

Response to the Proposed Amendments to South Carolina Criminal Rules

Charleston County Clerk of Court

December 29, 2009

The Charleston County Clerk of Court submits, for your consideration, the following response to the proposed amendments to South Carolina Criminal Rules.

104. Signing of Documents; Sanctions

(a) Form.

-Appellate Court Rule 603 contains specific language related to form of pleadings that should be included here.

106. Bond Matters

(2)(b) Emergency Revocation Motions.

-I am concerned that a revocation hearing would be held outside the presence of the defendant. If a hearing is held without the defendant being in custody and the bond is revoked, perhaps the rule should state a bench warrant shall be issued.

107. Surety on Bonds

(a)

-Appellate Court Rule 604 contains specific language related to Attorneys as Surety that should be included here.

(c) (1) Procedure for relief of bond.

-This section states the Clerk of Court shall schedule a hearing and *notify all necessary parties*. This section should list each party who is entitled to notice.

(d) Third Party Bonds

-We submit the phrase “and *may forfeit* the collateral if the defendant fails to appear” be used instead of “and *can lose* the collateral if the defendant fails to appear.”

116. Defendant’s Right to Counsel

-Appellate Court Rule 602 contains the provision allowing, “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.” This would allow designating the Public Defender to perform indigent screening, which is the current practice in Charleston County.

-Appellate Court Rules 602 and 608 provide for the appointment, substitution and relief of Counsel that conflict with this proposed rule.

117. Diversionary Programs

(b) Transfer Court System

-Should the Chief Justice approve and adopt the written procedure as well?

118. Bench Warrants

(c) Procedure

-Can the delivery by the Clerk of Court be performed electronically?

151. Sentencing

(b) Correcting Clear Error

-Who has the authority to correct “clear error” - the Clerk of Court or the Judge?

-What is the procedure if an error is discovered after ten days?