



HENRY McMASTER
ATTORNEY GENERAL

December 15, 2009

Brian E. Hulbert, Esquire
Staff Attorney, Town of Hilton Head Island
One Town Center Court
Hilton Head Island, South Carolina 29928

Dear Mr. Hulbert:

In a letter to this office you questioned whether the Fourteenth Judicial Circuit Public Defender is required to provide indigent defense services to defendants charged with misdemeanors tried in the Hilton Head Municipal Court.

Enclosed please find a copy of a prior opinion of this office dated March 21, 1996 which is responsive to your question. That opinion cites Rule 602, SCACR, which states in part that

[i]n cases involving criminal charges within the jurisdiction of magistrates' courts, municipal courts, or other courts with like jurisdiction, if a prison sentence is likely to be imposed following any conviction, the presiding judge of the court in which the matter is to be determined shall inform the accused as provided in Rule 2 when the case is called for disposition...

(b) The officer before whom the arrested person is taken shall:

- (1) Inform the accused of the charges against him and of the nature of the charges.
- (2) Advise the accused of his right to counsel and of his right of the appointment of counsel by the court, if the accused is financially unable to employ counsel.
- (3) If the accused represents that he is financially unable to employ counsel, take his application for the appointment of counsel or for the services of the Public Defender where the latter is available in the county...

(c) If application for counsel is approved for the accused, the Clerk of Court or other officer shall immediately notify the Office of Public Defender, if one exists in the county, and the Public Defender shall immediately thereafter enter upon the representation of the accused....

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The opinion noted above quotes another opinion of this office dated November 7, 1979 which stated with respect to Rule 602

[t]herefore, pursuant to the above, there is no question that an indigent charged with an offense within the jurisdiction of the municipal court is entitled to legal counsel '... if a prison sentence is likely to be imposed following any conviction.' By Rule 2(3), if there is a Public Defender in the county he is to represent the accused. However, while the rule does provide for representation by the Public Defender, admittedly in certain situations representation is not possible due to manpower and funding shortages.

This Office is informed that the Aiken County Public Defender and his assistants are funded only on a part-time basis based on their representation of cases triable in the General Sessions Court and Family Court. Therefore, obviously the Public Defender cannot be expected to represent all indigent defendants in cases triable in the magistrate and municipal courts. Due to such manpower and funding shortages it may be necessary that members of the Aiken County Bar other than the Public Defender and his staff be appointed to represent indigent defendants in municipal court.

Therefore, while Rule 602 requires appointment of counsel for indigent defendants for cases tried in the municipal court "if a prison sentence is likely to be imposed following any conviction", and while the Rule references appointment of the Public Defender in such situations, due to funding shortages, representation by other members of the Bar may be necessary in particular situations.

Sincerely,

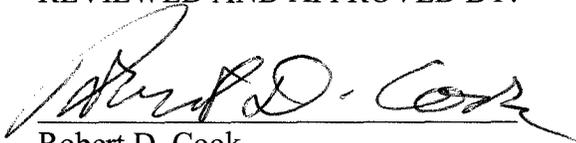
Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General