



HENRY McMASTER  
ATTORNEY GENERAL

April 23, 2009

David B. King, Chief of Police  
Town of Honea Path  
30 North Main Street  
Honea Path, South Carolina 29654

Dear Chief King:

In a letter to this office you requested an opinion regarding a case involving Magistrate William Gilmer.

In your first question you asked whether a magistrate can continue to hold court proceedings while out on bond for misconduct in office. I am unaware of any per se rule regarding such. There are procedures for suspension or removal of a judge, including a magistrate, from office in specified circumstances, such as by S.C. Code § 22-1-30, which authorizes suspension or removal of a magistrate by the Supreme Court for incapacity, misconduct or neglect of duty. Rule 17 of Rule 502, Rules for Judicial Disciplinary Enforcement, provides for interim suspension of a judge by the Supreme Court for a charge of a "serious crime" or "[u]pon receipt of sufficient evidence demonstrating that a judge poses a substantial threat of serious harm to the public or to the administration of justice." S.C. Code Ann. § 1-3-240 allows for removal of certain officers by the Governor for the reasons specified. S.C. Code Ann. § 8-1-100 states that "[a]ny State or county officer who is indicted in any court for any crime may, in the discretion of the Governor, be suspended by the Governor..." Therefore, while there are means providing for suspension or removal of a judge in specified circumstances, this office cannot comment on the applicability of any of these procedures as to a particular magistrate inasmuch as such a determination is more appropriately left for consideration by the appropriate body or other entity depending on the facts of a particular situation.

As to your question of whether the particular magistrate should be removed from office until his case is resolved, again, this is not a decision appropriate for determination by this office inasmuch as certain provisions, such as those specified above, delegate any such determination to other entities based upon particular circumstances.

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You also asked whether a magistrate can serve in office while in a pretrial intervention program. Based upon my review, I am unaware of any provisions specifically responsive to such question. Again, any review of a magistrate's ability to continue to serve in office is a matter beyond the authority of this office as set forth by the above-referenced statutes and court rules.

As to your question of why this case was transferred to another county or jurisdiction and not handled in the county in which the situation arose, I am informed by the attorney familiar with this case that such transfer was to avoid any sense of conflict which might have arisen from having the magistrate in a pretrial intervention program in the county in which he serves as magistrate.

You last questioned whether court proceedings handled by this particular magistrate would be subject to appeal based on the facts "he had been arrested for a crime and is out on bond". I am unaware of any grounds for appeal based upon such a factual basis.

With kind regards, I am,

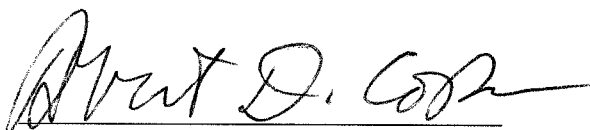
Very truly yours,

Henry McMaster  
Attorney General



By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



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