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VIA FACSIMILE/U.S. MAIL

May 27, 2004

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David R. Williams, Executive Director
Georgia Superior Court Clerks' Cooperative Authority
Suite 100
1875 Century Boulevard
Atlanta, Georgia 30345

Re: House Bill 1EX

Dear David:

I spoke with Woodson Daniel yesterday regarding the language of Section 26 of the above-referenced Bill.

Section 26 amends O.C.G.A. § 42-8-34(d)(1) which imposes a probation fee of \$23.00 per month and a one-time fee of \$50.00 where the defendant was convicted of a felony. The amendment to O.C.G.A. § 42-8-34(d)(1) adds a sentence to state that "Any fees collected by the court under this paragraph shall be remitted not later than the last day of the month after such fee is collected to the Georgia Superior Court Clerks' Cooperative Authority for deposit into the general fund of the state treasury."¹ As I have indicated previously, I am uncertain regarding the intent of this language as the probation fees provided for in O.C.G.A. § 42-8-34(d)(1) are apparently paid to the Department of Corrections rather than the court.

As amended, O.C.G.A. § 42-8-34(d)(1) will provide that:

In every case that a court of this state or any other state sentences a defendant to probation or any pretrial release or diversion program under the supervision of the department, in addition to any fine or order of restitution imposed by

¹ Section 10 of House Bill 1 EX enacts O.C.G.A. § 15-21A-3(b)(5) which indicates relevantly that "Fees collected by the courts under Code Section 42-8-34" are to be remitted to the Authority."

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the court, there shall be imposed a probation fee as a condition of probation, release, or diversion in the amount equivalent to \$23.00 per each month under supervision, and in addition, a one-time fee of \$50.00 where such defendant was convicted of any felony. The probation fee may be waived or amended after administrative process by the department and approval of the court, or upon determination by the court, as to the undue hardship, inability to pay, or any other extenuating factors which prohibit collection of the fee; provided, however, that the imposition of sanctions for failure to pay fees shall be within the discretion of the court through judicial process or hearings. Probation fees shall be waived on probationers incarcerated or detained in a departmental or other confinement facility which prohibits employment for wages. All probation fees collected by the department shall be paid into the general fund of the state treasury, except as provided in subsection (f) of Code Section 17-15-13, relating to sums to be paid into the Georgia Crime Victims Emergency Fund. Any fees collected by the court under this paragraph shall be remitted not later than the last day of the month after such fee is collected to the Superior Court Clerks' Cooperative Authority for deposit into the general fund of the state treasury.

(emphasis added). As I read the above language, it appears that the current process of collection of probation fees by the Department of Corrections is unchanged. The Department of Corrections will apparently continue to collect fees and remit those fees to the state treasury. It seems that the new language regarding the Authority might apply to the one-time \$50.00 fees in felony cases, but I am under the impression that such fees are generally collected by the Department and not the courts. From my reading, I am inclined to conclude that if the courts collect any fees under O.C.G.A. § 42-8-34(d)(1), they are required to remit those fees to the Authority, but if the Department of Corrections collects the fees, the Department remits the fees to the general fund.

Section 26 also amends O.C.G.A. § 42-8-34(d)(2) to provide that the one time fee of \$25.00 that is imposed in cases involving violations of O.C.G.A. §§ 40-6-391 or 16-12-2(b) where the person convicted is sentenced to probation or a suspended sentence is to be paid over to the Authority on a monthly basis not later than the last day of the

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following month and that the Authority is to pay the funds collected into the State treasury.

Chairman Daniel and I also discussed O.C.G.A. § 15-21A-7(b) which is enacted by Section 10 of House Bill 1 EX. O.C.G.A. § 15-21A-7(b) will provide that:

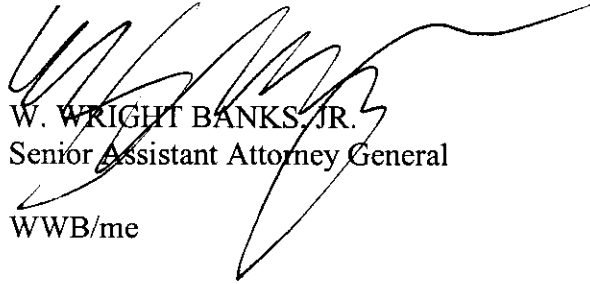
The authority shall develop a reporting and accounting system that employs controls necessary to determine the accuracy of the fine and fee collections and disbursements by each clerk of court or other officer or agent of any court receiving any fines and fees. No later than 60 days after the end of the last day of each month, each such clerk or agent shall report to the authority on a reporting system prescribed by the authority. Any entity doing business with such clerk or agents and all agencies of the state shall cooperate in providing on a timely basis any information or data requested by the authority in a format prescribed by the authority by regulation.

(emphasis added). The reporting requirement in O.C.G.A. § 15-21A-7 appears much broader than the specific remitting requirements elsewhere in Chapter 21A. For example, O.C.G.A. § 15-21A-3 describes the specific “costs, fees, and surcharges subject to this Code section.” O.C.G.A. § 15-21A-4(a)(1) requires that “Each clerk of any court or any other officer or agent of any court receiving any funds subject to this chapter on or after July 1, 2004, shall remit all such funds to the authority by the end of the month in which such funds are received.” The specific funds subject to the chapter would obviously appear to be those that are referenced in O.C.G.A. § 15-21A-3 and those in O.C.G.A. § 15-21A-6. O.C.G.A. § 15-21A-4(a)(2) provides relevantly that “If any court is more than 60 days delinquent or is habitually delinquent in remitting any funds or reports required under this Code section or Code section 15-21A-6, the authority shall notify the chief judge of superior court of the county in which the court is located.” O.C.G.A. § 15-21A-4(c) provides that “The authority shall prescribe uniform procedures and forms for the reporting and remittance of all funds subject to Code Section 15-21-3 . . .” Thus, given that O.C.G.A. § 15-21A-4(c) contemplates specific reporting for funds required to be remitted to the Authority, it appears fairly clear that the additional reporting requirement in O.C.G.A. § 15-21A-7 goes beyond those amounts that are required to actually be remitted to the Authority.

I hope that this is helpful. Please keep in mind that this letter is informal advice and does not constitute the official or unofficial opinion of the Attorney General.

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Sincerely,

A handwritten signature in black ink, appearing to read 'W. Wright Banks, Jr.', with a long horizontal flourish extending to the right.

W. WRIGHT BANKS, JR.
Senior Assistant Attorney General

WWB/me