

Equal time

Attorney pushing to have legal counsel appointed for poor inmates in lower court cases

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Criminal and civil rights attorney Stephen Henry will seek an order from a state circuit court judge mandating legal counsel for the poor in municipal and magistrate court where defendants risk jail time.

If that doesn't work, the Greenville lawyer, who has a long history of fighting for the little guy, said he'll bring a case on behalf of an indigent inmate who wants the court to provide legal counsel, seeking a ruling that can ultimately be applied to all lower court cases in South Carolina.

What is troubling to Henry is that the issue has already been decided by the U.S. Supreme Court.

South Carolina, however, has yet to respond.

It is an issue that could have been settled easily had the state Supreme Court followed up with an administrative order following the U.S. Supreme Court's May 2002 decision in *Alabama v. Shelton*, he said.

Poor people accused of felony crimes that could result in prison sentences have been guaranteed appointed attorneys for 45 years in the United States.

But *Alabama v. Shelton* extended that protection to people who could face any length of confinement - even if that possibility were only through a suspended sentence.

"The big issue still out there is how to get the office of indigent defense the approval it needs to go make attorney assignments on a daily basis at the detention center like they do for General Sessions Court," Henry said.

In *Alabama v. Shelton*, the majority decision, written by Justice Ruth Bader Ginsburg, upheld a ruling by the



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ON THE WAY: Steve Henry wants to help inmates get the help they have a legal right to receive.

Supreme Court of Alabama which found that because a suspended sentence could be revoked if a defendant failed to adhere to certain conditions, it amounted to a "term of imprisonment" for which, under the U.S. Supreme Court's precedents, the appointment of a lawyer is a constitutional prerequisite.

Henry says he believes alternative sentences routinely handed down in magistrate court requiring the defendant to spend 30 days in jail or pay a fine of \$500 would also be covered under *Alabama v. Shelton* since the failure to pay the fine would result in a jail sentence.

"This isn't a situation of 'Who is the bad guy?'" Henry said. "It is a situation where nobody has taken the step. And I think that is because nobody knows what to do because the issue hasn't been raised."

Henry said he has talked about his concerns with Greenville County Chief Magistrate Diane Cagle and Public Defender John Mauldin, as well as Zach Klebe, who oversees Greenville County's office of indigent defense.

As a result of her conversation >

with Henry a few weeks ago, Cagle said she has asked Magistrate James Hudson, who works out of the Greenville County Law Enforcement Center, to begin screening all applications for legal counsel from inmates to determine as quickly as possible whether they qualify for indigent defense.

"I decided it is more practical to have him look at these petitions, and refer the individuals he thinks may qualify to Zach Klebe," Cagle said.

But that is only a temporary solution, Henry said.

"With Shelton, I think the door is wide open for almost everyone who is indigent in jail to qualify for legal counsel, because they are already doing their time," Henry said, pointing out that many inmates jailed on lower court charges ultimately plead guilty at the first opportunity knowing they will be sentenced to time served.

"Many of these inmates don't even know they've got a right to counsel," he said. "One thing that is important to me is that someone who is not guilty not have a record."

On Tuesday of this week, 41 percent of the inmate population at the Greenville County Detention Center was incarcerated on a magistrate or municipal court charge, said Scottie Bodiford, the jail's director.

If those inmates had legal counsel, they could likely move through the system more quickly, he said. And ultimately that could help ease overcrowding among the more than 1,800 inmates, he said.

"I believe it would help our population here," he said.

Dealing with such a substantial increase in indigent cases could prove challenging, Klebe said. His office would need at least one more investigator to meet the increased demand, and the public defender would likely need more lawyers on staff to spread out the caseload.

One possible alternative to lessen the burden might be to treat some traffic charges and lesser violations such as fraudulent check charges as civil offenses, he said.

"By removing the possibility of imprisonment, you'd remove the right to an attorney," he said.

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