

JUSTICE COURT / MUNICIPAL COURT BENCH CARD ON THE RIGHT TO COUNSEL

THE RIGHT TO COUNSEL IS SET FORTH IN RULE 7 OF THE MISSISSIPPI RULES OF CRIMINAL PROCEDURE. READ THE RULE!

CHECKLIST OF IMPORTANT CONCERNS:

- THE ACCUSED IS ENTITLED TO AN ATTORNEY AT EVERY CRITICAL STAGE OF THE PROCEEDINGS. See Alabama v. Shelton, 535 U.S. 654 (2002); Scott v. Illinois, 440 U.S. 367, 373 (1979); Argersinger v. Hamlin, 407 U.S. 25 (1972); Page v. State, 495 So. 2d 436 (Miss. 1986).
- AT THE DEFENDANT'S FIRST APPEARANCE BEFORE A JUDGE, the judge must advise the defendant of the right to an attorney as required under Rule 7.1 of the Mississippi Rules of Criminal Procedure. An indigent defendant is entitled to an appointed attorney, free of cost, if the matter could result in the loss of liberty or the interests of justice so require.
- IF AN INDIGENT DEFENDANT WANTS AN ATTORNEY, then instruct him/her: (1) to submit a written MOTION FOR APPOINTMENT OF ATTORNEY, and (2) to complete and sign under oath an AFFIDAVIT OF SUBSTANTIAL HARDSHIP.

(The court shall make these forms available to the defendant at no cost.)

ADDITIONALLY, you may examine the defendant under oath to clarify his/her financial situation—which is especially important when the defendant has difficulty completing the AFFIDAVIT OF SUBSTANTIAL HARDSHIP.

- Enter an ORDER ON DEFENDANT'S MOTION FOR APPOINTMENT OF ATTORNEY. If denied, specifically state the reasons for not granting the defendant's request.

WAIVER OF RIGHT TO AN ATTORNEY:

Rule 7.1(c) of the Mississippi Rules of Criminal Procedure sets forth the procedures that the judge MUST follow when a defendant desires to act as his/her own attorney.

The BEST PRACTICE is to conduct a Rule 7.1(c) examination whenever the defendant is not represented by an attorney, or an appointed attorney, on a matter that could result in the loss of liberty AND to have the defendant sign a corresponding written waiver that contains the court's advisement.

THE DEFENDANT'S DECISION TO PROCEED WITHOUT AN ATTORNEY MUST BE KNOWINGLY AND VOLUNTARILY MADE.

WITHDRAWAL OF WAIVER:

Rule 7.1(d) of the Mississippi Rules of Criminal Procedure provides:

"A defendant may withdraw a waiver of the right to counsel at any stage of the proceedings but will not be entitled to repeat any proceeding previously held or waived solely on the grounds of the subsequent appointment or retention of counsel."



Prepared by the Mississippi Judicial College for training and educational purposes pursuant to Section 37-26-1.