Handbook for

Mississippi Chancery Court Clerks

2021

UNIVERSITY OF MISSISSIPPI LAW CENTER

DEAN

Susan Duncan

MISSISSIPPI JUDICIAL COLLEGE

BOARD OF GOVERNORS

Judge Cynthia Lee Brewer, *Chancery Court, Chair*
Bill Benson, *Constituent Advisory Committee Representative*
Judge William A. Boykin, *Justice Court*
Judge Virginia Carlton, *Mississippi Court of Appeals*
Justice Robert P. Chamberlin, *Mississippi Supreme Court*
Judge William J. Halford, Jr., *Municipal Court*
Judge Edwin Hannan, *County Court*
Judge Betty Sanders, *Senior Status*
Judge Michael M. Taylor, *Circuit Court*

DIRECTOR

Randy G. Pierce

ADDRESS

Mississippi Judicial College
University of Mississippi
P.O. Box 1848
University, Mississippi 38677

TELEPHONE AND FACSIMILE

Telephone: (662) 915-5955
Facsimile: (662) 915-7845

FOREWORD

The *Handbook for Mississippi Chancery Court Clerks* is drafted in such a way as to easily facilitate the addition of new material, changes in the law, and make corrections as needed.

To search for a word, phrase, or particular chapter within the *Handbook* document, please press down the "Ctrl/Control" button and then press the "F" button, and a "Find" box will open. Simply type the word, phrase, or particular chapter's name, such as "burden of proof" or "Chapter 16," in the blank and press "Enter." Click "Next" to move through the document.

To return to the front of the *Handbook* to conduct another search, please exit the "Find" box and press the "Home" button.

Any suggestions that you may have to further improve the style, format, presentation, or subject matter of the *Handbook* should be addressed to:

Mississippi Judicial College
c/o Carole E. Murphey
Research Counsel II
P.O. Box 1848
University, MS 38677
E-mail: cmurphey@olemiss.edu
Telephone: 662-915-5955
Fax: 662-915-7845

TABLE OF CONTENTS

TITLE **CHAPTER**

GENERAL PROVISIONS

DIVORCE & ALIMONY

MATTERS TESTAMENTARY & OF ADMINISTRATION

MINOR'S BUSINESS

CASES OF IDIOCY, LUNACY, & PERSONS OF UNSOUND MIND

REAL ESTATE PROCEEDINGS

OTHER COURT PROCEEDINGS

APPELLATE PROCEEDINGS

NON-COURT DUTIES

CHAPTER 1

THE CHANCERY COURT

CHARTS

CHAPTER 1

THE CHANCERY COURT

Establishment of the Chancery Courts

Mississippi Constitution Article VI, § 144, Judicial Power of State, states:

> The judicial power of the state shall be vested in a Supreme Court and such other courts as are provided for in this constitution.

Chancery Court Subject Matter Jurisdiction

Mississippi Constitution Article VI, § 159, Jurisdiction of Chancery Court, states:

> The chancery court shall have full jurisdiction in the following matters and cases, viz.:
>
> (a) All matters in equity;
> (b) Divorce and alimony;
> (c) Matters testamentary and of administration;
> (d) Minor's business;
> (e) Cases of idiocy, lunacy, and persons of unsound mind;
> (f) All cases of which the said court had jurisdiction under the laws in force when this Constitution is put in operation.

Mississippi Constitution Article VI, § 160, Additional Jurisdiction of Chancery Court, states:

> And in addition to the jurisdiction heretofore exercised by the chancery court
> in suits to try title and
> to cancel deeds and other clouds upon title to real estate,
> it shall have jurisdiction in such cases
> to decree possession, and
> to displace possession;
> to decree rents and compensation for improvements and taxes; and
> in all cases where said court heretofore exercised jurisdiction, auxiliary to courts of common law, it may exercise such jurisdiction to grant the relief sought, although the legal remedy may not have been exhausted or the legal title established by a suit at law.

Mississippi Constitution Article VI, § 161, Concurrent Jurisdiction of Chancery and Circuit court, provides:

> And the chancery court shall have jurisdiction, concurrent with the circuit court, of suits on bonds of fiduciaries and public officers for failure to account for money or property received, or wasted or lost by neglect or failure to collect, and of suits involving inquiry into matters of mutual accounts; but if the plaintiff brings his suit in the circuit court, that court may, on application of the defendant, transfer the cause to the chancery court, if it appear that the accounts to be investigated are mutual and complicated.

Appellate Jurisdiction

§ 11-51-79 From county court:

> Appeals from the equity side [of county court shall be made] to the chancery court.

Jurisdiction & Authority Conferred by Statute

§ 9-1-17 Punishment of contempt:

> The Supreme, circuit, chancery and county courts and the Court of Appeals shall have power to fine and imprison any person guilty of contempt of the court while sitting, but the fine shall not exceed One Hundred Dollars ($100.00) for each offense, nor shall the imprisonment continue longer than thirty (30) days. If any witness refuse to be sworn or to give evidence, or if any officer or person refuse to obey or perform any rules, order, or judgment of the court, such court shall have power to fine and imprison such officer or person until he shall give evidence, or until the rule, order, or judgment shall be complied with.
>
> At the discretion of the court, any person found in contempt for failure to pay child support and imprisoned therefor may be referred for placement in a state, county or municipal restitution, house arrest or restorative justice center or program, provided such person meets the qualifications prescribed in Section 99-37-19.

§ 9-1-19 Authority of judges of supreme, circuit courts and chancellors and judges of Court of Appeals to grant remedial writs:

> The judges of the Supreme and circuit courts and chancellors and judges of the Court of Appeals, in termtime and in vacation, may severally order the issuance of

writs of habeas corpus, mandamus, certiorari, supersedeas and attachments, and grant injunctions and all other remedial writs, in all cases where the same may properly be granted according to right and justice, returnable to any court, whether the suit or proceedings be pending in the district of the judge or chancellor granting the same or not. The fiat of such judge or chancellor shall authorize the issuance of the process for a writ returnable to the proper court or before the proper officer; and all such process or writs may be granted, issued and executed on Sunday.

§ 9-1-23 District domicile required [to be conservators of the peace]:

The judges of the Supreme, circuit and county courts and chancellors and judges of the Court of Appeals shall be conservators of the peace for the state, each with full power to do all acts which conservators of the peace may lawfully do; and the circuit judges and chancellors shall reside within their respective districts and the county judges shall reside in their respective counties.

§ 9-1-27 Appointment of officers pro tempore:

Whenever a vacancy shall exist in the office of clerk of any court, sheriff, or coroner and the vacancy shall not have been filled on or before the commencement of the term of any court which the clerk, sheriff, or coroner is required to attend, or if the clerk, sheriff, or coroner shall be absent, deceased, become unable, or refuse to discharge his duties, or be on trial therein, the court, or the judge or judges thereof, shall have power to appoint a suitable person to discharge the duties of clerk, sheriff, or coroner pro tempore, who shall take the oath required by law, and perform the duties and receive the emoluments of the office to which he is appointed, until the proper incumbent shall be duly qualified or return to his duties.

§ 9-5-81 Jurisdiction:

The chancery court in addition to the full jurisdiction in all the matters and cases expressly conferred upon it by the constitution shall have jurisdiction of all cases transferred to it by the circuit court or remanded to it by the supreme court; and such further jurisdiction, as is, in this chapter or elsewhere, provided by law.

§ 9-5-83 Administration of estate:

The court in which a will may have been admitted to probate, letters of administration granted, or a guardian may have been appointed, shall have jurisdiction to hear and determine all questions in relation to the execution of the trust of the executor, administrator, guardian, or other officer appointed for the

administration and management of the estate, and all demands against it by heirs at law, distributees, devisees, legatees, wards, creditors, or others; and shall have jurisdiction of all cases in which bonds or other obligations shall have been executed in any proceeding in relation to the estate, or other proceedings, had in said chancery court, to hear and determine upon proper proceedings and evidence, the liability of the obligors in such bond or obligation, whether as principal or surety, and by decree and process to enforce such liability.

§ 9-5-85 Subpoena of witnesses:

The chancery court shall have power to issue a summons for any person, or subpoena for any witness, whose appearance in court may be deemed necessary for any purpose, whether such party or witness reside in the same or any other county. It shall be the duty of the party summoned or subpoenaed, to attend the court according to the command of the process; and if it be necessary or proper to enforce the appearance of the party, the court, on the return of the process executed and failure to appear, may issue an attachment, and may fine the party when brought in for a contempt. If a witness before the court shall refuse to testify, the court may commit such witness for contempt of the court.

§ 9-5-87 Punishment for violations:

The chancery court, or the chancellor in vacation, or judge granting the writ, shall have power to punish any person for breach of injunction, or any other order, decree, or process of the court, by fine or imprisonment, or both, or the chancellor or judge granting the writ may require bail for the appearance of the party at the next term of the court to answer for the contempt; but such person shall be first cited to appear and answer. And any person so punished by order of the chancellor in vacation, may on five days' notice to the opposite party, apply to a judge of the supreme court, who, for good cause shown, may supersede the punishment until the meeting of the said chancery court. At the discretion of the court, any person found in contempt for failure to pay child support and imprisoned therefor may be referred for placement in a state, county or municipal restitution, house arrest or restorative justice center or program, provided such person meets the qualifications prescribed in Section 99-37-19.

§ 9-5-89 Appointment of guardian ad litem:

The court may appoint a guardian ad litem to any infant or defendant of unsound mind, and allow him suitable compensation payable out of the estate of such party, but the appointment shall not be made except when the court shall consider it necessary for the protection of the interest of such defendant; and a decree or judgment of any court shall not be void or erroneous because of the failure to have a guardian ad litem.

§ 9-5-93 Matters set in vacation:

Whenever the chancery court or chancellor has lawfully set any matter in vacation for confirmation or decree, and no contest has been timely filed, if an order or decree determining the same or setting another date therefor be not entered upon such date, the chancellor shall have the power to enter an order or decree on any day prior to the adjournment of the next succeeding term, without further process. Provided, that if the matter be one in which contest might have been entered prior to the date set and such contest be filed before the entry of such order or decree, the same shall be disposed of as if such contest had been timely filed.

§ 9-5-95 Extension of time in vacation:

The court or chancellor in vacation shall have power in proper cases for good cause shown to grant a reasonable enlargement of the time for the filing of an answer or answers, or of a demurrer or demurrers, and shall have power in like cases and for like cause shown to set aside decrees pro confesso and thereupon to permit the filing of answer or answers. But no such enlargement of time should be granted where the request therefor is solely for delay or is the result of inexcusable neglect on the part of the defendant or his solicitor.

§ 9-5-97 Powers of chancellor in vacation:

In the matter of ordering, decreeing and confirming sales of real and personal property of decedents, or of minors, or of persons of unsound mind, and in all other matters testamentary or of administration, in minors' business, matters affecting persons of unsound mind, and in the matter of the removal of disabilities of minority, the chancellors of the several districts of this state are hereby authorized and empowered to do in vacation all things, and to exercise all the powers in such matters that could be done by them in term time; and all laws governing the action of the chancery court in such matters, and the process and procedure therein, shall apply when the chancellor shall act therein in vacation; but before any sale of real estate shall be confirmed by the chancellor in vacation, the parties in interest shall have notice thereof as provided by law in the matter of confirming sales by chancellors in vacation.

§ 9-5-103 Reduction of specified bonds:

Whenever it shall appear by petition to the chancery court, or chancellor in vacation, that any bond given by an assignee, receiver, executor, administrator, guardian, or trustee is in excess of the value of the estate being administered, and as such is an unnecessary expense to the estate, or that other sufficient cause appears for so doing, the chancery court or chancellor in vacation may, after five

days' service of copy of said petition on the surety, cancel the bond or reduce the same to an amount sufficient to protect the estate, or accept a new bond in substitution of an existing one. However, the decree rendered shall not affect the liability upon a bond which accrued prior to its cancellation, reduction or substitution.

§ 9-5-105 Payment of costs:

When any chancellor in this state shall, by agreement of the parties, hear any cause or matter in vacation, at any place, other than the place of his residence, all expenses incurred by him in attendance upon said hearing, shall be paid equally by the parties thereto, upon the chancellor's filing an itemized statement thereof, with the clerk of the chancery court of the county in which such matter shall be pending; and when at any such hearing the attendance of the court reporter shall be required his actual expenses shall be likewise paid.

§ 9-5-255 Appointment of family masters:

(1) Except as provided by subsection (9) of this section, the senior chancellor of each chancery court district in the state may apply to the Chief Justice of the Supreme Court for the appointment of one or more persons to serve as family masters in chancery in each of the counties or for all of the counties within the respective chancery court district if the senior chancellor states in writing that the chancery court district's docket is crowded enough to warrant an appointment of a family master. . . .

(2) Family masters in chancery shall have the power to hear cases and recommend orders establishing, modifying and enforcing orders for support in matters referred to them by chancellors and judges of the circuit, county or family courts of such county. The family master in chancery shall have jurisdiction over paternity matters brought pursuant to the Mississippi Uniform Law on Paternity and referred to them by chancellors and judges of the circuit, county or family courts of such county. . . .

§ 11-1-16 Proceedings in vacation:

(1) Notwithstanding the provisions of any other law to the contrary, the judge of any circuit, chancery, county, youth or family court or any other court of record shall, in vacation, and in the same manner as at a regular term, have jurisdiction to hear and determine and make and enter judgments, orders and decrees in all cases, civil or criminal, which are pending in the court and which were triable at the preceding term. Parties and witnesses duly summoned, subpoenaed or bound by recognizance at the preceding term shall be bound to attend without the necessity

of additional process. Petit juries may be impaneled in such cases in the same manner as in termtime. All judgments, orders and decrees which the judge may render or make in such cases tried shall be signed by him and thereupon be entered and recorded on the minute book of the court in which the case or matter is pending, and shall have the same force and effect as if made, entered and recorded in termtime. Appeals may be had and taken therefrom when so entered and recorded, as in other cases, in like manner as is provided by law when cases are tried in termtime.

(2) The provisions of this section shall be supplemental and in addition to all other jurisdiction and authority which the judge of any such court may lawfully exercise in vacation or at a special term.

§ 11-1-17 Rendition of final decree; appeal:

All chancellors or judges of the chancery and circuit courts of the state of Mississippi shall render their final decree on any and all matters taken under advisement by such chancellors or judges not later than six (6) months after the date when same are taken under advisement or not later than six (6) months after the date on which the chancellors or courts or judges set as a date for the final brief or memoranda of authority is required to be filed on or as to the cause taken under advisement, whichever is the latest date after the date on which the cause or case is taken under advisement.

In the event a final decree has not been entered within the six months period hereinbefore referred to, then any party to said law suit shall have the right to appeal on the record as otherwise provided the same as if a final decree has been rendered adversely. Said appeal shall be to the supreme court of the state of Mississippi and shall be treated as a preferred case over other cases except election contests.

§ 11-5-79 Decree as circuit court judgment:

The decree of a court of chancery shall have the force, operation, and effect of a judgment at law in the circuit court.

§ 11-13-11 Restraining tax collection, jurisdiction:

The chancery court shall have jurisdiction of suits by one or more taxpayers in any county, city, town, or village, to restrain the collection of any taxes levied or attempted to be collected without authority of law.

§ 11-55-5 Costs awarded for meritless action:

(1) Except as otherwise provided in this chapter, in any civil action commenced or appealed in any court of record in this state, the court shall award, as part of its judgment and in addition to any other costs otherwise assessed, reasonable attorney's fees and costs against any party or attorney if the court, upon the motion of any party or on its own motion, finds that an attorney or party brought an action, or asserted any claim or defense, that is without substantial justification, or that the action, or any claim or defense asserted, was interposed for delay or harassment, or if it finds that an attorney or party unnecessarily expanded the proceedings by other improper conduct including, but not limited to, abuse of discovery procedures available under the Mississippi Rules of Civil Procedure. . . .

§ 13-5-26 Drawing and assigning jurors:

A judge or any court or any other state or county official having authority to conduct a trial or hearing with a jury within the county may direct the circuit clerk to draw and assign to that court or official the number of jurors he deems necessary. . . .

§ 29-1-143 Chancery court jurisdiction:

The chancery court shall have jurisdiction of all matters and causes, including suits and appeals from the commission, arising from the administration of Sections 29-1-125 through 29-1-143, except such causes and suits which the constitution gives to the circuit court. All suits in court shall be governed by the established rules of procedure for the court where the suit is maintained. The commission, as the agent of the state, may be made a party defendant as a citizen, and all process for the commission shall be served on its secretary.

§ 41-41-53 Parental consent; judicial waiver:

(3) A minor who elects not to seek or does not obtain consent from her parents or legal guardian under this section may petition, on her own behalf or by next friend, the chancery court in the county in which the minor resides or in the county in which the abortion is to be performed for a waiver of the consent requirement of this section pursuant to the procedures of Section 41-41-55.

§ 41-41-55 Application; minors' rights; waiver procedure:

(1) The requirements and procedures under Sections 41-41-51 through 41-41-63 shall apply and are available to minors whether or not they are residents of this state.

(2) The minor may participate in proceedings in the court on her own behalf. The court shall advise her that she has a right to court-appointed counsel and shall provide her with such counsel upon her request or if she is not already adequately represented.

(3) Court proceedings under this section shall be confidential and anonymous and shall be given such precedence over other pending matters as is necessary to insure that the court may reach a decision promptly, but in no case shall the court fail to rule within seventy-two (72) hours of the time the application is filed. If for any reason the court fails to rule within seventy-two (72) hours of the time the application is filed, the minor may proceed as if the consent requirement of Section 41-41-53 has been waived.

(4) Consent shall be waived if the court finds by clear and convincing evidence either:

(a) That the minor is mature and well-informed enough to make the abortion decision on her own; or
(b) That performance of the abortion would be in the best interests of the minor.

(5) A court that conducts proceedings under this section shall issue written and specific factual findings and legal conclusions supporting its decision and shall order that a confidential record of the evidence be maintained.

(6) An expedited confidential and anonymous appeal shall be available to any minor to whom the court denies a waiver of consent. The Mississippi Supreme Court shall issue promptly such rules and regulations as are necessary to insure that proceedings under Sections 41-41-51 through 41-41-63 are handled in an expeditious, confidential and anonymous manner.

(7) No filing fees shall be required of any minor who avails herself of the procedures provided by this section.

§ 41-57-23 Proceedings to correct birth certificate containing major deficiencies; acknowledgment of paternity:

(1) Any petition, bill of complaint or other proceeding filed in the chancery court to:

(a) change the date of birth by two (2) or more days,
(b) change the surname of a child,
(c) change the surname of either or both parents,

(d) change the birthplace of the child because of an error or omission of such information as originally recorded, or
(e) make any changes or additions to a birth certificate resulting from a legitimation, filiation or any changes not specifically authorized elsewhere by statute,

shall be filed in the county of residence of the petitioner or filed in any chancery court district of the state if the petitioner be a nonresident petitioner.

In all such proceedings, the State Board of Health shall be made a respondent therein, and a certified copy of the petition, bill of complaint or other proceeding shall be forwarded to the State Board of Health. Process may be served upon the State Registrar of Vital Records. The State Board of Health shall file an answer to all such proceedings within the time as provided by general law. The provisions of this section shall not apply to adoption proceedings. Upon receipt of a certified copy of a decree, which authorizes and directs the State Board of Health to alter the certificate, it shall comply with all of the provisions of such decree.

§ 93-1-17 Persons authorized to solemnize marriage:

[A]ny judge of the Supreme Court, Court of Appeals, circuit court, chancery court or county court may solemnize the rites of matrimony between any persons anywhere within this state who shall produce a license granted as herein directed.

In Forma Pauperis

§ 11-53-17 Indigent action without security:

A citizen may commence any civil action, or answer a rule for security for costs in any court without being required to prepay fees or give security for costs, before or after commencing suit, by taking and subscribing the following affidavit:

> I, _____, do solemnly swear that I am a citizen of the State of Mississippi, and because of my poverty I am not able to pay the costs or give security for the same in the civil action (describing it) which I am about to commence (or which I have begun, as the case may be) and that, to the best of my belief, I am entitled to the redress which I seek by such suit.

> However, "[t]he right to proceed in forma pauperis in civil cases does not extend beyond the initial trial of the matter." While section 11-53-17 allows "persons who are truly indigent [to] proceed in civil actions as paupers[,] . . . this statute authorizes in forma pauperis proceeding[s] in civil cases at the trial level only." ***Walker v. Bailey*, 270 So. 3d 195, 201 (Miss. Ct. App. 2018) (citations omitted).**

> One of the great problems of civil government is securing justice to the poor. Under the Constitution all persons are entitled to maintain an action in the courts for an injury done to him in his lands, goods, person, or reputation, and the courts shall be open and justice shall be administered without sale, denial, or delay. It is the policy of the law that every person, however humble or poor, may resort to the courts for the vindication of his rights and the redress of his wrongs. Justice must be granted to every person, whether such person is able to pay the costs or not; if he is too poor to pay the costs, under the law he may make oath to that effect, and the suit will then be entertained and rights will be accorded to him just as though he were paying the expense. If a person is able to deposit the costs, or give security therefor, it may be required, but, if he is unable to do so, he cannot be denied justice. ***Meeks v. Meeks*, 156 Miss. 638, 126 So. 189, 190 (1930).**

> ***See* Mississippi Rule of Civil Procedure 3(c), Commencement of action:**

Proceeding In Forma Pauperis. A party may proceed in forma pauperis in accordance with sections 11-53-17 and 11-53-19 of the Mississippi Code Annotated. The court may, however, on the motion of any party, on the motion of the clerk of the court, or on its own initiative, examine the affiant as to the facts and circumstances of his pauperism.

Rule 3(c) allows indigents to sue without depositing security for costs; however, the indigent affiant may be examined as to affiant's financial condition and the court may, if the allegation of indigency is false, dismiss the action. ***Advisory Committee Notes.***

§ 11-53-19 Untrue allegation of poverty, dismissal:

The court may dismiss an action commenced or continued on affidavit of poverty, if satisfied that the allegation of poverty was untrue.

It is contended on behalf of appellee that the action of the court in dismissing the case was authorized by section 948, Code 1906, which provides: "The court may dismiss an action commenced or continued on affidavit of poverty, if satisfied that the allegation of poverty was untrue." The judgment of the court in dismissing a cause under this statute must be based on testimony capable of being embodied in a bill of exceptions and made a part of the record in the case. Such a judgment is reviewable by this court on appeal. The question must be heard and determined on testimony adduced before the court in the regular way. This was not done. Therefore the court was in error in dismissing the case. ***Feazell v. Soltzfus*, 98 Miss. 886, 54 So. 444, 444-45 (1911).**

Jury Trials in Chancery Court

§ 11-5-3 Issue tried by jury:

The chancery court, in a controversy pending before it, and necessary and proper to be tried by a jury, shall cause the issue to be thus tried to be made up in writing. The jury shall be drawn in open court from the jury box used in the circuit court, in the presence of the clerk of the circuit court who shall attend with the box for that purpose. The number drawn shall not exceed twenty, and the slips containing the names shall be returned to the box. The clerk of the chancery court shall issue the venire facias to the sheriff, returnable as the court shall direct. If there be no jury box the jury may be obtained as provided for in the circuit court in such case. The sheriff and jurors, for failure to perform duty or to attend, shall be liable to like penalty as in the circuit court. The parties shall have the same right of challenge as in trials in the circuit court, and the jury may be completed in the same manner. The chancellor may instruct the jury in the same way that juries are instructed in the circuit court, and the parties shall have the same rights in respect thereto; the instructions shall be filed in the cause and become a part of the record, and the chancellor shall sign bills of exceptions as in the circuit court, and the court may grant new trials in proper cases.

> Under certain circumstances, a chancellor must retain a jury to determine issues of fact. *See e.g.* Miss. Code Ann. § 91–7–19 (1972) (at request of either party to probate proceeding, a jury may decide whether writing propounded is a will of the alleged testator); Miss. Code Ann. § 91–7–29 (1972) (witnesses in trial of issue devisavit vel non shall be examined before a jury); *Fowler v. Fisher*, 353 So. 2d 497 (Miss. 1977) (verdict of jury is not merely advisory where required by statute). Furthermore, a chancellor always has the discretion to permit a jury to decide a factual question where necessary and appropriate. ***Deposit Guar. Nat. Bank v. Cotten*, 420 So. 2d 242, 244 (Miss. 1982).**

§ 11-5-5 Venue change in jury cases:

The chancery court may award a change of venue for the trial of all issues to be tried by a jury pursuant to the procedure provided for in the Mississippi Rules of Civil Procedure. The clerk of the court from which the issue is to be removed, and the clerk of the court to which it is removed, respectively, shall, upon an order for a change of venue, discharge the duties directed to be performed by the clerks of circuit courts in such cases; and in such case the chancery court to which the venue is changed shall try the issue by a jury, and shall proceed and render decrees and finally dispose of the cause as if the suit had begun therein.

Youth Court

§ 43-21-107 Creation in various counties:

(2) A youth court division is hereby created as a division of the chancery court of each county in which no county court is maintained and any chancellor within a chancery court district shall be the judge of the youth court of that county within such chancery court district unless another judge is named by the senior chancellor of the county or chancery court district as provided by this chapter.

§ 43-21-111 Regular and special referees:

(1) In any county not having a county court or family court the judge may appoint as provided in Section 43-21-123 regular or special referees who shall be attorneys at law and members of the bar in good standing to act in cases concerning children within the jurisdiction of the youth court, and a regular referee shall hold office until removed by the judge. The requirement that regular or special referees appointed pursuant to this subsection be attorneys shall apply only to regular or special referees who were not first appointed regular or special referees prior to July 1, 1991.

(2) Any referee appointed pursuant to subsection (1) of this section shall be required to receive judicial training approved by the Mississippi Judicial College and shall be required to receive regular annual continuing education in the field of juvenile justice. The amount of judicial training and annual continuing education which shall be satisfactory to fulfill the requirements of this section shall conform with the amount prescribed by the Rules and Regulations for Mandatory Continuing Judicial Education promulgated by the Supreme Court. The Administrative Office of Courts shall maintain a roll of referees appointed under this section, shall enforce the provisions of this subsection and shall maintain records on all such referees regarding such training. Should a referee miss two (2) consecutive training sessions sponsored or approved by the Mississippi Judicial College as required by this subsection or fail to attend one (1) such training session within six (6) months of their initial appointment as a referee, the referee shall be disqualified to serve and be immediately removed as a referee and another member of the bar shall be appointed as provided in this section.

(3) The judge may direct that hearings in any case or class of cases be conducted in the first instance by the referee. The judge may also delegate his own administrative responsibilities to the referee. . . .

§ 43-21-151 Jurisdiction:

(1) The youth court shall have exclusive original jurisdiction in all proceedings concerning a delinquent child, a child in need of supervision, a neglected child, an abused child or a dependent child except in the following circumstances:

(a) Any act attempted or committed by a child, which if committed by an adult would be punishable under state or federal law by life imprisonment or death, will be in the original jurisdiction of the circuit court;

(b) Any act attempted or committed by a child with the use of a deadly weapon, the carrying of which concealed is prohibited by Section 97-37-1, or a shotgun or a rifle, which would be a felony if committed by an adult, will be in the original jurisdiction of the circuit court; and

(c) When a charge of abuse of a child first arises in the course of a custody action between the parents of the child already pending in the chancery court and no notice of such abuse was provided prior to such chancery proceedings, the chancery court may proceed with the investigation, hearing and determination of such abuse charge as a part of its hearing and determination of the custody issue as between the parents, notwithstanding the other provisions of the Youth Court Law. The proceedings in chancery court on the abuse charge shall be confidential in the same manner as provided in youth court proceedings.

When a child is expelled from the public schools, the youth court shall be notified of the act of expulsion and the act or acts constituting the basis for expulsion.

(2) Jurisdiction of the child in the cause shall attach at the time of the offense and shall continue thereafter for that offense until the child's twentieth birthday, unless sooner terminated by order of the youth court. The youth court shall not have jurisdiction over offenses committed by a child on or after his eighteenth birthday.

(3) No child who has not reached his thirteenth birthday shall be held criminally responsible or criminally prosecuted for a misdemeanor or felony; however, the parent, guardian or custodian of such child may be civilly liable for any criminal acts of such child. No child under the jurisdiction of the youth court shall be held criminally responsible or criminally prosecuted by any court for any act designated as a delinquent act, unless jurisdiction is transferred to another court under Section 43-21-157.

(4) The youth court shall also have jurisdiction of offenses committed by a child which have been transferred to the youth court by an order of a circuit court of this

state having original jurisdiction of the offense, as provided by Section 43-21-159.

(5) The youth court shall regulate and approve the use of teen court as provided in Section 43-21-753.

(6) Nothing in this section shall prevent the circuit court from assuming jurisdiction over a youth who has committed an act of delinquency upon a youth court's ruling that a transfer is appropriate pursuant to Section 43-21-157.

See Manual for Mississippi Youth Courts.

Chancery Court Districts and Terms of Court

Mississippi Constitution Article VI, § 152, Circuit and Chancery Court Districts, states:

> The Legislature shall divide the state into an appropriate number of chancery court districts.

§ 9-5-3 Chancery court districts:

(1) The state shall be divided into an appropriate number of chancery court districts, severally numbered and composed of the counties as set forth in the sections which follow. A court to be styled "The Chancery Court of the County of . . . ." shall be held in each county, and within each judicial district of a county having two (2) judicial districts, at least twice a year. Court shall be held in chancery court districts consisting of a single county on the same dates state agencies and political subdivisions are open for business excluding legal holidays. The dates upon which terms shall commence and the number of days for which terms shall continue in chancery court districts consisting of more than one (1) county shall be set by order of the chancellor in accordance with the provisions of subsection (2) of this section. A matter in court may extend past a term if the interest of justice so requires.

(2) An order establishing the commencement and continuation of terms of court for each of the counties within a chancery court district consisting of more than one (1) county shall be entered annually and not later than October 1 of the year immediately preceding the calendar year for which the terms of court are to become effective. Notice of the dates upon which terms of court shall commence and the number of days for which the terms shall continue in each of the counties within a chancery court district shall be posted in the office of the chancery clerk of each county within the district and mailed to the office of the Secretary of State for publication and distribution to all Mississippi Bar members. If an order is not timely entered, the terms of court for each of the counties within the chancery court district shall remain unchanged for the next calendar year.

(3) The number of chancellorships for each chancery court district shall be determined by the Legislature based upon the following criteria:

(a) The population of the district;
(b) The number of cases filed in the district;
(c) The case load of each chancellor in the district;
(d) The geographic area of the district;
(e) An analysis of the needs of the district by the court personnel of the district; and
(f) Any other appropriate criteria.

(4) The Judicial College of the University of Mississippi Law Center and the Administrative Office of Courts shall determine the appropriate:

(a) Specific data to be collected as a basis for applying the above criteria;

(b) Method of collecting and maintaining the specified data; and

(c) Method of assimilating the specified data.

(5) In a district having more than one (1) office of chancellor, there shall be no distinction whatsoever in the powers, duties and emoluments of those offices except that the chancellor who has been for the longest time continuously a chancellor of that court or, should no chancellor have served longer in office than the others, the chancellor who has been for the longest time a member of the Mississippi Bar, shall be the senior chancellor. The senior chancellor shall have the right to assign causes and dockets and to set terms in districts consisting of more than one (1) county.

***See* §§ 9-5-5 to -58 (listing the chancery court districts).**

Chancery Court Judges

Mississippi Constitution Article VI, § 154, Qualifications for Circuit or Chancery Court Judges, states:

> No person shall be eligible to the office of judge of the circuit court or of the chancery court who shall not have been a practicing lawyer for five years and who shall not have attained the age of twenty-six years, and who shall not have been five years a citizen of this state.

§ 9-5-1 Terms of office; chancellors:

A chancellor shall be elected for and from each of the chancery court districts as provided in this chapter and the listing of individual precincts shall be those precincts as they existed on October 1, 1990. He shall hold court in any other district with the consent of the chancellor thereof when in their opinion the public interest may be thereby promoted. The terms of all chancellors elected at the regular election for the year 1930 shall begin on the first day of January, 1931, and their terms of office shall continue for four (4) years. A chancellor shall be a resident of the district in which he serves but shall not be required to be a resident of a subdistrict if the district is divided into subdistricts.

Judicial Oath

Mississippi Constitution Article VI, § 155, Judicial Oath of Office states:

> The judges of the several courts of this state shall, before they proceed to execute the duties of their respective offices, take the following oath or affirmation, to-wit:
>
> > I, _____, solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ according to the best of my ability and understanding, agreeably to the Constitution of the United States and the Constitution and laws of the state of Mississippi. So help me God.
>
> ***See* § 25-1-11 Filing of oath of office.**

Court Administration

§ 9-1-5 Extension of court term:

In order to utilize the services of a judge temporarily assigned to chancery or circuit court in a county, the chancery or circuit court judge is authorized to extend a term of his court in one (1) county in a district, even if it overlaps into a term of that court in another county in the same district, so long as the term of court in the county into which the extension runs shall not be pretermitted. . . . The word "county" wherever used herein shall be construed to mean "judicial district" in counties having two (2) judicial districts.

§ 9-1-9 Adjournment upon absence of judge:

If the circuit judge or chancellor fail to attend at any term of the court, it shall stand adjourned from day to day until the third day, when, if the judge or chancellor shall not appear and open court, it shall stand adjourned without day; but, by virtue of a written order by the judge or chancellor, it may be adjourned by the clerk or sheriff to any day of the term, as the order may direct, and parties, witnesses and jurors must attend accordingly.

§ 9-1-29 Clerk's office controlled by court:

Each court shall have control over all proceedings in the clerk's office, and such control shall be exercised in a manner consistent with the Mississippi Rules of Civil Procedure.

§ 9-1-33 Minutes of court:

The minutes of the proceedings of the Supreme, circuit, chancery and county courts and the Court of Appeals shall be entered by the clerk of each, respectively, in the minute book of the court, against the next sitting of the court, if practicable, when the same shall be read in open court; and when corrected shall be signed--the minutes of the Supreme Court by the Chief Justice or presiding judge, of the Court of Appeals by the Chief Judge or presiding judge, of the circuit court by the circuit judge, of the chancery court by the chancellor, and of the county court by the county judge; and on the last day of the term, or within ten (10) days thereafter, the minutes shall be drawn up, read and signed.

Whenever by inadvertence said minutes and proceedings may remain unsigned or the judge of said court dies before signing the minutes, the succeeding judge or judges of said court may, in their discretion, examine into said unsigned minutes and ascertain as to the correctness thereof, and after same shall have been read in

open court, and if the court is of the opinion that same are true and correct, then the said minutes may be signed and adopted by said judge or judges.

§ 9-1-36 Office operating allowance; support staff; definitions:

(1) Each circuit judge and chancellor shall receive an office operating allowance for the expenses of operating the office of the judge, including retaining a law clerk, legal research, stenographic help, stationery, stamps, furniture, office equipment, telephone, office rent and other items and expenditures necessary and incident to maintaining the office of judge. The allowance shall be paid only to the extent of actual expenses incurred by the judge as itemized and certified by the judge to the Supreme Court in the amounts set forth in this subsection; however, the judge may expend sums in excess thereof from the compensation otherwise provided for his office. No part of this expense or allowance shall be used to pay an official court reporter for services rendered to said court.

(a) Until July 1, 2008, the office operating allowance under this subsection shall be not less than Four Thousand Dollars ($4,000.00) nor more than Nine Thousand Dollars ($9,000.00) per annum.

(b) From and after July 1, 2008, the office operating allowance under this subsection shall be Nine Thousand Dollars ($9,000.00) per annum.

(2) In addition to the amounts provided for in subsection (1), there is hereby created a separate office allowance fund for the purpose of providing support staff to judges. This fund shall be managed by the Administrative Office of Courts.

(3) Each judge who desires to employ support staff after July 1, 1994, shall make application to the Administrative Office of Courts by submitting to the Administrative Office of Courts a proposed personnel plan setting forth what support staff is deemed necessary. The plan may be submitted by a single judge or by any combination of judges desiring to share support staff. In the process of the preparation of the plan, the judges, at their request, may receive advice, suggestions, recommendations and other assistance from the Administrative Office of Courts. The Administrative Office of Courts must approve the positions, job descriptions and salaries before the positions may be filled. The Administrative Office of Courts shall not approve any plan which does not first require the expenditure of the funds in the support staff fund for compensation of any of the support staff before expenditure is authorized of county funds for that purpose. Upon approval by the Administrative Office of Courts, the judge or judges may appoint the employees to the position or positions, and each employee so appointed will work at the will and pleasure of the judge or judges who appointed him but will be employees of the Administrative Office of Courts.

Upon approval by the Administrative Office of Courts, the appointment of any support staff shall be evidenced by the entry of an order on the minutes of the court. When support staff is appointed jointly by two (2) or more judges, the order setting forth any appointment shall be entered on the minutes of each participating court. . . .

§ 9-13-1 Circuit and chancery court appointment:

Each circuit judge and chancellor shall appoint a competent person as shorthand reporter in his district by an entry upon the minutes of the court of an order to that effect, dated and signed by him. The said shorthand reporter shall be known as the official court reporter of said district.

§ 9-13-17 Appointment of additional court reporters:

The circuit judge, chancellor, family court judge or county judge may, by an order spread upon the minutes and made a part of the records of the court, appoint an additional court reporter for a term or part of a term whose duties, qualifications and compensation shall be the same as is now provided by law for official court reporters. The additional court reporter shall be subject to the control of the judge or chancellor, as is now provided by law for official court reporters, and the judge or chancellor shall have the additional power to terminate the appointment of such additional court reporter, whenever in his opinion the necessity for such an additional court reporter ceases to exist, by placing upon the minutes of the court an order to that effect. The regular court reporter shall not draw any compensation while the assistant court reporter alone is serving; however, in the event the assistant court reporter is serving because of the illness of the regular court reporter, the court may authorize payment of said assistant court reporter from the Administrative Office of Courts without diminution of the salary of the regular court reporter, for a period not to exceed forty-five (45) days in any one (1) calendar year. However, in any circuit, chancery, county or family court district within the State of Mississippi, if the judge or chancellor shall determine that in order to relieve the continuously crowded docket in such district, or for other good cause shown, the appointment of an additional court reporter is necessary for the proper administration of justice, he may, with the advice and consent of the board of supervisors if the court district is composed of a single county and with the advice and consent of at least one-half (½) of the boards of supervisors if the court district is composed of more than one (1) county, by an order spread upon the minutes and made a part of the records of the court, appoint an additional court reporter. The additional court reporter shall serve at the will and pleasure of the judge or chancellor, may be a resident of any county of the state, and shall be paid a salary designated by the judge or chancellor not to exceed the salary authorized by Section 9-13-19. The salary of the additional court reporter shall be

paid by the Administrative Office of Courts, as provided in Section 9-13-19; and mileage shall be paid to the additional court reporter by the county as provided in the same section. The office of such additional court reporter appointed under this section shall not be abolished or compensation reduced during the term of office of the appointing judge or chancellor without the consent and approval of the appointing judge or chancellor.

§ 9-17-1 Creation of office; appointment; compensation:

(1) The judges and chancellors of judicial districts, including chancery, circuit and county courts, may, in their discretion, jointly or independently, establish the office of court administrator in any county by an order entered on the minutes of each participating court in the county.

The establishment of the office of court administrator shall be accomplished by vote of a majority of the participating judges and chancellors in the county, and such court administrator shall be appointed by vote of a majority of the judges or chancellors and may be removed by a majority vote of the judges or chancellors. In case of a tie vote, the senior judge or senior chancellor shall cast two (2) votes.
. . .

***See* § 1-1-11 Distribution of sets purchased by state; electronic statutes access; CD-ROMS.**

***See* § 1-1-58 Advance sheets of general laws.**

***See* § 9-1-37 Stationery allowance.**

Removal from Office

Mississippi Constitution Article VI, § 177A, Commission on Judicial Performance, states:

> On recommendation of the commission on judicial performance, the supreme court may remove from office, suspend, fine or publicly censure or reprimand any justice or judge of this state. . . .

Mississippi Constitution Article VI, § 175, Liability and Punishment of Public Officers, states:

> All public officers, for wilful neglect of duty or misdemeanor in office, shall be liable to presentment or indictment by a grand jury; and, upon conviction, shall be removed from office, and otherwise punished as may be prescribed by law.

§ 25-5-1 Criminal convictions; mental competency:

> If any public officer . . . shall be convicted or enter a plea of guilty or nolo contendere in any court of this state or any other state or in any federal court of any felony other than manslaughter or any violation of the United States Internal Revenue Code, of corruption in office or peculation therein, or of gambling or dealing in futures with money coming to his hands by virtue of his office, any court of this state, in addition to such other punishment as may be prescribed, shall adjudge the defendant removed from office; and the office of the defendant shall thereby become vacant. If any such officer be found by inquest to be of unsound mind during the term for which he was elected or appointed, or shall be removed from office by the judgment of a court of competent jurisdiction or otherwise lawfully, his office shall thereby be vacated; and in any such case the vacancy shall be filled as provided by law. When any such officer is found guilty of a crime which is a felony under the laws of this state or which is punishable by imprisonment for one (1) year or more, other than manslaughter or any violation of the United States Internal Revenue Code, in a federal court or a court of competent jurisdiction of any other state, the Attorney General of the State of Mississippi shall promptly enter a motion for removal from office in the circuit court of Hinds County in the case of a state officer, and in the circuit court of the county of residence in the case of a district, county or municipal officer. The court, or the judge in vacation, shall, upon notice and a proper hearing, issue an order removing such person from office and the vacancy shall be filled as provided by law.

Vacancy from Office

§ 9-1-105 Absence or disability:

(1) Whenever any judicial officer is unwilling or unable to hear a case or unable to hold or attend any of the courts at the time and place required by law by reason of the physical disability or sickness of such judicial officer, by reason of the absence of such judicial officer from the state, by reason of the disqualification of such judicial officer pursuant to the provision of Section 165, Mississippi Constitution of 1890, or any provision of the Code of Judicial Conduct, or for any other reason, the Chief Justice of the Mississippi Supreme Court, with the advice and consent of a majority of the justices of the Mississippi Supreme Court, may appoint a person as a special judge to hear the case or attend and hold a court.

(2) Upon the request of the Chief Judge of the Court of Appeals, the senior judge of a chancery or circuit court district, the senior judge of a county court, or upon his own motion, the Chief Justice of the Mississippi Supreme Court, with the advice and consent of a majority of the justices of the Mississippi Supreme Court, shall have the authority to appoint a special judge to serve on a temporary basis in a circuit, chancery or county court in the event of an emergency or overcrowded docket. It shall be the duty of any special judge so appointed to assist the court to which he is assigned in the disposition of causes so pending in such court for whatever period of time is designated by the Chief Justice. The Chief Justice, in his discretion, may appoint the special judge to hear particular cases, a particular type of case, or a particular portion of the court's docket. . . .

CHANCERY COURT JURISDICTION

- All matters in equity
- Divorce & alimony
- Matters testamentary & of administration
- Minor's business
- Cases of idiocy, lunacy, & persons of unsound mind
- All cases of which the chancery court had jurisdiction when the Mississippi Constitution was enacted

Miss. Const. art. VI, § 159

- Suits to try title & to cancel deeds & other clouds upon real estate
- Suits to decree & to displace possession of real estate
- Suits to decree rents & compensation for improvements & taxes

Miss. Const. art. VI, § 160

Youth court jurisdiction by statute

§§ 43-21-107 & -151

CIRCUIT COURT JURISDICTION

CIVIL

Original jurisdiction in all civil matters
not vested by the constitution in another court
Miss. Const. art, VI, § 156

Appellate jurisdiction as prescribed by law
Miss. Const. art. VI, § 156 & § 9-7-81

Actions with the amount in controversy over $200.00
§ 9-7-81

Actions not exclusively cognizable in another court
§ 9-7-81

Eminent domain cases where there is no county court
§ 11-27-3

CRIMINAL

Original jurisdiction in all criminal matters
not vested by the constitution in another court
Miss. Const. art. VI, § 156

Prosecutions in the name of the state for
"treason, felonies, crimes, and misdemeanors,"
except those cognizable before another court
§ 9-7-81

COUNTY COURT JURISDICTION

CIVIL

Concurrent with the justice court in all civil matters
§ 9-9-21

Concurrent with the circuit & chancery courts
over all matters of law & equity
with an amount in controversy up to $200,000.00
§ 9-9-21

Exclusive jurisdiction over eminent domain,
partition of personal property,
& actions for unlawful entry & detainer
§ 9-9-21

Civil cases transferred from the circuit court
§ 9-9-27

CRIMINAL

Concurrent with the justice court in all criminal matters
§ 9-9-21

Criminal cases transferred from circuit court
§ 9-9-21

Non-capital felonies transferred from circuit court
§ 9-9-27

YOUTH COURT

Youth court jurisdiction by statute
§ 43-21-107 & -151

JUSTICE COURT JURISDICTION

CIVIL

Actions with the amount in controversy up to $500.00
"or such higher amount as may be prescribed by law"
Miss. Const. art. VI, § 171

Actions with the amount in controversy up to $3,500.00
§ 9-11-9

Payment of court costs is jurisdictional
§ 9-11-10

CRIMINAL

Concurrent with the circuit court over all crimes
where the punishment prescribed is not more than
a fine & imprisonment in the county jail
Miss. Const. art. VI, § 171 & § 99-33-1

Criminal cases remanded by a circuit court grand jury
§§ 99-33-1 & 99-33-13

Preliminary hearings & initial appearances
for criminal offenses committed within the county
MRCrP 5 & 6

MUNICIPAL COURT JURISDICTION

CRIMINAL

Actions for violations of the municipal ordinances
& state misdemeanor laws made offenses against the municipality
§ 21-23-7

Preliminary hearings & initial appearances
for criminal offenses committed within the municipality
§ 21-23-7

Criminal cases remanded by a circuit court grand jury
§ 21-23-7

Protection from Domestic Abuse Act
§ 21-23-7

CHAPTER 2

CHANCERY COURT CLERKS & THEIR DUTIES

CHARTS

APPENDIX 1

APPENDIX 2

CHAPTER 2

CHANCERY COURT CLERKS & THEIR DUTIES

Establishment of the Chancery Court Clerk

Mississippi Constitution Article VI, § 168, Clerks of Court, states:

> The clerk of the chancery court shall be selected in each county in the manner provided by law, and shall hold office for the term of four (4) years, and the Legislature shall provide by law what duties shall be performed during vacation by the clerks of the chancery courts, subject to the approval of the court.
>
> ***See* § 23-15-193 Officers chosen at general elections and**
> **§ 25-1-103 Holding of multiple offices.**

Oath, Bond & Training

Oath

§ 9-5-131 Bonds:

The clerk of the chancery court, before he enters upon the duties of the office, shall take the oath of office and give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in a penalty equal to five percent (5%) of the sum of all the state and county taxes shown by the assessment rolls and the levies to have been collectible in the county for the year immediately preceding the commencement of the term of office for such clerk; however, such bond shall not exceed the amount of One Hundred Thousand Dollars ($100,000.00). Such clerk may be required by the court, or the chancellor in vacation, to give additional bond in any particular case, which shall be a cumulative security, and shall not in any manner affect the liability on his official bond for any matter covered by it. His official bond shall be held to cover all his official acts, and all moneys which may come into his hands according to law or by order of the court or chancellor.

§ 97-11-41 Performance of duties before oath:

If any person elected to any office shall undertake to exercise the same or discharge the duties thereof without first having taken the oath of office or given bond as required by law, he shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than five hundred dollars, or imprisoned in the county jail not longer than one year, or both.

§ 25-1-9 Administration of oath of office:

The oath of office may be taken by all officers before any person authorized by law to administer an oath.

§ 11-1-1 Who may take oaths:

A judge of any court of record, clerk of such court, court reporter of such court, master, member of the board of supervisors, justice court judge, notary public, mayor, or police justice of a city, town or village, clerk of a municipality . . . may administer oaths.

§ 25-1-11 Filing of oath of office:

The oath of office of all officers whose duties are confined within the limits of the county in which they are elected shall be filed in the office of the clerk of the chancery court of the county.

Bond

§ 25-1-15 Bonds; form:

(1) The bonds of all public officers required to give individual bond shall be conditioned in the following form, to wit:

> Whereas, the above bound A B was duly elected (or appointed) to the office of _____ on the _____ day of _____, for the term of _____ years from the _____ day of _____; therefore, if he shall faithfully perform all the duties of said office during his continuance therein, then the above obligation to be void.

A new bond in the amount required by law shall be secured at the beginning of each new term of office or every four (4) years, whichever is less.

(2) The bonds of all public employees required to give individual bond shall be conditioned in the following form, to wit:

> Whereas, the above bound A B was duly employed (or appointed) to the position of _____ on the _____ day of _____; therefore, if he shall faithfully perform all the duties of said position during his continuance therein, then the above obligation to be void.

A new bond in an amount not less than that required by law shall be secured upon employment and coverage shall continue by the securing of a new bond every four (4) years concurrent with the normal election cycle of the Governor or with the normal election cycle of the local government applicable to the employee.

(3) A failure to observe the form herein prescribed shall not vitiate any official bond; and all official bonds shall be valid and binding in whatever form they may be taken, except so far as they may be conditioned for the performance of acts in violation of the laws or policy of the state. Whether in the proper penalty or without any penalty, whether correct or incorrect in its recitals as to the term of office or otherwise, whether properly payable, whether approved by the proper officer or not approved by any, or if irregular in any other respect, such bond, if delivered as the official bond of the officer or employee and serving as such, shall be obligatory on everyone who subscribed it for the purpose of making the official bond of such officer or employee to the full penalty or, if it has no penalty, to the full penalty of the bond which might have been required.

(4) All blanket bonds given on positions of public employment shall be conditioned upon the faithful performance of all the duties of the positions covered and insured by said blanket bond. A new bond in an amount not less than that required by law for public employees shall be secured at the beginning of each new term of office of the public or appointed official by whom they are employed, if applicable, or at least every four (4) years concurrent with the normal election cycle of the Governor.

§ 25-1-13 Surety bonds; requirements:

The state officials hereinafter named shall give bond in the penalty specified for each, with surety by one or more guaranty or surety companies authorized to do business in the state. . . . Premiums paid on all bonds under the provisions of this section shall be paid out of the state treasury upon warrant of the auditor, which shall be issued upon the approval of the bonds as herein provided; provided, however, that the said premiums shall be at the lowest rate obtainable. . . .

§ 25-1-19 Bonds; approval:

(1) The bond of the chancery clerk of each county shall be approved by the board of supervisors of the county. The bond of the members of the board of supervisors of the county shall be approved by the chancery clerk of such county. . . . All the bonds shall be filed and recorded in the office of the clerk of the chancery court of the county, except that the original of the chancery clerk's bond, after it is recorded, shall be deposited and filed in the office of the clerk of the circuit court.

Training

§ 9-5-132 Qualifications, training and education:

(1) Except as otherwise provided herein, no chancery clerk elected for a full term of office commencing on or after January 1, 1996, shall exercise any functions of office or be eligible to take the oath of office unless and until the chancery clerk has filed in the office of the circuit clerk a certificate of completion of a course of training and education conducted by the Mississippi Judicial College of the University of Mississippi Law Center within six (6) months of the beginning of the term for which such chancery clerk is elected. A chancery clerk who has completed the course of training and education and has satisfied his annual continuing education course requirements, and who is then elected for a succeeding term of office subsequent to the initial term for which he completed the training course, shall not be required to repeat the training and education course upon reelection. Any chancery clerk who has served a full or partial term before January 1, 1996, shall be exempt from the requirements of this subsection.

(2) In addition to meeting the requirements of subsection (1) of this section, after taking office by election or otherwise, each chancery clerk shall be required to file annually in the office of the circuit clerk a certificate of completion of a course of continuing education conducted by the Mississippi Judicial College. No chancery clerk shall have to comply with this subsection unless he will have been in office for five (5) months or more during a calendar year.

(3) Each chancery clerk elected for a term commencing on or after January 1, 1992, shall be required to file annually the certificate required in subsection (2) of this section commencing January 1, 1994.

(4) The requirements for obtaining the certificates in this section shall be as provided in subsection (6) of this section.

(5) Upon the failure of any chancery clerk to file with the circuit clerk the certificates of completion as provided in this section, such chancery clerk shall, in addition to any other fine or punishment provided by law for such conduct, not be entitled to any fee, compensation or salary, from any source, for services rendered as chancery clerk, for the period of time during which such certificate remains unfiled.

(6) The Mississippi Judicial College of the University of Mississippi Law Center shall prepare and conduct courses of training for basic and continuing education for chancery clerks of this state. The basic course of training shall be known as the "Chancery Clerks Training Course" and shall consist of at least thirty-two (32)

hours of training. The continuing education course shall be known as the "Continuing Education Course for Chancery Clerks," and shall consist of at least eighteen (18) hours of training. The content of the basic and continuing education courses and when and where such courses are to be conducted shall be determined by the judicial college. The judicial college shall issue certificates of completion to those chancery clerks who complete such courses.

(7) The expenses of the training, including training of those elected as chancery clerk who have not yet begun their term of office, shall be borne as an expense of the office of the chancery clerk.

(8) Chancery clerks shall be allowed credit toward their continuing education course requirements for attendance at chancery court proceedings if the presiding chancery court judge certifies that the chancery clerk was in actual attendance at a term or terms of court; provided, however, that at least twelve (12) hours per year of the continuing education course requirements must be completed at a regularly established program or programs conducted by the Mississippi Judicial College.

Compensation & Chancery Clerk Clearing Account

§ 9-1-43 Chancery and circuit clerk compensation; salaries of relatives; bond liability; clearing accounts; cash journal; failure to deposit funds:

(1) After making deductions for employer contributions paid by the chancery or circuit clerk to the Public Employees' Retirement System under Sections 25-11-106.1 and 25-11-123(f)(4), employee salaries and related salary expenses, and expenses allowed as deductions by Schedule C of the Internal Revenue Code, no office of the chancery clerk or circuit clerk of any county in the state shall receive fees as compensation for the chancery clerk's or circuit clerk's services in excess of Ninety-four Thousand Five Hundred Dollars ($94,500.00). All such fees received by the office of chancery or circuit clerks that are in excess of the salary limitation shall be deposited by such clerk into the county general fund on or before April 15 for the preceding calendar year. If the chancery clerk or circuit clerk serves less than one (1) year, then he shall not receive as compensation any fees in excess of that portion of the salary limitation that can be attributed to his time in office on a pro rata basis. Upon leaving office, income earned by any clerk in his last full year of office but not received until after his last full year of office shall not be included in determining the salary limitation of the successor clerk. There shall be exempted from the provisions of this subsection any monies or commissions from private or governmental sources which:

(a) are to be held by the chancery or circuit clerk in a trust or custodial capacity as prescribed in subsections (4) and (5); or
(b) are received as compensation for services performed upon order of a court or board of supervisors which are not required of the chancery clerk or circuit clerk by statute.

This office has issued a few opinions interpreting this salary cap statute. Regarding a circuit clerk, who is generally treated analogously as a chancery clerk in the statute, we opined that any services which are not required by statute are exempt from the salary cap of section 9-1-43. **Clerk's Scope of Statutory Duties, Opinion No. 2000-0417 (Miss. A. G. Aug. 4, 2000).**

It is clear to this office that the intent of the legislature was to provide that any amount of fees received by the office of the clerk over the salary cap are to become public funds of the county. **Chancery Clerk Salary Cap, Opinion No. 98-0744 (Miss. A. G. Dec. 2, 1998).**

It is the opinion of this office that under Section 9-1-43(1) chancery and circuit clerks will be allowed to deduct employee salaries and related expenses, and any expenses allowed as deductions by Schedule C of the Internal Revenue Code for purposes of determining fees to be received by them as compensation. This office does not interpret federal law, and we do not purport to state what the expenses allowed by Schedule C may be. **Re: Clerk's Fees, Cap, Opinion No. 96-0716 (Miss. A.G. Nov. 8, 1996).**

(2) It shall be unlawful for any chancery clerk or circuit clerk to use fees in excess of Ninety-four Thousand Five Hundred Dollars ($94,500.00), to pay the salaries or actual or necessary expenses of employees who are related to such clerk by blood or marriage within the first degree of kinship according to the civil law method of computing kinship as provided in Sections 1-3-71 and 1-3-73. However, the prohibition of this subsection shall not apply to any individual who was an employee of the clerk's office prior to the date his or her relative was elected as chancery or circuit clerk. The spouse and/or any children of the chancery clerk or circuit clerk employed in the office of the chancery clerk may be paid a salary; however, the combined annual salaries of the clerk, spouse and any child of the clerk may not exceed an amount equal to the salary limitation.

May a chancery or circuit clerk employ anyone related to them outside the first degree, pay that employee's salary and related expenses out of fees earned by that office and deduct that employee's salary and related expenses as a deductible expense of the office in reaching the salary cap? In response, we have rendered prior opinions that fees earned by a clerk which exceed the salary cap are public monies. Section 25-1-53 prohibits a circuit or chancery clerk from hiring as an officer, clerk, stenographer, deputy or an assistant any person related to them within the third degree if such person is to be paid out of public funds. However, we think that § 9-1-43(2) is the more specific statute and controls this question. It limits the prohibition solely to persons related within the first degree. Therefore, our answer to your question is "Yes." **Circuit Clerks Salary Cap - Related Employees, Opinion No. 97-0757 (Miss. A. G. Dec. 19, 1997).**

If a spouse or child was employed by the clerk's office prior to the date this law takes effect, does the underlined above apply to them? Or if a spouse or child was employed by the clerk's office prior to the clerk's next term, does it apply to them? And last, if a clerk is presently in office and has a spouse or child employed now and the clerk is re-elected for a new term of 4 years to the office of clerk, does this apply to that spouse or child? In response, section 9-1-43 places a limit on the fees that a circuit clerk can

> earn in a particular year. It prohibits at Subsection (2) a circuit clerk from paying a salary to an employee related to the clerk within the first degree an amount that would exceed the limit if combined with the clerk's fees. Such prohibition, however, "shall not apply to any individual who was an employee of the clerk's office prior to the date his or her relative was elected as chancery or circuit clerk." The statute [became] effective January 1, 1996. It is our opinion that under this statute the only time that a relative of a chancery or circuit clerk may be paid a salary, which combined with the clerk's fees would exceed the cap, would be when that relative was employed by the clerk's office prior to the time the clerk was first elected to office. To allow otherwise would defeat the intent of the statute. **Payment of Salaries to Employees of Circuit Clerks, Opinion No. 95-0477 (Miss. A. G. Aug. 10, 1995).**

(3) The chancery clerk and the circuit clerk shall be liable on their official bond for the proper deposit and accounting of all monies received by his office. The State Auditor shall promulgate uniform accounting methods for the accounting of all sources of income by the offices of the chancery and circuit clerk.

(4) There is created in the county depository of each county a clearing account to be designated as the "chancery court clerk clearing account," into which shall be deposited:

> (a) all such monies as the clerk of the chancery court shall receive from any person complying with any writ of garnishment, attachment, execution or other like process authorized by law for the enforcement of child support, spousal support or any other judgment;
> (b) any portion of any fees required by law to be collected in civil cases which are to pay for the service of process or writs in another county; and
> (c) any other money as shall be deposited with the court which by its nature is not, at the time of its deposit, public monies, but which is to be held by the court in a trust or custodial capacity in a case or proceeding before the court.

The clerk of the chancery court shall account for all monies deposited in and disbursed from such account and shall be authorized and empowered to draw and issue checks on such account at such times, in such amounts and to such persons as shall be proper and in accordance with law.

> As to your next question, you have also noted that it is necessary for the Chancery Clerk to maintain a trust account to receive funds pursuant to interpleader or other actions related to Chancery Court. Your second question follows:

2. Is it permissible to utilize the county's ID number in setting up these accounts. Can these funds be collateralized by the bank as county funds pursuant to state law?

In response, Section 9-1-43 provides in Subsection (4):

> There is created in the county depository of each county a clearing account to be designated as the "chancery court clerk clearing account," into which shall be deposited: . . . (c) any other money as shall be deposited with the court which by its nature is not, at the time of its deposit, public monies, but which is to be held by the court in a trust or custodial capacity in a case or proceeding before the court. The clerk of the chancery court shall account for all monies deposited in and disbursed from such account and shall be authorized and empowered to draw and issue checks on such account at such times, in such amounts and to such persons as shall be proper and in accordance with law.

By statutory directive, the chancery clerk must establish a clearing account in the county depository for funds held by the chancery court in a case before the court. Therefore, it is the opinion of this office that the county identification number should be used in setting up this account. Please note that we have previously opined that Section 9-1-43 does not prohibit a chancery clerk from creating different fund numbers within the county depository for specific accounts. It is our opinion that these account funds may be collateralized. **Re: Use of County Identification Number for Guardianship or Receivership Accounts, Opinion No. 2003-0035 (Miss. A.G. May 30, 2003).**

The following monies paid to the chancery clerk shall be subject to the salary limitation prescribed under subsection (1):

> (a) all fees required by law to be collected for the filing, recording or abstracting of any bill, petition, pleading or decree in any civil case in chancery;
> (b) all fees collected for land recordings, charters, notary bonds, certification of decrees and copies of any documents;
> (c) all land redemption and mineral documentary stamp commissions; and
> (d) any other monies or commissions from private or governmental sources for statutory functions which are not to be held by the court in a trust capacity.

Such fees as shall exceed the salary limitations shall be maintained in a bank account in the county depository and accounted for separately from those monies paid into the chancery court clerk clearing account.

> Section 9-1-43 provides in pertinent part that "the following monies paid to the chancery clerk shall be subject to the salary limitation prescribed under subsection (1) . . . (b) all fees collected for land recordings, charters, notary bonds, certification of decrees and copies of any documents . . ." Therefore, it is our opinion that the fees paid to the clerk under § 25-7-9(1)(e) for providing copies would not be exempt from the salary cap. **Chancery Clerk's Salary Cap, Opinion No. 97-0481 (Miss. A. G. Feb. 20, 1998).**

(5) There is created in the county depository in each county a clearing account to be designated as the "circuit court clerk civil clearing account," into which shall be deposited: (a) all such monies and fees as the clerk of the circuit court shall receive from any person complying with any writ of garnishment, attachment, execution or any other like process authorized by law for the enforcement of a judgment; (b) any portion of any fees required by law or court order to be collected in civil cases; (c) all fees collected for the issuance of marriage licenses; and (d) any other money as shall be deposited with the court which by its nature is not, at the time of its deposit, public monies but which is to be held by the court in a trust or custodial capacity in a case or proceeding before the court.

There is created in the county depository in each county a clearing account to be designated as the "circuit court clerk criminal clearing account," into which shall be deposited: (a) all such monies as are received in criminal cases in the circuit court pursuant to any order requiring payment as restitution to the victims of criminal offenses; (b) any portion of any fees and fines required by law or court order to be collected in criminal cases; and (c) all cash bonds as shall be deposited with the court. The clerk of the circuit court shall account for all monies deposited in and disbursed from such account and shall be authorized and empowered to draw and issue checks on such account, at such times, in such amounts and to such persons as shall be proper and in accordance with law; however, such monies as are forfeited in criminal cases shall be paid by the clerk of the circuit court to the clerk of the board of supervisors for deposit in the general fund of the county.

The following monies paid to the circuit clerk shall be subject to the salary limitation prescribed under subsection (1): (a) all fees required by law to be collected for the filing, recording or abstracting of any bill, petition, pleading or decree in any civil action in circuit court; (b) copies of any documents; and (c) any other monies or commissions from private or governmental sources for statutory functions which are not to be held by the court in a trust capacity.

(6) The chancery clerk and the circuit clerk shall establish and maintain a cash journal for recording cash receipts from private or government sources for furnishing copies of any papers of record or on file, or for rendering services as a

notary public, or other fees wherein the total fee for the transaction is Ten Dollars ($10.00) or less. The cash journal entry shall include the

date,
amount and
type of transaction,

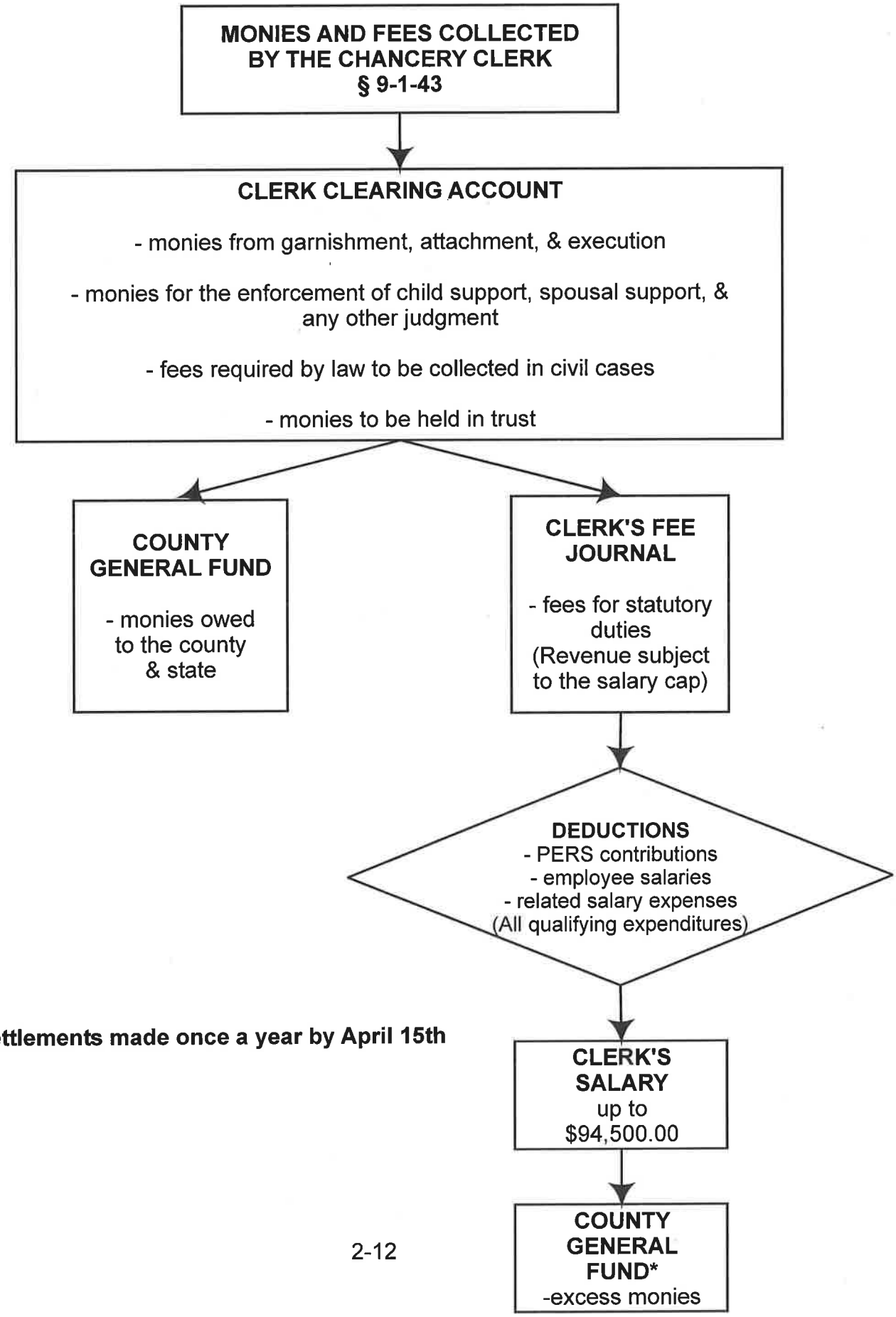
and the clerk shall not be required to issue a receipt to the person receiving such services. The State Auditor shall not take exception to the furnishing of copies or the rendering of services as a notary by any clerk free of charge.

In any county having two (2) judicial districts, whenever the chancery clerk serves as deputy to the circuit clerk in one (1) judicial district and the circuit clerk serves as deputy to the chancery clerk in the other judicial district, the chancery clerk may maintain a cash journal, separate from the cash journal maintained for chancery clerk receipts, for recording the cash receipts paid to him as deputy circuit clerk, and the circuit clerk may maintain a cash journal, separate from the cash journal maintained for circuit clerk receipts, for recording the cash receipts paid to him as deputy chancery clerk. The cash receipts collected by the chancery clerk in his capacity as deputy circuit clerk and the cash receipts collected by the circuit clerk in his capacity as deputy chancery clerk shall be subject to the salary limitation prescribed under subsection (1).

(7) Any clerk who knowingly shall fail to deposit funds or otherwise violate the provisions of this section shall be guilty of a misdemeanor in office and, upon conviction thereof, shall be fined in an amount not to exceed double the amount that he failed to deposit, or imprisoned for not to exceed six (6) months in the county jail, or be punished by both such fine and imprisonment.

§ 9-1-44 Appropriation of funds to pay expenses of office of chancery clerk or office of the circuit clerk:

If the total amount of all fees received by the office of the chancery clerk or by the office of the circuit clerk in any year are insufficient to pay the expenses of the office for that year, the clerk shall notify the board of supervisors, and if the board of supervisors makes a finding and enters on its minutes the finding that the fees received by the office of the clerk are insufficient to pay the expenses of the office for that year, then the board of supervisors, in its discretion, may appropriate funds from the general fund of the county to the office of the clerk as necessary to supplement the payment of the expenses of the office of the clerk.



***Settlements made once a year by April 15th**

Deputy Chancery Court Clerks

How Deputy Clerks Are Appointed

§ 9-5-133 Power to appoint deputies:

The clerk of the chancery court shall have power, with the approbation of the court, or of the judge in vacation, to appoint one or more deputies, who shall take the oath of office, and who thereupon shall have power to do and perform all the acts and duties which their principal may lawfully do; such approval, when given by the judge in vacation, shall be in writing, and shall be entered on the minutes of the court at the next term.

Thus, deputy chancery clerks are employed and paid for service in their capacity as deputy clerks by the chancery clerk or chancery court. In that capacity, a deputy chancery clerks have full power, under the discretion of the chancery clerk, to perform all the acts and duties which the chancery clerk may lawfully do. As their principal, the chancery clerk is liable under the law for the actions of his/her deputies. In your opinion request, the duties of the deputy clerk are solely dealing with land redemption and delinquent tax collection activities, which are responsibilities of the chancery clerk. Therefore, the deputy chancery clerk performing these specific duties are required to be paid by the chancery clerk. However, please note that a board of supervisors may, in its discretion, employ one or more of the chancery clerk's deputies to perform other duties such as purchasing clerk and/or bookeeper. Duties such as these do not require deputization and are not responsibilities of the chancery clerk as clerk of the board or clerk of the chancery court. Therefore, a deputy chancery clerk carrying out other duties for which they have been employed by the board may be compensated by the board of supervisors. **Re: Salary of Deputy Chancery Clerk, Opinion No. 2012-00481 (Miss. A.G. Oct. 17, 2012).**

First, it is important to remember that deputy chancery clerks are employed and paid for service in their capacity as deputy clerks by the chancery clerk or chancery court. In that capacity, they have full power, under your direction, to perform all the acts and duties which you as their principal may lawfully do. As their principal, you are liable under the law for the actions of your deputies. **Re: Deputy Chancery Clerks (Miss. A.G. Apr. 22, 1992).**

Nepotism is Prohibited

§ 25-1-53 Employment of relatives prohibited; exceptions:

It shall be unlawful for any person elected, appointed or selected in any manner whatsoever to any state, county, district or municipal office, or for any board of trustees of any state institution, to appoint or employ, as an officer, clerk, stenographer, deputy or assistant who is to be paid out of the public funds, any person related by blood or marriage within the third degree, computed by the rule of the civil law, to the person or any member of the board of trustees having the authority to make such appointment or contract such employment as employer. This section shall not apply to any employee who shall have been in said department or institution prior to the time his or her kinsman, within the third degree, became the head of said department or institution or member of said board of trustees; and this section shall not apply to any person seeking appointment as an election worker who has served as an election worker in the election immediately preceding the commencement of a term of office as an election commissioner by his kinsman within the third degree. . . .

[The] Attorney General has received your letter of request. . . . Your letter states:

> Please be advised that we represent the Board of Supervisors of Tunica County, Mississippi. An issue has arisen concerning the employment of the circuit clerk's niece. The circuit clerk's niece has been employed by the county working in various departments for a number of years. However, the board would now like to transfer the circuit clerk's niece to the circuit clerk's office. We are concerned with the nepotism statute which is § 25-1-53. As we understand, your office has previously opined that a three part analysis should be used, as follows:
>
> > (1) Are the parties related within the third degree?
> >
> > (2) Is the relative who is the public official an "appointing authority?"
> >
> > (3) Is the job included in the list of prohibitive positions?
>
> It would appear that certainly the answer to the questions (1) and (3) are yes as the county employee would fall within the third degree as far as being a niece and that it is a prohibited position as she would be a "deputy" "clerk." However, the question is who is the "appointing authority." Section 9-7-126 of the Mississippi Code provides that the board of supervisors may pay allowances for the purposes of defraying the salaries of deputy circuit clerks. In part, Section 9-7-126 provides as follows:
>
> > Deputy circuit clerks employed under authority of this

> section shall be deemed employees of the county. The clerk shall select and supervise their duties.
>
> The question is since the Tunica County Board of Supervisors is the employing authority and ultimately hires the employee, would Tunica County or the circuit clerk be deemed the "appointing authority?" It would appear if the Board of Supervisors of Tunica County is the "appointing authority," then the nepotism statute is not applicable. However, if the circuit clerk is deemed the "appointing authority," then the nepotism statute would be applicable. Also of significance, is § 9-1-43(2) and prior Opinion 97-0757 dated December 19, 1997. While possibly not applicable, would 9-1-43(2) allow the employment referenced even though the salary is paid by the board of supervisors.

As suggested in your letter one's niece is a relative within the third degree as computed by the rule of civil law. As also suggested in your letter the position of deputy circuit clerk is included in the list of prohibited positions found in § 25-1-53. In response to the question of who is the "appointing authority" of a deputy who is being paid by the board of supervisors pursuant to § 9-7-126, we have previously opined that such a deputy serves at the will and pleasure of the circuit clerk. It follows and is our opinion that the circuit clerk is the "appointing authority" even though the deputy is being compensated by the board of supervisors. In response to your last question, § 9-1-43(2) and our [previous] opinion addresses the prohibition against a chancery or circuit clerk employing a relative of the first degree and paying him or her out of the fees collected by the clerk and treating that salary and related expenses as a deductible expense of the office in reaching the statutory salary cap. In [that opinion] we said that such prohibition would not apply to a relative outside the first degree of kinship. However, we see nothing in § 9-1-43(2) that would authorize a circuit clerk to employ a relative within the third degree of kinship who is to be paid out of public funds by the board of supervisors pursuant to § 9-7-126. **Deputy Circuit Clerk, Opinion No. 2004-0413 (Miss. A. G. Aug. 27, 2004).**

Your letter states: . . .

> 2. Is it legal for a Circuit Clerk to employ and pay a member of his family as a Deputy Clerk? (i.e. mother, sister-in-law or brother-in-law)?"

In response to your second question, § 25-1-53 provides in part:

> "It shall be unlawful for any person elected, appointed or selected in any manner whatsoever to any state, county district or municipal office . . . to appoint or employ, as an officer, clerk, stenographer, deputy or assistant who is to be paid out of the public funds, any

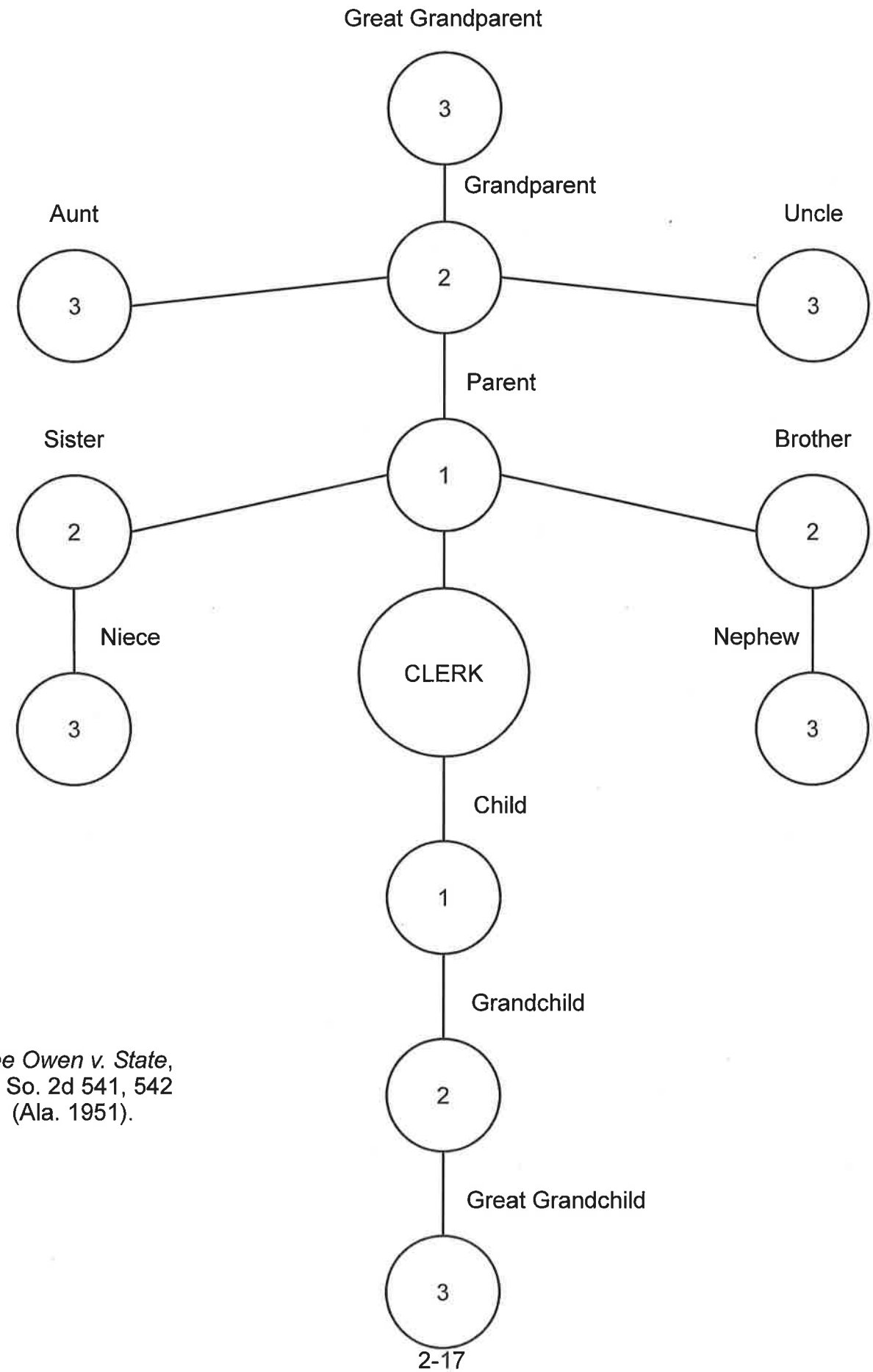
person related by blood or marriage within the third degree, computed by the rule of the civil law, to the person or any member of the board of trustees having the authority to make such appointment, or contract such employment as employer. . . ."

Based on the above, if the brother-in-law of the appointing authority is to be paid with public funds, such appointment would be prohibited. Conversely, if he is to be paid out of the fees earned by the appointing authority, the appointment would not be prohibited. We note that Section 9-7-126 specifically provides that deputy circuit clerks employed under the authority granted by said statute are deemed to be employees of the county. **Re: Residency of Deputy Circuit Clerk, Opinion No. 94-0449 (Miss. A.G. July 28, 1994).**

§ 25-1-55 Employment of relatives; penalties:

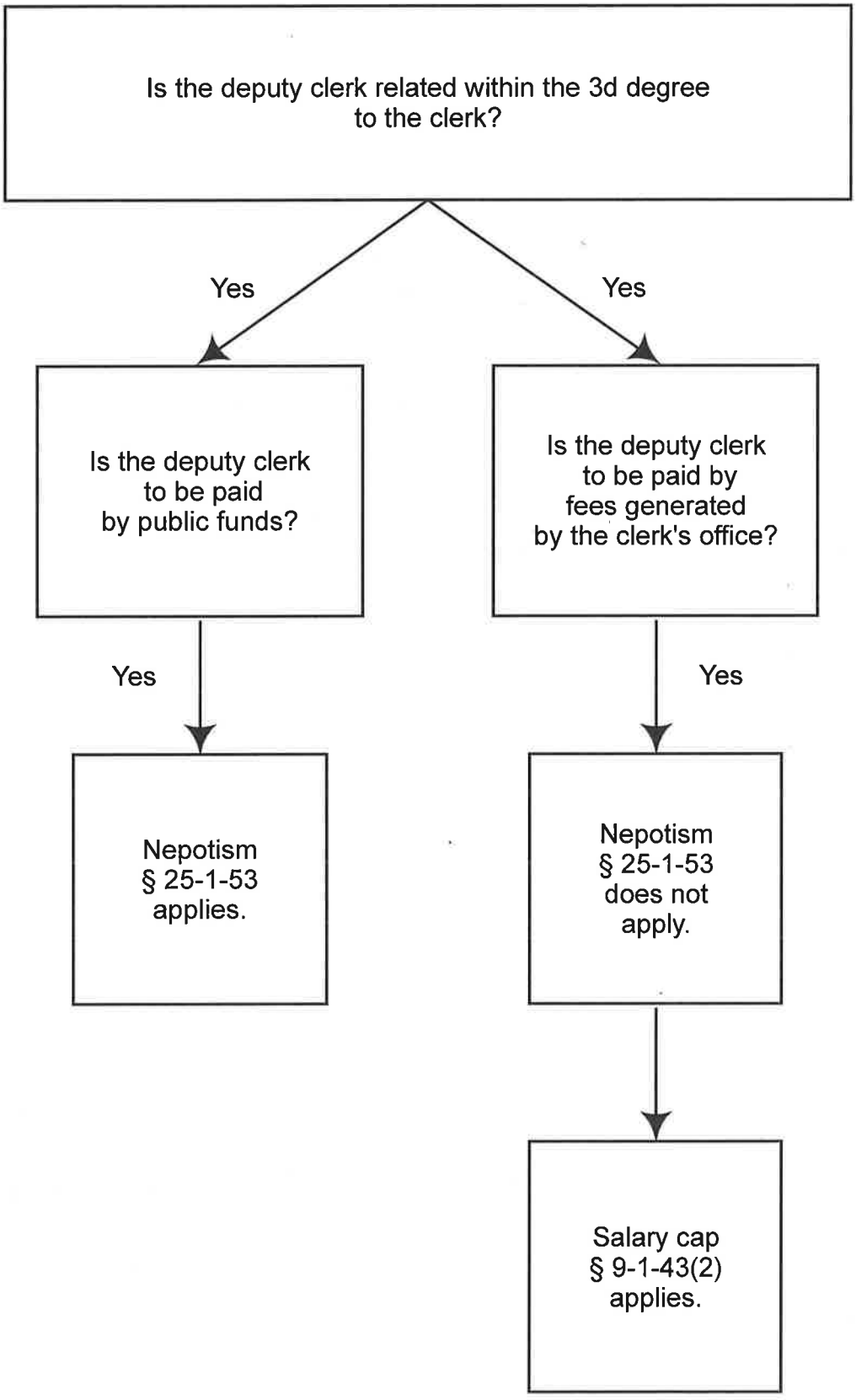
Any person violating the provisions of Section 25-1-53 shall forfeit to the State of Mississippi, and shall be liable on his official bond for, an amount equal to the sum of all moneys paid to any person appointed or employed in violation of the provisions aforesaid.

DEGREES OF KINSHIP



See Owen v. State, 51 So. 2d 541, 542 (Ala. 1951).

NEPOTISM


Is the deputy clerk related within the 3d degree to the clerk?
Yes
Yes
Is the deputy clerk to be paid by public funds?
Is the deputy clerk to be paid by fees generated by the clerk's office?
Yes
Yes
Nepotism § 25-1-53 applies.
Nepotism § 25-1-53 does not apply.
Salary cap § 9-1-43(2) applies.

Chancery Clerk's Duties

The duties of the chancery court clerk are defined by various sources. There is statutory authority for the clerk's duties, as well as duties prescribed by the Mississippi Rules of Civil Procedure, Mississippi Rules of Appellate Procedure, and the Uniform Chancery Court Rules. Below is a partial listing of those various duties.

Statutory Duties

§ 9-1-9 Adjournment upon absence of judge:

If the circuit judge or chancellor fail to attend at any term of the court, it shall stand adjourned from day to day until the third day, when, if the judge or chancellor shall not appear and open court, it shall stand adjourned without day; but, by virtue of a written order by the judge or chancellor, it may be adjourned by the clerk or sheriff to any day of the term, as the order may direct, and parties, witnesses and jurors must attend accordingly.

§ 9-1-31 Delivery of clerk's records:

When the office of clerk of any court shall become vacant, the records, papers, books, stationery, and everything belonging thereto, shall be delivered to the successor in office by any person having the same, on demand; and if any person having such records, papers, books, stationery, or other things shall refuse to deliver the same on demand to the person entitled thereto, he shall be liable for all damages sustained by any person aggrieved thereby; and in case of a refusal or a detention of the same, or of any part thereof, after demand made, the court may compel the delivery thereof, by fine and imprisonment at discretion, for contempt of court; and the court, or judge in vacation, may order process to be issued for the seizure of such records, papers, books, stationery, and other things, and for the delivery thereof to the successor in office.

§ 9-1-33 Minutes of court:

The minutes of the proceedings of the Supreme, circuit, chancery and county courts and the Court of Appeals shall be entered by the clerk of each, respectively, in the minute book of the court, against the next sitting of the court, if practicable, when the same shall be read in open court; and when corrected shall be signed--the minutes of the Supreme Court by the Chief Justice or presiding judge, of the Court of Appeals by the Chief Judge or presiding judge, of the circuit court by the circuit judge, of the chancery court by the chancellor, and of the county court by the county judge; and on the last day of the term, or within ten (10) days

thereafter, the minutes shall be drawn up, read and signed. . . .

§ 9-1-39 Clerks of separate judicial districts:

In Harrison County, a county having two judicial districts, the clerks of the circuit and chancery courts of said county shall be the clerks of the respective circuit and chancery courts in each of the districts aforesaid and the circuit clerk shall additionally be the clerk of the county court as provided by law, in each of said districts and they shall keep offices both at Gulfport and Biloxi, in which all books, records, dockets, papers and documents belonging to each of the courts of said district shall be kept respectively; and all dockets, records, papers and books required to be kept by law by clerks of the circuit, chancery and county courts in this state shall be kept by each of said clerks respectively at Gulfport and Biloxi, for each of said districts; and the enrollment of a judgment or decree in the district where the same may be rendered or obtained, shall be a lien on all property of the person against whom the same may be rendered within the district where so enrolled.

§ 9-1-45 Annual reports; noncompliance; penalties:

(1) Each chancery and circuit clerk shall file, not later than April 15 of each year, with the State Auditor of Public Accounts a true and accurate annual report on a form to be designed and supplied to each clerk by the State Auditor of Public Accounts immediately after January 1 of each year. The form shall include the following information:

(a) revenues subject to the salary cap, including fees;
(b) revenues not subject to the salary cap; and
(c) expenses of office, including any salary paid to a clerk's spouse or children.

Each chancery and circuit clerk shall provide any additional information requested by the Public Employees' Retirement System for the purpose of retirement calculations.

(2) In any county having two (2) judicial districts, a separate report may be filed by the chancery clerk and circuit clerk for each judicial district. Whenever the chancery clerk serves as deputy to the circuit clerk in one (1) judicial district and the circuit clerk serves as deputy to the chancery clerk in the other judicial district, each clerk may file, for the judicial district in which he serves, one (1) report for the revenues and expenses of his office in his capacity as chancery or circuit clerk and a separate report for reporting the revenues collected and expenses incurred in his capacity as deputy circuit or deputy chancery clerk.

(3) If the chancery or circuit clerk fails to provide the reports required in this section, then the State Auditor shall give by United States certified mail, return receipt requested, written notification to the chancery or circuit clerk of noncompliance. If within thirty (30) days after receipt of the notice, the chancery or circuit clerk, in the opinion of the State Auditor, remains in noncompliance, the State Auditor may institute civil proceedings in a court of the county in which the clerk serves. The court, upon a hearing, shall decide the issue and if it determines that the clerk is not in substantial compliance, shall order the clerk to immediately and thereafter comply. Violations of any order of the court shall be punishable as for contempt. In addition, the court in its discretion may impose a civil penalty in an amount not to exceed Five Thousand Dollars ($5,000.00) upon the clerk, for which he shall be liable in his individual capacity, for any such noncompliance that the court determines as intentional or willful.

§ 9-1-49 Report concerning certain persons' access to firearms:

(1) The clerk of the court shall prepare and forward to the Department of Public Safety the information described by subsection (2) of this section not later than the thirtieth day after the date the court:

(a) Judicially determines that a person is a person with mental illness or person with an intellectual disability under Title 41, Chapter 21, Mississippi Code of 1972, whether ordered for inpatient treatment, outpatient treatment, day treatment, night treatment or home health services treatment;

(b) Acquits a person in a criminal case by reason of insanity or on a ground of intellectual disability, without regard to whether the person is ordered by a court to receive inpatient treatment or residential care under Section 99-13-7;

(c) Appoints a guardian or conservator under Article 2, 3 or 4 of Section 1 of this act, based on the determination that the person is incapable of managing his own person or estate;

(d) Determines that a person is incompetent to stand trial pursuant to Rule 9.06 of the Mississippi Rules of Circuit and County Court Practice;

(e) Finds under Section 318 or 430 of Section 1 of this act that a person has been restored to reason; or

(f) Enters an order of relief from a firearms disability under Section 97-37-5(4).

(2) The clerk of the court shall prepare and forward the following information:

(a) The complete name, race, and sex of the person;

(b) Any known identifying number of the person, including social security number, driver's license number, or state identification card number;

(c) The person's date of birth; and

(d) The federal prohibited-person information that is the basis of the report

required by this section.

(3) If practicable, the clerk of the court shall forward to the Department of Public Safety the information described by subsection (2) of this section in an electronic format prescribed by the department.

(4) If an order previously reported to the department under subsection (1) of this section is reversed by order of any court, the clerk shall notify the department of the reversal not later than thirty (30) days after the clerk receives the court order or the mandate from the appellate court.

(5) The duty of a clerk to prepare and forward information under this section is not affected by:

(a) Any subsequent appeal of the court order;

(b) Any subsequent modification of the court order; or

(c) The expiration of the court order.

§ 9-5-91 Duties of chancery clerk in chancery cases in which guardian ad litem is appointed by court:

(1) In a chancery case in which a guardian ad litem is appointed by the court, it is the duty of the chancery clerk to prepare and forward to the Administrative Office of Courts the information described by subsection (2) of this section not later than the last day of the month following the entry of an order approving any payment to the guardian ad litem.

(2) The clerk shall prepare and forward the following information when filed in a contested case where the guardian ad litem fees exceed One Thousand Dollars ($1,000.00):

(a) A copy of any invoice for guardian ad litem fees;

(b) A copy of any order directing payment of guardian ad litem fees; and

(c) A copy of any petition seeking recovery of guardian ad litem fees, as well as any orders concerning payment of guardian ad litem fees, including, but not limited to, orders of contempt.

(3) If an order previously reported under subsection (1) of this section is amended by order of the court, the clerk shall forward the subsequent court order not later than the last day of the month following the entry of the amended order.

(4) The duty of a clerk to prepare and forward information under this section is not affected by:

(a) Any subsequent appeal of the court order;

(b) Any subsequent modification of the court order; or

(c) The expiration of the court order.

(5) This section does not apply to youth court matters.

§ 9-5-135 Keeping of court minutes:

(1) The clerk shall, in person or by deputy, attend all the sessions of the court, and shall keep minute books, in which he shall record, under the directions of the chancellor, all the proceedings of the court; and the minutes of the preceding day shall be read by him each morning of the session in open court, and the last day's proceedings shall be read by him in open court before adjournment, and the minutes must be signed by the chancellor.
(2) The clerk, at his option, may elect to keep the minute books by means of electronic filing or storage or both, as provided in Sections 9-1-51 through 9-1-57 in lieu of or in addition to any paper records.

§ 9-5-137 Duties in general:

It shall be the duty of the clerk to preserve and keep all
records,
files,
papers and
proceedings belonging to his office, and
to record
all last wills and testaments which may be probated;
all letters testamentary, of administration, and guardianship;
all accounts allowed;
all inventories, appraisements, and reports duly returned;
all instruments which are duly proved,
and which by law are required to be recorded in his office, in well-bound books to be kept for that purpose, each class in a separate book or books, or by means of electronic filing or storage or both in addition to or in lieu of any such physical records as provided in Sections 9-1-51 through 9-1-57, as the clerk may elect; all records shall be properly indexed.
He shall issue all process which may be required of him by law or by order of the court, or the chancellor in vacation; and shall discharge all other duties which may be required of him by law, or which properly appertain to the duties of his office. The clerk shall be under the direction of the court in termtime, and of the chancellor in vacation.

§ 9-5-141 Powers in general:

The clerk or his deputy may at any time receive and file all
bills,
petitions,
motions,
accounts,
inventories,
reports, or
other papers offered for that purpose,
and may issue all process authorized by law and proper in any matter or proceeding.

He may also at any time, in termtime or vacation, perform the following functions:
issue warrants of appraisement to appraise the personal estate of decedents;
allow and register claims against estates being administered in the court of which he is clerk;
make all orders and issue all process necessary for the collection and preservation of estates of decedents, minors, and persons of unsound mind;
appoint some person to collect and preserve the estate of any decedent in the state in any case provided for;
grant letters of administration to the husband or wife, or other person entitled thereto;
take the proof of wills,
admit wills to probate, in common form,
grant letters testamentary,
letters of administration with the will annexed, and de bonis non;
appoint guardians for minors, persons of unsound mind, and convicts of felony;
grant letters of administration;
institute suits in cases provided for, and,
whenever an appeal shall be taken from the grant of letters testamentary, of administration, or guardianship, appoint some fit person to discharge the duties pending the appeal.

He may do all such other acts as are provided by law and by the Mississippi Rules of Civil Procedure.

§ 9-5-145 Proceedings in general:

In all applications and proceedings before the clerk in vacation or in term time, the same pleadings and evidence and forms shall be observed, and the same process and service and return shall be necessary, as though the proceedings were before the court.

§ 9-5-147 Approval or disapproval of court:

All acts, judgments, orders, or decrees made by the clerk in term time or vacation or at rules, shall be subject to the approval or disapproval of the court of which he is clerk, and shall not be final until approved by the court. All such orders and proceedings of the clerk may, by order of the chancellor in vacation, be suspended until a hearing before him in court, and shall be subject to such orders and decrees as the court may make.

§ 9-5-151 Preservation and approval of minutes:

The minutes so kept of proceedings in vacation or in term time shall constitute a record of the office and shall be carefully preserved as such, free from erasure or alteration; and, at the first term thereafter of the court, in the case of minutes in vacation, or in the case of minutes in term time before the clerk at that term or the first term thereafter, shall be examined by the court and if approved, shall thereby become the minutes of the court, as if entered at a term thereof; and all the orders and decrees entered in said minutes in vacation, shall, by such approval of the court, become final and be as valid and effectual as if done by the court when they were done by the clerk.

§ 9-5-153 Evidence of court's approval:

The approval by the court of minutes entered in vacation or in term time, and adoption of the orders and decrees made by the clerk, may be evidenced by an order of the court approving such orders and decrees, excepting such as may be specified as not approved. It shall not be necessary to enter on the minutes of the court, in term time, any of said orders or decrees made in vacation or in term time, but the same, as entered in vacation or in term time, shall, by the approval of the court, become the acts of the court.

§ 9-5-155 Examination of bonds:

The chancellor shall, at each term of the court, carefully examine all bonds taken by the clerk in vacation, in pursuance of any order of the court, or the requirement of law, in any proceeding in such court, and make such orders in reference thereto

as he shall deem necessary for the security of the parties interested therein.

§ 9-5-157 Registration of sureties:

The clerk of the chancery court shall either procure a well-bound book, arranged alphabetically and properly ruled, lined and headed to show the name of the principal and surety, name of principal obligor, name of obligee, date of bond, penalty of bond, kind of bond, where recorded if recorded, number of suit in which filed and date of discharge or provide for the electronic filing or storage or both as provided in Sections 9-1-51 through 9-1-57 of this information. In one of these manners he shall abstract each bond, when filed in his office, by entering in such record the name of each principal and surety, under the proper letter, the name of principal obligor, name of obligee, date, penalty, kind of bond, where recorded if recorded, and number of suit in which filed. And when such bond has been discharged, the date thereof shall be entered in said record under the proper heading. The clerk of the chancery court shall also, as soon as said record has been obtained, thus abstract all executor's, administrator's and guardian's bonds in matters at that time pending in the chancery court of his county.

§ 9-5-159 Furnishing of specified abstracts:

The clerk of the chancery court shall, within ten days after the expiration of the term at which any decree for money shall be made, which is enforceable by execution against the defendant, furnish an abstract of such decree to the clerk of the circuit court of the county in which such decree is made; and it shall be the duty of the circuit clerk forthwith to enroll the same on the "Judgment Roll" in his office as judgments of the circuit court are required to be enrolled.

§ 9-5-161 Final recording of suits involving real estate or title:

(1) The clerk shall, within three (3) months after the final termination of each suit involving real estate, record all the pleadings, proofs, exhibits and proceedings therein, or such part thereof as may be required by order of the chancellor, in a book to be kept for that purpose, and to be styled "The Book of Final Records in Chancery." He shall likewise make a final record of all other proceedings or suits, if required by the decree or by order of the chancellor, omitting such portions from the record books as the chancellor may direct. The clerk shall also make final record of all or such portions of a former terminated proceeding or suit as may be requested by any person, upon payment by such person of the cost thereof.
(2) It shall be the duty of the chancery clerk of any county in which there is a county court established, to record in the final record the proceedings of all or any part thereof of proceedings in said court, affecting the title of lands in said county, when requested so to do by any person interested in said lands, and upon the

payment of the fee therefor by the person requesting same, and the clerk shall index same in the deed records of the county, and the filing of said proceedings or parts thereof shall be constructive notice from the date of said filing to all persons of said proceedings the same as if they had been decided by the chancery court. (3) The records required by subsections (1) and (2) of this section may be kept by means of electronic filing or storage or both as provided in Sections 9-1-51 through 9-1-57, as the clerk may elect.

§ 9-5-163 Custodian of specified items:

The clerk of the chancery court shall be the custodian of all documents, records, books and papers belonging, or in any way appertaining, to the probate court, and of the board of police, formerly existing, except as to such as may be required by law to be kept by the clerk of the circuit court; and, as such custodian, he shall do and perform all acts in relation to such records, books and papers which were heretofore required of, or might lawfully have been done by, the clerk of the said probate court or board of police. All such documents, records, books and papers may be kept by means of electronic filing or storage or both as provided in Sections 9-1-51 through 9-1-57, as the clerk may elect.

§ 9-5-165 Withdrawal of court files and documents:

The clerk shall not suffer any paper filed to be withdrawn but by leave of the chancellor, and then only by retaining a copy to be made at the cost of the party obtaining the leave. Provided, however, that any duly licensed and practicing attorney in good standing in the court may remove court files and related legal papers other than youth court and adoption court files and related papers from the clerk's office by signing therefor himself, or by a designated representative of his law office, on a record to be provided for that purpose. Such files or documents so removed shall be attested to by the clerk or his deputy at the time of removal, and said attorney shall be personally responsible for their safekeeping and return within ten (10) days, or before the first day of the next term of chancery court, whichever comes first and such files or documents shall not be removed from the county where the same are filed except that said files or documents may be taken by said attorney for use in a vacation hearing to such county where the hearing may be held. Failure to return any such court files or related legal papers as provided herein shall constitute contempt of court.

§ 9-5-167 Subscription and preservation of newspaper:

The clerk of the chancery court shall subscribe to at least one (1) and not more than two (2) of the newspapers published in his county as the court or chancellor may direct; and in the event no newspaper is published in the county, the clerk shall subscribe to the newspaper in which the publications ordered by the court are usually made. To preserve such newspapers, the clerk shall carefully file the original or microfilm copies thereof in his office, or may keep the same by means of electronic filing or storage or both as provided in Sections 9-1-51 through 9-1-57, as the clerk may elect. Before the clerk may utilize microfilm copies of newspapers presently on file and of those newspapers to be received in the future, the written approval of the court and the board of supervisors must be obtained. The expense of the subscriptions and the expense of the binding of filed newspapers or of the microfilming process shall be paid out of the county treasury. Two (2) or more counties may join together and agree to accomplish the purposes of this section and to share the costs of necessary equipment, subscriptions and labor involved.

§ 9-5-169 Inspection of records and papers:

Except as otherwise provided in Section 25-61-11.2, all of the records and papers of the office of the chancery clerk shall, at all reasonable hours on business days, be subject to the inspection and examination of all citizens; and the clerk shall show to any person inquiring for it where any record or paper in his or her office can be found, and shall allow him or her access to it, and to examine it and make any copy, note, or memorandum he or she desires to make of it.

§ 9-5-171 Destruction of specified records:

(1) The chancery clerk of each of the counties of the State of Mississippi, with the approval of the board of supervisors of such county, after an inventory has been made and checked by the board and an order spread on its minutes listing the reference, is authorized to dispose of records pursuant to a records control schedule approved by the Local Government Records Committee as provided in Section 25-60-1.
(2) No records which are in the process of being audited by the State Department of Audit or which are the basis of litigation shall be destroyed until at least twelve (12) months after final completion of the audits and litigation.
(3) Records may be filed and retained by electronic means as provided in Sections 9-1-51 through 9-1-57, whether the record is to be destroyed or not; provided, however, that destruction of records shall be carried out in accordance with Sections 25-59-21 and 25-59-27.

§ 9-5-255 Family masters; appointment, qualifications, powers, and duties:

(4) Persons appointed as family masters in chancery pursuant to this section shall meet and possess all of the qualifications required of chancery and circuit court judges of this state, shall remain in office at the pleasure of the appointing chancellor, and shall receive reasonable compensation for services rendered by them, as fixed by law, or allowed by the court. Family masters in chancery shall be paid out of any available funds budgeted by the board of supervisors of the county in which they serve; provided, however, in the event that a family master in chancery is appointed to serve in more than one county within a chancery court district, then the compensation and expenses of such master shall be equally apportioned among and paid by each of the counties in which such master serves. The chancery clerk shall issue to such persons a certificate of appointment.

§ 11-1-1 Who may take oaths:

A judge of any court of record, clerk of such court, court reporter of such court, master, member of the board of supervisors, justice court judge, notary public, mayor, or police justice of a city, town or village, clerk of a municipality, and any officer of any other state, or of the United States, authorized by the law thereof to administer oaths, the judge of any court of record, or the mayor or chief magistrate of any city, borough or corporation of a foreign country; may administer oaths and take and certify affidavits whenever the same may be necessary or proper in a proceeding in any court or under any law of this state, or for the purpose of taking depositions of any party of interest, or witnesses of any suit pending before any such court, or for the perpetuation of testimony, as provided in Section 13-1-57.

Dockets and Records Kept by the Chancery Clerk

Register of Claims

§ 9-5-173 Registration of claims:

The clerk shall keep in his office a well-bound book, or by means of electronic filing or storage or both as provided in Sections 9-1-51 through 9-1-57, as the clerk may elect, to be called the "Register of Claims," each page of which shall be divided into five (5) columns,

the first to contain the creditor's name,
the second the description of the claim,
the third the time when due,
the fourth the amount of the claim, and
the fifth the day of the registry.

He shall register in said book all claims proved and allowed against any estate administered in his court.

General Docket

§ 9-5-201 Keeping general and other dockets; computer storage:

(1) The clerk shall keep a general docket in which he shall enter

the names of the parties in each suit,
the time of filing the complaint, petition or answer, and all other papers in the cause,
the issuance and return of process, and
a note of reference to all orders made therein by the book and page.

He shall mark on the papers in every cause

the style and number of the suit, and
the time when and
the party by whom filed.

All the papers and pleadings filed in a cause shall be kept in the same file, and all the files kept in numerical order. The general docket shall be duly indexed, both direct and indirect, in the alphabetical order of the names of the parties, and each of them, so that the page of the docket containing the entries in each cause may be readily found.

(2) The general docket required to be kept by this section and all other dockets or records required by law to be kept by the chancery clerk may be kept on computer in lieu of any other physical docket, record or well-bound book if all such dockets

and records are kept by computer in accordance with regulations prescribed by the Administrative Office of Courts.

§ 9-5-203 Matters included:

The clerk shall place on the general docket all applications made and proceedings had in said court in

matters testamentary,
of administration,
in minors' business, and
in cases of persons of unsound mind,

by entering

the name of the person whose estate is the subject of the application or proceedings,
the time of filing the application or other paper,
the nature of it in brief terms,
the issuance and return of process, if any, or publication and proof of it, and
a note of reference to all orders made by the clerk or court, by the book and page, so that by reference to such docket the history of the administration of such estate may be traced.

Mississippi Rule of Civil Procedure 79 requires:

> **(a) General Docket.** The clerk shall keep a book known as the "general docket" of such form and style as is required by law and shall enter therein each civil action to which these rules are made applicable. The file number of each action shall be noted on each page of the docket whereon an entry of the action is made.
>
> All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be noted in this general docket on the page assigned to the action and shall be marked with its file number.
>
> These entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made. In the event a formal order is entered, the clerk shall insert the order in the file of the case. . . .
>
> **(c) Indexes; Calendars.** Suitable indexes of the general docket shall be kept by the clerk under the direction of the court. There shall be prepared, under the direction of the court, calendars of all actions ready for trial.

Issue Docket

§ 9-5-205 Keeping of issue docket:

The chancery clerk shall keep an issue docket in which he shall set down

(1) all causes triable according to due course at the instant term and

(2) such other causes for final hearings as may be ordered

(a) by the court or

(b) by consent of all the parties.

And he shall also place on said docket all petitions for the sale of the estates of decedents, minors and persons of unsound mind; all proceedings representing estates to be insolvent; final accounts of executors, administrators and guardians and petitions for distribution of an estate or payment of a legacy and all other similar matters in which an order or decree of the court is sought in matters testamentary, of administration, or guardianship, and wherein the issuance of process or notice is necessary to the final hearing on the matter so set down. Such docket may be kept on computer as provided in Section 9-5-201.

Motion Docket

§ 9-5-213 Motion docket and entries:

The clerk shall also keep a motion docket in which he shall, in the order in which they are filed, docket as of course and without request, all

demurrers,

motions,

ex parte petitions,

exceptions to evidence or reports, and

all matters pertaining to administration or guardianship not directed to be placed on the issue docket.

He shall also place on the motion docket all matters brought before him in vacation when presented, and, at the next term of the court, all such matters on said docket shall be examined and disposed of by the court by approving or disapproving the same. Such docket may be kept on computer as provided in Section 9-5-201.

Loose Leaf Docket

§ 9-5-215 Loose leaf docket:

Any chancellor in this state may, by an order made and entered on the minute book of the chancery court in each of said counties in his district, require the docket of said court to be provided and kept as follows:

(a) The clerk shall provide and keep, for the use of the chancellor, a loose leaf judge's docket, in which he shall enter, on a separate sheet, each matter or cause now pending in the court, or hereafter instituted therein, together with a chronological list of all pleadings, orders and decrees in each such matter or cause.

(b) The sheets on which the various matters or causes are entered shall be arranged in such docket as the chancellor may direct, and shall remain therein until each matter or cause is finally disposed of, when the sheet containing the entries concerning the same shall be removed, and placed in numerical order in a transfer binder.

(c) All litigated or contested matters or causes appearing on the judge's docket, which are triable by law, or by consent, at any term, shall be set for trial by the chancellor at such time during the term as he may direct. Provided, however, when any chancellor has entered an order on the minute book of the chancery court of the counties in his district requiring the docket of said court to be kept, as provided in this section, Sections 9-5-205 through 9-5-213 shall not apply to the chancery court of said district.

Such docket may be kept on computer as provided in Section 9-5-201.

Execution Docket

§ 9-5-217 Execution docket and entries therein:

The clerk shall keep an execution docket in the manner required of the clerk of the circuit court, in which he shall enter all final process issued by him, and record at large the returns that may be made thereon.

Other Books and Records

Mississippi Rules of Civil Procedure 79(d) states:

The clerk shall also keep such other books and records as may be required by statute or these rules. The documents required to be kept under this rule may be recorded by means of an exact-copy photocopy process.

Youth Court Records

§ 43-21-251 Court records:

(1) The court records of the youth court shall include:

(a) A general docket in which the clerk of the youth court shall enter the names of the parties in each cause, the date of filing the petition, any other pleadings, all other papers in the cause, issuance and return of process, and a reference by the minute book and page to all orders made therein. The general docket shall be duly indexed in the alphabetical order of the names of the parties.

(b) All the papers and pleadings filed in a cause. The papers in every cause shall be marked with the style and number of the cause and the date when filed. All the papers filed in a cause shall be kept in the same file, and all the files shall be kept in numerical order.

(c) All social records of a youth court, which shall include all intake records, social summaries, medical examinations, mental health examinations, transfer studies and all other information obtained and prepared in the discharge of official duty for the youth court. . . .

(d) A minute book in which the clerk shall record all the orders of the youth court.

(e) Proceedings of the youth court and evidence.

(f) All information obtained by the youth court from the Administrative Office of Courts pursuant to a request under Section 43-21-261(15).

(2) The records of the youth court and the contents thereof shall be kept confidential and shall not be disclosed except as provided in Section 43-21-261.

(3) The court records of the youth court may be kept on computer in the manner provided for storing circuit court records and dockets as provided in Section 9-7-171. . . .

Honorable Discharge Records

§ 35-3-13 Honorable discharges and service certificates:

(3) The chancery clerk of all counties shall keep a record of all honorable discharges and certificates of discharge in a separate record safeguarded and protected from theft, and definitely marked "Record of Discharged Members of the Armed Forces." The chancery clerk shall furnish certified copies of the discharge or discharge certificate of any veteran when so requested by the veteran, his dependents or his authorized representative; however, before furnishing any copy of the discharge or discharge certificate, the chancery clerk must verify the identity and relationship to the veteran of the person requesting the copy and must obtain and maintain on file a signed consent for the release of information from the veteran, dependent or authorized representative.

(4)(a) The chancery clerk of all counties shall keep a record of all veterans Form

DD-214 in a separate record safeguarded and protected from theft, and marked "Record of Veterans Service Form DD-214 Members of the Armed Forces." The chancery clerk shall record the form without charge and shall furnish certified copies of the Form DD-214 without charge when so requested by the veteran, his dependents or his authorized representative. The Form DD-214 record is not a public record under the public records law, and before furnishing any copy of the form, the chancery clerk shall verify the identity and relationship to the veteran of the person requesting the copy and obtain and maintain in the file a signed consent for the release of information from the veteran, dependent or authorized representative. The chancery clerk shall prepare and provide a form for use by the veteran, dependent or authorized representative to provide such consent for the release of information from the veteran, dependent or authorized representative.
(b) The chancery clerk of all counties shall keep a record of all veterans Form NGB-22 in a separate record safeguarded and protected from theft, and marked "Record of Veterans Service Form NGB-22 Members of the Armed Forces." The chancery clerk shall record the form without charge and shall furnish certified copies of the Form NGB-22 without charge when so requested by the veteran, his dependents or his authorized representative. The Form NGB-22 record is not a public record under the public records law, and before furnishing any copy of the form, the chancery clerk shall verify the identity and relationship to the veteran of the person requesting the copy and obtain and maintain in the file a signed consent for the release of information from the veteran, dependent or authorized representative. The chancery clerk shall prepare and provide a form for use by the veteran, dependent or authorized representative to provide such consent for the release of information from the veteran, dependent or authorized representative.

Adoption Records

§ 93-17-31 Clerks to keep separate index, docket and minute books:

The several chancery clerks shall obtain and keep a separate, confidential index showing the true name of the child adopted, the true name of its natural parent, or parents, if known, and the true name of the persons adopting the child and the date of the decree of adoption, and the name under which the child was adopted, or the name given the child by the adoption proceedings and a cross index shall be kept showing the said true name and the name given the child in the adoption decree, and which index shall be subject to the provisions of Section 93-17-25 as to same being kept in confidence and such index shall not be examined by any person, except officers of the court including attorneys, except upon order of the court, on good cause shown, in which the proceeding was had. The reports shall be filed only if so ordered by the chancellor. The several chancery clerks shall obtain and keep a separate docket and minute book of convenient size which shall be subject to provisions of Sections 93-17-25 through 93-17-31 and in which, from July 1, 1955, all entries concerning adoption shall be made.

Office Administration

Mississippi Rule of Civil Procedure 77 states in part:

> **(c) Clerk's Office and Orders by Clerk.** The clerk's office with the clerk or a deputy clerk in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays. . . .

§ 25-1-99 Workdays of county offices:

The clerks of the circuit and chancery courts shall keep their offices at the courthouses of their respective counties if offices shall be there provided for them. If offices shall not be there provided for them, they shall keep their offices within one-half (½) mile of the courthouses of their respective counties; except that the office of the county superintendent of education may be placed in the county in any other place determined by the county board of education to be most feasible, regardless of the distance from the courthouse. The offices of all circuit and chancery clerks shall be open for business on all business days from 8:00 a.m. to 5:00 p.m., except that within the discretion of the board of supervisors of said county, the above county offices may be closed at 12:00 noon one (1) business day of each week, or may be closed all day Saturday of each week, or may be closed at 12:00 noon on Saturday and at 12:00 noon on one (1) additional business day of each week. Such courthouse hours decided upon within the discretion of the board of supervisors must be duly entered at large on the minutes of said board, and such action by the board shall be published in a newspaper having general circulation in the county once each week for four (4) consecutive weeks.

Provided, however, the courthouse shall be closed on all state holidays as set forth in Section 3-3-7, and when any state holiday set forth in Section 3-3-7 falls on a Saturday, the courthouse may be closed on the Friday immediately preceding such Saturday and when such holiday falls on a Sunday, the courthouse may be closed on the Monday immediately succeeding such Sunday. The board of supervisors, in its discretion, may close the county offices on those holidays created by executive order of the Governor.

§ 3-3-7 Holidays:

(1) Except as otherwise provided in subsection (2) of this section, the following are declared to be legal holidays, viz:

the first day of January (New Year's Day);

the third Monday of January (Robert E. Lee's birthday and Dr. Martin

Luther King, Jr.'s birthday);

the third Monday of February (Washington's birthday);

the last Monday of April (Confederate Memorial Day);

the last Monday of May (National Memorial Day and Jefferson Davis' birthday);

the fourth day of July (Independence Day);

the first Monday of September (Labor Day);

the eleventh day of November (Armistice or Veterans' Day);

the day fixed by proclamation by the Governor of Mississippi as a day of Thanksgiving, which shall be fixed to correspond to the date proclaimed by the President of the United States (Thanksgiving Day); and

the twenty-fifth day of December (Christmas Day).

In the event any holiday hereinbefore declared legal shall fall on Sunday, then the next following day shall be a legal holiday.

(2) In lieu of any one (1) legal holiday provided for in subsection (1) of this section, with the exception of the third Monday in January (Robert E. Lee's and Martin Luther King, Jr.'s birthday) and the eleventh day of November (Armistice or Veterans Day), the governing authorities of any municipality or county may declare, by order spread upon its minutes, Mardi Gras Day or any one (1) other day during the year, to be a legal holiday.

§ 9-1-35 Seal:

The clerk of every chancery court, at the expense of the county, shall keep a seal, with the style of the court around the margin and the image of an eagle in the center.

§ 9-1-37 Stationery allowance:

The chancery courts shall make allowance to the clerks thereof of all needful sums for supplying the offices and courtrooms with necessary stationery, furniture, books, presses, seals, and other things necessary for the same, and for the safe-keeping of the books, records, and papers belonging thereto; and such allowance shall be certified to the board of supervisors. Provided, however, that in no event shall said chancery courts be allowed to purchase furniture in excess of $500.00 for any one (1) year without first securing the approval of the board of supervisors of the county.

§ 1-1-11 Distribution of sets purchased by state:

(1) Except as provided in subsection (2) of this section, the Joint Committee on Compilation, Revision and Publication of Legislation shall distribute or provide for the distribution of the sets of the compilation of the Mississippi Code of 1972 purchased by the state as follows:

> . . . One (1) set to each of the following: each chancery clerk . . . (and an additional set shall be given to each chancery clerk . . . in counties having two (2) judicial districts).

Attorney General Advisory Opinions

§ 7-5-25 Written opinions:

The Attorney General shall give his opinion in writing, without fee, to the Legislature, or either house or any committee thereof, and to the Governor, the Secretary of State, the Auditor of Public Accounts, the State Treasurer, the Superintendent of Public Education, the Insurance Commissioner, the Commissioner of Agriculture and Commerce, the State Geologist, the State Librarian, the Director of Archives and History, the Adjutant General, the State Board of Health, the Commissioner of Corrections, the Public Service Commission, Chairman of the State Tax Commission, the State Forestry Commission, the Transportation Commission, and any other state officer, department or commission operating under the law, or which may be hereafter created; the trustees and heads of any state institution, the trustees and heads of the universities and the state colleges, the district attorneys, the boards of supervisors of the several counties, the sheriffs, the chancery clerks, the circuit clerks, the superintendents of education, the tax assessors, county surveyors, the county attorneys, the attorneys for the boards of supervisors, mayor or council or board of aldermen of any municipality of this state, and all other county officers (and no others), when requested in writing, upon any question of law relating to their respective offices.

When any officer, board, commission, department or person authorized by this section to require such written opinion of the Attorney General shall have done so and shall have stated all the facts to govern such opinion, and the Attorney General has prepared and delivered a legal opinion with reference thereto, there shall be no liability, civil or criminal, accruing to or against any such officer, board, commission, department or person who, in good faith, follows the direction of such opinion and acts in accordance therewith unless a court of competent jurisdiction, after a full hearing, shall judicially declare that such opinion is manifestly wrong and without any substantial support. However, if a court of competent jurisdiction makes such a judicial declaration about a written opinion of the Attorney General that applies to acts or omissions of any licensee to which Section 63-19-57, 75-67-137 or 75-67-245 applies, and the licensee has acted in conformity with that written opinion, the liability of the licensee shall be governed by Section 63-19-57, 75-67-137 or 75-67-245, as the case may be. No opinion shall be given or considered if the opinion is given after suit is filed or prosecution begun.

Electronic Filing and Storage of Court Documents

§ 9-1-51 Definitions:

For purposes of Sections 9-1-51 through 9-1-57, the following terms shall have the meanings ascribed herein unless the context shall otherwise require:

(a) "Court" shall mean the Supreme Court, Court of Appeals, circuit courts, chancery courts, county courts, youth courts, family courts, justice courts and the municipal courts of this state.

(b) "Clerk" shall mean the clerks of any court.

(c) "Judge" shall mean the senior judge of any court.

(d) "County office" shall mean the office of the circuit clerk, chancery clerk, tax assessor and tax collector of every county of this state.

(e) "Documents," "court records," or "court-related records" shall mean and include, but not be limited to, all contents in the file or record of any case or matter docketed by the court, administrative orders, court minutes, court dockets and ledgers, and other documents, instruments or papers required by law to be filed with the court.

(f) "Electronic filing of documents" shall mean the transmission of data to a clerk of any court or state agency by the communication of information which is originally displayed in written form and thereafter converted to digital electronic signals, transformed by computer and stored by the clerk or state agency either on microfilm, magnetic tape, optical discs or any other medium.

(g) "Electronic storage of documents" shall mean the storage, retention and reproduction of documents using microfilm, microfiche, data processing, computers or other electronic process which correctly and legibly stores and reproduces or which forms a medium for storage, copying or reproducing documents.

(h) "Filing system" or "storage system" shall mean the system used by a court or county office for the electronic filing or storage of documents.

§ 9-1-53 Electronic filing and storage of court documents:

Courts and county offices are hereby authorized but not required to institute procedures for the electronic filing and electronic storage of court documents to further the efficient administration and operation of the courts. Electronically filed or stored documents may be kept in lieu of any paper documents. Courts governed by rules promulgated by the Mississippi Supreme Court that institute electronic filing and electronic storage of court documents and offices of circuit and chancery clerks that institute electronic filing and electronic storage of court documents shall do so in conformity with such rules and regulations prescribed by the Administrative Office of Courts and adopted by the Mississippi Supreme

Court concerning court records or court-related records. The provisions of Sections 9-1-51 through 9-1-57 shall not be construed to amend or repeal any other provision of existing state law which requires or provides for the maintenance of official written documents, records, dockets, books, ledgers or proceedings by a court or clerk of court in those courts which do not elect to exercise the discretion granted by this section. It is hereby declared to be the intent of the Legislature that official written documents, records, dockets, books, ledgers or proceedings may be filed, stored, maintained, reproduced and recorded in the manner authorized by Sections 9-1-51 through 9-1-57 or as otherwise provided by law, in the discretion of the clerk.

Mississippi Rule of Civil Procedure 5, Service and Filing of Pleadings and Other Papers, states in part:

> **(b) Service: How Made.** Whenever under these rules service is required or permitted to be made upon a party who is represented by an attorney of record in the proceedings, the service shall be made upon such attorney unless service upon party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him; or by transmitting it to him by electronic means; or . . . or by transmitting it to the clerk by electronic means. . . . Service by electronic means is complete when the electronic equipment being used by the attorney or party being served acknowledges receipt of the material. If the equipment used by the attorney or party being served does not automatically acknowledge the transmission, service is not complete until the sending party obtains an acknowledgement from the recipient. . . .
>
> **(e) Filing With the Court Defined.** The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court. . . . Filing may be accomplished by delivering the pleadings or other papers to the clerk of the court or to the judge, or by transmitting them by electronic means.

§ 9-1-57 Electronic storage system plan:

A plan for the storage system shall require, but not be limited to, the following:

(a) All original documents shall be recorded and released into the system within a specified minimum time period after presentation to the clerk;

(b) Original paper records may be used during the pendency of any legal proceeding;

(c) The plan shall include setting standards for organizing, identifying, coding and indexing so that the image produced during the duplicating process can be certified as a true and correct copy of the original and may be retrieved rapidly;

(d) All materials used in the duplicating process which correctly and legibly reproduces or which forms a medium of copying or reproducing all public records, as herein authorized, and all processes of development, fixation and washing of said photographic duplicates shall be of a quality approved for permanent photographic records by the United States Bureau of Standards;

(e) The plan shall provide for retention of the court records consistent with other law and in conformity with rules and regulations prescribed by the Administrative Office of Courts and adopted by the Mississippi Supreme Court and shall provide security provisions to guard against physical loss, alterations and deterioration; and

(f) All transcripts, exemplifications, copies or reproductions on paper or on film of an image or images of any microfilmed or otherwise duplicated record shall be deemed to be certified copies of the original for all purposes.

Failure to Perform the Duties of the Clerk

Sanctions by the Court

> Though we do not find [the clerk's] omissions to have been intentional, we do find that they constitute neglect of duty, the seriousness of which is compounded by the fact that strikingly similar mistakes in the same office recently have been addressed by this Court. The clerk, who again has been negligent in the supervision and oversight of her staff, is correct in her acceptance of personal responsibility for the failure of her office to notify all of the parties to the subject litigation - not just the plaintiff's lawyer - of the presiding judge's denial of the motions for summary judgment and the motions to dismiss. Accordingly, it is she - the clerk - who must be sanctioned for such failure. ***In re Dunn*, 84 So. 3d 4, 6 (Miss. 2010).**

Civil Liability

§ 25-1-45 Damages for neglect of duty:

> If any county, county district, or municipal officer who has executed bond for the faithful performance of duty shall knowingly or wilfully fail, neglect, or refuse to perform any duty required of him by law or shall violate his official obligations in any respect, the president or, in the absence or disability or default of the president, the vice-president of the board of supervisors in case of a county or county district officer, and the mayor in case of a municipal officer, or any person interested in either case shall cause suit to be brought on the bond of such officer for the recovery of the damages that may have been sustained thereby.

§ 25-1-73 Collection of public money; improper withholding; liability:

> Any officer, state, county, municipal, or district, or any other custodian of public funds or property who shall improperly withhold same from the state or county treasury or other authority whose duty it is to receive same, or who shall fail to turn property over to the proper custodian, or who shall in anywise be in default as to any money or property held by him as a public official in this state or in any other capacity as custodian of such funds or property which may come into his hands by virtue of his official position, whether in the proper performance of his official duties or otherwise, shall be liable on his bond for all costs of collection or recovery of money or property, including in such costs the commissions, if any, of the Department of Revenue or the attorney general, and all other costs connected therewith, including interest on funds improperly withheld for such time as such funds have been withheld, and reasonable rental and damages where property belonging to the public is so withheld. Any such public official who shall

unlawfully pay any public funds to himself, or who shall knowingly and designedly pay such funds to any other person not entitled thereto without allowance regularly made by the proper authority, shall be liable on his official bond for all costs of recovery of such funds, including the commissions, if any, which may be due to the officer making the collection.

Criminal Liability

§ 97-11-1 Making false entries in or altering public records:

If any clerk of any court, or public officer or any other person, shall wittingly make any false entry, or erase any work or letter, or change any record belonging to any court or public office, whether in his keeping or not, he shall, on conviction thereof, be imprisoned in the penitentiary for a term not exceeding ten years, and be liable to the action of the party aggrieved.

§ 97-11-17 Clerk's neglecting or refusing to give certified copies:

If any clerk shall neglect or refuse to make out and deliver within a reasonable time to the person having demanded and paid in advance the statutory charge for a certified copy of any paper, record, judgment, decree or entry on file, which is lodged or remaining in his office, such clerk shall be guilty of a misdemeanor in office.

§ 97-11-23 Drunkenness:

Any officer who shall be guilty of habitual drunkenness, or who shall be drunk while in the actual discharge of the duties of his office, or when called on to perform them, may be indicted therefor, and, upon conviction, shall be removed from office.

§ 97-11-33 Collection of unauthorized fees:

If any judge, justice court judge, sheriff, deputy sheriff, sheriff's employee, constable, assessor, collector, clerk, county medical examiner, county medical examiner investigator, employee of the Mississippi Department of Corrections, employee of any contractor providing incarceration services or any other officer, shall knowingly demand, take or collect, under color of his office, any money fee or reward whatever, not authorized by law, or shall demand and receive, knowingly, any fee for service not actually performed, such officer, so offending, shall be guilty of extortion, and, on conviction, shall be punished by fine not exceeding Five Thousand Dollars ($5,000.00), or imprisonment for not more than five (5) years, or both, and shall be removed from office.

§ 97-11-37 Failing, neglecting or refusing to perform duty:

If any person, being sheriff, clerk of any court, constable, assessor, or collector of taxes, or holding any county office whatever, or mayor, marshal, or constable, or any other officer of any city, town, or village, shall knowingly or wilfully fail, neglect, or refuse to perform any of the duties required of him by law, or shall fail or refuse to keep any record required to be kept by law, or shall secrete the same, or shall violate his duty in any respect, he shall, on conviction thereof, be fined not exceeding One Thousand Dollars ($1,000.00), or be imprisoned in the county jail not exceeding six (6) months, or both.

Embezzlement

§ 97-11-25 Embezzlement; conversion of property:

If any state officer or any county officer, or an officer in any district or subdivision of a county, or an officer of any city, town or village, or a notary public, or any other person holding any public office or employment, or any executor, administrator or guardian, or any trustee of an express trust, any master or commissioner or receiver, or any attorney at law or solicitor, or any bank or collecting agent, or other person engaged in like public employment, or any other person undertaking to act for others and intrusted by them with business of any kind, or with money, shall unlawfully convert to his own use any money or other valuable thing which comes to his hands or possession by virtue of his office or employment, or shall not, when lawfully required to turn over such money or deliver such thing, immediately do so according to his legal obligation, he shall, on conviction, be committed to the department of corrections for not more than twenty (20) years, or be fined not more than five thousand dollars ($5,000.00).

§ 97-11-27 Embezzlement; withholding property from successor:

If any officer or agent of this state, or of any county or subdivision of a county, or of any city, town, or village therein, in whose hands money, books, records, papers, or anything else required by law to be delivered by him to his successor in office or other person authorized by law to receive or have charge of the same, may be, shall wilfully and not in good faith refuse or neglect, on demand, to so deliver the same, he shall, on conviction, be imprisoned in the penitentiary not more than ten years, or be fined not more than one thousand dollars and be imprisoned in the county jail not more than one year.

§ 97-11-29 Embezzlement; false entries:

The state treasurer, auditor of public accounts, assessors and collectors of taxes, and all other state and county officers, and officers of cities, towns and villages, shall make and keep in their offices, subject to inspection at all times, an accurate entry of each and every sum of public money, securities, stocks, or other public money whatever, by them received, transferred, or disbursed; and if any of said officers, either municipal, county or state, or a clerk, agent or employee of such officers, shall willfully and fraudulently make any false entry therein or make any certificate or endorsement of any warrant on the treasury that the same is genuine, when the same is in fact not a genuine warrant, or shall loan any portion of the public moneys, securities, stocks, or other public property intrusted to him, for any purpose whatever, or shall, by willful act or omission of duty whatever, defraud, or attempt to defraud, the state, or any county, city, town or village, of any moneys, security, or property, he shall, on conviction thereof, be guilty of embezzlement, and fined not less than double the amount or value of the moneys, security, stock or other property so embezzled, or committed to the department of corrections for not more than ten (10) years, or both.

§ 97-11-31 Fraud or embezzlement committed in public office:

If any officer, or other person employed in any public office, shall commit any fraud or embezzlement therein, he shall be committed to the department of corrections for not more than ten (10) years, or be fined not more than five thousand dollars ($5,000.00), or both.

Removal from Office

§ 25-5-1 Criminal convictions; mental competency:

If any public officer, state, district, county or municipal, shall be convicted or enter a plea of guilty or nolo contendere in any court of this state or any other state or in any federal court of any felony other than manslaughter or any violation of the United States Internal Revenue Code, of corruption in office or peculation therein, or of gambling or dealing in futures with money coming to his hands by virtue of his office, any court of this state, in addition to such other punishment as may be prescribed, shall adjudge the defendant removed from office; and the office of the defendant shall thereby become vacant. If any such officer be found by inquest to be of unsound mind during the term for which he was elected or appointed, or shall be removed from office by the judgment of a court of competent jurisdiction or otherwise lawfully, his office shall thereby be vacated; and in any such case the vacancy shall be filled as provided by law.

When any such officer is found guilty of a crime which is a felony under the laws of this state or which is punishable by imprisonment for one (1) year or more, other than manslaughter or any violation of the United States Internal Revenue Code, in a federal court or a court of competent jurisdiction of any other state, the Attorney General of the State of Mississippi shall promptly enter a motion for removal from office in the circuit court of Hinds County in the case of a state officer, and in the circuit court of the county of residence in the case of a district, county or municipal officer. The court, or the judge in vacation, shall, upon notice and a proper hearing, issue an order removing such person from office and the vacancy shall be filled as provided by law.

Retirement from Office

§ 25-11-105 Membership:

(f) Each political subdivision of the state and each instrumentality of the state or a political subdivision, or both, is authorized to submit, for approval by the board of trustees, a plan for extending the benefits of this article to employees of any such political subdivision or instrumentality. Each such plan or any amendment to the plan for extending benefits thereof shall be approved by the board of trustees if it finds that the plan, or the plan as amended, is in conformity with such requirements as are provided in Articles 1 and 3; . . . .

§ 25-11-106.1 Chancery or circuit court clerks; employee and employer contributions:

(1) Any chancery or circuit clerk in office as of January 1, 2011, whose position is covered in the Public Employees' Retirement System by virtue of a plan submitted and approved under Section 25-11-105(f) will remain a member of the Public Employees' Retirement System.

(2) (a)(i) The county is responsible for employer contributions on net income attributable to direct treasury or county payroll income paid to the chancery or circuit clerk from the county.
(ii) Except as otherwise provided in this subsection (2), the chancery or circuit clerk is responsible for the employee contributions on net income attributable to direct treasury or county payroll income paid to the clerk and both the employee and employer share of contributions on the proportionate share of net income attributable to fees.
(iii) For contributions required for calendar year 2011 and any calendar year thereafter, the county may elect, by majority vote of the board of supervisors spread upon its minutes, to be responsible for the employer share of contributions on the proportionate share of net income of the chancery and circuit clerk attributable to fees. If the county elects to be

responsible for employer contributions under this provision, the election shall be irrevocable until the board of supervisors takes office for the next succeeding term of office at which time the board may elect whether to continue the election. Notice shall be given to the executive director of any election made under this subparagraph (iii) within five (5) days after the election is made.

(b) Not later than the date on which the annual report of earnings is due to be filed with the Office of the State Auditor, the chancery or circuit clerk shall submit to the system a copy of the earnings record and make complete payment of required contributions on net income from his or her office; however, in no event shall the contributions be less than the contributions due on the governmental treasuries paid by the county in the prior calendar year.

(c) If the chancery or circuit clerk fails to make full payment of contributions as required for calendar year 2010 or any calendar year thereafter, the system shall certify the delinquency to the county and the county shall withhold any and all payments and fees, including accrued interest, due to the chancery or circuit clerk in a manner as prescribed by board regulations until such time as the total amount of his or her delinquent contributions are withheld and pay the amount so withheld to the system.

(3) Any current or former chancery or circuit clerk for whom appropriate employee and employer contributions and interest on all fees and county income from covered service before January 1, 2010, have not been made shall do one (1) of the following:

(a) Pay to the system the required contributions and interest by not later than December 31, 2011. Failure to pay the required contributions and interest by December 31, 2011, shall constitute an irrevocable election to forfeit service credit for any period for which contributions are delinquent. Upon such forfeiture, the chancery or circuit clerk shall be relieved of the liability for additional employee and employer contributions and applicable interest for covered service before January 1, 2010.

(b) Elect, before December 31, 2011, not to pay delinquent employee and employer contributions and applicable interest for service as a chancery or circuit clerk before January 1, 2010. By making this election, the current or former chancery or circuit clerk shall irrevocably forfeit service credit for any period for which contributions are delinquent and shall not be liable for employee and employer contributions and applicable interest for covered service before January 1, 2010.

(4) If a current or former chancery or circuit clerk fails to make required contributions as provided in subsection (3)(a) of this section or elects to forfeit

service credit as provided in subsection (3)(b) of this section, all employee and employer contributions previously paid on that service shall be credited to the county as the reporting entity to be distributed as appropriate between the county and the chancery or circuit clerk or former chancery or circuit clerk. No further contributions shall be due on that past service and any credit on that past service shall be removed from the member's record and may not be reinstated at any time in the future.

§ 25-11-111 Withdrawal of members from service; retirement allowances:

(a)(1) Any member who became a member of the system before July 1, 2007, upon withdrawal from service upon or after attainment of the age of sixty (60) years who has completed at least four (4) years of membership service, or any member who became a member of the system before July 1, 2011, upon withdrawal from service regardless of age who has completed at least twenty-five (25) years of creditable service, shall be entitled to receive a retirement allowance, which shall begin on the first of the month following the date the member's application for the allowance is received by the board, but in no event before withdrawal from service.

(2) Any member who became a member of the system on or after July 1, 2007, upon withdrawal from service upon or after attainment of the age of sixty (60) years who has completed at least eight (8) years of membership service, or any member who became a member of the system on or after July 1, 2011, upon withdrawal from service regardless of age who has completed at least thirty (30) years of creditable service, shall be entitled to receive a retirement allowance, which shall begin on the first of the month following the date the member's application for the allowance is received by the board, but in no event before withdrawal from service.

(b)(1) Any member who became a member of the system before July 1, 2007, whose withdrawal from service occurs before attaining the age of sixty (60) years who has completed four (4) or more years of membership service and has not received a refund of his accumulated contributions, shall be entitled to receive a retirement allowance, beginning upon his attaining the age of sixty (60) years, of the amount earned and accrued at the date of withdrawal from service. The retirement allowance shall begin on the first of the month following the date the member's application for the allowance is received by the board, but in no event before withdrawal from service.

(2) Any member who became a member of the system on or after July 1, 2007, whose withdrawal from service occurs before attaining the age of sixty (60) years who has completed eight (8) or more years of membership service and has not received a refund of his accumulated contributions, shall be entitled to receive a

retirement allowance, beginning upon his attaining the age of sixty (60) years, of the amount earned and accrued at the date of withdrawal from service. The retirement allowance shall begin on the first of the month following the date the member's application for the allowance is received by the board, but in no event before withdrawal from service.

(c) Any member in service who has qualified for retirement benefits may select any optional method of settlement of retirement benefits by notifying the Executive Director of the Board of Trustees of the Public Employees' Retirement System in writing, on a form prescribed by the board, of the option he has selected and by naming the beneficiary of the option and furnishing necessary proof of age. The option, once selected, may be changed at any time before actual retirement or death, but upon the death or retirement of the member, the optional settlement shall be placed in effect upon proper notification to the executive director.

(d) Any member who became a member of the system before July 1, 2011, shall be entitled to an annual retirement allowance which shall consist of:

(1) A member's annuity, which shall be the actuarial equivalent of the accumulated contributions of the member at the time of retirement computed according to the actuarial table in use by the system; and

(2) An employer's annuity, which, together with the member's annuity provided above, shall be equal to two percent (2%) of the average compensation for each year of service up to and including twenty-five (25) years of creditable service, and two and one-half percent (2-½ %) of the average compensation for each year of service exceeding twenty-five (25) years of creditable service.

(3) Any retired member or beneficiary thereof who was eligible to receive a retirement allowance before July 1, 1991, and who is still receiving a retirement allowance on July 1, 1992, shall receive an increase in the annual retirement allowance of the retired member equal to one-eighth of one percent (1/8 of 1%) of the average compensation for each year of state service in excess of twenty-five (25) years of membership service up to and including thirty (30) years. The maximum increase shall be five-eighths of one percent (5/8 of 1%). In no case shall a member who has been retired before July 1, 1987, receive less than Ten Dollars ($10.00) per month for each year of creditable service and proportionately for each quarter year thereof. Persons retired on or after July 1, 1987, shall receive at least Ten Dollars ($10.00) per month for each year of service and proportionately for each quarter year thereof reduced for the option selected. However, such Ten Dollars ($10.00) minimum per month for each year of creditable service shall not apply to a retirement allowance computed under Section 25-11-114 based on a percentage of the member's average compensation.

(e) Any member who became a member of the system on or after July 1, 2011, shall be entitled to an annual retirement allowance which shall consist of:

(1) A member's annuity, which shall be the actuarial equivalent of the accumulated contributions of the member at the time of retirement computed according to the actuarial table in use by the system; and

(2) An employer's annuity, which, together with the member's annuity provided above, shall be equal to two percent (2%) of the average compensation for each year of service up to and including thirty (30) years of creditable service, and two and one-half percent (2-½ %) of average compensation for each year of service exceeding thirty (30) years of creditable service.

(f) Any member who became a member of the system on or after July 1, 2011, upon withdrawal from service upon or after attaining the age of sixty (60) years who has completed at least eight (8) years of membership service, or any such member upon withdrawal from service regardless of age who has completed at least thirty (30) years of creditable service, shall be entitled to receive a retirement allowance computed in accordance with the formula set forth in subsection (e) of this section. In the case of the retirement of any member who has attained age sixty (60) but who has not completed at least thirty (30) years of creditable service, the retirement allowance shall be computed in accordance with the formula set forth in subsection (e) of this section except that the total annual retirement allowance shall be reduced by an actuarial equivalent factor for each year of creditable service below thirty (30) years or the number of years in age that the member is below age sixty-five (65), whichever is less.

(g) No member, except members excluded by the Age Discrimination in Employment Act Amendments of 1986 (Public Law 99-592), under either Article 1 or Article 3 in state service shall be required to retire because of age.

(h) No payment on account of any benefit granted under the provisions of this section shall become effective or begin to accrue until January 1, 1953.

(i) (1) A retiree or beneficiary may, on a form prescribed by and filed with the retirement system, irrevocably waive all or a portion of any benefits from the retirement system to which the retiree or beneficiary is entitled. The waiver shall be binding on the heirs and assigns of any retiree or beneficiary and the same must agree to forever hold harmless the Public Employees' Retirement System of Mississippi from any claim to the waived retirement benefits.

(2) Any waiver under this subsection shall apply only to the person executing the waiver. A beneficiary shall be entitled to benefits according to the option selected by the member at the time of retirement. However, a

beneficiary may, at the option of the beneficiary, execute a waiver of benefits under this subsection.
(3) The retirement system shall retain in the annuity reserve account amounts that are not used to pay benefits because of a waiver executed under this subsection.
(4) The board of trustees may provide rules and regulations for the administration of waivers under this subsection.

***See* PERS of Mississippi at http://www.pers.ms.gov**

APPENDIX 1

TO

CHAPTER 2

CONSTITUTIONAL AND STATUTORY OATHS

APPENDIX OF CONSTITUTIONAL & STATUTORY OATHS

GRAND JURY OATHS

§ 13-5-45 Appointment of foreman:

The court shall appoint one of the grand jurors to be foreman of the grand jury, to whom the following oath shall be administered in open court, in the presence of the rest of the grand jurors, to wit:

> You, as foreman of this grand inquest, shall diligently inquire into, and true presentment make, of all such matters and things as shall be given you in charge, or otherwise come to your knowledge, touching the present service. The counsel of the state, your fellows, and your own you will keep secret. You shall not present any person through malice, hatred or ill will, nor shall you leave any person unpresented through fear, favor or affection, or for any reward, hope or promise thereof, but in all your presentments, you shall present the truth, the whole truth, and nothing but the truth, to the best of your skill and understanding. So help you God.

And the following oath shall be administered to the other jurors, to wit:

> The same oath that your foreman has now taken before you on his part, you, and each of you, shall well and truly observe, and keep on your respective parts. So help you God.

PETIT JURY OATHS

§ 13-5-71 Petit juror oath:

Petit jurors shall be sworn in the following form:

> You, and each of you, do solemnly swear (or affirm) that you will well and truly try all issues and execute all writs of inquiry that may be submitted to you, or left to your decision by the court, during the present term, and true verdicts give according to the evidence. So help you God.

§ 11-27-17 Jury oath [Eminent domain cases]:

When the jury shall be so impaneled, the jurors shall be sworn as follows:

I do solemnly swear or affirm that as a member of this jury I will discharge my duty honestly and faithfully, to the best of my ability, and that I will a true verdict render according to the evidence, without fear, favor, or affection, and that I will be governed by the instructions of the court. So help me God.

§ 13-5-73 Capital case juror oath:

The jurors in a capital case shall be sworn to:

> [W]ell and truly try the issue between the state and the prisoner, and a true verdict give according to the evidence and the law.

BAILIFF'S OATH

§ 13-5-73 Capital case juror oath:

Bailiffs may be specially sworn by the court, or under its direction, to attend on such jury and perform such duties as the court may prescribe for them.

COURT REPORTER'S OATH

§ 9-13-3 Oath of office:

Before entering into his office, the court reporter shall take, in open court, an oath that he will faithfully discharge the duties thereof; and the oath so taken shall be entered in the minutes of the court.

INTERPRETER'S OATH

§ 13-1-313 Oath of true interpretation:

Before participating in any proceedings subsequent to an appointment under the provisions of sections 13-1-301 et seq., an interpreter shall make an oath or affirmation that he will make a true interpretation in an understandable manner to the person for whom he is appointed and that he will repeat the statements of such persons in the English language to the best of his skill and judgment. The appointing authority shall provide recess periods as necessary for the interpreter when the interpreter so indicates.

JUDGE'S OATH

Section 155 Judicial oath of office:

The judges of the several courts of this state shall, before they proceed to execute the duties of their respective offices, take the following oath or affirmation, to-wit:

> I, _____, solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ according to the best of my ability and understanding, agreeably to the Constitution of the United States and the Constitution and laws of the state of Mississippi. So help me God.

LEGISLATOR'S OATH

Section 40 Oath of office:

Members of the legislature, before entering upon the discharge of their duties, shall take the following oath:

> I, _____, do solemnly swear (or affirm) that I will faithfully support the Constitution of the United States and of the state of Mississippi; that I am not disqualified from holding office by the Constitution of this state; that I will faithfully discharge my duties as a legislator; that I will, as soon as practicable hereafter, carefully read (or have read to me) the Constitution of this state, and will endeavor to note, and as a legislator to execute, all the requirements thereof imposed on the legislature; and I will not vote for any measure or person because of a promise of any other member of this legislature to vote for any measure or person, or as a means of influencing him or them so to do. So help me God.

OTHER ELECTED OFFICIAL'S OATH

Section 268 Oath of office:

All officers elected or appointed to any office in this state, except judges and members of the legislature, shall, before entering upon the discharge of the duties thereof, take and subscribe the following oath:

> I, _____, do solemnly swear (or affirm) that I will faithfully support the Constitution of the United States and the Constitution of the State of Mississippi, and obey the laws thereof; that I am not disqualified from holding the office of _____; that I will faithfully discharge the duties of the office upon which I am about to enter. So help me God.

APPENDIX 2

TO

CHAPTER 2

TRAINING STATUTES

MISSISSIPPI JUDICIAL COLLEGE TRAINING REQUIREMENTS			
Court Clerk	**Statute**	**Minimum Hours of Annual Continuing Education**	**Where Certificate of Annual Continuing Education is Filed**
Chancery clerk	§ 9-5-132	12 hours education at program +6 hours court attendance ---------- 18 hours of training	Circuit clerk's office
Circuit clerk	§ 9-7-122	12 hours education at program +6 hours court attendance ---------- 18 hours of training	Chancery clerk's office
Justice clerk	§ 9-11-29	12 hours of instruction	Circuit clerk's office
Municipal clerk	§ 21-23-12	12 hours of training	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

Chancery Court Clerks

§ 9-5-132 Training and continuing education course requirements for chancery clerks; filing of certificate of compliance; penalty for failure to file; courses; expenses; continuing education credit for attendance at chancery court proceedings.

(1) Except as otherwise provided herein, no chancery clerk elected for a full term of office commencing on or after January 1, 1996, shall exercise any functions of office or be eligible to take the oath of office unless and until the chancery clerk has filed in the office of the circuit clerk a certificate of completion of a course of training and education conducted by the Mississippi Judicial College of the University of Mississippi Law Center within 6 months of the beginning of the term for which such chancery clerk is elected. A chancery clerk who has completed the course of training and education and has satisfied his annual continuing education course requirements, and who is then elected for a succeeding term of office subsequent to the initial term for which he completed the training course, shall not be required to repeat the training and education course upon reelection. Any chancery clerk who has served a full or partial term before January 1, 1996, shall be exempt from the requirements of this subsection.

(2) In addition to meeting the requirements of subsection (1) of this section, after taking office by election or otherwise, each chancery clerk shall be required to file annually in the office of the circuit clerk a certificate of completion of a course of continuing education conducted by the Mississippi Judicial College. No chancery clerk shall have to comply with this subsection unless he will have been in office for 5 months or more during a calendar year.

(3) Each chancery clerk elected for a term commencing on or after January 1, 1992, shall be required to file annually the certificate required in subsection (2) of this section commencing January 1, 1994.

(4) The requirements for obtaining the certificates in this section shall be as provided in subsection (6) of this section.

(5) Upon the failure of any chancery clerk to file with the circuit clerk the certificates of completion as provided in this section, such chancery clerk shall, in addition to any other fine or punishment provided by law for such conduct, not be entitled to any fee, compensation or salary, from any source, for services rendered as chancery clerk, for the period of time during which such certificate remains unfiled.

(6) The Mississippi Judicial College of the University of Mississippi Law Center shall prepare and conduct courses of training for basic and continuing education for chancery clerks of this state. The basic course of training shall be known as the **"Chancery Clerks Training Course"** and shall consist of at least 32 hours of training. The continuing education course shall be known as the **"Continuing Education Course for Chancery Clerks,"** and shall consist of at least 18 hours of training. The content of the basic and continuing education courses and when and where such courses are to be conducted shall be determined by the judicial college. The judicial college shall issue certificates of completion to those chancery clerks who complete such courses.

(7) The expenses of the training, including training of those elected as chancery clerk who have not yet begun their term of office, shall be borne as an expense of the office of the chancery clerk.

(8) Chancery clerks shall be allowed credit toward their continuing education course requirements for attendance at chancery court proceedings if the presiding chancery court judge certifies that the chancery clerk was in actual attendance at a term or terms of court; provided, however, that at least 12 hours per year of the continuing education course requirements must be completed at a regularly established program or programs conducted by the Mississippi Judicial College.

Circuit Courts Clerks

§ 9-7-122 Training and continuing education requirements for circuit clerks; filing of certificate of compliance; penalty for failure to file; courses; expenses; continuing education credit for attendance at circuit court proceedings.

(1) Except as otherwise provided herein, no circuit clerk elected for a full term of office commencing on or after January 1, 1996, shall exercise any functions of office or be eligible to take the oath of office unless and until the circuit clerk has filed in the office of the chancery clerk a certificate of completion of a course of training and education conducted by the Mississippi Judicial College of the University of Mississippi Law Center within 6 months of the beginning of the term for which such circuit clerk is elected. A circuit clerk who has completed the course of training and education and has satisfied his annual continuing education course requirements, and who is then elected for a succeeding term of office subsequent to the initial term for which he completed the training course, shall not be required to repeat the training and education course upon reelection. A circuit clerk that has served either a full term of office or part of a term of office before January 1, 1996, shall be exempt from the requirements of this subsection.

(2) In addition to meeting the requirements of subsection (1) of this section, after taking office by election or otherwise, each circuit clerk shall be required to file annually in the office of the chancery clerk a certificate of completion of a course of continuing education conducted by the Mississippi Judicial College. No circuit clerk shall have to comply with this subsection unless he will have been in office for 5 months or more during a calendar year.

(3) Each circuit clerk elected for a term commencing on or after January 1, 1992, shall be required to file annually the certificate required in subsection (2) of this action commencing January 1, 1993.

(4) The requirements for obtaining the certificates in this section shall be as provided in subsection (6) of this section.

(5) Upon the failure of any circuit clerk to file with the chancery clerk the certificates of completion as provided in this section, such circuit clerk shall, in addition to any other fine or punishment provided by law for such conduct, not be entitled to any fee, compensation or salary, from any source, for services rendered as circuit clerk, for the period of time during which such certificate remains unfiled.

(6) The Mississippi Judicial College of the University of Mississippi Law Center shall prepare and conduct courses of training for basic and continuing education for circuit clerks of this state. The basic course of training shall be known as the **"Circuit Clerks Training Course"** and shall consist of at least 32 hours of training. The continuing education course shall be known as the **"Continuing Education Course for Circuit Clerks"** and shall consist of at least 18 hours of training. The content of the basic and continuing education courses and when and where such courses are to be conducted shall be determined by the judicial college. The judicial college shall issue certificates of completion to those circuit clerks who complete such courses.

(7) The expenses of the training, including training of those elected as circuit clerk who have not yet begun their term of office, shall be borne as an expense of the office of the circuit clerk.

(8) Circuit clerks shall be allowed credit toward their continuing education course requirements for attendance at circuit court proceedings if the presiding circuit court judge certifies that the circuit clerk was in actual attendance at a term or terms of court; provided, however, that at least 12 hours per year of the continuing education course requirements must be completed at a regularly established program or programs conducted by the Mississippi Judicial College.

(9) By August 1, 2015, and each year thereafter, the Administrative Office of Courts shall certify to the Mississippi Judicial College the names of all circuit clerks who have failed to provide the information required by Section 9-1-46. The judicial college shall not issue a certificate of continuing education required by subsection (2) of this section to any such clerk, and shall report to the State Auditor, and the board of supervisors of the county the clerk is elected from that the clerk shall not be entitled to receive the compensation set out in subsection (5) of this section. A clerk may be certified after coming into compliance with the requirements of Section 9-1-46.

Justice Court Clerks

§ 9-11-29 Clerk's certificate of completion of course of education; bond entered by clerk.

(1) Within ninety (90) days after appointment, every person appointed as clerk of the justice court under the provisions of Section 9-11-27, or a deputy clerk designated to receive training under Section 9-11-27, shall file annually in the office of the circuit clerk a certificate of completion of a course of training and education conducted by the Mississippi Judicial College of the University of Mississippi Law Center. The training course shall be known as the "Justice Court Clerks Training Course" and shall consist of at least twelve (12) hours of instruction. The contents of the courses and when and where the courses are to be conducted shall be determined by the judicial college. The judicial college shall issue a certificate of completion to the clerks and deputy clerks who complete a course.

(2) Every person appointed as clerk and deputy clerk of the justice court shall, before entering into the duties of the position, give bond, with sufficient surety, to be payable, conditioned and approved as provided by law and in the same manner as other county officers, in a penalty equal to Fifty Thousand Dollars ($50,000.00); and any party interested may proceed on such bond in a summary way, by motion in any court having jurisdiction of the same, against the principal and sureties, upon giving five (5) days' previous notice. The cost of the bond shall be paid by the county.

(3) Upon the failure of any person appointed as clerk of the justice court to file the certificates of completion as provided in subsection (1) of this section, that person shall not be allowed to carry out any of the duties of the office of clerk of the justice court, and shall not be entitled to compensation for the period of time during which the required certificates remain unfiled.

Municipal Court Clerks

§ 21-23-12 Training and education program for municipal court clerks; instruction by Mississippi Judicial College; certificate of completion.

(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.

(4) After August 1, 2015, and each year thereafter, the Administrative Office of Courts shall notify the judicial college of the name of any municipal court clerk who has not complied with the requirements of Section 9-1-46. The Mississippi Judicial College shall not provide such clerk with a certificate of completion of course work until such time that the Administrative Office of Courts has reported that the clerk is in compliance with the requirements of Section 9-1-46. Further, the Administrative Office of Courts shall report the names of all noncompliant clerks to the State Auditor and to the mayor of the municipality that employs the clerk.

CHAPTER 3

CHANCERY COURT FEES & ASSESSMENTS

CHAPTER 3

CHANCERY COURT FEES & ASSESSMENTS

§ 25-7-1 Lawful to demand specific fees only:

It shall be lawful for the . . . clerks of the chancery courts . . . to demand, receive, and take the several fees hereinafter mentioned and allowed for any business by them respectively done by virtue of their several offices, and no more.

§ 11-53-79 Table of fees to be posted conspicuously:

> It shall be the duty of the clerks of the circuit and chancery courts . . . to post in a conspicuous place in his office . . . a copy of the bill of fees which he is entitled to receive, and on failure to do so he shall not be entitled to receive or collect any fee for any service rendered during the time of such failure.

§ 25-7-9 Clerks of the chancery court:

(1) The clerks of the chancery courts shall charge the following fees:

(a)	For the act of certifying copies of filed documents, for each complete document	$1.00
(b)	(i) Recording each deed, will, lease, amendment, subordination, lien, release, cancellation, order, decree, oath, etc., per book and page listed where applicable, each deed of trust, or any other document, for the first five (5) pages	$25.00
	(ii) Each additional page	$1.00
(c)	(i) Recording oil and gas leases, cancellations, etc., including indexing in general indices; for the first (5) pages	$25.00
	(ii) Recording each oil and gas assignment, amendment of assignment, release, etc., first five (5) pages	$25.00
	per additional assignee	$18.00
	(iii) Each additional page	$1.00
	(iv) Sectional index entries per section or subdivision lot	$1.00
	(v) Archive fee	$1.00
	(vi) Entering marginal notations, if requested on document or by cover letter, pertaining to the recording of any	

	oil and gas document only per book and page	$4.00
(d)	(i) Furnishing copies of any papers of record or on file:	
	If performed by the clerk or his employee, per page	$.50
	If performed by any other person, per page	$.25
	(ii) Entering marginal notations on documents of record	$1.00
(e) For each day's attendance on the board of supervisors, for himself and one (1) deputy, each		$20.00
(f) For other services as clerk of the board of supervisors an allowance shall be made to him (payable semiannually at the July and January meetings) out of the county treasury, an annual sum not exceeding		$3,000.00
(g) For each day's attendance on the chancery court, to be approved by the chancellor:		
For the first chancellor sitting only, clerk and two (2) deputies, each		$85.00
For the second chancellor sitting, clerk only		$85.00
Provided that the fees herein prescribed shall be the total remuneration for the clerk and his deputies for attending chancery court.		
(h) On order of the court, clerks and not more than two (2) deputies may be allowed five (5) extra days for each term of court for attendance upon the court to get up records.		
(i) For public service not otherwise specifically provided for, the chancery court may by order allow the clerk to be paid by the county on the order of the board of supervisors, an annual sum not exceeding		$5,000.00
(j) For each civil filing, to be deposited into the Civil Legal Assistance Fund		$5.00

The chancery clerk shall itemize on the original document a detailed fee bill of all charges due or paid for filing, recording and abstracting same. No person shall be required to pay such fees until same have been so itemized, but those fees may be demanded before the document is recorded.

(2) The following fee shall be a total fee for all services performed by the clerk with respect to any civil case filed that includes, but is not limited to,
divorce,
alteration of birth or marriage certificate,
removal of minority,
guardianship or conservatorship,
estate of deceased,
adoption,
land dispute injunction,
settlement of small claim,
contempt,
modification,
partition suit, or
commitment,
which shall be payable upon filing and shall accrue to the chancery clerk at the time of filing. $85.00

The clerk or his successor in office shall perform all duties set forth without additional compensation or fee.

(3) For every civil case filed:

(a) An additional fee to be deposited to the credit of the Comprehensive Electronic Court Systems Fund established in Section 9-21-14 $10.00

(b) An additional fee to be deposited to the credit of the Judicial System Operation Fund established in Section 9-21-45 $40.00

(4) Cost of process shall be borne by the issuing party. Additionally, should the attorney or person filing the pleadings desire the clerk to pay the cost to the sheriff for serving process on one (1) person or more, or to pay the cost of publication, the clerk shall demand the actual charges therefor, at the time of filing.

§ 25-7-10 Chancery court clerks; additional allowance:

In counties having two (2) judicial districts and having a regularly appointed deputy chancery court clerk, the chancery court clerk may be allowed One Thousand Dollars ($1,000.00) per month. This amount may be allowed and paid monthly to the chancery court clerk by the board of supervisors of each county affected by this section out of the general fund of the county and may be in addition to all other allowances not provided by law.

§ 25-7-11 Filing and recording fees:

The chancery clerk shall itemize on the record, following the instrument recorded by him, a detailed fee bill of all charges due or paid for filing and recording same. A fee bill shall not be allowed him for a receipt given for the deed or other instrument unless the same shall be demanded, and such fee shall not be due until the clerk shall have complied with all the provisions of the law on the subject of the record of instruments.

Uniform Chancery Court Rule 9.01 states:

Court cost deposits to pay the fees due the Chancery Clerk shall be made with the filing of any complaint or petition as follows:

(1)	No fault divorce:	a deposit of $30.00.
(2)	Complaints other than ex parte matters:	a deposit of $75.00.
(3)	All ex parte matters:	a deposit of $25.00.
(4)	Upon filing a counterclaim or crossclaim by a Cross-Plaintiff:	a deposit of $25.00.
(5)	The Clerk may, pursuant to M.R.C.P. 3(b), require an additional deposit.	

I am requesting an opinion on the following:

1. Are filing fees for chancery court documents established by 25-7-9?
2. Is there a fee in 25-7-9 for filing any counterclaim in chancery court?
3. Uniform Chancery Court Rule 9.01 (4) calls for a fee of $25.00 for filing a counterclaim.
4. Is the Rule 9.01 fee inconsistent with 25-7-9?
5. Is the statute controlling over the rule?
6. Can a $25 fee, or any fee, be charged for filing any counterclaim in chancery court?

We are of the opinion that the statute and the rule in this instance can be read in basic agreement with one another. In fact, the statute specifically refers to and adopts the Rule. Our opinion is that the rule requires a $25.00 fee to be filed for a counterclaim or a crossclaim, but only when such counterclaim or crossclaim is made by a cross-plaintiff, e.g., where a cross-plaintiff files a cross-complaint against the cross-defendant, with the cross-complaint being a new cause of action between defendants or between plaintiffs in the original cause of action. We believe the apparent conflict between Section 25-7-9 and the rule is semantical. Although the rule contains the term "counterclaim", it is only the type of counterclaim which arises in the context of a crossclaim (or, to use the term in the statute, cross-complaint) amongst either the original defendants or amongst the original plaintiffs. We understand that this unfortunate semantical confusion has led to questions by Chancery Clerks as to which circumstances under which the Clerk is to charge the $25.00 fee. In the most common situation of where the plaintiff files a complaint against the defendant, and the defendant files an answer containing one or more counterclaims, there is no basis to charge the fee. But when one of the defendants of the original cause of action files a complaint against another of the original defendants, then the Clerk may charge the original defendant filing this new complaint with a co-defendant in the original cause of action the $25.00 fee. Likewise, where one of the plaintiffs in the original cause of action files a complaint against another of the original plaintiffs, then the Clerk may charge the original plaintiffs filing this new complaint against a co-plaintiffs in the original cause of action the $25.00 fee. We expect this fee would be assessed infrequently. Our responses to your questions above, therefore, are as follows:

Response to Question 1: No. It must be read along with Uniform Chancery Court Rule 9.01.

Response to Question 2: Yes, in the infrequent occasions discussed above.

Response to Question 4: No.

Response to Question 5: No.
Response to Question 6: No.
Re: Chancery Clerk Fees, Opinion No. 2006-00129 (Miss. A. G. Apr. 21, 2006).

Your letter asks "whether a [chancery] clerk may charge $25.00 as a fee for filing a counterclaim when the statute concerning fees contemplates a fee only for the filing of a cross-complaint." . . . It is our opinion that the above provisions allow the clerk to charge a $25.00 fee for the filing of a cross-complaint (i.e., crossclaim), or for the filing of a counterclaim by a cross-plaintiff (i.e. crossclaimant or cross-complainant). A clerk may not charge an additional $25.00 fee when a defendant answers a complaint with a counterclaim. The terms counterclaim and cross-claim are defined at M.R.C.P. 13. Briefly, a counterclaim is a claim by the defendant against the plaintiff; a cross-claim is a claim by a defendant against a co-defendant or by a plaintiff against a co-plaintiff. **Re: Chancery Clerk's Fee for Filing of Counterclaim, Opinion No. 94-0686 (Miss. A. G. Nov. 23, 1994).**

Your letter asks: "Can a chancery clerk require the payment of a fee for the filing of a Motion to Set Aside Judgement?". . . In response, Section 25-7-9 of the Mississippi Code, the Chancery Clerk Fee Statute, does not contemplate a chancery clerk's fee for Motion to Set Aside Judgement. Rule 9.01 of the Uniform Chancery Court Rules provides that a complainant, in any case other than an ex parte matter, a cross-claimant or a person filing for a no fault divorce, must pay a deposit of $75.00 when filing a complaint or petition. However, this is merely a deposit that is required "with the filing of any complaint or petition." It is our opinion on it would not apply to a Motion to Set Aside Judgement in a case that has already been filed. **Re: Chancery Clerk Fees, Opinion No. 95-0125 (Miss. A. G. Apr. 6, 1995).**

This letter is being written to you to inquire about a fee for filing a pleading in Chancery Court. The fee for filing an uncontested divorce is $37. If there are children and a valid withholding order and child support order are filed plus certifying copies for complainant and defendant and sending copies to welfare and employer by certified mail, can the clerk require a deposit of $82 instead of $37? . . . Based on the above cited statutes and rules it is our opinion that a $30.00 court cost deposit is all that can be charged upon the filing of an uncontested divorce, unless the clerk makes a motion to the court for additional security and the court so orders. **Re: Chancery Court Clerk Costs, Opinion No. 95-0502 (Miss. A. G. Aug. 14, 1995).**

If an uncontested divorce is filed in Chancery Court and it then becomes a contested matter, is the clerk to collect the additional $45.00 fee prior to filing the additional documents? If a no fault divorce becomes contested, then the additional $45.00 fee should be collected prior to filing the additional documents. When one party attempts to file a complaint (as opposed to a uncontested complaint) against the other, whether the party is filing a new document styled complaint or is attempting to amend a prior filing, the clerk should demand the additional fee from that party. **Re: House Bill 54, Opinion No. 93-0514 (Miss. A. G. Nov. 10, 1993).**

What is the proper filing fee for Paternity Cases? Uniform Chancery Rule 9.01 (hereafter Rule 9.01) is still in effect. It requires the prepayment of $75.00 for a complaint other than an ex parte matter. A paternity case is an adversary proceeding and is not an ex parte matter, therefore $75.00 is the proper amount. However, a stipulation in lieu of legal proceedings pursuant to § 43-19-33 is not contested and should be considered ex parte with a $25 fee. **Re: House Bill 54, Opinion No. 93-0514 (Miss. A. G. Nov. 10, 1993).**

Is an answer to a complaint the same as a cross-complaint? To be a cross-complaint must the document be labeled "Cross-Complaint"? An answer is not the same as a cross-complaint. The best practice would be to designate the document as a cross-claim or counterclaim; however, if a document is not designated as such, it may be allowed as such if it asserts what has to be asserted by M.R.C.P. 13, and the clerk is entitled to the fee. Rule 13 of the Mississippi Rules of Court specifically defines counterclaims and cross-claims, which we believe was intended by the phrase "cross-complaint" under § 25-7-9(2)(n). **Re: House Bill 54, Opinion No. 93-0514 (Miss. A. G. Nov. 10, 1993).**

State Assessments & Fees

Court Education Cost Assessment

§ 37-26-3 Court education and training costs; civil matters:

(1) In addition to any other fees or costs now or as may hereafter be provided by law, there is hereby charged in all civil cases in the chancery, circuit, county, justice and municipal courts of this state a court education and training cost in the amount of Two Dollars ($2.00), except in justice court cases where the amount sued for is less than Fifteen Dollars ($15.00). Such cost shall be collected by the clerk or judicial officer from the party bringing the civil action at the time of filing and taxed as costs.

(2) From and after July 1, 2017, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law and as determined by the State Fiscal Officer.

(3) From and after July 1, 2017, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

Court Constituents Cost Assessment

§ 37-26-9 Collection of costs; depositing funds; use of monies:

(1) It shall be the duty of the clerk of any court to promptly collect the costs imposed pursuant to the provisions of Section 37-26-3. In all cases the clerk shall monthly deposit all such costs so collected with the State Treasurer either directly or by other appropriate procedures. All such deposits shall be clearly marked for the State Court Education Fund and the State Prosecutor Education Fund. Upon receipt of such deposits, the State Treasurer shall credit seventy-five percent (75%) of any amounts so deposited to the State Court Education Fund created pursuant to subsection (2) of this section, and shall credit the remaining twenty-five percent (25%) of any amounts so deposited to the State Prosecutor Education Fund created pursuant to subsection (3) of this section.

(2) Such assessments as are collected under Section 99-19-73 shall be deposited in a special fund hereby created in the State Treasury and designated the “State Court Education Fund.” Monies deposited in such fund shall be expended by the Board of Trustees of State Institutions of Higher Learning as authorized and appropriated by the Legislature to defray the cost of providing: (i) education and training for the

courts of Mississippi and related personnel; (ii) technical assistance for the courts of Mississippi and related personnel; and (iii) current and accurate information for the Mississippi Legislature pertaining to the needs of the courts of Mississippi and related personnel.

(3) Such assessments as are collected under Section 99-19-73 shall be deposited in a special fund hereby created in the State Treasury and designated the "State Prosecutor Education Fund." Monies deposited in such fund shall be expended by the Attorney General of the State of Mississippi as authorized and appropriated by the Legislature to defray the cost of providing: (i) education and training for district attorneys, county prosecuting attorneys and municipal prosecuting attorneys; (ii) technical assistance for district attorneys, county prosecuting attorneys and municipal prosecuting attorneys; and (iii) current and accurate information for the Mississippi Legislature pertaining to the needs of district attorneys, county prosecuting attorneys and municipal prosecuting attorneys.

(4) A supplemental fund is hereby created in the State Treasury and designated the State Court Constituents Fund. Monies deposited in such fund shall be for the education and training of judges and related court personnel other than those specified in Section 37-26-1(b). In addition to any other fees or costs now or as may hereafter be provided by law, there is hereby charged in all civil cases in the chancery, circuit, county, justice and municipal courts of this state a supplemental court education and training cost in the amount of Fifty Cents (50¢), except in justice court cases where the amount sued for is less than Fifteen Dollars ($15.00); and in all criminal cases in the circuit, county, justice and municipal courts of this state, except in cases where the fine is less than Ten Dollars ($10.00). Such costs shall be charged and collected as provided by Sections 37-26-3 and 37-26-5. After the transfer to the State Prosecutor Education Fund of twenty-five percent (25%) of the money provided for in subsection (1) of this section, there shall then be transferred into the State Court Education Fund the money on deposit in the State Court Constituents Fund.

(5) A special fund is created in the State Treasury and designated the "State Court Security Systems Fund." Monies deposited in such fund shall be expended for general courtroom security as well as the maintenance and operation of security surveillance and detection devices for the courtrooms of each court of the State of Mississippi specified in Section 37-26-1(2). The Administrative Office of Courts shall conduct a study to assess and determine the security needs of the courts and is authorized to expend monies in the fund for the purposes of the fund as authorized and appropriated by the Legislature.

(6) From and after July 1, 2017, the expenses of the State Court Education Fund, the State Prosecutors Education Fund, the State Court Constituents Fund and the

State Court Security Systems Fund shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law and as determined by the State Fiscal Officer.

(7) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

State Assessments

§ 99-19-73 Assessment schedule; collection and disbursement:

(10)(a) After a determination by the court of the amount due, it shall be the duty of the clerk of the court to promptly collect all state assessments imposed under the provisions of this section. The state assessments imposed under the provisions of this section may not be paid by personal check.

(b) It shall be the duty of the chancery clerk of each county to deposit all state assessments collected in the circuit, county and justice courts in the county on a monthly basis with the State Treasurer pursuant to appropriate procedures established by the State Auditor. The chancery clerk shall make a monthly lump-sum deposit of the total state assessments collected in the circuit, county and justice courts in the county under this section, and shall report to the Department of Finance and Administration the total number of violations under each subsection for which state assessments were collected in the circuit, county and justice courts in the county during that month.

(c) It shall be the duty of the municipal clerk of each municipality to deposit all the state assessments collected in the municipal court in the municipality on a monthly basis with the State Treasurer pursuant to appropriate procedures established by the State Auditor. The municipal clerk shall make a monthly lump-sum deposit of the total state assessments collected in the municipal court in the municipality under this section, and shall report to the Department of Finance and Administration the total number of violations under each subsection for which state assessments were collected in the municipal court in the municipality during that month.

(11) It shall be the duty of the Department of Finance and Administration to deposit on a monthly basis all state assessments into the State General Fund or proper special fund in the State Treasury. The Department of Finance and Administration shall issue regulations providing for the proper allocation of these funds.

(12) The State Auditor shall establish by regulation procedures for refunds of state assessments, including refunds associated with assessments imposed before July 1, 1990, and refunds after appeals in which the defendant's conviction is reversed. The Auditor shall provide in the regulations for certification of eligibility for refunds and may require the defendant seeking a refund to submit a verified copy of a court order or abstract by which the defendant is entitled to a refund. All refunds of state assessments shall be made in accordance with the procedures established by the Auditor.

See "Regs for the Collection/Settlement/Refund of State Imposed Court Assessments" under "Local Governments" at https://www.osa.state.ms.us/resources/

Honorable Discharge & Service Certificates - Fee Allowance from the County

§ 35-3-13 Recordation without cost of honorable discharges and service certificates:

(1) All chancery clerks shall record without any cost to any person of the Armed Forces residing in the same county as the chancery clerk, all honorable discharges and all certificates of service of any and all members of the Armed Forces who have served in the Armed Forces, including the army, navy and marine, coast guard and nurses corps.
(2) The board of supervisors shall furnish to the chancery clerk all necessary supplies and equipment for the recording of these instruments, and allow out of the general fund of the county the sum of One Dollar ($1.00) for recording the discharge certificate. All certified copies will be furnished free without cost either to the soldier, sailor, marine, coast guardsman, nurse or the county.
(3) The chancery clerk shall keep a record of all honorable discharges and certificates of discharge in a separate record safeguarded and protected from theft, and definitely marked "Record of Discharged Members of the Armed Forces." The chancery clerk shall furnish certified copies of the discharge or discharge certificate of any veteran when so requested by the veteran, his dependents or his authorized representative; however, before furnishing any copy of the discharge or discharge certificate, the chancery clerk must verify the identity and relationship to the veteran of the person requesting the copy and must obtain and maintain on file a signed consent for the release of information from the veteran, dependent or authorized representative.
(4)(a) The chancery clerk of all counties shall keep a record of all veterans Form DD-214 in a separate record safeguarded and protected from theft, and marked "Record of Veterans Service Form DD-214 Members of the Armed Forces." The chancery clerk shall record the form without charge and shall furnish certified copies of the Form DD-214 without charge when so requested by the veteran, his dependents or his authorized representative. . . .

Fees for Collection of Mineral Documentary Tax

§ 27-31-85 Disposition of funds collected:

From the taxes levied and collected under and by virtue of Sections 27-31-77 through 27-31-83 inclusive, the chancery clerk shall retain five percent (5%) as a fee for the collection thereof, and shall pay the remainder thereof into the proper depository to the credit of the county, one-half (1/2) to the common county fund and one-half (1/2) to the county school fund. Such deposit shall be made on or before the 15th day of the month next succeeding that in which such collection may be made. The same percent of collections shall be retained by him from all funds collected by virtue of Section 27-31-75 hereof, and the remainder shall be likewise deposited.

Federal Lien Registration Fees

§ 85-8-13 Fees:

(2) The fee for filing and indexing each notice of lien or certificate or notice affecting the lien in the office of the chancery clerk is:

(a) For a lien on real estate	$ 10.00
(b) For a lien on personal property	$ 10.00
(c) For a certificate of discharge or subordination	$ 10.00
(d) For all other notices, including a certificate of release or non-attachment	$ 10.00

Fees for Oil, as, & Mineral Lease Cancellations

§ 89-5-23 Oil, gas and mineral leases:

(1) Whenever any oil, gas and mineral lease . . . recorded in any county of this state shall expire or terminate, the holder of such oil, gas and mineral lease, . . . shall be required to cancel of record such . . . lease by entering upon the margin of the record of such lease, a notation that said . . . lease has terminated and expired, which entry shall be attested by the clerk of the chancery court and shall discharge and release the lands therein described from said . . . lease. . . The chancery clerk shall be allowed a fee of one dollar ($1.00) for making such cancellation, and shall not be required to index same on sectional index but shall be required to note the cancellation on the margin of the record where said lease is recorded and if said cancellation is by separate instrument he shall note the cancellation on the margin where lease is recorded showing book and page of said instrument of cancellation. . . .

Fees for Tax Sale Duties

§ 27-43-3 Notice and clerk fees:

For examining the records to ascertain the record owner of the property, the clerk shall be allowed a fee of Fifty Dollars ($50.00); for issuing the notice the clerk shall be allowed a fee of Two Dollars ($2.00) and, for mailing the notice and noting that action on the tax sales record, a fee of One Dollar ($1.00); and for serving the notice, the sheriff or constable shall be allowed a fee of Forty-five Dollars ($45.00). For issuing a second notice, the clerk shall be allowed a fee of Five Dollars ($5.00) and, for mailing the notice and noting that action on the tax sales record, a fee of Two Dollars and Fifty Cents ($2.50), and for serving the second notice, the sheriff or constable shall be allowed a fee of Forty-five Dollars ($45.00).

The clerk shall also be allowed the actual cost of publication. The fees and cost shall be taxed against the owner of the land if the land is redeemed, and if not redeemed, then the fees are to be taxed as part of the cost against the purchaser. The failure of the landowner to actually receive the notice herein required shall not render the title void, provided the clerk and sheriff or constable have complied with the duties prescribed for them in this section.

Should the clerk inadvertently fail to send notice as prescribed in this section, then the sale shall be void and the clerk shall not be liable to the purchaser or owner upon refund of all purchase money paid.

§ 27-43-11 Clerk fees to determine lienors of record:

For examining the records to ascertain the names and addresses of lienors, the chancery clerk shall be allowed a fee of Seven Dollars ($7.00) in each instance for each lien where a lien is found of record, and said fees shall be taxed against the owner of said land, if same is redeemed, and if not redeemed, then said fees are to be taxed as part of the cost against the purchaser. A failure to give the required notice to such lienors shall render the tax title void as to such lienors, and as to them only, and such purchaser shall be entitled to a refund of all such taxes paid the state, county or other taxing district after filing his claim therefor as provided by law.

§ 27-43-4 Municipal notice and fees:

With respect to lands sold for the nonpayment of municipal taxes, both for ad valorem and for special improvements, the municipal clerk shall issue the same type notices and perform all other requirements as set forth in Sections 27-43-1 through 27-43-11, inclusive, and for so doing, the municipality shall be allowed the same fees as set forth in said sections. However, all certificates or affidavits of the municipal clerk shall be filed with the chancery clerk of the county in which the municipality is located for which the chancery clerk shall be allowed a filing fee of One Dollar ($1.00) per affidavit or certificate.

Fees for Collection of Delinquent Taxes

§ 25-7-21 Tax collectors:

(4) Fees of chancery clerk for collection of delinquent taxes:

(a) For abstracting the list of lands sold for taxes, for each separately described section or subdivision lot	$1.00
(b) For filing and recording deed to land sold for taxes	$10.00
(c) For abstracting each deed in the sectional index, per section or subdivision lot	$1.00
(d) For recording redemption of each	$10.00
(e) For abstracting each redemption in the sectional index, per section or subdivision lot	$1.00
(f) And, in addition, three percent (3%) on the amount necessary to redeem.	3%

The several officers' fees shall be collected by the tax collector or chancery clerk and paid over to those entitled to same.

Fees for Estate Administration

§ 11-53-43 Estate administration fees:

Executors and administrators shall be personally liable for the fees which accrue in the administration, and the estates in their hands shall be chargeable with such fees in preference to all other demands. It shall be lawful for the clerk of the chancery court to make out executions for the fees that may become due the officers of court or the publisher of a newspaper at any time in the administration of an estate. Every such execution shall have annexed to it a copy of the bill of costs, specifying the particular items thereof, to be enforced as in other cases.

§ 11-53-79 Posting bill of fees:

It shall be the duty of the clerks of the circuit and chancery courts, and of the sheriff, to post in a conspicuous place in his office, and each justice of the peace at his place of holding court, a copy of the bill of fees which he is entitled to receive, and on failure to do so he shall not be entitled to receive or collect any fee for any service rendered during the time of such failure.

Fees for Service Outside County - Filed in Justice Court

§ 9-11-20 Service outside issuing counties; fees:

In any civil case in the justice court in which any process or writ is to be served outside of the county where issued, the clerk of the justice court is hereby authorized and directed to forward, by United States mail, to the clerk of the justice court of the county where such writ or process is to be served, that portion of any fees required by law to be collected for the service of such process or writ along with the process or writ to be served. The clerk of the justice court of the county where the process or writ is to be served shall, upon receipt thereof, deliver such process or writ to a constable of the county for the service thereof and shall report and pay over such fees to the chancery clerk of the county at the time and in the manner provided in subsection (1) of Section 9-11-19 for the report and payment of fees, costs, fines and penalties charged and collected in the justice court.

Fees for Distribution of Ad Valorem Taxes

§ 27-31-85 Distribution of money collected:

From the taxes levied and collected under and by virtue of Sections 27-31-77 through 27-31-83 inclusive, the chancery clerk shall retain five percent (5%) as a fee for the collection thereof, and shall pay the remainder thereof into the proper depository to the credit of the county, one-half (1/2) to the common county fund and one-half (1/2) to the county school fund. Such deposit shall be made on or before the 15th day of the month next succeeding that in which such collection may be made. The same percent of collections shall be retained by him from all funds collected by virtue of Section 27-31-75 hereof, and the remainder shall be likewise deposited.

Fees for Auctioneers of Jewelry Inventories

§ 75-61-3 Filing of inventory with chancery clerk:

The said inventory and affidavit shall be a part of the records of said chancery clerk, and he shall be paid a fee of two and one-half dollars ($2.50) by the person filing said inventory.

County Assessments & Taxes

Court Administrator Assessment (Optional)

§ 9-17-5 Special fund: $2.00

(1) In each county where a court administrator has been appointed pursuant to this chapter, a special fund in the county treasury is hereby established to be known as the "court administration fund."

(2) (a) The judges and chancellors may apply their expense allowance in Section 9-1-36, Mississippi Code of 1972, to the court administration fund.
(b) The board of supervisors of any county within a judicial district having a court administrator is authorized to pay its pro rata cost of the salary and furnish an equipped office for the court administrator and his staff from county funds. The board of supervisors is further authorized to accept grants, gifts, donations or federal funds for the benefit of the office of the court administrator.
(c) The board of supervisors of any county within a judicial district having a court administrator is authorized, in its discretion, to charge, in addition to all other costs required by law, an amount not to exceed two dollars ($2.00) for each complaint filed in the chancery, circuit and county courts of such county. Any money collected pursuant to this subsection shall be paid into the court administrator fund.
(d) Money paid into the court administration fund under this chapter shall be applied to the office of the court administrator for the purpose of funding that office.

(3) All expenditures made from the court administration fund shall be upon written requisition of the court administrator approved by a judge or chancellor to the county or counties of the district designated by him, in proportion to the business of his office in the county.

Court Reporter's Tax

§ 9-13-21 Tax fee of court reporter: $10.00

In each suit, cause or matter where (1) a plea or answer is filed, and (2) in probate or any other cause or matter wherein the court reporter actually serves, a court reporter's tax fee of ten dollars ($10.00) shall be collected as costs, and paid into the treasury of the county in which the case is tried, as the jury tax is collected by law and paid in the circuit court.

Please give direction to the collection of the Court Reporter Tax Fee as required by § 9-13-21. [Does the clerk] collect the $10.00 fee prior to the filing of a plea or answer? In summary, [a prior] opinion holds that the Court Reporter Tax Fee is to be collected at the end of the case. **Re: House Bill 54, Opinion No. 1993-0514 (Miss. A. G. Nov. 10, 1993).**

County Law Library Assessment (Optional)

§ 19-7-31 Law libraries, establishment and maintenance: $2.50

(1)(a) The board of supervisors of each county in the state shall have power, by an appropriate order or orders on its minutes, to establish and maintain in the county courthouse or other suitable public building adjacent or near thereto, a public county law library under such rules, regulations and supervision as it may from time to time ordain and establish, and to that end, the board may accept gifts, grants, donations or bequests of money, furniture, fixtures, books, documents, maps, plats or other property suitable for that purpose.
(b) The board of supervisors shall have power to exchange or sell duplicate volumes or sets of any such books or furniture, and in case of sale, to invest the proceeds in other suitable books or furniture. The board may also purchase or lease from time to time additional books, furniture, or equipment for the public law library.
(c) The board of supervisors may also maintain the books prescribed under this section in an electronic format.
(2) For the purpose of providing suitable quarters for the public law library, the board of supervisors may, in its discretion, expend such sums as may be deemed necessary or proper for that purpose, and may also employ a suitable person as librarian and pay the law librarian such salary as the board, in its discretion, may determine. The board may employ additional librarians or other employees on either a part-time or full-time basis and may pay these additional employees as the board, in its discretion, may determine. The board of supervisors, in their discretion, may contract with the county or municipal library for any staff or facilities as they deem necessary for the overall management and operation of the county law library. The board of supervisors may contract with the State Law Library for law library services that may be offered by the State Law Library.
(3) If the public law library is established, all books, documents, furniture and other property then belonging to the county library, as provided for in Section 19-7-25, shall be transferred to and become part of the public law library, and all books, documents and publications donated by the state to the county library shall also become a part of the public law library. In that case, Sections 19-7-25 and 19-25-65, relating to the county library, shall be superseded in that county for as long as the public law library is maintained in the county.

(4) The board of supervisors of any county that establishes a public law library, in its discretion, may levy, by way of resolution, additional court costs not exceeding Two Dollars and Fifty Cents ($2.50) per case for each case, both civil and criminal, filed in the chancery, circuit and county courts or any of these in the county, and may levy, by way of resolution, additional court costs not exceeding One Dollar and Fifty Cents ($1.50) per case for each case, both civil and criminal, filed in the justice courts of the county, for the support of the library authorized in the county. If the additional court costs authorized in this section are levied, the clerk or judge of those courts shall collect those costs for all cases filed in his court and forward same to the chancery clerk, who shall deposit the same in a special account in a county depository for support and maintenance of the library, and the chancery clerk shall be accountable for those funds. However, no such levy shall be made against any cause of action the purpose of which is to commit any person with mental illness, or alcoholic or narcotic addiction to any institution for custodial or medical care, and no such tax shall be collected under this subsection on any cause of action that the proper clerk handling same deems to be in its very nature charitable and in which cause the clerk has not collected his own legal fees. . . .

(6) The board of supervisors of each county in which there are two (2) judicial districts, in its discretion, may maintain a law library in each judicial district. . . .

(8) Funds collected under this section may also be used for electronic and technological purposes related to the law library, including, but not limited to, computers, hardware, software, internet, online subscription services, legal research tools and electronic records.

Department of Archives & History Fee (Optional)

§ 25-60-5 Filing fee: $1.00

(1) Except as provided in subsection (2) of this section, any county or municipal official or employee who accepts documents for filing as public records shall, in addition to any other fee provided elsewhere by law, collect a fee of One Dollar ($1.00) for each document so filed. In municipalities and counties that collect Three Hundred Dollars ($300.00) or more per month from the filing fee, the official or employee collecting the fee shall, on or before the last day of each month, deposit the avails of Fifty Cents (50¢) of the fee into the general fund of the county or municipality, as appropriate, and remit the remainder to the State Treasurer who shall deposit it to the credit of a statewide local government records management fund which is hereby created in the State Treasury. In municipalities and counties that collect less than Three Hundred Dollars ($300.00) per month from the filing fee, the avails of Fifty Cents (50¢) of the fee shall be remitted to the State Treasurer on a quarterly basis for deposit as provided in the previous sentence. Any monies remaining in the fund at the end of a fiscal year

shall not lapse into the General Fund of the State Treasury. Counties and municipalities shall expend monies derived from the fee hereinabove imposed solely to support proper management of their official records in accordance with records management standards established by the Department of Archives and History. Monies in the Local Government Records Management Fund shall be expended by the Department of Archives and History, pursuant to legislative appropriation, to support the Local Government Records Office of the department and to support a local records management grant program as funds permit.

(2) The fee provided in subsection (1) of this section shall not be collected in any county until the board of supervisors, by resolution spread upon its minutes, determines that it will collect the fee.

(3) Each municipality and participating county may collect the filing fee provided for in this section on filings in any court subject to their respective jurisdiction.

County Crime Stoppers Surcharge (Optional)

§ 45-39-17 Surcharges:

In addition to any other monetary penalties and other penalties imposed by law, any county or municipality by ordinance may assess an additional surcharge in an amount not to exceed Two Dollars ($2.00) on each person upon whom a county, justice or municipal court imposes a fine or other penalty for any misdemeanor other than offenses relating to vehicular parking or registration if there is established to the benefit of the citizens of the county or municipality a local crime stoppers program which is not authorized to receive funds under local and private legislation. The proceeds from the surcharge may be used by a county or municipality only to fund that county's or municipality's support of the local crime stoppers program as authorized by Section 45-39-15, Mississippi Code of 1972. The proceeds from the surcharge imposed by this section shall be deposited into a special fund in the Department of Public Safety's Office of Public Safety Planning which shall promulgate rules and procedures relating to the administration of the special fund and the disbursement of monies in the fund to participating counties and municipalities. The maximum amount that a county or municipality may receive from the special fund shall be an amount equal to the deposits made into the fund by that entity, less one percent (1%) to be retained by the Office of Public Safety Planning to defray the costs of administering the special fund. Interest earned on the special fund shall remain in the fund and shall be used by the Office of Public Safety Planning to further defray the costs of administering the special fund.

Title 63 Surcharge (Optional)

§ 63-9-31 Surcharge for motor vehicle violations; disposition:

(1) In addition to any other monetary penalties and other penalties imposed by law, any county, municipality or the Pearl River Valley Water Supply District Patrol which participates in a wireless radio communications program approved by the applicable governing authorities may assess an additional surcharge in an amount not to exceed Ten Dollars ($10.00) on each person upon whom a court imposes a fine or other penalty for each violation of Title 63, Mississippi Code of 1972, except offenses relating to vehicular parking or registration. On all citations issued by Mississippi Highway Safety Patrol officers, a surcharge in the amount of Ten Dollars ($10.00) shall be collected by the court and deposited as provided in subsection (2) of this section. The proceeds from the surcharge on citations issued by county and municipal law enforcement officers or the Pearl River Valley Water Supply District Patrol may be used by a county or municipality only to fund that county's or municipality's or the Pearl River Valley Water Supply District Patrol's participation in the wireless radio communications program by funding public safety wireless communications systems and related computer and communications equipment. The proceeds from the surcharge on citations issued by Mississippi Highway Safety Patrol officers shall be used as provided in subsection (2) of this section. All proceeds from the surcharge imposed by this subsection shall be deposited into a special fund in the Department of Public Safety's Office of Public Safety Planning. The Office of Public Safety Planning shall promulgate rules and procedures relating to the administration of the special fund and the disbursement of monies in the fund to participating governmental entities. The maximum amount that a governmental entity may receive from the special fund shall be an amount equal to the deposits made into the fund by that entity, less one percent (1%) to be retained by the Office of Public Safety Planning to defray the costs of administering the special fund. Interest earned on the special fund shall remain in the fund and shall be used by the Office of Public Safety Planning to further defray the costs of administering the special fund.

(2) Deposits into the special fund resulting from citations issued by the Mississippi Highway Safety Patrol shall be utilized as follows: Fifty percent (50%) of the deposits into the special fund shall be used to automate the citations issued by Mississippi Highway Safety Patrol officers (including the transmittal of citations to the justice court, retrieval of the disposition from the justice court, and updating the driver's records) and fifty percent (50%) of the deposits into the special fund shall be used for the purpose of funding wireless communications and related computer equipment and computer software, subject to the approval of the Mississippi Department of Information Technology Services.

(3) Approval of a wireless radio communications program must be given by the applicable governing authorities when:

(a) The program includes the sharing of support facilities including, but not limited to, towers, shelters and microwave by participating entities; or

(b) The program includes the establishment of a mutual aid system using common radio frequency channels between participating entities; or

(c) The program sets forth a feasible methodology that utilizes the radio frequency spectrum in an efficient manner.

(4) Participating counties, municipalities, the Pearl River Valley Water Supply District Patrol and the Mississippi Highway Safety Patrol must provide notification of facilities available for interoperability to the Mississippi Department of Information Technology Services annually.

(5) Counties and municipalities and the Pearl River Valley Water Supply District Patrol participating in a wireless radio communications program and the Mississippi Highway Safety Patrol must comply with competitive bidding requirements prescribed in Section 31-7-13 and are encouraged to utilize an open architecture, nonproprietary system.

(6) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(7) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

Other Important Fee Statutes

§ 25-7-3 Supreme Court Clerk.

The Clerk of the Supreme Court shall charge the following fees:

(a) General docket fee, for filing the record on appeal in a civil or criminal case	$200.00
(b) Miscellaneous docket fee	$50.00

. . . .

§ 25-7-14 Public entities; payment of fees:

Neither the state, nor any county, city, town, or village, nor any state board, nor any state, county, city, town, or village officer, in his official character, may be required to prepay the cost of filing a document or an instrument with, or obtaining a copy of any filed document or instrument obtained from, the office of the chancery or circuit clerk. If the cost for filing a document or an instrument or obtaining a copy of a document or instrument is not paid at the time of filing or obtaining a copy of the document or instrument, then the clerk shall furnish an itemized statement and payment shall be paid in the same manner as other claims are paid by the governing body or official having authority to pay claims against the governing body.

§ 25-7-19 Sheriffs' fees:

(1) The sheriffs of the various counties of the State of Mississippi shall charge the following fees:

(a) A uniform total fee in all criminal and civil cases for the service of any process, summons, warrant, writ or other notice as may be required by law or the court, each	$45.00

. . . .

§ 25-34-9 Fee for services [Notarial officer]:

A notarial officer may charge a fee in an amount not to exceed Five Dollars ($5.00) for services rendered unless otherwise prohibited by law or by rules promulgated by the Secretary of State.

§ 25-7-45 Administration and certification of oaths:

For administering and certifying an oath or affidavit $ .25

§ 25-7-47 Witnesses:

Witnesses in the county, circuit, chancery and justice courts shall receive the same pay per day as is set by the board of supervisors under Section 25-7-61 for service as a juror plus mileage as authorized under Section 25-3-41 for each mile going to and returning from the courthouse to their homes by the nearest route, and such tolls and ferriages as they may actually be obliged to pay; but a charge shall not be made for mileage except that traveled in this state. Witnesses in all other cases shall receive the same compensation as they receive before the circuit court. . . .

CHAPTER 4

ADMINISTRATIVE OFFICE OF COURTS

CHAPTER 4

ADMINISTRATIVE OFFICE OF COURTS

Establishment of the AOC

§ 9-21-1 Establishment; purpose; definition of "court":

The Administrative Office of Courts is hereby created. The purpose of the Administrative Office of Courts shall be to assist in the efficient administration of the nonjudicial business of the courts of the state and in improving the administration of justice in Mississippi by performing the duties and exercising the powers as provided in this chapter.

As used in this chapter, unless the context clearly indicates otherwise, the term "court" means any tribunal recognized as a part of the judicial branch of government, but not including county boards of supervisors.

> In response, Sections 9-21-1, et. seq., creates the Administrative Office of Courts ("AOC"), one purpose of which is to assist in the efficient administration of the nonjudicial business of the courts of this state. **Re: Support Staff for Circuit Judges and Chancellors, Opinion No. 2004-0106 (Miss. A. G. Apr. 2, 2004).**

Duties of the AOC

§ 9-21-3 Duties:

(1) The Administrative Office of Courts shall be specifically charged with the duty of assisting the Chief Justice of the Supreme Court of Mississippi with his duties as the chief administrative officer of all courts of this state, including without limitation the task of insuring that the business of the courts of the state is attended with proper dispatch, that the dockets of such courts are not permitted to become congested and that trials and appeals of cases, civil and criminal, are not delayed unreasonably.

(2) The office shall also perform the following duties:

> (a) To work with the clerks of all youth courts and civil and criminal trial courts in the state to collect, obtain, compile, digest and publish information and statistics concerning the administration of justice in the state.
> (b) To serve as an agency to apply for and receive any grants or other

assistance and to coordinate and conduct studies and projects to improve the administration of justice by the courts of the state, and it may conduct such studies with or without the assistance of consultants.
(c) To supply such support to the Judicial Advisory Study Committee necessary to accomplish the purposes of this chapter, including without limitation, research and clerical assistance.
(d) To promulgate standards, rules and regulations for computer and/or electronic filing and storage of all court records and court-related records maintained throughout the state in courts and in offices of circuit and chancery clerks.
(e) It shall perform such other duties relating to the improvement of the administration of justice as may be assigned by the Supreme Court of Mississippi.

§ 9-23-11 Alcohol and drug intervention component; requirements; rules and special orders; appointment of employees; participation costs:

(1) The Administrative Office of Courts shall establish, implement and operate a uniform certification process for all intervention courts and other problem-solving courts including juvenile courts, veterans courts or any other court designed to adjudicate criminal actions involving an identified classification of criminal defendant to ensure funding for intervention courts supports effective and proven practices that reduce recidivism and substance dependency among their participants.

(2) The Administrative Office of Courts shall establish a certification process that ensures any new or existing intervention court meets minimum standards for intervention court operation.

(a) These standards shall include, but are not limited to:

(i) The use of evidence-based practices including, but not limited to, the use of a valid and reliable risk and needs assessment tool to identify participants and deliver appropriate interventions;
(ii) Targeting medium to high-risk offenders for participation;
(iii) The use of current, evidence-based interventions proven to reduce dependency on drugs or alcohol, or both;
(iv) Frequent testing for alcohol or drugs;
(v) Coordinated strategy between all intervention court program personnel involving the use of graduated clinical interventions;
(vi) Ongoing judicial interaction with each participant; and
(vii) Monitoring and evaluation of intervention court program implementation and outcomes through data collection and reporting.

(b) Intervention court certification applications shall include:

(i) A description of the need for the intervention court;
(ii) The targeted population for the intervention court;
(iii) The eligibility criteria for intervention court participants;
(iv) A description of the process for identifying appropriate participants including the use of a risk and needs assessment and a clinical assessment;
(v) A description of the intervention court intervention components, including anticipated budget and implementation plan;
(vi) The data collection plan which shall include collecting the following data:
1. Total number of participants;
2. Total number of successful participants;
3. Total number of unsuccessful participants and the reason why each participant did not complete the program;
4. Total number of participants who were arrested for a new criminal offense while in the intervention court program;
5. Total number of participants who were convicted of a new felony or misdemeanor offense while in the intervention court program;
6. Total number of participants who committed at least one (1) violation while in the intervention court program and the resulting sanction(s);
7. Results of the initial risk and needs assessment or other clinical assessment conducted on each participant; and
8. Total number of applications for screening by race, gender, offenses charged, indigence and, if not accepted, the reason for nonacceptance; and
9. Any other data or information as required by the Administrative Office of Courts.

(c) Every intervention court shall be certified under the following schedule:
(i) An intervention court application submitted after July 1, 2014, shall require certification of the intervention court based on the proposed drug court plan.
(ii) An intervention court initially established and certified after July 1, 2014, shall be recertified after its second year of funded operation on a time frame consistent with the other certified courts of its type.
(iii) A certified adult felony intervention court in existence on December 31, 2018, must submit a recertification petition by July 1, 2019, and be recertified under the requirements of this section on or before December 31, 2019; after the recertification, all certified adult felony intervention courts must submit a

recertification petition every two (2) years to the Administrative Office of Courts. The recertification process must be completed by December 31st of every odd calendar year.

(iv) A certified youth, family, misdemeanor or chancery intervention court in existence on December 31, 2018, must submit a recertification petition by July 31, 2020, and be recertified under the requirements of this section by December 31, 2020. After the recertification, all certified youth, family, misdemeanor and chancery intervention courts must submit a recertification petition every two (2) years to the Administrative Office of Courts. The recertification process must be completed by December 31st of every even calendar year.

(3) All certified intervention courts shall measure successful completion of the drug court based on those participants who complete the program without a new criminal conviction.

(4) (a) All certified drug courts must collect and submit to the Administrative Office of Courts each month, the following data:

(i) Total number of participants at the beginning of the month;

(ii) Total number of participants at the end of the month;

(iii) Total number of participants who began the program in the month;

(iv) Total number of participants who successfully completed the intervention court in the month;

(v) Total number of participants who left the program in the month;

(vi) Total number of participants who were arrested for a new criminal offense while in the intervention court program in the month;

(vii) Total number of participants who were convicted for a new criminal arrest while in the intervention court program in the month; and

(viii) Total number of participants who committed at least one (1) violation while in the intervention court program and any resulting sanction(s).

(b) By August 1, 2015, and each year thereafter, the Administrative Office of Courts shall report to the PEER Committee the information in subsection (4)(a) of this section in a sortable, electronic format.

(5) All certified intervention courts may individually establish rules and may make special orders and rules as necessary that do not conflict with the rules promulgated by the Supreme Court or the Administrative Office of Courts.

(6) A certified intervention court may appoint the full- or part-time employees it deems necessary for the work of the intervention court and shall fix the compensation of those employees. Such employees shall serve at the will and pleasure of the judge or the judge's designee.

(7) The Administrative Office of Courts shall promulgate rules and regulations to carry out the certification and re-certification process and make any other policies not inconsistent with this section to carry out this process.

(8) A certified intervention court established under this chapter is subject to the regulatory powers of the Administrative Office of Courts as set forth in Section 9-23-17.

Authority of the AOC

§ 9-21-17 Authority to use court services:

The Administrative Director of Courts and the Supreme Court are authorized to use the services of any member of the judiciary of any court and any court-supportive personnel, including, without limitation, court reporters, clerks, bailiffs, law clerks, court administrators, secretaries and employees in clerks' offices to carry out studies, projects and functions designed to improve or effect the efficient administration of justice and the operation of courts.

§ 9-21-19 Compliance with requests for information:

All judges, clerks of court, and other officers or employees of the courts and of offices related to and serving the courts shall comply with all requests made by the Administrative Director for information and statistical data relative to the work of the courts and of such offices and relative to the expenditure of public monies for their maintenance and operation.

Reporting Requirements to the AOC

Circuit, Justice, & Municipal Court Clerks

§ 9-1-46 Semiannual reports to Administration Office of Courts:

(1) Semiannually, the circuit clerks of each county, the municipal court clerks of each municipality, and the justice court clerks of each county shall report to the Administrative Office of Courts the following information:

(a) Individual misdemeanor and felony case records by offense, from the

circuit clerk for all circuit and county court criminal proceedings, and from the municipal and justice court clerks for all misdemeanors, electronically when available, containing the date on which the criminal charges were filed, charge code and name of indicted offenses, count number of indicted offenses, whether counsel was appointed, the disposition of the charges, date disposed, date sentenced, charge code and name of sentenced offenses, and sentence length.
(b) Data should be kept individually by case number and misdemeanor charges or indicted felony offense, and include, for criminal docket purposes, demographic information necessary for tracking individuals across multiple databases should be collected, including date of birth, city and state of residence, race, and gender.

(2) The Administrative Office of Courts shall be empowered to establish a uniform reporting format for all court clerks described in subsection (1) of this section. Such reporting format shall emphasize the need for reporting information in a sortable, electronic format. All clerks who submit required information in other formats shall report to the Administrative Office of Courts a schedule for conversion to technology to enable the reporting of all required data in a sortable, electronic format.

(3) Semiannual reports shall be made to the Administrative Office of Courts by December 31, 2014, or as soon thereafter as practicable, and every year thereafter, and on June 30, 2015, or as soon thereafter as practicable, and every year thereafter. On August 1, 2015, and each year thereafter, the Administrative Office of Courts shall provide to PEER and the Office of State Public Defender sortable, electronic copies of all reports required by this section.

(4) The Administrative Office of Courts shall share the information required under this section with the Oversight Task Force.

Certification of Compliance

§ 9-7-122 Qualifications; training and education:

(9) By August 1, 2015, and each year thereafter, the Administrative Office of Courts shall certify to the Mississippi Judicial College the names of all circuit clerks who have failed to provide the information required by Section 9-1-46. The judicial college shall not issue a certificate of continuing education required by subsection (2) of this section to any such clerk, and shall report to the State Auditor, and the board of supervisors of the county the clerk is elected from that the clerk shall not be entitled to receive the compensation set out in subsection (5) of this section. A clerk may be certified after coming into compliance with the

requirements of Section 9-1-46.

§ 9-11-27 Clerk appointment; designation of powers; training:

(2) By August 1, 2015, and each year thereafter, the Administrative Office of Courts shall report the names of all justice court clerks who have failed to comply with the reporting requirements of Section 9-1-46 to the boards of supervisors that selected them. Each clerk shall be given three (3) months from the date on which the board was given notice to come into compliance with the requirements of Section 9-1-46. The Administrative Office of Courts shall notify the board of supervisors of any justice court clerk who fails to come into compliance after the three-month notice required in this subsection. Any noncompliant clerks shall be terminated for failure to comply with Section 9-1-46 reporting requirement.

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

(4) After August 1, 2015, and each year thereafter, the Administrative Office of Courts shall notify the judicial college of the name of any municipal court clerk who has not complied with the requirements of Section 9-1-46. The Mississippi Judicial College shall not provide such clerk with a certificate of completion of course work until such time that the Administrative Office of Courts has reported that the clerk is in compliance with the requirements of Section 9-1-46. Further, the Administrative Office of Courts shall report the names of all noncompliant clerks to the State Auditor and to the mayor of the municipality that employs the clerk.

Chancery Court Clerks

§ 9-5-91 Duties of chancery clerk in chancery cases in which guardian ad litem is appointed by court:

(1) In a chancery case in which a guardian ad litem is appointed by the court, it is the duty of the chancery clerk to prepare and forward to the Administrative Office of Courts the information described by subsection (2) of this section not later than the last day of the month following the entry of an order approving any payment to the guardian ad litem.

(2) The clerk shall prepare and forward the following information when filed in a contested case where the guardian ad litem fees exceed One Thousand Dollars ($1,000.00):

(a) A copy of any invoice for guardian ad litem fees;
(b) A copy of any order directing payment of guardian ad litem fees; and
(c) A copy of any petition seeking recovery of guardian ad litem fees, as

well as any orders concerning payment of guardian ad litem fees, including, but not limited to, orders of contempt.

(3) If an order previously reported under subsection (1) of this section is amended by order of the court, the clerk shall forward the subsequent court order not later than the last day of the month following the entry of the amended order.

(4) The duty of a clerk to prepare and forward information under this section is not affected by:

(a) Any subsequent appeal of the court order;
(b) Any subsequent modification of the court order; or
(c) The expiration of the court order.

(5) This section does not apply to youth court matters.

Statistical Data Reporting

Supreme Court Order (October 25, 2000):

Pursuant to its statutory duty . . . . the Administrative Office of Courts (AOC) developed a procedure for collection of data on civil matters filed in the Circuit, Chancery, and County Courts of this state. . . .

This Court now finds that the Administrative Office of Courts . . . has found it necessary and desirable to amend its Form AOC/01 to accomplish its goals of uniform data collection. The Court approves the newly amended . . . and directs that the AOC provide samples of the amended form, Form AOC/01 to the clerks of the Circuit, Chancery, and County Courts.

IT IS THEREFORE ORDERED, that, from and after January 1, 2001, the clerks of the Circuit, Chancery, and County Courts shall require that any party or his representative file a completed and signed Form AOC/01, a copy of which together with explanation is attached to this order as Exhibit "A", with the initiation, re-opening, reinstatement, or other commencement of legal action in a civil matter. The clerks shall also require a new Form AOC/01 upon grant of a new trial. It is further ordered that the AOC shall not provide forms for the filing but shall make available such samples of the amended form as it deems necessary for the printing, production or reproduction of the amended form.

***See* Civil Case Disposition Form - Circuit**
***See* Civil Case Disposition Form - Chancery**
***See* Civil Case Disposition Form - County**
***See* Criminal Case Disposition Form - Circuit**

Electronic Storage of Court Records

§ 9-21-51 Study of storage of court and court-related records; promulgation of rules and regulations for electronic filing and storage of court records:

(1) The Supreme Court through the Administrative Office of Courts shall conduct a study to determine the progress of the implementation of Chapter 458, Laws of 1994 and Chapter 521, Laws of 1994. In conducting such study, the Administrative Office of Courts shall examine the various court systems and county offices in the state as defined in Section 9-1-51 to determine the types of computer software and hardware being used by courts and county offices which have elected to store records electronically. The Administrative Office of Courts, after consultation with designees of the Mississippi Association of Supervisors, the Mississippi Circuit Clerks' Association, the Mississippi Association of Chancery Clerks, the Mississippi Municipal Association, The Mississippi Bar, the Department of Archives and History and such other interested entities as the Administrative Office of Courts may identify, shall promulgate standards, rules and regulations for computer and/or electronic filing and storage of all court records and court-related records maintained throughout the state in courts and in county offices. The standards, rules and regulations required by this subsection shall be completed by the Administrative Office of Courts and adopted by the Supreme Court on or before July 1, 1998.

(2) Concurrently with the study mandated in subsection (1) of this section, the Administrative Office of Courts shall consult with designees of the Mississippi Association of Supervisors, the Mississippi Circuit Clerks' Association, the Mississippi Association of Chancery Clerks, the Assessors/Collectors Association, the Mississippi Municipal Association, the Mississippi State Tax Commission, The Mississippi Bar, the Department of Archives and History and such other interested entities as the Administrative Office of Courts may identify for the purpose of jointly considering and jointly proposing to the Legislature recommendations relating to the electronic filing and storage of all noncourt records maintained throughout the state in county offices as defined in Section 9-1-51. The Administrative Office of Courts shall report to the Legislature not later than January 1, 1998, a summary report of the types of computer software and hardware being used by courts and county offices which have elected to store records electronically, the rules promulgated pursuant to subsection (1) of this section, as well as the recommendations of the group as to the standards, rules and regulations for computer and/or electronic filing and storage of all noncourt records maintained throughout the state in county offices.

(3) All courts and county offices electing to store court records and court-related records electronically shall comply with the standards, rules and regulations

promulgated by the Administrative Office of Courts and adopted by the Mississippi Supreme Court. Any courts or county offices which currently store court records and court-related records electronically or which elect to store such records electronically before January 1, 1998, must bring such systems into compliance with the standards, rules and regulations no later than January 1, 1999.

The Administrative Office of Courts shall assist any court or county office currently storing court records or court-related records electronically or electing to store such records before July 1, 1999, in order to assure compliance with the standards, rules and regulations to be promulgated.

Comprehensive Electronic Court Systems Fund

§ 9-21-14 Comprehensive Electronic Court Systems Fund:

(1) There is created in the State Treasury a special fund to be known as the Comprehensive Electronic Court Systems Fund. The purpose of the fund shall be to provide funding for the development, implementation and maintenance of a comprehensive case management and electronic filing system, one of the purposes of which will be to provide duplicate dockets and case files at remote sites. The system will be designed to:

(a) Provide a framework for the seamless, transparent exchange of data among courts and with appropriate law enforcement, children's services and public welfare agencies.
(b) Allow judges and prosecutors to determine whether there are holds or warrants from other jurisdictions for defendants prior to release on bail or otherwise.
(c) Assist related agencies in tracking the court activity of individuals in all participating jurisdictions.
(d) Assist child protection and human services agencies to determine the status of children and caregivers in the participating jurisdictions.
(e) Duplicate and preserve court documents at remote sites so that they may be protected against catastrophic loss.
(f) Improve the ability of the Administrative Office of Courts and the state courts to handle efficiently monies flowing through the courts and to collect delinquent fees, fines and costs.
(g) Enable the state courts and clerks to generate management reports and analysis tools, allowing them to constantly track individual cases and the overall caseload.
(h) Provide a uniform system for docketing and tracking cases and to automatically generate status reports.
(i) Enable the Administrative Office of Courts to acquire statistical data

promptly and efficiently.
(j) Make trial court and individual case dockets available to the public online through use of the Internet.

(2) Monies from the fund shall be distributed by the State Treasurer upon warrants issued by the Administrative Office of Courts.

(3) The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

(a) Monies appropriated by the Legislature for the purposes of funding the comprehensive case management and electronic filing system;
(b) The interest accruing to the fund;
(c) Monies received from the federal government;
(d) Donations; and
(e) Monies received from such other sources as may be provided by law.

(4) The Supreme Court may utilize and fund as a pilot program any case management and electronic filing system of the Three Rivers Planning and Development District or that of any county or vendor that complies with the data and case management and electronic filing policy standards adopted by the Supreme Court. No statewide comprehensive case management and electronic system shall be implemented by the Mississippi Supreme Court unless such system is approved by the Legislature.

Electronic Filing and Storage of Court Documents

§ 9-1-51 Definitions:

For purposes of Sections 9-1-51 through 9-1-57, the following terms shall have the meanings ascribed herein unless the context shall otherwise require:

(a) "Court" shall mean the Supreme Court, Court of Appeals, circuit courts, chancery courts, county courts, youth courts, family courts, justice courts and the municipal courts of this state.

(b) "Clerk" shall mean the clerks of any court.

(c) "Judge" shall mean the senior judge of any court.

(d) "County office" shall mean the office of the circuit clerk, chancery clerk, tax assessor and tax collector of every county of this state.

(e) "Documents," "court records," or "court-related records" shall mean and include, but not be limited to, all contents in the file or record of any case or matter docketed by the court, administrative orders, court minutes, court dockets and ledgers, and other documents, instruments or papers required by law to be filed with the court.

(f) "Electronic filing of documents" shall mean the transmission of data to a clerk of any court or state agency by the communication of information which is originally displayed in written form and thereafter converted to digital electronic signals, transformed by computer and stored by the clerk or state agency either on microfilm, magnetic tape, optical discs or any other medium.

(g) "Electronic storage of documents" shall mean the storage, retention and reproduction of documents using microfilm, microfiche, data processing, computers or other electronic process which correctly and legibly stores and reproduces or which forms a medium for storage, copying or reproducing documents.

(h) "Filing system" or "storage system" shall mean the system used by a court or county office for the electronic filing or storage of documents.

§ 9-1-53 Electronic filing and storage of court documents:

Courts and county offices are hereby authorized but not required to institute procedures for the electronic filing and electronic storage of court documents to further the efficient administration and operation of the courts. Electronically filed or stored documents may be kept in lieu of any paper documents. Courts governed by rules promulgated by the Mississippi Supreme Court that institute electronic filing and electronic storage of court documents and offices of circuit and chancery clerks that institute electronic filing and electronic storage of court documents shall do so in conformity with such rules and regulations prescribed by the Administrative Office of Courts and adopted by the Mississippi Supreme Court concerning court records or court-related records. The provisions of Sections 9-1-51 through 9-1-57 shall not be construed to amend or repeal any other provision of existing state law which requires or provides for the maintenance of official written documents, records, dockets, books, ledgers or proceedings by a court or clerk of court in those courts which do not elect to exercise the discretion granted by this section. It is hereby declared to be the intent of the Legislature that official written documents, records, dockets, books, ledgers or proceedings may be filed, stored, maintained, reproduced and recorded in the manner authorized by Sections 9-1-51 through 9-1-57 or as otherwise provided by law, in the discretion of the clerk.

§ 9-1-57 Electronic storage system plan:

A plan for the storage system shall require, but not be limited to, the following:

(a) All original documents shall be recorded and released into the system within a specified minimum time period after presentation to the clerk;
(b) Original paper records may be used during the pendency of any legal proceeding;

(c) The plan shall include setting standards for organizing, identifying, coding and indexing so that the image produced during the duplicating process can be certified as a true and correct copy of the original and may be retrieved rapidly;

(d) All materials used in the duplicating process which correctly and legibly reproduces or which forms a medium of copying or reproducing all public records, as herein authorized, and all processes of development, fixation and washing of said photographic duplicates shall be of a quality approved for permanent photographic records by the United States Bureau of Standards;

(e) The plan shall provide for retention of the court records consistent with other law and in conformity with rules and regulations prescribed by the Administrative Office of Courts and adopted by the Mississippi Supreme Court and shall provide security provisions to guard against physical loss, alterations and deterioration; and

(f) All transcripts, exemplifications, copies or reproductions on paper or on film of an image or images of any microfilmed or otherwise duplicated record shall be deemed to be certified copies of the original for all purposes.

Mississippi Electronic Courts (MEC)

***See* http://courts.ms.gov/mec/mec.html**

Use of Interpreters in All Courts

§ 9-21-71 Definitions:

The following words and phrases shall have the meanings ascribed to them unless the context clearly requires otherwise:

(a) "Non-English speaker" means any party or witness who cannot readily understand or communicate in spoken English and who consequently cannot equally participate in or benefit from the proceedings unless an interpreter is available to assist the individual. The fact that a person for whom English is a second language knows some English does not prohibit that individual from being allowed to have an interpreter.

(b) "Interpreter" means any person authorized by a court and competent to translate or interpret oral or written communication in a foreign language during court proceedings.

(c) "Court proceedings" means a proceeding before any court of this state or a grand jury hearing.

§ 9-21-73 Program established:

(1) The Director of the Administrative Office of Courts shall establish a program to facilitate the use of interpreters in all courts of the State of Mississippi.

(2) (a) The Administrative Office of Courts shall prescribe the qualifications of and certify persons who may serve as certified interpreters in all courts of the State of Mississippi in bilingual proceedings. The Director of the Administrative Office of Courts may set and charge a reasonable fee for certification.
(b) The director shall maintain a current master list of all certified interpreters and shall report annually to the Supreme Court on the frequency of requests for and the use and effectiveness of the interpreters.

(3) In all state court bilingual proceedings, the presiding judicial officer, with the assistance of the director, shall utilize the services of a certified interpreter to communicate verbatim all spoken or written words when the necessity therefor has been determined pursuant to Section 9-21-79.

(4) All state courts shall maintain on file in the office of the clerk of the court a list of all persons who have been certified as interpreters in accordance with the certification program established pursuant to this section.

§ 9-21-75 Compensation:

The court may appoint either an interpreter who is paid or a volunteer interpreter.

§ 9-21-77 Oath, confidentiality and public comment:

(1) Prior to providing any service to a non-English speaking person, the interpreter shall subscribe to an oath that he or she shall interpret all communications in an accurate manner to the best of his or her skill and knowledge.

(2) The oath shall conform substantially to the following form:

INTERPRETER'S OATH

> Do you solemnly swear or affirm that you will faithfully interpret from _____(state the language) into English and from English into _____(state the language) the proceedings before this court in an accurate manner to the best of your skill and knowledge?

(3) Interpreters shall not voluntarily disclose any admission or communication that is declared to be confidential or privileged under state law. Out-of-court disclosures made by a non-English speaker communicating through an interpreter shall be treated by the interpreter as confidential or privileged or both unless the court orders the interpreter to disclose such communications or the non-English speaker waives such confidentiality or privilege.

(4) Interpreters shall not publicly discuss, report or offer an opinion concerning a matter in which they are engaged, even when that information is not privileged or required by law to be confidential.

(5) The presence of an interpreter shall not affect the privileged nature of any discussion.

§ 9-21-79 Determination of need for an interpreter:

(1) An interpreter is needed and a court interpreter shall be appointed when the judge determines, after an examination of a party or witness, that:

> (a) the party cannot understand and speak English well enough to participate fully in the proceedings and to assist counsel; or
> (b) the witness cannot speak English so as to be understood directly by counsel, court and jury.

(2) The court should examine a party or witness on the record to determine whether an interpreter is needed if:

(a) A party or counsel requests such an examination;
(b) It appears to the court that the party or witness may not understand and speak English well enough to participate fully in the proceedings; or
(c) If the party or witness requests an interpreter.

§ 9-21-81 Interpreter's fees and expenses:

(1) Any volunteer interpreter providing services under this act shall be paid reasonable expenses by the court.

(2) The expenses of providing an interpreter in any court proceeding may be assessed by the court as costs in the proceeding, or in the case of an indigent criminal defendant to be paid by the county.

Court Interpreter Credentialing Program

***See* https://courts.ms.gov/aoc/courtinterpreter/courtinterpreter.php**

ADMINISTRATIVE OFFICE OF COURTS

FORMS

ARE AVAILABLE

ON THE

ADMINISTRATIVE OFFICE OF COURTS

WEB SITE AT:

https://courts.ms.gov/statistics/statistics.php

https://courts.ms.gov/aoc/forms/personnelinfo.php

CHAPTER 5

PUBLIC ACCESS TO PUBLIC RECORDS

CHARTS

CHAPTER 5

PUBLIC ACCESS TO PUBLIC RECORDS

Public Policy

§ 25-61-1 Short title:

This chapter shall be known and may be cited as the "Mississippi Public Records Act of 1983." It is the policy of the Legislature that public records must be available for inspection by any person unless otherwise provided by this act. Furthermore, providing access to public records is a duty of each public body and automation of public records must not erode the right of access to those records. As each agency increases its use of and dependence on electronic record keeping, each agency must ensure reasonable access to records electronically maintained, subject to the rules of records retention.

> Court filings are considered to be public records, unless otherwise exempted by statute. ***Estate of Cole v. Ferrell*, 163 So. 3d 921, 925 (Miss. 2012) (citations omitted).**

§ 25-61-2 Policy:

It is the policy of this state that public records shall be available for inspection by any person unless otherwise provided by this chapter; furthermore, providing access to public records is a duty of each public body and automation of public records must not erode the right of access to those records. As each public body increases its use of, and dependence on, electronic record keeping, each public body must ensure reasonable access to records electronically maintained, subject to records retention.

§ 25-61-17 Construction:

Nothing in this chapter shall be construed as denying the legislature the right to determine the rules of its own proceedings and to regulate public access to its records. However, notwithstanding the provisions of this section, the Legislature shall be subject to the provisions of Sections 27-104-151 through 27-104-159.

Definitions

§ 25-61-3 Definitions:

The following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Public body" shall mean any department, bureau, division, council, commission, committee, subcommittee, board, agency and any other entity of the state or a political subdivision thereof, and any municipal corporation and any other entity created by the Constitution or by law, executive order, ordinance or resolution. . . . Within the meaning of this chapter, the term "entity" shall not be construed to include individuals employed by a public body or any appointed or elected public official.

(b) "Public records" shall mean all books, records, papers, accounts, letters, maps, photographs, films, cards, tapes, recordings or reproductions thereof, and any other documentary materials, regardless of physical form or characteristics, having been used, being in use, or prepared, possessed or retained for use in the conduct, transaction or performance of any business, transaction, work, duty or function of any public body, or required to be maintained by any public body. . . .

(c) "Data processing software" means the programs and routines used to employ and control the capabilities of data processing hardware, including, but not limited to, operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications and computer networking programs.

(d) "Proprietary software" means data processing software that is obtained under a licensing agreement and is protected by copyright or trade secret laws.

(e) "Incident report" means a narrative description, if such narrative description exists and if such narrative description does not contain investigative information, of an alleged offense, and at a minimum shall include the name and identification of each person charged with and arrested for the alleged offense, the time, date and location of the alleged offense, and the property involved, to the extent this information is known.

(f) "Investigative report" means records of a law enforcement agency containing information beyond the scope of the matters contained in an incident report, and generally will include, but not be limited to, the following matters if beyond the scope of the matters contained in an incident report:

> (i) Records that are compiled in the process of detecting and investigating any unlawful activity or alleged unlawful activity, the disclosure of which would harm the investigation which may include crime scene reports and demonstrative evidence;

(ii) Records that would reveal the identity of informants and/or witnesses;
(iii) Records that would prematurely release information that would impede the public body's enforcement, investigative or detection efforts;
(iv) Records that would disclose investigatory techniques and/or results of investigative techniques;
(v) Records that would deprive a person of a right to a fair trial or an impartial adjudication;
(vi) Records that would endanger the life or safety of a public official or law enforcement personnel, or confidential informants or witnesses;
(vii) Records pertaining to quality control or PEER review activities; or
(viii) Records that would impede or jeopardize a prosecutor's ability to prosecute the alleged offense.

(g) "Law enforcement agency" means a public body that performs as one of its principal functions activities pertaining to the enforcement of criminal laws, the apprehension and investigation of criminal offenders, or the investigation of criminal activities.

Procedure

§ 25-61-5 Public access to records; denials:

(1)(a) Except as otherwise provided by Sections 25-61-9, 25-61-11 and 25-61-11.2, all public records are hereby declared to be public property, and any person shall have the right to inspect, copy or mechanically reproduce or obtain a reproduction of any public record of a public body in accordance with reasonable written procedures adopted by the public body concerning the cost, time, place and method of access, and public notice of the procedures shall be given by the public body, or, if a public body has not adopted written procedures, the right to inspect, copy or mechanically reproduce or obtain a reproduction of a public record of the public body shall be provided within one (1) working day after a written request for a public record is made. No public body shall adopt procedures which will authorize the public body to produce or deny production of a public record later than seven (7) working days from the date of the receipt of the request for the production of the record.
(b) If a public body is unable to produce a public record by the seventh working day after the request is made, the public body must provide a written explanation to the person making the request stating that the record requested will be produced and specifying with particularity why the records cannot be produced within the

seven-day period. Unless there is mutual agreement of the parties, or the information requested is part of ongoing negotiations related to a request for competitive sealed proposals, in no event shall the date for the public body's production of the requested records be any later than fourteen (14) working days from the receipt by the public body of the original request. Production of competitive sealed proposals in accordance with requests made pursuant to this section shall be no later than seven (7) working days after the notice of intent to award is issued to the winning proposer. Persons making a request for production of competitive sealed proposals after the notice of intent to award is issued by the public body shall have a reasonable amount of time, but in no event less than seven (7) working days after the production of the competitive sealed proposals, to protest the procurement or intended award prior to contract execution. However, in any instance where a person has filed for a protective order for a competitive sealed proposal and the court has not ruled on the protective order within ninety (90) days of filing, then the public body may proceed with awarding the contract without production of competitive sealed proposals and the contract may be protested after execution.

> Mississippi Code Annotated section 25-61-5(1)(a) of the Mississippi Public Records Act requires that a person make a request to a public agency in order to obtain public records. "[I]f a public body has not adopted written procedures [concerning requests for public records], the right to inspect, copy or mechanically reproduce or obtain a reproduction of a public record of the public body shall be provided within one (1) working day after a written request for a public record is made." ***Scruggs v. Board of Super's of Alcorn County Commissioners*, 85 So. 3d 325, 327-28 (Miss. Ct. App. 2012) (citations omitted).**

(2) If any public record contains material which is not exempted under this chapter, the public agency shall redact the exempted material and make the nonexempted material available for examination. Such public agency shall be entitled to charge a reasonable fee for the redaction of any exempted material, not to exceed the agency's actual cost.
(3) Denial by a public body of a request for access to or copies of public records under this chapter shall be in writing and shall contain a statement of the specific exemption relied upon by the public body for the denial. Each public body shall maintain a file of all denials of requests for public records. Public bodies shall be required to preserve such denials on file for not less than three (3) years from the date such denials are made. This file shall be made available for inspection or copying, or both, during regular office hours to any person upon written request.
(4) This section shall stand repealed on July 1, 2024.

§ 25-61-9 Records furnished by third parties:

(1) Records furnished to public bodies by third parties which contain trade secrets or confidential commercial or financial information shall not be subject to inspection, examination, copying or reproduction under this chapter until notice to third parties has been given, but the records shall be released no later than twenty-one (21) days from the date the third parties are given notice by the public body unless the third parties have filed in chancery court a petition seeking a protective order on or before the expiration of the twenty-one-day time period. Any party seeking the protective order shall give notice to the party requesting the information in accordance with the Mississippi Rules of Civil Procedure.

(2) If any public record which is held to be exempt from disclosure pursuant to this chapter contains material which is not exempt pursuant to this chapter, the public body shall separate the exempt material and make the nonexempt material available for examination or copying, or both, as provided for in this chapter.

(3) Trade secrets and confidential commercial and financial information of a proprietary nature developed by a college, university or public hospital under contract with a firm, business, partnership, association, corporation, individual or other like entity shall not be subject to inspection, examination, copying or reproduction under this chapter.

(4) Misappropriation of a trade secret shall be governed by the provisions of the Mississippi Uniform Trade Secrets Act, Sections 75-26-1 through 75-26-19.

(5) A waste minimization plan and any updates developed by generators and facility operators under the Mississippi Comprehensive Multimedia Waste Minimization Act of 1990 shall be retained at the facility and shall not be subject to inspection, examination, copying or reproduction under this chapter.

(6) Data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in Section 75-26-3, and data processing software produced by a public body which is sensitive must not be subject to inspection, copying or reproduction under this chapter.

> As used in this subsection, “sensitive” means only those portions of data processing software, including the specifications and documentation, used to:

(a) Collect, process, store, and retrieve information which is exempt under this chapter.

(b) Control and direct access authorizations and security measures for automated systems.

(c) Collect, process, store, and retrieve information, disclosure of which would require a significant intrusion into the business of the public body.

(7) For all procurement contracts awarded by state agencies, the provisions of the contract which contain the commodities purchased or the personal or professional services provided, the unit prices contained within the procurement contracts, the overall price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information under this section, and shall be available for examination, copying or reproduction as provided for in this chapter. . . .

§ 25-61-10 Use of sensitive software:

(1) Except as otherwise provided in Section 25-61-11.2, any public body that uses sensitive software, as defined in Section 25-61-9, or proprietary software must not thereby diminish the right of the public to inspect and copy a public record. A public body that uses sensitive software, as defined in Section 25-61-9, or proprietary software to store, manipulate, or retrieve a public record will not be deemed to have diminished the right of the public if it either:

(a) If legally obtainable, makes a copy of the software available to the public for application to the public records stored, manipulated, or retrieved by the software; or

(b) ensures that the software has the capacity to create an electronic copy of each public record stored, manipulated, or retrieved by the software in some common format such as, but not limited to, the American Standard Code for Information Interchange.

(2) A public body shall provide a copy of the record in the format requested if the public body maintains the record in that format, and the public body may charge a fee which must be in accordance with Section 25-61-7.

(3) Before a public body acquires or makes a major modification to any information technology system, equipment, or software used to store, retrieve, or manipulate a public record, the public body shall adequately plan for the provision of public access and redaction of exempt or confidential information by the

proposed system, equipment or software.

(4) A public body may not enter into a contract for the creation or maintenance of a public records data base if that contract impairs the ability of the public to inspect or copy the public records of that agency, including public records that are on-line or stored in an information technology system used by the public body.

> The court clerk is responsible for following the Public Records Act which is codified at § 25-61-1 et. seq. [H]owever, there is nothing that requires the clerk to allow the public access to the court's computers so long as the public information that is on the computer can be furnished to a requestor. **Re: Justice Court Procedures, Opinion No. 2000-0486 (Miss. A. G. Aug. 28, 2000).**

Fees

§ 25-61-7 Fees incident to providing records:

(1) Except as provided in subsection (2) of this section, each public body may establish and collect fees reasonably calculated to reimburse it for, and in no case to exceed, the actual cost of searching, reviewing and/or duplicating and, if applicable, mailing copies of public records. Any staff time or contractual services included in actual cost shall be at the pay scale of the lowest level employee or contractor competent to respond to the request. Such fees shall be collected by the public body in advance of complying with the request.

> The MPRA provides for an advance payment of fees and costs associated with the review, search, duplication and mailing of public records. Assuming that a reasonable estimation has been done in this respect and demand is made for the advance payment thereof, in the event that after the work has been performed by the Town in complying with the request, the estimate proves to have been too low, is the Town permitted to require the additional payment of such fees, costs and expenses prior to the release of such information? Provided the costs and expenses are calculated pursuant to a lawfully enacted policy designed to capture the "actual cost of searching, reviewing and/or duplicating and, if applicable, mailing copies of public records," as provided by Section 25-61-7, the fact that the initial estimate was lower than the actual amount necessary to cover the "actual costs" of producing the public record(s) would not preclude a public body from collecting that additional amount. **Re: Open Records, Opinion No. 2006-00291 (Miss. A.G. July 10, 2006).**

> [A]ny compensation received by circuit clerks for services rendered that are not statutorily required would be exempt from the salary limitations as set forth in Section 9-1-43. In response to your specific inquiries, a search of the criminal records for felony convictions would be exempt. Please note that criminal records for felony convictions would be considered public records and as such are subject to the Public Records Act. The Public Records Act only allows for the collection of fees that do not exceed the actual cost of searching such records, so such fees would be exempt. **Re: Circuit Clerk Fees, Opinion No. 96-0003 (Miss. A. G. Feb. 7, 1996).**

(2) A public body may establish a standard fee scale to reimburse it for the costs of creating, acquiring and maintaining a geographic information system or multipurpose cadastre as authorized and defined under Section 25-61-1 et seq., or any other electronically accessible data. Such fees must be reasonably related to

the costs of creating, acquiring and maintaining the geographic information system, multipurpose cadastre or other electronically accessible data, for the data or information contained therein or taken therefrom and for any records, papers, accounts, maps, photographs, films, cards, tapes, recordings or other materials, data or information relating thereto, whether in printed, digital or other format. In determining the fees or charges under this subsection, the public body may consider the type of information requested, the purpose or purposes for which the information has been requested and the commercial value of the information.

Remedy for Denial of Request

§ 25-61-13 Proceedings to compel public access:

The Mississippi Ethics Commission shall have the authority to enforce the provisions of this chapter upon a complaint filed by any person denied the right granted under Section 25-61-5 to inspect or copy public records. Upon receiving a complaint, the commission shall forward a copy of the complaint to the head of the public body involved. The public body shall have fourteen (14) days from receipt of the complaint to file a response with the commission. After receiving the response to the complaint or, if no response is received after fourteen (14) days, the commission, in its discretion, may dismiss the complaint or proceed by setting a hearing in accordance with rules and regulations promulgated by the Ethics Commission. The Ethics Commission may order the public body and any individual employees or officials of the public body to produce records or take other reasonable measures necessary, if any, to comply with this chapter. The Ethics Commission may also impose penalties as authorized in this chapter. The Ethics Commission may order a public body to produce records for private review by the commission, its staff or designee. The Ethics Commission shall complete its private review of the records within thirty (30) days after receipt of the records from the public body. Records produced to the commission for private review shall remain exempt from disclosure under this chapter while in the custody of the commission.

Nothing in this chapter shall be construed to prohibit the Ethics Commission from mediating or otherwise resolving disputes arising under this chapter, from issuing an order based on a complaint and response where no facts are in dispute, or from entering orders agreed to by the parties. In carrying out its responsibilities under this section, the Ethics Commission shall have all the powers and authority granted to it in Title 25, Chapter 4, Mississippi Code of 1972, including the authority to promulgate rules and regulations in furtherance of this chapter.

Any party may petition the chancery court of the county in which the public body is located to enforce or appeal any order of the Ethics Commission issued

pursuant to this chapter. In any such appeal the chancery court shall conduct a de novo review. Nothing in this chapter shall be construed to prohibit any party from filing a complaint in any chancery court having jurisdiction, nor shall a party be obligated to exhaust administrative remedies before filing a complaint. However, any party filing such a complaint in chancery court shall serve written notice upon the Ethics Commission at the time of filing the complaint. The written notice is for information only and does not make the Ethics Commission a party to the case.

> What emerges from the cases are the following principles:
>
> > (1) there is to be a liberal construction of the general disclosure provisions of a public records act, whereas a standard of strict construction is to be applied to the exceptions to disclosure; [and]
> > (2) any doubt concerning disclosure should be resolved in favor of disclosure; . . . .
>
> Furthermore, this Court must keep in mind the broad public policy goals at work in this case, as set forth in the Act itself and found in the case law construing such statutes. . . . Therefore, the chancery court did not err in finding that the [requesting party] was entitled to the information requested by it. ***Mississippi Dep't of Wildlife, Fisheries & Parks v. Mississippi Wildlife Enforcement Officers' Ass'n*, 740 So. 2d 925, 936 (Miss. 1999).**

Penalty Available

§ 25-61-15 Penalty:

Any person who shall deny to any person access to any public record which is not exempt from the provisions of this chapter or who charges an unreasonable fee for providing a public record may be liable civilly in his personal capacity in a sum not to exceed One Hundred Dollars ($100.00) per violation, plus all reasonable expenses incurred by such person bringing the proceeding.

> Under section 25-61-15, the assessment to be made against a government entity for willfully and knowingly denying a public records request shall include all reasonable expenses incurred by such person bringing the lawsuit. The [public body] asserts that the word "expenses" does not include within its parameters attorney's fees. However, a look at the comment to Rule 54(d) of the Mississippi Rules of Civil Procedure explains what is meant by the term "expenses" in Mississippi jurisprudence: . . . Expenses include all the expenditures actually made by a litigant in connection with the action. . . . From these definitions concerning what a court can and cannot award in a judgment, it is clear that the term "expenses" encompasses attorney's fees incurred by a litigant. Therefore, § 25-61-15 provides for the [requesting party] to be paid for all reasonable expenses, including attorney's fees, it incurred as a result of being forced to pursue this action. ***Mississippi Dep't of Wildlife, Fisheries & Parks v. Mississippi Wildlife Enforcement Officers' Ass'n*, 740 So. 2d 925, 937-38 (Miss. 1999).**

Exemptions from the Mississippi Public Records Act

§ 25-61-11 Exempted or privileged records:

The provisions of this chapter shall not be construed to conflict with, amend, repeal or supersede any constitutional law, state or federal statutory law, or decision of a court of this state or the United States which at the time of this chapter is effective or thereafter specifically declares a public record to be confidential or privileged, or provides that a public record shall be exempt from the provisions of this chapter.

§ 25-61-11.1 Information exempt regarding persons with a weapon permit from the Mississippi Public Records Act of 1983:

The name, home address, any telephone number or other private information of any person who possesses a weapon permit issued under Section 45-9-101 or Section 97-37-7 shall be exempt from the Mississippi Public Records Act of 1983.

§ 25-61-11.2 Information technology records exempt from Mississippi Public Records Act of 1983:

The following information technology (IT) records shall be exempt from the Mississippi Public Records Act of 1983:

(a) IT infrastructure details, including network architecture, schematics, and IT system designs;
(b) Source code;
(c) Detailed hardware and software inventories;
(d) Security plans;
(e) Vulnerability reports;
(f) Security risk assessment details;
(g) Security compliance reports;
(h) Authentication credentials;
(i) Security policies and processes;
(j) Security incident reports; and
(k) Any audit, assessment, compliance report, work papers or any combination of these that if disclosed could allow unauthorized access to the state's IT assets.

§ 25-61-12 Personal information of law enforcement or court personnel and officers; exemption from Public Records Act; exception:

(1) The home address, any telephone number of a privately paid account or other private information of any law enforcement officer, criminal investigator, judge or district attorney or the spouse or child of the law enforcement officer, criminal investigator, judge or district attorney shall be exempt from the Mississippi Public Records Act of 1983. This exemption does not apply to any court transcript or recording if given under oath and not otherwise excluded by law.

(2)(a) When in the possession of a law enforcement agency, investigative reports shall be exempt from the provisions of this chapter; however, a law enforcement agency, in its discretion, may choose to make public all or any part of any investigative report.
(b) Nothing in this chapter shall be construed to prevent any and all public bodies from having among themselves a free flow of information for the purpose of achieving a coordinated and effective detection and investigation of unlawful activity. Where the confidentiality of records covered by this section is being determined in a private hearing before a judge under Section 25-61-13, the public body may redact or separate from the records the identity of confidential informants or the identity of the person or persons under investigation or other information other than the nature of the incident, time, date and location.
(c) Nothing in this chapter shall be construed to exempt from public disclosure a law enforcement incident report. An incident report shall be a public record. A law enforcement agency may release information in addition to the information contained in the incident report.
(d) Nothing in this chapter shall be construed to require the disclosure of information that would reveal the identity of the victim.

(3) Personal information of victims, including victim impact statements and letters of support on behalf of victims that are contained in records on file with the Mississippi Department of Corrections and State Parole Board, shall be exempt from the provisions of this chapter.

(4) Records of a public hospital board relating to the purchase or sale of medical or other practices or other business operations, and the recruitment of physicians and other health care professionals, shall be exempt from the provisions of this chapter.

§ 25-61-9 Records furnished by third parties:

(3) Trade secrets and confidential commercial and financial information of a proprietary nature developed by a college or university under contract with a firm,

business, partnership, association, corporation, individual or other like entity shall not be subject to inspection, examination, copying or reproduction under this chapter.

(4) Misappropriation of a trade secret shall be governed by the provisions of the Mississippi Uniform Trade Secrets Act, Sections 75-26-1 through 75- 26-19.

(5) A waste minimization plan and any updates developed by generators and facility operators under the Mississippi Comprehensive Multimedia Waste Minimization Act of 1990 shall be retained at the facility and shall not be subject to inspection, examination, copying or reproduction under this chapter.

*******The following is a comprehensive list of statutes that specifically exempt certain types of records from the Mississippi Public Records Act. However, this list does not contain every statutory exemption.*******

Specified Exemptions from the Mississippi Public Records Act of 1983	
§ 7-5-59	Certain investigation records in the possession of the attorney general
§ 9-1-38	Certain judicial records
§ 13-5-97	Certain jury records
§ 23-15-165	Certain information in voter registration files
§ 25-1-100	Certain personnel records
§ 25-1-102	Certain attorneys' work products
§ 25-11-121	Certain PERS documents
§ 25-61-9	Confidential information furnished by third parties
§ 25-61-11.1	Certain information of a person who possesses a weapon permit
§ 25-61-11.2	Certain information technology records
§ 25-61-12	Certain public officials' personal information
§ 27-3-77	Certain individual tax records
§ 27-3-80	Certain tax investigation information
§ 27-77-15	Certain tax appeal information
§ 31-1-27	Certain appraisal records
§ 33-15-11	Certain homeland security information
§ 37-11-51	Certain academic records
§ 39-7-41	Certain archaeological records
§ 41-9-68	Certain hospital records
§ 41-21-205	Information used for the Birth Defects Registry
§ 41-34-7	Reports of Hepatitis B or HIV carrier status of health care providers

§ 41-57-2	Certain persons not entitled to access to records of bureau of vital statistics
§ 41-75-19	Confidentiality of certain information involving ambulatory surgical facilities
§ 45-9-101	Records relating to applications for licenses to carry concealed pistols or revolvers
§ 47-5-575	Trade secrets of nonprofit corporation formed to manage prison industries
§ 49-2-71	Environmental self-evaluation reports
§ 49-7-305	Hunting incident reports
§ 57-1-14	Mississippi Development Authority information
§ 63-9-17	Traffic safety violator course records
§ 71-3-66	Restrictions on examination of workers' compensation records
§ 73-52-1	Certain license application and examination records
§ 79-11-527	Records relating to the registration of charitable organizations
§ 79-23-1	Certain commercial, financial records and trade secrets
§ 83-5-209	Records provided by insurer in course of financial examination by Commissioner of Insurance not required to be made public under the Public Records Act
§ 93-21-109	Records maintained by domestic violence shelters
§ 97-45-2	Certain investigative records
§ 99-41-31	Crime Victims' Compensation Fund claims

Other Specific Statutory Exemptions from the Mississippi Public Records Act

§ 7-5-59 Investigation of white collar crimes:

(6) Documents in the possession of the Attorney General gathered pursuant to the provisions of this section and subpoenas issued by him shall be maintained in confidential files with access limited to prosecutorial and other law enforcement investigative personnel on a "need to know" basis and shall be exempt from the provisions of the Mississippi Public Records Act of 1983, except that upon the filing of an indictment or information, or upon the filing of an action for recovery of property, funds or fines, such documents shall be subject to such disclosure as may be required pursuant to the applicable statutes or court rules governing the trial of any such judicial proceeding.

§ 9-1-38 No public access to certain records:

Records in the possession of a public body, as defined by paragraph (a) of Section 25-61-3, which are developed among judges and among judges and their aides, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

§ 13-5-97 Jury records exempt from public records provisions:

Records in the possession of a public body, as defined by paragraph (a) of Section 25-61-3, which are developed among juries concerning judicial decisions, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

§ 23-15-165 Implementation, functions, and regulation:

(6)(a) Social security numbers, telephone numbers and date of birth and age information in statewide, district, county and municipal voter registration files shall be exempt from and shall not be subject to inspection, examination, copying or reproduction under the Mississippi Public Records Act of 1983.
(b) Copies of statewide, district, county or municipal voter registration files, excluding social security numbers, telephone numbers and date of birth and age information, shall be provided to any person in accordance with the Mississippi Public Records Act of 1983 at a cost not to exceed the actual cost of production.

§ 25-1-100 Personnel files exempt from examination:

(1) Personnel records and applications for employment in the possession of a public body, as defined by paragraph (a) of Section 25-61-3, except those which may be released to the person who made the application or with the prior written

consent of the person who made the application, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

(2) Test questions and answers in the possession of a public body, as defined by paragraph (a) of Section 25-61-3, which are to be used in employment examinations, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

(3) Letters of recommendation in the possession of a public body, as defined by paragraph (a) of Section 25-61-3, respecting any application for employment, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

(4) Documents relating to contract authorization under Section 25-9-120 shall not be exempt from the provisions of Mississippi Public Records Act of 1983.

(5) Contracts for personal and professional services that are awarded or executed by any state agency, including, but not limited to, the Department of Information Technology Services and the Department of Transportation, shall not be exempt from the Mississippi Public Records Act of 1983.

§ 25-1-102 Attorney work product; examination:

Records in the possession of a public body, as defined by paragraph (a) of Section 25-61-3, which represent and constitute the work product of any attorney, district attorney or county prosecuting attorney representing a public body and which are related to litigation made by or against such public body, or in anticipation of prospective litigation, including all communications between such attorney made in the course of an attorney-client relationship, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

§ 25-11-121 Investment of excess cash; powers and duties of board regarding investments:

(11) Documentary material or data made or received by the system which consists of trade secrets or commercial or financial information that relates to the investments of the system shall be exempt from the Mississippi Public Records Act of 1983 if the disclosure of the material or data is likely to impair the system's ability to obtain such information in the future, or is likely to cause substantial harm to the competitive position of the person or entity from whom the information was obtained.

§ 27-3-77 Exemption from public access requirements:

Records in the possession of a public body, as defined by paragraph (a) of Section 25-61-3 which would disclose information about a person's individual tax payment or status, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

§ 27-3-80 Drug trafficking kingpin task force; investigation and prosecution of tax evasion; definitions:

(4) Any information received by the Attorney General, the Department of Revenue, the Bureau of Narcotics or other law enforcement agency shall be confidential except to the extent that disclosure is necessary to pursue tax evasion or other criminal tax charges or unless a proper judicial order is obtained. Information received under this section is exempt from the Mississippi Public Records Act of 1983.

§ 27-77-15 Confidentiality and disclosure of information:

(5) Information that is prohibited from being disclosed in subsection (1) of this section shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

§ 31-1-27 Appraisal records exempt from access:

Appraisal information in the possession of a public body, as defined by paragraph (a) of Section 25-61-3, which concern the sale or purchase of real or personal property for public purposes prior to public announcement of the purchase or sale, where the release of such records would have a detrimental effect on such sale or purchase, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

§ 33-15-11 Powers of Governor:

(12) To collect information and data for assessment of vulnerabilities and capabilities within the borders of Mississippi as it pertains to the nation and state's security and homeland defense. This information shall be exempt from the Mississippi Public Records Act, Section 25-61-1 et seq.

§ 37-11-51 Records exempt from public access:

(1) Test questions and answers in the possession of a public body, as defined by paragraph (a) of Section 25-61-3, which are to be used in future academic examinations, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

(2) Letters of recommendation in the possession of a public body, as defined by paragraph (a) of Section 25-61-3, respecting admission to any educational agency or institution, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

(3)(a) Except as provided in paragraph (b) of this subsection, documents, records, papers, data, protocols, information or materials in the possession of a community college or state institution of higher learning that are created, collected, developed, generated, ascertained or discovered during the course of academic research, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.
(b) The exemption under paragraph (a) of this subsection shall not apply to a public record that has been published, copyrighted, trademarked or patented.

(4) Unpublished manuscripts, preliminary analyses, drafts of scientific or academic papers, plans or proposals for future research and prepublication peer reviews in the possession of a community college or state institution of higher learning, or submitted and accepted for publication by publishers shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

(5) Nothing in this section shall otherwise create a public record right over, or shall impede or infringe upon, the copyright in any work.

(6) School safety plan documents containing preventive services listed in Section 37-3-83 shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

§ 39-7-41 Records exempt from public access:

Records in the possession of the Mississippi Department of Archives and History or any other public body as defined in paragraph (a) of Section 25-61-3 which contain information about the location of any specific archaeological site and which in the opinion of any such agency possessing such records would, upon the disclosure thereof, create a substantial risk of damage or destruction to the historical value of such archaeological site or create a substantial risk of damage or destruction to private property rights, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

§ 41-9-68 Mississippi Public Records Act exemption:

(1) Except as otherwise provided in subsection (2) of this section, records maintained by public hospitals shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

(2) The following records of public hospitals shall not be exempt from the Mississippi Public Records Act of 1983:

(a) The official minutes of the board of trustees of a public hospital;
(b) Financial reports not otherwise exempt that are required by state or federal statute or regulation to be filed with the owner of the public hospital or with any other agency of state or federal government; and
(c) Any other record maintained by a public hospital that does not fall within the definition of the term "hospital records" as that term is defined in Section 41-9-61, except for the following records, which shall be exempt:

(i) Records directly relating to the terms of any potential or current employment or services agreement with any physicians or other employees of a public hospital, including any application for medical staff privileges or membership with a public hospital;
(ii) Records directly relating to the credentialing, health, performance, salary, raises or disciplinary action of any employee or medical staff member or applicant for medical staff privileges at a public hospital;
(iii) Records directly relating to prospective strategic business decisions of a public hospital, including without limitation, decisions to open a new service line, implement capital improvements, or file applications for certificates of need or determinations of nonreviewability with the State Department of Health; and
(iv) Records directly relating to individual patient billing and collection information.

§ 41-21-205 Birth Defects Registry created:

(8)(b) Information that may identify an individual whose medical records have been used for obtaining data under this section is not available for public inspection under the Mississippi Public Records Act of 1983.

§ 41-34-7 Confidentiality:

Each report of Hepatitis B Virus carrier status or Human Immunodeficiency Virus carrier status filed in compliance with this section and each record maintained and meetings held by the boards in the course of monitoring a licensee for compliance with the practice requirements established by this section, are confidential and exempt from the provisions of the Mississippi Public Records Law, Sections 25-61-1, et seq.

§ 41-57-2 Access to records:

Records in the possession of the Mississippi Department of Health, bureau of vital statistics, which would be of no legitimate and tangible interest to a person making a request for access to such records, shall be exempt from the provisions of the Mississippi Public Records Act of 1983; provided, however, nothing in this section shall be construed to prohibit any person with a legitimate and tangible interest in such records from having access thereto.

§ 41-75-19 Confidentiality:

Information received by the licensing agency through filed reports, inspection, or as otherwise authorized under this chapter, shall not be disclosed publicly in such manner as to identify individuals, except in a proceeding involving the questions of licensure.

§ 45-9-101 Licensing generally:

(8) The Department of Public Safety shall maintain an automated listing of license holders and such information shall be available online, upon request, at all times, to all law enforcement agencies through the Mississippi Crime Information Center. However, the records of the department relating to applications for licenses to carry stun guns, concealed pistols or revolvers and records relating to license holders shall be exempt from the provisions of the Mississippi Public Records Act of 1983, and shall be released only upon order of a court having proper jurisdiction over a petition for release of the record or records.

§ 47-5-575 Application of Public Records Act:

Any records or reports which relate to the financial aspect or operations of the corporation, with the exception of any trade secrets, shall be considered as public records and shall be subject to the provisions of the Mississippi Public Records Act of 1983.

§ 49-2-71 Self-evaluation report privilege and exceptions:

(6) All environmental self-evaluation reports that are protected by the self-evaluation privilege created by this section shall be privileged and exempt from the provisions of the Mississippi Public Records Act in accordance with Section 25-61-11, Mississippi Code of 1972.

§ 49-7-305 Hunting incident reports; disclosure; reproduction fee:

(1) Hunting incident reports shall be exempt from disclosure or dissemination under the Mississippi Public Records Act of 1983 in accordance with the provisions of Section 45-29-1.

§ 57-1-14 Exemption from Public Records Act:

(1) Any records of the Mississippi Development Authority which contain client information concerning development projects shall be exempt from the provisions of the Mississippi Public Records Act of 1983 for a period of two (2) years after receipt of the information by the department. . . .

§ 63-9-17 Reporting convictions and completion of traffic safety violator course:

(5) Every court shall also forward a like report to the Department of Public Safety after the satisfactory completion by a defendant of an approved traffic safety violator course under Section 63-9-11, and the department shall make and maintain a private, nonpublic record to be kept for a period of ten (10) years. The record shall be solely for the use of the courts in determining eligibility under Section 63-9-11, as a first-time offender, and shall not constitute a criminal record for the purpose of private or administrative inquiry. Reports forwarded to the Department of Public Safety under this subsection shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

§ 71-3-66 Access to records:

The noncontroverted case medical reports, rehabilitation counselor reports and psychological reports of the commission, insofar as they refer to accidents, injuries and settlements, shall not be open to the public under the Mississippi Public Records Act of 1983, but only to the parties satisfying the commission of their interest in such records and the right to inspect them. Under such reasonable rules and regulations as the commission may adopt, the records of the commission as to any employee in any previous case in which such employee was a claimant shall be open to and made available to such claim to an employer or its insurance carrier which is called upon to pay compensation, medical expenses and/or funeral expenses, or to any party at interest, except that the commission may make such reasonable charge as it deems proper for furnishing information by mail and for copies of records.

§ 73-52-1 Exemptions from Public Records Act:

(1) Applications for licensure in the possession of a public body, as defined by paragraph (a) of Section 25-61-3, except that which may be released to the person who made the application or with the prior written consent of the person who made the application, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

(2) Test questions in the possession of a public body, as defined by paragraph (a) of Section 25-61-3, that are to be used in future license examinations, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

(3) Recommendations in the possession of any state board which is authorized to hold examinations and grant licenses or certificates to practice any profession, respecting any application for a professional license or certificate, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

§ 79-11-527 Reciprocal agreements:

The Secretary of State may enter into reciprocal agreements with a like authority of any other state or states for the purpose of exchanging information made available to the Secretary of State or to such other like authority. The information contained in or filed with any registration application, renewal or report may be made available to the public under such rules as the Secretary of State prescribes. Information in the possession of, filed with or obtained by the Secretary of State in connection with any investigation or examination under Sections 79-11-501 through 79-11-529 shall be confidential and exempt from the requirements of the Mississippi Public Records Act of 1983. No such information may be disclosed by the Secretary of State or any of his officers or employees unless necessary or appropriate in connection with a particular investigation or proceeding under Sections 79-11-501 through 79-11-529 or for any law enforcement purpose.

§ 79-23-1 Public records and trade secrets:

(3) Trade secrets and confidential commercial and financial information of a proprietary nature developed by a college or university under contract with a firm, business, partnership, association, corporation, individual or other like entity shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

§ 83-5-209 Examination reports:

(7)(a)(i) Except as provided in subsection (6) and in this subsection (7), documents, materials or other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in the course of an examination made under Sections 83-5-201 through 83-5-217, or in the course of analysis by the commissioner of the financial condition or market conduct of a company, shall be confidential by law and privileged, shall not be subject to the Mississippi Public Records Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties. . . .

§ 93-21-109 Exemption from Public Records Act:

(1) Records maintained by domestic violence shelters, except the official minutes of the board of directors of the shelter, and financial reports filed as required by statute with the board of supervisors or municipal authorities or any other agency of government, shall be withheld from public disclosure under the provisions of the Mississippi Public Records Act of 1983.

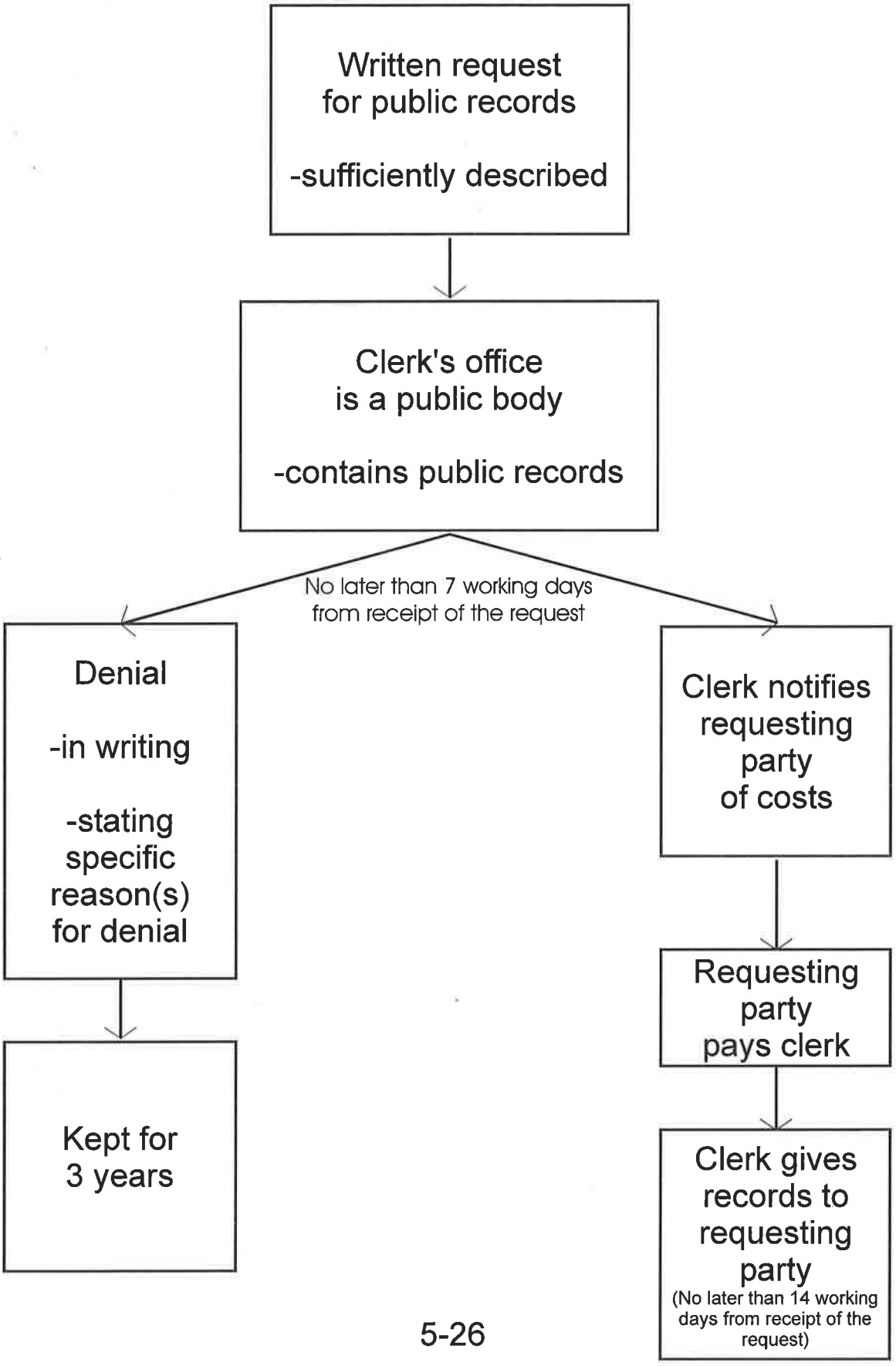
§ 97-45-2 Identity theft investigations; powers of Attorney General; subpoenas; production of documents; unauthorized disclosure:

(5) Documents in the possession of the Attorney General gathered pursuant to the provisions of this section and subpoenas issued by him shall be maintained in confidential files with access limited to prosecutorial and other law enforcement investigative personnel on a "need to know" basis and shall be exempt from the provisions of the Mississippi Public Records Act of 1983, except that upon the filing of an indictment or information, or upon the filing of an action for recovery of property, funds or fines, such documents shall be subject to such disclosure as may be required pursuant to the applicable statutes or court rules governing the trial of any such judicial proceeding.

§ 99-41-31 Disclosure of records as to claims; confidentiality of records:

The records, papers, files and communications of the division, director, staff and agents must be regarded as confidential information and privileged and not subject to disclosure under any condition including the Mississippi Public Records Act of 1983.

PUBLIC ACCESS TO PUBLIC RECORDS



CHAPTER 6

REVISED MISSISSIPPI LAW ON NOTARIAL ACTS

CHAPTER 6

REVISED MISSISSIPPI LAW ON NOTARIAL ACTS

Revised Mississippi Law on Notarial Acts

Application of Act

§ 25-34-5 Application of act:

This chapter applies to a notarial act performed on or after July 1, 2021.

Clerks Are Notaries

§ 25-34-3 Definitions:

As used in this chapter, the following words and phrases have the meanings ascribed in this section unless the context clearly requires otherwise:

. . . .

(f) "Notarial officer" means a notary public or other individual authorized to perform a notarial act.

(g) "Notary public" means an individual commissioned to perform a notarial act by the Secretary of State. . . .

§ 25-34-21 Persons authorized to perform notarial acts; signature and title as evidence:

(1) A notarial act may be performed in this state by:

(a) A notary public of this state;

(b) An elected judge, a clerk or deputy clerk of a court of this state; or

(c) The Mississippi Secretary of State or a Mississippi Assistant Secretary of State.

(2) The signature and title of an individual performing a notarial act in this state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(3) The signature and title of a notarial officer described in subsection (1) conclusively establish the authority of the officer to perform the notarial act.

Commission from Secretary of State

§ 25-34-41 Commission as notary public; application; qualifications; oath; bond; term; authority:

(1) An individual qualified under subsection (2) may apply to the Secretary of State for a commission as a notary public. The applicant must comply with and provide the information required by rules established by the Secretary of State and pay any application fee.

(2) An applicant for a commission as a notary public must:

(a) Be at least eighteen (18) years of age;
(b) Be a citizen or permanent legal resident of the United States;
(c) Be a resident of Mississippi for not less than thirty (30) days immediately preceding the date of the application;
(d) Be able to read and write English;
(e) Not be disqualified to receive a commission under Section 25-34-43; and
(f) Meet such other requirements as the Secretary of State may establish by rule.

(3) Before issuance of a commission as a notary public, an applicant for the commission must execute the oath of office prescribed by Section 268 of the Constitution and submit it to the Secretary of State.

Mississippi Constitution § 268 Oath of office:

All officers elected or appointed to any office in this State, except judges and members of the Legislature, shall, before entering upon the discharge of the duties thereof, take and subscribe the following oath:

I, _____, do solemnly swear (or affirm) that I will faithfully support the Constitution of the United States and the Constitution of the State of Mississippi, and obey the laws thereof; that I am not disqualified from holding the office of _____; that I will faithfully discharge the duties of the office upon which I am about to enter. So help me God.

(4) Before issuance of a commission as a notary public, the applicant for a commission must submit to the Secretary of State an assurance in the form of a surety bond or its functional equivalent in the amount of Five Thousand Dollars ($5,000.00) pursuant to the rules set forth by the Secretary of State. The assurance must be issued by a surety or other entity licensed by the Mississippi Department of Insurance. The assurance must cover acts performed during the term of the notary public's commission and must be in the form prescribed by the Secretary of State. If a notary public violates a law with respect to notaries public in this state, the surety or issuing entity is liable under the assurance. The surety or issuing entity must give thirty (30) days' notice to the Secretary of State before canceling the assurance. The surety or issuing entity must notify the Secretary of State not later than thirty (30) days after making a payment to a claimant under the assurance. A notary public may perform notarial acts in this state only during the period that a valid assurance is on file with the Secretary of State.

> We are of the further opinion that ex-officio notaries public have jurisdiction only within the geographic limits of the exercise of the general powers of their office. So, justice court judges and clerks and clerks of the circuit and chancery courts would therefore exercise their authority as ex-officio notaries public within the confines of the county where they serve, while assistant secretaries of state would exercise their authority as ex-officio notaries public within the confines of the State of Mississippi. Finally, it is the opinion of this office that any ex-officio notary public may use the common seal kept in the office of the clerk of the circuit court in a particular county to authenticate any notarial act which he or she is empowered to perform in that county. That is, an ex-officio notary public acting within the geographic limits of his or her jurisdiction may use a common seal kept in the office of the clerk of the circuit court within those geographic limits. **Re: Tadlock (Miss. A. G. Oct. 14, 1988) (discussing prior version of act).**

(5) On compliance with this section, the Secretary of State shall issue a commission as a notary public to an applicant for a term of four (4) years.

(6) A commission to act as a notary public authorizes the notary public to perform notarial acts. The commission does not provide the notary public any immunity or benefit conferred by the laws of this state on public officials or employees.

Seal

§ 25-34-3 Definitions:

As used in this chapter, the following words and phrases have the meanings ascribed in this section unless the context clearly requires otherwise:
. . . .
(h) "Official seal" means a physical image affixed to a tangible record or an electronic image attached to or logically associated with an electronic record.

§ 25-34-33 Official seal; requisites; county seals; death or incompetency of notary; duty to destroy or deface seal:

(1) Every notary public appointed and commissioned must procure, at his own expense, a suitable official seal. The official seal of a notary public must:

(a) Include the notary public's name, jurisdiction, commission expiration date and other information required by the Secretary of State; and

(b) Be capable of being copied together with the record to which it is affixed or attached or with which it is logically associated.

(2) The board of supervisors of every county must provide an official seal, with the inscription "notary public" around the margin and the image of an eagle in the center, which official seal must be kept in the office of the clerk of the circuit court. A judge, chancellor, clerk or deputy clerk of a court of this state, the Mississippi Secretary of State or an Assistant Secretary of State of this state may use the official seal to perform a notarial act under Section 25-34-19(1)(b) or (c).

(3) On the death or adjudication of incompetency of a current or former notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the official seal shall destroy or deface, as soon as reasonably practicable, all official seals of the notary public so that they may not be misused.

Must State When Commission Expires

§ 25-34-33 Official seal; requisites; county seals; death or incompetency of notary; duty to destroy or deface seal:

(1) . . . The official seal of a notary public must:

(a) Include the notary public's name, jurisdiction, commission expiration date . . . .

Journal

§ 25-34-37 Journal of notarial acts:

(1) A notary public must maintain a journal in which the notary public chronicles all notarial acts that the notary public performs.

(2) A journal must be created on a tangible or electronic medium. A notary public shall maintain only one (1) journal at a time to chronicle all notarial acts, whether those notarial acts are performed regarding tangible or electronic records. If the journal is tangible, it must be a permanent, bound register with numbered pages. An electronic journal must conform to specifications set forth in rules by the Secretary of State.

(3) An entry in a journal must be made contemporaneously with performance of the notarial act and contain the following information:

(a) The date and time of the notarial act;
(b) A description of the record, if any, and type of notarial act;
(c) The full name and address of each individual for whom the notarial act is performed;
(d) If identity of the individual is based on personal knowledge, a statement to that effect;
(e) If identity of the individual is based on satisfactory evidence, a brief description of the method of identification and the identification credential presented, if any, including the date of issuance and expiration of any identification credential;
(f) The address where the notarial act was performed if not the notary's business address; and
(g) The fee, if any, charged by the notary public.

(4) If the journal of notary public is lost or stolen, the notary public must notify promptly the Secretary of State upon discovery that the journal is lost or stolen.

(5) On resignation from, or the revocation or suspension of, a notary public's commission, the notary public must deposit all journal records with the circuit clerk of the county of residence of the notary public.

(6) Upon the death or adjudication of incompetency of a current or former notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the journal shall:

(a) Notify the Secretary of State of the death or adjudication in writing; and
(b) Within thirty (30) days of death or adjudication of incompetency, transmit all journal records to the circuit clerk of the county of residence of the notary public.

Notarial Acts

§ 25-34-7 Notarial acts authorized; conflicts of interest; disqualification; exceptions; acts voidable:

(1) A notarial officer may perform the following notarial acts:

(a) Take acknowledgments;
(b) Administer oaths and affirmations;
(c) Take verifications on oath or affirmation;
(d) Certify depositions of witnesses;
(e) Witness or attest signatures;
(f) Make or note a protest of a negotiable instrument;
(g) Make an affidavit regarding the truth of any witnesses or attested signatures in question along with any corrected language and, if the authenticity or correctness of language affects real property, file the same in the land records in the office of the chancery clerk where the land is located; and
(h) Any other acts so authorized by the law of this state.

(2) A notarial officer may not perform a notarial act when the officer:

(a) Is a party to the record being notarized;
(b) Is a spouse, child, sibling, parent, grandparent, grandchild, aunt or uncle, or niece or nephew, including a son or daughter-in-law, a mother or father-in-law, a stepchild or stepparent, or a half-sibling, of the person whose signature is being notarized or the person taking a verification on oath or affirmation from the officer; or
(c) Will receive as a direct result any commission, fee, advantage, right, title, beneficial interest, cash, property or other consideration exceeding in value the fees required by rules established by the Secretary of State.

(3) A notarial officer is not disqualified from performing a notarial act by virtue of his or her profession when the officer:

(a) Is an employee performing a notarial act on behalf of, or which benefits, the employer;

(b) Is an attorney who maintains an attorney-client relationship with the person whose signature is the subject of the notarial act; or
(c) Is a shareholder of a corporation or member of a limited liability company which is a party to a record that is the subject of the notarial act.

(4) A notarial act performed in violation of subsection (2) is voidable.

***See* § 25–34–23 Notarial acts performed in other states; effect; signature and title as evidence.**
***See* § 25–34–25 Notarial acts under authority of Indian tribes; effect; signature and title as evidence.**
***See* § 25–34–27 Notarial acts performed under federal law; effect; signature and title as evidence.**
***See* § 25–34–29 Notarial acts performed under authority of foreign states or international government organizations; effect; establishment of authority.**

§ 25-34-31 Certificate of notarial act; form and requisites; seal; attachment to record; evidentiary effect of officer signature:

(1) A notarial act must be evidenced by a certificate. The certificate must:

(a) Be executed contemporaneously with the performance of the notarial act;
(b) Be signed and dated by the notarial officer and, if the notarial officer is a notary public, be signed in the same manner as on file with the Secretary of State;
(c) Identify the jurisdiction in which the notarial act is performed;
(d) Contain the title of office of the notarial officer; and
(e) If the notarial officer is a notary public, indicate the date of expiration of the notary public's commission.

(2) If a notarial act regarding a tangible record is performed by a notary public, the notary public's official seal must be affixed to the certificate. If a notarial act is performed regarding a tangible record by a notarial officer other than a notary public and the certificate contains the information specified in subsection (1)(b), (c) and (d), the notarial officer's official seal may be affixed to the certificate. If a notarial act regarding an electronic record is performed by a notarial officer and the certificate contains the information specified in subsection (1)(b), (c) and (d), the notarial officer's official seal may be attached to or logically associated with the certificate.

(3) The party drafting a record that is the subject of a notarial act is responsible for

the form of the certificate, its wording and legal sufficiency. A notary public is not required to draft, edit or amend a certificate where the record presented does not contain an acceptable certificate; instead, the notary must refuse to perform the notarial act with respect to the record.

(4) A certificate of a notarial act is sufficient if it meets the requirements of subsections (1) and (2) and:

(a) Is in a form otherwise permitted by the law of this state;
(b) Is in a form permitted by the law applicable in the jurisdiction in which the notarial act was performed; or
(c) Sets forth the actions of the notarial officer and the actions are sufficient to meet the requirements of the notarial act as provided in Sections 25-34-7, 25-34-9, 25-34-11 and 25-34-15 of this act or any law of this state other than this chapter.

(5) By executing a certificate of a notarial act, a notarial officer certifies that the officer has complied with the requirements and made the determinations specified in Sections 25-34-7, 25-34-9, 25-34-11 and 25-34-15.

(6) A notarial officer may not affix the officer's signature to, or logically associate it with, a certificate until the notarial act has been performed.

(7) If a notarial act is performed regarding a tangible record, a certificate must be part of, or securely attached to, the record. If a notarial act is performed regarding an electronic record, the certificate must be affixed to, or logically associated with, the electronic record. If the Secretary of State has established standards under Section 25-34-39 for attaching, affixing or logically associating the certificate, the process must conform to those standards.

(8) The signature of a notarial officer certifying a notarial act may not be deemed evidence to show that the notarial officer had knowledge of the contents of the record so signed, other than those specific contents which constitute the signature, execution, acknowledgment, oath, affirmation, affidavit, verification or other act which the signature of that notarial officer chronicles.

Notary Fees

§ 25-34-9 Fee for services:

A notarial officer may charge a fee in an amount not to exceed Five Dollars ($5.00) for services rendered unless otherwise prohibited by law or by rules promulgated by the Secretary of State.

When Notary is Not an Attorney

§ 25-34-47 Limitations on authority of notaries public; false or deceptive advertising prohibited; accessibility of records; violations as false or deceptive acts; offenses; punishment:

(1) A commission as a notary public does not authorize an individual to:

(a) Assist persons in drafting legal records, give legal advice or otherwise practice law;
(b) Act as an immigration consultant or an expert on immigration matters;
(c) Represent a person in a judicial or administrative proceeding relating to immigration to the United States, United States citizenship or related matters; or
(d) Receive compensation for performing any of the activities listed in this subsection.

(2) A notary public may not engage in false or deceptive advertising.

(3) A notary public who is not an attorney licensed to practice law in this state may not use the term "notario" or "notario publico."

(4) A notary public who is not an attorney licensed to practice law in this state may not advertise or represent that the notary public may assist persons in drafting legal records, give legal advice or otherwise practice law. If a notary public who is not an attorney licensed to practice law in this state in any manner advertises or represents that the notary public offers notarial services, whether orally or in a record, including broadcast media, print media and the Internet, the notary public must include the following statement, or an alternate statement authorized or required by the Secretary of State, in the advertisement or representation, prominently and in each language used in the advertisement or representation:

"I am not an attorney licensed to practice law in this state. I am not allowed to draft legal records, give advice on legal matters, including immigration, or charge a fee for those activities."

If the form of advertisement or representation is not broadcast media, print media or the Internet and does not permit inclusion of the statement required by this subsection because of size, it must be displayed prominently or provided at the place of performance of the notarial act before the notarial act is performed.

(5) Except as otherwise allowed by law, a notary public may not withhold access to or possession of an original record provided by a person that seeks performance

of a notarial act by the notary public.

(6) Failure to comply with subsections (1) through (5) constitutes an unfair or deceptive act under Section 75-24-5.

(7) A person who knowingly and willfully violates subsections (1) through (5) is guilty of a misdemeanor, and upon conviction, shall be fined in an amount not to exceed One Thousand Dollars ($1,000.00).

(8) Upon a second conviction of any person under subsections (1) through (5), the offenses being committed within a period of five (5) years, the person is guilty of a misdemeanor, and upon conviction, shall be punished by imprisonment in the county jail for a period not to exceed one (1) year or a fine in an amount not to exceed One Thousand Dollars ($1,000.00), or both.

(9) Upon a third or subsequent conviction of any person for violation of subsections (1) through (5), the offenses being committed within a period of five (5) years, the person is guilty of a felony, and upon conviction, shall be punished by confinement in the custody of the Mississippi Department of Corrections for a period not to exceed five (5) years or a fine in an amount not to exceed Five Thousand Dollars ($5,000.00), or both.

(10) Criminal convictions in other jurisdictions for violations of substantially similar provisions to those contained in subsections (1) through (5) are counted in computing whether a violation under subsections (1) through (5) is a first, second, third or subsequent offense.

When Notary is an Attorney

§ 25-34-7 Notarial acts authorized; conflicts of interest; disqualification; exceptions; acts voidable:

(3) A notarial officer is not disqualified from performing a notarial act by virtue of his or her profession when the officer:

(a) Is an employee performing a notarial act on behalf of, or which benefits, the employer;
(b) Is an attorney who maintains an attorney-client relationship with the person whose signature is the subject of the notarial act; or
(c) Is a shareholder of a corporation or member of a limited liability company which is a party to a record that is the subject of the notarial act. . . .

CHAPTER 7

RULES OF COURT
&
CIVIL TRIAL PROCEDURES

CHARTS

APPENDIX

CHAPTER 7

RULES OF COURT
&
CIVIL TRIAL PROCEDURES

Duties & Responsibilities Required by Court Rules

Mississippi Rules of Civil Procedure (MRCP)

MRCP 1, Scope of Rules, states:

> These rules govern procedure in the circuit courts, chancery courts, and county courts in all suits of a civil nature, whether cognizable as cases at law or in equity, subject to certain limitations enumerated in Rule 81; however, even those enumerated proceedings are still subject to these rules where no statute applicable to the proceedings provides otherwise or sets forth procedures inconsistent with these rules. These rules shall be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action.

MRCP 3, Commencement of Action, provides:

> **(a) Filing of Complaint.** A civil action is commenced by filing a complaint with the court. A costs deposit shall be made with the filing of the complaint, such deposit to be in the amount required by the applicable Uniform Rule governing the court in which the complaint is filed. The amount of the required costs deposit shall become effective immediately upon promulgation of the applicable Uniform Court Rule and its approval by the Mississippi Supreme Court.
>
> **(b) Motion for Security for Costs.** The plaintiff may be required on motion of the clerk or any party to the action to give security within sixty days after an order of the court for all costs accrued or to accrue in the action. The person making such motion shall state by affidavit that the plaintiff is a nonresident of the state and has not, as affiant believes, sufficient property in this state out of which costs can be made if adjudged against him; or if the plaintiff be a resident of the state, that he has good reason to believe and does believe, that such plaintiff cannot be made to pay the costs of the action if adjudged against him. When the affidavit is made by a defendant it shall state that affiant has, as he believes, a meritorious defense and that the affidavit is not made for delay; when the affidavit is made by one not a party defendant it shall state that it is not made at the instance of a party defendant. If the security be not given, the suit shall be dismissed and execution issued for the costs that have accrued; however, the court may, for good cause shown, extend the time for giving such security.

(c) Proceeding In Forma Pauperis. A party may proceed in forma pauperis in accordance with sections 11-53-17 and 11-53-19 of the Mississippi Code Annotated. The court may, however, on the motion of any party, on the motion of the clerk of the court, or on its own initiative, examine the affiant as to the facts and circumstances of his pauperism.

(d) Accounting for Costs. Within sixty days of the conclusion of an action, whether by dismissal or by final judgment, the clerk shall prepare an itemized statement of costs incurred in the action and shall submit the statement to the parties or, if represented, to their attorneys. If a refund of costs deposit is due, the clerk shall include payment with the statement; if additional costs are due, a bill for same shall accompany the statement.

Service of Process by Mississippi Rule Civil Procedure 4

MRCP 4, Summons, provides:

(a) Summons: Issuance. Upon filing of the complaint, the clerk shall forthwith issue a summons.

(1) At the written election of the plaintiff or the plaintiff's attorney, the clerk shall:

(A) Deliver the summons to the plaintiff or plaintiff's attorney for service under subparagraphs (c)(1) or (c)(3) or (c)(4) or (c)(5) of this rule.

(B) Deliver the summons to the sheriff of the county in which the defendant resides or is found for service under subparagraph (c)(2) of this rule.

(C) Make service by publication under subparagraph (c)(4) of this rule.

(2) The person to whom the summons is delivered shall be responsible for prompt service of the summons and a copy of the complaint. Upon request of the plaintiff, separate or additional summons shall issue against any defendants.

After a complaint is filed, the clerk is required to issue a separate summons for each defendant except in the case of summons by publication. The summons must contain the information required by Rule 4(b), which requires the summons to notify the defendant that, among other things, a failure to appear will result in a judgment by default. Although the "judgment by default will be rendered" language may be an overstatement, the strong language is intended to encourage defendants to appear to protect their interests. Forms 1A, 1AA, 1B, and 1C are provided as suggested forms for the various summonses. The summons and a copy of the complaint must then be served on each defendant. This rule provides for personal service, residence service, first-class mail and acknowledgement service, certified mail service, and publication service. ***Advisory Committee Note.***

(b) Same: Form. The summons shall be dated and signed by the clerk, be under the seal

of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint. Where there are multiple plaintiffs or multiple defendants, or both, the summons, except where service is made by publication, may contain, in lieu of the names of all parties, the name of the first party on each side and the name and address of the party to be served. Summons served by process server shall substantially conform to Form 1A. Summons served by sheriff shall substantially conform to Form 1AA.

(c) Service.

(1) By Process Server. A summons and complaint shall, except as provided in subparagraphs (2) and (4) of this subdivision, be served by any person who is not a party and is not less than 18 years of age. When a summons and complaint are served by process server, an amount not exceeding that statutorily allowed to the sheriff for service of process may be taxed as recoverable costs in the action.

(2) By Sheriff. A summons and complaint shall, at the written request of a party seeking service or such party's attorney, be served by the sheriff of the county in which the defendant resides or is found, in any manner prescribed by subdivision (d) of this rule. The sheriff shall mark on all summons the date of the receipt by him, and within thirty days of the date of such receipt of the summons the sheriff shall return the same to the clerk of the court from which it was issued.

(3) By Mail.

(A) A summons and complaint may be served upon a defendant of any class referred to in paragraph (1) or (4) of subdivision (d) of this rule by mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to Form 1-B and a return envelope, postage prepaid, addressed to the sender.

(B) If no acknowledgment of service under this subdivision of this rule is received by the sender within 20 days after the date of mailing, service of such summons and complaint may be made in any other manner permitted by this rule.

(C) Unless good cause is shown for not doing so, the court shall order the payment of the costs of personal service by the person served if such person does not complete and return within 20 days after mailing, the notice and acknowledgment of receipt of summons.

(D) The notice and acknowledgment of receipt of summons and complaint shall be executed under oath or affirmation.

(4) By Publication.

(A) If the defendant in any proceeding in a chancery court, or in any proceeding in any other court where process by publication is authorized,

by statute, be shown by sworn complaint or sworn petition, or by a filed affidavit, to be a nonresident of this state or not to be found therein on diligent inquiry and the post office address of such defendant be stated in the complaint, petition, or affidavit, or if it be stated in such sworn complaint or petition that the post office address of the defendant is not known to the plaintiff or petitioner after diligent inquiry, or if the affidavit be made by another for the plaintiff or petitioner, that such post office address is unknown to the affiant after diligent inquiry and he believes it is unknown to the plaintiff or petitioner after diligent inquiry by the plaintiff or petitioner, the clerk, upon filing the complaint or petition, account or other commencement of a proceeding, shall promptly prepare and publish a summons to the defendant to appear and defend the suit. The summons shall be substantially in the form set forth in Form 1-C.

(B) The publication of said summons shall be made once in each week during three successive weeks in a public newspaper of the county in which the complaint or petition, account, cause or other proceeding is pending if there be such a newspaper, and where there is no newspaper in the county the notice shall be posted at the courthouse door of the county and published as above provided in a public newspaper in an adjoining county or at the seat of government of the state. Upon completion of publication, proof of the prescribed publication shall be filed in the papers in the cause. The defendant shall have thirty (30) days from the date of first publication in which to appear and defend. Where the post office address of a defendant is given, the street address, if any, shall also be stated unless the complaint, petition, or affidavit above mentioned, aver that after diligent search and inquiry said street address cannot be ascertained.

(C) It shall be the duty of the clerk to hand the summons to the plaintiff or petitioner to be published, or, at his request, and at his expense, to hand it to the publisher of the proper newspaper for publication. Where the post office address of the absent defendant is stated, it shall be the duty of the clerk to send by mail (first class mail, postage prepaid) to the address of the defendant, at his post office, a copy of the summons and complaint and to note the fact of issuing the same and mailing the copy, on the general docket, and this shall be the evidence of the summons having been mailed to the defendant.

(D) When unknown heirs are made parties defendant in any proceeding in the chancery court, upon affidavit that the names of such heirs are unknown, the plaintiff may have publication of summons for them and such proceedings shall be thereupon in all respects as are authorized in the case of a nonresident defendant. When the parties in interest are unknown, and affidavit of that fact be filed, they may be made parties by publication to them as unknown parties in interest.

(E) Where summons by publication is upon any unmarried infant, mentally incompetent person, or other person who by reason of advanced age, physical incapacity or mental weakness is incapable of managing his own estate, summons shall also be had upon such other person as shall be required to receive a copy of the summons under paragraph (2) of subdivision (d) of this rule.

(5) Service by Certified Mail on Person Outside State. In addition to service by any other method provided by this rule, a summons may be served on a person outside this state by sending a copy of the summons and of the complaint to the person to be served by certified mail, return receipt requested. Where the defendant is a natural person, the envelope containing the summons and complaint shall be marked "restricted delivery." Service by this method shall be deemed complete as of the date of delivery as evidenced by the return receipt or by the returned envelope marked "Refused."

(d) Summons and Complaint: Person to Be Served. The summons and complaint shall be served together. Service by sheriff or process server shall be made as follows:

(1) Upon an individual other than an unmarried infant or a mentally incompetent person,

(A) by delivering a copy of the summons and of the complaint to him personally or to an agent authorized by appointment or by law to receive service of process; or (B) if service under subparagraph (1)(A) of this subdivision cannot be made with reasonable diligence, by leaving a copy of the summons and complaint at the defendant's usual place of abode with the defendant's spouse or some other person of the defendant's family above the age of sixteen years who is willing to receive service, and by thereafter mailing a copy of the summons and complaint (by first class mail, postage prepaid) to the person to be served at the place where a copy of the summons and of the complaint were left. Service of a summons in this manner is deemed complete on the 10th day after such mailing.

(2) (A) upon an unmarried infant by delivering a copy of the summons and complaint to any one of the following: the infant's mother, father, legal guardian (of either the person or the estate), or the person having care of such infant or with whom he lives, and if the infant be 12 years of age or older, by delivering a copy of the summons and complaint to both the infant and the appropriate person as designated above.

(B) upon a mentally incompetent person who is not judicially confined to an institution for the mentally ill or mentally deficient or upon any other person who by reason of advanced age, physical incapacity or mental weakness is incapable of managing his own estate by delivering a copy of the summons and complaint to such person and by delivering copies to his guardian (of either the person or the estate) or conservator (of either the person or the estate) but if such person has no guardian or conservator,

then by delivering copies to him and copies to a person with whom he lives or to a person who cares for him.

(C) upon a mentally incompetent person who is judicially confined in an institution for the mentally ill or mentally retarded by delivering a copy of the summons and complaint to the incompetent person and by delivering copies to said incompetent's guardian (of either the person or the estate) if any he has. If the superintendent of said institution or similar official or person shall certify by certificate endorsed on or attached to the summons that said incompetent is mentally incapable of responding to process, service of summons and complaint on such incompetent shall not be required. Where said confined incompetent has neither guardian nor conservator the court shall appoint a guardian ad litem for said incompetent to whom copies shall be delivered.

(D) where service of a summons is required under (A), (B) and (C) of this subparagraph to be made upon a person other than the infant, incompetent, or incapable defendant and such person is a plaintiff in the action or has an interest therein adverse to that of said defendant, then such person shall be deemed not to exist for the purpose of service and the requirement of service in (A), (B) and (C) of this subparagraph shall not be met by service upon such person.

(E) if none of the persons required to be served in (A) and (B) above exist other than the infant, incompetent or incapable defendant, then the court shall appoint a guardian ad litem for an infant defendant under the age of 12 years and may appoint a guardian ad litem for such other defendant to whom a copy of the summons and complaint shall be delivered. Delivery of a copy of the summons and complaint to such guardian ad litem shall not dispense with delivery of copies to the infant, incompetent or incapable defendant where specifically required in (A), and (B) of this subparagraph.

(3) Upon an individual confined to a penal institution of this state or of a subdivision of this state by delivering a copy of the summons and complaint to the individual, except that when the individual to be served is an unmarried infant or mentally incompetent person the provisions of subparagraph (d)(2) of this rule shall be followed.

(4) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process.

(5) Upon the State of Mississippi or any one of its departments, officers or institutions, by delivering a copy of the summons and complaint to the Attorney General of the State of Mississippi.

(6) Upon a county by delivering a copy of the summons and complaint to the

president or clerk of the board of supervisors.
(7) Upon a municipal corporation by delivering a copy of the summons and complaint to the mayor or municipal clerk of said municipal corporation.
(8) Upon any governmental entity not mentioned above, by delivering a copy of the summons and complaint to the person, officer, group or body responsible for the administration of that entity or by serving the appropriate legal officer, if any, representing the entity. Service upon any person who is a member of the "group" or "body" responsible for the administration of the entity shall be sufficient.

(e) Waiver. Any party defendant who is not an unmarried minor, or mentally incompetent may, without filing any pleading therein, waive the service of process or enter his or her appearance, either or both, in any action, with the same effect as if he or she had been duly served with process, in the manner required by law on the day of the date thereof. Such waiver of service or entry of appearance shall be in writing dated and signed by the defendant and duly sworn to or acknowledged by him or her, or his or her signature thereto be proven by two (2) subscribing witnesses before some officer authorized to administer oaths. Any guardian or conservator may likewise waive process on himself and/or his ward, and any executor, administrator, or trustee may likewise waive process on himself in his fiduciary capacity. However, such written waiver of service or entry of appearance must be executed after the day on which the action was commenced and be filed among the papers in the cause and noted on the general docket.

(f) Return. The person serving the process shall make proof of service thereof to the court promptly. If service is made by a person other than a sheriff, such person shall make affidavit thereof. If service is made under paragraph (c)(3) of this rule, return shall be made by the sender's filing with the court the acknowledgment received pursuant to such subdivision. If service is made under paragraph (c)(5) of this rule, the return shall be made by the sender's filing with the court the return receipt or the returned envelope marked "Refused". Failure to make proof of service does not affect the validity of the service.

(g) Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process is issued.

(h) Summons: Time Limit for Service. If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion.

Service of Process by Mississippi Rule of Civil Procedure 81

MRCP 81, Applicability of Rules, states:

> **(a) Applicability in General.** These rules apply to all civil proceedings but are subject to limited applicability in the following actions which are generally governed by statutory procedures.
>
> (1) proceedings pertaining to the writ of habeas corpus;
> (2) proceedings pertaining to the disciplining of an attorney;
> (3) proceedings pursuant to the Youth Court Law and the Family Court Law;
> (4) proceedings pertaining to election contests;
> (5) proceedings pertaining to bond validations;
> (6) proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts and persons in need of mental treatment;
> (7) eminent domain proceedings;
> (8) Title 91 of the Mississippi Code of 1972;
> (9) Title 93 of the Mississippi Code of 1972;
> (10) creation and maintenance of drainage and water management districts;
> (11) creation of and change in boundaries of municipalities;
> (12) proceedings brought under Sections 9-5-103, 11-1-23, 11-1-29, 11-1-31, 11-1-33, 11-1-35, 11-1-43, 11-1-45, 11-1-47, 11- 1-49, 11-5-151 through 11-5-167, and 11-17-33.
>
> Statutory procedures specifically provided for each of the above proceedings shall remain in effect and shall control to the extent they may be in conflict with these rules; otherwise these rules apply.
>
> **(b) Summary Proceedings.** In ex parte matters where no notice is required proceedings shall be as summary as the pertinent statutes contemplate.
>
> **(c) Publication of Summons or Notice.** Whenever a statute requires summons or notice by publication, service in accordance with the methods provided in Rule 4 shall be taken to satisfy the requirements of such statute.
>
> **(d) Procedure in Certain Actions and Matters.** The special rules of procedure set forth in this paragraph shall apply to the actions and matters enumerated in subparagraphs (1) and (2) hereof and shall control to the extent they may be in conflict with any other provision of these rules.

30 Day Matters

(1) The following actions and matters shall be triable 30 days after completion of service of process in any manner other than by publication or 30 days after the first publication where process is by publication, to-wit:

adoption;
correction of birth certificate;
alteration of name;
termination of parental rights;
paternity;
legitimation;
uniform reciprocal enforcement of support;
determination of heirship;
partition;
probate of will in solemn form;
caveat against probate of will;
will contest;
will construction;
child custody actions;
child support actions; and
establishment of grandparents' visitation.

Rule 81(d) divides the actions therein detailed into two categories. This division is based upon the recognition that some matters, because of either their simplicity or need for speedy resolution, should be triable after a short notice to the defendant/respondent; while others, because of their complexity, should afford the defendant/respondent more time for trial preparation. ***Advisory Committee Notes*.**

7 Day Matters

(2) The following actions and matters shall be triable 7 days after completion of service of process in any manner other than by publication or 30 days after the first publication where process is by publication, to wit:

> removal of disabilities of minority;
> temporary relief in divorce,
> separate maintenance,
> child custody, or
> child support matters;
> modification or enforcement of custody, support, and alimony judgments;
> contempt; and
> estate matters and
> wards' business

in which notice is required but the time for notice is not prescribed by statute or by subparagraph (1) above.

(3) Complaints and petitions filed in the actions and matters enumerated in subparagraphs (1) and (2) above shall not be taken as confessed.

> Rule 81(d)(3) provides that the pleading initiating the action should be commenced by complaint or petition only and shall not be taken as confessed. Initiating Rule 81(d) actions by "motion" is not intended. ***Advisory Committee Notes.***

(4) No answer shall be required in any action or matter enumerated in subparagraphs (1) and (2) above but any defendant or respondent may file an answer or other pleading or the court may require an answer if it deems it necessary to properly develop the issues. A party who fails to file an answer after being required so to do shall not be permitted to present evidence on his behalf.

(5) Upon the filing of any action or matter listed in subparagraphs (1) and (2) above, summons shall issue commanding the defendant or respondent to appear and defend at a time and place, either in term time or vacation, at which the same shall be heard. Said time and place shall be set by special order, general order or rule of the court. If such action or matter is not heard on the day set for hearing, it may by order signed on that day be continued to a later day for hearing without additional summons on the defendant or respondent. The court may by order or rule authorize its clerk to set such actions or matters for original hearing and to continue the same for hearing on a later date.

Rule 81(d)(5) recognizes that since no answer is required of a defendant/respondent, then the summons issued shall inform him of the time and place where he is to appear and defend. If the matter is not heard on the date originally set for the hearing, the court may sign an order on that day continuing the matter to a later date. The rule also provides that the Court may adopt a rule or issue an order authorizing its Clerk to set actions or matters for original hearings and to continue the same for hearing on a later date. ***Advisory Committee Notes*.**

It is patent and obvious that the Chancellor erred in granting the default judgment. Rule 81(d)(5) requires the issuance of summons commanding the defendant to appear and defend at a time and place at which the action is to be heard and precludes a default judgment. That kind of summons was not issued in this case. The proper procedure under Rule 81 would have been to serve [the father] with the motion for modification and a Rule 81 summons, setting a time and date for a hearing at the Hinds Chancery Court, First Judicial District, and informing him that he was not required to respond in writing. It appears from the record that at the time [the father] was served with the motion and Rule 4 summons, no date was set for a hearing. It is clear that under Rule 81, even had [the father] been served with the correct form of summons, he would not have been required to respond in writing to the motion. The effect of the Rule 4 summons was merely to inform [the father] that a motion for modification had been filed. Such "notice" does not comply with Rule 81, which requires that a date and time be set for a hearing. Therefore, the Court finds that when proceeding under matters enumerated in Rule 81, a proper 81 summons must be served. ***Powell v. Powell*, 644 So. 2d 269, 274 (Miss. 1994).**

***See* Form 1D. Rule 81 Summons.**

Upon the filing of any action or matter listed in [Rule 81(d)] subparagraphs (1) and (2) above, summons shall issue commanding the defendant or respondent to appear and defend at a time and place, either in term time or vacation, at which the same shall be heard. Rule 4 does not fully apply to such proceedings. Issuance of a summons in the form required by Rule 4 to notify a party of a Rule 81(d)(2) petition has no effect. A Rule 81 summons notifies a party "of the time and place where he is to appear and defend," while a Rule 4 summons requires a written response within 30 days. To utilize a summons form that provides only Rule 4 information necessarily means that Rule 81(d) information is not given. Sample form 1D states that the petition is attached to the summons, though the Rule itself is not explicit. Failure to attach would mean that the person served would not know the matter against which a defense is to be made. ***Sanghi v. Sanghi*, 759 So. 2d 1250, 1253 (Miss. Ct. App. 2000).**

(6) Rule 5(b) notice shall be sufficient as to any temporary hearing in a pending divorce, separate maintenance, custody or support action provided the defendant has been summoned to answer the original complaint.

(e) Proceedings Modified. The forms of relief formerly obtainable under writs of fieri facias, scire facias, mandamus, error coram nobis, error coram vobis, sequestration, prohibition, quo warranto, writs in the nature of quo warranto, and all other writs, shall be obtained by motions or actions seeking such relief.

(f) Terminology of Statutes. In applying these rules to any proceedings to which they are applicable, the terminology of any statute which also applies shall, if inconsistent with these rules, be taken to mean the analogous device or procedure proper under these rules; thus (and these examples are intended in no way to limit the applicability of this general statement): Bill of complaint, bill in equity, bill, or declaration shall mean a complaint as specified in these rules; Plea in abatement shall mean motion; Demurrer shall be understood to mean motion to strike as set out in Rule 12(f); Plea shall mean motion or answer, whichever is appropriate under these rules; Plea of set-off or set-off shall be understood to mean a permissible counterclaim; Plea of recoupment or recoupment shall refer to a compulsory counterclaim; Cross-bill shall be understood to refer to a counter-claim, or a cross-claim, whichever is appropriate under these rules; Revivor, revive, or revived, used with reference to actions, shall refer to the substitution procedure stated in Rule 25; Decree pro confesso shall be understood to mean entry of default as provided in Rule 55; Decree shall mean a judgment, as defined in Rule 54;

(g) Procedure Not Specifically Prescribed. When no procedure is specifically prescribed, the court shall proceed in any lawful manner not inconsistent with the Constitution of the State of Mississippi, these rules, or any applicable statute.

Other Clerk Duties and Responsibilities

MRCP 5, Service and Filing of Pleadings and Other Papers, states in part:

(b)(1) Service: How Made. Whenever under these rules service is required or permitted to be made upon a party who is represented by an attorney of record in the proceedings, the service shall be made upon such attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him; or by transmitting it to him by electronic means; or by mailing it to him at his last known address, or if no address is known, by leaving it with the clerk of the court, or by transmitting it to the clerk by electronic means. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of

suitable age and discretion then residing therein. Service by electronic means is complete when the electronic equipment being used by the attorney or party being served acknowledges receipt of the material. If the equipment used by the attorney or party being served does not automatically acknowledge the transmission, service is not complete until the sending party obtains an acknowledgment from the recipient. Service by mail is complete upon mailing. . . .

(e)(1) Filing With the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk. . . .

MRCP 5.1, Privacy Protection for Filings Made with the Court, provides:

Beginning July 1, 2016, all courts and offices of a circuit or chancery clerk that maintain electronic storage or electronic filing of documents, as defined under section 9-1-51 of the Mississippi Code, and make those documents accessible online must conform with the privacy provisions of the Administrative Procedures for Mississippi Electronic Courts--specifically, Sections 5 and 9 therein.

MRCP 6, Time, states in part:

(a) Computation. In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, as defined by statute, or any other day when the courthouse or the clerk's office is in fact closed, whether with or without legal authority, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, a legal holiday, or any other day when the courthouse or the clerk's office is closed. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. In the event any legal holiday falls on a Sunday, the next following day shall be a legal holiday. . . .

MRCP 17, Parties Plaintiff and Defendant; Capacity, provides in part:

(c) Infants or Persons Under Legal Disability. Whenever a party to an action is an infant or is under legal disability and has a representative duly appointed under the laws of the State of Mississippi or the laws of a foreign state or country, the representative may sue or defend on behalf of such party. A party defendant who is an infant or is under legal disability and is not so represented may be represented by a guardian ad litem appointed by the court when the court considers such appointment necessary for the protection of the interest of such defendant. The guardian ad litem shall be a resident of the State of

Mississippi, shall file his consent and oath with the clerk, and shall give such bond as the court may require. The court may make any other orders it deems proper for the protection of the defendant. When the interest of an unborn or unconceived person is before the court, the court may appoint a guardian ad litem for such interest. If an infant or incompetent person does not have a duly appointed representative, he may sue by his next friend. . . .

MRCP 40, Assignment of Cases for Trial, states in part:

> **(b) Notice.** The court shall provide by written direction to the clerk when a trial docket will be set. The clerk shall at least five (5) days prior to the date on which the trial docket will be set notify all attorneys and parties without attorneys having cases upon the trial calendar of the time, place, and date when said docket shall be set. All cases shall be set on the trial docket at least twenty (20) days before the date set for trial unless a shorter period is agreed upon by all parties or is available under Rule 55. The trial docket shall be prepared by the clerk at the time actions are set for trial and shall state the case to be tried, the date of trial, the attorneys of record in the case, and the place of trial. Additionally, said trial docket shall reflect such attorneys of record and parties representing themselves as were present personally or by designee when the trial docket was set. The clerk shall within three (3) days after a case has been placed on the trial docket notify all parties who were not present personally or by their attorney of record at the docket setting as to their trial setting. Notice shall be by personal delivery or by mailing of a notice within said three (3) day period. Matters in which a defendant is summoned to appear and defend at a time and place certain pursuant to Rule 81 or in which a date, time and place for trial have been previously set shall not be governed by this rule. . . .

MRCP 41, Dismissal of Actions, states in part:

> **(d) Dismissal on Clerk's Motion.**
>
> **(1) Notice.** In all civil actions wherein there has been no action of record during the preceding twelve months, the clerk of the court shall mail notice to the attorneys of record that such case will be dismissed by the court for want of prosecution unless within thirty days following said mailing, action of record is taken or an application in writing is made to the court and good cause shown why it should be continued as a pending case. If action of record is not taken or good cause is not shown, the court shall dismiss each such case without prejudice. The cost of filing such order of dismissal with the clerk shall not be assessed against either party.
>
> **(2) Mailing Notice.** The notice shall be mailed in every eligible case not later than thirty days before June 15 and December 15 of each year, and all such cases shall be presented to the court by the clerk for action therein on or before June 30 and December 31 of each year. These deadlines shall not be interpreted as a prohibition against mailing of notice

and dismissal thereon as cases may become eligible for dismissal under this rule. This rule is not a limitation upon any other power that the court may have to dismiss any action upon motion or otherwise. . . .

MRCP 45, Subpoena, states in part:

(a) Form; Issuance.

(1) Every subpoena shall be issued by the clerk under the seal of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony, or to produce and permit inspection and copying of designated books, documents, electronically stored information, or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified. The clerk shall issue a subpoena signed and sealed, but otherwise in blank, to a party requesting it, who shall fill it in before service. A command to produce or to permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately. A subpoena may specify the form or forms in which electronically stored information is to be produced. . . .

(c) Service.

. . . .

(2) Proof of service shall be made by filing with the clerk of the court from which the subpoena was issued a statement, certified by the person who made the service, setting forth the date and manner of service, the county in which it was served, the names of the persons served, and the name, address and telephone number of the person making the service.

MRCP 53, Masters, Referees, and Commissioners, states in part:

(e) Proceedings. When a reference is made, the clerk shall forthwith furnish the master with a certified copy of the order of reference, which shall constitute sufficient certification of his authority. . . .

(g) Report.

(1) Contents and Filing. The master shall prepare a report upon the matters submitted to him by the order of reference and, if required to make findings of fact and conclusions of law, he shall set them forth in the report. He shall file the report with the clerk of the court and, unless otherwise directed by the order of reference, shall file with it a transcript of the proceeding and of the evidence in the original exhibits. The clerk shall forthwith mail to all parties notice of the filing. . . .

(h) Bond; When Required. The court may require a special commissioner appointed to conduct a sale of any property to give bond in such penalty and with sufficient sureties to be approved as the court may direct, payable to the State of Mississippi, and conditioned to pay according to law all money which may come into his hands as such special commissioner. The bond shall be filed with the court. For any breach of its condition, execution may be issued on order of the court for the sum due. However, when the clerk of the court or the sheriff is appointed to make a sale and the order does not provide for a bond, the official bond of the clerk or the sheriff shall be held as security in the premises.

MRCP 54, Judgments; Costs, states in part:

(e) Costs. Except when express provision therefor is made in a statute, costs shall be allowed as of course to the prevailing party unless the court otherwise directs, and this provision is applicable in all cases in which the State of Mississippi is a party plaintiff in civil actions as in cases of individual suitors. In all cases where costs are adjudged against any party who has given security for costs, execution may be ordered to issue against such security. Costs may be taxed by the clerk on one day's notice. On motions served within five days of the receipt of notice of such taxation, the action of the clerk may be reviewed by the court.

MRCP 55, Default, states in part:

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default.

MRCP 60, Relief from Judgment or Order, provides in part:

(a) Clerical Mistakes. Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time on its own initiative or on the motion of any party and after such notice, if any, as the court orders up until the time the record is transmitted by the clerk of the trial court to the appellate court and the action remains pending therein. Thereafter, such mistakes may be so corrected only with leave of the appellate court. . . .

MRCP 65, Injunctions, states in part:

(b) Temporary Restraining Order; Notice; Hearing; Duration. A temporary restraining order may be granted, without notice to the adverse party or his attorney if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the

notice and reasons supporting his claim that notice should not be required. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed ten days, as the court fixes (except in domestic relations cases, when the ten-day limitation shall not apply), unless within the time so fixed the order for good cause shown is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. . . .

MRCP 65.1, Security: Proceedings Against Sureties, provides:

> Whenever these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting the liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

MRCP 67, Deposit in Court, states:

> In any action in which any part of the relief sought is judgment for a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing. Where money is paid into court to abide the result of any legal proceeding, the judge may order it deposited at interest in a federally insured bank or savings and loan association authorized to receive public funds, to the credit of the court in the action or proceeding in which the money was paid. The money so deposited plus any interest shall be paid only upon the check of the clerk of the court, annexed with its certified order for the payment, and in favor of the person to whom the order directs the payment to be made.

MRCP 77, Courts and Clerks, states in part:

> **(a) Court Always Open.** The courts shall be deemed always open for the purposes of filing any pleading or other proper paper, of issuing and returning process, and of making and directing all interlocutory motions, orders, and rules.
>
> **(b) Trials and Hearings; Orders in Chambers.** All trials upon the merits shall be conducted in open court, except as otherwise provided by statute. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of

the clerk or other court officials and at any place within the state either within or without the district; but no hearing shall be conducted outside the district without the consent of all parties affected thereby.

(c) Clerk's Office and Orders by Clerk. The clerk's office with the clerk or a deputy clerk in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays. All motions and applications to the clerk for issuing process, for issuing process to enforce and execute judgments, for entering defaults, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but his action may be suspended or altered or rescinded by the court upon cause shown.

(d) Notice of Orders or Judgments. Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry in the manner provided for in Rule 5 upon each party who is not in default for failure to appear, and shall make a note in the docket of the service. Any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers. Lack of notice of the entry by the clerk does not affect the time to appeal, nor relieve, nor authorize the court to relieve, a party for failure to appeal within the time allowed, except as permitted by the Mississippi Rules of Appellate Procedure.

> The notices required by Rule 77(d) are mandatory, and they are indispensable to the right of parties to receive timely information from our state trial courts concerning significant judicial actions in civil matters in litigation. The deadlines applicable to litigants' right to appeal from judgments rendered by the courts are triggered by the dates on which those judgments and orders are entered. Meticulous adherence to Rule 77(d) by court clerks is essential to the protection and timely exercise of those rights. A court clerk's failure to practice unerring care and absolute efficiency in timely issuing and docketing such notices can be disastrous to a party who, for want of notice of an adverse judgment, does not know that he or she needs to act with dispatch to appeal in an effort to protect some important right or interest. ***In re Dunn*, 84 So. 3d 4, 6 (Miss. 2010).**

MRCP 79, Books and Reports Kept by the Clerk and Entries Therein, states:

> **(a) General Docket.** The clerk shall keep a book known as the "general docket" of such form and style as is required by law and shall enter therein each civil action to which these rules are made applicable. The file number of each action shall be noted on each page of the docket whereon an entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be noted in this general docket on the page assigned to the action and shall be marked with its file number. These entries shall be brief but shall show the nature of each paper filed or writ issued

and the substance of each order or judgment of the court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made. In the event a formal order is entered, the clerk shall insert the order in the file of the case.

(b) Minute Book. The clerk shall keep a correct copy of every judgment or order. This record shall be known as the "Minute Book."

(c) Indexes; Calendars. Suitable indexes of the general docket shall be kept by the clerk under the direction of the court. There shall be prepared, under the direction of the court, calendars of all actions ready for trial.

(d) Other Books and Records. The clerk shall also keep such other books and records as may be required by statute or these rules. The documents required to be kept under this rule may be recorded by means of an exact-copy photocopy process.

(e) Removing the File in a Case. The file of a case shall not be removed from the office of the clerk except by permission of the court or the clerk.

Uniform Chancery Court Rules (UCCR)

UCCR 1.02, Officers Must be Present in Court, provides:

When the Court is in session the Sheriff and Clerk, in person or by competent deputies, must be present in the courtroom to perform such duties as may be required of them by law or the direction of the Chancellor unless excused by the Chancellor. The Court Reporter shall be present as the Chancellor may direct, to perform the duties of Court Reporter.

UCCR 1.04, Clerk Must Have Papers and Dockets in Courtroom, states:

Unless the Chancellor directs otherwise, the Clerk shall, while the court is in session, have and keep in the courtroom, or in an office adjoining, the court file of each action pending for that day in the Court, and all dockets he is required to keep.

UCCR 2.02, Pleadings Must be Filed Before Presented, states:

All pleadings, accounts and other papers in any action shall be filed with the Clerk of the proper Court before being presented to the Chancellor. If to do so would inflict undue hardship on the attorney, or in emergency matters, the papers may be presented to the Chancellor and marked filed by him as provided in M.R.C.P. 5(e). Thereafter, the said papers shall be forthwith transmitted by the attorney to the proper Clerk.

UCCR 2.06, Blanks in Pleadings Must be Filled In, provides:

> All blanks contained in any pleading must be properly filled in according to the fact or facts before being filed with the clerk or presented for consideration by the Court or Chancellor. If the pleader does not know, and is unable to learn, the necessary fact or facts to enable him to fill in such blanks accurately, he must so state in his pleading.

UCCR 5.06, Judgment Must be Delivered to Clerk, states:

> As soon as a Judgment has been signed by the Chancellor, it shall be promptly delivered to the Clerk of the proper Court for record in the minute book. Any person to whom any Judgment may be entrusted by the Chancellor for delivery to the Clerk who shall either willfully or negligently fail to promptly deliver it to the Clerk, shall be guilty of a contempt.

UCCR 6.14, Court Costs Must be Paid Annually, states:

> Every fiduciary shall at least annually pay all accrued court costs and present the clerk's receipt therefor as a voucher on his next accounting.

UCCR 7.02, Return Envelope Must be Enclosed, states:

> When any attorney or Clerk shall forward papers to the Chancellor requesting a response or the return of a judgment, order or paper, a self-addressed, stamped envelope shall be enclosed for the return thereof to the Clerk by the Chancellor. If the attorney shall desire a copy of a judgment or order returned to him, he shall furnish such copy and self-addressed stamped envelope for the return thereof. All mail to the Chancellor should be fully prepaid.

UCCR 8.05, Financial Statement Required, provides in part:

> The party providing the required written statement shall immediately file a Certificate of Compliance with the Chancery Clerk for filing in the court file.

UCCR 8.06, Change of Address of Children, states in part:

> (b) Within five days of a party subject to this rule changing his/her address, he/she shall, so long as the child or children remain minors, notify in writing the Clerk of the Court which has entered the order providing for custody and visitation, of his/her full new address and shall furnish the other party a copy of such notice. The notice shall include the Court file number. The Clerk shall docket and file such notice in the cause. . . .

UCCR 9.01, Costs of Court, states:

> Court cost deposits to pay the fees due the Chancery Clerk shall be made with the filing of any complaint or petition as follows:
>
> (1) No fault divorce: a deposit of $30.00.
> (2) Complaints other than ex parte matters: a deposit of $75.00.
> (3) All ex parte matters: a deposit of $25.00.
> (4) Upon filing a counterclaim or crossclaim by a Cross-Plaintiff: a deposit of $25.00.
> (5) The Clerk may, pursuant to M.R.C.P. 3(b), require an additional deposit.

UCCR 9.02, All Papers Must be Kept in Proper Files, provides:

> The Clerk shall place and keep all papers pertaining to each action in a separate file and all papers pertaining to the same case shall be kept in the same file. The Clerk shall place and keep the files containing the papers in a filing case in the Clerk's office, or vault, in numerical order. In addition, files may be maintained electronically or on microfilm or microfiche provided a "reader" is available in the Clerk's office. states:

UCCR 9.04, Original Wills and Bonds–How Kept, states:

> The Clerk shall keep all original Wills, all bonds and receipts from banks and all disputed documents filed with him safely and securely locked in a safe or vault in his office. He shall not permit the same to be taken from his custody for any purpose, except on an order of the Chancellor entered on the minutes.

UCCR 10.01, Waiver of Consent to Abortion, provides in part:

> Any request by a minor to the Chancery Court or the Chancellor in vacation for waiver of consent to an abortion shall be by petition, filed with the Clerk of said Court by the minor or by a next friend. The petition shall be made under oath and shall include all of the following:
>
> (1) A statement that the complainant is pregnant;
>
> (2) A statement that the complainant is unmarried, under eighteen years of age, and unemancipated;
>
> (3) A statement that the complainant wishes to have an abortion without the notification of her parents or legal guardian;
>
> (4) An allegation of one or more of the following:

(a) That the complainant is sufficiently mature and well informed to intelligently decide whether to have an abortion without the notification of her parents, or legal guardian;

(b) That one or both of her parents, or her legal guardian was engaged in a pattern of physical, sexual, or emotional abuse against her, or that the notification of her parents, or legal guardian, otherwise is not in her best interest;

(c) That performance of the abortion would be in the best interest of the minor.

(5) A statement as to whether the complainant has retained an attorney, the name, address, and telephone number of her attorney. A minor may represent herself or be represented by counsel. The Court shall advise each minor petitioner of her right to court-appointed counsel, and shall appoint counsel to represent her if the minor so requests, and if the minor appears not to be represented.

If the minor chooses to represent herself such pleadings, documents, or evidence which she may file with the Clerk shall be liberally construed by the Court so as to do substantial justice. No fee shall be required by the Clerk for filing any papers or pleadings.

Upon the filing of any petition under this section, the Clerk shall immediately notify the Court or the Chancellor in vacation that such petition has been filed. The Court, or the Chancellor in vacation shall immediately exercise all due diligence in granting a setting within the time required by law. If a Chancellor in the District is not available, the Clerk shall immediately refer the petition to another Chancellor, Circuit Judge, County Judge, or a special master in Chancery to hear the petition as provided by law.

If the Court cannot hear the matter or the Court fails to make findings of fact and conclusions of law within 72 hours of the time of the filing of the petition, the Clerk shall immediately issue or cause to issue a statement under seal of the Court, that the Court has not ruled within 72 hours of the time of the filing of the petition and that the minor may proceed as if the consent requirement of Miss. Code Ann. 41-41-53 has been waived.

All proceedings, files, documents, and records reasonably connected with proceedings herein shall be kept strictly confidential and anonymous. Reference to said minor's identity shall be made by use of her initials only. Docket entries and decrees or orders spread upon the minutes of the Court shall in no way refer to the name of the minor, but shall be by reference to initials only.

The Court or the Chancellor in vacation shall conduct closed hearings regarding any such petition filed, and the Clerk, Reporter, and other officers of the Court shall take such steps as are reasonably necessary to maintain the confidentiality and anonymity of both litigants and documents.

If the Court or Chancellor in vacation shall rule against the petition or petitioner, or not grant a waiver of necessity for parental consent, a confidential, expedited appeal may be had by the minor pursuant to Mississippi Rule of Appellate Procedure 48.

If no appeal is taken during the appropriate period, but in no event later than seven (7) days following the filing of the disposition of said petition, all records except the Court's docket shall be securely sealed and deposited under lock and key in the Clerk's office and shall remain sealed and not available for inspection without further order of the Court.

In Forma Pauperis Proceedings

MRCP 3 Commencement of Action states in part:

> **(c) Proceeding In Forma Pauperis.** A party may proceed in forma pauperis in accordance with sections 11-53-17 and 11-53-19 of the Mississippi Code Annotated. The court may, however, on the motion of any party, on the motion of the clerk of the court, or on its own initiative, examine the affiant as to the facts and circumstances of his pauperism.
>
> Rule 3(c) allows indigents to sue without depositing security for costs; however, the indigent affiant may be examined as to affiant's financial condition and the court may, if the allegation of indigency is false, dismiss the action. ***Advisory Committee Notes*.**

§ 11-53-17 Indigent action without security:

A citizen may commence any civil action, or answer a rule for security for costs in any court without being required to prepay fees or give security for costs, before or after commencing suit, by taking and subscribing the following affidavit:

> I, _____, do solemnly swear that I am a citizen of the State of Mississippi, and because of my poverty I am not able to pay the costs or give security for the same in the civil action (describing it) which I am about to commence (or which I have begun, as the case may be) and that, to the best of my belief, I am entitled to the redress which I seek by such suit.

However, "[t]he right to proceed in forma pauperis in civil cases does not extend beyond the initial trial of the matter." While section 11-53-17 allows "persons who are truly indigent [to] proceed in civil actions as paupers[,] . . . this statute authorizes in forma pauperis proceeding[s] in civil cases at the trial level only.*"* ***Walker v. Bailey*, 270 So. 3d 195, 201 (Miss. Ct. App. 2018) (citations omitted).**

In *Nelson v. Bank of Mississippi*, 498 So. 2d 365 (Miss. 1986), this Court stated that while Miss. Code Ann. § 11-53-17 "provides that persons who are truly indigent may proceed in civil actions as paupers . . . this statute authorizes in forma pauperis proceedings in civil cases at the trial level only." In *Life & Cas. Ins. Co. v. Walters*, 190 Miss 761, 774, 200 So. 732 (1940), this Court stated "that the statute dealing with suits in forma pauperis applies only to courts of original jurisdiction, and not to courts of appeal." ***Moreno v. State*, 637 So. 2d 200, 202 (Miss. 1994) (citations omitted).**

One of the great problems of civil government is securing justice to the poor. Under the Constitution all persons are entitled to maintain an action in the courts for an injury done to him in his lands, goods, person, or reputation, and the courts shall be open and justice shall be administered without sale, denial, or delay. It is the policy of the law that every person, however humble or poor, may resort to the courts for the vindication of his rights and the redress of his wrongs. Justice must be granted to every person, whether such person is able to pay the costs or not; if he is too poor to pay the costs, under the law he may make oath to that effect, and the suit will then be entertained and rights will be accorded to him just as though he were paying the expense. If a person is able to deposit the costs, or give security therefor, it may be required, but, if he is unable to do so, he cannot be denied justice. ***Meeks v. Meeks*, 156 Miss. 638, 126 So. 189, 190 (1930).**

Section 11-53-17 authorizes a citizen of Mississippi to commence a civil action without being required to prepay fees or give security for costs by taking and subscribing an affidavit that the individual is a citizen and because of poverty is unable to pay the costs of the action. The court may make inquiry into the affidavit of poverty and if the court is satisfied that the allegations of poverty are not true, the court may dismiss the action. We see no provision in the statutes or the Mississippi Rules of Civil Procedure which would

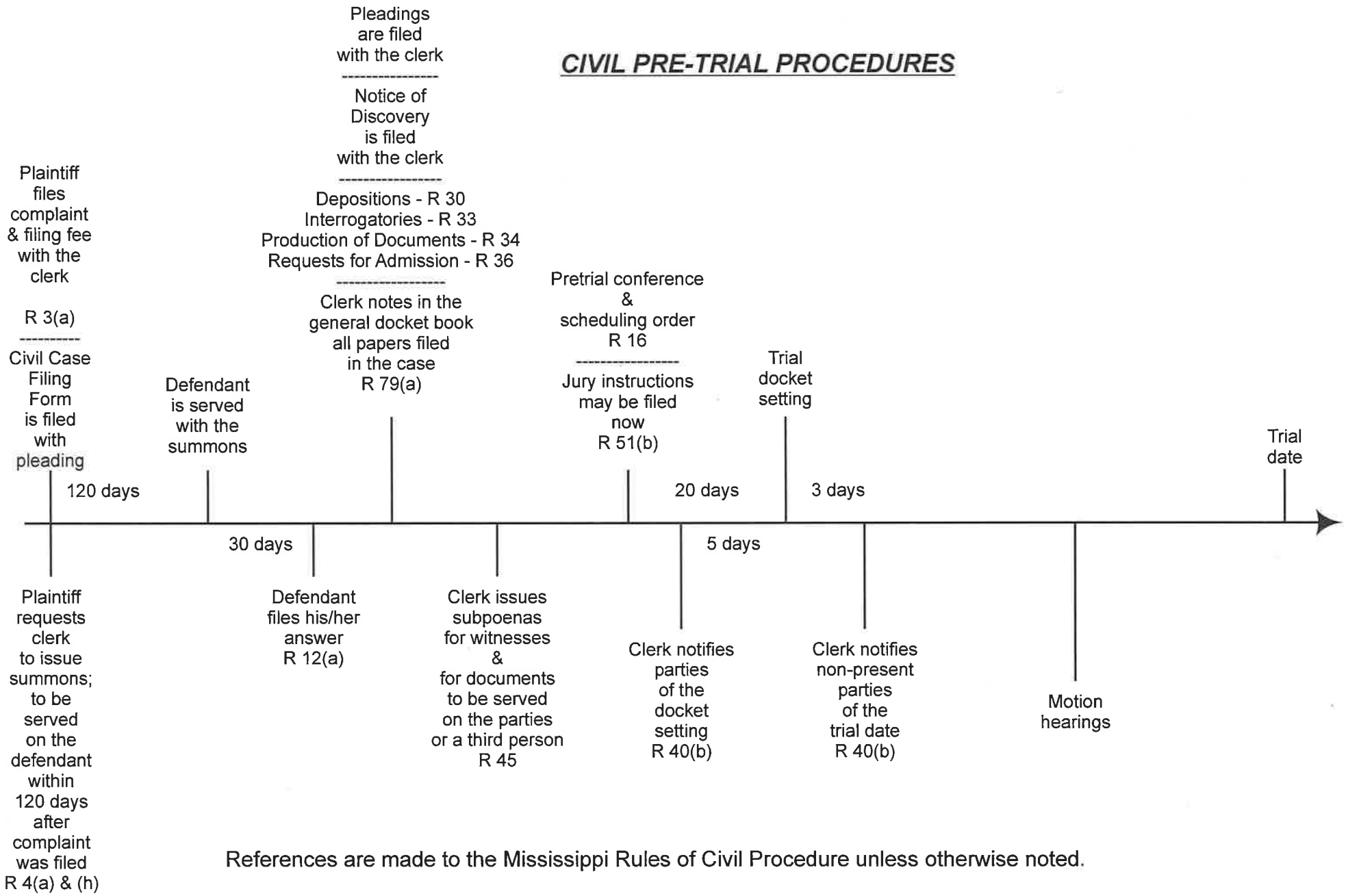
require such a hearing to take place after service of process. It is our opinion that the court may conduct a hearing after the filing of the complaint and before service of process. If the court dismisses the action prior to service of process, then there would be no need to serve the summons and complaint and no fee would accrue to the sheriff by virtue of Section 25-7-19. In the event the court declines to hold a hearing or if the court holds a hearing and does not dismiss the complaint, the sheriff is required to deliver the summons and complaint in accordance with Rule 4 of the Mississippi Rules of Civil Procedure. Under these circumstances, it is our opinion that the county would bear the cost of the sheriff's fee authorized by Section 25-7-19. for service of process. **Re: Payment for Service of Process - Paupers, Opinion No. 2005-0234 (Miss. A. G. May 27, 2005).**

§ 11-53-19 Untrue allegation of poverty, dismissal:

The court may dismiss an action commenced or continued on affidavit of poverty, if satisfied that the allegation of poverty was untrue.

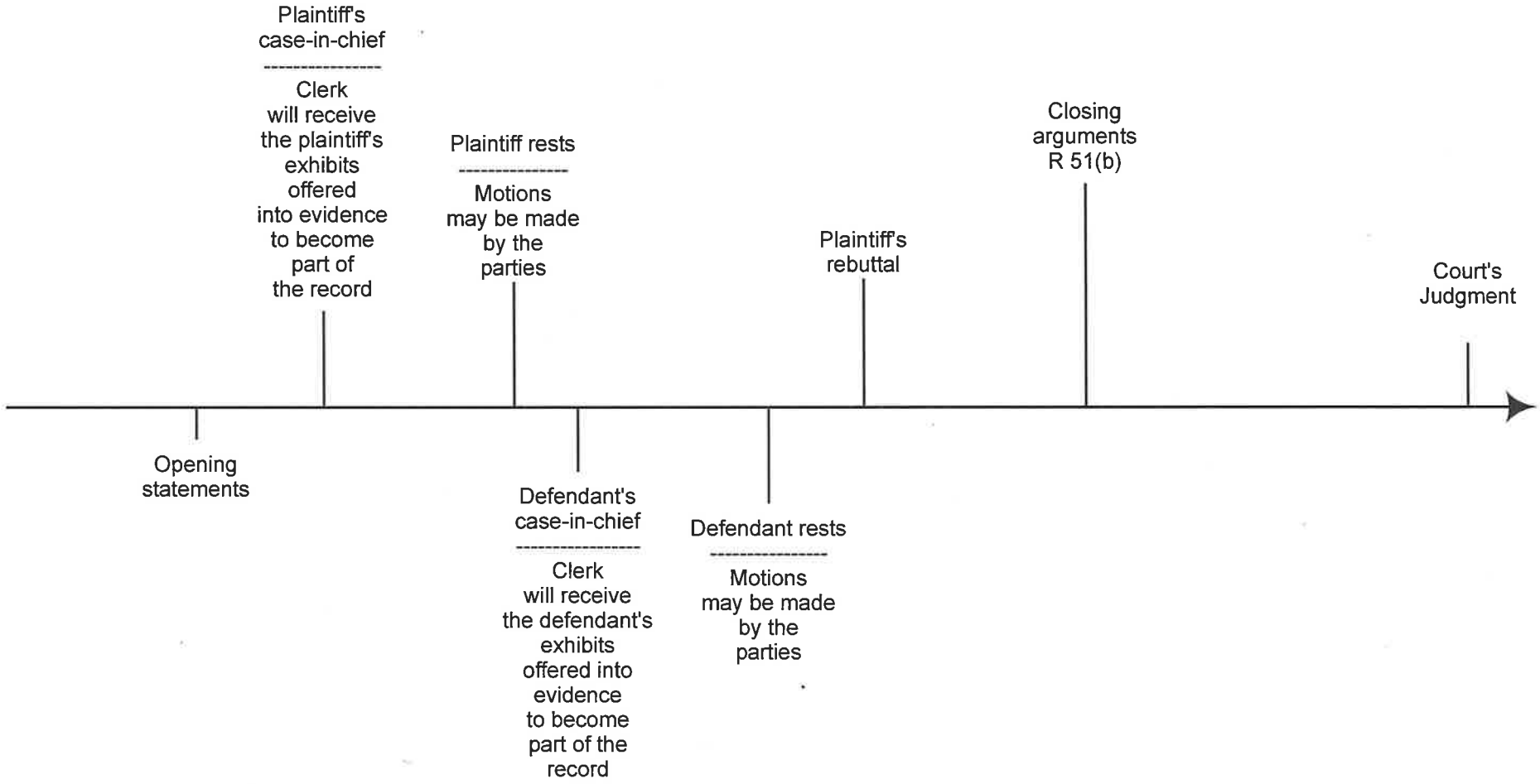
It is contended on behalf of appellee that the action of the court in dismissing the case was authorized by section 948, Code 1906, which provides: "The court may dismiss an action commenced or continued on affidavit of poverty, if satisfied that the allegation of poverty was untrue." The judgment of the court in dismissing a cause under this statute must be based on testimony capable of being embodied in a bill of exceptions and made a part of the record in the case. Such a judgment is reviewable by this court on appeal. The question must be heard and determined on testimony adduced before the court in the regular way. This was not done. Therefore the court was in error in dismissing the case. ***Feazell v. Soltzfus*, 98 Miss. 886, 54 So. 444, 444-45 (1911).**

CIVIL PRE-TRIAL PROCEDURES



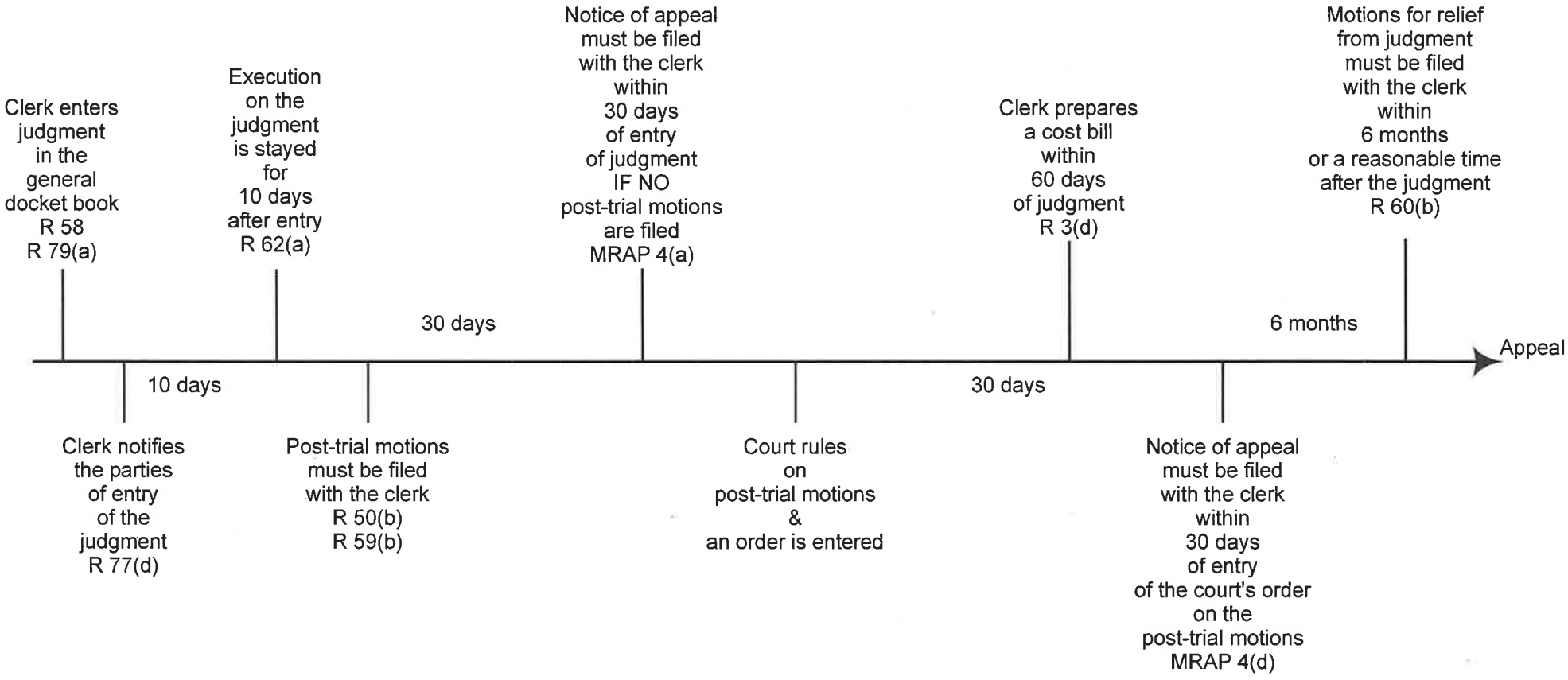
References are made to the Mississippi Rules of Civil Procedure unless otherwise noted.

CIVIL TRIAL PROCEDURES



References are made to the Mississippi Rules of Civil Procedure unless otherwise noted.

CIVIL POST-TRIAL PROCEDURES



References are made to the Mississippi Rules of Civil Procedure unless otherwise noted.

APPENDIX

TO

CHAPTER 7

IN FORMA PAUPERIS

BENCH CARD

IN FORMA PAUPERIS PROCEDURE FOR SELF-REPRESENTED FAMILY LAW CASES

Mississippi Law gives citizens the ability to have their fees or costs waived if they are unable to pay due to their poverty. In Forma Pauperis is a Latin term that means in the form of a pauper.

1. Plaintiff files Petition and accompanying Pauper's Affidavit. The affidavit shall state:

"I, _____, do solemnly swear that I am a citizen of the State of Mississippi, and because of my poverty I am not able to pay the costs or give security for the same in the civil action (describing it) which I am about to commence (or which I have begun, as the case may be) and that, to the best of my belief, I am entitled to the redress which I seek by such suit."

2. Clerk shall file the case and issue a Cause Number pursuant to Miss. Code Ann. § 11-1-5 and M.R.C.P. Rule 79.

3. **At this point, EITHER:**

   a. **Plaintiff proceeds *In Forma Pauperis*** (without payment of fees or costs) **OR**

   b. **IF the Clerk (or the Judge or any party to the case) believes the plaintiff may not be indigent**:

      1) The Clerk issues a Notice of Show Cause Hearing for the Judge to determine whether the plaintiff may proceed *In Forma Pauperis*. The Clerk provides the plaintiff with a copy of the Notice showing the time, date and location for hearing.

      2) The Clerk also provides a Financial Statement approved by the Court for the plaintiff to complete and bring to the Show Cause Hearing, which will include the plaintiff's income, assets and liabilities.

      3) At the Show Cause Hearing, the Judge determines, on the record, whether the plaintiff may proceed *In Forma Pauperis.* If *In Forma Pauperis* status is denied, the Judge will issue an Order stating the reasons for the denial and may dismiss the case without prejudice. The Judge or any party, upon belief that the plaintiff's allegation of poverty might be untrue, may request a Show Cause Hearing to determine whether the plaintiff is entitled to proceed *In Forma Pauperis.*

Mississippi Statutes and Rules governing *In Forma Pauperis*

Miss. Code Ann. § 11-53-17. Indigent Action without Security.
A citizen may commence any civil action, or answer a rule for security for costs in any court without being required to prepay fees or give security for costs, before or after commencing suit, by taking and subscribing [the pauper's affidavit as written in the first point on this page].

Miss. Code Ann. § 11-53-19. Untrue allegation of poverty, dismissal.
The court may dismiss an action commenced or continued on affidavit of poverty, if satisfied that the allegation of poverty was untrue.

Miss. Code Ann. § 11-53-21. Judgment for costs against poor persons.
In cases commenced or continued on an affidavit of poverty, the officers of the court shall perform all the duties required in the prosecution of the suit, and the witnesses shall attend until released; but in the case of failure to prosecute his suit to effect, judgment shall be given against the plaintiff for costs, and execution may be issued as in other cases.

M.R.C.P. Rule 3 Commencement of Action.
(c) Proceeding In Forma Pauperis. A party may proceed in forma pauperis in accordance with sections 11-53-17 and 11-53-19 of the Mississippi Code Annotated. The court may, however, on the motion of any party, on the motion of the clerk of the court, or on its own initiative, examine the affiant as to the facts and circumstances of his pauperism.
Rule 3 comment: Rule 3(c) allows indigents to sue without depositing security for costs; however, the indigent affiant may be examined as to affiant's financial condition and the court may, if the allegation of indigency is false, dismiss the action.

THE FINAL DECISION FOR ALLOWING IFP STATUS IS WITHIN THE JUDGE'S DISCRETION BASED ON THE FACTS PRESENTED IN A PARTICULAR CASE.

Family Law Implicates Fundamental Rights. This process could be used for all cases in Chancery Court, but it is especially recommended for family law cases, which implicate the fundamental rights of the parties. *See Boddie v. Connecticut*, 401 U.S. 371, 374 (1971) (holding that a state could not deny a divorce to a married couple based on their inability to pay approximately $60 in court costs because there were constitutionally protected "fundamental interests" at stake). Arguably, this would extend to all family law cases, such as child custody, guardianships, termination of parental rights, and adoptions.

SUGGESTED CONSIDERATIONS WHEN MAKING AN ON THE RECORD IFP DETERMINATION

1) Make an Individualized Assessment.

a) If the Pauper's Affidavit is challenged, determine the plaintiff's income. The Judge should make an individualized assessment of the plaintiff's ability to pay, based on **the totality of the circumstances** including, but not limited to, the plaintiff's:
- disposable income (consider only the income earned by the plaintiff and the financial resources available to the plaintiff, not the income of other household residents (*e.g.*, parents or siblings)),
- financial obligations and liquid assets, and
- cost of living in the county of residence.

b) The Judge may consider the **general standard of living in counties that have the lowest average per capita income** and elect to use a percentage of the Federal Poverty Guidelines as a factor for determining indigence. The Federal Poverty Guidelines may be found at https://aspe.hhs.gov/2019-poverty-guidelines.

c) At the Show Cause Hearing, the Judge should make **specific factual findings** as to why that person should or should not be entitled to proceed *In Forma Pauperis*.

d) The Judge should consider ordering all financial documents be filed under seal.

2) Suggested Considerations for Determining Indigence.

The Judge may consider granting *In Forma Pauperis* status when the plaintiff currently:

a) Has income at or below 100% of the Federal Poverty Guidelines.

b) Is receiving free legal services through:
- North Mississippi Rural Legal Services or Mississippi Center for Legal Services
- Mississippi Volunteer Lawyers Project
- A civil legal clinic operated by either School of Law in Mississippi
- Mississippi Center for Justice
- Southern Poverty Law Center

c) Has a contract for federally subsidized housing.

d) Is eligible for and receives SNAP benefits.

e) Is enrolled in Medicaid.

f) Is receiving pro bono legal services from a licensed attorney based on a referral from Legal Services or MVLP.

g) Is qualified for and receives Supplemental Security Income Disability Benefits for the Disabled, Blind, and Elderly.

CHAPTER 8

JURY TRIALS IN CHANCERY COURT

CHAPTER 8

JURY TRIALS IN CHANCERY COURT

Mississippi Constitution Art. III, § 31 Trial by jury, provides:

> The right of trial by jury shall remain inviolate, but the legislature may, by enactment, provide that in all civil suits tried in the circuit and chancery court, nine or more jurors may agree on the verdict and return it as the verdict of the jury.

> > The Mississippi Constitution, Article 3, § 31 provides in part that the right of trial by jury shall remain inviolate. . . . In chancery court, with some few statutory exceptions, the right to jury is purely within the discretion of the chancellor, and if one is empaneled, its findings are totally advisory. ***Union National Life Ins. Co. v. Crosby*, 870 So. 2d 1175, 1181-82 (Miss. 2004) (citations omitted).**

§ 11-5-3 Issue tried by jury:

The chancery court, in a controversy pending before it, and necessary and proper to be tried by a jury, shall cause the issue to be thus tried to be made up in writing. The jury shall be drawn in open court from the jury box used in the circuit court, in the presence of the clerk of the circuit court who shall attend with the box for that purpose. The number drawn shall not exceed twenty, and the slips containing the names shall be returned to the box. The clerk of the chancery court shall issue the venire facias to the sheriff, returnable as the court shall direct. If there be no jury box the jury may be obtained as provided for in the circuit court in such case. The sheriff and jurors, for failure to perform duty or to attend, shall be liable to like penalty as in the circuit court. The parties shall have the same right of challenge as in trials in the circuit court, and the jury may be completed in the same manner. The chancellor may instruct the jury in the same way that juries are instructed in the circuit court, and the parties shall have the same rights in respect thereto; the instructions shall be filed in the cause and become a part of the record, and the chancellor shall sign bills of exceptions as in the circuit court, and the court may grant new trials in proper cases.

> > The proper role of a jury in chancery court has long been a subject of debate in Mississippi. . . . The first case to consider the role of a jury in chancery after passage of the general statute in its present form was *Carradine v. Carradine*, 58 Miss. 286 (1880). On allegation of error for refusal to grant a jury trial, this Court first ruled that no question of fact was presented, but went on to state that "the granting of a jury trial in the chancery court where no statute prescribed one, is always discretionary

with the chancellor." Subsequent interpretations of the statutory language "necessary and proper to be tried by a jury" left to the chancellor's discretion the decision of a jury trial being necessary and proper but limited the discretion to those occasions when no statute required a jury trial. . . . We think these cases illustrate that while a chancellor may deny a jury trial, disregard the verdict of the jury, or not be subject to error due to erroneous instructions, that each category is based upon the premise that a jury trial was not required by statute. These restrictive interpretations indicate that a chancellor's discretion is not as broad where a jury trial is mandated. ***Fowler v. Fisher*, 353 So. 2d 497, 498 (Miss. 1977).**

[T]he granting of a jury trial, in the Chancery Court, where no statute prescribes one, is always discretionary with the chancellor. ***Carradine v. Estate of Carradine*, 58 Miss. 286, 293 (Miss. 1880).**

§ 11-5-5 Venue change in jury cases:

The chancery court may award a change of venue for the trial of all issues to be tried by a jury pursuant to the procedure provided for in the Mississippi Rules of Civil Procedure.

Specific Statutes Authorizing Trial by Jury in Chancery Proceedings

Civil Practice & Procedure

§ 11-51-11 From criminal contempt judgment:

A contemnor shall not be entitled to a jury trial unless the contemnor requests a jury trial and unless the fine exceeds Five Hundred Dollars ($500.00), or the imprisonment exceeds six (6) months.

Soil Conservation Districts

§ 69-27-41 Judicial enforcement of work requirements:

Where the commissioners of any district shall find that any of the provisions of land-use regulations prescribed in an ordinance adopted in accordance with the provisions of Section 69-27-37 are not being observed . . . then the commissioners may present to the chancery court of the county in which the lands of the defendant may lie a petition, duly verified, setting forth the adoption of the ordinance prescribing land-use regulations, the failure of the defendant landowner or operator or both to observe such regulations, and to perform particular work, operations or avoidance as required thereby. . . . Upon the filing of such petition,

process shall issue against the defendant returnable in the manner provided by law, and said cause shall be tried in the manner provided by law for the trial of civil actions. The defendant may demand a trial by jury and in such event, the jurors shall have the qualifications of jurors in eminent domain proceedings in the chancery court. . . .

§ 69-27-49 Appealing board of adjustment order:

Any petitioner aggrieved by an order of the board granting or denying, in whole or in part, the relief sought, . . . may obtain a review of such order in the chancery court of the county in which the lands of the petitioner may lie, by filing in such court a petition praying that the order of the board be modified or set aside and may demand a jury qualified in all respects as the jurors in eminent domain proceedings in the chancery court. . . .

Meat Inspection

§ 75-35-305 Seizure and condemnation of carcasses; grounds; bond:

(1) Any carcass, part of a carcass, meat or meat food product of cattle, sheep, swine, goats, horses, mules or other equines, or any dead, dying, disabled, or diseased cattle, sheep, swine, goat, or equine, that is being transported in intrastate commerce, or is held for sale in this state after such transportation, and that (a) is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this chapter, or (b) is capable of use as human food and is adulterated or misbranded, or (c) in any other way is in violation of this chapter, shall be liable to be proceeded against and seized and condemned, at any time, on a bill of complaint in the chancery court. . . . The proceedings in such chancery court cases shall conform, as nearly as may be, to the usual proceedings in chancery, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be removed at the suit of and in the name of this state in the circuit court.

Enforcement of Natural Gas Pipeline Safety Standards

§ 77-11-5 Equitable remedies:

(2) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this article, trial shall be by the court, or upon demand of the accused, by a jury and, upon demand of the accused, a jury trial for criminal contempt shall be transferred to the chancery court of the county in which the accused resides or has his principal place of business.

Executors & Administrators

§ 91-7-19 Parties; jury trial:

Any proponent of a will for probate may, in the first instance, make all interested persons parties to his application to probate the will, and in such case all who are made parties shall be concluded by the probate of the will. At the request of either party to such proceeding, an issue shall be made up and tried by a jury as to whether or not the writing propounded be the will of the alleged testator.

> We conclude that the role of a jury in a will contest is the same as that of a jury in a civil trial in a court of law and is not "merely advisory." ***Fowler v. Fisher*, 353 So. 2d 497, 501 (Miss. 1977).**

No Right to Trial by Jury

Uniform Law on Paternity

§ 93-9-15 Remedies:

Parties to an action to establish paternity shall not be entitled to a jury trial.

> ***See* § 93-9-27 Effect of test results; rebuttable presumption; no right to jury trial.**

THE JURY SELECTION PROCESS

Jury Selection by Statute

Mississippi Rule of Civil Procedure 47(b), Jurors, states:

> Jurors shall be drawn and selected for jury service as provided by statute.

§ 13-5-2 Public policy stated:

> It is the policy of this state that all persons selected for jury service be selected at random from a fair cross section of the population of the area served by the court, and that all qualified citizens have the opportunity in accordance with this chapter to be considered for jury service in this state and an obligation to serve as jurors when summoned for that purpose. A citizen shall not be excluded from jury service in this state on account of race, color, religion, sex, national origin, or economic status.

Competency of Jurors

§ 13-5-1 Who are competent jurors; determination of literacy:

> Every citizen not under the age of twenty-one years, who is either a qualified elector, or a resident freeholder of the county for more than one year, is able to read and write, and has not been convicted of an infamous crime, or the unlawful sale of intoxicating liquors within a period of five years and who is not a common gambler or habitual drunkard, is a competent juror. No person who is or has been within twelve months the overseer of a public road or road contractor shall, however, be competent to serve as a grand juror. The lack of any such qualifications on the part of one or more jurors shall not, however, vitiate an indictment or verdict. Moreover, no talesman or tales juror shall be qualified who has served as such talesman or tales juror in the last preceding two years, and no juror shall serve on any jury who has served as such for the last preceding two years. No juror shall serve who has a case of his own pending in that court, provided there are sufficient qualified jurors in the district, and for trial at that term.
>
> In order to determine that prospective jurors can read and write, the presiding judge shall, with the assistance of the clerk, distribute to the jury panel a form to be completed personally by each juror prior to being empaneled as follows:

Juror Information Card

1. Your name _____ Last_____ First ____ Middle initial
2. Your home address _____
3. Your occupation _____
4. Your age _____
5. Your telephone number _____ If none, write none
6. If you live outside the county seat, the number of miles you live from the courthouse _____ Miles

_____
Sign your name

The judge shall personally examine the answers of each juror prior to empaneling the jury and each juror who cannot complete the above form shall be disqualified as a juror and discharged.

A list of any jurors disqualified for jury duty by reason of inability to complete the form shall be kept by the circuit clerk and their names shall not be placed in the jury box thereafter until such person can qualify as above provided.

§ 13-5-4 Definitions:

As used in this chapter:

(a) "Court" means the circuit, chancery and county courts of this state and includes, when the context requires, any judge of the court.

(b) "Clerk" and "clerk of the court" means the circuit clerk of the county and any deputy clerk.

(c) "Master list" means the voter registration lists for the county.

(d) "Voter registration lists" means the official records of persons registered to vote in the county.

(e) "Jury wheel" means any physical device or electronic system for the storage of the names or identifying numbers of prospective jurors.

(f) "Jury box" means the jury wheel in which is placed the names or identifying numbers of prospective jurors whose names are drawn at random from the jury wheel and who are not disqualified.

(g) "Senior judge" means the circuit or chancery judge, as the case may be, who has the longest continuous service on the court in a particular judicial district which has more than 1 such judge, or if the judges are equal in time of service, then the judge who has been engaged for the longest time continuously in the practice of law in this state.

The Jury Commission and its Duties

§ 13-5-6 Jury commission - number, appointment, terms, qualifications, and compensation of members:

(1) A jury commission shall be established in each county to manage the jury selection process under the supervision and control of the court. The jury commission shall be composed of three (3) members who will serve a four-year term beginning on January 1, 1975, as follows:

One (1) member shall be appointed by the circuit judge of said county;
one (1) member shall be appointed by the chancery judge of said county; and
one (1) member shall be appointed by the board of supervisors of said county.

If there is more than one (1) circuit or chancery judge in a judicial district, then the senior circuit or chancery judge, as the case may be, shall make the said appointment for each county in his district. Any unexpired term shall be filled by the appropriate appointing authority who is in office at the time the vacancy occurs.

(2) A jury commissioner shall have the following qualifications:

(a) He shall be a duly qualified elector at the time of his appointment;
(b) He shall be a resident citizen in the county in which he is to serve; and
(c) He shall not be an attorney nor an elected public official.

(3) Each jury commissioner shall receive compensation at a per diem rate as provided in Section 25-3-69.

§ 13-5-8 Master list consisting of county voter registration list to be compiled and maintained:

(1) In April of each year, the jury commission for each county shall compile and maintain a master list consisting of the voter registration list for the county.

(2) The circuit clerk of the county and the registrar of voters shall have the duty to certify to the commission during the month of January of each year under the seal of his office the voter registration list for the county; the list shall exclude any person who has been permanently excused from jury service pursuant to Section 13-5-23(4). Any person who has been excluded from the master list for jury service may be reinstated to the master list after one (1) year by requesting that the circuit clerk reinstate him to the master list.

> It is the opinion of this office that only those persons who are registered to vote in state and local elections should be included on the certified list of registered voters. Those voters who are registered to vote pursuant to the National Voter Registration Act only are not registered to vote in state and local elections and therefore should not be included on the certified voter registration list certified by the circuit clerk for purposes of jury selection. **Re: Certified List of Voters for Jury Selection, Opinion No. 96-0002 (Miss. A.G. Jan. 10, 1996).**

Jury Wheel

§ 13-5-12 Jury wheel - selection and deposit of names or identifying numbers of prospective jurors - procedure where less than all names on master list used:

Unless all the names on the master list are to be placed in the jury wheel pursuant to Section 13-5-10, the names or identifying numbers of prospective jurors to be placed in the jury wheel shall be selected by the jury commission at random from the master list in the following manner:

1. The total number of names on the master list shall be divided by the number of names to be placed in the jury wheel;

2. The whole number nearest the quotient shall be the "key number," except that the key number shall never be less than two (2).

3. A "starting number" for making the selection shall then be determined by a random method from the number from one (1) to the key number, both inclusive.

4. The required number of names shall then be selected from the master list by taking in order the first name on the master list corresponding to the starting

number and then successively the names appearing in the master list at intervals equal to the key number, recommencing if necessary at the start of the list until the required number of names has been selected.

5. The name of any person who is under the age of twenty-one (21) years and the name of any person who has been permanently excused from jury service pursuant to Section 13-5-23(4) shall be passed over without interrupting the sequence of selection. Any person who has been excluded from the master list for jury service may be reinstated to the master list after one (1) year by requesting that the circuit clerk reinstate him to the master list.

6. Upon recommencing at the start of the list, names previously selected from the master list shall be disregarded in selecting the additional names.

The jury commission may use an electronic or mechanical system or device in carrying out its duties.

§ 13-5-10 Jury wheel; selection and deposit of names or identifying numbers of prospective jurors; number required; refilling:

The jury commission for each county shall maintain a jury wheel into which the commission shall place the names or identifying numbers of prospective jurors taken from the master list. If the total number of prospective jurors on the master list is one thousand (1,000) or less, the names or identifying numbers of all of them shall be placed in the jury wheel. In all other cases, the number of prospective jurors to be placed in the jury wheel shall be one thousand (1,000) plus not less than one percent (1%) of the total number of names on the master list. From time to time a larger or additional number may be determined by the jury commission or ordered by the court to be placed in the jury wheel. In April of each year, beginning in 1976, the wheel shall be emptied and refilled as prescribed in this chapter.

> It is our opinion that it is not necessary to maintain a physical jury wheel and jury box if the clerk is using a computer, as long as the clerk is capable of printing out a physical record of the contents of the jury wheel and jury box if it becomes necessary to do so. This assumes that the computer selection process has been directed by order of the court as required by section 13-5-76(3). **Re: Computerized Jury Wheel, Opinion No. 92-0700 (Miss. A. G. Dec. 3, 1992).**

§ 13-5-14 List of names placed in jury wheel to be delivered to senior circuit judge - minute entry:

At any time the jury commission places names in the jury wheel, the jury commission shall also deliver to the senior circuit judge a list of all names placed on or in the jury wheel, and said circuit judge shall spread upon the minutes of the circuit court all of the names so placed in the jury wheel.

§ 13-5-16 Random drawing of jurors:

[Private citizen randomly selects names or numbers]
(1) Except as otherwise provided by subsection (2) of this section, from time to time and in a manner prescribed by the court, a private citizen who does not have an interest in a case pending trial and who is not a practicing attorney publicly shall draw at random from the jury wheel the names or identifying numbers of as many prospective jurors as the court by order requires. The clerk shall prepare an alphabetical list of the names drawn. Neither the names drawn nor the list shall be disclosed to any person other than pursuant to this chapter or specific order of the court.

[Random selection by computer]
(2) The court may order that the drawing of names or identifying numbers pursuant to subsection (1) of this section may be performed by random selection of a computer or electronic device pursuant to such rules and regulations as may be prescribed by the court.

Jury Box

§ 13-5-26 Drawing and assigning jurors:

(1) The circuit clerk shall maintain a jury box and shall place therein the names or identifying numbers of all prospective jurors drawn from the jury wheel.

(2) A judge or any court or any other state or county official having authority to conduct a trial or hearing with a jury within the county may direct the circuit clerk to draw and assign to that court or official the number of jurors he deems necessary for one or more jury panels or as required by law for a grand jury, except as otherwise provided by subsection (3) of this section. Upon receipt of the direction, and in a manner prescribed by the court, the circuit clerk shall publicly draw at random from the jury box the number or jurors specified.

(3) The court may order that the drawing and assigning of jurors pursuant to subsection (2) of this section may be performed by random selection of a computer or electronic device pursuant to such rules and regulations as may be prescribed by the court. The jurors drawn for jury service shall be assigned at random by the clerk to each jury panel in a manner prescribed by the court.

> It is our opinion that it is not necessary to maintain a physical jury wheel and jury box if the clerk is using a computer, as long as the clerk is capable of printing out a physical record of the contents of the jury wheel and jury box if it becomes necessary to do so. This assumes that the computer selection process has been directed by order of the court as required by § 13-5-76(3). **Re: Computerized Jury Wheel, Opinion No. 92-0700 (Miss. A. G. Dec. 3, 1992).**

Summoning of Jurors

§ 13-5-28 Summoning of person drawn for jury duty:

If a grand, petit or other jury is ordered to be drawn, the clerk thereafter shall cause each person drawn for jury service to be served with a summons, either personally or by mail, addressed to the juror at the juror's usual residence, business or post office address, requiring the juror to report for jury service at a specified time and place. The summons shall include instructions to the potential jurors that explain, in layman's terms, the provisions of Section 13-5-23.

§ 13-5-18 Telephone answering device required; cost of device:

The clerk of the circuit court in each county shall purchase and install a telephone answering device for the purpose of providing a recorded message after 5:00 p.m. to jurors who have been summoned to jury duty, in order for such jurors to inquire as to whether their presence will be required in court the following day. The cost of purchasing and maintaining said telephone answering device shall be paid by the board of supervisors from the county general fund.

§ 13-5-32 Names of jurors drawn from jury box to be made public; exception:

The names of jurors drawn from the jury box shall be made available to the public unless the court determines in any instance that this information in the interest of justice should be kept confidential or its use limited in whole or in part.

§ 13-5-36 Preservation of records and papers in connection with selection and service of jurors:

All records and papers compiled and maintained by the jury commission or the clerk in connection with selection and service of jurors shall be preserved by the clerk for four (4) years after the jury wheel used in their selection is emptied and refilled, and for any longer period ordered by the court.

§ 13-5-97 Certain jury records exempt from public access requirements:

Records in the possession of a public body, as defined by paragraph (a) of Section 25-61-3, which are developed among juries concerning judicial decisions, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

§ 13-5-38 Payment of cost of implementation of law:

In counties where the implementation of Sections 13-5-2 through 13-5-16, 13-5-21, 13-5-26 through 13-5-38, and 13-5-41, requires additional clerical or other personnel, the board of supervisors, in its discretion, may pay for such services out of the general county fund of the respective county.

§ 13-5-87 Laws as to listing, drawing, summoning and impaneling of juries are directory:

All the provisions of law in relation to the listing, drawing, summoning and impaneling juries are directory merely, and a jury listed, drawn, summoned or impaneled, though in an informal or irregular manned, shall be deemed a legal jury after it shall have been impaneled and sworn, and it shall have the power to perform all the duties devolving on the jury.

Exemptions & Excuses from Jury Service

§ 13-5-23 Exemptions; length of service of tales and grand jurors:

(1) All qualified persons shall be liable to serve as jurors, unless excused by the court for one (1) of the following causes:

(a) When the juror is ill and, on account of the illness, is incapable of performing jury service; or

An excuse of illness under subsection (1)(a) of this section may be made to the clerk of court outside of open court by providing the clerk with a certificate of a licensed physician, stating that the juror is ill and is unfit for jury service, in which case the clerk may excuse the juror. If the excuse of illness is not supported by a physician's certificate, a judge of the court for which the individual was called to jury service shall decide whether to excuse an individual under subsection (1)(a) of this section.

(b) When the juror's attendance would cause undue or extreme physical or financial hardship to the prospective juror or a person under his or her care or supervision.

The test of an excuse under subsection (1)(b) of this section for undue or extreme physical or financial hardship shall be whether the individual would either:

(i) Be required to abandon a person under his or her personal care or supervision due to the impossibility of obtaining an appropriate substitute caregiver during the period of participation in the jury pool or on the jury; or
(ii) Incur costs that would have a substantial adverse impact on the payment of the individual's necessary daily living expenses or on those for whom he or she provides the principal means of support; or
(iii) Suffer physical hardship that would result in illness or disease.

"Undue or extreme physical or financial hardship" does not exist solely based on the fact that a prospective juror will be required to be absent from his or her place of employment or business.

A judge of the court for which the individual was called to jury service shall decide whether to excuse an individual under subsection (1)(b) of this section.

A person asking to be excused based on a finding of undue or extreme physical or financial hardship must take all actions necessary to have obtained a ruling on that request by no later than the date on which the individual is scheduled to appear for jury duty.

A person asking a judge to grant an excuse under subsection (1)(b) of this section shall be required to provide the judge with documentation such as, but not limited to, federal and state income tax returns, medical statements from licensed physicians, proof of dependency or guardianship and similar documents, which the judge finds to clearly support the request to be excused. Failure to provide satisfactory documentation shall result in a denial of the request to be excused.

(c) When the potential juror is a breast-feeding mother.

In cases under subsection (1)(c) of this section, the excuse must be made by the juror in open court under oath.

After two (2) years, a person excused from jury service shall become eligible once again for qualification as a juror unless the person was excused from service permanently. A person is excused from jury service permanently only when the deciding judge determines that the underlying grounds for being excused are of a permanent nature.

A tales juror shall not be compelled to serve two (2) days successively unless the case in which the juror is impaneled continues longer than one (1) day. Grand jurors shall serve until discharged by the court.

§ 13-5-25 Who is exempt as a personal privilege:

Every citizen over sixty-five (65) years of age, and everyone who has served on the regular panel as a juror in the actual trial of one or more litigated cases within two (2) years, shall be exempt from service if he claims the privilege. No qualified juror shall be excluded because of any such reasons, but the same shall be a personal privilege to be claimed by any person selected for jury duty. Any citizen over sixty-five (65) years of age may claim this personal privilege outside of open court by providing the clerk of court with information that allows the clerk to determine the validity of the claim.

Provided, however, that no person who has served on the regular panel as a juror in the actual trial of one or more litigated cases in one (1) court may claim the exemption in any other court where he may be called to serve.

> ***See* § 33-1-5 Jury duty exemption (Member of the Mississippi National Guard on active duty) and § 47-5-55 Exemption from jury duty (Employees of the Department of Corrections).**

Postponement of Jury Service

§ 13-5-33 One time postponement; emergency postponement:

(1) Notwithstanding any other provisions of this chapter, individuals scheduled to appear for jury service have the right to postpone the date of their initial appearance for jury service one (1) time only. Postponements shall be granted upon request, provided that:

(a) The juror has not been granted a postponement within the past two (2) years;

(b) The prospective juror appears in person or contacts the clerk of the court by telephone, electronic mail or in writing to request a postponement; and

(c) Prior to the grant of a postponement with the concurrence of the clerk of the court, the prospective juror fixes a date certain to appear for jury service that is not more than six (6) months or two (2) terms of court after the date on which the prospective juror originally was called to serve and on which date the court will be in session, whichever is the longer period.

(2) A subsequent request to postpone jury service may be approved by a judicial officer only in the event of an extreme emergency, such as a death in the family, sudden illness, or a natural disaster or a national emergency in which the prospective juror is personally involved, that could not have been anticipated at the time the initial postponement was granted. Prior to the grant of a second postponement, the prospective juror must fix a date certain on which the individual will appear for jury service within six (6) months or two (2) terms of court after the postponement on a date when the court will be in session.

(3) The Administrative Office of Courts shall promulgate rules for the implementation of this section.

Failure to Appear or Unfit to Serve

§ 13-5-34 Punishment for failure to appear or to complete jury service:

(1) A person summoned for jury service who fails to appear or to complete jury service as directed, and who has failed to obtain a postponement in compliance with the provisions for requesting a postponement, or who fails to appear on the date set pursuant to Section 13-5-33, may be ordered by the court to appear and show cause for failure to comply with the summons. If the juror fails to show good cause for noncompliance with the summons, the juror may be held in civil contempt of court and may be fined not more than Five Hundred Dollars ($500.00) or imprisoned not more than three (3) days, or both. The prospective juror may be excused from paying sanctions for good cause shown or in the interest of justice.

(2) In addition to, or in lieu of, the fine or imprisonment provided in subsection (1) of this section, the court may order that the prospective juror complete a period of community service for a period no less than if the prospective juror would have completed jury service, and provide proof of completion of this community service to the court.

Unfit for Jury Service

§ 13-5-83 Intoxicated jurors; jurors under the control of the court:

If any juror summoned to appear at court, should render himself unfit for service by intoxication before his name is called in court, he shall be fined in a sum not exceeding One Hundred Dollars ($100.00), and be imprisoned for a term not exceeding twenty-four hours. After grand and petit jurors are impaneled they shall be under the control of the court, and, for any breach of duty or contempt of court, may be fined and imprisoned.

Fees for Jury Service

§ **25-7-61 Jurors; voluntary return of fees to county:**

[Effective until January 1, 2008, or such time as the Lengthy Trial Fund is fully funded by a specific appropriation of the Legislature, whichever is later, this section shall read as follows:]

(1) Fees of jurors shall be payable as follows:

(a) Grand jurors and petit jurors in the chancery, county, circuit and special eminent domain courts shall be paid an amount to be set by the board of supervisors, not to be less than Twenty-five Dollars ($ 25.00) per day and not to be greater than Forty Dollars ($ 40.00) per day, plus mileage authorized in Section 25-3-41. In the trial of all cases where jurors are in charge of bailiffs and are not permitted to separate, the sheriff with the approval of the trial judge may pay for room and board of jurors on panel for actual time of trial. No grand juror shall receive any compensation except mileage unless he has been sworn as provided by Section 13-5-45; and no petit juror except those jurors called on special venires shall receive any compensation authorized under this subsection except mileage unless he has been sworn as provided by Section 13-5-71.

(b) Jurors making inquisitions of intellectual disability, mental illness or unsound mind and jurors on coroner's inquest shall be paid Five Dollars ($ 5.00) per day plus mileage authorized in Section 25-3-41 by the county treasurer on order of the board of supervisors on certificate of the clerk of the chancery court in which the inquisition is held.

(c) Jurors in the justice courts shall be paid an amount of not less than Ten Dollars ($ 10.00) per day and not more than Fifteen Dollars ($ 15.00) per day, to be established by the board of supervisors. In all criminal cases in the justice court in which the prosecution fails, the fees of jurors shall be paid by the county treasurer on order of the board of supervisors on certificate of the county attorney in all counties that have county attorneys, otherwise by the justice court judge.

(2) Any juror may return the fees provided as compensation for service as a juror to the county that paid for the person's service as a juror. The fees returned to the county may be earmarked for a particular purpose to be selected by the juror, including:

(a) The local public library;
(b) Local law enforcement;
(c) The Mississippi Burn Care Fund created in Section 7-9-70; or
(d) Any other governmental agency.

[From and after January 1, 2008, or such time as the Lengthy Trial Fund is fully funded by a specific appropriation of the Legislature, whichever is later, this section shall read as follows:]

(1) Fees of jurors shall be payable as follows:

(a) Grand jurors and petit jurors in the chancery, county, circuit and special eminent domain courts shall be paid an amount to be set by the board of supervisors, not to be less than Twenty-five Dollars ($ 25.00) per day and not to be greater than Forty Dollars ($ 40.00) per day, plus mileage authorized in Section 25-3-41. In the trial of all cases where jurors are in the charge of bailiffs and are not permitted to separate, the sheriff with the approval of the trial judge may pay for room and board of jurors on panel for actual time of trial. No grand juror shall receive any compensation except mileage unless the juror has been sworn as provided by Section 13-5-45; and no petit juror except those jurors called on special venires shall receive any compensation authorized under this subsection except mileage unless the juror has been sworn as provided by Section 13-5-71.

(b) Jurors making inquisitions of intellectual disability, mental illness or unsound mind and jurors on coroner's inquest shall be paid Five Dollars ($ 5.00) per day plus mileage authorized in Section 25-3-41 by the county treasurer on order of the board of supervisors on certificate of the clerk of the chancery court in which the inquisition is held.

(c) Jurors in the justice courts shall be paid an amount of not less than Ten Dollars ($ 10.00) per day and not more than Fifteen Dollars ($ 15.00) per day, to be established by the board of supervisors. In all criminal cases in the justice court in which the prosecution fails, the fees of jurors shall be paid by the county treasurer on order of the board of supervisors on certificate of the county attorney in all counties that have county attorneys, otherwise by the justice court judge.

(2) Any juror may return the fees provided as compensation for service as a juror to the county that paid for the person's service as a juror. The fees returned to the county may be earmarked for a particular purpose to be selected by the juror, including:

(a) The local public library;
(b) Local law enforcement;
(c) The Mississippi Burn Care Fund created in Section 7-9-70; or
(d) Any other governmental agency.

(3) The Administrative Office of Courts shall promulgate rules to establish a Lengthy Trial Fund to be used to provide full or partial wage replacement or wage supplementation to jurors who serve as petit jurors in civil cases for more than ten (10) days.

(a) The Uniform Circuit and County Court Rules shall provide for the following:

(i) The selection and appointment of an administrator for the fund.
(ii) Procedures for the administration of the fund, including payments of salaries of the administrator and other necessary personnel.
(iii) Procedures for the accounting, auditing and investment of money in the Lengthy Trial Fund.
(iv) A report by the Administrative Office of Courts on the administration of the Lengthy Trial Fund in its annual report on the judicial branch, setting forth the money collected for and disbursed from the fund.
(v) The Lengthy Trial Fund Administrator and all other necessary personnel shall be employees of the Administrative Office of Courts.

(b) The administrator shall use any monies deposited in the Lengthy Trial Fund to pay full or partial wage replacement or supplementation to jurors whose employers pay less than full regular wages when the period of jury service lasts more than ten (10) days.

(c) To the extent funds are available in the Lengthy Trial Fund, and in accordance with any rules or regulations promulgated by the Administrative Office of Courts, the court may pay replacement or supplemental wages out of the Lengthy Trial Fund not to exceed Three Hundred Dollars ($ 300.00) per day per juror beginning on the eleventh day of jury service. In addition, for any jurors who qualify for payment by virtue of having served on a jury for more than ten (10) days, the court, upon finding that the service posed a significant financial hardship to a juror, even in light of payments made with respect to jury service after the tenth day, may award replacement or supplemental wages out of the Lengthy Trial Fund not to exceed One Hundred Dollars ($ 100.00) per day from the fourth to the tenth day of jury service.

(d) Any juror who is serving or has served on a jury that qualifies for payment from the Lengthy Trial Fund, provided the service began on or after January 1, 2008, may submit a request for payment from the Lengthy Trial Fund on a form that the administrator provides. Payment shall be limited to the difference between the jury fee specified in subsection (1) of this section and the actual amount of wages a juror earns, up to the maximum level payable, minus any amount the juror actually receives from the employer during the same time period.

(i) The form shall disclose the juror's regular wages, the amount the employer will pay during the term of jury service starting on the eleventh day and thereafter, the amount of replacement or supplemental wages requested, and any other information the administrator deems necessary for proper payment.
(ii) The juror also shall be required to submit verification from the employer as to the wage information provided to the administrator, for example, the employee's most recent earnings statement or similar document, before initiation of payment from the fund.
(iii) If an individual is self-employed or receives compensation other than wages, the individual may provide a sworn affidavit attesting to his or her approximate gross weekly income, together with such other information as the administrator may require, in order to verify weekly income.

(4) Nothing in this section shall be construed to impose an obligation on any county to place monies in the Lengthy Trial Fund or to pay replacement or supplemental wages to any juror from county funds.

Determination of Compensation

§ 25-7-63 Jurors; amount:

The amount of compensation due to each grand juror, petit juror, and juror summoned on a special venire and regularly discharged by the court shall, after the discharge of such juror, be determined on the oath of the juror, allowed in open court, and entered on the minutes thereof. The clerk shall thereupon give a certificate of the same to the juror, and said certificate shall be negotiable and shall be paid by the county treasurer upon presentation by the payee or the holder in due course. In all other cases the court or officer before whom the juror serves shall determine the sum due and give certificate accordingly.

THE PETIT JURY & JURY VERDICTS

Right to a Trial by Jury

Mississippi Constitution Art. III, § 31 provides:

> The right to trial by jury shall remain inviolate, but the legislature may, by enactment, provide that in all civil suits tried in the circuit and chancery court, nine (9) or more jurors may agree on the verdict and return it as the verdict of the jury.

> > Section 31 of the Mississippi Constitution provides that the right to trial by jury shall remain inviolate. This Court has interpreted that constitutional provision to apply to all cases where the right to trial by jury existed at common law. ***Isaac v. McMorris*, 461 So. 2d 714, 715 (Miss. 1984) (citations omitted).**
>
> > Section 31 of the Constitution of the State of Mississippi guarantees a jury trial only in those cases where a jury was necessary according to the principles of common law. ***Walters v. Blackledge*, 71 So. 2d 433, 444 (Miss. 1954) (citations omitted).**

Mississippi Rule of Civil Procedure 38, Jury Trial of Right, states:

> (a) The right of the trial by jury as declared by the Constitution or any statute of the State of Mississippi shall be preserved to the parties inviolate.
>
> (b) Parties to an action may waive their rights to a jury trial by filing with the court a specific, written stipulation that the right has been waived and requesting that the action be tried by the court. The court may in its discretion, require that the action be tried by a jury notwithstanding the stipulation of waiver.

The Petit Jury

Number of Jurors

Mississippi Rule of Civil Procedure 48, Juries and Jury Verdicts, provides:

> **(a) Circuit and Chancery Courts.** Jurors in circuit and chancery court actions shall consist of twelve (12) persons, plus alternates as provided by Rule 47(d). . . .

Impaneling the Venire

§ 13-5-65 Impaneling of petit juries:

> After the drawing of the grand jury, the remaining jurors in attendance shall be impaneled into three (3) petit juries for the first week of court if there be a sufficient number left, and, if not, the court may direct a sufficient number for that purpose to be drawn and summoned. If there be more than enough jurors for the three (3) juries, or for two (2) juries if the court shall direct only two (2) to be impaneled, the excess may be discharged, or they may be retained, in the discretion of the court, to serve as talesmen. If so retained, they shall have the privilege of members of the regular panel, of exemption from service.

Uniform Civil Rule of Circuit and County Court 3.03 Number of Petit Jurors Summoned states:

> The court may direct the clerk of court concerning the number of petit jurors needed to be summoned for jury duty. The circuit and county court may employ the same jury venire in the selection of petit juries. . . .

§ 13-5-30 Summoning of jurors where there is shortage of petit jurors drawn from jury box:

> If there is an unanticipated shortage of available petit jurors drawn from a jury box, the court may require the sheriff to summon a sufficient number of petit jurors selected at random by the clerk from the jury box in a manner prescribed by the court.

> > The judge could have directed the [circuit] clerk to draw more names from the jury wheel. . . . A judge should not hesitate in enlarging the jury panel when legitimate questions for cause, for whatever reason, arise. ***Scott v. Ball*, 595 So. 2d 848, 850 (Miss. 1992).**

Juror Examination - Voir Dire

The purpose of voir dire is to select a fair and impartial jury. ***Puckett v. State*, 737 So. 2d 322, 332 (Miss. 1999).**

The judge has an absolute duty, however, to see that the jury selected to try any case is fair, impartial and competent. ***Scott v. Ball*, 595 So. 2d 848, 850 (Miss. 1992) (citations omitted).**

Uniform Civil Rule of Circuit and County Court 3.05 Voir Dire provides:

In the voir dire examination of jurors, the attorney will question the entire venire only on matters not inquired into by the court. Individual jurors may be examined only when proper to inquire as to answers given or for other good cause allowed by the court. No hypothetical questions requiring any juror to pledge a particular verdict will be asked. Attorneys will not offer an opinion on the law. The court may set a reasonable time limit for voir dire.

Mississippi Rule of Civil Procedure 47(a) Jurors states:

Any person called as a juror for the trial of any cause shall be examined under oath or upon affirmation as to his qualifications. The court may permit the parties or their attorneys to conduct the examination of the prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties of their attorneys to supplement the examination by further inquiry.

§ 13-5-69 Examination of jurors by attorneys or litigants:

Except in cases in which the examination of jurors is governed by rules promulgated by the Mississippi Supreme Court, the parties or their attorneys in all jury trials shall have the right to question jurors who are being impaneled with reference to challenges for cause, and for peremptory challenges, and it shall not be necessary to propound the questions through the presiding judge, but they may be asked by the attorneys or by litigants not represented by attorneys.

Jury Selection Process

Uniform Civil Rule of Circuit and County Court 4.04 Jury Selection Process states:

A. Peremptory jury challenges shall be exercised as follows:

1. The court shall consider all challenges for cause before the parties are required to exercise peremptory challenges.
2. Next, the plaintiff shall tender to the defendant a full panel of accepted jurors having considered the jury in the order in which they appear, having exercised any peremptory challenges desired.
3. Next, the defendant shall go down the juror list accepted by the plaintiff and exercise any peremptory challenge(s) to that panel.
4. Once the defendant exercises peremptory challenges to the panel tendered, the plaintiff shall then be required to again tender to the defendant a full panel of accepted jurors.
5. The above procedure shall be repeated until a full panel of jurors has been accepted by both sides.
6. Once the jury panel is selected, alternate jurors shall be selected following the procedure set forth above for selecting the jury panel.

B. Constitutional challenges to the use of peremptory challenges shall be made at the time each panel is tendered.

Jury Challenges

Challenges for Cause

Uniform Civil Rules of Circuit and County Court 4.04, Jury Selection Process, states:

The court shall consider all challenges for cause before the parties are required to exercise peremptory challenges.

The judge has wide discretion in determining whether to excuse any prospective juror, including one challenged for cause. ***Scott v. Ball*, 595 So. 2d 848, 849 (Miss. 1992).**

To the extent that any juror, because of his relationship to one of the parties, his occupation, his past experience, or whatever, would normally lean in favor of one of the parties, or be biased against the other, or one's claim or the other's defense in the lawsuit, to this extent, of course, his ability to be fair and impartial is impaired. ***Scott v. Ball*, 595 So. 2d 848, 850 (Miss. 1992).**

When a prospective juror assures the court that, despite the circumstance that raises some question as to his qualification, this will not affect his verdict, this promise is entitled to considerable deference. ***Scott v. Ball*, 595 So. 2d 848, 850 (Miss. 1992).**

When a rational challenge is made by a party to a prospective juror, and other jurors against whom no challenge is made are available, the judge should ordinarily excuse the challenged juror. ***Scott v. Ball*, 595 So. 2d 848, 850 (Miss. 1992).**

In our recent decision, *Hudson v. Taleff*, 546 So. 2d 359 (Miss. 1989), we added a factor which the judge should consider in reaching his decision whether or not to excuse a prospective juror when a rational reason to do so has been brought to his attention. *Hudson* involved a suit against a physician in which a number of the jury panel or members of their family had been patients of his. Because that suit was in a county in which the circuit court could have, without hardship or any significant inconvenience, summoned additional jurors for the venire, we reversed. Our implicit, if not explicit, holding in *Hudson* is that the judge's discretion in determining a juror's qualification where a reasonable challenge has been made is considerably narrowed where, without great inconvenience, other prospective jurors may be readily summoned. When a rational challenge is made by a party to a prospective juror, and other jurors against whom no challenge is made are available, the judge should ordinarily excuse the challenged juror. ***Scott v. Ball*, 595 So. 2d 848, 850 (Miss. 1992); *see Hudson v. Taleff*, 546 So. 2d 359, 360-63 (Miss. 1989).**

We have consistently held that the trial court may not be put in error for refusal to excuse jurors challenged for cause when the complaining party chooses not to exhaust his peremptory challenges. ***Scott v. Ball*, 595 So. 2d 848, 851 (Miss. 1992).**

Peremptory Challenges

Mississippi Rule of Civil Procedure 47(c), Jurors, provides:

> In actions tried before a twelve (12) person jury, each side may exercise four (4) peremptory challenges; in actions tried before a six (6) person jury, each side may exercise two (2) peremptory challenges. Where one or both sides are composed of multiple parties, the court may allow challenges to be exercised separately or jointly, and may allow additional challenges; provided, however, in all actions the number of challenges allowed for each side shall be identical. Parties may challenge any juror for cause.

Impaneling Alternate Jurors

Mississippi Rule of Civil Procedure 47(d) Jurors states:

> The trial judge may, in his discretion, direct that one (1) or two (2) jurors in addition to the regular panel be called and empaneled to sit as alternate jurors. Alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges for cause, shall take the same oath and shall have the same functions, powers, facilities, and privileges as the regular jurors. Each party shall be allowed 1 peremptory challenge to alternate jurors in addition to those provided by subdivision (c) of this rule. The additional peremptory challenges provided for herein may be used against an alternate juror only, and other peremptory challenges, provided by subdivision (c) of this rule, may not be used against an alternate juror.

§ 13-5-67 Impaneling of alternate jurors:

> Except in cases in which jury selection and selection of alternate jurors is governed by rules promulgated by the Supreme Court, whenever, in the opinion of a circuit judge presiding in a case in which a jury is to be used, the trial is likely to be a protracted one, such circuit judge, in his discretion, may direct that one (1) or two (2) jurors in addition to the regular panel be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges for cause, shall take the same oath and shall have the same functions, powers, facilities and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged at the time the jury retires to consider its verdict. In capital cases the defendant and the state shall each be allowed two (2) peremptory challenges to alternate jurors in addition to those otherwise provided by law. In all other cases each party shall be allowed one (1) peremptory challenge to alternate jurors in addition to those otherwise provided by law. In any criminal case all peremptory challenges by the state shall be made before the alternate juror is presented to the defendant. The additional peremptory challenges provided for herein may be used against an alternate juror only, and other peremptory challenges allowed by law may not be used against an alternate juror.

Oaths for Petit Jurors

§ 13-5-71 Oath of petit jurors:

Petit jurors shall be sworn in the following form:

> You, and each of you, do solemnly swear (or affirm) that you will well and truly try all issues and execute all writs of inquiry that may be submitted to you, or left to your decision by the court, during the present term, and true verdicts give according to the evidence. So help you God.

The oath shall authorize the jury to try all issues and execute all writs of inquiry which may be submitted to it during that term of the court. Talesmen, if any be summoned or retained, shall in like manner be sworn to try all issues and execute all writs of inquiry which may be submitted to them during the day for which they are summoned or the time for which they are retained.

Instructing the Jury

Mississippi Rule of Civil Procedure 51, Instructions to Jury, states:

> **(a) Procedural Instructions.** At the commencement of and during the course of a trial, the court may orally give the jury cautionary and other instructions of law relating to trial procedure, the duty and function of the jury, and may acquaint the jury generally with the nature of the case. . . .
>
> **(c) Instructions to Be Written.** Except as allowed by Rule 51(a), all instructions shall be in writing.
>
> **(d) When Read; Available to Counsel and Jurors.** Instructions shall be read by the court to the jury at the close of all the evidence and prior to oral argument; they shall be available to counsel for use during argument. Instructions shall be carried by the jury into the jury room when it retires to consider its verdict.

Uniform Civil Rule of Circuit and County Court 3.07 Jury Instructions in pertinent part states:

> The judge may instruct the jury. . . . All instructions will be read by the court in whatever order the court chooses, will be available for the attorneys during their argument, and will be carried by the jury into the jury room when they retire to consider their verdict.

Petit Jury Authority & Powers

Jurors May Take Notes During a Trial

Uniform Circuit and County Court Rule 3.14 Note Taking by Jurors states:

> 1. Note Taking Permitted in the Discretion of the Court - The court may, in its discretion, permit jurors to take written notes concerning testimony and other evidence. If the court permits jurors to take written notes, jurors shall have access to their notes during deliberations. Immediately after the jury has rendered its verdict, all notes shall be collected by the bailiff or clerk and destroyed.
> 2. Instructions - The court shall instruct the jury as to whether note taking will be permitted. If the court permits jurors to take written notes, the trial judge shall give both a preliminary instruction and an instruction at the close of all the evidence on the appropriate use of juror notes. These instructions shall be given in the following manner.
>
> (a) Preliminary Instruction - Note Taking Forbidden:
>
> You may not take notes during the course of the trial. There are several reasons for this. It is difficult to take notes and, at the same time, pay attention to what a witness is saying. Further, in a group the size of yours, certain persons will take better notes than others will, and there is a risk that jurors who do not take good notes will depend on jurors who do. The jury system depends upon all jurors paying close attention and arriving at a decision. I believe that the jury system works better when the jurors do not take notes. You will notice that we do have an official court reporter making a record of the trial; however, we will not have typewritten transcripts of this record available for your use in reaching a decision in this case.
>
> (b) Preliminary Instruction - Note Taking Permitted:
>
> If you would like to do so, you may take notes during the course of the trial. On the other hand, you are not required to take notes if you prefer not to do so. Each of you should make your own decision about this. If you decide to take notes, be careful not to get so involved in note taking that you become distracted from the ongoing proceedings. Notes are only a memory aid and a juror's notes may be used only as an aid to refresh that particular juror's memory and assist that juror in recalling the actual testimony. Each of you must rely on your own independent recollection of the proceedings. Whether you take notes or not, each of you must form and express your own opinion as to the facts of this case. An individual juror's notes may be used by that juror only and may not be shown to or shared with other jurors. You will notice that we

do have an official court reporter making a record of the trial; however, we will not have typewritten transcripts of this record available for your use in reaching a decision in this case.

(c) Use of Notes During Deliberations - Jury Instruction #

Members of the Jury, shortly after you were selected I informed you that you could take notes and I instructed you as to the appropriate use of any notes that you might take. Most importantly, an individual juror's notes may be used by that juror only and may not be shown to or shared with other jurors. Notes are only a memory aid and a juror's notes may be used only as an aid to refresh that particular juror's memory and assist that juror in recalling the actual testimony. Each of you must rely on your own independent recollection of the proceedings. Whether you took notes or not, each of you must form and express your own opinion as to the facts of this case. Be aware that during the course of your deliberations there might be the temptation to allow notes to cause certain portions of the evidence to receive undue emphasis and receive attention out of proportion to the entire evidence. But a juror's memory or impression is entitled to no greater weight just because he or she took notes, and you should not be influenced by the notes of other jurors. Thus, during your deliberations, do not assume simply because something appears in your notes that it necessarily took place in court.

The court allows juror note taking at the discretion of the trial judge subject to some restrictions. However, a significant danger of prejudice exists if jurors are allowed to use in deliberations notes taken during trial. Juror notes may give undue weight to that portion of the evidence covered by a juror's notes at the expense of evidence on which no notes were taken. The notes should not be read or used by any juror other than the juror who took the notes. We therefore hold that juror notes are permissible, but should not be allowed to be taken by that juror into the jury room during deliberations. ***Wharton v. State*, 734 So. 2d 985, 991 (Miss. 1998) (citations omitted).**

Evidence Available to the Jury

Uniform Civil Rule of Circuit and County Court 3.10 Jury Deliberations and Verdict states:

> The court shall permit the jury, upon retiring for deliberation, to take to the jury room the instructions and exhibits and writings which have been received in evidence, except depositions. . . .

Jury Deliberations

Uniform Civil Rule of Circuit and County Court 3.10 Jury Deliberations and Verdict states:

> The court may direct the jury to select one (1) of its members to preside over the deliberations and to write out and return any verdict agreed upon, and admonish the jurors that, until they are discharged as jurors in the cause, they may communicate upon subjects connected with the trial only while the jury is convened in the jury room for the purpose of reaching a verdict.
>
> The jurors shall be kept together for deliberations as the court reasonably directs. The court shall permit the jury, upon retiring for deliberation, to take to the jury room the instructions and exhibits and writings which have been received in evidence, except depositions. . . .
>
> When the jurors have agreed upon a verdict they shall be conducted into the courtroom by the officer having them in charge. The court shall ask the foreman or the jury panel if an agreement has been reached on a verdict. If the foreman or the jury panel answers in the affirmative, the judge shall call upon the foreman or any member of the panel to deliver the verdict in writing to the clerk or the court. The court may then examine the verdict and correct it as to matters of form. The clerk or the court shall then read the verdict in open court in the presence of the jury. . . . If neither party nor the court desires to poll the jury, the verdict shall be ordered filed and entered of record and the jurors discharged from the cause, unless a bifurcated hearing is necessary. If the court, on its own motion, or on motion of either party, polls the jury, each juror shall be asked by the court if the verdict rendered is that juror's verdict. In a criminal case where the verdict is unanimous and in a civil case where the required number of jurors have voted in the affirmative for the verdict, the court shall order the verdict filed and entered of record and discharge the jury unless a bifurcated hearing is necessary. . . .

Jury Verdicts

Uniform Civil Rule of Circuit and County Court 3.10 Jury Deliberations and Verdict states in pertinent part:

> When the jurors have agreed upon a verdict they shall be conducted into the courtroom by the officer having them in charge.
>
> The court shall ask the foreman or the jury panel if an agreement has been reached on a verdict. If the foreman or the jury panel answers in the affirmative, the judge shall call upon the foreman or any member of the panel to deliver the verdict in writing to the clerk or the court.
>
> The court may then examine the verdict and correct it as to matters of form. The clerk or the court shall then read the verdict in open court in the presence of the jury.

Mississippi Rule of Civil Procedure 48 Juries and Jury Verdicts addresses the number of votes required to return a verdict in a civil trial:

> **(a) Circuit and Chancery Courts.** Jurors in circuit and chancery court actions shall consist of twelve (12) persons . . . . A verdict or finding of nine (9) or more of the jurors shall be taken as the verdict or finding of the jury.

§ 13-5-93 Nine jurors may return a verdict in civil cases:

> In the trial of all civil suits in the circuit or chancery courts of this state, nine (9) or more jurors may agree on the verdict and return it into court as the verdict of the jury. Either party may request an instruction in writing to this effect and it shall thereupon be the duty of the trial judge to instruct the jury in writing that if nine (9) or more jurors agree on the verdict that they may return the same into open court as the verdict of the jury.

Types of Civil Verdicts

Mississippi Rule of Civil Procedure 49 General Verdicts and Special Verdicts provides:

> **(a) General Verdicts.** Except as otherwise provided in this rule, jury determination shall be by general verdict. The remaining provisions of this rule should not be applied in simple cases where the general verdict will serve the ends of justice.
>
> **(b) Special Verdict.** The court may require a jury to return only a special verdict

in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(c) General Verdict Accompanied by Answers to Interrogatories. The court, in its discretion, may submit to the jury, together with instructions for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and answers shall be entered. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered consistent with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

(d) Court to Provide Attorneys With Questions. In no event shall the procedures of subdivisions (b) or (c) of this rule be utilized unless the court, within a reasonable time before final arguments are made to the jury, provides the attorneys for all parties a copy of the written questions to be submitted to the jury.

Form of the Verdict

Uniform Civil Rule of Circuit and County Court 3.10 Jury Deliberations and Verdict states in pertinent part:

> If a verdict is so defective that the court cannot determine from it the intent of the jury, the court shall, with proper instructions, direct the jurors to reconsider the verdict. No verdict shall be accepted until it clearly reflects the intent of the jury. If the jury persists in rendering defective verdicts the court shall declare a mistrial.

§ 11-7-157 Form of verdict:

> No special form of verdict is required, and where there has been a substantial compliance with the requirements of the law in rendering a verdict, a judgment shall not be arrested or reversed for mere want of form therein.
>
> > The basic test with reference to whether or not a verdict is sufficient as to form is whether or not it is an intelligent answer to the issues submitted to the jury and expressed so that the intent of the jury can be understood by the court. This well-established rule of law has long been recognized by this Court. ***Sentinel Industrial Contracting Corp. v. Kimmins Industrial Service Corp.*, 743 So. 2d 954, 968 (Miss. 1999) (citations omitted).**

Polling The Jury

Uniform Civil Rule of Circuit and County Court 3.10 Jury Deliberations and Verdict states in pertinent part:

> The court shall inquire if either party desires to poll the jury, or the court may on its own motion poll the jury. If neither party nor the court desires to poll the jury, the verdict shall be ordered filed and entered of record and the jurors discharged from the cause.
>
> If the court, on its own motion, or on motion of either party, polls the jury, each juror shall be asked by the court if the verdict rendered is that juror's verdict.
>
> Where the required number of jurors have voted in the affirmative for the verdict, the court shall order the verdict filed and entered of record and discharge the jury. If less than the required number cannot agree the court may:
>
> > 1) return the jury for further deliberations or
> > 2) declare a mistrial.

> No motion to poll the jury shall be entertained after the verdict is ordered to be filed and entered of record or the jury is discharged.

Dismissing The Jury

Uniform Civil Rule of Circuit and County Court 3.10 Jury Deliberations and Verdict states in pertinent part:

> [I]t is appropriate for the court to thank jurors at the conclusion of a trial for their public service. . . .

CHAPTER 9

LEGAL RESEARCH

CHARTS

CHAPTER 9

LEGAL RESEARCH

Mississippi Code of 1972

The Mississippi Code of 1972 ("the Code") is the official codification of statutory laws for the State of Mississippi.

The Mississippi Code of 1972 is available on the internet and is published in book form.

Organization of the Mississippi Code

Titles

The Mississippi Code of 1972 is organized into fifty (50) different titles. Each title represents one major subject area of the law. The titles are odd-numbered, from one (1) through ninety-nine (99).

In a citation to a statute, the first number represents the title.

Chapters

Each title is subdivided into chapters. Each chapter addresses a separate topic of the larger title subject. The chapters are usually odd-numbered; although with recent enactments, there are some even-numbered chapters.

In a citation to a statute, the second number represents the chapter.

Sections

Each chapter is further subdivided into individual sections. The section contains the actual language of the law which was enacted by the Mississippi Legislature. The sections are usually odd-numbered, but with more recent statutes, there will be some even-numbered sections.

In a citation to a statute, the third number represents the section.

What Can be Found within Each Code Section

There will be a brief heading or title to the section, followed by the text of the statute.

There will be a brief description of the statutory history of the original enactment, along with subsequent amendments to the statute, if any.

In some versions of the Code, there may be cross-references to other statutes and research references. These are compiled by the company publishing the Code.

In an annotated version of the Code, there will be brief descriptions about cases which have interpreted that particular code section. These are called case "annotations."

Supplements

For book versions of the Code, there is a yearly supplement published to update each individual volume of the Code. It is called a "pocket part" and will contain amendments to statutes found in that particular volume. It is located in a pocket in the back of the volume.

Court System Codified

Title 9	Courts
Chapter 1	Provisions Common to Courts
Chapter 3	Supreme Court
Chapter 4	Court of Appeals of the State of Mississippi
Chapter 5	Chancery Courts
Chapter 7	Circuit Courts
Chapter 9	County Courts
Chapter 11	Justice Courts
Chapter 13	Court Reporters and Court Reporting
Chapter 15	Judicial Council [Repealed]
Chapter 17	Court Administrators
Chapter 19	Commission on Judicial Performance
Chapter 21	Administrative Office of Courts
Chapter 23	Intervention (Drug) Courts
Chapter 25	Veterans Treatment Courts
Chapter 27	Rivers Mcgraw Mental Health Diversion Pilot Program Act

MISSISSIPPI CODE OF 1972

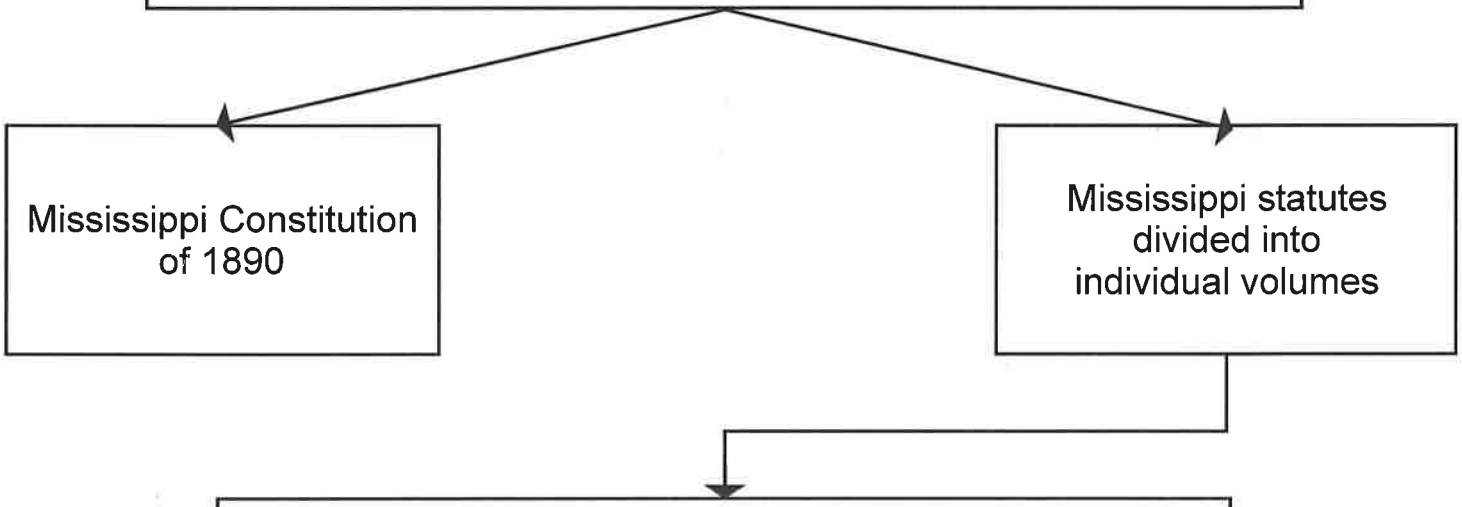
Mississippi Code of 1972 is the official codification of Mississippi Laws

It is a multi-volume set & is updated annually with pocket parts

The Code includes:

- Mississippi Constitution of 1890

- Mississippi statutes



Statutes are organized into titles, chapters & sections

title: represents a major subject area

chapter: addresses a specific subject within a title

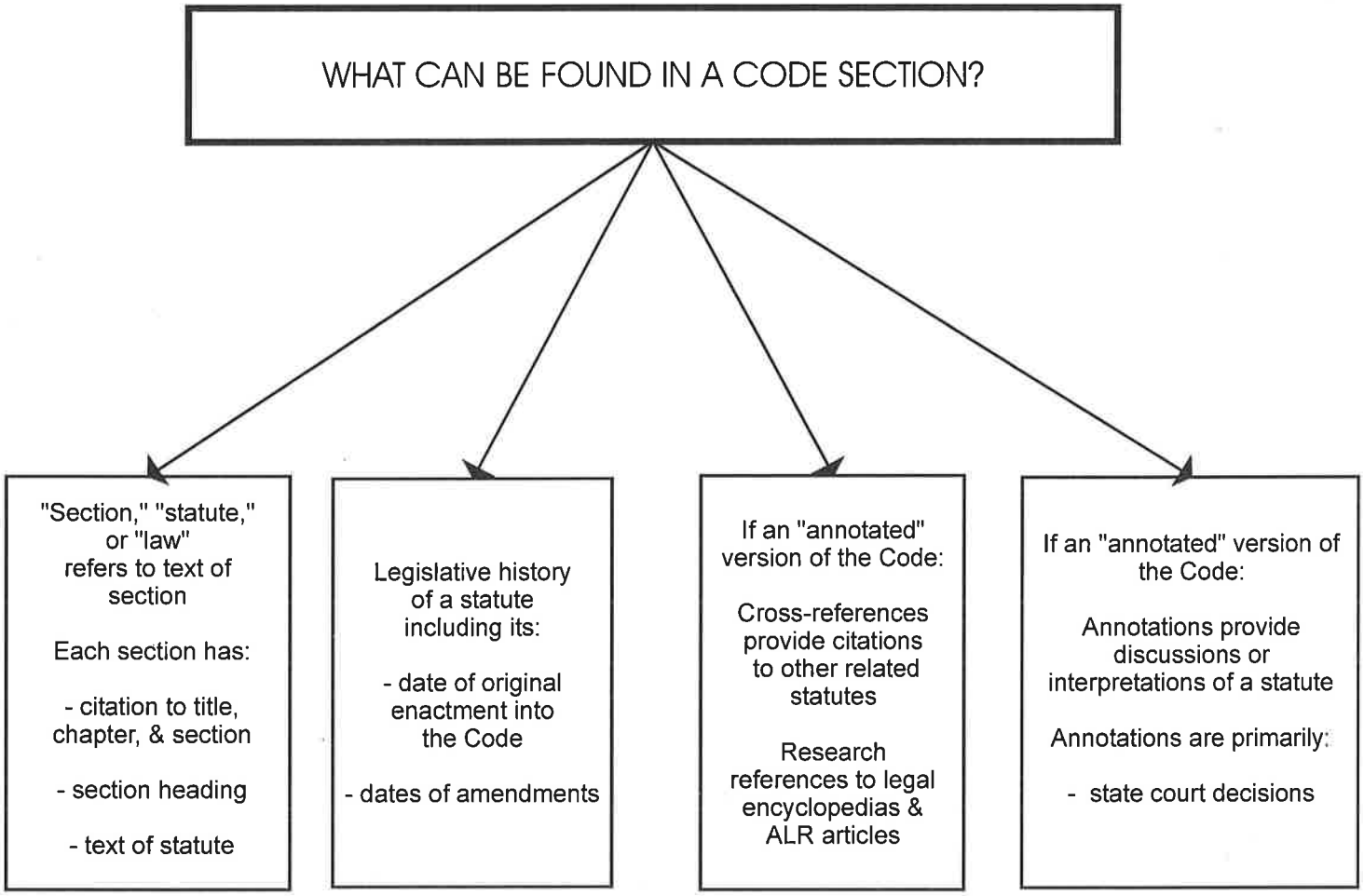
section: is the individual statute

For example, in § 9-7-121

"9" represents the Title, "Courts"

"7" represents the Chapter, "Circuit Courts"

"121" represents the Section, "Clerks in general"


WHAT CAN BE FOUND IN A CODE SECTION?
"Section," "statute," or "law" refers to text of section
Each section has:
- citation to title, chapter, & section
- section heading
- text of statute
Legislative history of a statute including its:
- date of original enactment into the Code
- dates of amendments
If an "annotated" version of the Code:
Cross-references provide citations to other related statutes
Research references to legal encyclopedias & ALR articles
If an "annotated" version of the Code:
Annotations provide discussions or interpretations of a statute
Annotations are primarily:
- state court decisions

How to Look up a Code Section

The Mississippi Secretary of State's web site has an online version of the Mississippi Code of 1972.

- Go to the web site **http://www.sos.ms.gov**
- Click on Communications & Publications
- Click on Search Mississippi Law
- Click Search the Mississippi Code at Michie's Legal Resources powered by LexisNexis Publishing
- Click "I agree" to get free public access of the Code
  This will pull up the entire Code listed by Titles.

If you have a citation to the Code (ex. § 11-11-1):

- Click + to open Title 11 Civil Practice and Procedure
- Click + to open Chapter 11 Venue of Actions
- Click + to open In General
- Click on § 11-11-1 Provisions of this chapter applicable to all courts

To search for a particular statute by words:

- Ex. § 11-7-189 Enrollment of judgments; satisfaction
- In the long, white box, type "judgment roll"
- Click the circle next to Search ALL documents in this source
- Then click magnifying glass box
- You will get 26 documents
- Scroll down until you find § 11-7-189 Enrollment of judgments; satisfaction

- Ex. § 99-19-73 Other Misdemeanors
- In the long, white box, type "other misdemeanors"
- Click the circle next to Search ALL documents in this source
- Then click magnifying glass box
- You will get 2 documents
- Scroll down until you find § 99-19-73 Standard state monetary assessment for certain violations

How to Look Up Legislative Bills

The Mississippi Legislature's web site contains all the bills that have been introduced during the legislative session.

If you have the number of a legislative bill:

- Ex. SB 2905 (from 2021 Legislative Session)
- Go to the web site **http://www.legislature.ms.gov**
- Click on Legislation
- Click on either All Measures or All Measures Not Dead
- Scroll all of the legislative bills until you find SB 2905

To search for a particular bill:

- Go to the web site **http://www.legislature.ms.gov**
- Click on Legislation
- Click on Text Search
- In Build Query long, white box in Not Dead Measures, type "chancery /3/ clerk" (That means the word "chancery" within 3 words of "clerk")
- Click Query Current
- Found 41 hits in 25 documents for chancery /3/ clerk
- Click on the bill number to read the bill

How to Get a Court Decision or a Hand Down List

The State of Mississippi Judiciary's web site contains the opinions that are handed down by both the Mississippi Supreme Court and the Mississippi Court of Appeals every week. Access to the decisions and hand down lists is free.

How to get a hand down list:

- Go to the web site **http://www.courts.ms.gov**
- To find a Mississippi Supreme Court Hand Down List:
    - Click on Hand Down Lists and select the court and year, ex. "2019 SCT"
      AND
      Select a hand down list date, ex. "11-07-2019"
    - Click Go
    - Click on an opinion's case number (in blue) to access the opinion
    - Click on the print icon to print a copy of the opinion

To search by a party's last name:

Ex. To find the opinion in *Anderson v. Wiggins*, which was handed down by the Mississippi Court of Appeals in 2019:

- Go to the web site **http://www.courts.ms.gov**
- Under General Docket type in the box "Anderson" (without quotes)
- Hit Enter
- Click More Results
- All opinions matching that criteria will be pulled up on the screen
- Scroll to find the *Anderson v. Wiggins* opinion
- Click on the opinion
- Click on the print icon to print a copy of the opinion

How to Find the Mississippi Rules of Court

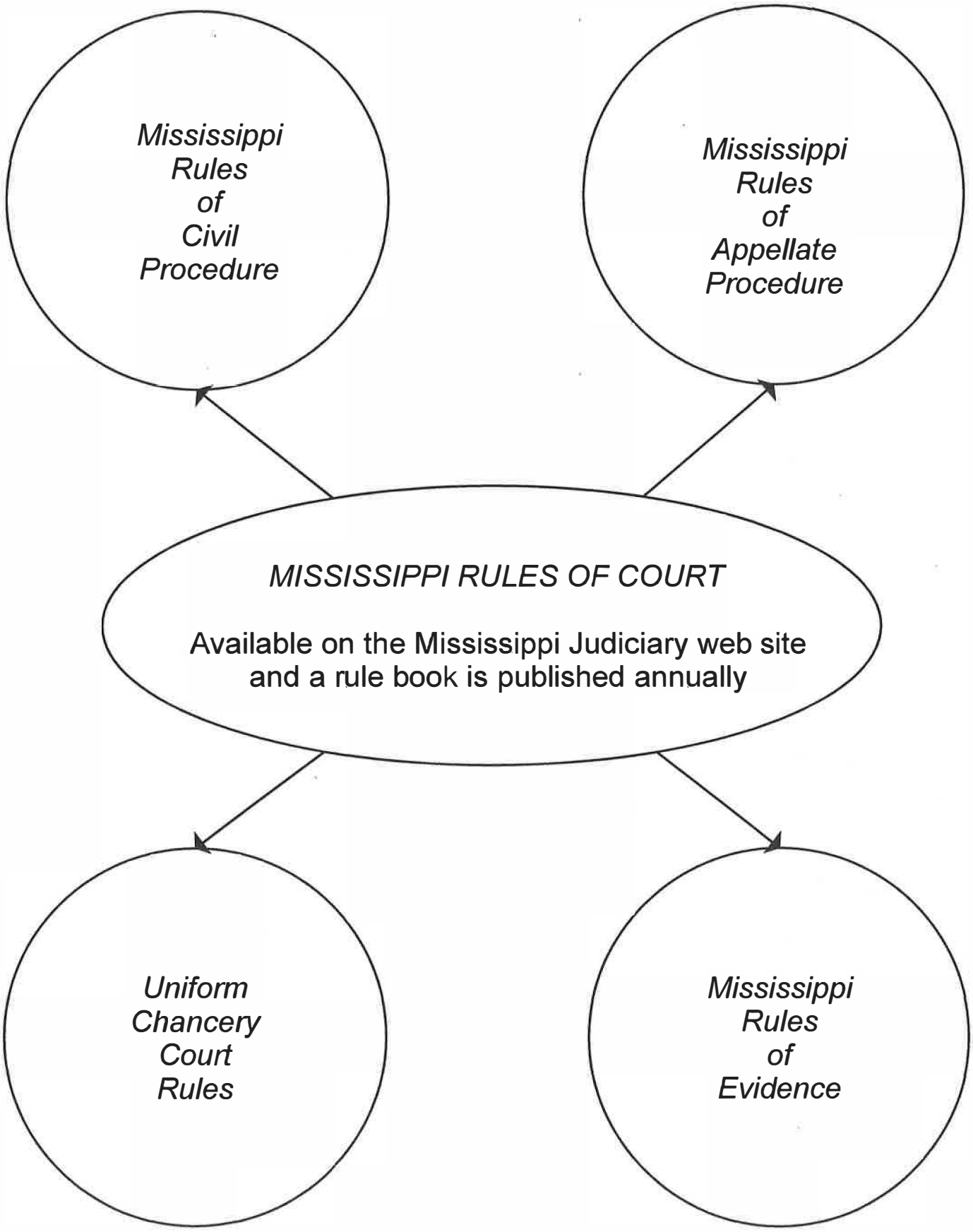
The State of Mississippi Judiciary's web site has links to all of the Mississippi Rules of Court:

- Go to the web site **http://www.courts.ms.gov**
- Click on Research tab
- Select Rules

  Uniform Civil Rules of Circuit and County Court Practice
  Mississippi Rules of Civil Procedure
  Mississippi Rules of Criminal Procedure
  Uniform Chancery Court Rules
  Mississippi Rules of Evidence
  Mississippi Rules of Appellate Procedure
  Mississippi Electronic Courts Administrative Procedures
  Appellate E-Filing Administrative Procedures
  Uniform Rules of Procedure for Justice Court
  Mississippi Rules of Professional Conduct
  Rules of Discipline for the Mississippi State Bar
  Mississippi Rules and Regulations for Mandatory Continuing Legal Education
  Rules Governing Admission to the Mississippi Bar
  Code of Judicial Conduct
  Rules of the Mississippi Commission on Judicial Performance
  Rules and Regulations for Mandatory Continuing Judicial Education
  Rules and Regulations Governing Certified Court Reporters
  Court Annexed Mediation Rules for Civil Litigation
  Rules and Regulations for Certification and Continuing Education for Mississippi Court Administrators
  Rules for Electronic and Photographic Coverage of Judicial Proceedings
  Uniform Rules of Youth Court Practice
  Rules of the Mississippi Lawyers and Judges Assistance Program
  Mississippi Law Student Limited Practice Rule

- Click on the particular set of rules you are researching, and it will open the rules, found in numerical order, in a PDF document.

MISSISSIPPI RULES OF COURT



How to Find an Attorney General Advisory Opinion

- Go to the web site **http://www.ago.state.ms.us**
- Click on Divisions
- Click on Opinions & Policy
- Click on Opinions
- Click Search Attorney General Opinions here

To look for an opinion on a particular statute:

- In the Search Terms box, type the citation to the statute
  Ex. "9-7-123" (without quotes)
- The Natural Language circle will be clicked by default
- Click Search
- Then review your results
- Click on the name of the opinion to view the opinion

To look for an opinion on a particular subject using Natural Language:

- In the Search Terms box, type "void tax sale" (without quotes)
- The Natural Language circle will be clicked by default
- Click Search
- Then review your results (100 results)
- Click on the name of the opinion to view the opinion

To look for an opinion on a particular subject using Terms & Connectors:

- In the Search Terms box, type "void /3 tax /3 sale" (without quotes)
- Click the Terms & Connectors circle
- Click Search
- Then review your results (40 results)
- Click on the name of the opinion to view the opinion

How to Find Domestic Violence Forms

- Go to the web site **http://www.ago.state.ms.us**
- Click on Divisions
- Click on Bureau of Victim Assistance
- Click on Interspousal/Domestic Violence
- Domestic Violence Forms will open in drop down menu
- Click on a particular form, which will open as a PDF
- Click the print icon to print the form

HELPFUL WEB SITES FOR JUDGES & COURT PERSONNEL		
Title	**Web Site**	**What is Available**
Mississippi Supreme Court	http://www.courts.ms.gov	Supreme Court decisions Court of Appeals decisions Rules of Court Docket information News Contact information
Administrative Office of Courts	https://courts.ms.gov/aoc/aoc.php	Forms Contact information
Mississippi Judicial College	http://mjc.olemiss.edu	Conference dates Training information Contact information Links to forms & other resources
Mississippi Secretary of State	http://www.sos.ms.gov	Mississippi Code of 1972 Election information Contact information
Mississippi Attorney General	http://www.ago.state.ms.us	Official advisory opinions Forms Contact information
Mississippi Office of the State Auditor	http://www.osa.state.ms.us	Forms Reports to download Contact information
Mississippi Legislature	http://www.legislature.ms.gov	Legislative bill status Contact information
Mississippi Department of Archives and History	http://www.mdah.state.ms.us	Records management information
Mississippi Department of Human Services	http://www.mdhs.state.ms.us	Public services information
State of Mississippi (official web site)	http://www.mississippi.gov	Links to state government

OTHER WAYS TO CONDUCT RESEARCH ON THE INTERNET			
WHAT	**WEB SITE**	**COST**	**WHAT YOU CAN FIND**
Google	www.google.com	No	Can search for names, publications, web sites Maps Legal & non-legal resources
LexisNexis	www.lexisnexis.com	Yes Subscription required	State & federal cases & statutes Newspapers Publications Legal & non-legal resources
Thomson West	www.westlaw.com	Yes Subscription required	State & federal cases & statutes Newspapers Publications Legal resources

CHAPTER 10

ANNULMENT & DIVORCE

CHART

CHAPTER 10

ANNULMENT

[A]n annulment proceeding is one maintained upon the theory that for some reason existing at the time of a pretended marriage, no valid marriage ever existed. ***United Timber & Lumber Co. v. Alleged Dependents of Hill*, 84 So. 2d 921, 924 (Miss. 1956).**

Void Marriages

§ 93-1-1 Incestuous marriages void:

(1) The son shall not marry his grandmother, his mother, or his stepmother; the brother his sister; the father his daughter, or his legally adopted daughter, or his grand-daughter; the son shall not marry the daughter of his father begotten of his stepmother, or his aunt, being his father's or mother's sister, nor shall the children of brother or sister, or brothers and sisters intermarry being first cousins by blood. The father shall not marry his son's widow; a man shall not marry his wife's daughter, or his wife's daughter's daughter, or his wife's son's daughter, or the daughter of his brother or sister; and the like prohibition shall extend to females in the same degrees. All marriages prohibited by this subsection are incestuous and void.
(2) Any marriage between persons of the same gender is prohibited and null and void from the beginning. Any marriage between persons of the same gender that is valid in another jurisdiction does not constitute a legal or valid marriage in Mississippi.

***But see Obergefell v. Hodges*, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015).**

It is hereby ordered that the State of Mississippi and all its agents, officers, employees, and subsidiaries . . . are hereby preliminarily enjoined from enforcing Section 263A of the Mississippi Constitution and Mississippi Code Section 93–1–1(2). ***Campaign for S. Equal. v. Bryant*, 64 F. Supp. 3d 906, 954 (S.D. Miss. 2014), *aff'd*, 791 F.3d 625 (5th Cir. 2015).**

§ 93-1-3 Incestuous marriages outside state:

Any attempt to evade section 93-1-1 by marrying out of this state and returning to it shall be within the prohibitions of said section.

§ 93-7-1 Declaration of nullity obtainable:

All bigamous or incestuous marriages are void, and a declaration of nullity may be obtained at the suit of either party.

Voidable Marriages

§ 93-7-3 Causes recognized:

A marriage may be annulled for any one (1) of the following causes existing at the time of the marriage ceremony:

(a) Incurable impotency.

(b) Adjudicated mental illness or incompetence of either or both parties. Action of a spouse who has been adjudicated mentally ill or incompetent may be brought by guardian, or in the absence of a guardian, by next friend, provided that the suit is brought within six (6) months after marriage.

(c) Failure to comply with the provisions of Sections 93-1-5 through 93-1-9 when any marriage affected by that failure has not been followed by cohabitation.

Or, in the absence of ratification:

(d) When either of the parties to a marriage is incapable, from want of age or understanding, of consenting to any marriage, or is incapable from physical causes of entering into the marriage state, or where the consent of either party has been obtained by force or fraud, the marriage shall be void from the time its nullity is declared by a court of competent jurisdiction.

(e) Pregnancy of the wife by another person, if the husband did not know of the pregnancy.

Suits for annulment under paragraphs (d) and (e) shall be brought within six (6) months after the ground for annulment is or should be discovered, and not thereafter.

The causes for annulment of marriage set forth in this section are intended to be new remedies and shall in no way affect the causes for divorce declared elsewhere to be the law of the State of Mississippi as they presently exist or as they may from time to time be amended.

We think it may be stated, as the general rule, that "a voidable marriage is valid for all purposes until avoided or annulled, and it cannot be attacked collaterally, but only in a direct proceeding during the lifetime of the parties. Hence, on the death of either, the marriage cannot be impeached, and is made good ab initio." ***Ellis v. Ellis*, 119 So. 304, 305 (Miss. 1928).**

A voidable marriage can not be attacked collaterally: "[S]uch a marriage was not void, but voidable, and that the right to annul it was barred by the death of the party." ***Parkinson v. Mills*, 159 So. 651, 655 (Miss. 1935).**

Jurisdiction

§ 93-7-11 Jurisdiction; procedure:

The chancery courts of the State of Mississippi shall have jurisdiction to hear and determine all suits for annulment and all suits for annulment shall be tried in term time or vacation, and the same rules of pleading and procedure shall apply as in divorce cases, and the laws of process now in force in divorce cases in this state shall apply in all suits for annulment.

Venue

§ 93-7-9 Place of filing:

The complaint for annulment shall be filed
in the county where the defendant resides, or
in the county where the marriage license was issued, or
in the county where the plaintiff resides, if the defendant be a nonresident of this state.

Void and Voidable Marriages			
Void	**Voidable**	**Voidable Within 6 months of marriage**	**Voidable Absent Ratification & Brought within 6 months after the ground was discovered or should have been discovered**
Bigamous marriage	Incurable impotency	Adjudicated mental illness or incompetence	Lack of age to consent
Incestuous marriage	Non-compliance with marriage license statutes IF marriage is not followed by cohabitation		Lack of understanding to consent
Marriage between persons of the same gender *But see Obergefell v. Hodges*, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015).			Physical Incapacity
			Consent obtained by fraud
			Pregnancy of wife by another person if the husband did not know of such pregnancy

DIVORCE

Jurisdiction

§ 93-5-5 Residence requirements:

The jurisdiction of the chancery court in suits for divorce shall be confined to the following cases:

(a) Where one (1) of the parties has been an actual bona fide resident within this state for six (6) months next preceding the commencement of the suit. If a member of the armed services of the United States is stationed in the state and residing within the state with his spouse, such person and his spouse shall be considered actual bona fide residents of the state for the purposes of this section, provided they were residing within the state at the time of the separation of the parties.

(b) In any case where the proof shows that a residence was acquired in this state with a purpose of securing a divorce, the court shall not take jurisdiction thereof, but dismiss the bill at the cost of complainant.

Venue

§ 93-5-11 Place of filing; nonresidents; transfers:

All complaints, except those based solely on the ground of irreconcilable differences, must be filed in the county in which the plaintiff resides, if the defendant be a nonresident of this state, or be absent, so that process cannot be served; and the manner of making such parties defendants so as to authorize a judgment against them in other chancery cases, shall be observed.

If the defendant be a resident of this state, the complaint shall be filed in the county in which such defendant resides or may be found at the time, or in the county of the residence of the parties at the time of separation, if the plaintiff be still a resident of such county when the suit is instituted.

A complaint for divorce based solely on the grounds of irreconcilable differences shall be filed in the county of residence of either party where both parties are residents of this state. If one (1) party is not a resident of this state, then the complaint shall be filed in the county where the resident party resides.

Transfer of venue shall be governed by Rule 82(d) of the Mississippi Rules of Civil Procedure.

Requirements for Complaint for Divorce

§ 93-5-33 Reports to board of health:

All complaints for divorce shall name

the parties to the suit,
when married, and
the number and names of the living minor children born of the marriage.

It shall be the duty of each chancery clerk in the state to make a report of each divorce granted in his county; and on forms furnished by the State Board of Health, to show the following information, as correctly as he is able to make such report:

Names of parties;
when married;
state of residence;
children under eighteen (18) in this family as of date couple last resided in same household;
custody of children; and
the page and book in which judgment is recorded.

He shall certify to the said report and affix thereunto his seal, and he shall forward it to the State Board of Health within ten (10) days after adjournment of each term of court in his county. For his services in preparing and forwarding said records to the State Board of Health he shall receive the sum of $.35 for each completed record, to be taxed to costs in each divorce case as other fees are taxed.

§ 93-5-7 Procedure:

The proceedings to obtain a divorce shall be by complaint in chancery, and shall be conducted as other suits in chancery, except that

(1) the defendant shall not be required to answer on oath;

(2) no judgment by default may be granted but a divorce may be granted on the ground of irreconcilable differences in termtime or vacation;

(3) admissions made in the answer shall not be taken as evidence;

(4) the clerk shall not set down on the issue docket any divorce case unless upon the request of one (1) of the parties;

(5) the plaintiff may allege only the statutory language as cause for divorce in a separate paragraph in the complaint; provided, however, the defendant shall be entitled to discover any matter, not privileged, which is relevant to the issues raised by the claims or defenses of the other;

(6) the court shall have full power in its discretion to grant continuances in such cases without the compliance by the parties with any of the requirements of law respecting continuances in other cases; and

(7) in all cases, except complaints seeking a divorce on the ground of irreconcilable differences, the complaint must be accompanied with an affidavit of plaintiff that it is not filed by collusion with the defendant for the purpose of obtaining a divorce, but that the cause or causes for divorce stated in the complaint are true as stated.

Additional Information to Be Filed with the Complaint

§ 93-27-209 Information to be submitted to court:

(1) Subject to any law providing for the confidentiality of procedures, addresses, and other identifying information, in a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five (5) years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(a) Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child custody determination, if any;

(b) Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and

(c) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(2) If the information required by subsection (1) is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

***See* Uniform Child Custody Jurisdiction and Enforcement Act, § 93-27-101 *et seq*.**

Uniform Chancery Court Rule 8.05 states:

Unless excused by Order of the Court for good cause shown, each party in every domestic case involving economic issues and/or property division shall provide the opposite party or counsel, if known, the following disclosures:

(a) A detailed written statement of actual income and expenses and assets and liabilities, such statement to be on the forms attached hereto as Exhibit "A", copies of the preceding year's Federal and State Income Tax returns, in full form as filed, or copies of W-2s if the return has not yet been filed; and, a general statement of the providing party describing employment history and earnings from the inception of the marriage or from the date of divorce, whichever is applicable; or,
(b) By agreement of the parties, or on motion and by order of the Court, or on the Court's own motion, a more detailed statement on the form attached hereto as Exhibit "B".

The party providing the required written statement shall immediately file a Certificate of Compliance with the Chancery Clerk for filing in the court file.

A party filing a document containing personal identifiers and/or sensitive information and data may (1) file an un-redacted document under seal; this document shall be retained by the court as part of the record; or, (2) file a reference list under seal. The reference list shall contain the complete personal data identifiers and/or the complete sensitive information and data required by this Rule.

The disclosures shall be made by the plaintiff not later than the time that the defendant's Answer is due, and by the defendant at the time that the defendant's Answer is due, but not later than 45 days from the date of the filing of the commencing pleading. The Court may extend or shorten the required time for disclosure upon written motion of one of the parties and upon good cause shown.

The disclosures shall include any and all assets and liabilities, whether marital or non-marital. A party is under a duty to supplement prior disclosures if that party knows that the disclosure, though correct when made, no longer accurately

reflects any and all actual income and expenses and assets and liabilities, as required by this Rule.

When offered in a trial or a conference, the party offering the disclosure statement shall provide a copy of the disclosure statement to the Court, the witness and opposing counsel.

This rule shall not preclude any litigant from exercising the right of discovery, but duplicate effort shall be avoided.

The failure to observe this rule, without just cause, shall constitute contempt of Court for which the Court shall impose appropriate sanctions and penalties.

***See* Exhibits A and B of the Uniform Chancery Court Rules.**

Defendant May Waive Service of Process

Mississippi Rule of Civil Procedure 4 Summons states:

> **(e) Waiver.** Any party defendant who is not an unmarried minor, or mentally incompetent may, without filing any pleading therein, waive the service of process or enter his or her appearance, either or both, in any action, with the same effect as if he or she had been duly served with process, in the manner required by law on the day of the date thereof. Such waiver of service or entry of appearance shall be in writing dated and signed by the defendant and duly sworn to or acknowledged by him or her, or his or her signature thereto be proven by two (2) subscribing witnesses before some officer authorized to administer oaths. Any guardian or conservator may likewise waive process on himself and/or his ward, and any executor, administrator, or trustee may likewise waive process on himself in his fiduciary capacity. However, such written waiver of service or entry of appearance must be executed after the day on which the action was commenced and be filed among the papers in the cause and noted on the general docket.

CHAPTER 11

PROBATE OF TESTATE ESTATE

CHARTS

CHAPTER 11

PROBATE OF TESTATE ESTATE

Clerk's Duties

§ 9-5-141 Powers in general:

The clerk or his deputy may at any time receive and file all bills, petitions, motions, accounts, inventories, reports, or other papers offered for that purpose, and may issue all process authorized by law and proper in any matter or proceeding.

He may also at any time, in termtime or vacation, perform the following functions:

issue warrants of appraisement to appraise the personal estate of decedents;
allow and register claims against estates being administered in the court of which he is clerk;
make all orders and issue all process necessary for the collection and preservation of estates of decedents, minors, and persons of unsound mind;
appoint some person to collect and preserve the estate of any decedent in the state in any case provided for;
grant letters of administration to the husband or wife, or other person entitled thereto;
take the proof of wills,
admit wills to probate, in common form,
grant letters testamentary,
letters of administration with the will annexed, and de bonis non;
appoint guardians for minors, persons of unsound mind, and convicts of felony;
grant letters of administration;
institute suits in cases provided for, and,
whenever an appeal shall be taken from the grant of letters testamentary, of administration, or guardianship, appoint some fit person to discharge the duties pending the appeal.

He may do all such other acts as are provided by law and by the Mississippi Rules of Civil Procedure.

§ 9-5-147 Approval or disapproval of court:

All acts, judgments, orders, or decrees made by the clerk in term time or vacation or at rules, shall be subject to the approval or disapproval of the court of which he is clerk, and shall not be final until approved by the court. All such orders and proceedings of the clerk may, by order of the chancellor in vacation, be suspended until a hearing before him in court, and shall be subject to such orders and decrees as the court may make.

Jurisdiction

§ 9-5-83 Administration of estate:

The court in which a will may have been admitted to probate, letters of administration granted, . . . shall have jurisdiction to hear and determine all questions in relation to the execution of the trust of the executor, administrator, guardian, or other officer appointed for the administration and management of the estate, and all demands against it by heirs at law, distributees, devisees, legatees, wards, creditors, or others; and shall have jurisdiction of all cases in which bonds or other obligations shall have been executed in any proceeding in relation to the estate, or other proceedings, had in said chancery court, to hear and determine upon proper proceedings and evidence, the liability of the obligors in such bond or obligation, whether as principal or surety, and by decree and process to enforce such liability.

Venue

§ 91-7-1 Venue of probate:

Wills shall be proved in and letters testamentary thereon granted by the chancery court of the county in which the testator had a fixed place of residence.

If he had no fixed place of residence and land be devised in the will, it shall be proved in and letters granted by the chancery court of the county where the land, or some part thereof, is situated.

Probate in Common Form

Caveat to Probate in Common Form

§ 91-7-21 Objections to probate:

Any one desiring to contest a will presented for probate may do so before probate by entering in the clerk's office in which it shall be presented his objection to the probate thereof, and causing all parties interested and who do not join him in such objection to be made parties defendant. Thereupon the issue devisavit vel non shall be made up and tried, and proceedings had as in other like cases. When an objection to the probate of a will has been made in writing, filed with the clerk, probate shall not be had of such will without notice to the objector.

Petition is Filed

Uniform Chancery Court Rule 6.15 states:

Every petition to probate a Will must have a copy of the Will attached thereto.

> On March 5, 1959, [petitioner] filed in the Chancery Court a petition praying for the probate in common form of a purported last will and testament of [the testate], the said [petitioner] being named as executor in said purported will. On March 7, 1959, a decree was entered by the chancellor admitting the will to probate in common form. ***Hogan v. Sillers*, 151 So. 2d 411, 411 (Miss. 1963).**

Uniform Chancery Court Rule 9.04 states:

The Clerk shall keep all original Wills, all bonds and receipts from banks and all disputed documents filed with him safely and securely locked in a safe or vault in his office. He shall not permit the same to be taken from his custody for any purpose, except on an order of the Chancellor entered on the minutes.

Will as Proof of Title

§ 91-5-35 Will as proof of title:

(1) When a person dies testate owning at the time of death real property in the State of Mississippi and his will purports to devise such realty, then said will may be admitted to probate, as a muniment of title only, by petition signed and sworn, without the necessity of administration or the appointment of an executor or administrator with the will annexed, provided it be shown by said petition that:
(a) The value of the decedent's probate estate in the State of Mississippi at the time of his or her death, exclusive of any interest in real property and exempt property set forth in Section 91-7-117, did not exceed the sum set forth in Section 91-7-322; and
(b) All known debts of the decedent and his estate have been paid, including estate and income taxes, if any.
(2) The petition shall be signed and sworn by the personal representative, including (a) an executor, (b) an administrator with the will annexed, or (c) other personal representative serving in a foreign jurisdiction. If there is no such serving executor, administrator with the will annexed, or other personal representative, then it shall be signed and sworn by (i) the spouse of the decedent, if then living, and (ii) the devisees of the Mississippi real property, whether specific or residuary, but excluding persons holding mere contingent remainder interests in the real property.
(3) The petition may be signed for and on behalf of the spouse of the decedent, or a beneficiary under the will of the decedent, by a person acting in a representative capacity in accordance with Section 91-8-303.
(4) The probate of a will under this section shall in no way affect the rights of any interested party to petition for a formal administration of the estate or to contest the will as provided by Section 91-7-23, Mississippi Code of 1972, or the right of anyone desiring to contest a will presented for probate as provided by Section 91-7-21, or as otherwise provided by law.
(5) This section shall apply to wills admitted to probate from and after July 1, 2020, notwithstanding that the testator or testatrix may have died on or before July 1, 2020.

Proof of Will

§ 91-7-7 Proving due execution:

The due execution of the will, whether heretofore or hereafter executed, must be proved by at least one (1) of the subscribing witnesses, if alive and competent to testify. If none of the subscribing witnesses can be produced to prove the execution of the will, it may be established by proving the handwriting of a testator and of the subscribing witnesses to the will, or of some of them. The execution of the will may be proved by affidavits of subscribing witnesses. The affidavits may be annexed to the will or may be a part of the will, and shall state the address of each subscribing witness. Such affidavits may be signed at the time that the will is executed.

Executor's Oath & Bond

§ 91-7-41 Fiduciary with will, oath; bond:

Every executor with the will annexed, at or prior to the time of obtaining letters testamentary or of administration, shall take and subscribe the following oath, viz.:

> I do swear that the writing exhibited by me is the true last will and testament of _____, as far as I know and believe, and that I, if and when appointed as executor, will well and truly execute the same according to its tenor, and discharge the duties required by law.

He will also give bond in such penalty as will be equal to the full value of the estate, and with such sureties as may be approved of by the court or by the clerk, payable to the state, with the following conditions, viz.:

> The condition of this bond is, that if the above bound _____, as executor of the last will and testament of _____, shall well and truly execute the will as far as the same may be consistent with law, and faithfully discharge all the duties required of him by law, then this obligation shall be void.

Exemption from Bond

§ 91-7-45 Exemption from bond:

If the testator, by will, direct that his executor shall not be required to give bond, then none shall be required unless the court or the clerk, at the time of granting the letters or afterwards, shall have reason to require bond, in which event it shall be the duty of the court or clerk to require bond with sufficient sureties. If any creditor of such testator petition the court or the clerk in vacation, under oath, stating his claim and that he believes he is in danger of losing his demand, or some of it, by the bad management of said estate or by the personal insolvency of the executor, such executor, having had five days' notice of the petition, shall be required to give a bond with sureties, to be approved by the court or clerk in vacation, payable to said creditor in a sufficient sum to cover his legal demand, and conditioned to save him from all loss by reason of any act or omission of such executor. Instead of such bond, the executor may give bond as if he had not been relieved from it by the will. If the bond required in either case be not given, it shall be the duty of the court or clerk to remove the executor and grant letters of administration, with the will annexed, to some other person.

Letters Testamentary Issued to Executor

§ 91-7-35 Issuing letters to executor:

The executor named in any last will and testament, whether made in this state or out of it and admitted to probate here on an authenticated copy or on the original, shall be entitled to letters testamentary thereon if not legally disqualified. A person shall not be capable of being executor who, at the time when letters testamentary ought to be granted, is under the age of eighteen years, of unsound mind, or convicted of a felony.

***See* UCCR 6.01 Attorney Must be Retained.**

If No Executor is Listed in the Will

§ 91-7-39 Administration with will annexed:

If there be no executor named in any last will and testament, or if the executors named all renounce the executorship or, being required to qualify, shall all refuse or fail to do so or shall refuse or wilfully neglect, for the space of forty days after the death of the testator, to exhibit the will and testament for probate or shall all be disqualified, then administration with the will annexed shall be granted to the person who would be entitled to administer according to the rule prescribed for granting administration. Before granting such administration, each executor named in the will and testament who has not renounced the executorship shall be summoned to show cause why administration should not be granted. If any executor named be absent from the state at the time of the probate of the will and administration should be granted during his absence, such executor shall be allowed forty days after his return to make application for letters testamentary and, on his qualifying, the letters of administration shall be revoked; and the administrator shall deliver all the estate which has come to his hands to the executor and settle the account of his administration.

Revocation of Letters Testamentary

§ 91-7-89 Nonresident fiduciaries, revocation of letters:

If letters testamentary or of administration be granted to any person not a resident of the state, or if any executor after his appointment remove out of the state, and if such executor refuse or neglect to settle his accounts annually or neglect the due administration thereof in any other respect, the court, after publication made and proof thereof as in other cases, or personal notice, may revoke the letters of such executor and proceed to grant administration de bonis non as if such executor had died or resigned.

Notice to Creditors

§ 91-7-145 Identifying claims against estate:

(1) The executor shall make reasonably diligent efforts to identify persons having claims against the estate. Such executor shall mail a notice to persons so identified, at their last known address, informing them that a failure to have their claim probated and registered by the clerk of the court granting letters within ninety (90) days after the first publication of the notice to creditors will bar such claim as provided in Section 91-7-151.
(2) The executor shall file with the clerk of the court an affidavit stating that such executor has made reasonably diligent efforts to identify persons having claims against the estate and has given notice by mail as required in subsection (1) of this section to all persons so identified. Upon filing such affidavit, it shall be the duty of the executor to publish in some newspaper in the county a notice requiring all persons having claims against the estate to have the same probated and registered by the clerk of the court granting letters, which notice shall state the time when the letters were granted and that a failure to probate and register within ninety (90) days after the first publication of such notice will bar the claim. The notice shall be published for three (3) consecutive weeks, and proof of publication shall be filed with the clerk. If a paper be not published in the county, notice by posting at the courthouse door and three (3) other places of public resort in the county shall suffice, and the affidavit of such posting filed shall be evidence thereof in any controversy in which the fact of such posting shall be brought into question.
(3) The filing of proof of publication as provided in this section shall not be necessary to set the statute of limitation to running, but proof of publication shall be filed with the clerk of the court in which the cause is pending at any time before a decree of final discharge shall be rendered; and the time for filing proof of publication shall not be limited to the ninety-day period in which creditors may probate claims.

> From a reading of this statute it is clear that an [executor] has four responsibilities:
>
> > (1) she must make reasonably diligent efforts to ascertain creditors having claims against the estate and mail them notice of the 90 day period within which to file a claim;
> > (2) she must file an affidavit stating that she has complied with the first subsection;
> > (3) she must publish in some newspaper in the county a notice to creditors explaining that they have 90 days within which to file claims against the estate; and
> > (4) she must file proof of publication with the clerk of court.
>
> ***In re Estate of Petrick*, 635 So. 2d 1389, 1392 (Miss. 1994).**

Under the statute, if [executor], through reasonably diligent efforts could have identified [creditor], as a "person" having a claim against the estate, she had the duty to mail notice prior to filing her affidavit, publishing notice in the paper, and filing proof of publication. In other words, if the creditor could have been ascertained through reasonably diligent efforts, mere publication in the newspaper in the county, absent notice by mail, does not comply with the mandates of the statute. The statute does not specifically allow for notice by publication as a substitute for actual notice by mail; rather, notice by publication is a requirement in addition to providing creditors notice by mail. It stands to reason that the notice by publication requirement is to further ensure that those creditors who were served by mail are reminded of the time limit to file claims, as well as to give constructive notice to creditors who could not be ascertained through reasonably diligent efforts. ***In re Estate of Petrick*, 635 So. 2d 1389, 1392-93 (Miss. 1994).**

Exception for Small Estates

§ 91-7-147 Notices in small estates:

Where the value of an estate shall not be more than Five Hundred Dollars ($500.00), the court shall dispense with newspaper notices; and notices in lieu thereof shall be posted for thirty (30) days at the courthouse door and two (2) other public places in the county. Failure of persons having claims against the estate to have their claims probated and registered by the clerk of the court granting letters within ninety (90) days after the date on which notice is posted will bar such claims as provided in Section 91-7-151.

§ 91-7-151 Limitations period; amending affidavits:

All claims against the estate of deceased persons, whether due or not, shall be registered, probated and allowed in the court in which the letters testamentary or of administration were granted within ninety (90) days after the first publication of notice to creditors to present their claim. Otherwise, the same shall be barred and a suit shall not be maintained thereon in any court, even though the existence of the claim may have been known to the executor or administrator. Where the affidavit is made in good faith and the claim is registered, probated and allowed by the clerk but the affidavit is defective or insufficient, the court may allow the affidavit to be amended so as to conform to the requirements of the statute, at any time before the estate is finally settled; whereupon the probate shall be as effective and the claim as valid against the estate as if the affidavit had been correct and sufficient in the first instance.

Inventory of Estate

§ 91-7-93 Inventory:

The executor or administrator shall, within ninety (90) days of the grant of his letters unless further time be allowed by the court or clerk, file an inventory, verified by oath, of the money and property owned by the decedent at the time of death, listing it with reasonable detail, and indicating as to each listed item, its market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item.

There shall be no requirement for filing an inventory if the requirement of filing an inventory is waived in the testator's will. The court or the chancellor may also waive the requirement for filing an inventory in an intestate estate upon petition to the court by the administrator. Even though the requirement of filing an inventory is waived in the testator's will or waived by the court or the chancellor upon petition to the court by the administrator in an intestate estate, the court or the chancellor may later order the executor or administrator to file an inventory upon the petition of a beneficiary or other interested party if the court or the chancellor determines that the filing of inventory is necessary or advisable.

§ 91-7-95 Supplemental inventory:

If any property not included in the original inventory comes to the knowledge of the executor or administrator, or if the executor or administrator learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisement showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court if the original inventory was filed, or furnish copies thereof or information thereof to persons interested in the new information.

§ 91-7-109 Conducting inventory and appraisal:

The executor or administrator may employ a qualified and disinterested appraiser to assist him in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.

Claims Against the Estate

§ 91-7-149 Procedure for probating claims:

Any person desiring to probate his claim shall present to the clerk the written evidence thereof, if any, or if the claim be a judgment or decree, a duly certified copy thereof, or if there be no written evidence thereof, an itemized account or a statement of the claim in writing, signed by the creditor, and make affidavit, to be attached thereto, to the following effect, viz.:

> That the claim is just, correct, and owing from the deceased; that it is not usurious; that neither the affiant nor any other person has received payment in whole or in part thereof, except such as is credited thereon, if any; and that security has not been received therefor except as stated, if any.

Thereupon, if the clerk shall approve, he shall indorse upon the claim the words following:

> Probated and allowed for $_____ and registered this ___ day of _____, A.D., _____, and shall sign his name officially thereto.

Probate registration and allowance shall be sufficient presentation of the claim to the executor; provided, that should the clerk probate and allow and register the claim, but fail or neglect to indorse thereon the words,

> Probated and allowed for $_____ and registered the ___ day of _____, A.D., _____, and officially sign his name thereto,

the court may, upon proper showing, allow the clerk to indorse on the claim, nunc pro tunc, the words,

> Probated and allowed for $_____ and registered, this the ___ day of _____, A.D., _____, and sign his name officially thereto.

If the claim be based upon a demand of which there is no written evidence or upon an itemized account, the statement of said claim or the itemized account shall be retained and kept by the clerk among the official papers pertaining to the estate; and if the claim be based upon a promissory note or other instrument purporting to have been executed by the decedent, the creditor shall file with his claim either the original thereof or a duplicate of such original in the discretion of the creditor. If the original writing is presented to the clerk, it may be withdrawn by the creditor, and the clerk shall make a duplicate thereof. No specific writing or

certificate shall be required to be made by the clerk on either the original writing or the duplicate retained by the clerk.

In no instance shall an original writing be required to be presented to the clerk unless

> (a) a question is raised by the personal representative of the estate, or by any party in interest, as to the authenticity of the original or
> (b) in the circumstances it would be unfair to admit into evidence the duplicate in lieu of the original.

In either of the above situations, the court or chancellor, upon good cause being shown, may require the creditor to produce the original before the court or clerk for the inspection of the personal representative or other party in interest, who may examine the original and who may make photographic copies thereof under the supervision of the clerk.

Notwithstanding the foregoing, any record, voucher, claim, check, draft, receipt, writing, account, statement, note or other evidence which may be furnished, filed, probated, presented or produced, or required to be produced, by a federally regulated bank, thrift or trust company shall be deemed to be an original admitted, furnished, filed, probated, presented, or produced for all purposes and with the same effect as the original, if such financial institution produces a copy of such evidence from a format of storage commonly used by financial institutions, whether electronic, imaged, magnetic, microphotographic or otherwise.

§ 91-7-91 Assets subject to claims:

The real property, goods, chattels, personal property, choses in action and money of the deceased, or which may have accrued to his estate after his death from the sale of property, real, personal or otherwise, and the rent of lands accruing during the year of his death, whether he died testate or intestate, shall be assets and shall stand chargeable with all the just debts, funeral expenses of the deceased, and the expenses of settling the estate, without any preference or priority as between real and personal property, and shall abate in the manner set out in Section 11, House Bill No. 1375, 2019 Regular Session. However, in cases where no administration has been or shall be commenced on the estate of the decedent within three (3) years after his death, no creditor of the decedent shall be entitled to a lien or any claim whatsoever on any real property of the decedent, or the proceeds therefrom, against purchasers or encumbrancers for value of the heirs of the decedent unless such creditor shall, within three (3) years and ninety (90) days from the date of the death of the decedent, file on the lis pendens docket in the office of the clerk of the chancery court of the county in which the land is located notice of his claim,

containing the name of the decedent, a brief statement of the nature, amount and maturity date of his claim and a description of the real property sought to be charged with the claim. The provisions of this section requiring the filing of notice shall not apply to any secured creditor having a recorded lien on the property.

Contest of Claims

§ 91-7-165 Contesting claims:

The executor may contest a claim presented against the estate. The court or clerk may refer the same to auditors, who shall hear and reduce to writing the evidence on both sides, if any be offered, and report their findings with the evidence to the court. Thereupon the court may allow or disallow the claim, but such proceeding shall not be had without notice to the claimant.

> The rule is well settled by the decisions of this Court that, when an [executor] contests the payment of a claim against the estate of a decedent, the claim must be established by clear and reasonably positive evidence. ***Ladnier v. Cross*, 128 So. 2d 540, 543 (Miss. 1961).**

Payment of Claims Against the Estate

§ 91-7-155 Duty to pay debts:

It shall be the duty of an executor to speedily pay the debts due by the estate out of the assets, if the estate be solvent; but he shall not pay any claim against the deceased unless the same has been probated, allowed, and registered.

§ 91-7-191 Insufficiency of personal property:

Whenever it shall be necessary for an executor or administrator to sell property to pay the debts and expenses of the estate, he may file a petition in the chancery court for the sale of the land of the deceased, or so much of it as may be necessary, and exhibit to the court a true account of the personal estate and debts due from the deceased, and the expenses and a description of the land to be sold. Any sale of land shall be subject to the abatement provisions of [section 91-7-91].

> It is clear from this statute and the decisions of this Court that in the absence of a contrary provision in a will, resort must first be had to the personal property in the payment of debts and expenses of the estate including federal estate taxes, before resort may be had to real property. It is also clear that resort must be first had to personal property not specifically devised by the will. ***In re Estate of Torian*, 321 So. 2d 287, 292 (Miss. 1975) (prior version of statute).**

§ 91-7-187 Selling realty before personalty:

When the estate of any deceased person consists of real and personal property and it shall be necessary to sell a portion thereof, the chancery court, on petition of the executor, administrator, legatees or distributees, being satisfied that it would be to the interest of the distributees or legatees, may decree a sale of the real estate in preference to the personal estate.

> When the decedent dies intestate, it must be conceded that, except in special cases, provided for by section 1900, where the interest of all parties make it advisable, the entire personal estate must be exhausted before, even by recourse to the courts, any portion of the lands can be sold and the proceeds devoted to that purpose. The reason for this distinction between personalty and land is obvious, and is still recognized in our jurisprudence. The personalty upon the death of the owner passes to the administrator; the title to the land vests at once in his heir. If this be the rule and the order in which property must be applied to the liquidation of the debts of an intestate, we see nothing in the statute to warrant the conclusion that the

legislature intended to adopt a different order in the case of a man dying testate. If the testator devise and bequeath by general terms his entire estate, unless the will contains evidence of a manifest intent on his part to commingle land and personalty, the personal estate must, as in case of intestacy, be first exhausted, before any portion of the lands can be used. ***Gordon v. James*, 39 So. 18, 24 (Miss. 1905).**

§ 91-7-197 Petitions affecting realty, persons summoned:

When a petition shall be filed to sell or lease land to pay debts or otherwise affecting the real estate of a deceased person, all parties interested shall be cited by summons or publication, which shall specify the time and place of hearing the petition. If the petition be filed by a creditor or by a purchaser to correct a mistake in the description of the land, the executor or administrator shall be cited.

Execution of the Will

§ 91-7-47 Functions of fiduciary with will annexed:

(1) Every executor with the will annexed, who has qualified, shall have the right to the possession of all the personal estate of the deceased, unless otherwise directed in the will; and he shall take all proper steps to acquire possession of any part thereof that may be withheld from him, and shall manage the same for the best interest of those concerned, consistently with the will, and according to law. He shall have the proper appraisements made, return true and complete inventories except as otherwise provided by law, shall collect all debts due the estate as speedily as may be, pay all debts that may be due from it which are properly probated and registered, so far as the means in his hands will allow, shall settle his accounts as often as the law may require, pay all the legacies and bequests as far as the estate may be sufficient, and shall well and truly execute the will if the law permit. He shall also have a right to the possession of the real estate so far as may be necessary to execute the will, and may have proper remedy therefor. . . .

§ 91-7-49 Following of will:

Whenever any last will and testament shall empower and direct the executor as to the sale of property, the payment of debts and legacies, and the management of the estate, the directions of the will shall be followed by the executor, and the provisions herein contained shall not so operate as to require the executor to pursue a different course from that prescribed in the will, if it be lawful. If land be directed by the will to be sold, the sale shall be made and the proper conveyance executed by the executors, or such of them as shall undertake the execution of the will, or by the person appointed by the will to execute the trust. If the executor fail to qualify or die before he execute the will, and if the person appointed fail to execute the trust, the sale shall be made by the administrator with the will annexed. The executor shall, in all cases, make publication for creditors to probate their claims, as required in the administration of the estates of intestates and with like effect, any provision of the will to the contrary notwithstanding.

Final Accounting

§ 91-7-291 Final settlement of accounts:

When the estate has been administered by payment of the debts and the collection of the assets, it shall be the duty of the executor or administrator, unless the court or chancellor, on cause shown, shall otherwise order, to make and file a final settlement of the administration by making out and presenting to the court, under oath, his final account, which shall contain a distinct statement of all the balances of the annual accounts, either as debits or credits, all other charges and disbursements, amounts received and not contained in any previous annual account, and a statement of the kind and condition of all assets in his hands. There shall be no requirement for filing a final account if the requirement of filing accountings is waived in the testator's will. The court or the chancellor may also waive the requirement for filing a final account in an intestate estate upon petition to the court by the administrator. Even though the requirement of filing accountings or the final account is waived in the testator's will or waived by the court or the chancellor upon petition to the court by the administrator in an intestate estate, the court or the chancellor may later order the executor or administrator to file a final account upon the timely petition of a beneficiary or other interested party if the court or the chancellor determines that the filing of a final account is necessary or advisable and the petition is timely filed.

§ 91-7-293 Statement of heirs, devisees, legatees:

The executor shall file with his final account a written statement, under oath, of the names of the heirs or devisees and legatees of the estate, so far as known, specifying particularly which, if any, are under the age of twenty-one years, of unsound mind, or convict of felony; the places of residence of each and their post-office address if they be nonresidents or, if the post-office address be unknown, the statement must aver that diligent inquiry has been made to learn the same without avail and giving the names and places of residence of the guardians of all who have guardians, so far as known.

§ 91-7-295 Final account, allowance and approval:

The final account so presented, with the statement as to parties, shall remain on file, subject to the inspection of any person interested. Summons shall be issued or publication be made for all parties interested, as in other suits in the chancery court, to appear at a term of the court, or before the chancellor in vacation, not less than thirty (30) days from the service of the summons or the completion of the publication, and show cause, if any they can, why the final account of the executor, administrator, or guardian should not be allowed and approved.

§ 91-7-297 Final account, examination and decree:

If process be returned executed, or publication has been made, the court shall examine the final account so presented and filed, hear the evidence in support of it, and the objections and evidence against it. If the court shall be satisfied that the account is correct, it shall make a final decree of approval and allowance, and shall, at the same time, order the executor or administrator to make distribution of the property in his hands. In proceedings for a final settlement, the court may allow any party interested to surcharge and falsify any annual or partial settlement of the executor or administrator.

Executor's Fees

§ 91-7-299 Fiduciary's allowance and compensation:

On the final settlement the court shall make allowance to the executor for the property or the estate which has been lost, or has perished or decreased in value, without his fault; and profit shall not be allowed him in consequence of increase. The court shall allow to an executor as compensation for his trouble, either in partial or final settlements, such sum as the court deems proper considering the value and worth of the estate and considering the extent or degree of difficulty of the duties discharged by the executor; in addition to which the court may allow him his necessary expenses, including a reasonable attorney's fee, to be assessed out of the estate, in an amount to be determined by the court.

Attorney's Fees

§ 91-7-281 Attorney's fees:

In annual and final settlements, the executor, administrator, or guardian shall be entitled to credit for such reasonable sums as he may have paid for the services of an attorney in the management or in behalf of the estate, if the court be of the opinion that the services were proper and rendered in good faith. Where the executor, administrator, or guardian acts also as attorney, the court may allow such executor, administrator, or guardian credit for his reasonable compensation as attorney in lieu of his compensation as executor, administrator, or guardian.

Uniform Chancery Court Rule 6.12 states:

> Every petition by a fiduciary or attorney for the allowance of attorney's fees for services rendered shall set forth the same facts as required in Rule 6.11, touching his compensation, and if so, the nature and effect thereof. If the petition be for the allowance of fees for recovering damages for wrongful death or injury, or other claim due the estate, the petition shall show the total amount recovered, the nature and extent of the service rendered and expense incurred by the attorney, and the amount if any, offered in compromise before the attorney was employed in the matter. In such cases, the amount allowed as attorney's fees will be fixed by the Chancellor at such sum as will be reasonable compensation for the service rendered and expense incurred without being bound by any contract made with any unauthorized persons. If the parties make an agreement for a contingent fee the contract or agreement of the fiduciary with the attorney must be approved by the Chancellor. Fees on structured settlements shall be based on the "present cash value" of the claim.
>
> In determining what constitutes a reasonable fee, this Court has said a chancellor should consider:
>
> (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) The fee customarily charged in the locality for similar legal services;
> (4) The amount involved and the results obtained;
> (5) The time limitations imposed by the client or by the circumstances;
> (6) The nature and length of the professional relationship with the client;
> (7) The experience, reputation and ability of the lawyer or lawyers performing the services; and
> (8) Whether the fee is fixed or contingent.
>
> ***Moreland v. Riley*, 716 So. 2d 1057, 1062 (Miss. 1998).**

Limitations of Actions

Against the Validity of the Will

§ 91-7-23 Time to contest probated will:

Any person interested may, at any time within two years, by petition or bill, contest the validity of the will probated without notice; and an issue shall be made up and tried as other issues to determine whether the writing produced be the will of the testator or not. If some person does not appear within two years to contest the will, the probate shall be final and forever binding, saving to infants and persons of unsound mind the period of two years to contest the will after the removal of their respective disabilities. In case of concealed fraud, the limitation shall commence to run at, and not before, the time when such fraud shall be, or with reasonable diligence might have been, first known or discovered.

Against the Executor

§ 15-1-25 Action against executor or administrator:

An action or scire facias may not be brought against any executor upon any judgment or other cause of action against his testator or intestate, except within four years after the qualification of such executor.

§ 91-7-239 Ninety-day exemption from lawsuits:

A suit or action shall not be brought against an executor until after the expiration of ninety (90) days from the date of letters testamentary or of administration.

> However, a suit cannot be filed against an executor until after 90 days following the issuance of the letters of administration. Since the letters [testamentary] were issued on December 21, 1981, the four year statute of limitations began to run 90 days later. . . . ***Townsend v. Estate of Gilbert*, 616 So. 2d 333, 336 (Miss. 1993).**

To Compel Distribution of the Estate

§ 91-7-303 Petition to compel distribution:

Any person entitled to a distributive share of an intestate's estate, or to a legacy under a last will and testament, may, at any time after the expiration of six months from the grant of letters testamentary or of administration, petition the court therefor, setting forth his claim; and the executor and all persons interested as distributees or legatees shall be cited to appear. Upon return of summons executed or publication made, the court may order the executor to make the distribution or to pay the legacies according to the rights of the parties, as may be adjudged; but the executor shall not be compelled, before final settlement, to make distribution or to pay any legacy until bond, with sufficient sureties, be given by the distributee or legatee, conditioned to refund his proportionate part of any debts or demands that may afterwards appear against the estate, and the costs of recovering the same.

Will Probated in Common Form - Prima Facie Evidence of the Validity of the Will

§ 91-7-27 Probate as prima facie evidence:

On the trial of an issue made up to determine the validity of a will which has been duly admitted to probate, such probate shall be prima facie evidence of the validity of the will.

Since the will was admitted to probate in common form, the only duties were to notify the parties named in the will (as they take under the will) and give 90 day notice to creditors, both of which were done. Anyone else is not a party to a common form probate, unless they petition for will contest within the statutorily prescribed time limit. ***In re Will of Winding, v. Estate of Winding*, 783 So. 2d 707, 711 (Miss. 2001).**

Probate In Solemn Form

§ 91-7-19 Parties; jury trial:

Any proponent of a will for probate may, in the first instance, make all interested persons parties to his application to probate the will, and in such case all who are made parties shall be concluded by the probate of the will.

At the request of either party to such proceeding, an issue shall be made up and tried by a jury as to whether or not the writing propounded be the will of the alleged testator.

***See* MRCP 81.**

The Court of Appeals correctly determined that the solemn form proceeding was defective as Kelly was served with Rule 4 summons instead of the Rule 81 service of process required by the Mississippi Rules of Civil Procedure. ***In re Estate of Kelly*, 951 So. 2d 543, 547 (Miss. 2007).**

Will Contest

Necessary Parties

§ 91-7-25 Necessary parties:

In any proceeding to contest the validity of a will, all persons interested in such contest shall be made parties.

> The words, "interested parties," in the statute, are deemed to mean parties who have a pecuniary interest in the subject of the contest, and that the heirs at law who would take the property of the deceased in the absence of a valid will are interested parties, and also that they are necessary parties under the very terms of the statute itself. It was further held, in that case, that the court cannot properly entertain a contest of the will without having before it all the parties interested in such contest. ***Provenza v. Provenza*, 29 So. 2d 669, 670 (Miss. 1947) (citations omitted).**

Trial by Jury

§ 91-7-19 Parties; jury trial:

At the request of either party to such proceeding, an issue shall be made up and tried by a jury as to whether or not the writing propounded be the will of the alleged testator.

> We have interpreted the right to a jury trial under Section 91-7-19 to mean that unless a party requests a jury trial under this section, the chancellor is not required to impanel a jury. ***In re Will of Varvaris*, 477 So. 2d 273, 278 (Miss. 1985).**

Burden of Proof

§ 91-7-29 Conduct of trial:

On the trial of such issue, the proponent of the will shall have the affirmative of the issue and be entitled to all the rights of one occupying such position. The witnesses shall be examined orally before the jury, except where in the circuit court depositions would be admissible; and the testimony taken on the probate of the will shall be admissible if the witnesses who delivered it be dead, out of the state, or have since become incompetent.

It is well settled law in Mississippi that in a will contest the proponents of the will have the burden of persuasion on all issues requisite to the validity of a will, e.g., due execution and testamentary capacity. Showing that the will was properly probated makes out the proponent's prima facie case. At this point, the burden of production shifts to the contestants. The contestants must present evidence to support their contention that the will is not valid. If the contestants present no evidence, the proponent's prima facie case stands, and the will will be found to be valid. Furthermore, the contestants may raise other issues, such as undue influence, but like the other grounds for invalidity, if the contestants do not present evidence to support the contention, the will may not be found invalid. ***In re Estate of Taylor*, 755 So. 2d 1284, 1287 (Miss. Ct. App. 2000) (citations omitted).**

Prima Facie Evidence

§ 91-7-27 Probate as prima facie evidence:

On the trial of an issue made up to determine the validity of a will which has been duly admitted to probate, such probate shall be prima facie evidence of the validity of the will.

The proponent of a contested will bears the burden of proving its validity in all respects. A prima facie case of validity is made when the will and its record of probate are admitted into evidence. Id. The contestants then bear the burden of going forward with evidence to challenge the will's validity. ***In re Estate of Pigg*, 877 So. 2d 406, 409 (Miss. Ct. App. 2003).**

To begin with, the positive statutory law of this state declares "On the issue of [devisavit vel non], the proponent of the will shall have the affirmative of the issue and be entitled to all the rights of one occupying

such position." We have accepted this rule of practice and evidence and fleshed out its meaning. Proponents of a will have the burden of proving the will throughout. They meet this burden by showing the will was duly executed and admitted to probate. When the will is admitted to probate, proponents put on prima facie evidence that the testator had testamentary capacity. The burden of going forward then shifts to contestant, who must overcome the presumption raised by proponents that testator had testamentary capacity. Put in today's terminology, the proponent of the will at all times bears the burden of persuading the trier of fact on all issues requisite to the validity of the will, e.g., due execution and testamentary capacity. At the outset the proponent bears the burden of producing evidence of due execution and testamentary capacity. This burden is conventionally met by offering the will itself, the affidavits of subscribing witnesses and the judgment admitting the will to probate. These offerings make out what is referred to as the proponent's prima facie case, meaning only that in such a state of the record the proponent is entitled to survive the contestant's motion for a directed verdict, in the event the case is heard before a jury, and that a jury verdict upholding the will may survive a motion for judgment notwithstanding the verdict. In the event no further proof is offered in a non-jury trial, the proponent will have carried its burden of persuasion sufficient to survive a motion to dismiss. Of course, if there is to be a contest of the will, the proponent does not have to rest after proving the common form probate but may and generally should offer other witnesses and evidence at that time and as a part of his case-in-chief. Once the proponent has shouldered his burden of production such that he has made out a prima facie case, the burden of production shifts to the contestants. What is critical for present purposes is that the burden of persuading the trier of fact on the issues of due execution and testamentary capacity rests on proponent throughout and never shifts to the contestants. That burden of persuasion is subject to the familiar preponderance of the evidence standard. ***Clardy v. National Bank of Commerce*, 555 So. 2d 64, 66 (Miss. 1989).**

Jury Verdict

We conclude that the role of a jury in a will contest is the same as that of a jury in a civil trial in a court of law and is not "merely advisory." ***Fowler v. Fisher*, 353 So. 2d 497, 501 (Miss. 1977).**

The chancellor, as the trier of fact, evaluates the sufficiency of the proof based on the credibility of witnesses and the weight of their testimony." The chancellor is the fact-finder and is charged with the obligation of resolving disputes between the parties and likewise is the sole arbiter of the credibility of the witnesses. ***Estate of Volmer v. Volmer*, 832 So. 2d 615, 621-22 (Miss. Ct. App. 2002) (will contest where issue was not tried by a jury).**

PROBATE IN COMMON FORM

CHECKLIST FOR THE COURT'S FILE

- ✓ **Petition to admit will to probate with will attached**
- ✓ **Affidavit or proof of will**
- ✓ **Order appointing executor and granting letters testamentary**
- ✓ **Oath**
- ✓ **Bond**
- ✓ **Affidavit of known creditors**
- ✓ **Proof of publication**
- ✓ **Inventory & Appraisal**
- ✓ **Accounting(s)**
- ✓ **Petition to Close Estate and Discharge Executor**
- ✓ **Proof of Service of Process or Waivers Thereto**
- ✓ **Order to Close Estate and Discharge Executor**

PROBATE IN COMMON FORM

Admission of Will to Probate

Original will presented & filed, if available
Petition must have copy of will attached
Will must be proved by at least 1 subscribing witness (usually through affidavit attached to self-proving will or by proof of will executed later)
U.C.C.R. 6.15; § 91-7-7

Caveat

Will may not be probated in common form if written objection is filed first
§ 91-7-21

Executor Appointed & Letters Testamentary Granted

Court appoints executor named in will, if appropriate
Executor must be over 18 years of age, of sound mind, & not a felon
If no person qualifies or agrees to act as executor, court may appoint an executor
§§ 91-7-35, 91-7-39

Oath & Bond

At the time letters testamentary are granted, executor must take & subscribe the oath
At this time, executor must also post bond equal to the full value of the estate, unless bond is waived by the terms of the will. Even so, the court has authority to require bond
§ 91-7-41

Notice to Creditors

Executor has responsibility of providing notice to creditors in the prescribed form & order:

Executor to make reasonably diligent efforts to ascertain creditors having a claim against the estate & to mail them actual notice of the 90 day time period in which to file a claim
Executor to file affidavit of known creditors & attest to having served actual notice on them
Executor to publish notice in newspaper which informs creditors that they have 90 days in which to file a claim against the estate: publication to run 3 times, once per week for 3 consecutive weeks
(Publication may be waived by court in very small estates having a value of not more than $500)
Executor to file proof of newspaper publication with the court
§ 91-7-145

Inventory & Appraisal

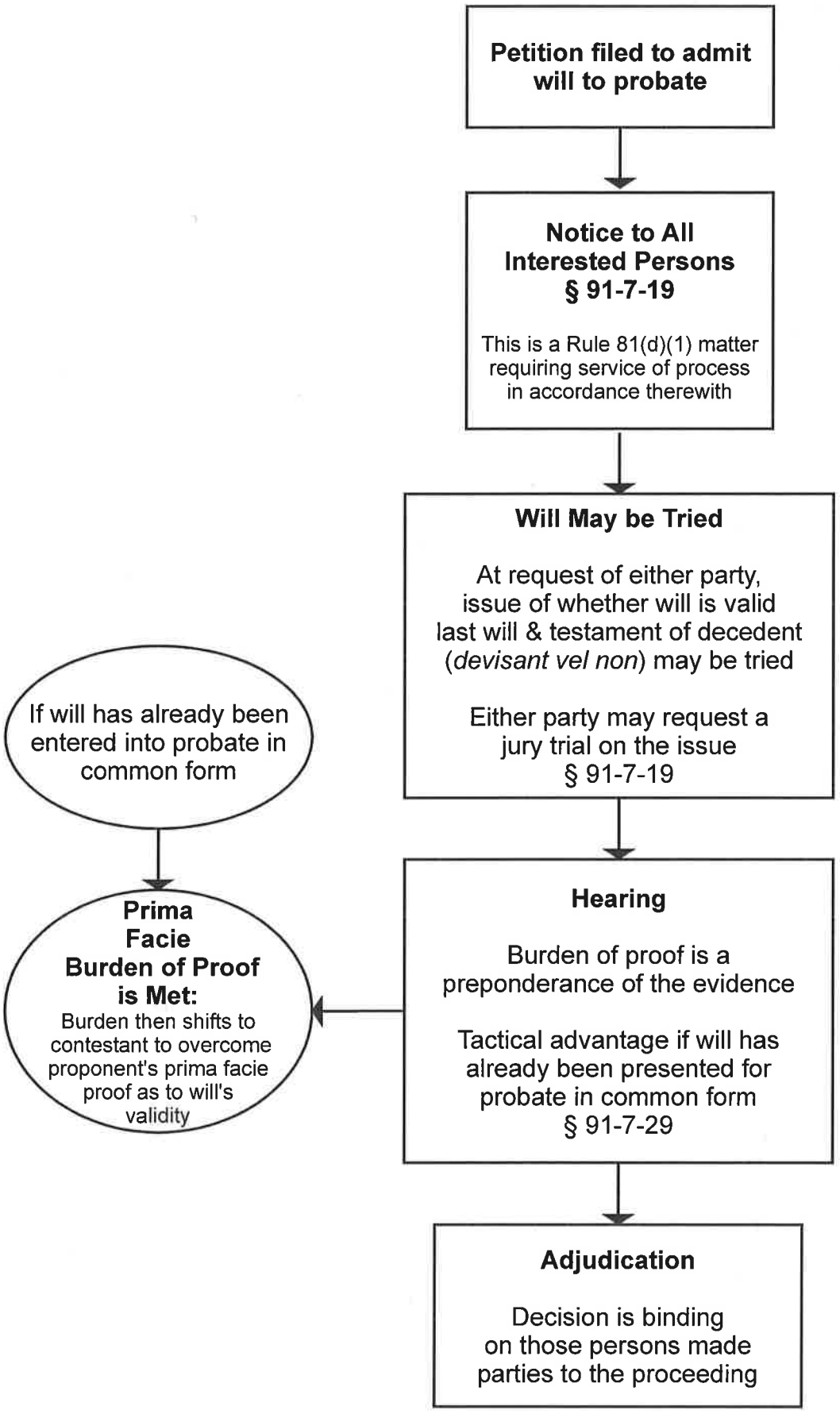
This process is commonly waived by the will. If not, executor is to complete inventory & appraisal within 90 days from the grant of letters testamentary.
§ 91-7-145

Execution of the Will

Petition to Close Estate & Discharge Executor Filed

Final account filed with petition unless excused by the court
All parties in interest summoned to hearing on final account & petition
Any party may enter appearance by consent & waiver
If approved, court enters order for final distribution of any property remaining in executor's care,
§§ 91-7-295, 91-7-297

PROBATE IN SOLEMN FORM



CHAPTER 12

ADMINISTRATION OF AN INTESTATE ESTATE

CHARTS

CHAPTER 12

ADMINISTRATION OF AN INTESTATE ESTATE

Clerk's Duties

§ 9-5-141 Powers in general:

The clerk or his deputy may at any time receive and file all bills, petitions, motions, accounts, inventories, reports, or other papers offered for that purpose, and may issue all process authorized by law and proper in any matter or proceeding.

He may also at any time, in termtime or vacation, perform the following functions:

issue warrants of appraisement to appraise the personal estate of decedents;
allow and register claims against estates being administered in the court of which he is clerk;
make all orders and issue all process necessary for the collection and preservation of estates of decedents, minors, and persons of unsound mind;
appoint some person to collect and preserve the estate of any decedent in the state in any case provided for;
grant letters of administration to the husband or wife, or other person entitled thereto;
take the proof of wills,
admit wills to probate, in common form,
grant letters testamentary,
letters of administration with the will annexed, and de bonis non;
appoint guardians for minors, persons of unsound mind, and convicts of felony;
grant letters of administration;
institute suits in cases provided for, and,
whenever an appeal shall be taken from the grant of letters testamentary, of administration, or guardianship, appoint some fit person to discharge the duties pending the appeal.

He may do all such other acts as are provided by law and by the Mississippi Rules of Civil Procedure.

§ 9-5-147 Approval or disapproval of court:

All acts, judgments, orders, or decrees made by the clerk in term time or vacation or at rules, shall be subject to the approval or disapproval of the court of which he is clerk, and shall not be final until approved by the court. All such orders and proceedings of the clerk may, by order of the chancellor in vacation, be suspended until a hearing before him in court, and shall be subject to such orders and decrees as the court may make.

Jurisdiction

§ 9-5-83 Administration of estate:

The court in which a will may have been admitted to probate, letters of administration granted, . . . shall have jurisdiction to hear and determine all questions in relation to the execution of the trust of the executor, administrator, guardian, or other officer appointed for the administration and management of the estate, and all demands against it by heirs at law, distributees, devisees, legatees, wards, creditors, or others; and shall have jurisdiction of all cases in which bonds or other obligations shall have been executed in any proceeding in relation to the estate, or other proceedings, had in said chancery court, to hear and determine upon proper proceedings and evidence, the liability of the obligors in such bond or obligation, whether as principal or surety, and by decree and process to enforce such liability.

Venue

§ 91-7-63 Letters of administration, issuance:

(1) Letters of administration shall be granted by the chancery court
of the county in which the intestate had, at the time of his death, a fixed place of residence;
but if the intestate did not have a fixed place of residence, then by the chancery court
of the county where the intestate died, or
that in which his personal property or some part of it may be.

Letters of Administration Are Granted to Administrator

§ 91-7-63 Letters of administration, issuance:

The court shall grant letters of administration to the relative who may apply, preferring

first the husband or wife and

then such others as may be next entitled to distribution if not disqualified, selecting amongst those who may stand in equal right the person or persons best calculated to manage the estate; or

the court may select

a stranger,

a trust company organized under the laws of this state, or

a national bank doing business in this state, if the kindred be incompetent.

If such person does not apply for administration within thirty (30) days from the death of an intestate, the court may grant administration to a creditor or to any other suitable person.

***See* U.C.C.R. 6.01 Attorney Must be Retained.**

§ 91-7-65 Disqualifications:

Letters of administration shall not be granted to a person under the age of eighteen (18) years, of unsound mind, or convicted of any felony.

Appointment of County Administrator

§ 91-7-73 County administrator, appointment and term:

It shall be the duty of the chancellor to appoint for each county of his district an officer to be styled "county administrator," to hold his office four years, and whose appointment shall be entered on the minutes of the court.

§ 91-7-75 County administrator, bond and oath:

Before a county administrator shall perform any of the duties or functions of the office, and before any letters shall be granted to him, he shall execute and file in the office of the clerk of the chancery court a bond with two (2) or more sufficient sureties, to be approved by the chancellor in termtime or vacation, in a penalty of Five Thousand Dollars ($5,000.00) payable to the state, conditioned that he will discharge all the duties of the office of county administrator, which bond may be sued on at the instance of any person interested. He shall also take an oath at or

prior to the granting of letters of administration, to be filed in the clerk's office, to administer according to law every estate which may be committed to his charge, and that he will account for and pay over all monies in his hands by virtue of his office when thereto required by order of the court.

§ 91-7-79 County administrator as fiduciary:

When it shall appear that any person has died, in this state or out of it, and has left real or personal property in this state, and some person has not applied for letters testamentary or of administration, the administration of the estate, after the expiration of sixty days from the death of such person, shall be committed to the county administrator, to whom letters of administration, administrator de bonis non, administration with the will annexed, or as the case may require, shall be granted. He shall administer the estate, as in other cases, under the direction of the court, with the same rights and liabilities as executors and other administrators. The county administrator shall not be bound to incur or be liable for costs, except such as the estate in his hands, in excess of his commissions shall be sufficient to pay. On the final settlement of the estate, he shall be allowed by the court, as his commissions, a sum not to exceed ten per cent on the whole estate administered. The county administrator may also be appointed temporary administrator pending an appeal from the grant of letters testamentary or of administration, and administrator to institute suit in proper cases. He shall be liable in all cases on his official bond for his acts, and another bond need not be executed by him in any case unless, his official bond being insufficient, the court shall require an additional bond, or where he may be required to give bond to account for the proceeds of a sale of land.

***See* § 91-7-83 Sheriff as administrator.**

Revocation of Letters of Administration

§ 91-7-89 Nonresident fiduciaries, revocation of letters:

If letters of administration be granted to any person not a resident of the state, or if any administrator after his appointment remove out of the state, and if such administrator refuse or neglect to settle his accounts annually or neglect the due administration thereof in any other respect, the court, after publication made and proof thereof as in other cases, or personal notice, may revoke the letters of such administrator and proceed to grant administration de bonis non as if such administrator had died or resigned.

Administrator's Oath & Bond

§ 91-7-67 Administrator's oath and bond:

The person to whom administration is granted, at or prior to the granting thereof, shall take and prescribe the following oath:

> I do swear that _____, deceased, died without any will, as far as I know or believe, and that I, if and when appointed, will well and truly administer all the goods, chattels, and credits of the deceased, and pay his debts as far as his goods, chattels, and credits will extend and the law requires me, and that I will make a true and perfect inventory of the said goods, chattels, and credits, and a just account, when thereto required. So help me God.

He shall give bond in a penalty equal to the value of all the personal estate, with such sureties as may be approved by the court or clerk, payable to the state, with condition in form or to the effect following, to wit:

> The condition of this bond is, that if the above bound _____, as administrator of the goods, chattels, rights, and credits of _____, deceased, shall faithfully discharge all the duties required of him by law, then this obligation shall be void.

The chancellor, in termtime or in vacation, may waive or reduce the bond if the administrator is the decedent's sole heir or if all the heirs are competent and present their sworn petition to waive or reduce such bond.

Heirs at Law

§ 91-1-27 Recognition as heir at law:

In all cases in which persons have died, or may hereafter die, wholly or partially intestate, having property, real or personal, any heir at law of such deceased person, or any one interested in any of the property as to which he shall have died intestate, may petition the chancery court of the county in which said deceased had his mansion house or principal place or residence, or in which any part of his real estate may be situated, in case he was a nonresident, setting forth the fact that said person died wholly or partially intestate, possessed of real or personal property in the State of Mississippi, the names of the heirs at law or next of kin, and praying that the person named in said petition be recognized and decreed to be the heir at law of said deceased.

§ 91-1-29 Determining heirs at law:

All the heirs at law and next of kin of said deceased who are not made parties plaintiff to the action shall be cited to appear and answer the same. And in addition thereto a summons by publication shall be made addressed to "The heirs at law of _____, Deceased," and shall be published as other publications to absent or unknown defendants, and the cause shall be proceeded with as other causes in chancery, and upon satisfactory evidence as to death of said person and as to the fact that the parties to said suit are his sole heirs at law, the court shall enter a judgment that the persons so described be recognized as the heirs at law of such a decedent, and as such be placed in possession of his estate. And said judgment shall be evidence in all the courts of law and equity in this state that the persons therein named are the sole heirs at law of the person therein described as their ancestor.

Notice to Creditors

§ 91-7-145 Identifying claims against estate:

(1) The executor or administrator shall make reasonably diligent efforts to identify persons having claims against the estate. Such executor or administrator shall mail a notice to persons so identified, at their last known address, informing them that a failure to have their claim probated and registered by the clerk of the court granting letters within ninety (90) days after the first publication of the notice to creditors will bar such claim as provided in Section 91-7-151.

(2) The executor or administrator shall file with the clerk of the court an affidavit stating that such executor or administrator has made reasonably diligent efforts to identify persons having claims against the estate and has given notice by mail as required in subsection (1) of this section to all persons so identified. Upon filing such affidavit, it shall be the duty of the executor or administrator to publish in some newspaper in the county a notice requiring all persons having claims against the estate to have the same probated and registered by the clerk of the court granting letters, which notice shall state the time when the letters were granted and that a failure to probate and register within ninety (90) days after the first publication of such notice will bar the claim. The notice shall be published for three (3) consecutive weeks, and proof of publication shall be filed with the clerk. If a paper be not published in the county, notice by posting at the courthouse door and three (3) other places of public resort in the county shall suffice, and the affidavit of such posting filed shall be evidence thereof in any controversy in which the fact of such posting shall be brought into question.

(3) The filing of proof of publication as provided in this section shall not be necessary to set the statute of limitation to running, but proof of publication shall be filed with the clerk of the court in which the cause is pending at any time before a decree of final discharge shall be rendered; and the time for filing proof of publication shall not be limited to the ninety-day period in which creditors may probate claims.

> From a reading of this statute it is clear that an [administrator] has four responsibilities:
>
> (1) she must make reasonably diligent efforts to ascertain creditors having claims against the estate and mail them notice of the 90 day period within which to file a claim;
>
> (2) she must file an affidavit stating that she has complied with the first subsection;
>
> (3) she must publish in some newspaper in the county a notice to creditors explaining that they have 90 days within which to file

claims against the estate; and

(4) she must file proof of publication with the clerk of court.

***In re Estate of Petrick*, 635 So. 2d 1389, 1392 (Miss. 1994).**

Under the statute, if [administrator], through reasonably diligent efforts could have identified [creditor], as a "person" having a claim against the estate, she had the duty to mail notice prior to filing her affidavit, publishing notice in the paper, and filing proof of publication. In other words, if the creditor could have been ascertained through reasonably diligent efforts, mere publication in the newspaper in the county, absent notice by mail, does not comply with the mandates of the statute. The statute does not specifically allow for notice by publication as a substitute for actual notice by mail; rather, notice by publication is a requirement in addition to providing creditors notice by mail. It stands to reason that the notice by publication requirement is to further ensure that those creditors who were served by mail are reminded of the time limit to file claims, as well as to give constructive notice to creditors who could not be ascertained through reasonably diligent efforts. ***In re Estate of Petrick*, 635 So. 2d 1389, 1392-93 (Miss. 1994).**

Exception for Small Estates

§ 91-7-147 Notices in small estates:

Where the value of an estate shall not be more than Five Hundred Dollars ($500.00), the court shall dispense with newspaper notices; and notices in lieu thereof shall be posted for thirty (30) days at the courthouse door and two (2) other public places in the county. Failure of persons having claims against the estate to have their claims probated and registered by the clerk of the court granting letters within ninety (90) days after the date on which notice is posted will bar such claims as provided in Section 91-7-151.

§ 91-7-151 Limitations period; amending affidavits:

All claims against the estate of deceased persons, whether due or not, shall be registered, probated and allowed in the court in which the letters testamentary or of administration were granted within ninety (90) days after the first publication of notice to creditors to present their claim. Otherwise, the same shall be barred and a suit shall not be maintained thereon in any court, even though the existence of the claim may have been known to the executor or administrator. Where the affidavit is made in good faith and the claim is registered, probated and allowed by the clerk but the affidavit is defective or insufficient, the court may allow the affidavit to be amended so as to conform to the requirements of the statute, at any

time before the estate is finally settled; whereupon the probate shall be as effective and the claim as valid against the estate as if the affidavit had been correct and sufficient in the first instance.

Intestate's Estate

§ 91-7-91 Assets subject to claims:

The goods, chattels, personal estate, choses in action and money of the deceased, or which may have accrued to his estate after his death from the sale of property, real, personal or otherwise, and the rent of lands accruing during the year of his death, whether he died testate or intestate, shall be assets and shall stand chargeable with all the just debts, funeral expenses of the deceased, and the expenses of settling the estate. The lands of the testator or intestate shall also stand chargeable for the debts and such expenses over and above what the personal estate may be sufficient to pay, and may be subjected thereto in the manner hereinafter directed. Provided, however, that in cases where no administration has been or shall be commenced on the estate of the decedent within three (3) years after his death, no creditor of the decedent shall be entitled to a lien or any claim whatsoever on any real property of the decedent, or the proceeds therefrom, against purchasers or encumbrancers for value of the heirs of the decedent unless such creditor shall, within three (3) years and ninety (90) days from the date of the death of the decedent, file on the lis pendens docket in the office of the clerk of the chancery court of the county in which said land is located notice of his claim, containing the name of the decedent, a brief statement of the nature, amount and maturity date of his claim and a description of the real property sought to be charged therewith. The provisions of this section requiring the filing of notice shall not apply to any secured creditor having a recorded lien on said property.

Inventory of Estate

§ 91-7-93 Inventory:

The executor or administrator shall, within ninety (90) days of the grant of his letters unless further time be allowed by the court or clerk, file an inventory, verified by oath, of the money and property owned by the decedent at the time of death, listing it with reasonable detail, and indicating as to each listed item, its market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item.

There shall be no requirement for filing an inventory if the requirement of filing an inventory is waived in the testator's will. The court or the chancellor may also

waive the requirement for filing an inventory in an intestate estate upon petition to the court by the administrator. Even though the requirement of filing an inventory is waived in the testator's will or waived by the court or the chancellor upon petition to the court by the administrator in an intestate estate, the court or the chancellor may later order the executor or administrator to file an inventory upon the petition of a beneficiary or other interested party if the court or the chancellor determines that the filing of inventory is necessary or advisable.

§ 91-7-95 Supplemental inventory:

If any property not included in the original inventory comes to the knowledge of the executor or administrator, or if the executor or administrator learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisement showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court if the original inventory was filed, or furnish copies thereof or information thereof to persons interested in the new information.

§ 91-7-109 Conducting inventory and appraisal:

The executor or administrator may employ a qualified and disinterested appraiser to assist him in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.

Claims Against the Estate

§ 91-7-149 Procedure for probating claims:

Any person desiring to probate his claim shall present to the clerk the written evidence thereof, if any, or if the claim be a judgment or decree, a duly certified copy thereof, or if there be no written evidence thereof, an itemized account or a statement of the claim in writing, signed by the creditor, and make affidavit, to be attached thereto, to the following effect, viz.:

> That the claim is just, correct, and owing from the deceased; that it is not usurious; that neither the affiant nor any other person has received payment in whole or in part thereof, except such as is credited thereon, if any; and that security has not been received therefor except as stated, if any.

Thereupon, if the clerk shall approve, he shall indorse upon the claim the words following:

> Probated and allowed for $_____ and registered this ___ day of _____, A.D., _____, and shall sign his name officially thereto.

Probate registration and allowance shall be sufficient presentation of the claim to the administrator; provided, that should the clerk probate and allow and register the claim, but fail or neglect to indorse thereon the words,

> Probated and allowed for $_____ and registered the ___ day of _____, A.D., _____, and officially sign his name thereto,

the court may, upon proper showing, allow the clerk to indorse on the claim, nunc pro tunc, the words,

> Probated and allowed for $_____ and registered, this the ___ day of _____, A.D., _____, and sign his name officially thereto.

If the claim be based upon a demand of which there is no written evidence or upon an itemized account, the statement of said claim or the itemized account shall be retained and kept by the clerk among the official papers pertaining to the estate; and if the claim be based upon a promissory note or other instrument purporting to have been executed by the decedent, the creditor shall file with his claim either the original thereof or a duplicate of such original in the discretion of the creditor. If the original writing is presented to the clerk, it may be withdrawn by the creditor, and the clerk shall make a duplicate thereof. No specific writing or

certificate shall be required to be made by the clerk on either the original writing or the duplicate retained by the clerk.

In no instance shall an original writing be required to be presented to the clerk unless

> (a) a question is raised by the personal representative of the estate, or by any party in interest, as to the authenticity of the original or
> (b) in the circumstances it would be unfair to admit into evidence the duplicate in lieu of the original.

In either of the above situations, the court or chancellor, upon good cause being shown, may require the creditor to produce the original before the court or clerk for the inspection of the personal representative or other party in interest, who may examine the original and who may make photographic copies thereof under the supervision of the clerk.

Notwithstanding the foregoing, any record, voucher, claim, check, draft, receipt, writing, account, statement, note or other evidence which may be furnished, filed, probated, presented or produced, or required to be produced, by a federally regulated bank, thrift or trust company shall be deemed to be an original admitted, furnished, filed, probated, presented, or produced for all purposes and with the same effect as the original, if such financial institution produces a copy of such evidence from a format of storage commonly used by financial institutions, whether electronic, imaged, magnetic, microphotographic or otherwise.

Contest of Claims

§ 91-7-165 Contesting claims:

The executor or administrator, legatee, heir, or any creditor may contest a claim presented against the estate. The court or clerk may refer the same to auditors, who shall hear and reduce to writing the evidence on both sides, if any be offered, and report their findings with the evidence to the court. Thereupon the court may allow or disallow the claim, but such proceeding shall not be had without notice to the claimant.

> The rule is well settled by the decisions of this Court that, when an [administrator] contests the payment of a claim against the estate of a decedent, the claim must be established by clear and reasonably positive evidence. ***Ladnier v. Cross*, 128 So. 2d 540, 543 (Miss. 1961) (prior version of statute).**

Payment of Claims Against the Estate

§ 91-7-155 Duty to pay debts:

It shall be the duty of an administrator to speedily pay the debts due by the estate out of the assets, if the estate be solvent; but he shall not pay any claim against the deceased unless the same has been probated, allowed, and registered.

§ 91-7-191 Insufficiency of personal property:

Whenever it shall be necessary for an executor or administrator to sell property to pay the debts and expenses of the estate, he may file a petition in the chancery court for the sale of the land of the deceased, or so much of it as may be necessary, and exhibit to the court a true account of the personal estate and debts due from the deceased, and the expenses and a description of the land to be sold. Any sale of land shall be subject to the abatement provisions of [section 91-7-90].

> It is clear from this statute and the decisions of this Court that in the absence of a contrary provision in a will, resort must first be had to the personal property in the payment of debts and expenses of the estate including federal estate taxes, before resort may be had to real property. It is also clear that resort must be first had to personal property not specifically devised by the will. ***In re Estate of Torian*, 321 So. 2d 287, 292 (Miss. 1975) (prior version of statute).**

§ 91-7-187 Selling realty before personalty:

When the estate of any deceased person consists of real and personal property and it shall be necessary to sell a portion thereof, the chancery court, on petition of the executor, administrator, legatees or distributees, being satisfied that it would be to the interest of the distributees or legatees, may decree a sale of the real estate in preference to the personal estate.

> When the decedent dies intestate, it must be conceded that, except in special cases, provided for by section 1900, where the interest of all parties make it advisable, the entire personal estate must be exhausted before, even by recourse to the courts, any portion of the lands can be sold and the proceeds devoted to that purpose. The reason for this distinction between personalty and land is obvious, and is still recognized in our jurisprudence. The personalty upon the death of the owner passes to the administrator; the title to the land vests at once in his heir. If this be the rule and the order in which property must be applied to the liquidation of the debts of an intestate, we see nothing in the statute to warrant the conclusion that the

legislature intended to adopt a different order in the case of a man dying testate. If the testator devise and bequeath by general terms his entire estate, unless the will contains evidence of a manifest intent on his part to commingle land and personalty, the personal estate must, as in case of intestacy, be first exhausted, before any portion of the lands can be used. ***Gordon v. James*, 39 So. 18, 24 (Miss. 1905).**

§ 91-7-197 Petitions affecting realty, persons summoned:

When a petition shall be filed to sell or lease land to pay debts or otherwise affecting the real estate of a deceased person, all parties interested shall be cited by summons or publication, which shall specify the time and place of hearing the petition. If the petition be filed by a creditor or by a purchaser to correct a mistake in the description of the land, the executor or administrator shall be cited.

Final Accounting

§ 91-7-291 Final settlement of accounts:

When the estate has been administered by payment of the debts and the collection of the assets, it shall be the duty of the executor or administrator, unless the court or chancellor, on cause shown, shall otherwise order, to make and file a final settlement of the administration by making out and presenting to the court, under oath, his final account, which shall contain a distinct statement of all the balances of the annual accounts, either as debits or credits, all other charges and disbursements, amounts received and not contained in any previous annual account, and a statement of the kind and condition of all assets in his hands. There shall be no requirement for filing a final account if the requirement of filing accountings is waived in the testator's will. The court or the chancellor may also waive the requirement for filing a final account in an intestate estate upon petition to the court by the administrator. Even though the requirement of filing accountings or the final account is waived in the testator's will or waived by the court or the chancellor upon petition to the court by the administrator in an intestate estate, the court or the chancellor may later order the executor or administrator to file a final account upon the timely petition of a beneficiary or other interested party if the court or the chancellor determines that the filing of a final account is necessary or advisable and the petition is timely filed.

§ 91-7-293 Statement of heirs, devisees, legatees:

The administrator shall file with his final account a written statement, under oath, of the names of the heirs or devisees and legatees of the estate, so far as known, specifying particularly which, if any, are under the age of twenty-one years, of unsound mind, or convict of felony; the places of residence of each and their post-office address if they be nonresidents or, if the post-office address be unknown, the statement must aver that diligent inquiry has been made to learn the same without avail and giving the names and places of residence of the guardians of all who have guardians, so far as known.

§ 91-7-295 Final account, allowance and approval:

The final account so presented, with the statement as to parties, shall remain on file, subject to the inspection of any person interested. Summons shall be issued or publication be made for all parties interested, as in other suits in the chancery court, to appear at a term of the court, or before the chancellor in vacation, not less than thirty (30) days from the service of the summons or the completion of the publication, and show cause, if any they can, why the final account of the executor, administrator, or guardian should not be allowed and approved.

§ 91-7-297 Final account, examination and decree:

If process be returned executed, or publication has been made, the court shall examine the final account so presented and filed, hear the evidence in support of it, and the objections and evidence against it. If the court shall be satisfied that the account is correct, it shall make a final decree of approval and allowance, and shall, at the same time, order the executor or administrator to make distribution of the property in his hands. In proceedings for a final settlement, the court may allow any party interested to surcharge and falsify any annual or partial settlement of the executor or administrator.

Administrator's Fees

§ 91-7-299 Fiduciary's allowance and compensation:

> On the final settlement the court shall make allowance to the administrator for the property or the estate which has been lost, or has perished or decreased in value, without his fault; and profit shall not be allowed him in consequence of increase. The court shall allow to an administrator, as compensation for his trouble, either in partial or final settlements, such sum as the court deems proper considering the value and worth of the estate and considering the extent or degree of difficulty of the duties discharged by the administrator; in addition to which the court may allow him his necessary expenses, including a reasonable attorney's fee, to be assessed out of the estate, in an amount to be determined by the court.

Attorney's Fees

§ 91-7-281 Attorney's fees:

> In annual and final settlements, the executor, administrator, or guardian shall be entitled to credit for such reasonable sums as he may have paid for the services of an attorney in the management or in behalf of the estate, if the court be of the opinion that the services were proper and rendered in good faith. Where the executor, administrator, or guardian acts also as attorney, the court may allow such executor, administrator, or guardian credit for his reasonable compensation as attorney in lieu of his compensation as executor, administrator, or guardian.

Uniform Chancery Court Rule 6.12 states:

> Every petition by a fiduciary or attorney for the allowance of attorney's fees for services rendered shall set forth the same facts as required in Rule 6.11, touching his compensation, and if so, the nature and effect thereof. If the petition be for the allowance of fees for recovering damages for wrongful death or injury, or other claim due the estate, the petition shall show the total amount recovered, the nature and extent of the service rendered and expense incurred by the attorney, and the amount if any, offered in compromise before the attorney was employed in the matter. In such cases, the amount allowed as attorney's fees will be fixed by the Chancellor at such sum as will be reasonable compensation for the service rendered and expense incurred without being bound by any contract made with any unauthorized persons. If the parties make an agreement for a contingent fee the contract or agreement of the fiduciary with the attorney must be approved by the Chancellor. Fees on structured settlements shall be based on the "present cash value" of the claim.

In determining what constitutes a reasonable fee, this Court has said a chancellor should consider:

> (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) The fee customarily charged in the locality for similar legal services;
>
> (4) The amount involved and the results obtained;
>
> (5) The time limitations imposed by the client or by the circumstances;
>
> (6) The nature and length of the professional relationship with the client;
>
> (7) The experience, reputation and ability of the lawyer or lawyers performing the services; and
>
> (8) Whether the fee is fixed or contingent.

***Moreland v. Riley*, 716 So. 2d 1057, 1062 (Miss. 1998).**

Limitations of Actions

Against the Administrator

§ 15-1-25 Action against executor or administrator:

An action or scire facias may not be brought against any administrator upon any judgment or other cause of action against his testator or intestate, except within four years after the qualification of such administrator.

§ 91-7-239 Ninety-day exemption from lawsuits:

A suit or action shall not be brought against an administrator until after the expiration of ninety (90) days from the date of letters testamentary or of administration.

> However, a suit cannot be filed against an [administrator] until after 90 days following the issuance of the letters of administration. Since the letters were issued on December 21, 1981, the four year statute of limitations began to run 90 days later. . . . ***Townsend v. Estate of Gilbert*, 616 So. 2d 333, 336 (Miss. 1993).**

To Compel Distribution of the Estate

§ 91-7-303 Petition to compel distribution:

Any person entitled to a distributive share of an intestate's estate, or to a legacy under a last will and testament, may, at any time after the expiration of six months from the grant of letters testamentary or of administration, petition the court therefor, setting forth his claim; and the administrator and all persons interested as distributees or legatees shall be cited to appear. Upon return of summons executed or publication made, the court may order the administrator to make the distribution or to pay the legacies according to the rights of the parties, as may be adjudged; but the administrator shall not be compelled, before final settlement, to make distribution or to pay any legacy until bond, with sufficient sureties, be given by the distributee or legatee, conditioned to refund his proportionate part of any debts or demands that may afterwards appear against the estate, and the costs of recovering the same.

ADMINISTRATION OF AN INTESTATE ESTATE

CHECKLIST FOR THE COURT'S FILE

- ✓ **Petition for administration of intestate estate and application for appointment of administrator**
- ✓ **Order appointing administrator and granting letters of administration**
- ✓ **Oath**
- ✓ **Bond**
- ✓ **Affidavit of known creditors**
- ✓ **Proof of publication**
- ✓ **Inventory & Appraisal**
- ✓ **Accounting(s)**
- ✓ **Petition to Close Estate and Discharge Administrator**
- ✓ **Proof of Service of Process or Waivers Thereto**
- ✓ **Order to Close Estate and Discharge Administrator**

ADMINISTRATION OF INTESTATE ESTATE

Application of party to become administrator of estate is granted by the court in order of preference

- Surviving spouse
- Next of kin, not otherwise disqualified
- Other third party, bank, or trust company
- If no application is made within 30 days of decedent's death, administration may be granted to creditor or other suitable person
- If no application is made and decedent left property in Mississippi, county administrator or sheriff may be appointed

↓

Oath & Bond

- At the time letters of administration are granted, administrator must take & subscribe the oath in § 91-7-41
- At this time, the administrator must also post bond equal to the full value of the personal estate unless all heirs are competent & consent to waive/reduce bond, or unless administrator is sole heir, pursuant to § 91-7-67

↓

Notice to creditors:
Administrator has responsibility of providing notice to creditors in the prescribed form & order pursuant to § 91-7-145

- Administrator is to make reasonably diligent efforts to ascertain creditors having a claim against the estate to mail them actual notice of the 90-day time period in which to file a claim
- Administrator is to file affidavit of known creditors & attest to having served actual notice on them
- Administrator is to publish notice in newspaper which informs creditors that they have 90 days in which to file a claim against the estate; publication to run 3 times, once per week for 3 consecutive weeks
- Administrator is to file proof of newspaper publication with court
- Publication may be waived by court in very small estates

↓

Inventory & Appraisal

- If not excused by the court, the administrator must complete inventory & appraisal within 90 days from the granting of letters of administration pursuant to § 91-7-145

↓

Interim hearings as necessary

- To authorize expenditures or to resolve any conflicts between the parties

↓

Petition to close estate & discharge administrator is filed

- Final accounting filed with petition unless excused by court
- All parties in interest summoned to hearing on final accounting & petition pursuant to § 91-7-295
- Any party may enter appearance by consent & waiver
- If approved, court enters order for final distribution of any property remaining in administrator's care pursuant to § 91-7-297
- Upon court's approval, administrator is allowed reasonable fee for services & for reimbursement of attorney's fees pursuant to § 91-7-299

CHAPTER 13

ADOPTION

CHART

CHAPTER 13

ADOPTION

Adoption Authorized by Statute

§ 93-17-3 Jurisdiction; venue; certificate of mental and physical condition of child; change of name:

(1) Except as otherwise provided in this section, a court of this state has jurisdiction over a proceeding for the adoption or readoption of a minor commenced under this chapter if:

(a) Immediately before commencement of the proceeding, the minor lived in this state with a parent, a guardian, a prospective adoptive parent or another person acting as parent, for at least six (6) consecutive months, excluding periods of temporary absence, or, in the case of a minor under six (6) months of age, lived in this state from soon after birth with any of those individuals and there is available in this state substantial evidence concerning the minor's present or future care;

(b) Immediately before commencement of the proceeding, the prospective adoptive parent lived in this state for at least six (6) consecutive months, excluding periods of temporary absence, and there is available in this state substantial evidence concerning the minor's present or future care;

(c) The agency that placed the minor for adoption is licensed in this state and it is in the best interest of the minor that a court of this state assume jurisdiction because:

(i) The minor and the minor's parents, or the minor and the prospective adoptive parent, have a significant connection with this state; and

(ii) There is available in this state substantial evidence concerning the minor's present or future care;

(d) The minor and the prospective adoptive parent or parents are physically present in this state and the minor has been abandoned or it is necessary in an emergency to protect the minor because the minor has been subjected to or threatened with mistreatment or abuse or is otherwise neglected, and the prospective adoptive parent or parents, if not residing in Mississippi, have completed and provided the court with a satisfactory

Interstate Compact for Placement of Children (ICPC) home study and accompanying forms;

(e) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (a) through (d), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to hear a petition for adoption of the minor, and it is in the best interest of the minor that a court of this state assume jurisdiction; or

(f) The child has been adopted in a foreign country, the agency that placed the minor for adoption is licensed in this state, and it is in the best interest of the child to be readopted in a court of this state having jurisdiction.

(2) A court of this state may not exercise jurisdiction over a proceeding for adoption of a minor if, at the time the petition for adoption is filed, a proceeding concerning the custody or adoption of the minor is pending in a court of another state exercising jurisdiction substantially in conformity with the Uniform Child Custody Jurisdiction Act or this section unless the proceeding is stayed by the court of the other state.

(3) If a court of another state has issued a decree or order concerning the custody of a minor who may be the subject of a proceeding for adoption in this state, a court of this state may not exercise jurisdiction over a proceeding for adoption of the minor unless:

(a) The court of this state finds that the court of the state which issued the decree or order:

(i) Does not have continuing jurisdiction to modify the decree or order under jurisdictional prerequisites substantially in accordance with the Uniform Child Custody Jurisdiction Act or has declined to assume jurisdiction to modify the decree or order; or

(ii) Does not have jurisdiction over a proceeding for adoption substantially in conformity with subsection (1)(a) through (d) or has declined to assume jurisdiction over a proceeding for adoption; and

(b) The court of this state has jurisdiction over the proceeding.

(4) Any person may be adopted in accordance with the provisions of this chapter in term time or in vacation by an unmarried adult, by a married person whose

spouse joins in the petition, by a married person whose spouse does not join in the petition because such spouse does not cohabit or reside with the petitioning spouse, and in any circumstances determined by the court that the adoption is in the best interest of the child. Only the consenting adult will be a legal parent of the child. The adoption shall be by sworn petition filed in the chancery court of the county in which the adopting petitioner or petitioners reside or in which the child to be adopted resides or was born, or was found when it was abandoned or deserted, or in which the home is located to which the child has been surrendered by a person authorized to so do. The petition shall be accompanied by a doctor's or nurse practitioner's certificate showing the physical and mental condition of the child to be adopted and a sworn statement of all property, if any, owned by the child. In addition, the petition shall be accompanied by affidavits of the petitioner or petitioners stating the amount of the service fees charged by any adoption agencies or adoption facilitators used by the petitioner or petitioners and any other expenses paid by the petitioner or petitioners in the adoption process as of the time of filing the petition. If the doctor's or nurse practitioner's certificate indicates any abnormal mental or physical condition or defect, the condition or defect shall not, in the discretion of the chancellor, bar the adoption of the child if the adopting parent or parents file an affidavit stating full and complete knowledge of the condition or defect and stating a desire to adopt the child, notwithstanding the condition or defect. The court shall have the power to change the name of the child as a part of the adoption proceedings. The word “child” in this section shall be construed to refer to the person to be adopted, though an adult.

(5) Adoption by couples of the same gender is prohibited.

> The Executive Director of DHS is hereby preliminarily enjoined from enforcing Mississippi Code section 93-17-3(5). ***Campaign for Southern Equal. v. Mississippi Dep't of Human Servs.*, 175 F. Supp. 3d 691, 709-11 (S.D. Miss. 2016) (citations omitted).**

(6) No person may be placed in the home of or adopted by the prospective adopting parties before a court-ordered or voluntary home study is satisfactorily completed by a licensed adoption agency, a licensed, experienced social worker approved by the chancery court, a court-appointed guardian ad litem that has knowledge or training in conducting home studies if so directed by the court, or by the Department of Human Services on the prospective adoptive parties if required by Section 93-17-11.

(7) No person may be adopted by a person or persons who reside outside the State of Mississippi unless the provisions of the Interstate Compact for Placement of Children (Section 43-18-1 et seq.) have been complied with. In such cases Forms 100A, 100B (if applicable) and evidence of Interstate Compact for Placement of

Children approval shall be added to the permanent adoption record file within one (1) month of the placement, and a minimum of two (2) post-placement reports conducted by a licensed child-placing agency shall be provided to the Mississippi Department of Child Protection Services Interstate Compact for Placement of Children office.

(8) No person may be adopted unless the provisions of the Indian Child Welfare Act (ICWA) have been complied with, if applicable. When applicable, proof of compliance shall be included in the court adoption file prior to finalization of the adoption. If not applicable, a written statement or paragraph in the petition for adoption shall be included in the adoption petition stating that the provisions of ICWA do not apply before finalization.

(9) The readoption of a child who has automatically acquired United States citizenship following an adoption in a foreign country and who possesses a Certificate of Citizenship in accordance with the Child Citizenship Act, CAA, Public Law 106-395, may be given full force and effect in a readoption proceeding conducted by a court of competent jurisdiction in this state by compliance with the Mississippi Registration of Foreign Adoptions Act, Article 9 of this chapter.

Who May Be Adopted	Any person	*§ 93-17-3(4).*
Who May Adopt	An unmarried individual or A married person whose spouse joins in the petition or A married person whose spouse does not join in the petition because such spouse does not cohabit or reside with the petitioning spouse	*§ 93-17-3(4).*
Attachments to the Petition	Doctor or nurse practitioner's certificate	*§ 93-17-3(4).*
	Sworn statement of all property owned by the child	*§ 93-17-3(4).*
	Affidavit stating amount of service fees charged by adoption agency	*§ 93-17-3(4).*

Parties to the Adoption

§ 93-17-5 Parties; consent:

(1) There shall be made parties to the proceeding by process or by the filing therein of a consent to the adoption proposed in the petition, which consent shall be duly sworn to or acknowledged and executed only by the following persons, but not before seventy-two (72) hours after the birth of the child:

(a) The parents, or parent, if only one (1) parent, though either be under the age of twenty-one (21) years;

(b) If both parents are dead, then any two (2) adult kin of the child within the third degree computed according to the civil law; if one of such kin is in possession of the child, he or she shall join in the petition or be made a party to the suit; or

(c) The guardian ad litem of an abandoned child, upon petition showing that the names of the parents of the child are unknown after diligent search and inquiry by the petitioners. In addition to the above, there shall be made parties to any proceeding to adopt a child, either by process or by the filing of a consent to the adoption proposed in the petition, the following:

(i) Those persons having physical custody of the child, except persons who are acting as foster parents as a result of placement with them by the Department of Human Services of the State of Mississippi.

(ii) Any person to whom custody of the child may have been awarded by a court of competent jurisdiction of the State of Mississippi.

(iii) The agent of the county Department of Human Services of the State of Mississippi that has placed a child in foster care, either by agreement or by court order.

(2) The consent may also be executed and filed by the duly authorized officer or representative of a home to whose care the child has been delivered. The child shall join the petition by the child's next friend.

(3) If consent is not filed, process shall be had upon the parties as provided by law for process in person or by publication, if they are nonresidents of the state or are not found therein after diligent search and inquiry, the court or chancellor in

vacation may fix a date in termtime or in vacation to which process may be returnable and shall have power to proceed in termtime or vacation. In any event, if the child is more than fourteen (14) years of age, a consent to the adoption, sworn to or acknowledged by the child, shall also be required or personal service of process shall be had upon the child in the same manner and in the same effect as if the child were an adult.

§ 93-17-6 Petition for determination of rights; alleged fathers:

(1) Any person who would be a necessary party to an adoption proceeding under this chapter and any person alleged or claiming to be the father of a child born out of wedlock who is proposed for adoption or who has been determined to be such by any administrative or judicial procedure (the "alleged father") may file a petition for determination of rights as a preliminary pleading to a petition for adoption in any court which would have jurisdiction and venue of an adoption proceeding. A petition for determination of rights may be filed at any time after the period ending thirty (30) days after the birth of the child. Should competing petitions be filed in two (2) or more courts having jurisdiction and venue, the court in which the first such petition was properly filed shall have jurisdiction over the whole proceeding until its disposition. The prospective adopting parents need not be a party to the petition. Where the child's biological mother has surrendered the child to a home for adoption, the home may represent the biological mother and her interests in this proceeding.

(2) The court shall set this petition for hearing as expeditiously as possible allowing not less than ten (10) days' notice from the service or completion of process on the parties to be served.

(3) The sole matter for determination under a petition for determination of rights is whether the alleged father is the natural father of the child based on Mississippi law governing paternity or other relevant evidence.

(4) If the court determines that the alleged father is not the natural father of the child, he shall have no right to object to an adoption under Section 93-17-7.

(5) If the court determines that the alleged father is the child's natural father and that he objects to the child's adoption, the court shall stay the adoption proceedings to allow the filing of a petition to determine whether the father's parental rights should be terminated pursuant to Section 93-15-119, or other applicable provision of the Mississippi Termination of Parental Rights Law.

(6) If a petition for the termination of parental rights is filed and, after an evidentiary hearing, the court does not terminate the father's parental rights, the court shall set the matter as a contested adoption as provided in Section 93-17-8.

(7) A petition for determination of rights may be used to determine the rights of alleged fathers whose identity is unknown or uncertain. In such cases the court shall determine what, if any, notice can be and is to be given those persons. Determinations of rights under the procedure of this section may also be made under a petition for adoption.

(8) Petitions for determination of rights shall be considered adoption cases and all subsequent proceedings such as a contested adoption under Section 93-17-8 and the adoption proceeding itself shall be portions of the same file.

(9) Service of process in the adoption of a foreign born child shall be governed by Section 93-15-105(5).

Consent to Adoption

§ 93-17-5 Parties; consent:

(1) There shall be made parties to the proceeding by process or by the filing therein of a consent to the adoption proposed in the petition, which consent shall be duly sworn to or acknowledged and executed only by the following persons, but not before seventy-two (72) hours after the birth of the child:

(a) The parents, or parent, if only one (1) parent, though either be under the age of twenty-one (21) years;

(b) If both parents are dead, then any two (2) adult kin of the child within the third degree computed according to the civil law; if one of such kin is in possession of the child, he or she shall join in the petition or be made a party to the suit; or

(c) The guardian ad litem of an abandoned child, upon petition showing that the names of the parents of the child are unknown after diligent search and inquiry by the petitioners. In addition to the above, there shall be made parties to any proceeding to adopt a child, either by process or by the filing of a consent to the adoption proposed in the petition, the following:

(i) Those persons having physical custody of the child, except persons who are acting as foster parents as a result of placement with them by the Department of Human Services of the State of Mississippi.

(ii) Any person to whom custody of the child may have been awarded by a court of competent jurisdiction of the State of Mississippi.

(iii) The agent of the county Department of Human Services of the State of Mississippi that has placed a child in foster care, either by agreement or by court order. . . .

Objection to Adoption

§ 93-17-7 Parental objection; when adoption may be allowed:

(1) No infant shall be adopted to any person if a parent whose parental rights have not been terminated under the Mississippi Termination of Parental Rights Law, after having been summoned, shall appear and object thereto before the making of a decree for adoption. A parent shall not be summoned in the adoption proceedings nor have the right to object thereto if the parental rights of the parent have been terminated by the procedure set forth in the Mississippi Termination of Parental Rights Law (Section 93-15-101 et seq.), and the termination shall be res judicata on the question of parental abandonment or unfitness in the adoption proceedings.

(2) No person, whether claiming to be the parent of the child or not, has standing to object to the adoption if:

(a) A final judgment for adoption that comports with all applicable state and federal laws has been entered by a court; and

(b) Notice to the parties of the action, whether known or unknown, has been made in compliance with Section 93-17-5.

Contested Adoption

§ 93-17-8 Contested adoptions:

(1) Whenever an adoption becomes a contested matter, whether after a hearing on a petition for determination of rights under Section 93-17-6 or otherwise, the court:

(a) Shall, on motion of any party or on its own motion, issue an order for immediate blood or tissue sampling in accordance with the provisions of Section 93-9-21 et seq., if paternity is at issue. The court shall order an expedited report of such testing and shall hold the hearing resolving this matter at the earliest time possible.

(b) Shall appoint a guardian ad litem to represent the child. Such guardian ad litem shall be an attorney, however his duties are as guardian ad litem and not as attorney for the child. The reasonable costs of the guardian ad litem shall be taxed as costs of court. Neither the child nor anyone purporting to act on his behalf may waive the appointment of a guardian ad litem.

(c) Shall determine first whether or not the objecting parent is entitled to so object under the criteria of Section 93-17-7 and then shall determine the custody of the child in accord with the best interests of the child and the rights of the parties as established by the hearings and judgments.

(d) Shall schedule all hearings concerning the contested adoption as expeditiously as possible for prompt conclusion of the matter.

(2) In determining the custody of the child after a finding that the adoption will not be granted, the fact of the surrender of the child for adoption by a parent shall not be taken as any evidence of that parent's abandonment or desertion of the child or of that parent's unfitness as a parent.

(3) In contested adoptions arising through petitions for determination of rights where the prospective adopting parents were not parties to that proceeding, they need not be made parties to the contested adoption until there has been a ruling that the objecting parent is not entitled to enter a valid objection to the adoption. At that point the prospective adopting parents shall be made parties by joinder which shall show their suitability to be adopting parents as would a petition for adoption. The identity and suitability of the prospective adopting parents shall be made known to the court and the guardian ad litem, but shall not be made known to other parties to the proceeding unless the court determines that the interests of

justice or the best interests of the child require it.

(4) No birth parent or alleged parent shall be permitted to contradict statements given in a proceeding for the adoption of their child in any other proceeding concerning that child or his ancestry.

(5) Appointment of a guardian ad litem is not required in any proceeding under this chapter except as provided in subsection (1)(b) above and except for the guardian ad litem needed for an abandoned child. It shall not be necessary for a guardian ad litem to be appointed where the chancery judge presiding in the adoption proceeding deems it unnecessary and no adoption agency is involved in the proceeding. No final decree of adoption heretofore granted shall be set aside or modified because a guardian ad litem was not appointed unless as the result of a direct appeal not now barred.

(6) The provisions of Chapter 15 of this Title 93, Mississippi Code of 1972, are not applicable to proceedings under this chapter except as specifically provided by reference herein.

(7) The court may order a child's birth father, identified as such in the proceedings, to reimburse the Department of Human Services, the foster parents, the adopting parents, the home, any other agency or person who has assumed liability for such child, all or part of the costs of the medical expenses incurred for the mother and the child in connection with the birth of the child, as well as reasonable support for the child after his birth.

§ 93-17-11 Investigation; decrees; review:

At any time after the filing of the petition for adoption and completion of process thereon, and before the entering of a final decree, the court may, in its discretion, of its own motion or on motion of any party to the proceeding, require an investigation and report to the court to be made by any person, officer or home as the court may designate and direct concerning the child, and shall require in adoptions, other than those in which the petitioner or petitioners are a relative or stepparent of the child, that a home study be performed of the petitioner or petitioners a licensed adoption agency or by the Department of Human Services, at the petitioner's or petitioners' sole expense and at no cost to the state or county. The investigation and report shall give the material facts upon which the court may determine whether the child is a proper subject for adoption, whether the petitioner or petitioners are suitable parents for the child, whether the adoption is to its best interest, and any other facts or circumstances that may be material to the proposed adoption. The home study shall be considered by the court in determining whether the petitioner or petitioners are suitable parents for the child. The court, when an

investigation and report are required by the court or by this section, shall stay the proceedings in the cause for such reasonable time as may be necessary or required in the opinion of the court for the completion of the investigation and report by the person, officer or home designated and authorized to make the same.

Upon the filing of that consent or the completion of the process and the filing of the investigation and report, if required by the court or by this section, and the presentation of such other evidence as may be desired by the court, if the court determines that it is to the best interests of the child that an interlocutory decree of adoption be entered, the court may thereupon enter an interlocutory decree upon such terms and conditions as may be determined by the court, in its discretion, but including therein that the complete care, custody and control of the child shall be vested in the petitioner or petitioners until further orders of the court and that during such time the child shall be and remain a ward of the court. If the court determines by decree at any time during the pendency of the proceeding that it is not to the best interests of the child that the adoption proceed, the petitioners shall be entitled to at least 5 days' notice upon their attorneys of record and a hearing with the right of appeal as provided by law from a dismissal of the petition; however, the bond perfecting the appeal shall be filed within 10 days from the entry of the decree of dismissal and the bond shall be in such amount as the chancellor may determine and supersedeas may be granted by the chancellor or as otherwise provided by law for appeal from final decrees.

After the entry of the interlocutory decree and before entry of the final decree, the court may require such further and additional investigation and reports as it may deem proper. The rights of the parties filing the consent or served with process shall be subject to the decree but shall not be divested until entry of the final decree.

§ 93-17-12 Fee for home study:

In any child custody matter hereafter filed in any chancery or county court in which temporary or permanent custody has already been placed with a parent or guardian and in all adoptions, the court shall impose a fee for any court-ordered home study performed by the Department of Human Services or any other entity. The fee shall be assessed upon either party or upon both parties in the court's discretion. The minimum fee imposed shall be not less than $350.00 for each household on which a home study is performed. The fee shall be paid directly to the Mississippi Department of Human Services prior to the home study being conducted by the department or to the entity if the study is performed by another entity. The judge may order the fee be paid by one or both of the parents or guardian. If the court determines that both parents or the guardian are unable to pay the fee, the judge shall waive the fee and the cost of the home study shall be

defrayed by the Department of Human Services.

§ 93-17-14 Home studies in international adoptions; duration of validity:

In the case of international adoptions, a home study of the prospective adopting parents shall be valid for a period of twenty-four (24) months from the date of completion.

Final Decree of Adoption

§ 93-17-13 Waiting period; final decree's effect:

(1) A final decree of adoption shall not be entered before the expiration of six (6) months from the entry of the interlocutory decree except

(a) when a child is a stepchild of a petitioner or is related by blood to the petitioner within the third degree according to the rules of the civil law or in any case in which the chancellor in the exercise of his discretion shall determine from all the proceedings and evidence in said cause that the six-month waiting period is not necessary or required for the benefit of the court, the petitioners or the child to be adopted, and shall so adjudicate in the decree entered in said cause, in either of which cases the final decree may be entered immediately without any delay and without an interlocutory decree,

(b) when the child has resided in the home of any petitioner prior to the granting of the interlocutory decree, in which case the court may, in its discretion, shorten the waiting period by the length of time the child has thus resided, or

(c) when an adoption in a foreign country is registered under Article 9 of this chapter, the Mississippi Registration of Foreign Adoptions Act.

(2) The final decree shall adjudicate, in addition to such other provisions as may be found by the court to be proper for the protection of the interests of the child; and its effect, unless otherwise specifically provided, shall be that

(a) the child shall inherit from and through the adopting parents and shall likewise inherit from the other children of the adopting parents to the same extent and under the same conditions as provided for the inheritance between brothers and sisters of the full blood by the laws of descent and distribution of the State of Mississippi, and that the adopting parents and their other children shall inherit from the child, just as if such child had

been born to the adopting parents in lawful wedlock;

(b) the child and the adopting parents and adoptive kindred are vested with all of the rights, powers, duties and obligations, respectively, as if such child had been born to the adopting parents in lawful wedlock, including all rights existing by virtue of Section 11-7-13, Mississippi Code of 1972; provided, however, that inheritance by or from the adopted child shall be governed by paragraph (a) above;

(c) that the name of the child shall be changed if desired; and

(d) that the natural parents and natural kindred of the child shall not inherit by or through the child except as to a natural parent who is the spouse of the adopting parent, and all parental rights of the natural parent, or parents, shall be terminated, except as to a natural parent who is the spouse of the adopting parent. Nothing in this chapter shall restrict the right of any person to dispose of property under a last will and testament.

(3) A final decree of adoption shall not be entered until a court-ordered home study is satisfactorily completed, if required in Section 93-17-11.

§ 93-17-15 Limitations period, challenging final decree:

No action shall be brought to set aside any final decree of adoption, whether granted upon consent or personal process or on process by publication, except within six (6) months of the entry thereof.

§ 93-17-17 Grounds to set aside:

For all purposes of this chapter, the chancery court shall be a court of general jurisdiction and it is declared to be the public policy of the state that no adoption proceedings shall be permitted to be set aside except for jurisdictional defects and for failure to file and prosecute the same under the provisions of this chapter.

Confidentiality of Adoption Proceedings

§ 93-17-25 Confidentiality:

All proceedings under this chapter shall be confidential and shall be held in closed court without admittance of any person other than the interested parties, except upon order of the court. All pleadings, reports, files and records pertaining to adopting proceedings shall be confidential and shall not be public records and shall be withheld from inspection or examination by any person, except upon order of the court in which the proceeding was had on good cause shown. Upon motion of any interested person, the files of adoption proceedings, heretofore had may be placed in the confidential files upon order of the court or chancellor and shall be subject to the provisions of this chapter. Provided, however, that notwithstanding the confidential nature of said proceedings, said record shall be available for use in any court or administrative proceedings under a subpoena duces tecum addressed to the custodian of said records and portions of such record may be released pursuant to Sections 93-17-201 through 93-17-223.

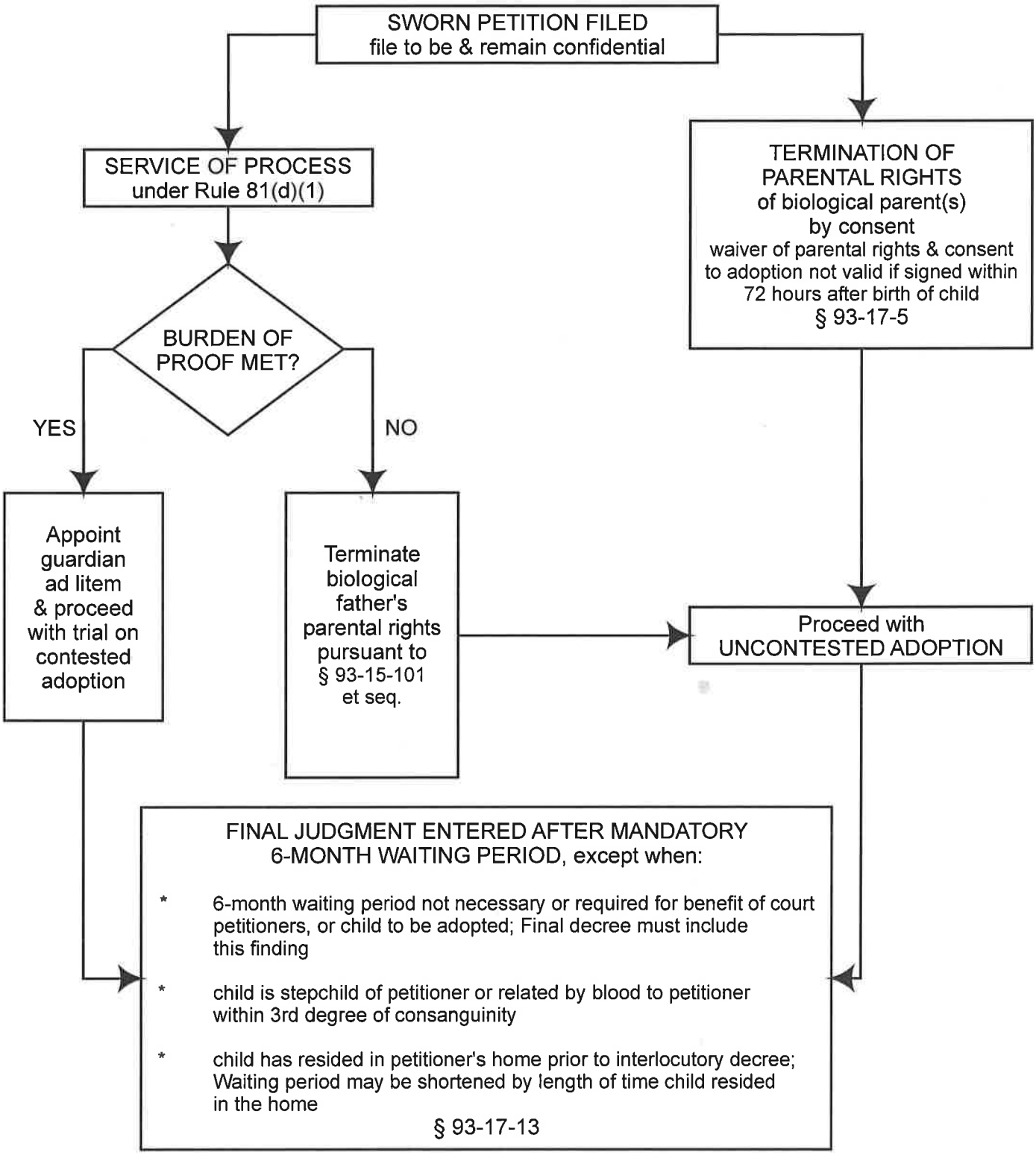
§ 93-17-29 Names in dockets and decrees:

The docket entries and decrees spread upon the minutes of the court shall not refer to names of the natural parent or parents nor to the original name of the child. In the decree reference to the child shall be by the name to be conferred upon it by the court rather than by its original name if the name of the child is to be changed. The style of the cause and the docket entry thereof shall recite only the names of the petitioners and that the case is for the adoption of a child described in the petition.

§ 93-17-31 Separate, confidential records:

The several chancery clerks shall obtain and keep a separate, confidential index showing the true name of the child adopted, the true name of its natural parent, or parents, if known, and the true name of the persons adopting the child and the date of the decree of adoption, and the name under which the child was adopted, or the name given the child by the adoption proceedings and a cross index shall be kept showing the said true name and the name given the child in the adoption decree, and which index shall be subject to the provisions of Section 93-17-25 as to same being kept in confidence and such index shall not be examined by any person, except officers of the court including attorneys, except upon order of the court, on good cause shown, in which the proceeding was had. The reports shall be filed only if so ordered by the chancellor. The several chancery clerks shall obtain and keep a separate docket and minute book of convenient size which shall be subject to provisions of Sections 93-17-25 through 93-17-31 and in which, from July 1, 1955, all entries concerning adoption shall be made.

ADOPTION
OVERVIEW OF PROCEDURE



CHAPTER 14

GUARDIANSHIPS

CHAPTER 14

GUARDIANSHIPS

Authority of Chancery Court

Infants and persons of unsound mind are disabled under the law to act for themselves. Long ago it became the established rule for the court of chancery to act as the superior guardian for all persons under such disability. This inherent and traditional power and protective duty is made complete and irrefragable by the provisions of our present state constitution. It is not competent for the Legislature to abate the said powers and duties or for the said court to omit or neglect them. It is the inescapable duty of the said court and of the chancellor to act with constant care and solicitude towards the preservation and protection of the rights of infants and persons non composmentis. The court will take nothing as confessed against them; will make for them every valuable election; will rescue them from faithless guardians, designing strangers, and even from unnatural parents, and in general will and must take all necessary steps to conserve and protect the best interest of these wards of the court. The court will not and cannot permit the rights of an infant to be prejudiced by any waiver, or omission or neglect or design of a guardian, or of any other person, so far as within the power of the court to prevent or correct. ***Union Chevrolet Co. v. Arrington*****, 138 So. 593, 595 (Miss. 595 (Miss. 1932).**

Difference Between a Guardian and Conservator

Initially, it is appropriate to distinguish guardianships from conservatorships. Guardians may be appointed for minors; incompetent adults; a person of unsound mind; alcoholics or drug addicts; convicts in the penitentiary; persons in the armed forces or merchant seamen reported as missing; or for veterans; or minor wards of a veteran. The guardian is the legally recognized custodian of the person or property of another with prescribed fiduciary duties and responsibilities under court authority and direction. A ward under guardianship is under a legal disability or is adjudged incompetent. In recent decades there has been an increased number of older adults in our society who possess assets in need of protective services provided through guardianships. But modification of laws have broadened the definition of persons for whom assistance can be afforded by the courts, and such statutes do not restrict such protection only to the adult incompetent or insane. Noting that trend in our society, the Mississippi Legislature incorporated into law in 1962 the conservatorship procedure for persons who, by reason of advanced age, physical incapacity, or mental weakness, were incapable of managing their own estates. Thus the Legislature provided a

new procedure through conservatorship for supervision of estates of older adults with physical incapacity or mental weakness, without the stigma of legally declaring the person non compos mentis. This additional procedure was intended to encompass a broader class of people than just the incompetent. Therefore, the distinguishing feature of conservatorship from guardianships lies in part in the lack of necessity of an incompetency determination or the existence of a legal disability for its initiation. After establishment of such protective procedures, the duties, responsibilities and powers of a guardian or conservator are the same. However, the status of the ward in each arrangement is different. ***Harvey v. Meador*, 459 So. 2d 288, 291-92 (Miss. 1984).**

General Provisions

Jurisdiction

§ 93-20-104 Subject-matter jurisdiction:

(1) Except to the extent jurisdiction is precluded by the Uniform Child Custody Jurisdiction and Enforcement Act and the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, the chancery court has jurisdiction over a guardianship or conservatorship for a respondent domiciled or present in this state or having property in this state.

(2) After a petition is filed in a proceeding for a guardianship or conservatorship and until termination of the proceeding, the court in which the petition is filed has:

(a) Exclusive jurisdiction to determine the need for the guardianship or conservatorship;

(b) Exclusive jurisdiction to determine how property of the respondent must be managed, expended, or distributed to or for the use of the respondent, an individual who is dependent in fact on the respondent, or other claimant;

(c) Nonexclusive jurisdiction to determine the validity of a claim against the respondent or property of the respondent or a question of title concerning the property; and

(d) If a guardian or conservator is appointed, exclusive jurisdiction over issues related to administration of the guardianship or conservatorship.

(3) A court that appoints a guardian or conservator has exclusive and continuing jurisdiction over the proceeding until the court terminates the proceeding. . . .

Venue

§ 93-20-106 Venue:

(1) Venue for a guardianship proceeding for a minor is in:

(a) The county in which the minor resides or is present at the time the proceeding commences; or

(b) The county in which another proceeding concerning the custody or parental rights of the minor is pending.

(2) Venue for a guardianship proceeding for an adult is in:

(a) The county in which the respondent resides;

(b) If the respondent has been admitted to an institution by court order, the county in which the court is located; or

(c) If the proceeding is for appointment of an emergency guardian for an adult, the county in which the respondent is present. . . .

(4) If proceedings under this act are brought in more than one (1) county, the court of the county in which the first proceeding is brought has the exclusive right to

proceed unless the court determines venue is properly in another court or that the interest of justice otherwise requires transfer of the proceeding.

Clerk's Duties

§ 93-20-108 Letters of guardianship or conservatorship:

(1) At or before the time of appointment, the guardian or conservator must take and subscribe an oath faithfully to discharge the duties of guardian or conservator of the ward according to law.
(2) The clerk must issue letters of guardianship to a guardian who takes the proper oath, posts bond if required, and submits a certificate of attorney and certificate of fiduciary, unless waived by the court.
(3) The clerk must issue letters of conservatorship to a conservator who takes the proper oath, posts bond if required, and submits a certificate of attorney and certificate of fiduciary, unless waived by the court or unless the conservator complies with another asset-protection arrangement required by the court.
(4) The court in its initial order of appointment or at any subsequent time may limit the powers conferred on a guardian or conservator. The court shall direct the clerk to issue new letters of guardianship or conservatorship that reflect the limitation. The court shall direct the clerk to give notice of the limitation by service of a copy of the court's order with proof of service on the guardian or conservator, the ward, and any other person the court determines. . . .

§ 9-1-49 Report concerning certain persons' access to firearms

(1) The clerk of the court shall prepare and forward to the Department of Public Safety the information described by subsection (2) of this section not later than the thirtieth day after the date the court: . . . (c) Appoints a guardian or conservator under [Sections 93-20-101 et seq.] based on the determination that the person is incapable of managing his own person or estate; . . . .
(2) The clerk of the court shall prepare and forward the following information:
(a) The complete name, race, and sex of the person;
(b) Any known identifying number of the person, including social security number, driver's license number, or state identification card number;
(c) The person's date of birth; and
(d) The federal prohibited-person information that is the basis of the report required by this section.
(3) If practicable, the clerk of the court shall forward to the Department of Public Safety the information described by subsection (2) of this section in an electronic format prescribed by the department.
(4) If an order previously reported to the department under subsection (1) of this section is reversed by order of any court, the clerk shall notify the department of

the reversal not later than thirty (30) days after the clerk receives the court order or the mandate from the appellate court.
(5) The duty of a clerk to prepare and forward information under this section is not affected by: (a) Any subsequent appeal of the court order; (b) Any subsequent modification of the court order; or (c) The expiration of the court order.

Guardianship of Minor

Parents are Natural Guardians

§ 93-13-1 Parental guardianship:

The father and mother are the joint natural guardians of their minor children and are equally charged with their care, nurture, welfare and education, and the care and management of their estates. The father and mother shall have equal powers and rights, and neither parent has any right paramount to the right of the other concerning the custody of the minor or the control of the services or the earnings of such minor, or any other matter affecting the minor. If either father or mother die or be incapable of acting, the guardianship devolves upon the surviving parent. Neither parent shall forcibly take a child from the guardianship of the parent legally entitled to its custody. But if any father or mother be unsuitable to discharge the duties of guardianship, then the court, or chancellor in vacation, may appoint some suitable person, or having appointed the father or mother, may remove him or her if it appear that such person is unsuitable, and appoint a suitable person.

Petition is Filed

§ 93-20-202 Petition for appointment of guardian for minor:

(1) A person interested in the welfare of a minor, including the minor, may petition for appointment of a guardian for the minor.
(2) A petition under subsection (1) must comply with the requirement for an affidavit under the Uniform Child Custody Jurisdiction and Enforcement Act and must also include:
(a) The name and address of any attorney for the parents of the minor;
(b) The reason guardianship is sought and would be in the best interest of the minor;
(c) The name and address of any proposed guardian and the reason the proposed guardian should be selected; and
(d) If the minor has property other than personal effects, a general statement of the minor's property with an estimate of its value.
(3) Notice of a hearing on a petition filed after the appointment of a guardian

which seeks an order under this article, together with a copy of the petition, must be given to the ward, the guardian, the parents of the ward, and any other person the court determines.

Notice of Hearing

§ 93-20-203 Notice of hearing for appointment of guardian for minor:

(1) If a petition is filed under Section 93-20-202, the court must set a date, time and place for a hearing, and the petitioner must cause summons to be issued and served not less than seven (7) days before the hearing, together with a copy of the petition, on each of the following who is not the petitioner:

(a) The minor, if the minor will be fourteen (14) years of age or older at the time of the hearing;

(b) Each parent of the minor who can be found with reasonable diligence or, if there is none, the adult nearest in kinship who can be found with reasonable diligence; and

(c) Each individual who had primary care or custody of the minor for at least sixty (60) days during the six (6) months immediately before the filing of the petition.

(2) For any other person the court determines should know of the proceedings, notice must be provided under Rule 5 of the Mississippi Rules of Civil Procedure.

(3) A petition under this article must state the name and address of an attorney representing the petitioner, if any, and must set forth under the style of the case and before the body of the petition the following language in bold or highlighted type:

THE RELIEF SOUGHT HEREIN MAY AFFECT YOUR LEGAL RIGHTS. YOU HAVE A RIGHT TO NOTICE OF ANY HEARING ON THIS PETITION, TO ATTEND ANY SUCH HEARING, AND TO BE REPRESENTED BY AN ATTORNEY.

(4) If a petitioner is unable to serve summons under subsection (1)(a), the court may appoint a guardian ad litem for the minor for the purpose of receiving summons.

***See* § 93-20-204 Attorney for minor.**

Hearing

§ 93-20-205 Rights at hearing:

(1) The court shall require a minor who is the subject of a hearing for appointment of a guardian to attend the hearing and allow the minor to participate in the hearing unless the court determines, by clear and convincing evidence presented at

the hearing or at a separate hearing, that:

(a) The minor consistently and repeatedly refused to attend the hearing after being fully informed of the right to attend and, if the minor is fourteen (14) years of age or older, the potential consequences of failing to do so;

(b) There is no practicable way for the minor to attend the hearing;

(c) The minor lacks the ability or maturity to participate meaningfully in the hearing; or

(d) Attendance would be harmful to the minor.

(2) Unless excused by the court for good cause shown, the person proposed to be appointed as guardian for a minor must attend a hearing for appointment of a guardian.

(3) Each parent of a minor who is the subject of a hearing for appointment of a guardian has the right to attend the hearing.

Appointment of Guardian

§ 93-20-206 Order on appointment; limited guardianship for minor:

(1) After a hearing under Section 93-20-202, the court may appoint a guardian for a minor, dismiss the proceeding, or take other appropriate action consistent with this act or law of this state other than this act.

(2) In appointing a guardian under subsection (1), the following apply:

(a) The court shall appoint a person nominated as guardian by a parent of the minor in a will or other record unless the court finds the appointment is contrary to the best interest of the minor.

(b) If multiple parents have nominated different persons to serve as guardian, the court shall appoint the nominee whose appointment is in the best interest of the minor, unless the court finds that appointment of none of the nominees is in the best interest of the minor.

(c) If a guardian is not appointed under paragraph (a) or (b), the court shall appoint the person nominated by the minor if the minor is fourteen (14) years of age or older unless the court finds that appointment is contrary to the best interest of the minor. In that case, the court shall appoint as guardian a person whose appointment is in the best interest of the minor.

(3) In the interest of maintaining or encouraging involvement by a minor's parent in the minor's life, developing self-reliance of the minor, or for other good cause, the court, at the time of appointment of a guardian for the minor or later, on its own or on motion of the minor or other interested person, may create a limited guardianship by limiting the powers otherwise granted by this article to the guardian. Following the same procedure, the court may grant additional powers or withdraw powers previously granted.

(4) The court, as part of an order appointing a guardian for a minor, shall state

rights retained by any parent of the minor, which may include contact or visitation with the minor, decision-making regarding the minor's health care, education, or other matter, or access to a record regarding the minor.
(5) An order granting a guardianship for a minor must state that each parent of the minor is entitled to notice that:
(a) The location of the minor's residency has changed;
(b) The court has modified or limited the powers of the guardian; or
(c) The court has removed the guardian.

***See* § 93-20-207 Emergency guardian for minor.**

Guardian's Duties

§ 93-20-208 Duties of guardian for minor:

(1) A guardian for a minor is a fiduciary. Except as otherwise limited by the court, a guardian for a minor has the duties and responsibilities of a parent regarding the minor's support, care, education, health, safety, and welfare. A guardian must act in the minor's best interest and exercise reasonable care, diligence, and prudence.
(2) A guardian for a minor must:
(a) Become personally acquainted with the minor and maintain sufficient contact with the minor to know and report to the court the minor's abilities, limitations, needs, opportunities, and physical and mental health;
(b) Take reasonable care of the minor's personal effects and bring a proceeding for a conservatorship if necessary to protect other property of the minor;
(c) Expend funds of the minor that have been received by the guardian for the minor's current needs for support, care, education, health, safety, and welfare;
(d) Conserve any funds of the minor not expended under paragraph (c) for the minor's future needs, but if a conservator is appointed for the minor, pay the funds as directed by the court to the conservator to be conserved for the minor's future needs;
(e) Report the condition of the minor and account for funds and other property of the minor in the guardian's possession or subject to the guardian's control, as required by court rule or ordered by the court on application of a person interested in the minor's welfare;
(f) Inform the court of any change in the minor's dwelling or address; and
(g) In determining what is in the minor's best interest, take into account the minor's preferences to the extent actually known or reasonably ascertainable by the guardian.

Guardian's Powers

§ 93-20-209 Powers of guardian for minor:

(1) Except as otherwise limited by court order, a guardian of a minor has the powers a parent otherwise would have regarding the minor's support, care, education, health, safety, and welfare.

(2) Except as otherwise limited by court order, a guardian for a minor may:

(a) Apply for and receive funds up to the amount set forth in Section 93-20-431 and benefits otherwise payable for the support of the minor to the minor's parent, guardian, or custodian under a statutory system of benefits or insurance or any private contract, devise, trust, conservatorship, or custodianship.
(b) Unless inconsistent with a court order entitled to recognition in this state, take custody of the minor and establish the minor's place of dwelling and, on authorization of the court, establish or move the minor's dwelling outside this state.
(c) If the minor is not subject to conservatorship, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the minor or make a payment for the benefit of the minor;
(d) Consent to health or other care, treatment, or service for the minor; or
(e) To the extent reasonable, delegate to the minor responsibility for a decision affecting the minor's well-being.

(3) The court may authorize a guardian for a minor to consent to the adoption of the minor if the minor does not have a parent.

(4) A guardian for a minor may consent to the marriage of the minor if authorized by the court.

Termination of Guardianship

§ 93-20-210 Removal of guardian for minor; termination of guardianship; appointment of successor:

(1) Guardianship for a minor under this act terminates:

(a) On the minor's death, adoption, emancipation, attainment of majority, or on a date set by the court; or

(b) When the court finds that the standard in Section 93-20-201 for appointment of a guardian is not satisfied, unless the court finds that:

(i) Termination of the guardianship would be harmful to the minor; and

(ii) The minor's interest in the continuation of the guardianship outweighs the interest of any parent of the minor in restoration of the parent's right to make decisions for the minor.

(2) A ward or any party may petition the court to terminate the guardianship, modify the guardianship, remove the guardian and appoint a successor guardian.

(3) A petitioner under subsection (2) must give notice of the hearing on the petition to the minor, if the minor is fourteen (14) years of age or older and is not the petitioner, and to the guardian, each parent of the minor, and any other person the court determines.

(4) Not later than thirty (30) days after appointment of a successor guardian for a minor, notice must be given of the appointment to the ward, if the minor is fourteen (14) years of age or older, to each parent of the minor, and to any other person the court determines.

(5) When terminating a guardianship for a minor under this section, the court may issue an order providing for transitional arrangements that will assist the minor with a transition of custody and that is in the best interest of the minor.

(6) A guardian for a minor who is removed must cooperate with a successor guardian to facilitate transition of the guardian's responsibilities and protect the best interest of the minor.

Guardianship of Adult

Petition is Filed

§ 93-20-302 Petition for appointment of guardian for adult:

(1) A proceeding under this article may be instituted by the chancellor or clerk of the chancery court, any relative or friend of the adult, or any other interested party, including the adult for whom the order is sought, by filing a sworn petition in the chancery court of the county of the residence of the adult, setting forth that the adult is alleged to be in need of a guardianship.
(2) The petition must state the name and address of an attorney representing the petitioner, if any, and must set forth under the style of the case and before the body of the petition the following language in bold or highlighted type:

THE RELIEF SOUGHT HEREIN MAY AFFECT YOUR LEGAL RIGHTS. YOU HAVE A RIGHT TO NOTICE OF ANY HEARING ON THIS PETITION, TO ATTEND ANY SUCH HEARING, AND TO BE REPRESENTED BY AN ATTORNEY.

(3) The guardian for an adult is not required to retain an attorney of record for the guardianship if the court finds that this would impose an undue burden on the ward's estate.

Notice of Hearing

§ 93-20-303 Notice of hearing for appointment of guardian for adult:

(1) On receipt of a petition under Section 93-20-302 for appointment of a guardian for a respondent who is an adult, the court must set a date, time and place for a hearing, and unless the court finds that the adult for whom the guardian is to be appointed is competent and joins in the petition, the petitioner must cause summons to be served not less than seven (7) days before the hearing, together with a copy of the petition, on the adult for whom the guardian is to be appointed. The court may, for good cause shown, direct that a shorter notice be given.
(2) Unless the court finds that the adult for whom the guardian is to be appointed is competent and joins in the petition, summons must also issue to:

(a) Any conservator appointed to the respondent;
(b) At least one (1) adult relative of the respondent who resides in Mississippi from the following group in the listed order of preference: spouse, children, parents, siblings; but if none of those can be found:

(i) To one (1) adult relative of the respondent who is not the petitioner and who resides in Mississippi if that relative is within the third degree of kinship.
(ii) If no relative within the third degree of kinship to the

respondent is found residing in the State of Mississippi, the court shall either designate some other appropriate person to receive the summons or appoint a guardian ad litem to receive the summons.

(3) In a proceeding on a petition under this article, notice of the hearing must also be given to any other person the court determines is entitled to notice. Failure to give notice does not preclude the court from appointing a guardian.

(4) If the person for whom the guardian is to be appointed is entitled to any benefit, estate or income paid or payable by or through the Veterans' Administration of the United States government, such administration must also be given a summons.

(5) Notice of a hearing on a petition seeking an order under this article that is filed after the appointment of a guardian, together with a copy of the petition, must be given to the ward, the guardian, and any other person the court determines.

§ 93-20-304 Appointment of guardian ad litem:

The court may appoint a guardian ad litem to any respondent and allow suitable compensation payable out of the estate of the respondent, but the appointment shall not be made except when the court considers it necessary for the protection of the interest of the respondent; a judgment of any court is not void or erroneous for failure to have a guardian ad litem.

§ 93-20-305 Professional evaluation:

(1) The chancery court must conduct a hearing to determine whether a guardian is needed for the respondent. Before the hearing, the court, in its discretion, may appoint a guardian ad litem to look after the interest of the person in question; the guardian ad litem must be present at the hearing and present the interests of the respondent for whose person a guardian is to be appointed.

(2) The chancery judge shall be the judge of the number and character of the witnesses and proof to be presented, except that the proof must include certificates made after a personal examination of the respondent by the following professionals, each of whom shall make in writing a certificate of the result of that examination to be filed with the clerk of the court and become a part of the record of the case

(a) Two (2) licensed physicians; or

(b) One (1) licensed physician and either one (1) licensed psychologist, nurse practitioner, or physician's assistant.

(3) The personal examination may occur face-to-face or via telemedicine, but any telemedicine examination must be made using an audio-visual connection by a physician licensed in this state and as defined in Section 83-9-351. A nurse practitioner or physician assistant conducting an examination shall not also be in a collaborative or supervisory relationship, as the law may otherwise require, with

the physician conducting the examination. A professional conducting an examination under this section may also be called to testify at the hearing.

Hearing

§ 93-20-306 Rights at hearing:

(1) At a hearing held under this article, the respondent may:
(a) Present evidence and subpoena witnesses and documents;
(b) Examine witnesses; and
(c) Otherwise participate in the hearing.
(2) Unless excused by the court for good cause shown, a proposed guardian must attend a hearing under this article.
(3) A hearing under this article must be closed upon request of the respondent and a showing of good cause.
(4) Any person may request to participate in a hearing under this article. The court may grant the request, with or without a hearing, on determining that the best interest of the respondent will be served. The court may impose appropriate conditions on the person's participation.

§ 93-20-307 Confidentiality of records:

(1) An adult subject to a proceeding for a guardianship, an attorney designated by the adult, and a person entitled to notice either under Section 93-20-309(4) or a court order may access court records of the proceeding and resulting guardianship, including the guardian's plan under Section 93-20-315 and guardian's well-being report under Section 93-20-316. A person not otherwise entitled to access court records under this subsection may petition the court for access to court records of the guardianship, including the guardian's report and plan, for good cause. The court shall grant access if access is in the best interest of the respondent or ward or furthers the public interest and does not endanger the welfare or financial interests of the respondent or ward.
(2) A report under Section 93-20-304 of a guardian ad litem or a professional evaluation under Section 93-20-305 may be considered confidential and may be sealed on filing when determined necessary by the court. If the court finds the file should be sealed, the file will remain available to:
(a) The court;
(b) The individual who is the subject of the report or evaluation, without limitation as to use;
(c) The petitioner, guardian ad litem, and petitioner's and respondent's attorneys, for purposes of the proceeding;
(d) Unless the court orders otherwise, an agent appointed under a power of attorney for health care or power of attorney for finances in which the

respondent is the principal; and

(e) Any other person if it is in the public interest or for a purpose the court orders for good cause.

§ 93-20-308 Who may be guardian for adult:

(1) Appointment of a guardian for an adult will be at the discretion of the court and in the best interest of the respondent. If two (2) or more persons have requested responsibility as guardian for the adult, the court shall select as guardian the person the court considers best qualified. In determining the best qualified person, the court shall consider the person's relationship with the respondent, the person's skills, the expressed wishes of the respondent, including any designation made in a will, durable power of attorney, or health-care directive, the extent to which the person and the respondent have similar values and preferences, and the likelihood the person will be able to perform the duties of a guardian successfully. The court, acting in the best interest of the respondent, may decline to appoint as guardian a person requesting such an appointment.

(2) If a qualified guardian under this section cannot be determined, or if other circumstances arise where the court determines that a guardian must instead be appointed, the court, at its discretion, may appoint the chancery court clerk for the county in which the proceedings were filed, to serve as the respondent's guardian. The chancery court clerk shall serve in the capacity ordered by the court unless a conflict of interest arises or the clerk presents circumstances where the court determines the clerk's recusal from appointment is permitted.

(3) A person that provides paid services to the respondent, or an individual who is employed by a person who provides paid services to the respondent or is the spouse, parent, or child of an individual who provides or is employed to provide paid services to the respondent, may not be appointed as guardian unless:

(a) The individual is related to the respondent by blood, marriage, or adoption; or

(b) The court finds by clear and convincing evidence that the person is the best qualified person available for appointment and the appointment is in the best interest of the respondent.

(4) An owner, operator, or employee of a long-term-care institution at which the respondent is receiving care may not be appointed as guardian unless the owner, operator, or employee is related to the respondent by blood, marriage, or adoption.

Appointment of Guardian

§ 93-20-309 Order on appointment of guardian:

(1) A court order appointing a guardian for an adult must:

(a) Include a specific finding that clear and convincing evidence established that the identified needs of the respondent cannot be met by a less restrictive alternative, including use of appropriate supportive services and technological assistance; and

(b) Include a specific finding that clear and convincing evidence established the respondent was given proper summons notifying the respondent of the hearing on the petition.

(2) A court order establishing a full guardianship for an adult must state the basis for granting a full guardianship and include specific findings that support the conclusion that a limited guardianship would not meet the functional needs of the ward.

(3) A court order establishing a limited guardianship for an adult must state the specific powers granted to the guardian.

(4) The court, as part of an order establishing a guardianship for an adult, must identify and include the contact information for any person that subsequently is entitled to:

(a) Notice of the rights of the adult under Section 93-20-310(2);

(b) Notice of a change in the primary dwelling of the adult;

(c) Notice that the guardian has delegated:

(i) The power to manage the care of the adult;

(ii) The power to make decisions about where the adult lives;

(iii) The power to make major medical decisions on behalf of the adult;

(iv) A power that requires court approval under Section 93-20-314; or

(v) Substantially all powers of the guardian;

(d) A copy of the guardian's plan under Section 93-20-315 and the guardian's well-being report under Section 93-20-316;

(e) Access to court records relating to the guardianship;

(f) Notice of the death or significant change in the condition of the adult;

(g) Notice that the court has limited or modified the powers of the guardian; and

(h) Notice of the removal of the guardian.

(5) A spouse and adult children of a ward are entitled to notice under Section 93-20-303 unless the court determines notice would be contrary to the preferences or prior directions of the ward or not in the best interest of the ward.

(6) (a) If the chancellor finds from the evidence that the adult is incapable of taking care of his person, the chancellor shall appoint a guardian over the

person.

(b) The costs and expenses of the proceedings shall be paid out of the estate of the person if a guardian is appointed. If a guardian is appointed and the adult has no estate, or if no guardian is appointed, then the costs and expenses must be paid by the person instituting the proceedings.

***See* § 93-20-310 Notice of order of appointment; rights.**
***See* § 93-20-311 Emergency guardian for adult.**

Guardian's Duties

§ 93-20-312 Duties of guardian for adult:

(1) A guardian for an adult is a fiduciary. Except as otherwise limited by the court, a guardian for an adult shall make decisions regarding the support, care, education, health, and welfare of the ward to the extent necessitated by the adult's limitations.

(2) A guardian for an adult promotes the self-determination of the adult and, to the extent reasonably feasible, encourages the adult to participate in decisions, act on the adult's own behalf, and develop or regain the capacity to manage the adult's personal affairs. In furtherance of this duty, the guardian may:

(a) Become personally acquainted with the adult and maintain sufficient contact with the adult through regular visitation and other means, and to know the adult's abilities, limitations, needs, opportunities, and physical and mental health;

(b) To the extent reasonably feasible, identify the values and preferences of the adult and involve the adult in decisions affecting the adult, including decisions about the adult's care, dwelling, activities, or social interactions; and

(c) Make reasonable efforts to identify and facilitate supportive relationships and services for the adult.

(3) A guardian for an adult at all times shall exercise reasonable care, diligence, and prudence when acting on behalf of or making decisions for the adult. In furtherance of this duty, the guardian shall:

(a) Take reasonable care of the personal effects, pets, and service or support animals of the adult and bring a proceeding for a conservatorship if necessary to protect the adult's property;

(b) Expend funds and other property of the adult received by the guardian for the adult's current needs for support, care, education, health, and welfare;

(c) Conserve any funds and other property of the adult not expended under paragraph (b) for the adult's future needs, but if a conservator has been appointed for the adult, pay the funds and other property at least quarterly

to the conservator to be conserved for the adult's future needs; and

(d) Monitor the quality of services, including long-term care services, provided to the adult.

(4) In making a decision for a ward, the guardian must make the decision the guardian reasonably believes the adult would make if the adult were able unless doing so would unreasonably harm or endanger the welfare or personal or financial interests of the adult. To determine the decision the ward would make if able, the guardian shall consider the adult's previous or current directions, preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable by the guardian.

(5) If a guardian for an adult cannot make a decision under subsection (4) because the guardian does not know and cannot reasonably determine the decision the adult probably would make if able, or the guardian reasonably believes the decision the adult would make would unreasonably harm or endanger the welfare or personal or financial interests of the adult, the guardian must act in accordance with the best interest of the adult. In determining the best interest of the adult, the guardian may consider:

(a) Information received from professionals and persons that demonstrate sufficient interest in the welfare of the adult;

(b) Other information the guardian believes the adult would have considered if the adult were able to act; and

(c) Other factors a reasonable person in the circumstances of the adult would consider, including consequences for others.

(6) A guardian for an adult immediately must notify the court if the condition of the adult has changed so that the adult is capable of exercising rights previously removed.

Guardian's Powers

§ 93-20-313 Powers of guardian for adult:

(1) Except as limited by court order, a guardian for an adult may:

(a) Apply for and receive funds and benefits for the support of the adult, unless a conservator is appointed for the adult and the application or receipt is within the powers of the conservator;

(b) Unless inconsistent with a court order, establish the adult's place of dwelling;

(c) Consent to health or other care, treatment, or service for the adult;

(d) If a conservator for the adult has not been appointed, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the adult or pay funds for the adult's benefit;

(e) To the extent reasonable, delegate to the adult responsibility for a decision affecting the adult's well-being; and

(f) Receive personally identifiable health-care information regarding the adult.

(2) In exercising a guardian's power under subsection (1)(b) to establish the adult's place of dwelling, the guardian must:

(a) Select a residential setting the guardian believes the adult would select if the adult were able, in accordance with the decision-making standard in Section 93-20-312(4) and (5). If the guardian does not know and cannot reasonably determine what setting the ward likely would choose if able, or if the guardian reasonably believes the decision the adult would make would unreasonably harm or endanger the welfare or personal or financial interests of the adult, the guardian must choose in accordance with Section 93-20-312(5) a residential setting that is consistent with the adult's best interest;

(b) In selecting among residential settings, give priority to a residential setting in a location that will allow the adult to interact with persons important to the adult and meet the adult's needs in the least restrictive manner reasonably feasible unless to do so would be inconsistent with the

decision-making standard in Section 93-20-312(4) and (5);

(c) Establish or move the permanent place of dwelling of the adult to a nursing home, mental-health facility, or other facility that places restrictions on the adult's ability to leave or have visitors only if:

(i) The establishment or move is in the guardian's plan under Section 93-20-315;

(ii) The court authorizes the establishment or move; or

(iii) The guardian gives notice of the establishment or move at least fourteen (14) days before the establishment or move to the adult and all persons entitled to notice under Section 93-20-309(4) or court order, and no objection is filed;

(d) Establish or move the place of dwelling of the adult outside this state only if consistent with the guardian's plan and authorized by the court by specific order;

(e) Take action that would result in the sale of or surrender of the lease to the primary dwelling of the adult only if:

(i) The action is specifically included in the guardian's plan under Section 93-20-315;

(ii) The court authorizes the action by specific order; or

(iii) Notice of the action was given at least fourteen (14) days before the action to the adult and all persons entitled to the notice under Section 93-20-309(4) or court order and no objection has been filed; and

(f) Notify the court that the adult's dwelling or permanent residence has become so damaged by fire, flood, or other emergency circumstance that the guardian has had to temporarily or permanently relocate the adult to another residential setting.

(3) In exercising a guardian's power under subsection (1)(c) to make health-care decisions, the guardian shall:

(a) Involve the adult in decision-making to the extent reasonably feasible, including, when practicable, by encouraging and supporting the adult in

understanding the risks and benefits of health-care options;

(b) Defer to a decision by an agent under an advanced healthcare directive executed by the adult and cooperate to the extent feasible with the agent making the decision; and

(c) Take into account:

(i) The risks and benefits of treatment options; and
(ii) The current and previous wishes and values of the adult, if known or reasonably ascertainable by the guardian.

***See* § 93-20-314 Special limitations on guardian's power.**
***See* § 93-20-315 Guardian's plan.**
***See* § 93-20-316 Guardian's well-being report; monitoring of guardianship.**

Removal of Guardian

§ 93-20-317 Removal of guardian for adult; appointment of successor:

(1) Upon petition and for good cause shown, the court may hold a hearing to consider whether to remove a guardian for an adult for failure to perform the guardian's duties and appoint a successor guardian to assume the duties of guardian.

(2) Notice of a petition under this section must be given to the ward, the guardian, and any other person the court determines.

(3) A ward who seeks to remove the guardian and have a successor guardian appointed has the right to choose an attorney for representation in this matter. The court shall award reasonable attorney's fees to the attorney for the adult as provided in Section 93-20-118.

(4) Not later than ten (10) days after appointing a successor guardian, the court shall give notice of the appointment to the adult ward, the adult ward's spouse, parents, children, and any person entitled to notice under a court order.

Termination of Guardianship

§ 93-20-318 Termination or modification of guardianship for adult:

(1) Upon petition and for good cause shown, the court may hold a hearing to consider whether termination of the guardianship exists on the ground that a basis for appointment under Section 93-13-301 does not exist or termination would be in the best interest of the adult or for other good cause; or modification of the guardianship exists on the ground that the extent of protection or assistance granted is not appropriate or for other good cause.

(2) Notice of a petition under this section must be given to the ward, the guardian, and any other person the court determines.

(3) On presentation of prima facie evidence for termination of a guardianship for an adult, the court shall order termination unless it is proven that a basis for appointment of a guardian under Section 93-13-301 exists.

(4) The court shall modify the powers granted to a guardian for an adult if the powers are excessive or inadequate due to a change in the abilities or limitations of the adult, the adult's supports, or other circumstances.

(5) Unless the court otherwise orders for good cause shown, before terminating or modifying a guardianship for an adult, the court shall follow the same procedures to safeguard the rights of the adult which apply to a petition for guardianship.

(6) A ward who seeks to terminate or modify the terms of the guardianship has the right to choose an attorney for representation in the matter. The court shall award reasonable attorney's fees to the attorney for the adult as provided in Section 118.

CHAPTER 15

UNIFORM LAW ON PATERNITY

CHAPTER 15

UNIFORM LAW ON PATERNITY

Jurisdiction

§ 93-9-15 Remedies:

The county court, the circuit court, or the chancery court has jurisdiction of an action under Sections 93-9-1 through 93-9-49, and all remedies for the enforcement of orders awarding custody or for expenses of pregnancy and confinement for a wife, or for education, necessary support and maintenance, or funeral expenses for legitimate children shall apply. The defendant must defend the cause in whichever court the action is commenced. The court has continuing jurisdiction to modify or revoke an order and to increase or decrease amounts fixed by order for future education and necessary support and maintenance. All remedies under the Uniform Interstate Family Support Act, and amendments thereto, are available for enforcement of duties of support and maintenance under Sections 93-9-1 through 93-9-49. Parties to an action to establish paternity shall not be entitled to a jury trial. The court may also order the father to reimburse Medicaid for expenses of the pregnancy and confinement of the mother.

§ 93-9-3 Construction; uniformity of laws:

Nothing herein contained shall be construed as abridging the power and jurisdiction of the chancery courts of the State of Mississippi, exercised over the estates of minors, nor as an abridgment of the power and authority of said chancery courts or the chancellor in vacation or chancery clerk in vacation to appoint guardians for minors. The Uniform Law on Paternity shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

Venue

§ 93-9-17 Venue of actions:

(1) An action under §§ 93-9-1 through 93-9-49 may be brought
in the county where the alleged father is present or has property; or
in the county where the mother resides; or
in the county where the child resides.
However, if the alleged father resides or is domiciled in this state, upon the motion of the alleged father filed within thirty (30) days after the date the action is served upon him, the action shall be removed to the county where the alleged

father resides or is domiciled. If no such motion is filed by the alleged father within thirty (30) days after the action is served upon him, the court shall hear the action in the county in which the action was brought.

(2) Subsequent to an initial filing in an appropriate court, any action regarding paternity, support, enforcement or modification and to which the Department of Human Services is a party may be heard in any county by a court which would otherwise have jurisdiction and is a proper venue. Upon written request by the Department of Human Services, the clerk of the court of the original county shall transfer a certified copy of the court file to the clerk of the appropriate transfer county without need for application to the court. Such written request shall certify that the Department of Human Services has issued timely notification of the transfer in writing to all interested parties. Such written request and notice shall be entered into the court file by the transferring clerk of the transferring court. The transferred action shall remain on the docket of the transferred court in which the action is heard, subject to another such transfer.

Petition is Filed

§ 93-9-9 Enforcement; surname of child; acknowledgment of paternity:

(1) Paternity may be determined upon the petition of the mother, or father, the child or any public authority chargeable by law with the support of the child; provided that such an adjudication after the death of the defendant must be made only upon clear and convincing evidence. If paternity has been lawfully determined, or has been acknowledged in writing according to the laws of this state, the liabilities of the noncustodial parent may be enforced in the same or other proceedings by the custodial parent, the child, or any public authority which has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, necessary support and maintenance, and medical or funeral expenses for the custodial parent or the child. The trier of fact shall receive without the need for third-party foundation testimony certified, attested or sworn documentation as evidence of

(a) childbirth records;

(b) cost of filing fees;

(c) court costs;

(d) services of process fees;

(e) mailing cost;

(f) genetic tests and testing fees;

(g) the department's attorney's fees;

(h) in cases where the state or any of its entities or divisions have provided medical services to the child or the child's mother, all costs of prenatal care, birthing, postnatal care and any other medical expenses incurred by the child or by the mother as a consequence of the mother's pregnancy or delivery; and

(i) funeral expenses.

All costs and fees shall be ordered paid to the Department of Human Services in all cases successfully prosecuted with a minimum of Two Hundred Fifty Dollars ($250.00) in attorney's fees or an amount determined by the court without submitting an affidavit. Proceedings may be instituted at any time until such child attains the age of twenty-one (21) years unless the child has been emancipated as provided in Section 93-5-23 and Section 93-11-65. In the event of court-determined paternity, the surname of the child shall be that of the father, unless the judgment specifies otherwise.

(2) If the alleged father in an action to determine paternity to which the Department of Human Services is a party fails to appear for a scheduled hearing after having been served with process or subsequent notice consistent with the Rules of Civil Procedure, his paternity of the child(ren) shall be established by the court if a written declaration in support of establishing paternity made under penalty of perjury to the best of her knowledge, information and belief by the mother averring the alleged father's paternity of the child has accompanied the complaint to determine paternity. The written declaration shall constitute sufficient grounds for the court's finding of the alleged father's paternity without the necessity of the presence or testimony of the mother at the said hearing. The court shall, upon motion by the Department of Human Services, enter a judgment of paternity. . . .

(3) Upon application of both parents to the State Board of Health and receipt by the State Board of Health of a sworn acknowledgement of paternity executed by both parents subsequent to the birth of a child born out of wedlock, the birth certificate of the child shall be amended to show such paternity if paternity is not shown on the birth certificate. Upon request of the parents for the legitimization of a child under this section, the surname of the child shall be changed on the certificate to that of the father.

(4) (a) A signed voluntary acknowledgment of paternity is subject to the right of any signatory to rescind the acknowledgment within the earlier of:

(i) One (1) year; or
(ii) The date of a judicial proceeding relating to the child, including a proceeding to establish a support order, in which the signatory is a party.

(b) After the expiration of the one-year period specified in subsection (4)(a)(i) of this section, a signed voluntary acknowledgment of paternity may be challenged in court only on the basis of fraud, duress or material mistake of fact, with the burden of proof upon the challenger; the legal responsibilities, including child support obligations, of any signatory arising from the acknowledgment may not be suspended during the pendency of the challenge, except for good cause shown.

(c) During the one-year time period specified in subsection (4)(a)(i) of this section, the alleged father may request genetic testing through the Department of Human Services in accordance with the provisions of Section 93-9-21.

(d) The one-year time limit, specified in subsection (4)(a)(i) of this section, for the right of the alleged father to rescind the signed voluntary acknowledgement of paternity shall be tolled from the date the alleged father files his formal application for genetic testing with the Department of Human Services until the date the test results are revealed to the alleged father by the department. After the one-year time period has expired, not including any period of time tolled for the purpose of acquiring genetic testing through the department, the provisions of subsection (4)(b) of this section shall apply.

***See* Miss. R. Civ. Pro. 81.**

No Right to a Jury Trial

§ 93-9-15 Remedies:

Parties to an action to establish paternity shall not be entitled to a jury trial.

Paternity Proof for Trial

Genetic Testing

§ 93-9-21 Genetic tests; order and notice; enforcement of order to submit; notice of witness testifying as to sexual intercourse with mother:

(1) (a) In all cases brought pursuant to Title IV-D of the Social Security Act, upon written declarations of the mother, putative father, or the Department of Human Services made under penalty of perjury to the best of his or her knowledge, information and belief alleging paternity, the department may issue an administrative order for paternity testing which requires the mother, putative father and minor child to submit themselves for paternity testing. The department shall send the putative father a copy of the Administrative Order and a Notice for Genetic Testing which shall include the date, time and place for collection of the putative father's genetic sample. The department shall also send the putative father a Notice and Complaint to Establish Paternity which shall specify the date and time certain of the court hearing by certified mail, restricted delivery, return receipt requested. Notice shall be deemed complete as of the date of delivery as evidenced by the return receipt. The required notice may also be delivered by personal service upon the putative father in accordance with Rule 4 of the Mississippi Rules of Civil Procedure insofar as service of an administrative order or notice is concerned.

(b) If the putative father does not submit to genetic testing, the court shall, without further notice, on the date and time previously set through the notice for hearing, review the documentation of the refusal to submit to genetic testing and make a determination as to whether the complaint to establish paternity should be granted. The refusal to submit to such testing shall create a rebuttable presumption of an admission to paternity by the putative father.

(c) In any case in which the Department of Human Services orders genetic testing, the department is required to advance costs of such tests subject to recoupment from the alleged father if paternity is established. If either party challenges the original test results, the department shall order additional testing at the expense of the challenging party.

(2) In any case in which paternity has not been established, the court, on its own motion or on motion of the plaintiff or the defendant, shall order the mother, the alleged father and the child or children to submit to genetic tests and any other tests which reasonably prove or disprove the probability of paternity. If paternity

has been previously established, the court shall only order genetic testing pursuant to Section 93-9-10.

If any party refuses to submit to such tests, the court may resolve the question of paternity against such party or enforce its order for genetic testing as the rights of others and the interest of justice require.

(3) Any party calling a witness or witnesses for the purpose of testifying that they had sexual intercourse with the mother at any possible time of conception of the child whose paternity is in question shall provide all other parties with the name and address of the witness at least twenty (20) days before the trial. If a witness is produced at the hearing for the purpose provided in this subsection but the party calling the witness failed to provide the twenty-day notice, the court may adjourn the proceeding for the purpose of taking a genetic test of the witness before hearing the testimony of the witness if the court finds that the party calling the witness acted in good faith.

(4) The court shall ensure that all parties are aware of their right to request genetic tests under this section.

(5) (a) Genetic tests shall be performed by a laboratory selected from the approved list as prepared and maintained by the Department of Human Services.
(b) The Department of Human Services shall publicly issue a request for proposals, and such requests for proposals when issued shall contain terms and conditions relating to price, technology and such other matters as are determined by the department to be appropriate for inclusion or required by law. After responses to the request for proposals have been duly received, the department shall select the lowest and best bid(s) on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter into contract(s) with one or more of the laboratories submitting proposals. The department shall prepare a list of all laboratories with which it has contracted on these terms. The list and any updates thereto shall be distributed to all chancery clerks. To be eligible to appear on the list, a laboratory must meet the following requirements:

(i) The laboratory is qualified to do business within the State of Mississippi;
(ii) The laboratory can provide test results in less than fourteen (14) days; and
(iii) The laboratory must have participated in the competitive procurement process.

Tests Results

§ 93-9-23 Genetic testing, reports and proceedings on tests:

(1) Genetic testing shall be made by experts qualified as examiners of genetic tests who shall be appointed by the court pursuant to Section 93-9-21(5). The expert shall attach to the report of the test results an affidavit stating in substance:

(a) that the affiant has been appointed by the court to administer the test and shall give his name, address, telephone number, qualifications, education and experience;

(b) how the mother, child and alleged father were identified when the samples were obtained;

(c) who obtained the samples and how, when and where obtained;

(d) the chain of custody of the samples from the time obtained until the tests were completed;

(e) the results of the test and the probability of paternity as calculated by an expert based on the test results; (f) the amount of the fee for performing the test; and

(g) the procedures performed to obtain the test results. In cases initiated or enforced by the Department of Human Services pursuant to Title IV-D of the Social Security Act, the Department of Human Services shall be responsible for paying the costs of any genetic testing when such testing is required by law to establish paternity, subject to recoupment from the defendant if paternity is established.

(2) The expert or laboratory shall send all parties, or the attorney of record if a party is represented by counsel, a copy of the report by first class mail. The expert or laboratory shall file the original report with the clerk of the court along with proof of mailing to the parties or attorneys. A party may challenge the testing procedure within thirty (30) days of the date of mailing the results. If either party challenges the original test results, the court shall order additional testing at the expense of the challenging party.

(3) If the court, in its discretion, finds cause to order additional testing, then it may

do so using the same or another laboratory or expert. If there is no timely challenge to the original test results or if the court finds no cause to order additional testing, then the certified report shall be admitted as evidence in the proceeding as prima facie proof of its contents.

(4) Upon request or motion of any party to the proceeding, the court may require persons making any analysis to appear as a witness and be subject to cross-examination, provided that the request or motion is made at least ten (10) days before the hearing. The court may require the party making the request or motion to pay the costs and/or fees for the expert witness' appearance.

Court's Order of Filiation

§ 93-9-29 Order of filiation:

(1) If the finding be against the defendant, the court shall make an order of filiation, declaring paternity and for the support and education of the child.

(2) The order of filiation shall specify the sum to be paid weekly or otherwise. In addition to providing for the support and education, the order shall also provide for the funeral expenses if the child has died; for the support of the child prior to the making of the order of filiation; and such other expenses as the court may deem proper. In the event the defendant has health insurance available to him through an employer or organization that may extend benefits to the dependents of such defendant, the order of filiation may require the defendant to exercise the option of additional coverage in favor of the child he is legally responsible to support.

(3) The court may require the payment to be made to the mother, or to some person or corporation to be designated by the court as trustee, but if the child is or is likely to become a public charge on a county or the state, the public welfare agent of that county shall be made the trustee. The payment shall be directed to be made to a trustee if the mother does not reside within the jurisdiction of the court. The trustee shall report to the court annually, or oftener as directed by the court, the amounts received and paid over.

Costs

§ 93-9-9 Enforcement; surname of child; acknowledgment of paternity:

(1) All costs and fees shall be ordered paid to the Department of Human Services in all cases successfully prosecuted with a minimum of Two Hundred Fifty Dollars ($250.00) in attorney's fees or an amount determined by the court without submitting an affidavit.

§ 93-9-25 Test costs; compensating experts:

The costs of the blood or other tests required by the court and the compensation of each expert witness appointed by the court shall be fixed at a reasonable amount. It shall be paid as the court shall order.

The court may order that it be paid by the parties in such proportions and at such times as it shall prescribe, and that, after payment by either of the parties or both, all or part or none of it be taxed as costs in the action.

The fee of an expert witness called by a party but not appointed by the court shall be paid by the party calling him but shall not be taxed as costs in the action.

§ 93-9-45 Court costs assessed against defendant:

If the court makes an order of filiation, declaring paternity and for the support and maintenance, and education of the child, court costs, including the cost of the legal services of the attorney representing the petitioner, expert witness fees, the court clerk, sheriff and other costs shall be taxed against the defendant.

Right to Appeal

§ 93-9-41 Review:

An appeal in all cases may be taken by the defendant, a guardian ad litem appointed by the court for the child, the mother or her personal representative, or the public welfare official, from any final order or judgment of any court having jurisdiction of filiation proceedings, as provided for in sections 93-9-1 to 93-9-49, directly to the supreme court within thirty (30) days after the entry of said order of judgment. No appeal however shall operate as a stay of execution unless the defendant shall give the security provided for in sections 93-9-1 to 93-9-49, and further security to pay the costs of such appeal. If any such appeal shall be taken by a guardian ad litem, appointed for the child by the court, the court may in its

discretion allow payment, for the actual disbursements made by the said guardian ad litem for taking appeal. When allowed by the judge and duly audited, said disbursement shall become a county charge and shall be paid by the county.

CHAPTER 16

YOUTH COURT

CHAPTER 16

YOUTH COURT

Youth Court Division in Chancery & County Court

§ 43-21-107 Creation in various counties:

(1) A youth court division is hereby created as a division of the county court of each county now or hereafter having a county court, and the county judge shall be the judge of the youth court unless another judge is named by the county judge as provided by this chapter.

(2) A youth court division is hereby created as a division of the chancery court of each county in which no county court is maintained and any chancellor within a chancery court district shall be the judge of the youth court of that county within such chancery court district unless another judge is named by the senior chancellor of the county or chancery court district as provided by this chapter.

Youth Court Jurisdiction

§ 43-21-151 Exclusive original jurisdiction; exceptions; children under 13:

(1) The youth court shall have exclusive original jurisdiction in all proceedings concerning a delinquent child, a child in need of supervision, a neglected child, an abused child or a dependent child except in the following circumstances:

(a) Any act attempted or committed by a child, which if committed by an adult would be punishable under state or federal law by life imprisonment or death, will be in the original jurisdiction of the circuit court;
(b) Any act attempted or committed by a child with the use of a deadly weapon, the carrying of which concealed is prohibited by Section 97-37-1, or a shotgun or a rifle, which would be a felony if committed by an adult, will be in the original jurisdiction of the circuit court; and
(c) When a charge of abuse of a child first arises in the course of a custody action between the parents of the child already pending in the chancery court and no notice of such abuse was provided prior to such chancery proceedings, the chancery court may proceed with the investigation, hearing and determination of such abuse charge as a part of its hearing and determination of the custody issue as between the parents, notwithstanding the other provisions of the Youth Court Law. The proceedings in chancery court on the abuse charge shall be confidential in the same manner as provided in youth court proceedings.

When a child is expelled from the public schools, the youth court shall be notified of the act of expulsion and the act or acts constituting the basis for expulsion.

(2) Jurisdiction of the child in the cause shall attach at the time of the offense and shall continue thereafter for that offense until the child's twentieth birthday, unless sooner terminated by order of the youth court. The youth court shall not have jurisdiction over offenses committed by a child on or after his eighteenth birthday.

(3) No child who has not reached his thirteenth birthday shall be held criminally responsible or criminally prosecuted for a misdemeanor or felony; however, the parent, guardian or custodian of such child may be civilly liable for any criminal acts of such child. No child under the jurisdiction of the youth court shall be held criminally responsible or criminally prosecuted by any court for any act designated as a delinquent act, unless jurisdiction is transferred to another court under Section 43-21-157.

(4) The youth court shall also have jurisdiction of offenses committed by a child which have been transferred to the youth court by an order of a circuit court of this state having original jurisdiction of the offense, as provided by Section 43-21-159.

(5) The youth court shall regulate and approve the use of teen court as provided in Section 43-21-753.

(6) Nothing in this section shall prevent the circuit court from assuming jurisdiction over a youth who has committed an act of delinquency upon a youth court's ruling that a transfer is appropriate pursuant to Section 43-21-157.

Youth Court Personnel

§ 9-9-29 Court of record; clerk; sheriff:

The county court shall be a court of record and the clerk of the circuit court shall be the clerk of the county court, and he or his deputy shall attend all the sessions of the county court, and have present at all sessions, all books, records, files, and papers pertaining to the term then in session. The dockets, minutes, and records of the county court shall be kept, so far as is practicable, in the same manner as are those of the circuit court as provided by statute and the Mississippi Rules of Civil Procedure. . . .

§ 43-21-111 Regular and special referees:

(1) In any county not having a county court or family court the judge may appoint as provided in Section 43-21-123 regular or special referees who shall be

attorneys at law and members of the bar in good standing to act in cases concerning children within the jurisdiction of the youth court, and a regular referee shall hold office until removed by the judge. The requirement that regular or special referees appointed pursuant to this subsection be attorneys shall apply only to regular or special referees who were not first appointed regular or special referees prior to July 1, 1991.

(2) Any referee appointed pursuant to subsection (1) of this section shall be required to receive judicial training approved by the Mississippi Judicial College and shall be required to receive regular annual continuing education in the field of juvenile justice. The amount of judicial training and annual continuing education which shall be satisfactory to fulfill the requirements of this section shall conform with the amount prescribed by the Rules and Regulations for Mandatory Continuing Judicial Education promulgated by the Supreme Court. The Administrative Office of Courts shall maintain a roll of referees appointed under this section, shall enforce the provisions of this subsection and shall maintain records on all such referees regarding such training. Should a referee miss two (2) consecutive training sessions sponsored or approved by the Mississippi Judicial College as required by this subsection or fail to attend one (1) such training session within six (6) months of their initial appointment as a referee, the referee shall be disqualified to serve and be immediately removed as a referee and another member of the bar shall be appointed as provided in this section.

(3) The judge may direct that hearings in any case or class of cases be conducted in the first instance by the referee. The judge may also delegate his own administrative responsibilities to the referee.

(4) All hearings authorized to be heard by a referee shall proceed in the same manner as hearings before the youth court judge. A referee shall possess all powers and perform all the duties of the youth court judge in the hearings authorized to be heard by the referee.

(5) An order entered by the referee shall be mailed immediately to all parties and their counsel. A rehearing by the judge shall be allowed if any party files a written motion for a rehearing or on the court's own motion within three (3) days after notice of referee's order. The youth court may enlarge the time for filing a motion for a rehearing for good cause shown. Any rehearing shall be upon the record of the hearing before the referee, but additional evidence may be admitted in the discretion of the judge. A motion for a rehearing shall not act as a supersedeas of the referee's order, unless the judge shall so order. . . .

(7) Upon request of the boards of supervisors of two (2) or more counties, the judge of the chancery court may appoint a suitable person as referee to two (2) or

more counties within his district, and the payment of salary may be divided in such ratio as may be agreed upon by the boards of supervisors.

§ 43-21-119 Personnel:

The judge or his designee shall appoint as provided in Section 43-21-123 sufficient personnel, responsible to and under the control of the youth court, to carry on the professional, clerical and other work of the youth court. The cost of these persons appointed by the youth court shall be paid as provided in Section 43-21-123 out of any available funds budgeted for the youth court by the board of supervisors.

§ 43-21-121 Appointment of guardian ad litem:

(1) The youth court shall appoint a guardian ad litem for the child:

(a) When a child has no parent, guardian or custodian;
(b) When the youth court cannot acquire personal jurisdiction over a parent, a guardian or a custodian;
(c) When the parent is a minor or a person of unsound mind;
(d) When the parent is indifferent to the interest of the child or if the interests of the child and the parent, considered in the context of the cause, appear to conflict;
(e) In every case involving an abused or neglected child which results in a judicial proceeding; or
(f) In any other instance where the youth court finds appointment of a guardian ad litem to be in the best interest of the child.

(2) The guardian ad litem shall be appointed by the court when custody is ordered or at the first judicial hearing regarding the case, whichever occurs first.

(3) In addition to all other duties required by law, a guardian ad litem shall have the duty to protect the interest of a child for whom he has been appointed guardian ad litem. The guardian ad litem shall investigate, make recommendations to the court or enter reports as necessary to hold paramount the child's best interest. The guardian ad litem is not an adversary party and the court shall ensure that guardians ad litem perform their duties properly and in the best interest of their wards. The guardian ad litem shall be a competent person who has no adverse interest to the minor. The court shall ensure that the guardian ad litem is adequately instructed on the proper performance of his duties.

(4) The court, including a county court serving as a youth court, may appoint either a suitable attorney or a suitable layman as guardian ad litem. In cases where the court appoints a layman as guardian ad litem, the court shall also appoint an attorney to represent the child. From and after January 1, 1999, in order to be eligible for an appointment as a guardian ad litem, such attorney or layperson must have received child protection and juvenile justice training provided by or approved by the Mississippi Judicial College within the year immediately preceding such appointment. The Mississippi Judicial College shall determine the amount of child protection and juvenile justice training which shall be satisfactory to fulfill the requirements of this section. The Administrative Office of Courts shall maintain a roll of all attorneys and laymen eligible to be appointed as a guardian ad litem under this section and shall enforce the provisions of this subsection.

(5) Upon appointment of a guardian ad litem, the youth court shall continue any pending proceedings for a reasonable time to allow the guardian ad litem to familiarize himself with the matter, consult with counsel and prepare his participation in the cause. The youth court shall issue an order of assignment that grants the guardian ad litem authority to review all relevant documents concerning the minor child and to interview all parties and witnesses involved in proceedings concerning the minor child for whom the guardian ad litem is appointed.

(6) Upon order of the youth court, the guardian ad litem shall be paid a reasonable fee as determined by the youth court judge or referee out of the county general fund as provided under Section 43-21-123. To be eligible for such fee, the guardian ad litem shall submit an accounting of the time spent in performance of his duties to the court.

(7) (a) The court, in its sound discretion, may appoint a volunteer trained layperson to assist children subject to the provisions of this section in addition to the appointment of a guardian ad litem. If the court utilizes his or her discretion as prescribed under this subsection, a volunteer Court-Appointed Special Advocate (CASA) shall be appointed from a program that supervises the volunteer and meets all state and national CASA standards to advocate for the best interests of children in abuse and neglect proceedings. To accomplish the assignment of a CASA volunteer, the court shall issue an order of assignment that shall grant the CASA volunteer the authority, equal to that of the guardian ad litem, to review all relevant documents and to interview all parties and witnesses involved in the proceeding in which he or she is appointed. Except as otherwise ordered by the court, the assignment of a CASA volunteer for a child shall include subsequent proceedings through permanent placement of the child.

(b) Before assigning a CASA volunteer as prescribed under this subsection, the youth court judge shall determine if the volunteer has sufficient qualifications, training and ability to serve as a CASA volunteer, including his or her ability to represent and advocate for the best interests of children assigned to him or her. No volunteer shall be assigned until a comprehensive criminal background check has been conducted.

All CASA volunteers shall:

(i) Be sworn in by a judge of the court;
(ii) Swear or affirm to abide by all laws, regulations, and orders of the court;
(iii) Swear or affirm to advocate what he or she perceives to be in the best interests of the child for whom he or she is assigned in all matters pending before the court;
(iv) Provide independent, factual information to the court regarding the children and cases to which they are assigned;
(v) Advocate on behalf of the children involved in the cases to which they are assigned what they perceive to be in the best interests of the children; and
(vi) Monitor proceedings in cases to which they have been assigned and advise and assist the court in its determination of the best interests of the children involved.

(c) Regarding any case to which a CASA volunteer has been assigned, the CASA volunteer:

(i) Shall be notified by the court of all court proceedings and hearings of any kind pertaining to the child;
(ii) Shall be notified by the Department of Child Protection Services of all administrative review hearings;
(iii) Shall be entitled to attend all court proceedings and hearings of any kind pertaining to the child;
(iv) May be called as a witness in the proceedings by any party or by the court and may request of the court the opportunity to appear as a witness; and
(v) Shall be given access to all portions of the court record relating to proceedings pertaining to the child and the child's family.

(d) Upon application to the court and notice to all parties, the court shall grant the CASA volunteer access to other information, including the department records as provided in Section 43-21-261, relating to the child and the child's family and to other matters involved in the proceeding in which he or she is appointed. All records and information requested or

reviewed by the CASA volunteer in the course of his or her assignment shall be deemed confidential and shall not be disclosed by him except pursuant to court order. All records and information shall only be disclosed as directed by court order and shall be disclosed as directed by court order and shall be subject to whatever protective order the court deems appropriate.

1. In the absence of clear statutory authority, may the Youth Court Judge assign cases to a CASA volunteer, referred to as a non-professional GAL/CASA volunteer, without violating the statutory youth court confidentiality requirements found in Section 43-21-257, -259,-261?

1. The Youth Court Judge may assign cases to a CASA volunteer pursuant to Section 43-21-121(7) of the Mississippi Code, which specifically provides that the, "[youth] court, in its sound discretion, may appoint a volunteer trained layperson to assist children subject to the provisions of this section in addition to the appointment of a guardian ad litem." Of course, as the statute provides, the appointment of the volunteer is to assist children in addition to the appointment of a guardian ad litem. In order to disclose records to the volunteer the Court must provide by court order the extent and purpose of the disclosure pursuant to Section 43-21-261.

2. Are Youth Courts required to enter into Memorandum of Understanding with a non-professional GAL/CASA volunteer organization in order to obtain services of the CASA volunteer, referred to as non-professional GAL/CASA volunteer?

2. Youth Courts are not required by law to enter into a Memorandum of Understanding with CASA to obtain its services. However, as set forth in the answer to question number (1) the youth court must enter an order appointing the volunteer and authorizing the disclosure of records to the volunteer. Whether or not the court enters into the Memorandum of Understanding is within the discretion of the court. Without commenting on the specific provisions of the Memorandum, it is the opinion of this office, that the court has the authority to enter into an agreement/memorandum with CASA, so long as it does not violate any provisions of the Youth Court Act and/or the newly enacted Uniform Rules of Youth Court Practice.

Re: Use of CASA in Youth Court, Opinion No. 2009-00219 (Miss. A.G. June 5, 2009).

Youth Court Records - Confidential

§ 43-21-251 Court records:

(1) The court records of the youth court shall include:

(a) A general docket in which the clerk of the youth court shall enter the names of the parties in each cause, the date of filing the petition, any other pleadings, all other papers in the cause, issuance and return of process, and a reference by the minute book and page to all orders made therein. The general docket shall be duly indexed in the alphabetical order of the names of the parties.

Section 43-21-251 lists those documents included in the court records of the youth court. It is clear from that section that the records set forth in Section 43-21-251 are to be in possession of the clerk of the youth court, which is the chancery clerk in counties not having a county court. These records include all papers and pleadings filed in a cause and the docket book and minute book of youth court. **Youth Court, Opinion No. 1993-0604 (Miss. A. G. Sept. 22, 1993).**

(b) All the papers and pleadings filed in a cause. The papers in every cause shall be marked with the style and number of the cause and the date when filed. All the papers filed in a cause shall be kept in the same file, and all the files shall be kept in numerical order.

(c) All social records of a youth court, which shall include all intake records, social summaries, medical examinations, mental health examinations, transfer studies and all other information obtained and prepared in the discharge of official duty for the youth court.

(i) A "social summary" is an investigation of the personal and family history and the environment of a child who is the subject of a youth court cause. The social summary should describe all reasonable appropriate alternative dispositions. The social summary should contain a specific plan for the care and assistance to the child with a detailed explanation showing the necessity for the proposed plan of disposition.
(ii) A "medical examination" is an examination by a physician of a child who is the subject of a youth court cause or of his parent. The youth court may order a medical examination at any time after the intake unit has received a written complaint. Whenever possible, a

medical examination shall be conducted on an outpatient basis. A medical examination of a parent of the child who is the subject of the cause shall not be ordered unless the physical or mental ability of the parent to care for the child is a relevant issue in the particular cause and the parent to be examined consents to the examination. (iii) A "mental health examination" is an examination by a psychiatrist or psychologist of a child who is the subject of a youth court cause or of his parent. The youth court may order a mental health examination at any time after the intake unit has received a written complaint. Whenever possible, a mental health examination shall be conducted on an outpatient basis. A mental health examination of a parent of the child who is the subject of a cause shall not be ordered unless the physical or mental ability of the parent to care for the child is a relevant issue in the particular cause and the parent to be examined consents to the examination. (iv) A "transfer study" is a social summary which addresses the factors set forth in Section 43-21-157(5). A transfer study shall not be admissible evidence nor shall it be considered by the court at any adjudicatory hearing. It shall be admissible evidence at a transfer or disposition hearing.

(d) A minute book in which the clerk shall record all the orders of the youth court.

(e) Proceedings of the youth court and evidence.

(f) All information obtained by the youth court from the Administrative Office of Courts pursuant to a request under Section 43-21-261(15).

(2) The records of the youth court and the contents thereof shall be kept confidential and shall not be disclosed except as provided in Section 43-21-261.

(3) The court records of the youth court may be kept on computer in the manner provided for storing circuit court records and dockets as provided in Section 9-7-171. The Administrative Office of Courts shall recommend to the youth courts a uniform format to maintain the records of such courts.

§ 43-21-259 Other confidential records:

All other records involving children and the contents thereof shall be kept confidential and shall not be disclosed except as provided in section 43-21-261.

§ 43-21-255 Disclosure of law enforcement records:

(1) Except as otherwise provided by this section, all records involving children made and retained by law enforcement officers and agencies or by the youth court prosecutor and the contents thereof shall be kept confidential and shall not be disclosed except as provided in Section 43-21-261.

(2) A child in the jurisdiction of the youth court and who has been taken into custody for an act, which if committed by an adult would be considered a felony or offenses involving possession or use of a dangerous weapon or any firearm, may be photographed or fingerprinted or both. Any law enforcement agency taking such photographs or fingerprints shall immediately report the existence and location of the photographs and fingerprints to the youth court. Copies of fingerprints known to be those of a child shall be maintained on a local basis only. Such copies of fingerprints may be forwarded to another local, state or federal bureau of criminal identification or regional depository for identification purposes only. Such copies of fingerprints shall be returned promptly and shall not be maintained by such agencies.

(3) Any law enforcement record involving children who have been taken into custody for an act, which if committed by an adult would be considered a felony and/or offenses involving possession or use of a dangerous weapon including photographs and fingerprints, may be released to a law enforcement agency supported by public funds, youth court officials and appropriate school officials without a court order under Section 43-21-261. Law enforcement records shall be released to youth court officials and to appropriate school officials upon written request. Except as provided in subsection (4) of this section, any law enforcement agency releasing such records of children in the jurisdiction of the youth court shall immediately report the release and location of the records to the youth court. The law enforcement agencies, youth court officials and school officials receiving such records are prohibited from using the photographs and fingerprints for any purpose other than for criminal law enforcement and juvenile law enforcement. Each law enforcement officer or employee, each youth court official or employee and each school official or employee receiving the records shall submit to the sender a signed statement acknowledging his or her duty to maintain the confidentiality of the records. In no instance shall the fact that such records of children in the jurisdiction of the youth court exist be conveyed to any private individual, firm, association or corporation or to any public or quasi-public agency the duties of which do not include criminal law enforcement or juvenile law enforcement.

(4) When a child's driver's license is suspended for refusal to take a test provided under the Mississippi Implied Consent Law, the law enforcement agency shall report such refusal, without a court order under Section 43-21-261, to the

Commissioner of Public Safety in the same manner as such suspensions are reported in cases involving adults.

(5) All records involving a child convicted as an adult or who has been twice adjudicated delinquent for a sex offense as defined by Section 45-33-23, Mississippi Code of 1972, shall be public and shall not be kept confidential.

§ 43-21-257 Confidentiality of agency records:

(1) Unless otherwise provided in this section, any record involving children, including valid and invalid complaints, and the contents thereof maintained by the Department of Human Services or Department of Child Protection Services, or any other state agency, shall be kept confidential and shall not be disclosed except as provided in Section 43-21-261.

(2) The Office of Youth Services shall maintain a state central registry containing the number and disposition of all cases together with such other useful information regarding those cases as may be requested and is obtainable from the records of the youth court. The Office of Youth Services shall annually publish a statistical record of the number and disposition of all cases, but the names or identity of any children shall not be disclosed in the reports or records. The Office of Youth Services shall adopt such rules as may be necessary to carry out this subsection. The central registry files and the contents thereof shall be confidential and shall not be open to public inspection. Any person who discloses or encourages the disclosure of any record involving children from the central registry shall be subject to the penalty in Section 43-21-267. The youth court shall furnish, upon forms provided by the Office of Youth Services, the necessary information, and these completed forms shall be forwarded to the Office of Youth Services. The Department of Human Services and its employees are exempt from any civil liability as a result of any action taken pursuant to the compilation or release of information on the central registry under this section and any other applicable section of this code, unless determined that an employee has willfully and maliciously violated the rules and administrative procedures of the department pertaining to the central registry or any section of this code. If an employee is determined to have willfully and maliciously performed such a violation, said employee shall not be exempt from civil liability in this regard.

(3) The Department of Child Protection Services shall maintain a state central registry on neglect and abuse cases containing

(a) the name, address and age of each child,
(b) the nature of the harm reported,
(c) the name and address of the person responsible for the care of the child, and

(d) the name and address of the substantiated perpetrator of the harm reported.

"Substantiated perpetrator" shall be defined as an individual who has committed an act(s) of sexual abuse or physical abuse that would otherwise be deemed as a felony or any child neglect that would be deemed as a threat to life. A name is to be added to the registry only based upon a criminal conviction or an adjudication by a youth court judge or court of competent jurisdiction, ordering that the name of the perpetrator be listed on the central registry. The central registry shall be confidential and shall not be open to public inspection. Any person who discloses or encourages the disclosure of any record involving children from the central registry without following the rules and administrative procedures of the department shall be subject to the penalty in Section 43-21-267. The Department of Child Protection Services and its employees are exempt from any civil liability as a result of any action taken pursuant to the compilation or release of information on the central registry under this section and any other applicable section of this code, unless determined that an employee has willfully and maliciously violated the rules and administrative procedures of the department pertaining to the central registry or any section of this code. If an employee is determined to have willfully and maliciously performed such a violation, said employee shall not be exempt from civil liability in this regard.

(4) The Mississippi State Department of Health may release the findings of investigations into allegations of abuse within licensed day care centers made under the provisions of Section 43-21-353(8) to any parent of a child who is enrolled in the day care center at the time of the alleged abuse or at the time the request for information is made. The findings of any such investigation may also be released to parents who are considering placing children in the day care center. No information concerning those investigations may contain the names or identifying information of individual children.

The Department of Health shall not be held civilly liable for the release of information on any findings, recommendations or actions taken pursuant to investigations of abuse that have been conducted under Section 43-21-353(8).

Disclosure of Records

§ 43-21-261 Disclosure of records:

(1) Except as otherwise provided in this section, records involving children shall not be disclosed, other than to necessary staff or officials of the youth court, a guardian ad litem appointed to a child by the court, or a Court-Appointed Special Advocate (CASA) volunteer who may be assigned in an abuse and neglect case, except pursuant to an order of the youth court specifying the person or persons to

whom the records may be disclosed, the extent of the records which may be disclosed and the purpose of the disclosure. Such court orders for disclosure shall be limited to those instances in which the youth court concludes, in its discretion, that disclosure is required for the best interests of the child, the public safety, the functioning of the youth court, or to identify a person who knowingly made a false allegation of abuse or neglect, and then only to the following persons:

(a) The judge of another youth court or member of another youth court staff;
(b) The court of the parties in a child custody or adoption cause in another court;
(c) A judge of any other court or members of another court staff, including the chancery court that ordered a forensic interview;
(d) Representatives of a public or private agency providing supervision or having custody of the child under order of the youth court;
(e) Any person engaged in a bona fide research purpose, provided that no information identifying the subject of the records shall be made available to the researcher unless it is absolutely essential to the research purpose and the judge gives prior written approval, and the child, through his or her representative, gives permission to release the information;
(f) The Mississippi Department of Employment Security, or its duly authorized representatives, for the purpose of a child's enrollment into the Job Corps Training Program as authorized by Title IV of the Comprehensive Employment Training Act of 1973 (29 USCS Section 923 et seq.). However, no records, reports, investigations or information derived therefrom pertaining to child abuse or neglect shall be disclosed;
(g) Any person pursuant to a finding by a judge of the youth court of compelling circumstances affecting the health, safety or well-being of a child and that such disclosure is in the best interests of the child or an adult who was formerly the subject of a youth court delinquency proceeding;
(h) A person who was the subject of a knowingly made false allegation of child abuse or neglect which has resulted in a conviction of a perpetrator in accordance with Section 97-35-47 or which allegation was referred by the Department of Child Protection Services to a prosecutor or law enforcement official in accordance with the provisions of Section 43-21-353(4).

Law enforcement agencies may disclose information to the public concerning the taking of a child into custody for the commission of a delinquent act without the necessity of an order from the youth court. The information released shall not identify the child or his address unless the information involves a child convicted as an adult.

Section 43-21-261 sets forth certain provisions that govern the disclosure of youth court records. It provides in part:

> (1) Except as otherwise provided in this section, records involving children shall not be disclosed, other than to necessary staff of the youth court, except pursuant to an order of the youth court specifying the person or persons to whom the records may be disclosed, the extent of the records which may be disclosed and the purpose of the disclosure. Such court orders for disclosure shall be limited to those instances in which the youth court concludes, in its discretion, that disclosure is required for the best interests of the child, the public safety or the functioning of the youth court and then only to the following persons. . . .

The above quoted provisions provide that records containing the names of the parties involved in youth court proceedings are not to be disclosed except upon the order of the court following a finding by the court that such disclosure is in the best interest of the child. It further provides that such disclosures may be made only to certain specified persons. **Judges Authority, Op. Att'y Gen. 2002-0739 (Dec. 20, 2002).**

(2) Any records involving children which are disclosed under an order of the youth court or pursuant to the terms of this section and the contents thereof shall be kept confidential by the person or agency to whom the record is disclosed unless otherwise provided in the order. Any further disclosure of any records involving children shall be made only under an order of the youth court as provided in this section.

(3) Upon request, the parent, guardian or custodian of the child who is the subject of a youth court cause or any attorney for such parent, guardian or custodian, shall have the right to inspect any record, report or investigation relevant to a matter to be heard by a youth court, except that the identity of the reporter shall not be released, nor the name of any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of such person. The attorney for the parent, guardian or custodian of the child, upon request, shall be provided a copy of any record, report or investigation relevant to a matter to be heard by a youth court, but the identity of the reporter must be redacted and the name of any other person must also be redacted if the person or agency making the information available finds that disclosure of the information would be likely to endanger the life, safety or well-being of the person. A record provided to the attorney under this section must remain in the attorney's control and the attorney may not provide copies or access to another person or entity without prior consent of a court with appropriate jurisdiction.

(4) Upon request, the child who is the subject of a youth court cause shall have the right to have his counsel inspect and copy any record, report or investigation which is filed with the youth court or which is to be considered by the youth court at a hearing.

> We then must examine Section 43-21-261, a portion of which is cited in your request. That Section, although requiring an order of the youth court for the release of records involving children in most circumstances, specifically recognizes a right to inspect the records which inures to specified individuals. . . . The section then goes on to list 7 specific persons or entities to whom orders of disclosure for records involving children may be issued. But, as recognized by the first line of the above cited provision, Section 43-21-261 also provides exceptions to the general prohibition against disclosure absent a court order. We find the following language in 43-21-261(3) and (4):
>
> > (3) Upon request, the parent, guardian or custodian of the child who is the subject of a youth court cause or any attorney for such parent, guardian or custodian, shall have the right to inspect any record, report or investigation which is to be considered by the youth court at a hearing, except that the identity of the reporter shall not be released, nor the name of any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of such person.
> >
> > (4) Upon request, the child who is the subject of a youth court cause shall have the right to have his counsel inspect and copy any record, report or investigation which is filed with the youth court.
>
> It is the opinion of the Attorney General that the above provisions of Section 43-21-261, which grant to a parent, guardian, custodian (or their attorney) or the attorney representing a child in a youth court action the right to inspect the records, allow disclosure of the records without the prerequisite of an order from the youth court. All that is required is that a request be made by the appropriate party for access to the records. Subsection (3) provides that the right of a parent, guardian or custodian, or their attorney, to access the records is limited to an inspection of the records, and does not permit copying. Further, the right to inspect only applies to any record which is going to be considered by the youth court, and not to any other records which may be in the possession of any agency or individual regarding that child. The right of the attorney representing a child which is the subject of a youth court cause to gain access to a record, report or investigation filed with the youth court is not limited solely to inspection, but also includes the authority to make copies. **Release of Juvenile Records, Opinion No. 2004-0370 (Miss. A. G. July 30, 2004).**

(5) (a) The youth court prosecutor or prosecutors, the county attorney, the district attorney, the youth court defender or defenders, or any attorney representing a child shall have the right to inspect and copy any law enforcement record involving children.
(b) The Department of Child Protection Services shall disclose to a county prosecuting attorney or district attorney any and all records resulting from an investigation into suspected child abuse or neglect when the case has been referred by the Department of Child Protection Services to the county prosecuting attorney or district attorney for criminal prosecution.
(c) Agency records made confidential under the provisions of this section may be disclosed to a court of competent jurisdiction.
(d) Records involving children shall be disclosed to the Division of Victim Compensation of the Office of the Attorney General upon the division's request without order of the youth court for purposes of determination of eligibility for victim compensation benefits.

(6) Information concerning an investigation into a report of child abuse or child neglect may be disclosed by the Department of Child Protection Services without order of the youth court to any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker, family protection worker, family protection specialist, child caregiver, minister, law enforcement officer, or a public or private school employee making that report pursuant to Section 43-21-353(1) if the reporter has a continuing professional relationship with the child and a need for such information in order to protect or treat the child.

(7) Information concerning an investigation into a report of child abuse or child neglect may be disclosed without further order of the youth court to any interagency child abuse task force established in any county or municipality by order of the youth court of that county or municipality.
(8) Names and addresses of juveniles twice adjudicated as delinquent for an act which would be a felony if committed by an adult or for the unlawful possession of a firearm shall not be held confidential and shall be made available to the public.

(9) Names and addresses of juveniles adjudicated as delinquent for murder, manslaughter, burglary, arson, armed robbery, aggravated assault, any sex offense as defined in Section 45-33-23, for any violation of Section 41-29-139(a)(1) or for any violation of Section 63-11-30, shall not be held confidential and shall be made available to the public.

(10) The judges of the circuit and county courts, and presentence investigators for the circuit courts, as provided in Section 47-7-9, shall have the right to inspect any youth court records of a person convicted of a crime for sentencing purposes only.

(11) The victim of an offense committed by a child who is the subject of a youth court cause shall have the right to be informed of the child's disposition by the youth court.

(12) A classification hearing officer of the State Department of Corrections, as provided in Section 47-5-103, shall have the right to inspect any youth court records, excluding abuse and neglect records, of any offender in the custody of the department who as a child or minor was a juvenile offender or was the subject of a youth court cause of action, and the State Parole Board, as provided in Section 47-7-17, shall have the right to inspect such records when the offender becomes eligible for parole.

(13) The youth court shall notify the Department of Public Safety of the name, and any other identifying information such department may require, of any child who is adjudicated delinquent as a result of a violation of the Uniform Controlled Substances Law.

(14) The Administrative Office of Courts shall have the right to inspect any youth court records in order that the number of youthful offenders, abused, neglected, truant and dependent children, as well as children in need of special care and children in need of supervision, may be tracked with specificity through the youth court and adult justice system, and to utilize tracking forms for such purpose.

(15) Upon a request by a youth court, the Administrative Office of Courts shall disclose all information at its disposal concerning any previous youth court intakes alleging that a child was a delinquent child, child in need of supervision, child in need of special care, truant child, abused child or neglected child, as well as any previous youth court adjudications for the same and all dispositional information concerning a child who at the time of such request comes under the jurisdiction of the youth court making such request.

(16) The Administrative Office of Courts may, in its discretion, disclose to the Department of Public Safety any or all of the information involving children contained in the office's youth court data management system known as Mississippi Youth Court Information Delivery System or “MYCIDS.”

(17) The youth courts of the state shall disclose to the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) any youth court records in order that the number of youthful offenders, abused, neglected, truant and dependent children, as well as children in need of special care and children in need of supervision, may be tracked with specificity through the youth court and adult justice system, and to utilize tracking forms for such purpose. The disclosure

prescribed in this subsection shall not require a court order and shall be made in sortable, electronic format where possible. The PEER Committee may seek the assistance of the Administrative Office of Courts in seeking this information. The PEER Committee shall not disclose the identities of any youth who have been adjudicated in the youth courts of the state and shall only use the disclosed information for the purpose of monitoring the effectiveness and efficiency of programs established to assist adjudicated youth, and to ascertain the incidence of adjudicated youth who become adult offenders.

(18) In every case where an abuse or neglect allegation has been made, the confidentiality provisions of this section shall not apply to prohibit access to a child's records by any state regulatory agency, any state or local prosecutorial agency or law enforcement agency; however, no identifying information concerning the child in question may be released to the public by such agency except as otherwise provided herein.

(19) In every case of child abuse or neglect, if a child's physical condition is medically labeled as medically "serious" or "critical" or a child dies, the confidentiality provisions of this section shall not apply. In such cases, the following information may be released by the Mississippi Department of Child Protection Services: the cause of the circumstances regarding the fatality or medically serious or critical physical condition; the age and gender of the child; information describing any previous reports of child abuse or neglect investigations that are pertinent to the child abuse or neglect that led to the fatality or medically serious or critical physical condition; the result of any such investigations; and the services provided by and actions of the state on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or medically serious or critical physical condition.

(20) Any member of a foster care review board designated by the Department of Child Protection Services shall have the right to inspect youth court records relating to the abuse, neglect or child in need of supervision cases assigned to such member for review.

(21) Information concerning an investigation into a report of child abuse or child neglect may be disclosed without further order of the youth court in any administrative or due process hearing held, pursuant to Section 43-21-257, by the Department of Child Protection Services for individuals whose names will be placed on the central registry as substantiated perpetrators.

(22) The Department of Child Protection Services may disclose records involving children to the following:

(a) A foster home, residential child-caring agency or child-placing agency to the extent necessary to provide such care and services to a child;
(b) An individual, agency or organization that provides services to a child or the child's family in furtherance of the child's permanency plan to the extent necessary in providing those services;
(c) Health and mental health care providers of a child to the extent necessary for the provider to properly treat and care for the child;
(d) An educational institution or educational services provider where the child is enrolled or where enrollment is anticipated to the extent necessary for the school to provide appropriate services to the child; and
(e) Any other state agency if the disclosure is necessary to the department in fulfilling its statutory responsibilities in protecting the best interests of the child.

Sealing Youth Court Records

§ 43-21-263 Sealing of records:

(1) The youth court may order the sealing of records involving children:

(a) if the child who was the subject of the cause has attained twenty (20) years of age;

(b) if the youth court dismisses the cause; or

(c) if the youth court sets aside an adjudication in the cause.

(2) The youth court may, at any time, upon its own motion or upon application of a party to a youth court cause, order the sealing or unsealing of the records involving children.

Destruction of Youth Court Records

§ 43-21-265 Destruction of records:

The youth court, in its discretion, may order the destruction of any records involving children except medical or mental health examinations as defined in Section 43-21-253. This order shall be directed to all persons maintaining the records, shall order their physical destruction by an appropriate means specified by the youth court and shall require the persons to file with the youth court a written report of compliance with the order. No records, however, may be destroyed without the approval of the director of the department of archives and history.

Clerk's Fees

§ 43-21-205 Court costs and fees:

In proceedings under this chapter, no court costs shall be charged against any party to a petition, and no salaried officer of the state, county or any municipality, nor any youth court counselor, nor any witness other than an expert witness shall be entitled to receive any fee for any service rendered to the youth court or for attendance in the youth court in any proceedings under this chapter; but the fees of the circuit and chancery clerks in youth court cases originating by petition shall be paid as is provided by law for like services in other cases and shall be paid by the county on allowance of the board of supervisors on an itemized cost bill approved by the judge. These costs shall be paid out of the general fund. No clerk shall be allowed compensation for attendance in youth court.

If there is a cost bill it is prepared by the clerk of the court, approved by the judge and placed on the minutes of the court. We point out that section 43-21-205 allows a chancery or circuit clerk to be paid fees from the county for youth court work. **Youth Court, Opinion No. 1993-0604 (Miss. A. G. Sept. 22, 1993).**

CHAPTER 17

COMMITMENTS

CHARTS

CHAPTER 17

COMMITMENT OF MENTALLY ILL PERSONS

Jurisdiction

§ 41-21-63 Commitment proceedings; jurisdiction of chancery court and circuit court:

(1) No person, other than persons charged with crime, shall be committed to a public treatment facility except under the provisions of Sections 41-21-61 through 41-21-107 or 43-21-611 or 43-21-315. However, nothing herein shall be construed to repeal, alter or otherwise affect the provisions of Section 35-5-31 or to affect or prevent the commitment of persons to the Veterans Administration or other agency of the United States under the provisions of and in the manner specified in those sections.
(2)(a) The chancery court, or the chancellor in vacation, shall have jurisdiction under Sections 41-21-61 through 41-21-107 except over persons with unresolved felony charges unless paragraph (b) of this subsection applies. . . .

Venue

§ 41-21-65 Affidavit:

(5) If any person is alleged to be in need of treatment, any relative of the person, or any interested person, may make affidavit of that fact and shall file the Uniform Civil Commitment Affidavit with the clerk of the chancery court of the county in which the person alleged to be in need of treatment resides, but the chancellor or duly appointed special master may, in his or her discretion, hear the matter in the county in which the person may be found. . . .

Affidavit is Filed

§ 41-21-65 Affidavit; legislative intent; form; fees:

(1) It is the intention of the Legislature that the filing of an affidavit under this section be a simple, inexpensive, uniform, and streamlined process for the purpose of facilitating and expediting the care of individuals in need of treatment.

(2) The Uniform Civil Commitment Affidavit developed by the Department of Mental Health under this section must be provided by the clerk of the chancery court to any party or affiant seeking a civil commitment under this section, and must be utilized in all counties to commence civil commitment proceedings under this section. The affidavit must be made available to the public on the website of the Mississippi Department of Mental Health.

(3) The Department of Mental Health, in consultation with the Mississippi Chancery Clerks Association, the Mississippi Conference of Chancery Court Judges and the Mississippi Association of Community Mental Health Centers, must develop a written guide setting out the steps in the commitment process no later than January 1, 2020. The guide shall be designated as the "Uniform Civil Commitment Guide" and must include, but not be limited to, the following:

(a) Steps in the civil commitment process from affidavit to commitment, written in easily understandable layman's terms;
(b) A schedule of fees and assessments that will be charged to commence a commitment proceeding under this section;
(c) Eligibility requirements and instructions for filing a pauper's affidavit; and
(d) A statement on the front cover of the guide advising that persons wishing to pursue a civil commitment under this section are not required to retain an attorney for any portion of the commitment process.

(4) Immediately upon availability, but no later than January 1, 2020, the Uniform Civil Commitment Guide must be provided by the clerk of the chancery court to any party or affiant seeking a civil commitment under this section and also must be made available to the public on the website of the Mississippi Department of Mental Health.

(5) If any person is alleged to be in need of treatment, any relative of the person, or any interested person, may make affidavit of that fact and shall file the Uniform Civil Commitment Affidavit with the clerk of the chancery court of the county in which the person alleged to be in need of treatment resides, but the chancellor or duly appointed special master may, in his or her discretion, hear the matter in the county in which the person may be found. The affidavit shall set forth the name and address of the proposed patient's nearest relatives and whether the proposed patient resides or has visitation rights with any minor children, if known, and the reasons for the affidavit. The affidavit must contain factual descriptions of the proposed patient's recent behavior, including a description of the behavior, where it occurred, and over what period of time it occurred, if known. Each factual allegation may be supported by observations of witnesses named in the affidavit. The Department of Mental Health, in consultation with the Mississippi Chancery Clerks' Association, shall develop a simple, one-page affidavit form for the use of affiants as provided in this section. The affidavit also must state whether the affiant has consulted with a Community Mental Health Center or a physician to determine whether the alleged acts by the proposed respondent warrant civil commitment in lieu of other less-restrictive treatment options. No chancery clerk shall require an affiant to retain an attorney for the filing of an affidavit under this section.

Clerk's Fees

(6) The chancery clerk may charge a total filing fee for all services equal to the amount set out in Section 25-7-9(o), and the appropriate state and county assessments as required by law which include, but are not limited to, assessments for the Judicial Operation Fund (Section 25-7-9(3)(b)); the Electronic Court System Fund (Section 25-7-9(3)(a)); the Civil Legal Assistance Fund (Section 25-7-9(1)(k)); the Court Education and Training Fund (Section 37-26-3); State Court Constituent's Fund (Section 37-26-9(4)); and reasonable court reporter's fee. Costs incidental to the court proceedings as set forth in Section 41-21-79 may not be included in the assessments permitted by this subsection. The total of the fees and assessments permitted by this subsection may not exceed One Hundred Fifty Dollars ($150.00).

(7) The prohibition against charging the affiant other fees, expenses, or costs shall not preclude the imposition of monetary criminal penalties under Section 41-21-107 or any other criminal statute, or the imposition by the chancellor of monetary penalties for contempt if the affiant is found to have filed an intentionally false affidavit or filed the affidavit in bad faith for a malicious purpose.

(8) Nothing in this section shall be construed so as to conflict with Section 41-21-63.

Writ Issued

§ 41-21-67 Proceedings upon affidavit; physician or psychologist authority for temporary commitment; Crisis Intervention Teams:

(1) Whenever the affidavit provided for in Section 41-21-65 is filed with the chancery clerk, the clerk, upon direction of the chancellor of the court, shall issue a writ directed to the sheriff of the proper county to take into custody the person alleged to be in need of treatment and to take the person for pre-evaluation screening and treatment by the appropriate community mental health center established under Section 41-19-31. The community mental health center will be designated as the first point of entry for pre-evaluation screening and treatment. If the community mental health center is unavailable, any reputable licensed physician, psychologist, nurse practitioner or physician assistant, as allowed in the discretion of the court, may conduct the pre-evaluation screening and examination as set forth in Section 41-21-69. The order may provide where the person shall be held before being taken for pre-evaluation screening and treatment. However, when the affidavit fails to set forth factual allegations and witnesses sufficient to support the need for treatment, the chancellor shall refuse to direct issuance of the

writ. Reapplication may be made to the chancellor. If a pauper's affidavit is filed by an affiant who is a guardian or conservator of a person in need of treatment, the court shall determine if either the affiant or the person in need of treatment is a pauper and if, the affiant or the person in need of treatment is determined to be a pauper, the county of the residence of the respondent shall bear the costs of commitment, unless funds for those purposes are made available by the state.

In any county in which a Crisis Intervention Team has been established under the provisions of Sections 41-21-131 through 41-21-143, the clerk, upon the direction of the chancellor, may require that the person be referred to the Crisis Intervention Team for appropriate psychiatric or other medical services before the issuance of the writ. . . .

Appointment of Physicians or Medical Personnel

§ 41-21-67 Proceedings upon affidavit; physician or psychologist authority for temporary commitment:

(2) Upon issuance of the writ, the chancellor shall immediately appoint and summon two (2) reputable, licensed physicians or one (1) reputable, licensed physician and either one (1) psychologist, nurse practitioner or physician assistant to conduct a physical and mental examination of the person at a place to be designated by the clerk or chancellor and to report their findings to the clerk or chancellor. However, any nurse practitioner or physician assistant conducting the examination shall be independent from, and not under the supervision of, the other physician conducting the examination. A nurse practitioner or psychiatric nurse practitioner conducting an examination under this chapter must be functioning within a collaborative or consultative relationship with a physician as required under Section 73-15-20(3). In all counties in which there is a county health officer, the county health officer, if available, may be one (1) of the physicians so appointed. If a licensed physician is not available to conduct the physical and mental examination within forty-eight (48) hours of the issuance of the writ, the court, in its discretion and upon good cause shown, may permit the examination to be conducted by the following: (a) two (2) nurse practitioners, one (1) of whom must be a psychiatric nurse practitioner; or (b) one (1) psychiatric nurse practitioner and one (1) psychologist or physician assistant. Neither of the physicians nor the psychologist, nurse practitioner or physician assistant selected shall be related to that person in any way, nor have any direct or indirect interest in the estate of that person nor shall any full-time staff of residential treatment facilities operated directly by the State Department of Mental Health serve as examiner.

Appointment of Attorney

§ 41-21-67 Proceedings upon affidavit; physician or psychologist authority for temporary commitment:

(3) The clerk shall ascertain whether the respondent is represented by an attorney, and if it is determined that the respondent does not have an attorney, the clerk shall immediately notify the chancellor of that fact. If the chancellor determines that the respondent for any reason does not have the services of an attorney, the chancellor shall immediately appoint an attorney for the respondent at the time the examiners are appointed. . . .

Pre-Hearing Detention

§ 41-21-67 Proceedings upon affidavit; physician or psychologist authority for temporary commitment:

(4) If the chancellor determines that there is probable cause to believe that the respondent is mentally ill and that there is no reasonable alternative to detention, the chancellor may order that the respondent be retained as an emergency patient at any licensed medical facility for evaluation by a physician, nurse practitioner or physician assistant and that a peace officer transport the respondent to the specified facility. If the community mental health center serving the county has partnered with Crisis Intervention Teams under the provisions of Sections 41-21-131 through 41-21-143, the order may specify that the licensed medical facility be a designated single point of entry within the county or within an adjacent county served by the community mental health center. If the person evaluating the respondent finds that the respondent is mentally ill and in need of treatment, the chancellor may order that the respondent be retained at the licensed medical facility or any other available suitable location as the court may so designate pending an admission hearing. If necessary, the chancellor may order a peace officer or other person to transport the respondent to that facility or suitable location. Any respondent so retained may be given such treatment as is indicated by standard medical practice. However, the respondent shall not be held in a hospital operated directly by the State Department of Mental Health, and shall not be held in jail unless the court finds that there is no reasonable alternative.

> Section 41-21-67(4) authorizes a chancellor or duly appointed special master to order the temporary detention of an individual in jail if he finds probable cause to believe the person is mentally ill and that jail is the only reasonable location for detention. By challenging the chancellor's statutory prerogative to temporarily detain mentally ill persons in jail, the plaintiff launches a facial attack on the constitutionality of the statute. . . . The

court is cognizant of no reason why a county may not, in the interest of societal safety, temporarily detain in jail an individual who has exhibited violent tendencies. If substantive due process is deprived, be it jail or mental health facility, the deprivation is caused by a failure to provide constitutionally adequate food, clothing, shelter, medical care and other safe conditions of confinement - not by any official title placed over the front entrance. Consequently, the court declines to hold that use of jails for temporary detention of persons awaiting civil commitment proceedings is unconstitutional per se. ***Boston v. Lafayette County*, 743 F. Supp. 462, 469 (Miss. 1990).**

Physicians' Examination & Report

§ 41-21-69 Examination; attorney may be present:

(1)(a) The appointed examiners shall immediately make a full inquiry into the condition of the person alleged to be in need of treatment and shall make a mental examination and physical evaluation of the person, and each examiner must make a report and certificate of the findings of all mental and acute physical problems to the clerk of the court. Each report and certificate must set forth the facts as found by the appointed examiner and must state whether the examiner is of the opinion that the proposed patient is suffering a disability defined in Sections 41-21-61 through 41-21-107 and should be committed to a treatment facility. The statement shall include the reasons for that opinion. The examination may be based upon a history provided by the patient and the report and certificate of findings shall include an identification of all mental and physical problems identified by the examination.

(b) If the appointed examiner finds:

(i) the respondent has mental illness;

(ii) the respondent is capable of surviving safely in the community with available supervision from family, friends or others;

(iii) based on the respondent's treatment history and other applicable medical or psychiatric indicia, the respondent is in need of treatment in order to prevent further disability or deterioration that would result in significant deterioration in the ability to carry out activities of daily living; and

(iv) his or her current mental status or the nature of his or her illness limits or negates his or her ability to make an informed decision to seek

voluntarily or comply with recommended treatment;

the appointed examiners shall so show on the examination report and certification and shall recommend outpatient commitment.

The appointed examiners shall also show the name, address and telephone number of the proposed outpatient treatment physician or facility.

(2) The examinations shall be conducted and concluded within forty-eight (48) hours after the order for examination and appointment of attorney, and the certificates of the appointed examiners shall be filed with the clerk of the court within that time, unless the running of that period extends into nonbusiness hours, in which event the certificates must be filed at the beginning of the next business day. However, if the appointed examiners are of the opinion that additional time to complete the examination is necessary, and this fact is communicated to the chancery clerk or chancellor, the clerk or chancellor shall have authority to extend the time for completion of the examination and the filing of the certificate, the extension to be not more than eight (8) hours.

Right for Attorney to be Present

(3) At the beginning of the examination, the respondent shall be told in plain language of the purpose of the examination, the possible consequences of the examination, of his or her right to refuse to answer any questions, and his or her right to have his or her attorney present.

Dismissal

§ 41-21-71 Dismissal or hearing:

If, as a result of the examination, the appointed examiners certify that the person is not in need of treatment, the chancellor or clerk shall dismiss the affidavit without the need for a further hearing. . . .

Hearing

§ 41-21-71 Dismissal or hearing:

If the chancellor or chancery clerk finds, based upon the appointed examiners' certificates and any other relevant evidence, that the respondent is in need of treatment and the certificates are filed with the chancery clerk within forty-eight (48) hours after the order for examination, or extension of that time as provided in Section 41-21-69, the clerk shall immediately set the matter for a hearing. The hearing shall be set within seven (7) days of the filing of the certificates unless an extension is requested by the respondent's attorney. In no event shall the hearing be more than ten (10) days after the filing of the certificates.

§ 41-21-73 Notice and conduct of hearing; allocation of costs:

(1) The hearing shall be conducted before the chancellor. However, the hearing may be held at the location where the respondent is being held. Within a reasonable period of time before the hearing, notice of same shall be provided the respondent and his attorney, which shall include:

(a) notice of the date, time and place of the hearing;
(b) a clear statement of the purpose of the hearing;
(c) the possible consequences or outcome of the hearing;
(d) the facts that have been alleged in support of the need for commitment;
(e) the names, addresses and telephone numbers of the examiner(s); and
(f) other witnesses expected to testify.

(2) The respondent must be present at the hearing unless the chancellor determines that the respondent is unable to attend and makes that determination and the reasons therefor part of the record. At the time of the hearing the respondent shall not be so under the influence or suffering from the effects of drugs, medication or other treatment so as to be hampered in participating in the proceedings. The court, at the time of the hearing, shall be presented a record of all drugs, medication or other treatment that the respondent has received pending the hearing, unless the court determines that such a record would be impractical

and documents the reasons for that determination.

(3) The respondent shall have the right to offer evidence, to be confronted with the witnesses against him and to cross-examine them and shall have the privilege against self-incrimination. The rules of evidence applicable in other judicial proceedings in this state shall be followed.

(4) If the court finds by clear and convincing evidence that the proposed patient is a person with mental illness or a person with an intellectual disability and, if after careful consideration of reasonable alternative dispositions, including, but not limited to, dismissal of the proceedings, the court finds that there is no suitable alternative to judicial commitment, the court shall commit the patient for treatment in the least restrictive treatment facility that can meet the patient's treatment needs. Treatment before admission to a state-operated facility shall be located as closely as possible to the patient's county of residence and the county of residence shall be responsible for that cost. Admissions to state-operated facilities shall be in compliance with the catchment areas established by the State Department of Mental Health. A nonresident of the state may be committed for treatment or confinement in the county where the person was found.

Alternatives to commitment to inpatient care may include, but shall not be limited to:

-voluntary or court-ordered outpatient commitment for treatment with specific reference to a treatment regimen,
-day treatment in a hospital,
-night treatment in a hospital,
-placement in the custody of a friend or relative or
-the provision of home health services.

For persons committed as having mental illness or having an intellectual disability, the initial commitment shall not exceed three (3) months.

(5) No person shall be committed to a treatment facility whose primary problems are the physical disabilities associated with old age or birth defects of infancy.

(6) The court shall state the findings of fact and conclusions of law that constitute the basis for the order of commitment. The findings shall include a listing of less restrictive alternatives considered by the court and the reasons that each was found not suitable.

(7) A stenographic transcription shall be recorded by a stenographer or electronic recording device and retained by the court.

(8) Notwithstanding any other provision of law to the contrary, neither the State Board of Mental Health or its members, nor the State Department of Mental Health or its related facilities, nor any employee of the State Department of Mental Health or its related facilities, unless related to the respondent by blood or marriage, shall be assigned or adjudicated custody, guardianship, or conservatorship of the respondent.

(9) The county where a person in need of treatment is found is authorized to charge the county of the person's residence for the costs incurred while the person is confined in the county where such person was found.

Waiver of Hearing

§ 41-21-76 Waivers:

The respondent in any involuntary commitment proceeding held pursuant to the provisions of Sections 41-21-61 through 41-21-107 may make a knowing and intelligent waiver of his rights in such proceeding, provided that the waiver is made by his attorney with the informed consent of the respondent and with the approval of the court. The reasons for the waiver shall be made a part of the record.

COMMITMENT OF MENTALLY ILL PERSON

Uniform Civil Commitment Affidavit Filed
With the chancery clerk which must include:

-name(s) & address(es) of person's nearest relative(s)
-whether person resides or has visitation rights with any minor children, if known
-reason(s) for the affidavit
-factual description(s) of person's recent behavior, where it occurred, & time period(s) of behavior
§ 41-21-65

↓

Writ Issued
directing sheriff to take person into custody

§ 41-21-67

↓

Appointment of Examiners

-to conduct a mental & physical examination of person

§ 41-21-67

← **Appointment of Attorney**
If person does not have an attorney, court shall appoint an attorney for him/her at time examiners are appointed
§ 41-21-67

→ **Pre-Hearing Detention**
If court finds probable cause to believe person is mentally ill & there is no reasonable alternative, the person may be retained as a patient at a medical facility
§ 41-21-67

↓

Appointed Examiners' Reports Filed with Clerk
within 48 hours after order for examination is issued & attorney is appointed
§ 41-21-69

↓ 7 days

Hearing
-Must be held within 7 days of filing of the examiners' reports unless an extension is requested & then for no more than 10 days after filing
-Person must attend unless court determines unable
-Person may make informed waiver of rights
§§ 41-21-73 & -76

↓

Adjudication
Person confined upon CLEAR & CONVINCING EVIDENCE that he/she is mentally ill or intellectually disabled to least restrictive facility than can meet person's treatment needs.
§ 41-21-73

← Initial commitment cannot exceed 3 months

→ Alternatives to Commitment Include:

-Voluntary outpatient treatment with specific regimen

-Day treatment in hospital

-Night treatment in hospital

-Placement with friend or relative

-Home health services

Outpatient Treatment

§ 41-21-74 Outpatient treatment:

(1) If the commitment order directs outpatient treatment, the outpatient treatment physician may prescribe or administer to the respondent treatment consistent with accepted medical standards.

(2) If the respondent fails or clearly refuses to comply with outpatient treatment, the director of the treatment facility, his designee or an interested person shall make all reasonable efforts to solicit the respondent's compliance. These efforts shall be documented and, if the respondent fails or clearly refuses to comply with outpatient treatment after such efforts are made, such efforts shall be documented with the court by affidavit. Upon the filing of the affidavit, the sheriff of the proper county is authorized to take the respondent into his custody.

(3) The respondent may be returned to the treatment facility as soon thereafter as facilities are available. The respondent may request a hearing within ten (10) days of his return to the treatment facility. Such hearing shall be held pursuant to the requirements set forth in Section 41-21-81.

(4) The chancery court of the county where the public facility is located or the committing court shall have jurisdiction over matters concerning outpatient commitments when such an order is sought subsequent to an inpatient course of treatment pursuant to Sections 41-21-61 through 41-21-107, 43-21-611, 99-13-7 and 99-13-9. An outpatient shall not have or be charged for a recommitment process within a period of twelve (12) months of the initial outpatient order.

Commitment to Treatment Facility

§ 41-21-77 Commitment to treatment facility:

If admission is ordered at a treatment facility, the sheriff, his or her deputy or any other person appointed or authorized by the court shall immediately deliver the respondent to the director of the appropriate facility. Neither the Board of Mental Health or its members, nor the Department of Mental Health or its related facilities, nor any employee of the Department of Mental Health or its related facilities, shall be appointed, authorized or ordered to deliver the respondent for treatment, and no person shall be so delivered or admitted until the director of the admitting institution determines that facilities and services are available. Persons who have been ordered committed and are awaiting admission may be given any such treatment in the facility by a licensed physician as is indicated by standard medical practice. Any county facility used for providing housing, maintenance and medical treatment for involuntarily committed persons pending their transportation and admission to a state treatment facility shall be certified by the State Department of Mental Health under the provisions of Section 41-4-7(kk). No person shall be delivered or admitted to any non-Department of Mental Health treatment facility unless the treatment facility is licensed and/or certified to provide the appropriate level of psychiatric care for persons with mental illness. It is the intent of this Legislature that county-owned hospitals work with regional community mental health/intellectual disability centers in providing care to local patients.

The clerk shall provide the director of the admitting institution with a certified copy of the court order, a certified copy of the appointed examiners' certificates, a certified copy of the affidavit, and any other information available concerning the physical and mental condition of the respondent. Upon notification from the United States Veterans Administration or other agency of the United States government, that facilities are available and the respondent is eligible for care and treatment in those facilities, the court may enter an order for delivery of the respondent to or retention by the Veterans Administration or other agency of the United States government, and, in those cases the chief officer to whom the respondent is so delivered or by whom he is retained shall, with respect to the respondent, be vested with the same powers as the director of the Mississippi State Hospital at Whitfield, or the East Mississippi State Hospital at Meridian, with respect to retention and discharge of the respondent.

Costs of Commitment

§ 41-21-79 Liability for costs:

The costs incidental to the court proceedings including, but not limited to, court costs, prehearing hospitalization costs, cost of transportation, reasonable physician's, psychologist's, nurse practitioner's or physician assistant's fees set by the court, and reasonable attorney's fees set by the court, shall be paid out of the funds of the county of residence of the respondent in those instances where the patient is indigent unless funds for those purposes are made available by the state. However, if the respondent is not indigent, those costs shall be taxed against the respondent or his or her estate. The total amount that may be charged for all of the costs incidental to the court proceedings shall not exceed Four Hundred Dollars ($400.00). Costs incidental to the court proceedings permitted under this section may not be charged to the affiant nor included in the fees and assessments permitted under Section 41-21-65(6).

May a court issue an order requesting the county to compensate the Chancery Clerk for additional services performed that are not statutory functions required to be performed by the clerk and are not addressed in 25-7-9 or elsewhere in the Mississippi Code? May a court order the county to compensate the Chancery Clerk for services rendered related to the mental commitment process over and above the statutory fees provided in 25-7-9 or elsewhere in the Mississippi Code? As you know, Section 25-7-9 of the Mississippi Code provides that a chancery clerk shall receive a certain fee "for all services performed by the clerk with respect to a complaint which shall be payable upon filing and shall accrue to the chancery clerk at the time of filing." It is our opinion that the $75.00 fee would cover all of the normal services that a court clerk would perform with regard to any petition or complaint before the court, including filing of the petition and other papers filed in the case, entries in docket books and judgement rolls, issuance of subpoenas and notifying persons of court dates, and similar type services. It would not include, in our opinion, administrative services described in your letter which seem to be more like services that would be performed by a social worker, for example consultations with family or friends, scheduling physicians, providing insurance information to hospitals, making arrangements for prescreening and follow-ups, etc. In response to your question, I refer to Section 41-21-79 of the Mississippi Code which provides as follows:

> The costs incidental to the court proceedings, including but not limited to court costs, prehearing hospitalization costs, cost of transportation, reasonable physician's and psychologist's fees set by the court, and reasonable attorney's fees set by the court, shall be paid out of the funds of the county of residence of the respondent

in those instances where the patient is indigent unless funds for such purposes are made available by the state. Provided, however, if the respondent is not indigent, said costs shall be taxed against the respondent or his estate. Further provided that if the respondent is found by the court to not be in need of mental treatment then all such costs shall be taxed to the affiant initiating the hearing.

Under the doctrine of ejusdem generis it is our opinion that administrative fees set by the court are included in the types of costs that may be assessed pursuant to Section 41-21-79 quoted above. Therefore, it is our opinion that if the chancery court clerk performs such administrative services, the court may allow a reasonable fee therefor over and above the clerk's statutory filing fee. **Re: Compensation of Chancery Court Clerk where Services Rendered in Lunacy Commitments, Opinion No. 98-0689 (Miss. A. G. Nov. 25, 1998).**

Post-Confinement Issues

§ 41-21-81 Proceedings regarding continued hospitalization:

If at any time within twenty (20) days after admission of a patient to a treatment facility the director determines that the patient is in need of continued hospitalization, he shall give written notice of his findings, together with his reasons for such findings, to the respondent, the patient's attorney, the clerk of the admitting court and the two (2) nearest relatives or guardian of the patient, if the addresses of such relatives or guardian are known. The patient, or any aggrieved relative or friend or guardian shall have sixty (60) days from the date of such notice to request a hearing on the question of the patient's commitment for further treatment. The patient, or any aggrieved relative or guardian or friend, may request a hearing by filing a written notice of request within such sixty (60) days with the clerk of the county within which the facility is located; provided, however, that the patient may request such a hearing in writing to any member of the professional staff, which shall be forwarded to the director and promptly filed with the clerk of the county within which the facility is located and provided further that if the patient is confined at the Mississippi State Hospital, Whitfield, Mississippi, said notice of request shall be filed with the Chancery Clerk of the First Judicial District of Hinds County, Mississippi.

A copy of the notice of request must be filed by the patient or on his behalf with the director and the chancery clerk of the admitting court. The notice of the need for continued hospitalization shall be explained to the patient by a member of the professional staff and the explanation documented in the clinical record. At the same time the patient shall be advised of his right to request a hearing and of his right to consult a lawyer prior to deciding whether to request the hearing, and the

fact that the patient has been so advised shall be documented in the clinical record. Hearings held pursuant to this section shall be held in the chancery court of the county where the facility is located; provided, however, that if the patient is confined at the Mississippi State Hospital at Whitfield, Mississippi, the hearing shall be conducted by the Chancery Court of the First Judicial District of Hinds County, Mississippi.

§ 41-21-83 Hearing concerning continued commitment:

If a hearing is requested as provided in Section 41-21-74, 41-21-81 or 41-21-99, the court shall not make a determination of the need for continued commitment unless a hearing is held and the court finds by clear and convincing evidence that

(a) the person continues to have mental illness or have an intellectual disability; and

(b) involuntary commitment is necessary for the protection of the patient or others; and

(c) there is no alternative to involuntary commitment.

Hearings held under this section shall be held in the chancery court of the county where the facility is located; however, if the patient is confined at the Mississippi State Hospital at Whitfield, Mississippi, the hearing shall be conducted by the Chancery Court of the First Judicial District of Hinds County, Mississippi.

The hearing shall be held within fourteen (14) days after receipt by the court of the request for a hearing. The court may continue the hearing for good cause shown. The clerk shall ascertain whether the patient is represented by counsel, and, if the patient is not represented, shall notify the chancellor who shall appoint counsel for him if the chancellor determines that the patient for any reason does not have the services of an attorney; however, the patient may waive the appointment of counsel subject to the approval of the court. Notice of the time and place of the hearing shall be served at least seventy-two (72) hours before the time of the hearing upon the patient, his attorney, the director, and the person requesting the hearing, if other than the patient, and any witnesses requested by the patient or his attorney, or any witnesses the court may deem necessary or desirable.

The patient must be present at the hearing unless the chancellor determines that the patient is unable to attend and makes that determination and the reasons therefor part of the record.

The court shall put its findings and the reasons supporting its findings in writing and shall have copies delivered to the patient, his attorney, and the director of the treatment facility. An appeal from the final commitment order by either party may be had on the terms prescribed for appeals in civil cases; however, such appeal shall be without supersedeas. The record on appeal shall include the transcript of the commitment hearing.

§ 41-21-85 Costs of second hearing:

All costs of the hearing or appeal under Section 41-21-83, including, but not limited to, costs of all writs, notices, petitions, appeals, and attorney's fees and transportation of the patient to and from the place of the hearing shall be borne by the treatment facility in those instances where the patient is indigent, provided that if the patient is not indigent, all costs shall be taxed to the patient.

Termination & Discharge

§ 41-21-87 Discharge at initiative of director:

(1) The director of either the treatment facility where the patient is committed or the treatment facility where the patient resides while awaiting admission to any other treatment facility may discharge any civilly committed patient upon filing his certificate of discharge with the clerk of the committing court, certifying that the patient, in his judgment, no longer poses a substantial threat of physical harm to himself or others.

Return Patient to Committing Court

(2) A director of a treatment facility specified in subsection (1) above may return any patient to the custody of the committing court upon providing seven (7) days' notice and upon filing his certificate of same as follows:

(a) When, in the judgment of the director, the patient may be treated in a less restrictive environment; however, treatment in such less restrictive environment shall be implemented within seven (7) days after notification of the court; or
(b) When, in the judgment of the director, adequate facilities or treatment are not available at the treatment facility.

Transfer to Another Facility

(3) Except as provided in Section 41-21-88, no committing court shall enjoin or restrain any director of a treatment facility specified in subsection (1) above from discharging a patient under this section whose treating professionals have determined that the patient meets one (1) of the criteria for discharge as outlined in subsection (1) or (2) of this section. The director of the treatment facility where the patient is committed may transfer any civilly committed patient from one (1) facility operated directly by the Department of Mental Health to another as necessary for the welfare of that or other patients. Upon receiving the director's certificate of transfer, the court shall enter an order accordingly.

(4) Within twenty-four (24) hours prior to the release or discharge of any civilly committed patient, other than a temporary pass due to sickness or death in the patient's family, the director shall give or cause to be given notice of such release or discharge to one (1) member of the patient's immediate family, provided the member of the patient's immediate family has signed the consent to release form provided under subsection (5) and has furnished in writing a current address and telephone number, if applicable, to the director for such purpose. The notice of release shall also be provided to any victim of such person and/or to any person to whom a restraining order has been entered to protect from such person. The notice to the family member shall include the psychiatric diagnosis of any chronic mental disorder incurred by the civilly committed patient and any medications provided or prescribed to the patient for such conditions.

(5) All providers of service in a treatment facility, whether in a community mental health/intellectual disability center, region or state psychiatric hospital, are authorized and directed to request a consent to release information from all patients which will allow that entity to involve the family in the patient's treatment. Such release form shall be developed by the Department of Mental Health and provided to all treatment facilities, community mental health/intellectual disability centers and state facilities. All such facilities shall request such a release of information upon the date of admission of the patient to the facility or at least by the time the patient is discharged.

(6) Each month the Department of Mental Health-operated facilities shall provide the directors of community mental health centers the names of all individuals who were discharged to their catchment area with referral for community-based services. The department shall require community mental health care providers to report monthly the date that service(s) were initiated and type of service(s) initiated.

§ 41-21-89 Discharge; initiative of patient; representative:

Nothing in Sections 41-21-61 through 41-21-107 shall preclude any patient, his attorney, or relative or guardian from seeking a patient's release from a treatment facility by application for writ of habeas corpus; provided that the application shall be made to the chancellor of the county in which the patient is hospitalized. Provided, further, that if the patient is hospitalized at the Mississippi State Hospital at Whitfield, Mississippi, the said application shall be made to a chancellor of the first judicial district of Hinds County, Mississippi.

COMMITMENT OF ONE ADDICTED TO ALCOHOL OR DRUGS

Jurisdiction & Venue

§ 41-31-3 The Uniform Alcohol and Drug Commitment Affidavit; Uniform Alcohol and Drug Commitment Guide; initiation or institution of proceedings:

(4) Proceedings for detention, care and treatment of any person alleged to be an alcoholic or drug addict may be initiated or instituted by such person's husband, wife, child, mother, father, next of kin, or by any friend or relative thereof, or by the county health officer. Such proceedings shall be instituted by the filing of the Uniform Alcohol and Drug Commitment Affidavit in the chancery court
of the county of such person's residence or
of the county in which he may be found. . . .

§ 41-31-18 Jurisdiction:

The court shall have continuing jurisdiction over a person committed to an inpatient or outpatient treatment program under this chapter for one (1) year after completion of the treatment program. During that time and upon affidavit in the same cause of action, the court may conduct a hearing consistent with this chapter or Title 41, Chapter 21, Mississippi Code of 1972, to determine whether the person needs to be recommitted for further alcohol and drug treatment or to determine whether the person suffers from a mental or nervous condition or affliction requiring commitment for mental health treatment. Upon a finding by the court that the person is in need of further treatment, the court may commit the person to an appropriate treatment facility. The person subject to commitment must be afforded the due process entitled to him or her under Title 41, Chapters 21 and 31, Mississippi Code of 1972. This section may not be construed so as to conflict with the provisions of Section 41-21-87.

Affidavit is Filed

§ 41-31-3 The Uniform Alcohol and Drug Commitment Affidavit; Uniform Alcohol and Drug Commitment Guide; initiation or institution of proceedings:

(1) The Department of Mental Health must develop a Uniform Alcohol and Drug Commitment Affidavit to be utilized in all counties to initiate commitment proceedings under Title 41, Chapters 30, 31 and 32, Mississippi Code of 1972. The Uniform Alcohol and Drug Commitment Affidavit must be provided by the clerk of the chancery court to any party or affiant seeking a civil commitment under this chapter and also must be made available to the public on the website of the Mississippi Department of Mental Health.

(2) The Department of Mental Health, in consultation with the Mississippi Chancery Clerks Association, the Mississippi Conference of Chancery Court Judges and the Mississippi Association of Community Mental Health Centers, must develop a written guide no later than January 1, 2020, setting out the steps in the commitment process. The guide shall be designated as the "Uniform Alcohol and Drug Commitment Guide" and shall include, but not be limited to, the following:

(a) Steps in the alcohol and drug commitment process from affidavit to commitment, written in easily understandable layman's terms;
(b) A schedule of fees and assessments that will be charged to commence a commitment proceeding under this chapter;
(c) Eligibility requirements and instructions for filing a pauper's affidavit; and
(d) A statement on the front cover of the guide advising that persons who pursue an alcohol and drug commitment under this chapter are not required to retain an attorney for any portion of the commitment process.

(3) As soon as available but no later than January 1, 2020, the Uniform Alcohol and Drug Commitment Guide must be provided by the clerk of the chancery court to any party or affiant seeking a civil commitment under this chapter, and also must be made available to the public on the website of the Mississippi Department of Mental Health.

(4) . . . It shall be necessary that the affidavit allege that such person
is an alcoholic or drug addict, as the case may be,
is a resident citizen of this state, and
because of his alcoholism or drug addiction is
incapable of or unfit to look after and conduct his affairs, or
is dangerous to himself or others, or
has lost the power of self-control because of periodic, constant or frequent use of alcoholic beverages or habit-forming drugs, and
that he is in need of care and treatment, and
that his detention, care and treatment at an institution will improve his health.

A chancery clerk may not require an affiant to retain an attorney for the filing of an affidavit under this section. All proceedings authorized by this chapter may be had and conducted either in termtime or in vacation of said court.

Hearing

§ 41-31-5 Proceedings after filing of petition:

(1) Whenever an affidavit is filed, the chancellor of said court shall, by order, fix a time upon a day certain for the hearing thereof, either in termtime or in vacation, which hearing shall be fixed not less than five (5) days nor more than twenty (20) days from the filing of the affidavit. The person alleged to be an alcoholic or drug addict shall be served with a citation to appear at said hearing not less than three (3) days prior to the day fixed for said hearing, and there shall be served with such citation a true and correct copy of the affidavit.

(2) The clerk must ascertain whether the respondent is represented by an attorney, and if it is determined that the respondent does not have an attorney, the clerk immediately must notify the chancellor of that fact. If the chancellor determines that the respondent for any reason does not have the services of an attorney, the chancellor shall appoint an attorney for the respondent before a hearing on the affidavit.

(3) At the time fixed, the chancellor shall hear evidence on the affidavit, with or without the presence of the alleged alcoholic or drug addict, and all persons interested shall have the right to appear and present evidence touching upon the truth and correctness of the allegations of the affidavit. The said chancellor, in his discretion, may require that the alleged alcoholic or drug addict be examined by the county health officer or by such other competent physician or physicians as the chancellor may select, and may consider the results of such examination in reaching a decision in said matter.

(4) If the alleged alcoholic or drug addict shall admit the truth and correctness of the allegations of the affidavit, or if the chancellor should find from the evidence that such person is an alcoholic or drug addict, and is in need of detention, care and treatment in an institution, and that the other material allegations of said petition are true, then he shall enter an order so finding, and shall order that such person be remanded and committed to and confined in the proper state institution under this chapter or a private treatment facility under the provisions of Title 41, Chapter 32, Mississippi Code of 1972, or, in the case of an alcoholic to an approved public or private treatment facility pursuant to the provisions of Title 41, Chapter 30, Mississippi Code of 1972, for care and treatment for a period of not less than thirty (30) days nor more than ninety (90) days as the necessity of the case may, in his discretion, require. However, when such person shall be so committed, the medical director of the said institution shall be vested with full discretion as to the treatment and discharge of such person, and may discharge and release such person at any time when the condition of such person shall so justify.

Court's Findings

§ 41-31-5 Proceedings after filing of petition:

(5)(a) If the chancellor determines under this section that the alleged alcoholic or drug addict is in need of care and treatment but also affirmatively finds that the alleged alcoholic or drug addict would benefit from the less restrictive option of an outpatient treatment program, the chancellor, in his discretion and upon agreement of both the affiant and the person in need of treatment, may order the alleged alcoholic or drug addict into an outpatient treatment program.

(b) If the order directs outpatient treatment, the outpatient treatment provider may prescribe or administer to the respondent treatment consistent with accepted alcohol and drug abuse treatment standards. If the respondent fails or clearly refuses to comply with outpatient treatment, the director of the treatment program, his designee or an interested person must make all reasonable efforts to solicit the respondent's compliance. These efforts must be documented and, if the respondent fails or clearly refuses to comply with outpatient treatment after the efforts are made, the efforts must be documented with the court by affidavit. Upon the filing of the affidavit, the sheriff of the proper county may take the respondent into custody. The chancellor thereafter may order the respondent to inpatient treatment as soon as a treatment facility is available.

(c) The respondent may request a hearing within ten (10) days of commitment to inpatient treatment by filing a written request with the chancery clerk of the committing court, or the respondent may request such a hearing in writing to any member of the professional staff of the treatment facility, which must be forwarded to the director and promptly filed with the chancery clerk of the committing court. The respondent must be advised of the right to request such a hearing and of the right to consult a lawyer.

Court May Issue Writ

§ 41-31-9 Enforcement powers:

The chancellor shall have the power to order the issuance of such writs and other process as may be necessary to enforce his orders in such matters, including writs directed to the sheriff of any proper county to take such person into custody and to deliver him to the director of the proper institution. Such writs and other process shall be issued and executed accordingly.

***See* § 41-31-21 Grounds to refuse admission.**

Right to Appeal

§ 41-31-7 Right to appeal:

Any person who shall be ordered to be committed to an institution as provided in this chapter, and who shall feel aggrieved at such decision, may appeal therefrom to the supreme court of this state by giving notice thereof in the manner provided by law and by furnishing a good and sufficient bond in an amount to be fixed by the chancellor, and to be approved by the clerk of said court, which said bond shall be conditioned to pay all costs of the proceedings and the appeal, and that said person will appear to abide the decision of the court on such appeal. On such appeal, the record shall be made and prepared as in other cases, and all of the provisions of the general law shall apply thereto except that it shall be necessary that the proper notice be given and the requisite bond furnished within five (5) days from the date of the final determination of the chancellor.

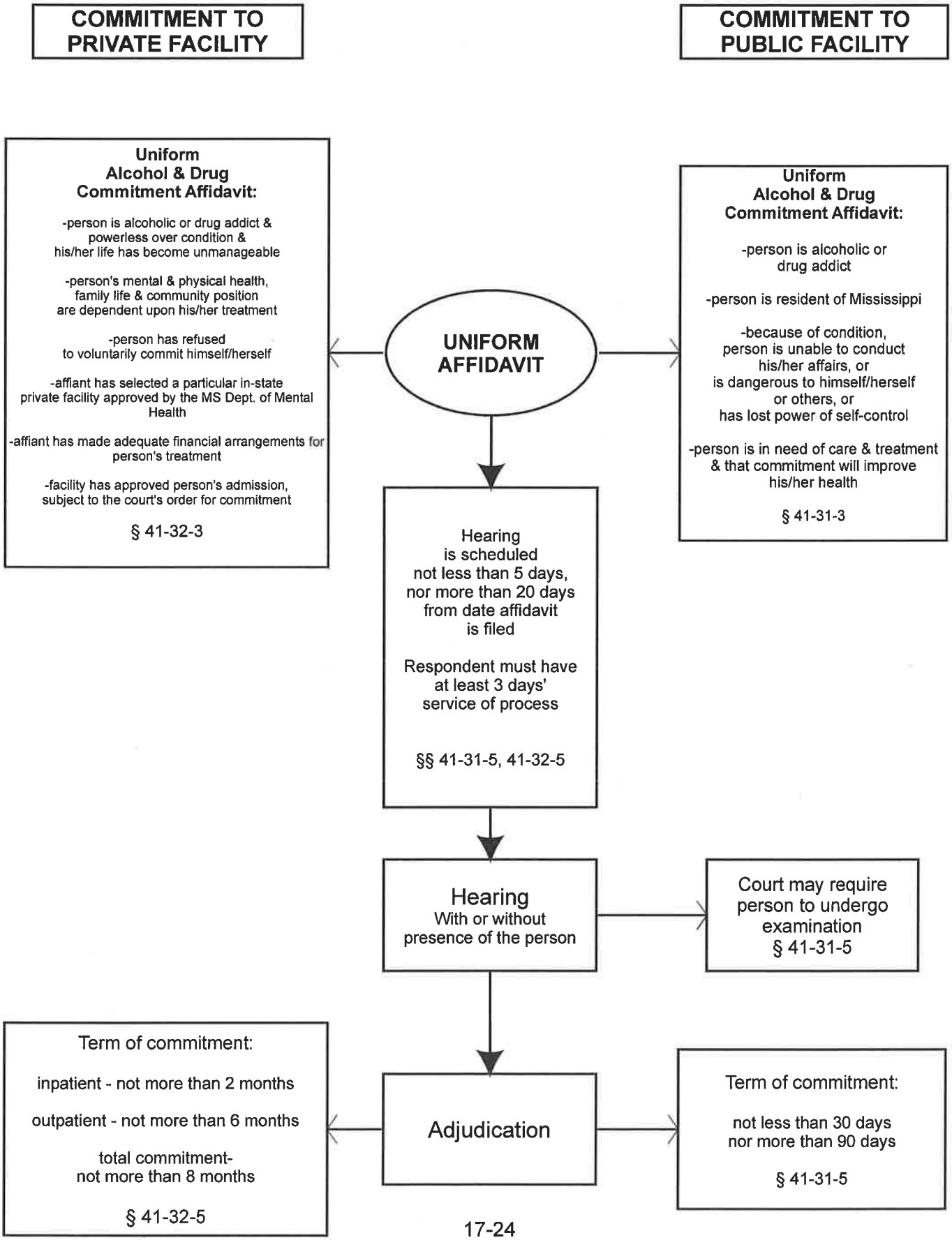
> [The petitioner] concedes that the statute is ambiguous but argues that the ambiguity should be resolved in favor of protection of his liberty interest [by granting a stay pending appeal]. We disagree. The ambiguity in such circumstances should be resolved in a manner consistent with the best and most rational reading which may be given the entire statutory scheme. The statute makes most sense when it operates to provide for a sensitive balancing of the necessity for prompt and effective intervention in the lives of those in need of treatment for chemical dependency, on the one hand, with the individual's liberty interest, on the other. An automatic right of supersedeas or stay is inconsistent therewith. ***McIntire v. Moore*, 512 So. 2d 687, 689 (Miss. 1987).**

Costs of Commitment

§ 41-31-15 Costs of commitment and support:

The provisions of the law with respect to the costs of commitment and the cost of support, including the prohibition in Section 41-21-65 regarding the charging of extra fees and expenses to persons initiating commitment proceedings, methods of determination of persons liable therefor, and methods of determination of financial ability, and all provisions of law enabling the state to secure reimbursement of any such items of cost, applicable to the commitment to and support of the mentally ill persons in state hospitals, shall apply with equal force in respect to each item of expense incurred by the state in connection with the commitment, care, custody, treatment, and rehabilitation of any person committed to the state hospitals and maintained in any institution or hospital operated by the State of Mississippi under the provisions of this chapter.

COMMITMENT OF ONE ADDICTED TO ALCOHOL OR DRUGS



COMMITMENT OF ONE ADDICTED TO ALCOHOL OR DRUGS TO A PRIVATE TREATMENT FACILITY

Jurisdiction & Venue

§ 41-32-1 Provisions supplemental; involuntary commitment:

A person may be involuntarily committed for alcoholism or drug addiction, or both, to a private treatment facility, upon a judgment of the chancery court
of the county of such person's residence, or
in the county where such person may be found.

Affidavit is Filed

§ 41-32-3 Contents of complaint:

Any interested person may file a Uniform Alcohol and Drug Commitment Affidavit with the chancery court for a judgment of committal in termtime or in vacation. The affidavit shall state facts to establish:

(a) the defendant is an alcoholic or drug addict, i.e., he is powerless over alcohol or drugs, or both, and his life has thereby become unmanageable;
(b) defendant's mental and physical health, his continued family life or his position in the community are dependent on his treatment at a chemical dependency unit, alcohol and drug unit, outpatient house or another private treatment facility, or combination of facilities, providing treatment for chemically dependent persons;
(c) the defendant has refused to commit himself to such private treatment facility, though having been requested so to do by persons who genuinely care for his well-being;
(d) the affiant has selected a particular private treatment facility which, if located in this state, has been approved by the Department of Mental Health, Division of Alcohol and Drug Abuse;
(e) the affiant has made adequate financial arrangements for defendant's treatment at such facility; and
(f) such facility has approved the admission of the defendant, subject to commitment by the chancery court.

Pre-Hearing Detention

§ 41-32-7 Defendants likely to flee or physically harm themselves or others:

Upon allegation in the affidavit and upon clear and convincing proof that the defendant is under the influence of alcohol or drugs, or both, to the extent that if the defendant is served with process he will, in all likelihood, flee the jurisdiction of the court or physically harm himself or others, then the chancellor may, in his discretion, set the matter for hearing not more than five (5) days, excluding Saturdays, Sundays and legal holidays, from the filing of the affidavit, and order the defendant committed and confined, without notice, until the hearing, to a chemical dependency unit, alcohol and drug unit, outpatient house or any other private facility for the treatment of chemically dependent persons.

Hearing

§ 41-32-5 Hearing; orders authorized:

(1) The chancellor shall schedule with the affiant a time on a day certain for the hearing thereof, not less than five (5) days nor more than twenty (20) days from the filing of the affidavit. The case shall be triable upon three (3) days' service of process and service of notice of the time for the hearing. At the time fixed, the chancellor shall hear the evidence in the presence of the defendant if he will appear, and without the presence of the defendant if he will not appear, and all persons interested shall have the right to appear and present evidence touching upon the truth and correctness of the allegations of the affidavit.

(2) The clerk must ascertain whether the respondent is represented by an attorney, and if it is determined that the respondent does not have an attorney, the clerk immediately must notify the chancellor of that fact. If the chancellor determines that the respondent for any reason does not have the services of an attorney, the chancellor must appoint an attorney for the respondent before a hearing on the affidavit.

(3) If the defendant admits the truth and correctness of the allegations of the affidavit, or if the chancellor shall find from the evidence that the defendant is an alcoholic or drug addict, or both, and is in need of detention, care and treatment in a private treatment facility, and that the other material allegations of the affidavit are true, then the chancellor shall enter a judgment so finding, and shall order that such person be committed to and confined in a chemical dependency unit, alcohol and drug unit, outpatient house or any other private treatment facility, within or outside the state, for the treatment of chemically dependent persons, as the chancellor, in his discretion, deems to be in the best interest of the defendant. Any such order for the commitment of the defendant shall require that the defendant be

committed for such period of time as the chancellor shall determine, in his discretion, as is necessary to provide for the care and treatment of the defendant or for such other period of time as may be established by authorized personnel at the designated facility or facilities; however, in no event shall such period of confinement extend beyond a period of eight (8) months. The chancellor may require treatment at a combination of facilities or may designate commitment at an inpatient facility for not more than two (2) months and an outpatient facility for not more than six (6) months, subject to institutional earlier release.

§ 41-32-11 Assistance of sheriffs:

The chancellor may order assistance by the sheriff of the county, or any other county in confining and transporting the defendant to the facility, at the expense of the committing county.

Right to Appeal

§ 41-32-9 Right to appeal:

Any person who shall be ordered to be committed to a private treatment facility as provided in this chapter, and who shall feel aggrieved at such decision, may appeal therefrom to the supreme court of this state by giving notice thereof in the manner provided by law and by furnishing a good and sufficient bond in an amount to be fixed by the chancellor, and to be approved by the clerk of said court, such bond to be conditioned to pay all costs of the proceedings and the appeal, and that said person will appear to abide the decision of the court on such appeal. On such appeal, the record shall be made and prepared as in other cases, and all of the provisions of the general law shall apply thereto except that it shall be necessary that the proper notice be given and the requisite bond furnished within five (5) days from the date of the final determination of the chancellor.

EMERGENCY INVOLUNTARY COMMITMENT

§ 41-30-27 Applications for emergency involuntary commitment:

Application

(1) (a) A person may be admitted to an approved public or private treatment facility for emergency care and treatment upon a decree of the chancery court accepting an application for admission thereto accompanied by the certificate of two (2) licensed physicians. The application shall be to the chancery court of the county of such person's residence and may be made by any one (1) of the following:

> Either certifying physician, the patient's spouse or guardian, any relative of the patient, or any other person responsible for health, safety or welfare of all or part of the citizens within said chancery court's territorial jurisdiction.

The application shall state facts to support the need for immediate commitment, including factual allegations showing that the person to be committed has

> threatened,
> attempted, or
> actually inflicted physical harm upon himself or another.

The physicians' certificates shall state that they examined the person within two (2) days of the certificate date and shall set out the facts to support the physicians' conclusion that the person is an alcoholic or drug addict who has lost the power of self-control with respect to the use of alcoholic beverages or habit-forming drugs and that unless immediately committed he is likely to inflict physical harm upon himself or others.

Hearing

A hearing on such applications shall be heard by the chancery court in term time or in vacation, and the hearing shall be held in the presence of the person sought to be admitted unless he fail or refuse to attend. Notice of the hearing shall be given to the person sought to be admitted, as soon as practicable after the examination by the certifying physicians, and the person sought to be admitted shall have an opportunity to be represented by counsel, and shall be entitled to have compulsory process for the attendance of witnesses.

(b) For the purpose of this section, the term "drug addict" shall have the meaning ascribed to it by Section 41-31-1(d).

> A drug addict shall mean any person who chronically and habitually uses any form of habit-forming drugs, such as opiates and the derivatives thereof, barbiturates, and every tablet, powder, substance, liquid or fluid, patented or not, containing habit-forming drugs if same is capable of being used by human beings and produces drug addiction in any form or degree. **Miss. Code Ann. § 41-31-1(d).**

(2) The chancery judge may refuse an application if in his opinion the application and certificate fail to sustain the grounds for commitment. Upon acceptance of the application after hearing thereon and decree sustaining the application by the judge, the person shall be transported to the facility by a peace officer, health officer, the applicant for commitment, the patient's spouse or the patient's guardian. The person shall be retained at the facility that admitted him, or be transferred to any other appropriate treatment resource, until discharged pursuant to subsection (3).

(3) The attending physician shall discharge any person committed pursuant to this section when he determines that the grounds for commitment no longer exist, but no person committed pursuant to this section shall be retained in any facility for more than five (5) days.

(4) The application filed pursuant to subsection (1) of this section shall also contain an affidavit for involuntary commitment pursuant to Title 41, Chapter 31, Mississippi Code of 1972. If the application for emergency involuntary commitment is accepted under subsection (2) of this section, the chancery judge shall order a hearing on the affidavit for commitment pursuant to Title 41, Chapter 31, Mississippi Code of 1972, to be held on the fifth day of such involuntary emergency commitment, the provisions of Section 41-31-5 regarding the time of hearing to the contrary notwithstanding; provided, however, that at the time of such involuntary commitment the alleged alcoholic or drug addict shall be served with a citation to appear at said hearing and shall have an opportunity to be represented by counsel.

§ 41-30-29 Provisions supplement other statutes:

The provisions of subsections (3) and (4) of Section 41-30-27 shall be supplemental and in addition to the provisions of Title 41, Chapter 31, Mississippi Code of 1972, which pertain to commitment of alcoholics.

§ 41-30-31 Involuntary commitment beyond five days:

Involuntary commitment of an individual to an approved public or private treatment facility for treatment or rehabilitation for a period in excess of five (5) days shall be according to the provisions of Title 41, Chapter 31, Mississippi Code of 1972.

§ 41-30-33 Confidentiality:

(1) The registration and other records of services by approved treatment facilities, whether in-patient, intermediate or out-patient, authorized by this chapter, shall remain confidential, and information which has been entered in the records shall be considered privileged information.

(2) No part of the records shall be disclosed without the consent of the person to whom it pertains, but appropriate disclosure may be made without such consent to treatment personnel for use in connection with his treatment and to counsel representing the person in any proceeding held pursuant to Title 41, Chapter 31, Mississippi Code of 1972. Disclosure may also be made without consent upon court order for purposes unrelated to treatment after application showing good cause therefor. In determining whether there is good cause for disclosure, the court shall weigh the need for the information to be disclosed against the possible harm of disclosure to the person to whom such information pertains.

CHAPTER 18

CONSERVATORSHIPS

CHAPTER 18

CONSERVATORSHIPS

Authority of Chancery Court

Infants and persons of unsound mind are disabled under the law to act for themselves. Long ago it became the established rule for the court of chancery to act as the superior guardian for all persons under such disability. This inherent and traditional power and protective duty is made complete and irrefragable by the provisions of our present state constitution. It is not competent for the Legislature to abate the said powers and duties or for the said court to omit or neglect them. It is the inescapable duty of the said court and of the chancellor to act with constant care and solicitude towards the preservation and protection of the rights of infants and persons non composmentis. The court will take nothing as confessed against them; will make for them every valuable election; will rescue them from faithless guardians, designing strangers, and even from unnatural parents, and in general will and must take all necessary steps to conserve and protect the best interest of these wards of the court. The court will not and cannot permit the rights of an infant to be prejudiced by any waiver, or omission or neglect or design of a guardian, or of any other person, so far as within the power of the court to prevent or correct. ***Union Chevrolet Co. v. Arrington*****, 138 So. 593, 595 (Miss. 595 (Miss. 1932).**

Difference Between a Guardian and Conservator

Initially, it is appropriate to distinguish guardianships from conservatorships. Guardians may be appointed for minors; incompetent adults; a person of unsound mind; alcoholics or drug addicts; convicts in the penitentiary; persons in the armed forces or merchant seamen reported as missing; or for veterans; or minor wards of a veteran. The guardian is the legally recognized custodian of the person or property of another with prescribed fiduciary duties and responsibilities under court authority and direction. A ward under guardianship is under a legal disability or is adjudged incompetent. In recent decades there has been an increased number of older adults in our society who possess assets in need of protective services provided through guardianships. But modification of laws have broadened the definition of persons for whom assistance can be afforded by the courts, and such statutes do not restrict such protection only to the adult incompetent or insane. Noting that trend in our society, the Mississippi Legislature incorporated into law in 1962 the conservatorship procedure for persons who, by reason of advanced age, physical incapacity, or mental weakness,

were incapable of managing their own estates. Thus the Legislature provided a new procedure through conservatorship for supervision of estates of older adults with physical incapacity or mental weakness, without the stigma of legally declaring the person non compos mentis. This additional procedure was intended to encompass a broader class of people than just the incompetent. Therefore, the distinguishing feature of conservatorship from guardianships lies in part in the lack of necessity of an incompetency determination or the existence of a legal disability for its initiation. After establishment of such protective procedures, the duties, responsibilities and powers of a guardian or conservator are the same. However, the status of the ward in each arrangement is different. ***Harvey v. Meador*, 459 So. 2d 288, 291-92 (Miss. 1984).**

General Provisions

Jurisdiction

§ 93-20-104 Subject-matter jurisdiction:

(1) Except to the extent jurisdiction is precluded by the Uniform Child Custody Jurisdiction and Enforcement Act and the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, the chancery court has jurisdiction over a guardianship or conservatorship for a respondent domiciled or present in this state or having property in this state.

(2) After a petition is filed in a proceeding for a guardianship or conservatorship and until termination of the proceeding, the court in which the petition is filed has:

(a) Exclusive jurisdiction to determine the need for the guardianship or conservatorship;

(b) Exclusive jurisdiction to determine how property of the respondent must be managed, expended, or distributed to or for the use of the respondent, an individual who is dependent in fact on the respondent, or other claimant;

(c) Nonexclusive jurisdiction to determine the validity of a claim against the respondent or property of the respondent or a question of title concerning the property; and

(d) If a guardian or conservator is appointed, exclusive jurisdiction over issues related to administration of the guardianship or conservatorship.

(3) A court that appoints a guardian or conservator has exclusive and continuing jurisdiction over the proceeding until the court terminates the proceeding. . . .

Venue

§ 93-20-106 Venue:

(3) Venue for a conservatorship proceeding is in:

(a) The county in which the respondent resides, whether or not a guardian has been appointed in another county or other jurisdiction; or

(b) If the respondent does not reside in this state, in any county in which property of the respondent is located.

(4) If proceedings under this act are brought in more than one (1) county, the court of the county in which the first proceeding is brought has the exclusive right to proceed unless the court determines venue is properly in another court or that the interest of justice otherwise requires transfer of the proceeding.

Clerk's Duties

§ 93-20-108 Letters of guardianship or conservatorship:

(1) At or before the time of appointment, the guardian or conservator must take and subscribe an oath faithfully to discharge the duties of guardian or conservator of the ward according to law.
(2) The clerk must issue letters of guardianship to a guardian who takes the proper oath, posts bond if required, and submits a certificate of attorney and certificate of fiduciary, unless waived by the court.
(3) The clerk must issue letters of conservatorship to a conservator who takes the proper oath, posts bond if required, and submits a certificate of attorney and certificate of fiduciary, unless waived by the court or unless the conservator complies with another asset-protection arrangement required by the court.
(4) The court in its initial order of appointment or at any subsequent time may limit the powers conferred on a guardian or conservator. The court shall direct the clerk to issue new letters of guardianship or conservatorship that reflect the limitation. The court shall direct the clerk to give notice of the limitation by service of a copy of the court's order with proof of service on the guardian or conservator, the ward, and any other person the court determines. . . .

§ 9-1-49 Report concerning certain persons' access to firearms

(1) The clerk of the court shall prepare and forward to the Department of Public Safety the information described by subsection (2) of this section not later than the thirtieth day after the date the court: . . .

> (c) Appoints a guardian or conservator under [Sections 93-13-101 et seq.] based on the determination that the person is incapable of managing his own person or estate; . . .

(2) The clerk of the court shall prepare and forward the following information:

> (a) The complete name, race, and sex of the person;
> (b) Any known identifying number of the person, including social security number, driver's license number, or state identification card number;
> (c) The person's date of birth; and
> (d) The federal prohibited-person information that is the basis of the report required by this section.

(3) If practicable, the clerk of the court shall forward to the Department of Public Safety the information described by subsection (2) of this section in an electronic format prescribed by the department.
(4) If an order previously reported to the department under subsection (1) of this section is reversed by order of any court, the clerk shall notify the department of the reversal not later than thirty (30) days after the clerk receives the court order or the mandate from the appellate court.

(5) The duty of a clerk to prepare and forward information under this section is not affected by:

(a) Any subsequent appeal of the court order;

(b) Any subsequent modification of the court order; or

(c) The expiration of the court order.

Conservatorship of Minor

Petition is Filed

§ 93-20-402 Petition for appointment of conservator; notice:

(1) A person interested in the estate, financial affairs, or welfare of the individual, including a person that would be adversely affected by lack of effective management of property or financial affairs of the individual, may petition for the appointment of a conservator for the individual.

(2) The proceeding may be instituted by the chancellor or clerk of the chancery court, any relative or friend of the individual, or any other interested party, including the individual for whom the order is sought, by filing a sworn petition in the chancery court of the residence of the individual setting forth that the individual is alleged to be in need of a conservatorship.

(3) The petition must state the name and address of an attorney representing the petitioner, if any, and must set forth under the style of the case and before the body of the petition the following language in bold or highlighted type:

THE RELIEF SOUGHT IN THIS PETITION MAY AFFECT YOUR LEGAL RIGHTS. YOU HAVE A RIGHT TO NOTICE OF ANY HEARING ON THIS PETITION, TO ATTEND ANY HEARING, AND TO BE REPRESENTED BY AN ATTORNEY.

Notice of Hearing

§ 93-20-403 Notice and hearing for appointment of conservator:

(1) On receipt of a petition under Section 93-20-402 for appointment of a conservator for a respondent, the court must set a date, time, and place for a hearing on the petition, and unless the court finds that the respondent for whom the conservator is to be appointed is competent and joins in the petition, the petitioner must cause summons to be served not less than seven (7) days before the hearing, together with a copy of the petition, on the person for whom the conservator is to be appointed. The court may, for good cause shown, direct that a shorter notice be given.

(2) Unless the court finds that the respondent for whom the conservator is to be appointed is competent and joins in the petition, the summons must also issue to:

(a) Any guardian appointed to the respondent; and

(b) At least one (1) adult relative of the respondent who resides in Mississippi from the following group in the listed order of preference: spouse, children, parents, siblings; but if none of those can be found:

(i) To one (1) adult relative of the respondent and who is not the petitioner and who resides in Mississippi if that relative is within the third degree of kinship.

(ii) If no relative within the third degree of kinship to the respondent is found residing in the State of Mississippi, the court must either designate some other appropriate person to receive the summons or appoint a guardian ad litem to receive the summons.

(3) In a proceeding under this article, notice of the hearing also must be given to any other person interested in the respondent's welfare the court determines is entitled to notice. Failure to give notice under this subsection does not preclude the court from appointing a guardian.

(4) If the person for whom the conservator is to be appointed is entitled to any benefit, estate or income paid or payable by or through the Veterans' Administration of the United States government, such administration shall also be given summons.

(5) Notice of a hearing on a petition seeking an order under this article that is filed after the appointment of a conservator, together with a copy of the petition, must be given to the ward, the conservator, and any other person the court determines.

§ 93-20-407 Professional evaluation:

(1) The chancery court must conduct a hearing to determine whether a conservator is needed for the respondent. Before the hearing, the court, in its discretion, may appoint a guardian ad litem, and the guardian ad litem must be present at the hearing and present the interests of the respondent.

(2) The chancery judge shall be the judge of the number and character of the witnesses and proof to be presented, except that the proof must include certificates made after a personal examination of the respondent by the following professionals, each of whom must make in writing a certificate of the result of that examination to be filed with the clerk of the court and become a part of the record of the case.

(a) Two (2) licensed physicians; or

(b) One (1) licensed physician and either one (1) licensed psychologist, nurse practitioner, or physician's assistant.

(3) The personal examination may occur face-to-face or via telemedicine, but any telemedicine examination must be made using an audiovisual connection by a physician licensed in this state and as defined in Section 83-9-351. A nurse practitioner or physician assistant conducting an examination shall not also be in a collaborative or supervisory relationship, as the law may otherwise require, with

the physician conducting the examination. A professional conducting an examination under this section may also be called to testify at the hearing.

(4) The personal examination requirement in subsections (2) and (3) does not apply if the respondent is:

(a) Missing, detained or unable to return to the United States; or

(b) A minor with no other disability or incapacity.

However, a personal examination is required to extend a conservatorship beyond the age of majority.

Hearing

§ 93-20-408 Rights at hearing:

(1) At a hearing under this article, the respondent may:

(a) Present evidence and subpoena witnesses and documents;

(b) Examine witnesses; and

(c) Otherwise participate in the hearing.

(2) Unless excused by the court for good cause, a proposed conservator must attend a hearing under this article.

(3) A hearing under this article must be closed on request of the respondent and a showing of good cause.

(4) Any person may request to participate in a hearing under this article. The court may grant the request, with or without a hearing, on determining that the best interest of the respondent will be served. The court may impose appropriate conditions on the person's participation.

§ 93-20-409 Confidentiality of records:

(1) An individual subject to a proceeding for a conservatorship, an attorney designated by the respondent or ward, and a person entitled to notice either under Section 93-13-411(5) or court order may access court records of the proceeding and resulting conservatorship, including the conservator's plan under Section 93-13-419 and the conservator's report under Section 93-13-423. A person not otherwise entitled to access to court records under this section for good cause may petition the court for access to court records of the conservatorship, including the conservator's plan and report. The court must grant access if access is in the best interest of the respondent or ward or furthers the public interest and does not endanger the welfare or financial interests of the respondent or individual.

(2) A report under Section 93-13-405 of a guardian ad litem or professional evaluation under Section 93-13-407 may be confidential and may be sealed on filing when determined necessary by the court. If the court finds the file should be sealed, the file shall remain available to:

(a) The court;

(b) The individual who is the subject of the report or evaluation, without limitation as to use;

(c) The petitioner, guardian ad litem and petitioner's and respondent's attorneys, for purposes of the proceeding;

(d) Unless the court directs otherwise, a person appointed under a power of attorney for finances in which the respondent is identified as the principal; and

(e) Any other person if it is in the public interest or for a purpose the court orders for good cause.

§ 93-20-410 Who may be conservator:

(1) Appointment of a conservator is at the discretion of the court, and in the best interest of the respondent. If two (2) or more persons have requested responsibility as conservator, the court shall select as conservator the person the court considers best qualified. In determining the best qualified person, the court shall consider the person's relationship with the respondent, the person's skills, the expressed wishes of the respondent including any designation made in a will, durable power of attorney, or health-care directive, the extent to which the person and the respondent have similar values and preferences, and the likelihood the person will be able to perform the duties of a conservator successfully. The court, acting in the best interest of the respondent, may decline to appoint as conservator a person requesting the appointment.

(2) If a qualified conservator cannot be determined, the court, in its discretion, may appoint the chancery court clerk or probate administrator for the county in which the proceedings were filed to serve as the respondent's conservator. The chancery court clerk or the probate administrator shall serve in the capacity ordered by the court unless a conflict of interest arises or the clerk or the probate administrator presents circumstances where the court determines the clerk's recusal from appointment is permitted.

(3) A person that provides paid services to the respondent, or an individual who is employed by a person that provides paid services to the respondent or is the spouse, parent, or child of an individual who provides or is employed to provide paid services to the respondent, may not be appointed as conservator unless:

(a) The individual is related to the respondent by blood, marriage, or adoption; or

(b) The court finds by clear and convincing evidence that the person is the best qualified person available for appointment and the appointment is in the best interest of the respondent.

(4) An owner, operator, or employee of a long-term-care institution at which the respondent is receiving care may not be appointed as conservator unless the owner, operator, or employee is related to the respondent by blood, marriage, or adoption.

Appointment of Conservator

§ 93-20-401 Basis for appointment of conservator:

(1) For a minor. The court may appoint a conservator for the property or financial affairs of a minor if the court finds by clear and convincing evidence that appointment of a conservator is in the minor's best interest, and:

(a) If the minor has a parent, the court gives weight to any recommendation of the parent whether an appointment is in the minor's best interest; and
(b) Either:
(i) The minor owns funds or other property requiring management or protection that otherwise cannot be provided;
(ii) The minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor's age; or
(iii) Appointment is necessary or desirable to obtain or provide funds or other property needed for the support, care, education, health, or welfare of the minor.

§ 93-20-411 Order on appointment of conservator:

(1) A court order appointing a conservator for a minor must include findings to support appointment of a conservator and, if a full conservatorship is granted, the reason a limited conservatorship would not meet the identified needs of the minor.
. . .

(4) A court order establishing a limited conservatorship must state the specific property placed under the control of the conservator and the powers granted to the conservator.

(5) The court, as part of an order establishing a conservatorship, must identify and include the contact information for any person that subsequently is entitled to:
(a) Notice of the rights of the ward under Section 93-13-412(2);

(b) Notice of a sale of or surrender of a lease to the primary dwelling of the individual;
(c) Notice that the conservator has delegated a power that requires court approval under Section 93-13-414 or substantially all powers of the conservator;
(d) Notice that the conservator will be unavailable to perform the conservator's duties for more than one (1) month;
(e) A copy of the conservator's plan under Section 93-13-419 and the conservator's report under Section 93-13-423;
(f) Access to court records relating to the conservatorship;
(g) Notice of a transaction involving a substantial conflict between the conservator's fiduciary duties and personal interests;
(h) Notice of the death or significant change in the condition of the individual;
(i) Notice that the court has limited or modified the powers of the conservator; and
(j) Notice of the removal of the conservator. . . .

(7) If a ward is a minor, each parent and adult sibling of the minor is entitled to notice under subsection (5) unless the court determines notice would not be in the best interest of the minor.

(8) (a) If the chancellor finds from the evidence that the person is in need of a conservatorship, the chancellor must appoint a conservator over the estate of the person.
(b) The costs and expenses of the proceedings shall be paid out of the estate of the respondent if a conservator is appointed. If a conservator is not appointed, the costs and expenses shall be paid by the person instituting the proceedings unless the proceedings were instituted by the court or the chancery clerk.

§ 93-20-412 Notice of order of appointment; rights:

(1) A conservator appointed under Section 93-20-411 must give to the ward and to all other persons given notice under Section 93-20-403 a copy of the order of appointment. The order and notice must be given not later than fourteen (14) days after the appointment.

(2) Not later than fourteen (14) days after appointment of a conservator under Section 93-20- 411, the court must give to the ward, the conservator, and any other person entitled to notice under Section 93-20-411(5), a statement of the rights of the ward and procedures to seek relief if the ward is denied those rights. The statement must be in plain language, in at least sixteen-point font, and to the

extent feasible, in a language in which the ward is proficient. The statement must notify the ward of the right to:

(a) Seek termination or modification of the conservatorship, or removal of the conservator, and choose an attorney to represent the individual in these matters;

(b) Participate in decision-making to the extent reasonably feasible;

(c) Receive a copy of the conservator's plan under Section 93-20-419, the conservator's inventory under Section 93-20-420, and the conservator's report under Section 93-20-423; and

(d) Object to the conservator's inventory, plan, or report.

(3) If a conservator is appointed for the reasons stated in Section 93-20-401(2)(a)(ii) and the ward is missing, notice under this section to the individual is not required.

Conservator's Duties

§ 93-20-418 Duties of conservator:

(1) A conservator is a fiduciary and has duties of prudence and loyalty to the ward.

(2) A conservator must promote the self-determination of the ward and, to the extent feasible, encourage the ward to participate in decisions, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs.

(3) In making a decision for a ward, the conservator must make the decision the conservator reasonably believes the ward would make if able, unless doing so would fail to preserve the resources needed to maintain the ward's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or personal or financial interests of the ward. To determine the decision the ward would make if able, the conservator must consider the ward's prior or current directions, preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable by the conservator.

(4) If a conservator cannot make a decision under subsection (3) because the conservator does not know and cannot reasonably determine the decision the ward probably would make if able, or the conservator reasonably believes the decision the individual would make would fail to preserve resources needed to maintain the ward's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or personal or financial interests of the ward, the conservator shall act in accordance with the best interest of the ward. In determining the best interest of the ward, the conservator shall consider:

(a) Information received from professionals and persons who demonstrate sufficient interest in the welfare of the ward;
(b) Other information the conservator believes the ward would have considered if the ward were able to act; and
(c) Other factors a reasonable person in the circumstances of the ward would consider, including consequences for others.

(5) Except when inconsistent with the conservator's duties under subsections (1) through (4), and where investments other than in FDIC-insured investments are permitted in the court's order approving the conservator's plan, a conservator must invest and manage the conservatorship estate as a prudent investor would, by considering:
(a) The circumstances of the ward and the conservatorship estate;
(b) General economic conditions;
(c) The possible effect of inflation or deflation;
(d) The expected tax consequences of an investment decision or strategy;
(e) The role of each investment or course of action in relation to the conservatorship estate as a whole;
(f) The expected total return from income and appreciation of capital;
(g) The need for liquidity, regularity of income, and preservation or appreciation of capital; and
(h) The special relationship or value, if any, of specific property to the ward.

(6) The propriety of a conservator's investment and management of the conservatorship estate is determined in light of the facts and circumstances existing when the conservator decides or acts and not by hindsight.

(7) A conservator must make a reasonable effort to verify facts relevant to the investment and management of the conservatorship estate.

(8) A conservator that has special skills or expertise, or is named conservator in reliance on the conservator's representation of special skills or expertise, has a duty to use the special skills or expertise in carrying out the conservator's duties.

(9) In investing, selecting specific property for distribution, and invoking a power of revocation or withdrawal for the use or benefit of the ward, a conservator must consider any estate plan of the ward known or reasonably ascertainable to the conservator and may examine the will or other donative, nominative, or appointive instrument of the individual.

(10) A conservator must maintain insurance on the insurable real and personal property of the ward, unless the conservatorship estate lacks sufficient funds to

pay for insurance or the court finds:

(a) The property lacks sufficient equity; or

(b) Insuring the property would unreasonably dissipate the conservatorship estate or otherwise not be in the best interest of the ward.

(11) A conservator has access to and authority over a digital asset of the ward to the extent provided by the Revised Uniform Fiduciary Access to Digital Assets Act (Title 91, Chapter 23, Mississippi Code of 1972).

(12) A conservator for an adult must notify the court if the condition of the adult has changed so that the adult has become capable of autonomy in exercising rights previously delegated to the conservator. The notice must be given immediately on learning of the change.

Conservator's Powers

§ 93-20-414 Powers of conservator requiring court approval:

(1) Except as otherwise ordered by the court, a conservator must give notice to persons entitled to notice under Section 93-13-411(5) and receive specific authorization by the court before the conservator may exercise with respect to the conservatorship the power to:

(a) Make a gift;

(b) Sell, encumber an interest in, or surrender a lease to the primary dwelling of the ward;

(c) Convey, release, or disclaim a contingent or expectant interest in property, including marital property and any right of survivorship incident to joint tenancy or tenancy by the entireties;

(d) Exercise or release a power of appointment;

(e) Create a revocable or irrevocable trust of property of the conservatorship estate, whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the ward;

(f) Exercise a right to elect an option or change a beneficiary under an insurance policy or annuity or surrender the policy or annuity for its cash value;

(g) Exercise a right to an elective share in the estate of a deceased spouse of the ward or renounce or disclaim a property interest;

(h) Grant a creditor priority for payment over creditors of the same or higher class if the creditor is providing property or services used to meet the basic living and care needs of the ward and preferential treatment otherwise would be impermissible under Section 93-13-427(6);

(i) Make, modify, amend, or revoke the will of the ward in compliance with Section 91-5-1 et seq.;
(j) Pay premiums on any insurance policy issued on the life of the ward if the individual is a minor, the policy was issued during the lifetime of the individual's deceased parent, and the court finds the policy's continuance is warranted;
(k) Acquire or dispose of real property, including real property in another state, for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of, or abandon property;
(l) Make repairs or alterations in a building or other structure, demolish any improvement, or raze an existing or erect a new wall or building if costs exceed Two Thousand Five Hundred Dollars ($2,500.00);
(m) Subdivide or develop land, dedicate land to public use, make or obtain the vacation of a plat and adjust a boundary, adjust a difference in valuation of land, exchange or partition land by giving or receiving consideration, and dedicate an easement to public use without consideration;
(n) Enter for any purpose into a lease of property as lessor or lessee, with or without an option to purchase or renew, for a term within or extending beyond the term of the conservatorship;
(o) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or a pooling or unitization agreement;
(p) Borrow funds, with or without security, to be repaid from the conservatorship estate or otherwise;
(q) Pay or contest a claim, settle a claim by or against the conservatorship estate or the ward by compromise, arbitration, or otherwise, or release, in whole or in part, a claim belonging to the conservatorship estate to the extent the claim is uncollectible; or
(r) Bring an action, claim, or proceeding in any jurisdiction for the protection of the conservatorship estate or the conservator in the performance of the conservator's duties;

(2) In approving a conservator's exercise of a power listed in subsection (1), the court must consider the ward's prior or current directions, preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable by the conservator. The court also must consider:

(a) The financial needs of the ward and individuals who are in fact dependent on the ward for support, and the interests of creditors of the individual;

(b) Possible reduction of income, estate, inheritance, or other tax liabilities;

(c) Eligibility for governmental assistance;

(d) The previous pattern of giving or level of support provided by the individual;

(e) Any existing estate plan or lack of estate plan of the individual;

(f) The life expectancy of the individual and the probability the conservatorship will terminate before the ward's death; and

(g) Any other relevant factor.

(3) A conservator may not revoke or amend a power of attorney for finances executed by the ward. If a power of attorney for finances is in effect, a decision of the conservator takes precedence over that of the attorney-in-fact only to the extent of the authorization granted to the conservator by court order.

***See* § 93-13-421 Administrative Powers of conservator not requiring court approval.**

Removal of Conservator

§ 93-20-429 Removal of conservator; appointment of successor:

(1) The court may remove a conservator for failure to perform the conservator's duties or other good cause and appoint a successor conservator to assume the duties of the conservator.

(2) The court must hold a hearing to determine whether to remove a conservator and appoint a successor on:

(a) A petition of the ward, conservator, or person interested in the welfare of the ward that contains allegations which, if true, would support a reasonable belief that removal of the conservator and appointment of a successor may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed during the preceding six (6) months;

(b) Communication from the ward, conservator, or person interested in the welfare of the ward which supports a reasonable belief that removal of the

conservator and appointment of a successor may be appropriate; or

(c) Determination by the court that a hearing would be in the best interest of the ward.

(3) Notice of a petition under subsection (2)(a) must be given to the ward, the conservator, and any other person the court determines.

(4) A ward who seeks to remove the conservator and have a successor appointed has the right to choose an attorney to represent the ward in this matter. If the ward is not represented by an attorney, the court may appoint an attorney under the same conditions as in Section 93-13-406. The court may award reasonable attorney's fees to the attorney as provided in Section 93-13-118.

(5) In selecting a successor conservator, the court must follow the priorities under Section 93-13-410.

Termination of Conservatorship

§ 93-20-430 Termination or modification of conservatorship:

(1) A conservatorship must be terminated when the minor becomes an adult, becomes emancipated, or dies; the termination must comply with Section 93-13-423, but a conservatorship may continue into adulthood when the court finds the ward qualifies for conservatorship as an adult under the provisions of subsections (5) and (6).

(2) A ward, the conservator, or a person interested in the welfare of the individual may petition for:

(a) Termination of the conservatorship on the ground that a basis for appointment under Section 93-13-401 does not exist or termination would be in the best interest of the ward or for other good cause; or\

(b) Modification of the conservatorship on the ground that the extent of protection or assistance granted is not appropriate or for other good cause shown.

(3) The court must hold a hearing to determine whether termination or modification of a conservatorship is appropriate on:

(a) A petition that contains allegations which, if true, would support a reasonable belief that termination or modification of the conservatorship may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding six (6) months;

(b) A communication from the ward, conservator, or person interested in the welfare of the ward which supports a reasonable belief that termination or modification of the conservatorship may be appropriate, including because the functional needs of the ward or supports or services available to the ward have changed;

(c) A report from a guardian or conservator which indicates that termination or modification may be appropriate because the functional needs or supports or services available to the ward have changed or other less restrictive alternative is available; or

(d) A determination by the court that a hearing would be in the best interest of the ward.

(4) Notice of a petition under this section must be given to the ward, the conservator, and any other person the court determines.

(5) On presentation of prima facie evidence for termination of a conservatorship, the court must order termination unless it is proven that a basis for appointment of a conservator under Section 93-13-401 exists.

(6) The court must modify the powers granted to a conservator if the powers are excessive or inadequate due to a change in the abilities or limitations of the ward, the ward's supports, or other circumstances.

(7) Unless the court otherwise orders for good cause, before terminating a conservatorship, the court shall follow the same procedures to safeguard the rights of the ward which apply to a petition for conservatorship.

(8) A ward who seeks to terminate or modify the terms of the conservatorship has the right to choose an attorney to represent the ward in this matter. If the ward is not represented by an attorney, the court may appoint an attorney under the same conditions as in Section 93-13-406. The court may award reasonable attorney's fees to the attorney as provided in Section 93-13-118.

(9) On termination of a conservatorship other than by reason of the death of the ward, property of the conservatorship estate passes to the ward. The order of termination must direct the conservator to file a final report and petition for discharge on approval by the court of the final report.

(10) If a ward dies testate, the conservator must deliver the will to the named representative and certify that delivery to the court. If the ward dies intestate, Section 91-7-68 governs.

Conservatorship of Adult

Petition is Filed

§ 93-20-402 Petition for appointment of conservator; notice:

(1) A person interested in the estate, financial affairs, or welfare of the individual, including a person that would be adversely affected by lack of effective management of property or financial affairs of the individual, may petition for the appointment of a conservator for the individual.

(2) The proceeding may be instituted by the chancellor or clerk of the chancery court, any relative or friend of the individual, or any other interested party, including the individual for whom the order is sought, by filing a sworn petition in the chancery court of the residence of the individual setting forth that the individual is alleged to be in need of a conservatorship.

(3) The petition must state the name and address of an attorney representing the petitioner, if any, and must set forth under the style of the case and before the body of the petition the following language in bold or highlighted type:

> THE RELIEF SOUGHT IN THIS PETITION MAY AFFECT YOUR LEGAL RIGHTS. YOU HAVE A RIGHT TO NOTICE OF ANY HEARING ON THIS PETITION, TO ATTEND ANY HEARING, AND TO BE REPRESENTED BY AN ATTORNEY.

Notice of Hearing

§ 93-20-403 Notice and hearing for appointment of conservator:

(1) On receipt of a petition under Section 93-20-402 for appointment of a conservator for a respondent, the court must set a date, time, and place for a hearing on the petition, and unless the court finds that the respondent for whom the conservator is to be appointed is competent and joins in the petition, the petitioner must cause summons to be served not less than seven (7) days before the hearing, together with a copy of the petition, on the person for whom the conservator is to be appointed. The court may, for good cause shown, direct that a shorter notice be given.

(2) Unless the court finds that the respondent for whom the conservator is to be appointed is competent and joins in the petition, the summons must also issue to:

(a) Any guardian appointed to the respondent; and

(b) At least one (1) adult relative of the respondent who resides in Mississippi from the following group in the listed order of preference:

spouse, children, parents, siblings; but if none of those can be found:

(i) To one (1) adult relative of the respondent and who is not the petitioner and who resides in Mississippi if that relative is within the third degree of kinship.

(ii) If no relative within the third degree of kinship to the respondent is found residing in the State of Mississippi, the court must either designate some other appropriate person to receive the summons or appoint a guardian ad litem to receive the summons.

(3) In a proceeding under this article, notice of the hearing also must be given to any other person interested in the respondent's welfare the court determines is entitled to notice. Failure to give notice under this subsection does not preclude the court from appointing a guardian.

(4) If the person for whom the conservator is to be appointed is entitled to any benefit, estate or income paid or payable by or through the Veterans' Administration of the United States government, such administration shall also be given summons.

(5) Notice of a hearing on a petition seeking an order under this article that is filed after the appointment of a conservator, together with a copy of the petition, must be given to the ward, the conservator, and any other person the court determines.

§ 93-20-407 Professional evaluation:

(1) The chancery court must conduct a hearing to determine whether a conservator is needed for the respondent. Before the hearing, the court, in its discretion, may appoint a guardian ad litem, and the guardian ad litem must be present at the hearing and present the interests of the respondent.

(2) The chancery judge shall be the judge of the number and character of the witnesses and proof to be presented, except that the proof must include certificates made after a personal examination of the respondent by the following professionals, each of whom must make in writing a certificate of the result of that examination to be filed with the clerk of the court and become a part of the record of the case.

(a) Two (2) licensed physicians; or

(b) One (1) licensed physician and either one (1) licensed psychologist, nurse practitioner, or physician's assistant.

(3) The personal examination may occur face-to-face or via telemedicine, but any telemedicine examination must be made using an audiovisual connection by a physician licensed in this state and as defined in Section 83-9-351. A nurse practitioner or physician assistant conducting an examination shall not also be in a collaborative or supervisory relationship, as the law may otherwise require, with the physician conducting the examination. A professional conducting an

examination under this section may also be called to testify at the hearing.

(4) The personal examination requirement in subsections (2) and (3) does not apply if the respondent is:

(a) Missing, detained or unable to return to the United States; or

(b) A minor with no other disability or incapacity.

However, a personal examination is required to extend a conservatorship beyond the age of majority.

Hearing

§ 93-20-408 Rights at hearing:

(1) At a hearing under this article, the respondent may:

(a) Present evidence and subpoena witnesses and documents;

(b) Examine witnesses; and

(c) Otherwise participate in the hearing.

(2) Unless excused by the court for good cause, a proposed conservator must attend a hearing under this article.

(3) A hearing under this article must be closed on request of the respondent and a showing of good cause.

(4) Any person may request to participate in a hearing under this article. The court may grant the request, with or without a hearing, on determining that the best interest of the respondent will be served. The court may impose appropriate conditions on the person's participation.

§ 93-20-409 Confidentiality of records:

(1) An individual subject to a proceeding for a conservatorship, an attorney designated by the respondent or ward, and a person entitled to notice either under Section 411(5) or court order may access court records of the proceeding and resulting conservatorship, including the conservator's plan under Section 419 and the conservator's report under Section 423. A person not otherwise entitled to access to court records under this section for good cause may petition the court for access to court records of the conservatorship, including the conservator's plan and report. The court must grant access if access is in the best interest of the respondent or ward or furthers the public interest and does not endanger the welfare or financial interests of the respondent or individual.

(2) A report under Section 405 of a guardian ad litem or professional evaluation

under Section 407 may be confidential and may be sealed on filing when determined necessary by the court. If the court finds the file should be sealed, the file shall remain available to:

(a) The court;

(b) The individual who is the subject of the report or evaluation, without limitation as to use;

(c) The petitioner, guardian ad litem and petitioner's and respondent's attorneys, for purposes of the proceeding;

(d) Unless the court directs otherwise, a person appointed under a power of attorney for finances in which the respondent is identified as the principal; and

(e) Any other person if it is in the public interest or for a purpose the court orders for good cause.

§ 93-20-410 Who may be conservator:

(1) Appointment of a conservator is at the discretion of the court, and in the best interest of the respondent. If two (2) or more persons have requested responsibility as conservator, the court shall select as conservator the person the court considers best qualified. In determining the best qualified person, the court shall consider the person's relationship with the respondent, the person's skills, the expressed wishes of the respondent including any designation made in a will, durable power of attorney, or health-care directive, the extent to which the person and the respondent have similar values and preferences, and the likelihood the person will be able to perform the duties of a conservator successfully. The court, acting in the best interest of the respondent, may decline to appoint as conservator a person requesting the appointment.

(2) If a qualified conservator cannot be determined, the court, in its discretion, may appoint the chancery court clerk or probate administrator for the county in which the proceedings were filed to serve as the respondent's conservator. The chancery court clerk or the probate administrator shall serve in the capacity ordered by the court unless a conflict of interest arises or the clerk or the probate administrator presents circumstances where the court determines the clerk's recusal from appointment is permitted.

(3) A person that provides paid services to the respondent, or an individual who is employed by a person that provides paid services to the respondent or is the spouse, parent, or child of an individual who provides or is employed to provide paid services to the respondent, may not be appointed as conservator unless:

(a) The individual is related to the respondent by blood, marriage, or adoption; or

(b) The court finds by clear and convincing evidence that the person is the

best qualified person available for appointment and the appointment is in the best interest of the respondent.

(4) An owner, operator, or employee of a long-term-care institution at which the respondent is receiving care may not be appointed as conservator unless the owner, operator, or employee is related to the respondent by blood, marriage, or adoption.

Appointment of Conservator

§ 93-20-401 Basis for appointment of conservator:

(2) For an adult. The court may appoint a conservator for the property or financial affairs of an adult if the court finds by clear and convincing evidence that:

(a) The adult is unable to manage property or financial affairs because:
(i) Of a limitation in the adult's ability to receive and evaluate information or make or communicate decisions, even with the use of appropriate supportive services or technological assistance;
(ii) The adult is missing, detained, incarcerated, or unable to return to the United States;
(b) Appointment is necessary to:
(i) Avoid harm to the adult or significant dissipation of the property of the adult; or
(ii) Obtain or provide funds or other property needed for the support, care, education, health, or welfare of the adult or of an individual entitled to the adult's support; and
(c) The respondent's identified needs cannot be met by a less restrictive alternative.

(3) The court shall grant a conservator only those powers necessitated by demonstrated limitations and needs of the respondent and issue orders that will encourage development of the respondent's maximum self-determination and independence. The court may not establish a full conservatorship if a limited conservatorship or other less restrictive alternative would meet the needs of the respondent.

§ 93-20-411 Order on appointment of conservator:

(2) A court order appointing a conservator for an adult must:

(a) Include a specific finding that clear and convincing evidence has established that the identified needs of the respondent cannot be met by a less restrictive alternative, including use of appropriate supportive services or technological assistance; and

(b) Include a specific finding that clear and convincing evidence established that the respondent was given proper summons notifying the respondent of the hearing on the petition.

(3) A court order establishing a full conservatorship for an adult must state the basis for granting a full conservatorship and include specific findings to support the conclusion that a limited conservatorship would not meet the functional needs of the adult.

(4) A court order establishing a limited conservatorship must state the specific property placed under the control of the conservator and the powers granted to the conservator.

(5) The court, as part of an order establishing a conservatorship, must identify and include the contact information for any person that subsequently is entitled to:

(a) Notice of the rights of the ward under Section 93-13-412(2);

(b) Notice of a sale of or surrender of a lease to the primary dwelling of the individual;

(c) Notice that the conservator has delegated a power that requires court approval under Section 93-13-414 or substantially all powers of the conservator;

(d) Notice that the conservator will be unavailable to perform the conservator's duties for more than one (1) month;

(e) A copy of the conservator's plan under Section 93-13-419 and the conservator's report under Section 93-13-423;

(f) Access to court records relating to the conservatorship;

(g) Notice of a transaction involving a substantial conflict between the conservator's fiduciary duties and personal interests;

(h) Notice of the death or significant change in the condition of the individual;

(i) Notice that the court has limited or modified the powers of the conservator; and

(j) Notice of the removal of the conservator.

(6) If a ward is an adult, the spouse and adult children of the ward are entitled under subsection (5) to notice unless the court determines notice would be

contrary to the preferences or prior directions of the ward or are not in the best interest of the ward. . . .

(8) (a) If the chancellor finds from the evidence that the person is in need of a conservatorship, the chancellor must appoint a conservator over the estate of the person.
(b) The costs and expenses of the proceedings shall be paid out of the estate of the respondent if a conservator is appointed. If a conservator is not appointed, the costs and expenses shall be paid by the person instituting the proceedings unless the proceedings were instituted by the court or the chancery clerk.

§ 93-20-412 Notice of order of appointment; rights:

(1) A conservator appointed under Section 93-20-411 must give to the ward and to all other persons given notice under Section 93-20-403 a copy of the order of appointment. The order and notice must be given not later than fourteen (14) days after the appointment.

(2) Not later than fourteen (14) days after appointment of a conservator under Section 93-20- 411, the court must give to the ward, the conservator, and any other person entitled to notice under Section 93-20-411(5), a statement of the rights of the ward and procedures to seek relief if the ward is denied those rights. The statement must be in plain language, in at least sixteen-point font, and to the extent feasible, in a language in which the ward is proficient. The statement must notify the ward of the right to:
(a) Seek termination or modification of the conservatorship, or removal of the conservator, and choose an attorney to represent the individual in these matters;
(b) Participate in decision-making to the extent reasonably feasible;
(c) Receive a copy of the conservator's plan under Section 93-20-419, the conservator's inventory under Section 93-20-420, and the conservator's report under Section 93-20-423; and
(d) Object to the conservator's inventory, plan, or report.

(3) If a conservator is appointed for the reasons stated in Section 93-20-401(2)(a)(ii) and the ward is missing, notice under this section to the individual is not required.

Conservator's Duties

§ 93-20-418 Duties of conservator:

(1) A conservator is a fiduciary and has duties of prudence and loyalty to the ward.

(2) A conservator must promote the self-determination of the ward and, to the extent feasible, encourage the ward to participate in decisions, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs.

(3) In making a decision for a ward, the conservator must make the decision the conservator reasonably believes the ward would make if able, unless doing so would fail to preserve the resources needed to maintain the ward's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or personal or financial interests of the ward. To determine the decision the ward would make if able, the conservator must consider the ward's prior or current directions, preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable by the conservator.

(4) If a conservator cannot make a decision under subsection (3) because the conservator does not know and cannot reasonably determine the decision the ward probably would make if able, or the conservator reasonably believes the decision the individual would make would fail to preserve resources needed to maintain the ward's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or personal or financial interests of the ward, the conservator shall act in accordance with the best interest of the ward. In determining the best interest of the ward, the conservator shall consider:

(a) Information received from professionals and persons who demonstrate sufficient interest in the welfare of the ward;
(b) Other information the conservator believes the ward would have considered if the ward were able to act; and
(c) Other factors a reasonable person in the circumstances of the ward would consider, including consequences for others.

(5) Except when inconsistent with the conservator's duties under subsections (1) through (4), and where investments other than in FDIC-insured investments are permitted in the court's order approving the conservator's plan, a conservator must invest and manage the conservatorship estate as a prudent investor would, by considering:

(a) The circumstances of the ward and the conservatorship estate;
(b) General economic conditions;
(c) The possible effect of inflation or deflation;
(d) The expected tax consequences of an investment decision or strategy;
(e) The role of each investment or course of action in relation to the conservatorship estate as a whole;
(f) The expected total return from income and appreciation of capital;

(g) The need for liquidity, regularity of income, and preservation or appreciation of capital; and
(h) The special relationship or value, if any, of specific property to the ward.

(6) The propriety of a conservator's investment and management of the conservatorship estate is determined in light of the facts and circumstances existing when the conservator decides or acts and not by hindsight.

(7) A conservator must make a reasonable effort to verify facts relevant to the investment and management of the conservatorship estate.

(8) A conservator that has special skills or expertise, or is named conservator in reliance on the conservator's representation of special skills or expertise, has a duty to use the special skills or expertise in carrying out the conservator's duties.

(9) In investing, selecting specific property for distribution, and invoking a power of revocation or withdrawal for the use or benefit of the ward, a conservator must consider any estate plan of the ward known or reasonably ascertainable to the conservator and may examine the will or other donative, nominative, or appointive instrument of the individual.

(10) A conservator must maintain insurance on the insurable real and personal property of the ward, unless the conservatorship estate lacks sufficient funds to pay for insurance or the court finds:
(a) The property lacks sufficient equity; or
(b) Insuring the property would unreasonably dissipate the conservatorship estate or otherwise not be in the best interest of the ward.

(11) A conservator has access to and authority over a digital asset of the ward to the extent provided by the Revised Uniform Fiduciary Access to Digital Assets Act (Title 91, Chapter 23, Mississippi Code of 1972).

(12) A conservator for an adult must notify the court if the condition of the adult has changed so that the adult has become capable of autonomy in exercising rights previously delegated to the conservator. The notice must be given immediately on learning of the change.

Conservator's Powers

§ 93-20-414 Powers of conservator requiring court approval:

(1) Except as otherwise ordered by the court, a conservator must give notice to

persons entitled to notice under Section 93-13-411(5) and receive specific authorization by the court before the conservator may exercise with respect to the conservatorship the power to:

(a) Make a gift;

(b) Sell, encumber an interest in, or surrender a lease to the primary dwelling of the ward;

(c) Convey, release, or disclaim a contingent or expectant interest in property, including marital property and any right of survivorship incident to joint tenancy or tenancy by the entireties;

(d) Exercise or release a power of appointment;

(e) Create a revocable or irrevocable trust of property of the conservatorship estate, whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the ward;

(f) Exercise a right to elect an option or change a beneficiary under an insurance policy or annuity or surrender the policy or annuity for its cash value;

(g) Exercise a right to an elective share in the estate of a deceased spouse of the ward or renounce or disclaim a property interest;

(h) Grant a creditor priority for payment over creditors of the same or higher class if the creditor is providing property or services used to meet the basic living and care needs of the ward and preferential treatment otherwise would be impermissible under Section 93-13-427(6);

(i) Make, modify, amend, or revoke the will of the ward in compliance with Section 91-5-1 et seq.;

(j) Pay premiums on any insurance policy issued on the life of the ward if the individual is a minor, the policy was issued during the lifetime of the individual's deceased parent, and the court finds the policy's continuance is warranted;

(k) Acquire or dispose of real property, including real property in another state, for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of, or abandon property;

(l) Make repairs or alterations in a building or other structure, demolish any improvement, or raze an existing or erect a new wall or building if costs exceed Two Thousand Five Hundred Dollars ($2,500.00);

(m) Subdivide or develop land, dedicate land to public use, make or obtain the vacation of a plat and adjust a boundary, adjust a difference in valuation of land, exchange or partition land by giving or receiving consideration, and dedicate an easement to public use without consideration;

(n) Enter for any purpose into a lease of property as lessor or lessee, with or without an option to purchase or renew, for a term within or extending

beyond the term of the conservatorship;
(o) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or a pooling or unitization agreement;
(p) Borrow funds, with or without security, to be repaid from the conservatorship estate or otherwise;
(q) Pay or contest a claim, settle a claim by or against the conservatorship estate or the ward by compromise, arbitration, or otherwise, or release, in whole or in part, a claim belonging to the conservatorship estate to the extent the claim is uncollectible; or
(r) Bring an action, claim, or proceeding in any jurisdiction for the protection of the conservatorship estate or the conservator in the performance of the conservator's duties;

(2) In approving a conservator's exercise of a power listed in subsection (1), the court must consider the ward's prior or current directions, preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable by the conservator. The court also must consider:
(a) The financial needs of the ward and individuals who are in fact dependent on the ward for support, and the interests of creditors of the individual;
(b) Possible reduction of income, estate, inheritance, or other tax liabilities;
(c) Eligibility for governmental assistance;
(d) The previous pattern of giving or level of support provided by the individual;
(e) Any existing estate plan or lack of estate plan of the individual;
(f) The life expectancy of the individual and the probability the conservatorship will terminate before the ward's death; and
(g) Any other relevant factor.

(3) A conservator may not revoke or amend a power of attorney for finances executed by the ward. If a power of attorney for finances is in effect, a decision of the conservator takes precedence over that of the attorney-in-fact only to the extent of the authorization granted to the conservator by court order.

***See* § 93-13-421 Administrative Powers of conservator not requiring court approval.**

Removal of Conservator

§ 93-20-429 Removal of conservator; appointment of successor:

(1) The court may remove a conservator for failure to perform the conservator's

duties or other good cause and appoint a successor conservator to assume the duties of the conservator.

(2) The court must hold a hearing to determine whether to remove a conservator and appoint a successor on:

(a) A petition of the ward, conservator, or person interested in the welfare of the ward that contains allegations which, if true, would support a reasonable belief that removal of the conservator and appointment of a successor may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed during the preceding six (6) months;

(b) Communication from the ward, conservator, or person interested in the welfare of the ward which supports a reasonable belief that removal of the conservator and appointment of a successor may be appropriate; or

(c) Determination by the court that a hearing would be in the best interest of the ward.

(3) Notice of a petition under subsection (2)(a) must be given to the ward, the conservator, and any other person the court determines.

(4) A ward who seeks to remove the conservator and have a successor appointed has the right to choose an attorney to represent the ward in this matter. If the ward is not represented by an attorney, the court may appoint an attorney under the same conditions as in Section 93-13-406. The court may award reasonable attorney's fees to the attorney as provided in Section 93-13-118.

(5) In selecting a successor conservator, the court must follow the priorities under Section 93-13-410.

Termination of Conservatorship

§ 93-20-430 Termination or modification of conservatorship:

(1) A conservatorship must be terminated when the minor becomes an adult, becomes emancipated, or dies; the termination must comply with Section 93-13-423, but a conservatorship may continue into adulthood when the court finds the ward qualifies for conservatorship as an adult under the provisions of subsections (5) and (6).

(2) A ward, the conservator, or a person interested in the welfare of the individual may petition for:

(a) Termination of the conservatorship on the ground that a basis for appointment under Section 93-13-401 does not exist or termination would be in the best interest of the ward or for other good cause; or\

(b) Modification of the conservatorship on the ground that the extent of protection or assistance granted is not appropriate or for other good cause shown.

(3) The court must hold a hearing to determine whether termination or modification of a conservatorship is appropriate on:

(a) A petition that contains allegations which, if true, would support a reasonable belief that termination or modification of the conservatorship may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding six (6) months;

(b) A communication from the ward, conservator, or person interested in the welfare of the ward which supports a reasonable belief that termination or modification of the conservatorship may be appropriate, including because the functional needs of the ward or supports or services available to the ward have changed;

(c) A report from a guardian or conservator which indicates that termination or modification may be appropriate because the functional needs or supports or services available to the ward have changed or other less restrictive alternative is available; or

(d) A determination by the court that a hearing would be in the best interest of the ward.

(4) Notice of a petition under this section must be given to the ward, the conservator, and any other person the court determines.

(5) On presentation of prima facie evidence for termination of a conservatorship, the court must order termination unless it is proven that a basis for appointment of a conservator under Section 93-13-401 exists.

(6) The court must modify the powers granted to a conservator if the powers are excessive or inadequate due to a change in the abilities or limitations of the ward, the ward's supports, or other circumstances.

(7) Unless the court otherwise orders for good cause, before terminating a conservatorship, the court shall follow the same procedures to safeguard the rights of the ward which apply to a petition for conservatorship.

(8) A ward who seeks to terminate or modify the terms of the conservatorship has the right to choose an attorney to represent the ward in this matter. If the ward is not represented by an attorney, the court may appoint an attorney under the same conditions as in Section 93-13-406. The court may award reasonable attorney's fees to the attorney as provided in Section 93-13-118.

(9) On termination of a conservatorship other than by reason of the death of the ward, property of the conservatorship estate passes to the ward. The order of termination must direct the conservator to file a final report and petition for discharge on approval by the court of the final report.

(10) If a ward dies testate, the conservator must deliver the will to the named representative and certify that delivery to the court. If the ward dies intestate, Section 91-7-68 governs.

CHAPTER 19

TAX SALES

CHAPTER 19

TAX SALES

§ 27-41-79 Sales of land for taxes; certified lists of lands sold:

The tax collector shall on or before the second Monday of May and on or before the second Monday of October of each year, transmit to the clerk of the chancery court of the county separate certified lists of the lands struck off by him to the state and that sold to individuals, specifying

to whom assessed,
the date of sale,
the amount of taxes for which sale was made, and
each item of cost incident thereto, and
where sold to individuals, the name of the purchaser,

such sale to be separately recorded by the clerk in a book kept by him for that purpose. Except as otherwise provided in Section 27-41-49, all such lists shall vest in the state or in the individual purchaser thereof a perfect title to the land sold for taxes, but without the right of possession for the period of and subject to the right of redemption; but a failure to transmit or record a list or a defective list shall not affect or render the title void.

If the tax collector or clerk shall fail to perform the duties herein prescribed, he shall be liable to the party injured by such default in the penal sum of Twenty-five Dollars ($25.00), and also on his official bond for the actual damage sustained.

The lists hereinabove provided shall, when filed with the clerk, be notice to all persons in the same manner as are deeds when filed for record.

The lists of lands hereinabove referred to shall be filed by the tax collector in May for sales made in April and in October for sales made in September, respectively.

Redemption of Land Sold for Taxes

Notice to Owners Prior to Expiration of Redemption Period

§ 27-43-1 Notice to owners:

The clerk of the chancery court shall, within one hundred eighty (180) days and not less than sixty (60) days prior to the expiration of the time of redemption with respect to land sold, either to individuals or to the state, be required to issue notice to the record owner of the land sold as of 180 days prior to the expiration of the time of redemption, in effect following, to wit:

State of Mississippi, To _____
County of _____

You will take notice that _____ (here describe lands) _____ lands assessed to you or supposed to be owned by you, was, on the _____ day of _____, 2_____, sold to _____ for the taxes of _____ (year) _____, and that the title to said land will become absolute in _____(purchaser)_____ unless redemption from said tax sale be made on or before _____ day of _____, 2_____.

This _____ day of _____, 2_____.

_____
Chancery Clerk of _____County, MS

When property is sold for unpaid county or municipal ad valorem taxes, the property owner must be given notice of his right to redeem the property within 180 days of, but no less than 60 days prior to, the expiration of the redemption period. ***Johnson v. Ferguson*, 58 So. 3d 711, 714 (Miss. Ct. App. 2011) (citations omitted).**

[S]ection 27-43-1 mandates that the chancery clerk provide notice "within one hundred eighty (180) days and not less than sixty (60) days prior to the expiration of the time of redemption" to those persons having an interest in real property sold for ad valorem taxes. ***Green Tree Servicing, LLC v. Dukes*, 25 So. 3d 399, 403 (Miss. Ct. App. 2009).**

§ 27-43-3 Notice to owners; service of notice; fees:

Resident of Mississippi - Service on the Person, by Mail & by Publication

The clerk shall issue the notice to the sheriff or a constable of the county of the reputed owner's residence, with prior approval by the board of supervisors with the acknowledgement that the board will cover any incurred costs of any initial system updates required to facilitate this action if the owner is a resident of the State of Mississippi, and the sheriff or constable shall also be required to serve notice as follows:

> (a) Upon the reputed owner personally, if he can be found in the county after diligent search and inquiry, by handing him a true copy of the notice;
>
> (b) If the reputed owner cannot be found in the county after diligent search and inquiry, then by leaving a true copy of the notice at his usual place of abode with the spouse of the reputed owner or some other person who lives at his usual place of abode above the age of sixteen (16) years, and willing to receive the copy of the notice; or
>
> (c) If the reputed owner cannot be found after diligent search and inquiry, and if no person above the age of sixteen (16) years who lives at his usual place of abode can be found at his usual place of abode who is willing to receive the copy of the notice, then by posting a true copy of the notice on a door of the reputed owner's usual place of abode.

The sheriff or constable shall make his return to the chancery clerk issuing the notice. The clerk shall also mail a copy of the notice to the reputed owner at his usual street address, if it can be ascertained after diligent search and inquiry, or to his post-office address if only that can be ascertained, and he shall note such action on the tax sales record.

The clerk shall also be required to publish the name and address of the reputed owner of the property and the legal description of the property in a public newspaper of the county in which the land is located, or if no newspaper is published as such, then in a newspaper having a general circulation in the county. The publication shall be made at least forty-five (45) days prior to the expiration of the redemption period.

***See* Mississippi Rule of Civil Procedure 4.**

Section 27-45-3 of the Mississippi Code allows an owner whose land was sold for taxes, "or any persons for him with his consent, or any person interested in the land" to redeem the property by paying the delinquent taxes, along with statutory damages and interest, within two years after the date of the tax sale. The chancery clerk is required by statute to provide the owner of the property, as well as any mortgagees, beneficiaries, and holders of vendors' liens, written notice of the expiration of this redemption period. Should the chancery clerk inadvertently fail to notify the property owner in compliance with the statutory requirements, "the sale shall be void and the clerk shall not be liable to the purchaser or owner upon refund of all purchase money paid." ***SASS Muni-V, LLC v. DeSoto Cty.*, 170 So. 3d 441, 446 (Miss. 2015) (citations omitted).**

Redemption notice must be given in accordance with the procedures set forth in section 27-43-3. Section 27-43-3 requires that the redemption notice be given to the reputed owner in three ways: (1) personal service delivered by the sheriff, (2) registered or certified mail, and (3) publication in the appropriate newspaper. . . . Because the chancery clerk failed to fully comply with the redemption notice requirements of sections 27-43-1 and 27-43-3, the chancery court did not err in setting aside the tax sale as void. ***Tofino Holdings, LLC v. Donnell & Sons, LLC*, 119 So. 3d 358, 360-61 (Miss. Ct. App. 2012).**

Non-Resident of Mississippi - Service by Mail & by Publication

If the reputed owner is a nonresident of the State of Mississippi, then the clerk shall mail a copy of the notice to the reputed owner in the same manner as set out in this section for notice to a resident of the State of Mississippi, except that notice served by the sheriff or constable shall not be required.

Kay Tiblier, a resident of California, failed to pay the 2006 ad valorem taxes on real property in Jackson County, Mississippi. On August 27, 2007, Debra Davis purchased the property at a tax sale. Tiblier, who had been suffering from Alzheimer's disease, died on June 22, 2009. The chancery clerk mailed notice of the expiration of the redemption period to Tiblier's last known address on June 26, 2009. The notice was returned "unclaimed." Davis subsequently received a tax deed to the property, and Tiblier's estate filed this action to set it aside. The chancery court granted summary judgment to the estate, finding that the chancery clerk

had failed to strictly adhere to the statutory notice requirements. . . . At issue is the adequacy of the chancery clerk's attempt to notify Tiblier by mail. The notice was timely mailed to Tiblier at an address in California she had used in the past. It was returned "unclaimed," presumably because Tiblier had moved from that address some years before and had died before the notice was mailed. The chancery clerk treated the notice as "undelivered" per the statute but neglected to produce affidavits documenting any subsequent efforts to locate Tiblier. Assuming the first mailing was properly treated as undelivered, the chancery clerk clearly failed to comply with the statute. "Statutes dealing with land forfeitures for delinquent taxes should be strictly construed in favor of the landowners. Any deviation from the statutorily mandated procedure renders the sale void." Davis's argument on appeal is that the notice, returned "unclaimed," was not "undelivered" under the statute. Thus, she contends the statutory notice requirements were met and no affidavits were required. However, Davis has presented no authority to support her position. Our own review of the caselaw shows that we have repeatedly treated unclaimed mail as undelivered under the statute. . . . In fact, the United States Supreme Court has held that when the mailed notice of a tax sale is returned "unclaimed," additional efforts to locate the owner are constitutionally required. ***Davis v. Estate of Tiblier*, 107 So. 3d 181, 181-84 (Miss. Ct. App. 2013) (citations omitted).**

If the owner is a non-resident, then personal service is not required. ***Johnson v. Ferguson*, 58 So. 3d 711, 714 (Miss. Ct. App. 2011) (discussing prior version of statute).**

Service by Mail

Notice by mail shall be by registered or certified mail. In the event the notice by mail is returned undelivered and the notice as required in this section to be served by the sheriff or constable is returned not found, then the clerk shall make further search and inquiry to ascertain the reputed owner's street and post-office address. If the reputed owner's street or post-office address is ascertained after the additional search and inquiry, the clerk shall again issue notice as set out in this section. If notice is again issued and it is again returned not found and if notice by mail is again returned undelivered, then the clerk shall file an affidavit to that effect and shall specify in the affidavit the acts of search and inquiry made by him in an effort to ascertain the reputed owner's street and post-office address and the affidavit shall be retained as a permanent record in the office of the clerk and that action shall be noted on the tax sales record. If the clerk is still unable to ascertain

the reputed owner's street or post-office address after making search and inquiry for the second time, then it shall not be necessary to issue any additional notice but the clerk shall file an affidavit specifying the acts of search and inquiry made by him in an effort to ascertain the reputed owner's street and post-office address and the affidavit shall be retained as a permanent record in the office of the clerk and that action shall be noted on the tax sale record.

Cases on Notice:

When a property owner fails to timely pay his or her property taxes, the county will auction off the property for the amount of unpaid taxes. At that point, the property owner has two years to redeem the property. If he or she fails to do so, the property is forfeited to whoever wins the auction. But for a tax sale to be valid, the chancery clerk must strictly follow Mississippi Code Section 27-43-3's notice requirements. These statutory notice procedures further Mississippi's long-standing policy of protecting landowners from losing property in tax sales. Specifically, the statute mandates that when a clerk is unable to notify the landowner, he or she must diligently search and inquire for a new or different address to provide notice. Here, the property owner failed to timely pay his taxes or to redeem them within two years of the tax sale of his property. The owner objected to the sale, asserting that he was deprived of his property without the statutorily required prior notice. What our review shows is that the chancery clerk's first notice was returned undelivered. At that point, by statute, the clerk was required to diligently search for a different address for the property owner. But despite having another address readily available in the county's land records, no notices were ever mailed to that address before the redemption period ended. Thus, the clerk's search and inquiry did not strictly comply with the statute. We must therefore reverse and render. ***Campbell Properties, Inc. v. Cook*, 258 So. 3d 273, 274 (Miss. 2018).**

After Osborne's property was sold at auction, the chancery clerk's office was required to provide him notice - by personal service, certified or registered mail, and by newspaper publication - of when his right to redeem the property would expire. Thus, the clerk's office needed Osborne's physical and mailing addresses. But when the chancery clerk sent a “courtesy notice” to Osborne in February 2015 to 8435 Highway 3, C/O P.O. Box 820258, Vicksburg, MS 39182-0258, the notice was returned to the clerk's office marked “not deliverable as addressed.” Despite this, the

clerk continued to use that very same post-office-box address for every subsequent notice that was mailed, certified or otherwise. When the statutory notice sent in March 2015 and personal service by the sheriff were ineffective, the clerk was required by statute to perform a diligent search and inquiry to locate another address for Osborne. The deputy clerk responsible for redemption notices testified that she reviewed the tax collector's records. She also testified that she reviewed court and land records and prior tax sales for Osborne's address. Still, after doing so, the clerk's office continued to send future notices to the same post-office-box address, an address from which the very first notice - the courtesy notice - was returned "not deliverable as addressed." This address was continually used for mailings, though Warren County land records contained a deed of trust filed March 10, 2011, which listed Osborne's address at 8435 Highway 3, Redwood, MS 39156. In fact, the deed conveying the subject property to Osborne listed the correct address for the property as 8435 Highway 3, Redwood, MS 39156. . . . However, no notices were ever mailed to that address. . . . While the chancery clerk did take certain steps to locate Osborne, the clerk continued to use the post-office-box address from which the very first notice had been returned as "not deliverable as addressed." This was done even though another address for Osborne was readily attainable in court filings. Thus, we find a diligent search and inquiry was not conducted as required by the statute. We therefore reverse and render. ***Campbell Properties, Inc. v. Cook*, 258 So. 3d 273, 274-75 (Miss. 2018).**

There is testimony that a deputy chancery clerk personally handed Osborne a certified notice that had been returned to the clerk's office, and the record shows that Osborne did sign the return receipt. But putting aside the conflicting testimony over when Osborne signed the return receipt and whether he actually received the notice, the fact remains that the statute does not allow service in this manner. Rather, the statute dictates that notices be sent by certified or registered mail. We recognize this is a hard-line approach, but the redemption-notice statute must be followed strictly. Because it was not here, we must reverse and render the chancellor's judgment affirming the tax sale. ***Campbell Properties, Inc. v. Cook*, 258 So. 3d 273, 278 (Miss. 2018).**

Section 27-43-3 requires redemption notice be given by personal service, by mail, and by publication in an appropriate newspaper. All three requirements must be met for the redemption notice to be

complete and in accordance with the statute. In *Viking Investments, LLC. v. Addison Body Shop, Inc.*, the deputy sheriff posted the notice of redemption to the landowner's business, and the landowner later received notice of the expiration period by certified mail. On appeal, we found that posting a notice to the property when the intended recipient cannot be located is clearly not one of the methods for perfecting personal service under Rule 4 of the Mississippi Rules of Civil Procedure. According to section 27-43-3, the sheriff is required to serve personal notice as summons issued from the courts are served. . . . Here, the sheriff posted the notice on Norris's door. Posting notice on the door is not a method for personal service of process under Rule 4. Accordingly, we find that Norris was not given proper notice of the expiration of the redemption period because the sheriff never personally served him the notice. ***Rebuild America, Inc. v. Norris*, 64 So. 3d 499, 501-02 (Miss. Ct. App. 2010) (citations omitted) (discussing prior version of statute).**

The Madison County Chancery Clerk testified regarding his effort to serve notice on the Grosses. Notice was issued to the sheriff, but it was returned unfound. Copies of the notice were mailed to a street address . . . but they were returned undelivered. Notice was then published in the Madison County Herald. The chancery clerk filed an affidavit stating that he tried to call a phone number listed for the Grosses, but it was disconnected. The chancery clerk mailed another notice to an alternate address, and he called the B&I Quick Stop to ask if anyone there could get a message to the Grosses. At trial, Mr. Gross testified that his mailing address was post office box 539, and his physical address was 171 Pugh Road, but he only received mail at the post office box. . . . On cross-examination, the chancery clerk admitted that his office did not mail any notices to the Grosses' post office box. He further admitted that his office was aware of this post-office box address because it was listed as the Grosses' address on their 2003 tax receipt. The Grosses' post office box address was also listed on the deeds delivered to Alexander. Section 27-43-3 is clear that if notice by mail and personal service by the sheriff are unsuccessful, the chancery clerk must make further inquiry to determine the owner's street and post office address. Only after further investigation and an effort to send notice to the post office address may the chancery clerk file an affidavit relieving his office of any further duties regarding notice. Here, it is clear that the Grosses' post office address was readily available to the chancery clerk. Despite the numerous attempts to

serve the Grosses at various addresses, as well as through publication, the chancery clerk never sent a notice to the post office address. We agree with the chancellor's finding that the chancery clerk failed to conduct a diligent search as required by statute because of this error. ***Alexander v. Gross*, 996 So. 2d 822, 824-25 (Miss. Ct. App. 2008) (discussing prior version of statute).**

It is clear in this case that there was not a substantial compliance with our statutes or Section 27-43-3. In the first place, as the chancellor noted, there was a noncompliance with MRCP 4. Second, as was pointed out, the clerk is required to give public notice at least 45 days prior to the expiration of the redemption period. Forty-three days did not suffice. The notice was also fatally defective in attempting to serve both [owners] with a single notice. The statute surely contemplates that each owner shall receive the notice required by the statute. Statutes dealing with land forfeitures for delinquent taxes should be strictly construed in favor of the landowners. ***Brown v. Riley*, 580 So. 2d 1234, 1237 (Miss. 1991) (discussing prior version of statute).**

Cases on the Affidavit(s):

Johnson contends that the chancery clerk failed to satisfy the requirements of the statute as the "affidavit" submitted by the chancery clerk's office was not a sworn affidavit. As such, he claims that the tax sale is void. . . . We agree with Johnson that the purported "affidavit" was insufficient to meet the requirements of section 27-43-3. . . . Furthermore, in a recent case, *Rebuild America, Inc. v. McGee*, we found that "unsworn affidavits executed by a deputy clerk," were not sufficient to cure any defects to notice and "insufficient to meet the statutory requirements." Here, the wording in the purported affidavit is similar to that contained in the document in *McGee*, and although the document is labeled as an "Affidavit," it is neither sworn nor notarized. It is only signed by the deputy chancery clerk. Therefore, in accordance with our holdings . . . we must find that the document purporting to be an "affidavit" in this case is "merely a piece of paper with the word 'affidavit' as its title." Thus, it is insufficient to meet the statutory requirements of section 27-43-3. ***Johnson v. Ferguson*, 58 So. 3d 711, 714-15 (Miss. Ct. App. 2011) (citations omitted) (discussing prior version of statute).**

This Court has stated:

> [I]t is strict compliance with the statute which is mandated. The statute requires, inter alia, the filing of "an affidavit specifying therein the acts of search and inquiry" regarding efforts to ascertain the landowner's street address and post office address. According to another portion of the statute, the clerk must be "diligent" in his/her search and inquiry.

Thus, taking [the deputy clerk's] affidavit as true, the . . . Chancery Clerk's office did not heed this Court's admonition . . . concerning the appropriate documentation to verify the "due diligence" exercised by the chancery clerk's office in attempting to locate the property owner after a tax sale, but prior to the redemption deadline. The form affidavit had blanks to check indicating a search had occurred in the "Phone Directory," with the "City Tax Collector," and in the "City Tax Directory." Also, there was a blank to list "Other" sources used. On the face of the affidavit, [the deputy clerk] did not check any blanks and did not note any sources of her search. Accordingly, we find that the chancellor did not err in finding that the Forrest County Chancery Clerk's office did not comply with the notice requirements of the statute. ***Reed v. Florimonte*, 987 So. 2d 967, 974-75 (Miss. 2008) (citations omitted) (discussing prior version of statute).**

Mississippi's long-standing public policy is to protect landowners from loss by sale of their land for taxes. Section 27-43-3 reflects this policy by providing that "[s]hould the clerk inadvertently fail to send notice as prescribed in this section, then such sale shall be void. . . ." Under this guidance, we have held that the statutory notice requirements of section 27-43-3 must be strictly construed in favor of landowners. . . . Regarding the notice requirements found in section 27-43-3, there is nothing in the record to suggest that the chancery clerk took any steps beyond mailing notice and sending the sheriff to the property to deliver notice. According to section 27-43-3, the clerk was also required to publish notice in the newspaper. Also, because the certified mail was returned unclaimed and the sheriff did not find the owner, the clerk was required to conduct additional search and inquiry and file two affidavits detailing her efforts to locate the owner. From the record before us, it does not appear that the clerk filed any such affidavits. There were neither any affidavits in evidence nor any notations in the tax sale record that any affidavits had been filed. Based on our recent decisions, we find that it was clearly erroneous for the chancellor to conclude that the clerk complied with all the statutory

notice requirements, even though she had not filed the supporting affidavits. ***Moore v. Marathon Asset Management, LLC*, 973 So. 2d 1017, 1020-21 (Miss. Ct. App. 2008) (citations omitted) (discussing prior version of statute).**

In Mississippi, it is public policy to favor and protect landowners from [sale of their land] for taxes. Further, we must strictly construe sections 27-43-1 and 27-43-3. Failure of the chancery clerk to file the requisite affidavits renders a tax deed void. In the case sub judice, it is undisputed that, while the chancery clerk filed the first necessary affidavit required by Section 27-43-3, she failed to file the second required affidavit. Her failure to strictly adhere to the statute renders the tax deed void. ***Norwood v. Moore*, 932 So. 2d 63, 66 (Miss. Ct. App. 2006) (citations omitted) (discussing prior version of statute).**

Clerk's Fees

For examining the records to ascertain the record owner of the property, the clerk shall be allowed a fee of Fifty Dollars ($50.00); for issuing the notice the clerk shall be allowed a fee of Two Dollars ($2.00) and, for mailing the notice and noting that action on the tax sales record, a fee of One Dollar ($1.00); and for serving the notice, the sheriff or constable shall be allowed a fee of Forty-five Dollars ($45.00). For issuing a second notice, the clerk shall be allowed a fee of Five Dollars ($5.00) and, for mailing the notice and noting that action on the tax sales record, a fee of Two Dollars and Fifty Cents ($2.50), and for serving the second notice, the sheriff or constable shall be allowed a fee of Forty-five Dollars ($45.00). The clerk shall also be allowed the actual cost of publication. The fees and cost shall be taxed against the owner of the land if the land is redeemed, and if not redeemed, then the fees are to be taxed as part of the cost against the purchaser. The failure of the landowner to actually receive the notice herein required shall not render the title void, provided the clerk and sheriff or constable have complied with the duties prescribed for them in this section.

Failure to Send Notice

Should the clerk inadvertently fail to send notice as prescribed in this section, then the sale shall be void and the clerk shall not be liable to the purchaser or owner upon refund of all purchase money paid.

While our prior opinion did not address whether the tax sale was void, the issue is now before us, and we hold that the tax sale was void ab initio due to the chancery clerk's failure to comply fully with the statutory notice requirements. Section 24-43-3 provides:

> "Should the clerk inadvertently fail to send notice as prescribed in this section, then sale shall be void and the clerk shall not be liable to the purchaser or owner upon refund of all purchase money paid."

Both we and the Mississippi Court of Appeals have interpreted Section 27-43-3 to mean that failure to comply strictly with the notice requirements renders the purchaser's tax deed void, with no legal effect, and not simply voidable. As the Court of Appeals has put it, a tax sale that does not meet the requirements of Section 27-43-3 is void ab initio. . . . Here, on the other hand, Section 27-43-3 unambiguously states that failure to provide the requisite notice to the property owner renders the sale void. Further, Section 27-43-3 gives the property owner a right to notice of the expiration of the redemption period prior to the tax sale. Without the notice, a valid sale cannot occur. To modify the existing rights, the property owner must relinquish the right to notice before the property is sold. Otherwise, the plain language of Section 27-43-3 controls, and the chancery clerk's failure to provide the requisite notice renders the tax sale void. In the instant case, the record indicates that the property owner attempted to waive the requirements of Section 27-43-3 only after Sass Muni brought suit to void the tax sale and obtain a refund. The property owner's belated attempt to disclaim its interest in the property cannot cure the fact that Sass Muni's tax deed has been void since the time of the tax sale. ***City of Horn Lake v. Sass Muni-V, LLC*, 268 So. 3d 514, 518-19 (Miss. 2018).**

Notice to Lienors

§ 27-43-5 Notice to lienors:

It shall be the duty of the clerk of the chancery court to examine the record of deeds, mortgages and deeds of trust in his office to ascertain the names and addresses of all mortgagees, beneficiaries and holders of vendors liens of all lands sold for taxes; and he shall, within the time fixed by law for notifying owners, send by certified mail with return receipt requested to all such lienors so shown of record the following notice, to-wit:

State of Mississippi, To _____
County of _____

You will take notice that _____ (here describe lands) _____ assessed to, or supposed to be owned by _____ was on the _____ day of _____, 2 _____, sold to _____ for the taxes of _____ (giving year)_____ upon which you have a lien by virtue of the instrument recorded in this office in _____ Book _____, page _____, dated _____, and that the title to said land will become absolute in said purchaser unless redemption from said sale be made on or before the _____ day of May of 2 _____.

This _____ day of _____, 2 _____.

_____
Chancery Clerk of _____ County, MS

The chancery clerk has an affirmative duty under section 27-43-5 to examine the records of mortgages and deeds of trust maintained in his office, for a period of six years prior to the date of a tax sale and to identify lienholders with an interest in any property which was sold for delinquent taxes. After conducting the search the chancery clerk uses a form and the language set out in section 27-43-5 to send to the lienholder of the real property sold delinquent taxes. ***Green Tree Servicing, LLC v. Dukes*, 25 So. 3d 399, 403 (Miss. Ct. App. 2009).**

The issue presented is whether the tax sale was void because the chancery clerk failed to send the lienholder, First Union, adequate notice. Wachovia and Mid–State argue that the notice was inadequate because it failed to identify the book, page number, and date the deed of trust was filed in the land records. . . . In *Green Tree Servicing, LLC v. Dukes*, this Court set aside a tax sale because the notice to the lienholder failed to state the book, page, and date within the notice. Such is the case here. Even Rebuild America admits that the clerk failed to follow the specific requirements of section 27-43-5. Instead, Rebuild America argues that these were minor technicalities. The chancery clerk's notice clearly deviated from the statutorily mandated notice. As did the Court in *Dukes*, we must "reverse and set aside the tax sale as it pertains to any interest in the subject property held by" the lienholder. ***Wachovia Bank, N.A. v. Rebuild America, Inc.*, 56 So. 3d 586, 588 (Miss. Ct. App. 2011) (citations omitted).**

Statutes dealing with land forfeitures for delinquent taxes should be strictly construed in favor of the landowner. Any deviation from the statutorily mandated procedure renders the tax sale void. In the present case, there is a clear deviation from the statutorily-mandated notice. The notice sent to the lienholder was merely a duplicate of that notice sent to the property owner. The notice, which was sent to the lienholder, did not state it was in fact intended for the lienholder, as opposed to having been sent in error. . . . The notice did not identify any interest purportedly held by the lienholder in the property that was the subject of the notice. The notice did not indicate that Green Tree, or any other entity might hold or be the beneficiary of a deed of trust on the subject property. Nor did the notice identify the source of any interest purportedly held by the lienholder in the subject property. The notice did not state the date of any document creating an interest in the lienholder, nor did it state the book and page number where any document was recorded. The statutorily-mandated notice is intended to without equivocation advise a party that he has a specific interest which requires his attention. The attempted notice in this case did not meet that test and is, therefore, invalid. Because the chancery clerk failed to provide the lienholder with the statutorily-mandated notice, this Court is obligated to reverse and set aside the tax sale as it pertains to any interest in the subject property held by Green Tree. ***Green Tree Servicing, LLC v. Dukes*, 25 So. 3d 399, 403-04 (Miss. Ct. App. 2009) (citations omitted).**

> Sometime in June 2004, American General received, by certified mail, an instrument entitled "2001 Delinquent Tax Notices." The document did not contain the name of the property owner, a description of the land, the book and page number of the deed of trust, or the purchaser of the property at the tax sale. . . . We conclude that American General did not receive the statutorily-required notice; thus, the chancellor correctly found that the tax sale was void as to American General. ***SKL Investments, Inc. v. American General Finance, Inc.*, 22 So. 3d 1247, 1249-50 (Miss. Ct. App. 2009).**

§ 27-43-7 Notice to lienors; service:

The notice shall be mailed to said lienors, if any, to the post-office address of the lienors, if such address is set forth in the instrument creating the lien, otherwise to the post-office address of said lienors, if actually known to the clerk, and if unknown to the clerk then addressed to the county site of the said county.

§ 27-43-9 Liens; entry and certification:

Upon completing the examination for said liens, the clerk shall enter upon the tax sale book upon the page showing the sale a notation to the effect that such examination had been made, giving the names and addresses, if known, of said lienors, the book and page where the liens are created, and the date of mailing by registered mail the notice to the lienors. If the clerk finds no liens of record, he shall so certify on said tax sale book. In each instance the clerk shall date the certificate and sign his name thereto.

§ 27-43-11 Liens; fees of clerk; failure to give notice:

For examining the records to ascertain the names and addresses of lienors, the chancery clerk shall be allowed a fee of Seven Dollars ($7.00) in each instance for each lien where a lien is found of record, and said fees shall be taxed against the owner of said land, if same is redeemed, and if not redeemed, then said fees are to be taxed as part of the cost against the purchaser. . . .

Failure to Give Notice

§ 27-43-11 Liens; fees of clerk; failure to give notice:

A failure to give the required notice to such lienors shall render the tax title void as to such lienors, and as to them only, and such purchaser shall be entitled to a refund of all such taxes paid the state, county or other taxing district after filing his claim therefor as provided by law.

In addition, the failure to provide notice to a lien holder renders the sale void as to that lien holder, and the purchaser "shall be entitled to a refund of all such taxes paid the state, county or other taxing district after filing his claim therefor as provided by law." ***SASS Muni-V, LLC v. DeSoto Cty.*, 170 So. 3d 441, 446 (Miss. 2015).**

If [the purchaser] fails to secure a good title to the property he attempts to purchase, because of the invalidity of the tax sale, he cannot recover the amount paid therefor, either from the taxing authorities or from the owner of the land, unless some statute in terms provides such remedy. . . . Rather, SASS seeks a refund of its purchase price, a remedy specifically provided for in Sections 27-43-3 and 27-43-11. This procedure does not allow a tax-sale purchaser to "back out" of its investment on a whim, but applies only when the sale is void for lack of notice. . . . SASS's interest in the validity of its title to the property gives it standing to challenge the chancery clerk's compliance with the notice statutes. ***SASS Muni-V, LLC v. DeSoto Cty.*, 170 So. 3d 441, 448-49 (Miss. 2015).**

It is clear that the failure to give proper notice to a lienholder renders that tax sale void as to that lienholder. ***SKL Investments, Inc. v. American General Finance, Inc.*, 22 So. 3d 1247, 1249-50 (Miss. Ct. App. 2009).**

In the event that a tax sale is rendered void for improper notice to one lienholder, but not others, the purchaser is faced with two options. The purchaser may opt to retain the property subject to the lien of the improperly-noticed lienholder. Alternatively, the purchaser may opt to file a claim for a refund, thereby relinquishing all rights to the property. Among other variables, the purchaser's decision will depend on the value of the property, the amount paid for the property, and the amount of the lien on the property. Accordingly, on remand, Rebuild America may choose to

either retain the property subject to the lien of Wachovia Bank and Mid-State or to relinquish its rights to the property and file a claim for a refund. ***Wachovia Bank, N.A. v. Rebuild America, Inc.*, 56 So. 3d 586, 589 (Miss. Ct. App. 2011) (citations omitted).**

When & Who May Redeem Land & Costs

§ 27-45-3 Persons who may redeem land:

The owner, or any persons for him with his consent, or any person interested in the land sold for taxes, may redeem the same, or any part of it, where it is separable by legal subdivisions of not less than forty (40) acres, or any undivided interest in it, at any time within two (2) years after the day of sale, by paying to the chancery clerk, regardless of the amount of the purchaser's bid at the tax sale,

the amount of all taxes for which the land was sold,

with all costs incident to the sale, and

five percent (5%) damages on the amount of taxes for which the land was sold, and

interest on all such taxes and costs at the rate of one and one-half percent (1-1/2%) per month, or any fractional part thereof, from the date of such sale, and

all costs that have accrued on the land since the sale, with interest thereon from the date such costs shall have accrued, at the rate of one and one-half percent (1-1/2%) per month, or any fractional part thereof;

saving only to infants who have or may hereafter inherit or acquire land by will and persons of unsound mind whose land may be sold for taxes, the right to redeem the same within two (2) years after attaining full age or being restored to sanity, from the state or any purchaser thereof, on the terms herein prescribed, and on their paying the value of any permanent improvements on the land made after the expiration of two (2) years from the date of the sale of the lands for taxes.

Upon such payment to the chancery clerk as hereinabove provided, he shall execute to the person redeeming the land a release of all claim or title of the state or purchaser to such land, which said release shall be attested by the seal of the chancery clerk and shall be entitled to be recorded without acknowledgment, as deeds are recorded. Said release when so executed and attested shall operate as a quitclaim on the part of the state or purchaser of any right or title under said tax sale.

§ 27-45-7 Mortgagee [or lienor] may redeem in part:

If there exist upon a portion of a tract of land sold for taxes a lien, either of a deed of trust or mortgage of any kind, the mortgagee or holder of the notes secured by such deed of trust, or any person interested in such real estate may redeem that portion of the land so sold in solido upon which portion such mortgagee or owner of notes secured by deed of trust holds such lien in the following manner, to-wit:

> Such mortgagee or owner of notes secured by a deed of trust or any person interested in such real estate may apply, in writing, to the chancery clerk of the county in which the land was sold, within the time provided by law, for redemption from the sale for taxes of such portion of the entire tract so sold in solido. Upon the application being filed with him, it shall be the duty of the chancery clerk to give ten days' notice, in writing, of such application, by registered mail, to the last known post-office address with return receipt requested, to the owner and to the purchaser at the tax sale, and to all persons holding mortgages or other liens of record on the land so sold in solido or any part thereof, which notice shall designate a time not less than ten days from the mailing thereof when such clerk shall hear and perform the duties hereinafter provided for. The clerk shall enter on the record of such tax sale notations giving the date when such notices were mailed and the names and post-office addresses of persons to whom mailed. On the date named for such hearing, the chancery clerk shall make such investigation as he may deem necessary to ascertain the relative value which that portion of the land on which the lien of such mortgage or deed of trust is held by the applicant, or by any other person, bears to the value of the entire land sold in solido for taxes, and the chancery clerk shall apportion the taxes due upon such portion at the ratio which said portion, upon which the lien exists, bears to the entire value of the property sold in solido for taxes. Upon such apportionment, the mortgagee or holder of the deed of trust, or any person interested in such real estate, shall be entitled to redeem that part of the land by payment of the sum apportioned thereon to the chancery clerk, regardless of the amount of the purchaser's bid at the tax sale, with its proportionate part, calculated as above provided, of all costs, damages and interest consequent upon the sale, and also all state and county taxes that have accrued upon that portion of said land since the sale, apportioned by the chancery clerk in the manner hereinabove provided, together with interest thereon, at the rate of one per centum per month, or any fractional part thereof, from the date such taxes shall have accrued.

§ 27-45-9 Partial redemption:

The redemption mentioned in Section 27-45-7 shall operate to fully and effectually redeem that portion of the land from the operation of the tax sale from which such redemption is made and shall leave in full force and effect the tax sale as to the remainder of the land so sold for taxes, which remainder, or any part thereof, may thereafter, in the time provided by law, be redeemed by the owner or any person interested in such real estate by the payment of the balance due, or such part thereof calculated as above provided. In the event that there shall exist several trust deeds or mortgages upon the property so sold in solido, and redemption under one or more of such trust deeds shall operate so as to effect redemption of a portion of the lands in any one of the others, because of overlapping descriptions and leave unredeemed the remainder of the land covered by such other deeds of trust or mortgages, the chancery clerk shall likewise have power to apportion in the same manner as aforesaid the amount required to redeem the remainder of the land included in such trust deed, omitting the portion of the land in such trust deed which had been previously redeemed, in the manner as above provided. Upon redemption by one other than the owner of the land redeemed, it shall be the duty of the redeemer to immediately notify, in writing, by registered mail with return receipt requested, any and all persons holding prior lien or liens of deed of trust or mortgage shown by the records of deeds of trust of the county where the land is situated, of the redemption of such part or all of said land, addressed to the lienor or lienors at his or their last known post-office address, and to file a copy of such notice or notices with the chancery clerk of said county who shall make entry of the receipt of the copy of such notice or notices on the record of tax sales of his office where such record of the redemption is entered. If the redeemer shall fail to give the notice or notices as above provided for, then such redeemer shall not be entitled by subrogation, or otherwise, to obtain or be granted any prior equity upon the land so redeemed over any prior lienor or lienors on the land so redeemed, whether such equity by subrogation or otherwise existed or not. Upon redemption of land or any part thereof as above provided, the chancery clerk shall execute a release thereof from the tax sale with the same effect, and shall note the redemption on his tax sales record, as is provided for redemptions in the usual manner.

Clerk Deposits Redemption Funds

§ 27-45-5 Deposit of redemption funds; disposition:

It shall be the duty of the chancery clerk of each county in the state to immediately deposit in the county depository of his county all sums of money paid to him by any person for the redemption of land sold for taxes in his county; all such funds are hereby declared to be public funds, and shall be secured by the county depository, as other public funds are required to be secured by law. The board of supervisors of each county shall provide the clerk with printed checks in the form of vouchers, with proper blanks, bound in book form with a sufficient blank margin to be used in drawing redemption funds out of the county depository; all such checks shall be numbered in numerical order, and it shall be the duty of the clerk to draw on such funds upon such checks as herein provided in payment of all amounts due the officers and purchasers out of said funds. He shall first pay the officers entitled to their costs, fees, and damages which are allowed to said officers by law; and he shall then pay to the purchasers at any such tax sale, the full amount due him as provided by law. It shall be the duty of the state auditor of public accounts to audit such account of each clerk, as other public funds are audited; and he shall include in said audit a special report to the board of supervisors of his county setting out in detail the amounts collected, and the disposition of such funds, and the balance on hand, and attest to the correctness thereof.

If such clerk shall neglect, refuse or fail to deposit such funds received by him as herein provided, he shall be guilty of misfeasance in office, and in addition thereto shall be liable on his official bond to any person injured by his failure to deposit such funds in the county depository as herein provided.

> It is our opinion that Section 27-45-5 authorizes a chancery clerk to accept partial payments from a Chapter 13 bankruptcy trustee towards the redemption of pre-petition tax sales. Of course, the property will not be "redeemed" until all amounts have been paid. You may wish to contact the State Auditor's office for guidance on how such partial payments should be recorded. **Re: Chapter 13 Bankruptcy Plan Payments Used for Redemption of County Tax Sale, Opinion No. 2010-00625 (Miss. A. G. Nov. 15, 2010).**

Disbursements Made by Clerk

§ 27-45-1 Redemption after tax sale:

Redemption of land sold for taxes shall be made through the chancery clerks of the respective counties.

Where the land was sold to the state, the clerk, out of the amount necessary to redeem, shall

(1) First pay to the officers entitled thereto the costs, fees and damages which are allowed those officers by law in cases of lands sold to individuals;

(2) Second, he shall pay the state the amount of state taxes with the interest and additional charges thereon allowed by law to the state; and,

(3) Third, he shall pay to the county the sums computed in like manner which belong to the county and the various taxing districts thereof.

Where the land was sold to an individual, the clerk shall pay:

(a) First, to the state the amount of state taxes with the interest and additional charges thereon allowed by law, unless same has been paid previously by the tax purchaser or some other person;

(b) Second, to the county the sums computed in like manner which belong to the county and the various taxing districts thereof, unless same has been paid previously by the tax purchaser or some other person;

(c) Third, to the county the five percent (5%) damages on the amount of the taxes for which the land was sold; and

(d) Fourth, the balance to the purchaser.

The clerk shall make his redemption settlements within twenty (20) days after the end of each month and shall make a complete report thereof to the board of supervisors.

For a failure so to report or to pay over the sums to the parties entitled thereto as herein required, he shall be liable on his official bond to a penalty of one percent (1%) per month on the amount withheld.

The chancery clerk shall also note each redemption on the public record of delinquent tax lands, on the day payment of taxes is made, with the date, name and the amount of redemption money paid.

Special Provisions for Tax Sales

§ 27-45-13 Redemption of lands sold by mistake:

When anyone, designing and endeavoring to pay the taxes due on his own land, shall by mistake pay the taxes due on other land than his own, in consequence whereof his own land shall have been sold for taxes, such person may, within the two years allowed for redemption, make affidavit of the facts, and if the taxes for which his land was sold, and the costs of such sale exceed the amount he had so paid, he shall pay the tax collector of the county the difference, and also all taxes subsequently accrued on such land and not before paid, and shall protect the state and county against any loss by reason of the mistake. He shall obtain the receipt in duplicate of such collector for what he shall pay him, which receipt it shall be the duty of the collector to give him, specifying particularly on what account such payment was made. Said receipts need not be from the book of receipts required to be kept. He shall deposit one of said receipts with the chancery clerk, together with said affidavit setting forth the facts of such mistake; and thereupon it shall be the duty of the chancery clerk to release to such person the title of the state or individual purchaser to such land, and, where the land was sold to the state, to notify the auditor to make proper entry on the assessment roll in his office. The auditor and the chancery clerk shall charge the tax collector with the amount due on the transaction to the state and county, respectively, and the collector shall also make proper entry on the assessment roll in his office.

§ 27-45-15 Sale of land paid on by mistake:

Land on which said person had paid on by mistake, shall be sold for the taxes and costs, the payment of which, except for mistake, it had escaped, as follows:

> The chancery clerk shall notify the tax collector of his release of the land first sold and the collector shall immediately give notice in writing to the person in possession of the land paid on by mistake, if any, or to the owner or person claiming it, that at a meeting of the board of supervisors of the county, to be designated in such notice, he will apply for an order to sell said land because of the foregoing facts. At such meeting, the collector shall report the facts in writing to the board of supervisors, and that he has given notice as above required, and said board shall hear any objection to the proposed sale of such land, and unless there be some valid objection shall order it to be sold. Thereupon the collector shall advertise it as sales

of land for taxes are required to be advertised, and shall sell it on some day when it is lawful to sell land under execution in his county, and shall proceed in all respects as required in making sales of land for taxes on the first Monday of April. He shall report the lists of lands so sold to the clerk of the chancery court in the same manner and within the same relative time as provided for sales of land for taxes at the usual time. He shall pay over to the proper officers the taxes collected from sales to individuals as in other cases.

§ 27-45-17 Release by clerk of title to certain lands:

If the owner, or any person interested in any land sold for taxes, shall at any time within two years after the sale for taxes produce a receipt of the tax collector showing payment of the taxes, for which the land was sold, before the sale, and shall pay to the chancery clerk all subsequently accrued taxes, the said clerk shall release to the owner or person interested the title of the state or individual purchaser to such land. The land so released shall thereafter be dealt with as lands redeemed are required to be, and the tax collector, whose receipt was so produced, shall be charged with the taxes collected by him as in the case of other taxes.

§ 27-45-27 Amount and enforcement of lien; official errors and omissions:

(1) The amount paid by the purchaser of land at any tax sale thereof for taxes, either state and county, levee or municipal, and interest on the amount paid by the purchaser at the rate of one and one-half percent (1- ½ %) per month, or any fractional part thereof, and all expenses of the sale and registration, thereof shall be a lien on the land in favor of the purchaser and the holder of the legal title under him, by descent or purchase, if the taxes for which the land was sold were due, although the sale was illegal on some other ground. The purchaser and the holder of the legal title under him by descent or purchase, may enforce the lien by bill in chancery, and may obtain a decree for the sale of the land in default of payment of the amount within some short time to be fixed by the decree.

In all suits for the possession of land, the defendant holding by descent or purchase, mediately or immediately, from the purchaser at tax sale of the land in controversy, may set off against the complainant the above-described claim, which shall have the same effect and be dealt with in all respects as provided for improvements in a suit for the possession of land. But the term "suits for the possession of land," as herein used, does not include an action of unlawful entry and detainer.

(2) No county or municipal officer shall be liable to any purchaser at a tax sale or any recipient of a tax deed for any error or inadvertent omission by such official

during any tax sale.

This section does not permit a purchaser to recover damages against a single lienholder whose lien survived the tax sale because of inadequate notice. ***Wachovia Bank, N.A. v. Rebuild America, Inc.*, 56 So. 3d 586, 589 (Miss. Ct. App. 2011) (citations omitted).**

§ 27-45-19 Record of state tax lands:

The tax collector shall keep a record of lands struck off to the state for taxes for his convenience in collecting taxes and making settlements with the state and county. The chancery clerk, when he releases such lands upon redemption, shall immediately notify the auditor and tax collector, giving name of person redeeming, date of redemption, and description of the land, and the auditor and collector, when they receive such notice, shall at once make entry thereof upon their records.

Maturity of Tax Sales

§ 27-45-21 Certification by clerk of lands not redeemed:

(1) It shall be the duty of the chancery clerk, within thirty (30) days after the period of redemption has expired, to certify to the Secretary of State a list, on forms provided by the Secretary of State, of all lands struck off to the state for taxes, which have not been redeemed. The list shall show a description of the land, all costs, officer's and printer's fees, the tax for which it sold, segregated as to state, county, levee and drainage districts, and of all taxes due on the lands for the year in which it was struck off to the state, segregated as to state, county, levee and drainage districts, a total of two (2) years' taxes listed separately (the taxes for which it sold and accrued taxes for one (1) year). If any chancery clerk shall fail or neglect to transmit such lists within the time specified, he shall be liable to the state on his official bond in the penalty of Fifty Dollars ($50.00) for each day that he is in default. The penalty to be collected by the Department of Revenue, or by the Attorney General, in a suit instituted for that purpose upon request of the Secretary of State; provided that the Secretary of State, if so requested by any chancery clerk before the expiration of ten (10) days and for good cause shown, may grant a reasonable extension of the time within which the clerk shall transmit his list.

(2) The Secretary of State may provide the forms described in subsection (1) of this section for certifying lands struck off to the state for taxes to the chancery clerk as an electronic record. The chancery clerk may certify the list of all lands struck off to the state by completing and submitting the form containing the

electronic signature of the chancery clerk to the Secretary of State. An electronic record of the list submitted by the chancery clerk to the Secretary of State in the prescribed form and containing the electronic signature of the chancery clerk shall vest good title in the State of Mississippi to all lands listed in the form.

§ 27-45-23 Conveyances to purchasers at tax sales:

When the period of redemption has expired, the chancery clerk shall, on demand, execute deeds of conveyance to individuals purchasing lands at tax sales. Which conveyances shall be essentially in the following form to wit:

State of Mississippi, County of _____

Be it known, that _____, tax collector of said county of _____, did, on the _____ day of _____, A.D. _____, according to law, sell the following land, situated in said county and assessed to _____ to wit: _____ (here describe the land) _____ for the taxes assessed thereon (or when sold for other taxes it should be so stated) for the year A.D. _____, when _____ became the best bidder therefor, at and for the sum of _____ dollars and _____ cents; and the same not having been redeemed, I therefore sell and convey said land to the said _____.

Given under my hand, the _____ day of _____, A. D. _____ .

_____
Chancery Clerk

Such conveyance shall be attested by the seal of the office of the chancery clerk and shall be recordable when acknowledged as land deeds are recorded, and such conveyance shall vest in the purchaser a perfect title with the immediate right of possession to the land sold for taxes. No such conveyance shall be invalidated in any court except by proof that the land was not liable to sale for the taxes, or that the taxes for which the land was sold had been paid before sale, or that the sale had been made at the wrong time or place. If any part of the taxes for which the land was sold was illegal or not chargeable on it, but part was chargeable, that shall not affect the sale nor invalidate the conveyance, unless it appears that before sale the amount legally chargeable on the land was paid or tendered to the tax collector.

You state that Marshall County has received demands from individuals and lenders, after the time for redemption has passed but before the issuance of a tax deed, for the Chancery Clerk to void a tax sale, due to a defect in the sale procedure. You then ask if the Chancery Clerk is allowed to unilaterally set aside a tax sale due to a defect in the sale procedure. [The attorney general's response is:] No. We have previously opined that a chancery clerk does not possess statutory authority to void a tax sale once it has been made. . . . We agree with your conclusion that, after the redemption period has expired, the Chancery Clerk is required by Section 27-45-23 to, upon demand, issue a deed to an individual who purchased the land at a tax sale. **Re: Power of Chancery Clerk to Void a Tax Sale, Opinion No. 2010-00390 (Miss. A. G. July 23, 2010).**

Once the 1999 sale for 1998 taxes matured and a deed was issued, the 1999 sale could not be voided. Thus, [purchaser] is the owner of the parcel by virtue of the deed issued by the county for that parcel in 2001. The subsequent sales for 1999 and 2000 taxes were voided by the municipal governing authorities at the direction of the county assessor and all moneys were refunded to the purchasers at those sales. There is no procedure for re-instating those sales. It is as if those sales never occurred. The taxes for 1999, 2000, and 2001 are now due and owing. As owner of the parcel, [purchaser] is entitled to pay these taxes and any penalties which have accrued. **Re: Redemption of Tax Sale, Opinion No. 2002-0521 (Miss. A. G. Sept. 13, 2002).**

If a person is given a tax deed by the Clerk, does it become effective at the time the deed is written or when the deed is recorded? A purchaser at a tax sale is the record owner of the land without right of possession and subject to the taxpayer's right of redemption. The tax sale list which the city tax collector must file with the chancery clerk and the municipal clerk pursuant to § 21-33-63 operates to transfer title to the purchaser. The tax deed itself is simply evidence of the right of possession and that the time for redemption has expired. **Re: Taxes - Sales (Land), Opinion No. 1999-0268 (Miss. A. G. June 4, 1999).**

Land Purchased From the State

§ 29-1-81 Issuance of patents and contracts:

(1) All conveyances of land by the state in fee shall be by patent issued from the Secretary of State's office; every patent issued shall be under the great seal, signed by the Secretary of State.

(2) (a) The patent shall be issued by the Office of the Secretary of State and delivered to the patentee. A copy thereof shall be retained by the Secretary of State among the records of his office.

(b) The Secretary of State may file the original patent with the chancery clerk and such filing shall constitute the delivery of the patent to the patentee. Prior to filing the original patent, the Secretary of State shall collect from the patentee the sum of Twenty Dollars ($20.00) to cover the cost of filing the patent. Failure of the Secretary of State to file the patent shall not affect its validity.

(3) All contracts of sale of public lands shall be issued from the Secretary of State's office in duplicate; and every contract issued shall be under the great seal, signed by the Secretary of State and countersigned by the Governor.

(4) No more than one-quarter (¼) section of land shall be embraced in the same patent or contract, except as otherwise provided by law.

§ 29-1-83 Assessment for taxes:

When a patent shall issue for public lands, the land commissioner shall notify the clerk of the chancery court and the tax assessor of the county in which it is situated of the fact, giving the name of the patentee, a description of the land, and the price per acre. Said land shall, after January 1st of the next year after issuance of patents, be assessed for taxes as other lands are.

Void Sales

Procedure of Voiding a Tax Sale

Is the 1991 tax sale of this parcel for unpaid 1990 county tax either void or voidable because of the unredeemed sale to the state the previous year? Is the tax deed issued in 1993 as the result of the 1991 tax sale either void or voidable? Does the Board of Supervisors have any jurisdiction to set aside or declare invalid the 1991 tax sale of this parcel after the two year period for redemption has passed and a tax deed has been issued by the Clerk? Does the Board of Supervisors have any authority to order a refund to the 1991 tax sale purchaser under these facts and circumstances? What action, if any, should or could the Board of Supervisors take in this matter? In response to your questions, it is well-settled that once property has been struck off to the state, the property should not be sold again. Therefore, the 1991 tax sale was void. The purchaser is entitled to a refund of the purchase price paid at the tax sale, but is not entitled to payment of interest, except that portion of the purchase price that represented interest due on the taxes due prior to the tax sale. The board of supervisors may void the 1991 tax sale by order spread upon its minutes. **Re: Authority to Void Tax Sale, Opinion No. 1994-0720 (Miss. A. G. Feb. 15, 1995).**

§ 29-1-29 Lands mistakenly sold to state may be stricken:

The chancery clerk of any county is hereby authorized to report to the attorney general any lands that have been or may hereafter be sold to the state for delinquent taxes, the validity of which sale is in doubt, and the attorney general shall make an investigation into the subject matter. If in his opinion such sale of said land is void, he shall so notify such chancery clerk in writing, and the said clerk shall strike such land from the list of lands sold to the state of record in his office, and shall report said land to the board of supervisors for a new assessment if the assessment is invalid, or for an order for resale if the assessment is valid.

In a prior opinion this office has stated that once property has been struck to the state at a tax sale, the property should not be sold again. Therefore, a subsequent municipal tax sale would be void, and the purchaser is entitled to a refund of the purchase price paid at the tax sale, but is not entitled to payment of interest, except that portion of the purchase price which represented interest due on the taxes. **Re: Sale of Property for Unpaid Municipal Taxes, Opinion No. 1997-0836 (Miss. A. G. Jan. 15, 1998).**

§ 29-1-91 Taxes remain a charge on redeemed land:

If the state's title to any land certified into the land office fail, and the land be reclaimed or redeemed before or after sale by the state, the taxes for which it was sold and the taxes for each subsequent year and all officers' fees shall remain and become a charge upon the land as if it had been regularly assessed to the owner in each of said years.

If the title to any land purchased by any municipality under any provisions of Section 21-33-69, 21-33-73, or 21-37-49 shall fail, and the land be reclaimed before or after any sale by the municipality, the municipal, municipal separate school, and/or special improvement or other taxes for which it was sold, and any and all of such taxes for any subsequent year, and all officers' fees shall remain and become a charge upon such land, subordinate only to state and county taxes, as if it had been regularly assessed to the owner in each of said years.

§ 29-1-93 County officer; fees for tax land sales:

The fees of all county officers allowed by law in connection with land sold to the state for taxes shall be paid by the state when such land shall be sold by the state. Upon such sale the land commissioner shall carefully calculate said fees and shall certify the same to the auditor who, if he finds the same correct, shall issue his warrants therefor to the proper persons; provided, that said fees shall lapse as to any land not sold within ten (10) years after the period of redemption has expired.

§ 29-1-95 Taxes paid from purchase money; allocation of funds:

(1) All taxes due the county, municipality, public school district, drainage district or levee board on lands sold to the state for taxes and listed into the Secretary of State's office shall remain in abeyance until the land be sold, and thereafter such taxes shall be paid out of the purchase money; but state, county, municipality, public school district, drainage district or levee board taxes shall not accrue on such lands after the fiscal year in which it was certified to the state. Upon the payment of the purchase money of any tax land into the Treasury, the Secretary of State shall certify to the Department of Finance and Administration and to the Treasurer the amount of fees and costs allowed to the county tax collector and chancery clerk, as in cases of the redemption of lands from tax sales, under the provisions of Section 25-7-21; and the Department of Finance and Administration shall issue warrants in favor of such county tax collector and chancery clerk for the amount of such fees. The Secretary of State shall also certify to the Department of Finance and Administration and the Treasurer the amount of the county, municipality, public school district, drainage district and levee board taxes for which said land was sold to the state, and all taxes accruing on said land until

the year in which it was certified to the state; and the Department of Finance and Administration shall issue warrants in favor of the proper county, municipality, public school district, drainage district, and levee board for the said four (4) years' taxes. The balance of the purchase money shall be deposited into a special fund to be known as the "Land Records Maintenance Fund," that is hereby created in the State Treasury. The fund shall be administered by the Secretary of State. Any amount on hand in said Land Records Maintenance Fund at the end of the fiscal year that is not necessary to pay any obligations to local governmental units set out in this subsection shall, after June 30 of each year, be transferred to the General Fund, and shall not be authorized for expenditure by the Secretary of State to reimburse or otherwise defray the expenses of any office administered by the Secretary of State.

(2) If, after the payment of the fees and costs allowed to the county tax collector and the chancery clerk, as aforesaid, the balance of the purchase money of any tax land paid into the Treasury shall be insufficient to cover the amount of the state, county, municipality, public school district, drainage district or levee board taxes due thereon, or if the records of the Secretary of State fail to show the amount of state, county, municipality, public school district, drainage district or levee board taxes accruing for the years until said land was certified to the state, on lands sold by the Secretary of State, he shall apportion the balance of the purchase money derived from the sale of such lands between the state, county, municipality, public school district, drainage district and levee board upon the basis of the amount of taxes due the state, county, municipality, public school district, drainage district and levee board, respectively, at the time said land was struck off to the state for delinquent taxes by the sheriff and tax collector, and for which said lands were struck off to the state. . . .

CHAPTER 20

PUBLIC LAND RECORDS

CHAPTER 20

PUBLIC LAND RECORDS

§ 89-5-1 Recording instruments; conveyances, acknowledgment, priority:

Except as provided by Sections 89-5-101 through 89-5-113, a conveyance of land shall not be good against a purchaser for a valuable consideration without notice, or any creditor, unless it be lodged with the clerk of the chancery court of the county in which the lands are situated to be recorded; but after filing with the clerk, the priority of time of filing shall determine the priority of all conveyances of the same land as between the several holders of such conveyances.

General Index - Direct/Reverse

§ 89-5-33 General index; sectional index; indexing instructions:

(1) The clerk of the chancery court shall provide a general index, direct and reverse, on which shall be entered, in regular alphabetical order under the appropriate letter, the name of each maker of the instrument and the name of each person to whom made; and in like alphabetical order under its appropriate title shall be entered the name of each person to whom the instrument is made and the name of each person by whom made. A general index, both direct and reverse, of mortgages and deeds of trust on land shall be kept separate from the general index to other records which the chancery clerk is required to keep, and he shall make the proper entries in it as he is required to make in the other general index. Immediately on receipt of any instrument to be recorded, the clerk shall make these entries in the appropriate general index and, after recording the instrument, the book and page in which the record is made shall be noted opposite each name thus placed in such general index, both direct and reverse.

> The book and page specified in 89-5-33 is intended to be a unique identifier so that the records are readily accessible to the general public. It is the opinion of this office that if the records are stored electronically and there is therefore no book and page, they may be assigned a properly indexed unique identifier which will make them readily accessible to the general public. Such records must be cross-referenced as required by Section 89-5-33. Also, any electronically maintained records must be accessible to the public in accordance with the Public Records Act. **Re: Electronically Stored Land Records, Opinion No. 2002-0760 (Miss. A. G. Jan. 10, 2003).**

(2) The clerk of the chancery court shall maintain a sectional index to instruments describing land which are also entered in the general index. Each entry shall state

the name of each maker of the instrument, the name of each person to whom made, and the date, type of instrument and the appropriate reference where recorded. Opposite each such entry, the sectional index shall indicate the location of the land described in the instrument

(a) by quarter section or governmental lot or other applicable subdivision of each section, township and range established by governmental survey, or
(b) by lot number for platted subdivisions, official surveys, and unofficial subdivisions and surveys commonly in use.

The clerk may elect to keep the sectional index by quarter-quarter section rather than by the quarter section, but shall not require a preparer's indexing instruction to describe the quarter-quarter section. Except as otherwise provided in this section, every instrument describing land and required to be entered in the general index shall also be entered in the sectional index. In the event of conflict between the general and the sectional indices, the notice imparted by the general index shall prevail except to the extent the land is described by lot number for platted subdivisions, official surveys and unofficial subdivisions and surveys commonly in use, the sectional index shall prevail.

(3) Every surveyor or other person who prepares a legal description of land or who prepares an instrument utilizing an existing description shall (except as herein provided) include an indexing instruction which shall state the section, township and range and one or more quarter sections or governmental lots or other applicable subdivisions of each section in which the land is located. The preparer, at his option, may elect to note the quarter-quarter section in which the land is located, but shall not be required to do so. However, if the section or quarter sections or governmental lots or other applicable subdivisions of the section cannot feasibly be determined by such surveyor or other person, the indexing instruction shall contain a statement to that effect and shall then state all of the sections and quarter sections or governmental lots or other applicable subdivisions of the section in which the described land could possibly be located. The indexing instruction shall be distinctly set apart in the instrument so as to be readily apparent to the chancery clerk. A chancery clerk shall refuse to accept delivery of an instrument which does not contain the indexing instruction required in this section unless the instrument otherwise discloses the information required to be included in an indexing instruction. To be accepted for recording, an instrument shall state the name, address and telephone number of the person, entity or firm preparing it. The fact that the indexing instruction or preparer information may be omitted, incorrect, incomplete or false shall not invalidate the instrument or the filing thereof for record. The chancery clerk shall enter the instrument in the sectional index according to the indexing instruction, or equivalent information if

accepted for filing without an indexing instruction, and shall make no entries under any other quarter sections or governmental lots or subdivisions of the section. Notwithstanding the foregoing, the following kinds of instruments shall be indexed as stated:

(a) Instruments describing land by reference to officially platted subdivisions or to official surveys or to unofficial subdivisions and surveys commonly in use will not require an indexing instruction and shall be indexed in the general index and the sectional index for such subdivision or survey without further requirement.

(b) Instruments describing land or interests in land solely by reference to previously recorded instruments or affecting previously recorded instruments shall not require an indexing instruction and need not be entered in the sectional index but shall be entered in the general index and noted on the margin of the previously recorded instrument. Instruments describing land or interests in land by specific description of certain parcels and, for other parcels, by reference to previously recorded instruments, shall be entered in the sectional index according to the indexing instruction for the specific description and also noted on the margin of the previously recorded instrument, in addition to the general index.

(c) Instruments containing blanket descriptions of all land within a stated geographic area without specific description shall be entered in a separate part of the sectional index or in an index of indefinite records or an index of blanket conveyances in addition to the general index.

(d) Instruments describing land in irregular sections (all or any part of a section not capable of being divided into quarter sections for indexing purposes) shall be entered in the general index and in an appropriate sectional index maintained by the chancery clerk. The indexing instruction, however, shall be proper and complete if it states no more than the number of the irregular section or sections in which the land is located or, as above provided, in which the land could possibly be located. When an instrument describes land within an irregular section according to officially platted subdivisions or to official surveys or to unofficial subdivisions or surveys commonly in use, it shall be indexed in the sectional index for such subdivisions or surveys.

(4) When an instrument has been restored to service from microfilm or other archived record, the chancery clerk shall enter a notation on the margin stating that it is a substituted record and stating the date on which it was restored to

service. Such marginal notation shall then constitute notice that the general index must be examined for instruments filed prior to such date which may have been noted on the margin of the original record but do not appear on the margin of the restored record.

(5) The clerk of the chancery court shall enter instruments in the sectional index by the end of the twentieth day the office is open following the day on which the instrument is filed, except for records of tax sales.

(6) If the chancery clerk elects to abbreviate the names of parties to an instrument in the indices, the clerk shall maintain a list of standard abbreviations used for that purpose and shall adhere to such list.

(7) The clerk of the chancery court shall not correct or alter an entry made in any index, whether kept manually or by computer, unless the date and time of the change is clearly disclosed on the revised record.

(8) If insufficient space is available for making entries on the margin of a recorded instrument, the chancery clerk may enter on the margin a reference where a continuation sheet is located.

(9) Except as expressly provided herein, nothing contained in this section shall be construed to modify the requirements of other statutes regarding the duties of the clerk of the chancery court to index and record instruments affecting the title to land.

Mortgages and Deeds of Trust Index - Direct/Reverse

§ 89-5-33 General index; sectional index; indexing instructions:

(1) A general index, both direct and reverse, of mortgages and deeds of trust on land shall be kept separate from the general index to other records which the chancery clerk is required to keep, and he shall make the proper entries in it as he is required to make in the other general index.

Sectional & Subdivision Index

§ 89-5-33 General index; sectional index; indexing instructions:

(2) The clerk of the chancery court shall maintain a sectional index to instruments describing land which are also entered in the general index. Each entry shall state the name of each maker of the instrument, the name of each person to whom made, and the date, type of instrument and the appropriate reference where recorded. Opposite each such entry, the sectional index shall indicate the location of the land described in the instrument

(a) by quarter section or governmental lot or other applicable subdivision of each section, township and range established by governmental survey, or
(b) by lot number for platted subdivisions, official surveys, and unofficial subdivisions and surveys commonly in use.

The clerk may elect to keep the sectional index by quarter-quarter section rather than by the quarter section, but shall not require a preparer's indexing instruction to describe the quarter-quarter section. Except as otherwise provided in this section, every instrument describing land and required to be entered in the general index shall also be entered in the sectional index. In the event of conflict between the general and the sectional indices, the notice imparted by the general index shall prevail except to the extent the land is described by lot number for platted subdivisions, official surveys and unofficial subdivisions and surveys commonly in use, the sectional index shall prevail.

Indexing Instruction

§ 89-5-33 General index; sectional index; indexing instructions:

(3) Every surveyor or other person who prepares a legal description of land or who prepares an instrument utilizing an existing description shall (except as herein provided) include an indexing instruction which shall state the section, township and range and one or more quarter sections or governmental lots or other applicable subdivisions of each section in which the land is located. The preparer, at his option, may elect to note the quarter-quarter section in which the land is located, but shall not be required to do so. However, if the section or quarter sections or governmental lots or other applicable subdivisions of the section cannot feasibly be determined by such surveyor or other person, the indexing instruction shall contain a statement to that effect and shall then state all of the sections and quarter sections or governmental lots or other applicable subdivisions of the section in which the described land could possibly be located. The indexing instruction shall be distinctly set apart in the instrument so as to be readily apparent to the chancery clerk. A chancery clerk shall refuse to accept delivery of an instrument which does not contain the indexing instruction required in this section unless the instrument otherwise discloses the information required to be included in an indexing instruction. To be accepted for recording, an instrument shall state the name, address and telephone number of the person, entity or firm preparing it. The fact that the indexing instruction or preparer information may be omitted, incorrect, incomplete or false shall not invalidate the instrument or the filing thereof for record. The chancery clerk shall enter the instrument in the sectional index according to the indexing instruction, or equivalent information if accepted for filing without an indexing instruction, and shall make no entries under any other quarter sections or governmental lots or subdivisions of the section. Notwithstanding the foregoing, the following kinds of instruments shall be indexed as stated:

Exceptions to Indexing Instruction

(a) Instruments describing land by reference to officially platted subdivisions or to official surveys or to unofficial subdivisions and surveys commonly in use will not require an indexing instruction and shall be indexed in the general index and the sectional index for such subdivision or survey without further requirement.

(b) Instruments describing land or interests in land solely by reference to previously recorded instruments or affecting previously recorded instruments shall not require an indexing instruction and need not be entered in the sectional index but shall be entered in the general index and

noted on the margin of the previously recorded instrument. Instruments describing land or interests in land by specific description of certain parcels and, for other parcels, by reference to previously recorded instruments, shall be entered in the sectional index according to the indexing instruction for the specific description and also noted on the margin of the previously recorded instrument, in addition to the general index.

(c) Instruments containing blanket descriptions of all land within a stated geographic area without specific description shall be entered in a separate part of the sectional index or in an index of indefinite records or an index of blanket conveyances in addition to the general index.

(d) Instruments describing land in irregular sections (all or any part of a section not capable of being divided into quarter sections for indexing purposes) shall be entered in the general index and in an appropriate sectional index maintained by the chancery clerk. The indexing instruction, however, shall be proper and complete if it states no more than the number of the irregular section or sections in which the land is located or, as above provided, in which the land could possibly be located. When an instrument describes land within an irregular section according to officially platted subdivisions or to official surveys or to unofficial subdivisions or surveys commonly in use, it shall be indexed in the sectional index for such subdivisions or surveys.

Conflict Between Entries in the General & Sectional Indexes

§ 89-5-33 General index; sectional index; indexing instructions:

(2) In the event of conflict between the general and the sectional indices, the notice imparted by the general index shall prevail except to the extent the land is described by lot number for platted subdivisions, official surveys and unofficial subdivisions and surveys commonly in use, the sectional index shall prevail.

Information Required on Certain Instruments

§ 89-5-33 General index; sectional index; indexing instructions:

(3) To be accepted for recording, an instrument shall state the name, address and telephone number of the person, entity or firm preparing it.

§ 27-3-51 Miscellaneous duties and authority:

(2) The chancery clerk shall require that the current mailing address and current business or employment telephone number, if any, and current residential telephone number, if any, of each grantor and grantee be included on all deeds as a prerequisite for the deed to be filed for record after July 1, 1987. If the residential telephone number is unlisted, the grantor or grantee shall include on the deed a telephone number where he or she can be reached during business hours. If the grantee may receive mail at the address of the property transferred, then the address of the transferred property shall be the mailing address of the grantee for the purposes of this section. The information provided by the grantor and grantee shall be true and correct and complete to the best of his or her knowledge and belief under penalty of perjury under Section 97-9-61. The chancery clerk may refuse to accept delivery of any deed for filing that does not contain on the deed the information required in this section. The fact that the information provided by the grantor or grantee may be incorrect, incomplete or false, however, shall not invalidate the deed or the filing thereof for record. The Commissioner of Revenue shall annually audit the deeds filed with the chancery clerk of each county and assess a penalty of One Hundred Dollars ($100.00) against the county for each deed filed in violation of this section, and the aggregate of such sum shall be withheld by the Commissioner of Revenue from the next installment of homestead exemption reimbursement due under Section 27-33-41.

§ 89-3-1 Acknowledgment or proof necessary to recording:

(1) A document concerning real property or conveying personal property may not be recorded unless, in the case of a paper document, it contains an original signature or signatures, or in the case of an electronic document, contains an electronic signature or signatures that comply with the Uniform Real Property Electronic Recording Act (Article 3, Chapter 5, Title 89, Mississippi Code of 1972). For purposes of this section, the terms "document," "paper document" and "electronic document" have the meaning given in the Uniform Real Property Electronic Recording Act. A document concerning real property or conveying personal property which conforms to this subsection may be recorded if it is acknowledged or proved according to law, or in the case of a document that is an affidavit, verified upon oath or affirmation.

(2) (a) A tangible copy of an electronic document that is otherwise eligible for recording under the laws of this state may be recorded if the tangible copy of the electronic document has been certified to be a true and correct copy of the electronic document as required in paragraph (b) of this subsection (2).

(b) The certificate must be transmitted with and be recorded as a part of the tangible copy of the electronic document being recorded and must:

(i) Contain an original signature of a licensed attorney or custodian of the electronic document that is verified upon oath or affirmation;

(ii) Identify the jurisdiction in which the certification is performed;

(iii) Contain the title of the notarial officer;

(iv) Indicate the date of expiration, if any, of the notarial officer's commission; and

(v) Include an official seal of the notary public affixed to the certificate.

(c) The following form of certificate is sufficient for purposes of this subsection if completed with the information required in paragraph (b) of this subsection:

"CERTIFICATE OF ELECTRONIC DOCUMENT

I, _____, [a licensed attorney or the custodian of the electronic document], hereby certify that the attached document, _____ (insert title), on _____(date), and containing _____ pages, is a true and correct copy of an electronic document printed by me or under my supervision. A false certification under this section shall be subject to any penalties provided by law for such.

_____

(Signature of person making certification)

STATE OF _____
COUNTY OF _____

Signed and sworn to (or affirmed) before me on (date) by _____ (name(s) of individual(s) making statement).

_____
(Signature of Notarial Officer)

_____
(Title of officer)

My commission expires:

_____
(Affix official seal, if applicable)"

(d) All tangible copies of electronic documents eligible for recording under this subsection (2) are validly recorded when accepted for recording by the chancery clerk's office. Tangible copies of electronic documents recorded by a chancery clerk before the effective date of the Revised Mississippi Law on Notarial Acts shall be considered validly recorded with or without the certification provided in paragraph (b) of this subsection (2).

(e) The person making the certification provided in this section must:

(i) Confirm that the electronic document contains an electronic signature that is capable of independent verification and renders any subsequent changes or modifications to the electronic document evident;

(ii) Personally print or supervise the printing of the electronic document onto paper; and

(iii) Not make any changes or modifications to the electronic document other than the certification described in this subsection (2).

(f) If a certificate is completed with the information required by paragraph (b) of this subsection (2) and is attached to or made part of a tangible copy of an electronic document, the certificate is prima facie evidence that the requirements of paragraph (e) of this subsection (2) have been satisfied.

(g) This section does not apply to maps or plats that are subject to the requirements of Section 19-27-23, 19-27-25 or 19-27-27.

(3) The chancery clerk's office may refuse to record a document that does not satisfy the requirements of this section. However, if a document does not satisfy subsection (1) or (2) of this section, but is otherwise admitted to record, then all persons shall be on constructive notice of the contents of the document.

(4) If the relative priorities of conflicting claims to real property were established before July 1, 2011, then the law applicable to those claims at the time those claims were established shall determine their priority.

(5) This section does not require the acknowledgement or verification upon oath or affirmation or prohibit the recording of any of the following filed for record under the Uniform Commercial Code or otherwise specially provided for by law:

(a) A financing statement;

(b) A security agreement filed as a financing statement; or

(c) A continuation statement.

§ 89-3-3 Acknowledgment and proof:

Every conveyance, contract or agreement proper to be recorded, may be acknowledged or proved before any judge of a United States court, any judge of the supreme court, any judge of the circuit court, or any chancellor, or any judge of the county court, or before any clerk of a court of record or notary public, who shall certify such acknowledgment or proof under the seal of his office, or before any justice of the peace, or police justice, or mayor of any city, town, or village, or clerk of a municipality, or member of the board of supervisors, whether the property conveyed be within his county or not.

§ 89-3-7 Forms of acknowledgment:

(1) The following long forms of acknowledgment may be used in the case of conveyances or other written instruments affecting real or personal property; and any acknowledgment so taken and certified shall be sufficient to satisfy all requirements of law:

(a) In the case of natural persons acting in their own right:

STATE OF _____
COUNTY OF _____

Personally appeared before me, the undersigned authority in and for the said county and state, on this _____ day of _____, 20_____, within my jurisdiction, the within named _____, who acknowledged that (he) (she) (they) executed the above and foregoing instrument.

_____
(Signature of notarial officer)

_____
(Title of office)

My commission expires:

_____
(Affix official seal, if applicable)

(b) In the case of corporations:

STATE OF _____
COUNTY OF _____

Personally appeared before me, the undersigned authority in and for the said county and state, on this _____ day of _____, 20_____, within my jurisdiction, the within named _____, who acknowledged that (he) (she) is _____ of _____, a _____ corporation, and that for and on behalf of the said corporation, and as its act and deed (he) (she) executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

_____
(Signature of notarial officer)

_____
(Title of office)

My commission expires:

_____
(Affix official seal, if applicable)

(c) In the case of a corporate general partner of a limited partnership:

STATE OF _____
COUNTY OF_____

Personally appeared before me, the undersigned authority in and for the said county and state, on this_____ day of_____, 20_____, within my jurisdiction, the within named_____, who acknowledged to me that (he) (she) is_____ of_____, a _____ corporation and general partner of_____, a_____ limited partnership, and that for and on behalf of said corporation as general partner of said limited partnership, and as the act and deed of said corporation as general partner of said limited partnership, and as the act and deed of said limited partnership, (he) (she) executed the above and foregoing

instrument, after first having been duly authorized by said corporation and said limited partnership so to do.

_____
(Signature of notarial officer)

_____
(Title of office)

My commission expires:

_____
(Affix official seal, if applicable)

(d) In the case of a corporate member of a member-managed limited liability company:

STATE OF _____
COUNTY OF_____

Personally appeared before me, the undersigned authority in and for the said county and state, on this_____ day of _____, 20_____, within my jurisdiction, the within named _____, who acknowledged to me that (he) (she) is _____ of _____, a _____ corporation and member of _____, a _____ member-managed limited liability company, and that for and on behalf of said corporation as member of said limited liability company, and as the act and deed of said corporation as member of said limited liability company, and as the act and deed of said limited liability company, (he) (she) executed the above and foregoing instrument, after first having been duly authorized by said corporation and said limited liability company so to do.

_____
(Signature of notarial officer)

_____
(Title of office)

My commission expires:

_____
(Affix official seal, if applicable)

(e) In the case of a corporate manager of a manager-managed limited liability company:

STATE OF _____
COUNTY OF_____

Personally appeared before me, the undersigned authority in and for the said county and state, on this_____ day of_____, 20_____, within my jurisdiction, the within named_____, who acknowledged to me that (he) (she) is_____ of_____, a _____ corporation and manager of_____, a_____ manager-managed limited liability company, and that for and on behalf of said corporation as manager of said limited liability company, and as the act and deed of said corporation as manager of said limited liability company, and as the act and deed of said limited liability company, (he) (she) executed the above and foregoing instrument, after first having been duly authorized by said corporation and said limited liability company so to do.

_____
(Signature of notarial officer)

_____
(Title of office)

My commission expires:

_____
(Affix official seal, if applicable)

(f) In the case of persons acting in representative capacities:

STATE OF _____
COUNTY OF _____

Personally appeared before me, the undersigned authority in and for the said county and state, on this _____ day of _____, 20_____, within my jurisdiction, the within named _____, who acknowledged that (he) (she) is _____ of _____ and that in said representative capacity (he) (she) executed the above and foregoing instrument, after first having been duly authorized so to do.

_____
(Signature of notarial officer)

_____
(Title of office)

My commission expires:

_____
(Affix official seal, if applicable)

(g) In the case of proof of execution of the instrument made by a subscribing witness:

STATE OF _____
COUNTY OF _____

Personally appeared before me, the undersigned authority in and for the said county and state, on this _____ day of _____, 20_____, within my jurisdiction, CD, one of the subscribing witnesses to the above and foregoing instrument, who, being first duly sworn, states that (he) (she) saw the within (or above) named AB, whose name is subscribed thereto, sign and deliver the same to EF (or that (he) (she) heard AB acknowledge that (he) (she) signed and delivered the same to EF); and that the affiant subscribed (his) (her) name as witness thereto in the presence of AB.

_____
(Signature of notarial officer)

_____
(Title of office)

My commission expires:

_____
(Affix official seal, if applicable)

(h) In the case of any business organization, foreign or domestic:

STATE OF _____
COUNTY OF _____

Personally appeared before me, the undersigned authority in and for the said county and state, on this _____ day of _____, 20_____, within my jurisdiction, the within named _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed in the above and foregoing instrument and acknowledged that he/she/they executed the same in his/her/their representative capacity(ies), and that by his/her/their signature(s) on the instrument, and as the act and deed of the person(s) or entity(ies) upon behalf of which he/she/they acted, executed the above and foregoing instrument, after first having been duly authorized so to do.

_____

(Signature of notarial officer)

_____

(Title of office)

My commission expires:

_____

(Affix official seal, if applicable)

(2) The following short form certificates of notarial acts are sufficient for the purposes indicated if the certificate complies with Section 16(1) and (2) of the Revised Mississippi Law on Notarial Acts as codified:

(a) For an acknowledgment in an individual capacity:

"STATE OF _____
COUNTY OF _____

This record was acknowledged before me on (date) by (name(s) of individual(s)).

_____

(Signature of notarial officer)

_____

(Title of office)

My commission expires:

_____

(Affix official seal, if applicable)

(b) For an acknowledgment in a representative capacity:

"STATE OF _____
COUNTY OF _____

This record was acknowledged before me on (date) by (name(s) of individual(s)) as (type of authority, such as officer or trustee) of (name of party on behalf of whom record was executed).

_____

(Signature of notarial officer)

_____

(Title of office)

My commission expires:

_____

(Affix official seal, if applicable)

(c) For a verification on oath or affirmation (jurat):

"STATE OF _____
COUNTY OF _____

Signed and sworn to (or affirmed) before me on (date) by (name(s) of individual(s) making statement).

_____
(Signature of notarial officer)

_____
(Title of office)

My commission expires:

_____
(Affix official seal, if applicable)

(d) For witnessing or attesting a signature:

"STATE OF _____
COUNTY OF _____

Signed or attested before me on (date) by (name(s) of individual(s)).

_____
(Signature of notarial officer)

_____
(Title of office)

My commission expires:

_____
(Affix official seal, if applicable)

Federal Tax Lien Index

§ 85-8-5 Notice of lien; filing:

(1) Notices of liens, certificates and other notices affecting federal tax liens or other federal liens must be filed in accordance with this chapter.

(2) Notices of liens upon real property for obligations payable to the United States and certificates and notices affecting the liens shall be filed in the office of the chancery clerk of the county in which the real property subject to a federal lien is situated.

(3) Notices of federal liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates of notices affecting the liens shall be filed as follows:

(a) If the person against whose interest the lien applies is a corporation or a partnership whose principal executive office is in the state, as these entities are defined in the Internal Revenue laws of the United States, in the office of the Secretary of State.
(b) If the person against whose interest the lien applies is a trust that is not covered by paragraph (a) of this subsection, in the office of the Secretary of State.
(c) If the person against whose interest the lien applies is the estate of a decedent, in the office of the Secretary of State.
(d) In all other cases in the office of the chancery clerk of the county where the owner resides at the time of filing of the notice of lien.

§ 85-8-7 Certification of notice of lien:

Certification of notices of liens, certificates or other notices affecting federal liens by the Secretary of the Treasury of the United States or his delegate or by any official or entity of the United States responsible for filing or certify notice of any other lien, entitles them to be filed and no other attestation, certification or acknowledgment is necessary.

§ 85-8-9 Filing notice; duties and responsibilities:

(1) If a notice of federal lien, a refiling of a notice of federal lien, or a notice of revocation of any certificate described in subsection (2) of this section is presented to the filing officer who is:

. . . .

(b) Chancery clerk, he shall endorse thereon his identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the title and address of the official party certifying the lien, and the total amount appearing on the notice of lien. . . .

(3) If a refiled notice of federal lien referred to in subsection (1) of this section or any of the certificates or notices referred to in subsection (2) of this section is presented for filing with the chancery clerk, he shall permanently attach the refiled notice or the certificate to the original notice of lien and enter the refiled notice of the certificate with the date of filing in any alphabetical lien index on the line where the original notice of lien is entered.

(4) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of lien or certificate or notice affecting any lien, filed under this act, naming a particular person, and if a notice or certificate is on file, giving the date and hour of its filing. The fee for a certificate is $5.00. Upon request the filing officer shall furnish a copy of any notice of federal lien or notice or certificate affecting a federal lien for a fee of $2.00 per page.

§ 85-8-11 Duties of chancery clerk:

Chancery clerks with whom notices of federal liens, certificates and notices affecting such liens have been filed prior to January 1, 1990, shall, after that date, continue to maintain records containing such notices and certificates filed prior to January 1, 1990.

§ 85-8-13 Fees:

(2) The fee for filing and indexing each notice of lien or certificate or notice affecting the lien in the office of the chancery clerk is:

(a) For a lien on real estate	$ 10.00
(b) For a lien on personal property	$ 10.00
(c) For a certificate of discharge or subordination	$ 10.00
(d) For all other notices, including a certificate of release or non-attachment	$ 10.00

Lis Pendens Record

§ 11-47-1 Record to be kept by chancery clerk:

The clerk of the chancery court shall keep in his office, as a public record, a suitable book, to be called the "Lis Pendens Record."

§ 11-47-15 Docket form:

The lis pendens docket shall be ruled, and have printed at the top of the pages, or opposite page, the following headings for the columns, and the entries shall correspond with them, viz.:

Names of plaintiffs;
names of defendants;
kind of suit or writ;
when suit instituted or writ levied;
in or from what court;
nature of the suit or writ;
description of the land involved or levied on;
date of filing and recording lis pendens notice;
result of the suit or levy; and
remarks.

§ 11-47-3 Notice of suit affecting real estate recorded:

When any person shall begin a suit in any court, whether by declaration or bill, or by cross-complaint, to enforce a lien upon, right to, or interest in, any real estate, unless the claim be founded upon an instrument which is recorded, or upon a judgment duly enrolled, in the county in which the real estate is situated, such person shall file with the clerk of the chancery court of each county where the real estate, or any part thereof, is situated, a notice containing the names of all the parties to the suit, a description of the real estate, and a brief statement of the nature of the lien, right, or interest sought to be enforced. The clerk shall immediately file and record the notice in the lis pendens record, and note on it, and in the record, the hour and day of filing and recording.

The chancery clerk wholly failed to comply with Section 11-47-3 and that failure resulted in no valid nor legal notice to purchasers nor to encumbrancers of the pendency of the litigation. It is clear that a lis pendens notice must be actually recorded in The Lis Pendens Records to constitute notice. The only notice accomplished in the case sub judice was to the individual who accepted the lis pendens notice but failed to record it

in the Lis Pendens Book. In the absence of effective notice the [parties] are bona fide purchasers unaffected by any lien to which the property may be subject. ***Aldridge v. Aldridge*, 527 So. 2d 96, 100 (Miss. 1988).**

§ 11-47-5 Notice by officer levying on real estate:

When the sheriff . . . shall levy upon real estate by virtue of any process, unless it be in execution upon a judgment which is duly enrolled in the county where the real estate is situated, he shall file with the clerk of the chancery court of each county in which the real estate, or any part thereof, is situated, a notice of the levy, containing the names of the parties to the proceedings, the kind of process, and a description of the real estate levied on. The clerk shall file, record and note upon the notice and record, as required in Section 11-47-3.

§ 11-47-7 Clerk to index the record:

The clerk, upon filing and recording each notice, shall index the same, both directly and indirectly, under the name of each party, each plaintiff or complainant, against each defendant, and each defendant at the suit of each plaintiff or complainant.

§ 11-47-9 Effect of failure to enter notice:

If a person beginning any such suit, by declaration, bill, or cross-complaint affecting real estate, or if an officer levying any process upon real estate, shall fail to have the required notice entered in the lis pendens record, such suit or levy shall not affect the rights of bona fide purchasers or incumbrancers of such real estate, unless they have actual notice of the suit or levy.

§ 11-47-11 Result of proceeding entered:

Where the proceedings in or as to the suit or levy, notice of which has been entered in the lis pendens record, shall be terminated, whether on the merits or not, the court wherein the same were pending shall direct the clerk who has the record to make such entry therein as it shall prescribe, to give notice of the result of the proceedings and of the devolution of the real estate; and the clerk shall at once, on presentation thereof, file and record the prescribed entry and note the date of filing and recording on the record.

§ 11-47-13 Liability of a clerk, sheriff, or other officer:

If any clerk fail to perform any of the duties herein required of him, he shall be liable on his official bond to any party injured for all damages he may have sustained. . . .

Notice of Construction Liens

§ 85-7-133 Chancery clerk to keep record of liens:

Each of the several chancery clerks of this state shall provide in his office, as a part of the land records of his county, a record entitled "Notice of Liens" wherein notices under Section 85-7-131 shall be filed and recorded, and the liens shall not take effect until some notation of the lien is filed and recorded in the record showing

a description of the property involved,
the name of the lienor or lienors,
the date of filing,
if and where suit is filed, and
if and where contract is filed or recorded.

§ 85-7-131 Property subject to lien; effect as to purchasers, etc., without notice:

Every water well or oil and gas well, and any fixed machinery, gearing or other fixture that may or may not be used or connected therewith, shall be liable for services or construction and the debt shall be a lien thereon. . . .

§ 85-7-132 Violation of oil and gas conservation statutes; lien to enforce fines and penalties:

Every building, well or structure of any kind, and any fixed machinery, gearing or other fixture that may or may not be used or connected therewith, and all fixtures and equipment in the producing unit assigned such well by the Oil and Gas Board shall be liable for any penalty, civil fine or other expense arising from the violation of any statute of this state with respect to the conservation of oil and gas, or any provision of Sections 53-1-1 through 53-1-47 and Sections 53-3-1 through 53-3-21, or any rule, regulation or order made by the board thereunder. The Oil and Gas Board may use the provisions of this chapter to enforce any such lien. The Oil and Gas Board shall perfect such lien in the county or counties where the property or equipment involved in the violation is located. Such lien shall take effect as to purchasers or encumbrancers for a valuable consideration without notice thereof only from the time of filing notice of such lien as provided by Section 85-7-133.

Condominium Liens

§ 89-9-9 Condominium plans; recordation, amendment and revocation:

The provisions of [the Mississippi Condominium Law] shall apply to property divided or to be divided into condominiums only if there shall be recorded in the office of the chancery clerk in the county in which such property lies a plan consisting of

(a) a description or survey map of the surface of the land included within the project,

(b) diagrammatic floor plans of the building or buildings built or to be built thereon in sufficient detail to identify each unit, its relative location and approximate dimensions, and

(c) a certificate consenting to the recordation of such plan pursuant to this chapter signed and acknowledged by the record owner of such real property and all record holders of security interests therein. . . .

§ 89-9-21 Assessment upon condominium:

A reasonable assessment upon any condominium made in accordance with a recorded declaration of restrictions permitted by Section 89-9-17 shall be a debt of the owner thereof at the time the assessment is made. The amount of any such assessment plus any other charges thereon, such as interest, costs, attorneys' fees, and penalties, as such may be provided for in the declaration of restrictions, shall be and become a lien upon the condominium assessed when the management body causes to be recorded in the office of the chancery clerk of the county in which such condominium is located a notice of assessment, which shall state the amount of such assessment and such other charges thereon as may be authorized by the declaration of restrictions, a description of the condominium against which the same has been assessed, and the name of the record owner thereof. Such notice shall be signed and verified by an authorized representative of the management body or as otherwise provided in the declaration of restrictions.

Such lien shall be recorded in a condominium lien book alphabetically by name of the condominium unit owner, and such books need not be obtained until a condominium plat shall have been first recorded in said county. Upon payment of said assessment and charges in connection with which such notice has been so recorded, or other satisfaction thereof, the management body shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof. . . . Unless sooner satisfied and released, or the enforcement thereof initiated as hereafter provided, such lien shall expire and be of no further force or effect one

year from the date of recordation of said notice of assessment; provided, however, that said one-year period may be extended by the management body for a time not to exceed one additional year by recording a written extension thereof. . . .

Homestead Exemption

§ 27-33-35 Duties of clerk of board of supervisors:

The clerk of the board of supervisors shall keep all records and documents relating to homestead exemption matters coming before the board and perform such services as are generally required of him by Section 19-3-27, and in addition to such general duties:

(a) He shall receive applications for homestead exemption as they are delivered to him by the tax assessor, as required in Section 27-33-33(g); and before June 1 and in the manner prescribed by the rules and regulations of the Tax Commission, he shall forward the originals of all applications to the commission in Jackson, Mississippi, and

(1) on the first day of each regular monthly meeting of the board of supervisors he shall present to it all applications for homestead exemption in his hands at that time for the board's consideration, as directed hereafter in this article,

(2) when not in use, said applications shall be kept on file in alphabetical order, and

(3) at the end of each current year he shall deliver duplicate homestead exemption applications that are no longer valid to the chancery clerk of the county to be held by him as a public record for at least three (3) years. This shall also include all applications disallowed by the board. . . .

§ 27-33-37 Duties and powers of the board of supervisors:

The board of supervisors shall perform the duties imposed by this article on the members, the president, and the board as a unit, with the powers and authority granted and as necessary for the proper administration of the article, and specifically as set out in this section.

(a) At each regular monthly meeting the president of the board shall require of and receive from the clerk of the board all applications for homestead exemption having come into his hands as provided in Section

27-33-35 of this article.

(b) As soon as practicable after convening, at each regular monthly meeting, the board, in the light of public records, personal knowledge, information given by the assessor, and any other reliable source of information that may be available, shall examine each application which has been delivered to the clerk by the tax assessor, and pass upon its correctness and the eligibility of the property and of the person, under the law, as fully as may be done before final approval, after the land roll has been finally approved of minute record; and the board shall carefully consider and construe the relationship between buyers and sellers of property on which homestead exemption is sought, and the terms, conditions, rate of interest, payments made and to be made, of all conveyances doubtful in such respect. One (1) member of the board shall check each application prior to the time for final approval, and shall indicate if it should be approved, disapproved, or if it requires further investigation.

(c) If any application be found incorrect or incomplete in any particular required by law, or deficient in any respect, the board shall give notice immediately to the applicant, in writing, by mail, advising the applicant of the defect and the nature thereof, so that the applicant may correct it, if it can be corrected, before the time for final action by the board.

(d) The year in which the land roll is made, at the meeting of the board of supervisors at which the certificate of the department finally approving the land assessment roll is received and entered in its minutes, and at the September meeting the board of supervisors shall complete the consideration of each and every application for homestead exemption; and all applications, or claims, not clearly within the provisions and requirements of this article shall be disallowed by the board. Where it appears to the board, in a case or cases involving transactions completed after July 1, 1938, that conveyances have been made without bona fide consideration, and liens taken with questionable consideration or values, or where the payments on the principal have not been made as required, or there is evidence of any kind that the transactions were not bona fide in every particular, and were entered into for the purpose of obtaining a homestead exemption contrary to the letter and spirit of law, the application shall be disallowed.

(e) Each application shall be plainly endorsed “allowed” or “disallowed” as the case may be, over the date, and the signature of the president of the board, who may use a facsimile stamp for the purposes; and, in the space

provided on the application for that purpose, there shall be entered for each assessment, (1) the page and line number of the assessment on the land roll, (2) the total number of acres, (3) the total assessed value of the land, (4) the assessed value of the buildings, (5) the total assessed value of the exempted land and buildings, (6) the assessed value of the land and buildings not exempted, (7) the name of the road district, if any, in which the property lies, and (8) the name of the school district in which the property lies.

(f) All applicants, whose applications are finally disallowed by the board, shall be given notice immediately by the board, in writing, by mail. Petitions and objections by applicants for correction or amendment shall be heard by the board at the next regular meeting of the board after notice that the application was finally disallowed.

(g) It shall not be necessary that an order be entered on the minutes of the board which allows or disallows an application as provided by paragraph (f) of this section, unless there be a division among the board members, then an order shall be entered on the minutes recording the aye and nay vote.

(h) The board of supervisors shall have, and is hereby given, the power and authority to summon and examine witnesses under oath, to examine records, and to do any and all other things necessary and proper to ascertain the facts with respect to any application, or claim, for homestead exemption presented to it. The board shall disallow any application for homestead exemption when it is found that the person or the property was ineligible, after the supplemental roll is approved and within one (1) year after that in which the application was executed; and it shall correct, likewise, any and all errors found in the supplemental roll. When an application is disallowed by the board after the supplemental roll has been approved, it shall give notice and proceed as in the case of a rejection by the department. A certified copy of the order finally disallowing an application, and making a correction in the supplemental roll must be adopted before the last Monday of August and shall be received by the department no later than September 15 of the year following the year in which the supplemental roll was made.

(i) At the first regular or special meeting of the board of supervisors held after the supplemental roll, required by Section 27-33-35 of this article, has been made, it shall examine the roll, and if found correct shall enter in the minutes an order approving the roll; and the applications disallowed shall be listed in the minutes by name and amount, with the reason for

disallowance. A copy of the order shall be attached to the supplemental roll and sent to the department.

(j) All applicants whose applications are rejected for reimbursement of tax loss by the department, after having been allowed by the board, shall be given notice immediately by the board, in writing, by mail, with the reasons for the rejection by the department, and the applicants shall have thirty (30) days in which to file objections thereto, which objections shall be heard by the board at the same or the next regular meeting after objections are filed by the applicant. If the board finds that in its opinion the application should be allowed, it shall continue the matter in its record, and present its objection to the rejection, with evidence in support of it, to the department. All applications finally rejected by the department or by the Board of Tax Appeals shall be disallowed by the board, and entered of minute record.

(k) When the board shall receive notice from the department that an application for homestead exemption has been rejected by the department for reimbursement of tax loss, the board shall proceed in the manner prescribed in paragraph (j) of this section. Upon the hearing of objections of the applicant, if the board finds that the application should be disallowed, it shall so order and notify the department that its rejection has been "accepted." If the board is of the opinion that the application should be allowed, it shall notify the department that it objects to the rejection of the application, and shall submit, in writing, its reasons for the "objection." All such matters between the board and the department may be concluded by correspondence, or by personal appearance of the board, or one or more of its members, the clerk, or the assessor, or by a representative of the department present at any meeting of the board. If upon consideration of the objection, the department determines that the application for homestead exemption should be allowed; it will reverse the adjustment resulting from the department's rejection of the application and advise the board of this reversal. If upon consideration of the objection, the department determines that it had properly rejected the application for homestead exemption; it shall advise the board that its objection has been denied by the department. Within thirty (30) days from the date of the notice from the department advising the board that its objection had been denied, the board can appeal this denial of the objection by the department to the Board of Tax Appeals. The decision on the appeal by the board from the denial by the department of the board's objection to the department's rejection of an application for reimbursement of the tax loss shall be final, and the board and the department will either allow or disallow the application based on the decision of the Board of Tax Appeals.

(l) It shall be the duty of the board, and it is hereby given the power to order the tax collector, by an order entered on its minutes, to reassess, and list as subject to all taxes, the property described in an application for homestead exemption and as entered on the regular land assessment roll, under the following circumstances:

> (i) When an application for homestead exemption is finally rejected by the department for reimbursement of tax loss which has been regularly approved by the board and entered on the supplemental roll; or
> (ii) Where an application has been wrongfully allowed by the board.

When any property has been reassessed as herein provided, all additional taxes due as a result of such reassessment shall become due and be payable on or before the first day of February of the year following that in which notice to make the reassessment is issued; and if not paid, the tax collector shall proceed to sell the property for the additional taxes in the same manner and at the same time other property is sold for the current year's taxes, or he may collect the taxes by all methods by which other taxes on real estate may be collected. Provided, no penalty or interest shall be applied for any period prior to February 1 of the year following that in which the reassessment is made, and provided further, that such reassessment shall not take effect or become a lien on the property of bona fide purchasers or encumbrancers for value without notice thereof, unless there shall have been filed prior to their attaining such status a notice of rejection in the chancery clerk's office in the county in which the property is located, which notice shall be recorded and indexed as are deeds; but the applicant shall in all cases remain personally liable for such reassessment.

> We [have] stated that pursuant to Section 27-33-37(l), if a new owner of a residence is a bona fide purchaser thereof for value and without notice of the rejection of the homestead exemption application upon said property, then the lien for additional taxes due to rejection of the application will neither attach to the property nor impose personal liability upon the new owner. It is our opinion that protection of original buyer “B”,who was a bona fide purchaser without notice of the lien, extends to all subsequent purchasers of the property, even where, like purchaser “C,” they have notice of the lien. Any other result would defeat the intent of the statute. **Re: Homestead Exemption, Opinion No. 2006-0480 (Miss. A. G. Sept. 29, 2006).**

(m) The board of supervisors may employ the clerk of the board to collect and assemble data and information and to perform the services required of the board by paragraph (e) of this section and to make investigations required in connection with the duties of the board in determining the eligibility of homestead exemptions and to perform all other ministerial duties required of the board in connection with administering the Homestead Exemption Law and as directed by the board. If the board employs the clerk, he shall be paid out of the general county fund as follows: for the first two thousand (2,000) applications he may, in the discretion of the board, be paid not exceeding One Dollar ($1.00) each, for the next two thousand (2,000) applications he may be paid not exceeding Seventy-five Cents (75¢) each, for the next two thousand (2,000) applications he may be paid not exceeding Fifty Cents (50¢) each, for the next two thousand (2,000) applications he may be paid not exceeding Thirty-five Cents (35¢) each, all over the above number he shall be paid not exceeding Twenty-five Cents (25¢) each. The board shall require the assessor to correctly describe all lands included in any applications for homestead exemption, and to assess all such lands on the land assessment roll, separately from other lands, as required by this article; and to present to the board all proper and necessary notices for the correction of land descriptions on the roll, changes in ownership, and for increases and decreases in the assessments of exempt homes.

§ 27-33-39 Duties of the chancery clerk:

The chancery clerk of the county shall:

(a) Assist the board of supervisors in dealing with applications for homestead exemption, and present, on the call of the board, all records from his office necessary for the allowance or disallowance of any application for homestead exemption coming before the board; and

(b) Receive from the clerk of the board of supervisors the applications filed for homestead exemption, as provided in Section 27-33-35, paragraph (a), and preserve them accessible as public records for at least three years.

§ 27-31-75 Filing application for exemption:

Application for such exemption upon existing interests shall be made to the chancery clerk of the county wherein the land lies in which such interest is owned, by filing application in duplicate with the said clerk, which shall contain the following information:

(a) Name of applicant;
(b) Address of applicant;
(c) Description of land affected (including aggregate acreage);
(d) Fractional interest for which exemption is applied and nature of such interest;
(e) Recording data concerning the instrument creating the interest including grantor or lessor, grantee or lessee, date of instrument, book and page of record and date of filing;
(f) Length of primary term;
(g) Recording data on instruments divesting original party of any interest in a portion of original interest therein conveyed;
(h) Number of net mineral, royalty or lease acres on which exemption sought;
(i) Amount tendered therewith.

Upon receipt of such application, accompanied by the sum shown therein, the chancery clerk shall give it a serial number, mark it filed, showing the date received and shall note the payment of the mineral documentary tax on the original application. The clerk shall make a notation on the face of the record of the instrument described in the application showing the date of payment, the amount of the payment as stated in the application and the serial number of the application. After such notation is made, the original application, with the required notations, shall be returned to the applicant by mailing to the address shown on the application (or delivered otherwise to the applicant) and the duplicate application shall be retained by the clerk as his permanent record.
If it later be ascertained that an insufficient amount was paid with the application for the exemption provided herein, such exemption shall not be thereby rendered void but the additional amount which should have been paid, together with a penalty of twenty-five percent (25%) and one percent (1%) interest per month thereon from the date of the application until paid, shall be a lien on the interest exempted and a personal debt of the applicant collectible by suit for appropriate personal judgment and to enforce the lien, which may be maintained by the county to which such sum should have been paid.

§ 27-31-77 Mineral documentary tax; levy:

There is hereby levied and shall be paid and collected, as herein set forth, a documentary or transfer tax, to be known as the mineral documentary tax, upon the filing and recording of every lease and other writing hereafter executed whereby there is created a leasehold interest in and to any nonproducing oil, gas or other minerals in, on or under or that may be produced from any lands situated within the State of Mississippi, or whereby any such interest is assigned or is extended beyond the primary term fixed by the original instrument, and upon every deed, instrument, transfer, evidence of sale or other writing whereby there is hereafter conveyed to a grantee or purchaser, or excepted or reserved to a grantor separately and apart from the surface, any interest in, or right to receive royalty from, any nonproducing oil, gas or other minerals in, on or under or that may be produced from any lands within the State of Mississippi. Provided, the tax shall not apply to any mortgage or instrument creating a lien upon such interest, nor to the sale under foreclosure thereof, or the passing of such interest by descent or will.

> As a matter of law, a reservation cannot be made by the grantee in the deed. Only the grantor can make a reservation out of the estate granted. For these reasons, we find there was evidence beyond a reasonable doubt to support reformation based on a scrivener's error. It is evident from the language employed in the chancellor's opinion and final judgment that she applied an erroneous legal standard. Nevertheless, upon review, we find evidence beyond a reasonable doubt to support reformation based on mutual mistake and a scrivener's error. Therefore, we affirm. ***Ward v. Harrell*, 186 So. 3d 410, 414 (Miss. Ct. App. 2016).**

§ 27-31-79 Mineral documentary tax; amount; lien:

The mineral documentary tax shall be a lien upon the interest leased, assigned, conveyed, reserved, excepted or transferred and the amount to be paid shall be determined as follows (provided that the minimum tax shall be one dollar), to-wit:

> (a) Upon the filing and recording of each instrument creating, assigning or transferring a leasehold (or interest therein or any portion thereof) or conveying, transferring, excepting or reserving a mineral or royalty interest as above described, the primary term of which shall expire ten (10) years or less from the date of the execution of the instrument, the tax shall be a sum equal to Three Cents per mineral or royalty acre conveyed, leased, assigned, excepted, reserved or transferred therein.

(b) Such tax shall be Six Cents per mineral or royalty acre if the primary term of such interest shall expire more than ten (10) years and not exceeding twenty (20) years from the date of the execution of such instrument.

(c) Such tax shall be Eight Cents per mineral or royalty acre if the primary term of such interest shall extend more than twenty (20) years from the date of the execution of such instrument.

§ 27-31-81 Persons liable for tax; time for payment:

The mineral documentary tax shall be payable by the grantee or grantees named in and the beneficiary or real party in interest under such lease, deed, conveyance, transfer, assignment or other writing, except that as to any exception or reservation creating any such interest the tax shall be payable by the grantor or grantors in such instrument.

The tax shall be due and payable upon the filing of the instrument for record, and the chancery clerk shall note the fact of the payment as provided in Section 27-31-83.

Any chancery clerk, who accepts or records an instrument upon which the tax is not paid to him as required under this section, shall be liable to the county for double the amount of tax shown to have been due upon the instrument; however, the chancery clerk shall not be liable for any sum where the amount of the tax tendered is accepted by him in good faith as the proper amount due.

If an insufficient amount is paid for the tax, the filing and recording of the instrument shall nevertheless be good and valid for all purposes as now provided by statute, but the additional amount which should have been paid, together with a penalty of twenty-five percent (25%) thereof and one-half of one percent (½ of 1%) interest per month thereon from the due date until paid, shall be a lien on the interest conveyed, reserved or excepted therein, and a personal debt of the said taxpayer, collectible by suit by the county for personal judgment or to enforce the lien or both.

§ 27-31-83 Documentary tax stamps:

The mineral documentary tax shall be paid to the chancery clerk of the county in which the land affected by the sale, lease or reservation or other instrument of the oil, gas or other minerals is situated. Upon payment of the tax, the chancery clerk shall note on the face or margin of the instrument, the following:

(a) the fact of the payment;

(b) the total amount of the tax paid in conjunction with the recording of the instrument; and

(c) the name of the county in which the instrument is filed.

This notation shall constitute sufficient proof of payment of the tax.

§ 27-31-85 Disposition of funds collected:

From the taxes levied and collected under and by virtue of Sections 27-31-77 through 27-31-83 inclusive, the chancery clerk shall retain five percent (5%) as a fee for the collection thereof, and shall pay the remainder thereof into the proper depository to the credit of the county, one-half to the common county fund and one-half to the county school fund. Such deposit shall be made on or before the 15th day of the month next succeeding that in which such collection may be made. The same percent of collections shall be retained by him from all funds collected by virtue of Section 27-31-75 hereof, and the remainder shall be likewise deposited.

CHAPTER 21

ANNEXATION

CHAPTER 21

ANNEXATION

Mississippi Constitution Article 4, § 88 Content of general laws states:

> The legislature shall pass general laws, under which local and private interest shall be provided for and protected, and under which cities and towns may be chartered and their charters amended, and under which corporations may be created, organized, and their acts of incorporation altered; and all such laws shall be subject to repeal or amendment.

§ 21-1-27 Ordinance required to expand or contract boundaries:

(1) The limits and boundaries of existing cities, towns and villages shall remain as now established until altered in the manner hereinafter provided. When any municipality shall desire to enlarge or contract the boundaries thereof by adding thereto adjacent unincorporated territory or excluding therefrom any part of the incorporated territory of such municipality, the governing authorities of such municipality shall pass an ordinance defining with certainty the territory proposed to be included in or excluded from the corporate limits, and also defining the entire boundary as changed.

In the event the municipality desires to enlarge such boundaries, such ordinance shall in general terms describe the proposed improvements to be made in the annexed territory, the manner and extent of such improvements, and the approximate time within which such improvements are to be made; such ordinance shall also contain a statement of the municipal or public services which such municipality proposes to render in such annexed territory. In the event the municipality shall desire to contract its boundaries, such ordinance shall contain a statement of the reasons for such contraction and a statement showing whereby the public convenience and necessity would be served thereby.

Petition is Filed

§ 21-1-29 Petition, filing and contents:

When any such ordinance shall be passed by the municipal authorities, such municipal authorities shall file a petition in the chancery court of the county in which such municipality is located; however, when a municipality wishes to annex or extend its boundaries across and into an adjoining county such municipal authorities shall file a petition in the chancery court of the county in which such territory is located. The petition shall recite the fact of the adoption of such ordinance and shall pray that the enlargement or contraction of the municipal boundaries, as the case may be, shall be ratified, approved and confirmed by the court. There shall be attached to such petition, as exhibits thereto, a certified copy of the ordinance adopted by the municipal authorities and a map or plat of the municipal boundaries as they will exist in event such enlargement or contraction becomes effective.

Notice of Hearing

§ 21-1-31 Notice of hearing; other municipalities:

Upon the filing of such petition and upon application therefor by the petitioner, the chancellor shall fix a date certain, either in term time or in vacation, when a hearing on said petition will be held, and notice thereof shall be given in the same manner and for the same length of time as is provided in Section 21-1-15 with regard to the creation of municipal corporations, and all parties interested in, affected by, or being aggrieved by said proposed enlargement or contraction shall have the right to appear at such hearing and present their objection to such proposed enlargement or contraction. However, in all cases of the enlargement of municipalities where any of the territory proposed to be incorporated is located within three miles of another existing municipality, then such other existing municipality shall be made a party defendant to said petition and shall be served with process in the manner provided by law, which process shall be served at least thirty days prior to the date set for the hearing.

§ 21-1-15 Notice of hearing:

After the filing of said petition, and upon request therefor by the petitioners, the chancellor shall set a day certain, either in term time or in vacation, for the hearing of such petition and notice shall be given to all persons interested in, affected by, or having objections to the proposed incorporation, that the hearing on the petition will be held on the day fixed by the chancellor and that all such persons will have the right to appear and enter their objections, if any, to the proposed incorporation.

The said notice shall be given by publication thereof in some newspaper published or having a general circulation in the territory proposed to be incorporated once each week for three consecutive weeks, and by posting a copy of such notice in three or more public places in such territory. The first publication of such notice and the posted notice shall be made at least thirty days prior to the day fixed for the hearing of said petition, and such notice shall contain a full description of the territory proposed to be incorporated. However, if any of the territory proposed to be incorporated is located within three miles of the boundaries of an existing municipality, then such existing municipality shall be made a party defendant to such petition and shall be served with process in the manner provided by law, which process shall be served at least thirty days prior to the date set for the hearing.

Hearing

§ 21-1-33 Decree; burden of proof:

(1) If the chancellor finds from the evidence presented at the hearing that the proposed enlargement or contraction is reasonable and is required by the public convenience and necessity and, in the event of an enlargement of a municipality, that reasonable public and municipal services will be rendered in the annexed territory within a reasonable time and that the governing authority of the municipality complied with the provisions of Section 21-1-27, the chancellor shall enter a decree approving, ratifying and confirming the proposed enlargement or contraction, and describing the boundaries of the municipality as altered. In so doing the chancellor shall have the right and the power to modify the proposed enlargement or contraction by decreasing the territory to be included in or excluded from the municipality, as the case may be.

(2) If the chancellor shall find from the evidence that the proposed enlargement or contraction, as the case may be, is unreasonable and is not required by the public convenience and necessity, or in the event of an enlargement of a municipality, that the governing authority of the municipality failed to comply with the provisions of Section 21-1-27, then he shall enter a decree denying the enlargement or contraction.

(3) In any event, the decree of the chancellor shall become effective after the passage of ten (10) days from the date thereof or, in the event an appeal is taken therefrom, within ten (10) days from the final determination of the appeal. In any proceeding under this section the burden shall be upon the municipal authorities to show that the proposed enlargement or contraction is reasonable.

The outcome determinative question of ultimate fact before the chancery court is the reasonableness of the proposed annexation. ***In re Enlargement and Extension of Municipal Boundaries of City of Biloxi*, 744 So. 2d 270, 277 (Miss. 1999).**

***See* Miss. R. Civ. Pro. 81(a)(11).**

§ 21-1-35 Assessment of costs:

In the event no objection is made to the petition for the enlargement or contraction of the municipal boundaries, the municipality shall be taxed with all costs of the proceedings. In the event objection is made, such costs may be taxed in such manner as the chancellor shall determine to be equitable pursuant to the Mississippi Rules of Civil Procedure. In the event of an appeal from the judgment of the chancellor, the costs incurred in the appeal shall be taxed against the appellant if the judgment be affirmed, and against the appellee if the judgment be reversed.

Right to Appeal

§ 21-1-37 Review:

If the municipality or any other interested person who was a party to the proceedings in the chancery court be aggrieved by the decree of the chancellor, then such municipality or other person may prosecute an appeal therefrom within the time and in the manner and with like effect as is provided in section 21-1-21 in the case of appeals from the decree of the chancellor with regard to the creation of a municipal corporation.

§ 21-1-21 Review:

Any person interested in or aggrieved by the decree of the chancellor, and who was a party to the proceedings in the chancery court, may prosecute an appeal therefrom to the supreme court within ten days from the date of such decree by furnishing an appeal bond in the sum of five hundred dollars with two good and sufficient sureties, conditioned to pay all costs of the appeal in event the decree is affirmed. Such appeal bond shall be subject to the approval of the chancery clerk and shall operate as a supersedeas. If the decree of the chancellor be affirmed by the supreme court, then such decree shall go into effect after the passage of ten days from the date of the final judgment thereon, and the party or parties prosecuting such appeal and the sureties on their appeal bond shall be adjudged to pay all costs of such appeal.

> Both [Section 21-1-33 and Section 21-1-21] speak of the decree of the chancellor going into effect ten days after the appeal is decided. Supersedeas must be requested in the chancery court. The City did not do this and therefore the final judgment disallowing de-annexation and ordering further action on behalf of the City was not stayed. The notice of appeal filed by the City did nothing to stay the judgment of the chancery court and prevent the City from being held in contempt. ***In re Contraction, Exclusion and De-Annexation of City of Grenada*, 876 So. 2d 995, 1005 (Miss. 2004).**

Clerk's Duties

§ 21-1-39 Copy to secretary of state:

Whenever the corporate limits of any municipality shall be enlarged or contracted, as herein provided, the chancery clerk shall, after the expiration of ten days from the date of such decree if no appeal be taken therefrom, forward to the secretary of state a certified copy of such decree, which shall be filed in the office of the secretary of state and shall remain a permanent record thereof. In the event an appeal be taken from such decree and such decree is affirmed, then the certified copy thereof shall be forwarded to the secretary of state within ten days after receipt of the mandate from the supreme court notifying the clerk of such affirmance.

§ 21-1-41 Description of boundaries:

In all cases where the limits of a municipality are enlarged or contracted the municipal authorities shall furnish to the chancery clerk a map or plat of the boundaries of the municipality as altered. Such map or plat shall be recorded in the official plat book of the county.

CHAPTER 22

BOND VALIDATION

CHARTS

CHAPTER 22

BOND VALIDATION

§ 31-13-3 Definition of "bonds":

The word "bond" or "bonds," when used in this chapter, shall be deemed to include every form of written obligation that may be now or hereafter legally issued by any county, municipality, school district, road district, drainage district, levee district, sea wall district, and of any other district or subdivision whatsoever, as now existing or as may be hereafter created.

Papers Filed with the Clerk

§ 31-13-5 Validity of bonds issued:

When any county, municipality, school district, road district, drainage district, levee district, sea wall district, or any other district or subdivision authorized to issue bonds shall take steps to issue bonds for any purpose whatever, the officer or officers of such county, municipality, or district charged by law with the custody of the records of same shall, if the board issuing same so determine by order entered on its minutes, transmit to said bond attorney a certified copy of all legal papers pertaining to the issuance of said bonds, including transcripts of records and ordinances, proof of publication, and tabulation of vote, if any, and any other facts pertaining to said issuance. Said bond attorney shall thereupon as expeditiously as possible examine said legal papers, pass upon the sufficiency thereof, and render an opinion in writing, addressed to the board proposing to issue said bonds, as to the validity of same; and if any further action on the part of said board is necessary or any further data is desired, he shall indicate what is necessary to be done in the premises in order to make said bonds legal, valid, and binding.

When in his opinion all necessary legal steps have been taken to make the said bond issue legal, valid, and binding, he shall render a written opinion to that effect and shall transmit all legal papers, together with his opinion, to the clerk of the chancery court of the county in which the district or municipality proposing to issue said bonds is situated, or if said district embraces more than one county or parts of more than one county, then to the chancery clerk of any one of said counties.

The chancery clerk shall file the same, enter the same on the docket of the chancery court, and shall promptly notify the chancellor of the district in writing that said papers are on file and the cause has been docketed.

The chancellor shall then notify the chancery clerk to set the matter for hearing at some future date, not less than ten days thereafter, and the clerk shall give not less than five days' notice by making at least one publication in some paper published in the county where the case is docketed, addressed to the taxpayers of the county, municipality, or district proposing to issue said bonds, advising that the matter will be heard on the day named.

If on the day set for hearing there is no written objection filed by any taxpayer to the issuance of said bonds, a decree approving the validity of same shall be entered by the chancellor; and if the chancellor be not present the clerk shall forward him the decree prepared by the state's bond attorney for his signature, and shall enter the said decree upon his minutes in vacation.

If no written objection is filed to the validation of the bonds, certificates of indebtedness, or other written obligations which are being validated, by any taxpayer to the issuance of same, then the validation decree shall be final and forever conclusive from its date, and no appeal whatever shall lie therefrom.

If at the hearing any taxpayer of the county, municipality, or district issuing said bonds appears and files, or has filed written objection to the issuance of said bonds, then the chancellor, or the chancery clerk if the chancellor be not present, shall set the case over for another day convenient to the chancellor, not less than ten days thereafter, and shall notify the bond attorney to appear and attend the hearing. On the hearing the chancellor may hear additional competent, relevant and material evidence under the rules applicable to such evidence in the chancery court, so as to inquire into the validity of the bonds or other obligations proposed to be issued, and enter a decree in accordance with his finding.

Where written objections have been filed to the validation but not otherwise, if either party shall be dissatisfied with the decree of the chancellor, an appeal shall be granted as in other cases, provided such appeal be prosecuted and bond filed within twenty days after the chancellor enters his decree. However, no appeal shall lie in any case unless written objection has been filed to the validation of the bonds or other obligations by the time set for the validation hearing. The chancery clerk shall certify the record to the supreme court as in other cases, and the supreme court shall hear the case as a preference case.

§ 31-13-7 Decree validating bonds:

If the chancellor shall enter a decree confirming and validating said bonds and there shall be no appeal by either party from said decree, or if on appeal the supreme court enters its decree confirming and validating said bonds or other written obligations, the validity of said bonds or other written obligations so

issued shall be forever conclusive against the county, municipality, or district issuing same; and the validity of said bonds or other written obligations shall never be called in question in any court in this state.

§ 31-13-9 Stamped or written entry; evidence of validation; facsimile signature and seal:

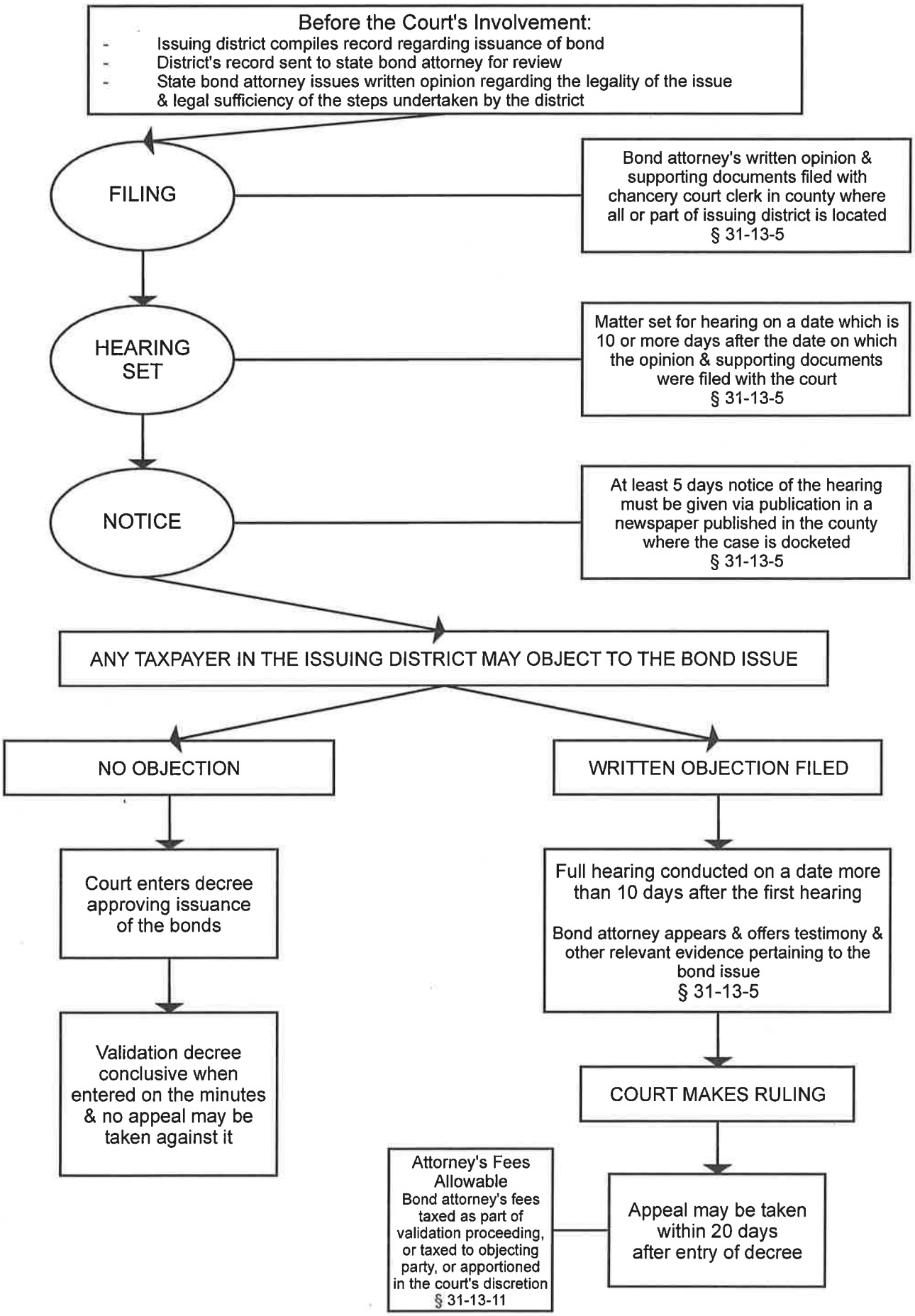
Whenever any bonds are validated under the provisions of this chapter, the clerk or other proper officer of the county, municipality, or district issuing same shall stamp or write on each of said bonds over his signature and the seal of the issuer the words "validated and confirmed by decree of the chancery (or supreme) court," together with the date of the rendition of the final decree validating same, which entry shall be taken as evidence of the validation of said bonds in any court in this state. If the resolution authorizing the issuance of the bonds shall so provide, such signature and seal under this section may be a facsimile.

Court Costs

§ 31-13-11 Court costs and fee of bond attorney:

The court costs in all such cases shall be paid by the county, municipality, or district proposing to issue said bonds or other written obligations, and in addition to such costs it shall also pay to the bond attorney a fee of not more than one-tenth of one percent (1/10 of 1%), provided said fee shall not be less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), of the amount of the bonds or other obligations issued or proposed to be issued. The payment of this fee shall be full compensation for all legal services rendered in connection with the issuance of said bonds, except that when the state's bond attorney attends a hearing of objection to the validation of said bonds, his actual and necessary expenses and a reasonable rate of compensation for attending the said hearing as required by this chapter shall be taxed as a part of the costs of the validation proceedings, upon approval by the clerk or chancellor of an itemized account of such expenses and time expended. If objection is filed to the validation of said bonds, then in that event the taxation of court costs, including expenses and a reasonable rate of compensation for the bond attorney, shall be discretionary with the chancellor, as in other cases in the chancery court, against the issuing board or district, or the objector or objectors, or apportioned as the chancellor may deem proper.

BOND VALIDATION



CHAPTER 23

PROTECTION FROM DOMESTIC ABUSE

CHAPTER 23

PROTECTION FROM DOMESTIC ABUSE

Jurisdiction

§ 93-21-5 Jurisdiction; right to relief:

(1) The municipal, justice, county or chancery court . . . shall have jurisdiction over proceedings under this chapter as provided in this chapter. The petitioner's right to relief under this chapter shall not be affected by his leaving the residence or household to avoid further abuse. . . .
(4) A record shall be made of any proceeding in justice or municipal court that involves domestic abuse.

Venue

§ 93-21-5 Jurisdiction; right to relief:

(2) Venue shall be proper in any county or municipality where the respondent resides or in any county or municipality where the alleged abusive act or acts occurred. . . .
(3) If a petition for an order for protection from domestic abuse is filed in a court lacking proper venue, the court, upon objection of the respondent, shall transfer the action to the appropriate venue pursuant to other applicable law. . . .

Petition

§ 93-21-7 Filing of petitions; persons authorized; domestic abuse cases:

(1) Any person may seek a domestic abuse protection order for himself by filing a petition alleging abuse by the respondent. Any parent, adult household member, or next friend of the abused person may seek a domestic abuse protection order on behalf of any minor children or any person alleged to be incompetent by filing a petition with the court alleging abuse by the respondent. Cases seeking relief under this chapter shall be priority cases on the court's docket and the judge shall be immediately notified when a case is filed in order to provide for expedited proceedings.

In order to obtain a restraining order in Mississippi, an individual may seek a domestic abuse protection order by filing a petition alleging abuse by the respondent. The Mississippi Code contains a specific definition of what constitutes “abuse”:

> Abuse means the occurrence of one or more of the following acts between spouses, former spouses, persons living as spouses or who formerly lived as spouses, persons having a child or children in common, other individuals related by consanguinity or affinity who reside together or who formerly resided together, or between individuals who have a current or former dating relationship:
>
> (i) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury or serious bodily injury with or without a deadly weapon;
>
> (ii) Placing, by physical menace or threat, another in fear of imminent serious bodily injury;
>
> (iii) Criminal sexual conduct committed against a minor within the meaning of Section 97-5-23;
>
> (iv) Stalking within the meaning of Section 97-3-107;
>
> (v) Cyberstalking within the meaning of Section 97-45-15; or
>
> (vi) Sexual offenses within the meaning of Section 97-3-65 or 97-3-95.
>
> When all of the events testified to by Kimberly are reviewed, it is clear that there was insufficient evidence for a protective order. Kimberly essentially testified that: (1) Craig had touched her stomach when she did not want him to, (2) Craig had made her feel "pinned" near her car, and (3) Craig had threatened to keep custody of Nathanael. None of these events involved Craig causing Kimberly any form of bodily injury, nor did they constitute criminal sexual conduct. Furthermore, none of the incidents related by Kimberly constitute stalking or cyberstalking. Kimberly never testified that she feared "imminent serious bodily injury." Although Kimberly testified to an alleged sexual assault by Craig in Ohio, the chancellor apparently did not find Kimberly credible as to the assault, as he specifically declined to find that Kimberly had shown evidence of sexual battery or rape. Therefore, there was no ground to issue the protective order under Mississippi law. Consequently, we reverse and render the chancery court's entry of a Mississippi protective order. ***Wolfe v. Wolfe*, 49 So. 3d 650, 652-53 (Miss. Ct. App. 2010) (citations omitted).**

(2) A petition seeking a domestic abuse protection order may be filed in any of the following courts: municipal, justice, county or chancery. . . . A chancery court shall not prohibit the filing of a petition which does not seek emergency relief on the basis that the petitioner did not first seek or obtain temporary relief in another court. A petition requesting emergency relief pending a hearing shall not be filed in chancery court unless specifically permitted by the chancellor under the circumstances or as a separate pleading in an ongoing chancery action between the parties. Nothing in this section shall:

(a) Be construed to require consideration of emergency relief by a chancery court; or
(b) Preclude a chancery court from entering an order of emergency relief.

(3) The petitioner in any action brought pursuant to this chapter shall not bear the costs associated with its filing or the costs associated with the issuance or service of any notice of a hearing to the respondent, issuance or service of an order of protection on the respondent, or issuance or service of a warrant or witness subpoena. If the court finds that the petitioner is entitled to an order protecting the petitioner from abuse, the court shall be authorized to assess all costs including attorney's fees of the proceedings to the respondent. The court may assess costs including attorney's fees to the petitioner only if the allegations of abuse are determined to be without merit and the court finds that the petitioner is not a victim of abuse as defined by Section 93-21-3.

> Pratt argues that Nelson only requested relief under the [Protection from Domestic Abuse] Act, not under Rule 65. Nelson agrees that she did not request relief under Rule 65, claiming she only requested a "Domestic Violence Order of Protection," and filed pleadings under the Act on forms created by the Attorney General's Office. Both Nelson and Pratt also agree that since relief was not originally requested under Rule 65, the requirements of Rule 65(d)(2) have not been met regarding Nelson's petition for a domestic violence protection order filed on November 2011. Nor did Nelson file a complaint or affidavit requesting relief under Rule 65. It appears the chancellor was continuing the temporary restraining order put in place at the beginning of the trial on August 1 permanently under Rule 65, instead of granting protection under the requested relief of the Act. However, Rule 65 is not the proper vehicle for imposing a permanent restraining order; it is designed to afford temporary relief when irreparable harm occurs. As Nelson notes, there is no precedent for converting a domestic violence protection order into a Rule 65 injunction; neither the statute nor the rule contemplates this action. Under this case's procedural posture, Nelson was either entitled to relief under the Act or not. We therefore find the chancellor's ruling in error regarding the Rule 65 injunction/restraining order. ***Pratt v. Nelson*, 170 So. 3d 620, 624-25 (Miss. Ct. App. 2015).**

§ 93-21-9 Petition contents:

(1) A petition filed under the provisions of this chapter shall state:

(a) Except as otherwise provided in this section, the
name,
address and
county of residence of each petitioner and
name,
address and
county of residence of each individual alleged to have committed abuse;
(b) The facts and circumstances concerning the alleged abuse;
(c) The relationships between the petitioners and the individuals alleged to have committed abuse; and
(d) A request for one or more domestic abuse protection orders.

When Spouse Requests Protective Order

(2) If a petition requests a domestic abuse protection order for a spouse and alleges that the other spouse has committed abuse, the petition shall state whether or not a suit for divorce of the spouses is pending and, if so, in what jurisdiction.

When Petitioner and Respondent are in a Divorce Proceeding

(3) Any temporary or permanent decree issued in a divorce proceeding subsequent to an order issued pursuant to this chapter may, in the discretion of the chancellor hearing the divorce proceeding, supersede in whole or in part the order issued pursuant to this chapter.

When Petitioner is Divorced from Respondent

(4) If a petitioner is a former spouse of an individual alleged to have committed abuse:

(a) A copy of the decree of divorce shall be attached to the petition; or

(b) The petition shall state the decree is currently unavailable to the petitioner and that a copy of the decree will be filed with the court before the time for the hearing on the petition.

For Protection Order for a Child Under the Jurisdiction of a Court

(5) If a petition requests a domestic abuse protection order for a child who is

subject to the continuing jurisdiction of a youth court, family court or a chancery court, or alleges that a child who is subject to the continuing jurisdiction of a youth court, family court or chancery court has committed abuse:

> (a) A copy of the court orders affecting the custody or guardianship, possession and support of or access to the child shall be filed with the petition; or
>
> (b) The petition shall state that the orders affecting the child are currently unavailable to the petitioner and that a copy of the orders will be filed with the court before the hearing on the petition.

Emergency Relief

(6) If the petition includes a request for emergency relief pending a hearing, the petition shall contain a general description of the facts and circumstances concerning the abuse and the need for immediate protection.

Petitioner's Address May be Omitted from Petition

(7) If the petition states that the disclosure of the petitioner's address would risk abuse of the petitioner or any member of the petitioner's family or household, or would reveal the confidential address of a shelter for domestic violence victims, the petitioner's address may be omitted from the petition. If a petitioner's address has been omitted from the petition pursuant to this subsection and the address of the petitioner is necessary to determine jurisdiction or venue, the disclosure of such address shall be made orally and in camera. A nonpublic record containing the address and contact information of a petitioner shall be maintained by the court to be utilized for court purposes only.

Petition Signed Under Oath

(8) Every petition shall be signed by the petitioner under oath that the facts and circumstances contained in the petition are true to the best knowledge and belief of the petitioner. . . .

Emergency Domestic Abuse Protection Order

§ 93-21-13 Emergency domestic abuse protection orders:

(1)(a) The court in which a petition seeking emergency relief pending a hearing is filed must consider all such requests in an expedited manner and shall not refer or direct the matter to be sent to another court. The court may issue an emergency domestic abuse protection order without prior notice to the respondent upon good cause shown by the petitioner. Immediate and present danger of abuse to the petitioner, any minor children or any person alleged to be incompetent shall constitute good cause for issuance of an emergency domestic abuse protection order. The respondent shall be provided with notice of the entry of any emergency domestic abuse protection order issued by the court by personal service of process.
(b) A court granting an emergency domestic abuse protection order may grant relief as provided in Section 93-21-15(1)(a).
(c) An emergency domestic abuse protection order shall be effective for ten (10) days, or until a hearing may be held, whichever occurs first. If a hearing under this subsection (1) is continued, the court may grant or extend the emergency order as it deems necessary for the protection of the abused person. A continuance under this subsection (1)(c) shall be valid for no longer than twenty (20) days.

(2) The Attorney General, in cooperation with the Mississippi Supreme Court and the Mississippi Judicial College, shall develop standardized forms for emergency domestic abuse protection orders. Use of the standardized forms in protection order proceedings pursuant to this chapter shall be fully implemented by all courts no later than July 1, 2015. However, in any criminal prosecution or contempt proceeding for a violation of a domestic abuse protection order, it shall not be a defense that the order was not issued on the standardized form.

(3) Upon issuance of any protection order by the court, the order shall be entered into the Mississippi Protection Order Registry by the clerk of the court pursuant to Section 93-21-25, and a copy provided to the sheriff's department in the county of the court of issuance.

(4) An emergency domestic abuse protection order issued under this section is effective in this state, in all other states, and in United States territories and tribal lands. A court shall not limit the scope of a protection order to the boundaries of the State of Mississippi or to the boundaries of a municipality or county within the State of Mississippi.

Hearing

§ 93-21-11 Notice and Hearing:

(1) Within ten (10) days of the filing of a petition under the provisions of this chapter, the court shall hold a hearing, at which time the petitioner must prove the allegation of abuse by a preponderance of the evidence.

(2) The respondent shall be given notice of the filing of any petition and of the date, time and place set for the hearing by personal service of process. A court may conduct a hearing in the absence of the respondent after first ascertaining that the respondent was properly noticed of the hearing date, time and place.

> Section 93-21-11, which provides that "[w]ithin ten (10) days of the filing of a petition under the provisions of this chapter [Protection from Domestic Abuse], the court shall hold a hearing, at which time the petitioner must prove the allegations of abuse by a preponderance of the evidence. . . ." ***Mississippi Comm'n on Judicial Performance v. Curry*, 249 So. 3d 369, 374 (Miss. 2018).**

§ 93-21-19 Testimony by spouses not to be restricted:

There shall be no restrictions concerning a spouse testifying against his spouse in any hearing under the provisions of this chapter.

Protective Order

§ 93-21-15 Protective orders; consent agreements:

(1)(a) After a hearing is held as provided in Section 93-21-11 for which notice and opportunity to be heard has been granted to the respondent, and upon a finding that the petitioner has proved the existence of abuse by a preponderance of the evidence, the municipal and justice courts shall be empowered to grant a temporary domestic abuse protection order to bring about a cessation of abuse of the petitioner, any minor children, or any person alleged to be incompetent. The relief the court may provide includes, but is not limited to, the following:

> (i) Directing the respondent to refrain from abusing the petitioner, any minor children, or any person alleged to be incompetent;
> (ii) Prohibiting or limiting respondent's physical proximity to the abused or other household members as designated by the court, including residence and place of work;
> (iii) Prohibiting or limiting contact by the respondent with the abused or other household members designated by the court, whether in person, by

telephone or by other electronic communication;
(iv) Granting possession to the petitioner of the residence or household to the exclusion of the respondent by evicting the respondent or restoring possession to the petitioner, or both; or
(v) Prohibiting the transferring, encumbering or otherwise disposing of property mutually owned or leased by the parties, except when in the ordinary course of business.

(b) The duration of any temporary domestic abuse protection order issued by a municipal or justice court shall not exceed thirty (30) days. However, if the party to be protected and the respondent do not have minor children in common, the duration of the temporary domestic abuse protection order may exceed thirty (30) days but shall not exceed one (1) year.

(c) Procedures for an appeal of the issuance of a temporary domestic abuse protection order are set forth in Section 93-21-15.1.

(2)(a) After a hearing is held as provided in Section 93-21-11 for which notice and opportunity to be heard has been granted to the respondent, and upon a finding that the petitioner has proved the existence of abuse by a preponderance of the evidence, the chancery or county court shall be empowered to grant a final domestic abuse protection order or approve any consent agreement to bring about a cessation of abuse of the petitioner, any minor children, or any person alleged to be incompetent. In granting a final domestic abuse protection order, the chancery or county court may provide for relief that includes, but is not limited to, the following:

(i) Directing the respondent to refrain from abusing the petitioner, any minor children, or any person alleged to be incompetent;
(ii) Granting possession to the petitioner of the residence or household to the exclusion of the respondent by evicting the respondent or restoring possession to the petitioner, or both;
(iii) When the respondent has a duty to support the petitioner, any minor children, or any person alleged to be incompetent living in the residence or household and the respondent is the sole owner or lessee, granting possession to the petitioner of the residence or household to the exclusion of the respondent by evicting the respondent or restoring possession to the petitioner, or both, or by consent agreement allowing the respondent to provide suitable, alternate housing;
(iv) Awarding temporary custody of or establishing temporary visitation rights with regard to any minor children or any person alleged to be incompetent, or both;
(v) If the respondent is legally obligated to support the petitioner, any

minor children, or any person alleged to be incompetent, ordering the respondent to pay temporary support for the petitioner, any minor children, or any person alleged to be incompetent;
(vi) Ordering the respondent to pay to the abused person monetary compensation for losses suffered as a direct result of the abuse, including, but not limited to, medical expenses resulting from such abuse, loss of earnings or support, out-of-pocket losses for injuries sustained, moving expenses, a reasonable attorney's fee, or any combination of the above;
(vii) Prohibiting the transferring, encumbering, or otherwise disposing of property mutually owned or leased by the parties, except when in the ordinary course of business;
(viii) Prohibiting or limiting respondent's physical proximity to the abused or other household members designated by the court, including residence, school and place of work;
(ix) Prohibiting or limiting contact by the respondent with the abused or other household members designated by the court whether in person, by telephone or by electronic communication; and
(x) Ordering counseling or professional medical treatment for the respondent, including counseling or treatment designed to bring about the cessation of domestic abuse.

(b) Except as provided below, a final domestic abuse protection order issued by a chancery or county court under the provisions of this chapter shall be effective for such time period as the court deems appropriate. The expiration date of the order shall be clearly stated in the order.

(c) Temporary provisions addressing temporary custody, visitation or support of minor children contained in a final domestic abuse protection order issued by a chancery or county court shall be effective for one hundred eighty (180) days. A party seeking relief beyond that period must initiate appropriate proceedings in the chancery court of appropriate jurisdiction. If at the end of the one-hundred-eighty-day period, neither party has initiated such proceedings, the custody, visitation or support of minor children will revert to the chancery court order addressing such terms that was in effect at the time the domestic abuse protection order was granted. The chancery court in which custody, visitation or support proceedings have been initiated may provide for any temporary provisions addressing custody, visitation or support as the court deems appropriate.

(3) Every domestic abuse protection order issued pursuant to this section shall set forth the reasons for its issuance, shall contain specific findings of fact regarding the existence of abuse, shall be specific in its terms and shall describe in reasonable detail the act or acts to be prohibited. No mutual protection order shall be issued unless that order is supported by an independent petition by each party

requesting relief pursuant to this chapter, and the order contains specific findings of fact regarding the existence of abuse by each party as principal aggressor, and a finding that neither party acted in self-defense.

(4) The Attorney General, in cooperation with the Mississippi Supreme Court and the Mississippi Judicial College, shall develop standardized forms for temporary and final domestic abuse protection orders. The use of standardized forms in protection order proceedings pursuant to this chapter shall be fully implemented by all courts no later than July 1, 2015. However, in any criminal prosecution or contempt proceeding for a violation of a domestic abuse protection order, it shall not be a defense that the order was not issued on the standardized form.

(5) Upon issuance of any protection order by the court, the order shall be entered in the Mississippi Protection Order Registry by the clerk of the court pursuant to Section 93-21-25, and a copy shall be provided to the sheriff's department in the county of the court of issuance.

(6) Upon subsequent petition by either party and following a hearing of which both parties have received notice and an opportunity to be heard, the court may modify, amend, or dissolve a domestic abuse protection order previously issued by that court.

(7) A domestic abuse protection order issued under this section is effective in this state, in all other states, and in United States territories and tribal lands. A court shall not limit the scope of a protection order to the boundaries of the State of Mississippi or to the boundaries of a municipality or county within the State of Mississippi.

(8) Procedures for an appeal of the issuance or denial of a final domestic abuse protection order are set forth in Section 93-21-15.1.

§ 93-21-17 Grant of relief not to affect property titles or availability of other remedies; court approval required to amend orders:

(1) The granting of any relief authorized under this chapter shall not preclude any other relief provided by law.

(2) The court may amend its order or agreement at any time upon subsequent petition filed by either party. Protective orders issued under the provisions of this chapter may only be amended by approval of the court.

(3) No order or agreement under this chapter shall in any manner affect title to any real property.

§ 93-21-29 Proceedings to be in addition to other civil or criminal remedies:

Any proceeding under this chapter shall be in addition to other available civil or criminal remedies.

Appeals

§ 93–21–15.1 [Appeals]:

(1)(a) De novo appeal. Any party aggrieved by the decision of a municipal or justice court judge to issue a temporary domestic abuse protection order has the right of a trial de novo on appeal in the chancery court having jurisdiction. The trial de novo shall be held within ten (10) days of the filing of a notice of appeal. All such appeals shall be priority cases and the judge must be immediately notified when an appeal is filed in order to provide for expedited proceedings. The appeal will proceed as if a petition for an order of protection from domestic abuse had been filed in the chancery court. Following the trial de novo, if the petitioner has proved the existence of abuse by a preponderance of the evidence, the chancery court may grant a final domestic abuse protection order. In granting a final domestic abuse protection order, the chancery court may provide for relief that includes, but is not limited to, the relief set out in Section 93-21-15(2).

(b) Notice of appeal. The party desiring to appeal a decision from municipal or justice court must file a written notice of appeal with the chancery court clerk within ten (10) days of the issuance of a domestic abuse protection order. In all de novo appeals, the notice of appeal and payment of costs must be simultaneously filed and paid with the chancery clerk. Costs for an appeal by trial de novo shall be calculated as specified in subsection (4) of this section. The written notice of appeal must specify the party or parties taking the appeal and must designate the judgment or order from which the appeal is taken. A copy of the notice of appeal must be provided to all parties or their attorneys of record and to the clerk of the court from which the appeal is taken. A certificate of service must accompany the written notice of appeal. Upon receipt by the municipal or justice court of the notice of appeal, the clerk of the lower court shall immediately provide the entire court file to the chancery clerk.

(2)(a) Appeals on the record. Any party aggrieved by the decision of a county court to issue a final domestic abuse protection order or to deny such an order shall be entitled to an appeal on the record in the chancery court having jurisdiction. If the county court has issued a domestic abuse protection order as a temporary order instead of a final order as contemplated by Section 93-21-15(2), the chancery court shall permit the appeal on the record and shall treat the temporary order issued by the county court as a final order on the matter. The

chancery court shall treat the appeal as a priority matter and render a decision as expeditiously as possible.

(b) Notice of appeal and filing the record. The party desiring to appeal a decision from county court must file a written notice of appeal with the chancery court clerk within ten (10) days of the issuance of a domestic abuse protection order. In all appeals, the notice of appeal and payment of costs, where costs are applicable, shall be simultaneously filed and paid with the chancery clerk. Costs shall be calculated as specified in subsection (4) of this section. The written notice of appeal must specify the party or parties taking the appeal and must designate the judgment or order from which the appeal is taken. A copy of the notice of appeal must be provided to all parties or their attorneys of record and to the clerk of the court from which the appeal is taken. A certificate of service must accompany the written notice of appeal. In all appeals in which the appeal is solely on the record, the record from the county court must be filed with the chancery clerk within thirty (30) days of filing of the notice of appeal. However, in cases involving a transcript, the court reporter or county court may request an extension of time. The court, on its own motion or on application of any party, may compel the compilation and transmission of the record of proceedings. Failure to file the record with the court clerk or to request the assistance of the court in compelling the same within thirty (30) days of the filing of the written notice of appeal may be deemed an abandonment of the appeal and the court may dismiss the same with costs to the appealing party or parties, unless a party or parties is exempt from costs as specified in subsection (4) of this section.

(c) Briefs on appeal on the record. Briefs, if any, filed in an appeal on the record must conform to the practice in the Supreme Court as to form and time of filing and service, except that the parties should file only an original and one (1) copy of each brief. The consequences of failure to timely file a brief will be the same as in the Supreme Court.

(3) Supersedeas. The perfecting of an appeal, whether on the record or by trial de novo, does not act as a supersedeas. Any domestic abuse protection order issued by a municipal, justice or county court shall remain in full force and effect for the duration of the appeal, unless the domestic abuse protection order otherwise expires due to the passage of time.

(4) Cost bond. In all appeals under this section, unless the court allows an appeal in forma pauperis or the appellant otherwise qualifies for exemption as specified in this subsection (4), the appellant shall pay all court costs incurred below and likely to be incurred on appeal as estimated by the chancery clerk. In all cases

where the appellant is appealing the denial of an order of protection from domestic abuse by a county court, the appellant shall not be required to pay any costs associated with the appeal, including service of process fees, nor shall the appellant be required to appeal in forma pauperis. In such circumstances, the court may assess costs of the appeal to the appellant if the court finds that the allegations of abuse are without merit and the appellant is not a victim of abuse. Where the issuance of a mutual protection order is the basis of the appeal, the appellant may be entitled to reimbursement of appellate costs paid to the court as a matter of equity if the chancery court finds that the mutual order was issued by the lower court without regard to the requirements of Section 93-21-15(3).

(5) The appellate procedures set forth in this section for appeals from justice, municipal and county courts shall control if there is a conflict with another statute or rule.

(6) Any party aggrieved by the issuance or denial of a final order of protection by a chancery court shall be entitled to appeal the decision. The appeal shall be governed by the Mississippi Rules of Appellate Procedure and any other applicable rules or statutes.

Violation of Protective Order

§ 93-21-21 Violation of order or agreement:

(1) Upon a knowing violation of (a) a protection order or court-approved consent agreement issued pursuant to this chapter, (b) a similar order issued by a foreign court of competent jurisdiction for the purpose of protecting a person from domestic abuse . . . , or (c) a bond condition imposed pursuant to Section 99-5-37, the person violating the order or condition commits a misdemeanor punishable by imprisonment in the county jail for not more than six (6) months or a fine of not more than One Thousand Dollars ($ 1,000.00), or both.

(2) Alternatively, upon a knowing violation of a protection order or court-approved consent agreement issued pursuant to this chapter or a bond condition issued pursuant to Section 99-5-37, the issuing court may hold the person violating the order or bond condition in contempt, the contempt to be punishable as otherwise provided by applicable law. A person shall not be both convicted of a misdemeanor and held in contempt for the same violation of an order or bond condition.

(3) When investigating allegations of a violation under subsection (1) of this section, law enforcement officers shall utilize the uniform offense report prescribed for this purpose by the Office of the Attorney General in consultation with the sheriff's and police chief's associations. However, failure of law enforcement to utilize the uniform offense report shall not be a defense to a crime charged under subsection (1) of this section.

(4) In any conviction for a violation of a domestic abuse protection order as described in subsection (1) of this section, the court shall enter the disposition of the matter into the corresponding uniform offense report.

(5) Nothing in this section shall be construed to interfere with the court's authority, if any, to address bond condition violations in a more restrictive manner.

Protective Orders Issued in Foreign Jurisdictions

§ 93-21-16 Full faith and credit for certain protective orders issued in other jurisdictions:

(1) A protective order from another jurisdiction issued to protect the applicant from abuse as defined in Section 93-21-3, or a protection order as defined in Section 93-22-3, issued by a tribunal of another state . . . shall be accorded full faith and credit by the courts of this state and enforced in this state as provided for in the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

(2) For purposes of enforcement by Mississippi law enforcement officers, a protective order from another jurisdiction, or a protection order as defined in Section 93-22-3 and issued by a tribunal of another state, is presumed to be valid if it meets the requirements of Section 93-22-7.

(3) For purposes of judicial enforcement of a protective order issued in another jurisdiction, or a protection order as defined in Section 93-22-3 and issued by a tribunal of another state, an order is presumed valid if it meets the requirements of Section 93-22-5(4). It is an affirmative defense in any action seeking enforcement of a protective order issued in another jurisdiction, or a protection order as defined in Section 93-22-3 and issued by a tribunal of another state, that any criteria for the validity of the order is absent.

Mississippi Protective Order Registry

§ 93-21-25 Mississippi Protective Order Registry:

(1) In order to provide a statewide registry for protection orders and to aid law enforcement, prosecutors and courts in handling such matters, the Attorney General is authorized to create and administer a Mississippi Protection Order Registry. The Attorney General's office shall implement policies and procedures governing access to the registry by authorized users, which shall include provisions addressing the confidentiality of any information which may tend to reveal the location or identity of a victim of domestic abuse.

(2) All orders issued pursuant to Sections 93-21-1 through 93-21-29, 97-3-7(11), 97-3-65(6) or 97-3-101(5) will be maintained in the Mississippi Protection Order Registry. It shall be the duty of the clerk of the issuing court to enter all civil and criminal domestic abuse protection orders and all criminal sexual assault protection orders, including any modifications, amendments or dismissals of such orders, into the Mississippi Protection Order Registry within twenty-four (24) hours of issuance with no exceptions for weekends or holidays. . . .

THE

DOMESTIC VIOLENCE FORMS

DRAFTED BY

THE ATTORNEY GENERAL'S OFFICE

ARE AVAILABLE

ON THE ATTORNEY GENERAL'S

WEB SITE:

http://www.ago.state.ms.us/divisions/domestic-violence/

CHAPTER 24

APPEALS TO THE MISSISSIPPI SUPREME COURT

APPENDIX

CHAPTER 24

APPEALS TO THE MISSISSIPPI SUPREME COURT

Notice of Appeal is Filed

Mississippi Rule of Appellate Procedure 3, Appeal as of Right - How Taken, provides:

> **(a) Filing the Notice of Appeal.** In all cases, both civil and criminal, in which an appeal is permitted by law as of right to the Supreme Court, there shall be one procedure for perfecting such appeal. That procedure is prescribed in these rules. All statutes, other sets of rules, decisions or orders in conflict with these rules shall be of no further force or effect. An appeal permitted by law as of right from a trial court to the Supreme Court shall be taken by filing a notice of appeal with the clerk of the trial court within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the perfection of the appeal, but is ground only for such action as the Supreme Court deems appropriate, which may include dismissal of the appeal. Interlocutory appeals by permission shall be taken in the manner prescribed by Rule 5.
>
> **(b) Joint or Consolidated Appeals.** If two or more persons are entitled to appeal from a judgment or order of a trial court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the Supreme Court (or of the Court of Appeals in cases assigned to the Court of Appeals) upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.
>
> **(c) Content of the Notice of Appeal.** The notice of appeal shall specify the
> party or parties taking the appeal and
> party or parties against whom the appeal is taken, and
> designate as a whole or in part the judgment or order appealed from.
> An appeal shall not be dismissed for informality of form or title of the notice of appeal.
>
> **(d) Service of the Notice of Appeal.** The clerk of the trial court shall serve notice of the filing of a notice of appeal by mailing a copy of the notice to counsel of record for each party other than the appellant, or, if a party is not represented by counsel, to the last known address of that party, and to the court reporter; and the clerk shall transmit to the clerk of the Supreme Court forthwith a copy of the notice of appeal, together with the docket fee as provided in Rule 3(e), and, with

cost to the appellant, a certified copy of the trial court docket as of the date of the filing of the notice of appeal, a certified copy of the opinion, if any, and a certified copy of the judgment from which the appeal is being taken and a certified copy of the Civil Case Filing Form in civil cases or the Notice of Criminal Disposition Form in criminal cases. When an appeal is taken by a defendant in a criminal case, the clerk shall also serve a copy of the notice of appeal upon the defendant, either by personal service or by mail addressed to the defendant. The clerk shall note on each copy served the date on which the notice of appeal was filed. Failure of the clerk to serve notice shall not affect the perfection of the appeal. Service shall be sufficient notwithstanding the death of a party or the party's counsel. The clerk shall note in the docket the names of the parties to whom the clerk mails copies with the date of mailing.

(e) Payment of Fees. Upon the filing of any separate or joint notice of appeal from the trial court, the appellant shall pay to the clerk of the trial court the docket fee to be received by the clerk of the trial court on behalf of the Supreme Court.

Time When Notice of Appeal Must be Filed

Mississippi Rule of Appellate Procedure 4, Appeal as of Right - When Taken, states:

> **(a) Appeal and Cross-Appeals in Civil and Criminal Cases.** Except as provided in Rules 4(d) and 4(e), in a civil or criminal case in which an appeal or cross-appeal is permitted by law as of right from a trial court to the Supreme Court, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from. If a notice of appeal is mistakenly filed in the Supreme Court, the clerk of the Supreme Court shall note on it the date on which it was received and transmit it to the clerk of the trial court and it shall be deemed filed in the trial court on the date so noted.
>
> > Before going any further, we note that [the appellant's] notice of appeal was not filed within the time frame set forth in Rule 4(a) of the Mississippi Rules of Appellate Procedure. Rule 4(a) of the Mississippi Rules of Appellate Procedure declares that the notice of appeal must be filed within thirty (30) days of the entry of the final judgment, and Rule 2(a) of the Mississippi Rules of Appellate Procedure provides for mandatory dismissal of an appeal that is not timely filed. Moreover, we have held that this time requirement is jurisdictional and will be strictly enforced. In short, pursuant to Rules 2(a) and 4(a) of the Mississippi Rules of Appellate Procedure, we will not consider an appeal that is not timely filed. In the present case, the final judgment of the circuit court was entered on July 28, 2003. [The appellant] filed her notice of appeal on September 8, 2003, roughly forty-two (42) days after the entry of the final judgment. Therefore, [the appellant's] appeal was not timely filed, and we could dismiss this appeal and affirm the judgment of the circuit court for that reason alone. ***Westbrook v. Mississippi Employment Sec. Comm'n*, 910 So. 2d 1135, 1138 (Miss. Ct. App. 2005).**
>
> **(b) Notice Before Entry of Judgment.** A notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order shall be treated as filed after such entry and on the day of the entry.
>
> **(c) Notice by Another Party.** If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this rule, whichever period last expires.

(d) Post-trial Motions in Civil Cases. If any party files a timely motion of a type specified immediately below the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding. This provision applies to a timely motion under the Mississippi Rules of Civil Procedure

(1) for judgment under Rule 50(b);
(2) under Rule 52(b) to amend or make additional findings of facts, whether or not granting the motion would alter the judgment;
(3) under Rule 59 to alter or amend the judgment;
(4) under Rule 59 for a new trial; or
(5) for relief under Rule 60 if the motion is filed no later than 10 days after the entry of judgment.

A notice of appeal filed after announcement or entry of the judgment but before disposition of any of the above motions is ineffective to appeal from the judgment or order, or part thereof, specified in the notice of appeal, until the entry of the order disposing of the last such motion outstanding. Notwithstanding the provisions of Appellate Rule 3(c), a valid notice of appeal is effective to appeal from an order disposing of any of the above motions.

> Mississippi Rule of Appellate Procedure 4(a) requires that in a ... criminal case in which an appeal ... is permitted by law as of right from a trial court to the Supreme Court, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from. Timely filing of a notice of appeal is jurisdictional. ***Eades v. State*, 805 So. 2d 554, 555 (Miss. Ct. App. 2000).**

(e) Post-trial Motions in Criminal Cases. If a defendant makes a timely motion under the Uniform Criminal Rules of Circuit Court Practice

(1) for judgment of acquittal notwithstanding the verdict of the jury, or
(2) for a new trial under Rule 5.16, the time for appeal for all parties shall run from the entry of the order denying such motion.

Notwithstanding anything in this rule to the contrary, in criminal cases the 30 day period shall run from the date of the denial of any motion contemplated by this subparagraph, or from the date of imposition of sentence, whichever occurs later. A notice of appeal filed after the court announces a decision sentence, or order but before it disposes of any of the above motions, is ineffective until the date of the entry of the order disposing of the last such motion outstanding, or until the date of the entry of the judgment of conviction, whichever is later. Notwithstanding the provisions of Appellate Rule 3(c), a valid notice of appeal is effective to appeal from an order disposing of any of the above motions.

(f) Parties Under Disability. In the case of parties under a disability of infancy or unsoundness of mind, the various periods of time for which provision is made in this rule and within which periods of time action must be taken shall not begin to run until the date on which the disability of any such party shall have been removed. However, in cases where the appellant infant or person of unsound mind was a plaintiff or complainant, and in cases where such a person was a party defendant and there had been appointed for him or her a guardian ad litem, appeals to the Supreme Court shall be taken in the manner prescribed in this rule within two years of the entry of the judgment or order which would cause to commence the running of the 30 day time period for all other appellants as provided in this rule.

(g) Extensions. The trial court may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time otherwise prescribed by this rule. Any such motion which is filed before expiration of the prescribed time may be granted for good cause and may be ex parte unless the court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to other parties, and the motion shall be granted only upon a showing of excusable neglect. No such extension shall exceed 30 days past such prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

(h) Reopening Time for Appeal. The trial court, if it finds

(a) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry and

(b) that no party would be prejudiced, may, upon motion filed within 180 days of entry of the judgment or order or within 7 days of receipt of such notice, whichever is earlier, reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal.

(i) Taxpayer Appeals. If the board of supervisors of any county, or the mayor and board of aldermen of any city, town or village, or any other board, commission or other officer of any county, or municipality, or district, sued in an official capacity, fails to file a notice of appeal under Rule 4(a) within 20 days after the date of entry of an adverse judgment or order, or within 7 days after filing of a notice by another party pursuant to Rule 4(c), any taxpayer of the county, municipality or district shall have the right at the taxpayer's own expense to employ private counsel to prosecute the appeal in compliance with these rules. If the governmental entity files a notice of appeal, the appeal shall not be dismissed if any such taxpayer objects and prosecutes the appeal at the taxpayer's own expense.

Content of Record on Appeal

Mississippi Rule of Appellate Procedure 10, Content of the Record on Appeal, states in part:

> **(a) Content of the Record.** The parties shall designate the content of the record pursuant to this rule, and the record shall consist of designated papers and exhibits filed in the trial court, the transcript of proceedings, if any, and in all cases a certified copy of the docket entries prepared by the clerk of the trial court. . . .

Clerk's Duty to Prepare the Record for Appeal

Mississippi Rule of Appellate Procedure 11, Completion and Transmission of the Record, provides:

> **(d) Duty of Trial Court Clerk to Prepare and Transmit Record.**
>
> **(1) Clerk's Preparation of Record.** Upon the appellant's compliance with subparagraph (b)(1) and service of the designation required by Rule 10(b)(1) the trial court clerk shall assemble the record as follows:
>
> **i. Clerk's Papers.**
>
> **(a) Conventional.** A certified copy of the docket entries prepared by the clerk of the trial court shall be followed by a legible photocopy of any papers filed with the clerk and designated by the parties and a cost bill for the preparation of the record indicating costs for the trial court clerk and court reporter and the Supreme Court filing fee. Within 30 days, the clerk shall assemble the papers in the order of filing, number each page consecutively at the bottom, and transmit a list of the papers correspondingly numbered and identified with reasonable definiteness. All jury instructions shall be placed in the record with court instructions first, instructions given to plaintiff second, instructions refused plaintiff third, instructions given to defendant fourth, and instructions refused defendant fifth. The trial court clerk shall separate the clerk's papers into volumes of no more than 150 pages for fastening. The clerk shall fasten the clerk's papers on the top and provide suitable covers for each volume. Each volume of clerk's papers shall be bound in a brown binder and the outside of each binder shall designate the page numbers of the pages contained in that volume.
>
> **(b) Electronic.** Within 30 days, the clerk shall use the Mississippi Electronic Court (MEC) system to assemble the record as follows. The docket shall be followed by the papers designated by the parties and a cost

bill for the preparation of the record indicating costs for the trial court clerk and court reporter. The clerk shall assemble the papers in the order of filing, except that jury instructions shall be assembled with court instructions first, instructions given to plaintiff second, instructions refused plaintiff third, instructions given to defendant fourth, and instructions refused defendant fifth. The Supreme Court filing fee shall be mailed to the Supreme Court.

ii. Transcript.

(a) Conventional. The original transcript is prepared by the court reporter pursuant to Rule 11(c). The clerk of the trial court shall not renumber the pages of the original transcript, nor make copies of the original transcript, nor handle the original transcript in any way other than to include in the table of contents of the Clerk's Papers the number of volumes contained in the original transcript and include the original transcript as part of the record to be transmitted to the Supreme Court. The court reporter is responsible for preparing, certifying, and binding the transcript and is responsible for furnishing the transcript fully ready for transmission to the Supreme Court.

(b) Electronic. The original transcript is prepared by the court reporter pursuant to Rule 11(c). The court reporter shall either file the transcript electronically or deliver the transcript on an electronic disk to the clerk so that the clerk can then file the transcript electronically. The court reporter is responsible for preparing and certifying the transcript and for furnishing the transcript fully ready for transmission to the Supreme Court.

iii. Exhibits.

(a) Conventional. Within 30 days, a copy of exhibits designated by the parties shall be assembled in a flat file envelope or a box. If an exhibit is a photograph, the original shall be included and a photocopy retained by the trial court clerk. Video and audio tapes shall be included and a duplicate shall be retained by the trial court clerk. The clerk shall include with the exhibits forwarded to the Supreme Court a list of all exhibits designated by the parties, indicating thereon those retained by the trial court clerk and those submitted to the Supreme Court. Documents of unusual bulk or weight and physical exhibits other than documents, shall not be transmitted by the trial court clerk unless the clerk is directed to do so by a party or by the clerk of the Supreme Court. A party must make advance arrangements with the clerks for the transportation and receipt of exhibits of unusual bulk or weight.

(b) Electronic. Within 30 days, exhibits designated by the parties shall be assembled as follows. If the document or photograph can be scanned, the trial court clerk shall scan the exhibit, convert the file to Adobe Portable Document Format (PDF), and retain the original unless a party or the clerk of the Supreme Court directs otherwise. If the document, photograph, or physical exhibit cannot be scanned, the trial court clerk should, if possible, photograph the exhibit; scan or convert the photograph to PDF; and retain the original unless a party or the clerk of the Supreme Court directs otherwise.

The trial court clerk shall comply with subsection (d)(1)(iii)(a) if

- the exhibit can neither be scanned nor photographed;
- the PDF image is deficient so that the original is necessary; or
- the exhibit is a video or audio recording.

Following the time for attorney's examination and proposed correction under Rule 10(b)(5), the trial court clerk shall send all PDF exhibits to the Supreme Court using the Mississippi Electronic Court (MEC) system. When forwarding exhibits to the Supreme Court, the trial court clerk shall include a list of all designated exhibits, indicating those scanned, those photographed, those submitted conventionally, and those retained by the trial court clerk.

(e) Retention of Duplicate Record in Trial Court for Use in Preparing Appellate Papers. The trial court shall retain, pending further order of the Supreme Court, its original docket entries, the original papers held with the clerk, a copy of the list of papers required by Rule 11(d)(1)(I), the original exhibits, other than photographs, a photocopy of photographic exhibits, a copy of video and audio tape exhibits, a duplicate of the reporter's transcript, and table of contents. Attorneys preparing appellate papers may use these retained documents. In cases where the circuit or chancery court has functioned as an appellate court for review of an on-the-record adjudication by an administrative agency or inferior tribunal and the circuit or chancery court clerk determines that a copy of the proceedings of such adjudication is retained in the administrative agency or inferior tribunal, the circuit or chancery court clerk need not copy the record of such proceedings, but must retain the original of the papers and documents attendant to the proceedings in that court while transmitting to the Supreme Court the original of the agency or inferior tribunal record (including transcript, papers, documents, and exhibits), along with a copy of the record of the circuit or chancery court proceedings.

Rule 10 of the Mississippi Rules of Appellate Procedure governs the content of the record on appeal and provides that "the record shall consist of designated papers and exhibits." Rule 11 of the Mississippi Rules of Appellate Procedure establishes certain deadlines within which the clerk is to compile and transmit the appellate record and also requiring the clerk to retain a duplicate record in the trial court. . . . This Court's case file, Lyons's sworn motion to compel, the transcript of the circuit court hearing, and the circuit court's findings of fact reveal that on January 4, 2011, Lyons filed a designation of the record with the circuit clerk. Various documents, including the briefs filed in the appeal from the county court to the circuit court, were specifically listed in the designation of the record. The circuit clerk failed timely to assemble the appellate record pursuant to Rule 11(d)(1) of the Mississippi Rules of Appellate Procedure, and the circuit clerk failed to seek an extension of that deadline. The circuit clerk did not notify the parties that the record was complete until March 2, 2011. On March 7, 2011, Lyons examined the documents that the circuit clerk offered as the appellate record. However, the circuit clerk incorrectly had provided the entire case file to Lyons, instead of the actual record that had been prepared for transmittal to the Supreme Court. On March 9, 2011, the Lyons firm filed a Rule 10(b)(5) certificate certifying that it had examined the appellate record and that the appellate record was complete. Once Lyons had filed its Rule 10(b)(5) certificate, the circuit clerk improperly excluded a number of documents from the appellate record, even though those documents had been properly designated. The circuit clerk failed timely to transmit the complete record to the Supreme Court pursuant to Rule 11(d)(2) of the Mississippi Rules of Appellate Procedure, and the circuit clerk did not seek an extension of the applicable deadline. The circuit clerk transmitted what she purported to be the appellate record, and it was marked filed by the Clerk of the Supreme Court on April 6, 2011. . . . Based on the pleadings, the testimony before the circuit court, and the circuit court's findings, frequent systemic errors are occurring in the circuit clerk's office. These errors are directly caused by the circuit clerk's failure properly to train the employees in her office. The circuit clerk, not litigants, must bear the costs of these errors. . . . The Court remands this matter to the . . . Circuit [court] calculation, imposition, and collection of appropriate sanctions from the circuit clerk. ***T. Jackson Lyons & Associates, P.A. v. Precious T. Martin, Sr. & Associates*, PLLC, 83 So. 3d 1284, 1286-89 (Miss. 2012).**

APPENDIX

TO CHAPTER 24

CHECKLIST FOR APPEALS

TO THE

MISSISSIPPI

SUPREME COURT

CHECKLIST FOR APPEALS TO THE SUPREME COURT[1]

CIVIL AND CRIMINAL APPEALS FROM CIRCUIT COURT

FILING THE NOTICE OF APPEAL - *Rule 3(a) & 4(a)*.

Appellant files notice of appeal with the circuit clerk of the trial court within 30 days of judgment or order from which appealed:

_____ Written notice of appeal - *Rule 3(c)*.

Specifies the party/parties taking the appeal

Specifies the party/parties against whom the appeal is taken

Designates as a whole or in part the judgment or order from which appealed

_____ Docket fee (to be forwarded to the supreme court clerk) - *Rule 3(d)*.

_____ Clerk stamps original and all copies with filing date

SERVICE OF THE NOTICE OF APPEAL - *Rule 3(d)*.

Clerk of the trial court mails a copy of the notice of appeal to:

_____ Counsel of record for each party other than the appellant or the party if not represented by counsel

_____ Court reporter

_____ Defendant in criminal case

_____ Supreme court clerk; includes with copy of the notice of appeal:

_____ Docket fee

_____ Certified copy of the trial court docket as of the date of the notice of appeal

_____ Certified copy of the trial court opinion, if any

_____ Certified copy of the judgment from which the appeal is being taken

_____ Certified copy of the Civil Case Filing Form in civil cases

OR

_____ Certified copy of the Notice of Criminal Disposition Form in criminal cases

Note: The clerk can list the name(s) of the court reporter(s) who are responsible for the transcript.

_____ Clerk notes in docket the names of the parties to whom the clerk mails copies, with the date of mailing

---

[1]References are made to the appropriate Mississippi Rule of Appellate Procedure.

DESIGNATION OF THE RECORD - *Rule 10*.

_____ Appellant/Party designates those parts of the record necessary for appeal within 7 days of filing the notice of appeal. - *Rule 10(b)(1)*.

_____ Copy for the court reporter(s) (served by the appellant)

_____ Copy for the appellee (served by the appellant)

_____ Record shall consist of: - *Rule 10(a)*.

_____ Designated papers and exhibits filed in the trial court

_____ Transcript of the proceedings, if any

_____ Certified copy of the docket entries prepared by the clerk of the trial court

_____ Entire record for death penalty cases, including jury questionnaires

Note: Briefs are usually not part of the record unless they are necessary to show that an issue was presented to the trial court.

Unless specifically designated or a death penalty case, the record shall NOT consist of: - *Rule 10(b)(3)*.

(May want to check those items which were specifically designated)

_____ Subpoenas or summonses for any witness or defendant when there is an appearance for such person

_____ Papers relating to discovery, including depositions, interrogatories, requests for admission, and all related notices, motions or orders

_____ Any motion and order of continuance or extension of time

_____ Documents concerning the organization of the grand jury or any list from which grand or petit jurors are selected

_____ Pleadings subsequently replaced by amended pleadings

_____ Jury voir dire

ESTIMATION AND PAYMENT OF FEES - *Rule 11*.

Appellant deposits with the clerk within 7 days of filing the notice of appeal:

_____ Estimated cost of preparing the record for appeal, including the cost of preparing the transcript - *Rule 11(b)(1)*.

Note: Unless the entire record is designated by the appellant (except for matters excluded above), the appellee may designate other portions of the record to be included at the expense of the appellant unless the appellant obtains an order from the trial court requiring the appellee to pay the expense. - *Rule 10(b)(4)*.

Note: Clerk or court reporter may request the trial court to grant an increase in the amount deposited for preparing the record for appeal. - *Rule 11(b)(2)*.

Appellant files with the clerk at the same time as the deposit: - *Rule 11(b)(1)*.

_____ Certificate setting forth the fact that the appellant deposited the estimated cost of preparing the appeal

_____ Copy of the certificate served upon all other parties

_____ Copy of the certificate served upon the court reporter

_____ Copy of the certificate served upon the supreme court clerk

DUTY OF REPORTER TO PREPARE AND FILE TRANSCRIPT - *Rule 11(c)*.

Court reporter shall file with the clerk of the trial court:

_____ Appellant's certificate of compliance endorsed by the court reporter and including the date which the court reporter expects to have the transcript completed

_____ Copy for all parties

_____ Copy for the supreme court clerk

_____ Original and 1 copy of the trial transcript

_____ Electronically formatted media/medium

_____ Clerk pays the court reporter for actual fees earned in preparing the transcript

DUTY OF CLERK TO PREPARE AND TRANSMIT RECORD - *Rule 11(d)*.

Clerk shall assemble the record in the following order after the appellant's compliance with Rule 11(b)(1) and Rule 10(b)(1):

_____ Clerk's Papers (within 30 days) - *Rule 11(d)(1)(i) & (2)*.

_____ Conventional

_____ Electronic

_____ Table of contents

_____ Certified copy of the docket entries

_____ Copies of designated papers in the order of filing and numbered consecutively at the bottom of each page

Jury instructions shall be included in the court's papers in the following order:

_____ Court instructions

_____ Instructions granted to plaintiff

_____ Instructions refused to plaintiff

_____ Instructions granted to defendant

_____ Instructions refused to defendant

_____ Detailed, itemized cost bill

Note: Each item should be separately listed to include the number of pages for each item, the cost per page for each item, and the total charge for each

item. The lower court clerk shall include a single charge for the court reporter's transcript, which is separately itemized, and not duplicated in any other charge for the clerk's papers or for any other item. The lower court shall not charge for duplicate copies of items included in the record. The rules of court allow only a single charge for each page of the record based upon the count of pages submitted on appeal.

_____ Clerk's certificate of compliance with Rule 11, certified and seal affixed

Note: The clerk's papers shall be on pages 8 ½ x 11 inches in size, separated into volumes of up to 150 pages, and bound at the top in a brown binder. However, if there is a legal-size attachment(s) to a pleading or other court papers, the attachment should not be reduced. A legal-size page may be folded at the bottom. Contact the supreme court clerk's office if there will be more than 15 legal-size pages in the clerk's papers. The pages contained in each volume of the clerk's papers shall be listed on the outside of each binder and list in the table of contents each volume with corresponding page numbers for each volume of the record.

_____ Original transcript as prepared by the court reporter - *Rule 11(d)(1)(ii)*.

_____ Conventional

_____ Electronic

_____ Exhibits (within 30 days) - *Rule 11(d)(1)(iii)*.

_____ Conventional

_____ Electronic

_____ Copy of all designated exhibits in a flat-file envelope or box

_____ Original photographs, if any; photocopy kept by clerk

_____ Original audio/video tapes, if any; duplicate kept by clerk

_____ List of all exhibits designated by the parties, including those retained by clerk and those submitted to the supreme court clerk

Note: Physical exhibits and exhibits of unusual bulk other than documents are retained by the trial clerk unless designated by the party or requested by the supreme court clerk.

Note: Do not reduce an original exhibit which is on legal-size paper. A legal-size page may be folded at the bottom.

_____ Clerk keeps: - *Rule 11(e)*.

_____ Original docket entries

_____ Original papers held by the clerk

_____ Copy of the list of papers required by Rule 11(d)(1)(i)

_____ Original exhibits, other than photographs

_____ Photocopy/ies of photographs
_____ Copy of audio/video tape exhibits
_____ Duplicate of the court reporter's transcript
_____ Copy of table of contents

CIRCUIT/CHANCERY COURT AS APPELLATE COURT/COMMISSION APPEALS

When circuit/chancery court functioned as an appellate court for review of an on-the-record adjudication by an administrative agency or inferior tribunal and that agency or tribunal retains a copy of the proceedings, the clerk does not need a copy of those proceedings.

Clerk transmits to the supreme court clerk: - *Rule 11(e)*.

_____ Copy of the papers and documents of the proceedings in the circuit or chancery court
_____ Original record of the agency or inferior tribunal
_____ Transcript
_____ Papers and documents
_____ Exhibits

Note: Clerk does not retain a copy of the administrative agency or inferior tribunal record.

Clerk shall serve notice of the completion of the transcript to: - *Rule 11(d)(2)*.

_____ Appellant/counsel
_____ Appellee/counsel
_____ Supreme court clerk

ATTORNEY'S EXAMINATION AND PROPOSED CORRECTIONS - *Rule 10(b)(5)*.

_____ Appellant examines the record for 14 days
_____ Appellant returns the record to the clerk within 14 days with
_____ Written proposed corrections, if any
_____ Certificate of examination
_____ Certificate of service that record has been returned to the clerk
_____ Appellee examines the record for 14 days
_____ Appellee returns the record to the clerk within 14 days with
_____ Written proposed corrections, if any
_____ Certificate of examination
_____ Certificate of service that record has been returned to the clerk
_____ If parties agree in writing to proposed corrections, they are deemed made by stipulation
_____ If parties do not agree on the proposed corrections, the clerk shall deliver the record with

the proposed corrections to the trial court - *Rule 10(b)(5)*.

CORRECTION OR MODIFICATION OF THE RECORD - *Rule 10(e)*.

_____ Trial court determines which corrections, if any, are proper and issues an order under Rule 10(e) - *Rule 10(b)(5)*.

_____ Clerk serves all parties and their attorneys with a copy of the court's order within 5 days - *Rule 10(b)(5)*.

- _____ Party may request a hearing within 5 days of service
- _____ Trial court conducts a hearing, if requested
- _____ Trial court issues order directing the clerk and/or court reporter to make the appropriate corrections, if any

_____ Record returned to the clerk and/or court reporter to make the appropriate corrections within 7 days - *Rule 10(b)(5)*.

_____ Clerk verifies appropriate corrections have been made - *Rule 10(b)(5)*.

Note: This rule allows for a supplemental record to be filed, if needed, by court order.

TRANSMISSION OF THE RECORD TO THE SUPREME COURT CLERK - *Rule 11(d)(2)*.

_____ Clerk delivers the record to the supreme court clerk after all corrections have been made, if any, and/or a supplemental record has been filed, if any.

PROCEDURE FOLLOWING DECISION LETTER FROM SUPREME COURT

_____ Clerk notifies the supreme court clerk's office whether the exhibits on file with the supreme court clerk are originals or duplicates. Any originals will be returned with a charge for postage costs. Duplicates will be destroyed.

EXECUTION OF CRIMINAL JUDGMENT - *Rule 39(b)*.

_____ Clerk shall notify the supreme court clerk in writing of the status of the execution of the criminal judgment within 30 days of receipt of the mandate.

CHAPTER 25

CLERK OF THE BOARD OF SUPERVISORS

CHAPTER 25

CLERK OF THE BOARD OF SUPERVISORS

Mississippi Constitution Art. 6, § 170 County districts; board of supervisors states:

> Each county shall be divided into five districts, a resident freeholder of each district shall be selected, in the manner prescribed by law, and the five so chosen shall constitute the board of supervisors of the county, a majority of whom may transact business. The board of supervisors shall have full jurisdiction over roads, ferries, and bridges, to be exercised in accordance with such regulations as the legislature may prescribe, and perform such other duties as may be required by law; provided, however, that the Legislature may have the power to designate certain highways as "state highways," and place such highways under the control and supervision of the State Highway Commission, for construction and maintenance. The clerk of the chancery court shall be the clerk of the board of supervisors.

***See* § 19-3-29 Appointment of clerk pro tempore.**

Duties of the Clerk of the Board of Supervisors

§ 19-3-27 Duties of clerk of board of supervisors; signing of minutes:

It shall be the duty of the clerk of the board of supervisors to keep and preserve a complete and correct record of all the proceedings and orders of the board. He shall enter on the minutes the names of the members who attend at each meeting, and the names of those who fail to attend. He shall safely keep and preserve all records, books, and papers pertaining to his office, and deliver them to his successor when required.

The minutes of each day's proceedings shall either

(a) be read and signed by the president or the vice president, if the president is absent or disabled so as to prevent his signing of the minutes, on or before the first Monday of the month following the day of adjournment of any term of the board of supervisors; or

(b) be adopted and approved by the board of supervisors as the first order of business on the first day of the next monthly meeting of the board.

Docket of Claims

§ 19-13-27 Claims docketed:

The clerk of the board of supervisors shall be supplied with, and shall keep as a record of his office, a book to be styled "The Docket of Claims," in which he shall enter monthly all demands, claims and accounts against the county presented to him during the month. The docket shall provide spaces for the name of the claimant, the number of the claim, the amount of the claim, and on what account. All demands, claims and accounts filed against the county shall be preserved by the clerk as a permanent record, and numbered to correspond with the warrants to be issued therefor, if allowed. Immediately upon being notified of any judgment being rendered against the county, the clerk shall docket the same as a claim for allowance and payment as provided by law. Any claimant who has filed a claim with the clerk of the board of supervisors in the manner provided in Section 19-13-25 whose said claim is not allowed because of the failure of such clerk to keep the docket of claims as herein required, shall be entitled to recover the amount of such claim from such clerk on his official bond. Failure of the clerk to keep the docket of claims as herein required shall render such clerk liable to the county in the amount of Five Hundred Dollars ($500.00), and the Auditor of Public Accounts, upon information to the effect that such claims docket has not been kept, shall proceed immediately against such clerk for the collection of said penalty.

§ 19-13-29 Duties of clerk in receiving, filing and paying claims:

When claims against the county shall be presented to the clerk thereof, said clerk shall mark "filed" on each such claim, as of the date of presentation of same, and shall audit, number, and docket the same consecutively under the heading of each fund in the book of accounts required by Section 19-11-13 out of which the same shall be paid. The said clerk shall file the claims in like manner, and shall safely preserve the same as records of his office. Each year's records shall be kept separate and begin with a new number for each year, and thence run in regular order for that year.

In issuing any warrant under order of the board of supervisors to pay any one of said claims so numbered and kept, said clerk shall enter the number of the claim and designate the fund against which allowed in the body of the warrant so that the claim may be easily found and identified, and so that possible duplication may be avoided.

For failure to perform any duty required of him herein, said clerk shall not be entitled to the compensation now provided by law for such duty, when performed,

and the board of supervisors shall be prohibited from authorizing payment of the same to said clerk, but, instead, said board shall be authorized to employ a competent person to perform any duty which such clerk has failed to perform, either in his capacity as the clerk of the board or as the county auditor, and pay to such person the compensation now provided by law for such services, as aforesaid.

Any claim filed with the clerk on or before the last working day in the month prior to the next regular meeting of the board of supervisors at which claims are considered pursuant to Section 19-13-31 shall be so docketed as to be considered by the board of supervisors at such meeting.

County Bonds on Docket of Claims

§ 31-19-9 County bond payment:

Whenever any county, road district, consolidated school district, rural school district, or other taxing districts controlled by the board of supervisors which has heretofore issued or shall hereafter issue bonds or other obligations of which principal and interest shall be payable at some bank or trust company, or at some office other than the county treasury, it shall be the duty of the clerk of the board of supervisors on the allowance of said board to issue a warrant against the proper fund for the amount of principal and interest due and to forward exchange to the paying agent. Said exchange shall be sufficient in amount to pay said principal and interest and a reasonable fee to said paying agent for handling same, said fee not to exceed one-half of one percent of the amount of coupons paid and one-eighth of one percent of the amount of bonds paid. Said exchange shall be forwarded in time to reach the paying agent at least five days prior to the date on which said principal and interest shall become due, and the receipt of the paying agent for said remittance shall be sufficient voucher in the hands of said clerk for said remittance until the bonds or coupons shall have been paid and cancelled and returned to said clerk.

Road Equipment Purchases - Exempt County

§ 19-13-17 Road equipment purchases:

(Text of section applicable to any county which is exempt from the provisions of Section 19-2-3)

A board of supervisors purchasing tractors, trucks and other machinery or equipment for constructing, reconstructing and maintaining the public roads shall not pay, or agree or contract to pay, more therefor than the then prevailing

manufacturer's retail list price at the factory, plus freight and sales tax, any federal excise tax, and a reasonable service and assembly charge. The board may provide for the payment of all or any portion of such price over the useful life of the property as determined according to the most recent asset depreciation range (ADR) guidelines for the Class Life Asset Depreciation Range System established by the Internal Revenue Service pursuant to the United States Internal Revenue Code and regulations thereunder or comparable depreciation guidelines with respect to any equipment not covered by ADR guidelines; provided, however, that no installment contract described in this sentence may be executed by the board during the last year of the board's term of office. All such deferred payments shall be represented by notes of the county, or a separate road district or supervisors district thereof, as the case may be, to be dated at or after the time of delivery of the machinery, bearing interest at a rate not exceeding that allowed in Section 75-17-105, from date until paid, and payable to the seller of the machinery, or the purchaser of the notes, out of the road fund of the county or district. All such notes for any purchase shall be payable on the fifteenth day of June or the fifteenth day of December, the first to be payable not more than one (1) year after date. Said notes shall be signed by the president of the board, and countersigned by the clerk thereof, under the seal of the county. Said notes may be validated in the manner provided by law, and may be delivered to the seller of the machinery, or to any person who will purchase the same at a lower rate of interest than said seller is willing to accept, or at a like rate of interest plus a premium, any money received from a sale of such notes to be applied to the payment of the balance due on said machinery, and any surplus to be paid into the road fund of the county or district, as the case may be. On the first business day of each month in which any such note matures, the clerk shall docket the principal amount of such note, with interest thereon to maturity, as a claim against the county, in favor of the last known holder of such note, and the board shall allow the same at its regular meeting held that month without further presentation, proof or demand, to be paid as other claims in its proper order.

In all advertisements for bids for road machinery or equipment under this section, the board of supervisors shall insert in such advertisements a statement as to whether or not the road machinery or equipment purchased is to be paid for in cash, or is to be purchased upon installment payments as authorized herein. All indebtedness incurred under the provisions hereof may be incurred by the board without the necessity of calling an election thereon, receiving a petition therefor, or giving notice of the intention of the board to incur such indebtedness. However, no indebtedness shall be hereafter incurred under the provisions of this section which, when added to the amount of notes incurred hereunder which are then outstanding shall require the use in the retirement of such notes in any one (1) year of more than fifty percent (50%) of the amount available to the county, separate road district, or supervisors district, as the case may be, for the

maintenance of roads and bridges for the preceding fiscal year. The amount available for the maintenance of roads and bridges shall be deemed to be the sum of the amounts produced by the county's or district's share of the state gasoline and motor vehicle privilege license tax, less that amount required by law to be set aside for the payment of bonds, together with the amount produced by the road and/or bridge ad valorem tax levy for such county or district, as the case may be. Nothing herein, however, shall be construed to invalidate any indebtedness previously incurred and now outstanding.

When any county, separate road district, or supervisors district has heretofore incurred, or shall hereafter incur an indebtedness under the provisions of this section for the purchase of road machinery or equipment, it shall be the duty of the chancery clerk of such county to deduct each month from the distribution of the state gasoline tax which would otherwise be paid to such county or district (but not from the amount required by law to be set aside for the payment of bonds) a proportionate amount of the sum which will be due as the principal of and interest upon the next installment to be paid on such indebtedness, it being the intention of this section to provide that if the indebtedness be payable in semiannual installments then there shall be set aside each month out of said distribution of state gasoline tax one-sixth (1/6) of the amount which will be necessary to pay the principal of and any interest upon the next installment to become due, and that a like method of computation shall be followed in all cases in determining the amount to be so set aside. All amounts so deducted under the provisions of this section shall be kept in a separate fund of the county, separate road district, or supervisors district, as the case may be, and shall be expended for no other purpose than the payment of the principal and interest of said indebtedness until the same be paid. Should said separate fund so created not be sufficient for the payment of the next maturing installment of principal and interest when the same becomes due, there shall be transferred thereto from the road and bridge fund such amount as will make the separate fund sufficient for the purpose.

If any person, firm, corporation or association, or any agent or employee thereof, shall willfully claim and receive any amount from any county, separate road district, or supervisors district, as the purchase price of, or as any installment upon the purchase price of, any road machinery or equipment where the provisions of this section have not been complied with, or if any member of the board of supervisors shall knowingly vote for the payment of any unauthorized claim for the purchase price, or any installment upon the purchase price, of any road machinery or equipment, then such person, firm, corporation, association or member of the board of supervisors, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding double the amount of such unauthorized claim, or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

Road Equipment Purchases - Countywide System

§ 19-13-17 Road equipment purchases:

(Text of section applicable to any county which is required to operate on a countywide system of road administration in conformance with Section 19-2-3)

A board of supervisors purchasing tractors, trucks and other machinery or equipment for constructing, reconstructing and maintaining the public roads may provide for the payment of all or any portion of the price thereof over the useful life of the property as determined according to the most recent asset depreciation range (ADR) guidelines for the Class Life Asset Depreciation Range System established by the Internal Revenue Service pursuant to the United States Internal Revenue Code and regulations thereunder or comparable depreciation guidelines with respect to any equipment not covered by ADR guidelines; provided, however, that no installment contract described in this sentence may be executed by the board during the last year of the board's term of office. All such deferred payments shall be represented by notes of the county, to be dated at or after the time of delivery of the machinery, bearing interest at a rate not exceeding that allowed in Section 75-17-105, from date until paid, and payable to the seller of the machinery, or the purchaser of the notes, out of the road fund of the county. All such notes for any purchase shall be payable on June 15 or December 15, the first to be payable not more than one (1) year after date. Said notes shall be signed by the president of the board, and countersigned by the clerk thereof, under the seal of the county. Said notes may be validated in the manner provided by law, and may be delivered to the seller of the machinery, or to any person who will purchase the same at a lower rate of interest than said seller is willing to accept, or at a like rate of interest plus a premium, any money received from a sale of such notes to be applied to the payment of the balance due on said machinery, and any surplus to be paid into the road fund of the county. On the first business day of each month in which any such note matures, the clerk shall docket the principal amount of such note, with interest thereon to maturity, as a claim against the county, in favor of the last known holder of such note, and the board shall allow the same at its regular meeting held that month without further presentation, proof or demand, to be paid as other claims in its proper order.

In all advertisements for bids for road machinery or equipment under this section, the board of supervisors shall insert in such advertisements a statement as to whether or not the road machinery or equipment purchased is to be paid for in cash, or is to be purchased upon installment payments as authorized herein. All indebtedness incurred under the provisions hereof may be incurred by the board without the necessity of calling an election thereon, receiving a petition therefor, or giving notice of the intention of the board to incur such indebtedness. However,

no indebtedness shall be hereafter incurred under the provisions of this section which, when added to the amount of notes incurred hereunder which are then outstanding shall require the use in the retirement of such notes in any one (1) year of more than fifty percent (50%) of the amount available to the county for the maintenance of roads and bridges for the preceding fiscal year. The amount available for the maintenance of roads and bridges shall be deemed to be the sum of the amounts produced by the county's share of the state gasoline and motor vehicle privilege license tax, less that amount required by law to be set aside for the payment of bonds, together with the amount produced by the road and/or bridge ad valorem tax levy for such county. Nothing herein, however, shall be construed to invalidate any indebtedness previously incurred and now outstanding.

When any county has heretofore incurred, or shall hereafter incur an indebtedness under the provisions of this section for the purchase of road machinery or equipment, it shall be the duty of the chancery clerk as county treasurer to pay the principal of and interest upon the indebtedness in semiannual installments from the road maintenance and bridge funds.

If any person, firm, corporation or association, or any agent or employee thereof, shall willfully claim and receive any amount from any county as the purchase price of, or as any installment upon the purchase price of, any road machinery or equipment where the provisions of this section have not been complied with, then such person, firm, corporation or association shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding double the amount of such unauthorized claim or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

Sale of Personal Property - Itemized Invoice

§ 19-13-25 Personal property sales, claims itemized:

All claims filed for allowance by a board of supervisors which are based upon a sale or sales of any personal property shall be sufficiently itemized to show in detail the kind, quantity and price of the articles sold. Claims covering the sale of lumber shall be itemized so as to show in detail the grade or grades thereof, the amount of each different size of lumber covered by said invoice or statement, together with the total number of feet of each different grade and size, and the price per thousand feet at which it is sold, stated separately for each different grade and size. Each itemized invoice or statement so filed shall be accompanied by either

(1) a receipt, in like detail, properly dated, and signed by a public officer, agent or employee authorized to accept delivery of such property, or,

(2) a bill of lading or shipping receipt issued by a common carrier making delivery of such property, the rules of which carrier require a receipt to be given by the consignee on delivery, or

(3) an affidavit of the seller, his agent or employee, showing how, where, when, and to whom delivery of such property was made.

Where an affidavit is filed as proof of delivery, if delivery was by mail, the affidavit must have attached thereto a post office registry or insurance receipt, and if delivery was made by car, truck, or other public or private conveyance or means, the affidavit must state the name and address of the party actually making the delivery, and the make and license number of any car or truck used therein, as well as the other matters above required. The person so mailing or making actual delivery of such property shall, for the purpose of making such affidavit only, be considered an agent or employee of the seller. It is expressly provided, however, that no claim not first filed with the clerk of the board of supervisors shall be allowed until the seller has filed such claim in accordance with the requirements of this section.

§ 19-13-31 Administration of claims:

(1) At each regular meeting of the board, the claims docket shall be called and all claims then on file, not previously rejected or allowed, shall be passed upon in the order in which they are entered upon the docket. All claims found by the board to be illegal, and which cannot be made legal by amendment, shall be rejected or disallowed. All other claims shall be audited, and all those found proper upon due proof shall be allowed in the order in which they appear on the docket, whether or not there shall then be sufficient money in the several funds on which warrants must be drawn for their payment. Those claims as to which a continuance is requested by the claimant, and those found to be defective but which might be perfected by amendment shall be continued. When any claim is allowed by the board, it shall see that the claims docket correctly specifies the name of the claimant, the number of the claim, the amount allowed, and on what account. The president, or the vice president in the absence or disability of the president, of the board of supervisors shall check the claims docket at the close of each day's business and shall verify the correctness of all docket entries made during the day. He shall sign his name at the end of the docket entries covering the day's business, but it shall not be necessary that he sign the claims docket under each claim allowed or otherwise disposed of. The board shall enter an order on its minutes approving the demands and accounts allowed, but it shall only be necessary to refer to such demands and accounts by the numbers as they appear on the claims docket.

If the board shall reject any such claim in whole or in part, or refuse, when

requested at a proper time, to pass finally thereon, the claimant may appeal to the circuit court, or may bring suit against the county on such claim. In either case, if the claimant recovers judgment and notifies the clerk of the board of supervisors, and if no appeal be taken to the Supreme Court, the board shall allow the same, and a warrant shall be issued therefor.

If the terms of the invoice provide a discount for payment in less than forty-five (45) days, boards of supervisors shall preferentially process it and use all diligence to obtain the savings by compliance with the invoice terms, if it would be cost effective.

In processing claims of vendors the board of supervisors shall be subject to the provisions of Sections 31-7-301, 31-7-305, 31-7-309, 31-7-311 and 31-7-313.

(2) Notwithstanding the provisions of this section to the contrary, the chancery clerk may be authorized by an order of the board of supervisors entered upon its minutes, to issue pay certificates against the legal and proper fund for the salaries of officials and employees of the county or any department, office or official thereof without prior approval by the board of supervisors as required by this section for other claims, provided the amount of the salary has been previously entered upon the minutes by an order of the board of supervisors, or by inclusion in the current fiscal year budget and provided the payment thereof is otherwise in conformity with law and is the proper amount of a salaried employee and for hourly employees for the number of hours worked at the hourly rate approved on the minutes.

***See* § 19-13-33 Certain allowances unlawful.**

Ad Valorem Assessment Rolls

§ 27-35-81 When assessment rolls filed; board may extend time:

(1) If the assessment is conducted by or under the direction of the assessor, the assessor shall complete the assessment of both real and personal property and file the roll or rolls with the clerk of the board of supervisors on or before the first Monday in July of each year. He shall make an affidavit and append it to each roll, showing that he has faithfully endeavored to ascertain and assess all the persons and property in his county, that he has not omitted any person or thing, or placed upon, or accepted an under valuation of any property, through fear, favor or partiality, and that he has required every taxpayer to make the oath required to be taken by the person rendering a list of his taxable property wherever possible. The assessor shall file with the roll or rolls, under oath, a list showing the name of every taxpayer who has failed or refused to make oath to his tax lists.

(2) If the roll or rolls are not filed as required by this section on or before the first Monday in July of each year, the board of supervisors at its July meeting shall adopt an order showing the failure of the roll or rolls to be filed and shall certify to the Department of Revenue a statement showing such failure and the time necessary to complete the roll or rolls.

(3) Upon receipt of such certificate from the board of supervisors of any county, the Department of Revenue shall provide when such roll shall be completed and filed, and the date when the board of supervisors shall meet to equalize the roll or rolls, and the time when objections to the assessments contained in such roll or rolls, shall be heard by the board of supervisors, provided that not less than ten (10) days' notice shall be given prior to the hearing of such objections. When such roll or rolls shall be filed, they shall be dealt with in all respects as now provided by law except as to the time.

§ 27-35-83 Supervisors to equalize rolls; notice to taxpayers:

The board of supervisors shall immediately at the July meeting proceed to equalize such rolls and shall complete such equalization at least ten (10) days before the August meeting, and shall immediately by newspaper publication notify the public that such rolls so equalized are ready for inspection and examination. In counties having two (2) judicial districts, the board shall by order designate on what days during August it will begin in each of the two (2) districts upon its hearing of objections, and these days shall be named in the said notice, and the board shall be authorized to hold its sessions in the two (2) districts respectively as designated in the order aforesaid. The foregoing provision with reference to counties with two (2) judicial districts shall apply to any subsequent meetings whereof notice to taxpayers is necessary to be given.

§ 27-35-89 Hearing objections to assessment:

(1) The board of supervisors of each county shall hold a meeting at the courthouse, or at the chancery clerk's office in counties where the chancery clerk's office is in a building separate from the courthouse, on the first Monday of August, to hear objections to the assessment. The board shall examine the assessment rolls, and hear and determine all exceptions thereto, and shall sit from day to day until the same shall have been disposed of, and all proper corrections made, or may take objections under advisement as provided in subsection (2) of this section. The board shall equalize the assessment and may increase or diminish the valuation of any property, so that property of the same value shall be assessed for an equal sum. Where an individual assessment has been increased immediate notice in writing shall be sent by mail to the person whose assessment is increased by the clerk of the board of supervisors. At the said meeting the board shall have the power to change erroneous assessments or to add omitted property but any person affected by such action shall have notice as next above provided. If the board adjourn before considering the objections filed, such objections shall be heard at the next regular meeting of the board.

(2) The board of supervisors may take an objection under advisement to allow the taxpayer or his designee, the tax assessor or the board to compile information relating to the objection; however, the board shall enter an order on the objection on or before the first Monday of September.

§ 27-35-93 Filing of objection mandatory:

A person who is dissatisfied with the assessment may, at the August meeting, present objections thereto in writing which shall be filed by the clerk and docketed and preserved with the roll. All persons who fail to file objections shall be concluded by the assessment and precluded from questioning its validity after its final approval by the board of supervisors or by operation of law, except minors and persons non compos mentis.

§ 27-35-105 Method of approving assessment:

Assessments must be approved by an order of the board of supervisors entered on the minutes; but the failure to make and enter such order shall not vitiate the assessment if it shall appear that the assessment was made according to law.

§ 27-35-109 Entry of changes; clerk's responsibility:

All changes made in the assessment rolls by the supervisors shall be entered on the assessment roll by its clerk, and all certificates required to be furnished by the board of supervisors relating in any way to the assessment of property shall be made by the chancery clerk.

§ 27-35-119 Notice of adjournment of meeting at which final approval of roll entered; right of appeal:

(1) The clerk of the board of supervisors shall mail notice of the adjournment of the meeting at which final approval of the roll by the Department of Revenue is entered to any taxpayer who objects to an assessment. Such notice shall be accompanied by an affidavit from the clerk stating the date upon which such notice was mailed. . . .

§ 27-35-123 Copies made upon completion:

When the roll is finally completed by the board of supervisors, as provided by law and in accordance with the instructions of the Department of Revenue, the clerk shall make two (2) fair and correct copies, or reproductions of such copies, of each roll, but in counties having two (2) judicial districts, two (2) for each district, as examined and corrected, if it be corrected. He shall transmit one (1) copy of each roll to the Department of Revenue within thirty (30) days after the final approval of the rolls by the board under the orders of the Department of Revenue and he shall be liable on his bond for failure to transmit same by that date. He shall deliver the other copy of each roll to the tax collector upon receipt of approval of the roll by the Department of Revenue. He shall retain and carefully preserve the original rolls as a public record in his office. The clerk shall make the proper extensions of the total amount of property assessed to every taxpayer, and shall add truly and correctly every page of said copies and carry the results thereof to the recapitulation. He shall add said recapitulation and shall certify to the truth and correctness of all calculations in said copies.

§ 27-35-125 Copies not made:

If the clerk fail to make out, certify, and transmit the copies of the assessment rolls as required, he shall forfeit the sum of Five Hundred Dollars ($500.00), to be recovered by action or motion against him and the sureties on his official bond, to be prosecuted by the state; and the board of supervisors shall appoint some other person to make and certify the copies, who shall receive the compensation provided for the clerk. The auditor and president of the board of supervisors shall certify the failure to the district attorney.

Homestead Exemption

§ 27-33-35 Responsibilities of board clerk:

The clerk of the board of supervisors shall keep all records and documents relating to homestead exemption matters coming before the board and perform such services as are generally required of him by Section 19-3-27, and in addition to such general duties:

(a) He shall receive applications for homestead exemption as they are delivered to him by the tax assessor, as required in Section 27-33-33(g); and before June 1 and in the manner prescribed by the rules and regulations of the Department of Revenue, he shall forward the originals of all applications to the department in Jackson, Mississippi, and

(1) on the first day of each regular monthly meeting of the board of supervisors he shall present to it all applications for homestead exemption in his hands at that time for the board's consideration, as directed hereafter in this article,
(2) when not in use, said applications shall be kept on file in alphabetical order, and
(3) at the end of each current year he shall deliver duplicate homestead exemption applications that are no longer valid to the chancery clerk of the county to be held by him as a public record for at least three (3) years.

This shall also include all applications disallowed by the board.

(b) He shall make the supplemental roll of homestead exemptions granted from the applications therefor (not from the land roll), the year the land roll is made, as soon as reasonably possible after the roll has been approved by the department and has been finally approved of minute record by the board of supervisors, and only after the board has approved or disapproved all applications.

(c) He shall make the supplemental roll as prescribed by the department.

(d) He shall make the proper entry in all columns on the supplemental roll, as defined in Section 27-33-11(n), and shall add truly and correctly each column of values of said roll and carry the results thereof to the grand total; and shall certify a copy of the supplemental roll to the tax collector in the same manner as the regular assessment roll is certified.

(e) He shall make in triplicate the supplemental roll and the original shall be forwarded immediately to the department, one (1) copy shall be attached to the original land assessment roll, and the other copy shall be delivered to the tax collector as a legal part of the regular land assessment roll, as provided by Section 27-33-11(n). In counties having two (2) judicial districts, he shall make four (4) copies, one (1) for each judicial district, or separate rolls for each district, as may be directed by order of the board of supervisors. The original supplemental roll shall be forwarded to the department no later than December 31 of each year.

(f) He shall also prepare two (2) certificates of tax loss from the approved applications for homestead exemption and from current legally completed land assessment roll, including the supplemental roll as defined in Section 27-33-11(n), which certificates shall be made on forms to be prescribed and furnished by the department. One (1) certificate shall reflect the tax loss incurred because of the exemptions provided to applicants under the age of sixty-five (65) and not disabled as defined in this article, and the other shall reflect the tax loss incurred because of the exemptions provided to applicants aged sixty-five (65) or over and disabled as defined in this article.

The certificates shall show truly and correctly the total number of applications allowed for homestead exemption and the total tax loss resulting from applications allowed for homestead exemption; and such additional information as the department may require.

The certificates shall be made in triplicate and be certified by him as being true and correct; and not later than December 31 of each year he shall forward the original certificates to the department, deliver the duplicate certificates to the tax collector, and retain the triplicate certificates in his file as a public record. Certificates received later than June 1 of the year following the year in which the supplemental roll is made shall not be considered for reimbursement by the department.

§ 27-33-11 General definitions:

(n) "Supplemental roll" means a list containing the amount of the assessment of all lands and buildings which are all, or a part, of exempt homesteads, and a list of the homeowners to whom a homestead exemption has been allowed by the board for the current year, and showing in strict alphabetical order the names of all applicants to whom the exemption was granted, and in vertical columns the amount of the assessment, the assessed value of the exempted land and buildings, the assessed value of the land and buildings not exempted, the page and line

number of the regular land roll where entered, the number of acres exempted, the dollar amount of exemption allowed and such other information as the Department of Revenue may require. The department shall prescribe the form of the supplemental roll and may require such rolls to be prepared and maintained on electronic media. The supplemental roll, as herein defined, is hereby made a legal supplement to and a part of the complete land assessment roll of the county or municipality and shall be subject to all laws relating to assessment rolls and particularly Section 27-35-117, 27-35-123 and 27-35-125 as far as applicable and not inconsistent with the provisions of this article.

The supplemental roll, when certified by the clerk of the board of supervisors and delivered to the tax collector, shall be his warrant to allow the amount of the tax exemption to each person as a credit on or deduction from the gross amount of the taxes charged to that person on the assessment roll.

§ 27-33-37 Responsibilities of board of supervisors:

(m) The board of supervisors may employ the clerk of the board to collect and assemble data and information and to perform the services required of the board by paragraph (e) of this section and to make investigations required in connection with the duties of the board in determining the eligibility of homestead exemptions and to perform all other ministerial duties required of the board in connection with administering the Homestead Exemption Law and as directed by the board. If the board employs the clerk, he shall be paid out of the general county fund as follows: for the first two thousand (2,000) applications he may, in the discretion of the board, be paid not exceeding One Dollar ($1.00) each, for the next two thousand (2,000) applications he may be paid not exceeding Seventy-five Cents (75¢) each, for the next two thousand (2,000) applications he may be paid not exceeding Fifty Cents (50¢) each, for the next two thousand (2,000) applications he may be paid not exceeding Thirty-five Cents (35¢) each, all over the above number he shall be paid not exceeding Twenty-five Cents (25¢) each. The board shall require the assessor to correctly describe all lands included in any applications for homestead exemption, and to assess all such lands on the land assessment roll, separately from other lands, as required by this article; and to present to the board all proper and necessary notices for the correction of land descriptions on the roll, changes in ownership, and for increases and decreases in the assessments of exempt homes.

§ 27-33-39 Responsibilities of chancery clerk:

The chancery clerk of the county shall,

(a) Assist the board of supervisors in dealing with applications for homestead exemption, and present, on the call of the board, all records from his office necessary for the allowance or disallowance of any application for homestead exemption coming before the board; and

(b) Receive from the clerk of the board of supervisors the applications filed for homestead exemption, as provided in Section 27-33-35, paragraph (a), and preserve them accessible as public records for at least three years.

County Budget

Preparation of the Budget

§ 19-11-5 Fiscal year:

Each county of the State of Mississippi shall operate on a fiscal year basis, beginning October first and ending September thirtieth of each year.

§ 19-11-7 Preparation and publication of annual budget:

(With regard to any county which is exempt from the provisions of Section 19-2-3, this section shall read as follows:)

(1) The board of supervisors of each county of the State of Mississippi shall, at its August meeting of each year, prepare a complete budget of revenues, expenses and a working cash balance estimated for the next fiscal year, which shall be based on the aggregate funds estimated to be available for the ensuing fiscal year for each fund, from which such estimated expenses will be paid, exclusive of school maintenance funds, which shall be shown separately. Such statement of revenues shall show every source of revenue along with the amount derived from each source. The budget containing such statement of revenues and expenses shall be published at least one (1) time during August or September but not later than September 30 of the year in a newspaper published in the county, or if no newspaper is published therein, then in a newspaper having a general circulation therein.

(2) The board of supervisors shall not prepare a budget that reduces the county budget by more than twenty percent (20%) in the last year of the members' term of office if a majority of the members of the board are not reelected.

(With regard to any county which is required to operate on a countywide system of road administration as described in Section 19-2-3, this section shall read as follows:)

(1) The county administrator of each county of the State of Mississippi shall prepare and submit to the board of supervisors at its August meeting of each year a complete budget of revenues, expenses and a working cash balance estimated for the next fiscal year, which shall be based on the aggregate funds estimated to be available for the ensuing fiscal year for each fund, from which such estimated expenses will be paid, exclusive of school maintenance funds, which shall be shown separately and exclusive of the budget of the sheriff's department which shall be prepared by the sheriff. Such statement of revenues shall show every

source of revenue along with the amount derived from each source. The budget, including the sheriff's budget, containing such statement of revenues and expenses shall be published at least one (1) time during August or September but not later than September 30 of the year in a newspaper published in the county, or if no newspaper is published therein, then in a newspaper having a general circulation therein.

(2) The county administrator shall not prepare a budget that reduces the county budget by more than twenty percent (20%) in the last year of the members' term of office if a majority of the members of the board are not reelected.

§ 19-11-9 Form of budget:

The budget of expenses, revenues and working cash balance shall be prepared in such form as may be necessary, upon forms to be prescribed by the State Auditor, as the head of the State Department of Audit, or by the director thereof appointed by the State Auditor. Such budget of expenses shall show in detail all estimates of the expenditures to be made out of the general county fund and its auxiliary funds, all estimates of expenditures to be made out of the road and bridge maintenance and construction funds, and all amounts to be paid out of the several bond and interest sinking funds for the bonded debt service in the next fiscal year.

§ 19-11-11 Final budget, contents and approval; budget reduction restriction:

(1) The budget as finally determined, in addition to setting out separately each general item of expenditure for which appropriations are to be made and the fund out of which the same is to be paid, shall set out the total amount to be expended from each fund, the anticipated working cash balance in the fund at the close of the present fiscal year, the estimated amount, if any, which shall accrue to the fund from sources other than taxation for the new fiscal year, and the amount necessary to be raised for each fund by tax levy during such fiscal year, and the working cash balance which the board determines necessary for the next fiscal year. The board of supervisors, not later than September 15th, shall then, by resolution, approve and adopt the budget as finally determined, and enter the same at length and in detail in its official minutes, and in like manner the said board shall enter the budget of estimated expenses for the county department of education which shall have been prepared and presented to the board by the county superintendent of education as provided by law.

(2) The board of supervisors shall not adopt a budget that reduces the county budget by more than twenty percent (20%) in the last year of the members' term of office if a majority of the members of the board are not reelected.

Uniform System of Accounts for the Counties

§ 19-11-13 Maintaining uniform system of accounts:

The clerk of the board of supervisors of each county shall open and keep a regular set of books, as prescribed by the state auditor, as the head of the state department of audit, or by the director thereof appointed by the state auditor. Such set of books, known as the "uniform system of accounts for the counties," shall always be subject to inspection within office hours by any citizen desiring to inspect same. Said books shall contain accounts, under headings, corresponding with the several headings of the budget, so that the expenditures under each head may at once be known. It shall be the duty of said clerk to enter all receipts and expenditures in the said books or system of accounts monthly, post and balance the ledgers thereof at the end of each month so that all information needed for a comprehensive review of operations of the county under budgetary limitations may be readily obtainable. Such books shall be paid for out of the general county fund, upon the order of the board of supervisors.

§ 19-11-17 Budget estimates not to be exceeded:

No expenditures shall be made, or liabilities incurred, or warrants issued, in excess of the budget estimates as finally determined by the board of supervisors, or as thereafter revised under the provisions of this chapter. The board of supervisors shall not approve any claim, and the clerk shall not issue any warrant for any expenditures in excess of the budget estimates thus made and approved by the board of supervisors, or as thereafter revised under the provisions of this chapter, except upon the order of a court of competent jurisdiction, or for an emergency as hereinafter provided. Any violation of the provisions of this section shall make the members of the board of supervisors voting for same, and the surety upon their official bonds, liable for the full amount of the claim allowed, the contract entered into, or the public work provided for, and the state auditor, as the head of the state department of audit, shall be authorized to sue for the recovery of the sum or sums so voted. Provided, however, that the term “budget estimates” for purposes of personal liability of the members of the board of supervisors under this section shall not include any unfunded liability for county employee retirement or pension funds. Nothing in this section shall diminish any responsibility of the members of the board of supervisors to fund any employee retirement or pension plans, or any liability as a result of any failure to fund such plans as otherwise required by law.

§ 19-11-21 Emergency expenditures:

Upon the happening of any emergency caused by fire, flood, storm, epidemic, riot or insurrection, or caused by an inherent defect due to defective construction, or when the immediate preservation of order or of public health is necessary, or when the restoration of a condition of usefulness of any public building or other property which has been destroyed by accident or otherwise, is necessary, or when mandatory expenditures required by law must be met, the board of supervisors may, upon adoption, by unanimous vote of all members present at any meeting, of a resolution stating the facts constituting the emergency and entering the same on its minutes, make the expenditures, borrow money or incur the liabilities necessary to meet such emergency, without further notice or hearing, and may revise the budget accordingly. The clerk then shall be authorized to issue emergency warrants drawn against the special fund or funds properly chargeable with such expenditures, and upon presentation of such warrants the county depository shall pay same with any money in such fund or funds available for such purpose. If at any time there shall not be sufficient money available in such fund or funds, from usual sources or from grants, transfers or donations, to pay such warrants, the board of supervisors of the county is hereby authorized to borrow the required amount, not to exceed the authorized emergency expenditure, and shall execute the notes of the county for the amount so borrowed, and the board of supervisors, in such event shall be authorized to levy a special tax, not to exceed two mills on the dollar, for the repayment of such notes, which shall be made to mature not later than the 15th day of March next succeeding the date of issuance.

Monthly Report to the Board of Supervisors

§ 19-11-23 Monthly report:

At the regular meeting in each month, the clerk shall submit to the board of supervisors of the county a report showing the expenditures and liabilities incurred against each separate budget item during the preceding calendar month, and like information for the whole of the fiscal year to the first day of the month in which such report is made, together with the unexpended balance of each budget item and the unencumbered balance in each fund. He shall also set forth the receipts from property tax and, in detail, the receipts from other taxes and all other sources by each fund for the same period.

CHAPTER 26

COUNTY AUDITOR

CHAPTER 26

COUNTY AUDITOR

§ 19-17-1 Clerk:

The clerk of the board of supervisors is the county auditor, and he shall perform the duties of auditor as provided by law.

Ledger Accounts

§ 19-17-3 Maintenance of certain ledger accounts:

The county auditor shall keep a well-bound book, in which he shall keep an account with each county office, and with the courthouse, jail, and poorhouse, and wherein he shall enter allowances for each. He shall keep accounts of allowances made for mileage and pay of the members of the board of supervisors and of jurors, and of witnesses for the state, each separately, as well as expenditures on account of each part of every public road under a separate contract or other separate link.

Depository Funds Ledger

§ 19-17-5 Maintenance of depository funds ledger:

The county auditor shall keep, as a record in his office, a book to be styled "depository funds ledger" in which he shall record all receipts and disbursements of county funds, and he shall compare and reconcile said "depository funds ledger" with the depository's report of funds of the county on deposit, as shown by such report, quarterly and/or at such other times, as may be required by the board of supervisors.

Issues Receipts

§ 19-17-9 Issuance of receipt warrants:

It shall be the duty of the county auditor to issue his receipt warrant to any person desiring to pay money into the county treasury, specifying the amount and the particular account on which such payment is to be made, and the fund to which it belongs. However, a receipt warrant shall not be credited to the person making such payment, nor be charged to the county depository, until there shall be produced and filed with such auditor a duplicate receipt, signed by the depository, for the sum specified in such receipt warrant.

County Officers' Accounts

§ 19-17-7 Maintenance of accounts of officers:

The county auditor shall keep a suitable book, in which he shall enter the accounts of all officers whose duty it is to receive or collect any money for the county, exhibiting the debits and credits, and what they represent, whether money, warrants, or bonds, and whether belonging to the general or any special fund. Such book shall be at all times subject to the inspection of any citizen of the county.

§ 19-17-11 Settlement with officers; exact payment:

The county auditor shall examine, audit and settle the accounts . . . of all officers receiving funds payable into such treasury, and shall require all sums due from any officer to be paid into the county depository on the day such funds are collected or on the next business day thereafter. In all cases, on issuing his receipt warrant for the payment of any money into the county treasury, he shall charge the person to whom the warrant is issued with its amount, if not before charged to such person; and on presentation to him of the duplicate receipt of the county depository, he shall charge it with such sum, and credit the person to whom the receipt warrant was issued with the sum. If any officer whose duty it is to make any payment into the county treasury shall fail to do so as prescribed by law, the county auditor or the board of supervisors shall forthwith institute suit against the officer on his official bond for such default.

§ 19-17-17 Examining books of officers; report:

The clerk of the board of supervisors, as county auditor, is authorized and required to examine the accounts, dockets and records of clerks, sheriffs and other officers of his county, to ascertain if any money payable into the county treasury is properly chargeable to them, and he shall charge them with such money. It shall be his duty to make written report, under oath, to each regular session of the grand jury setting forth the conditions as found by said examination, and any failure to make such report shall be a misdemeanor, and upon conviction for same he shall be fined not less than Fifty Dollars ($50.00) nor more than Two Hundred Dollars ($200.00).

Tax Collector

§ 19-17-11 Settlement with officers; exact payment:

The county auditor shall examine, audit and settle the accounts of the collector of taxes payable into the county treasury, and of all officers receiving funds payable into such treasury, and shall require all sums due from any officer to be paid into the county depository on the day such funds are collected or on the next business day thereafter. In all cases, on issuing his receipt warrant for the payment of any money into the county treasury, he shall charge the person to whom the warrant is issued with its amount, if not before charged to such person; and on presentation to him of the duplicate receipt of the county depository, he shall charge it with such sum, and credit the person to whom the receipt warrant was issued with the sum. If any officer whose duty it is to make any payment into the county treasury shall fail to do so as prescribed by law, the county auditor or the board of supervisors shall forthwith institute suit against the officer on his official bond for such default.

§ 19-17-13 Debiting and crediting tax collector:

It shall be the duty of the clerk, as county auditor, on delivering the assessment rolls to the tax collector, to charge him with the full amount of all taxes required to be paid into the county treasury, as shown by the rolls and the law, or by the order of the board of supervisors levying county taxes, and in settling with him to charge him with any additional assessments on the rolls due the county that may have been made, and to credit him only with such payments as he shall have made, according to law, into said treasury, and with such legal allowances as shall have been made to him by the board of supervisors, or as are fixed by law.

Report Defaulting County Officers

§ 19-17-19 Requirement of reporting defaulting officers:

If any justice of the peace, or other officer required by law to make report or furnish a list to the clerk of the board of supervisors, or to make payment of any money accruing to the county or state and payable into the county treasury, shall fail to make such report or furnish such list, or if the county depository shall fail to bring all moneys or certificates of deposit belonging to the county treasury to the board of supervisors to be counted by the board as required by law, it shall be the duty of the clerk, as county auditor, to report such delinquent in writing, to the grand jury, and also to the district attorney, for the institution of legal proceedings for the default.

Jury Tax Duties

§ 19-17-15 Charging officer with court expenses:

It shall be the duty of the clerk, on receiving from the circuit court the list of jury taxes accrued at any term of the circuit court, and of the fines, penalties and forfeitures imposed or accrued at each term of the court, at once, as county auditor, to charge the sheriff of the county, or the person acting as such for the time, with the full amount of such jury taxes, fines, penalties, and forfeitures, and to require the sheriff, or the person acting as such, to pay the amount into the county treasury, except such as he shall show a legal excuse for not collecting and paying.

When a fine, penalty, or forfeiture shall be imposed by any court of which he is a clerk, he shall, as county auditor, at once charge such sum to the proper officer, and require its payment into the county treasury.

Poll Tax Duties

§ 19-17-21 Crediting and reporting on poll tax:

It shall be the duty of the county auditor to place to the credit of the public school fund of the county all sums of money paid into the county treasury arising from the state Two Dollars ($ 2.00) poll tax, and, on the first day of October and April of each fiscal year, he shall report to the county superintendent of public education and the auditor of public accounts the amount of such credit during the preceding six months.

Privilege Tax Duties

§ 27-17-5 Construction and effect; local government duties:

(2) The board of supervisors of each county and the governing body of each municipality shall levy, assess and collect all taxes upon the privilege of doing business as specified in this chapter.

(3) The duty of the board of supervisors of each county and of the governing board of each municipality to levy, assess and collect taxes as required by subsection (2) of this section shall be mandatory. The privilege taxes collected on businesses outside of municipalities shall be for the benefit of counties, and the privilege taxes collected on businesses within a municipality shall be for the benefit of the municipality.

§ 27-17-475 Printing of license blanks:

It shall be the duty of the county auditor or of the governing body of a municipality to prepare and have printed and distributed to the officer collecting the tax the proper privilege tax license blanks necessary to carry into effect any law relating to privilege taxes. There shall be printed on each license at the bottom thereof the words "this license shall not make lawful any act or thing declared to be unlawful by the State of Mississippi." All such privilege license blanks shall be printed in the form prescribed by the county auditor or in the case of a municipality, by the governing body of a municipality. The privilege license blanks shall be imprinted with the fiscal year for which the blanks are to be issued and shall be numbered consecutively for each fiscal year. The privilege license blanks shall be made in duplicate, which duplicate may be in the form of a paper copy or electronic document. The original and paper or electronic duplicate, as the case may be, must bear the same serial number and be alike in all respects except that they must be marked "original" and "duplicate." If a paper duplicate is used, the original and duplicate shall be of different colors.

§ 27-17-477 Requisitions:

Each officer required to collect privilege taxes shall make requisitions upon the county auditor or in the case of municipalities upon the governing body of the municipality for such license blanks for privilege taxes as will be needed by him from time to time and the county auditor or the proper officer of the municipality shall make a record by serial number of the license blanks issued to such officer, which shall be accounted for as herein provided.

§ 27-17-495 Duty of county auditor:

At the end of each month the county auditor shall carefully check the books and records of the tax collector and his accounts with any bank or banks, and shall verify the amounts collected as privilege taxes under the provisions of this chapter.

§ 27-17-501 Privilege taxes reported monthly:

The privilege taxes paid to the officer collecting same shall be reported by him monthly and paid into the proper depository, to the credit of the general fund, as are other taxes, except as otherwise provided by law, and each officer shall within twenty (20) days after the end of each month make to the county auditor, or in the case of a municipality, to the governing body of the municipality, a report of the licenses issued by him during the preceding month, upon such form as shall be prescribed by the county auditor or by the governing body of the municipality.

Lieu Tax Duties

§ 27-37-3 Federal agreements; payments in lieu of taxes:

The governing body of any county in this state is hereby authorized and empowered,

(a) to make requests of the United States for and on behalf of the county and other political subdivisions whose jurisdictional limits are within or coextensive with the limits of the county, for the payment of such sums in lieu of taxes as the United States may agree to pay, and

(b) to enter into agreements with the United States, in the name of the county, for the performance of services by the county and such other political subdivisions for the benefit of a project, and for the payment by the United States to the county, in one or more installments, of sums in lieu of taxes.

Except in the case of a municipal separate school district, the governing body of the municipality is authorized and empowered to make agreements for payments in lieu of school taxes.

§ 27-37-7 Statement by county auditor; receipt:

On or before the date on which payment of sums in lieu of taxes is due, the county auditor shall present a statement to the United States, in the name of the county, in the amount of such payment. Whenever such payment is received, the county auditor shall issue a receipt therefor in the name of the county, for the political subdivisions included in the agreement.

§ 27-37-9 Apportionment of funds:

Immediately after receiving a payment in lieu of taxes, the county auditor shall apportion and pay it to the several political subdivisions in accordance with the agreement under which the payment was received, notwithstanding any other law controlling the expenditure of county funds.

Other Duties

§ 27-41-41 Collector's presentation of cash book:

It shall be the duty of the tax collector to present the cash book, required by Section 27-41-39 to be kept by him, to the board of supervisors or county auditor when required. Upon final settlement with the auditor of public accounts, the cash book shall be produced before him, and he shall endorse on it the fact and the date of presentation, and that he has examined the entries it contains of payments made to him of state taxes, and that the entries are correct. The cash book shall remain in the office of the tax collector as a permanent record of the office, and when he goes out of office, his successor shall preserve the same.

§ 27-41-43 Delivery of duplicate tax receipts:

The book of duplicate receipts for taxes provided for, whether filled or not, shall, at the time of making final report to the board of supervisors and county auditor each year, be delivered by the tax collector to the clerk of the chancery court, and be received, receipted for, and carefully preserved.

§ 41-27-29 Responsibilities:

(c) The president and secretary issuing checks or pay warrants shall withhold from wages and salaries paid to each employee each month the required federal income tax, social security tax, and state retirement contribution in accordance with the requirements of the county in which the respective employees reside.

(d) At the end of each month the commission making disbursements shall report and remit the respective amounts so withheld to the chancery clerk of the county in which each employee resides, for incorporation by said clerk in the reports required to be made by said clerk, as county auditor for said county. Said report shall be made in such form as required by the chancery clerk in each county.

(e) The books and all records of each county commission and the joint commission shall be made available and subject to such audits as the respective county auditors of the cooperating counties and the state auditor may deem proper and necessary.

Compensation

§ 25-3-19 County auditors; compensation:

The chancery clerks, as county auditors, shall receive compensation for their services as such the annual amount of Five Thousand Three Hundred Dollars ($5,300.00), payable in equal monthly installments out of the county treasury; however, the board of supervisors, by resolution duly adopted and entered on its minutes, may provide that such salaries shall be paid semimonthly on the first and fifteenth day of each month or every two (2) weeks pursuant to Section 25-3-29. If a pay date falls on a weekend or legal holiday, salary payments shall be made on the workday immediately preceding the weekend or legal holiday.

CHAPTER 27

COUNTY TREASURER

CHAPTER 27

COUNTY TREASURER

County Treasurer

§ 27-105-343 Chancery clerks to perform duties of county treasurers:

From and after the passage of this section, all the duties except the duty of receiving and disbursing money that were imposed by law on county treasurers shall be required to be done by chancery clerks, and they shall be the custodians of all the books, records, papers, and vouchers heretofore belonging to county treasurers, and shall be custodians of all the promissory notes, bonds, and other like property belonging to or deposited with the county, and said clerks shall in all respects be liable on their official bonds for the proper care of the same.

The duty of receipting for and disbursing all monies heretofore deposited with county treasurers shall be done and performed by the designated county and drainage district depositories appointed in the manner provided by law; and any person or corporation required to pay money into a county treasury shall hereafter pay the same to a properly designated depository and such depository shall issue receipts therefor in duplicate, one of which shall be filed with the chancery clerk and the other retained by the person or corporation making such payment, and such payment when made to a designated depository shall discharge the person or corporation making such payment from any further liability therefor.

In the event there shall be no designated depository for any money required to be paid into a county treasury, such payment shall be made to the tax collector who shall receipt for same in duplicate as required in the preceding paragraph and shall pay the same over to a legally appointed depository within ten (10) days after one is qualified to receive the same. The tax collector shall be the custodian of all money belonging to a county or any subdivision thereof until there be appointed a depository for any such funds and the said tax collectors shall be liable on their official bond for the proper accounting and payment of any funds so paid to them.

Boards of supervisors shall allow chancery clerks for their compensation for performance of the duties required of them by this section the sum of Two Thousand Five Hundred Dollars ($2,500.00) per annum.

Nothing in this section shall preclude drainage districts from selecting their treasurer or depository as now provided by law.

County Depository

§ 27-105-303 Chancery clerks assume treasurers' duties:

The amount of money belonging to the several funds in the county treasury of each county in the state which is required to meet the current needs and demands of no more than seven (7) business days shall be kept on deposit in or through qualified financial institutions whose accounts are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or in or through some of them doing business in the several counties, provided that where there is no such financial institution in a county qualifying as a depository, some such financial institution in an adjoining county may qualify as a depository. All such deposits shall be subject to payment when demanded on warrant issued by the clerk of the board of supervisors on the order of the said board or on the allowance of a court authorized to allow the same. Each financial institution qualifying as such county depository shall not be required to pay interest to the county for the privilege of holding the deposits unless federal law permits the payment of interest on such deposits, in which case the maximum permitted interest rate shall be paid on such deposits. Where more than one (1) financial institution in a county offers to qualify as a depository, the board of supervisors may allocate such money to each qualified financial institution as nearly as practicable in proportion to their respective net worth, and may adopt the rules for receiving such deposits.

> [A] board of supervisors upon compliance within the [above] statute may select more than one qualified financial institution to serve as a county depository. **Re: County Depositories, Opinion No. 2002-0499 (Miss. A. G. Sept. 6, 2002).**

§ 27-105-315 Qualification as depository:

(1) Any financial institution in a county, or in an adjoining county where there is no financial institution in the county qualifying, whose accounts are insured by the Federal Deposit Insurance Corporation or any successors to that insurance corporation may qualify as a county depository, if the institution qualifies as a public funds depository under Section 27-105-5 or a public funds guaranty pool member under Sections 27-105-5 and 27-105-6. The qualified financial institution shall secure those deposits by placing qualified securities on deposit with the State Treasurer as provided in Section 27-105-5.

> It is our opinion that a bank may qualify as a county depository under §§ 27-105-305 and 27-105-315 if it has at least one branch office located within the county and meets all other requirements. **County Depositories, 1996 Op. Att'y Gen. 0582 (Aug. 1996).**

(2) Notwithstanding the foregoing, any financial institution whether or not meeting the prescribed ratio requirement whose accounts are insured by the Federal Deposit Insurance Corporation or any successors to that insurance corporation, may receive county funds in an amount not exceeding the amount that is insured by that insurance corporation and may qualify as a county depository to the extent of that insurance.

(3) For purposes of the foregoing subsection (2), a deposit or investment shall be within the amount that is insured by that insurance corporation if the deposit or investment is made on the following conditions:

(a) The financial institution arranges for the investment of the funds in interest-bearing accounts in one or more banks or savings and loan associations wherever located in the United States, for the account of the public depositor;
(b) The full amount of the principal and accrued interest of each such interest-bearing account is insured by the Federal Deposit Insurance Corporation;
(c) The financial institution acts as custodian for the public depositor with respect to the funds invested in the public depositor's account; and
(d) At the same time that such interest-bearing accounts are invested, the financial institution receives an amount of deposits from customers of other financial institutions located in the United States equal to or greater than the amount of the funds invested by the public depositor through the financial institution.

§ 27-105-317 Commission of depository:

A county depository must be issued a commission under Section 27-105-11 before receipt of county deposits.

Deposits into County Depository

§ 27-105-321 Receipts in triplicate:

When any payment of county funds shall be made into a county depository in pursuance of this article, the depository shall give the person making such payment triplicate receipts, specifying the accounts on which the payment is made, one of which shall be immediately mailed to the chancery clerk of the county. Any person paying money into the county depositories shall, before paying same, receive a pay warrant from the chancery clerk allowing him to make such deposit, and no county depository shall receive any money unless accompanied by such pay warrant.

Tax Collector's Deposits into the County Depository

§ 27-105-325 Tax collector settlements:

In making a settlement with the county treasury, the tax collector of each county shall pay the amount due the county to a county depository, according to law and the rules of the board of supervisors. The tax collector, in making deposits, shall receive duplicate receipts for the same and shall mail one to the chancery clerk, and the county depository, upon demand, shall issue its official receipt as required heretofore.

County Depository Reports

§ 27-105-323 Disbursement and receipt reports:

In any county where a county depository or depositories shall qualify as herein provided, every such depository, at the regular January, April, July and October meetings of the board of supervisors, and at such other times as may be required by the board, shall make to the board of supervisors a detailed report of all moneys received by it and of the disbursements thereof, so that said receipts and disbursements shall clearly and distinctly appear; and each depository shall exhibit with its reports the vouchers for the disbursements charged therein, and all such vouchers paid by the county depository shall be marked cancelled by the clerk and shall be filed and preserved by the clerk subject to examination by the state auditing department. Such depository shall also, at the time of making such reports, present a certified statement of the amount then on deposit in the depository, and shall, upon demand of the board of supervisors, bring all moneys belonging to the county to the board of supervisors to be counted; and, if any county depository shall neglect or refuse to make such reports, it shall forfeit the sum of two hundred and fifty dollars ($250.00) to be recovered by suit in the name of the county for its use.

§ 27-105-327 Fee for keeping funds:

The amount to be paid by any and all depositories for the privilege of keeping county funds on deposit, if required to be paid under the provisions of Section 27-105-303, shall be computed on the average daily balance of the public money kept on deposit therewith and there be credited and paid to the county monthly. Each depository shall render, at the beginning of each and every month, to the chancery clerk a statement in duplicate, showing the daily balance of the county money held by it during the month next preceding, and all sums paid to the county for the privilege of keeping said county money shall be credited to the account of the several funds entitled thereto.

Failure of County Depository

§ 27-105-329 Failure to pay county warrants:

In the event of the failure of any county depository to pay any county warrant lawfully issued on any funds on deposit belonging to the county in the depository, the county is empowered to order the State Treasurer to sell such securities as are placed with the State Treasurer by the depository, or call on the public funds guaranty pool if the depository is a member, or so much of them as may be necessary to cover back into the county treasury the amount of county funds on deposit with the depository, with accrued interest thereon, as provided in Section 27-105-25. In the event of the failure of the county depository to pay any warrant when the depository has placed as security surety bonds, the clerk or holder of the warrant shall notify the president of the board of supervisors and he shall take such immediate action as he may deem best and most expedient for covering back into the Treasury all county money on deposit in the depository, and the board of supervisors is authorized to employ counsel, if necessary, to more speedily enforce the payment. The expenses of the collection, including the counsel fee, shall be charged against the depository, and, in addition thereto, the depository shall be liable for damages at the rate of one percent (1%) per month for any delay in paying over any county funds when lawfully demanded, and the bond of any depository shall be liable for those expenses and damages.

Withdrawal of Bonds

§ 27-105-349 County withdrawal of bonds pledged or filed as security:

The State Treasurer is authorized and empowered to allow county depositories of county funds or county district funds of every kind and character to withdraw any bonds pledged or filed or deposited as security for those deposits:

(a) When in the opinion of the State Treasurer the deposits become reduced to such an extent as to justify the withdrawal; or

(b) to withdraw any such bonds or corporate surety bonds, and substitute in lieu thereof other bonds or corporate surety bonds, as the case may be.

All such bonds shall be such as are authorized by law to be pledged or filed as security for those deposits, or if a corporate surety bond, it must be made by a surety company authorized to do business in this state; and in addition, all such deposits shall be fully secured and covered as required by Section 27-105-5.

Juror Fees

§ **25-7-61** **Jurors; voluntary return of fees to county:**

[Effective until January 1, 2008, or such time as the Lengthy Trial Fund is fully funded by a specific appropriation of the Legislature, whichever is later, this section shall read as follows:]

(1) Fees of jurors shall be payable as follows:

(a) Grand jurors and petit jurors in the chancery, county, circuit and special eminent domain courts shall be paid an amount to be set by the board of supervisors, not to be less than Twenty-five Dollars ($25.00) per day and not to be greater than Forty Dollars ($40.00) per day, plus mileage authorized in Section 25-3-41. In the trial of all cases where jurors are in charge of bailiffs and are not permitted to separate, the sheriff with the approval of the trial judge may pay for room and board of jurors on panel for actual time of trial. No grand juror shall receive any compensation except mileage unless he has been sworn as provided by Section 13-5-45; and no petit juror except those jurors called on special venires shall receive any compensation authorized under this subsection except mileage unless he has been sworn as provided by Section 13-5-71.

(b) Jurors making inquisitions of intellectual disability, mental illness or unsound mind and jurors on coroner's inquest shall be paid Five Dollars ($5.00) per day plus mileage authorized in Section 25-3-41 by the county treasurer on order of the board of supervisors on certificate of the clerk of the chancery court in which the inquisition is held.

(c) Jurors in the justice courts shall be paid an amount of not less than Ten Dollars ($10.00) per day and not more than Fifteen Dollars ($15.00) per day, to be established by the board of supervisors. In all criminal cases in the justice court in which the prosecution fails, the fees of jurors shall be paid by the county treasurer on order of the board of supervisors on certificate of the county attorney in all counties that have county attorneys, otherwise by the justice court judge.

(2) Any juror may return the fees provided as compensation for service as a juror to the county that paid for the person's service as a juror. The fees returned to the county may be earmarked for a particular purpose to be selected by the juror, including:

(a) The local public library;

(b) Local law enforcement;

(c) The Mississippi Burn Care Fund created in Section 7-9-70; or

(d) Any other governmental agency.

[From and after January 1, 2008, or such time as the Lengthy Trial Fund is fully funded by a specific appropriation of the Legislature, whichever is later, this section shall read as follows:]

(1) Fees of jurors shall be payable as follows:

(a) Grand jurors and petit jurors in the chancery, county, circuit and special eminent domain courts shall be paid an amount to be set by the board of supervisors, not to be less than Twenty-five Dollars ($25.00) per day and not to be greater than Forty Dollars ($40.00) per day, plus mileage authorized in Section 25-3-41. In the trial of all cases where jurors are in the charge of bailiffs and are not permitted to separate, the sheriff with the approval of the trial judge may pay for room and board of jurors on panel for actual time of trial. No grand juror shall receive any compensation except mileage unless the juror has been sworn as provided by Section 13-5-45; and no petit juror except those jurors called on special venires shall receive any compensation authorized under this subsection except mileage unless the juror has been sworn as provided by Section 13-5-71.

(b) Jurors making inquisitions of intellectual disability, mental illness or unsound mind and jurors on coroner's inquest shall be paid Five Dollars ($5.00) per day plus mileage authorized in Section 25-3-41 by the county treasurer on order of the board of supervisors on certificate of the clerk of the chancery court in which the inquisition is held.

(c) Jurors in the justice courts shall be paid an amount of not less than Ten Dollars ($10.00) per day and not more than Fifteen Dollars ($15.00) per day, to be established by the board of supervisors. In all criminal cases in the justice court in which the prosecution fails, the fees of jurors shall be paid by the county treasurer on order of the board of supervisors on certificate of the county attorney in all counties that have county attorneys, otherwise by the justice court judge.

(2) Any juror may return the fees provided as compensation for service as a juror to the county that paid for the person's service as a juror. The fees returned to the

county may be earmarked for a particular purpose to be selected by the juror, including:

(a) The local public library;

(b) Local law enforcement;

(c) The Mississippi Burn Care Fund created in Section 7-9-70; or

(d) Any other governmental agency.

(3) The Administrative Office of Courts shall promulgate rules to establish a Lengthy Trial Fund to be used to provide full or partial wage replacement or wage supplementation to jurors who serve as petit jurors in civil cases for more than ten (10) days.

(a) The Uniform Circuit and County Court Rules shall provide for the following:

(i) The selection and appointment of an administrator for the fund.

(ii) Procedures for the administration of the fund, including payments of salaries of the administrator and other necessary personnel.

(iii) Procedures for the accounting, auditing and investment of money in the Lengthy Trial Fund.

(iv) A report by the Administrative Office of Courts on the administration of the Lengthy Trial Fund in its annual report on the judicial branch, setting forth the money collected for and disbursed from the fund.

(v) The Lengthy Trial Fund Administrator and all other necessary personnel shall be employees of the Administrative Office of Courts.

(b) The administrator shall use any monies deposited in the Lengthy Trial Fund to pay full or partial wage replacement or supplementation to jurors whose employers pay less than full regular wages when the period of jury service lasts more than ten (10) days.

(c) To the extent funds are available in the Lengthy Trial Fund, and in accordance with any rules or regulations promulgated by the Administrative Office of Courts, the court may pay replacement or supplemental wages out of the Lengthy Trial Fund not to exceed Three Hundred Dollars ($300.00) per day per juror beginning on the eleventh day of jury service. In addition, for any jurors who qualify for payment by virtue of having served on a jury for more than ten (10) days, the court, upon finding that the service posed a significant financial hardship to a juror, even in light of payments made with respect to jury service after the tenth day, may award replacement or supplemental wages out of the Lengthy Trial Fund not to exceed One Hundred Dollars ($100.00) per day from the fourth to the tenth day of jury service.

(d) Any juror who is serving or has served on a jury that qualifies for payment from the Lengthy Trial Fund, provided the service began on or after January 1, 2008, may submit a request for payment from the Lengthy Trial Fund on a form that the administrator provides. Payment shall be limited to the difference between the jury fee specified in subsection (1) of this section and the actual amount of wages a juror earns, up to the maximum level payable, minus any amount the juror actually receives from the employer during the same time period.

(i) The form shall disclose the juror's regular wages, the amount the employer will pay during the term of jury service starting on the eleventh day and thereafter, the amount of replacement or supplemental wages requested, and any other information the administrator deems necessary for proper payment.

(ii) The juror also shall be required to submit verification from the employer as to the wage information provided to the administrator, for example, the employee's most recent earnings statement or similar document, before initiation of payment from the fund.

(iii) If an individual is self-employed or receives compensation other than wages, the individual may provide a sworn affidavit attesting to his or her approximate gross weekly income, together with such other information as the administrator may require, in order to verify weekly income.

(4) Nothing in this section shall be construed to impose an obligation on any county to place monies in the Lengthy Trial Fund or to pay replacement or supplemental wages to any juror from county funds.

§ 25-7-63 Jurors; amount:

The amount of compensation due to each grand juror, petit juror, and juror summoned on a special venire and regularly discharged by the court shall, after the discharge of such juror, be determined on the oath of the juror, allowed in open court, and entered on the minutes thereof. The clerk shall thereupon give a certificate of the same to the juror, and said certificate shall be negotiable and shall be paid by the county treasurer upon presentation by the payee or the holder in due course. In all other cases the court or officer before whom the juror serves shall determine the sum due and give certificate accordingly.

Cash Bail Fund

§ 99-5-9 Cash bail bond:

(1) In addition to any type of bail allowed by statute, any committing court, in its discretion, may allow any defendant, to whom bail is allowable, to deposit cash as bail bond in lieu of a surety or property bail bond, by depositing such cash sum as the court may direct with the sheriff or officer having custody of defendant, who shall receipt therefor and who shall forthwith deliver the said monies to the county treasurer, who shall receipt therefor in duplicate. The sheriff, or other officer, upon receipt of the county treasurer, shall forthwith deliver one (1) copy of such receipt to the committing court who shall then order the release of such defendant.

(2) The order of the court shall set forth the conditions upon which such cash bond is allowed and shall be determined to be the agreement upon which the bailee has agreed.

(3) The sums received by the county treasurer shall be deposited by him in a special fund to be known as "Cash Bail Fund," and shall be received by him subject to the terms and conditions of the order of the court.

(4) If the committing court authorizes bail by a cash deposit under subsection (1) of this section, but anyone authorized to release a criminal defendant allows the deposit of an amount less than the full amount of the bail ordered by the court, the defendant may post bail by a professional bail agent in an amount equal to one-fourth (1/4) of the full amount fixed under subsection (1) or the amount of the actual deposit whichever is greater.

Liability of County Treasurer

§ 27-105-345 Prohibited use of funds:

The making of profit, directly or indirectly, by the county treasurer, tax collector, treasurer of any board of trustees, or any officer whatever, out of any money belonging to a county, the custody of which the county treasurer or other officer is charged with, by loaning or otherwise using it, or depositing the same in any manner contrary to law, or a removal by any such officer or by his consent of such moneys, or a part thereof, and placing it elsewhere than as provided by law, shall constitute a felony, and, on conviction thereof, shall subject such officer to imprisonment in the state penitentiary for a term not exceeding two (2) years or a fine not exceeding five thousand dollars ($5,000.00), or to both such fine and imprisonment, and the officer offending shall be liable on his official bond for all profits realized for such unlawful use of such funds.

§ 97-21-1 Account books kept in public offices:

Every person who, with intent to defraud, shall make any false entry, or shall falsely alter any entry made in any book of accounts kept in the office of the auditor of public accounts, or in the office of the treasurer of this state, or in the office of any county treasurer, or in any other public office, by which any demand or obligation, claim, right, or interest, either against or in favor of this state, or any county, city, town, or village, or any individual, shall be or purport to be discharged, diminished, increased, created, or in any manner affected, shall, upon conviction thereof, be guilty of forgery.

CHAPTER 28

PURCHASING, RECEIVING & INVENTORY CONTROL CLERKS

CHAPTER 28

PURCHASING, RECEIVING & INVENTORY CONTROL CLERKS

Purchasing Clerk

§ 31-7-101 Establishment of department of purchasing; administration; personnel:

From and after the first Monday of January 1989, the supervisors of each county in the state shall establish a central purchase system. The central purchase system shall be administered by a county department of purchasing headed by a purchase clerk who, unless the chancery clerk is appointed by the board of supervisors as purchase clerk as hereinafter authorized, shall be appointed by the county administrator, with the approval of the board of supervisors, in any county required to operate under a countywide system of road administration, or who shall be appointed by the board of supervisors in any other county.

The purchase clerk shall not be a member of the board of supervisors.

The purchase clerk shall be the director of the department of purchasing. No person shall serve as the purchase clerk who, within one (1) year after his appointment, does not receive certification from the State Auditor as having successfully completed the professional education program offered for purchase clerks pursuant to Section 19-3-77.

The department of purchasing shall purchase all equipment, heavy equipment, machinery, supplies, commodities, materials and services used by any office or department of the county except for those offices or departments whose expenditures are not required by law to be approved by the board of supervisors.

The purchase clerk may, subject to the approval of the entity which appointed him, hire personnel necessary to operate the department of purchasing efficiently. Unless the chancery clerk is appointed by the board of supervisors as receiving clerk as hereinafter authorized, the county administrator, with the approval of the board of supervisors, in any county required to operate under the countywide system of road administration, or the board of supervisors in any other county, shall appoint a receiving clerk, who shall not be a member of the board of supervisors.

Assistant receiving clerks, when necessary, may be appointed by the receiving clerk subject to the approval of the entity which appointed him. No person shall serve as the receiving clerk who, within one (1) year after his appointment, does not receive certification from the State Auditor as having successfully completed the professional education program offered for receiving clerks pursuant to

Section 19-3-77. The receiving clerk and his assistants shall be solely responsible for accepting the delivery of all equipment, heavy equipment, machinery, supplies, commodities, materials and services purchased by the county.

The purchase clerk shall disapprove any purchase requisitions which, in his opinion, are not in compliance with the purchasing laws of the state.

The board of supervisors may designate the chancery clerk, with his consent, to serve as the purchase clerk or assistant purchase clerk or as the receiving clerk or assistant receiving clerk; however a chancery clerk designated as purchase clerk or assistant purchase clerk may not also serve as receiving clerk or assistant receiving clerk, and a chancery clerk designated as receiving clerk or assistant receiving clerk may not serve as purchase clerk or assistant purchase clerk.

Neither the purchase clerk nor any assistant purchase clerks shall serve as the receiving clerk or as an assistant receiving clerk.

When the chancery clerk serves as county administrator and purchase clerk or assistant purchase clerk, the receiving clerk and any assistant receiving clerks shall be appointed by and serve at the will and pleasure of the board of supervisors.

§ 31-7-103 Compliance with audit department requirements; small purchases:

The purchase clerk shall be responsible as hereinafter provided for the purchase and acquisition of all equipment, heavy equipment, machinery, supplies, commodities, materials and services to be acquired for the county from successful bidders or other vendors, as authorized by law.

The central purchase system shall comply with the requirements prescribed by the State Department of Audit under the authority of Section 7-7-211 and in accordance with Section 31-7-113, and the purchase clerk shall be responsible for the maintenance of such system.

No requisition to purchase, purchase order or receiving report shall be required for the purchase of any item or services with an acquisition cost of not more than One Thousand Five Hundred Dollars ($1,500.00) in the aggregate; however, the invoice for every such purchase shall be signed by the department head or his or her designee, or a receipt signed by the person making the purchase shall be attached to the invoice and forwarded to the purchase clerk. No claim based on any such purchase shall be approved except after compliance with the provisions of this section.

§ 31-7-119 Board of supervisors; restrictions:

(1) Except as provided in subsection (2) of this section, neither the board of supervisors nor any member thereof shall individually purchase, order or receive any equipment, heavy equipment, machinery, supplies, commodities, materials or services for the use or benefit of the county.

(2) In any county in which the board of supervisors is not required to operate on a countywide system of road administration, the prohibition as provided in subsection (1) of this section shall not apply

(a) to purchases of not more than One Thousand Five Hundred Dollars ($1,500.00) in the aggregate; or

(b) to the purchase of parts or repair services in emergency situations, which purchases are exempt from bid requirements pursuant to Section 31-7-13(m)(ii) and (iii), Mississippi Code of 1972.

Any supervisor who purchases any item or services in accordance with this subsection (2) shall sign the invoice or receipt and forward it to the purchase clerk in the manner provided by Section 31-7-103.

No claim based on any such purchase shall be approved unless the purchase was made in compliance with the provisions of this subsection.

Receiving Clerk

§ 31-7-101 Establishment of department of purchasing; administration; personnel:

The board of supervisors may designate the chancery clerk, with his consent, to serve as the purchase clerk or assistant purchase clerk or as the receiving clerk or assistant receiving clerk; however a chancery clerk designated as purchase clerk or assistant purchase clerk may not also serve as receiving clerk or assistant receiving clerk, and a chancery clerk designated as receiving clerk or assistant receiving clerk may not serve as purchase clerk or assistant purchase clerk. Neither the purchase clerk nor any assistant purchase clerks shall serve as the receiving clerk or as an assistant receiving clerk.

When the chancery clerk serves as county administrator and purchase clerk or assistant purchase clerk, the receiving clerk and any assistant receiving clerks shall be appointed by and serve at the will and pleasure of the board of supervisors.

§ 31-7-109 Receipting system:

The receiving clerk or his assistants shall, upon proper delivery of equipment, heavy equipment, machinery, supplies, commodities, materials or services, acknowledge receipt of goods in compliance with a receipting system prescribed by the State Department of Audit under the authority of Section 7-7-211 and in accordance with Section 31-7-113, and the receiving clerk shall be responsible for the maintenance of such system.

Inventory Control Clerk

§ 31-7-107 Inventory control system:

In addition to the required central purchase system, from and after the first Monday in January 1989, each county shall establish and maintain an inventory control system pursuant to requirements prescribed by the State Department of Audit under the authority of Section 7-7-211 and in accordance with Section 31-7-113; provided, however, that not more than a sixty (60) day inventory of supplies, commodities and materials shall be kept on hand unless otherwise approved by the board of supervisors.

The inventory control clerk shall be employed or designated in the same manner and by the same entity which employs or designates the purchase clerk.

The inventory control clerk shall be responsible for the maintenance of such system and such other personnel as may be required for the efficient operation of the inventory control system and shall not be a member of the board of supervisors.

No person shall serve as the inventory control clerk who, within one (1) year after his appointment, does not receive certification from the State Auditor as having successfully completed the professional education program offered for inventory control clerks pursuant to Section 19-3-77.

The opening entries of such system shall be compiled by the inventory control clerk from a physical inventory which the board of supervisors shall cause to be made of all property of the county by April 1, 1989, and such beginning inventory shall be recorded in the minutes of the board of supervisors.

The clerk of the board of supervisors shall deliver to the inventory control clerk a certified copy of such inventory within seven (7) days after the acceptance of the beginning inventory by the board of supervisors.

Following acceptance of the beginning inventory, the inventory control clerk, pursuant to regulations promulgated by the State Auditor, shall perform physical inventories of assets of the county on or before October 1 of each year and shall file with the board of supervisors, in triplicate, a written report of such inventory.

The clerk of the board of supervisors shall keep the original of each inventory report so filed by the inventory control clerk as a permanent record of the county and shall forward a copy to the State Department of Audit not later than October 15.

In a separate report to the clerk of the board, the inventory control clerk shall list additions to and deletions from the annual inventory report and shall also list items unaccounted for from the previous annual inventory report.

§ 31-7-115 Annual audit reports:

The State Auditor, or a certified public accountant employed by the State Auditor, shall, upon the close of the fiscal year of the county, make an audit of the books, records, supporting documents and other data of the county purchase clerk and the inventory control clerk. The Auditor shall review the county's compliance with Section 31-7-13(d), (k) and (m).

The audit report shall include a schedule of purchases not made from the lowest bidder under the authority of Section 31-7-13(d), with the reasons given therefor. The audit report shall include a schedule of emergency purchases made under the authority of Section 31-7-13(k).

The audit report shall include a schedule of purchases made noncompetitively from a sole source under the authority of Section 31-7-13(m). Such audit report shall be published in at least one (1) newspaper published in the county, or if no newspaper is published in the county, then in a newspaper having general circulation in the county.

Bond Required for Purchase Clerk, Receiving Clerk & Inventory Control Clerk

§ 31-7-124 Bonded clerks:

The receiving clerk and inventory control clerk shall give bond in a penalty equal to Seventy-five Thousand Dollars ($75,000.00) and the purchase clerk shall give bond in a penalty equal to One Hundred Thousand Dollars ($100,000.00) with sufficient surety, to be payable, conditioned and approved as provided by law. All assistant purchasing, receiving and inventory control clerks shall be bonded in a penalty not less than Fifty Thousand Dollars ($50,000.00). Such bond shall be in addition to any other bond required by law, with sufficient surety, to be payable, conditioned and approved as provided by law. The premiums of such bonds shall be paid from any funds available to the board of supervisors for the payment of such premiums.

CHAPTER 29

PURCHASING REGULATIONS

CHAPTER 29

PURCHASING REGULATIONS

§ 31-7-9 Adoption of purchasing regulations:

(1)(a) The Office of Purchasing, Travel and Fleet Management shall adopt purchasing regulations governing the purchase by any agency of any commodity or commodities and establishing standards and specifications for a commodity or commodities and the maximum fair prices of a commodity or commodities, subject to the approval of the Public Procurement Review Board. It shall have the power to amend, add to or eliminate purchasing regulations. The adoption of, amendment, addition to or elimination of purchasing regulations shall be based upon a determination by the Office of Purchasing, Travel and Fleet Management with the approval of the Public Procurement Review Board, that such action is reasonable and practicable and advantageous to promote efficiency and economy in the purchase of commodities by the agencies of the state. Upon the adoption of any purchasing regulation, or an amendment, addition or elimination therein, copies of same shall be furnished to the State Auditor and to all agencies affected thereby. Thereafter, and except as otherwise may be provided in subsection (2) of this section, no agency of the state shall purchase any commodities covered by existing purchasing regulations unless such commodities be in conformity with the standards and specifications set forth in the purchasing regulations and unless the price thereof does not exceed the maximum fair price established by such purchasing regulations. The Office of Purchasing, Travel and Fleet Management shall furnish to any county or municipality or other local public agency of the state requesting same, copies of purchasing regulations adopted by the Office of Purchasing, Travel and Fleet Management and any amendments, changes or eliminations of same that may be made from time to time.

(b) The Office of Purchasing, Travel and Fleet Management may adopt purchasing regulations governing the use of credit cards, procurement cards and purchasing club membership cards to be used by state agencies, governing authorities of counties and municipalities, school districts and the Chickasawhay Natural Gas District. Use of the cards shall be in strict compliance with the regulations promulgated by the office. Any amounts due on the cards shall incur interest charges as set forth in Section 31-7-305 and shall not be considered debt.

(c) Pursuant to the provision of Section 37-61-33(3), the Office of Purchasing, Travel and Fleet Management of the Department of Finance and Administration is authorized to issue procurement cards to all public school district classroom teachers and other necessary direct support personnel at the beginning of the school year for the purchase of instructional supplies using Educational Enhancement Funds. The cards will be issued in equal amounts per teacher

determined by the total number of qualifying personnel and the then current state appropriation for classroom instructional supplies under the Education Enhancement Fund. All purchases shall be in accordance with state law and teachers are responsible for verification of capital asset requirements when pooling monies to purchase equipment. The cards will expire on a pre-determined date at the end of each school year. All unexpended amounts will be carried forward, to be combined with the following year's instructional supply fund allocation, and reallocated for the following year. The Department of Finance and Administration is authorized to loan any start-up funds at the beginning of the school year to fund this procurement system for instructional supplies with loan repayment being made from sales tax receipts earmarked for the Education Enhancement Fund.

(d) In a sale of goods or services, the seller shall not impose a surcharge on a buyer who uses a state-issued credit card, procurement card, travel card, or fuel card. The Department of Finance and Administration shall have exclusive jurisdiction to enforce and adopt rules relating to this paragraph. Any rules adopted under this paragraph shall be consistent with federal laws and regulations governing credit card transactions described by this paragraph. This paragraph does not create a cause of action against an individual for a violation of this paragraph.

(2) The Office of Purchasing, Travel and Fleet Management shall adopt, subject to the approval of the Public Procurement Review Board, purchasing regulations governing the purchase of unmarked vehicles to be used by the Bureau of Narcotics and Department of Public Safety in official investigations pursuant to Section 25-1-87. Such regulations shall ensure that purchases of such vehicles shall be at a fair price and shall take into consideration the peculiar needs of the Bureau of Narcotics and Department of Public Safety in undercover operations.

(3) The Office of Purchasing, Travel and Fleet Management shall adopt, subject to the approval of the Public Procurement Review Board, regulations governing the certification process for certified purchasing offices, including the Mississippi Purchasing Certification Program, which shall be required of all purchasing agents at state agencies. Such regulations shall require entities desiring to be classified as certified purchasing offices to submit applications and applicable documents on an annual basis, and in the case of a state agency purchasing office, to have one hundred percent (100%) participation and completion by purchasing agents in the Mississippi Purchasing Certification Program, at which time the Office of Purchasing, Travel and Fleet Management may provide the governing entity with a certification valid for one (1) year from the date of issuance. The Office of Purchasing, Travel and Fleet Management shall set a fee in an amount that recovers its costs to administer the Mississippi Purchasing Certification Program, which shall be assessed to the participating state agencies.

§ 31-7-11 Agency purchasing practices:

Each agency of the state shall furnish information relative to its purchase of commodities, and as to its method of purchasing such commodities, to the Department of Finance and Administration annually and at such other times as the Department of Finance and Administration may request.

The Department of Finance and Administration shall have supervision over the purchasing and purchasing practices of each state agency and may by regulation or order correct any practice that appears contrary to the provisions of this chapter or to the best interests of the state. If it shall appear that any agency is not practicing economy in its purchasing or is permitting favoritism or any improper purchasing practice, the Department of Finance and Administration shall require that the agency immediately cease such improper activity, with full and complete authority in the Department of Finance and Administration to carry into effect its directions in such regard.

All purchases, trade-ins, sales or transfer of personal property made by any officer, board, agency, department or branch of the state government except the Legislature shall be subject to the approval of the Department of Finance and Administration. Such transaction shall be made in accordance with rules and regulations of the Department of Finance and Administration relating to the purchase of state-owned motor vehicles and all other personal property. The title of such property shall remain in the name of the state.

State Contract Price

§ 31-7-12 Commodity purchase price; approval sources; evaluation of pricing:

(1) Except in regard to purchases of unmarked vehicles made in accordance with purchasing regulations adopted by the Department of Finance and Administration pursuant to Section 31-7-9(2), all agencies shall purchase commodities at the state contract price from the approved source, unless approval is granted by the Department of Finance and Administration to solicit purchases outside the terms of the contracts. However, prices accepted by an agency shall be less than the prices set by the state contract. Prices accepted by an agency shall be obtained in compliance with paragraph (a), (b) or (c) of Section 31-7-13. It shall be the responsibility of the Department of Finance and Administration to ascertain that the resulting prices shall provide a cost effective alternative to the established state contract.

(2) Governing authorities may purchase commodities approved by the Department of Finance and Administration from the state contract vendor, or from any source

offering the identical commodity, at a price not exceeding the state contract price established by the Department of Finance and Administration for such commodity, without obtaining or advertising for competitive bids. Governing authorities that do not exercise the option to purchase such commodities from the state contract vendor or from another source offering the identical commodity at a price not exceeding the state contract price established by the Department of Finance and Administration shall make such purchases pursuant to the provisions of Section 31-7-13 without regard to state contract prices established by the Department of Finance and Administration, unless such purchases are authorized to be made under subsection (5) of this section.

(3) Nothing in this section shall prohibit governing authorities from purchasing, pursuant to subsection (2) of this section, commodities approved by the Department of Finance and Administration at a price not exceeding the state contract price established by the Department of Finance and Administration.

(4) The Department of Finance and Administration shall ensure that the prices of all commodities on the state contract are the lowest and best prices available from any source offering that commodity at the same level of quality or service, utilizing the reasonable standards established therefor by the Department of Finance and Administration. If the Department of Finance and Administration does not list an approved price for the particular item involved, purchase shall be made according to statutory bidding and licensing requirements. To encourage prudent purchasing practices, the Department of Finance and Administration shall be authorized and empowered to exempt certain commodities from the requirement that the lowest and best price be approved by order placed on its minutes.

(5) Any school district may purchase commodities from vendors with which any levying authority of the school district, as defined in Section 37-57-1, has contracted through competitive bidding procedures pursuant to Section 31-7-13 for purchases of the same commodities. Purchases authorized by this subsection may be made by a school district without obtaining or advertising for competitive bids, and such purchases shall be made at the same prices and under the same conditions as purchases of the same commodities are to be made by the levying authority of the school district under the contract with the vendor.

Bid Requirements & Exceptions

***See* § 31-7-13 Bidding requirements.**

CHAPTER 30

COUNTY ADMINISTRATOR

CHAPTER 30

COUNTY ADMINISTRATOR

Authorization for County Administrator

§ 19-4-1 Hiring, qualifications and general duties:

(With regard to any county that is exempt from the provisions of Section 19-2-3, this section shall read as follows:)

The board of supervisors of any county is authorized, in its discretion, to employ a county administrator. The person employed as county administrator shall hold at least a bachelor's degree from an accredited college or university and shall have knowledgeable experience in any of the following fields: work projection, budget planning, accounting, purchasing, cost control, personnel management and road construction procedures. Such administrator, under the policies determined by the board of supervisors and subject to said board's general supervision and control, shall administer all county affairs falling under the control of the board and carry out the general policies of the board in conformity with the estimates of expenditures fixed in the annual budget as finally adopted by the board or as thereafter revised by appropriate action of the board.

(With regard to any county that is required to operate on a countywide system of road administration as described in Section 19-2-3, this section shall read as follows:)

The board of supervisors of each county shall appoint some person other than a member of such board to serve as county administrator. The board of supervisors may appoint the chancery clerk of the county as county administrator if the chancery clerk agrees to serve as county administrator, or the board may appoint as county administrator some other person who has knowledgeable experience in any of the following fields: work projection, budget planning, accounting, purchasing, cost control or personnel management.

If the chancery clerk is appointed to serve as county administrator, the board of supervisors, with the approval of the chancery clerk, may appoint the chancery clerk also to serve as the county purchase clerk, an assistant purchase clerk, the inventory control clerk or any combination of such positions, but no chancery clerk who serves as county administrator shall also serve as the county road manager or a receiving clerk or an assistant receiving clerk for the county.

If some person other than the chancery clerk is appointed to serve as county administrator, the board of supervisors may appoint such person also to serve as

(a) inventory control clerk;
(b) inventory control clerk and county road manager; or
(c) inventory control clerk and county purchase clerk; but such person shall not serve as both county administrator and as a receiving clerk or an assistant receiving clerk for the county.

Notwithstanding any provisions of this section to the contrary, in any county having a population of less than three thousand (3,000) according to the latest federal decennial census, the board of supervisors, with the approval of the chancery clerk, may appoint the chancery clerk also to serve as the county administrator, the county purchase clerk, an assistant purchase clerk, the receiving clerk, an assistant receiving clerk, and the inventory control clerk, or any combination of such positions.

The county administrator, under the policies determined by the board of supervisors and subject to the board's general supervision and control, shall administer all county affairs falling under the control of the board and carry out the general policies of the board in conformity with the estimates of expenditures fixed in the annual budget as finally adopted by the board or as thereafter revised by appropriate action of the board.

The boards of supervisors of at least two (2) but no more than five (5) counties may, by agreement executed under the Interlocal Cooperation Act of 1974, employ the same person to serve them as county administrator; however, a chancery clerk may not be appointed to serve as administrator for more than one (1) county nor for any county other than the county for which he serves as chancery clerk.

The State Auditor shall prescribe a course of continuing education for county administrators to keep them knowledgeable about their duties and responsibilities with respect to administering the affairs of the county. At least one (1) training session shall be held annually.

§ 19-4-3 Terms of employment; compensation:

(With regard to any county that is exempt from the provisions of Section 19-2-3, this section shall read as follows:)

The county administrator so employed shall hold office at the pleasure of the board of supervisors and his employment may be terminated at any time by a majority vote of the board of supervisors. He shall be paid a salary to be fixed by the board of supervisors which may be paid from the county general fund or from the proceeds of any tax levied by the board of supervisors for the support and maintenance of any unit of county government, excluding schools and hospitals, or from any funds which may be available to defray the financial administration expenses of county government. The board shall provide travel and transportation expense and other office expenses as are needed in the performance of the duties of the office of county administrator. Said travel and transportation expense shall be paid on itemized vouchers in accordance with the provisions of Section 25-3-41.

(With regard to any county that is required to operate on a countywide system of road administration as described in Section 19-2-3, this section shall read as follows:)

The person appointed as county administrator under Section 19-4-1 shall serve at the will and pleasure of the board of supervisors and may be removed from such position by a majority vote of the board. The compensation of the county administrator shall be fixed by the board of supervisors and may be paid from the county general fund or from any funds which may be available to defray the financial administration expenses of county government. Any chancery clerk who agrees to also serve as county administrator may be paid, in addition to such compensation as he is otherwise entitled to receive by law, such additional compensation as the board deems him to be entitled commensurate with the additional duties he performs as county administrator. The board shall provide travel and transportation expense and other office expenses as are needed in the performance of the duties of the office of county administrator. Said travel and transportation expense shall be paid on itemized vouchers in accordance with the provisions of Section 25-3-41.

§ 19-4-5 County administration policies:

The board of supervisors by action spread upon the minutes shall establish the general policies to be followed in the administration of the county and the county administrator so employed shall have such duties and responsibilities as set forth in Sections 19-4-1 through 19-4-9.

Oath & Bond

§ 19-4-9 Oath of office and bond:

The county administrator shall take the official oath of office and shall give bond to the board of supervisors, with sufficient surety, to be payable, conditioned and approved as provided by law, in a penalty equal to three percent (3%) of the sum of all the state and county taxes shown by the assessment rolls and the levies to have been collectible in the county for the year immediately preceding the commencement of the term of office for such administrator; however, such bond shall not exceed the amount of One Hundred Thousand Dollars ($100,000.00). The bond premiums shall be paid from the county general fund or other available funds of the county.

Duties of the County Administrator

§ 19-4-7 Responsibilities:

(With regard to any county that is exempt from the provisions of Section 19-2-3, this section shall read as follows:)

The board of supervisors may delegate and assign to the county administrator the duties and responsibilities enumerated below, in whole or in part, and such other duties and responsibilities as said board may determine, not contrary to the laws of the State of Mississippi or the Constitution thereof and not assigned by law to other officers:

(a) Employ an office clerk and such other technical and secretarial assistance for the board as may be needed, maintain an office for the board and prepare a budget for his office subject to approval of the board;

(b) Prepare an inventory of all personal property owned by the county and the location and condition of such property and shall maintain a perpetual inventory of such property;

(c) List all buildings and real estate owned by the county and keep a perpetual list of such real estate;

(d) Be responsible for carrying out the responsibilities of the board of supervisors in regard to janitorial services and maintenance of buildings and property owned by the county except such as may be specifically assigned by the board of supervisors to some other person or office, or may be the responsibility of some other office under law;

(e) Exercise supervision over the purchase clerk and inventory control clerk of the county, and the boards or other divisions of county government financed in whole or in part through taxes levied on county property and purchases shall be made from vendors whose bids have been accepted by the board of supervisors under the provisions of law or to serve as purchase clerk or inventory control clerk;

(f) Assist the board in the preparation of the budget and preparation of the tax levy;

(g) Have authority to make inquiry of any person or group using county funds appropriated by the board of supervisors as to the use or proper use of such funds and shall report to the board of supervisors as to such findings;

(h) Have general supervision over the county sanitary land fills and refuse collection procedures;

(i) Have general supervision over county-owned parks, playgrounds and recreation areas;

(j) Have general supervision over any and all zoning and building code ordinances adopted by the board of supervisors and shall administer such ordinances;

(k) Have general supervision over any and all airports owned by the county;

(l) Be the liaison officer to work with the various divisions of county government and agencies to see that county-owned property is properly managed, maintained, repaired, improved, kept or stored;

(m) See that all orders, resolutions and regulations of the board of supervisors are faithfully executed;

(n) Make reports to the board from time to time concerning the affairs of the county and keep the board fully advised as to the financial condition of the county and future financial needs;

(o) Keep the board of supervisors informed as to federal and state laws and regulations which affect the board of supervisors and the county, shall advise the board as to the possible availability of federal or state grants and assistance for which the county may be eligible, shall assist in the

preparation and submission of plans and project specifications necessary to acquire such assistance, and shall be the administrating officer of county grants from state and federal sources;

(p) Be charged with the responsibility of securing insurance coverage on such county property as the board shall decide should be insured and of securing any other insurance required or authorized by law. He shall work out a plan of insurance for the county which will insure minimum premiums;

(q) Receive inquiries and complaints from citizens of the county as to the operation of county government, investigate such inquiries and complaints and shall report his finding to the board and the individual supervisor of the district from which such inquiry or complaint arises;

(r) Meet regularly with the board of supervisors and have full privileges of discussion but no vote;

(s) Do any and all other administrative duties that the board of supervisors could legally do themselves and that they can legally delegate without violating the laws of the state nor impinging upon the duties set out by law for other officers.

(With regard to any county that is required to operate on a countywide system of road administration as described in Section 19-2-3, this section shall read as follows:)

The board of supervisors may delegate and assign to the county administrator the duties and responsibilities enumerated below, in whole or in part, and such other duties and responsibilities as said board may determine, not contrary to the laws of the State of Mississippi or the Constitution thereof and not assigned by law to other officers:

(a) Employ an office clerk and such other technical and secretarial assistance for the board as may be needed, maintain an office for the board and prepare a budget for his office subject to approval of the board;

(b) Be responsible for carrying out the policies adopted by the board of supervisors;

(c) Exercise supervision over the boards or other divisions of county government, except for the sheriff's department, financed in whole or in part through taxes levied on county property and purchases shall be made

from vendors whose bids have been accepted by the board of supervisors under the provisions of law;

(d) Prepare the budget for consideration by the board of supervisors and assist the board of supervisors in the preparation of the tax levy; however, the sheriff, any governing authority, as defined in Section 31-7-1, funded in whole or in part by the board of supervisors and any board or commission funded in whole or in part by the board of supervisors shall be responsible for preparing their respective budgets for consideration by the board of supervisors;

(e) Make inquiry of any person or group using county funds appropriated by the board of supervisors as to the use or proper use of such funds and shall report to the board of supervisors as to such findings;

(f) Have general supervision over the county sanitary landfills and refuse collection procedures;

(g) Have general supervision over county-owned parks, playgrounds and recreation areas;

(h) Have general supervision over any and all zoning and building code ordinances adopted by the board of supervisors and shall administer such ordinances;

(i) Have general supervision over any and all airports owned by the county;

(j) Be the liaison officer to work with the various divisions of county government and agencies to see that county-owned property is properly managed, maintained, repaired, improved, kept or stored;

(k) See that all orders, resolutions and regulations of the board of supervisors are faithfully executed;

(l) Make reports to the board from time to time concerning the affairs of the county and keep the board fully advised as to the financial condition of the county and future financial needs;

(m) Keep the board of supervisors informed as to federal and state laws and regulations which affect the board of supervisors and the county, shall advise the board as to the possible availability of federal or state grants and assistance for which the county may be eligible, shall assist in the

preparation and submission of plans and project specifications necessary to acquire such assistance, and shall be the administrating officer of county grants from state and federal sources;

(n) Be charged with the responsibility of securing insurance coverage on such county property as the board shall decide should be insured and of securing any other insurance required or authorized by law. He shall work out a plan of insurance for the county which will ensure minimum premiums;

(o) Receive inquiries and complaints from citizens of the county as to the operation of county government, investigate such inquiries and complaints, and shall report his finding to the board and the individual supervisor of the district from which such inquiry or complaint arises;

(p) Meet regularly with the board of supervisors and have full privileges of discussion but no vote;

(q) Perform any and all other administrative duties that the board of supervisors could legally perform themselves and that they can legally delegate without violating the laws of the state nor impinging upon the duties set out by law for other officers.

CHAPTER 31

PERSONNEL CLERK

CHAPTER 31

PERSONNEL CLERK

Exempt County

In a county not operating on the countywide system, usually referred to as a "beat system," personnel matters are in the discretion of the individual supervisors and the board of supervisors as a whole, but must be consistent with state and federal law.

Countywide System

§ 19-2-9 Countywide personnel administration for county employees; exemption of certain employees:

(1) The board of supervisors of each county which is required to operate on a countywide system of road administration as described in Section 19-2-3 shall adopt and maintain a system of countywide personnel administration for all county employees other than those employees subject to subsection (2) of this section. The personnel system shall be implemented and administered by the county administrator. Such personnel system may include, but not be limited to, policies which address the following: hiring and termination of employees, appeal and grievance procedures, leave and holidays, compensation, job classification, training, performance evaluation and maintenance of records. All employees of the county shall be employees of the county as a whole and not of any particular supervisor district. However, any employee which the county administrator is authorized to employ may be terminated at the will and pleasure of the administrator without requiring approval by the board of supervisors.

The board of supervisors of each county shall spread upon its minutes all its actions on personnel matters relating to hiring or termination and such other personnel matters deemed appropriate by the board.

(2) The elected officials of any county described in subsection (1) of this section, other than members of the board of supervisors, who are authorized by law to employ shall adopt and maintain a system of personnel administration for their respective employees or shall adopt the system of personnel administration adopted by the board of supervisors. The personnel system adopted and any amendments thereto shall be filed with the board of supervisors.

Preservation of Applications and Records

29 Code of Federal Regulations § 1602.31 Preservation of Records Made or Kept states:

> Any personnel or employment record made or kept by a political jurisdiction (including but not necessarily limited to requests for reasonable accommodation application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, layoff, or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship) shall be preserved by the political jurisdiction for a period of 2 years from the date of the making of the record or the personnel action involved, whichever occurs later. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of 2 years from the date of termination. Where a charge of discrimination has been filed, or an action brought by the Attorney General against a political jurisdiction under title VII, the ADA, or GINA, the respondent political jurisdiction shall preserve all personnel records relevant to the charge or action until final disposition of the charge or the action. The term "personnel record relevant to the charge," for example, would include personnel or employment records relating to the person claiming to be aggrieved and to all other employees holding positions similar to that held or sought by the person claiming to be aggrieved; and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the person claiming to be aggrieved applied and was rejected. The date of final disposition of the charge or the action means the date of expiration of the statutory period within which a person claiming to be aggrieved may bring an action in a U.S. district court or, where an action is brought against a political jurisdiction either by a person claiming to be aggrieved or by the Attorney General, the date on which such litigation is terminated.

Equal Employment Opportunity Act Report

29 Code of Federal Regulations § 1602.7 Requirement for Filing of Report states:

> On or before September 30 of each year, every employer that is subject to title VII of the Civil Rights Act of 1964, as amended, and that has 100 or more employees shall file with the Commission or its delegate executed copies of Standard Form 100, as revised (otherwise known as "Employer Information Report EEO-1") in conformity with the directions set forth in the form and accompanying instructions. . . .

Federal Income Tax

26 U.S.C.A. § 3402 Income Tax Collected at Source states:

> (a) Requirement of withholding.
>
> > (1) In general. – Except as otherwise provided in this section, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary. . . .
> >
> > ***See* W-4 form.**

26 Code of Federal Regulations § 31.6011(a)-4 Returns of Income Tax Withheld states:

> (a) Withheld from wages.
>
> > (1) In general. Except as otherwise provided in paragraphs (a)(2), (a)(3), (a)(4), and (b) of this section, and in § 31.6011(a)-5, every person required to make a return of income tax withheld from wages pursuant to section 3402 shall make a return for the first calendar quarter in which the person is required to deduct and withhold such tax and for each subsequent calendar quarter, whether or not wages are paid therein, until the person has filed a final return in accordance with § 31.6011(a)-6. Except as otherwise provided in paragraphs (a)(2), (a)(3), (a)(4), and (b) of this section, and in § 31.6011(a)-8, Form 941, "Employer's QUARTERLY Federal Tax Return," is the form prescribed for making the return required under this paragraph (a)(1).

State Income Tax

§ 27-7-305 Leased employees:

(1) Except as otherwise provided in this section, every employer making payments of wages to employees shall deduct and withhold from such wages an amount determined from withholding tables promulgated by the commissioner and furnished to the employer. The full amount deducted and withheld from any employee's wages during the income year shall be credited against the tax liability of the employee under the provisions of Article 1 of this chapter for that year. Any such tables promulgated by the commissioner shall not be designed to collect more than the amount of tax that the taxpayer can reasonably be expected to owe for the income year. Businesses that lease employees by a contract of employment with a leasing firm may be considered the employer for Mississippi withholding tax purposes. In such cases payments to the leasing company may be attached for such withholding taxes upon default by the leasing firm.

(2) Firms that lease employees to businesses are required to maintain separate ledgers of account for these employees. These lease firms shall furnish the Department of Revenue annually a summary of wages paid, number of employees and amounts withheld by location. In addition, the commissioner shall require firms that lease employees to businesses to give a cash bond or an approved surety bond in an amount sufficient to cover twice the estimated tax liability for a period of three (3) months. This bond shall be filed with the commissioner prior to beginning business in this state. Failure to comply with this provision shall subject such person to the penalties provided by this chapter.

(3) An out-of-state business as defined in Section 3 of this act shall not be subject to any employer tax withholdings for income that is not subject to income taxation under Sections 1 through 5 of this act.

§ 27-7-309 Employer to file withholding return:

(1) (a) Except as otherwise provided in this subsection, every employer required to deduct and withhold from wages under this article shall, for each calendar quarter, on or before the fifteenth day of the month following the close of such calendar quarter, file a withholding return as prescribed by the commissioner and pay over to the commissioner the full amount required to be deducted and withheld from wages by such employer for the calendar quarter. Provided that the commissioner may, by regulation, provide that every such employer shall, on or before the fifteenth day of each month, pay over to the commissioner or a depository designated by the commissioner, the amount required to be deducted and

withheld by such employer for the preceding month, if such amount is One Hundred Dollars ($100.00) or more. Returns and payments placed in the mail must be postmarked by the due date in order to be timely filed, except when the due date falls on a weekend or holiday, returns and payments placed in the mail must be postmarked by the first working day following the due date in order to be considered timely filed.

(b) The commissioner may promulgate rules and regulations to require or permit filing periods of any duration, in lieu of monthly or quarterly filing periods, for any taxpayer or group thereof.

(2) Notwithstanding any of the other provisions of this section, all transient employers and all employers engaged in any business which is seasonal shall make return and pay over to the commissioner on a monthly basis, the full amounts required to be deducted and withheld from the wages by such employer for the calendar month. Such returns and payments to the commissioner by such employers shall be made on or before the fifteenth day of the month following the month for which such amounts were deducted and withheld from the wages of his employees. The commissioner shall have the authority to issue reasonable rules and regulations designating or classifying those transient and seasonal employers.

(3) If the commissioner, in any case, has justifiable reason to believe that the collection of funds required to be withheld by any employer as provided herein is in jeopardy, he may require the employer to file a return and pay such amount required to be withheld at any time.

(4) Every employer who fails to withhold or pay to the commissioner any sums required by this article to be withheld and paid, shall be personally and individually liable therefor, except as provided in Section 27-7-307; and any sum or sums withheld in accordance with the provisions of this article shall be deemed to be held in trust for the State of Mississippi and shall be recorded by the employer in a ledger account so as to clearly indicate the amount of tax withheld and that the amount is the property of the State of Mississippi.

(5) Once an employer has become liable to a quarterly return of withholding, he must continue to file a quarterly report, even though no tax has been withheld, until such time as he notifies the commissioner, in writing, that he no longer has employees or that he is no longer liable for such quarterly returns.

(6) Once an employer has become liable to a monthly return of withholding, he must continue to file a monthly report, even though no tax has been withheld until such time as he notifies the commissioner, in writing, that he no longer has employees or that he is no longer liable for such monthly returns.

(7) Magnetic media reporting may be required in a manner to be determined by the commissioner.

§ 27-7-333 Employer's withholding account number assignment:

Except as otherwise provided in this section, every employer, as defined herein, shall, on or before January 1, 1969, make application to the commissioner for and be assigned an employer's withholding account number.

The account number assigned to an employee shall be used by such employer on all returns, reports and inquiries addressed to the commissioner.

This section shall not apply to an "out-of-state business" during a "disaster response period" as such terms are defined in Section 3 of this act.

Public Employees' Retirement System

§ 25-11-101 Public Employee's Retirement System created:

A retirement system is hereby established and placed under the management of the board of trustees for the purpose of providing retirement allowances and other benefits under the provisions of this article for officers and employees in the state service and their beneficiaries. The retirement system provided by Article 3 shall go into operation as of the first day of the month following the effective date thereof, when contributions by members shall begin and benefits shall become payable.

This system shall be an agency of the State of Mississippi having all the powers and privileges of a public corporation and shall be known as the "Public Employees' Retirement System of Mississippi." By such name all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held; but in ordinary correspondence the word "system" may be used instead of the full title. After appropriation for administrative expenses and after payment of investment management fees and costs, all funds of the system shall be held in trust in the custody of the board of trustees as funds of the beneficiaries of the trust. The Joint Legislative Committee on Performance Evaluation and Expenditure Review is hereby authorized and directed to have performed random actuarial evaluations, as necessary, of the funds and expenses of the Public Employees' Retirement System and to make annual reports to the Legislature on the financial soundness of the system.

§ 25-11-124 Employer to pay required member contributions; tax treatment; funding; retirement treatment:

Each employer shall pick up the member contributions required by Section 25-11-123, for all compensation earned after June 30, 1982, and the contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code and the Mississippi Income Tax Code; however, each employer shall continue to withhold federal and state income taxes based upon such contributions until the internal revenue service or the federal courts rule that, pursuant to section 414(h) of the United States Internal Revenue Code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The employer shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The employer may pick up these contributions by a reduction in the cash salary of the member, or by an offset against a future salary increase, or by a combination of a reduction in salary and offset against a future salary increase. If member contributions are picked up they

shall be treated for all purposes of the public employees' retirement system in the same manner and to the same extent as member contributions made prior to the date picked up.

§ 25-11-125 Employer contributions for certain fee paid public officers:

(1) The board of supervisors may appropriate and include in its budget for public purposes a sufficient sum to pay the required employer contribution to the Public Employees' Retirement System for all fee paid elected officials in judicial capacities of the county and supervisors' districts, and those contributions shall be included by the clerk of the board in his regular reports and remittals to the Executive Director of the Public Employees' Retirement System for other county officers and regular county employees whose employer contributions are not included in and paid from the annual county budget.

(2) If the county elects to be responsible for contributions on the net fee income of the constable, the board of supervisors of the county shall appropriate and include in its budget a sufficient sum to pay to the Public Employees' Retirement System for each constable holding office in that county the required employer contributions on the net fee income and all direct payments to the constable from the county, and those contributions shall be handled by the clerk of the board in the manner required by subsection (1) of this section.

Workers' Compensation

§ 71-3-5 Application:

The following shall constitute employers subject to the provisions of this chapter:

> . . . .
> Any state agency, state institution, state department, or subdivision thereof, including counties, municipalities and school districts, or the singular thereof, not heretofore included under the Workers' Compensation Law, may elect, by proper action of its officers or department head, to come within its provisions and, in such case, shall notify the commission of such action by filing notice of compensation insurance with the commission. Payment for compensation insurance policies so taken may be made from any appropriation or funds available to such agency, department or subdivision thereof, or from the general fund of any county or municipality. . . .

§ 71-3-7 Liability for payment of compensation:

(5) Every employer to whom this chapter applies shall be liable for and shall secure the payment to his employees of the compensation payable under its provisions.

Health & Life Insurance Coverage

§ 25-15-101 Administration of insurance program; self-insurance; liability for payment of benefits and loss or misappropriation of funds:

The governing board of any county . . . may negotiate for and secure for all or specified groups of employees and their dependents of such county a policy or policies of group insurance covering the life, (except as hereinafter provided), salary protection, health, accident and hospitalization, as well as a group contract or contracts covering hospital and/or medical and/or surgical services or benefits (including surgical costs, so-called "hospital extras," medical expenses, allied coverages, and major medical costs) of such of its employees and their dependents as may desire such insurance and other coverage under such service or benefit contracts, and who shall authorize in writing the deduction from the salary or wages of such employees of the proportionate part of the costs thereof attributable to such employees. . . .

The governing board or head of such political subdivision is authorized to pay such full costs direct to the insurance company and to the hospital and/or medical and/or surgical service association from the general fund, contingent fund, or the maintenance fund of such county. . . .

***See* § 25-15-103 Amount of coverage.**