

1979 WL 43159 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 7, 1979

*1 Henry Summerall, Jr., Esquire
Attorney at Law
100 Park Avenue, S.W.
Aiken, South Carolina 29801

Dear Mr. Summerall:

In a letter to this Office you asked whether the Aiken County Public Defender is obligated to furnish representation to indigent defendants in the Recorder's Court for the City of Aiken.

Pursuant to Rule 1 of the Defendant of Indigents Act:

‘(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.’

Included in Rule 2 are the provisions that:

‘(3) If the accused represents that he is financially unable to employ counsel, . . . (the officer shall) . . . take his application for the appointment of counsel or for the services of the Public Defender where the latter is available in the county.

If application for counsel is made by 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 prompt notification thereof to the accused and counsel so appointed.’

Therefore, 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 reference to the responsibility of members of the Bar to accept appointments to represent indigent defendants, Canon 2 of the Code of Professional Responsibility in EC 2-25 states:

*2 ‘(h)istorically, the need for legal services of those unable to pay reasonable fees has been met in part by lawyers who donated their services or accepted court appointments on behalf of such individuals. The basic responsibility for

providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional work load, should find time to participate in serving the disadvantaged. The rendition of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer . . .’

In sum, it appears that members of the Aiken County Bar are obligated pursuant to the Code of Professional Ethics to accept appointment to represent indigent persons in municipal court in the circumstances as above described. Of course, inasmuch as the Public Defender and his staff are members of the Bar they would likewise be obligated to perform this service.

Hopefully this has been responsive to your inquiry. If there is anything further do not hesitate to contact me.
Sincerely,

Charles H. Richardson
Assistant Attorney General

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