

**JUSTICE AND MUNICIPAL COURT – ZOOM MEETING
MAY 7, 2020**

**SYNOPSIS OF
QUESTIONS AND ANSWERS**

This synopsis is a brief summary of the questions asked of the panelists and their answers. For the precise questions and answers, we urge the judges and clerks to view the Vimeo of the Zoom meeting as posted on the MJC’s Vimeo Channel at: <https://mjc.olemiss.edu/mjc-on-vimeo/>

1. The budgetary/accounting application that our municipality uses has no place to enter payments on domestic abuse protection orders. What should we do?

This is a programming issue. The company should be able to set up a separate category for these payments, such as using a case number for tracking and accounting purposes. It’s important to keep it simple and clear for audit purposes.

2. If a bonding company pays off a forfeited bond, are the monies deposited into the general account or into a separate account? If it goes into the general account, how should it be posted into the system?

Deposit is made into the general fund, and then handled the same way as for a fine.

3. Our small municipality is not yet set up to conduct court. May municipal police file their tickets in justice court?

Justice courts have concurrent jurisdiction with municipal courts on state misdemeanor offenses occurring within the boundaries of the county. But, a justice court *MAY NOT* hear city ordinance violations.

See also:

“While it is true that [state misdemeanor] offenses that occur within the municipality may be tried in justice court, we have previously opined in MS AG Op., Gore (August 15, 1994) it is violative of the legislative intent of Mississippi Code Annotated Section 21-23-7 for municipal officials to routinely file criminal charges in the justice court for offenses that occur within the municipality.” MS AG Op., Griffith (December 8, 2000).

4. How should clerks respond to inquiries by landlords on whether it is lawful to change the locks on doors of tenants who are behind in rent during the COVID-19 crisis?

Tell them to seek the advice of counsel. Clerks may not give legal advice or engage in ex parte communications.

5. What if a defendant is unable to pay a fine because of a financial hardship caused by the COVID-19 crisis?

MRCrP 26.5(d) allows the court to make inquiry into the reasons for nonpayment, including whether nonpayment was willful or due to indigency or economic inability to pay.

MRCrP 26.5(d)(1) provides:

“(1) If it appears to the satisfaction of the court that nonpayment is not willful, the court shall enter an order allowing the defendant additional time for payment, reducing the amount thereof or of each installment, or revoking the fine or order of restitution or the unpaid portion thereof in whole or in part. However, the court shall not suspend or reduce an assessment imposed pursuant to Mississippi Code Section 99-19-73.”

6. Will there be any upcoming state assessment changes?

There wasn't any changes prior to the State of Emergency being declared. The State Auditor's Office will inform the clerks if there are any changes enacted in the reconvened 2020 Legislative Session.

7. Is a holder of a commercial driver's license eligible for DUI nonadjudication if the offense occurred while that person was driving a personal vehicle?

A holder of a commercial driver's license or a commercial learning permit at the time of the offense is not eligible for DUI nonadjudication. *See* Miss. Code Ann. § 63-11-30(14)(a)(ii).

But see:

Senate Bill 2550 at www.legislature.ms.gov/legislation/all-measures-not-dead/
History of Senate Bill 2550: 03/13 (H) Referred To Transportation; Judiciary B

8. If a defendant gets a DUI and the case is dismissed, does he/she still have to complete MASEP?

If the case is dismissed for failure to prosecute or because the defendant was found not guilty, then it's closed. The court would not have authority to impose any sentencing conditions.

9. Is a defendant with a learner's permit eligible for participating in the traffic safety violator course?

Miss. Code Ann § 63-9-11 provides in part:.

“(3)(a) Whenever a person not covered under Section 63-1-55 is charged with a misdemeanor violation of any of the provisions of Chapter 3, 5 or 7 of this title, the person shall be eligible to participate in not less than four (4) hours of a traffic safety violator course and thereby have no record of the violation on the person's driving record if the person meets all the following conditions:

(i) The defendant has a valid Mississippi driver's license or permit. . . .”

10. If the court enters an order of DUI nonadjudication, do we then remove the defendant's information from our court records?

An expungement order is needed to remove the defendant's information from your court records. Note that a permanent record of the nonadjudication is kept by the Department of Public Safety.

See Miss. Code Ann. § 63-11-30(14)(e)(i), which provides:

“The clerk shall immediately forward a record of every person placed in a nonadjudication program and of every nonadjudication order to the Department of Public Safety for inclusion in the permanent confidential registry of all cases that are nonadjudicated under this subsection (14).”

11. How is the Department of Public Safety handling the payment of reinstatement fees?

People are paying reinstatement fees through the portal on the MDPS website at:
https://www.ms.gov/dps/license_renewal/Reinstatement?

But, if a person (for whatever reason) is non-eligible to pay, then he/she will need to come into the driver's license office when it reopens.

12. What precautionary guidelines need to be followed when conducting in-person court proceedings during the State of Emergency?

You will need to determine what works best for your court provided that those protective measures conform to the directives of:

- The Mississippi Supreme Court's Emergency Administrative Orders
<https://courts.ms.gov/>
- The Governor's Executive Orders
- Any local or county orders, rules, regulations, resolutions, and actions not in conflict with the Mississippi Supreme Court's Emergency Administrative Orders or the Governor's Executive Orders

See, e.g.:

Supreme Court's Emergency Administrative Order-11, which provides in part:

“Nothing in this Order prohibits a court from conducting in-person, non-jury proceedings, so long as that court utilizes appropriate caution and prudence, and remains compliant with prior Orders of this Court and the guidelines issued by the MSDH and the Centers for Disease Control and Prevention ("CDC"). In extending such discretion, the Court notes that the CDC has observed that "[each community is unique" and "appropriate mitigation strategies will vary based on the level of community transmission, characteristics of the community and their populations, and the local capacity to implement strategies." Moreover, the specific resources and the nature of facilities vary across the State (e.g., courtroom and courthouse layouts, the number of judicial employees, alternative buildings which may be designated by the boards of supervisors and found lawfully designated by the acting judge). Since the MSDH has deemed this "a rapidly changing situation[,]" which it and the CDC "continue to closely monitor[,]" judges are urged to consult the available resources disseminated by those agencies for current information in making all determinations and their decisions which implicate in-person courthouse contact (e.g., recommendations on capacity limitations for gatherings; social distancing; personal protective measures, including face coverings).”

13. Is it necessary to reissue summons when the Governor's Executive Order suspending evictions has been lifted?

If the tenant has already been properly served, then notice of the hearing should, in most cases, be sufficient. But, the court will need to decide that issue on a case-by case basis. For further clarification regarding this concern, a formal opinion of the Mississippi Attorney General's office may be requested pursuant to Miss. Code Ann. § 7-5-25.

14. What if a person needs a new picture for his/her driver's license?

People can renew online and pay online. Pictures are usually good for eight years. To obtain a new picture would require coming into the driver's license office when it reopens.

15. When will the driver's license offices reopen?

There's no definitive answer on when the offices will reopen, but the expectation is that it will be soon.

See:

Governor's Executive Order No. 1474, which provides in part:

- "I. In order to cope with and respond to the COVID-19 emergency, pursuant to Miss. Code Ann. § 33-15-11(c)(1), the provisions of Miss. Code Ann. §§ 63-1-47, 63-1-6, 63-1-21, 45-9-101, 97-37-7, and 45-35-55 are hereby suspended to the extent necessary to delay the expiration of all valid driver's licenses, learner's permits, intermediate licenses, firearm permits and ID cards set to expire between March 14, 2020, and June 30, 2020. Such licenses, permits and ID cards shall instead expire on August 3, 2020.
- II. Pursuant to Miss. Code Ann. § 33-15-31(a), the commissioner of the Department of Public Safety may execute his authority under Miss. Code Ann. § 45-1-3 to further address any issues that arise as a result of the Driver Service Bureau's limited services during the State of Emergency."

16. How are reinstatements of driver's licenses being handled?

These are being handled on a case-by-case basis. If the person's driver's license was suspended simply because the driver couldn't access the driver's license office because of the State of Emergency, then the reinstatement fee will be waived. But, if the driver's license went into suspension on or before February 25, 2020, then that fee will not be waived.

17. If a defendant's court date was postponed due to the COVID-19 and notice was sent by mail of the new court date but later returned because of a wrong address, may the court conduct a trial in absentia on the offense?

This needs to be determined on a case-by-case basis. Not being properly served is an affirmative defense.

See:

§ 99-17-9 (When judge may hold trial in absentia):

“In criminal cases the presence of the prisoner may be waived (a) if the defendant is in custody and consenting thereto, or (b) is on recognizance or bail, has been arrested and escaped, or has been notified in writing by the proper officer of the pendency of the indictment against him, and resisted or fled, or refused to be taken, or is in any way in default for nonappearance, the trial may progress at the discretion of the court, and judgment made final and sentence awarded as though such defendant were personally present in court.”

See also In re Chisolm, 837 So. 2d 183, 190 (Miss. 2003) (“Chisolm was not improperly tried in absentia, as the statute contains an exception for a trial in the absence of a defendant who has been charged with a misdemeanor offense and is properly notified of the setting and chooses not to appear.”).

18. Can a driver’s license be renewed online?

See the Mississippi Department of Public Safety website at:
www.ms.gov/dps/license_renewal/License?

19. When will the suspension on evictions be lifted?

Governor’s Executive Order No. 1480 states: “

“I. The statewide Safer at Home instituted in Executive Order 1477, as amended by Executive Order 1478, is extended and shall remain in full force and effect until 8:00 a.m. on Monday, May 25, 2020, except as follows:”

No way to know for sure whether that date will be extended by a new Executive Order.

20. How is the Department of Public Safety handling interlock restrictive licenses during the State of Emergency?

Drivers who want to obtain an interlock restricted license in lieu of the 120 day suspension must already have the ignition interlock device installed on the vehicle and will need to keep up with the required paperwork. After reopening, our office will start backdating the records (in this instance only) to allow for the interlock restrictive license at this time.

See also:

Miss. Code Ann. § 63-11-30(14)(c) provides in part:

“(c) . . . (i) The court shall order the person to:
4. a. If the court determines that the person violated this section with respect to alcohol or intoxicating liquor, the person must install an ignition-interlock device on every motor vehicle operated by the person, obtain an interlock-restricted license, and maintain that license for one hundred twenty (120) days or suffer a one-hundred-twenty-day suspension of the person’s regular driver’s license, during which time the person must not operate any vehicle.”

21. If someone pays their fine off, and it is a no insurance ticket, how do they get their driver’s license reinstated at this time?

See Governor’s Executive Order 1474 (<https://mjc.olemiss.edu/covid-19-related-orders/>)

22. What steps are necessary for ensuring that a defendant’s waiver is valid?

It depends upon the proceedings. For example,

MRCrP 1.8 (Interactive Audiovisual Devices) provides in part:

“(b) Requirements. In using interactive audiovisual equipment, the following are required:
(1) a full record of the proceedings shall be made as provided in applicable rules;
(2) the court shall determine that the defendant knowingly, intelligently, and voluntarily agrees to appear at the proceeding by interactive audiovisual means;
and”

23. How many courts are considered "police court" (still under the control of the police department)?

No courts are under the control of the police department.

See:

Miss. Code Ann. § 21-23-1 provides:

“There shall be a municipal court in all municipalities of this state. Wherever the words ‘police court’ or ‘police justice’ appear in the laws of this state, they shall mean municipal court or municipal judge, respectively.

Miss. Const. Art. 1 § 1 Separate magistracies:

“The powers of the government of the State of Mississippi shall be divided into three distinct departments, and each of them confided to a separate magistracy, to-wit: those which are legislative to one, those which are judicial to another, and those which are executive to another.”

Miss. Const. Art. I § 2 Separate powers:

“No person or collection of persons, being one or belonging to one of these departments, shall exercise any power properly belonging to either of the others. The acceptance of an office in either of said departments shall, of itself, and at once, vacate any and all offices held by the person so accepting in either of the other departments.”

24. What forms need to be sent to the Department of Public Safety for a nonadjudication?

No forms are needed. Just send the following two orders:

1. The order of nonadjudication on the front-end.
2. The order of nonadjudication on the back-end showing successful completion of the statutorily required conditions.

See also Miss. Code Ann. § 63-11-30(14).

25. What happens when the justice court judge recuses himself/herself from a case?

Rule 1.07 of Uniform Rules of Procedure for Justice Court provides:

“If a justice court judge recuses himself or is otherwise unable to serve in a case, the case shall be rotated to another justice court judge of the county. If no justice court judge is able to serve because of recusals, or is otherwise unable to serve, then a circuit court judge of the district, in consultation with the recused judge(s), may appoint any justice court judge from a surrounding county to hear the case.”