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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Steven E. Blair
Coffee County Probate Judge
Post Office Box 311247
Enterprise, Alabama 36331

Probate Judges – Judges – Drug Courts –
Conflicts of Interest

State law does not authorize a probate judge to be appointed to serve as a drug court judge, based on the judge's position as a probate judge, under the provisions of the Alabama Drug Offender Accountability Act.

Dear Judge Blair:

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

QUESTIONS

Does state law permit a probate judge to serve as a drug court judge as defined by section 12-23A-1, *et seq.* of the Code of Alabama? If so, may the probate judge be compensated for service as a drug court judge?

FACTS AND ANALYSIS

The Alabama Drug Offender Accountability Act ("Act"), found in section 12-23A-1, *et seq.*, of the Code, provides for the establishment of drug court programs. ALA. CODE §§ 12-23A-1 to 12-23A-13 (Supp. 2012). Section 12-23A-2(7), in pertinent part, defines "drug court" as follows:

(7) Drug court. A judicial intervention program for drug offenders *in the criminal division of the circuit or district court* that incorporates the ten key

components as enumerated in subsection (f) of Section 12-23A-4

ALA. CODE § 12-23A-2(7) (2006) (emphasis added).

Section 12-23A-4(a)(1) provides for the establishment of the drug court and states, in pertinent part, as follows:

(a)(1) The presiding judge of each judicial circuit, with the consent of the district attorney of that judicial circuit, may establish a drug court or courts, under which drug offenders shall be processed, to appropriately address the identified substance abuse problem of the drug offender as a condition of pretrial release, pretrial diversion, probation, jail, prison, parole, community corrections, or other release or diversion from a correctional facility. The structure, method, and operation of each drug court may differ and should be based upon the specific needs of and resources available to the judicial district or circuit where the drug court is located, but shall be created and operate pursuant to this chapter and in compliance with rules promulgated by the Alabama Supreme Court.

ALA. CODE § 12-23A-4(a)(1) (Supp. 2012).

This Office has been informed that no specific rules have been promulgated for the drug court. The statutory provisions require that drug courts under the Act are to be functions of either a circuit court or a district court. Furthermore, section 12-11-30(2) of the Code confers jurisdiction over criminal offenses exclusively to the circuit and district courts. ALA. CODE § 12-11-30(2) (2006). Therefore, a drug court judge under the Act must be either a circuit or district judge, depending on the court in which the drug court is established.

The judicial powers of the State are vested in a unified judicial system. ALA. CONST. art. VI, § 139 (amend. 328). The chief justice is authorized to assign “appellate justices and judges to any appellate court for temporary service and trial judges, supernumerary justices and judges, and retired trial judges and retired appellate judges for temporary service in any court. . . .” ALA. CONST. art. VI, §149 (amend. 328). Similarly, Alabama law provides for the appointment of special circuit and district court judges under certain circumstances. *See* ALA. CODE § 12-1-14 (2012) & ALA. CODE § 12-1-14.1 (2012). These authorities do not authorize a probate judge to be assigned to

temporary service in the appellate or trial courts based on the judge's position as a probate judge.

Additionally, as the Supreme Court has stated, "[Section 149] standing alone, permits this court to adopt a rule providing for the temporary assignment of judges." *State ex rel. Locke v. Sweeney*, 349 So. 2d 1147, 1148 (Ala. 1977). The Supreme Court has done so. Rule 13 of the Alabama Rules of Judicial Administration provides as follows: "The presiding circuit judge may temporarily assign *circuit or district court judges* to serve either within the circuit or in district courts within the circuit." ALA. R. JUD. ADMIN. 13 (emphasis added). This Office is not aware of any other provision of law that would authorize the appointment of an active probate judge to also serve as a circuit or district court judge.

Because we answer your first question in the negative, your remaining question is moot. Additionally, your questions may implicate various provisions of the Alabama Canons of Judicial Ethics. Accordingly, you should also direct your inquiry to the Judicial Inquiry Commission.

CONCLUSION

State law does not authorize a probate judge to be appointed to serve as a drug court judge, based on the judge's position as a probate judge, under the provisions of the Alabama Drug Offender Accountability Act.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division