



2011-063

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE  
ATTORNEY GENERAL

May 24, 2011

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Honorable Robert L. Broussard  
Madison County District Attorney  
100 North Side Square  
Huntsville, Alabama 35801-4820

District Attorneys – Practice of Law  
– Legal Services – Charitable  
Purposes

There is a difference between the  
“Practice of Law” as defined in the  
Code of Alabama and “Public  
Interest Legal Service” as defined in  
Rule 6.1 of the Alabama Rules of  
Professional Conduct.

A district attorney, assistant district  
attorney, deputy district attorney, or  
any attorney who receives a  
qualified state or federal license to  
practice law may not offer legal  
services that fall outside the  
authority of the license that has been  
obtained. Lawyers in state or  
federal practice who are seeking to  
assist the public or comply with Rule  
6.1 of the Alabama Rules of  
Professional Conduct are only  
authorized to participate in such  
events, actions, or projects that do  
not involve the provision of legal  
services.

Dear Mr. Broussard:

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

QUESTIONS

(1) Is there a difference between the "Practice of Law" as defined in the Code of Alabama and "Public Interest Legal Service" as defined in Rule 6.1 of the Alabama Rules of Professional Conduct?

(2) May a district attorney, assistant district attorney, or a deputy district attorney engage in charitable public-interest legal services to comply with Rule 6.1 of the Alabama Rules of Professional Conduct?

FACTS AND ANALYSIS

In your letter of request, you seek an opinion from the Attorney General that will possibly resolve what you describe as an "apparent conflict" between Rule 6.1 of the Alabama Rules of Professional Conduct and sections 12-17-184(11) and 34-3-6(b) of the Code of Alabama as it relates to attorneys employed directly by the executive branch of Alabama. Specifically, you seek a determination from this Office that every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged.

Section 34-3-6 of the Code of Alabama defines "Practice of Law," in pertinent part, as follows:

(a) *Only* such persons as are *regularly licensed have authority to practice law.*

(b) For the purposes of this chapter, the *practice of law is defined as follows:*

Whoever,

(1) In a representative capacity appears as an advocate or draws papers, pleadings, or documents, or performs any act in connection with proceedings pending or prospective before a court or a body, board, committee, commission, or officer constituted by law or having authority to

take evidence in or settle or determine controversies in the exercise of the judicial power of the state or any subdivision thereof; or

(2) For a consideration, reward, or pecuniary benefit, present or anticipated, direct or indirect, advises or counsels another as to secular law, or draws or procures or assists in the drawing of a paper, document, or instrument affecting or relating to secular rights; or

(3) For a consideration, reward, or pecuniary benefit, present or anticipated, direct or indirect, does any act in a representative capacity in behalf of another tending to obtain or secure for such other the prevention or the redress of a wrong or the enforcement or establishment of a right; or

(4) As a vocation, enforces, secures, settles, adjusts, or compromises defaulted, controverted, or disputed accounts, claims or demands between persons with neither of whom he or she is in privity or in the relation of employer and employee in the ordinary sense;

is practicing law.

ALA. CODE § 34-3-6 (2002) (emphasis added). In defining what constitutes legal service, the Legislature used very broad language that included both actions done for consideration and actions done in the absence of consideration. Section 34-3-6(a) clearly states that the practice of law may only be performed by a person who is regularly licensed.

District attorneys and assistant district attorneys have specific duties to which they must adhere. These powers and duties are set out at section 12-17-184 of the Code of Alabama. More specifically, section 12-17-184(11) prohibits district attorneys or full-time assistant district attorneys from practicing law in any form outside the discharge of the official duties. This subsection states as follows:

All district attorneys and all full-time assistant district attorneys shall devote their entire time to the discharge of the duties of their respective offices, and each and every one of the officers are prohibited from practicing law, directly or indirectly, in any court of this state or of the United States, or in any other manner or form whatsoever, except in the discharge of the official duties of their offices.

ALA. CODE § 12-17-184(11) (2006). Notwithstanding section 12-17-184, district attorneys and full-time assistant district attorneys are not “regularly” licensed and, therefore, are not authorized to practice law as defined pursuant to section 34-3-6 of the Code of Alabama. Instead, state and federal attorneys receive a qualified license to practice because such practice is limited in scope and best qualified as being public interest in nature. *See, generally*, ALA. CODE § 34-3-17 (2002).

Rule 6.1 of the Alabama Rules of Professional Conduct encourages, but does not require, lawyers to offer legal services or financial assistance to persons or organizations within the community that are unable to afford or provide such assistance. The sentiments espoused in this rule are akin to the thoughts of similar service industries. Rule 6.1 states as follows:

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

A. R. PROF’L CONDUCT 6.1. This particular provision does not limit participation to the provision of legal services. This rule acknowledges that a person may provide services by providing financial support to public interest organizations.

Although not mentioned in your request, this Office notes that Rule 6.6 of the Alabama Rules of Professional Conduct permits special member license holders to render pro bono services. This exception is afforded in

the limited instance where an inactive member seeks to become licensed for the sole purpose of rendering pro bono services. Rule 6.6 is inapplicable to the present matter because district attorneys and full-time assistant district attorneys do not receive a special license under similar circumstances. Instead, the provision of a special license to a district attorney or a full-time assistant district attorney is subject to the statutory limitations found in section 12-17-184(11) of the Code of Alabama.

Initially, you inquire as to whether there is a difference between the "Practice of Law" as defined in section 34-3-6 of the Code of Alabama and "Public Interest Legal Service" as defined in Rule 6.1 of the Alabama Rules of Professional Conduct. It is the opinion of this Office that section 34-3-6 sets forth what actions constitute the practice of law within the State of Alabama. Conversely, Rule 6.1 of the Alabama Rules of Professional Conduct does not define the term "Public Interest Legal Service." Instead, this rule concentrates on the various actions that may be taken by a lawyer, both legal and otherwise, to assist the public or other organizations that advocate for those that are less fortunate.

In your second question, you inquire as to whether a district attorney, assistant district attorney, or a deputy district attorney may engage in charitable public interest legal services in order to "comply" with Rule 6.1 of the Alabama Rules of Professional Conduct. As stated earlier, nothing in rule 6.1 intimates that the offering of legal services is the only means of fulfilling this rule. Moreover, Rule 6.1 is permissive in nature and does not require compliance on the part of any attorney.

Attorneys operating within state or federal government may already be perceived as practicing public-interest law. Nevertheless, it is the opinion of this Office that any state or federal attorney who has been issued a qualified license to practice law may not practice law outside the purview of that license. More pointedly, district attorneys and full-time assistant district attorneys who have been issued a qualified license must practice within the constraints outlined in section 12-17-184(11) of the Code of Alabama. Therefore, government lawyers seeking to assist the public must do so in some means other than through the provision of legal services.

### CONCLUSION

There is a difference between the "Practice of Law" as defined in the Code of Alabama and "Public Interest Legal Service" as defined in Rule 6.1 of the Alabama Rules of Professional Conduct.

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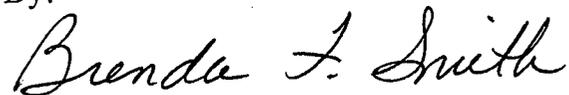
A district attorney, assistant district attorney, deputy district attorney, or any attorney who receives a qualified state or federal license to practice law may not offer legal services that fall outside the authority of the license that has been obtained. Lawyers in state or federal practice who are seeking to assist the public or comply with Rule 6.1 of the Alabama Rules of Professional Conduct are only authorized to participate in such events, actions, or projects that do not involve the provision of legal services.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE  
Attorney General

By:

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

BRENDA F. SMITH  
Chief, Opinions Division

LS/MMG  
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