

1978 WL 207627 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 31, 1978

*1 Mr. Neal Forney
Assistant Director
South Carolina Court Administration
P.O. Box 11788
Columbia, S. C. 29211

Dear Mr. Forney:

You have asked whether magistrates have the authority to dismiss a civil action in cases where the plaintiff neglects to proceed in the cause against the defendant as may be necessary or to appear at the trial.

Aside from any statute or rule of practice, the power of trial courts to dismiss a civil case for failure to prosecute with due diligence is generally considered inherent and independent of any statute or rule of court. Such power is necessarily vested in them to manage their own affairs so as to achieve orderly and expeditious disposition of cases. [24 Am.Jur.2d, Dismissal, Section 59](#), page 50.

The general rule as stated above to date has not been expressly applied by the legislature to the magistrates' courts. Although [Section 15-35-20 of the 1976 Code of Laws of South Carolina](#) generally states the rule to be applied in civil cases in this state, the provisions of that section have not been applied to the magistrates' courts. See Section 22-3-110. However, specific exception has been made, our research reveals, for cases in claim and delivery (Section 22-3-1330) and landlord and tenant cases (Section 27-37-30).

Therefore, it is the opinion of this Office, in accordance with the above-referenced general rule, that magistrates have the authority to dismiss a civil action in cases where the plaintiff neglects to proceed in the cause against the defendant as may be necessary or to appear at the trial. It should be emphasized that the above-referenced general rule has application only in civil cases, not criminal. See Opinion of the Attorney General, dated September 7, 1977.

I trust the preceding discussion adequately answers your question, however, if any further explanation is required, please feel free to contact me.

Very truly yours,

Richard P. Wilson
Assistant Attorney General

Approved by:

(Illegible Signature)

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