



HENRY McMASTER
GOVERNOR

October 16, 2023

Dear Distinguished Members of the Senate:

I write to address a matter of significant importance to the people of South Carolina and an area in need of additional transparency, accountability, and improvement: the selection of county magistrates. To this end, and in a spirit of continued cooperation and collaboration, I write to inform the Senate of several modifications to the magistrate application and the process for members of the Senate to recommend candidates for my consideration.

In addition to being one of the oldest judicial positions in South Carolina, county magistrates also serve in the judicial role that is closest to the people. South Carolina currently has over 300 magistrates who hear thousands of cases each year. A South Carolinian is more likely to see a county magistrate than any other type of judge in our judicial system. As has been detailed in the media, these judges receive little public scrutiny before they are confirmed, receive limited training, and are not required to be lawyers in good standing with the Bar. Yet oftentimes these are the judges who have the most immediate impact on public safety and public confidence in the judicial system and the Rule of Law.

Sitting as a summary court of general jurisdiction, county magistrates preside over a broad array of criminal and civil litigation. In addition to having criminal trial jurisdiction over matters involving offenses subject to the penalty of a fine not exceeding \$500 or imprisonment up to 30 days, or both, magistrates are charged with authorizing search and arrest warrants, conducting preliminary hearings, and setting a defendant's bail and bond conditions. Moreover, magistrates may preside over criminal trials for offenses with higher penalty provisions where specifically authorized by statute, such as for third-offense driving under suspension and third-degree domestic violence, or where a case is transferred from general sessions with the agreement of the solicitor and the defendant, provided that the penalty does not exceed one year of imprisonment or a fine of \$5,500, or both.

In addition to being entrusted with conducting certain categories of criminal proceedings, magistrates are charged with principal responsibility for a variety of other important matters, such as refereeing contentious landlord-tenant disputes, issuing emergency or temporary restraining orders, and presiding over civil litigation where the amount in controversy does not exceed \$7,500.

Moreover, magistrates also have other significant—even if secondary, supplemental, or concurrent—authority, such as entering domestic-violence protection orders when the family court is not in session, requiring parties to undergo mental-health examinations, prohibiting the possession of firearms, expunging certain criminal records, and issuing fugitive warrants.

Despite this broad jurisdiction and significant authority over the lives and liberties of all South Carolinians, according to data from Court Administration, only 27.8% of the current sitting magistrates are licensed attorneys. In fact, not only are most of our current magistrates not attorneys, but those lay magistrates also are not provided sufficient training to prepare them for confidently presiding over many legal matters and competently protecting the rights of the parties who appear before them. I continue to believe that most, if not all, county magistrates should be attorneys, but at a minimum, lay magistrates should receive more job-specific training than the State requires for numerous vocations, such as auctioneers, cosmetologists, massage therapists, and nail technicians.

As you are likely aware, article V, section 26 of the South Carolina Constitution provides that “[t]he Governor, by and with the advice and consent of the Senate, shall appoint a number of magistrates for each county as provided by law.” Although this section of the constitution requires the General Assembly to provide for magistrates’ terms and jurisdiction, “the Constitution clearly and plainly states” that magistrates shall be appointed by the Governor with the advice and consent of the Senate. *State ex rel. Riley v. Pechilis*, 273 S.C. 628, 630, 258 S.E.2d 433, 434 (1979). “This constitutional provision therefore sets forth the exclusive method for selection of magistrates, and compliance with its terms is mandatory.” *Id.* Notwithstanding the constitution’s textual commitment of magisterial appointments to the Governor, subject only to the advice and consent of the Senate, my relatively recent predecessors adopted or acceded to a custom of senatorial deference, whereby a local senator or county senatorial delegation is relied upon as the sole source for nominations. Much like the previous (and invalidated) practice of accommodating various forms of “advisory elections,” “magisterial nominating elections,” or “preferential primary elections” “to select nominees for the office of magistrate to be submitted to the Governor for appointment,” the custom of looking to senators for recommendations has, “[w]ith extremely rare exception,” resulted in nominees “receiv[ing] the nomination by the Governor and approval by the Senate.” *Id.* at 631, 632, 258 S.E.2d at 434, 435. Suffice it to say that both approaches have had the “undeniable purpose,” or at least the obvious impact, of “coerc[ing] the Governor into appointing and the Senate into confirming the [anointed individual], regardless of his or her qualifications for office, thereby chilling the constitutionally granted discretionary power of the Governor to appoint magistrates.” *Id.* at 632, 258 S.E.2d at 434–35.

Against this legal and practical backdrop, I have determined that the process must be improved to provide overdue transparency and additional accountability to the magisterial selection process. Although I do not presently intend to eliminate the practice of receiving and considering recommendations from members of the Senate, recent experiences have illustrated that enhanced screening is necessary for those who are nominated for this position of public trust. I feel sure that members of the Senate will agree that this (relatively recent) customary courtesy was not intended to subordinate quality and that, in any event, deference should not, and cannot,

serve as a substitute for competence. Whether a product of the reliance on senatorial nominations or other factors, one cannot credibly dispute that magisterial candidates have not been sufficiently vetted in recent years. Consequently, candidates have avoided disclosing to my office and members of the Senate information regarding (or that would reveal) actual or potential problems, conflicts of interest, or prior disciplinary actions.

According to Court Administration, of the 302 magistrates currently serving in South Carolina, 70 of them are acting in a holdover capacity after the expiration of their four-year term. This situation presents a unique opportunity for significant, and systematic, improvement. With the Senate's help, and with a more transparent and accountable process, I am confident that we can enhance the caliber of our State's magistrates, while also simultaneously advancing public safety and restoring the public's faith in this critical component of our judiciary.

For the foregoing reasons, I have revised the application and screening process to align more closely with the existing materials and processes used by Senate committees when scrutinizing statewide appointments submitted for confirmation and by the Judicial Merit Section Commission when evaluating candidates for election by the General Assembly. As is already the case with many other gubernatorial appointments requiring the Senate's advice and consent, magisterial candidates will now be required to complete more detailed applications and to waive confidentiality protections for, and to authorize the release of records related to, any attorney or judicial disciplinary proceedings.

I have enclosed a copy of the revised application for the Senate's review and utilization in connection with future nominations. I look forward to working with members of the Senate on this important initiative, and I am confident that through continued cooperation and consultation we can improve the qualifications of our State's magistrates and provide additional transparency and accountability in the process. I believe this enhancement of our magisterial appointment process will give our citizens a greater confidence in—and appreciation of—the Rule of Law in South Carolina.

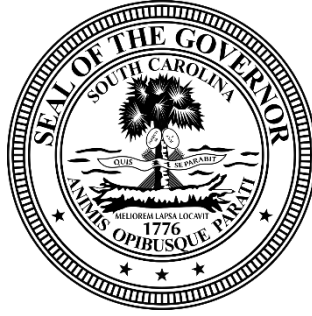
Yours very truly,



Henry McMaster

HM/tl

Enclosures



MAGISTATE APPLICATION ENHANCEMENTS

OCTOBER 16, 2023

To enhance the caliber of our state's magistrates, while also simultaneously advancing public safety and restoring the public's faith in this critical component of our judiciary:

- Senate magisterial nominees will be required to disclose new, different, or additional information prior to gubernatorial appointment.
- The new disclosure requirements align with what the Senate requires candidates appointed to many statewide boards and commissions to provide as part of the confirmation process.
- In addition, current magistrates seeking reappointment and magisterial nominees who are licensed as attorneys or have previously served in any judicial capacity will be required to waive confidentiality and authorize the release of information and records related to any prior sanction, discipline, or determination of misconduct.

Nominees will now be required to disclose additional information regarding the following:

- Financial assets and liabilities
- Business affiliations and arrangements
- Employment history
- Professional licensure
- Continuing education
- Involvement in litigation
- Political contributions
- Sentencing philosophy
- Social media accounts
- Actual or potential conflicts of interest (and requires applicants to describe how they would address conflicts of interest that may arise if appointed and confirmed)

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APPLICATION FOR APPOINTMENT

Magistrate

Magistrates are appointed by the Governor, with the advice and consent of the Senate, pursuant to Article V, Section 26 of the South Carolina Constitution. This application must be completed in its entirety to be considered for appointment as a magistrate.

Please note that information provided herein may be subject to disclosure, in whole or in part, in accordance with the provisions of the South Carolina Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 *et seq.*, subject to any applicable exemptions or exclusions for protected or personal identifying information. By submitting this application, you agree that if appointed and confirmed you will abide by the laws of the State of South Carolina that govern public officials and also agree to meet and maintain compliance with the requirements set forth for magistrates in Title 22 of the South Carolina Code of Laws.

To the extent possible, please submit an electronic application via the Office of the Governor's Internet portal. A secure link will be provided by email upon receipt of your recommendation or nomination. However, because an electronic application cannot be saved for completion at a later date and must be completed in its entirety before submission, please use this document or download and print a blank version of the electronic application, which will allow you to review the requirements and gather information or documents prior to submission. Incomplete applications will not be considered for appointment and confirmation by the Senate. Please use and attach additional pages if necessary to respond fully to one or more questions in this application.

POSITION

Magistrate Nominee Application ID (for internal use only):

County of Nomination:

Part-Time or Full-Time Position:

PERSONAL INFORMATION

1. Full Legal Name:
2. Any other names by which you have been known (including any maiden name):

3. Preferred Telephone Number for Contact:
4. Home Address:
5. County of Residence:
6. Senate District:
7. S.C. Driver's License Number:
8. Voter Registration Number:
9. Social Security Number (xxx-xx-xxxx):
10. Are you a citizen of the United States and of this State? Yes No
11. Have you been a resident of this State for at least the immediate prior five (5) years?
Yes No
12. Date of Birth (MM/DD/YYYY):
13. Current Age:
14. Race:
15. Gender:
16. Marital Status: Single Married Widowed Separated Divorced

If married, state the date of your marriage and your spouse's full name and occupation:

If widowed, list the name(s) of spouse(s):

If you have ever been divorced or are in the process of obtaining a divorce, state the date of divorce or filing for divorce, name of the moving party, court, and grounds:

17. State the names of your children, if any, and their ages. If your children are not full-time students, identify the employer and occupation of each child:
18. Is there anything associated with any accounts you maintain on any social media platforms or in the public record that could or would embarrass or reflect negatively upon the Office of the Governor or the State of South Carolina were you to be appointed? Yes No
If yes, please identify and describe.

EDUCATION, EMPLOYMENT, & SERVICE EXPERIENCE

1. List the highest level of education completed and identify all high schools, colleges, universities, graduate, or professional schools attended, including the dates of attendance and degrees or certificates received, and provide an explanation for any departure from an institution before receiving a degree or certificate or completing the course of study:
2. List any academic honors or awards, if applicable:
3. List the significant activities, clubs, or organizations in which you took part during your attendance at college, graduate, or professional school, including the dates you were involved in these activities and any leadership positions you held:
4. Briefly describe any continuing education during the past five (5) years:
5. List all professional organizations of which you are a member and give the titles and dates of any offices or leadership positions you have held in such groups:
6. List all published books and articles you have written, including citations and dates of publication:
7. Current employment status: Employed Retired Unemployed Other (explain)
 - a. If employed, please provide the name and address (including city, state, and zip code) of your current employer, and your title and hire date:
8. Please list each of your former employers (name, address, city, state, and zip code), your title, dates of employment, reason for departure, and explain any gaps in your employment:
9. Are you an attorney or have you ever been licensed as an attorney? Yes No
 - a. If yes, are you a member of the South Carolina Bar? Yes No
 - i. Bar number:
 - b. If yes, how many years have you practiced law?
 - c. If yes, identify all states and jurisdictions in which you are or have been licensed to practice law and provide the year of admission and current standing:
 - d. If yes, please complete and submit the accompanying form, titled “Waiver of Confidentiality and Authorization to Release Information and Records.”

10. Are you currently certified, or have you ever been certified, as a law enforcement officer in the State of South Carolina? Yes No

If yes, please provide the following information:

- a. Agency:
- b. Title(s) or rank(s):
- c. Dates of service:
- d. Reason for departure:
- e. List all law enforcement certifications and current status of each:

11. Are you currently serving, or have you ever served, in the U.S. Armed Forces? Yes No

If yes, please provide the following information:

- a. Current or final rank:
- b. Branch of Service:
- c. Dates of Service:
- d. Character of Discharge or Release:
 - i. If not honorable, please provide the details:

PERSONAL & PROFESSIONAL CONDUCT

1. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five (5) years and include any offices or positions held in any such groups, any professional honors, awards, or other forms of recognition received and not listed elsewhere:
2. Have you ever been held, arrested, charged, indicted, or convicted by federal, state, or other authorities for violation, or for suspicion of violation, of any federal law or regulation, state law or regulation, or county or municipal law, regulation, or ordinance (other than traffic violations for which a fine of \$125 or less was imposed)? Yes No
 - a. If yes, please identify and describe, including details regarding of the offense for which you were arrested or charged, and provide documentation reflecting any final resolution or disposition (including any expungement):
3. Have you ever, in South Carolina or any other jurisdiction, as a lawyer, judge, professional, or other public or private official, been cautioned with or without a finding of misconduct, sanctioned, cited, or disciplined for lawyer, judicial, or other professional misconduct or been the subject of a formal complaint to any court, administrative agency, bar or professional association, disciplinary committee or commission, or any other entity for a breach of ethics or professional standards? Yes No
 - a. If yes, please identify and describe and provide details regarding, and documentation reflecting, any final resolution or disposition:

4. Within the past five (5) years, have you or any company or organization in which you have a controlling interest been licensed by a South Carolina state agency? Yes No
- a. If yes, please identify the entity and the state agency:
5. Have you ever been investigated by the Department of Social Services or has your name ever been enrolled or listed on the Central Registry of Child Abuse and Neglect?
- Yes No
- a. If yes, please identify and describe and provide details regarding, and documentation reflecting, any final resolution or disposition:
6. Have you or any company or organization in which you have a controlling interest been investigated, reprimanded, fined, or suspended for doing business with any state or federal agency? Yes No
- a. If yes, please identify and describe and provide details regarding, and documentation reflecting, any final resolution or disposition:
7. Have you ever defaulted on any state or federal student loan? Yes No
- a. If yes, please identify and describe and provide details regarding, and documentation reflecting, any final resolution or disposition:
8. Have you ever filed for bankruptcy? Yes No
- a. If yes, please identify and describe and provide details regarding, and documentation reflecting, any final resolution or disposition:
9. Are you currently undergoing treatment for alcohol use disorder or any drug or substance use or abuse disorder that would impair your ability to serve in the office to which you are applying? Yes No
- a. If yes, please provide details:
10. Have you ever been sued or been a party, either in a personal or professional capacity, in any state or federal litigation within the preceding ten (10) years? Yes No
- a. If yes, please identify and describe and provide details regarding, and documentation reflecting, any final resolution or disposition:
11. Have you ever been terminated from employment for cause? Yes No
- a. If yes, please provide details:

12. Have you ever been disciplined or fined by the State Ethics Commission?

Yes No

a. If yes, please provide details and proof of resolution:

13. Have you ever been the subject of a complaint or charge of discrimination on the basis of sex, race, religion, national origin, age, or disability filed in court or with an administrative agency? Yes No

a. If yes, please identify and describe and provide details regarding, and documentation reflecting, any final resolution or disposition:

CONFLICTS OF INTEREST

1. Are you now or have you ever been employed as a “lobbyist,” as defined by S.C. Code Ann. § 2-17-10(13), or acted in the capacity of a “lobbyist’s principal,” as defined by S.C. Code Ann. § 2-17-10(14)? Yes No

a. If yes, please identify and describe and provide details, including the dates of your employment, engagement, or activity in such capacity and specify by whom you were employed, retained, or directed:

2. Do you currently serve, or have you previously served, on any local or state board, commission, committee, or elected office? Yes No

a. If yes, please list the positions and dates of service:

3. Have you ever held public office? Yes No

a. If so, please identify the office or offices involved, the periods of your service, and whether you were elected or appointed:

4. Have you ever been an unsuccessful candidate for elective, judicial, or other public office?

Yes No

a. If yes, please identify the office or offices sought and date or dates of candidacy:

5. Do you or does any member of your immediate family have an interest in any entity that does business with, has done business with, or may be expected to do business with the State of South Carolina or with the County in which you are applying to serve?

Yes No

a. If yes, please identify and provide details:

6. Have you or any member of your immediate family sold, leased, or rented personal property to any state or local government agency in South Carolina? Yes No
 - a. If yes, please describe the transaction(s) and identify the individuals involved:
7. Is your spouse or a member of your immediate family employed by the State of South Carolina or by the County in which you are applying to serve? Yes No
 - a. If yes, please identify and provide details:
8. Are you, your spouse, or a member of your immediate family affiliated with your nominating authority or with the Office of the Governor? Yes No
 - a. If yes, please identify and provide details:
9. Please state how long you have known the Senator(s) or other person(s) who recommended you for the position for which you are applying and describe the nature of your relationship:
10. Have you engaged in any fundraising activities with any political candidate or any political, social, community, or religious organizations? Yes No
 - a. If yes, please identify and describe:
11. Please list any and all financial contributions that you or your spouse have made to candidates for federal, state, and local elected office within the last ten (10) years:
12. Do you have any business activities that you would envision remaining involved with if appointed and confirmed? Yes No
 - a. If yes, please identify and describe:
13. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality? Yes No
 - a. If yes, please identify and describe:

FINANCIAL

1. Please provide the following information, itemized in detail:
 - a. the identity, value, and location of all financial assets held, directly or indirectly, including, but not limited to, bank accounts, real estate, trusts, investments, and other financial holdings.
 - b. the identity, amount, location, and holder of each liability owed, directly or indirectly, which is greater than \$1,000, including, but not limited to, personal or credit card debts, mortgages, loans, and other financial obligations.

2. Describe any financial arrangements or business relationships which you have, or have had in the past, that could constitute or result in a possible conflict of interest in the office or position to which you are seeking appointment and explain how you would resolve any potential conflict of interest:
3. Have you filed state and federal income tax returns for the past five years? Yes No
 - a. If no, please provide details and proof of resolution:
4. Have federal, state, or local authorities ever instituted a tax lien or other collection procedure against you? Yes No
 - a. If yes, please provide details and proof of resolution:
5. Have you or has any company in which you have a controlling interest been delinquent in any local, state, or federal taxes? Yes No
 - a. If yes, please provide details and proof of resolution:
6. If your bank or brokerage firm has provided you with a standard financial statement reflecting assets and liabilities, please upload or attach it.

POSITION-SPECIFIC QUESTIONS

1. Please summarize your familiarity with the common legal issues and procedures (criminal and civil) in Magistrates' Courts:
2. Please summarize your knowledge base, skillset, or other qualities that would benefit the office or position to which you are seeking appointment:
3. Please summarize your sentencing philosophy in criminal matters:
4. If appointed and confirmed as a magistrate, and a conflict of interest arises or occurs, please describe how you would address it:
5. Are you currently serving, or have you previously served, in some judicial capacity, whether as a magistrate, municipal judge, or otherwise? Yes No
 - a. If yes, please identify and describe, to include noting whether any such service was in a full-time or part-time capacity:
 - b. If yes, please complete and submit the accompanying form, titled "Waiver of Confidentiality and Authorization to Release Information and Records."

REFERENCES AND RECOMENDATIONS

Please provide five (5) letters of recommendation from personal and professional acquaintances. A minimum of three (3) letters must be signed by residents of the same county as the applicant. The Office of the Governor may contact these individuals and inquire about the applicant's character, temperament, and qualifications. Letters should be addressed to: The Honorable Henry McMaster, Governor, State of South Carolina, 1100 Gervais Street, Columbia, South Carolina 29201 and directed to the attention of Ms. Ahkia Chisolm, Director of Boards and Commissions.

Please provide any other information which may reflect positively or negatively on your application or candidacy or which you believe should be disclosed in connection with your application or your consideration for the office or position to which you are seeking appointment.

CERTIFICATION AND NOTICE TO APPLICANT

By signing and submitting this application, I hereby affirm and declare under penalty of perjury that the foregoing is true and correct and further certify and confirm the following:

The Office of the Governor and the South Carolina Law Enforcement Division ("SLED") are authorized to conduct a background investigation, including but not limited to criminal history, public records, driving record, and credit checks.

The Office of the Governor is authorized to provide copies of my completed application, and any information gathered in processing this application for appointment, to the Senate.

My signature constitutes a waiver of the confidentiality of any proceeding before any grievance committee.

I am under an ongoing duty to notify the Office of the Governor and the Senate of any corrections, clarifications, or additions to the initial answers and responses provided in this application.

My electronic signature shall have the same force and effect as a written signature.

SIGNATURE: _____

NAME: _____

DATE: _____

[SUBMIT]

**WAIVER OF CONFIDENTIALITY AND
AUTHORIZATION TO RELEASE INFORMATION AND RECORDS
(OFFICE OF THE GOVERNOR)**

Deborah S. McKeown, Esquire
Office of Commission Counsel
Supreme Court of South Carolina
1220 Senate Street, Suite 111
Columbia, South Carolina 29201
dmckeown@sccourts.org

RE: *Waiver of Confidentiality and Authorization to Release Information and Records
(Office of the Governor)*

Dear Ms. McKeown:

This letter authorizes the Commission on Judicial Conduct, the Commission on Lawyer Conduct, the Office of Disciplinary Counsel, and the Supreme Court, as applicable, to inform the Office of the Governor whether I have been sanctioned or disciplined—at any time, in any capacity, and in South Carolina or in any other jurisdiction—for judicial, lawyer, or other professional misconduct or have been found to have committed any such misconduct to the knowledge of either of the aforementioned Commissions, the Office of Disciplinary Counsel, or the Court. I further authorize the Commission on Judicial Conduct, the Commission on Lawyer Conduct, the Office of Disciplinary Counsel, and the Supreme Court, as applicable, to release and provide to the Office of the Governor any and all records related to any such sanction, discipline, or determination of misconduct. To facilitate the foregoing, I expressly waive any and all rights, privileges, or protections concerning the confidentiality of any and all corresponding information or records.

Please send any and all responsive information and records to:

Office of the Governor
Attn.: Director of Boards and Commissions
1100 Gervais Street
Columbia, South Carolina 29201
AChisolm@governor.sc.gov

SIGNATURE

Print Name

S.C. Bar No. (if applicable): _____

Date