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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Honorable Callie T. Dietz  
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Juvenile Court Intake Officers --  
Magistrates -- Office of Profit -- Conflicts  
of Interest -- Officers and Offices --  
Administrative Office of Courts

Juvenile court intake officers must not serve in a separate appointive or elective office in the executive or legislative branch of government at the same time as serving as a juvenile court intake officer because of the prohibitions contained in section 12-15-102(11) of the Code of Alabama and Rule 8(B) of the Alabama Rules of Juvenile Procedure.

Dear Ms. Dietz:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Is it a violation of section 12-15-102(11) of the Code and Rule 8(B) of the Alabama Rules of Juvenile Procedure, and the common law prohibition against the holding of incompatible and inconsistent offices, for a person to serve simultaneously as a juvenile court intake officer and to hold a separate appointive or elective office or position in an executive or legislative branch of any form of government (examples of which may include, but are not limited to, a mayor, city councilperson, county commissioner, state legislator,

law enforcement official or officer, school attendance officer, or one who serves on a local board of education)?

### FACTS AND ANALYSIS

Section 12-15-102(11) defines "intake officer" as follows:

A juvenile probation officer or an employee of the judicial branch of government, *who is neutral and detached from executive and legislative branch activities*, designated by the juvenile court judge to initiate original delinquency, dependency, and child in need of supervision cases, as well as cases designated in Section 12-15-132 before the juvenile court. The juvenile court intake officer shall be appointed a magistrate pursuant to Rule 18, Alabama Rules of Judicial Administration, to issue warrants of arrest for individuals 18 years of age or older committing criminal offenses under the jurisdiction of the juvenile court.

ALA. CODE § 12-15-102(11) (Supp. 2009) (emphasis added).

Additionally, Rule 8(B) of the Alabama Rules of Juvenile Procedure provides that "[j]uvenile court intake officers *shall be neutral and detached from activities of the executive and legislative branches of government* and shall perform duties as provided by law. Juvenile court intake officers shall have the power to administer oaths for the purpose of verifying complaints and/or petitions in juvenile matters." ALA. R. JUV. P. 8(B) (emphasis added).

Intake officers generally perform the following duties by law:

#### Detention/Shelter Care v. Release Decisions:

Determine if children should be placed in detention or shelter care or released—ALA. CODE §§12-15-127(b) & 12-15-128 (Supp. 2009).

#### Initiation of Cases/Handling Complaints Filed:

Receive and examine verified written complaints or petitions, made under oath, of allegations of delinquency, in need of supervision, or

dependency or violations of probation or aftercare—ALA. CODE §§ 12-15-114(a), 12-15-115(c), & 12-15-118(1) (Supp. 2009); Rule 12(A), Alabama Rules of Juvenile Procedure.

Administer oaths for the purpose of verifying complaints and/or petitions in juvenile matters—Rule 8(B), Alabama Rules of Juvenile Procedure.

Conduct a preliminary inquiry—Rule 12(B), Alabama Rules of Juvenile Procedure.

**Delivering Petitions for Filing:**

Once the complaint is filed and it appears from the preliminary inquiry that the child is within the subject-matter jurisdiction and venue of the juvenile court and whether probable cause exists to believe that the child is delinquent, dependent, in need of supervision, or in violation of an order of probation or aftercare, initiate the case by delivering a petition for filing if it is in the best interests of the child or of the public—ALA. CODE § 12-15-120(a) (Supp. 2009); Rule 12(C)(2), Alabama Rules of Juvenile Procedure.

Endorse upon the petition that the juvenile court has subject-matter jurisdiction and venue over the case and that the filing of the petition is in the best interests of the public and the child—ALA. CODE § 12-15-120(b) (Supp. 2009) [NOTE: The intake officer must not *sign* the petition itself]—ALA. CODE § 12-15-121(a) (Supp. 2009).

The petition must be filed within 14 days of receiving the complaint, except as provided in Rule 15 or when a child has been detained—Rule 12(D), Alabama Rules of Juvenile Procedure.

Rule 8(C) of the Alabama Rules of Juvenile Procedure requires juvenile court intake officers to be appointed magistrates under Rule 18 of the Alabama Rules of Judicial Administration if they issue warrants of arrest against adults tried in the juvenile court. Rule 18(II)(A) of the Alabama Rules of Judicial Administration requires that any person appointed as a magistrate “must meet the general requirements established by law for public officers and, in addition, *shall be neutral and detached from all law enforcement activities.*” ALA. R. JUD. ADMIN. R. 18(II)(A) (emphasis added). The Committee Comments to Rule 18 of the Alabama Rules of Judicial Administration explain this essential requirement as follows:

Consistent with the opinions of the United States Supreme Court, since magistrates are a part of the judicial branch of government and must exercise independent judgment in the performance of their duties, all appointees must also be neutral and detached from the law enforcement function. No person who is affiliated with the prosecution or police, assigned to the police or connected with law enforcement activities should be considered eligible for appointment.

ALA. R. JUD. ADMIN. R. 18 comments.

In *Shadwick v. City of Tampa*, 407 U.S. 345, 350 (1972), the United States Supreme Court held that magistrates issuing arrest warrants must be severed from and disengaged from activities of law enforcement to be neutral and detached. Applying the tests for neutrality and detachment (i.e., connections to law enforcement reflected by loyalty, employment, duties, source of compensation, and supervision), the Court held that the magistrate in question was neutral and detached because the magistrate was not affiliated with the prosecution or police, was not connected with law enforcement activities, and was subject to the supervision of a municipal judge.

Juvenile court intake officers perform judicial functions similar to magistrates in that they receive sworn written complaints and make probable cause determinations about whether juvenile petitions should be filed (or, in the case of a magistrate, whether an arrest warrant should be issued). In performing these judicial functions, juvenile court intake officers, as mandated in section 12-15-102(11) of the Code and Rule 8(B) of the Alabama Rules of Juvenile Procedure, must be neutral and detached from the executive and legislative branches of government. Therefore, it is the opinion of this Office that a juvenile court intake officer serving in a separate office or position in the executive or legislative branches of government would be in direct violation of the statute and rule.

#### CONCLUSION

Juvenile court intake officers must not serve in a separate appointive or elective office in the executive or legislative branch of government at the same time as serving as a juvenile court intake officer because of the prohibitions contained in section 12-15-102(11) of the Code and Rule 8(B) of the Alabama Rules of Juvenile Procedure.

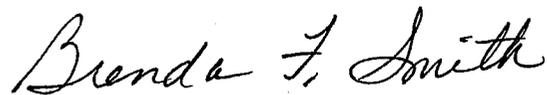
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I hope this opinion answers your question. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING  
Attorney General

By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH  
Chief, Opinions Division

TK/BM/BFS

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