1980 WL 120671 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
February 13, 1980

***1** John Patrick, Esquire
Assistant Director
S. C. Court Administration
Post Office Box 11788
Columbia, South Carolina 29211

Dear John:
In a letter to this Office you requested an opinion as to the proper procedure to be followed by a magistrate to collect the administrative court cost authorized by Section 34-11-70(2)(b), Code of Laws of South Carolina, 1976, as amended, to be assessed against the party who applied for a criminal warrant in a fraudulent check case when the case is dismissed for want of prosecution. Such subsection specifically provides:
'(a)ny court, including magistrate's, may dismiss a case under the provisions of this chapter for want of prosecution. When any prosecutions are initiated under this chapter, the party applying for the warrant shall be held liable for all reasonable administrative costs accruing not to exceed twenty dollars in the event the case is dismissed for want of prosecution. Unless waived by the court, the party applying for the warrant shall notify, orally or otherwise, the court not less than twenty-four hours prior to the date and time set for trial that full restitution has been made in connection with such warrant and such notification shall relieve that party of the responsibility of prosecution.'

Thus, pursuant to the above provisions, the party who applied for the warrant may be held liable for the administrative court costs unless such party notifies the court not less than twenty-four hours prior to the trial that full restitution has been made.

As to your request for an opinion on the proper procedure to be followed to collect such administrative costs, this Office is unable to suggest a procedure to be used absolutely in all cases. Obviously it would have been advantageous to have such a procedure clearly spelled out in the recently enacted legislation and this may be a matter that should be considered for future action by the Legislature. The enactment of legislation providing that the failure of the individual who applied for the warrant to notify the court in the circumstances described above constitutes contempt and allowing for punitive action by the court would be one means of handling such a situation. It is clear, however, that the present statute defining contempt, Section 22-3-950, Code of Laws of South Carolina, 1976, does not cover the above situation involving a fraudulent check.

Pending any amendment by the Legislature, it is suggested that the court strongly stress to the individual applying for the fraudulent check warrant his obligation to inform the court if restitution is made. If such notice is not provided within twenty-four hours of the time set for trial and the magistrate does not waive the obligation of the individual who applied for the warrant to pay such costs, the court should notify the individual by phone or mail of his obligation and mandate payment. Presumably if the person who applied for the warrant frequently utilizes the magistrate's court, he would be more willing to accept his obligation. While a magistrate is not authorized to refuse to consider any cases that would be brought before him in the future by such an individual, the individual could be clearly reminded of his previous obligation to the court when the individual appears before the magistrate again and wishes to institute a subsequent fraudulent check action.

***2** If the above 'diplomatic' approaches are not successful in insuring payment of such administrative costs and the recalcitrant individual appears before the court on a frequent basis, the magistrate may consider having a Rule to Show Cause issued against the individual requiring him to formally appear before the court as to why such costs should not be assessed against him.

However, admittedly such a hearing would be more form than substance inasmuch as I am unsure of any means of moving against the party to collect such costs if it is determined they are owing. However such a hearing may in itself encourage the voluntary payment of such costs.

In reviewing your request, consideration was given to the idea of the magistrate, when he has failed to obtain notice of restitution having been made of a fraudulent check and especially when such notice is repeatedly not given, compelling the individual to appear in court on the date set for trial. With reference to such, consideration was given to the provisions which authorize a magistrate to compel the attendance of a witness in a matter before him, Sections 22-3-930 and 22-5-560, Code of Laws of South Carolina, 1976. However, it appears that such provisions do not provide an adequate means of handling the individual who institutes a fraudulent check case.

Consideration was also given to bringing a civil action to recover such costs, especially in those instances where the individual requesting the warrant repeatedly refuses to pay the costs properly assessed against him. If such an action was brought, supposedly the State would be the moving party. However, it would appear that there is a question of whether such actions could be brought advantageously in a magistrate's court inasmuch as by Section 22-3-20, Code of Laws of South Carolina, 1976, a magistrate does not have jurisdiction of a civil action in which the State is a party '. . . except an action for a penalty and not exceeding one hundred dollars.' It appears therefore that a civil action to recover such costs would be advisable only in situations where the amounts of outstanding costs are large.

Therefore, there does not appear to be any absolute means of collecting such costs. If any other proposals come to mind in addition to those suggested above, please contact me and I will be happy to discuss such with you. However, it appears that legislative action specifically providing for a means of collecting such cost would be the best solution.
Sincerely,

Charles H. Richardson
Assistant Attorney General

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