

**THE MISSISSIPPI RULES OF CRIMINAL PROCEDURE
More from Justice Kitchens**

**Presented to Mississippi's Justice Court Judges
Mississippi Judicial College
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A young preacher, who was just getting started, had enormous admiration for an elderly evangelist who'd had a long and productive ministry. The young man asked the old gentleman how it was that his preaching had been so effective.

“Well, Son,” the old man explained, “it’s pretty simple, really. First, I tell ’em what I’m gonna tell ’em. Then, I tell ’em. At the end, I tell ’em what I done told ’em.”

Think of me as that old preacher. Fact is, half of that is true. But I’m not a preacher.

I did, however, come here today to tell you what I done told you, though not *all* of what I done told you. Some of you may recall that, almost exactly a year ago, I introduced you to the new Mississippi Rules of Criminal Procedure, which had been adopted unanimously

by the Mississippi Supreme Court and were going to take effect, in the courts you serve, on July 1, 2017.

For three and a half hours I talked to you about those rules. Everything I'm going to tell you this morning, I told you last year—and a lot more. Today I'm going to talk about just two things. Mostly, I'm going to talk about initial appearances. In addition, I'm to raise a little hell about the absurd practice of setting kajillion dollar bail bonds that nobody in Mississippi can make.

RULE 5

Re: Initial Appearances

Rule 5's clear requirement that initial appearances before judges occur within forty-eight (48) hours of arrest is *mandatory*.

This is true without regard to the seeming contradictions of MRCrP 1.3 about computation of time. Under Rule 5, no exception is made for Saturdays, Sundays, legal holidays, or days when the court clerk's office is closed. Initial appearances are conducted by judges, not court clerks.

The mandatory requirement, “. . . the accused shall be taken without unnecessary delay, and in no event later than forty-eight (48) hours after arrest, before a judge for an initial appearance[,]” appears twice in Rule 5.¹

Here are a couple of examples of how Rule 5 must be applied:

- In a rural area on an interstate highway, someone is arrested and jailed by a state trooper on a charge of DUI at 11:30 p.m. on December 23. A judge *shall* conduct an initial appearance for the accused person before 11:30 p.m. on December 25. The hearing can occur at any time, day or night, within the 48-hour period that began at the time of the arrest.
- A deputy sheriff comes in and files an affidavit charging John Doe with four counts of burglary. You issue a warrant for Doe’s arrest and the deputy leaves with it. The next day you and your spouse fly to Italy to celebrate your 50th anniversary. While you’re on your two-week trip of a lifetime, Doe is arrested, pursuant to your warrant, and locked in the county jail. Within 48 hours, *some judge* in that county must have conducted an initial appearance. Of course, you will have made arrangements for *some judge* or *judges* to cover for you while you’re away. The courts must remain open for initial appearances, regardless of circumstances. This is serious business, and it’s part of your job.

¹This mandate is found in MRCrP 5(b)(3), which pertains to warrantless arrests, and in MRCrP 5(c)(2)(A), which pertains to arrests made pursuant to warrant.

Rule 5 contemplates that the accused will be taken before the judge, not that the judge will go into the jail to conduct the initial appearance. See MRCrP 5.2(a), which provides, in pertinent part: “Every person in custody and not under indictment **shall be taken,** without unnecessary delay and in accordance with Rule 5.1, **before a judge** for an initial appearance.” (Emphasis added.)

The quoted language references Rule 5.1, which does not *suggest*, does not *recommend*, but rather **COMMANDS** that the initial appearance, before a judge, occur within 48 hours after arrest.

So, when the judge is informed—probably by the jailer, but perhaps by the arresting officer or maybe by someone else, such as the sheriff—that someone has been arrested and is in custody, the judge’s question should be, “What time was he/she *arrested?*” not “What time was he/she locked up?”

It behooves you, a judge, to make it crystal clear to the sheriff, the jailer(s), the jail administrator, and—to be thorough—to every law enforcement officer you know, that you, or whichever judge is on call,

MUST be notified immediately when someone is jailed in the county you have been elected to serve.

The exception specified in Rule 5.2(a) applies to persons who are under indictment. But consider this scenario: Richard Roe has been indicted by the grand jury for some crime, let's say aggravated assault. He has been released on bail, but gets picked up on some other charge for which he has not been indicted. It may be a felony, or it may be a misdemeanor. The jailer needs to let you, or some judge who handles initial appearances, know that Richard Roe has been jailed on a new charge so an initial appearance on the new charge can be conducted within 48 hours of his arrest.

It is *your* responsibility to develop a reliable notification system. Obviously, this is going to require the cooperation of the law enforcement community. It also will require the active assistance of your Justice Court Clerk. Additionally, it will require cooperation among the Justice Court Judges in your jurisdiction so an unfair burden does not fall upon any one judge.

Presumably, the voters who elected you gave you credit for having a considerable amount of common sense. Obviously, that is what will be required to work out a workable system in your county. The Mississippi Rules of Criminal Procedure have been in full force and effect for almost a year, and it was almost exactly a year ago that I gave you this same information at your Spring conference in 2017. We were here, in this same spot, on April 6, 2017.

“PLEASE RELEASE ME, LET ME GO”

The amount of time allotted to me today does not allow for an in-depth discussion of the subject of release, which the Mississippi Rules of Criminal Procedure address in great detail in Rule 8. But let me give you just a few pointers.

In Mississippi, it would be exceedingly rare—as in *hardly ever*—for a six-figure (\$1,000,000 or more) bail to be set. It is conceivable that this could occur in the case of an exceedingly wealthy defendant—someone with riches far beyond the dreams of this old country boy—who could post such a bond with relative ease. But, then, such a person might have extensive property holdings in

Mississippi that he wouldn't want to abandon; so, this would tend to make flight very unlikely. If so, he probably could be released on recognizance, without posting any bail at all.

Or, someone like Paul Manafort, who now is under federal indictment for alleged crimes with international overtones, could show up in the Justice Court of Podunk County, Mississippi, charged with a crime. Based on news accounts, Mr. Manafort has spent much of his life overseas and is a seasoned world traveler. He also is said to have extensive personal resources. Thus, a bail amount of a million dollars or more could be appropriate in the case of a person such as he.

But for your regular old Mississippi man or woman, it is hard to imagine an instance in which the setting of a bail amount for millions, or even hundreds of thousands, of dollars would be proper. This is nothing new; but Rule 8 should provide some clarification, and I think it does.

If you are convinced by the evidence before you during an initial appearance or a preliminary hearing that an accused person is a flight

risk—someone who is likely to run—then the solution is not to set an exorbitant amount of bail. It is to **DENY BAIL!**

If the evidence has convinced you that the accused is a dangerous person and there is a very real risk that he or she will do harm to others, then the solution is not to set an exorbitant amount of bail. It is to **DENY BAIL!**

Whether you set bail, deny bail, order an accused released on his own recognizance, and/or specify no contact with certain persons or impose other restrictions, you will have to issue an order. That order must contain findings that explain why you did what you did concerning the release or detention of the accused. All of this is spelled out in Rule 8.

IN CONCLUSION

So, what have I “done told you?” Other than my insatiable craving for your company, what did Old Justice Kitchens come over to Neshoba County to tell you this afternoon? Just two things:

1. You GOTTA do initial appearances within 48 hours of arrest; and,
2. Stop setting outrageously high bail bonds.

That’s it. Go and sin no more.

Presented by:

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