

1976 S.C. Op. Atty. Gen. 396 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4532, 1976 WL 23149

Office of the Attorney General

State of South Carolina

Opinion No. 4532

November 26, 1976

*1 Attorneys employed in the clinical programs at the Law School are private appointed counsel insofar as the Defense of Indigents Act is concerned and are not excused from compliance with the statute and Supreme Court Rules in seeking reimbursement for necessary expenses.

TO: Harry J. Haynsworth, Esquire
Acting Dean
School of Law
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QUESTION PRESENTED:

Must attorneys employed by the clinical programs at the Law School request reimbursement for necessary expenses under the Defense of Indigents Act in the same manner as public defenders and private appointed counsel, or are they excepted from the application of the statutory provisions and rules of court?

STATUTES, CASES, ETC., INVOLVES:

Act No. 309, Acts and Joint Resolutions of the General Assembly of the State of South Carolina, 1969, at page 374

Supreme Court Rule promulgated pursuant to the Defense of Indigents Act, South Carolina Code of Laws (1962) (Cum. Supp.), page 81 et seq.

7 C.J.S. Attorney and Client § 172, page 1034

DISCUSSION OF THE ISSUE:

The clinical programs have been in effect at the Law School since 1968. Through this program legal services are provided to indigents including indigent inmates at the Department of Corrections. Pursuant to Section 7 and Section 8 of Act No 309, Acts and Joint Resolutions of the General Assembly of the State of South Carolina, 1969, at page 374, funds are available for reimbursing public defenders and private appointed counsel for the cost of reproducing transcripts and briefs in appeals to the State Supreme Court for indigents. * These sections provide that either a public defender or an appointed attorney must submit a voucher to the Clerk of Court which is thereafter forwarded to the judge, and, if approved, to the State Treasurer for payment. Section 8 of the Act states:

Private, appointed counsel shall submit a voucher to the clerk of court of the county of appointment setting forth all details of the appointment for purposes of remuneration under Section 4 . . .

The form of the order of appointment required by the statute is set forth in the South Carolina Code of Laws [Rules promulgated pursuant to the Defense of Indigents Act, Volume 15, 1975, Cum. Supp., at page 85 (form number 4)]. Since public defenders are provided remuneration through the local defender corporation there is no requirement that they provide proof of appointment to the Clerk of Court and through the Clerk to the other designated public officials.

As I understand it you make no claim that the clinical programs are public defender corporations pursuant to Section 5 of the Act and, of course, correctly so. You seek to have the clinical programs excused from obtaining orders of appointment before being qualified to seek reimbursement pursuant to Sections 7 and 8 of the Act. It is generally held that where statutes have been passed providing for compensation to attorneys appointed by the Court to defend indigent persons accused of crime, that the right to be compensated pursuant to the statutes depends on the validity of the appointment.

*2 While an attorney showing that the statute has been complied with is entitled to recover for his services, unless the statute is substantially complied with, no such allowance is permissible. 7 C.J.S. Attorney and Client § 172, page 1034.

Although a full written and executed Order of Appointment duly filed might not be a necessary prerequisite to authorize an attorney privately or an attorney in the clinical program to discuss a case with an indigent inmate or defendant, in the opinion of this Office, the Order of Appointment would be necessary in order to qualify that attorney to receive remuneration from public funds. Attorneys employed as public defenders or assistant public defenders by the nature of their office can only represent indigent defendants; and are by statute, which provides for the creation of a public defender corporation, authorized to provide these services. There is no more reason to excuse attorneys employed in the clinical programs at the law school from compliance with the statute and rules than it is for private appointed counsel. Indeed, the burden on private appointed counsel is actually greater. There is, in fact, an even more practical reason for requiring the clinical programs to comply with the statute. Often times the clinic attorneys will initiate a proceeding and at some point thereafter the circuit judge declines to appoint the clinic but instead chooses to appoint a member of the local bar. Although these questions are invariably resolved without any significant problem, there still exists the possibility that questions could be raised and difficulties encountered in determining who is the appropriate party to be compensated.

Although the clinics are not retained by the indigent client in the sense that they are not paid by the client for their services, they are still private counsel. The public defenders have no choice as to who they will represent. It is my understanding that the clinical programs choose their clients and do not represent any indigent who seeks their services. The basis for the clinic attorney's status is found in the charter of the clinic and not in the statutes of this State. It is my understanding that in the very near future pursuant to rule promulgated by the State Supreme Court the State Treasurer will cease reimbursing attorneys or court stenographers for an original transcript of the trial in a direct appeal. ** This again is another reason why an order of appointment should be obtained. In order to obtain the transcript from the court reporter, who is obliged by statute to provide it free in an indigent's appeal, an order will have to be obtained from the trial court. A finding of indigency will necessarily have to be made, and all of this, which includes the obtaining of the transcript and the right to free counsel, must be based on an order of the trial court. In sum, we simply do not believe there is any basis in the law to make a distinction between attorneys employed by the clinical programs and attorneys in private practice insofar as the Defense of Indigents Act is concerned.

CONCLUSION:

*3 The Defense of Indigents Act provides no exceptions for attorneys employed by clinical programs at the Law School which would excuse them from complying with the terms of the Act and Rules of Court. The only persons who may be compensated pursuant to the Act are private appointed counsel and public defenders. Since there is no question that clinical attorneys are not public defenders, they are therefore private appointed counsel; and they must obtain an order of appointment before seeking compensation pursuant to the Act

Emmet H. Clair

Assistant Attorney General

Footnotes

- * Note 1. See: Rule 7, Rules of Supreme Court, Defense of Indigents Act, dated November 12, 1976, and effective December 15, 1976.
- ** See: Note 1, supra.
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