



# STATE OF ARKANSAS

Office of the Attorney General

Winston Bryant  
Attorney General

Telephone:  
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Opinion No. 94-192

July 28, 1994

The Honorable Tom Wynne  
Prosecuting Attorney  
13th Judicial District  
P.O. Box 748  
Fordyce, Arkansas 71742

Dear Mr. Wynne:

This is in response to Deputy Prosecuting Attorney Caren Harp's request for an opinion on whether an attorney hired via a professional services contract to represent the indigent in criminal proceedings must comply with the attorney eligibility standards in death cases established by the Arkansas Public Defender Commission. You note that Act 1193 of 1993, now codified at A.C.A. § 16-87-201 *et seq.*, provides that trial public defenders offices may be created and sets forth the mechanisms for such creation. It also sets forth the duties and powers of the Arkansas Public Defender Commission. A.C.A. § 16-87-203(a) (Cum. Supp. 1993). You ask whether, if the attorney for a county is contracting to provide all indigent services, this attorney, who is not a part of the "trial public defender office," must comply with those standards.

This office has previously opined that it is for the Arkansas Public Defender Commission to determine whether the employment of an attorney through a professional services contract to represent the indigent is in compliance with the provisions of Act 1193. See Op. Att'y Gen. 94-032 (copy enclosed). It was noted therein that the Commission has the authority to determine whether a county using a professional services contract in such manner in fact has a "public defender system" as required by Act 1193. See A.C.A. § 16-87-206(f). The Commission has authority to establish policies and standards for the public defender system throughout the state (see A.C.A. § 16-87-203(a)(1) (Cum. Supp. 1993)), as well as

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the authority to annually evaluate the "public defender system" of each county to determine whether each is in compliance with the policies and standards established by the Commission. A.C.A. § 16-87-206(f).

In conclusion, therefore, it is my opinion that the Arkansas Public Defender Commission has the authority to determine whether attorneys providing indigent defense through professional services contracts must meet the attorney eligibility standards.

The foregoing opinion, which I hereby approve, was prepared by Deputy Attorney General Elana C. Wills.

Sincerely,

A handwritten signature in black ink, appearing to read "Winston Bryant", written in a cursive style.

WINSTON BRYANT  
Attorney General

WB:ECW/cyh

Enclosure