

1977 S.C. Op. Att. Gen. 214 (S.C.A.G.), 1977 S.C. Op. Att. Gen. No. 77-280, 1977 WL 24620

Office of the Attorney General

State of South Carolina

Opinion No. 77-280

September 8, 1977

*1 TO: David H. Maring
Chief Judge
The Family Court of the
Fifteenth Judicial Circuit

QUESTION:

Whether the parents of a juvenile charged with a criminal offense are financially responsible for retaining private counsel for their child?

AUTHORITIES:

Rule 44, Rules of Practice for the Family Courts of the State of South Carolina (July 1, 1977).

[In Re Gault](#), 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967).

[In Re Ricky H.](#), 86 Cal. Rptr. 76, 468 P. 2d 204 (1970).

[McBride v. Jacobs](#), 101 App. D.C. 189, 247 F. 2d 595 (1957).

DISCUSSION:

You have requested an opinion from this office concerning whether the parents of a juvenile charged with a criminal offense are financially responsible for retaining private counsel for their child. The Supreme Court of the United States set forth the requirements that must be followed in such juvenile hearings with respect to representation by counsel in [In Re Gault](#), 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967):

‘We conclude that the Due Process Clause of the Fourteenth Amendment requires that in respect of proceedings to determine delinquency which may result in commitment to an institution in which the juvenile’s freedom is curtailed, the child and his parents must be notified of the child’s right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed the represent the child.’ (Emphasis added).

Rule 44 of the Rules of Practice for the Family Courts of the State of South Carolina is in agreement with the conclusion of the Supreme Court in [Gault](#). Rule 44 provides that there shall be served upon the child and his parents or guardians a notice that such child has a right to counsel, and if the parents cannot afford counsel, an attorney will be appointed by the court. Both [Gault](#) and Rule 44 require appointment of counsel for the child only in the circumstance that the parents are unable to afford it. The test of indigency rests not on the child but on the financial capabilities of the parents. For this reason, it is the opinion of this office that if the parents of a juvenile are financially capable of retaining counsel for him, they are responsible to do so. To allow otherwise would remove the right of counsel from those juveniles whose parents have the financial ability to retain it, but refuse to do so, thus making court appointment on grounds of indigency impossible.

In the case of [In Re Ricky H.](#), 86 Cal. Rptr. 76, 468 P 2d 204 (1970), the California Court decided the constitutionality of a reimbursement statute which made financially responsible parents liable to the county for the cost of legal services rendered to a minor. The Court stated that the legislative enactment was merely declarative of the common law obligation that parents must support their minor children. The Court further noted that the juvenile's representation by counsel in a juvenile delinquency proceeding was considered a necessity which was the financial responsibility of the parents. Although it may be asserted that in certain circumstances a parent may waive the minor's right to counsel, such a waiver will not be effective if the court finds a conflict of interest between the parent and child. [McBride v. Jacobs](#), 101 App. D.C. 189, 247 F. 2d 595 (1957).

CONCLUSION:

*2 The parents of a juvenile charged with a criminal offense are financially responsible for retaining private counsel for their child provided that they are financially able to do so and therefore fail to fall within the indigency exception.

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