

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

March 21, 1996

K. W. Arthur, Chief of Police
Walterboro Police Department
Post Office Box 709
Walterboro, South Carolina 29488

Re: Informal Opinion

Dear Chief Arthur:

You have asked the following questions:

- (1) [i]s a City required to provide an attorney at no cost to an indigent person who appears in Municipal Court?
- (2) [a]re there some indigent persons allowed to avail themselves of the Colleton County Public Defender's Office in a traffic or criminal case in the Municipal Court?

South Carolina Appellate Court Rule (SCACR) 602 provides in pertinent part as follows:

... [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 to 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.

Upon an examination of the completed Affidavit of Indigency (Form II), by the officer designated for the purpose of determining indigency, along with the other facts alleged, a presumption of non-indigency is created if the gross income of the accused exceeds \$125 per week. The baseline figure for non-indigency is increased by \$20 per defendant.

Where the accused's income exceeds the presumptive amount and a presumption of non-indigency is created, but liabilities and debts exist as complicating factors, a final determination of indigency may be made by the judge with jurisdiction over the court in which the matter is to be heard.

(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. If there is no Public Defender for the county, then the Clerk of Court or other officer shall immediately notify the court, or such person as the resident judge may designate, of the request for counsel and appointment of counsel shall be made immediately with

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prompt notification thereof to the accused and counsel so appointed.

In an opinion of this Office dated November 7, 1979, we stated as follows with respect to the foregoing rule:

[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.

In summary, the appointment of counsel for indigent defendants for cases triable in magistrate's or municipal court is governed by Supreme Court Rule 602. Pursuant thereto, counsel is appointed for indigent defendants "if a prison sentence is likely to be imposed following any conviction." If the court so determines, then an examination into whether or not the defendant is indigent is conducted and, if so, provision for the appointment of counsel is made in accordance with the foregoing Rule. I am herein providing you with a copy of Rule 602, the 1979 opinion referenced above, as well as a passage from the Magistrates and Municipal Court Judges Bench Book which discusses counsel for defendants in those courts generally.

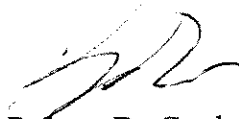
This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney

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as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,

A handwritten signature in dark ink, appearing to read 'RDC', is written over the typed name.

Robert D. Cook
Assistant Deputy Attorney General

RDC/an
Enclosures