

1982 WL 189346 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 23, 1982

*1 Charles J. Devic
Executive Secretary
The Board of Commissioners on Judicial Standards
South Carolina Supreme Court
Post Office Box 50487
Columbia, South Carolina 29250

Dear Mr. Devic:

Mr. McLeod referred to me your recent letter concerning the practice in West Columbia of requiring defendants who request jury trials in municipal court to post either a cash or surety bond. The court indicated that such is done due to the frequent failure of persons released on personal recognizance bonds to appear for a jury strike and/or jury trial. You indicated that defense attorneys are claiming that the referenced practice has a chilling effect on a person's right to a jury trial.

Pursuant to [§ 17-15-10, Code of Laws of South Carolina](#), 1976, any person charged with a non-capital offense must be released pending trial on his own recognizance, without surety, unless a determination is made that such release would not reasonably assure the appearance of the defendant at trial or would result in an unreasonable danger to the community. At the bond hearing, a judge may examine various criteria in determining whether a defendant is entitled to release on his own recognizance. Such criteria would include, for example, the nature of the charge, family ties, employment and length of residence in the community.

Prior to being released on his recognizance, the defendant must sign an unsecured bond in an amount specified. Such amount is an acknowledgement of an indebtedness to the State if the defendant fails to comply with the terms of the bond. In addition to being so obligated, a defendant charged with a misdemeanor, who fails to appear before a court as required, may be fined not more than One Thousand Dollars (\$1,000.00) or imprisoned for not more than one (1) year, or both.

Referencing the above, while a court may refuse to release a defendant on his own recognizance if the court is not reasonably assured that the defendant will appear for trial, such a blanket assumption may not be made as to all defendants who request a jury trial. I agree with the argument that such could have a chilling effect on a person's right to a jury trial. Each defendant brought before the court is entitled to a separate bond hearing after which, a determination may be made as to the type bond, if any, is appropriate. Furthermore, as referenced, measures may be taken pursuant to a personal recognizance bond if a defendant released on such fails to appear for trial.

I am forwarding a copy of this letter to the State Court Administrator's Office. Such office is the more appropriate office to investigate and advise the City of West Columbia as to this matter.

If there is anything further, please advise.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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