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ATTORNEY GENERAL

April 1, 2022

Isaac McDuffie Stone, Chairman
South Carolina Commission on Prosecution Coordination
1200 Senate Street, Ste. B-03, Wade Hampton Building
Columbia, SC 29201

L. Eden Hendrick, Director
South Carolina Department of Juvenile Justice
PO Box 21069
Columbia, SC 29221

Dear Solicitor Stone and Director Hendrick:

We received your request seeking an opinion on whether a circuit's Solicitor's Office or the Department of Juvenile Justice is the proper party to present a probation violation in family court. This letter sets out our Office's understanding of your question and our response.

Issue:

This opinion is a response to two independent requests from the South Carolina Commission on Prosecution Coordination and the South Carolina Department of Juvenile Justice. The essential question is whether a circuit solicitor's office or the Department of Juvenile Justice is the proper party to present a probation violation in family court.

Law/Analysis:

This question relates to an intersection of black letter law and historical practice. We understand that practices have not been uniform across the State in the past. Furthermore, any particular case before a court must be resolved on its particular merits by judicial decision. Our Office has observed previously that "[t]he very nature of the juvenile system makes clear the family court juvenile adjudication is an inherently different process than a typical criminal prosecution." *Op. S.C. Att'y Gen.*, 2016 WL 963700 (February 3, 2016) (quoting *In re Stephen W.*, 409 S.C. 73, 761 S.E.2d 231 (2014)).

For these reasons we emphasize that this opinion is a general discussion of the law in the abstract, which must be applied on a case-by-case basis. This opinion is directed at the

requesting parties, each of which play crucial roles in the juvenile justice process, and it is intended to aid them in their respective roles.

Our Office is informed that when a juvenile offender violates their probation, the probation revocation process generally begins with the State filing a Rule to Show Cause and a supporting affidavit which is signed by the juvenile's probation counselor, a school official, parent or guardian, treatment provider, or other person with knowledge of the alleged violation of the prior probation order. This procedure is governed by Rule 14 of the South Carolina Rules of Family Court, which states in relevant part:

> (a) For Contempt of Court. Except for direct contempt of court, contempt of court proceedings shall be initiated only by a rule to show cause duly issued and served in accordance with the provisions hereof.
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> . . .
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> (c) Affidavit or Verified Petition. No rule to show cause shall be issued unless based upon and supported by an affidavit or verified petition, or unless issued by the judge *sua sponte*. The supporting affidavit or verified petition shall identify the court order, decree or judgment which the responding party has allegedly violated, the specific act(s) or omission(s) which constitute contempt, and the specific relief which the moving party is seeking.
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> . . .
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> (g) Hearing Procedure. The contempt hearing shall be an evidentiary hearing with testimony pursuant to the Rules of Evidence, except as modified by the Family Court Rules. At the contempt hearing, the moving party must establish a prima facie case of willful contempt by showing the existence of the order of which the moving party seeks enforcement, and the facts showing the respondent's noncompliance. The moving party shall satisfy the burden of proof required by law for the specific nature of contempt before the court. Once the moving party establishes a prima facie case, the respondent is entitled to present evidence of a defense or inability to comply with the order. If requested, the Court may allow reply testimony. The Court may impose sanctions provided by law upon proper showing and finding of willful contempt, and may award other appropriate relief properly requested by a party to the proceeding.

Rule 14, SCRFC.

Contempt of court may be civil or criminal in nature, as described by the South Carolina Supreme Court in *Poston v. Poston*:

> The major factor in determining whether a contempt is civil or criminal is the purpose for which the power is exercised, including the nature of the relief and the purpose for which the sentence is imposed. The purpose of civil contempt is to coerce the defendant to do the thing required by the order for the benefit of the complainant. The primary purposes of criminal contempt are to preserve the court's authority and to punish for disobedience of its orders. If it is for civil contempt the punishment is remedial, and for the benefit of the complainant. But if it is for criminal contempt the sentence is punitive, to vindicate the authority of the court.
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> An unconditional penalty is criminal in nature because it is solely and exclusively punitive in nature.

Poston v. Poston, 331 S.C. 106, 111, 502 S.E.2d 86, 88 (1998) (internal citations and quotations omitted). The Court in *Poston* also observed that "[c]ivil contempt must be proven by clear and convincing evidence," while "[i]n a criminal contempt proceeding, the burden of proof is beyond a reasonable doubt." 331 S.C. at 113, 502 S.E.2d at 89.

Turning to juvenile adjudications, during a "dispositional" or sentencing hearing, a Family Court judge can place a youth on probation, meaning that the youth is under a court order to abide by various conditions of probation during the probationary period. *See* S.C. Code Ann. § 63-19-1410(3) (Supp. 2021). Our Office is informed that when a Rule to Show Cause is filed, it is alleged that the youth has violated a condition of their prior probation order. If the court finds that the juvenile has in fact violated their probation, they will be adjudicated delinquent for a new charge of Contempt of Court. Following a youth's adjudication for Contempt of Court, the Family Court can then implement a consequence for the youth's violation, which, pursuant to Section 63-19-1440, can include a determinate or indeterminate period of incarceration. *See* S.C. Code Ann. § 63-19-1440 (Supp. 2021). The obvious purpose of this contempt action is "to preserve the court's authority and to punish for disobedience of its orders." *See Poston v. Poston, supra.* Thus, this contempt of court action is criminal in nature. *See also In re Darlene C.*, 278 S.C. 664, 666, 301 S.E.2d 136, 137 (1983) (holding that "a juvenile who commits criminal contempt by running away in violation of a court order" could be confined in a secure facility).

We turn now to the question of whether a circuit solicitor's office or the Department of Juvenile Justice is the proper party to bring such a Rule to Show Cause for criminal contempt. Section 63-3-610 mandates that "[a]ll prosecutorial functions and duties in the family courts

shall be a responsibility of and be vested in the solicitor." S.C. Code Ann. § 63-3-610 (2010). In a 1983 opinion, our Office discussed the application of this statute, then codified as Section 20-7-1470, to a criminal contempt action in family court. The question there was whether the Office of the Attorney General would prosecute or defend a South Carolina Department of Social Services employee if they were charged with criminal contempt of court. There we opined:

> [The statute] places the responsibility of all prosecutorial functions and duties in the Family Court upon the Circuit Solicitor. Our State Supreme Court has on two occasions held that there is no inherent conflict of interest or unethical duty imposed on the Attorney General wherein he is called upon to defend a public employee or officer pursuant to § 1–7–50 in a criminal proceeding and his position as chief prosecuting officer of the State. *Langford v. McLeod*, 269 S.C. 466, 238 S.E.2d 161 (1977); *State of South Carolina, etc., et al. v. Snipes, et al.*, 266 S.C. 415, 223 S.E.2d 853 (1976). However in a situation wherein this office undertook representation of a public employee or official cited in contempt it is likely that this office would defer to the solicitor for prosecution of that contempt in light of § 20–7–1470 [now codified as Section 63-3-610].

Op. S.C. Att'y Gen., 1983 WL 142762 (December 7, 1983) (emphasis added). In summary, our 1983 opinion concluded that the solicitor would be the proper party to prosecute a SCDSS employee for criminal contempt in the Family Court, per Section 63-3-610. *Id.*

We believe that the conclusion in our 1983 opinion applies here. As discussed above, a Rule to Show Cause which alleges that a juvenile offender has violated their probation generally is punitive in purpose, and the contempt sought is criminal in nature. Consistent with our 1983 opinion, we believe a court would hold that this is a prosecutorial function and duty which Section 63-3-610 assigns to the solicitor. *See Op. S.C. Att'y Gen.*, 1983 WL 142762 (December 7, 1983).

Conclusion:

As more fully discussed above, our Office is informed that probation violations are presented to the family courts in South Carolina through Rules to Show Cause which seek to hold the juvenile in contempt of court. The apparent purpose of these contempt actions are "to preserve the court's authority and to punish for disobedience of its orders." *See Poston v. Poston,* 331 SC 106, 111, 502 S.E.2d 86, 88 (1998). Thus, these contempt of court actions are criminal in nature. *See also In re Darlene C.*, 278 S.C. 664, 666, 301 S.E.2d 136, 137 (1983) (holding that "a juvenile who commits criminal contempt by running away in violation of a court order" could be confined in a secure facility (emphasis added)).

It is the opinion of this Office that as between the circuit solicitor and Department of Juvenile Justice, a court would conclude that the solicitor is the proper party to pursue these actions. In 1983, our Office opined that the circuit solicitor would be the proper party to prosecute a SCDSS employee for criminal contempt in the family court. *Op. S.C. Att'y Gen.*, 1983 WL 142762 (December 7, 1983). Consistent with our 1983 opinion, we believe a court would hold that this is a prosecutorial function and duty which Section 63-3-610 assigns to the solicitor. S.C. Code Ann. § 63-3-610 (2010).

We reiterate that this question relates to an intersection of black letter law and historical practice. Additionally, our Office has observed previously that "[t]he very nature of the juvenile system makes clear the family court juvenile adjudication is an inherently different process than a typical criminal prosecution." *Op. S.C. Att'y Gen.*, 2016 WL 963700 (February 3, 2016) (quoting *In re Stephen W.*, 409 S.C. 73, 761 S.E.2d 231 (2014)). We understand that practices have not been uniform across the State in the past.

Our Office has previously recognized that "in the absence of contrary legislation, courts have inherent power to provide themselves with appropriate instruments required for the performance of their duties." *Op. S.C. Att'y Gen.*, 1999 WL 1425995 (December 14, 1999). Thus, the family courts have latitude, within statutory boundaries, in how the courts structure orders for juvenile commitments suspended to probation. *See Op. S.C. Att'y Gen.*, 2006 WL 2593088 (August 8, 2006) (discussing orders for commitment, suspended upon probation which allowed for release of the juvenile to a community residence if the Department determined the juvenile qualified). Nothing in this opinion should be construed to restrict the power of the family courts, including the power to issue a Rule to Show Cause *sua sponte* based upon information received from the Department of Juvenile Justice. *See* Rule 14(c), SCRFC. However, our Office cannot speculate in an opinion how a court might structure an order in a hypothetical situation, or how a court might choose to exercise its continuing authority over a juvenile placed on probation. *Cf.* S.C. Code Ann. § 63-19-1410(A)(3) (Supp. 2020) ("A child placed on probation by the court remains under the authority of the court only until the expiration of the specified term of the child's probation."). For these reasons, our focus here has been on the use of criminal contempt of court actions to revoke juvenile probation, which we understand has been the general, historical practice in our State.

Furthermore, we strongly emphasize that any particular case before a court must be resolved on its particular merits by judicial decision. The purpose of this opinion is only to discuss the law in the abstract, in response to requests from both the Commission on Prosecution Coordination and the Department of Juvenile Justice, to aid each of them in their work.

Sincerely,

David S. Jones
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General