

Opinion No. 2008-183

November 25, 2008

The Honorable Henry H. Boyce
Prosecuting Attorney
Third Judicial District
208 Main Street, Suite 31
Newport, Arkansas 72112

Dear Mr. Boyce:

I am writing in response to your request for an opinion on five questions relating to a circuit judge's ability to charge certain fees in criminal cases. Specifically, you ask:

- A. In a criminal case, must a circuit judge, or any other judge, have state statutory authority to impose fines, costs, sentences, fees, restitution, contributions, or any other penalties?
- B. In a criminal case, is a circuit judge, or other judge, limited to the amounts of fines, costs, sentences, fees, restitution, contributions, or any other penalties provided by law?
- C. In a criminal case, may a circuit judge order moneys to be paid in lieu of fines, costs, sentences, fees, restitution, contribution, or any other penalties or assessments to be paid into a separate bank account maintained by the circuit judge, prosecuting attorney, sheriff, or other official?
- D. Does a circuit judge have the authority to approve a plea bargain arrangement where, as a condition of probation or a reduced

sentence, the defendant must make a “contribution” to a Drug Control Fund or other cash fund?

E. In a criminal case, is there any authority for a judge to require the payment of a “contribution”?

RESPONSE

I must respectfully decline to address your questions because of this office’s long-standing policy against issuing opinions on matters that are the subject of pending or impending litigation or an ongoing administrative proceeding. This policy has consistently been applied to matters pending before both administrative agencies and the courts. *E.g.*, Ops. Att’y Gen. 2008-081, 99-139, 96-137, 90-114. Your questions are implicated in the ongoing proceedings of the Judicial Discipline and Disability Commission against Circuit Judge Willard Proctor. Therefore, I am unable to answer your questions.

Assistant Attorney General Ryan Owsley prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN MCDANIEL
Attorney General

DM:RO/cyh