

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

In Re:)
)
Rule 407 SCACR,)
Rule 1.10(e))

ADMINISTRATIVE ORDER

The Public Defender for Greenville County has petitioned the Court for an Order regarding the interpretation of Rule 407, SCACR, Rule 1.10(e), Rules of Professional Conduct, and its application to the appointment of counsel in criminal cases under the system currently operated in Greenville County. The request for clarification is well founded.

SCACR, Rule 407, Rule 1.10(e) provides as follows:

A lawyer representing a client of a public defender office, legal services association, or similar programs serving indigent clients shall not be disqualified under this Rule because of the program's representation of another client in the same or a substantially related matter if:

- (1) the lawyer is screened in a timely manner from access to confidential information relating to and from any participation in the representation of the other client; and
- (2) the lawyer retains authority over the objectives of the representation pursuant to Rule 5.4(c)

The cited language is an Amendment to Rule 1.10 and became effective October 1, 2005. The primary purpose of this Amendment is to allow Public Defender offices to

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represent co-defendants under specific delineated circumstances and thereby reduce the number of appointments to the private bar pursuant to Rule 608.

For almost 25 years, Greenville County has managed a contract attorney program which operates parallel to the state funded Public Defender office. Each of the contract attorneys operates as an independent contractor and, therefore, the need for traditional conflict appointments to the private bar pursuant to Rule 608 is almost non-existent. As conflicts arise, responsibility for representation of co-defendants is assigned to the different contract attorneys and to the Public Defender office attorneys.

The Court finds that cases are appointed by the Office of Indigent Defense to either the Public Defender Office or one of the eleven Greenville County contract attorneys as early as possible and, occasionally, the existence of conflicts subsequently becomes known. Because Greenville County operates the contract attorney program, there are eleven independent attorneys in addition to the Public Defender Office that can be appointed to alleviate any potential conflict. The Court further finds that it is clearly in the best interest of the client that such conflicts be resolved and avoided. Under the unique circumstances in Greenville County, it appears to this Court that requiring the Public Defender Office to represent persons with clear conflicts of interest pursuant to an arbitrary application of Rule 1.10(e) is simply unnecessary.

THEREFORE, IT IS ORDERED that the Greenville County Office of Indigent Defense, the agency responsible for appointment of counsel in criminal cases, should avoid the conflict of interest issues arising from representation of "another client in the same or a substantially related matter", co-defendants, victims or other parties similarly situated, by:

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1) appointment to the Greenville County contract attorneys whenever conflicts arise between a Public Defender client and “another client in the same or a substantially related matter”; and

2) appointment to the Public Defender or a different contract attorney whenever such conflicts arise between a contract attorney client and “another client in the same or a substantially related matter”.

AND IT IS SO ORDERED.



D. Garrison Hill
Administrative Judge, General Sessions
Thirteenth Judicial Circuit

Greenville, South Carolina

March 9, 2006