

## Indigent Defendant's Right To Counsel

### U.S. Constitution 6<sup>th</sup> Amendment, 14<sup>th</sup> Amendment

The Sixth and Fourteenth Amendments to the United States Constitution compel states to provide counsel to indigent criminal defendants.

#### Cases

- 1) **Gideon v. Wainwright** 372 U.S. 335, 83 sup ct 792 1963 (felony charge)

Indigent criminal defendants cannot be tried and convicted unless they are provided with defense counsel. If Defendant can't afford an attorney court must appoint one.

- 2) **State v. Cowart** 251 S. C. 360, 162 S. e. 2d 535 1968

The rule announced in Gideon case is applicable to S.C. via 14<sup>th</sup> Amendment.

- 3) **Argersinger v. Hamlin** 407 U.S. 25, 92 S. Ct. 2006 (1972 Case)

“Actual Imprisonment” Established that a defendant was entitled to the constitutional right to counsel when the defendant received a sentence “that ends up in the actual deprivation of a person's liberty”.

- 4) **Scott v. Illinois**. 440 U.S. 367, 99 S. Ct. 1158 (1979)

Defendant was convicted of theft and fined \$50 after a bench trial in the Circuit Court, Cook County.

Petitioner, an indigent, was convicted of shoplifting and was fined \$50 after a bench trial in an Illinois state court. The applicable Illinois statute set the maximum penalty for such an offense at a \$500 fine, one year in jail, or both. Petitioner's conviction was ultimately affirmed by the Illinois Supreme Court, over the petitioner's contention that a line of cases culminating in **Argersinger v. Hamlin**, requires state provision of counsel whenever imprisonment is an authorized penalty. **Held:** The Sixth and Fourteenth Amendments require that no indigent criminal defendant be sentenced to a term of imprisonment unless the State has afforded him the right to assistance of appointed counsel in his defense, but do not require a state trial court to appoint counsel for a criminal defendant, such as petitioner, who is charged with a statutory offense for which imprisonment upon conviction is authorized but not imposed.

Although the intentions of the *Argersinger* Court are not unmistakably clear from its opinion, we conclude today that *Argersinger* did indeed delimit the constitutional right to appointed counsel in state criminal proceedings. Even were the matter *res nova*, we believe that the central premise of *Argersinger*—that actual imprisonment is a penalty different in kind from fines or the mere threat of imprisonment—is eminently sound and warrants adoption of actual imprisonment as the line defining the constitutional right to appointment of counsel. *Argersinger*

has proved reasonably workable, whereas any extension would create confusion and impose unpredictable, but necessarily substantial, costs on 50 quite diverse States. We therefore hold that the **Sixth and Fourteenth Amendments to the United States Constitution require only that no indigent criminal defendant be sentenced to a term of imprisonment unless the State has afforded him the right to assistance of appointed counsel in his defense.**

5) **Alabama v. Shelton** 2002 Alabama case 535 U.S. 658, 122 S. Ct. 1767,

The Supreme Court held the constitutional right to counsel extends to a defendant who receives a suspended sentence that “**may** end up in the actual deprivation of a person's liberty”. citing **Argersinger**, the Supreme Court explained:

The defendant in **Shelton** was convicted of a misdemeanor; was sentenced to thirty days' imprisonment, which was immediately suspended; and was placed on unsupervised probation for two years.

A suspended sentence is a prison term imposed for the offense of conviction. Once the prison term is triggered, the defendant is incarcerated not for the probation violation, but for the underlying offense. The uncounseled conviction at that point “result[s] in imprisonment ...;” it “ends up in the actual deprivation of a person's liberty.”

6) **Talley v. State**, 371 S.C. 535, 640 S.E.2d 878, S.C., January 22, 2007

S.C. Supreme Court held that the federal constitutional right to counsel does not apply when the defendant receives an immediately suspended sentence and a fine.

**Relevant Sections of South Carolina Statutes**

**Defense of Indigents**

**17-3-10** Persons entitled to Counsel shall be so advised; when Counsel shall be provided.

Any person entitled to counsel under the Constitution of the United States shall be so advised and if it is determined that the person is financially unable to retain counsel then counsel shall be provided upon order of the appropriate judge unless such person voluntarily and intelligently waives his right thereto. The fact that the accused may have previously engaged and partially paid private counsel at his own expense in connection with pending charges shall not preclude a finding that he is financially unable to retain counsel.

**17-3-50** Determination of fees for appointed counsel and public defenders

### **Article 3 Commission on Indigent Defense**

**17-3-310 (G) (4)** Commission on Indigent Defense shall assist the public defenders throughout the State in their efforts to provide adequate legal defense to the indigent.

**17-3-310 (G) (6)** Commission on Indigent Defense shall have the authority to negotiate and enter into contracts, as appropriate, with independent counsel for the provision of indigent defense services in cases in which a conflict of interest exists in a public defender office **and in other cases in which indigent representation by independent counsel is necessary or advisable**. This authority may be delegated by the commission to a circuit public defender, but is at all times subject to standards established by the commission.

### **Article 5 Circuit Public Defenders**

**17-3-520. Circuit public defender; qualifications; responsibilities.**

**(B) A circuit public defender is responsible for:**

(6) developing and presenting for the commission's approval a circuit plan for the delivery of criminal indigent defense services;

(7) establishing processes and procedures consistent with commission standards to ensure that when a case that is assigned to the office presents a conflict of interest for a public defender, the conflict is identified and handled appropriately and ethically;

(8) negotiating and entering into contracts, as appropriate and when authorized by the commission, with independent counsel actively practicing within the circuit for the provision of indigent defense services in cases in which a conflict of interest exists in the circuit public defender office **and in other criminal cases in the circuit in which indigent defense representation by independent counsel is necessary or advisable**;

**17-3-530. Chief county public defenders; responsibilities and duties.**

(A) Each circuit public defender may employ, assign, and supervise one or more chief county public defenders in the counties within the circuit to assist in managing, supervising, and providing indigent defense representation in the circuit.

**(B) Each chief county public defender must be responsible for:**

(1) managing, supervising, and **providing public defender services within the assigned county or counties**;

**17-3-540. Maintenance and staffing of county public defender offices.**

(A) Subject to the provisions of this section, the circuit public defender in each judicial circuit may maintain offices and employ chief county public defenders, assistant public defenders, investigators, and other staff **as necessary to provide adequate and meaningful representation of indigent clients within the counties of the judicial circuit.** Personnel employed pursuant to the provisions of this section serve at the pleasure of the circuit public defender and have responsibilities as the circuit public defender directs.

**14-1-207. Additional assessment, magistrate's court; remittance; disposition; annual audits.**

(A) A person who is convicted of, pleads guilty or nolo contendere to, or forfeits bond for an offense occurring after June 30, 2008, tried in magistrates court must pay an amount equal to 107.5 percent of the fine imposed as an assessment. This assessment must be paid to the magistrate and deposited as required by Section 22-1-70 in the county in which the criminal judgment is rendered for remittance to the State Treasurer by the county treasurer.

**(6) 10.49 percent to the Office of Indigent Defense for the defense of indigents;**

**Rule 602 Defense of Indigents**

**RULE 602  
DEFENSE OF INDIGENTS**

Rules promulgated under the Defense of Indigents Act (Act No. 309) passed by the General Assembly and approved by the Governor on June 17, 1969, were adopted by this Court on January 1, 1970. By Order of this Court dated September 20, 1972, the Rules were amended and now read as follows:

(a) Every person arrested for the commission of a crime within the jurisdiction of the Court of General Sessions, every juvenile to be brought before any court on any charge for which he may be imprisoned, and every person charged with the violation of a probationary sentence shall be taken as soon as practicable before the Clerk of the Court of General Sessions in the county where the charges are preferred, or such other officer or officers as may be designated by the resident judge of the circuit, for the purpose of securing to the accused the right to counsel.

**In cases involving criminal charges within the jurisdiction of magistrates' courts, municipal courts, or other courts with like jurisdiction, if a prison sentence is likely to be imposed following any conviction, the presiding judge of the court in which the matter is to**

**be determined shall inform the accused as provided in Rule 2 when the case is called for disposition. The procedures concerning juveniles, as provided in Rule 1 and Rule 2 hereof, shall continue to be followed.**

**(b) The officer before whom the arrested person is taken shall:**

**(1) Inform the accused of the charges against him and of the nature of the charges.**

**(2) Advise the accused of his right to counsel and of his right to the appointment of counsel by the court, if the accused is financially unable to employ counsel.**

**(3) If the accused represents that he is financially unable to employ counsel, take his application for the appointment of counsel or for the services of the Public Defender where the latter is available in the county.**

Upon examination of a completed Affidavit of Indigency (Form II), the officer designated to make a determination of indigency shall determine if the accused is indigent. If that officer is unable to make this determination, the final determination whether the accused is indigent shall be made by a judge of the court in which the matter is to be heard.

For purposes of this rule, a person is indigent if that person is financially unable to employ counsel. In making a determination whether a person is indigent, all factors concerning the person's financial condition should be considered including income, debts, assets and family situation. A presumption that the person is indigent shall be created if the person's net family income is less than or equal to the Poverty Guidelines established and revised annually by the United States Department of Health and Human Services and published in the Federal Register. Net income shall mean gross income minus deductions required by law.

**(c) If application for counsel is approved for the accused, the Clerk of Court or other officer shall immediately notify the Office of Public Defender, if one exists in the county, and the Public Defender shall immediately thereafter enter upon the representation of the accused.** If there is no Public Defender for the county, then the Clerk of Court or other officer shall immediately notify the court, or such person as the resident judge may designate, of the request for counsel and appointment of counsel shall be made immediately with prompt notification thereof to the accused and counsel so appointed.

## **Rule 608 Appointment of Lawyers for Indigents**

Method of appointing lawyers to serve as counsel for indigent persons in the Circuit and Family courts.

## **Letters**

In 2009 the Public Defender requested funding from municipalities in Beaufort County for them to continue to provide representation for indigent defendants. When municipalities declined to grant funding to the Public Defender's Office, the Circuit Public Defender notified the courts and municipalities that they would no longer provide public defenders for indigents charged with offenses to be heard in municipal courts.

### **ACLU Letter of March 18, 2013**

ACLU requests municipalities to address the structural deficiencies of indigent defense on municipal courts and to collaborate on a comprehensive state-wide system that provides effective, high-quality, and ethical legal representation for criminal defendants who are unable to afford an attorney in all criminal courts of this state.

## **AG Opinions**

**December 15, 2009** The Attorney General's Office acknowledges that the rules require Public Defenders to represent indigent defendants in municipal courts, but also recognizes that due to manpower and funding shortages this may not always be possible.

**March 21, 1996** The Attorney General's Office acknowledges that the rules require Public Defenders to represent indigent defendants in municipal courts, but also recognizes that due to manpower and funding shortages this may not always be possible.

**September 25, 1972** The Attorney General's Office put out a letter as a result of new South Carolina Supreme Court Rules and recent U.S. Supreme Court Case law which relate to the appointment of counsel for indigents in the lower courts. Specifically states that the Public Defenders, if there are any in the county, will represent indigent defendants

## **South Carolina Court Administration**

Email 3/12/2010 says:

- 1) Magistrates and Municipal Judges are prohibited from appointing counsel pursuant to Rule 608.
- 2) In counties where Public Defenders do represent indigent defendants, it is typically confined to county courts and not municipal courts.
- 3) OID readily admits this is not in line with recent U.S. Supreme Court decisions (Shelton and Rothgery).
- 4) Lack of funding dictates practice of not representing indigent defendants in Municipal Court.
- 5) Some Jurisdictions have contracted with private attorneys to handle indigent defendants in summary courts.

**Issues if hire local attorney hired or appointed to provide counsel for indigent Defendant by Municipality**

- 1) Municipal Court Judge has no appointment power under the rules.
- 2) Municipal Court Judge has no budget authority, dependent upon TC providing funds.
- 3) Who sets the fees, Municipality can agree to pay rock bottom dollar and get worst attorney for Defendant (Williams v. Weber County Appeal)
- 4) Must Appellate attorney be provided by Municipality?
- 5) In a PCR complaint who represents the trial defense counsel?
- 6) Counsel to assist Indigent Defendant in filing PCR complaint?
- 7) Defendants can sue Municipality for providing ineffective Counsel.



OFFICE OF THE FOURTEENTH CIRCUIT  
PUBLIC DEFENDER  
GENE G. HOOD

1905 Duke Street – Post Office Box 525  
Beaufort, South Carolina 29901  
(Phone) 843-470-4800 – (Fax) 843-470-4533

October 15, 2009

Thomas D. Peeples, Mayor  
One Town Center Court  
Hilton Head Island, South Carolina 29928

Dear Mayor Peeples;

As you are aware, the State of South Carolina reorganized the Public Defense System last year in an effort to bring uniformity and equanimity to the legal services in our state. Since its inception, the Public Defender System in South Carolina has been funded by the State and counties. Although we never received financial support from the Town of Hilton Head Island, the Beaufort County Public Defenders' Office has, nonetheless, provided indigent defense services for the Town. An ever increasing case load and budgetary constraints prohibit us from continuing to do so.

For this reason, I wrote to you this past winter and submitted a request to the Town of Hilton Head Island on February 17, 2009 for funding to provide Indigent Defense Services through my office for the Municipal Court of Hilton Head Island. To date I have received no funding from the town. Therefore, on October 5, 2009, I notified the Beaufort County Clerk of Court and all Municipal Court Judges that the 14<sup>th</sup> Circuit Public Defender's Office can no longer be assigned as counsel for indigent defendants in your court.

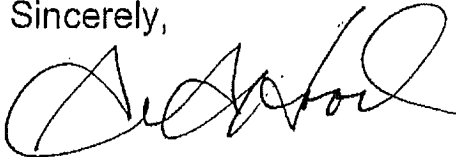
In order to comply with the State and Federal requirement to provide indigent defense, you may contract with any qualified private attorney or law firm to provide such services. My office can no longer



afford to provide those services for free to the Town of Hilton Head Island as we have in the past. The Clerk of Court's office will continue to screen all persons for indigent status and will notify your court when the town is responsible for their defense.

With kind regards, I am

Sincerely,

A handwritten signature in black ink, appearing to read "Gene G. Hood". The signature is fluid and cursive, with the first name "Gene" being more prominent.

Gene G. Hood  
14<sup>th</sup> Circuit Public Defender

ggh/jkf

cc: Maureen T. Coffey  
file

## DEFENSE OF INDIGENTS

### ARTICLE 1.

#### GENERAL PROVISIONS

**SECTION 17-3-10.** Persons entitled to counsel shall be so advised; when counsel shall be provided.

Any person entitled to counsel under the Constitution of the United States shall be so advised and if it is determined that the person is financially unable to retain counsel then counsel shall be provided upon order of the appropriate judge unless such person voluntarily and intelligently waives his right thereto. The fact that the accused may have previously engaged and partially paid private counsel at his own expense in connection with pending charges shall not preclude a finding that he is financially unable to retain counsel.

**SECTION 17-3-50.** Determination of fees for appointed counsel and public defenders; maximum amounts; authorization to exceed maximum; payment for certain services.

(A) When private counsel is appointed pursuant to this chapter, he must be paid a reasonable fee to be determined on the basis of forty dollars an hour for time spent out of court and sixty dollars an hour for time spent in court. The same hourly rates apply in post-conviction proceedings. Compensation may not exceed three thousand five hundred dollars in a case in which one or more felonies is charged and one thousand dollars in a case in which only misdemeanors are charged. Compensation must be paid from funds available to the Office of Indigent Defense for the defense of indigents represented by court-appointed, private counsel. The same basis must be employed to determine the value of services provided by the office of the public defender for purposes of Section 17-3-40.

(B) Upon a finding in ex parte proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant, the court shall authorize the defendant's attorney to obtain such services on behalf of the defendant and shall order the payment, from funds available to the Office of Indigent Defense, of fees and expenses not to exceed five hundred dollars as the court considers appropriate.

(C) Payment in excess of the hourly rates and limits in subsection (A) or (B) is authorized only if the court certifies, in a written order with specific findings of fact, that payment in excess of the rates is necessary to provide compensation adequate to ensure effective assistance of counsel and payment in excess of the limit is appropriate because the services provided were reasonably and necessarily incurred.

(D) Nothing in this section shall be construed to alter the provisions of Section 17-3-10 concerning those defendants who are entitled to legal representation.

### ARTICLE 3.

#### COMMISSION ON INDIGENT DEFENSE

**SECTION 17-3-310.** Commission created; appointment of members; terms; powers and duties.

(A) There is created the Commission on Indigent Defense consisting of thirteen members.

(B) Nine members shall be appointed by the Governor as follows:

(1) One member from each of the four judicial regions of the State appointed upon recommendation of the South Carolina Public Defender Association. Members shall serve for terms of four years and until their successors are appointed and qualify. Vacancies must be filled in the manner of original appointment for the unexpired portion of the term. A person may not be appointed to the commission pursuant to the

provisions of this item or, once appointed pursuant to the provisions of this item, may not continue to serve on the commission unless the person is a public defender.

(2) A member of the South Carolina Bar whose practice is principally in family law, appointed upon recommendation by the South Carolina Bar membership for a term of two years and who may be reappointed.

(3) Two members of the South Carolina Bar whose practice is principally in criminal defense law, appointed upon recommendation of the South Carolina Bar membership, who shall serve for a term of two years and may be reappointed.

(4) Two members of the South Carolina Bar whose practice is principally neither criminal defense nor family law, appointed upon recommendation of the South Carolina Bar membership, who shall serve for two-year terms and who may be reappointed.

(C) The remaining four members must be appointed as follows:

(1) two members appointed by the Chief Justice of the South Carolina Supreme Court, one of whom must be a retired circuit court judge and one of whom must be either a retired family court judge or a retired appellate court judge, each of whom shall serve for a term of four years and until a successor is appointed and qualifies; and

(2) the Chairmen of the Senate and House Judiciary Committees, or their legislative designees, for the terms for which they are elected.

(D) The chairman must be elected by the commission from its membership and shall serve for a term of two years. A chairman may be re-elected.

(E) Members currently serving as of July 1, 2005, shall continue to serve until the expiration of their term and may be reappointed as provided in subsection (B)(1).

(F) The commission may adopt an appropriate seal and promulgate regulations consistent with the provisions of this article to govern its operations and procedures and shall supervise the operations of the Office of Indigent Defense including all the divisions of the office.

(G) The commission:

(1) may establish divisions within the office to administer the services and programs as it considers necessary to fulfill the purposes of this article;

(2) shall develop rules, policies, procedures, regulations, and standards as it considers necessary to carry out the provisions of the article and comply with state law or regulations and the rules of the Supreme Court, including the nature and scope of services to be provided, the clientele to be served, and the establishment of criteria to be used in the determination of indigency and qualifications for services for indigent legal representation;

(3) shall cooperate and consult with state agencies, professional associations, and other groups concerning the causes of criminal conduct, the rehabilitation and correction of persons charged with and convicted of crimes, the administration of criminal justice, and the improvement and expansion of defender services;

(4) shall assist the public defenders throughout the State in their efforts to provide adequate legal defense to the indigent. This assistance includes, but is not limited to:

(a) the preparation and distribution of a basic defense manual and other educational materials;

(b) the preparation and distribution of model forms and documents employed in indigent defense;

(c) the promotion of and assistance in the training of indigent defense attorneys;

(d) the provision of legal research assistance to public defenders; and

(e) the provision of other assistance to public defenders as may be authorized by law;

(5) shall collect, maintain, review, and publish records and statistics for the purpose of evaluating the delivery of indigent defense representation in the State; and

(6) shall have the authority to negotiate and enter into contracts, as appropriate, with independent counsel for the provision of indigent defense services in cases in which a conflict of interest exists in a public defender office and in other cases in which indigent representation by independent counsel is necessary or advisable. This authority may be delegated by the commission to a circuit public defender, but is at all times subject to standards established by the commission.

(7) The commission shall establish and administer the rules and procedures for selection of members to serve on the Circuit Public Defender Selection Panels, and shall establish the rules and procedures under which the selection panels shall operate.

## ARTICLE 5.

### CIRCUIT PUBLIC DEFENDERS

**SECTION 17-3-510.** Circuit Public Defender Selection Panel; county representation; nomination of Circuit Public Defender; election by South Carolina Prosecution Coordination Commission.

**SECTION 17-3-520.** Circuit public defender; qualifications; responsibilities.

(A) In order for a person to be eligible to fill the position of circuit public defender, the person must:

- (1) be at least twenty-five years of age;
- (2) have been admitted and licensed to practice law in all courts of the State for at least five years;
- (3) be a member in good standing of the South Carolina Bar, at all times; and
- (4) be competent to counsel and defend a person charged with a capital felony and be certified at all times to defend capital cases in the State.

(B) A circuit public defender is responsible for:

- (1) administering and coordinating the day-to-day operations of their respective offices, supervising the public defenders and other staff serving in the offices, and actively participating in the representation of clients throughout the judicial circuit;
- (2) keeping and maintaining appropriate records, which includes:
  - (i) the number of persons represented pursuant to the provisions of this chapter, including cases assigned to other attorneys because of conflicts of interest;
  - (ii) the offenses charged; the outcome of each case; the expenditures made in carrying out the duties imposed by this article; and
  - (iii) other information and data as the commission may from time to time require;
- (3) establishing a juvenile offender division within the circuit public defender office to specialize in the criminal defense of juveniles;
- (4) preparing and submitting annually to the executive director of the commission a proposed budget for the provision of circuit-wide indigent defense services, an annual report containing pertinent data on the operation, costs, and needs of the circuit defender office, and other information as the commission or executive director may require;
- (5) assisting the commission in establishing the state system and establishing the standards, policies, and procedures required pursuant to the applicable provisions of Section 17-3-310;
- (6) developing and presenting for the commission's approval a circuit plan for the delivery of criminal indigent defense services;
- (7) establishing processes and procedures consistent with commission standards to ensure that when a case that is assigned to the office presents a conflict of interest for a public defender, the conflict is identified and handled appropriately and ethically;
- (8) negotiating and entering into contracts, as appropriate and when authorized by the commission, with independent counsel actively practicing within the circuit for the provision of indigent defense services in cases in which a conflict of interest exists in the circuit public defender office and in other criminal cases in the circuit in which indigent defense representation by independent counsel is necessary or advisable;
- (9) establishing processes and procedures consistent with commission standards to ensure that office and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;

(10) establishing administrative management procedures for circuit and county offices;

(11) establishing procedures in conformity with commission standards for managing caseloads and assigning cases in a manner that ensures that public defenders are assigned cases according to experience, training, and manageable caseloads and taking into account case complexity, the severity of the charges, potential punishments, and the legal skills required to provide effective assistance of counsel;

(12) establishing policies and procedures consistent with commission standards and Supreme Court Rules for assigning counsel for indigent persons in capital cases;

(13) establishing and supervising consistent commission standards, a training and performance evaluation program for attorneys and non-attorney staff members and contractors;

(14) establishing procedures consistent with commission standards to handle complaints involving indigent defense performance and to ensure that public defenders, office personnel, contract and appointed attorneys and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the rules and disciplinary jurisdiction of the South Carolina Supreme Court; and

(15) performance of other duties assigned by the commission.

**SECTION 17-3-530.** Chief county public defenders; responsibilities and duties.

(A) Each circuit public defender may employ, assign, and supervise one or more chief county public defenders in the counties within the circuit to assist in managing, supervising, and providing indigent defense representation in the circuit.

(B) Each chief county public defender must be responsible for:

(1) managing, supervising, and providing public defender services within the assigned county or counties;

(2) performing other duties as assigned by the circuit public defender, including duties that may be assigned throughout the circuit; and

(3) keeping a record of public defender and associated services and expenses in the assigned county or counties and submitting the records to the circuit public defender as requested.

**SECTION 17-3-540.** Maintenance and staffing of county public defender offices.

(A) Subject to the provisions of this section, the circuit public defender in each judicial circuit may maintain offices and employ chief county public defenders, assistant public defenders, investigators, and other staff as necessary to provide adequate and meaningful representation of indigent clients within the counties of the judicial circuit. Personnel employed pursuant to the provisions of this section serve at the pleasure of the circuit public defender and have responsibilities as the circuit public defender directs.

(B) These employees are employees of the administering county and entitled to the same fringe benefits as other personnel employed by the administering county. All personnel costs including fringe benefits must be paid by the administering county, but must be reimbursed to the administering county from operational funds provided to the circuit public defender office from county and state appropriated funds.

**RULE 602**  
**DEFENSE OF INDIGENTS**

Rules promulgated under the Defense of Indigents Act (Act No. 309) passed by the General Assembly and approved by the Governor on June 17, 1969, were adopted by this Court on January 1, 1970. By Order of this Court dated September 20, 1972, the Rules were amended and now read as follows:

**(a)** Every person arrested for the commission of a crime within the jurisdiction of the Court of General Sessions, every juvenile to be brought before any court on any charge for which he may be imprisoned, and every person charged with the violation of a probationary sentence shall be taken as soon as practicable before the Clerk of the Court of General Sessions in the county where the charges are preferred, or such other officer or officers as may be designated by the resident judge of the circuit, for the purpose of securing to the accused the right to counsel.

In cases involving criminal charges within the jurisdiction of magistrates' courts, municipal courts, or other courts with like jurisdiction, if a prison sentence is likely to be imposed following any conviction, the presiding judge of the court in which the matter is to be determined shall inform the accused as provided in Rule 2 when the case is called for disposition. The procedures concerning juveniles, as provided in Rule 1 and Rule 2 hereof, shall continue to be followed.

**(b)** The officer before whom the arrested person is taken shall:

- (1)** Inform the accused of the charges against him and of the nature of the charges.
- (2)** Advise the accused of his right to counsel and of his right to the appointment of counsel by the court, if the accused is financially unable to employ counsel.
- (3)** If the accused represents that he is financially unable to employ counsel, take his application for the appointment of counsel or for the services of the Public Defender where the latter is available in the county.

Upon examination of a completed Affidavit of Indigency (Form II), the officer designated to make a determination of indigency shall determine if the accused is indigent. If that officer is unable to make this determination, the final determination whether the accused is indigent shall be made by a judge of the court in which the matter is to be heard.

For purposes of this rule, a person is indigent if that person is financially unable to employ counsel. In making a determination whether a person is indigent, all factors concerning the person's financial condition should be considered including income, debts, assets and family situation. A presumption that the person is indigent shall be created if the person's net family income is less than or equal to the Poverty Guidelines established and revised annually by the United States Department of Health and Human Services and published in the Federal Register. Net income shall mean gross income minus deductions required by law.

**(c)** If application for counsel is approved for the accused, the Clerk of Court or other officer shall immediately notify the Office of Public Defender, if one exists in the county, and the Public Defender shall immediately thereafter enter upon the representation of the accused. If there is no Public Defender for the county, then the Clerk of Court or other officer shall immediately notify the court, or such person as the resident judge may designate, of the request for counsel and appointment of counsel shall be made immediately with prompt notification thereof to the accused and counsel so appointed.

The initial designation of the Public Defender of appointment of counsel to represent an accused shall be subject to review by the court if it subsequently appears that the accused is in fact financially able to employ counsel, has obtained counsel of his own, or for other good cause shown.

If counsel shall have been retained and partially paid for his services in either the trial or appeal stages, no reimbursement may be had from indigent funds. However, upon the completion of the trial stage, the defendant may be brought before the designated officer of the county for the purpose of a redetermination of indigency. Upon a finding of indigency, and upon the appointment of counsel, the fees and costs of representation may be had from indigent funds as prescribed in these rules.

**(d)** The appointment of private counsel pursuant to Section V of the Act shall be made or confirmed in a written order, showing the date and time of the appointment; which shall be filed with the Clerk of Court, with copies thereof provided to the accused and to the appointed counsel. Where representation is by a Public Defender, he shall file with the Clerk of Court a written certificate setting forth the date and time at which he undertook such representation, and shall keep and report the hours in court and hours out of court and extraordinary expenses incurred applicable to each case for which representation is made.

**(e)(1)** Trial counsel, whether retained, appointed, or Public Defender, shall continue representation of an accused until final judgment, including any proceeding on direct appeal, except as hereinafter provided.

**(2)** During the trial stage, trial counsel may be relieved only for good cause upon written petition to and by written order of the trial judge. In all cases where relief from representation is sought by trial counsel, a copy of the petition shall be served on the accused and the prosecuting attorney. The Public Defender also shall be served when relief is sought by retained or appointed counsel. If trial counsel is relieved for good cause, the trial court shall immediately appoint substitute counsel.

**(3)** After conviction of an accused who has been represented by appointed counsel or Public Defender, the Office of Appellate Defense shall represent the accused until final judgment. After serving and filing a Notice of Appeal for an accused who desires to appeal, appointed counsel and Public Defenders shall be automatically relieved as appellate counsel for the accused, without obtaining leave to withdraw as provided in Rule 264, SCACR. However, the Public Defender or appointed counsel shall assist in representing the accused in any manner necessary to properly perfect the appeal or as otherwise requested by the Office of Appellate Defense.

**(4)** When an accused who desires to appeal claims to be indigent at the conclusion of the trial, his retained counsel must first serve and file a Notice of Appeal as required by Rule 203, SCACR. The accused shall then request a determination of his indigency status from the Office of Appellate Defense. If the Office of Appellate Defense determines that the accused is not indigent, retained counsel shall continue representation of the accused during the appeal, unless granted leave to withdraw under Rule 264, SCACR.

If the Office of Appellate Defense determines that the accused is indigent, it will represent the accused until final judgment, including any proceeding on direct appeal, without retained trial counsel's obtaining leave to withdraw under Rule 264, SCACR. However, retained counsel shall assist in representing the accused in any manner necessary to properly establish the indigency of the accused and properly perfect the appeal, including but not limited to obtaining an affidavit of indigency from the accused, obtaining a Court Order declaring the accused's indigency from either the trial judge or the Chief Administrative Judge of the Circuit, and in any other manner requested by the Office of Appellate Defense.

**(f)** Where a Defender Corporation is established in a county and representation of a defendant is by an attorney other than the Public Defender, no claim for reimbursement of such appointed counsel shall be submitted to the State Treasurer, but he shall be paid out of other available funds.

**(g) (1)** The application for counsel fees and/or expenses under the terms of this Act shall be made on such forms as prescribed and furnished by the South Carolina Court Administration. Vouchers for fees or expenses should be submitted upon the completion of each stage of representation, trial and appeal stages, respectively. No voucher for fees or expenses except where specifically permitted by written order of the court shall be submitted prior to the completion of a state of representation.

After the completion of services in a state of representation, appointed counsel or public defenders must submit their voucher for fees and/or expenses within thirty (30) days after such completion to the Clerk of Court of the county in which the services were performed.

**(2)** Vouchers submitted for fees must show with specificity the hours of in-court and out-of-court time, with an explanation as to the nature of each entry.

Necessary expenses which must be approved by the trial judge by written order, prior to their being incurred, are fees of expert witnesses, costs of scientific tests or exhibits for trial demonstration, costs of psychiatric examinations, and extraordinary travel expenses. The cost of long distance telephone calls should be submitted on the voucher. No other expenses may be submitted for reimbursement from the fund. All claims for expense against the defense fund must be shown on the voucher and must be accompanied by an original or copy of the bills documenting such claim.

Appointed counsel or public defenders involved in representation of defendants against whom the death penalty is sought are subject to the provisions of these Rules of the Defense of Indigents Act except as contravened by the special provisions of Act 555 of 1978.