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STATE OF ALABAMA
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Rules of Criminal Procedure – Warrants –
District Attorneys – Service of Process and
Summons – Fines – Penalties – Notices –
Houston County

A court in a criminal case may issue a
warrant for the arrest of the defendant for
the failure to appear at a hearing to show
cause for the failure to pay a fine after
notice of the hearing has been mailed to
the defendant's last known address.

Subject to the limitations of Rule 26.11 of
the Alabama Rules of Criminal Procedure,
the court may place a nonindigent
defendant in jail for failure to pay a fine
after the defendant has completed his or
her sentence or probation for the
underlying offense. The defendant may
serve time until the fine is paid or no
longer than one day for each \$15 of the
fine, no longer than the maximum term of
imprisonment for the offense, and no
longer than one year if the offense is a
felony.

Dear Mr. Valeska:

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

QUESTIONS

(1) May the circuit court issue an alias warrant
for failure to appear at a show cause hearing on the

nonpayment of a fine in a criminal case, even though the defendant did not receive personal service of the hearing notice under Rule 34.4 of the Alabama Rules of Criminal Procedure?

(2) May a nonindigent defendant be held up to one year for each \$15 owed where the defendant has completed his or her sentence or probation under Rule 26.11 of the Alabama Rules of Criminal Procedure?

FACTS AND ANALYSIS

Your request states as follows:

I am writing with a request for an opinion with regard to failure to pay in criminal cases. I am trying to get some uniformity in the enforcement of nonpayment cases within this circuit and the state. Currently, we are sending notice of a show cause hearing to the defendant at his last known address of record pursuant to Rule 34.4 of the Alabama Rules of Criminal Procedure. In the event the defendant fails to appear, we then request a warrant be issued for his or her arrest. Some of the circuit court judges seem to feel that we must prove that the defendant was, in fact, served before an alias warrant can be issued. Based on this rule, have we done all that is necessary for service to issue a warrant for nonappearance?

I would also request an opinion on how to handle the defendant once he or she gets to court to, again, acquire some uniformity in this regard. I have looked at Rule 26.11 of the Alabama Rules of Criminal Procedure, which seems to allow that a defendant who is not indigent can be held for up to one year for each \$15 owed. This seems to be true even if the defendant has reached his end of sentence on the original case or released from probation. This rule is not followed in this circuit.

Regarding your first question, Rule 34 of the Alabama Rules of Criminal Procedure governs form, contents, and service of motions and requests. Rule 34.4 specifically provides for service and filing. It states as follows:

Unless otherwise provided in these rules, *notice of any hearings at which the defendant's presence is required shall be served on the defendant*, and, if the defendant is represented by counsel, also upon counsel. As to all other notices or documents, where the defendant is represented by counsel, service shall be made upon the attorney of record. *Service upon the defendant* and the attorney *shall be accomplished* by delivering or *by mailing copies to their last known addresses*, or, if no address is known, by leaving copies with the clerk of the court. Reasonable alternative methods of service on the attorney may be approved by the court.

ALA. R. CRIM. P. 34.4 (emphasis added). This rule permits service of notice of a hearing by mail to the defendant's last known address. It does not require personal service.

This Office has observed that, “[u]nder Rule[] 9.1(c), . . . the court may issue a warrant of arrest for the defendant’s failure to appear at arraignment or other date. ALA. R. CRIM. P. 9.1(c). . . .” Opinion to Honorable Kristi A. Valls, Limestone County District Attorney, dated April 18, 2005, A.G. No. 2005-113, at 5. In addition to the authority to issue a warrant for the failure to appear at a show cause hearing on the failure to pay a fine, the court is authorized to issue a warrant solely on the failure to pay under Rule 26.11, which specifically governs the imposition and nonpayment of fines and restitution. ALA. R. CRIM. P. 26.11. Opinions to Honorable Robert W. Ennis, Attorney, City of Tuscaloosa, dated June 6, 2007, A.G. No. 2007-103; and Honorable George C. Simpson, District Judge, Clay County, dated May 6, 1987, A.G. No. 87-00170. Therefore, the court may issue a warrant for the arrest of the defendant for the failure to appear at a hearing to show cause for the failure to pay a fine after notice of the hearing has been mailed to the defendant’s last known address.

Regarding your second question, the *Ennis* opinion stated that a municipal judge could place the defendant in jail until the fine is paid or no longer than one day for each \$15 of the fine. That opinion opined as follows regarding the remedies for nonpayment available to the court:

After conducting an inquiry into the defendant’s ability to pay under Rule 26.11(g), the judge may use one of the remedies listed in Rule 26.11(h) such as . . . “[d]irect[ing] that the defendant be incarcerated until the unpaid fine . . . is paid, subject, however, to section (i) of this rule.” ALA. R. CRIM. P. 26.11(h)(3). Rule 26.11(i) contains a number of limitations on the incarceration remedy. For example,

“in no event shall such period of incarceration exceed one (1) day for each fifteen dollars (\$15.00) of the fine.” ALA. R. CRIM. P. 26.11(i)(1)(i).

Ennis, at 5.

This Office previously issued an opinion to you relating to other limitations on the incarceration remedy. Opinion to Honorable Douglas Albert Valeska, District Attorney, Twentieth Judicial Circuit, dated May 26, 2004, A.G. No. 2004-150. That opinion stated as follows:

[A] court cannot order the defendant to serve additional time if the aggregate of the time served would exceed the maximum term of imprisonment authorized for the underlying offense. *See* ALA. R. CRIM. P. 26.11(i)(1)(iv). . . . Nor may a court order a defendant to serve time for failure to pay fines, costs, and/or restitution if the defendant is indigent. *See* ALA. R. CRIM. P. 26.11(i)(2). . . .

Valeska, at 3. Nor, as you correctly indicate, may a court order a defendant to serve more than one year if the underlying offense is a felony. ALA. R. CRIM. P. 26.11(i)(1)(ii).

The *Valeska* opinion ultimately concluded that Rule 26.11(h) allows a court to order a defendant to serve time for failure to pay a fine after the defendant has served his or her sentence for the underlying offense. The rule also contemplates its application to defendants who have completed probation. Rule 26.11(f) governs action for failure to pay. Rule 26.11(f)(1) requires notice to the district attorney for nonpayment by a defendant not on probation, while Rule 26.11(f)(2) requires such notice to the probation officer for a probationer. ALA. R. CRIM. P. 26.11(f)(1) & (2). *Cf.*, *Ex parte Stewart*, 74 So. 3d 944 (2011) (trial court had jurisdiction over proceeding to enforce compliance with restitution order, although defendant had completed his terms of imprisonment and probation).

Accordingly, subject to the limitations of Rule 26.11, the court may place a nonindigent defendant in jail for failure to pay a fine after the defendant has completed his or her sentence or probation for the underlying offense. The defendant may serve time until the fine is paid or no longer than one day for each \$15 of the fine, no longer than the maximum term of imprisonment for the offense, and no longer than one year if the offense is a felony.

CONCLUSION

A court in a criminal case may issue a warrant for the arrest of the defendant for the failure to appear at a hearing to show cause for the failure to pay a fine after notice of the hearing has been mailed to the defendant's last known address.

Subject to the limitations of Rule 26.11 of the Alabama Rules of Criminal Procedure, the court may place a nonindigent defendant in jail for failure to pay a fine after the defendant has completed his or her sentence or probation for the underlying offense. The defendant may serve time until the fine is paid or no longer than one day for each \$15 of the fine, no longer than the maximum term of imprisonment for the offense, and no longer than one year if the offense is a felony.

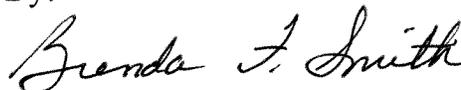
I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

LUTHER STRANGE

Attorney General

By:



BRENDA F. SMITH

Chief, Opinions Division

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