

1978 WL 34999 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 26, 1978

**\*1 RE: Court Subpoena as expert witness in state criminal courts**

R. Ramsey Mellette, Jr., M.D.  
Medical University of South Carolina  
171 Ashley Avenue  
Charleston, S. C. 29403

Dear Dr. Mellette:

Please forgive my delay in responding to your letter of June 9, 1978. Unfortunately my response will be of minimal help to you.

[Section 19-9-40 of the South Carolina Code](#) of Laws (1976) states that '(n)o per diem shall be paid to any such witness who is in receipt of a salary or per diem compensation from the State . . .' However, Section 19-19-210 provides that physicians testifying on behalf of the defense in felony prosecutions may receive Five (\$5.00) Dollars per day if his testimony is material. Section 19-19-220 adds that doctors from the State Hospital shall receive Five (\$5.00) Dollars per day for their testimony. So, the scheme of the Code seems to provide for a minimal fee for doctors when called as experts to give material evidence. However, I doubt that this is of much help in compensating for your lost fees.

The problem you have encountered is one inherent in the criminal law process. For the most part, the prosecutor has control of the criminal docket. So many variables are involved in bringing a criminal action to trial, that no prosecutor can predict with complete accuracy the precise time a case will be tried or a witness called to testify. Of course, a defense attorney must rely upon the prosecutor for this information. To insure that witnesses are available, an attorney must necessarily subpoena his for the earliest possible moment the case will be called. It sounds as if this happened in your case. Of course, sometimes a case may be set for a date certain and then the subpoena can be more accurate. This can only rarely be done.

I am not sure that this is completely responsive to your question. If I can help you further don't hesitate to contact me.  
Sincerely,

Scott Elliott  
Staff Attorney

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