

March 12, 2007

The Honorable Mike Fair
Senator, District No. 6
P. O. Box 142
Columbia, South Carolina 29202

Dear Senator Fair:

In a letter to this office you questioned whether notice should be provided to attorneys representing crime victims of judicial proceedings involving their clients. It has been proposed that where a formal notice of appearance has been filed by a victim's attorney with a clerk of court, the victim's attorney should, contemporaneously with the prosecution and the defense, be provided written notice from the clerk of court's office of all court hearings pertaining to the case in which the victim is involved. Of course, as to notice by a clerk of court of the court of general sessions and common pleas as to cases in a magistrate's or municipal court, the clerk of court would have no responsibility. Instead, it must be considered whether personnel in a magistrate's or municipal court should provide such notice.

Based upon my review, there are no absolute provisions requiring such notice by a clerk of court or the magistrate's or municipal court. However, certain provisions support providing notice of judicial proceedings to attorneys representing crime victims.

Article I, Section 24 of the State Constitution provides for a victims' bill of rights stating that

(A) [t]o preserve and protect victims' rights to justice and due process regardless of race, sex, age, religion, or economic status, victims of crime have the right to:

(1) be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal and juvenile justice process, and informed of the victim's constitutional rights provided by statute;

(2) be reasonably informed when the accused or convicted person is arrested, released from custody, or has escaped;

(3) be informed of and present at any criminal proceedings which are dispositive of the charges where the defendant has the right to be present;

- (4) be reasonably informed of and be allowed to submit either a written or oral statement at all hearings affecting bond or bail;
- (5) be heard at any proceeding involving a post-arrest release decision, a plea, or sentencing;
- (6) be reasonably protected from the accused or persons acting on his behalf throughout the criminal justice process;
- (7) confer with the prosecution, after the crime against the victim has been charged, before the trial or before any disposition and informed of the disposition;
- (8) have reasonable access after the conclusion of the criminal investigation to all documents relating to the crime against the victim before trial;
- (9) receive prompt and full restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury, including both adult and juvenile offenders;
- (10) be informed of any proceeding when any post-conviction action is being considered, and be present at any post-conviction hearing involving a post-conviction release decision;
- (11) a reasonable disposition and prompt and final conclusion of the case;
- (12) have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and have these rules subject to amendment or repeal by the legislature to ensure protection of these rights. (emphasis added).

As recognized by the State Supreme Court in its decision in Ex parte Littlefield v. Williams, 343 S.C. 212, 218, 540 S.E.2d 81, 84 (2000), “[t]he Victims’ Bill of Rights also establishes a system through which victims can request services and notification of proceedings held during the criminal prosecution.” Therefore, it is clear that, pursuant to the State Constitution, victims have the right to be informed of matters affecting their interests.

S.C. Code Ann. §§ 16-3-1505 et seq. set forth statutory provisions recognizing victims’ rights.¹ Section 16-3-1505 provides the legislative intent for such provisions stating that

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The term “victim” is defined by Section 16-3-1510(1) as “...any individual who suffers direct or threatened physical, psychological, or financial harm as the result of the commission or attempted commission of a criminal offense, as defined in this section. "Victim" also includes any individual's spouse, parent, child, or the lawful representative of a victim who is: (a) deceased; (b) a minor; (c) (continued...)

[i]n recognition of the civic and moral duty of victims of and witnesses to a crime to cooperate fully and voluntarily with law enforcement and prosecution agencies, and in further recognition of the continuing importance of this citizen cooperation to state and local law enforcement efforts and to the general effectiveness and the well-being of the criminal and juvenile justice systems of this State, and to implement the rights guaranteed to victims in the Constitution of this State, the General Assembly declares its intent, in this article, to ensure that all victims of and witnesses to a crime are treated with dignity, respect, courtesy, and sensitivity; that the rights and services extended in this article to victims of and witnesses to a crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants; and that the State has a responsibility to provide support to a network of services for victims of a crime, including victims of domestic violence and criminal sexual assault. (emphasis added).

As stated victims' rights are to be protected "in a manner no less vigorous than the protections afforded criminal defendants." As to criminal defendants, notification of a defendant's attorney regarding criminal matters is expressly recognized in certain contexts. See, e.g., Rule 5, SCRPC; City of Aiken v. Koontz, 368 S.C. 542, 629 S.E.2d 686 (Ct.App. 2006).

As to representation by an attorney of a victim, as to summary courts, Section 16-3-1535 states that

- (A) [t]he summary court, upon retaining jurisdiction of an offense involving one or more victims, reasonably must attempt to notify each victim of his right to:
- (1) be present and participate in all hearings;
 - (2) be represented by counsel;... (emphasis added).

Also, pursuant to Section 16-3-1545(D), "[t]he prosecuting agency must inform each victim of his right to legal counsel and of any available civil remedies." (emphasis added). Therefore, these statutes clearly recognize the right of victims to be represented by attorneys.

Several statutes expressly refer to required notification of victims of various proceedings. For instance, Section 16-3-1525 provides that

¹(...continued)

incompetent; or (d) physically or psychologically incapacitated. "Victim" does not include any individual who is the subject of an investigation for, who is charged with, or who has been convicted of or pled guilty or nolo contendere to the offense in question. "Victim" also does not include any individual, including a spouse, parent, child, or lawful representative, who is acting on behalf of the suspect, juvenile offender, or defendant unless his actions are required by law. "Victim" also does not include any individual who was imprisoned or engaged in an illegal act at the time of the offense.

(A) A law enforcement agency, upon effecting the arrest or detention of a person accused of committing an offense involving one or more victims, must make a reasonable attempt to notify each victim of the arrest or detention and of the appropriate bond or other pretrial release hearing or procedure...

(H) [i]n cases in which a defendant has bond set by a summary court judge:

(1) the arresting agency of the defendant reasonably must attempt to notify each victim of each case for which bond is being determined of his right to attend the bond hearing and make recommendations to the presiding judge. This notification must be made sufficiently in advance to allow the victim to exercise his rights contained in this article.

(2) the summary court judge, before proceeding with a bond hearing in a case involving a victim, must ask the representative of the facility having custody of the defendant to verify that a reasonable attempt was made to notify the victim sufficiently in advance to attend the proceeding...

(I) In cases in which a defendant has a bond proceeding before a circuit court judge:

(1) the prosecuting agency reasonably must attempt to notify each victim of each case for which bond is being determined of his right to attend the bond hearing and make recommendations to the presiding judge. This notification must be made sufficiently in advance to allow the victim to exercise his rights contained in this article.

(2) the circuit court judge, before proceeding with a bond hearing in a case involving a victim, must ask the representative of the prosecuting agency to verify that a reasonable attempt was made to notify the victim sufficiently in advance to attend. If notice was not given in a timely manner, the hearing must be delayed for a reasonable time to allow notice;...

(J) In cases in which a juvenile has a detention hearing before a family court judge:

(1) the prosecuting agency reasonably must attempt to notify each victim of each case for which the juvenile is appearing before the court of his right to attend the detention hearing and make recommendations to the presiding judge. This notification must be made sufficiently in advance to allow the victim to exercise his rights pertaining to the detention hearing.

(2) the family court judge, before proceeding with a detention hearing in a case involving a victim, must ask the prosecuting agency to verify that a reasonable attempt was made to notify the victim sufficiently in advance to attend....

Subsection (K) states that “[u]pon scheduling a preliminary hearing in a case involving a victim, the summary court judge reasonably must attempt to notify each victim of each case for which the defendant has a hearing of his right to attend.”

As to summary courts, Section 16-3-1535 states that

(D) [t]he summary court judge reasonably must attempt to notify each victim related to the case of each hearing, trial, or other proceeding...

(F) The summary court judge must recognize and protect the rights of victims and witnesses as diligently as those of the defendant.

Subsection (G) of Section 16-3-1545 states that

[t]he prosecuting agency, upon request, must make a reasonable attempt to keep each victim informed of the status and progress of a case, with the exception of preliminary hearings, from the time a juvenile case is referred to, or a general sessions charge is received by, the prosecuting agency for disposition of the case in general sessions or family court.

Subsection (I) states that “[t]he prosecuting agency reasonably must attempt to notify each victim of each hearing, trial, or other proceeding....” Therefore, it is clear that the right of victims to be notified of various court proceedings is statutorily protected.

Section 16-3-1550(D) states that

[t]he circuit or family court judge must recognize and protect the rights of victims and witnesses as diligently as those of the defendant. A circuit or family court judge, before proceeding with a trial, plea, sentencing, or other dispositive hearing in a case involving a victim, must ask the prosecuting agency to verify that a reasonable attempt was made to notify the victim sufficiently in advance to attend. If notice was not given in a timely manner, the hearing must be delayed for a reasonable time to allow notice.

Such is consistent with the requirement previously spelled out in the legislative intent as set forth in Section 16-3-1505 that the rights of victims are to be “...protected by law enforcement agencies, prosecutors and judges in a manner no less vigorous than the protections afforded criminal defendants.” See also: Section 16-3-1535(F) (“The summary court judge must recognize and protect the rights of victims and witnesses as diligently as those of the defendant.”).

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Generally, when interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991); Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

As set forth, statutory requirements regarding notification of victims of various court proceedings are specifically provided. Also, as referenced, there is the legislative intent that victims' rights are to be protected the same as criminal defendants. Additionally, the State Constitution specifically provides that victims are to be informed of criminal proceedings. As a result, in the opinion of this office, the better course would be that where a formal notice of appearance has been filed by a victim's attorney with either the clerk of court or a magistrate's or municipal court, that victim's attorney should be provided written notice contemporaneously with the prosecution and the defense of all court hearings pertaining to the case in which the victim is involved. Also, inasmuch as specific statutory duties are imposed on law enforcement agencies and prosecuting agencies with regard to notification of victims of various aspects of the criminal procedure affecting their situations, if an attorney files notice with these agencies, attempts should be made by these agencies to provide notice to the attorney as well as the victim where statutorily required.

If there are any questions, please advise.

Sincerely,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
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