

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**No. 2010-CA-01745**

**LAFAYETTE COUNTY BOARD OF  
SUPERVISORS**

**APPELLANT**

**V.**

**THIRD CIRCUIT DRUG COURT**

**APPELLEE**

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**SUPPLEMENTAL BRIEF OF THE APPELLEE**

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An Appeal From the Circuit Court of Lafayette County, Mississippi  
Honorable Andrew K. Howorth, Circuit Judge, Presiding


**NO ORAL ARGUMENT REQUESTED**

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## CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

- (1) Lafayette County Board of Supervisors, Appellant
  - (a) Mike Pickens, District 1 Supervisor
  - (b) Johnny Morgan, District 2 Supervisor
  - (c) Robert Blackmon, District 3 Supervisor
  - (d) Lloyd Oliphant, District 4 Supervisor
  - (e) Ray Sockwell, Jr., District 5 Supervisor
- (2) Third Circuit Drug Court, Appellee
- (3) Hon. Andrew K. Howorth, Third Circuit Drug Court Judge
- (4) David D. O'Donnell, Attorney for the Appellant
- (5) Attorney General Jim Hood, Attorney for the Appellee
- (6) Elizabeth R. Carr, Attorney for the Appellee

  
Elizabeth R. Carr, MSB# [REDACTED]

## TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PARTIES.....	2
TABLE OF CONTENTS .....	3
TABLE OF AUTHORITIES .....	4
STATEMENT OF THE ISSUES .....	5
ARGUMENT .....	6
CONCLUSION .....	10
CERTIFICATE OF SERVICE .....	11

## **TABLE OF AUTHORITIES**

<b><u>Cases</u></b>	<b><i>Page(s)</i></b>
<i>Court Reorganization Plan of Hudson County</i> , 391 A.2d 1255 (1978).....	8
<i>In re Bauman</i> , 878 So.2d 1033 (Miss.Ct.App.2004). ....	7
<i>O'Coins, Inc. v. Treasure of the county of Worcester</i> , 510, 287 N.E.2d 608, 611 (1972) .....	6
<i>Pena v. District Court of Second Judicial District</i> , 681 P.2d 953 (Colo.1984).....	8
<i>Sartin v. Barlow ex rel. Smith</i> , 16 So.2d 372 (Miss. 1944). ....	6
<i>Strong v. Bostick</i> , <u>420 So.2d 1356, 1359 (Miss.1982)</u> . ....	6
<i>State v. Lynch</i> , 796 P.2d 1150, 1166 (Ok1.1990). ....	6

### **Statutes**

Mississippi Code Annotated 93-23-9(3) (Rev. 2004) §. ....	8
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## **STATEMENT OF THE ISSUES**

1. WHETHER, BASED ON UNION COUNTY'S HAVING REPLACED LAFAYETTE COUNTY AS THE "LEAD COUNTY" FOR THE THIRD CIRCUIT DRUG COURT, THE APPEAL SHOULD BE CONSIDERED MOOT?
2. WHETHER IT IS PROPER FOR THE SUPREME COURT TO CONSIDER THIS APPEAL TAKING INTO CONSIDERATION MISSISSIPPI CODE SECTION 9-23-9(3)?

## ARGUMENT

### APPEAL FILED IN THE INSTANT CAUSE IS NOT MOOT BECAUSE WHILE UNION COUNTY NOW SERVES AS THE "LEAD COUNTY" THIS LEGAL ISSUE IS HIGHLY CAPABLE OF REPETITION

The Court raises the issue of whether because a new county, namely Union County, has taken over the responsibility of "lead county," this issue should be considered moot. It is a well-founded premise that the Court will dismiss an appeal "when no useful purpose could be accomplished by entertaining it, when so far as concerns any practical ends to be served the decision upon the legal questions involved would be merely academic." *Strong v. Bostick*, 420 So.2d 1356, 1359 (Miss.1982). There are, however, exceptions to this rule. The questions raised in this case have great public interest. While the aforesaid is the general rule, it has, on the other hand, been broadly stated that the rule will not be applied when the question or questions involved are matters affecting the public interest. *Sartin v. Barlow ex rel. Smith*, 16 So.2d 372 (Miss. 1944). The Court has found that when the question concerns a matter of such a nature that it would be distinctly detrimental to the public interest that there should be a failure by the dismissal to declare and enforce a rule for future conduct there is an exception to the general rule as respects moot cases. *Id* at 376

Given the vital role drug courts play in the counties in which they serve by rehabilitating substance abusers and equipping them with the life skills needed to re-enter society as sober, productive citizens, this issue is of great importance to insure the uninterrupted furtherance of the program. Drug Courts are courts designed to address crimes committed by persons addicted to drugs or alcohol providing rehabilitation to drug addicted offenders by requiring them to participate in drug treatment programs and intense supervision. When drug abuse prevention fails, the public pays a high price, particularly if abusers commit serious offences under the

influence of drugs (e.g., domestic violence) or to help pay for their habit (e.g., burglary, theft). Thus it is extremely imperative that the Drug Court's power to carry out its functions is not improperly usurped.

In addition to the great public interest involved in providing guidance and clarification in this matter, the Court has also found an exception where it is highly probable for the issue to be repetitious. In *In re Bauman*, 878 So.2d 1033 (Miss.Ct.App.2004), the Court found there are two qualifiers to a finding that a moot appeal is capable of repetition yet evading review: (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration and (2) there was a reasonable expectation that the same complaining party would be subject to the same action again. *Id* at 1037. The *Bauman* case was a civil commitment action. *Id.* at 1035. The appellant had been committed and then subsequently discharged. *Id.* at 1037. This Court found that, though the appellant was discharged prior to his appeal, his appeal fell under the capable of repetition yet evading review exception. *Id.* at 1038. This is synonymous with the facts in this instance.

The Third Circuit Drug Court has only been operational since 2008. From its inception until 2010, Lafayette County was considered the court's jurisdictional court. While Lafayette County has relinquished its responsibilities as "lead county" to Union County, this issue could also arise in Union County or any other respective county that serves as "lead county" in the future. In light of this, there must be clarification not only to explain the Drug Court's ability to establish rules in furtherance of the goals of the Drug Court but also because the issue is capable of repetition and thus must be settled accordingly. It is the Appellee's belief that should this matter not be settled, future disputes such as the one presently before the Court, would irreparably harm the participants and family of said participants should there be a lapse of

operation, etc. due to the Courts inability to run its program without interference from some outside source.

**SECTION 9-23-9(3) IS INAPPLICABLE AS IT RELATES TO THE ISSUE  
ARRISING FROM THIS APPEAL AS IT GOES TO DEFINING AND  
CLARIFYING THE DRUG COURTS INHERENT POWERS**

While Mississippi Code Annotated Section 9-23-9(3) speaks towards the Advisory Committees' role as arbiter in instances arising out of the operation of the drug courts, the Appellee, Third Circuit Drug Court, does not believe this to be nexus of the appeal in this instance. The Appellee is of the opinion that the issues regarding the operation of the drug court fall secondary to the Court's need for clarification regarding what the drug court's inherent powers are as it relates to making rules necessary to carry out the functions of the Court.

It is well settled that a court has the inherent power to provide the facilities, personnel and resources reasonably necessary for the performance of the judicial functions in the county. "And as a corollary thereof [a judge] must have the power to compel the appropriation and expenditure of funds by the coequal executive and legislative branches of government to accomplish such purpose, subject only to the bounds of reasonable discretion" *Pruett v. State* 574 So.2d 1342 Miss.,1990 citing *Court Reorganization Plan of Hudson County*, 391 A.2d 1255 (1978). Further the Court in *Pena v. District Court of Second Judicial District*, 681 P.2d 953 (Colo.1984), found that "courts possess inherent powers to effectuate an orderly and efficient administration of justice without being financially or procedurally inhibited by the General Assembly).

In the instant case, the Appellant asserts that the Drug Court exceeded its authority in issuing certain Orders regarding the Lafayette County Supervisors' interference with the functions of the Drug Courts. The Court's June 17, 2010 order specifically directed the

Lafayette County Board of Supervisors to “cease and desist” its interference with the Court’s functions, including employee hiring and other budgetary issues. Courts have long realized that there are those who believe the judiciary’s sole role is to preside over the adjudicative process and that providing manpower for criminal defense is an executive function. *See, State v. Lynch*, 796 P.2d 1150, 1166 (Okla.1990) (Opala, V.C.J., concurring in part and dissenting in part). *But see* majority, *Lynch*, 796 P.2d at 1162-63; and 796 P.2d at 1174 (Sims, J., Dissenting.) The Court has however found that its responsibility, however, far exceeds only adjudicating. The Court in *O’Coins, Inc. v. Treasure of the county of Worcester*, 362 Mass. 507, 510, 287 N.E.2d 608, 611 (1972), stated that the “court’s authority is not limited to adjudication, but includes certain ancillary functions, such as rule-making and judicial administration, which are essential if the courts are to carry out their constitutional mandate.” It takes on “executive functions” to the extent that judges are involved with the administration of the litigation system and it has some legislative function in the development of the substantive law within the jurisdiction through the decisional process.” *Id.*

## **CONCLUSION**

While the issues originally brought forth in the Appellant's appeal were resolved with respect to the facts in this particular case, the underlying issues still remain because of the likelihood that this could occur again. The Court has consistently, in instances where the issue could recur, found an exception the moot doctrine. Given the great public interest involved with insuring that the Drug Court can, under statutory provisions and precedence, make those rules deemed necessary so as maintain not only the adjudicating aspects of the Court, but also those duties that fall ancillary to it such as judicial administration.

The Appellee believes that while the State Drug Court Advisory Committee was ordained with the responsibility of acting as arbiter in instances where disputes arise from the operational aspects of the drug courts, it is inapplicable in this instance. The issue before the court in this instance concerns clarification as to what inherent powers the drug courts possess in furthering the overall goals of the program. While it may be true that the advisory committee is the proper forum for disputes dealing with day to day aspects, the committee would not be proper to clarify whether the Court was within its power to Order the Lafayette County Board of Supervisors to terminate its interfering actions. In light of the foregoing, the Appellee believes this appeal to be properly before the Court due to its probability of recurrence and also because the advisory committee would not be the proper body to determine what the drug courts' inherent powers is in carrying out the legislative intent of the Mississippi Drug Court Rules and the drug court program.

**CERTIFICATE OF SERVICE**

I, Elizabeth R. Carr, Special Assistant Attorney General, Counsel for the Appellee, do hereby certify that I have caused this day to be mailed, by United States Mail, postage prepaid, a true and correct copy of the above and foregoing Brief of the Appellee to :

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THIS, the 5th day of August, 2011.



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