

1978 WL 34921 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 19, 1978

*1 Joseph M. McCullough, Jr.
Staff Attorney
South Carolina Court Administration
South Carolina Supreme Court
P. O. Box 11330
Columbia, SC 29211

Dear Joe:

You have requested an Opinion from this Office concerning two questions related to the Death Penalty Act (Section 16-3-20, et seq., of the South Carolina Code).

1. Should the language of part (B) of Section 16-3-26 which states that the county 'shall pay to appointed counsel such fee and costs, not to exceed fifteen hundred dollars, as the court shall deem appropriate' be construed as an aggregated maximum for the two attorneys appointed under part (A) of Section 16-3-26 or as an individual maximum for each such attorney?

2. Is it appropriate that appointed counsel fees for appellate work and the costs of transcript automatically provided by the Supreme Court be paid from the funds provided in the Defense of Indigents Act?

This Office has examined both the Defense of Indigents Act (Section 17-3-10 et. seq.) and the Rules of Court for the Defense of Indigents Act in order to determine the intent of the Death Penalty Act. This examination is appropriate for an indigent defendant entitled to counsel (Section 17-3-10) or charged with murder (Section 17-3-20) qualifies for the benefits of the Defense of Indigents Act. As indigent defendant charged with murder and the death penalty is also entitled to the more stringent protections of Section 16-3-26. By paralleling the provisions of the two Acts, and applying the Rules, the intent of the Death Penalty Act is construed clearly.

1. In determining whether the fifteen hundred dollars maximum of Section 16-3-26 is aggregate or individual, it is necessary to examine Section 17-3-50 of the Defense of Indigents Act and Rule 8 of the Defense of Indigents Act. Section 17-3-50 reads in part:

When private counsel is appointed . . . he shall be paid a reasonable fee . . . In no event, however, shall such fee exceed . . . seven hundred and fifty dollars in a capital case through final judgment on trial.

Rule 8 of the Defense of Indigents Act reads:

Where more than one private counsel are appointed to represent a person, the combined fee paid to such counsel shall not exceed the maximum provided under the statute. (emphasis added).

Because both Section 17-3-50 and Rule 8 apply to the defense of indigents it is logical to apply these clear limitations to the less clear maximum in Section 16-3-26 which also deals with the defense of indigents. The application leads to the conclusion that the legislative intent was for the 'combined fee' not to exceed fifteen hundred dollars—"the maximum

provided under the statute.’ This interpretation is persuasive since Section 16-3-26 allows the appointment of only two attorneys, each attorney would receive no more than seven hundred and fifty dollars.

This is also the individual maximum in a capital case under Section 17-3-50. It is therefore the Opinion of this Office that the fifteen hundred dollar maximum of Section 16-3-26 is an aggregate maximum for the two appointed attorneys.

*2 2. In posing your question as to whether appellate fees for the Death Penalty Act's provision for mandatory review by the Supreme Court were payable under the Defense of Indigents Act, you indicated an opinion of Section 16-3-26 provisions for counsel fees did not extend to the appellate level. This Office cannot agree with this Opinion. As noted The Death Penalty Act provides for automatic Supreme Court review and therefore it may be concluded that such mandatory appeal is the responsibility of attorneys appointed under the auspices of the Act. This interpretation is supported by Rule 5 of the Defense of Indigents Act which provides:

When counsel has been assigned . . . such assignment shall continue until final judgment, including any proceedings on direct appeal.

Rule 5 indicates that when an indigent has been charged with capital or noncapital offense penalty, his appointed attorney is responsible for the case until final judgment—including appeals. It would be unjust to hold counsel to a lesser degree of duty which his indigent client is charged with murder and the death penalty. It is therefore the Opinion of this Office that appointed counsel is not entitled to appellate fees from the Defense of Indigent funds. The fifteen hundred dollar maximum designated in Section 16-3-26 of the Death Penalty Act is payment to appointed counsel for an assignment which continues until final judgment and includes appeals.

Sincerely,

A. Camden Lewis
Sr. Assistant Attorney General

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