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STATE OF ALABAMA

APR 20 1990

90-00230

Honorable Pamela W. Baschab  
Presiding District Court Judge  
P. O. Box 396  
Bay Minette, AL 36507

Courts - Judges - Arrests

A district judge cannot have a standing order or policy which provides that alias writs of arrest be issued for defendants who failed to appear only if the defendants are residents of Alabama.

Dear Judge Baschab:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

May a district judge have a standing order or policy which provides that alias writs of arrest be issued for defendants who failed to appear only if they are residents of Alabama?

FACTS AND ANALYSIS

The issuance and execution of writs of arrest is provided for at Code of Alabama 1975, § 15-10-40 through § 15-10-47. Section 15-10-40 states, regarding the issuance of writs of arrest:

"A writ of arrest must be issued by the clerk forthwith after the finding of the indictment against each defendant who is not in actual custody, who has not been bailed, whose undertaking of bail has been declared forfeited or when an order is made by the judge presiding when the indictment is returned by the grand jury commanding that writ of arrest issue; or it may be issued without order of court by the district attorney of the circuit or by any circuit judge. But if the defendant is in actual custody, he shall be held by virtue of the indictment and no writ of arrest need be issued, unless it is so ordered by the judge presiding when the indictment is found."

Regarding alias and pluries writs, § 15-10-43 states that as many writs of arrest as necessary may be issued, and after forfeiture is taken, another writ of arrest may be issued without an order.

A standing order or policy of a court which provides that alias writs of arrest are to be issued for defendants who failed to appear only if the defendants are residents of Alabama would be in conflict with the above-mentioned laws. Therefore, a district judge should not have this policy.

Of course, there will be cases in which it will not be feasible to issue an alias writ of arrest for a defendant who failed to appear and who is not a resident of Alabama. However, such a determination must be made by a judge on a case-by-case basis.

#### CONCLUSION

A district judge cannot have a standing order or policy which provides that alias writs of arrest be issued for defendants who failed to appear only if the defendants are residents of Alabama.

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I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN  
Attorney General  
By:

A handwritten signature in cursive script, reading "Lynda K. Oswald". The signature is written in dark ink and is positioned above the printed name of the signatory.

LYNDA K. OSWALD  
Assistant Attorney General

DS/LKO/jho

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