-equity court. It is obvious from reading these two Acts together that it was the legislative intent that two separate and uniform courts of probate and master-in-equity be established. The 1976 Act created uniform jurisdiction for the probate court and the 1979 Act established a separate master-in-equity court with its separate jurisdiction.

\*2 However, Section 2 of Part II of the 1979 Act states that:  
[t]he master-in-equity for each county holding office on the effective date of this act shall continue to serve as a master-in-equity until the expiration of his term of office at which time his successor shall be selected as provided by law . . .

This language indicates that the legislature is attempting to provide for the transitional period by allowing those judges who held the office as master-in-equity to continue to hold it until the expiration of that term. Therefore, until your term expires or you are replaced by a separate master-in-equity, this provision would allow you to hold the position of master-in-equity which you were elected to. Under the authority of [State ex rel McLeod v. Court of Probate of Colleton County, 266 S.C. 279, 223 S.E.2d 166 \(1975\)](#), any actions that you would take as master-in-equity would be valid as you would be holding office as a de facto judge until a new master-in-equity is selected.

Very truly yours,

Treva G. Ashworth  
Senior Assistant Attorney General

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