



HENRY McMASTER
ATTORNEY GENERAL

October 9, 2009

Rosalyn W. Frierson, Director
South Carolina Court Administration
1015 Sumter Street, Suite 200
Columbia, South Carolina 29201

Dear Ms. Frierson:

In a letter to this office you referenced provisions of Act No. 271 of 2008 which deal with certification and educational requirements for "victim service providers". You have questioned whether summary court judges and their staff, who are required by law to notify victims of hearings, would be required to be certified as "victim service providers."

S.C. Code Ann. § 16-3-1400 states that

[f]or the purpose of this article:

(1) "victim service provider" means a person:

(a) who is employed by a local government or state agency and whose job duties involve providing victim assistance as mandated by South Carolina law; or

(b) whose job duties involve providing direct services to victims and who is employed by an organization that is incorporated in South Carolina, holds a certificate of authority in South Carolina, or is registered as a charitable organization in South Carolina, and the organization's mission is victim assistance or advocacy and the organization is privately funded or receives funds from federal, state, or local governments to provide services to victims;.... (emphasis added).

Pursuant to S.C. Code Ann. § 16-3-1620(D),

[p]ublic victim assistance programs shall ensure that all victim service providers employed in their respective offices are certified through the Office of Victim Services Education and Certification within the Office of the Crime Victims' Ombudsman.

(1) Private, nonprofit programs shall ensure that all victim service providers in these nonprofit programs are certified by a Victim Services Coordinating Council approved certification program. Victim Services Coordinating Council approval must include review of the program to ensure that requirements are commensurate with the certification requirements for public victim assistance service providers.

(2) Victim service providers, serving in public or private nonprofit programs, employed on the effective date of this chapter are exempt from basic certification requirements but shall meet annual continuing education requirements to maintain certification. Victim service providers, serving in public or private nonprofit programs, employed after the effective date of this chapter are required to complete the basic certification requirements within one year from the date of employment and to meet annual continuing education requirements to maintain certification throughout their employment.

(3) The mandatory minimum certification requirements, as promulgated by the Crime Victims' Ombudsman, may not exceed fifteen hours, and the mandatory minimum requirements for continuing advocacy education, as promulgated by the Crime Victims' Ombudsman, may not exceed twelve hours.

(4) Nothing in this section shall prevent an entity from requiring or an individual from seeking additional certification credits beyond the basic required hours. (emphasis added).

You acknowledged that summary courts are required by law to perform specific tasks relating to victim's rights. See: S.C. Code Ann. § 16-3-1535. You stated that

...their primary duty is to notify victims of hearings. In many small jurisdictions, the responsibility falls personally on the judge to complete these tasks, which are ministerial in nature.

The judges and their staff do not serve as "advocates" for victims. The Canons of Judicial Conduct require, among other things, that the judge shall uphold the integrity

and independence of the judiciary, avoid any appearance of impropriety, and perform the duties of their office impartially. Requiring that the judge and/or their staff become certified and act as “victim service providers” could certainly lead to questions concerning the impartiality of the court.

Additionally, there is the matter of annual training for anyone who is considered a “victim service provider.” If the individual was hired as of January 1, 2009, then 12 hours is required annually. For anyone hired subsequently, the initial training year requirement is 15 hours, and then 12 hours annually thereafter. To require judges and their staff to attend this training would pull them away from the business of the court, where many of them are already part-time. Additionally, the judges currently are required to obtain continuing legal education in the following amounts: (1) Magistrates - 18 annual hours; and (2) Municipals - 12 annual hours.

Training on the laws relating to victims’ rights is routinely included in our Orientation School for new magistrate and municipal court judges. Additionally, state law currently mandates that all summary court judges receive annual training in the area of domestic violence, an area of the law which is permeated by victim issues. Both Court Administration and the SC Summary Court Judges Association provide several other training opportunities throughout the year which often address the laws relating to victims’ rights as they pertain to the summary courts. These laws are frequently covered in the Intensive Training for Magistrate and Municipal Judges, the SC Summary Court Judges Association Staff and Judges Conference (which is attended by many clerks), SC Summary Court Judges Association Annual Convention, and the SC Magistrate Court Judges Mandatory School.

Referencing such, you have asked

...whether magistrate and municipal court judges, as well as their staff, are considered “victim service providers” pursuant to Section 16-3-400, and subject to the annual training requirements. If the opinion of your office is that they do qualify as “victim service providers”, would all employees who may be required to notify victims of hearings be required to receive this training, or only employees whose job description is limited to providing such services?

For purposes of your questions, it must first be determined whether a magistrate or municipal court judge or a member of the staff of such courts are employees of “a local government” for purposes of Section 16-3-1400(1). As to specific statutes, S.C. Code Ann. § 22-8-40 (H) provides that “[m]agistrates in a county are entitled to the same perquisites as those employees of the county of similar position and salary.” S.C. Code Ann. § 22-8-30 provides that

(A) [e]ach county shall provide sufficient facilities and personnel for the necessary and proper operation of the magistrates' courts in that county.

(B) Other personnel determined to be necessary by the county for magistrates in a county must be provided by the governing body of the county and must be county employees and be paid by the county. (emphasis added).

An opinion of this office dated December 14, 1999, noting such provision, referenced an earlier opinion dated October 12, 1990 which indicated that

...it appears that a primary focus of...(Section 22-8-30)...was to make the responsibility for staffing a magistrate's office a county as opposed to a State responsibility...(Therefore, it was concluded that)...it is within the county's discretion as to the placement of personnel in a magistrate's office and what type employees are sufficient.

Also, as to Section 22-8-30, an opinion of this office dated August 8, 1991 stated that

...counties are to provide personnel necessary for the proper operation of a magistrates court, that these employees are to be county employees and that these employees must be paid by the county...[W]hile employees of a magistrate's office are considered "county employees" and are paid by the county, any decision regarding the actual hiring and discharge of these employees is a decision of an individual magistrate pursuant to Section 4-9-30(7).

S.C. Code Ann. § 22-1-160 states that

[n]o person shall be employed by a magistrate when the duties of his employment consist of financial responsibilities, including receiving and having custody of moneys collected in behalf of the magistrate, until he shall have entered into and filed, in the office of the clerk of court of the county in which the person is employed, bond to the State in a sum of like amount as and if required of the magistrate by § 22-1-150. The bond shall be conditioned for the faithful performance and discharge of the duties of the employee, with surety to be approved by the governing body of the county.... (emphasis added).

The State Supreme Court in its decision in the case of In the Matter of Harrelson, 376 S.C. 488, 489, 657 S.E.2d 754 (2008) referred to the respondent as having been "...employed as a magistrate in Horry County...." A prior opinion of this office dated October 18, 2001 stated that "[a]s a general matter, magistrates are considered county employees...." See also: Ops. Atty. Gen. dated July 19, 2001; June 22, 1993; January 7, 1964. An opinion of this office dated June 22, 1993

dealt with the question of whether a magistrate should be considered a state employee or a county employee. The opinion stated that

[v]arious State statutes comment on a county's responsibilities regarding magistrates. Pursuant to S.C. Code Section 22-8-30 counties are to provide "sufficient facilities and personnel for the necessary and proper operation of the magistrates' courts." S.C. Code Section 22-8-40 provides that counties are to designate magistrates as full-time or part-time. S.C. Code Section 22-1-10 states that counties are to designate the number of full-time and part-time magisterial positions and the compensation and work location of each magistrate in that county. Magistrates are paid by the counties pursuant to S.C. Code Section 22-8-40. Also, such provision further states that magistrates "are entitled to the same perquisites as those employees of the county of similar position and salary." Any redress of grievances by a magistrate regarding classification or compensation must be addressed to the county governing body. See: S.C. Code Section 22-8-50. Referencing the above, while I am unaware of any statute precisely stating that magistrates are county employees, the various statutes outlined above provide strong indication that magistrates should probably be considered county employees.

As to municipal courts, S.C. Code Ann. § 14-25-5 states that "[t]he council of each municipality in this State may, by ordinance, establish a municipal court, which shall be a part of the unified judicial system of this State, for the trial and determination of all cases within its jurisdiction. The ordinance shall provide for the appointment of one or more full-time or part-time judges and the appointment of a clerk." S.C. Code Ann. § 14-25-25 states that "[a] municipal judge shall not be required to be a resident of the municipality by whom he is employed. A municipality may contract with any other municipality in the county or with the county governing body to employ the municipal judge of the other municipality or a magistrate to preside over its court." (emphasis added). S.C. Code Ann. § 14-25-35 states that "[t]he municipal clerk or other municipal employee may be appointed to serve as clerk of the court.

An opinion dated August 27, 1996 dealt with the question of what comprises non-judicial support personnel for the court and who employs them. The opinion stated that

...non-judicial support personnel would include all those persons who are not judges...and who assist the court through support functions. In this regard, typically, one would be speaking of secretaries, process-servers, clerks, bailiffs, court administrator, stenographers, administrative personnel and other support staff. If these individuals are employed by the City and there is no specific statute authorizing their appointment or employment by Council or the Court itself...it would be my opinion...that such individuals would be employed by the city manager pursuant to Section 5-13-90.

As to whether these recognized employees of a local government have job duties involving providing victim assistance as mandated by State law, Section 16-3-1535 referenced previously provides 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;
- (3) pursue civil remedies; and
- (4) submit an oral or written victim impact statement, or both, for consideration by the summary court judge at the disposition proceeding.

(B) The summary court must provide to each victim who wishes to make a written victim impact statement a form that solicits pertinent information regarding the offense, including:

- (1) the victim's personal information and supplementary contact information;
- (2) an itemized list of the victim's economic loss and recovery from any insurance policy or any other source;
- (3) details of physical or psychological injuries, or both, including their seriousness and permanence;
- (4) identification of psychological services requested or obtained by the victim;
- (5) a description of any changes in the victim's personal welfare or family relationships; and
- (6) any other information the victim believes to be important and pertinent.

(C) The summary court judge must inform a victim of the applicable procedures and practices of the court.

(D) The 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.

(G) In cases in which the sentence is more than ninety days, the summary court judge must forward, as appropriate and within fifteen days, a copy of each victim's impact

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statement or the name, mailing address, and telephone number of each victim, or both, to the Department of Corrections, the Department of Probation, Parole and Pardon Services, or the Board of Juvenile Parole, the Department of Juvenile Justice, and a diversion program. The names, addresses, and telephone numbers of victims and prosecution witnesses contained in the records of the Department of Corrections, the Department of Probation, Parole and Pardon Services, the Board of Juvenile Parole, and the Department of Juvenile Justice are confidential and must not be disclosed directly or indirectly, except by order of a court of competent jurisdiction or as necessary to provide notifications, or services, or both, between these agencies, these agencies and the prosecuting agency, or these agencies and the Attorney General. (emphasis added).

Therefore, there are clearly delineated responsibilities regarding victim services mandated to the summary courts and their judges.

Consistent with the above, in the opinion of this office, magistrates and municipal court judges and their staff should be considered to be "employed by a local government" for purposes of Section 16-3-1400 and as such, would be "victim service providers" inasmuch as pursuant to Section 16-3-1535, they provide statutorily required victim assistance. To the extent a magistrate or municipal court judge and his or her staff carry out duties associated with victims, such as those prescribed by Section 16-5-1535, in the opinion of this office, they must undergo the training and certification required by Section 16-3-1620(D).

If there are any questions, please advise.

Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
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