

# The State of South Carolina



## Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE: 803-734-3970  
FACSIMILE: 803-253-6283

November 19, 1990

The Honorable John C. Hayes, III  
Senator, District No. 15  
Drawer 964  
Rock Hill, South Carolina 29731

Dear Senator Hayes:

In a letter to this Office you questioned whether a law enforcement officer's wife may be a bondsperson under various scenarios.

Section 38-53-190 of the Code provides that certain persons are not allowed to be a surety on a bail bond. Such provision states:

No sheriff, deputy sheriff, other law enforcement officer, judicial official, attorney, parole officer, probation officer, jailer, assistant jailer, employee of any court of this State, or other public employee assigned to duties relating to the administration of the court may become a surety on a bail bond for any person. No person covered by this section may act as agent for any bonding company or professional bondsman, nor may he have an interest, directly or indirectly, in the financial affairs of any firm or corporation whose principal business is acting as bondsmen. Nothing in this section prohibits any person designated above from being a surety upon the bond of his spouse, parent, brother, sister, child, or descendant.

No reference is made to the spouse of a law enforcement officer in such circumstances.

However, Rule 604 of the State Appellate Court Rules states:

No attorney or other officer of the Court shall become a surety upon any recognizance or upon any undertaking in the Courts of this State. No attorney or other officer of the Court shall be directly or indirectly involved in the surety business or involved in business with any person or persons becoming surety upon any recognizance or upon any undertaking in the Courts of this State. Attorneys and other officers violating this rule shall be punished as for a contempt of Court.

Furthermore, no Court or Clerk of Court in this State shall accept in any case pending before a Court in this State, or appealed to a Court in this State, any bail bond or surety bond in respect of which an attorney or court official, or any agent or employee of an attorney or court officer, or any member of the immediate family of an attorney or court officer, or any corporation in which any person aforesaid owns an interest, acts, indirectly or directly, as bail or surety, provided, however, that this prohibition shall not apply to any bond in which any attorney, court officer, agent, employee, or family member, as defined above, may be the principal. The phrase "any member of the immediate family" shall include the spouse, father, mother, father-in-law, mother-in-law, son, daughter, brother, sister, brother-in-law, or sister-in-law of any such attorney or court officer. (Emphasis added.)

Such Rule therefore forbids acceptance of a bail bond or surety bond where a member of the immediate family, which would include a spouse, of a "court officer" acted as bail or surety. See also: Section 17-15-130 of the Code ("No sheriff shall take any attorney at law or officer of court as bail for any person whomsoever in any criminal case.") In State v. Brantley, 279 S.C. 215, 305 S.E.2d 234 (1983) the State Supreme Court referred to a sheriff as an officer of the court. Similarly, any law enforcement officer could be considered a "court officer."

The Honorable John C. Hayes, III  
Page 3  
November 19, 1990

Inasmuch as the prohibition set forth above is a court rule, any questions regarding the interpretation of Rule 604 as to the situation you addressed should be referred to the Clerk of the State Supreme Court.

With kind regards, I am

Very truly yours,



Charles H. Richardson  
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



Robert D. Cook  
Executive Assistant for Opinions