

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

January 24, 2003

Opinion No. 03-009

Scope of Public Defenders' Duty to Represent Defendants During "Drug Court" Appearances

QUESTION

If a defendant is required, as a condition of probation, community corrections or pre-trial diversion, to comply with the requirements of a "drug court" program, does the public defender appointed by the court to represent the defendant at trial also have a duty to appear on the defendant's behalf at "drug court" staffings and appearances, even if there are no charges or violation warrants pending against the defendant?

OPINION

The district public defender has no duty to appear at such staffings and appearances unless the defendant's liberty is directly at stake in the particular proceeding involved.

ANALYSIS

The duties of the district public defenders in criminal matters to which they have been appointed in the trial courts are set forth at Tenn. Code Ann. § 8-14-204(a):

The district public defender has the duty and responsibility of representing *indigent persons* for whom the district public defender has been appointed as counsel by the court. Either personally through an assistant district public defender, the district public defender shall counsel with the accused and represent such accused in the trial court. If the accused is aggrieved by the judgment of the trial court imposing a sentence of imprisonment, or dismissing a habeas corpus or post-conviction petition, the district public defender shall advise such accused fully concerning rights of appellate review.

(emphasis supplied). That provision is given further content by the statutory definition of “indigent person”:

For the purposes of this part, an “indigent person” is one who does not possess sufficient means to pay reasonable compensation for the services of a competent attorney:

(1) In any criminal prosecution or juvenile delinquency proceeding *involving a possible deprivation of liberty*;

* * *

Tenn. Code Ann. § 8-14-201 (emphasis supplied).

The “drug court” program began as a diversionary measure to deal with less serious offenses like simple drug possession and driving under the influence. National Association of Drug Court Professionals, *What is a Drug Court* (<http://www.nadcp.org>)(visited Oct. 1, 2002). The program has expanded in many communities to include drug-using offenders who have been charged with non-drug offenses. *Id.* In exchange for completing the program, the court may dismiss the original charge, reduce or set aside a sentence, offer some lesser penalty, or offer a combination of these. U.S. Department of Justice, *Defining Drug Courts: The Key Components* 7 (1997). It is our understanding that, in those Tennessee jurisdictions sponsoring drug court programs, participation in the program may be required in connection with pre-trial diversion, as a condition of probation, or as part of a community corrections plan.

The request does not describe what occurs at a “drug court staffing or appearance” in the requestor’s jurisdiction. It is our understanding that, in most jurisdictions, such appearances do not typically involve any “possible deprivation of [the defendant’s] liberty,” Tenn. Code Ann. § 8-14-201(1), but consist instead of informal discussions with program staff, often without the presence or participation of any judicial officer, concerning the defendant’s progress in completing the program. It is also our understanding that, whenever a defendant is accused of an infraction that might warrant his termination from the program, the matter is referred to the judge who assigned the offender to the program for a formal hearing at which the defendant would enjoy a statutory right to counsel. *E.g.*, Tenn. Code Ann. § 40-35-311(b) (statutory right to counsel at probation violation proceedings); *see also* Tn. Sup. Ct. R. 13, Section 1(i) (authority of appointed counsel “to act for the defendant throughout the proceedings in the court in which the appointment is made and in any subsequent proceedings . . . until the case has been concluded . . .”).

Accordingly, it is the opinion of this Office that the district public defenders are not under any statutory duty to appear at routine appearances made by their clients in the course of their participation in a drug court program, because such appearances do not involve any risk of a deprivation of liberty. However, if such an appearance results in the commencement of a formal

proceeding before a judicial officer at which the client's liberty is directly at stake, the public defender has a duty to represent the client's interests at that proceeding, consistent with his or her appointment at the outset of the case.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

P. ROBIN DIXON, JR.
Assistant Attorney General

Requested by:

David Allen Doyle
District Public Defender, 18th Judicial District
117 East Main Street
Gallatin, TN 37066