

1973 WL 27000 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 12, 1973

*1 The Honorable Joseph R. Moss
Chief Justice
Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Dear Mr. Chief Justice:

You have previously forwarded to me a proposed amendment to Rule 6 of the Rules of the Supreme Court promulgated pursuant to the provisions in the Defense of Indigents Act, Section 17-290, Code of Laws of South Carolina, 1962, 1971 Cum. Supp.

The proposed amendment, it would appear, requires that the treasurer pay private appointed counsel under the circumstances outlined in that amendment. Under the Defense of Indigents Act, each county in the State is allocated a certain proportionate amount depending on population. In those counties where a Defender Corporation has been established, the entire amount due that county is paid to the Defender Corporation. The funds for that particular county are, therefore, exhausted. Under the General Appropriations Act enacted in 1973, Act No. 354, Acts and Joint Resolutions of the General Assembly of the State of South Carolina 1973, there is a proviso in the appropriation for the State Treasurer's Office that it is the intent of the General Assembly that any expense incurred in any county for the defense of indigents in excess of the county's share be borne by that county. It would, therefore, seem that if some of the counties in the State do not exhaust the funds appropriated for them each year, this provision would prevent the use of those funds to pay private appointed counsel in counties where there is a Defender Corporation.

The only other fund is that fund created by Section 17-287 of the Defense of Indigents Act. That statute provides in part as follows:

This fund shall be used to reimburse private appointed counsel, public defenders and assistant public defenders for necessary expenses actually incurred in the representation of persons pursuant to this chapter.

In view of this language, it is my opinion that this statute could not be construed to reimburse private appointed counsel for his fee. The statute could be amended by the legislature to cover this situation by inserting after the word chapter the phrase 'or as may be authorized by the Supreme Court under its Rules'.

It, therefore, follows that there are no State funds out of which private appointed counsel could be paid in a county where a Defender Corporation is established. It would seem that such funding should be provided by the General Assembly. However, until this is done, I would recommend that the proposed rule be further amended by adding the phrase at the end 'as such funds are made available by the General Assembly.'

As you are probably aware, we have had a considerable number of problems arising where a criminal defendant is represented by private retained counsel at his trial and is either not paid for his services or if paid for his services at trial is indigent at the conclusion of trial and is without funds to retain counsel on appeal. This seems to present a greater problem in those counties where a Defender Corporation is established. In my opinion, there should be some clear statement or rule promulgated by the court establishing who is responsible for pursuing the appeal in these situations. If private counsel undertakes to represent a defendant at trial and the court is of the opinion that he should pursue any appeal taken, irrespective of whether he is paid, then

I believe that such should be set forth in a rule by the court, making it clear that this will be his responsibility unless relieved for good cause shown by either the circuit court or this court. It is further my opinion that a time limit should be put on any attempt by such counsel to seek relief.

*2 In other words, if it is his responsibility, then it should be made clear that he must file Notice of Intention to Appeal within the time prescribed and move before the court to seek relief within a prescribed time thereafter or pursue the appeal. Until funds are made available for his payment by the General Assembly, it should be made clear that this is part of his professional responsibility.

If there are any questions with regard to this matter, please let me know.

With kindest personal regards,

Yours very truly,

Emmet H. Clair

Assistant Attorney General

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