



WEST'S ANNOTATED MISSISSIPPI CODE

TITLE 21. MUNICIPALITIES

CHAPTER 23. MUNICIPAL COURTS

§ 21-23-11. Court clerk; dockets and minutes; initial misdemeanor appearances

M. Courts (12 hrs)

The clerk of the municipality shall be the clerk of the municipal court, unless the governing authorities shall otherwise elect. The clerk of the court shall attend the sittings of the court in person or by duly appointed deputies, and he shall be under the direction of the municipal judge. The governing authorities may authorize the municipal judge to appoint other municipal employees as deputy clerks of the court to assist the clerk of the court in the conduct of the court's responsibilities or the governing authorities may appoint deputy clerks of the court. The authorization to appoint and/or appointment of deputy clerks of the court shall be entered in the minutes of the municipality. A police officer of the municipality may be the clerk of the court or a deputy clerk of the court. The governing authorities shall provide for the training of court personnel.

The clerk of the court shall keep permanent dockets, upon which all cases shall be entered; said docket shall contain the style of the case and the nature of the charge against an accused, and the names of witnesses for the prosecution and defendant. The clerk of the court shall also keep a minute record in which all orders and judgments shall be entered. One (1) record may serve as both the docket record and minute record. The clerk of the court or deputy clerk of the court shall issue all process from the court, except arrest warrants or process for the seizure of persons and property, and shall administer the collection of all fines, penalties, fees and costs imposed by the court and deposit all collections with the municipal treasurer or equivalent officer. The clerk of the court shall purchase all dockets, minute record, stationery and other supplies for the municipal court, and have the account allowed by the municipal judge; the order allowing the same shall be entered upon the minutes, and the municipal authorities shall pay the same. The clerk of the court and deputy clerks of the court shall have power to take acknowledgments, administer any oaths required by law to be taken by any person, and take affidavits charging any crime against the municipality or state.

When the municipal judge is unavailable, persons charged with the commission of misdemeanor violations within the municipality may be brought before the clerk of the court for initial appearances required by the Mississippi Uniform Criminal Rules of Circuit Court Practice where the clerk of the court has satisfactorily completed a course of training and education on this subject conducted by the Mississippi Judicial College of the University of Mississippi Law Center and the municipal judge has established written guidelines and procedures for the clerk of the court to discharge this function. Such guidelines shall be entered in the minutes of the court and be deemed a public record and made available to defendant or counsel.

CREDIT(S)

Laws 1950, Ch. 491, § 105; Laws 1979, Ch. 401, § 7; Laws 1988, Ch. 418, § 1; Laws 1989, Ch. 571, § 3; Laws 1995, Ch. 506, § 1; Laws 1995, Ch. 447, § 6, eff. July 1, 1995.

HISTORICAL AND STATUTORY NOTES

Derivation:

Code 1930, § 2538; Code 1942, § 3374-105.

CROSS REFERENCES

Municipality's council shall elect vice-mayor and other officers, see § 21- 7-15.

LIBRARY REFERENCES

Clerks of Courts ↻64.

WESTLAW Topic No. 79.
C.J.S. Courts §§ 249, 254.

JUDICIAL DECISIONS

In general 1

Affidavits and oaths 2

Appointment by municipal judge 7

Collection of fines 6

Dual employment 5

Initial appearances 3

Records 4

1. In general

It would not be illegal or unethical for the full-time county justice court clerk to also be employed by a local city as the city's part-time municipal court clerk. The employee may not be paid by one entity while performing services for the other, and the board of supervisors in their discretion may determine whether or not the justice court clerk will be a full-time or part-time employee. Op.Atty.Gen. No. 2000-0484, Carroll, September 8, 2000.

There is no prohibition against a justice court clerk also serving as a municipal court clerk for a city in the same county. Of course, the employee may not be paid by one entity while performing services for the other. Op.Atty.Gen. No. 2000-0465, Lumpkin, August 18, 2000.

Since the minute record contains all orders and judgments from the municipal court, it is imperative that the municipal court judge sign such orders and judgments, but there is no requirement that the minute records be bound. A digital signature pursuant to Section 25-63-5 is not sufficient since the minutes must be printed and signed. Op.Atty.Gen. No. 2000-0409, Rook, July 24, 2000.

A police chief or his officers can serve as municipal court clerk or a deputy clerk of the court, and would be under the direction of the municipal judge while conducting the activities of the court clerk. Op.Atty.Gen. No. 99-0434, Ferrell, October 15, 1999.

A full-time law enforcement officer may serve as an Ex Officio Deputy Clerk with the authority to "take acknowledgements, administer any oaths required by law to be taken by any person, and take affidavits charging any crime against the municipality or state." Op.Atty.Gen. Tennyson, Jan. 16, 1989.

Municipalities may accept payment of fines and court costs by credit card provided the full amount legally due is remitted to the city without discount or cost. Stated differently, there is no authority for the city to accept a discounted amount or to pay service charges or other charges for credit card service. Op.Atty.Gen. Jenkins, May 17, 1991.

The clerk of a municipal court does not have authority to issue arrest warrants or to issue search warrants. Moreover, Section 21-23-11 does not give the clerk of a municipal court the authority to approve the sufficiency of bonds; therefore, the clerk does not have this authority. Op.Atty.Gen. Hatcher, July 8, 1992.

The municipal clerk is not a notary public by virtue of his/her office; however, pursuant to § 21-23-11, a municipal court clerk has all of the powers of a notary public. Op.Atty.Gen. Lindsey, April 22, 1992.

There is no authority for a municipal court judge to appoint any other individual to conduct probable cause hearings for the purpose of issuing a warrant. Probable cause hearings are judicial functions and must be performed by a judge, and only a judge may make a probable cause determination. In justice court, once a judge makes a determination that probable cause exists, the judge may order the clerk to issue a warrant; however, the clerk cannot make the probable cause determination. Op.Atty.Gen. No. 97-0354, Hatcher, June 20, 1997.

A municipal court clerk is under the direction of the municipal judge and should report to that judge any activities concerning the operation of the municipal court. Op.Atty.Gen. No. 97-0132, Wood, March 7, 1997.

While this section authorizes a police officer to be appointed as a clerk or deputy clerk of the court, such a police officer would be under the direction of the municipal judge while conducting the activities of the court clerk. Op.Atty.Gen. No. 97-0132, Wood, March 7, 1997.

Section 21-23-7(10) gives a municipal court judge the authority and power to make rules for the

administration of the court's business. Such rules shall be in writing and filed with the clerk of the court and may address the policy and procedures to be followed by the municipal court clerk, consistent with section 21-23-11, to insure the effective operation of the municipal court. Op.Atty.Gen. No. 97-0124, Hester, March 7, 1997.

While there is no prohibition against a police officer who also serves as municipal court clerk or deputy clerk issuing a traffic ticket or other citation that is returnable to the municipal court where he serves as clerk, if the municipal judge determines that he cannot impartially hear such a case, the ticket or citation may be filed in the justice court of the county. Op.Atty.Gen. No. 97-0021, Jan. 10, 1997.

2. Affidavits and oaths

Under Mississippi statute, police sergeant who was deputy clerk of police court had no authority to take affidavits from store owners or their representatives preferring charges against picketing individuals and, without direction of police justice, to issue warrants of arrest. *Smith v. Grady* (C.A.5 (Miss.) 1969) 411 F.2d 181. Criminal Law ↻217

There is no authority which would require placing of an official seal on a criminal affidavit. However, the affidavit should show the official title or position of the person acknowledging the oath, e.g., "clerk" or "deputy clerk." Op.Atty.Gen. No. 2003-0086, Navarro, February 28, 2003.

The validity of the traffic ticket constituting an affidavit is not affected by the dispatcher taking the original information, thereby becoming a potential fact witness, performing the administrative function of acknowledging or taking the officer's oath on the charging document. Op.Atty.Gen. No. 2002-0158, Holland, April 5 2002.

A traffic ticket should not be accepted and docketed by the municipal court clerk unless it has been signed by the officer issuing it. However, if a case has been filed on a traffic ticket that has not been signed by the officer issuing it, the court may allow the officer to cure the defect by signing the ticket and then proceed with the case. Upon a motion by the defendant to dismiss, the court has discretion to deny the motion and allow the officer to cure the defect by signing the ticket and proceeding with the case. Op.Atty.Gen. No. 2002-0770, Nowak, January 10, 2003.

A municipal court clerk may, where the crime occurs within the municipality's jurisdiction, take felony affidavits to be served both inside and outside the municipal corporate limits pursuant to § 21-23-11. Op.Atty.Gen. Haltom, Nov. 27, 1989.

3. Initial appearances

A Court Clerk is certified to hold an initial appearance as regards defendants who are in jail and cannot make bond. Op.Atty.Gen. No. 95-0664, Slade, Oct. 25, 1995.

4. Records

The court clerk has the responsibility to maintain the records of the court pursuant to Section 21-23-11. Therefore, the municipal court clerk should keep the original affidavits and copies of warrants for felony cases in the office of the court clerk and may make copies for the investigators. Op.Atty.Gen. No. 2000-0668, Hutcherson, November 17, 2000.

Section 21-23-11 provides that the municipal court clerk is responsible for preserving the records of the court and maintaining them in the municipal court clerk's office. There is no prohibition against a municipal court clerk from placing court records in a separate data base in a county computer in the justice court building, however, this clerk must make sure that the court records in a computer data base are secure and that unauthorized persons do not have access to the records. Op.Atty.Gen. No. 2000-0484, Carroll, September 8, 2000.

Pursuant to Section 25-61-5, as regards the authority to release municipal court records, if a written procedure exists, then it should be followed as to who authorizes release of records. If none exists, the custodian or person in charge of the records should authorize release of the records. This would ordinarily be the clerk of the court as determined by the governing authorities. Op.Atty.Gen. No. 2005-0210, Markopoulus, June 10, 2005, 2005 WL 1692986.

5. Dual employment

A deputy municipal court clerk does not exercise any core power of the judiciary and therefore can simultaneously hold that office and serve as justice court judge, although situations may arise that would require recusal as judge in particular cases. The individual may not perform Justice Court duties during times for which he is being paid as a deputy

municipal court clerk, and continued municipal employment is at the discretion of the municipal governing authorities. Op.Atty.Gen. No. 2003-0125, Sanford, March 21, 2003.

6. Collection of fines

A municipal judge may order a criminal defendant, who has been convicted and sentenced to pay a fine, to pay off his fine and court costs over time on a payment plan. The order may stipulate how the collection of money from a payment plan shall be applied, i.e., fine, court cost, state assessments, etc. If the order is silent as to how the collections should be applied, the court clerk shall make such a determination. Op.Atty.Gen. No. 2003-0133, Moncure-Cannon, April 7, 2003.

7. Appointment by municipal judge

When a municipal governing authority has granted the authority to appoint a deputy municipal court clerk to the municipal court judge, and that judge makes an appointment, the failure to include in the official minutes the authority to make such appointment or the name of the deputy court clerk so appointed does not render any official acts taken by that appointee void and unenforceable; those acts are valid and binding acts of a de facto municipal officer. Op.Atty.Gen. No. 2005-0263, Sorrell, June 3, 2005, 2005 WL 1692966.

Miss. Code Ann. § 21-23-11, MS ST § 21-23-11

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WEST'S ANNOTATED MISSISSIPPI CODE

TITLE 21. MUNICIPALITIES

CHAPTER 23. MUNICIPAL COURTS

§ 21-23-12. Training program for court clerks

(1) Every person appointed as clerk of the municipal court shall be required annually to attend and complete a comprehensive course of training and education conducted or approved by the Mississippi Judicial College of the University of Mississippi Law Center. Attendance shall be required beginning with the first training seminar conducted after said clerk is appointed.

(2) The Mississippi Judicial College of the University of Mississippi Law Center shall prepare and conduct a course of training and education for municipal court clerks of the state. The course shall consist of at least twelve (12) hours of training per year. After completion of the first year's requirement, a maximum of six (6) hours training, over and above the required twelve (12) hours, may be carried forward from the previous year. The content of the course of training and when and where it is to be conducted shall be determined by the Judicial College. A certificate of completion shall be furnished to those municipal court clerks who complete such course, and each certificate shall be made a permanent record of the minutes of the board of aldermen or city council in the municipality from which the municipal clerk is appointed.

(3) Upon the failure of any person appointed as clerk of the municipal court to file the certificate of completion as provided in subsection (2) of this section, within the first year of appointment, such person shall then not be allowed to carry out any of the duties of the office of clerk of the municipal court and shall not be entitled to compensation for the period of time during which such certificate remains unfiled.

CREDIT(S)

Laws 1992, Ch. 423, § 1; Laws 1996, Ch. 309, § 1, eff. July 1, 1996.

LIBRARY REFERENCES

Courts ↻ 187.
WESTLAW Topic No. 106.

JUDICIAL DECISIONS

In general 1
Noncompliance 3
Required testing 2

1. In general

Section 21-23-12 provides that persons appointed as clerk of the municipal court shall be required to attend training; it does not specify that every person appointed as a clerk nor deputy clerks should attend; therefore, only the clerk of the municipal court, not deputy clerks, are required to complete the training and education course. Op.Atty.Gen. No. 93-0683, Coats, Nov. 3, 1993.

2. Required testing

A municipal court clerk is required to receive at least

twelve (12) hours of training and education each year twelve (12) hours of training within the first year of being appointed as clerk, and then an additional twelve (12) hours of training on an annual basis. If a clerk receives more than the required twelve (12) hours of training in one year, up to six (6) of those hours may be carried forward to be applied to the next year's requirement. Op.Atty.Gen. No. 2001-0133, Kossman, March 9, 2001.

3. Noncompliance

Failure of a municipal court clerk to receive the required training prohibits the clerk from performing any of the duties of the job and from receiving any compensation until the training is completed. Upon noncompliance, the governing authorities should suspend the clerk without pay until the clerk complies

with the requirements. Continued payments to an unqualified clerk should be reported to the State Auditor. Op.Atty.Gen. No. 2001-0133, Kossman, March 9, 2001.

Miss. Code Ann. § 21-23-12, MS ST § 21-23-12

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