Handbook for

Mississippi Circuit Court Clerks

2021

UNIVERSITY OF MISSISSIPPI LAW CENTER

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FOREWORD

The *Handbook for Mississippi Circuit 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.

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

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CHAPTER 1

THE CIRCUIT COURT

CHARTS

CHAPTER 1

THE CIRCUIT COURT

Establishment of the Circuit Courts

Mississippi Constitution Article 6, § 144 Judicial Power of State, provides:

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

Circuit Court Subject Matter Jurisdiction

Civil

Mississippi Constitution Article 6, § 156 Jurisdiction of Circuit Court, states:

> The circuit court shall have original jurisdiction in all matters civil . . . in this state not vested by this Constitution in some other court, and such appellate jurisdiction as shall be prescribed by law.

§ 9-7-81 Jurisdiction in general:

> The circuit court shall have original jurisdiction in all actions when the principal of the amount in controversy exceeds two hundred dollars, and of all other actions and causes, matters and things arising under the constitution and laws of this state which are not exclusively cognizable in some other court, and such appellate jurisdiction as prescribed by law. Such court shall have power to hear and determine all prosecutions in the name of the state for treason, felonies, crimes, and misdemeanors, except such as may be exclusively cognizable before some other court; and said court shall have all the powers belonging to a court of oyer and terminer and general jail delivery, and may do and perform all other acts properly pertaining to a circuit court of law.

> > Subject matter jurisdiction deals with the power and authority of a court to consider a case. As such, subject matter jurisdiction may not be waived and may be asserted at any stage of the proceeding or even collaterally**.** ***Esco v. Scott*, 735 So. 2d 1002, 1006 (Miss. 1992).**

Criminal

Mississippi Constitution Article 6, § 156 Jurisdiction of Circuit Court, states:

> The circuit court shall have original jurisdiction in all matters . . . criminal in this state not vested by this Constitution in some other court, and such appellate jurisdiction as shall be prescribed by law.

§ 9-7-81 Jurisdiction in general:

> Such court shall have power to hear and determine all prosecutions in the name of the state for treason, felonies, crimes, and misdemeanors, except such as may be exclusively cognizable before some other court; and said court shall have all the powers belonging to a court of oyer and terminer and general jail delivery, and may do and perform all other acts properly pertaining to a circuit court of law.

Special Statutes Conferring Jurisdiction to the Circuit Court

§ 11-27-3 Creation of court:

> A special court of eminent domain is hereby created, to consist of a judge, jury, and such other officers and personnel as hereinafter set out, and it shall have and exercise the jurisdiction and powers hereinafter enumerated. The original powers and jurisdiction shall be and is hereby fixed in the county court in each county that has elected to come under the provisions of Section 9-9-1 Mississippi Code of 1972, or that may hereafter come under the provisions of said Section 9-9-1, and in every other county of this state, the original powers and jurisdiction shall be and is hereby fixed in the circuit court of such county, which said powers and jurisdiction may be exercised in full either in termtime or vacation, or both.

Mississippi Constitution Article 6, § 161 Concurrent Jurisdiction, 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

Mississippi Constitution Article 6, § 156 Jurisdiction of Circuit Court, provides:

> The circuit court shall have . . . such appellate jurisdiction as shall be prescribed by law.

Civil Appeals

§ 11-51-79 From county court:

> No appeals or certiorari shall be taken from any interlocutory order of the county court, but if any matter or cause be unreasonably delayed of final judgment therein, it shall be good cause for an order of transfer to the circuit or chancery court upon application therefor to the circuit judge or chancellor. Appeals from the law side of the county court shall be made to the circuit court, and those from the equity side to the chancery court on application made therefor and bond given according to law, except as hereinafter provided. Such appeal shall operate as a supersedeas only when such would be applicable in the case of appeals to the Supreme Court. Appeals should be considered solely upon the record as made in the county court and may be heard by the appellate court in termtime or in vacation.

§ 11-51-81 To county court:

> All appeals from courts of justices of the peace, special and general, and from all municipal courts shall be to the county court under the same rules and regulations as are provided on appeals to the circuit court, but appeals from orders of the board of supervisors, municipal boards, and other tribunals other than courts of justice of the peace and municipal courts, shall be direct to the circuit court as heretofore. And from the final judgment of the county court in a case appealed to it under this section, a further appeal may be taken to the circuit court on the same terms and in the same manner as other appeals from the county court to the circuit court are taken: Provided that where the judgment or record of the justice of the peace, municipal or police court is not properly certified, or is not certified at all, that question must be raised in the county court in the absence of which the defect shall be deemed as waived and by such waiver cured and may not thereafter be raised for the first time in the circuit court on the appeal thereto; and provided further that there shall be no appeal from the circuit court to the Supreme Court of any case civil or criminal which originated in a justice of the peace, municipal or police court and was thence appealed to the county court and thence to the circuit court unless in the determination of the case a constitutional question be necessarily involved and then only upon the allowance of the appeal by the circuit judge or by a judge of the Supreme Court.

In the end, we conclude that the "three-court rule" found in Mississippi Code Section 11-51-81 contravenes the constitutional mandates imposed upon the Legislature and the judiciary. . . . We thus find this portion of Section 11-51-81 to be unconstitutional:

> [A]nd provided further that there shall be no appeal from the circuit court to the supreme court of any case civil or criminal which originated in a justice of the peace, municipal or police court and was thence appealed to the county court and thence to the circuit court unless in the determination of the case a constitutional question be necessarily involved and then only upon the allowance of the appeal by the circuit judge or by a judge of the supreme court.

Having found a portion of Section 11-51-81 to be unconstitutional, we need to make perfectly clear that our finding on this issue in no way affects the constitutionality of the remainder of Section 11-51-81. ***Jones v. City of Ridgeland*, 48 So. 3d 530, 538-399 (Miss. 2010).**

§ 11-51-85 From justice court judgment:

Either party may appeal to the circuit court of the county from the judgment of any justice court judge if appeal be demanded and bond given within (10) days after the rendition of the judgment. The party taking the appeal shall give bond with a sufficient surety, to be approved by the clerk of the justice court payable to the opposite party, in the penalty of double the amount of the judgment, or double the value of the property involved, and all costs accrued and likely to accrue in the case, and in no case to be less than One Hundred Dollars ($100.00), conditioned for the payment of such judgment as the circuit court may render against him; and the appeal, when demanded and bond given, shall operate as a supersedeas of execution on such judgment. Any defendant against whom a civil judgment may have been entered by a justice court judge who, by reason of his poverty, is not able to give bond may nevertheless appeal from such judgment on his making an affidavit that, by reason of his poverty, he is unable to give bond or other security to obtain such appeal, but the appeal in such case shall not operate as a supersedeas of the judgment. The clerk of the justice court shall at once make up a transcript of the record and properly transmit the same to the clerk of the circuit court, within fifteen (15) days after the bond has been filed. In counties where there is a county court, appeals from justice courts shall be to the county court.

Uniform Civil Rule of Circuit and County Court 5.04 states in part:

> The party desiring to appeal a decision from a lower court must file a written notice of appeal with the circuit court clerk. . . .

Criminal Appeals

§ 99-35-1 Right to appeal:

In all cases of conviction of a criminal offense against the laws of the state by the judgment of a justice court, or by a municipal court, for the violation of an ordinance thereof, an appeal may be taken within forty (40) days from the date of such judgment of conviction to the county court of the county, in counties in which a county court is in existence, or the circuit court of the county, in counties in which a county court is not in existence, which shall stay the judgment appealed from. Any person appealing a judgment of a justice court or a municipal court under this section shall post bond for court costs relating to such appeal. The amount of such bond shall be determined by the justice court judge or municipal judge, payable to the state in an amount of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00). On appearance of the appellant in the circuit court the case shall be tried anew and disposed of as other cases pending therein.

This Court has held where there is conflict between a statute and a procedural rule created by the Supreme Court, the rule controls and the statute is void and of no effect. ***Murray v. State*, 870 So. 2d 1182, 1184 (Miss. 2004).**

Mississippi Rule of Criminal Procedure Rule 29.1., Notice of Appeal; Contents; Defects; Dismissal, states in part:

(a) Notice of Appeal. Any person adjudged guilty of a criminal offense by a justice or municipal court may appeal to county court or, if there is no county court, to circuit court, by filing simultaneously a written notice of appeal, and both a cost bond and an appearance bond (or cash deposit), as provided in Rules 29.3(a) and 29.4(a), with the clerk of the circuit court having jurisdiction within thirty (30) days of such judgment. . . .

Administrative Appeals

Uniform Civil Rule of Circuit and County Court 5.03 states:

On appeals from administrative agencies the court will only entertain an appeal to determine if the order or judgment of the lower authority:

1. Was supported by substantial evidence; or
2. Was arbitrary or capricious; or
3. Was beyond the power of the lower authority to make; or
4. Violated some statutory or constitutional right of the complaining party.

Transfer of Jurisdiction

To Circuit Court

Mississippi Constitution Article 6, § 162 Transfer to Circuit Court, states:

> All causes that may be brought in the chancery court whereof the circuit court has exclusive jurisdiction shall be transferred to the circuit court.

§ 9-7-83 Jurisdiction of transfers and remands:

> The circuit court shall have jurisdiction of all cases transferred to it by the chancery court or remanded to it by the supreme court.

From Circuit Court

Civil Cases

Mississippi Constitution Article 6, § 157 Transfer to Chancery Court, provides:

> All causes that may be brought in the circuit court whereof the chancery court has exclusive jurisdiction shall be transferred to the chancery court.

Mississippi Constitution Article 6, § 161 Concurrent Jurisdiction, 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.

§ 9-9-27 Cases transferred; prosecution by affidavit:

> In any civil case instituted in the circuit court, wherein all parties file a motion to transfer said case to the county court for trial, or wherein all parties file an instrument of writing consenting to such a transfer, the circuit court may, in its discretion, transfer the case to the county court for trial. . . .

Criminal Cases

§ 9-9-27 Cases transferred; prosecution by affidavit:

In misdemeanor cases and in felony cases not capital, wherein indictments have been returned by the grand jury, the circuit court may transfer with full jurisdiction all or any of the same, in its discretion, to the county court for trial. . . and prosecutions by affidavit are hereby authorized in misdemeanor cases under the same procedure as if indictments had been returned in the circuit court and same had been transferred to the county court.

Youth Court Cases

§ 43-21-159 Transfer of cases:

(1) When a person appears before a court other than the youth court, and it is determined that the person is a child under jurisdiction of the youth court, such court shall, unless the jurisdiction of the offense has been transferred to such court as provided in this chapter, or unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted, immediately dismiss the proceeding without prejudice and forward all documents pertaining to the cause to the youth court; and all entries in permanent records shall be expunged. The youth court shall have the power to order and supervise the expunction or the destruction of such records in accordance with Section 43-21-265. Upon petition therefor, the youth court shall expunge the record of any case within its jurisdiction in which an arrest was made, the person arrested was released and the case was dismissed or the charges were dropped or there was no disposition of such case. In cases where the child is charged with a hunting or fishing violation or a traffic violation, whether it be any state or federal law, a violation of the Mississippi Implied Consent Law, or municipal ordinance or county resolution, or where the child is charged with a violation of Section 67-3-70, the appropriate criminal court shall proceed to dispose of the same in the same manner as for other adult offenders and it shall not be necessary to transfer the case to the youth court of the county. However, unless the cause has been transferred, or unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted, the youth court shall have power on its own motion to remove jurisdiction from any criminal court of any offense including a hunting or fishing violation, a traffic violation, a violation of the Mississippi Implied Consent Law, or a violation of Section 67-3-70, committed by a child in a matter under the jurisdiction of the youth court and proceed therewith in accordance with the provisions of this chapter. . . .

(3) Nothing in subsection (1) or (2) shall apply to a youth who has a pending

charge or a conviction for any crime over which circuit court has original jurisdiction.

(4) In any case wherein the defendant is a child as defined in this chapter and of which the circuit court has original jurisdiction, the circuit judge, upon a finding that it would be in the best interest of such child and in the interest of justice, may at any stage of the proceedings prior to the attachment of jeopardy transfer such proceedings to the youth court for further proceedings unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted or has previously been convicted of a crime which was in original circuit court jurisdiction, and the youth court shall, upon acquiring jurisdiction, proceed as provided in this chapter for the adjudication and disposition of delinquent child proceeding proceedings. If the case is not transferred to the youth court and the youth is convicted of a crime by any circuit court, the trial judge shall sentence the youth as though such youth was an adult. The circuit court shall not have the authority to commit such child to the custody of the Department of Youth Services for placement in a state-supported training school. . . .

(7) No offense involving the use or possession of a firearm by a child who has reached his fifteenth birthday and which, if committed by an adult would be a felony, shall be transferred to the youth court.

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).**

Circuit Court Powers & Authority[1]

Rule Authority

Uniform Civil Rule of Circuit and County Court 2.02 states:

> The court is empowered to hear and determine all motions, appeals or other applications to the court, which the court may hear and determine without a jury, in term or vacation, and may hear or determine the same in any county in the judicial district of the court, or in a county to which venue has been transferred.

Uniform Civil Rule of Circuit and County Court 1.03 states:

> Any person embraced within these rules who violates the provisions hereof may be subjected to sanctions, contempt proceedings or other disciplinary actions imposed or initiated by the court.

Mississippi Rule of Criminal Procedure 17.9, Failure to Disclose; Sanctions, states in part:

> **(c) Sanctions.** Willful violation by an attorney of an applicable discovery rule, or an order issued pursuant thereto, may subject the attorney to appropriate sanctions by the court.

[1]This section is only a partial listing of the rules and statutes which authorize and empower the circuit courts to act.

Statutory Authority

In General

§ 9-1-17 Punishment of contempt:

The circuit courts shall have power to fine and imprison any person guilty of contempt of the court while sitting, but the fine shall not exceed $100.00 for each offense, nor shall the imprisonment continue longer than 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. . . .

§ 9-1-23 District domicile required:

The judges of the circuit courts 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. . . .

§ 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 . . . until the proper incumbent shall be duly qualified or return to his duties.

§ 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:

(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.

§ 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.

Court Processes

§ 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 circuit courts, in term time 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 granting the same or not. . . .

§ 9-7-91 Judgments and executions:

The circuit court may render judgments according to the principles and usages of law, in all cases cognizable before it, and award executions, directed to the sheriff or other proper officer of any county. The court, upon legal conviction of a person of a crime or misdemeanor, shall proceed to judgment and award execution thereon as the law directs.

§ 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.

Criminal Procedure

§ 99-15-1 Conservators of peace:

The judges of the circuit courts are conservators of the peace throughout the state, and each judge of the county court and every justice court judge is such within his county.

§ 99-15-3 Taking of bonds and recognizances:

Any conservator of the peace has power to take all manner of bonds and recognizances from persons charged on affidavit with crimes and offenses, for their appearance in the circuit court to answer thereto, as well as for crimes and offenses committed in their presence. If any person fail to give bond or enter into recognizance, with the sureties prescribed, when required to do so by a conservator of the peace, he shall be committed to the county jail, there to remain until he comply or be otherwise discharged by due course of law. Every bond or recognizance so taken shall be returned to the circuit court before its next term. If any person so bound fail to appear in the circuit court, his bond or recognizance shall be adjudged forfeited, and otherwise proceeded with as provided by law.

§ 99-15-5 Arrest and commitment:

Any conservator of the peace may, upon a finding of probable cause, by warrant issued under his hand, cause any person charged on affidavit with having committed, or with being suspected of, any offense against the law, to be arrested and brought before him, or before some other conservator of the peace in the proper county. On examination, the conservator of the peace shall commit the offender to jail if the offense be not bailable, and if it be bailable and the offender fail to find bail.

§ 99-15-9 Subpoenas:

A conservator of the peace, in all examinations had before him for offenses, may

issue a subpoena to any county, and compel obedience thereto.

§ 99-15-11 Search warrants:

Any conservator of the peace, on the affidavit of a credible person, may issue a search warrant and cause stolen or embezzled goods to be seized; but the affidavit and warrant must specify the goods to be seized and the person or place to be searched.

§ 99-15-15 Appointment of counsel:

When any person shall be charged with a felony, misdemeanor punishable by confinement for ninety (90) days or more, or commission of an act of delinquency, the court or the judge in vacation, being satisfied that such person is an indigent person and is unable to employ counsel, may, in the discretion of the court, appoint counsel to defend him. Such appointed counsel shall have free access to the accused who shall have process to compel the attendance of witnesses in his favor. The accused shall have such representation available at every critical stage of the proceeding against him where a substantial right may be affected.

§ 99-15-17 Compensation of counsel; amount:

The compensation for counsel for indigents appointed as provided in section 99-15-15, shall be approved and allowed by the appropriate judge and in any one (1) case may not exceed one thousand dollars ($1000.00) for representation in circuit court whether on appeal or originating in said court. Provided, however, if said case is not appealed to or does not originate in a court of record, the maximum compensation shall not exceed two hundred dollars ($200.00) for any one (1) case, the amount of such compensation to be approved by a judge of the circuit court in the county where the case arises. Provided, however, in a capital case two (2) attorneys may be appointed, and the compensation may not exceed two thousand dollars ($2,000.00) per case. If the case is appealed to the state supreme court by counsel appointed by the judge, the allowable fee for services on appeal shall not exceed one thousand dollars ($1000.00) per case. In addition, the judge shall allow reimbursement of actual expenses. The attorney or attorneys so appointed shall itemize the time spent in defending said indigents together with an itemized statement of expenses of such defense, and shall present same to the appropriate judge. The fees and expenses as allowed by the appropriate judge shall be paid by the county treasurer out of the general fund of the county in which the prosecution was commenced.

Although section 99-15-17 limits the compensation which an attorney may receive for the representation of an indigent, it also allows for

"reimbursement of actual expenses." [We] are able to save this statute from unconstitutionality by interpreting this language to include reimbursement for all actual costs to the lawyer for the purpose of keeping his or her door open to handle this case, i.e., the lawyer will receive a pro rata share of actual overhead. . . . [The] $1,000.00 given to an attorney for representation of an indigent is an "honorarium" or pure profit. ***Wilson v. State*, 574 So. 2d 1338, 1340-41 (Miss. 1990).**

§ 99-15-23 Plea entered for defendant standing mute:

If the defendant, on arraignment, refuses or neglects to plead, or stands mute, the court must cause the plea of "not guilty" to be entered, and the trial to proceed.

§ 99-15-24 Motions and guilty pleas:

In criminal cases in circuit courts, unless otherwise provided by law, guilty pleas may be taken and motions may be heard in any county in the circuit court district that contains the county in which venue lies. Nothing in this section shall be construed as affecting venue for the purpose of bringing indictments or the conducting of jury trials.

§ 99-15-25 Entry of guilty plea in vacation:

(1) Any person who is charged in any circuit or county court with the commission of a criminal offense by a proper affidavit, indictment or information in cases of misdemeanors or by indictment by the grand jury in cases of felonies, and who is represented by counsel, may, by his own election, appear before the judge of the court at such time as the said judge may fix in vacation of the court and be arraigned and enter a plea of guilty to the offense with which he is charged. Upon the entering of such plea of guilty, the judge shall have the power and authority to impose any lawful and proper sentence upon the defendant in vacation just as though the plea was entered and the sentence imposed during a regular term of the court.

(2) All judgments and orders imposing sentences in vacation upon such pleas of guilty shall be entered upon the minutes of the proper court in vacation just as though same were had and entered during term time.

§ 99-15-26 Release after successful completion of conditions:

(1)(a) In all criminal cases, felony and misdemeanor, other than crimes against the person, a crime of violence as defined in Section 97-3-2, a violation of Section 97-11-31 or crimes in which a person unlawfully takes, obtains or misappropriates

funds received by or entrusted to the person by virtue of his or her public office or employment, the circuit or county court shall be empowered, upon the entry of a plea of guilty by a criminal defendant made on or after July 1, 2014, to withhold acceptance of the plea and sentence thereon pending successful completion of such conditions as may be imposed by the court pursuant to subsection (2) of this section.

(b) In all misdemeanor criminal cases, other than crimes against the person, the justice or municipal court shall be empowered, upon the entry of a plea of guilty by a criminal defendant, to withhold acceptance of the plea and sentence thereon pending successful completion of such conditions as may be imposed by the court pursuant to subsection (2) of this section.

(c) Notwithstanding paragraph (a) of this subsection (1), in all criminal cases charging a misdemeanor of domestic violence as defined in Section 99-3-7(5), a circuit, county, justice or municipal court shall be empowered, upon the entry of a plea of guilty by the criminal defendant, to withhold acceptance of the plea and sentence thereon pending successful completion of such conditions as may be imposed by the court pursuant to subsection (2) of this section.

(d) No person having previously qualified under the provisions of this section shall be eligible to qualify for release in accordance with this section for a repeat offense. A person shall not be eligible to qualify for release in accordance with this section if charged with the offense of trafficking of a controlled substance as provided in Section 41-29-139(f) or if charged with an offense under the Mississippi Implied Consent Law. Violations under the Mississippi Implied Consent Law can only be nonadjudicated under the provisions of Section 63-11-30. . . .

§ 99-15-27 Copy of indictment and list of special venire in capital cases:

Any person indicted for a capital crime shall, if demanded by him by motion in writing before the completion of drawing of any special venire which is summoned to appear on the day of his trial, have a copy of the indictment and list of the special venire delivered to him or his counsel at least one (1) entire day before said trial.

§ 99-15-29 Continuances:

On all applications for a continuance the party shall set forth in his affidavit the facts which he expects to prove by his absent witness or documents that the court may judge of the materiality of such facts, the name and residence of the absent witness, that he has used due diligence to procure the absent documents, or presence of the absent witness, as the case may be, stating in what such diligence consists, and that the continuance is not sought for delay only, but that justice may be done. The court may grant or deny a continuance, in its discretion, and may of

its own motion cross-examine the party making the affidavit. The attorneys for the other side may also cross-examine and may introduce evidence by affidavit or otherwise for the purpose of showing to the court that a continuance should be denied. No application for a continuance shall be considered in the absence of the party making the affidavit, unless his absence be accounted for to the satisfaction of the court. A denial of the continuance shall not be ground for reversal unless the supreme court shall be satisfied that injustice resulted therefrom.

§ 99-15-31 Continuances in capital cases:

Application for continuance in capital cases shall not be entertained after the drawing of any special venire which is summoned to appear on the day the case is set for trial, except for causes arising afterward, unless a good excuse be shown for not having made the application before.

§ 99-15-35 Change of venue:

On satisfactory showing, in writing, sworn to by the prisoner, made to the court, or to the judge thereof in vacation, supported by the affidavits of two or more credible persons, that, by reason of prejudgment of the case, or grudge or ill will to the defendant in the public mind, he cannot have a fair and impartial trial in the county where the offense is charged to have been committed, the circuit court, or the judge thereof in vacation, may change the venue in any criminal case to a convenient county, upon such terms, as to the costs in the case, as may be proper.

§ 99-15-37 Transfer of records to removal court:

Upon the order being made changing the venue in a criminal case, the clerk shall make out a transcript of the caption of the record, also of the proceedings impaneling the grand jury, of the indictment, with the entries or indorsements thereon, and all entries relative thereto in the records of his office, of the bonds and recognizances of the defendant, of the names of all the witnesses, and of all orders, judgments, or other papers or proceedings belonging to or had in said cause and attach his certificate thereto, under his hand, with the seal of the court annexed, and forward it, sealed up, by a special messenger, or deliver it himself, together with all the original subpoenas in the case, to the clerk of the circuit court to which the trial is ordered to be removed.

§ 99-15-39 Trial on indictment:

The defendant, on a change of venue, shall be tried on the copy of the indictment so certified; and the record, proceedings, and papers therein copied and certified, shall, in all respects become, be received, read, and taken as the original record, papers and proceedings in the said cause, and shall have the same force and effect.

Defects in the transcript shall not avail the accused if he do not object to them specifically before trial.

§ 99-15-43 Venue in capital cases:

In capital cases the application for change of venue must be made before the drawing of any special venire which is summoned to appear on the day the case is set for trial, or it will be too late, except where the ground on which such application is based occurred after the drawing of such venire.

§ 99-15-45 Costs of change of venue:

The county from which the venue is changed shall pay the costs and expenses incident to such change and trial in another county as if such change of venue had not been made.

§ 99-15-47 Joint indictments; felony severance:

Any of several persons jointly indicted for a felony may be tried separately on making application therefor, in capital cases, before the drawing of any special venire which is summoned to appear on the day the case is set for trial and in other cases, before arraignment.

§ 99-15-57 Relief under previous law; expunging of record:

(1) Any person who pled guilty within six (6) months prior to the effective date of Section 99-15-26, and who would have otherwise been eligible for the relief allowed in such section, may apply to the court in which such person was sentenced for an order to expunge from all official public records all recordation relating to his arrest, indictment, trial, finding of guilty and sentence. If the court determines, after hearing, that such person has satisfactorily served his sentence or period of probation and parole, pled guilty within six (6) months prior to the effective date of Section 99-15-26 and would have otherwise been eligible for the relief allowed in such section, it may enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or trial in response to any inquiry made of him for any purpose.
(2) Upon petition therefor, the court shall expunge the record of any case in which an arrest was made, the person arrested was released and the case was dismissed or the charges were dropped, there was no disposition of such case, or the person was found not guilty at trial.

§ 99-15-59 Expunging of misdemeanor charges:

Any person who is arrested, issued a citation, or held for any misdemeanor and not formally charged or prosecuted with an offense within twelve (12) months of arrest, or upon dismissal of the charge, may apply to the court with jurisdiction over the matter for the charges to be expunged.

§ 99-19-25 Suspension of sentence:

The circuit courts and the county courts, in misdemeanor cases, are hereby authorized to suspend a sentence and to suspend the execution of a sentence, or any part thereof, on such terms as may be imposed by the judge of the court. Provided, the suspension of imposition or execution of a sentence hereunder may not be revoked after a period of five (5) years. . . .

§ 99-19-71 Expunging of misdemeanor conviction:

(1) Any person who has been convicted of a misdemeanor that is not a traffic violation, and who is a first offender, may petition the justice, county, circuit or municipal court in which the conviction was had for an order to expunge any such conviction from all public records.
(2)(a) Except as otherwise provided in this subsection, a person who has been convicted of a felony and who has paid all criminal fines and costs of court imposed in the sentence of conviction may petition the court in which the conviction was had for an order to expunge one (1) conviction from all public records five (5) years after the successful completion of all terms and conditions of the sentence for the conviction upon a hearing as determined in the discretion of the court; however, a person is not eligible to expunge a felony classified as: (i) A crime of violence as provided in Section 97-3-2; (ii) Arson, first degree as provided in Sections 97-17-1 and 97-17-3; (iii) Trafficking in controlled substances as provided in Section 41-29-139; (iv) A third, fourth or subsequent offense DUI as provided in Section 63-11-30(2)(c) and (2)(d); (v) Felon in possession of a firearm as provided in Section 97-37-5; (vi) Failure to register as a sex offender as provided in Section 45-33-33; (vii) Voyeurism as provided in Section 97-29-61; (viii) Witness intimidation as provided in Section 97-9-113; (ix) Abuse, neglect or exploitation of a vulnerable person as provided in Section 43-47-19; or (x) Embezzlement as provided in Sections 97-11-25 and 97-23-19. A person is eligible for only one (1) felony expunction under this paragraph. For the purposes of this section, the terms “one (1) conviction” and “one (1) felony expunction” mean and include all convictions that arose from a common nucleus of operative facts as determined in the discretion of the court.
(b) The petitioner shall give ten (10) days' written notice to the district attorney before any hearing on the petition. In all cases, the court wherein the petition is

filed may grant the petition if the court determines, on the record or in writing, that the applicant is rehabilitated from the offense which is the subject of the petition. In those cases where the court denies the petition, the findings of the court in this respect shall be identified specifically and not generally.
(3) Upon entering an order of expunction under this section, a nonpublic record thereof shall be retained by the Mississippi Criminal Information Center solely for the purpose of determining whether, in subsequent proceedings, the person is a first offender. . . .

§ 99-13-11 Mental examinations of accused:

In any criminal action in which the mental competency of a person charged with a felony is in question, the circuit or county court or judge in vacation on motion duly made by the defendant or the district attorney, or on the motion of the court or judge, may order the person to submit to a mental examination by a competent psychiatrist or psychologist selected by the court to determine his ability to make a defense; any cost or expense in connection with such mental examination shall be paid by the county in which the criminal action is pending.

Court Administration

Uniform Civil Rule of Circuit and County Court 1.02 states:

The court shall be opened formally and conducted with dignity and decorum at all times. The judge shall wear a judicial robe at all times when presiding in open court. The wearing of a robe is discretionary where court facilities make it infeasible. Each officer of the court shall be responsible for the promotion of respect for the court.

§ 9-1-29 Court to control clerk's office:

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.

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

Each circuit judge 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 . . . 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, as is now provided by law for official court reporters, and the judge 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. . . .

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

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. . . .

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

If the circuit judge 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 shall not appear and open court, it shall stand adjourned without day; but, by virtue of a written order by the judge, 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.

§ 9-1-33 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. . . .

Office Administration

§ 9-1-36 Office allowance for circuit judges, chancellors and certain staff; procedure to employ certain staff members; title to tangible property; reports; adoption or rules and regulations:

(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. . . .

***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.**

Circuit Court Districts

Mississippi Constitution Article 6, § 152 Circuit and Chancery Court Districts, provides in part:

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

§ 9-7-3 Circuit court districts and terms of court; number of judges; powers and duties of judges:

> (1) The state is divided into an appropriate number of circuit court districts severally numbered and composed of the counties as set forth in the sections which follow. . . .
>
> ***See* Miss. Code Ann. §§ 9-7-5 to -57** (listing the circuit court districts).

§ 9-7-1 Judges in General:

> A circuit judge . . . may hold court in any other district with the consent of the judge thereof, when in their opinion the public interest may require. . . .

Circuit Court Terms of Court

Official Terms of Court

Mississippi Constitution Article 6, § 158 Holding of Circuit Court, states:

> A circuit court shall be held in each county at least twice in each year, and the judges of said courts may interchange circuits with each other in such a manner as may be provided by law.

§ 9-7-87 Jurisdiction of special terms:

> At a special term the circuit court may impanel grand and petit juries, and shall have jurisdiction to hear and determine all civil and criminal business, in the same manner as at a regular term. . . . The judge may direct whether jurors shall be summoned and how they shall be drawn.

§ 11-1-16 Proceedings in vacation; jurisdiction and authority of judge:

(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.

> It is thus clear that there has been a vast expansion by statutory enactment of the times within which circuit judges are lawfully empowered to conduct court affairs. ***Griffin v. State*, 565 So. 2d 545, 548 (Miss. 1990).**
>
> With respect to the term of court issue, we find Miss. Code Ann. § 11-1-16 clearly gives a circuit court authority to consider a pending motion after a term has ended. ***Presley v. State*, 792 So. 2d 950, 953 (Miss. 2001).**

§ 99-15-25 Entry of guilty plea in vacation:

(1) Any person who is charged in any circuit or county court with the commission of a criminal offense by a proper affidavit, indictment or information in cases of misdemeanors or by indictment by the grand jury in cases of felonies, and who is represented by counsel, may, by his own election, appear before the judge of the court at such time as the said judge may fix in vacation of the court and be arraigned and enter a plea of guilty to the offense with which he is charged. Upon the entering of such plea of guilty, the judge shall have the power and authority to impose any lawful and proper sentence upon the defendant in vacation just as though the plea was entered and the sentence imposed during a regular term of the court.

(2) All judgments and orders imposing sentences in vacation upon such pleas of guilty shall be entered upon the minutes of the proper court in vacation just as though same were had and entered during term time.

§ 9-7-3 Circuit court districts and terms of court; number of judges; powers and duties of judges:

(1) A court to be styled **"The Circuit 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 circuit 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 the terms shall continue in circuit court districts consisting of more than one (1) county shall be set by order of the circuit court judge 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 circuit 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 the terms of court shall commence and the number of days for which the terms shall continue in each of the counties within a circuit court district shall be posted in the office of the circuit 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 any circuit court district shall remain unchanged for the next calendar year. A certified copy of any order entered under the provisions of this subsection shall, immediately upon the entry thereof, be delivered to the clerk of the board of supervisors in each of the counties within the circuit court district. . . .

Circuit Court Judges

Qualifications

Mississippi Constitution Article 6, § 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.

Requirements for Office

§ 9-7-1 Judges in general:

> A circuit judge shall be a resident of the district in which he or she serves but shall not be required to be a resident of a subdistrict if the district is divided into subdistricts.

§ 9-1-23 District domicile required:

> [T]he circuit judges and chancellors shall reside within their respective districts and the county judges shall reside in their respective counties.

§ 9-1-25 Law practice prohibited:

> It shall not be lawful for any judge of the circuit court to exercise the profession or employment of an attorney or counselor at law, or to be engaged in the practice of law; and any person offending against this prohibition shall be guilty of a high misdemeanor and be removed from office; but this shall not prohibit a circuit judge from practicing in any of the courts for a period of six (6) months from the time such judges assume office so far as to enable them to bring to a conclusion cases actually pending when they were appointed or elected in which such judge was then employed. . . .

How Elected

Mississippi Constitution Article 6, § 153 Election and Terms, provides:

> The judges of the circuit courts shall be elected by the people in a manner and at a time to be provided by the legislature and the judges shall hold their office for a term of four years.

§ 9-7-1 Judges; election; holding of terms of court; term of office; residence:

> A circuit judge shall be elected for and from each circuit court district and the listing of individual precincts shall be those precincts as they existed on October 1, 1990. He may hold court in any other district with the consent of the judge thereof, when in their opinion the public interest may require. The terms of all circuit judges hereafter elected shall begin on the first day of January 1931 and their terms of office shall continue for four (4) years. A circuit judge shall be a resident of the district in which he or she serves but shall not be required to be a resident of a subdistrict if the district is divided into subdistricts.

Number of Circuit Court Judges

§ 9-7-3 Circuit court districts and terms of court; number of judges; powers and duties of judges:

> (3) The number of judges in each circuit 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 judge 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.

Judicial Oath

Mississippi Constitution Article 6, § 155 Judicial Oath of Office, provides:

> 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.

§ 25-1-11 Filing of oath of office:

> The oath of office of all state officers, and of all officers elected or appointed for any district composed of more than one county, shall be filed in the office of the secretary of state; but the oath of office of the circuit judges, chancellors, and district attorneys may be filed in the office of the clerk of the court where such officer shall first attend to discharge the duties of his office. . . .

Senior Circuit Court Judge

§ 9-7-3 Circuit court districts and terms of court; number of judges; powers and duties of judges:

> (5) In a district having more than one (1) office of circuit judge, there shall be no distinction whatsoever in the powers, duties and emoluments of those offices except that the judge who has been for the longest time continuously a judge of that court or, should no judge have served longer in office than the others, the judge who has been for the longest time a member of The Mississippi Bar, shall be the senior judge. The senior judge shall have the right to assign causes and dockets and to set terms in districts consisting of more than one (1) county. A circuit court judge shall have the right to assign criminal matters to county court as provided in Section 9-9-21.

Removal from Office

Mississippi Constitution Article 6, § 177A Commission on Judicial Performance, states in part:

> 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 for:
>
> > (a) actual conviction of a felony in a court other than a court of the State of Mississippi;
> > (b) willful misconduct in office;
> > (c) willful and persistent failure to perform his duties;
> > (d) habitual intemperance in the use of alcohol or other drugs; or
> > (e) conduct prejudicial to the administration of justice which brings the judicial office into disrepute; and may retire involuntarily any justice or judge for physical or mental disability seriously interfering with the performance of his duties, which disability is or is likely to become of a permanent character.

Mississippi Constitution Article 6, § 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, 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.

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. . . .

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

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

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

Protection from Domestic Abuse Act
§ 21-23-7

DOMESTIC ABUSE ACT

Actions filed pursuant to and as provided in
Title 93, Chapter 21, Mississippi Code of 1972,
the Protection from Domestic Abuse Act
§ 21-23-7

CHAPTER 2

CIRCUIT COURT CLERKS & THEIR DUTIES

CHARTS

APPENDIX 1

APPENDIX 2

CHAPTER 2

CIRCUIT COURT CLERKS & THEIR DUTIES

Establishment of the Circuit Court Clerk

Mississippi Constitution Article 6, § 168 Clerks of court:

> [T]he clerk of the circuit court and 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 circuit and chancery courts, subject to the approval of the court.
>
> ***See* § 23-15-193 Officers chosen at general elections & § 25-1-103 Holding of multiple offices.**

Oath, Bond & Training

Oath

§ 9-7-121 Clerks in general:

> The clerk of the circuit 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 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 clerk. However, such bond shall not exceed the amount of One Hundred Thousand Dollars ($100,000.00). And he may be required to give additional bond from time to time, for the faithful application of all moneys coming into his hands by law or order of the court; but such additional bonds shall be cumulative security, and the original bond shall likewise cover all moneys coming into the hands of the clerk by law or order of the court.

§ 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 official bonds of all other state officers shall continue and remain as to amounts thereof as now fixed elsewhere by law, but said bonds shall be subject to the provisions stated herein for sureties, approval, filing, and premium payment unless otherwise specifically provided. 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 . . . circuit clerk of each county shall be approved by the board of supervisors of the 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

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

(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 six (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 five (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 section commencing January l, 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 thirty-two (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 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 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 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.

(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.

Compensation & Circuit Clerk Clearing Accounts

§ 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).**

We [have] stated that any compensation received by a circuit clerk for services that he is not statutorily required to perform would be exempt from the salary limitations set forth in section 9-1-43. A circuit clerk is not statutorily required to perform the services of searching for civil court records or marriage license records; therefore, amounts charged by him therefor would not be subject to the cap. **Re: Circuit Clerk Fees; Salary Cap, Opinion No. 97-0656 (Miss. A.G. Oct. 24, 1997).**

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).**

Based on the [applicable] statutes, any 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:

> (1) 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. *See* § 25-61-7 of the Mississippi Code.
>
> (2) Services rendered to the Board of Supervisors in implementing redistricting plans would be exempt.
>
> (3) Application fees collected by clerks who are appointed Passport agents would be exempt. Any activities performed by someone appointed as a Passport agent would be outside the scope of the duties of the circuit clerk and therefore, any compensation received for those activities would be exempt from the salary cap.
>
> (4) Fees for programming and setting up voting machines and equipment for elections would be exempt. Under section 23-15-415, the authorities in charge of elections may employ someone to be custodian of voting machines.

This would be outside the scope of the duties of the circuit clerk and/or registrar. Therefore, any compensation received as custodian would be exempt from the salary cap. **Re: Circuit Clerk Fees, Opinion No. 96-0003 (Miss. A.G. Feb. 7, 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 section 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." **Re: 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 four 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. **Re: 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.

> The State Auditor has authority to promulgate uniform accounting methods for the accounting of all sources of income by the offices of the chancery and circuit clerk. This would include adopting methods for the accounting of expenses with regard to both cap and non-cap income. **Re: Accounting Methods for Chancery and Circuit Clerk Income, Opinion No. 2013-00467 (Miss. A.G. Dec. 13, 2013).**

. . . .

(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:

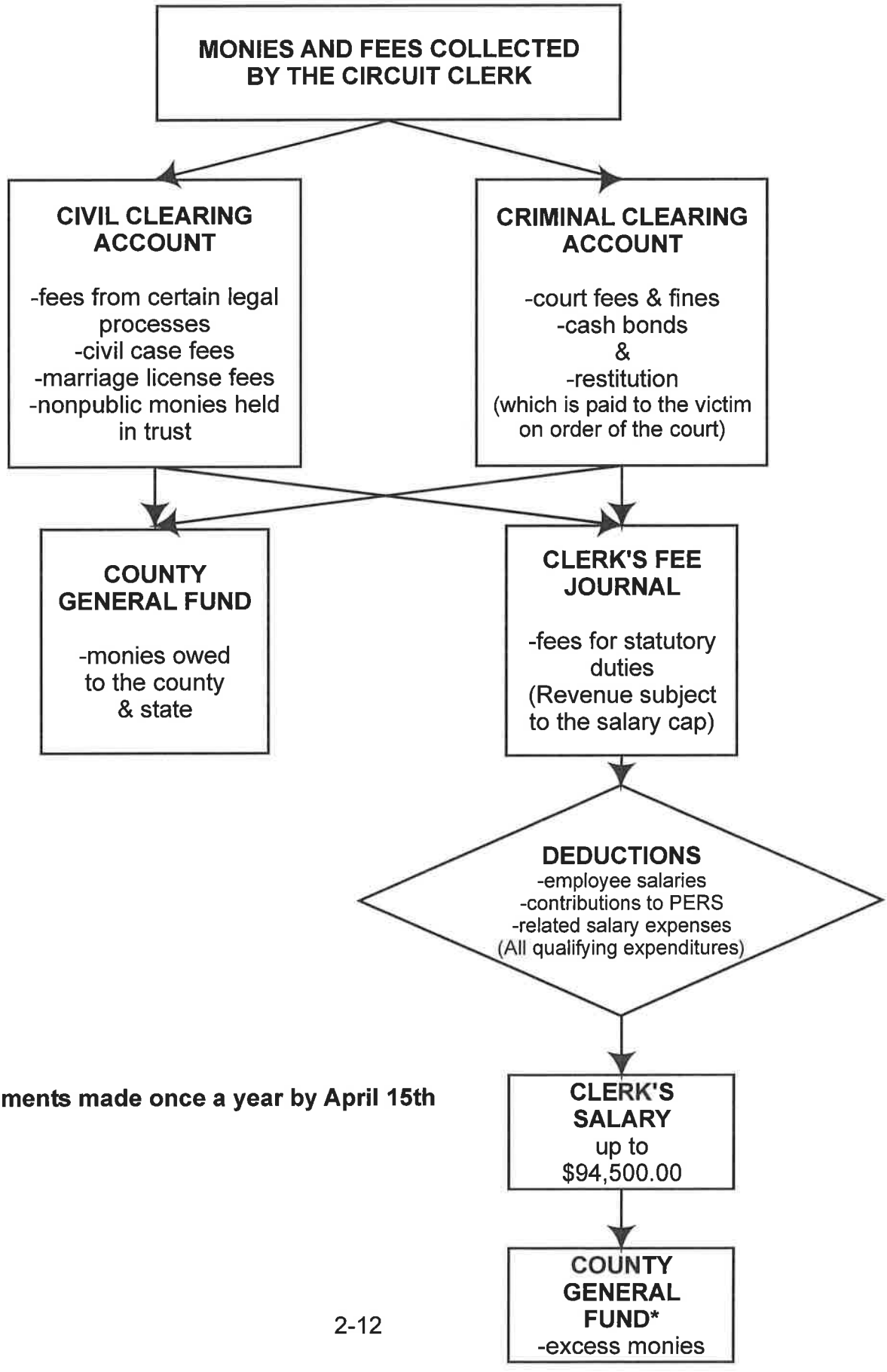
If the total amount of all fees received by the office of the chancery clerk or by the office of the circuit clerk in any year are insufficient to pay the expenses of the office for that year, the clerk shall notify the board of supervisors, and if the board of supervisors makes a finding and enters 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.

Additional Compensation for Clerk Serving as County Registrar

§ 23-15-225 Compensation of registrars:

(5) The circuit clerk shall, in addition to any other compensation provided for by law, be entitled to receive as compensation from the board of supervisors the amount of Two Thousand Five Hundred Dollars ($2,500.00) per year. This payment shall be for the performance of his or her duties in regard to the conduct of elections and the performance of his or her other duties. . . .

(7) The board of supervisors shall not allow any additional compensation authorized under this section for services as county registrar to any circuit clerk who is receiving fees as compensation for his or her services equal to the limitation on compensation prescribed in Section 9-1-43.



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

Deputy Circuit Court Clerks

How Deputy Clerks Are Appointed

§ 9-7-123 Appointment of deputies; oath; bond:

(1) The clerk of the circuit 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 may give bond, 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.

***See* § 9-7-124 Temporary deputies & § 9-7-125 Deputy circuit clerks.**

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. . . .

§ 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.

[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 section 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 section 9-1-43(2) and prior Opinion 97-0757 dated December 19, 1997. While possibly not applicable, would section 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 section 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 section 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, section 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 section 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 section 9-7-126. **Re: Deputy Circuit Clerk, Opinion No. 2004-0413 (Miss. A.G. Aug. 27, 2004).**

Additional Funding for Deputy Clerk Salaries

§ 9-7-126 Compensation of deputy circuit clerks:

(1) There shall be allowed out of the county treasury from the general county funds, or any other available funds payable monthly by the board of supervisors of the county, not less than the following amounts for the purposes of defraying the salaries of deputy circuit clerks:

Class 1 and 2 counties not less than $450.00 per month;
Class 3 and 4 counties not less than $350.00 per month;
Class 5, 6, 7 and 8 counties not less than $250.00 per month.

The above and foregoing allowances shall be for the purposes of defraying the salaries of deputy circuit clerks provided such allowance, and upon written request of the circuit clerk, shall be paid directly to the deputy circuit clerk designated by him, in the absence of which request, the allowance shall be paid monthly to the circuit clerk. Deputy circuit clerks employed under authority of this section shall be deemed employees of the county. The clerk shall select and supervise their public duties. . . .

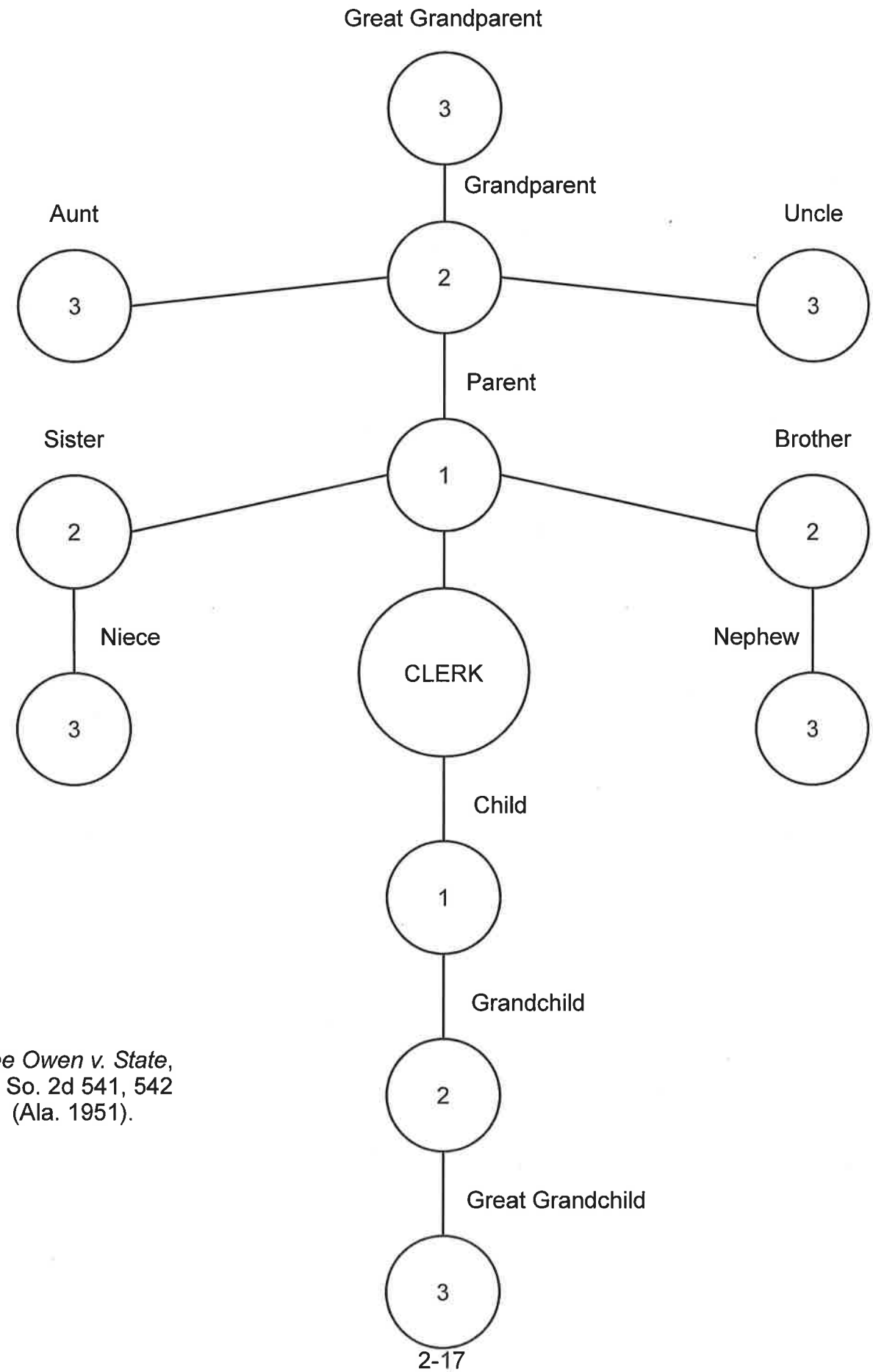
Section 9-7-126 mandates that "upon written request" the board shall make available a certain sum of money each month for the purpose of defraying the cost of a deputy. The section provides options as to whom the money will be given. **Re: Deputy Clerks/9-7-126, Opinion No. 91-0731 (Miss. A.G. Aug. 14, 1991).**

§ 25-7-15 Deputy circuit court clerk:

(1) In counties having two (2) judicial districts and having a regularly appointed deputy circuit court clerk who shall serve in the judicial district of the county other than the judicial district of the county in which the circuit court clerk resides, the circuit court clerk shall be allowed One Thousand Dollars ($1,000.00) per month. This amount shall be allowed and paid monthly to the circuit court clerk by the board of supervisors of each county affected by this section out of the general fund of the county and shall be in addition to all other allowances now provided by law. . . .

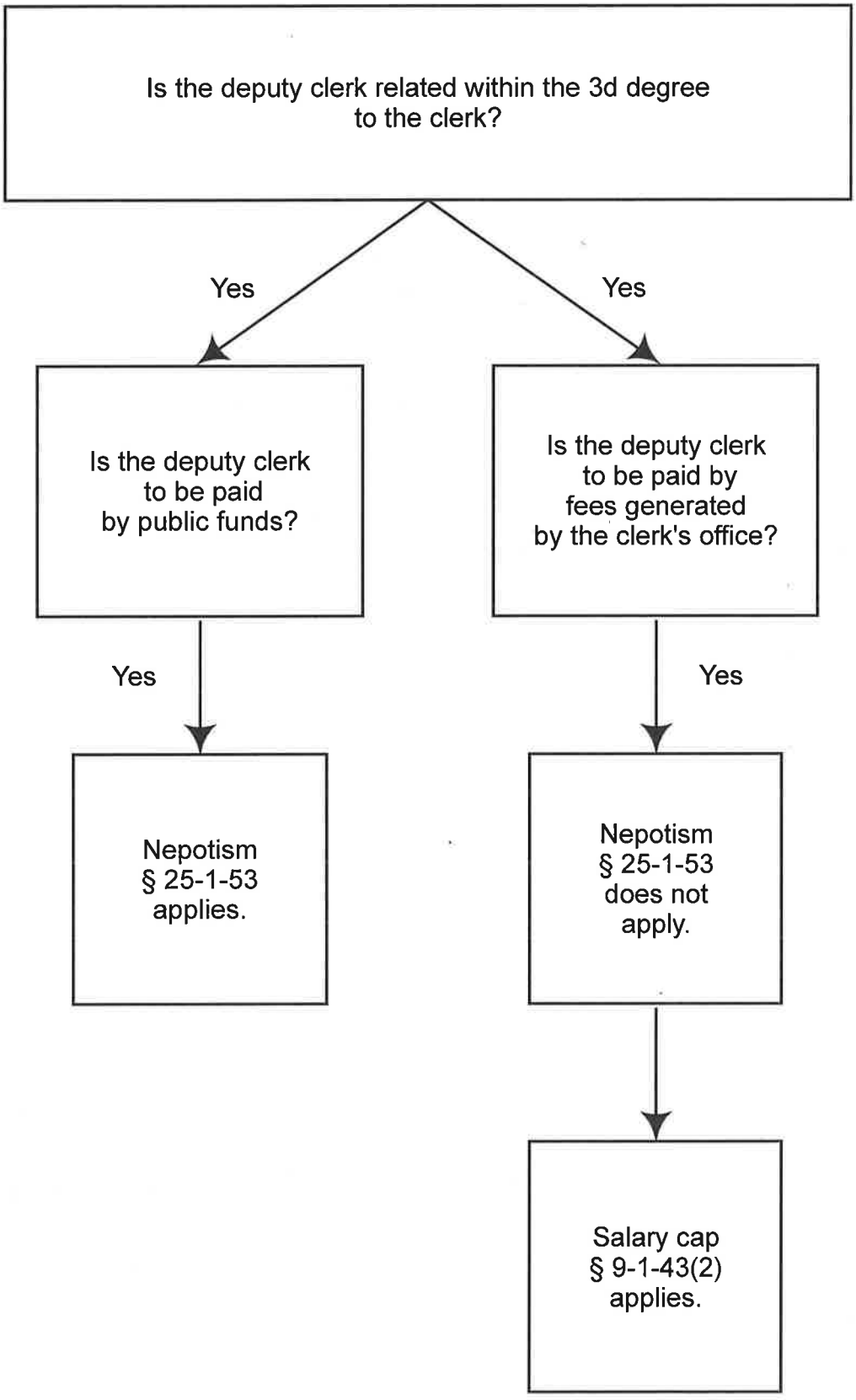
(3) The circuit clerks of every county having an assessed valuation in excess of Sixty-five Million Dollars ($65,000,000.00) at the last federal census and having located therein two (2) municipalities with population in excess of thirty thousand (30,000) respectively at the last federal census and bordering on the Gulf of Mexico, of every county bordering on the Gulf of Mexico and the State of Alabama, and of counties having a population in excess of one hundred fifty thousand (150,000) according to the federal census of 1960, and any county with a population in excess of sixty-five thousand (65,000) at the last federal census of 1970 and having an assessed valuation in excess of One Hundred Twenty-five Million Dollars ($125,000,000.00) according to the 1975 assessment, shall receive a sum of not less than Twelve Thousand Dollars ($12,000.00) annually for employment of deputies whose duties are devoted substantially to registration of voters. The sum shall be payable monthly out of any available funds in the county treasury.

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.

Circuit Clerk's Duties

Certain duties of the clerk are authorized by statute. There are also duties prescribed by the Mississippi Rules of Civil Procedure, Mississippi Rule of Criminal Procedure, Mississippi Rules of Appellate Procedure, and the Uniform Civil Rules of Circuit and County Court Practice.

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.

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

(1) Semiannually, the circuit 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.

§ 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.

§ 9-7-127 Making of final record:

Within three (3) months after the final determination of any suit, or if an appeal shall have been taken, then within three (3) months after receiving a certificate of the affirmance of the judgment, the clerk shall enter in a well-bound book, to be kept for the purpose, a full and complete record of all the proceedings in the suit, if the title to the real estate be involved or affected, and if not, only on the order of the court. On failure to make a final record required by law or the order of the court, the clerk may be fined, as for a contempt, Twenty Dollars ($20.00) for each failure; and he shall also be liable in damages to any party injured. A final record shall not be made of any suit without a judgment on the merits. Such record may be kept on computer as provided in Section 9-7-171.

§ 9-7-128 Destruction of specified items:

(1) Where there is no requirement for a permanent record to be made, the clerk, upon order of the court, may dispose of and destroy all case files of the circuit or county court which have been in existence for ten (10) years or which have been reduced to judgment and that judgment satisfied and cancelled. The clerk may also dispose of and destroy any loose records not required by law to be kept as permanent records after a period of ten (10) years. No records, however, may be destroyed without the approval of the Director of the Department of Archives and History.

(2) The files, records and other documents described herein may, upon order of the court in accordance with the provisions of this section, be electronically stored for convenience and efficiency in storage. The electronic storage of documents, for purposes of this section, shall have the same meaning as set forth in § 9-1-51. In those counties electing to store files, records and documents by means of electronic storage, the following described case files shall be electronically stored after the time periods described below have elapsed:

(a) Cases in county criminal or civil court which have been dismissed or in which a judgment has been entered at least three (3) years prior to the date upon which they are electronically stored; and
(b) Cases in circuit, criminal or civil court which have been dismissed or in which a judgment has been entered at least five (5) years prior to the date upon which they are electronically stored.

(3) Nothing in this section shall serve as authority to destroy any docket book, minute book, issue docket, subpoena docket, witness docket book, execution docket book, voter registration book, marriage record book, trial order, abstract of judgment, judgment roll, criminal file where an indictment was returned and the defendant convicted if the file is not at least twenty (20) years old, habeas corpus docket, preliminary hearing docket or Court of Appeals or Supreme Court appeals docket.

§ 13-1-155 Disposal or destruction of exhibits:

After not less than ninety (90) days after the final determination or disposition of any civil action, or if an appeal shall have been taken, then after not less than ninety (90) days after receiving a certificate of the final disposition of the action, the clerk of the court in which the action was filed or tried shall destroy, return or otherwise dispose of all exhibits which were filed in the action. Provided, however, that no exhibit shall be destroyed, returned or otherwise disposed of until after the expiration of the time within which a bill of review may be filed in applicable cases as provided in Section 11-5-121, Mississippi Code of 1972. The clerk shall notify the attorneys for all parties to the action and the owner or person having custody of the property prior to the court action before the expiration of the ninety (90) day period that the exhibits may be claimed.

§ 9-7-129 County treasury allowances:

Within ten days after each term of circuit court, it shall be the duty of the clerk to deliver to the clerk of the board of supervisors a certified list of allowances made by the court at such term, payable out of the county treasury, specifying

the amount,
to whom allowed, and
on what account.

For any failure to deliver such list, the clerk of the circuit court may be punished by the court as for a contempt.

§ 9-7-131 Jury fee book:

The clerk of the circuit court shall keep a book to be called the "jury book," in which he shall enter the time of issuing all certificates to jurors, the amount thereof, and to whom issued. Such book may be kept by means of electronic filing or storage or both as provided in Sections 9-1-51 through 9-1-57, or otherwise, as the clerk may elect. Within ten (10) days after each term of the court, he shall file in the office of the clerk of the board of supervisors of his county a certified copy of such entries, for the information of the board. For any failure in this respect, the clerk of the circuit court may be fined and imprisoned by the court as for a contempt.

§ 9-7-133 Imposition and collection of jury tax:

A jury tax of three dollars is imposed on each original suit in the circuit court in which a plea is filed, and on every issue therein tried separately by a jury, and a tax of two dollars on each case transferred or appealed thereto, to constitute a fund for the payment of jurors, and to be collected by the clerk or sheriff as costs. The clerk shall be liable on his official bond for any failure to charge, receive, or issue execution for the jury tax; and the sheriff shall likewise be liable for a failure to collect or to pay the same to the county treasurer; and they may be fined as for a contempt therefor not more than one hundred dollars.

§ 9-7-135 Reporting of affected cases:

Within ten days after the end of any term of the court, the clerk shall furnish to the clerk of the board of supervisors a list of all judgments rendered and suits disposed of at such term, or in the preceding vacation, on which a jury tax is imposed, and shall pay over all sums received by him for jury tax during the term and since the last term, and for any failure shall be liable as provided by Section 9-7-133. And if any clerk shall fail to furnish the said list he shall be fined by the court in the sum of one hundred dollars, on motion of the clerk of the board of supervisors or the district attorney.

§ 9-7-137 Registration of sureties on bonds:

The clerk of the circuit court shall 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.

In this 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. Such information may be kept on computer as provided in Section 9-7-171.

§ 9-7-139 Recording of pardons:

When a pardon may be granted by the governor to anyone convicted of a crime, two copies thereof shall be filed with the secretary of state in accordance with the provisions of Section 7-3-5, Mississippi Code of 1972. One such copy shall be retained by the secretary of state in a permanent register and the other copy shall be immediately forwarded by the secretary of state to the circuit clerk of the county in which such person was convicted. The county shall furnish and the circuit clerk shall maintain a permanent record of pardons and the circuit clerk may certify the fact of any recorded pardon for use in any court or agency, state or federal.

§ 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.

§ 11-7-217 Fine, penalty and forfeiture executions:

The clerk of the circuit court shall, immediately after the adjournment of every term, issue execution according to the nature of the case, for all fines, penalties and forfeitures assessed by the court, or which shall have accrued to the state or to the county, and remaining due and unpaid. Said clerk shall, within thirty days after such adjournment, transmit a list of said executions to the clerk of the board of supervisors of the county, noting the names of the defendants, the amounts, and the sheriff or other officer to whom the same was delivered; and, at the same time, he shall transmit to said clerk a statement of the returns made by the sheriff or other officer on execution for fines, penalties, and forfeitures returnable to the last term of the court. Any circuit court clerk who shall fail to issue such executions, or to transmit the lists thereof as required, shall forfeit and pay the sum of two hundred dollars for every such offense, to be recovered by the state or county, on motion against him and his sureties by the district attorney, before the circuit court. The clerk of the board of supervisors shall notify the district attorney of such default.

§ 25-7-59 Witness certificates; reports:

The circuit clerk shall, within thirty (30) days after the adjournment of each term of the circuit court, make a report in writing to the county auditor of all witness certificates issued by him, payable out of the county treasury, which report shall state

the name of each witness,
the case,
the date, and
the amount of each certificate.

Said report shall be certified by him under his official seal, and the county auditor shall enter the same upon the proper record in his office.

§ 41-57-48 Statistical Record of Marriage:

(1) For each marriage performed in this state, a record entitled "Statistical Record of Marriage" shall be filed with the office of vital records registration of the State Board of Health by the circuit clerk who issued the marriage license and shall be registered if it has been completed and filed in accordance with this section.

(2) The circuit clerk who issues the marriage license shall complete the statistical record (except for the section relating to the ceremony) on a form prescribed and furnished by the State Board of Health and shall sign it. The record shall be prepared on the basis of information obtained from the parties to be married, and both the bride and the groom shall sign the record certifying that the information about themselves is correct.

(3) The person who performs the marriage ceremony shall complete and sign the section relating to the ceremony and shall return the record to the circuit clerk who issued the license within five (5) days after the ceremony.

(4) The circuit clerk, on or before the tenth day of each calendar month, shall forward to the State Board of Health all completed records returned to him during the preceding month.

(5) The circuit clerk shall receive a recording fee of one dollar ($1.00) for each marriage record prepared and forwarded by him to the State Board of Health. This fee shall be collected from the applicants for the license together with, and in addition to, the fee for the license and shall be deposited in the county treasury. The recording fees shall be paid to the circuit clerk out of the county treasury once each six (6) months on order of the board of supervisors, upon certification by the office of vital records registration of the number of marriage records filed.

§ 99-19-65 Collection of fines and penalties:

The clerk of the circuit court shall, immediately after the adjournment of every term, issue execution according to the nature of the case, for all fines, penalties and forfeitures assessed by the court, or which shall have accrued to the state or to the county, and remaining due and unpaid. Said clerk shall, within thirty (30) days after such adjournment, transmit a list of said executions to the clerk of the board of supervisors of the county, noting

the names of the defendants,
the amounts, and
the sheriff or other officer to whom the same was delivered;

and, at the same time he shall transmit to said clerk a statement of the returns made by the sheriff or other officer on execution for fines, penalties, and forfeitures returnable to the last term of the court. Any circuit court clerk who shall fail to issue such executions, or to transmit the lists thereof as required, shall forfeit and pay the sum of $200.00 for every such offense, to be recovered by the state or county, on motion against him and his sureties by the district attorney, before the circuit court. The clerk of the board of supervisors shall notify the district attorney of such default.

County Court Clerk

§ 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.

The sheriff shall be the executive officer of the county court; he shall by himself, or deputy, attend all its sessions, and he shall serve all process and execute all writs issued therefrom in the manner as such process and writs would be served and executed when issued by the justice courts, or by the circuit or chancery courts according as appertains to the value of the cause or matter in hand.

The clerk and sheriff shall receive the same fees for attendance, and for other services as are allowed by law to the clerk and to the sheriffs for like duties in the circuit and chancery courts; provided however, that in all cases where the justice courts have concurrent jurisdiction with the county court, the clerk shall be allowed to receive only such fees as are allowed to justice courts, and the sheriff shall be allowed only such fees as the constable in said justice court would be entitled to under the law for similar services.

Youth Court - County Court Clerk

§ 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. . . .

Dockets and Record Books Kept by the Circuit Clerk

General Docket

§ 9-7-171 General docket; computer storage:

(1) The clerk shall keep a general docket, in which he shall enter
the names of the parties in each case,
the time of filing the declaration, indictment, record from inferior courts on appeal or certiorari, petition, plea, or demurrer, and all other papers in the cause,
the issuance and return of process, and
a note of all judgments rendered therein, by reference to the minute 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;
and he shall not suffer any paper so filed to be withdrawn but by leave of the court, and then only by retaining a copy, to be made at the cost of the party obtaining the leave. All the papers and pleadings filed in a cause shall be kept in the same file, and all the files kept in numerical order.

Entries in criminal cases shall not be made on the docket so as to disclose the names of the defendants until their arrest. And the docket shall be duly indexed, both directly and indirectly, in the alphabetical order of the names of each of the parties.

(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 circuit 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.

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. . . .

> Rule 79(a) specifies that the docket entries reflect the date on which entries are made in the general docket. Since several important time periods and deadlines are calculated from the date of the entry of judgments and orders, these entries must accurately reflect the actual date of the entries rather than another date, such as the date on which a judgment or order is signed by the judge. See, for example, Rule 58 mandating that a judgment is effective only when entered as provided in Rule 79(a), and Rule 59 which requires that motions to alter or amend judgments be filed within ten days after the entry of judgment. ***Advisory Committee Note.***

(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.

Uniform Civil Rule of Circuit and County Court Practice 1.12 states:

No record, or any part of a file of court papers, shall be taken from the clerk's custody without a written order from the judge to the clerk. The clerk shall keep a register of all files checked out by permission of the court and the same shall be redelivered to the clerk on the day provided for in the order from the judge, or, if none is provided, before the opening of the next term.

Criminal Docket

§ 9-7-175 Criminal docket:

The clerk shall make out for each term a separate docket of cases begun by indictment, presentment, information, or other proceedings of a criminal nature, in the name or on behalf of the state or any municipal corporation. Such docket may be kept on computer as provided in Section 9-7-171.

§ 9-7-171 General docket; computer storage:

Entries in criminal cases shall not be made on the docket so as to disclose the names of the defendants until their arrest.

Appearance Docket

§ 9-7-177 Appearance docket:

The clerk shall keep an appearance docket, in which he shall enter
all civil cases not triable at the first term after they are begun,
in the order in which they are commenced,
with the date of such commencement.
Such docket may be kept on computer as provided in Section 9-7-171.

Subpoena Docket

§ 9-7-179 Subpoena docket:

The clerk shall keep a subpoena docket, in which he shall enter
the style and number of each case in which a subpoena for a witness is issued,
the name of the party for whom the witness is subpoenaed,
to whom the subpoena is directed,
the date of its issuance,
when returnable, and
whether or not executed.
He shall therein keep an account of all witnesses who may be absent when the case in which they have been subpoenaed is called for trial, or who may disqualify themselves from giving testimony by being intoxicated when such case is tried; and he shall not issue any certificate to such witnesses. The docket shall be kept duly indexed. Such docket may be kept on computer as provided in Section 9-7-171.

***See* Mississippi Rule of Civil Procedure 45 Subpoena.**

Execution Docket

§ 9-7-181 Execution docket:

The clerk shall keep a docket, in which he shall enter every capias pro finem and all executions issued by him, specifying
the names of the parties,
the date,
the amount of the judgment or decree and of costs,
the name of the officer to whom it is delivered,
to what county directed,
the date when issued, and
the return-day thereof; and,

when the same is returned, shall, without delay, record the return at large on the same page of the docket.

And the execution docket shall be kept duly indexed, both directly and indirectly, in the alphabetical order of the names of each of the parties. Such docket may be kept on computer as provided in Section 9-7-171.

Trial Docket

Mississippi Rule of Civil Procedure 40(b) states:

> **(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.

Mississippi Rule of Criminal Procedure 9 states in part:

> A docket of cases set for trial shall be maintained by the clerk or the court administrator.

Minute Book

Mississippi Rules of Civil Procedure 79(b) states:

> The clerk shall keep a correct copy of every judgment or order. This record shall be known as the "Minute Book."

Secret Record of Indictments

§ 99-7-13 Secret record book:

> The clerk of the circuit court shall, within ten days after the adjournment of each term of court, record the indictments returned into court in a well-bound book to be kept for that purpose which shall be styled "Secret Record of Indictments," and which shall be properly indexed and kept secret. If the office of the clerk be furnished with an iron safe or vault, the book shall be kept therein when not in actual use. If an indictment be lost or destroyed, the accused may be tried on a certified copy of the indictment made from the said record-book.

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.

Office Administration

Mississippi Rule of Civil Procedure 77 provides 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 circuit 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 circuit, chancery and county 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 circuit, chancery or county courts be allowed to purchase furniture in excess of five hundred dollars for any one 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 circuit clerk . . . (and an additional set shall be given to each circuit clerk, . . . in counties having two (2) judicial districts).

§ 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.

§ 7-5-43 Advising of public officials and employees:

(1) In addition to all power and authority vested in the attorney general of the state of Mississippi by its constitution and statutes and all common law power and authority which may be invested in or exercised by such attorney general as such,

the attorney general of the state of Mississippi and his assistants and representatives are hereby authorized upon request made of him to, in his discretion, render such services as the attorney general may deem necessary to assist in advising and in representing, either or both, all officers or employees of any county district, county, or municipality of the state of Mississippi, or of the state of Mississippi, or of any board, agency, or commission thereof, as the case may be, or any circuit clerk or county registrar, should they or any of them be investigated or called as a witness by the federal civil rights commission, be sued in an action at law or in equity, be prosecuted or cited to show cause or charged with contempt, civil or criminal, or proceeded against in any manner, either or all, in any state or federal court by the United States government, by any agency, officer, department, or representative of the United States government, or by any other person, either or all, as a result of the discharge by any of said Mississippi county district, county, municipal, or state of Mississippi officers or employees, boards, agencies, or commissions and the members thereof, or by the said circuit clerk or county registrar of their official duties under the constitution and other laws of the state of Mississippi, or growing out of such official action or nonaction, as the case may be.

The foregoing authority vested in the attorney general as above set out shall not apply to or with respect to any suit, action, hearing, or controversy which may arise between two (2) or more of the aforesaid officers or employees, circuit clerks or county registrars, such commissions, boards, or agencies or members thereof, or said county districts, counties, or municipalities of the state of Mississippi, or between them or by any of them and an agency or officer of the state of Mississippi which, under existing laws of the state of Mississippi, the attorney general is otherwise authorized or required to represent.

(2) Any request made of the attorney general for the assistance above referred to shall be made in writing and, if by an individual, shall be signed by him or her. If by a board or commission or agency as such, there shall be entered upon its minutes an order making such request, and the request from and on behalf of said board, commission, or agency to the attorney general for said assistance shall be accompanied by a certified copy of said order.

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 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 on 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.

(2) Electronic Court System Service: How Made. Where a court has, by local rule, adopted the Mississippi Electronic Court System, service which is required or permitted under these rules shall be made in conformity with the Mississippi

Electronic Court System procedures. . . .

(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.

Uniform Civil Rule of Circuit and County Court 1.16 states:

> A court may, by local rule, allow pleadings and other papers to be served, filed, signed, or verified by electronic means in conformity with the Mississippi Electronic Court System procedures. Pleadings and other papers filed electronically in compliance with the procedures are written papers for purposes of these rules. Please refer to the Administrative Procedures for Mississippi Electronic Court System on the Supreme Court's website at www.mssc.state.ms.us.

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, 6-7 (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 state tax commission 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.

§ 97-11-15 Failing or refusing to send certificate of appeal:

Any clerk of a circuit court who shall wilfully or negligently fail or refuse to send up the certificate of appeal, as provided in Section 99-35-121, Mississippi Code of 1972, within the time required, shall be guilty of a misdemeanor and upon conviction therefor shall be punished by a fine of not more than two hundred dollars ($200.00), or by imprisonment in the county jail for not more than three months, or both.

§ 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.

§ 99-19-65 Collection of fines and penalties:

The clerk of the circuit court shall, immediately after the adjournment of every term, issue execution according to the nature of the case, for all fines, penalties and forfeitures assessed by the court, or which shall have accrued to the state or to the county, and remaining due and unpaid. Said clerk shall, within thirty days after such adjournment, transmit a list of said executions to the clerk of the board of supervisors of the county, noting the names of the defendants, the amounts, and the sheriff or other officer to whom the same was delivered; and, at the same time he shall transmit to said clerk a statement of the returns made by the sheriff or other officer on execution for fines, penalties, and forfeitures returnable to the last term of the court. Any circuit court clerk who shall fail to issue such executions,

or to transmit the lists thereof as required, shall forfeit and pay the sum of two hundred dollars for every such offense, to be recovered by the state or county, on motion against him and his sureties by the district attorney, before the circuit court. The clerk of the board of supervisors shall notify the district attorney of such default.

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 (⅛ 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 (⅝ 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

APPENDIX 1 - 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

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

CIRCUIT CLERK FEES & ASSESSMENTS

CHAPTER 3

CIRCUIT COURT ASSESSMENTS & FEES

Circuit Clerk Fees

§ 25-7-1 Restrictions on demands for fees:

It shall be lawful for the Clerk of the Supreme Court, the clerks of the circuit and chancery courts, the clerks of the justice court, masters and commissioners in chancery, sheriffs, constables, justice court judges, and other officers and persons named in this chapter 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.

***See* § 11-53-79 Table of fees to be posted conspicuously.**

§ 25-7-13 Circuit court clerks; fees:

(1) The clerks of the circuit court shall charge the following fees:

(a) Docketing, filing, marking and registering each complaint, petition and indictment $85.00

The fee set forth in this paragraph shall be the total fee for all services performed by the clerk up to and including entry of judgment with respect to each complaint, petition or indictment, including all answers, claims, orders, continuances and other papers filed therein, issuing each writ, summons, subpoena or other such instruments, swearing witnesses, taking and recording bonds and pleas, and recording judgments, orders, fiats and certificates; the fee shall be payable upon filing and shall accrue to the clerk at the time of collection. The clerk or his successor in office shall perform all duties set forth above without additional compensation or fee.

The general statute authorizing fees provides that the clerk of the circuit court should charge for the following services:

> (a) Docketing, filing, marking and registering each complaint, petition, indictment and all answers, claims, orders, continuances and other papers filed therein, issuing each writ, summons, subpoena or other such instruments and swearing witnesses, taking and recording bonds and pleas, recording judgments, orders, fiats and certificates. . . .
>
> We hold that this section does not authorize the circuit clerk to charge the customary filing fee in cases where, as here, the circuit court is acting as an appellate court. Accordingly, we order the clerk to refund the charge of $44.50. ***Staples v. Blue Cross & Blue Shield of Mississippi, Inc.*, 585 So. 2d 747, 749–50 (Miss. 1991) (citing Miss. Code Ann. § 25–7–13) (discussing prior version of statute).**

(b)	Docketing and filing each motion to renew judgment, notice of renewal of judgment, suggestion for a writ of garnishment, suggestion for a writ of execution and judgment debtor actions and issuing all process, filing and recording orders or other papers and swearing witnesses	$35.00
(c)	For every civil case filed, an additional fee to be deposited to the credit of the Comprehensive Electronic Court Systems Fund established in Section 9-21-14	$10.00
(d)	For every civil case filed, an additional fee to be deposited to the credit of the Judicial System Operation Fund established in Section 9-21-45	$ 40.00

(2) Except as provided in subsection (1) of this section, the clerks of the circuit court shall charge the following fees:

(a)	Filing and marking each order or other paper and recording and indexing same	$2.00

(b)	Issuing each writ, summons, subpoena, citation, capias and other such instruments	$1.00
(c)	Administering an oath and taking bond	$2.00
(d)	Certifying copies of filed documents, for each complete document	$1.00
(e)	Recording orders, fiats, licenses, certificates, oaths and bonds:	
	First page	$2.00
	Each additional page	$1.00
(f)	Furnishing copies of any papers of record or on file and entering marginal notations on documents of record:	
	If performed by the clerk or his employee, per page	$1.00
	If performed by any other person, per page	$.25
(g)	Judgment roll entry	$5.00
(h)	Taxing cost and certificate	$1.00
(i)	For taking and recording application for marriage license, for filing and recording consent of parents when required by law, for filing and recording medical certificate, filing and recording proof of age, recording and issuing license, recording and filing returns	$35.00
	The clerk shall deposit Fourteen Dollars ($14.00) of each fee collected for a marriage license in the Victims of Domestic Violence Fund established in Section 93-21-117, on a monthly basis.	
(j)	For certified copy of marriage license and search of record, the same fee charged by the Bureau of Vital Statistics of the State Board of Health.	
(k)	For public service not particularly provided for, the circuit court may allow the clerk,	

per annum, to be paid by the county
on presentation of the circuit court's order,
the following amount $5,000.00

However, in the counties having
two (2) judicial districts,
such above allowance shall be made
for each judicial district.

(l) For drawing jurors and issuing venire,
to be paid by the county $5.00

(m) For each day's attendance upon the
circuit court term, for himself and
necessary deputies allowed by the court,
each to be paid by the county $75.00

In response to your specific questions, we are of the opinion that, in accordance with Section 25-7-13 (2)(m), the clerk is entitled to be paid once for himself or a deputy for each day of the term then in session and the court may authorize additional deputies for the term then in session. **Re: Circuit Clerk's Fees, Opinion No. 2002-0045 (Miss. A. G. Mar. 1, 2002).**

(n) Summons, each juror to be paid by the county
upon the allowance of the court $1.00

(o) For issuing each grand jury subpoena,
to be paid by the county on allowance by the court,
not to exceed Twenty-five Dollars ($25.00)
in any one (1) term of court $1.00

(p) For each civil filing, to be deposited
into the Civil Legal Assistance Fund $5.00

(3) On order of the court, clerks and deputies may be allowed five (5) extra days for attendance upon the court to get up records.

(4) The clerk's fees in state cases where the state fails in the prosecution, or in cases of felony where the defendant is convicted and the cost cannot be made out of his estate, in an amount not to exceed Four Hundred Dollars $400.00 shall be paid out of the county treasury on approval of the circuit court, and the allowance thereof by the board of supervisors of the county.

In counties having two (2) judicial districts, such allowance shall be made in each judicial district; however, the maximum thereof shall not exceed Eight Hundred Dollars $800.00

Clerks in the circuit court, in cases where appeals are taken in criminal cases and no appeal bond is filed, shall be allowed by the board of supervisors of the county after approval of their accounts by the circuit court, in addition to the above fees, for making such transcript the rate of Two Dollars $2.00/per page

(5) The clerk of the circuit court may retain as his commission on all money coming into his hands, by law or order of the court, a sum to be fixed by the court not exceeding one-half of one percent on all such sums. ½ of 1%

The briefs of the parties seem to assume that the commission is automatically one-half of one percent (½ of 1%) of the sums handled by the clerk. This ignores the plain language of the statute. The commission may not exceed one-half of one percent (½ of 1%). The amount of the commission, quite plainly, is to be determined by the court. The statute grants the court considerable discretion, ranging all the way from a nominal commission up to an amount "not exceeding one-half of one percent." In fixing the clerk's commission, the court should exercise its discretion in light of the responsibility assumed by the clerk and as well the services rendered by the clerk. Suffice it to say that there is nothing in the statute that mandates that the commission is always one-half of one percent. We are confident that circuit courts will act with reason and discretion in discharging their responsibilities under Section 25-7-13(5). ***Mississippi State Highway Comm'n v. Herban*, 522 So. 2d 210, 213-14 (Miss. 1988).**

(6) For making final records required by law, including, but not limited to, circuit and county court minutes, and furnishing transcripts of records, the circuit clerk shall charge Two Dollars $2.00/per page

The same fees shall be allowed to all officers for making and certifying copies of records or papers which they are authorized to copy and certify.

(7) The circuit clerk shall prepare an itemized statement of fees for services performed, cost incurred, or for furnishing copies of any papers of record or on file, and shall submit the statement to the parties or, if represented, to their attorneys within sixty (60) days. A bill for same shall accompany the statement.

Expungement Filing Fee

§ 99-19-72 Petition for expungement; filing fees:

A filing fee of One Hundred Fifty Dollars ($150.00) is hereby levied on each petition to expunge an offense under Section 99-19-71 to be collected by the circuit clerk and distributed as follows:

(a) One Hundred Dollars ($100.00) to be deposited into the Judicial System Operation Fund;
(b) Forty Dollars ($40.00) to be deposited into the District Attorneys Operation Fund; and
(c) Ten Dollars ($10.00) to be retained by the circuit clerk collecting the fee for administration purposes.

Grand Jury Fee

§ 25-7-15 Allowances for deputy circuit court clerks:

(2) The boards of supervisors of every county shall pay to the circuit clerk the sum of Seven Hundred Dollars ($700.00) for each session of the grand jury for preparing the grand jury docket, subpoenas, calendar and related services.

Commitment to Penitentiary Fee

§ 99-19-45 Commitment to penitentiary; duties of clerks of circuit court; fees:

The clerks of the circuit court of the counties in the State of Mississippi shall furnish the Mississippi Department of Corrections, within five (5) days after adjournment of court, a commitment paper showing the name, sex, race and social security number of the person convicted and the crime committed, along with certified copies of the sentencing order and indictment, as well as any subsequent order entered by the court in such cause.

The clerks shall also furnish the Department of Corrections, within five (5) days after adjournment of such court, a certified copy of the probation order of an individual who is placed on probation under the supervision of the Division of Community Corrections of the department. Such order shall provide the name of the person placed on probation, the crime, term of sentence, date of sentence, period of probation, sex, race and a brief history of the crime committed.

As compensation for such services they shall receive the sum of Fifty Cents (50¢) for each transcript, and the sum shall be paid out of the treasury of the county, with the approval of the board of supervisors, on the filing of a bill for such service.

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.

§ 25-7-15 Deputy circuit court clerk:

(1) In counties having two (2) judicial districts and having a regularly appointed deputy circuit court clerk who shall serve in the judicial district of the county other than the judicial district of the county in which the circuit court clerk resides, the circuit court clerk shall be allowed One Thousand Dollars ($1,000.00) per month. This amount shall be allowed and paid monthly to the circuit court clerk by the board of supervisors of each county affected by this section out of the general fund of the county and shall be in addition to all other allowances now provided by law.
(2) The boards of supervisors of every county shall pay to the circuit clerk the sum of Seven Hundred Dollars ($700.00) for each session of the grand jury for preparing the grand jury docket, subpoenas, calendar and related services.
(3) The circuit clerks of every county having an assessed valuation in excess of Sixty-five Million Dollars ($65,000,000.00) at the last federal census and having located therein two (2) municipalities with population in excess of thirty thousand (30,000) respectively at the last federal census and bordering on the Gulf of Mexico, of every county bordering on the Gulf of Mexico and the State of Alabama, and of counties having a population in excess of one hundred fifty thousand (150,000) according to the federal census of 1960, and any county with a

population in excess of sixty-five thousand (65,000) at the last federal census of 1970 and having an assessed valuation in excess of One Hundred Twenty-five Million Dollars ($125,000,000.00) according to the 1975 assessment, shall receive a sum of not less than Twelve Thousand Dollars ($12,000.00) annually for employment of deputies whose duties are devoted substantially to registration of voters. The sum shall be payable monthly out of any available funds in the county treasury.

§ 25-7-17 Circuit court clerks; restrictions:

The clerk of the circuit court of any county in Mississippi in which is located a municipality with a population of seventy-five hundred or more, according to the last federal census, may be allowed an amount not exceeding five hundred dollars for any one year to be paid out of the municipal treasury of said municipality on the filing of an itemized account of fees in each special case appealed from any city, where said case is disposed of by nolle prosequi, passed to files, or verdict of not guilty. Said fee bills shall be approved by the city attorney for payment and shall be presented to the municipal council or board of aldermen of said municipality for allowance, in the discretion of said council or board. This section shall not apply to counties wherein is located a municipality of less than ten thousand and more than seventy-five hundred population, in which said county there has been created and maintained a county court under chapter 9, title 9, of the Mississippi Code of 1972.

§ 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 or attempted 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:

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. . . .

§ 41-57-48 Statistical Record of Marriage:

(5) The circuit clerk shall receive a recording fee of one dollar ($1.00) for each marriage record prepared and forwarded by him to the State Board of Health. This fee shall be collected from the applicants for the license together with, and in addition to, the fee for the license and shall be deposited in the county treasury. The recording fees shall be paid to the circuit clerk out of the county treasury once each six (6) months on order of the board of supervisors, upon certification by the office of vital records registration of the number of marriage records filed.

§ 45-1-29 Crime laboratory; utilization of combined resources; Division of Support Services established:

(3) The Commissioner of Public Safety shall establish and the Division of Support Services of the Department of Public Safety shall collect for services rendered proper fees commensurate with the services rendered by the crime laboratory. Those fees shall be deposited into a special fund in the State Treasury to the credit of the crime laboratory and expended in accordance with applicable rules and regulations of the Department of Finance and Administration. Those fees may be used for any authorized expenditure of the crime laboratory except expenditures for salaries, wages and fringe benefits.
(4) Upon every individual convicted of a felony or misdemeanor, every individual who is nonadjudicated on a felony or misdemeanor case under Section 99-15-26 or 63-11-30(14), and every individual who participates in a pretrial intervention program established under Section 99-15-101 et seq., in a case where the Forensics Laboratory provided forensic science or laboratory services in connection with the case, the court shall impose and collect a separate laboratory analysis fee of Three Hundred Dollars ($300.00), in addition to any other

assessments and costs imposed by statutory authority, unless the court finds that undue hardship would result by imposing the fee. All fees collected under this section shall be deposited into the special fund of the Forensics Laboratory created in subsection (3) of this section.

§ 93-21-117 Victims of Domestic Violence Fund:

(1) There is hereby created in the State Treasury a special fund to be known as the "Victims of Domestic Violence Fund." The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

(a) Monies appropriated by the Legislature;
(b) The interest accruing to the fund;
(c) Monies received under the provisions of Section 99-19-73;
(d) Monies received from the federal government;
(e) Donations to the Victims of Domestic Violence Fund;
(f) Assessments collected pursuant to Section 83-39-31; and
(g) Monies received from such other sources as may be provided by law.

(2) The circuit clerks of the state shall deposit in the fund on a monthly basis the additional fee charged and collected for marriage licenses under the provisions of Section 25-7-13, Mississippi Code of 1972.

(3) All other monies received by the state from every source for the support of the program for victims of domestic violence, established by Sections 93-21-101 through 93-21-113, shall be deposited in the "Victims of Domestic Violence Fund." The monies in the fund shall be used by the State Department of Health solely for funding and administering domestic violence shelters under the provisions of Sections 93-21-101 through 93-21-113, in such amounts as the Legislature may appropriate to the department for the program for victims of domestic violence established by Sections 93-21-101 through 93-21-113. Not more than ten percent (10%) of the monies in the "Victims of Domestic Violence Fund" shall be appropriated to the State Department of Health for the administration of domestic violence shelters. . . .

State Assessments in Civil Cases

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 & Fees in Criminal Cases

Standard State Assessments

§ 99-19-73 Standard State monetary assessment for certain violations, misdemeanors and felonies; suspension or reduction of assessment prohibited; collection and deposit of assessments; refunds:

(1) Traffic violations. In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or other penalty for any violation in Title 63, Mississippi Code of 1972, except offenses relating to the Mississippi Implied Consent Law (Section 63-11-1 et seq.) and offenses relating to vehicular parking or registration:

FUND	AMOUNT
State Court Education Fund	
State Prosecutor Education Fund	
Vulnerable Persons Training, Investigation & Prosecution Trust Fund	
Child Support Prosecution Trust Fund	
Driver Training Penalty Assessment Fund	
Law Enforcement Officers Training Fund	
Spinal Cord and Head Injury Trust Fund	
Emergency Medical Services Operating Fund	
Mississippi Leadership Council on Aging Fund	
Law Enforcement Officers and Fire Fighters Death Benefits Trust Fund	
Law Enforcement Officers and Fire Fighters Disability Benefits Trust Fund	
State Prosecutor Compensation Fund	
Crisis Intervention Mental Health Fund	
Intervention Court Fund	
Judicial Performance Fund	
Capital Defense Counsel Fund	
Indigent Appeals Fund	
Capital Post-Conviction Counsel Fund	
Victims of Domestic Violence Fund	
Public Defenders Education Fund	
Domestic Violence Training Fund	
Attorney General's Cyber Crime Unit	
Children's Safe Center Fund	
DuBard School for Language Disorders Fund	
Children's Advocacy Centers Fund	
Judicial System Operation Fund	
GENERAL FUND	$90.50

(2) Implied Consent Law violations. In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or any other penalty for any violation of the Mississippi Implied Consent Law (Section 63-11-1 et seq.):

FUND	AMOUNT
Crime Victims' Compensation Fund	
State Court Education Fund	
State Prosecutor Education Fund	
Vulnerable Persons Training, Investigation & Prosecution Trust Fund	
Child Support Prosecution Trust Fund	
Driver Training Penalty Assessment Fund	
Law Enforcement Officers Training Fund	
Emergency Medical Services Operating Fund	
Mississippi Alcohol Safety Education Program Fund	
Federal-State Alcohol Program Fund	
Mississippi Forensics Laboratory Implied Consent Law Fund	
Spinal Cord and Head Injury Trust Fund	
Capital Defense Counsel Fund	
Indigent Appeals Fund	
Capital Post-Conviction Counsel Fund	
Victims of Domestic Violence Fund	
Law Enforcement Officers and Fire Fighters Death Benefits Fund	
Law Enforcement Officers and Fire Fighters Disability Benefits Trust Fund	
State Prosecutor Compensation Fund	
Crisis Intervention Mental Health Fund	
Intervention Court Fund	
Statewide Victim’s Information Notification System Fund	
Public Defenders Education Fund	
Domestic Violence Training Fund	
Attorney General's Cyber Crime Unit	
GENERAL FUND	$243.50

(3) Game and Fish Law violations. In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or other penalty for any violation of the game and fish statutes or regulations of this state:

FUND	AMOUNT
State Court Education Fund	
State Prosecutor Education Fund	
Vulnerable Persons Training, Investigation & Prosecution Trust Fund	
Law Enforcement Officers Training Fund	
Hunter Education and Training Program Fund	
Law Enforcement Officers and Fire Fighters Death Benefits Fund	
Law Enforcement Officers and Fire Fighters Disability Benefits Trust Fund	
State Prosecutor Compensation Fund	
Crisis Intervention Mental Health Fund	
Intervention Court Fund	
Capital Defense Counsel Fund	
Indigent Appeals Fund	
Capital Post-Conviction Counsel Fund	
Victims of Domestic Violence Fund	
Public Defenders Education Fund	
Domestic Violence Training Fund	
Attorney General's Cyber Crime Unit	
GENERAL FUND	$89.00

(4) [Deleted]

(5) Speeding, reckless and careless driving violations. In addition to any assessment imposed under subsection (1) or (2) of this section, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or other penalty for driving a vehicle on a road or highway:

(a) At a speed that exceeds the posted speed limit by at least ten (10) miles per hour but not more than twenty (20) miles per hour	$10.00
(b) At a speed that exceeds the posted speed limit by at least twenty (20) miles per hour but not more than thirty (30) miles per hour	$20.00
(c) At a speed that exceeds the posted speed limit by thirty (30) miles per hour or more	$30.00
(d) In violation of Section 63-3-1201, which is the offense of reckless driving	$10.00
(e) In violation of Section 63-3-1213, which is the offense of careless driving	$10.00

All assessments collected under this subsection shall be deposited into the State General Fund.

(6) Other Misdemeanors. In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or other penalty for any misdemeanor violation not specified in subsection (1), (2), or (3) of this section, except offenses relating to vehicular parking or registration:

FUND	AMOUNT
Crime Victims' Compensation Fund	
State Court Education Fund	
State Prosecutor Education Fund	
Vulnerable Persons Training, Investigation & Prosecution Trust Fund	
Child Support Prosecution Trust Fund	
Law Enforcement Officers Training Fund	
Capital Defense Counsel Fund	
Indigent Appeals Fund	
Capital Post-Conviction Counsel Fund	
Victims of Domestic Violence Fund	
State Crime Stoppers Fund	
Law Enforcement Officers and Fire Fighters Death Benefits Trust Fund	
Law Enforcement Officers and Fire Fighters Disability Benefits Trust Fund	
State Prosecutor Compensation Fund	
Crisis Intervention Mental Health Fund	
Intervention Court Fund	
Judicial Performance Fund	
Statewide Victim’s Information and Notification System Fund	
Public Defenders Education Fund	
Domestic Violence Training Fund	
Attorney General's Cyber Crime Unit	
Information Exchange Network Fund	
Motorcycle Officer Training Fund	
Civil Legal Assistance Fund	
Justice Court Collections Fund	
Municipal Court Collections Fund	
GENERAL FUND	$121.75

(7) Other Felonies. In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment from each person upon whom a court imposes a fine or other penalty for any felony violation not specified in subsection (1), (2) or (3) of this section:

FUND	AMOUNT
Crime Victims' Compensation Fund	
State Court Education Fund	
State Prosecutor Education Fund	
Vulnerable Persons Training, Investigation & Prosecution Trust Fund	
Child Support Prosecution Trust Fund	
Law Enforcement Officers Training Fund	
Capital Defense Counsel Fund	
Indigent Appeals Fund	
Capital Post-Conviction Counsel Fund	
Victims of Domestic Violence Fund	
Criminal Justice Fund	
Law Enforcement Officers and Fire Fighters Death Benefits Trust Fund	
Law Enforcement Officers and Fire Fighters Disability Benefits Trust Fund	
State Prosecutor Compensation Fund	
Crisis Intervention Mental Health Fund	
Intervention Court Fund	
Statewide Victim’s Information and Notification System Fund	
Public Defenders Education Fund	
Domestic Violence Training Fund	
Attorney General's Cyber Crime Unit	
Forensics Laboratory DNA Identification System Fund	
GENERAL FUND	$280.50

(8) Additional assessments on certain violations:

(a) Railroad Crossing Violations. In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment in addition to all other state assessments due under this section from each person upon whom a court imposes a fine or other penalty for any violation involving railroad crossings under Section 37-41-55, 63-3-1007, 63-3-1009, 63-3-1011, 63-3-1013 or 77-9-249:

Operation Lifesaver Fund	$25.00

(b) Drug Violations. In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment in addition to all other state assessments due under this section from each person upon whom a court imposes a fine or other penalty for any violation of Section 41-29-139:

Drug Evidence Disposition Fund	$25.00
Mississippi Foster Care Fund	$2.00

(c) Motor vehicle liability insurance violations. In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected the following state assessment in addition to all other state assessments due under this section from each person upon whom a court imposes a fine or other penalty for any violation of Section 63-15-4(4) or Section 63-16-13(1):

Uninsured Motorist Identification Fund:	
First offense	$200.00
Second offense	$300.00
Third or subsequent offense	$400.00

(9) If a fine or other penalty imposed is suspended, in whole or in part, such suspension shall not affect the state assessment under this section. No state assessment imposed under the provisions of this section may be suspended or reduced by the court.

(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 Government" at https://www.osa.state.ms.us/resources/

Court Constituents Cost Assessment

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

(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.

Children's Trust Fund & Victims of Human Trafficking Fund Assessments

§ 99-19-75 Assessment on certain offenses against children, deposit:

(1) In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected from each person upon whom a court imposes a fine or other penalty for any violation of Section 97-3-65, 97-5-1 or 97-3-7, when committed against a minor, an assessment of One Thousand Dollars ($1,000.00) to be deposited into the Mississippi Children's Trust Fund created in Section 93-21-305, using the procedures described in Section 99-19-73.
(2) In addition to any monetary penalties and any other penalties imposed by law, there shall be imposed and collected from each person upon whom a court imposes a fine or other penalty for any violation of Section 97-3-7, 97-3-54.1, 97-3-65, 97-3-95, 97-5-1, or 97-29-51 an assessment of One Thousand Dollars ($1,000.00) to be deposited into the "Victims of Human Trafficking and Commercial Sexual Exploitation Fund. . . ."

Criminal Investigation Assessment

§ 99-19-77 Criminal investigation assessment:

In addition to any criminal penalties or fines, the court may impose an assessment against a defendant convicted of a felony violation, or a Class I violation that is punishable as provided in Section 49-7-141, investigated by the Office of the Attorney General, the district attorneys, sheriffs, the Mississippi Bureau of Investigation, Mississippi Bureau of Narcotics, the Mississippi Agricultural and Livestock Theft Bureau, the Mississippi Department of Wildlife, Fisheries and Parks and municipal police departments which may cover all reasonable costs of the investigation. Costs are to be paid to the appropriate governmental entity incurring the particular item of cost and include, but are not limited to, the cost of investigators, service of process, court reporters, expert witnesses and attorney's fees, and transportation costs expended by the governmental entity in the investigation of such case, and must be used to augment the governmental entity's existing budget and not to supplant it.

Game & Fish License Assessment

§ 49-7-21 License form and content; electronic purchase; hunting or fishing without license:

(6) In addition to any other fines or penalties imposed under subsection (4) or (5) of this section, the person convicted shall be assessed by the court an administrative fee equal in amount to the cost of the hunting, trapping or fishing license fee that such person unlawfully failed to possess at the time of the violation, the amount of which license fee shall be entered upon the ticket or citation by the charging officer at the time the ticket or citation is issued. The clerk of the court in which the conviction takes place, promptly shall collect all administrative fees imposed under this subsection and deposit them monthly with the State Treasurer, in the same manner and in accordance with the same procedure, as nearly as practicable, as required for the collection, receipt and deposit of state assessments under Section 99-19-73. However, all administrative fees collected under the provisions of this subsection shall be credited by the State Treasurer to the account of the Department of Wildlife, Fisheries and Parks, and may be expended by the department upon appropriation by the Legislature. . . .

Littering with Substance Likely to Ignite Grass Assessment

§ 97-15-29 Littering with substance likely to ignite grass; fines and penalties:

(7) There shall be imposed and collected an assessment of Fifty Dollars ($50.00) on each violation of this section. The assessment shall be deposited into the Law Enforcement Officers Monument Fund created in Section 39-5-71. After the monument is constructed, the assessment shall not be deposited into the fund. The assessment shall then be deposited with the Postsecondary Education Financial Assistance Board to be used for the scholarship program for children of deceased or disabled law enforcement officers and firemen as provided by Section 37-106-39.

Title 63 Violation Surcharge Assessment

§ 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 . . . 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. . . .

State Fees

Appearance Bond Fee

§ 83-39-31 Fee on appearance bonds and recognizances; additional assessment on bail bonds to be deposited into Victims of Domestic Violence Fund:

Cash Bail Bond
(1) Upon every defendant charged with a criminal offense who posts a cash bail bond, a surety bail bond, a property bail bond or a guaranteed arrest bond certificate conditioned for his appearance at trial, there is imposed a fee equal to two percent (2%) of the face value of each bond or Twenty Dollars ($ 20.00), whichever is greater, to be collected by the clerk of the court when the defendant appears in court for final adjudication or at the time the defendant posts cash bond unless subsection (4) applies.

Recognizance Bond
(2) Upon each defendant charged with a criminal offense who is released on his own recognizance, who deposits his driver's license in lieu of bail, or who is released after arrest on written promise to appear, there is imposed a fee of Twenty Dollars ($ 20.00) to be collected by the clerk of the court when the defendant appears in court for final adjudication unless subsection (4) applies.

> Whether the twenty dollar appearance bond fee, required by Section 83-39-31(2) of the Mississippi Code, should be collected by the clerk of the court for a defendant who deposited his/her driver's license in lieu of bail and then enters a guilty or nolo contendre by paying the fine to the clerk, without appearing in court for final adjudication? In response to your question, the clerk of the court should collect the twenty dollar appearance fee when a defendant deposits his/her driver's license in lieu of bail and then enters a guilty or nolo contendre plea by paying the fine to the clerk as set forth in Section 83-39-31(2). **Re: Appearance Bond Fees, Opinion No. 2006-00412 (Miss. A.G. Sept. 5, 2006).**

Appeal Bond
(3) Upon each defendant convicted of a criminal offense who appeals his conviction and posts a bond conditioned for his appearance, there is imposed a fee equal to two percent (2%) of the face value of each bond or Twenty Dollars ($ 20.00), whichever is greater. If such defendant is released on his own recognizance pending his appeal, there is imposed a fee of Twenty Dollars ($ 20.00). The fee imposed by this subsection shall be imposed and shall be collected by the clerk of the court when the defendant posts a bond unless subsection (4) applies.

> Is an official taking bond for an appeal to the State Supreme Court of a felony conviction in Circuit Court required by Section 83-39-31[(3)], to collect an appearance bond fee? Section 83-39-31[(3)] of the Mississippi Code of 1972 imposes the fee upon each defendant convicted of a criminal offense who appeals his conviction and posts a bond conditioned upon his appearance. Subsection [(3)] of 83-39-31, unlike the other subsections, does not require that the bond be conditioned upon appearance at trial. It is our opinion that the bond fee demanded by subsection [(3)] is applicable to an appearance bond posted by a criminal defendant appealing a conviction from circuit court to the state supreme court. **Re: Appearance Bond Fee for Appeal, Opinion No. 93-0439 (Miss. A.G. Aug. 5, 1993).**

Cases Where Fee is Not Imposed

(4) If a defendant is found to be not guilty or if the charges against a defendant are dismissed, or if the prosecutor enters a nolle prosequi in the defendant's case or retires the defendant's case to the file, or if the defendant's conviction is reversed on appeal, the fees imposed pursuant to subsections (1), (2), (3) and (7) shall not be imposed.

(5) The State Auditor shall establish by regulation procedures providing for the timely collection, deposit, accounting and, where applicable, refund of the fees imposed by this section. 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.

(6) It shall be the duty of the clerk or any officer of the court authorized to take bonds or recognizances to promptly collect, at the time such bonds or recognizances are received or taken, all fees imposed pursuant to this section. In all cases, the clerk or officer of the court shall deposit all fees so collected with the State Treasurer, pursuant to appropriate procedures established by the State Auditor, for deposit into the State General Fund.

> Under section 83-39-31, the clerk must keep a list of the bonds posted and the cases wherein the State has failed to obtain a conviction, in which cases the fees paid are subject to refund. **Re: A clerk is not required to prepare a list of names for the benefit of a bail bondman, Opinion No. 95-0074 (Miss. A.G. Feb. 16, 1995).**

(7) In addition to the fees imposed by this section, there shall be an assessment of Ten Dollars ($ 10.00) imposed upon every criminal defendant charged with a criminal offense who posts a cash bail bond, a surety bail bond, a property bail bond or a guaranteed arrest bond to be collected by the clerk of the court and deposited in

the Victims of Domestic Violence Fund created by Section 93-21-117, unless subsection (4) applies.

Driving Suspension Reduction Fee

§ 63-1-71 Suspension for certain convictions:

(3) The county court or circuit court having jurisdiction, on petition, may reduce the suspension of driving privileges under this section if the suspension would constitute a hardship on the offender. When the petition is filed, such person shall pay to the circuit clerk of the court where the petition is filed a fee of Twenty Dollars ($20.00) for each year, or portion thereof, of license revocation or suspension remaining under the original sentence, which shall be deposited into the State General Fund to the credit of a special fund hereby created in the State Treasury to be used for alcohol or drug abuse treatment and education, upon appropriation by the Legislature. This fee shall be in addition to any other court costs or fees required for the filing of petitions.

Traffic Safety Violator Course Fee

§ 63-9-11 Criminal liability; first time violators:

(3)(i) The additional fee of $10.00 imposed under this subsection (3) shall be forwarded by the court clerk to the State Treasurer for deposit into a special fund created in the State Treasury. Monies in the special fund may be expended by the Department of Public Safety, upon legislative appropriation, to defray the costs incurred by the department in maintaining the nonpublic record of persons who are eligible for participation under the provisions of this subsection (3).

Interlock Device Fund Fee

§ 63-11-31 Vehicle impoundment, immobilization and ignition locks

(2)(a)(i) The cost of installation and operation of an ignition-interlock device shall be borne by the person to whom an interlock-restricted driver's license is issued, and the costs of court-ordered drug testing shall be borne by the person so ordered, unless the person is determined by the court to be indigent. (ii) The cost of participating in a court-ordered drug-testing program shall be borne by the person, unless the person is determined by the court to be indigent.
(b)(i) A person convicted under Section 63-11-30 shall be assessed by the court, in addition to the criminal fines, penalties and assessments provided by law for violations of Section 63-11-30, a fee of Fifty Dollars ($50.00), to be deposited in the Interlock Device Fund in the State Treasury unless the person is determined by the court to be indigent. (ii) A person nonadjudicated under Section 63-11-30 shall be

assessed by the court, in addition to the criminal fines, penalties and assessments provided by law for violations of Section 63-11-30, a fee of Two Hundred Fifty Dollars ($250.00) to be deposited in the Interlock Device Fund in the State Treasury unless the person is determined by the court to be indigent.

Criminal Justice Fund Fee

§ 97-19-67 Bad checks; penalties; restitution:

(4) Upon conviction of any person for a violation of Section 97-19-55, when the prosecution of such person was commenced by the filing of a complaint with the court by the district attorney under the provisions of Section 97-19-79, the court shall, in addition to any other fine, fee, cost or penalty which may be imposed under this section or as otherwise provided by law, and in addition to any order as the court may enter under subsection (3) of this section requiring the offender to pay restitution under Sections 99-37-1 through 99-37-23, impose a fee in the amount up to eighty-five percent (85%) of the face amount of the check, draft, order, electronically converted check, or electronic commercial debit for which the offender was convicted of drawing, making, issuing, uttering, delivering or authorizing in violation of Section 97-19-55.
(5) It shall be the duty of the clerk or judicial officer of the court collecting the fees imposed under subsection (4) of this section to monthly deposit all such fees so collected with the State Treasurer, either directly or by other appropriate procedures, for deposit in the special fund of the State Treasury created under Section 99-19-32, known as the "Criminal Justice Fund."

> [T]his office has interpreted this statute to mean that when the prosecution of a person for violation of section 97-19-55 is commenced by the filing of a complaint by the district attorney's office), the court must impose a fee up to 85% of the face value of the check. However, if the prosecution of a person for bad check violation was not commenced by the filing of a complaint by the district attorney, then the court should not impose the fee. **Re: Bad Checks/85% Fee, Opinion No. 95-0388 (Miss. A. G. Aug. 2, 1995).**

County Assessments & Taxes

Jury Tax

§ 9-7-133 Imposition and collection of jury tax:

A jury tax of three dollars is imposed on each original suit in the circuit court in which a plea is filed, and on every issue therein tried separately by a jury, and a tax of two dollars on each case transferred or appealed thereto, to constitute a fund for the payment of jurors, and to be collected by the clerk or sheriff as costs. The clerk shall be liable on his official bond for any failure to charge, receive, or issue execution for the jury tax; and the sheriff shall likewise be liable for a failure to collect or to pay the same to the county treasurer; and they may be fined as for a contempt therefor not more than one hundred dollars.

Court Administrator Assessment (Optional)

§ 9-17-5 Special fund:

(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:

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.

County Law Library Assessment (Optional)

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

(1)(a) The board of supervisors of each county in the state shall have power . . . 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. . . .

(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 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.

(5) To accomplish the purposes of this section, the board of supervisors may enter into such arrangement or arrangements with the county bar association of any such county as may seem advisable for the care and operation of the law library, and the board may receive and consider, from time to time, such recommendations as the bar association may deem appropriate regarding the library.

(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. In those counties the board, in its discretion, may pay from the county general fund or from the special fund authorized in this section all the costs authorized in this section, provided that the board shall not spend in each judicial district less than the amount of the special court costs authorized in this section and collected in each such district.

(7) The governing authorities of any municipality, in their discretion, by resolution duly adopted and entered on their official minutes, may levy additional court costs not exceeding One Dollar and Fifty Cents ($1.50) per case for each conviction in the municipal court of the municipality, for the support and maintenance of the county law library in the county within which the municipality is located. The additional costs shall be collected by the clerk of the court, forwarded to the chancery clerk of the county for deposit in a special account in the county depository, and expended for support and maintenance of the county law library in the same manner and in accordance with the same procedure as provided for costs similarly collected in the

chancery, circuit, county and justice courts of the county.

(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 and History Fee (Optional)

§ 25-60-5 Filing fee:

(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. . . . 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 Prosecuting Attorney Tax

§ 25-3-9 County prosecuting attorneys; compensation:

In all cases of conviction there shall be taxed against the convicted defendant, as an item of cost, the sum of Three Dollars ($3.00), which shall be turned in to the county treasury as a part of the general county funds; however, the Three Dollars ($3.00) shall not be taxed in any case in which it is not the specific duty of the county attorney to appear and prosecute.

CHAPTER 4

PAYMENT & COLLECTION OF COURT COSTS, FINES, ASSESSMENTS & RESTITUTION

CHAPTER 4

PAYMENT & COLLECTION OF COURT COSTS, FINES, ASSESSMENTS & RESTITUTION

Clerk Issues Executions for Fines

§ 99-19-65 Collection of fines and penalties:

The clerk of the circuit court shall, immediately after the adjournment of every term, issue execution according to the nature of the case, for all fines, penalties and forfeitures assessed by the court, or which shall have accrued to the state or to the county, and remaining due and unpaid. Said clerk shall, within thirty days after such adjournment, transmit a list of said executions to the clerk of the board of supervisors of the county, noting the names of the defendants, the amounts, and the sheriff or other officer to whom the same was delivered; and, at the same time he shall transmit to said clerk a statement of the returns made by the sheriff or other officer on execution for fines, penalties, and forfeitures returnable to the last term of the court. Any circuit court clerk who shall fail to issue such executions, or to transmit the lists thereof as required, shall forfeit and pay the sum of two hundred dollars for every such offense, to be recovered by the state or county, on motion against him and his sureties by the district attorney, before the circuit court. The clerk of the board of supervisors shall notify the district attorney of such default.

§ 99-19-20 Fines; payment; indigent defendants; inability to work or unavailability of work:

(1) Except as otherwise provided under Section 99-19-20.1, when any court sentences a defendant to pay a fine, the court may order

(a) that the fine be paid immediately, or

(b) that the fine be paid in installments to the clerk of the court or to the judge, if there be no clerk, or

> An alternative available to the trial judge is the establishment of a realistic installment plan for the payment of the fine [pursuant to] § 99-19-20(1)(b). ***Cassibry v. State*, 453 So. 2d 1298, 1299 (Miss. 1984).**

(c) that payment of the fine be a condition of probation, or

(d) that the defendant be required to work on public property for public benefit under the direction of the sheriff for a specific number of hours, or

Section 99-19-20(1)(d) authorizes the trial judge to require that [a criminal defendant] perform public service. ***Cassibry v. State*, 453 So. 2d 1298, 1299 (Miss. 1984).**

(e) any combination of the above. . . .

§ 99-37-5 Payment and orders:

(1) When a defendant is sentenced to pay a fine or costs or ordered to make restitution, the court may order payment to be made forthwith or within a specified period of time or in specified installments. If a defendant is sentenced to a term of imprisonment, an order of payment of a fine, costs or restitution shall not be enforceable during the period of imprisonment unless the court expressly finds that the defendant has assets to pay all or part of the amounts ordered at the time of sentencing.

(2) When a defendant sentenced to pay a fine or costs or ordered to make restitution is also placed on probation or imposition or execution of sentence is suspended, the court may make payment of the fine or costs or the making of restitution a condition of probation or suspension of sentence. Such offenders shall make restitution payments directly to the victim. As an alternative to a contempt proceeding under Sections 99-37-7 through 99-37-13, the intentional refusal to obey the restitution order or a failure by a defendant to make a good faith effort to make such restitution may be considered a violation of the defendant's probation and may be cause for revocation of his probation or suspension of sentence.

Mississippi Rule of Criminal Procedure 26.6 states in part:

Method of Payment; To Whom. Unless the court expressly directs otherwise:

(1) the payment of a fine, restitution, and/or court costs shall be made to the clerk of court; and
(2) monies received from the defendant shall be applied as follows:
(A) first, to pay any and all court costs (as designated by statute) assessed against the defendant;
(B) second, to pay any restitution the defendant has been ordered to make; and
(C) third, to pay any fines imposed against the defendant.
The clerk shall, as promptly as practicable, forward restitution payments to the victim.

Ways to Collect Court Costs, Fines, Assessments & Restitution

Contempt Proceedings

§ 99-19-20 Fines; payment; indigent defendants; inability to work or unavailability of work:

(2) Except as otherwise provided under Section 99-19-20.1, the defendant may be imprisoned until the fine is paid if the defendant is financially able to pay a fine and the court so finds, subject to the limitations provided under this section. The defendant shall not be imprisoned if the defendant is financially unable to pay a fine and so states to the court in writing, under oath, after sentence is pronounced, and the court so finds, except if the defendant is financially unable to pay a fine and such defendant failed or refused to comply with a prior sentence as specified in subsection (1) of this section, the defendant may be imprisoned.

> [I]t is established . . . that an indigent may not be incarcerated because he is financially unable to comply with an otherwise lawfully imposed sentence of a fine. So long as [the defendant] is "financially unable to pay a fine" and the trial court so finds, he may not be imprisoned. ***Cassibry v. State*, 453 So. 2d 1298, 1299 (Miss. 1984).**
>
> Whether or not a warrant can be issued depends on the courts earlier (if any) finding of ability to pay and the contents of the court order. . . . Warrants can generally be issued if the person is in violation of the court order. However, the court must be careful to determine ability to pay prior to incarceration. **Re: Collection of Unpaid Fines, Opinion No. 2018-00103 (Miss. A.G. Apr. 20, 2018).**

This subsection shall be limited as follows:

> (a) In no event shall such period of imprisonment exceed one (1) day for each One Hundred Dollars ($100.00) of the fine.
>
> (b) If a sentence of imprisonment, as well as a fine, were imposed, the aggregate of such term for nonpayment of a fine and the original sentence of imprisonment shall not exceed the maximum authorized term of imprisonment.
>
> (c) It shall be in the discretion of the judge to determine the rate of the credit to be earned for work performed under subsection (1)(d), but the rate shall be no lower than the rate of the highest current federal minimum wage.

Section 99-19-20(2)(c) provides that [a defendant] would receive credit against his fine for any such public service work "at the rate of the highest current federal minimum wage." ***Cassibry v. State*, 453 So. 2d 1298, 1299 (Miss. 1984).**

Section 99-19-20 of the Mississippi Code puts a limitation on the period of time for which a person can be imprisoned for refusing to pay a fine when they are financially able to do so. Although it puts a limit on the time of imprisonment, it does not create a credit against a delinquent fine. He may be imprisoned not to exceed one day for each $25.00 of the fine. However, he would still be liable for the entire fine once released. For example, if he owed a $250.00 fine and was financially able to pay but refused to pay he could be jailed for 10 days. (One day for each $25.00 of the fine) He would still owe the fine when released. If he chose to work his fine would be reduced by $10.00 per day under Section 47-1-47. **Re: Time Served, Opinion No. 2008-00611 (Miss. A.G. Dec. 18, 2008) (prior version of statute).**

(3) Periods of confinement imposed for nonpayment of two (2) or more fines shall run consecutively unless specified by the court to run concurrently.

§ 99-19-20.1 Incarceration for failure to pay fine, restitution, or court costs; ability to pay; maximum term of imprisonment; minors:

(1) Incarceration shall not automatically follow the nonpayment of a fine, restitution or court costs. Incarceration may be employed only after the court has conducted a hearing and examined the reasons for nonpayment and finds, on the record, that the defendant was not indigent or could have made payment but refused to do so. When determining whether a person is indigent, the court shall use the current Federal Poverty Guidelines and there shall be a presumption of indigence when a defendant's income is at or below one hundred twenty-five percent (125%) of the Federal Poverty Guidelines, subject to a review of his or her assets. A defendant at or below one hundred twenty-five percent (125%) of the Federal Poverty Guidelines without substantial liquid assets available to pay fines, fees, and costs shall be deemed indigent. In determining whether a defendant has substantial liquid assets, the judge shall not consider up to Ten Thousand Dollars ($10,000.00) in tangible personal property, including motor vehicles, household goods, or any other assets exempted from seizure under execution or attachment as provided under Section 85-3-1. If the defendant is above one hundred twenty-five percent (125%) of the Federal Poverty Guidelines, the judge shall make an individualized assessment of his or her ability to pay based on the totality of the circumstances including, but not limited to, the defendant's disposable income, financial obligations and liquid assets. If the judge determines that a

defendant who claims indigence is not indigent and the defendant could have made payment but refused to do so, the case file shall include a written explanation of the basis for the determination of the judge. In justice and municipal court, such finding shall be included in the court's order.

(2) If it appears to the satisfaction of the court that nonpayment is not willful, the court shall enter an order that allows the defendant additional time for payment, reduces the amount of each installment, revokes the fine, in whole or in part, or allows the defendant to perform community service at the state minimum wage per hour rate. If the court finds nonpayment is willful after consideration of the defendant's situation, means, and conduct with regard to the nonpayment, the court shall determine the period of incarceration, if any, subject to the limitations set by law and subsection (3) of this section.

(3) If at the time the fine, restitution or court cost is ordered, a sentence of incarceration is also imposed, the aggregate total of the period of incarceration imposed pursuant to this section and the term of the sentence originally imposed may not exceed the maximum term of imprisonment authorized for the offense.

§ 99-37-7 Contempt for default:

(1) Except as otherwise provided under Section 99-19-20.1, when a defendant sentenced to pay a fine or to make restitution defaults in the payment thereof or of any installment, the court, on motion of the district attorney, or upon its own motion, may require him to show cause why his default should not be treated as contempt of court, and may issue a show cause citation or a warrant of arrest for his appearance.

(2) Except as otherwise provided under Section 99-19-20.1, unless the defendant shows that his default was not attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good faith effort to make the payment, the court may find that his default constitutes contempt and may order him committed until the fine or the restitution, or a specified part thereof, is paid.

§ 99-37-9 Imprisonment for contempt:

The term of imprisonment for contempt for failure to make restitution shall be set forth in the commitment order, and shall not exceed one (1) day for each twenty-five dollars ($25.00) of the restitution, or thirty (30) days if the order of the restitution was imposed upon conviction of a violation or misdemeanor, or one (1) year in any other case, whichever is the shorter period. A person committed for failure to make restitution shall be given credit toward payment for each day of imprisonment at the rate specified in the commitment order.

§ 99-37-11 Relief from payments:

If it appears to the satisfaction of the court that the default in the payment of a fine or restitution is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount thereof or of each installment or revoking the fine or order of restitution or the unpaid portion thereof in whole or in part.

> It is the opinion of this office that section 99-37-11 can only be used to revoke a fine if the defendant shows that his default was not attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good faith effort to make the payment pursuant to section 99-37-7. There is no authority for such fines to be excused simply due to their age or the fact that the defendant left the state. **Re: Uncollectible Fines, Opinion No. 96-0197 (Miss. A. G. Apr. 12, 1996).**

Executions on Criminal Judgments

§ 9-7-171 General docket:

The clerk shall keep a general docket, in which he shall enter . . . a note of all judgments rendered therein, by reference to the minute book and page.

§ 99-19-65 Collection of fines and penalties:

The clerk of the circuit court shall, immediately after the adjournment of every term, issue execution according to the nature of the case, for all fines, penalties and forfeitures assessed by the court, or which shall have accrued to the state or to the county, and remaining due and unpaid.

> Section 99-19-65 requires that "the circuit clerk, without the necessity of additional court orders, shall issue execution according to the nature of the case." **Re: Unpaid Fines (Miss. A. G. Mar. 26, 1980).**

Said clerk shall, within thirty days after such adjournment, transmit a list of said executions to the clerk of the board of supervisors of the county, noting
the names of the defendants,
the amounts, and
the sheriff or other officer to whom the same was delivered;
and, at the same time he shall transmit to said clerk a statement of the returns made by the sheriff or other officer on execution for fines, penalties, and forfeitures returnable to the last term of the court.

Any circuit court clerk who shall fail to issue such executions, or to transmit the lists thereof as required, shall forfeit and pay the sum of two hundred dollars for every such offense, to be recovered by the state or county, on motion against him and his sureties by the district attorney, before the circuit court. The clerk of the board of supervisors shall notify the district attorney of such default.

§ 9-7-181 Execution docket:

The clerk shall keep a docket, in which he shall enter every capias pro finem and all executions issued by him, specifying
the names of the parties,
the date,
the amount of the judgment or decree and of costs,
the name of the officer to whom it is delivered,
to what county directed,
the date when issued, and

the return-day thereof;
and, when the same is returned, shall, without delay, record the return at large on the same page of the docket. . . .

§ 25-31-23 Responsibility as to fines:

The district attorney, at each term of the circuit court, shall carefully examine the minutes of the preceding terms and the execution docket, to see that executions have been issued for all fines, penalties, and forfeitures adjudged at such terms, and that the same have been properly proceeded on and returned, and what fines, penalties, and forfeitures have been collected; and he shall, at the close of every term, make out a statement of all fines, forfeitures, and penalties adjudged and made final at such term; and also of all fines, penalties, and forfeitures collected or received by the sheriff or other officer, stating each case and the amount, and shall deliver the same to the clerk of the board of supervisors of the county. He shall proceed against the officers and their sureties for any neglect of duty of which they may be guilty.

§ 99-37-13 Enforcement of judgments:

A default in the payment of a fine or costs or failure to make restitution or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution for the collection of a fine or restitution shall not discharge a defendant committed to imprisonment for contempt until the amount of the fine or restitution has actually been collected.

> Section 99-37-13 authorizes a criminal fine to be enrolled on the judgment rolls in the circuit clerk's office thereby creating a lien on all of the defendant's property in the county for that judgment amount. **Re: Enrolling Criminal Judgment from Justice Court, Opinion No. 95-0410 (Miss. A. G. July 19, 1995).**

§ 11-7-191 Judgment as lien:

A judgment so enrolled shall be a lien upon and bind all the property of the defendant within the county where so enrolled, from the rendition thereof, and shall have priority according to the order of such enrollment. . . . A judgment shall not be a lien on any property of the defendant thereto unless the same be enrolled.

> It is our opinion that this section allows a criminal judgment sentencing a person to pay a fine, assessments, costs, bond fees or restitution, to be enrolled on the judgment roll. **Re: Judgment Roll (Miss. A. G. Feb. 26, 1992).**

Statute of Limitations on Civil Judgments to Collect Court Costs and Fines

§ 15-1-51 Actions against and in favor of the state:

Statutes of limitation in civil cases shall not run against the state, or any subdivision or municipal corporation thereof, except that any judgment or decree rendered in favor of the state, or any subdivision or municipal corporation thereof, shall not be a lien on the property of the defendant therein for a longer period than seven (7) years from the date of filing notice of the lien, unless an action is brought before the expiration of such time or unless the state or such subdivision or municipal corporation refiles notice of the lien. There shall be no limit upon the number of times that the state, or any subdivision or municipal corporation thereof, may refile such notices of lien. . . .

> Is there a statute of limitations on civil judgments in favor of the State for court costs, fees and fines in criminal cases?
>
> > Section 99-19-65 requires the circuit clerk to issue executions on fines, penalties or forfeitures accruing to the county or state. The judgment of the court in a criminal case imposing a fine, assessments or costs is a judgment in favor of the county.
>
> Section 15-1-51 controls the question you pose. . . . It is our opinion that there is no statute of limitations on recovery of fines, costs and assessments in favor of the state or county in a criminal case. However, the judgment of the court in favor of the state or county, duly enrolled in the judgment roll in the circuit clerk's office, creates a lien on the property of the defendant that lasts only seven years unless renewed as allowed by law. **Re: Civil Judgments/Statute of Limitations, Opinion No. 94-0450 (Miss. A. G. Aug. 24, 1994).**

Garnishment

§ 99-37-13 Enforcement of judgments:

A default in the payment of a fine or costs or failure to make restitution or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution for the collection of a fine or restitution shall not discharge a defendant committed to imprisonment for contempt until the amount of the fine or restitution has actually been collected.

Section 99-37-13 states:

> A default in the payment of a fine or costs or failure to make restitution or any installment thereof may be collected by any means authorized by law for the enforcement of judgment. . . .

It is our opinion that this section allows a criminal judgment sentencing a person to pay a fine, assessments, costs, bond fees or restitution, to be enrolled on the judgment roll. It also allows a criminal defendant's wages to be garnished after default in payment of the fine or other charge. **Re: Judgment Roll, Opinion No. 92-0131 (Miss. A. G. Feb. 26, 1992).**

It is the opinion of this office that [section 99-37-13] would authorize the use of garnishment to collect fines and costs. **Re: Use of Garnishments to Collect Fines (Miss. A. G. Dec. 30, 1985).**

Probation Revocation Hearings

§ 99-19-20 Fines; payment; indigent defendants; inability to work or unavailability of work:

(1) Except as otherwise provided under Section 99-19-20.1, when any court sentences a defendant to pay a fine, the court may order . . . that payment of the fine be a condition of probation. . . .

§ 99-37-5 Payment and orders:

(2) When a defendant sentenced to pay a fine or costs or ordered to make restitution is also placed on probation or imposition or execution of sentence is suspended, the court may make payment of the fine or costs or the making of restitution a condition of probation or suspension of sentence. Such offenders shall make restitution payments directly to the victim. As an alternative to a contempt proceeding under Sections 99-37-7 through 99-37-13, the intentional refusal to obey the restitution order or a failure by a defendant to make a good faith effort to make such restitution may be considered a violation of the

defendant's probation and may be cause for revocation of his probation or suspension of sentence.

Collection Agency

§ 19-3-41 Jurisdiction and powers generally:

(2) The board of supervisors of any county, in its discretion, may contract with a private attorney or private collection agent or agency to collect any type of delinquent payment owed to the county including, but not limited to, past-due fees, fines and assessments, delinquent ad valorem taxes on personal property and delinquent ad valorem taxes on mobile homes that are entered as personal property on the mobile home rolls, collection fees associated with the disposal or collection of garbage, rubbish and solid waste, or with the district attorney of the circuit court district in which the county is located to collect any delinquent fees, fines and other assessments.

> Section 19-3-41 would empower a county board of supervisors to contract with a private collection agency or attorney to collect outstanding fines. Section 99-19-20 does not forbid the use of a collection agency or an attorney to collect the delinquent fines. **Re: Private Company Collecting Fines, Opinion No. 93-0863 (Miss. A. G. Mar. 18, 1994).**

Any such contract may provide for payment contingent upon successful collection efforts or payment based upon a percentage of the delinquent amount collected; however, the entire amount of all delinquent payments collected shall be remitted to the county and shall not be reduced by any collection costs or fees.

> However, Mississippi Code Annotated Section 19-3-41 provides for a county to charge a fee for the collection of delinquent payments owed to the county under certain circumstances. Specifically, subsection 19-3-41(2) allows the county to contract with a private attorney or private collection agency to collect delinquent payments owed to the county. Under such contract, an additional fee in excess of the delinquent payment owed may be collected. Additionally, subsection 19-3-41(4) allows the county to use its own employees to collect delinquent payments owed to the county. A collection fee may be added to the delinquent payments collected by the county employees. **Re: Collection of Delinquent Fines, Opinion No. 2004-0128 (Miss. A.G. Mar. 26, 2004).**

There shall be due to the county from any person whose delinquent payment is collected pursuant to a contract executed under this subsection an amount, in addition to the delinquent payment, of not to exceed twenty-five percent (25%) of the delinquent payment for collections made within this state and not to exceed fifty percent (50%) of the delinquent payment for collections made outside of this state. However, in the case of delinquent fees owed to the county for garbage or rubbish collection or disposal, only the amount of the delinquent fees, which may include an additional amount not to exceed up to One Dollar ($1.00) or ten percent (10%) per month, whichever is greater, on the current monthly bill on the balance of delinquent monthly fees as prescribed under Sections 19-5-21 and 19-5-22, may be collected and no amount in addition to such delinquent fees may be collected if the board of supervisors of the county has notified the county tax collector under Section 19-5-22 for the purpose of prohibiting the issuance of a motor vehicle road and bridge privilege license tag to the person delinquent in the payment of such fees.

Any private attorney or private collection agent or agency contracting with the county under the provisions of this subsection shall give bond or other surety

payable to the county in such amount as the board of supervisors deems sufficient. Any private attorney with whom the county contracts under the provisions of this subsection must be a member in good standing of The Mississippi Bar. Any private collection agent or agency with whom the county contracts under the provisions of this subsection must meet all licensing requirements for doing business in the State of Mississippi.

Neither the county nor any officer or employee of the county shall be liable, civilly or criminally, for any wrongful or unlawful act or omission of any person or business with whom the county has contracted under the provisions of this subsection.

The Mississippi Department of Audit shall establish rules and regulations for use by counties in contracting with persons or businesses under the provisions of this subsection.

CHAPTER 5

ADMINISTRATIVE OFFICE OF COURTS

CHAPTER 5

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 6

PUBLIC ACCESS TO PUBLIC RECORDS

CHARTS

CHAPTER 6

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

Specified Exemptions from the Mississippi Public Records Act of 1983	
§ 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.

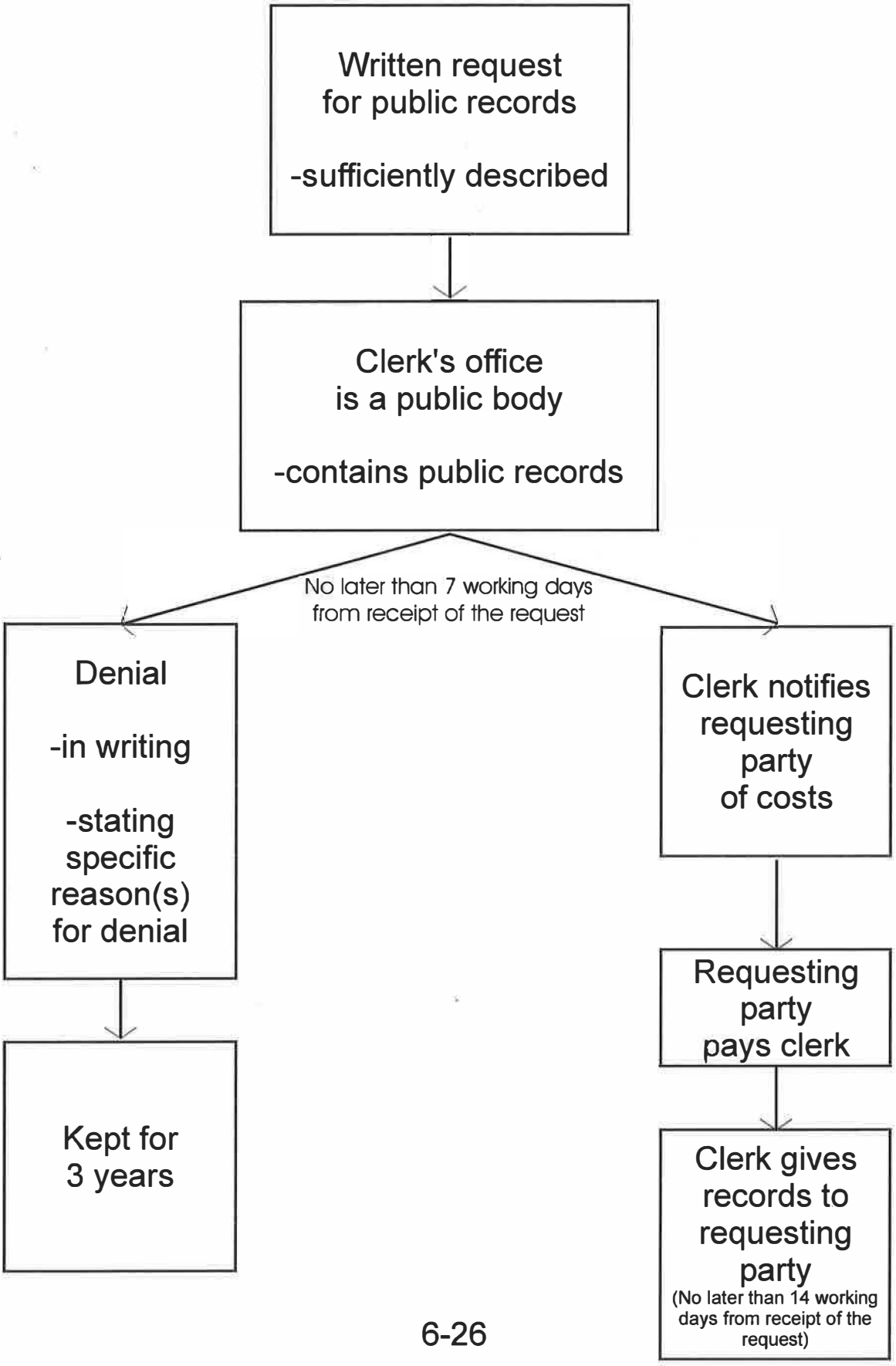
§ 97-45-2 Identity theft investigations; powers of Attorney General; subpoenas; production of documents; unauthorized disclosure:

(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 7

VOTER REGISTRATION

CHARTS

CHAPTER 7

VOTER REGISTRATION

Who Is Qualified to Register to Vote

Mississippi Constitution Article 12, § 241 Qualifications for Electors states:

> Every inhabitant of this state, except idiots and insane persons, who is a citizen of the United States of America, eighteen (18) years old and upward, who has been a resident of this state for one (1) year, and for one (1) year in the county in which he offers to vote, and for six (6) months in the election precinct or in the incorporated city or town in which he offers to vote, and who is duly registered as provided in this article, and who has never been convicted of murder, rape, bribery, theft, arson, obtaining money or goods under false pretense, perjury, forgery, embezzlement or bigamy, is declared to be a qualified elector, except that he shall be qualified to vote for President and Vice President of the United States if he meets the requirements established by Congress therefor and is otherwise a qualified elector.

§ 23-15-11 Eligibility:

> Every inhabitant of this state, except persons adjudicated to be non compos mentis, who is a citizen of the United States of America, eighteen (18) years old and upwards, who has resided in this state for thirty (30) days and for thirty (30) days in the county in which he or she seeks to vote, and for thirty (30) days in the incorporated municipality in which he or she seeks to vote, and who has been duly registered as an elector under Section 23-15-33, and who has never been convicted of vote fraud or of any crime listed in Section 241, Mississippi Constitution of 1890, shall be a qualified elector in and for the county, municipality and voting precinct of his or her residence, and shall be entitled to vote at any election upon compliance with Section 23-15-563. If the thirtieth day to register before an election falls on a Sunday or legal holiday, the registration applications submitted on the business day immediately following the Sunday or legal holiday shall be accepted and entered in the Statewide Elections Management System for the purpose of enabling voters to vote in the next election. Any person who will be eighteen (18) years of age or older on or before the date of the general election and who is duly registered to vote not less than thirty (30) days before the primary election associated with the general election, may vote in the primary election even though the person has not reached his or her eighteenth birthday at the time that the person seeks to vote at the primary election. No others than those specified in this section shall be entitled, or shall be allowed, to vote at any election.

In Mississippi, residence and domicile are synonymous for election purposes. A person's domicile in election matters has been defined as the place where he has his true, fixed, permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning. A domicile continues until another is acquired; before a domicile can be considered lost or changed, a new domicile must be acquired by removal to a new locality with intent to remain there, and the old domicile must be abandoned without intent to return thereto. ***Garner v. Mississippi Democratic Executive Committee*, 956 So. 2d 906, 909 (Miss. 2007) (citations omitted).**

Section 23-15-11 provides that one who meets the specific qualifications stated therein "shall be a qualified elector in and for the county, municipality and voting precinct of his residence." Section 23-15-571(3) provides in part: A person offering to vote may be challenged upon the following grounds: (a) That he is not a registered voter in the precinct. In response to your specific question, in order for one to be a legitimate registered voter of a particular precinct, he or she must reside within the boundaries of that precinct. Therefore, based on the above quoted statutes, we are of the opinion that a registered voter may not cast a lawful ballot in a voting precinct other than the precinct where he or she resides. **Re: Proper Precinct for Voting, Opinion No. 2003-0345 (Miss. A. G. July 14, 2003).**

§ 23-15-15 Documentation required of naturalized citizens:

It shall be the duty of any person who has acquired citizenship by order or decree of naturalization and who is otherwise qualified to register and vote under the laws of the State of Mississippi to present or exhibit to the registrar of the county of his or her residence, at or before the time he or she may offer to register,

a certified copy of the final order or decree of naturalization, or

a certificate of naturalization or duplicate thereof, or

a certified copy of such certificate of naturalization or duplicate;

otherwise he or she shall not be allowed to register or to vote.

Who Is Not Qualified to Register to Vote

§ 23-15-19 Persons convicted of certain crimes not to be registered:

Any person who has been convicted of vote fraud or any crime listed in Section 241, Mississippi Constitution of 1890, such crimes defined as "disenfranchising," shall not be registered, or if registered the name of the person shall be removed from the Statewide Elections Management System by the registrar or the election commissioners of the county of his or her residence. Whenever any person shall be convicted in the circuit court of his or her county of a disenfranchising crime, the county registrar shall thereupon remove his or her name from the Statewide Elections Management System; and whenever any person shall be convicted of a disenfranchising crime in any other court of any county, the presiding judge of the court shall, on demand, certify the fact in writing to the registrar of the county in which the voter resides, who shall thereupon remove the name of the person from the Statewide Elections Management System and retain the certificate as a record of his or her office.

The list of crimes cited in § 241 specifies only certain disenfranchising felonies. By court decisions and opinions of your office, the list of disenfranchising offenses cited in § 241 has been expanded. However, the statute specifically states any crime listed in § 241. Is any such compilation to include only those felonies specified in § 241, or shall it include those felonies cited in [a previous opinion]? One of the crimes listed in § 241 is theft. The Fifth Circuit Court of Appeals in *Cotton v. Fordice*, 157 F. 3d 388 (5th Cir. 1998) ruled that crimes that involved the unlawful taking of property constitute theft. Likewise, the basis for our various opinions wherein we identified disenfranchising crimes is that the specific crime in question, although the exact name of the crime is not listed in § 241, does, in fact, constitute one of the crimes listed in said section. Therefore, in direct response to your question, the compilation required by § 23-15-151 should include the names of persons who have been convicted of any of the crimes identified as disqualifying by the courts or by our official opinions. **Re: Disqualification of Voters, Opinion No. 2003-0555 (Miss. A. G. Oct. 24, 2003).**

This is a request for an official Attorney General's opinion regarding disenfranchising crimes.

I recently became aware of the Fifth Circuit Court of Appeals case *Cotton v. Fordice*, 157 F.3d 388 (5th Cir. 1998), in which the court held that the crime of armed robbery was a disenfranchising crime under § 241 of the Mississippi Constitution of 1890. I am aware that previous Attorney General opinions have held that the crime of armed robbery was not a disenfranchising crime. In light of this new Fifth Circuit case, I am requesting your official opinion as to

> whether the Secretary of State should begin advising circuit clerks and election commissioners to purge from the voter rolls those persons convicted in Mississippi courts of the crime of armed robbery. In addition, there is language in the *Cotton v. Fordice* decision which suggests that other crimes that involve unlawful taking would now be disenfranchising that previously had been regarded as not disenfranchising. Accordingly, I am also requesting an official opinion as to whether the convictions in Mississippi courts for the crimes of robbery, burglary, shoplifting, receiving stolen property and any other related crimes should be considered disenfranchising in Mississippi.

In *Cotton v. Fordice*, the Fifth Circuit Court of Appeals cited and quoted § 241, which denies the ballot to any person convicted of murder, rape, bribery, theft, arson, obtaining money or goods under false pretenses, perjury, forgery, embezzlement or bigamy and then said:

> Neither the Mississippi caselaw or statutes resolve whether theft, as used in § 241, includes the crime of armed robbery. The federal courts' task is to determine as best we can how the Mississippi Supreme Court would rule if the issue were before it. In law, theft is a general label for statutorily created crimes involving an unlawful taking. At common law, theft was defined as the felonious taking and carrying away of the personal property of another with intent to convert it to the use of the taker without the consent of the owner. Similarly, Mississippi defines larceny as taking and carrying away, feloniously, the personal property of another. The Mississippi Code labels various theft crimes as larceny, receiving stolen property, robbery, extortion and so forth. At least one other court has broadly interpreted § 241 to conclude that theft is an umbrella term to describe those crimes that involve a wrongful taking. As there is no crime labeled theft in Mississippi, the term in § 241 is only meaningful if it includes the larceny crimes, and thus includes armed robbery. We also find it persuasive that in Mississippi, larceny is a lesser included offense of robbery. Because the term theft in § 241 must generically include a conviction for armed robbery, [the felon] is disenfranchised under Mississippi law.

Based on the above, it is our opinion that one convicted of the crime of armed robbery is disenfranchised. One of the elements of the crimes of receiving stolen property, robbery, extortion and shoplifting is the wrongful taking of property. Therefore, in our opinion, a felony conviction of any of these crimes is also disenfranchising. With respect to the crime of burglary, *Black's Law Dictionary* definition is “the breaking and entering the house of another in the nighttime, with intent to commit a felony therein, whether the felony be actually committed or not.” Since the

wrongful taking of property is not an element of the crime of burglary, we are constrained to say that burglary is not a disenfranchising crime. [We have previously stated] that the following crimes are disqualifying: arson, bribery, bigamy, embezzlement, obtaining money or goods under false pretense (including felony bad check), forgery, murder, perjury, rape, and theft which includes larceny and taking unlawful possession of a motor vehicle under Section 97-17-42, [and] timber larceny . We now modify that opinion by adding the crimes of armed robbery, robbery, receiving stolen property, extortion, and felony shoplifting. **Re: Disqualifying Crimes, Opinion No. 2000-0454 (Miss. A. G. Aug. 18, 2000).**

§ 23-15-151 Removal of voters convicted of voter fraud or disenfranchising crimes from Statewide Elections Management System:

The circuit clerk of each county is authorized and directed to prepare and keep in his or her office a full and complete list, in alphabetical order, of persons convicted of voter fraud or of any crime listed in Section 241, Mississippi Constitution of 1890.

A certified copy of any enrollment by one clerk to another will be sufficient authority for the enrollment of the name, or names, in another county.

A list of persons convicted of voter fraud, any crime listed in Section 241, Mississippi Constitution of 1890, or any crime interpreted as disenfranchising in later Attorney General opinions, shall also be entered into the Statewide Elections Management System on a quarterly basis.

Voters who have been convicted in a Mississippi state court of any disenfranchising crime are not qualified electors as defined by Section 23-15-11 and shall be purged or otherwise removed by the county registrar or county election commissioners from the Statewide Elections Management System.

Section 23-15-151 requires the circuit clerk of each county to maintain a full and complete list, in alphabetical order, of persons convicted of any crime listed in § 241, Mississippi Constitution of 1890. Said clerk shall enter the names of all persons who have been or shall be hereafter convicted of any crime listed in § 241, in a book prepared and kept for that purpose. To my knowledge, no such book has ever been maintained by previous clerks in this county. I take this to be a mandatory requirement. Am I to start this book prospectively, or am I to attempt to list any known persons who should have been placed upon this record? Based on the language of the statute which you accurately quote, we are of the opinion that, pursuant to § 23-15-151 a book containing a list of all persons convicted of any crime listed in § 241 of the Mississippi Constitution includes those who have previous convictions. Therefore you should make reasonable attempts to list persons known to have previous convictions. **Re: Disqualification of Voters, Opinion No. 2003-0555 (Miss. A. G. Oct. 24, 2003).**

We are of the opinion that section 23-15-151 requires the circuit clerk of each county to prepare and maintain a list of all persons who have been convicted of disqualifying crimes in their respective counties. However, any documentation received from a circuit clerk of another county, the State of Mississippi or any other source showing that a resident of a particular county has a disqualifying conviction should be recorded in such compilation or preserved in some other manner in order to insure that the name of the person convicted does not appear on the registration records. **Re: Disqualification of Voters, Opinion No. 2003-0555 (Miss. A. G. Oct. 24, 2003).**

§ 23-15-21 Non-citizen not to register or vote:

It shall be unlawful for any person who is not a citizen of the United States or the State of Mississippi to register or to vote in any primary, special or general election in the state.

County Registrar

§ 23-15-223 County registrars:

(1) The State Board of Election Commissioners, on or before the fifteenth day of February succeeding each general election, shall appoint in the several counties registrars of elections, who shall hold office for four (4) years and until their successors shall be duly qualified. The county registrar shall be the clerk of the circuit court, unless the State Board of Election Commissioners finds the circuit clerk to be an improper person to register the names of the electors in the county. The State Board of Election Commissioners shall draft rules and regulations to provide for notice and hearing before removal of the circuit clerk, if notice and a hearing is practicable under the circumstances.

(2) The county registrar is empowered to appoint deputy registrars, with the consent of the board of election commissioners, who may discharge the duties of the registrar. The clerk of every municipality shall be appointed as such a deputy registrar, as contemplated by the National Voter Registration Act (NVRA).

(3) The county registrar shall not be held liable for any malfeasance or nonfeasance in office by any deputy registrar who is a deputy registrar by virtue of his or her office.

(4) The Secretary of State, in conjunction with the State Board of Community and Junior Colleges, has developed and made available online a computer skills training course for all newly appointed registrars that shall be completed within one hundred eighty (180) days of the commencement of their term of office.

§ 23-15-225 Compensation of county registrars and circuit clerks:

(1) The registrar shall be entitled to such compensation, payable monthly out of the county treasury, which the board of supervisors of the county shall allow on an annual basis in the following amounts:

(a) For counties with a total population of more than two hundred thousand (200,000), an amount not to exceed Thirty-one Thousand Three Hundred Ninety-five Dollars ($31,395.00), but not less than Nine Thousand Six Hundred Sixty Dollars ($9,660.00).

(b) For counties with a total population of more than one hundred thousand (100,000) and not more than two hundred thousand (200,000), an amount not to exceed Twenty-six Thousand Five Hundred Sixty-five Dollars ($26,565.00), but not less than Nine Thousand Six Hundred Sixty Dollars ($9,660.00).

(c) For counties with a total population of more than fifty thousand (50,000) and not more than one hundred thousand (100,000), an amount not to exceed Twenty-four Thousand One Hundred Fifty Dollars ($24,150.00), but not less than Nine Thousand Six Hundred Sixty Dollars ($9,660.00).

(d) For counties with a total population of more than thirty-five thousand (35,000) and not more than fifty thousand (50,000), an amount not to exceed Twenty-one Thousand Seven Hundred Thirty-five Dollars ($21,735.00), but not less than Nine Thousand Six Hundred Sixty Dollars ($9,660.00).

(e) For counties with a total population of more than twenty-five thousand (25,000) and not more than thirty-five thousand (35,000), an amount not to exceed Nineteen Thousand Three Hundred Twenty Dollars ($19,320.00), but not less than Nine Thousand Six Hundred Sixty Dollars ($9,660.00).

(f) For counties with a total population of more than fifteen thousand (15,000) and not more than twenty-five thousand (25,000), an amount not to exceed Sixteen Thousand Nine Hundred Five Dollars ($16,905.00), but not less than Nine Thousand Six Hundred Sixty Dollars ($9,660.00).

(g) For counties with a total population of more than ten thousand (10,000) and not more than fifteen thousand (15,000), an amount not to exceed Fourteen Thousand Four Hundred Ninety Dollars ($14,490.00), but not less than Eight Thousand Four Hundred Fifty-two Dollars and Fifty Cents ($8,452.50).

(h) For counties with a total population of more than six thousand (6,000) and not more than ten thousand (10,000), an amount not to exceed Twelve Thousand Seventy-five Dollars ($12,075.00), but not less than Eight Thousand Four Hundred Fifty-two Dollars and Fifty Cents ($8,452.50).

(i) For counties with a total population of not more than six thousand (6,000), an amount not to exceed Nine Thousand Six Hundred Sixty Dollars ($9,660.00) but not less than Six Thousand Six Hundred Forty-one Dollars and Twenty-five Cents ($6,641.25).

(j) For counties having two (2) judicial districts, the board of supervisors of the county may allow, in addition to the sums prescribed herein, in its discretion, an amount not to exceed Eleven Thousand Five Hundred Dollars ($11,500.00).

(2) In the event of a reregistration within such county, or a redistricting that necessitates the hiring of additional deputy registrars, the board of supervisors, in its discretion, may by contract compensate the county registrar amounts in addition to the sums prescribed herein.

(3) As compensation for their services in assisting the county election commissioners in performance of their duties in the revision of the voter roll as electronically maintained by the Statewide Elections Management System and in assisting the election commissioners, executive committees or boards of supervisors in connection with any election, the registrar shall receive the same daily per diem and limitation on meeting days as provided for the board of election commissioners as set out in Sections 23-15-153 and 23-15-227 to be paid from the general fund of the county.

(4) In any case where an amount has been allowed by the board of supervisors pursuant to this section, such amount shall not be reduced or terminated during the term for which the registrar was elected.

(5) The circuit clerk shall, in addition to any other compensation provided for by law, be entitled to receive as compensation from the board of supervisors the amount of Two Thousand Five Hundred Dollars ($2,500.00) per year. This payment shall be for the performance of his or her duties in regard to the conduct of elections and the performance of his or her other duties.

(6) The municipal clerk shall, in addition to any other compensation for performance of duties, be eligible to receive as compensation from the municipality's governing authorities a reasonable amount of additional compensation for reimbursement of costs and for additional duties associated with mail-in registration of voters.

(7) The board of supervisors shall not allow any additional compensation authorized under this section for services as county registrar to any circuit clerk who is receiving fees as compensation for his or her services equal to the limitation on compensation prescribed in Section 9-1-43.

Procedures for Registration

§ 23-15-33 Registrar's responsibilities concerning the Statewide Election Management System:

(1) Every person entitled to be registered as an elector in compliance with the laws of this state and who has signed his or her name on and properly completed the application for registration to vote shall be registered by the county registrar in the voting precinct of the residence of such person through the Statewide Elections Management System.

(2) Every person entitled to be registered as an elector in compliance with the laws of this state and who registers to vote pursuant to the National Voter Registration Act of 1993 shall be registered by the county registrar in the voting precinct of the residence of such person through the Statewide Elections Management System.

Office Hours for Registration

§ 23-15-37 Registration times and places:

(1) The registrar shall register the electors of his or her county at any time during regular office hours.

(2) The county registrar may keep his or her office open to register voters from 8:00 a.m. until 7:00 p.m., including the noon hour, for the five (5) business days immediately preceding the thirtieth day before any regularly scheduled primary or general election. The county registrar shall also keep his or her office open from 8:00 a.m. until 12:00 noon on the Saturday immediately preceding the thirtieth day before any regularly scheduled primary or general election, unless that Saturday falls on a legal holiday, in which case registration applications submitted on the Monday immediately following the legal holiday shall be accepted and entered in the Statewide Elections Management System for the purpose of enabling such voters to vote in the next primary or general election.

(3) The registrar, or any deputy registrar duly appointed by law, may visit and spend such time as he or she may deem necessary at any location in his or her county, selected by the registrar not less than thirty (30) days before an election, for the purpose of registering voters.

(4) A person who is physically disabled and unable to visit the office of the registrar to register to vote due to such disability may contact the registrar and request that the registrar or the registrar's deputy visit him or her for the purpose of registering such person to vote. The registrar or the registrar's deputy shall visit

that person as soon as possible after such request and provide the person with an application for registration, if necessary. The completed application for registration shall be executed in the presence of the registrar or the registrar's deputy.

(5) (a) In the fall and spring of each year the registrar of each county shall furnish all public schools with mail-in voter registration applications. The applications shall be provided in a reasonable time to enable those students who will be eighteen (18) years of age before a general election to be able to vote in the primary and general elections.
(b) Each public school district shall permit access to all public schools of this state for the county registrar or the county registrar's deputy to register persons who are eligible to vote and to provide voter education.

Application Made in Person

§ 23-15-39 Application; expenses; municipal annexation or redistricting:

(1) Applications for registration as electors of this state, which are sworn to and subscribed before the registrar or deputy registrar authorized by law and which are not made by mail, shall be made upon a form established by rule duly adopted by the Secretary of State.

(2) The boards of supervisors shall make proper allowances for office supplies reasonably necessitated by the registration of county electors.

(3) If the applicant indicates on the application that he or she resides within the city limits of a city or town in the county of registration, the county registrar shall process the application for registration or changes to the registration as provided by law.

(4) If the applicant indicates on the application that he or she has previously registered to vote in another county of this state or another state, notice to the voter's previous county of registration in this state shall be provided by the Statewide Elections Management System. If the voter's previous place of registration was in another state, notice shall be provided to the voter's previous state of residence if the Statewide Elections Management System has that capability.

(5) The county registrar shall provide to the person making the application a copy of the application upon which has been written the county voting precinct and municipal voting precinct, if any, in which the person shall vote. Upon entry of the voter registration information into the Statewide Elections Management

System, the system shall assign a voter registration number to the person, and the county registrar shall mail the applicant a voter registration card to the mailing address provided on the application.

(6) Any person desiring an application for registration may secure an application from the registrar of the county of which he or she is a resident and may take the application with him or her and secure assistance in completing the application from any person of the applicant's choice. It shall be the duty of all registrars to furnish applications for registration to all persons requesting them, and it shall likewise be the registrar's duty to furnish aid and assistance in the completing of the application when requested by an applicant. The application for registration shall be sworn to and subscribed before the registrar or deputy registrar at the municipal clerk's office, the county registrar's office or any other location where the applicant is allowed to register to vote. The registrar shall not charge a fee or cost to the applicant for accepting the application or administering the oath or for any other duty imposed by law regarding the registration of electors.

(7) If the person making the application is unable to read or write, for reason of disability or otherwise, he or she shall not be required to personally complete the application in writing and execute the oath. In such cases, the registrar or deputy registrar shall read the application and oath to the person and the person's answers thereto shall be recorded by the registrar or the registrar's deputy. The person shall be registered as an elector if he or she otherwise meets the requirements to be registered as an elector. The registrar shall record the responses of the person and the recorded responses shall be retained permanently by the registrar. The county registrar shall enter the voter registration information into the Statewide Elections Management System and designate the entry as an assisted filing.

(8) The receipt of a copy of the application for registration sent pursuant to Section 23-15-35(2) shall be sufficient to allow the applicant to be registered as an elector of this state, if the application is not challenged.

(9) In any case in which the corporate boundaries of a municipality change, whether by annexation or redistricting, the municipal clerk shall, within ten (10) days after approval of the change in corporate boundaries, provide to the county registrar conforming geographic data that is compatible with the Statewide Elections Management System. The data shall be developed by the municipality's use of a standardized format specified by the Statewide Elections Management System. The county registrar, county election commissioner or other county official, who has completed an annual training seminar sponsored by the Secretary of State pertaining to the implementation of new boundary lines in the Statewide Elections Management System and received certification for that training, shall update the municipal boundary information into the Statewide Elections

Management System. The Statewide Elections Management System updates the municipal voter registration records and assigns electors to their municipal voting precincts. The county registrar shall forward to the municipal clerk written notification of the additions and changes, and the municipal clerk shall forward to the affected municipal electors written notification of the additions and changes.

Application Made by Mail

§ 23-15-47 Registering by mail:

(1) Any person who is qualified to register to vote in the State of Mississippi may register to vote by mail-in application in the manner prescribed in this section.

(2) The following procedure shall be used in the registration of electors by mail:

(a) Any qualified elector may register to vote by mailing or delivering a completed mail-in application to his or her county registrar at least thirty (30) days before any election; however, if the thirtieth day to register before an election falls on a Sunday or legal holiday, the registration applications submitted on the business day immediately following the Sunday or legal holiday shall be accepted and entered into the Statewide Elections Management System for the purpose of enabling voters to vote in the next election. The postmark date of a mailed application shall be the applicant's date of registration.

(b) Upon receipt of a mail-in application, the county registrar shall stamp the application with the date of receipt, and shall verify the application either by matching the applicant's Mississippi driver's license number through the Mississippi Department of Public Safety or by matching the applicant's social security number through the American Association of Motor Vehicle Administrators. Within fourteen (14) days of receipt of a mail-in registration application, the county registrar shall complete action on the application, including any attempts to notify the applicant of the status of his or her application.

(c) If the county registrar determines that the applicant is qualified and his or her application is legible and complete, the county registrar shall mail the applicant written notification that the application has been approved, specifying the county voting precinct, municipal voting precinct, if any, polling place and supervisor district in which the person shall vote. This written notification of approval containing the specified information shall be the voter's registration card. The registration card shall be provided by the county registrar to the applicant in accordance with Section 23-15-39. Upon entry of the voter registration information into the Statewide Elections Management System, the system shall assign a voter registration number to the applicant. The assigned voter registration number shall be

clearly shown on the written notification of approval. In mailing the written notification, the county registrar shall note the following on the envelope: “DO NOT FORWARD”. If any registration notification form is returned as undeliverable, the voter's registration shall be void.

(d) A mail-in application shall be rejected for any of the following reasons:

(i) An incomplete portion of the application makes it impossible for the registrar to determine the eligibility of the applicant to register;
(ii) A portion of the application is illegible in the opinion of the county registrar and makes it impossible to determine the eligibility of the applicant to register;
(iii) The county registrar is unable to determine, from the address and information stated on the application, the precinct in which the voter should be assigned or the supervisor district in which he or she is entitled to vote;
(iv) The applicant is not qualified to register to vote pursuant to Section 23-15-11;
(v) The county registrar determines that the applicant is already registered as a qualified elector of the county;
(vi) The county registrar is unable to verify the application pursuant to subsection (2)(b) of this section.

(e) If the mail-in application of a person is subject to rejection for any of the reasons set forth in paragraph (d)(i) through (iii) of this subsection, and it appears to the county registrar that the defect or omission is of such a minor nature and that any necessary additional information may be supplied by the applicant over the telephone or by further correspondence, the county registrar may write or call the applicant at the telephone number or address, or both, provided on the application. If the county registrar is able to contact the applicant by mail or telephone, the county registrar shall attempt to ascertain the necessary information, and if this information is sufficient for the registrar to complete the application, the applicant shall be registered. If the necessary information cannot be obtained by mail or telephone, or is not sufficient to complete the application within fourteen (14) days of receipt, the county registrar shall give the applicant written notice of the rejection and provide the reason for the rejection. The county registrar shall further inform the applicant that he or she has a right to attempt to register by appearing in person or by filing another mail-in application.

(f) If a mail-in application is subject to rejection for the reason stated in

paragraph (d)(v) of this subsection and the "present home address" portion of the application is different from the residence address for the applicant found in the Statewide Elections Management System, the mail-in application shall be deemed a written request to update the voter's registration pursuant to Section 23-15-13. The county registrar or the election commissioners shall update the voter's residence address in the Statewide Elections Management System and, if necessary, advise the voter of a change in the location of his or her county or municipal polling place by mailing the voter a new voter registration card.

(3) The instructions and the application form for voter registration by mail shall be in a form established by rule duly adopted by the Secretary of State.

(4) (a) The Secretary of State shall prepare and furnish without charge the necessary forms for application for voter registration by mail to each county registrar, municipal clerk, all public schools, each private school that requests such applications, and all public libraries.
(b) The Secretary of State shall distribute without charge sufficient forms for application for voter registration by mail to the Commissioner of Public Safety, who shall distribute the forms to each driver's license examining and renewal station in the state, and shall ensure that the forms are regularly available to the public at such stations.
(c) Bulk quantities of forms for application for voter registration by mail shall be furnished by the Secretary of State to any person or organization. The Secretary of State shall charge a person or organization the actual cost he or she incurs in providing bulk quantities of forms for application for voter registration to such person or organization.

(5) The originals of completed mail-in applications shall remain on file in the office of the county registrar with copies retained in the Statewide Elections Management System.

(6) If the applicant indicates on the application that he or she resides within the city limits of a city or town in the county of registration, the county registrar shall enter the information into the Statewide Elections Management System.

(7) If the applicant indicates on the application that he or she has previously registered to vote in another county of this state or another state, notice to the voter's previous county of registration in this state shall be provided through the Statewide Elections Management System. If the voter's previous place of registration was in another state, notice shall be provided to the voter's previous state of residence.

(8) Any person who attempts to register to vote by mail shall be subject to the penalties for false registration provided for in Section 23-15-17.

Approval or Denial of Application for Registration

§ 23-15-41 Recordation of status and registration:

(1) When an applicant to register to vote has completed the application form as prescribed by administrative rule, the county registrar shall enter the applicant's information into the Statewide Elections Management System where the applicant's status will be marked as "ACTIVE," "PENDING" or "REJECTED," and the applicant shall be entitled to register upon his or her request for registration made in person to the registrar, or deputy registrar if a deputy registrar has been appointed. No person other than the registrar, or a deputy registrar, shall register any applicant.

(2) If an applicant is not qualified to register to vote, then the registrar shall enter the applicant's information into the Statewide Elections Management System and mark the applicant's status as "PENDING" or "REJECTED," with the specific reason or reasons for that status noted. The registrar shall notify the election commission of those applicants rejected.

When a Person Is Not Approved for Registration

§ 23-15-43 Automatic review:

In the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in Sections 23-15-61 through 23-15-79. In addition to the meetings of the election commissioners provided in those sections, the commissioners are required to hold such additional meetings to determine all pending cases of registration on review before the election at which the applicant desires to vote.

It is not the purpose of this section to indicate the decision that should be reached by the election commissioners in certain cases but to define which applicants should receive further examination by providing for an automatic review.

§ 23-15-45 Notice to rejected applicant:

In the event that registration is denied pending automatic review by the county election commissioners, the registrar shall immediately inform the applicant that the registration is denied and advise the applicant of the date, time and place of the next meeting of the county election commissioners, at which time the

applicant may present such evidence either in person or in writing as he deems pertinent to the question of residency.

Appeals from Denial of Registration

§ 23-15-61 Appeal by rejected applicant:

Any person denied the right to register as a voter may appeal from the decision of the county registrar to the board of election commissioners by filing with the county registrar, on the same day of the denial or within five (5) days after the denial, a written application for appeal.

§ 23-15-71 Appeal to circuit court:

Any elector aggrieved by the decision of the commissioners shall have the right to file a bill of exceptions thereto, to be approved and signed by the commissioners, embodying the evidence in the case and the findings of the commissioners, within two (2) days after the rendition of the decision, and may thereupon appeal to the circuit court upon the execution of a bond, with two (2) or more sufficient sureties to be approved by the commissioners, in the sum of One Hundred Dollars ($100.00), payable to the state, and conditioned to pay all costs in case the appeal shall not be successfully prosecuted; and in case the decision of the commissioners be affirmed, judgment shall be entered on the bond for all costs.

§ 23-15-75 Circuit court judgment; costs prohibited:

Should the judgment of the circuit court be in favor of the right of an elector to be registered, the court shall so order, and shall, by its judgment, direct the registrar of the county forthwith to register him. Costs shall not, in any case, be adjudged against the county.

§ 23-15-77 When costs allowed:

The election commissioners shall not award costs in proceedings before them; but circuit courts and the Supreme Court shall allow costs as in other cases.

Voter Identification Card

§ 23-15-7 Mississippi Voter Identification Card:

(1) The Secretary of State shall negotiate a Memorandum of Understanding which shall be entered into by the Mississippi Department of Public Safety and the registrar of each county for the purpose of providing a Mississippi Voter Identification Card. The card shall be valid for the purpose of voter identification purposes under Section 23-15-563 and available only to registered voters of this state. No fee shall be charged or collected for the application for or issuance of a Mississippi Voter Identification Card. Any costs associated with the application for or issuance of a Mississippi Voter Identification Card shall be made payable from the state's General Fund.

(2) The registrar of each county shall provide a location in the registrar's office at which he or she shall accept applications for Mississippi Voter Identification Cards in accordance with the Mississippi Constitution; however, in counties having two (2) judicial districts the registrar shall provide a location in the registrar's office in each judicial district at which he or she shall accept applications for Mississippi Voter Identification Cards in accordance with the Mississippi Constitution.

(3) No person shall be eligible for a Mississippi Voter Identification Card if the person has a valid unexpired Mississippi driver's license or an identification card issued under Section 45-35-1 et seq.

(4) (a) The Mississippi Voter Identification Card shall be captioned "MISSISSIPPI VOTER IDENTIFICATION CARD" and shall contain a prominent statement that under Mississippi law it is valid only as identification for voting purposes. The identification card shall include the following information regarding the applicant:

(i) Full legal name;
(ii) Legal residence address;
(iii) Mailing address, if different; and
(iv) Voting information.

(b) The Mississippi Voter Identification Card shall also contain the date the voter identification card was issued, the county in which the voter is registered and such other information as required by the Secretary of State.

(5) The application shall be signed and sworn to by the applicant and any falsification or fraud in the making of the application shall constitute false swearing under Section 97-7-35.

(6) The registrar shall require presentation and verification of any of the following information during the application process before issuance of a Mississippi Voter Identification Card:

(a) A photo identity document; or

(b) Documentation showing the person's date and place of birth; or

(c) A social security card; or

(d) A Medicare card; or

(e) A Medicaid card; or

(f) Such other acceptable evidence of verification of residence in the county as determined by the Secretary of State.

(7) A Mississippi Voter Identification Card shall remain valid for as long as the cardholder remains qualified to vote. It shall be the duty of a person who moves his or her residence within this state to surrender his or her voter identification card to the registrar of the county of his or her new residence and that person may thereafter apply for and receive a new card if such person is eligible under this section. It shall be the duty of a person who moves his or her residence outside this state or who ceases to be qualified to vote to surrender his or her card to the registrar who issued it.

(8) The Secretary of State, in conjunction with the Mississippi Department of Public Safety, shall adopt rules and regulations for the administration of this section.

WHO IS QUALIFIED
TO VOTE IN
MISSISSIPPI

— A United States Citizen —

— A Naturalized Citizen —
with Proper Identification

— An Inhabitant of Mississippi —

— A Person at Least 18 Years of Age —

WHO IS NOT QUALIFIED
TO VOTE IN
MISSISSIPPI

— A Person Who is an Idiot or Insane —

— A Person Who Has Been Convicted of —
murder
rape
bribery
theft
arson
false pretenses
perjury
forgery
embezzlement
bigamy
vote fraud

— A Person Who is Not a United States & Mississippi Citizen —

***See* Miss. Const. Art. 12, § 241; § 23-15-11**

CHAPTER 8

MARRIAGE LICENSE PROCEDURES

CHARTS

CHAPTER 8

MARRIAGE LICENSE PROCEDURES

Custodian of Marriage Records

§ 93-1-23 Custodian of records relating to marriage licenses:

The clerk of the circuit court in each county shall be the legal custodian of the records and papers relating to marriage licenses and certificates of marriage formerly kept by the clerk of the probate court of each county.

Hours of Issuance of Marriage License

§ 93-1-11 Hours for issuance of licenses:

(1) It shall be unlawful for any clerk to issue a marriage license between the hours of 6 p.m. and 8 a.m. When a clerk shall issue a license he shall certify on said license the time when it was issued.

(2) Any clerk violating the provisions of this section shall be guilty of a misdemeanor, and shall be fined not more than five hundred dollars ($500.00).

Prerequisites for Marriage License

§ 93-1-5 Prerequisites for marriage license:

(1) Every male who is at least seventeen (17) years old and every female who is at least fifteen (15) years old shall be capable in law of contracting marriage. However, males and females under the age of twenty-one (21) years must furnish the circuit clerk satisfactory evidence of consent to the marriage by the parents or guardians of the parties. It shall be unlawful for the circuit court clerk to issue a marriage license until the following conditions precedent have been complied with:

(a) Application for the license is to be made in writing to the clerk of the circuit court of any county in the State of Mississippi. The application shall be sworn to by both applicants and shall include:

(i) The names, ages and addresses of the parties applying;
(ii) The names and addresses of the parents of the applicants, and, for applicants under the age of twenty-one (21), if no parents, then names and addresses of the guardian or next of kin;
(iii) The signatures of witnesses; and

(iv) Any other data that may be required by law or the State Board of Health.

(b) Proof of age shall be presented to the circuit court clerk in the form of either a birth certificate, baptismal record, armed service discharge, armed service identification card, life insurance policy, insurance certificate, school record, driver's license, tribal identification card or other official document evidencing age. The document substantiating age and date of birth shall be examined by the circuit court clerk before whom application is made, and the circuit court clerk shall retain in his file with the application the document or a certified or photostatic copy of the document.

(c) Applicants under the age of twenty-one (21) must submit affidavits showing the age of both applying parties made by either the father, mother, guardian or next of kin of each of the contracting parties and filed with the clerk of the circuit court along with the application.

(d) If the male applicant is under seventeen (17) years of age or the female is under fifteen (15) years of age, and satisfactory proof is furnished to the judge of any circuit, chancery or county court that sufficient reasons exist and that the parties desire to be married to each other and that the parents or other person in loco parentis of the person or persons so under age consent to the marriage, then the judge of any such court in the county where either of the parties resides may waive the minimum age requirement and by written instrument authorize the clerk of the court to issue the marriage license to the parties if they are otherwise qualified by law. Authorization shall be a part of the confidential files of the clerk of the court, subject to inspection only by written permission of the judge.

(e) In no event shall a license be issued by the circuit court clerk when it appears to the circuit court clerk that the applicants are, or either of them is:

(i) Intoxicated; or
(ii) Suffering from a mental illness or an intellectual disability to the extent that the clerk believes that the person does not understand the nature and consequences of the application for a marriage license.

(2) Any circuit clerk shall be liable under his official bond because of noncompliance with the provisions of this section.

(3) Any circuit court clerk who issues a marriage license without complying with the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Fifty Dollars ($50.00) and not more than Five Hundred Dollars ($500.00).

Marriage License Procedure

If the male is under 17 years old
or
the female is under 15 years old,

the court in the county
where either of the parties resides
may waive the age requirements
by written instrument if:

Sufficient reasons exist;

The parties desire to be married; &

The parents/persons in loco parentis
consent.

Male - At least 17 years old

Female - At least 15 years old

Do not appear to be intoxicated, or
have a mental illness or intellectual
disability

Parties Apply in Writing to the Circuit Clerk

& Sworn to by Both Applicants

Application Contains:

Parties' Names, Ages, & Addresses

Parents/Guardians' Names & Addresses

Signatures of Witnesses

Any Other Data Required by Law or the State Board of Health

Circuit Clerk Issues
the Marriage License

Documents Required For a Marriage License

Proof of Age

Birth Certificate

Baptismal Record

Armed Service Discharge

Armed Service Identification Card

Life Insurance Policy

Insurance Certificate

School Record

Driver's License

Other Official Document Evidencing Age

Application

In Writing

Sworn to by Both Applicants

Contains:

Parties' Names, Ages & Addresses

Parents/Guardians' Names & Addresses

Signatures of Witnesses

Any Other Data Required by Law or the State Board of Health

Noncompliance with the above Listed Statutes Not to Affect Marriages

§ 93-1-9 Effect of noncompliance:

The failure to comply with the provisions of Sections 93-1-5 and 93-1-7 shall not affect the validity of any marriage duly solemnized, followed by cohabitation.

Fees for Marriage License

§ 25-7-13(2) Clerks of the circuit court:

(i) For taking and recording application for marriage license, for filing and recording consent of parents when required by law, for filing and recording medical certificate, filing and recording proof of age, recording and issuing license, recording and filing returns $ 35.00

The clerk shall deposit Fourteen Dollars ($14.00) of each fee collected for a marriage license in the Victims of Domestic Violence Fund established in Section 93-21-117, on a monthly basis.

§ 93-21-117 Victims of Domestic Violence Fund:

(1) There is hereby created in the State Treasury a special fund to be known as the "Victims of Domestic Violence Fund." The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

(a) Monies appropriated by the Legislature;
(b) The interest accruing to the fund;
(c) Monies received under the provisions of Section 99-19-73;
(d) Monies received from the federal government;
(e) Donations to the Victims of Domestic Violence Fund;
(f) Assessments collected pursuant to Section 83-39-31; and
(g) Monies received from such other sources as may be provided by law.

(2) The circuit clerks of the state shall deposit in the fund on a monthly basis the additional fee charged and collected for marriage licenses under the provisions of Section 25-7-13, Mississippi Code of 1972. . . .

Solemnization of Marriages

§ 93-1-13 License essential:

A marriage shall not be contracted or solemnized unless a license therefor shall first have been duly issued. No irregularity in the issuance of or omission in the license shall invalidate any marriage, nor shall this section be construed so as to invalidate any marriage that is good at common law.

§ 93-1-15 License and solemnization required for valid marriage:

(1) No marriage contracted after April 5, 1956 shall be valid unless the contracting parties shall have obtained a marriage license as otherwise required by law, and unless also the marriage, after such license shall have been duly issued therefor, shall have been performed by or before any person, religious society, institution, or organization authorized by Sections 93-1-17 and 93-1-19 to solemnize marriages. Failure in any case to comply with both prerequisites aforesaid, which shall also be construed as mandatory and not merely directory, shall render the purported marriage absolutely void and any children born as a result thereof illegitimate.

(2) Nothing contained in this section shall be construed to affect the validity of any marriage, either ceremonial or common law, contracted prior to April 5, 1956.

§ 93-1-17 By whom marriages may be solemnized:

Any minister of the gospel ordained according to the rules of his church or society, in good standing; any Rabbi or other spiritual leader of any other religious body authorized under the rules of such religious body to solemnize rites of matrimony and being in good standing; any 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. Justice court judges and members of the boards of supervisors may likewise solemnize the rites of matrimony within their respective counties. Any marriages performed by a mayor of a municipality prior to March 14, 1994 are valid provided such marriages satisfy the requirements of Section 93-1-18.

§ 21-23-7 Powers and duties of municipal judge; mayor serving as municipal judge:

(3) The municipal judge may solemnize marriages. . . .

§ 93-1-18 Validation of certain marriages performed by mayors:

Any marriages performed by a mayor of a municipality prior to March 14, 1994, are validated unless they have been invalidated by a court of competent jurisdiction, provided that all other requirements of law have been met and the marriages would have been valid if performed by an official authorized by law to solemnize the rites of matrimony.

§ 93-1-19 Marriage may be solemnized according to religious customs:

It shall be lawful for a pastor of any religious society in this state to join together in marriage such persons of the society to whom a marriage license has been issued, according to the rules and customs established by the society. The clerk or keeper of the minutes, proceedings, or other books of the religious society wherein such marriage shall be had and solemnized, shall make a true and faithful register of all marriages solemnized in the society, in a book kept by him for that purpose, and return a certificate of the same to the clerk of the circuit court of the county, to be by him recorded, under the penalty prescribed in Section 93-1-21 [Repealed].

Statistical Record of Marriage

§ 41-57-48 Statistical record of marriage:

(1) For each marriage performed in this state, a record entitled "Statistical Record of Marriage" shall be filed with the office of vital records registration of the State Board of Health by the circuit clerk who issued the marriage license and shall be registered if it has been completed and filed in accordance with this section.

(2) The circuit clerk who issues the marriage license shall complete the statistical record (except for the section relating to the ceremony) on a form prescribed and furnished by the State Board of Health and shall sign it. The record shall be prepared on the basis of information obtained from the parties to be married, and both the bride and the groom shall sign the record certifying that the information about themselves is correct.

(3) The person who performs the marriage ceremony shall complete and sign the section relating to the ceremony and shall return the record to the circuit clerk who issued the license within five (5) days after the ceremony.

(4) The circuit clerk, on or before the tenth day of each calendar month, shall forward to the State Board of Health all completed records returned to him during the preceding month.

(5) The circuit clerk shall receive a recording fee of one dollar ($1.00) for each marriage record prepared and forwarded by him to the State Board of Health. This

fee shall be collected from the applicants for the license together with, and in addition to, the fee for the license and shall be deposited in the county treasury. The recording fees shall be paid to the circuit clerk out of the county treasury once each six (6) months on order of the board of supervisors, upon certification by the office of vital records registration of the number of marriage records filed.

§ 41-57-57 Securing complete records:

In order to secure records of marriages and births in the several counties in this state from the earliest records down to the present time, the state board of health is hereby authorized and empowered to make contract with the circuit clerks or others of this state to compile for the bureau of vital statistics complete lists of marriages in the various counties from the earliest records down to the present time. In order to complete these records by securing records of said marriages in all said counties, the state board of health is hereby authorized and empowered to deposit all moneys received as fees for certified copies of births, deaths and marriages in the state treasury in a separate account to be used for the completion of the vital statistics on marriages in the various counties, and for clerical expenses and other expenses necessary for completion and issuance of birth records. Said fund shall be paid out for said purposes only on voucher issued for these purposes by the state board of health. When said statistics of past marriages in the several counties shall have been completed and paid for, then all of said funds that may remain on hand and all other such funds collected for certified copies of birth, death and marriage records thereafter may be used for the completion of birth records.

§ 41-57-59 Penalties for violations:

Any person or persons who shall violate any of the provisions of Sections 41-57-41 through 41-57-57, or any rule, regulation or order of the State Board of Health relative to the making of said reports, as to reporting, recording or filing the information for the bureau of vital statistics on marriages, or who shall fail, neglect or refuse to perform any of the duties imposed by said order, rules or regulations, or shall furnish false information for the purpose of making incorrect records for said bureau, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than Five Hundred Dollars ($500.00) or be imprisoned in the county jail not exceeding six (6) months, or shall suffer both such fine and imprisonment, at the discretion of said court.

CHAPTER 9

REVISED MISSISSIPPI LAW ON NOTARIAL ACTS

CHAPTER 9

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 10

LEGAL RESEARCH

CHARTS

CHAPTER 10

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

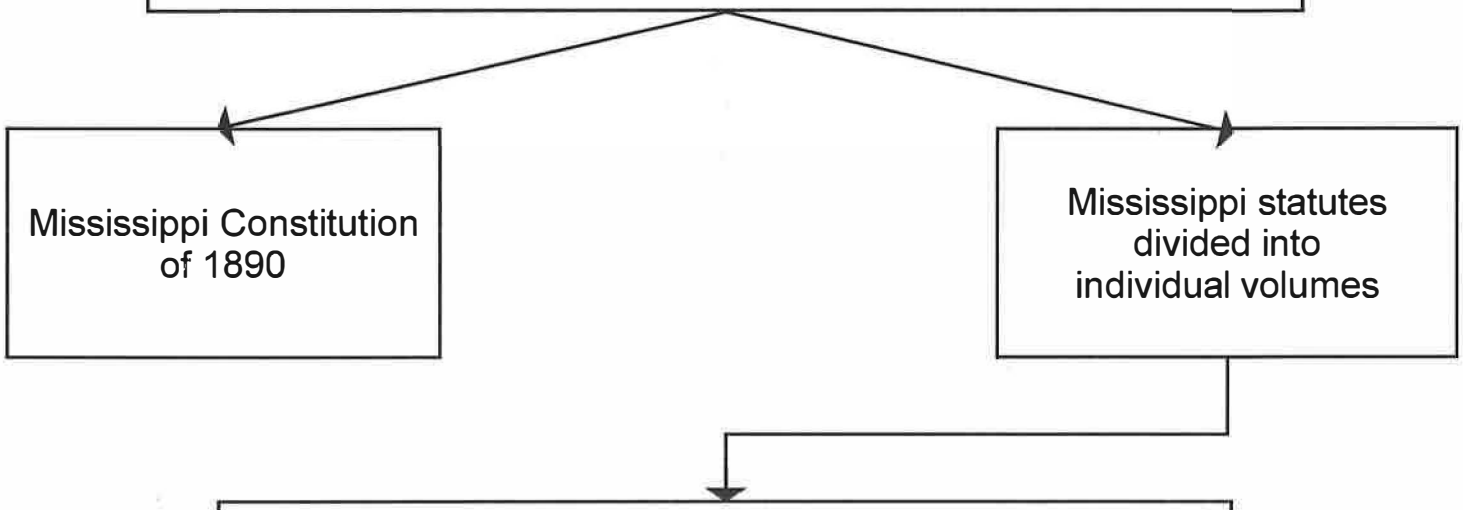
Mississippi Code of 1972 is the official codification of Mississippi Laws

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

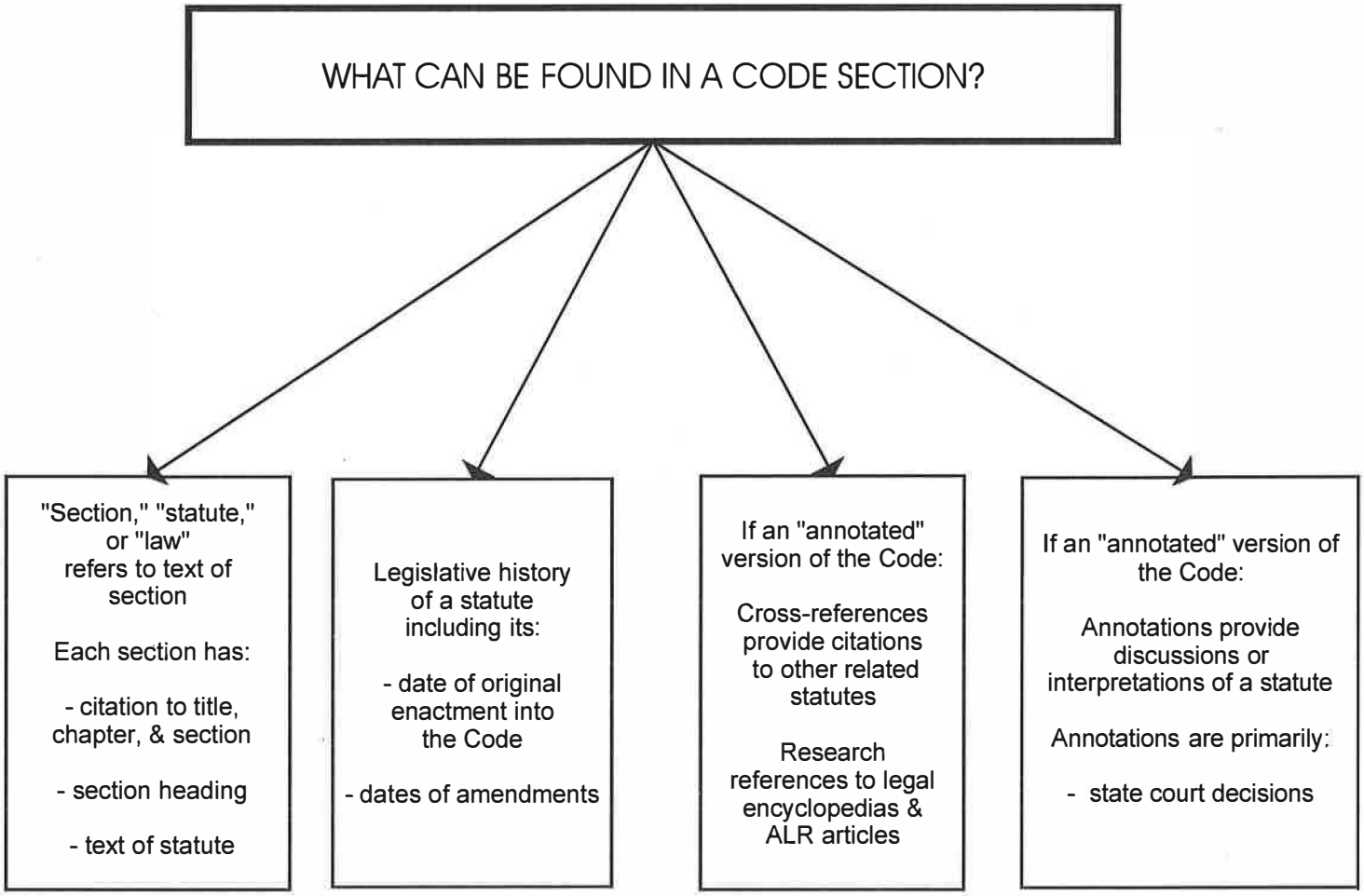
section: is the individual statute

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

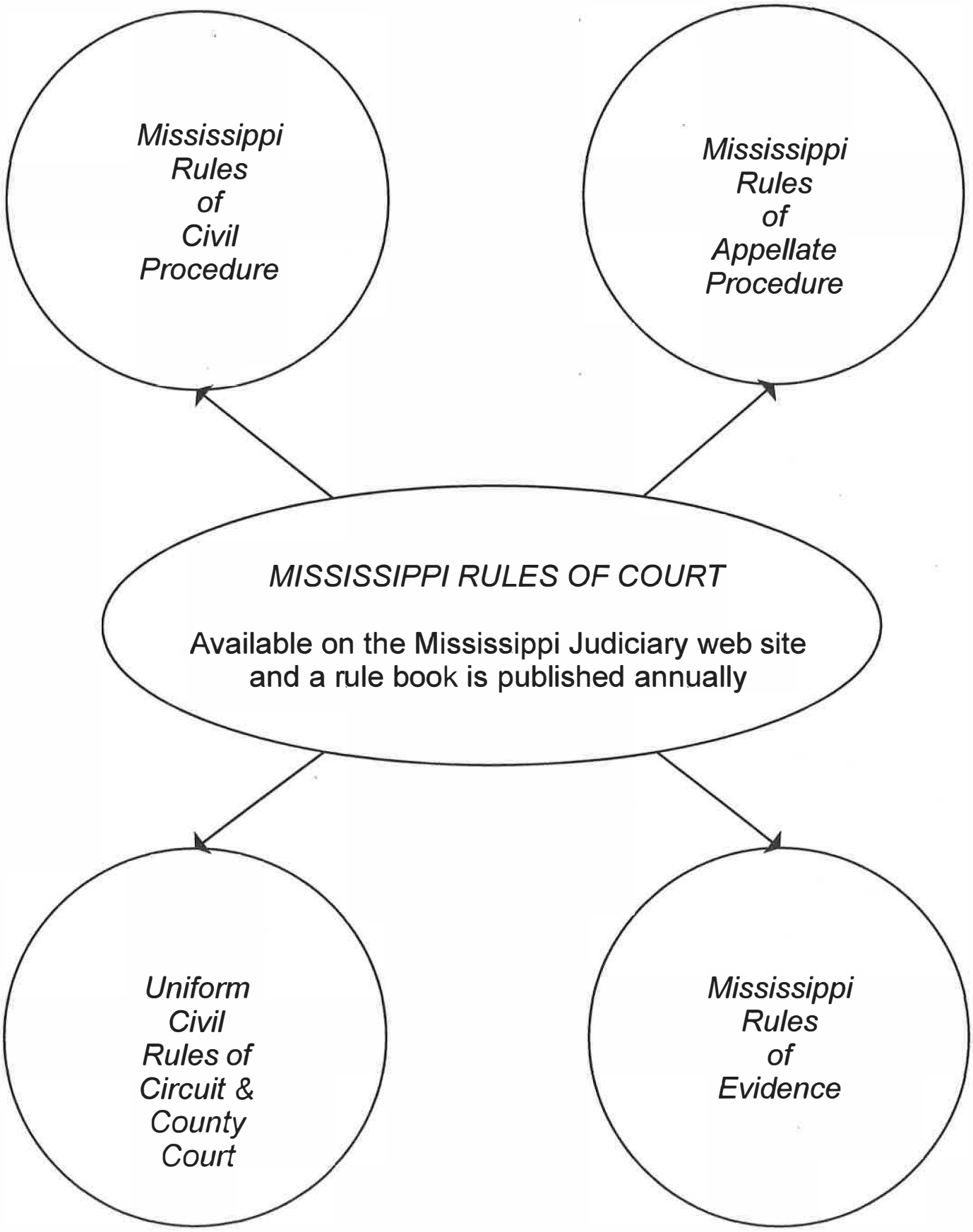
The State of Mississippi Judiciary's web site has links to all of the Mississippi Rules of Court:

- 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
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CHAPTER 11

THE JURY SELECTION PROCESS

CHARTS

CHAPTER 11

THE JURY SELECTION PROCESS

The Right to Trial by Jury

Civil Trials

Mississippi Constitution Article 3, § 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.

Mississippi Rule of Civil Procedure 38 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.

Criminal Trials

Unites States Constitution Amendment VI provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed. . . .

Mississippi Constitution Article III, § 31 Trial by jury provides:

The right to trial by jury shall remain inviolate . . . .

§ 9-3-63 Limitation on rules:

Rules prescribed by the Supreme Court shall preserve the right of trial by jury as at common law and as declared by Article 3, § 31 of the Mississippi Constitution of 1890 and as declared by Amendment VII to the Constitution of the United States.

The Mississippi Supreme Court has stated:

> In order that there may be no confusion in the minds of jurors engaged in the trial of a criminal case we think it is proper to instruct them in such cases that their verdict must be unanimous. . . The constitutional right to trial by jury includes as its essential elements that the jury shall consist of twelve (12) impartial men, neither more nor less, . . . and that the verdict shall be unanimous. ***Markham v. State*, 46 So. 2d 88, 89 (Miss. 1950).**

The Jury Selection Process

Mississippi Rule of Civil Procedure 47(b) states:

> [T]that 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.

***See* § 13-5-21 Jury list in counties with two circuit court districts.**

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 and § 47-5-55 Exemptions from jury duty.**

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 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.

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(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.

CLERK'S DUTIES IN JURY SELECTION PROCESS	
§ 13-5-8	Clerk certifies the county's voter registration list to the jury commission in January of each year
§ 13-5-16	Clerk prepares an alphabetical list of all of the names drawn from the jury wheel
§ 13-5-26	Clerk maintains a jury box which contains the names or identifying numbers of all the prospective jurors drawn from the jury wheel
§ 13-5-26	Clerk draws names and assigns the number of jurors the court has ordered for 1 or more jury panels
§ 13-5-26	Clerk publicly & randomly draws the number of jurors specified by the court from the jury box
§ 13-5-28	Clerk issues a jury summons for each person drawn from the jury box and has each person served personally or by mail
§ 13-5-1	Clerk keeps a list of all jurors disqualified for jury duty for not being able to complete the jury form
§ 25-7-63	Clerk is responsible for seeing that each juror is compensated for his jury service

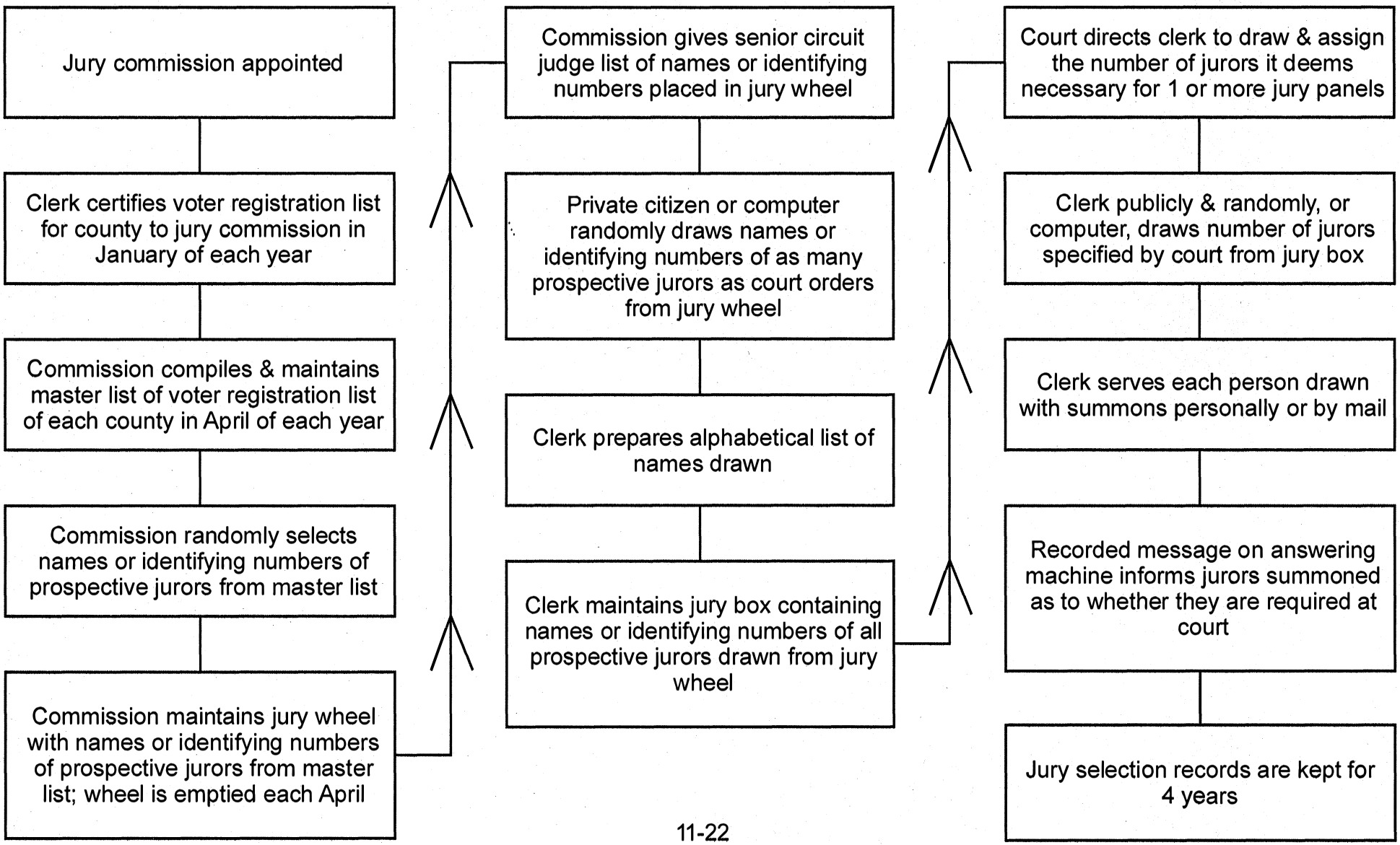
Clerk is in the courtroom and present for:

1. **Jury qualification**
2. **Jury voir dire**
3. **Jury & alternate selection**

WHO ARE COMPETENT JURORS

COMPETENT JUROR	INCOMPETENT JUROR
Mississippi citizen	Convicted of an infamous crime
21 years old & older	Convicted of the unlawful sale of intoxicating liquors
A qualified elector	A common gambler
Can read & write	A habitual drunkard

JURY SELECTION PROCESS



CHAPTER 12

THE GRAND JURY & INDICTMENTS

CHARTS

CHAPTER 12

THE GRAND JURY & INDICTMENTS

Grand Jury Impanelment & Terms

Mississippi Rule of Criminal Procedure 13 states in part:

> Grand juries may be impaneled and serve both in term time and vacation. . . . Upon impanelment, a grand jury may be convened and reconvened by order of the court. The grand jury will continue to serve until the next grand jury is impaneled and it may return indictments to court in term time or vacation notwithstanding intervening terms of court between the time the grand jury is impaneled and the time an indictment is returned.

§ 13-5-39 Terms of grand juries limited:

Unless otherwise directed by an order of the senior circuit judge, not more than two (2) grand juries shall be drawn or impaneled during a calendar year at or for a term or terms of the circuit court in any county or judicial district of a county; provided, however, upon impanelment, a grand jury may be convened and reconvened in termtime and in vacation. It shall continue to serve from term to term until the next grand jury is impaneled, and it may return indictments to any term of court, notwithstanding that a term of court at which criminal business may be conducted shall intervene between the time the grand jury is impaneled and the time an indictment is returned.

§ 13-5-43 Impaneling as conclusive evidence of competency and qualifications:

Before swearing any grand juror as such, he shall be examined by the court, on oath, touching his qualification. After the grand jurors shall have been sworn and impaneled, no objection shall be raised, by plea or otherwise, to the grand jury, but the impaneling of the grand jury shall be conclusive evidence of its competency and qualifications. However, any party interested may challenge or except to the array for fraud.

§ 13-5-53 Adjournment of grand jury to a day; pay in such case:

The court or judge, in its discretion, may adjourn the grand jury to a subsequent day in term time or vacation, and the jurors shall receive pay only for the number of days they shall be actually engaged in the performance of their duties.

§ 13-5-83 Jurors under the control of the court:

> 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.

Number of Grand Jurors

Mississippi Rule of Criminal Procedure 13.1 states:

> The grand jury shall consist of at least fifteen (15) persons, but not more than twenty-five (25) persons, the exact number to be within the discretion of the judge impaneling the jury.

§ 13-5-41 Number of grand jurors:

> The number of grand jurors shall not be less than fifteen (15) nor more than twenty-five (25), in the discretion of the court.

Additional Grand Jurors Drawn

Mississippi Rule of Criminal Procedure 13.1 states:

> If during the service of a grand jury the number of grand jurors able to serve on the grand jury shall become less than fifteen (15), then the circuit judge may have additional grand jurors summoned, impaneled, and charged in the same manner as the original grand jurors.

§ 13-5-51 Places of absent jurors to be filled:

> If, after the grand jury has been sworn, any of the members thereof should absent themselves from any cause, or become incompetent to sit, or be excused by the court, the court shall have power to cause others to be sworn in their places.

Grand Jury Foreman & Oaths of Foreman & Grand Jurors

Mississippi Rule of Criminal Procedure 13.3 states:

> The court shall appoint a foreperson of the grand jury to whom the . . . oath shall be administered in open court. . . . If a foreperson becomes unable to continue service as a grand juror, the court shall appoint another member of the grand jury as replacement. The fact that the original foreperson was replaced shall not be grounds for attacking the validity of the acts or indictments of the grand jury.

§ 13-5-45 Foreman to be appointed and all to be sworn:

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:

[Foreman's Oath]

> 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:

[Grand Jurors' Oath]

> 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.

Grand Jury's Charge

Mississippi Rule of Criminal Procedure 13.2 states in part:

> Only the circuit judge may deliver the charge to the grand jury, except that the circuit clerk or deputy court clerk may read the charge as proposed by the circuit judge when the judge shall be unable to deliver the charge by reason of physical infirmity. The circuit judge shall charge the grand jury according to the matters required by law as the judge deems fit and proper. A sample charge which may be used is attached as an Appendix to these Rules.

§ 13-5-47 Judge to charge the grand jury:

The judge shall charge the grand jury concerning its duties and expound the law to it as he shall deem proper, and he shall particularly charge it concerning enforcement of the following statutes:

(1) those against gambling and the unlawful selling and handling of intoxicating liquors;

(2) those relating to gambling with minors, and the giving or selling to them tobacco, narcotics, or liquors;

(3) those providing for the assessment, collection and disbursement of the public revenues, both state and county;

(4) those defining the duties of public officers;

(5) those relating to the collection and paying over of fines and forfeitures;

(6) those relating to providing fire escapes in hotels, theaters and other buildings;

(7) those relating to the management of sixteenth section school trust lands; and

(8) all such other statutes as he shall deem proper at any time.

Moreover, the judge shall especially charge the grand jury with respect to the state forest fire laws as set forth in Section 95-5-25 and Section 92-17-13, and charge that the grand jury shall report to him as to the status of forest protection in the county.

It shall be unlawful for the district attorney or other officer, or person, to deliver to the grand jury the charge required by this section to be delivered by the judge, but this shall not prevent the judge from having the circuit clerk read the charge proposed by the judge, to the grand jury in the presence of the judge, when, by reason of physical infirmity, the judge shall be unable to deliver his charge.

Grand Jury's Authority

Mississippi Rule of Criminal Procedure 13.6 provides in part:

> A grand jury has the power to indict any person upon affirmative vote of twelve (12) or more grand jurors. The grand jury report should not accuse any person by name of an offense, malfeasance, or misfeasance unless an indictment is returned. If accusations are included in a grand jury report, the comments may be expunged upon the motion of the individual or on motion of the court.

§ 13-5-63 Witnesses before grand jury may be subpoenaed and sworn:

> The foreman of the grand jury shall have power to order subpoenas for all witnesses desired to be produced, and he shall also have power to swear all witnesses. A record shall be kept by the foreman and returned to court, certified and signed by the foreman, of the names of all witnesses sworn before the grand jury.

§ 99-9-23 Witness subpoenaed in vacation to appear before grand jury:

> Any district attorney or conservator of the peace may apply to the clerk of the circuit court in vacation for writs of subpoena for any witness to attend before the grand jury. It shall be the duty of the clerk to issue all subpoenas thus applied for, and it shall be the duty of all witnesses subpoenaed to attend in obedience to the command of such subpoena. If such witnesses fail to appear, the foreman of the grand jury may apply for and obtain an attachment, as in other cases of defaulting witnesses, and such witnesses shall be liable to all the penalties to which any defaulting witness is subject.

Grand Jury's Other Duties

§ 13-5-55 Grand jury to inspect jail; sheriff punishable:

Each grand jury which is impaneled shall make a personal inspection of the county jail, its condition, sufficiency for the safekeeping of prisoners, and their accommodation and health, and make reports thereof to the court. For any violation or neglect of duty as to the jail, the sheriff may be punished as for a misdemeanor, or may be fined as for a contempt, such not to exceed Fifty Dollars ($50.00).

§ 13-5-57 Grand jury may examine all county offices:

The grand jury shall have free access at all proper hours to the papers, records, accounts and books of all county officers, for all examinations which, in its discretion, it may see fit to make, and may make report to the court in relation thereto.

§ 13-5-59 Grand jury to examine tax collector's books:

It shall be the duty of each grand jury which is impaneled to examine the tax collector's books and his reports and settlements, and make report thereon.

Grand Jury's Secrecy

Mississippi Rule of Criminal Procedure 13.5 provides in part:

> A grand juror, except when called as a witness in court, shall keep secret the proceedings and actions taken in reference to matters brought before the grand jury for six (6) months after final adjournment of the grand jury, and the name and testimony of any witness appearing before the grand jury shall be kept secret. No attorney general, district attorney, county attorney, other prosecuting attorney, or other officer of the court shall announce to any unauthorized person what the grand jury will consider in its deliberations. If such information is disclosed, the disclosing person may be found in contempt of court punishable by fine or imprisonment. No grand juror, witness, attorney general, district attorney, county attorney, other prosecuting attorney, clerk, sheriff or other officer of the court shall disclose to any unauthorized person that an indictment is being found or returned into court against a defendant or disclose any action or proceeding in relation to the indictment before the finding of an indictment, within six (6) months thereafter, or before the defendant is arrested or gives bail or recognizance.

§ 13-5-61 Grand jury not to disclose secrets of jury-room:

> A grand juror, except when called as a witness in court, shall not disclose any proceeding or action had by the grand jury in relation to offenses brought before it, within six (6) months after final adjournment of the grand jury upon which he served, nor shall any grand juror disclose the name or testimony of any witness who has been before the grand jury on pain of fine or imprisonment for contempt of court.

§ 97-9-53 Indictments; penalty for disclosing facts relating to indictment:

> If a grand juror, witness, district attorney, clerk, sheriff, or any other officer of the court, disclose the fact of an indictment being found or returned into court against a defendant, or disclose any action or proceeding had in relation thereto, before the finding of the indictment, or in six months thereafter, or until after the defendant shall have been arrested or given bail or recognizance to answer thereto, he shall be fined not more than two hundred dollars.

THE GRAND JURY

GRAND JURY

15-25 Jurors

12 or more votes to return an indictment

GRAND JURIES IN GENERAL		
Provisions for Grand Jury	§ 13-5-39	Two grand juries drawn in calendar year unless court orders otherwise
	Rules 13.1, § 13-5-41	Grand jury should consist of 15 - 25 jurors
	§ 13-5-43	Court examines potential jurors for qualifications Being sworn & impaneled is conclusive evidence of the grand jury's competency
	Rule 13.1, § 13-5-39	Upon impanelment, grand jury may be convened & reconvened in term time and in vacation
	Rule 13.1, § 13-5-51	Court can have other jurors sworn to fill vacancies in the grand jury
	Rule 13.1, § 13-5-39	Grand jury may return indictment to any term of court
Grand Jury Foreman	Rule 13.1, § 13-5-45	Court appoints a grand jury foreman who is then sworn
	§ 13-5-63	Foreman can subpoena witnesses before the grand jury and swear them in
	§ 13-5-63	Foreman keeps a record of all witnesses sworn before the grand jury and returns it to the court
Grand Jury Members	§ 13-5-45	Grand juror members are sworn
	Rule 13.1, § 13-5-61	Grand jurors are not to disclose any proceedings conducted by the grand jury within 6 months after final adjournment
	§ 97-9-53	Grand juror is fined for disclosing facts relating to an indictment

GRAND JURIES IN GENERAL		
Duties	Rule 13.1, § 13-5-47	Court charges grand jury concerning its duties & the law
	§ 13-5-55	Grand jury inspects the county jail & reports to the court
	§ 13-5-57	Grand jury may examine all county offices & report to the court
	§ 13-5-59	Grand jury examines the tax collector's books & reports to the court
Compensation	§ 13-5-53	Grand jurors are paid only for the number of days they actually perform their duties

INDICTMENTS

Votes Required to Return an Indictment

Mississippi Rule of Criminal Procedure 13.6 states:

> A grand jury has the power to indict any person upon affirmative vote of twelve (12) or more grand jurors.

Form of the Indictment

Mississippi Rule of Criminal Procedure 14.1 states:

> The indictment upon which the defendant is to be tried shall be a plain, concise and definite written statement of the essential facts and elements constituting the offense charged and shall fully notify the defendant of the nature and cause of the accusation. Formal and technical words are not necessary in an indictment, if the offense can be substantially described without them.
>
> An indictment shall also include the following:
>
> (A) the name of the accused;
> (B) the date on which the indictment was filed in court;
> (C) a statement that the prosecution is brought in the name and by the authority of the State of Mississippi;
> (D) the county and, in two-district counties, the judicial district in which the indictment is brought;
> (E) the date and, if applicable, the time at which the offense was alleged to have been committed;
> (F) the signature of the foreperson of the grand jury issuing it; and
> (G) the words "against the peace and dignity of the state."

Indictment Presented to the Clerk

Mississippi Rule of Criminal Procedure 2.1 states in part:

> After the grand jury returns an indictment, the circuit clerk shall mark the indictment "filed" and such entries shall be dated and signed by the circuit clerk. The circuit clerk shall, within ten (10) days after adjournment of the term of court, record the indictments in the "Secret Record of Indictments," which shall be indexed and kept secret. The circuit clerk shall issue a capias to the sheriff of the county where the indictment was returned. . . .

§ 99-7-9 Presentment; entry on minutes of court; warrant to issue; copy of indictment to be served on defendant:

All indictments and the report of the grand jury must be presented to the clerk of the circuit court by the foreman of the grand jury or by a member of such jury designated by the foreman, with the foreman's name endorsed thereon, accompanied by his affidavit that all indictments were concurred in by 12 or more members of the jury and that at least 15 were present during all deliberations, and must be marked "filed," and such entry be dated and signed by the clerk. It shall not be required that the body of the grand jury be present and the roll called. An entry on the minutes of the court of the finding or presenting of an indictment shall not be necessary or made, but the endorsement by the foreman, together with the marking, dating, and signing by the clerk shall be the legal evidence of the finding and presenting to the court of the indictment. Unless the party indicted be in custody or on bond or recognizance entry of the indictment otherwise than by its number shall not be made at any time or for any purpose on the minutes or on any docket, nor shall any publicity be given to the fact of the existence of the indictment; but it shall never be made an objection to the indictment that it was improperly entered on the minutes or docket. A warrant for the person indicted shall immediately issue and be served on the person so indicted. After the arrest of the person indicted, and prior to arraignment, a copy of the indictment shall be served on such person. . . .

Clerk Records Indictment in "Secret Record of Indictments"

§ 99-7-13 Secret record book; accused may be tried on copy made from record book:

The clerk of the circuit court shall, within 10 days after the adjournment of each term of court, record the indictments returned into court in a well-bound book to be kept for that purpose which shall be styled "Secret Record of Indictments," and which shall be properly indexed and kept secret. If the office of the clerk be furnished with an iron safe or vault, the book shall be kept therein when not in actual use. If an indictment be lost or destroyed, the accused may be tried on a certified copy of the indictment made from the said record-book.

***See* § 9-7-171 General Docket.**
***See* § 9-7-175 Criminal Docket.**

§ 99-7-15 Authority to inspect indictment limited to certain officers until arrest made:

An indictment returned into the clerk of the circuit court, shall not be inspected by any person but the judge, clerk, district attorney, and sheriff, until the defendant shall have been arrested or has entered into bail or recognizance for the offense.

Clerk Issues Capias

§ 99-9-1 Capias or alias issued for arrest on indictment:

The process for arrest on an indictment shall be a capias, which shall be issued immediately on the return of the indictment into court, and made returnable instanter, unless otherwise ordered by the court, and if the capias be not returned executed, the clerk shall issue an alias, returnable to the next term, without an order for that purpose.

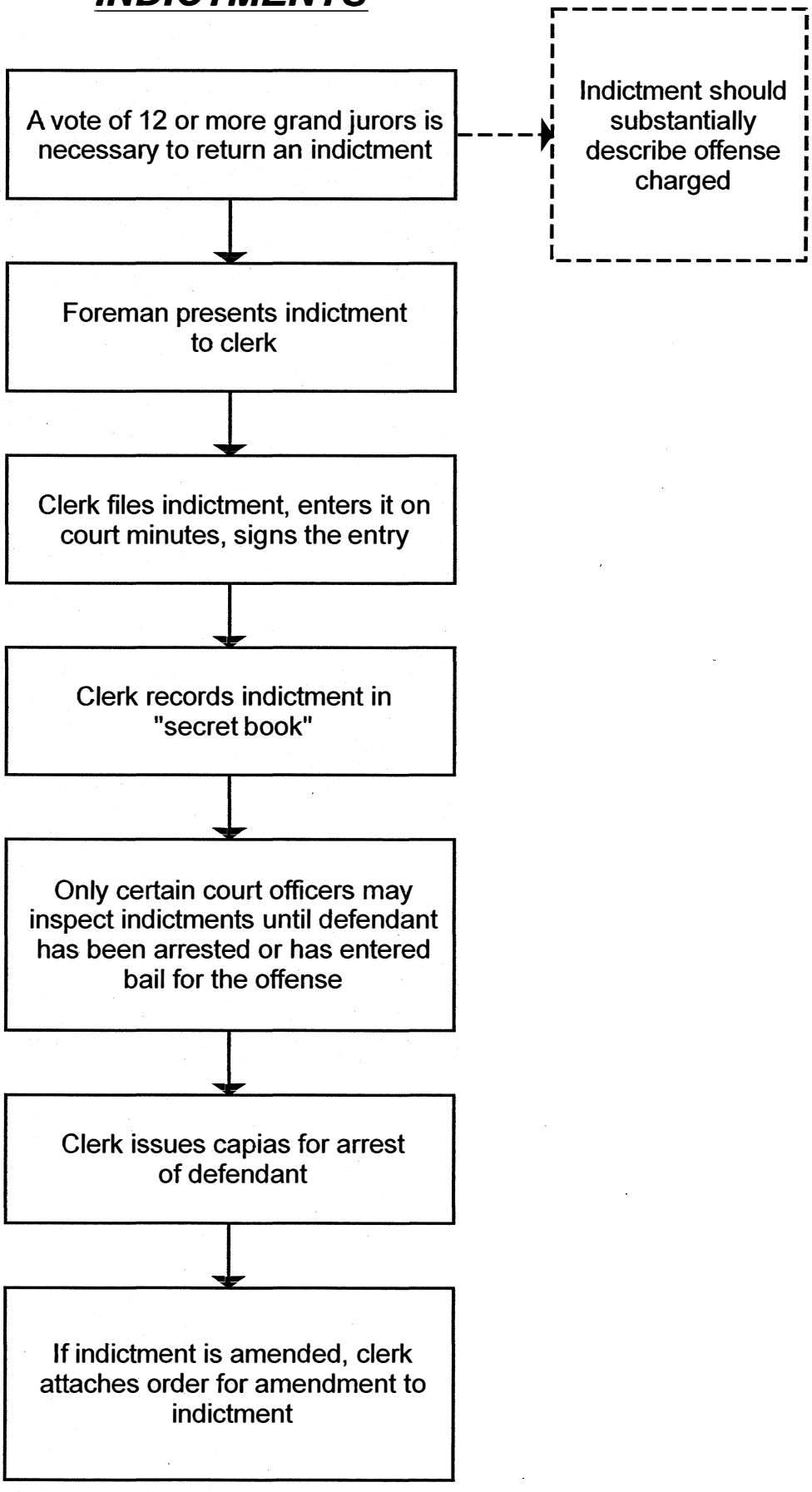
***See* §§ 99-9-3 to -7 (These statutes discuss the clerk's duties when an indictment is returned against a corporation.)**

Amendment of Indictment at Trial

§ 99-17-15 Variance between indictment and proof; amendment of record and indictment; order for amendment:

The order of the court for amendment of the indictment, record or proceedings provided in Section 99-17-13 shall be entered on the minutes, and shall specify precisely the amendment, and shall be a part of the record of said case, and shall have the same effect as if the indictment or other proceeding were actually changed to conform to the amendment; and wherever necessary or proper for the guidance of the jury, or otherwise, the clerk shall attach to the indictment a copy of the order for amendment.

INDICTMENTS



CHAPTER 13

THE PETIT JURY & VERDICTS

CHARTS

CHAPTER 13

THE PETIT JURY & VERDICTS

Civil Trials

Mississippi Rule of Civil Procedure 48 states:

> **(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). . . .
>
> **(b) County Court.** Juries in county court actions shall consist of six (6) persons, plus alternates as provided by Rule 47(d). . . .

Criminal Trials

Mississippi Rule of Criminal Procedure 18.1 states:

> In felony cases, conviction requires the unanimous consent of twelve (12) impartial jurors.
>
> > The constitutional right to trial by jury includes as its essential elements that the jury shall consist of twelve (12) impartial men, neither more nor less. . . . ***Markham v. State*, 46 So. 2d 88, 89 (Miss. 1950).**

Impanelment of the Petit Jury

§ 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.

***See* § 13-5-89 Juries in condemnation proceedings.**

Uniform Civil Rule of Circuit and County Court 3.03 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. Special Courts of Eminent Domain may employ the jury venire of either county or circuit court in the selection of petit juries, or may direct the clerk of court concerning the number of petit jurors needed to be summoned for jury duty.

§ 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.

§ 13-5-77 Special venire facias to issue in certain criminal cases:

> When any person charged with a capital crime, or with the crime of manslaughter, shall have been arraigned and the plea of not guilty entered, the accused or the district attorney in any such case shall, upon demand, be entitled to a special venire. If at a term of court a special venire has been demanded for any case or cases, it shall be the duty of the court to cause to be drawn, in open court, from the jury box as many names as the judge in his discretion may direct, not to be less than forty (40) for each special venire as the judge in his discretion may direct to be called, and it shall be the duty of the clerk to issue a special venire facias, commanding the sheriff to summon the persons whose names are so drawn, to attend the court on a particular day to be named in the writ. . . .

§ 13-5-79 When opinion as to guilt or innocence will not render one incompetent in a criminal case:

> Any person, otherwise competent, who will make oath that he is impartial in the case, shall be competent as a juror in any criminal case, notwithstanding the fact that he has an impression or an opinion as to the guilt or innocence of the accused, if it appear to the satisfaction of the court that he has no bias or feeling or prejudice in the case, and no desire to reach any result in it, except that to which the evidence may conduct. Any juror shall be excluded, however, if the court be of opinion that he cannot try the case impartially, and the exclusion shall not be assignable for error.

§ 13-5-81 Challenge to array; quashing of venire:

A challenge to the array shall not be sustained, except for fraud, nor shall any venire facias, except a special venire facias in a criminal case, be quashed for any cause whatever.

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.

Juror Examination - Voir Dire

Uniform Civil Rule of Circuit and County Court 3.05 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 Challenges

Mississippi Rule of Civil Procedure 47(c) specifies:

> **(c) Challenges.** In actions tried before a twelve-person jury, each side may exercise four peremptory challenges. In actions tried before a six-person jury, each side may exercise two 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.

Mississippi Rule of Criminal Procedure 18.3 states in part:

> Both parties shall be allowed the following number of peremptory challenges for the selection of jurors:
>
> (A) Selection of Regular Jurors: Regarding regular jurors, the defendant and the prosecution shall each have peremptory challenges, as follows:
>
> (i) In cases wherein the punishment may be death or life imprisonment, the defendant and the prosecution each shall have twelve (12) peremptory challenges for the selection of the regular twelve (12) jurors.
>
> (ii) In felony cases not involving the possible sentence of death or life imprisonment, the defendant and the prosecution each shall have six (6) peremptory challenges for the selection of the twelve (12) regular jurors.
>
> (iii) The defendant and the prosecution each shall have two (2) peremptory challenges in a trial with a six (6) person jury.
>
> These challenges may not be used in the selection of alternate juror(s).

Mississippi Rule of Criminal Procedure 18.3 states in part:

> When the court has elected to impanel alternate juror(s), the defendant and the prosecution shall each have peremptory challenges, as follows:
>
> > (i) In death penalty cases, the peremptory challenges shall equal the number of alternate jurors the court has ordered to be selected.
> >
> > (ii) In all other cases, the peremptory challenges shall be one (1) challenge for each two (2) alternate jurors, or part thereof, ordered by the court to be selected.
>
> These challenges for alternate jurors may not be used in the selection of regular jurors.

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.

§ 13-5-73 Oath of jurors and bailiffs in capital cases:

The jurors in a capital case shall be sworn to:

> well and truly try the issue between the state and the prisoner, and a true verdict give according to the evidence and the law.

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.

§ 11-27-17 Jury oath [for 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.

Jury Authority

§ 13-5-91 Jury may view the place:

> When, in the opinion of the court, on the trial of any cause, civil or criminal, it is proper, in order to reach the ends of justice, for the court and jury to have a view or inspection of the property which is the subject of litigation, or the place at which the offense is charged to have been committed, . . . the court may, at its discretion, enter an order providing for such view or inspection as is herein below directed.
>
> After such order is entered, the whole organized court, consisting of the judge, jury, clerk, sheriff, and the necessary number of deputy sheriffs, shall proceed, in a body, to such place or places, property, object or thing to be so viewed or inspected, which shall be pointed out and explained to the court and jury by the witnesses in the case, who may, at the discretion of the court, be questioned by the court and by the representative of each side at the time and place of such view or inspection, in reference to any material fact brought out by such view or inspection.
>
> The court on such occasion shall remain in session from the time it leaves the courtroom till it returns thereto, and while so in session outside the courtroom it shall have full power to compel the attendance of witnesses, to preserve order, to prevent disturbance and to punish for contempt such as it has when sitting in the courtroom.
>
> In criminal trials all such views or inspections must be had before the whole court and in the presence of the accused, and the production of all evidence from all witnesses or objects, animate or inanimate, must be in his presence.

Evidence Available to the Jury

Uniform 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 Sequestration

Mississippi Rule of Criminal Procedure 18.8 states in part:

> In all other cases, the jury may be sequestered on request of either the defendant or the prosecuting attorney made at least forty-eight (48) hours in advance of the trial. The court may grant or refuse the request to sequester the jury. The court may, on its own initiative or upon request of either party, sequester a jury at any stage of a trial.

§ 13-5-95 Separate accommodations and bailiffs for male and female jurors:

> In selecting overnight accommodations for jurors, the court shall provide separate housing for men and women jurors. Male bailiffs shall accompany the male jurors, and female bailiffs the female jurors. At least one bailiff shall accompany each group, and the court in its sound discretion shall require as many bailiffs as are necessary. Either group may be housed in private premises if necessary.

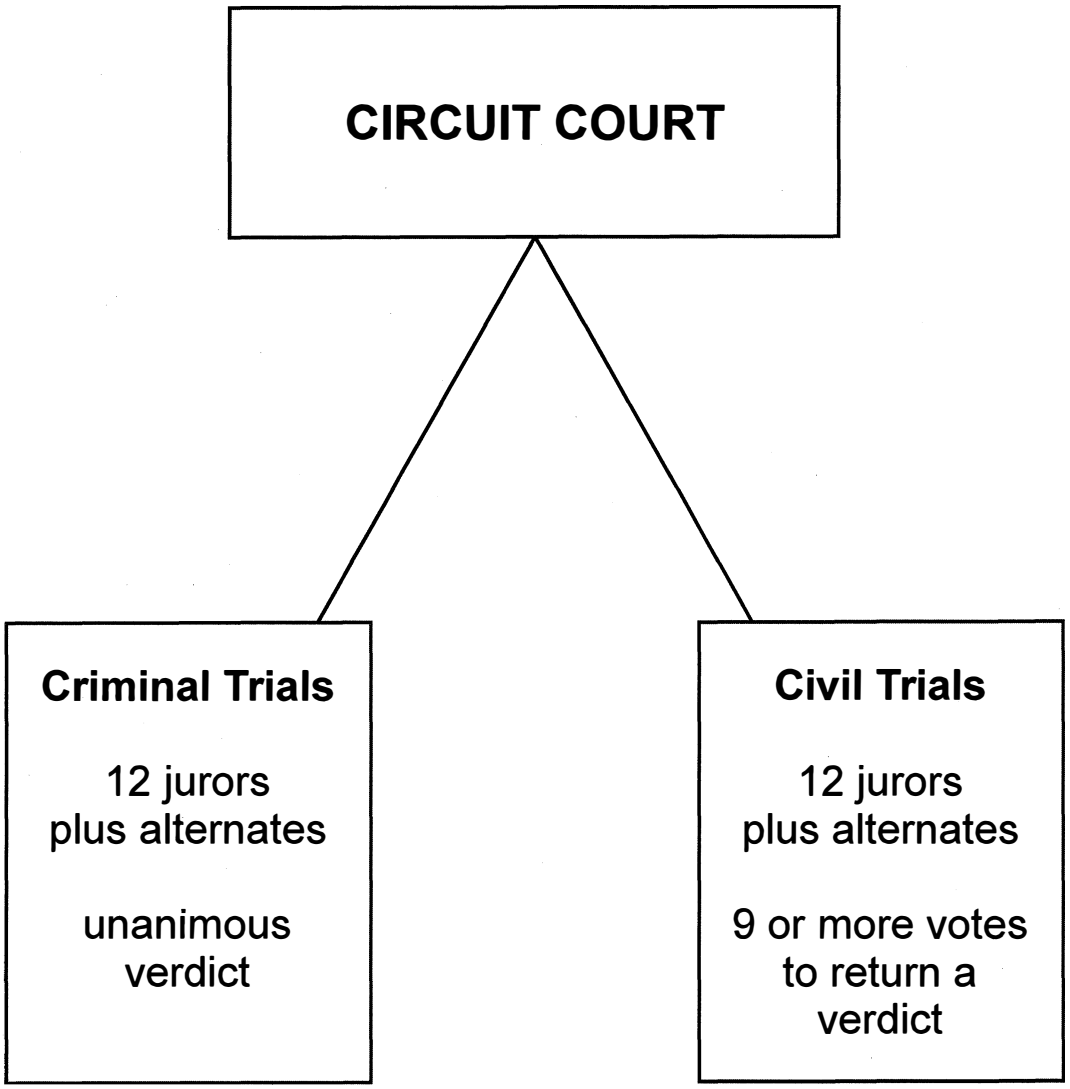
PETIT JURIES IN CIVIL CASES				
Court	**# of jurors**	**# of peremptory challenges**	**# of alternate jurors**	**# of peremptory challenges for alternates**
Circuit	12	4	1 or 2	1
County	6	2	1 or 2	1

PETIT JURIES IN CRIMINAL CASES				
Court	**# of jurors**	**# of peremptory challenges**	**# of alternate jurors**	**# of peremptory challenges for alternates**
Circuit Capital case	12	12	court's discretion	# of challenges is equal to the # of alternate jurors the court has ordered to be selected
Circuit Non-capital case	12	6	court's discretion	1 challenge for each 2 alternate jurors ordered by the court to be selected
County Misdemeanor	6	2	court's discretion	1 challenge for each 2 alternate jurors ordered by the court to be selected

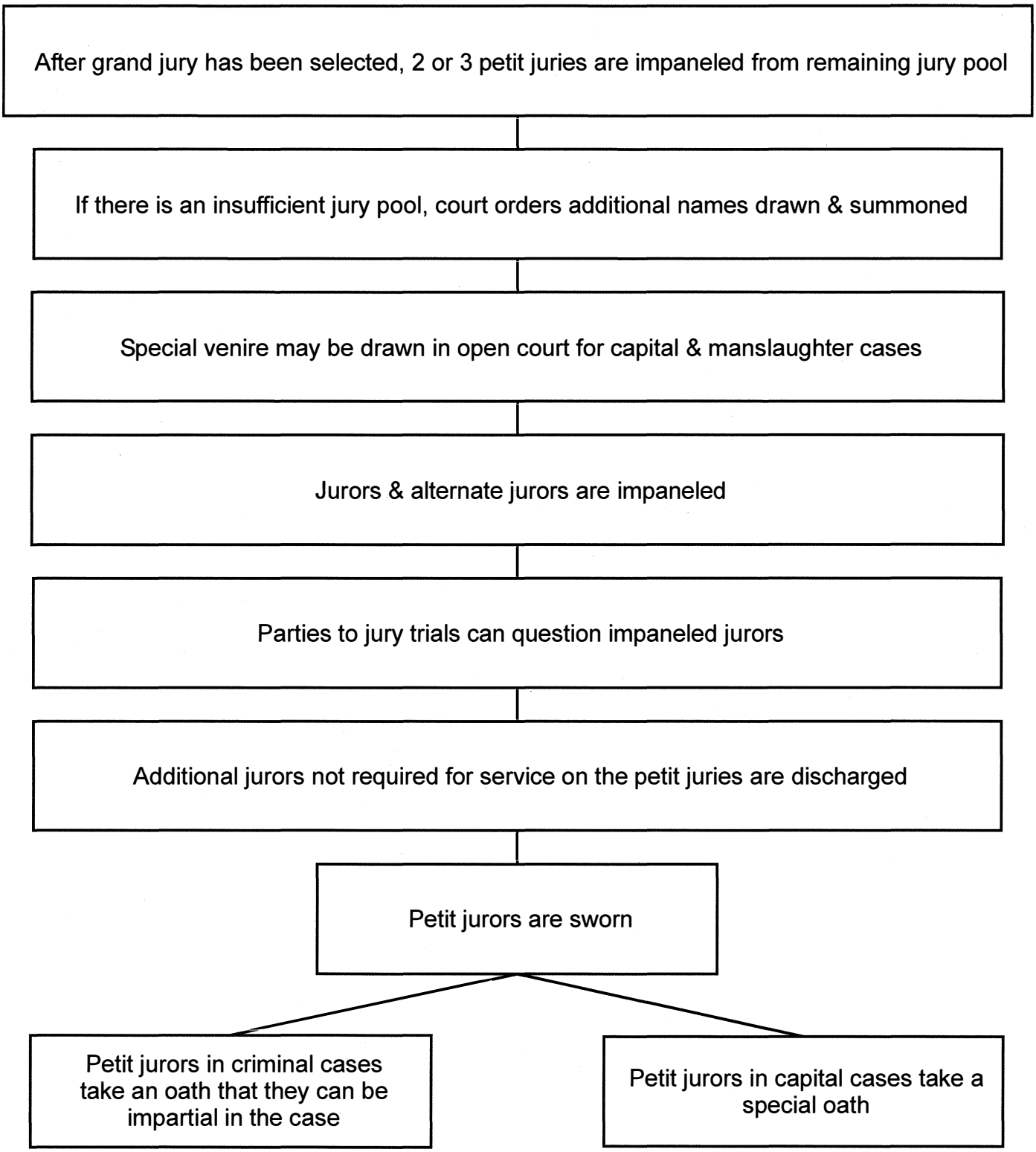
Clerk is in the courtroom & present for:

1. **Jury qualification**
2. **Jury voir dire**
3. **Jury & alternate selection**

THE PETIT JURY



PETIT JURY SELECTION PROCESS IN GENERAL



Jury Deliberations & Verdicts

Uniform Rule of Circuit and County Court 3.10 states in part:

> The court may direct the jury to select one 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. After the jurors have retired to consider their verdict the court shall not recall the jurors to hear additional evidence. The court, after notice to all attorneys, may recall the jury after it has retired and give such additional written instructions to the jury as the court deems appropriate.
>
> If the jury, after they retire for deliberation, desires to be informed of any point of law, the court shall instruct the jury to reduce its question to writing and the court in its discretion, after affording the parties an opportunity to state their objections or assent, may grant additional written instructions in response to the jury's request.
>
> If it appears to the court that the jury has been unable to agree, the court may require the jury to continue their deliberations and may give an appropriate instruction. If it appears to the court that there is no reasonable probability of agreement, the jury may be discharged without having agreed upon a verdict and a mistrial granted.

Civil Verdicts

Mississippi Rule of Civil Procedure 48 requires:

> **(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). A verdict or finding of nine (9) or more of the jurors shall be taken as the verdict or finding of the jury.
>
> **(b) County Court.** Juries in county court actions shall consist of six (6) persons, plus alternates as provided by Rule 47(d). A verdict or finding of five (5) 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.

Criminal Verdicts

Mississippi Rule of Criminal Procedure 18.1 states:

> In felony cases, conviction requires the unanimous consent of twelve (12) impartial jurors.

> In order that there may be no confusion in the minds of jurors engaged in the trial of a criminal case we think it is proper to instruct them in such cases that their verdict must be unanimous. . . The constitutional right to trial by jury includes as its essential elements that the jury shall consist of twelve impartial men, neither more nor less, . . . and that the verdict shall be unanimous. ***Markham v. State*, 46 So. 2d 88, 89 (Miss. 1950).**

> The United States Supreme Court has stated that a verdict rendered by a six (6) person jury in a non-petty offense trial must be unanimous. ***Burch v. Louisiana*, 99 S. Ct. 1623, 1627 (1979).**

CHAPTER 14

CIVIL TRIAL PROCEDURES

CHAPTER 14

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.

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 Civil Rules of Circuit and County Court (UCRCCC)

UCRCCC 1.11 states:

> With the exception of default or agreed orders and judgments, all proposed orders and judgments to be signed by the court shall be submitted directly to the court by an attorney and not through the clerk or through correspondence, unless otherwise permitted by the court. All orders or judgments presented to the court shall be signed by the attorney presenting the same.

UCRCCC 1.12 provides:

> No record, or any part of a file of court papers, shall be taken from the clerk's custody without a written order from the judge to the clerk. The clerk shall keep a register of all files checked out by permission of the court and the same shall be redelivered to the clerk on the day provided for in the order from the judge, or, if none is provided, before the opening of the next term.

UCRCCC 1.14 states:

> Attorneys having cases or practicing before a court shall contact the clerk of the court to ascertain the practices of the local courts. There will be no local rules of court unless such rules are approved by the Supreme Court of Mississippi.

UCRCCC 2.05 provides:

> Unless otherwise directed by the court, the submission of a trial brief on the merits of a case or particular issues is within the discretion of the parties. A copy of any such brief submitted shall be simultaneously served upon opposing attorneys. No memorandum or brief required or permitted by this rule shall be filed with the clerk. Memorandum or briefs shall not exceed 25 pages in length and shall be accompanied by copies of all authorities cited therein.

UCRCCC 2.06 states:

> Unless otherwise ordered by the court, all pleadings, motions, or applications to the court, except the initial pleading, must be served by any form of service authorized by Rule 5 of the Mississippi Rules of Civil Procedure on all attorneys of record for the parties, or on the parties when not represented by an attorney, and the person filing the same shall also file an original certificate of service certifying that a correct copy has been provided to the attorneys or to the parties, the manner of service, and to whom it was served. Except as allowed by this rule or allowed by the court for good cause shown, the clerk may not accept for filing any

document which is not accompanied by a certificate of service.

UCRCCC 2.07 states in part:

> The motion for writ of habeas corpus shall be filed with the clerk of any court of competent jurisdiction of the county where the movant is detained. The proper respondent and, in cases where the person for whom habeas relief is sought is charged with a crime, the prosecuting attorney must receive three (3) days written notice, with a copy of the motion attached, prior to any hearing or consideration by the court. Such three (3) days notice may be waived for grounds sufficiently urgent and necessary to due process and the grounds therefore shall be found by the court and made a part of the record. If no court has entertained any proceeding on the movant's matter, excepting bond, the motion for habeas corpus shall be filed with the clerk of the circuit court in the county in which the movant is detained.
>
> The court shall give preliminary consideration of the motion for the writ of habeas corpus as follows:
>
> a. The motion shall be examined promptly by the judge of the court in which the motion is filed.
>
> b. If the motion, upon examination, does not substantially comply with the requirements of this rule, it need not be entertained on its merits and the clerk shall so notify the movant. . . .

UCRCCC 3.03 provides:

> 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. Special Courts of Eminent Domain may employ the jury venire of either county or circuit court in the selection of petit juries, or may direct the clerk of court concerning the number of petit jurors needed to be summoned for jury duty.

UCRCCC 3.07 states in part:

> At least twenty-four hours prior to trial each of the attorneys must number and file the attorney's jury instructions with the clerk, serving all other attorneys with copies of the instructions.

UCRCCC 3.10 states in 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. 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.

UCRCCC 3.14 states in part:

> 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. . . .

UCRCCC 4.01 states:

> A cost deposit shall be made with the clerk of court at the time of the filing of the complaint in the amount set forth under section 25-7-13 of the Mississippi Code.

UCRCCC 4.02 states in part:

> 1. The original of each motion, and all affidavits and other supporting evidentiary documents shall be filed with the clerk in the county where the action is docketed.

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.

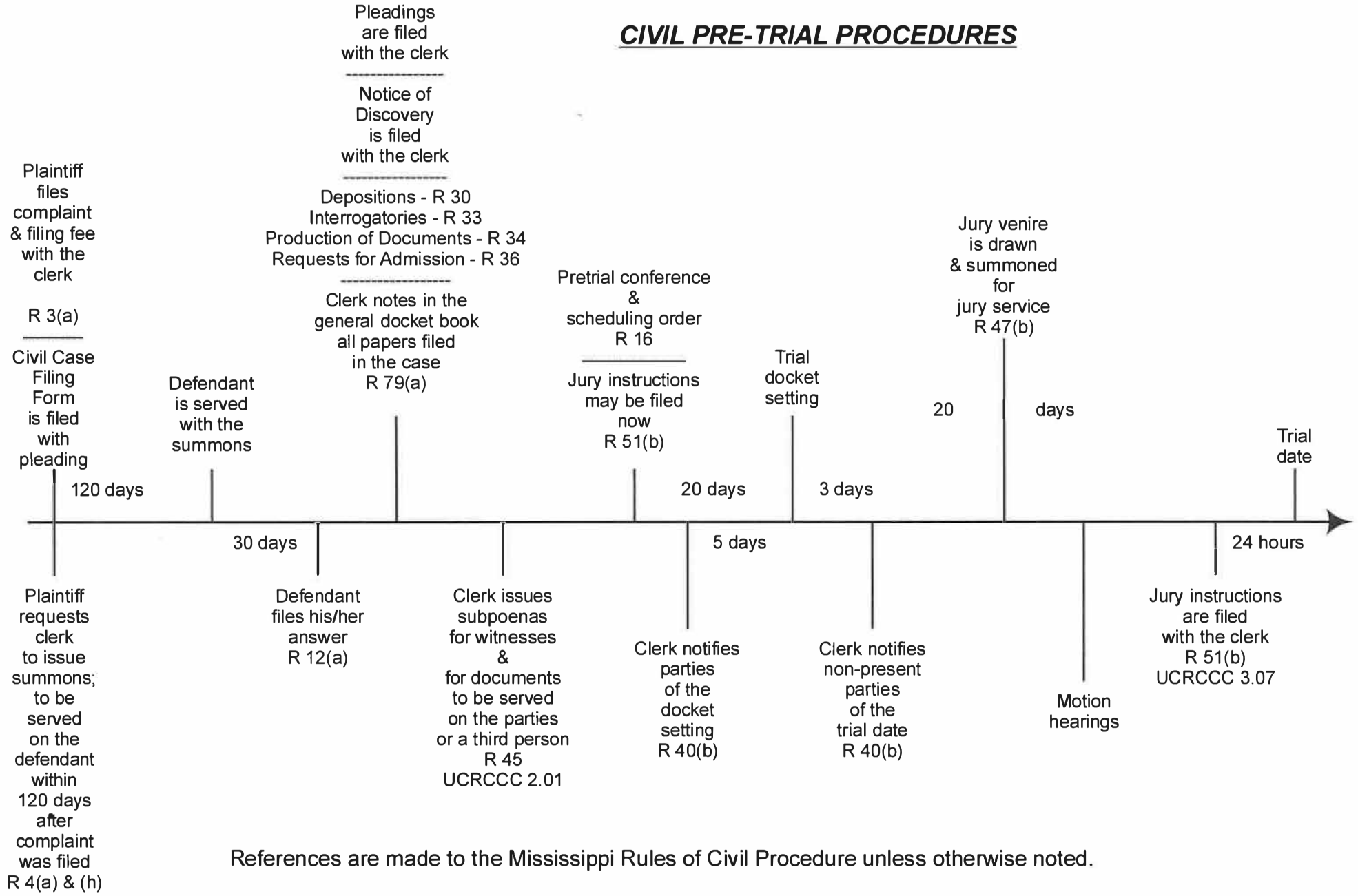
> It is contended on behalf of appellee that the action of the court in dismissing the case was authorized by section 948, Code 1906, which provides: "The court may dismiss an action commenced or continued on affidavit of poverty, if satisfied that the allegation of poverty was untrue." The judgment 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).**

Appeals

UCRCCC 5.09 states:

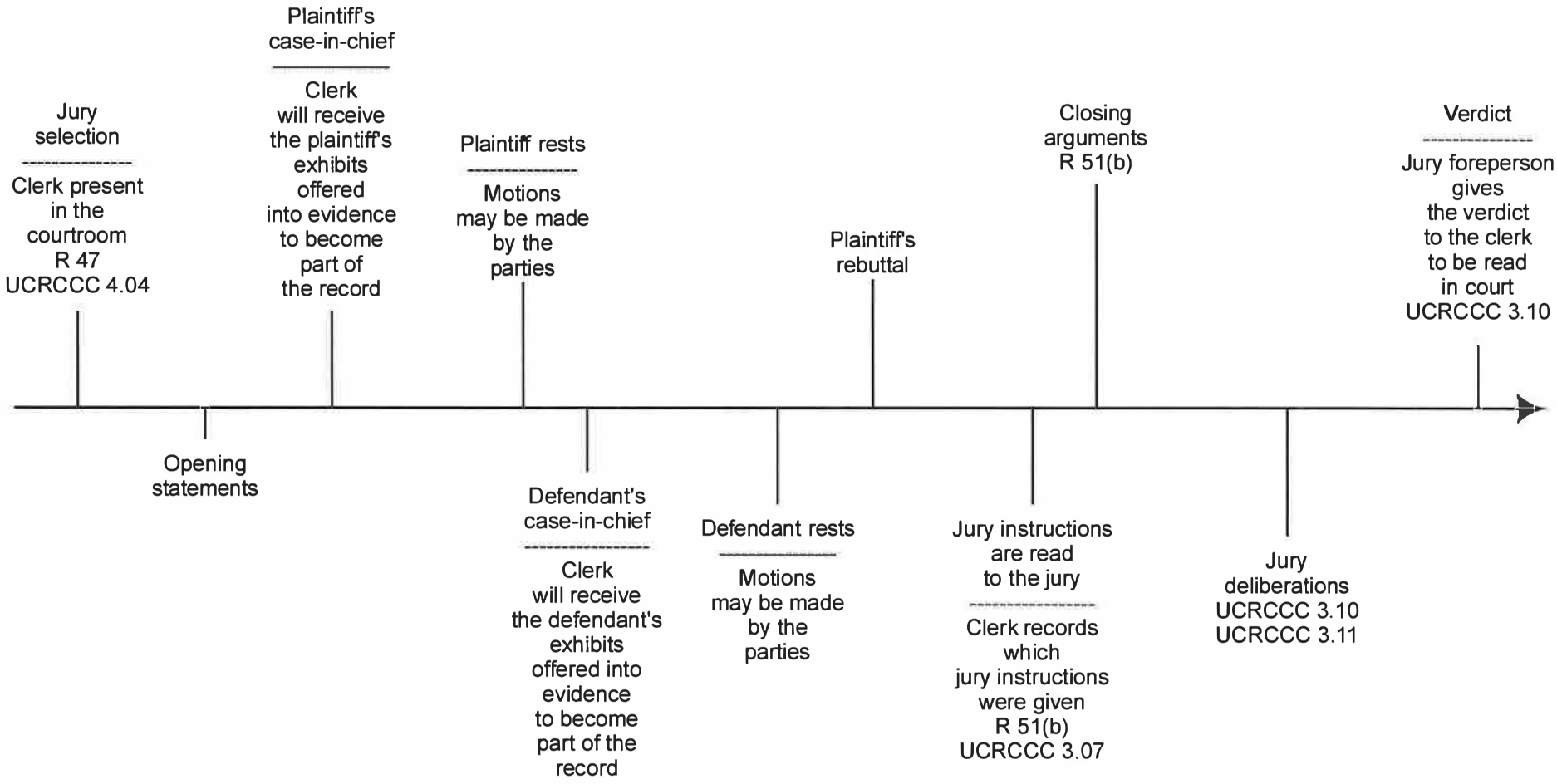
> In all appeals, unless the court allows an appeal in forma pauperis, the appellant or appellants shall pay all court costs incurred below and likely to be incurred on appeal as estimated by the circuit court clerk. Should a dispute arise, a party may apply to the court for relief.

CIVIL PRE-TRIAL PROCEDURES



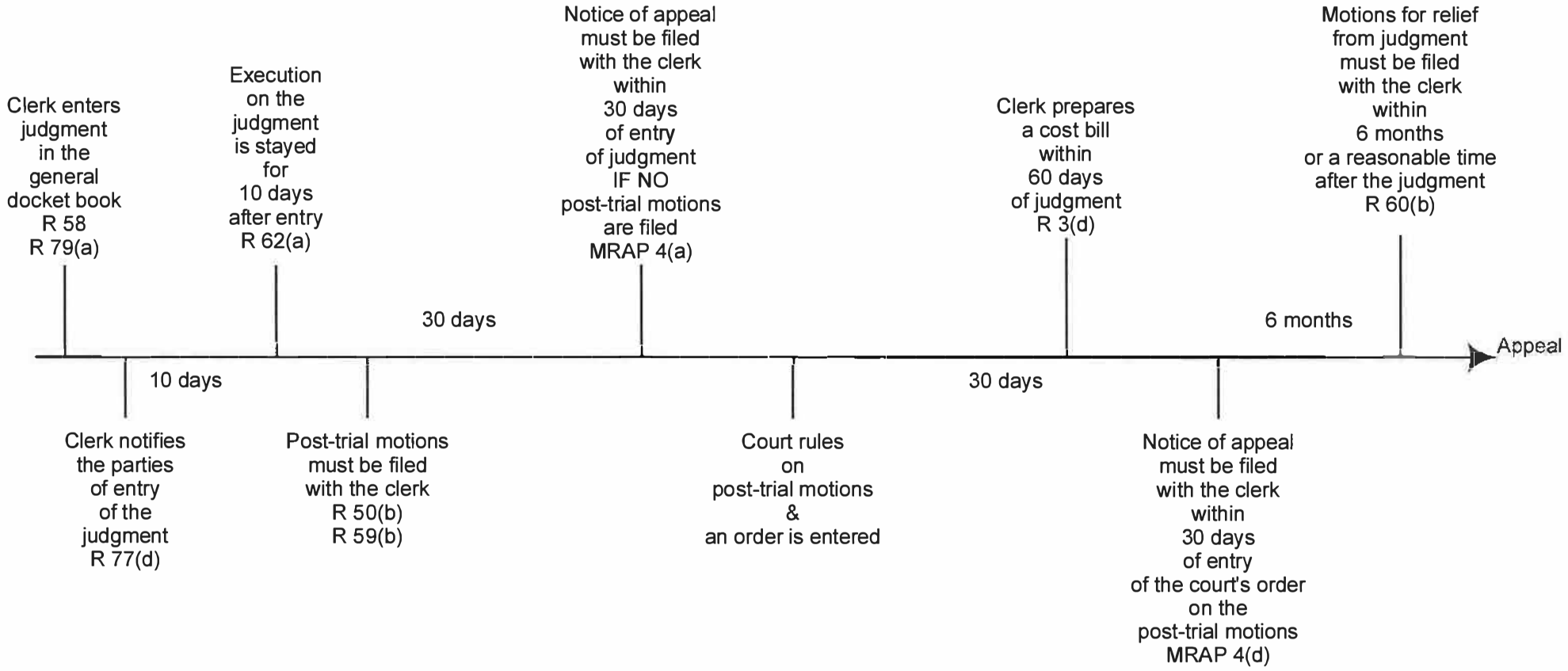
References are made to the Mississippi Rules of Civil Procedure unless otherwise noted.

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 14

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 15

SELECTED CAUSES OF ACTION

CHAPTER 15

SELECTED CAUSES OF ACTION

SELECTED CAUSES OF ACTION CONTRACTS			
CAUSE OF ACTION	**AUTHORITY**	**LIMITATION OF ACTION**	**STATUTE**
Suit on open account except as otherwise provided by Uniform Commercial Code 1. open account 2. account stated not acknowledged in writing, signed by debtor	 Common law Common law	 3 years 3 years	 § 15-1-29 § 15-1-29
Breach of unwritten contract 1. unwritten contract, express or implied 2. unwritten contract of employment	 Common law Common law	 3 years 1 year	 § 15-1-29 § 15-1-29
Breach of warranty	Common law	6 years	§ 75-2-725
Breach of written contract	Common law	3 years	§ 15-1-49
Breach of any contract for sale of goods or services	Common law	6 years	§ 75-2-725
Promissory notes	Common law	3 years	§ 15-1-49

* This chart provides only a partial listing of civil causes of action concerning contracts in Mississippi.

SELECTED CAUSES OF ACTION TORTS - NEGLIGENCE			
CAUSE OF ACTION	**AUTHORITY**	**LIMITATION OF ACTION**	**STATUTE**
Deficiencies in construction or improvements to real property	Common law	6 years	§ 15-1-41
Legal malpractice	Common law	3 years	§ 15-1-49
Loss of consortium	§ 93-3-1	3 years	§ 15-1-49
Medical malpractice	Common law	2 years	§ 15-1-36
Negligent infliction of emotional distress	Common law	3 years	§ 15-1-49
Negligent misrepresentation	Common law	3 years	§ 15-1-49
Negligent operation of a vehicle	Common law	3 years	§ 15-1-49
Premises liability 1. trespassers 2. licensees 3. invitees	 Common law Common law Common law	 3 years 3 years 3 years	 § 15-1-49 § 15-1-49 § 15-1-49
Personal injury	Common law	3 years	§ 15-1-49
Wrongful death	§ 11-7-13	3 years	§ 15-1-49

* This chart provides only a partial listing of civil causes of action concerning negligence torts in Mississippi.

SELECTED CAUSES OF ACTION TORTS - INTENTIONAL			
CAUSE OF ACTION	**AUTHORITY**	**LIMITATION OF ACTION**	**STATUTE**
Abuse of process/legal proceedings	Common law	1 year	§ 15-1-35
Alienation of affection	Common law	3 years	§ 15-1-49
1. Assault **2. Assault and battery**	Common law Common law	1 year 1 year	§ 15-1-35 § 15-1-35
Conversion	Common law	1 year	§ 15-1-35
Defamation 1. libel 2. slander	 Common law Common law	 1 year 1 year	 § 15-1-35 § 15-1-35
False arrest	Common law	1 year	§ 15-1-35
False imprisonment	Common law	1 year	§ 15-1-35
Fraud	Common law	3 years	§ 15-1-49
Intentional infliction of emotional distress	Common law	1 year	§ 15-1-35

CAUSE OF ACTION	AUTHORITY	LIMITATION OF ACTION	STATUTE
Invasion of privacy	Common law	1 year	§ 15-1-35
Trespass			
1. cutting trees without consent of owner	§ 95-5-10	2 years	§ 95-5-29
2. loosening or taking boats and watercraft	§ 95-5-11	1 year	§ 95-5-29
3. taking cottonseed sacks	§ 95-5-13	1 year	§ 95-5-29
4. boxing pine trees	§ 95-5-15	1 year	§ 95-5-29
5. dog endangering poultry or livestock	§ 95-5-19	1 year	§ 95-5-29
6. fences, bars, gates, bridges, buildings	§ 95-5-23	1 year	§ 95-5-29
7. fire damage to another's land	§ 95-5-25	1 year	§ 95-5-29
8. on lands held by the State	§ 95-5-27	1 year	§ 95-5-29
Wrongful discharge/termination	Common law	1 year	§ 15-1-29

* This chart provides only a partial listing of civil causes of action concerning intentional torts in Mississippi.

SELECTED CAUSES OF ACTION STRICT LIABILITY			
CAUSE OF ACTION	**AUTHORITY**	**LIMITATION OF ACTION**	**STATUTE**
Products liability	§ 11-1-63	3 years	§ 15-1-49
Liability for animals	§ 69-13-19	3 years	§ 15-1-49

* This chart provides only a partial listing of civil causes of action concerning strict liability in Mississippi.

SELECTED LIMITATIONS OF ACTIONS		
PROVISION	**LIMITATION OF ACTION**	**STATUTE**
Completion of limitation extinguishes right		§ 15-1-3
General limitation - action for which no other period of limitation is prescribed	3 years	§ 15-1-49
Injury claims against the state or its political subdivisions	1 year	§ 11-46-11
Intentional torts	1 year	§ 15-1-35
Judgments - foreign and domestic 1. actions founded on domestic or foreign judgment 2. execution on a domestic judgment 3. actions founded on foreign judgment against person residing in state at commencement of suit	 7 years 7 years 3 years	 § 15-1-43 § 15-1-43 § 15-1-45
Lien of judgments limited	7 years	§ 15-1-47
Limitations of suits by and against the state, counties and municipal corporations	7 years	§ 15-1-51
Penalty or forfeiture on any penal statute	1 year	§ 15-1-33
Period of limitations shall not be changed by contract		§ 15-1-5

* This chart provides only a partial listing of limitations of actions in Mississippi.
Mississippi Code, Title 15 provides statutes concerning limitations of actions and prevention of frauds.

CHAPTER 16

EMINENT DOMAIN

CHAPTER 16

EMINENT DOMAIN

Mississippi Constitution, Article III, § 17, Taking property for public use; due compensation, provides:

> Private property shall not be taken or damaged for public use, except on due compensation being first made to the owner or owners thereof, in a manner to be prescribed by law; and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be public shall be a judicial question, and, as such, determined without regard to legislative assertion that the use is public.
>
> > The right of eminent domain is an inherent and essential element of sovereignty. . . . ***Morley v. Jackson Redevelopment Auth.*, 874 So. 2d 973, 976 (Miss. 2004).**

Special Court of Eminent Domain

§ 11-27-3 Creation of court:

A special court of eminent domain is hereby created, to consist of a judge, jury, and such other officers and personnel as hereinafter set out, and it shall have and exercise the jurisdiction and powers hereinafter enumerated. The original powers and jurisdiction shall be and is hereby fixed in the county court in each county that has elected to come under the provisions of Section 9-9-1 Mississippi Code of 1972, or that may hereafter come under the provisions of said Section 9-9-1, and in every other county of this state, the original powers and jurisdiction shall be and is hereby fixed in the circuit court of such county, which said powers and jurisdiction may be exercised in full either in termtime or vacation, or both.

§ 11-27-1 Persons having right:

Any person or corporation having the right to condemn private property for public use shall exercise that right as provided in this chapter, except as elsewhere specifically provided under the laws of the state of Mississippi.

Complaint & Pleadings

§ 11-27-5 Complaint to condemn:

Any person or corporation having the right to condemn private property for public use shall file a complaint to condemn with the circuit clerk of the county in which the affected property, or some part thereof, is situated and shall make all the owners of the affected property involved, and any mortgagee, trustee or other person having any interest therein or lien thereon a defendant thereto. The complaint shall be considered a matter of public interest and shall be a preference case over other cases except other preference causes. The complaint shall describe in detail the property sought to be condemned, shall state with certainty the right to condemn, and shall identify the interest or claim of each defendant.

> The circuit clerk serves as clerk of the special court of eminent domain by virtue of the same commission and authority which empowers him to serve as clerk of the circuit court and county court. The fees statute governs his charges in whichever of these capacities he sits. Docketing fees imposed by Section 25-7-13(1)(a) are assessable in eminent domain cases. . . . In eminent domain cases the circuit clerk receives, handles and disburses substantial sums of money. The clerk is accountable for these funds. It is understood generally that the circuit clerk will handle substantial monies from time to time, and to that end we require of the clerk a bond before he enters upon his office. ***Mississippi State Highway Comm'n v. Herban*, 522 So. 2d 210, 212 (Miss. 1988).**

§ 11-27-31 Property in multiple counties:

In case the property sought to be condemned be in more than one (1) county, proceedings may be instituted in either of the counties in which a part of said property is situated.

§ 11-27-7 Commencement, hearing and pleadings:

The complaint shall be filed with the circuit clerk and shall be assigned a number and placed on the docket as other pleadings in circuit court or county court. The plaintiff shall also file a lis pendens notice in the office of the chancery clerk immediately after filing the complaint. The circuit clerk, or the plaintiff by his attorney, shall forthwith present such complaint to the circuit judge or county judge, as the case may be, who shall by written order directed to the circuit clerk fix the time and place for the hearing of the matter, in termtime or vacation, and the time of hearing shall be fixed on a date to allow sufficient time for each defendant named to be served with process as is otherwise provided by the

Mississippi Rules of Civil Procedure, for not less than thirty (30) days prior to the hearing. If a defendant, or other party in interest, shall not be served for the specified time prior to the date fixed, the hearing shall be continued to a day certain to allow the thirty-day period specified. Not less than twenty (20) days prior to the date fixed for such hearing, the plaintiff shall file with the circuit clerk and serve upon the defendants, or their respective attorneys, a statement showing:

> (1) the fair market value of the property to be condemned, determined as of the date of the filing of the complaint;
> (2) the damages, if any, to the remainder if less than the whole is taken, giving a total compensation and damages to be due as determined by the plaintiff.

Not less than ten (10) days prior to the date fixed for such hearing, each of the defendants shall file with the circuit clerk and serve upon the plaintiff, or his attorney, a statement showing:

> (1) the fair market value of the property to be condemned, determined as of the date of the filing of the complaint;
> (2) the damages, if any, to the remainder if less than the whole is taken, giving a total compensation and damages to be due as determined by the defendants.

In each such instance, both the plaintiff and the defendant shall set out in such statement the asserted highest and best use of the property and shall itemize the elements of damage, if any, to the remainder if less than the whole is taken. The statements required by this section shall constitute the pleadings of the parties with respect to the issue of value, and shall be treated as pleadings are treated in civil actions in the circuit court. The judge, for good cause shown, may increase or decrease the time for pleading by the plaintiff or by the defendant.

§ 11-27-11 Operation:

The circuit clerk shall deliver a copy of said order of the court fixing the time and place for the hearing to the sheriff of the county and to the official court reporter. The sheriff shall attend the court and execute all process. The court reporter shall take the testimony. The circuit clerk, in the presence of the sheriff and chancery clerk, shall draw from the jury box of the court the names of twenty-four (24) jurors, or such numbers of jurors as shall be ordered by the court, who shall serve in said court, and shall issue a venire facias to the sheriff, commanding him to summon the jurors so drawn to appear at the time and place designated by the order of the court. All acts and actions of the clerk and sheriff, including the return endorsed on each summons issued, shall be filed by the clerk and made a part of the record in the cause.

Trial

§ 11-27-19 Conduct of trial; interest:

Evidence may be introduced by either party, and the jury may, in the sound discretion of the judge, go to the premises, under the charge of the court as to conduct, conversation and actions as may be proper in the premises. Evidence of fair market value shall be established as of the date of the filing of the complaint. Any judgment finally entered in payment for property to be taken shall provide legal interest on the award of the jury from the date of the filing of the complaint until payment is actually made; provided, however, that interest need not be paid on any funds deposited by the plaintiff and withdrawn by the defendants prior to judgment. At the conclusion of the trial, the court shall instruct the jury in accordance with the Mississippi Rules of Civil Procedure.

§ 11-27-13 Separate trials; right to jury:

Each different property, identified by separate ownership, shall constitute a separate civil action and shall require a separate trial, unless otherwise agreed by all parties with the approval of the court. Trial shall be to a jury which shall be examined and impaneled in accordance with the Mississippi Rules of Civil Procedure. Alternatively, trial may be to the court, as provided by the Mississippi Rules of Civil Procedure.

§ 11-27-17 Jury oath:

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.

§ 11-27-19 Conduct of trial; interest:

Evidence may be introduced by either party, and the jury may, in the sound discretion of the judge, go to the premises, under the charge of the court as to conduct, conversation and actions as may be proper in the premises. . . .

§ 13-5-91 View by jury:

When, in the opinion of the court, on the trial of any cause, civil or criminal, it is proper, in order to reach the ends of justice, for the court and jury to have a view or inspection of the property which is the subject of litigation. . . .

Jury Verdict

§ 11-27-23 Verdict, required majority and form:

In the trial of all cases provided for herein, nine (9) jurors may bring in a verdict as in other civil cases. The verdict of the jury shall be in the following form:

> We, the jury, find that the _____ defendant (naming him) will be damaged by the acquisition of his property for the public use, in the sum of _____ Dollars.

Judgment

§ 11-27-25 Form of judgment:

Upon the return of the verdict, the court shall enter a judgment as follows, viz:

> In this case the claim of _____ (naming him or them) to have condemned certain lands named in the complaint, to-wit: _____ (here describe the property), being the property of _____ (here name the owner), was submitted to a jury composed of _____ (here insert their names) on the ___ day of _____, A. D., _____, and the jury returned a verdict fixing said defendant's compensation and damages at _____ Dollars, and the verdict was received and entered. Now, upon payment of the said award, with legal interest from the date of the filing of the complaint, ownership of the said property shall be vested in plaintiff and it may be appropriated to the public use as prayed for in the complaint. Let the plaintiff pay the costs, for which execution may issue.

§ 11-27-27 Payment; transfer of title:

Upon the return of the verdict and entry of the judgment, the applicant shall pay to defendants, or to the clerk if defendants absent themselves, the differences between the judgment and deposits previously made, if any; shall pay the costs of court, including the cost of jury service as is otherwise provided by law for the court in which the case is tried. Then, ownership of the property described in the petition shall be vested in petitioner and it may use said property as specified in the petition. If deposits previously made exceed the judgment, then the clerk or defendant to whom disbursement thereof has been made, as the case may be, shall pay such excess to the petitioner.

> The question next becomes whether the clerk's commission should be deducted from the monies handled by him before they are paid to the landowner defendant or, on the other hand, whether the commission must be paid by MSHC over and above the sums paid into court under Sections 11-27-27 and 11-27-85. Section 25-7-13(5) uses the word "retain." That word connotes a process whereby the clerk deducts his commission before paying the monies to the landowner defendant. Such an approach, however, encounters two serious problems. A property owner has a constitutional right to "due compensation." This Court has rejected the idea that the landowner may be assessed costs incident to an eminent domain proceeding, holding rather that the condemning authority of the state must pay such costs. . . . Not only may the landowner not constitutionally be assessed with costs in such a manner that diminishes his compensation received, we have a statutory mandate that the condemning authority "shall pay the costs of court." We interpret the rule regarding the clerk's commission in harmony with the landowner's constitutional rights to due compensation and the statutory mandate that the condemning authority pay the costs. . . . Seen in this light, we hold that the commission awarded the clerk under Section 25-7-13(5) shall be paid by MSHC in addition to the sums deposited with the clerk. ***Mississippi State Highway Comm'n v. Herban*, 522 So. 2d 210, 213 (Miss. 1988).**

Right to Appeal

§ 11-27-29 Review:

(1) Every party shall have the right to appeal directly to the Supreme Court from the judgment entered in the special court of eminent domain, whether tried in county court or circuit court, by giving notice within ten (10) days from the date of the judgment or final order entered by the court to the court reporter to transcribe the record as taken and by prepaying all costs that may be adjudged against him; and said notice to the court reporter shall be given and the costs shall be paid as is otherwise required by law for appeals to the Supreme Court. If the judgment be in excess of the sum, if any, deposited, and the plaintiff, other than the State of Mississippi or any political subdivision thereof, desires an appeal, he shall deposit a sum, or a good and sufficient surety bond with a surety company authorized to do business in the State of Mississippi acceptable to the clerk, equal to double the amount of the judgment, less the amount of the deposit, if any, which shall be held exclusively to secure all damages assessed against plaintiff. In any case where the deposit exceeds the compensation to be paid the defendants as determined by the final judgment, the excess shall be returned to the plaintiff. If the appeal is by the defendant, it shall not operate as a supersedeas, nor shall the right of the plaintiff to enter in and upon the land and to appropriate the same to public use be delayed. If the appeal be by the State of Mississippi or any political subdivision thereof, no bond or prepayment of costs shall be required, except the Supreme Court filing fee as required by Section 25-7-3.

(2) The term of a special court of eminent domain shall begin when the court is convened as provided by statute and shall continue for ten (10) days immediately following the entry and filing of a judgment or final order with the clerk of the court, and thereafter the court shall have jurisdiction to dispose of any post trial motions or proceedings filed within said ten (10) days. The jurisdiction of a special court of eminent domain shall expire upon the entry and filing with the clerk of a final judgment or order disposing of any post trial motions or proceedings.

Right to Immediate Possession

§ 11-27-81 Persons eligible:

The right of immediate possession pursuant to Sections 11-27-81 through 11-27-89, Mississippi Code of 1972, may be exercised only:

(a) By the State Highway Commission for the acquisition of highway rights-of-way only;

(b) By any county or municipality for the purpose of acquiring rights-of-way to connect existing roads and streets to highways constructed or to be constructed by the State Highway Commission;

(c) By any county or municipality for the purpose of acquiring rights-of-way for widening existing roads and streets of such county or municipality; provided, however, that said rights-of-way shall not displace a property owner from his dwelling or place of business;

(d) By the boards of supervisors of any county of this state for the acquisition of highway or road rights-of-way in connection with a state-aid project designated and approved in accordance with Sections 65-9-1 through 65-9-31, Mississippi Code of 1972;

(e) By any county, municipality or county utility authority created under the Mississippi Gulf Region Utility Act, Section 49-17-701 et seq., for the purpose of acquiring rights-of-way for water, sewer, drainage and other public utility purposes; provided, however, that such acquisition shall not displace a property owner from his dwelling or place of business. A county utility authority should prioritize utilizing easements within ten (10) feet of an existing right-of-way when economically feasible. A county utility authority may not exercise the right to immediate possession under this paragraph after July 1, 2013. Provisions of this paragraph (f) shall not apply to House District 109;

(f) By any county authorized to exercise the power of eminent domain under Section 19-7-41 for the purpose of acquiring land for construction of a federal correctional facility or other federal penal institution;

(g) By the Mississippi Major Economic Impact Authority for the purpose of acquiring land, property and rights-of-way for a project as defined in Section 57-75-5(f)(iv)1 or any facility related to the project as provided in Section 57-75-11(e)(ii);

(h) By the boards of supervisors of any county of this state for the purpose of constructing dams or low-water control structures on lakes or bodies of water under the provisions of Section 19-5-92;

(i) By the board of supervisors of any county of this state for the purpose of acquiring land, property and/or rights-of-way for any project the board of supervisors, by a duly adopted resolution, determines to be related to a project as defined in Section 57-75-5(f)(iv). The board of supervisors of a county may not exercise the right to immediate possession under this paragraph (j) after July 1, 2003;

(j) By a regional economic development alliance created under Section 57-64-1 et seq., for the purpose of acquiring land, property and/or rights-of-way within the project area and necessary for any project such an alliance, by a duly adopted resolution, determines to be related to a project as defined in Section 57-75-5(f)(xxi). An alliance may not exercise the right to immediate possession under this paragraph (k) after July 1, 2012; or

(k) By the board of supervisors of any county of this state for the purpose of acquiring or clearing title to real property, property and/or rights-of-way within the project site and necessary for any project such board of supervisors, by a duly adopted resolution, determines to be related to a project as defined in Section 57-75-5(f)(xxii). A county may not exercise the right to immediate possession under this paragraph (l) after July 1, 2012.

§ 11-27-83 Declaration in complaint; appraisal:

If a plaintiff eligible to claim the right of immediate possession under the provisions of Sections 11-27-81 through 11-27-89 shall desire immediate possession of the property sought to be condemned, other than property devoted to a public use, the plaintiff shall so state in the complaint to condemn property filed with the circuit clerk pursuant to Sections 11-27-1 through 11-27-49, Mississippi Code of 1972, and shall therein make and substantiate the following declaration concerning the governmental project for which the property is being condemned:

That the plaintiff shall suffer irreparable harm and delay by exercising the right to condemn said property through eminent domain proceedings pursuant to Sections 11-27-1 through 11-27-49, as opposed to claiming the right of immediate possession of said property pursuant to Sections 11-27-81 through 11-27-89.The court, or the judge thereof in vacation, as soon as practicable after being satisfied that service of process has been

obtained, shall appoint a disinterested, knowledgeable person qualified to make an appraisal of the property described in the complaint to act as appraiser.

The appraiser, after viewing the property, shall return to the clerk of court within ten (10) days after his appointment, his report in triplicate, under oath, which report shall state:

(1) the fair market value of the property to be condemned, determined as of the date of the filing of the complaint;

(2) the damages, if any, to the remainder if less than the whole is taken, giving a total compensation and damages to be due as determined by the appraiser; and

(3) his opinion as to the highest and best use of the property, and a narrative of the facts pertaining to his appraisal.

Mississippi's "quick take" statute provides that a condemning authority may take immediate possession of property where it can substantiate that the authority will "suffer irreparable harm and delay" if regular eminent domain procedures are followed rather than the quick take procedures. ***Winters v. City of Columbus*, 735 So. 2d 1104, 1108 (Miss. Ct. App. 1999).**

§ 11-27-85 Order and deposit:

(1) Upon the filing of the report of the appraiser, the clerk shall within three (3) days mail notice to the parties and the court that the report has been filed. The court shall review the report of the appraiser and shall, after not less than five (5) days' notice thereof to the defendants, enter an order granting to the plaintiff title to the property, less and except all oil, gas and other minerals which may be produced through a well bore, and the right to immediate entry unless, for other cause shown or for uncertainty concerning the immediate public need for such property pursuant to Section 11-27-83, the judge shall determine that such passing of title, and right of entry should be denied. However, no person lawfully occupying real property shall be required to move from a dwelling or to move his business or farm operation without at least ninety (90) days' written notice prior to the date by which such move is required.

(2) Upon entry of said order, the plaintiff may deposit not less than eighty-five percent (85%) of the amount of the compensation and damages as determined by the appraiser with the clerk of the court, and upon so doing, the plaintiff shall be

granted title to the property, less and except all oil, gas and other minerals which may be produced through a well bore, and shall have the right to immediate entry to said property. The defendant, or defendants, shall be entitled to receive the amount so paid to the clerk of the court, which shall be disbursed as their interest may appear, pursuant to order of the court.

(3) Notwithstanding any provisions of subsections (1) and (2) of this section to the contrary, title and immediate possession to real property, including oil, gas and other mineral interests, may be granted under this section to

> (a) any county authorized to exercise the power of eminent domain under Section 19-7-41 for the purpose of acquiring land for construction of a federal correctional facility or other federal penal institution,
>
> (b) the Mississippi Major Economic Impact Authority for the purpose of acquiring land, property and rights-of-way for a project as defined in Section 57-75-5(f)(iv) 1 and any facility related to such project,
>
> (c) a regional economic development alliance for the purpose of acquiring land, property and rights-of-way for a project as defined in Section 57-75-5(f)(xxi) and any facility related to the project; and
>
> (d) any county for the purpose of acquiring or clearing title to real property, property and rights-of-way for a project as defined in Section 57-75-5(f)(xxii).
>
> > The question next becomes whether the clerk's commission should be deducted from the monies handled by him before they are paid to the landowner defendant or, on the other hand, whether the commission must be paid by MSHC over and above the sums paid into court under Sections 11-27-27 and 11-27-85. Section 25-7-13(5) uses the word “retain.” That word connotes a process whereby the clerk deducts his commission before paying the monies to the landowner defendant. Such an approach, however, encounters two serious problems. A property owner has a constitutional right to “due compensation.” This Court has rejected the idea that the landowner may be assessed costs incident to an eminent domain proceeding, holding rather that the condemning authority of the state must pay such costs. . . . Not only may the landowner not constitutionally be assessed with costs in such a manner that diminishes his compensation received, we have a statutory mandate that the condemning authority “shall pay the costs of court.” We interpret the rule regarding the clerk's

commission in harmony with the landowner's constitutional rights to due compensation and the statutory mandate that the condemning authority pay the costs. . . . Seen in this light, we hold that the commission awarded the clerk under Section 25-7-13(5) shall be paid by MSHC in addition to the sums deposited with the clerk. ***Mississippi State Highway Comm'n v. Herban*, 522 So. 2d 210, 213 (Miss. 1988).**

§ 11-27-87 Inaccuracy of deposit:

If the plaintiff takes title to and possession of the land condemned pursuant to the order of the court and the amount of compensation as determined upon final disposition of the case is in excess of the amount of the deposit, the plaintiff shall pay interest to the owner at the rate of eight percent (8%) per annum upon the amount of such excess from the date of the filing of the complaint until payment is actually made. If the plaintiff takes title to and possession of the land condemned pursuant to the order of the court and the amount of the compensation as determined upon final disposition of the case is less than the amount of the deposit, the plaintiff shall be entitled to a personal judgment against the owner for the amount of the difference.

§ 11-27-89 Appraiser's pay; right to jury:

The appraiser shall receive as compensation for his services such sum, plus expenses, as the court allows, which shall be taxed as cost in the proceedings. The sum allowed shall be based upon the degree of difficulty and the time required to perform the appraisal, but may not exceed One Thousand Dollars ($1,000.00) unless, in the opinion of the court, special circumstances warrant a greater sum. An order granting a sum greater than One Thousand Dollars ($1,000.00) must describe in detail the special circumstances that warrant payment of a greater sum. The making of a deposit by the plaintiff or the withdrawal of said deposit by the defendant or defendants shall not prejudice the right of any party to a trial by jury in the special court of eminent domain to determine the fair market value of the property to be condemned and the damages, if any, to the remainder if less than the whole is taken, as provided in Sections 11-27-1 through 11-27-49, Mississippi Code of 1972.

CHAPTER 17

JUDGMENTS ENROLLED IN CIRCUIT COURT

CHARTS

CHAPTER 17

JUDGMENTS ENROLLED IN CIRCUIT COURT

Judgments in Circuit Court - Jurisdiction

§ 9-7-91 Judgments and executions:

The circuit court may render judgments according to the principles and usages of law, in all cases cognizable before it, and award executions, directed to the sheriff or other proper officer of any county. The court, upon legal conviction of a person of a crime or misdemeanor, shall proceed to judgment and award execution thereon as the law directs.

Judgment Roll

§ 11-7-189 Judgment roll:

Form of Judgment Roll

(1) The clerk of the circuit court shall procure and keep in his office one or more books to be styled **"The Judgment Roll,"** which book or books shall be appropriately divided under the several letters of the alphabet, and on each page shall be placed the following captions:

Clerk's Duty to Enroll Final Judgment

The clerk shall, within twenty (20) days after the adjournment of each term of court, enroll all final judgments rendered at that term in the order in which they were entered on the minutes by entering on **"The Judgment Roll,"** under the proper letter or letters of the alphabet:

the name of each and every defendant to such judgment,
the post office address of each defendant, and
the social security or tax identification number of each defendant if such information is known or readily ascertainable, and if such defendant or defendants have an attorney at law in such case
the name and post office address of such attorney or firm of attorneys if such post office address is known or readily ascertainable;
the amount of such judgment;
the date of rendition;
the county and court in which rendered;
the date, hour and minute of enrollment; and

the name of the plaintiff or plaintiffs and
the post office address of each plaintiff if readily ascertainable, and
if represented by an attorney at law or a firm of attorneys then
the name and post office address of such attorney or firm of attorneys if the post office address is known or readily ascertainable.

The name of the attorney or firm of attorneys and post office addresses of the parties may be subsequently inserted by the clerk at any time.

Notwithstanding the foregoing, the failure to list a social security number on a judgment shall not invalidate said judgment nor shall it make the party failing to list said judgment liable for such failure to list or the recording official liable for such failure.

Satisfaction of Judgment Liens

(2) Any attorney of record representing a plaintiff or plaintiffs in the case may, for and on behalf of his client or clients, satisfy in whole or in part a judgment on such Judgment Roll by endorsing thereon the extent of such satisfaction and signing an entry so showing, and when so satisfied the clerk shall attest and subscribe such endorsement under the proper heading therein. When any judgment shall otherwise be satisfied, the clerk shall so enter under proper heading and subscribe the entry.

Judgment Roll May Be Kept on Computer

(3) The Judgment Roll may be kept on computer as provided in section 9-7-171. In such case the plaintiff or attorney representing such plaintiff shall present to the clerk a sworn affidavit directing the clerk to cancel or otherwise show as satisfied the judgment recorded under this section.

As there is no written Judgment Roll Book, and all the information required of said Roll is now kept on a computer system, does the computer system now constitute the official Judgment Roll of DeSoto County? Answer: Yes, provided the "records are kept by computer in accordance with regulations prescribed by the Administrative Office of Courts." *See* Section 9-7-171(2) of the Mississippi code. **Re: Procedures for Enrolling Judgments when Judgment Roll is Computerized, Opinion No. 2008-00657 (Miss. A.G. Jan. 16, 2009).**

JUDGMENT ROLL FORM

Defendant's Name and Name of Defendant's Attorney and Post Office Address of Each	Amount of Judgment or Decree	Date of Rendition	County and Court in Which Rendered	Social Security or Tax Identification Number	Date, Hour and Minute of Enrollment	Plaintiff's Name, Plaintiff's Attorney, and Post Office Address of Each	When and How Satisfied	Remarks

Enrollment of Office Confession of Judgment

§ 11-7-181 Making office confession of judgment:

A person indebted to another in any sum of money within the jurisdiction of the circuit court, on any promise, agreement, or covenant, may sign an office confession of judgment in the clerk's office of the circuit court, in the manner following, to wit: The creditor shall file in the clerk's office a statement, under oath, substantially to the effect following, viz.:

> The State of Mississippi, _____ County.
> In the circuit court of said county, _____ day of _____, A. D. ____.
> _____ states, on oath, that _____ is justly indebted to him for the amount of _____ dollars on an instrument of writing in the following words and figures, viz.:
> (here copy the same), and in case of indorsement say indorsed as follows: (here copy the indorsement), or on open account, of which a copy is hereto attached, which remains due and unpaid, and that said sum of money is not due or claimed under a fraudulent or usurious consideration.
>
> (Signed) _____
>
> Sworn to and subscribed the _____ day of _____ A. D. ____ before me. _____, Clerk.

And if the evidence of the debt be in writing, the same shall be filed with said statement; and if not in writing, then a copy of the open account shall be filed; and the party indebted shall sign, before the clerk, an acknowledgment written upon or annexed to such statement, to the effect following, to wit:

> I do hereby acknowledge myself indebted to the said _____ in the sum of _____ Dollars, which includes interest up to the first day of the next term of the said circuit court, and I give my consent for judgment to be rendered against me in favor of said _____, at the next term of said circuit court for said amount and all legal costs accruing thereon, with stay of execution (if any) until (as may be agreed upon).
>
> (Signed) _____
>
> Taken and acknowledged the _____ day of_____, A.D. _____, before me. _____, Clerk.

§ 11-7-183 Processing office confession of judgment:

When such statement and acknowledgment are filed, the clerk shall docket the cause on the appearance docket, and at the next term on the motion of the plaintiff, the court shall render judgment thereon for the amount acknowledged to be due, with interest from the first day of the term, and with such stay of execution, if any, as may be stipulated; and such judgment shall be final unless set aside during the term, and shall be as binding and obligatory as a judgment rendered in any other form; and a full and complete final record shall be made therein as in other cases.

§ 11-7-185 Void office confessions of judgment:

A judgment rendered on office confession shall be void in toto as to third parties, if tainted with fraud or usury.

§ 11-7-187 Judgment on confession releases errors:

A judgment on confession shall be equal to a release of all errors; but all powers of attorney for confessing or suffering judgment to pass by default or otherwise, and all general releases of error made or to be made by any person before action brought, shall be absolutely null and void.

Enrollment of a Judgment

§ 11-7-191 Judgment as a lien:

A judgment so enrolled shall be a lien upon and bind all the property of the defendant within the county where so enrolled, from the rendition thereof, and shall have priority according to the order of such enrollment, in favor of the judgment creditor, his representatives or assigns, against the judgment debtor and all persons claiming the property under him after the rendition of the judgment. A judgment shall not be a lien on any property of the defendant thereto unless the same be enrolled. In counties having two (2) judicial districts, a judgment shall operate as a lien only in the district or districts in which it is enrolled. Any judgment for the purpose described in section 85-3-52 shall not be a lien on any property in this state, real, personal or mixed, that is owned by a resident of this state, and shall not be enforced or satisfied against any such property.

§ 11-7-193 Forfeiting priority of lien:

A junior judgment creditor may give written notice to any senior judgment creditor requiring him to execute his judgment; and if the senior judgment creditor, being so notified, shall fail, neglect or refuse to have execution issued, and levied within ten days from said notice for the satisfaction of his judgment, he shall lose his priority, and the junior judgment creditor may cause execution to issue on his judgment and to be levied on any of the property of the defendant, and the proceeds of a sale thereof shall be applied to the junior judgments so levied.

§ 11-7-197 Effectiveness of other court's judgments:

Judgments and decrees, at law or in equity, rendered in any court of the United States held within this state, or in the supreme court or the court of chancery of this state, shall not be a lien upon or bind the property of the defendant within the county in which such judgments or decrees may be rendered, until an abstract thereof shall be filed in the office of the clerk of the circuit court of the county and enrolled on the judgment roll, in the manner and on the terms hereinbefore provided in section 11-7-195. Such judgments and decrees shall bind the property of the defendants from the date of such enrollment, in like manner as judgments and decrees rendered in a different county and so enrolled.

§ 11-7-195 Effect in other counties:

A judgment or decree rendered in any court of the United States or of this state shall not be a lien upon or bind any property of the defendant situated out of the county in which the judgment or decree was rendered until the plaintiff shall file in the office of the clerk of the circuit court of the county in which such property is situated an abstract of such judgment or decree which has been certified by the clerk of the court in which the same was rendered containing:

the names of all the parties to such judgment or decree,
its amount,
the social security or tax identification number of the defendant if such information is known or readily ascertainable,
the date of the rendition, and
the amount appearing to have been paid thereon, if any.

It shall be the duty of the clerk of the circuit court on receiving such abstract and on payment of the fees allowed by law for filing and enrolling the same, to file and forthwith enroll the same on The Judgment Roll, as in other cases. Such judgment or decree shall, from the date of its enrollment, be a lien upon and bind the property of the defendant within the county where it shall be so enrolled. If a foreign judgment has been filed in any county of this state pursuant to sections 11-7-301 through 11-7-309 and such judgment may be enforced in such county, then, for purposes of this section, such judgment shall be treated as if it had been rendered in such county and may be enrolled on The Judgment Roll in other counties pursuant to the provisions of this section. Any judgment for the purpose described in section 85-3-52 shall not be a lien on any property in this state, real, personal or mixed, that is owned by a resident of this state and shall not be enforced or satisfied against any such property.

§ 11-7-199 Growing crop exempt from liens:

A growing crop shall not be subject to the lien of a judgment.

§ 11-7-201 Revival of judgment not necessary:

It shall not be necessary to revive a judgment by scire facias because no execution shall have been issued on such judgment within a year and a day after its rendition, but execution may be issued without such revival.

Limitation of Actions for Enforcing a Judgment

§ 15-1-43 Actions founded on domestic judgment or decree; renewal of judgment; form:

All actions founded on any judgment or decree rendered by any court of record in this state, shall be brought within seven (7) years next after the rendition of such judgment or decree, or last renewal of judgment or decree, whichever is later.

A judgment or decree can be renewed only if, at the time of renewal, the existing judgment or decree has not expired. A judgment or decree may be renewed by the filing with the clerk of the court that rendered such judgment or decree a Notice of Renewal of Judgment or Decree substantially in the following form:

NOTICE OF RENEWAL OF JUDGMENT OR DECREE

(a) Notice is given of renewal of judgment that was rendered and filed in this action as follows:

(i) Date that judgment was filed;
(ii) Case number of such judgment;
(iii) Judgment was taken against;
(iv) Judgment was taken in favor of;
(v) Current holder of such judgment;
(vi) Current amount owing of such judgment; and
(vii) Certification that at the time of the filing of the notice the judgment remains valid and has not been satisfied or barred.

(b) If applicable, that a Notice of Renewal of Judgment or Decree has been previously filed with the clerk of the court that rendered such judgment on:

The renewal of such judgment is effective as of the date of the filing of the Notice of Renewal with the clerk of the court that rendered such judgment. The renewal of judgment shall be treated in the same manner as the previously rendered judgment. The circuit clerk shall enroll the Notice of Renewal showing the date of the filing of the Notice of Renewal, and the lien of the renewal of such judgment continues from the date of the enrollment of the existing judgment. The right to renew a judgment in any other manner allowed by law instead of using the above Notice of Renewal remains unimpaired.

At the time of the filing of the Notice of Renewal of Judgment, the judgment creditor or his attorney shall make and file with the clerk of the court that rendered the judgment an affidavit setting forth the name and last-known post office address of the judgment debtor and the judgment creditor. Promptly upon the filing of the Notice of Renewal of Judgment, the clerk shall mail notice of the filing of the Notice of Renewal of Judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's attorney, if any, in this state. In addition, the judgment creditor may mail a notice of the filing of the Notice of Renewal of Judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the validity of the renewal of judgment if proof of mailing by the judgment creditor has been filed.

Enrollment of a Foreign Judgment

United States Constitution Article 4, § 1 Full Faith and Credit:

Full Faith and Credit shall be given in each State to the . . . judicial proceedings of every other state.

This State is required by the United States Constitution, Art. IV, Sec. 1, to give full faith and credit to all final judgments of other states and federal courts unless

(1) "the foreign judgment itself was obtained as a result of some false representation without which the judgment would not have been rendered" or

(2) "the rendering court did not have jurisdiction over the parties or the subject matter."

***Davis v. Davis*, 558 So. 2d 814, 817 (Miss. 1990) (citations omitted).**

Uniform Enforcement of a Foreign Judgment

§ 11-7-301 Definition:

In this act "foreign judgment" means any judgment, decree or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.

§ 11-7-303 Filing and status of foreign judgment:

A copy of any foreign judgment authenticated in accordance with the act of Congress or the statutes of this state or any rule promulgated and adopted by the Mississippi Supreme Court may be filed in the office of the clerk of the circuit court of any county in this state. Said clerk shall treat the foreign judgment in the same manner as a judgment of the circuit court of any county in this state. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a judgment of a circuit court of any county in this state and may be enforced or satisfied in like manner, subject to the provisions of section 15-1-45. Any foreign judgment for the purpose described in section 85-3-52 shall not be a lien on any property in this state, real, personal or mixed, that is owned by a resident of this state, and shall not be enforced or satisfied against any such property.

§ 11-7-305 Notice of filing:

(1) At the time of the filing of the foreign judgment, the judgment creditor or his lawyer shall make and file with the clerk of the circuit court, as the case may be, an affidavit setting forth the name and last known post office address of the judgment debtor and the judgment creditor.

(2) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

(3) No execution or other process for enforcement of a foreign judgment filed hereunder shall issue until twenty (20) days after the date the judgment is filed.

Enrollment and enforcement of foreign judgments in Mississippi is governed by statute: Uniform Enforcement of Foreign Judgments, Mississippi Code Annotated sections 11-7-301 through 11-7-309. . . . The procedure for properly enrolling a foreign judgment in Mississippi is found in section 11-7-303 and section 11-7-305. Briefly, the process is:

> (1) judgment creditor must file an affidavit and copy of the foreign judgment with the circuit clerk;
> (2) the circuit clerk promptly mails notice to the judgment debtor;
> (3) no action may be taken for twenty (20) days after the foreign judgment is filed.

***Davis v. Davis*, 558 So. 2d 814, 816-18 (Miss. 1990).**

In *Galbraith and Dickens Aviation Ins. v. Gulf Coast Aircraft*, 396 So. 2d 19, 21 (Miss. 1981), which involved the Oklahoma long-arm statute, this Court said:

> It is well settled that a judgment rendered by a court of competent jurisdiction in a sister state is entitled to a presumption of validity as to that court's assumption of jurisdiction, and the burden is on the party attacking the judgment to affirmatively show its invalidity. It is also a general rule that judgments entered in courts of a sister state, when sought to be made the judgment of another state, may only be attacked for lack of jurisdiction, otherwise they must be given the same effect as a domestic judgment.

***Temtex Products, Inc. v. Brock*, 433 So. 2d 942, 944 (Miss. 1983) (citations omitted).**

Appeal & Stay of Execution

§ 11-7-307 Stay:

(1) If the judgment debtor shows the circuit court of any county that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated [in the foreign state], upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(2) If the judgment debtor shows the circuit court of any county any ground upon which enforcement of a judgment of any court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this state.

Suit on the Foreign Judgment

§ 11-7-309 Optional proceedings:

The right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under this act remains unimpaired.

Limitation of Actions for Enforcing a Foreign Judgment

§ 15-1-45 Actions founded on foreign judgments:

All actions founded on any judgment or decree rendered by any court of record without this state shall be brought within seven (7) years after the rendition of such judgment or decree, and not after. However, if the person against whom such judgment or decree was or shall be rendered, was, or shall be at the time of the institution of the action, a resident of this state, such action, founded on such judgment or decree, shall be commenced within three (3) years next after the rendition thereof, and not after.

> The litigants in any suit have to comply with the appropriate statute of limitations in order to maintain an action. A thorough discussion of the purpose of limitation statutes is found in that case. The primary purpose of statutory time limitations is to compel the exercise of a right of action within a reasonable time. . . . The Appellants in this case did not enroll their judgment within seven years as required by the statute; therefore, the judgment cannot be enforced and the circuit court's decision should be affirmed. ***Magallanes v. Magallanes*, 802 So. 2d 174, 176 (Miss. Ct. App. 2001) (citation omitted).**

Priority of Enrolled Judgment Liens

§ 11-7-191 Judgment as lien:

A judgment so enrolled shall be a lien upon and bind all the property of the defendant within the county where so enrolled, from the rendition thereof, and shall have priority according to the order of such enrollment, in favor of the judgment creditor, his representatives or assigns, against the judgment debtor and all persons claiming the property under him after rendition of the judgment. . . .

> As a general rule a junior lien entitles the holder to the residue of the encumbered property, after an older lien has been satisfied. In equity the junior claimant would be entitled to the surplus of money arising from a sale under the older lien. In *Great Southern Land Co. v. Valley Securities Co.*, we stated: The general rule is that, where a surplus remains after satisfying a senior mortgage, it should be applied on the junior mortgage. We have not departed from the rule . . . that the surplus arising from a sale under a senior lien should be applied on a junior lien. ***Builders Supply Co. v. Pine Belt Sav. & Loan Ass'n*, 369 So. 2d 743, 745 (Miss. 1979) (citations omitted).**

§ 11-7-193 Forfeiting priority of lien:

A junior judgment creditor may give written notice to any senior judgment creditor requiring him to execute his judgment; and if the senior judgment creditor, being so notified, shall fail, neglect or refuse to have execution issued, and levied within 10 days from said notice for the satisfaction of his judgment, he shall lose his priority, and the junior judgment creditor may cause execution to issue on his judgment and to be levied on any of the property of the defendant, and the proceeds of a sale thereof shall be applied to the junior judgments so levied.

Renewal of Enrolled Judgments

§ 15-1-47 Judgment lien:

A judgment or decree rendered in any court held in this state shall not be a lien on the property of the defendant therein for a longer period than seven years from the rendition thereof, unless an action be brought thereon before the expiration of such time. However, the time during which the execution of a judgment or decree shall be stayed or enjoined by supersedeas, injunction or other process, shall not be computed as any part of the period of seven years.

It is clear from the above statute that the time within which the action must be brought is 7 years next after the rendition of such judgment or decree, and not after. [In] *Street v. Smith*, . . . it is pointed out that the effective method to extend the judgment lien is by filing another suit upon the judgment before the expiration of 7 years from the date of the rendition thereof. ***Kimbrough v. Wright*, 97 So. 2d 362, 363 (Miss. 1957).**

§ 13-3-153 Motion to revive judgment:

Those provisions of the Mississippi Code of 1972 relating to the execution of judgments without revival shall not prevent a revival in any case by a motion to revive judgment.

Assignment of Judgment

§ 13-3-147 Manner of execution by assignee:

The assignee of a judgment, where the plaintiff has died, may have execution thereof for his use as if such death had not occurred, upon filing with the clerk his affidavit of the death of the plaintiff and the assignment, and, where the plaintiff has not died, the assignee of a judgment may have an execution for his use in the same manner.

The statute recognizes the validity of an assignment of a judgment, and we think the city had the power to make the assignment of a judgment in its favor, it being shown that the city received the full amount of the judgment rendered. ***Wilkinson v. Hutto*, 128 So. 93, 95 (Miss. 1930).**

Various Judgments Enrolled by the Circuit Clerk

Judgments Rendered in State Courts

Chancery Courts

§ 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.

Justice Courts

§ 11-9-129 Judgments as lien:

Judgments rendered by justices of the peace shall operate as a lien upon the property, real or personal, of the defendant or defendants therein, found or situated in the county where rendered, or in any other county where the same may be, which is not exempt by law from execution, if an abstract of the judgment be filed with the clerk of the circuit court of the county wherein the property is situated, and entered upon the judgment roll, as in other cases of enrolled judgments. The lien shall commence from the date of enrollment, and the judgment may be enrolled and have the force and effect of a lien in all cases where an appeal is taken, as well as in other cases. And in the event of a reversal of the judgment of the justice's court, the clerk of the circuit court shall enter a memorandum to that effect on the judgment roll.

Municipal Courts

§ 21-13-19 Treatment of misdemeanors:

Judgments for fines, costs, forfeitures and other penalties imposed by municipal courts may be enrolled by filing a certified copy of the record with the clerk of any circuit court and execution may be had thereon as provided by law for other judgments.

MISCELLANEOUS ASSESSMENTS, LIENS, & PENALTIES ENROLLED AS JUDGMENTS	
§ 19-5-105	**Private property cleaning; lien**
§ 21-19-11	**Cleaning property; costs and expenses; hearing; notice; collection of costs and penalties**
§ 23-15-813	**Civil penalties and proceedings**
§ 27-7-55	**Tax collection; enrolling judgment**
§ 27-7-59	**Taxes jeopardized by delay**
§ 27-13-29	**Tax liens, judgment roll entries and sureties**
§ 27-13-33	**Taxes jeopardized by delay**
§ 27-15-215	**Failure to procure license**
§ 27-41-101	**Default; notice; tax lien; judgment**
§ 27-41-105	**Jeopardy warrant and lien**
§ 27-65-57	**Lien enrolled as judgment**
§ 27-65-61	**Jeopardy assessment**
§ 27-71-333	**Collection of penalties**
§ 43-21-619	**Parents' responsibility to pay**
§ 53-1-47	**Penalties**
§ 71-5-367	**Enforcing payment of contribution**
§ 75-27-113	**Timber weights and measures**
§ 85-7-427	**Judgments establishing lien**
§ 93-11-71	**Payments 30 days overdue; judgment; disestablishment of paternity; work program**

Motions for Relief from Judgment

Mississippi Rule of Civil Procedure 60, Relief from Judgment or Order, provides:

> **(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.
>
> > Rule 60(a) only authorizes the trial court to correct clerical errors; it does not authorize any changes to the judgment that are substantive and change the effect or intent of the original judgment. ***Cmt.***
> >
> > In response, it is the opinion of this office that a clerical error entering an incorrect name on the judgment rolls may be corrected with a court order from the circuit court. Rule 60 of the Mississippi Rules of Civil Procedure allows a court to make such a correction. **Re: Judgment Roll, Opinion No. 2001-0196, (Miss. A.G. Apr. 6, 2001).**
>
> **(b) Mistakes; Inadvertence; Newly Discovered Evidence; Fraud, etc.** On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
>
> > (1) fraud, misrepresentation, or other misconduct of an adverse party;
> > (2) accident or mistake;
> > (3) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
> > (4) the judgment is void;
> > (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;
> > (6) any other reason justifying relief from the judgment.
>
> The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than six months after the judgment, order, or proceeding was entered or taken.
>
> A motion under this subdivision does not affect the finality of a judgment or

suspend its operation. Leave to make the motion need not be obtained from the appellate court unless the record has been transmitted to the appellate court and the action remains pending therein.

This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action and not otherwise.

> Rule 60 motions for relief from a judgment filed no later than ten days after entry of judgment toll the time period in which an appeal may be taken. Rule 60 motions filed more than ten days after entry of judgment do not toll the time period in which an appeal may be taken. A Rule 60(b) motion for relief from a judgment does not automatically stay execution upon the judgment. The trial court has discretion to stay execution upon the judgment while a Rule 60(b) motion is pending. ***Cmt.***

(c) Reconsideration of transfer order. An order transferring a case to another court will become effective ten (10) days following the date of entry of the order. Any motion for reconsideration of the transfer order must be filed prior to the expiration of the 10-day period, for which no extensions may be granted. If a motion for reconsideration is filed, all proceedings will be stayed until such time as the motion is ruled upon; however, if the transferor court fails to rule on the motion for reconsideration within thirty (30) days of the date of filing, the motion shall be deemed denied.

> ***See*** **Mississippi Rule of Civil Procedure 62 Stay of Proceedings to Enforce a Judgment.**

CHAPTER 18

EXECUTIONS ON JUDGMENTS

CHARTS

CHAPTER 18

EXECUTIONS ON JUDGMENTS

Clerk Issues Executions

§ 11-7-217 Fine, penalty and forfeiture executions:

The clerk of the circuit court shall, immediately after the adjournment of every term, issue execution according to the nature of the case, for all fines, penalties and forfeitures assessed by the court, or which shall have accrued to the state or to the county, and remaining due and unpaid. Said clerk shall, within thirty days after such adjournment, transmit a list of said executions to the clerk of the board of supervisors of the county, noting the names of the defendants, the amounts, and the sheriff or other officer to whom the same was delivered; and, at the same time, he shall transmit to said clerk a statement of the returns made by the sheriff or other officer on execution for fines, penalties, and forfeitures returnable to the last term of the court. Any circuit court clerk who shall fail to issue such executions, or to transmit the lists thereof as required, shall forfeit and pay the sum of two hundred dollars for every such offense, to be recovered by the state or county, on motion against him and his sureties by the district attorney, before the circuit court. The clerk of the board of supervisors shall notify the district attorney of such default.

***See* § 11-53-73 Executions.**

§ 99-19-65 Collection of fines and penalties:

The clerk of the circuit court shall, immediately after the adjournment of every term, issue execution according to the nature of the case, for all fines, penalties and forfeitures assessed by the court, or which shall have accrued to the state or to the county, and remaining due and unpaid. Said clerk shall, within thirty days after such adjournment, transmit a list of said executions to the clerk of the board of supervisors of the county, noting the names of the defendants, the amounts, and the sheriff or other officer to whom the same was delivered; and, at the same time he shall transmit to said clerk a statement of the returns made by the sheriff or other officer on execution for fines, penalties, and forfeitures returnable to the last term of the court. Any circuit court clerk who shall fail to issue such executions, or to transmit the lists thereof as required, shall forfeit and pay the sum of two hundred dollars for every such offense, to be recovered by the state or county, on motion against him and his sureties by the district attorney, before the circuit court. The clerk of the board of supervisors shall notify the district attorney of such default.

Rule Provisions

Mississippi Rule of Civil Procedure 62, Stay of Proceedings to Enforce a Judgment, states:

> **(a) Automatic Stay; Exceptions.** Except as stated herein or as otherwise provided by statute or by order of the court for good cause shown, no execution shall be issued upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after the later of its entry or the disposition of a motion for a new trial. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.
>
> **(b) Stay on Motion.** In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60(b), or of a motion to set aside a verdict made pursuant to Rule 50(b), or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).
>
> **(c) Injunction Pending Appeal.** When an interlocutory or final judgment has been rendered granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of an appeal from such judgment upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party. The power of the court to make such an order is not terminated by the taking of the appeal.
>
> **(d) Stay Upon Appeal.** When an appeal is taken, the appellant, when and as authorized by statute or otherwise, may obtain a stay subject to the exceptions contained in subdivision (a) of this rule.
>
> . . . .

Mississippi Rule of Appellate Procedure 8, Stay or Injunction Pending Appeal, states:

> **(a) Stay by Clerk's Approval of Supersedeas Bond.** The appellant shall be entitled to a stay of execution of a money judgment pending appeal if the appellant gives a supersedeas bond, payable to the opposite party, with two or more sufficient resident sureties, or one or more guaranty or surety companies authorized to do business in this state, in a penalty of 125 percent of the amount of

the judgment appealed from, conditioned that the appellant will satisfy the judgment complained of and also such final judgment as may be made in the case. The clerk of the trial court shall approve any such bond and the approval of the supersedeas bond by the clerk shall constitute a stay of the judgment. In the event the clerk declines to approve the bond, or the clerk's approval is contested, or the appellant seeks a stay on any basis other than compliance with this subdivision, the requirements of Rule 8(b) apply.

(b) Other Stays Must Ordinarily Be Sought in the First Instance From the Trial Court.

(1) Application for a stay of the judgment or the order of a trial court pending appeal or for approval or disapproval of a contested supersedeas bond or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance to the trial court. The court shall require the giving of security by the appellant in such form and in such sum as the court deems proper, and for good cause shown may set a supersedeas bond in an amount less than the 125 percent required in cases under Rule 8(a).

(2) However, a bond or equivalent security required on any money judgment entered in whole or in part on account of punitive damages shall, as to the punitive damages portion of the judgment only, be the lower of:

(a) 125 percent of the total amount of punitive damages, or
(b) ten percent of the net worth of the defendant seeking appeal as determined by applying generally accepted accounting principles to the defendant's financial status as of December 31, of the year prior to the entry of the judgment for punitive damages.

(c) Absent unusual circumstances, the total amount of the required bond or equivalent security for any case as to punitive damages shall not exceed $100,000,000.

(3) To qualify for reduction of bond or equivalent security under subpart (b)(2)(b), there must be a good and sufficient showing that the imposition of a supersedeas bond of 125 percent of the full judgment appealed from would place that appellant in a condition of insolvency or would otherwise substantially threaten its future financial viability.

(4) When the appellant is allowed the benefit of a reduction in bond or equivalent security under subpart (b)(2)(b) or (c), the court may require submission of such reports or evidence to the court and to opposing parties as will allow them to be properly informed of the financial condition of the appellant during the period of supersedeas. If at any time after notice and

hearing, the court finds that an appellant who has posted a bond or equivalent security for less than 125 percent of the full amount of the judgment has taken actions that affect the financial ability of the appellant to respond to the judgment, or has taken other actions with the intent to avoid the judgment, the court shall increase the bond or equivalent security to the full 125 percent of the judgment. If the appellant does not post the additional bond required by the court, the stay shall be revoked.

(5) If a hearing is necessary for issues arising under subpart (b), the judgment shall be stayed during such hearing and for ten days following the trial court's ruling. The ruling of the trial court on motions filed under this subpart (b) shall be reviewable by the Supreme Court or the Court of Appeals.

(c) Motion to Stay or Vacate Stay in Supreme Court. A motion for such relief may be made to the Supreme Court (or to the Court of Appeals in cases assigned by the Supreme Court to the Court of Appeals) but the motion shall show that the application to the trial court for relief sought is not practicable, or that the trial court has denied an application or has failed to afford the relief which the applicant has requested, with the reasons given by the trial court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon and, if the facts are subject to dispute, the motion shall be supported by affidavits or other sworn statements. The applicant shall file an original and four (4) copies of the motion for stay and, if the motion is opposed, shall attach legible copies of the documents listed below. If the applicant asserts that time does not permit the filing of a written motion, applicant shall deliver to the clerk five (5) legible copies of each of the listed documents as soon as possible. If any listed document cannot be attached or delivered, a statement of the reason for the omission shall be substituted. The documents required are:

(1) the application to the trial court for a stay;
(2) each brief or memorandum of authorities filed by a party to the application in the trial court;
(3) the opinion giving the reasons advanced by the trial court for denying relief;
(4) the trial court order or judgment denying relief.

Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the clerk of the Supreme Court and will be considered by a panel of the Supreme Court or the Court of Appeals. In emergency cases the application may be considered by a single justice or judge of the appropriated appellate court, and the applicant shall file the motion with the clerk of the Supreme Court in writing as promptly as possible.

(d) Stay May Be Conditioned Upon the Giving of a Bond; Proceedings Against Sureties. Relief available in the Supreme Court or the Court of Appeals under this rule may be conditioned upon the filing of a bond or other appropriate security in the trial court. If the security is given in the form of a bond or stipulation or undertaking with one or more sureties, each surety submits itself to the jurisdiction of the trial court and irrevocably appoints the clerk of the trial court as its agent upon whom any papers affecting its liability on the bond or undertaking may be served. The surety's liability may be enforced on motion in the trial court without the necessity of an independent action. The motion and notice of the motion may be served upon the clerk of the trial court, who shall forthwith mail copies to the sureties if their addresses are known.

Mississippi Rule of Civil Procedure 69, Execution, states:

(a) Enforcement of Judgments. Process to enforce a judgment for the payment of money shall be by such procedures as are provided by statute. The procedure on execution, in proceedings supplementary to and in aid of judgment, and in proceedings on and in aid of execution, shall be as provided by statute.

(b) Examination by Judgment Creditor. To aid in the satisfaction of a judgment of more than one hundred dollars, the judgment creditor may examine the judgment debtor or any other person, including the books, papers, or documents of same, upon any matter not privileged relating to the debtor's property.

The judgment creditor may examine the judgment debtor or other person in open court as provided by statute or may utilize the discovery procedures stated in Rules 26 through 37 hereof.

***See* § 13-1-261 Examination of judgment debtor.**

Execution Procedures in General

§ 13-3-155 Execution on other court judgments:

The clerk of the circuit court in whose office any judgment or decree shall be enrolled, may issue execution and writs of garnishment thereon, directed to the sheriff of his county, returnable before the court which rendered the judgment or decree.

Time When Writ of Execution Is to Be Issued and to Whom

§ 13-3-111 When executions must be issued:

The clerks of all courts of law or equity, after the adjournment of the court for the term shall, at the request and cost of the owner of the judgment or decree or his attorney, issue executions on all judgments and decrees rendered therein, and place the same in the hands of the sheriff of the county. The sheriff shall effectuate any execution on a judgment. If requested by such owner, they shall issue executions directed to the sheriff of any other county, and shall deliver the same to the owner or his attorney.

§ 13-3-147 Manner of execution by assignee:

The assignee of a judgment, where the plaintiff has died, may have execution thereof for his use as if such death had not occurred, upon filing with the clerk his affidavit of the death of the plaintiff and the assignment, and, where the plaintiff has not died, the assignee of a judgment may have an execution for his use in the same manner.

Form of the Writ of Execution & When Returnable

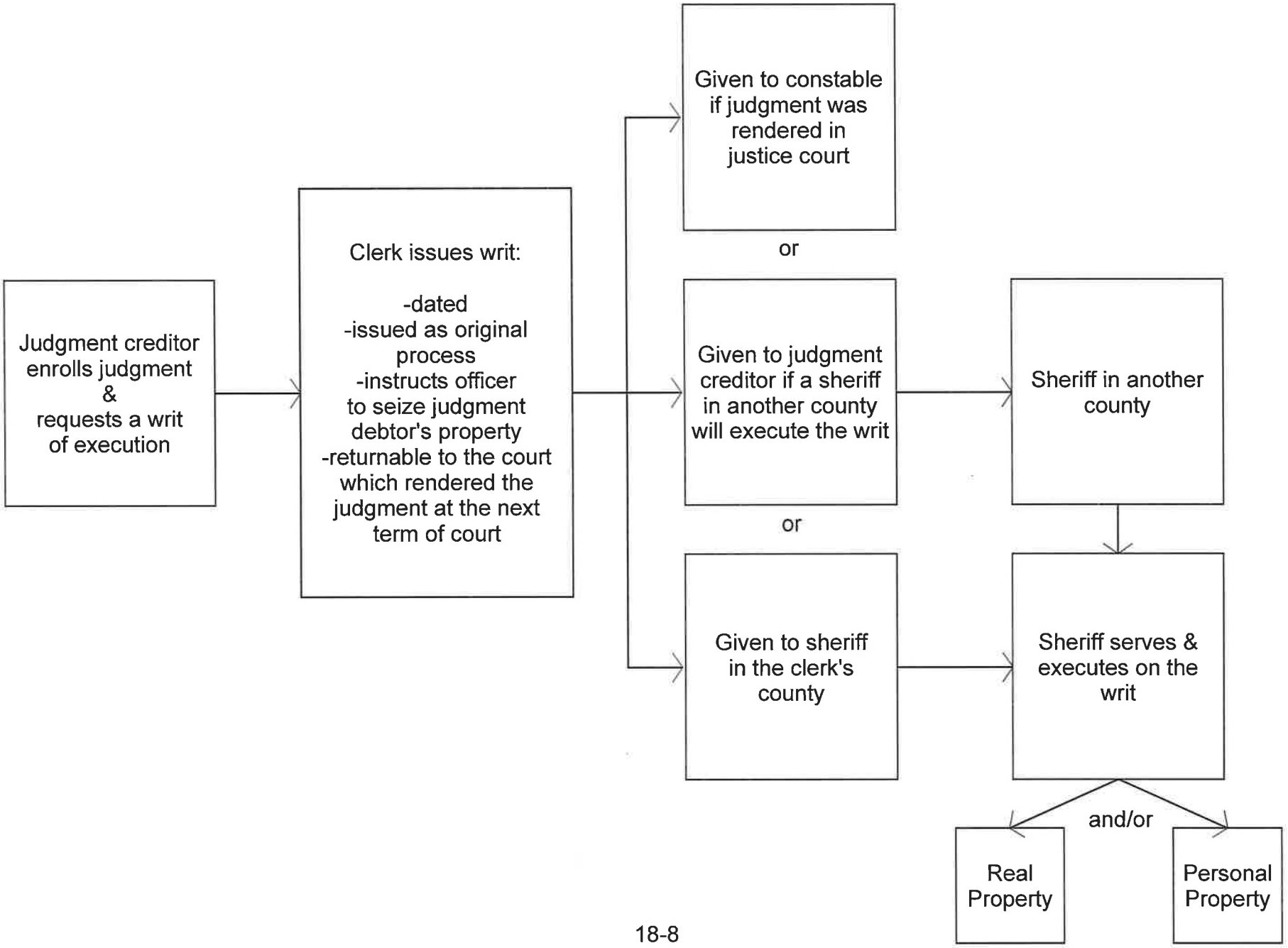
§ 13-3-113 Writ of execution; issuance and return:

Writs of execution shall bear date and be issued in the same manner as original process, and shall be made returnable on the first day of the next term of the court in which the judgment or decree was rendered, if there be 15 days between the issuance and return thereof, and, if not, on the first day of the term next thereafter. Such execution may be directed to the sheriff or other proper officer of any county, who shall serve and execute the same, and make return thereof to the court in which the judgment or decree was rendered.

§ 13-3-115 Subsequent executions issued:

If a first writ of execution shall not have been returned and shall not have been executed, the clerk may issue another execution at the cost of any party in whose favor the execution was issued, if such party shall desire to take out another execution.

WRIT OF EXECUTION



Levy of Writs of Execution & Attachments on Land

§ 13-3-123 Levy of attachment on realty:

In case of a levy of an attachment on real estate in the occupancy of any person, the officer shall go to the house or upon the land of the defendant, and there declare that he attaches the same at the suit of the plaintiff, but if the land be unoccupied, or if the process be an execution, he may attach or levy upon the same by returning that he has attached or levied upon the land, describing it by numbers or otherwise properly, and, if the process be an attachment, stating that the land is unoccupied; and in all cases the return of the officer shall be conclusive of the facts stated therein, except on timely motion to quash.

§ 13-3-163 Advertising of sale:

(1) Sales of land may be made on any day except Sunday and any legal holiday as defined by Section 3-3-7, Mississippi Code of 1972, and shall be advertised by the plaintiff in a newspaper published in the county, once in each week for three (3) successive weeks, or, if no newspaper is so published, in some newspaper having a general circulation therein once in each week for three (3) successive weeks.

(2) In addition to effectuating the advertisement, any expense or cost incurred by advertising and providing notice for the sale of land pursuant to subsection (1) of this section in justice court shall be paid by the plaintiff, and said expenses shall be taxed as costs.

§ 13-3-169 Mode of sale:

(1) Except as otherwise provided in this section, sales under execution shall not commence sooner than eleven o'clock in the forenoon, nor continue later than four o'clock in the afternoon. All such sales shall be by auction, to the highest bidder for cash, and only so much of the property levied on shall be sold as will satisfy the execution and costs.

(2) Sales under execution conducted by a special agent of the State Tax Commission pursuant to a warrant, jeopardy warrant or alias warrant issued by the Chairman of the State Tax Commission, shall commence and be conducted at the times specified by the Chairman of the State Tax Commission or his duly authorized agent. All such sales shall be by auction to the highest bidder for cash or for cash equivalent deemed acceptable by the Chairman of the State Tax Commission. Only so much of the property levied on shall be sold as will satisfy the execution and costs.

§ 13-3-161 Location of execution sales:

All sales by any sheriff by virtue of an execution or other process, when not issued by a justice court, shall be made at the courthouse of the county. The sheriff shall effectuate any execution on a judgment. However, personal property too cumbersome to be removed, may be sold at the place where the same may be, or at any convenient place. Cattle, sheep, or stock, other than horses and mules, may be sold at any public place in the neighborhood of the defendant's residence.

Sales of personal property under execution or other process from a justice court may be made at any convenient point in the county where it is found, or at the courthouse of the county. The sheriff shall effectuate any execution on a judgment. The sale of lands under executions or other process from such courts shall be made as under execution from the circuit courts.

§ 13-3-171 Land sold first in subdivisions:

All lands comprising a single tract, sold under execution, shall be first offered in subdivisions not exceeding one hundred and sixty (160) acres, or one-quarter section, and then offered as an entirety, and the price bid for the latter shall control only when it shall exceed the aggregate of the bids for the same in subdivisions.

§ 13-3-173 Adjournment of sale:

Whenever, from a defect of bidders, caused by inclement weather or otherwise, the property shall not be likely to command a reasonable price, the officer may adjourn the sale and re-advertise the same for a subsequent day. Whenever a sale advertised for a particular day shall not be completed on that day, the same may be continued from day to day.

§ 13-3-175 Writ of venditioni exponas:

If any property taken in execution shall remain in the hands of the officer unsold, he shall so return on the execution, and thereupon a writ of venditioni exponas shall issue, directed to the officer, upon which the like proceedings shall be had as might and ought to have been had on the first execution. And if property sold on a venditioni exponas shall not bring enough to satisfy the judgment, the officer shall forthwith return the same, and thereupon another proper execution for the balance remaining unpaid may be issued.

§ 13-3-181 Examination of judgment-roll by officer:

After the sale of any property by the sheriff or other officer on execution, before the money is paid over by him, he shall examine the judgment-roll to ascertain if

there by any elder judgment or judgments, decree or decrees, enrolled against the defendant or defendants in execution, having a priority of lien. If there be, he shall apply the proceeds of the sale to the judgment or decree having the priority of lien, and return such application upon the execution. Should there by any dispute as to which judgment or decree has the priority of lien, the officer shall make a statement of the fact of the dispute, and return the same, with the execution and the money raised thereon, into the court to which the same is returnable, and the court shall, on motion and examination of the facts, determine to whom the money so raised on execution shall be paid.

§ 13-3-187 Conveyance of land, execution sale:

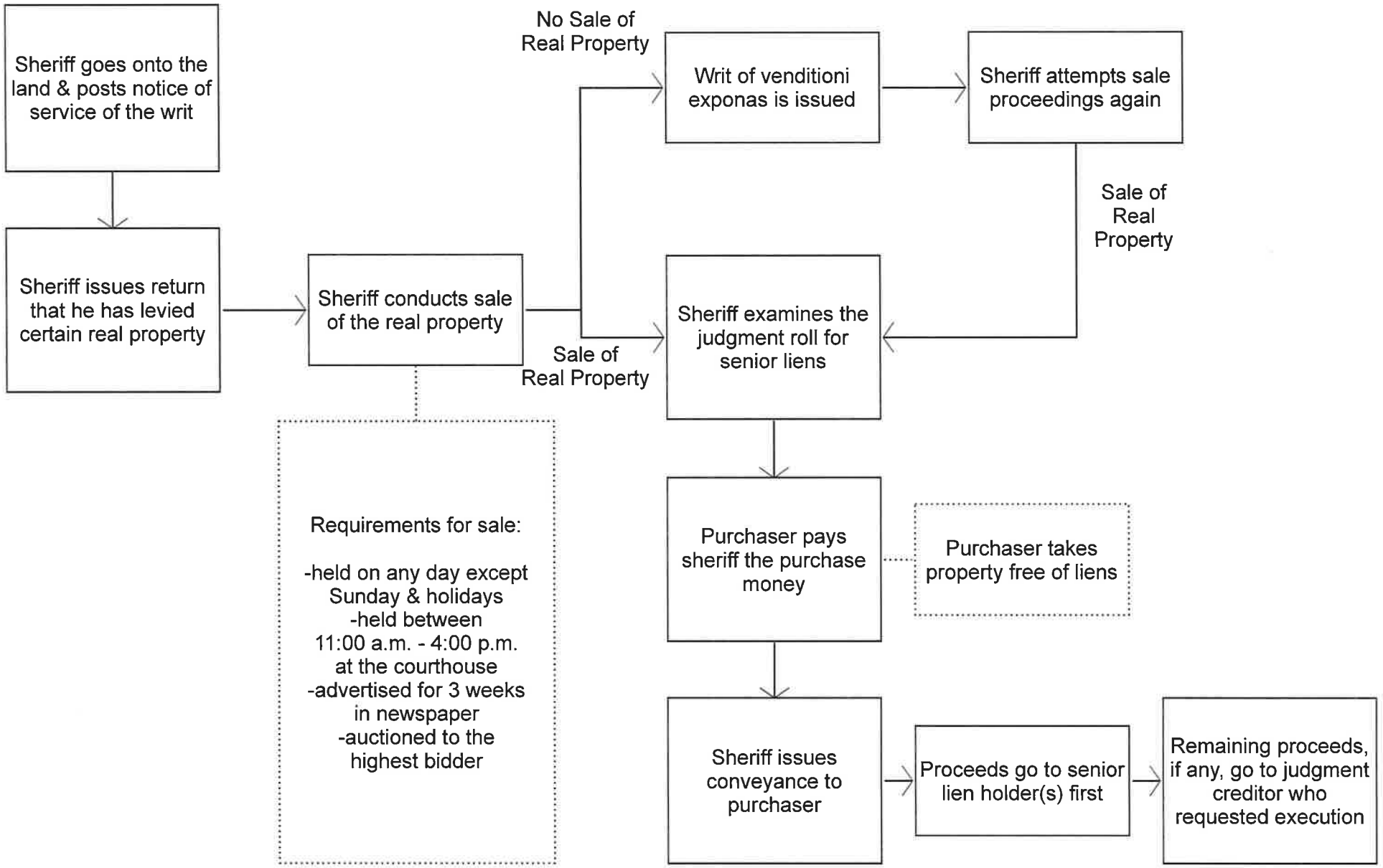
When lands are sold by virtue of any writ of execution or other process, the officer making the sale shall, on payment of the purchase-money, execute to the purchaser a conveyance which shall vest in the purchaser all the right, title and interest which the defendant had in and to such lands, and which, by law, could be sold under such execution or other process.

§ 89-1-65 Conveyance by sheriff:

A conveyance of land sold by a sheriff under execution may be in the following form, and shall be sufficient to convey all of the title of the defendant in the execution, which any conveyance such officer might make would in such case convey; and a conveyance by a constable in like form, the proper changes being made, shall have the like effect in case of sale made by him, viz.:

> By virtue of an execution issued by the clerk of the circuit court of ____ county, on the ____ day of ____, A. D. ____, returnable before said court on the ____ Monday of ____, A. D. ____, to enforce the judgment of said court, rendered on the ____ day of ____, A. D. ____, in favor of ____ against ____, for ____ dollars, and costs, I, as sheriff of ____ county, have this day, according to law, sold the following lands, to wit: [here describe the land]; when ____ became the best bidder therefor at the sum of ____ dollars, and he having paid said sum of money, I now convey said land to him.
>
> Witness my hand, the ____, A. D. ____
> _____ Sheriff.

EXECUTION ON REAL PROPERTY



Levy of Writs of Execution & Attachments on Personal Property

§ 13-3-125 Levy upon personal property:

If the levy be upon personal property the officer shall take the same into his possession and dispose of it according to law.

> The officer must assume dominion and control over the property, but the seizure may be either actual or constructive. ***Industries Sales Corp. v. Reliance Mfg. Co.*, 138 So. 2d 484, 486 (Miss. 1963).**

§ 13-3-165 Advertising sale of personalty:

(1) Sales of personalty may be made on any day except Sunday and any legal holiday as defined by Section 3-3-7, Mississippi Code of 1972, and shall be advertised by the plaintiff ten (10) days before the day of sale by posting notices of the time, terms and place of sale in three (3) public places in the county, one (1) of which shall be at the courthouse.

(2) In addition to effectuating the advertisement, any expense or cost incurred by advertising and providing notice for the sale of personalty pursuant to subsection (1) of this section in justice court shall be paid by the plaintiff, and said expenses shall be taxed as costs.

§ 13-3-169 Mode of sale:

(1) Except as otherwise provided in this section, sales under execution shall not commence sooner than eleven o'clock in the forenoon, nor continue later than four o'clock in the afternoon. All such sales shall be by auction, to the highest bidder for cash, and only so much of the property levied on shall be sold as will satisfy the execution and costs.

(2) Sales under execution conducted by a special agent of the State Tax Commission pursuant to a warrant, jeopardy warrant or alias warrant issued by the Chairman of the State Tax Commission, shall commence and be conducted at the times specified by the Chairman of the State Tax Commission or his duly authorized agent. All such sales shall be by auction to the highest bidder for cash or for cash equivalent deemed acceptable by the Chairman of the State Tax Commission. Only so much of the property levied on shall be sold as will satisfy the execution and costs.

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Sales of personal property under execution or other process from a justice court may be made at any convenient point in the county where it is found, or at the courthouse of the county. The sheriff shall effectuate any execution on a judgment. The sale of lands under executions or other process from such courts shall be made as under execution from the circuit courts.

§ 13-3-173 Adjournment of sale:

Whenever, from a defect of bidders, caused by inclement weather or otherwise, the property shall not be likely to command a reasonable price, the officer may adjourn the sale and readvertise the same for a subsequent day. Whenever a sale advertised for a particular day shall not be completed on that day, the same may be continued from day to day.

§ 13-3-175 Writ of venditioni exponas:

If any property taken in execution shall remain in the hands of the officer unsold, he shall so return on the execution, and thereupon a writ of venditioni exponas shall issue, directed to the officer, upon which the like proceedings shall be had as might and ought to have been had on the first execution. And if property sold on a venditioni exponas shall not bring enough to satisfy the judgment, the officer shall forthwith return the same, and thereupon another proper execution for the balance remaining unpaid may be issued.

§ 13-3-181 Examination of judgment-roll by officer:

After the sale of any property by the sheriff or other officer on execution, before the money is paid over by him, he shall examine the judgment roll to ascertain if there by any elder judgment or judgments, decree or decrees, enrolled against the defendant or defendants in execution, having a priority of lien. If there be, he shall apply the proceeds of the sale to the judgment or decree having the priority of lien, and return such application upon the execution. Should there by any dispute as to which judgment or decree has the priority of lien, the officer shall make a statement of the fact of the dispute, and return the same, with the execution and the money raised thereon, into the court to which the same is returnable, and the court shall, on motion and examination of the facts, determine to whom the money so raised on execution shall be paid.

§ 13-3-141 Care of property by officer:

Upon return of execution the court in cases where the compensation is not fixed by law, shall settle and adjust what the officer shall be allowed for his reasonable expenses of keeping personal property levied by him, and the same shall be taxed as costs. The officer may retain the same out of the money arising from the sale of the property.

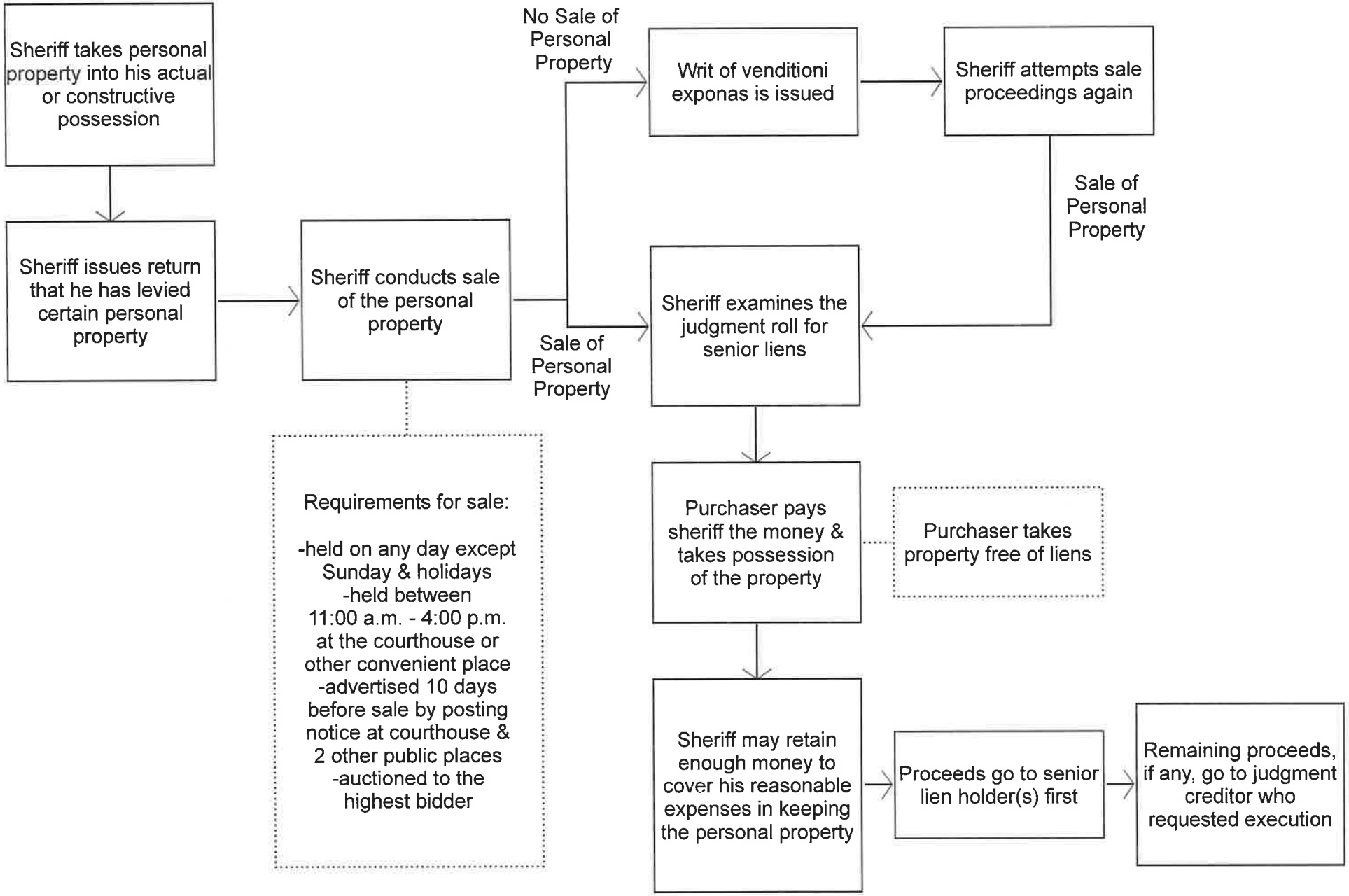
§ 13-3-143 Manner of execution by executor:

When the executor or administrator of a plaintiff who dies before satisfaction of his judgment shall file with the clerk a copy of his letters testamentary or of administration, duly certified, execution may be issued on the judgment as if such death had not occurred, and the clerk shall indorse on the execution the fact of the death of the plaintiff, and that the execution is at the instance of his executor or administrator, stating the name of the executor or administrator. When an administrator, guardian, trustee, or other person acting in a fiduciary or official capacity, who recovered a judgment, shall die, resign, or be removed without having obtained satisfaction thereof, his successor may have execution of the judgment in the same manner, without revival of the judgment by scire facias.

§ 13-3-177 Death of officer taking property:

When the officer taking property under execution shall die before the sale thereof, a writ of venditioni exponas shall issue, directed to the proper officer of the county in which the property was taken, and such officer shall, under the writ of venditioni exponas, receive the property from the representatives of the former sheriff, or other officer, who are required to deliver the same to the officer having the venditioni exponas, on his producing the same and executing a receipt for the property, and the officer shall proceed to sell the same as in other cases.

EXECUTION ON PERSONAL PROPERTY



OTHER PROPERTY WHICH MAY BE EXECUTED UPON	
§ 13-3-127	**Levy on rights and credits**. ***See* § 13-3-135 Purchaser's ownership of defendant's interests.**
§ 13-3-129	**Levy on corporate stock.** ***See* § 13-3-135 Purchaser's title to certain interests of defendant sold under execution or attachment.**
§ 13-3-131	**Levy on partner's interest.**
§ 13-3-141	**Care of property by officer.**
§ 13-3-167	**Time for perishable good sales.**

Bonds Required for Executions on Personal Property

§ 13-3-157 Bond of indemnity may be required:

If the sheriff shall levy an execution, attachment, or writ of seizure for the purchase-money on any personal property, and a doubt shall arise whether the right to the property be in the defendant or not, the sheriff may demand of the plaintiff a bond with sufficient sureties, payable to the officer, in a penalty equal to double the value of the property, conditioned that the obligors therein will indemnify and save harmless the officer against all damages which he may sustain in consequence of the seizure or sale of the property, and will pay to and satisfy any person claiming title to the property all damages which such person may sustain in consequence of the seizure or sale. If such bond be not given on or before the day of the sale or the return day of the attachment, the sheriff shall be justified in releasing the levy and delivering the property to the party from whose possession it was taken; but the plaintiff or his agent or attorney shall have reasonable notice, in writing, before the day of sale or return day of the writ, that the bond is required. . . .

§ 85-3-5 Security bond; liability:

If any sheriff or other officer shall levy or be about to levy an execution or attachment on any personal property claimed as exempt, and a doubt shall arise as to the liability of the property to be sold, he may demand of the plaintiff a bond, with sufficient sureties, payable to such officer, in a sufficient penalty, conditioned to indemnify and save harmless the officer against all damages which he may sustain in consequence of the seizure or sale of the property, and to pay the defendant all damages which he may sustain in consequence of the seizure or sale; and if such bond be not given, after reasonable notice, in writing, from the officer to the plaintiff, his agent or attorney, that it is required, the officer may refuse to levy, or, having levied, may dismiss the levy; but if the required bond be given, the officer shall seize and sell or dispose of the property according to the command of the process in his hands, and shall return the bond with the execution or attachment. If an officer shall seize personal property exempt from execution, he shall be liable to an action at the suit of the owner for all damages sustained thereby, unless he have taken an indemnifying bond.

Property Exempt from Execution

Real Property & Homestead Exemption

§ 85-3-21 Homestead exemption; real property:

Every citizen of this state, male or female, being a householder shall be entitled to hold exempt from seizure or sale, under execution or attachment, the land and buildings owned and occupied as a residence by him, or her, but the quantity of land shall not exceed one hundred sixty (160) acres, nor the value thereof, inclusive of improvements, save as hereinafter provided, the sum of Seventy-five Thousand Dollars ($75,000.00); provided, however, that in determining this value, existing encumbrances on such land and buildings, including taxes and all other liens, shall first be deducted from the actual value of such land and buildings. But husband or wife, widower or widow, over sixty (60) years of age, who has been an exemptionist under this section, shall not be deprived of such exemption because of not residing therein.

§ 85-3-23 Homestead exemption; personal property:

Every citizen of this state, male or female, being a householder shall be entitled to hold exempt from seizure or sale under execution or attachment the land and buildings owned and occupied as a residence by such person, also the proceeds of any insurance, fire or otherwise, on any such buildings destroyed or damaged by fire, tornado or otherwise, not to exceed in value, save as hereinafter provided, Seventy-five Thousand Dollars ($75,000.00), and personal property to be selected by him or her not to exceed in value Two Hundred Fifty Dollars ($250.00) or the articles specified as exempt to the head of a family; provided, however, that no sum or amount due, or to become due such person, nor any part thereof, for or on account of wages, salaries or commissions, shall in any proceedings be selected or claimed as exempt under this section. But husband or wife, widower or widow, over sixty (60) years of age, who has been an exemptionist under this section, shall not be deprived of such exemption because of not residing therein.

§ 85-3-37 Allotment of homestead; indivisible premises:

If the premises be not capable of being so divided as to set off the debtor a part, including the dwelling house and not exceeding Seventy-five Thousand Dollars ($75,000.00) in value, inclusive of improvements, or if the debtor has made a valid homestead declaration, and the homestead exceeds Seventy-five Thousand Dollars ($75,000.00) in value, the householders or freeholders shall value the land, inclusive of the dwelling house and buildings; and if the surplus of the valuation, over and above the exempt value, shall, within sixty (60) days, be paid

by the execution-debtor, the premises shall not be sold; but if the surplus be not paid within sixty (60) days after the valuation, the officer may advertise and sell the premises, if the same shall bring a greater sum than the exempt value; and out of the proceeds of the sale he shall pay to the execution-debtor the sum of Seventy-five Thousand Dollars ($75,000.00).

Personal Property

§ 85-3-1 Property exempt from seizure under execution or attachment:

There shall be exempt from seizure under execution or attachment:

(a) Tangible personal property of the following kinds selected by the debtor, not exceeding Ten Thousand Dollars ($10,000.00) in cumulative value:

(i) Household goods, wearing apparel, books, animals or crops;
(ii) Motor vehicles;
(iii) Implements, professional books or tools of the trade;
(iv) Cash on hand;
(v) Professionally prescribed health aids;
(vi) Any items of tangible personal property worth less than Two Hundred Dollars ($200.00) each.

Household goods, as used in this paragraph (a), means clothing, furniture, appliances, one (1) radio and one (1) television, one (1) firearm, one (1) lawn mower, linens, china, crockery, kitchenware, and personal effects (including wedding rings) of the debtor and his dependents; however, works of art, electronic entertainment equipment (except one (1) television and one (1) radio), jewelry (other than wedding rings), and items acquired as antiques are not included within the scope of the term "household goods." This paragraph (a) shall not apply to distress warrants issued for collection of taxes due the state or to wages described in Section 85-3-4.

(b) (i) The proceeds of insurance on property, real and personal, exempt from execution or attachment, and the proceeds of the sale of such property.
(ii) Income from disability insurance.

(c) All property in this state, real, personal and mixed, for the satisfaction of a judgment or claim in favor of another state or political subdivision of another state for failure to pay that state's or that political subdivision's income tax on benefits received from a pension or other retirement plan. As used in this paragraph (c), "pension or other retirement plan" includes:

(i) An annuity, pension, or profit-sharing or stock bonus or similar plan established to provide retirement benefits for an officer or employee of a public or private employer or for a self-employed individual;
(ii) An annuity, pension, or military retirement pay plan or other retirement plan administered by the United States; and
(iii) An individual retirement account.

(d) One (1) mobile home, trailer, manufactured housing, or similar type dwelling owned and occupied as the primary residence by the debtor, not exceeding a value of Thirty Thousand Dollars ($30,000.00); in determining this value, existing encumbrances on the dwelling, including taxes and all other liens, shall first be deducted from the actual value of the dwelling. A debtor is not entitled to the exemption of a mobile home as personal property who claims a homestead exemption under Section 85-3-21, and the exemption shall not apply to collection of delinquent taxes under Sections 27-41-101 through 27-41-109.

(e) Assets held in, or monies payable to the participant or beneficiary from, whether vested or not,

(i) a pension, profit-sharing, stock bonus or similar plan or contract established to provide retirement benefits for the participant or beneficiary and qualified under Section 401(a)1, 403(a), or 403(b)2 of the Internal Revenue Code (or corresponding provisions of any successor law), including a retirement plan for self-employed individuals qualified under one (1) of such enumerated sections,
(ii) an eligible deferred compensation plan described in Section 457(b)3 of the Internal Revenue Code (or corresponding provisions of any successor law), or
(iii) an individual retirement account or an individual retirement annuity within the meaning of Section 4084 of the Internal Revenue Code (or corresponding provisions of any successor law), including a simplified employee pension plan.

(f) Monies paid into or, to the extent payments out are applied to tuition or other qualified higher education expenses at eligible educational institutions, as defined in Section 5295 of the Internal Revenue Code or corresponding provisions of any successor law, monies paid out of the assets of and the income from any validly existing qualified tuition program authorized under Section 529 of the Internal Revenue Code or corresponding provisions of any successor law, including, but not limited to, the Mississippi Prepaid Affordable College Tuition (MPACT) Program established under Sections 37-155-1 through 37-155-27 and the Mississippi Affordable College Savings (MACS) Program established under Sections 37-155-101 through 37-155-125.

(g) The assets of a health savings account, including any interest accrued thereon, established pursuant to a health savings account program as provided in the Health Savings Accounts Act (Sections 83-62-1 through 83-62-9).

(h) In addition to all other exemptions listed in this section, there shall be an additional exemption of property having a value of Fifty Thousand Dollars ($50,000.00) of whatever type, whether real, personal or mixed, tangible or intangible, including deposits of money, available to any Mississippi resident who is seventy (70) years of age or older.

(i) An amount not to exceed Five Thousand Dollars ($5,000.00) of earned income tax credit proceeds.

(j) An amount not to exceed Five Thousand Dollars ($5,000.00) of federal tax refund proceeds.

(k) An amount not to exceed Five Thousand Dollars ($5,000.00) of state tax refund proceeds.

(l) Subject to the provisions of Section 2(2) of this act, the assets of a catastrophe savings account, including any interest accrued thereon, established under Sections 1 through 4 of this act.

(m) Nothing in this section shall in any way affect the rights or remedies of the holder or owner of a statutory lien or voluntary security interest.

§ 85-3-3 Personal property; exemptions:

Where an officer shall be about to levy an execution or attachment on personal property, some of which shall be claimed as exempt, he shall demand of the defendant that he make selection of such property as is exempt to him and in reference to which he has the right of selection; and the defendant shall then and there make his selection, or, failing to do so, the officer shall make it for him, and any selection so made shall be conclusive on the defendant.

§ 85-3-23 Homestead exemption; personal property:

Every citizen of this state, male or female, being a householder shall be entitled to hold exempt from seizure or sale under execution or attachment the land and buildings owned and occupied as a residence by such person, also the proceeds of any insurance, fire or otherwise, on any such buildings destroyed or damaged by fire, tornado or otherwise, not to exceed in value, save as hereinafter provided, Seventy-five Thousand Dollars ($75,000.00), and personal property to be selected

by him or her not to exceed in value Two Hundred Fifty Dollars ($250.00) or the articles specified as exempt to the head of a family; provided, however, that no sum or amount due, or to become due such person, nor any part thereof, for or on account of wages, salaries or commissions, shall in any proceedings be selected or claimed as exempt under this section. But husband or wife, widower or widow, over sixty (60) years of age, who has been an exemptionist under this section, shall not be deprived of such exemption because of not residing therein.

Penalties Available

Against the Debtor or Third Parties

§ 97-9-71 Refusal to identify or permit property to be seized:

If any person shall have in his possession or under his control personal property of any kind subject to seizure by virtue of any legal process in the hands of any state or federal law enforcement officer, as the property of another or as subject to such process, and shall refuse or omit to point out such property to such officer on his demanding it, and to permit him to take possession of it, he shall, upon conviction, be subject to a fine of not less than the value of such property, nor more than double such value, or to imprisonment in the county jail not less than one (1) month nor more than six (6) months, or to both such fine and imprisonment.

§ 97-9-75 Resisting service of process:

Any person who knowingly and wilfully opposes or resists any officer or other authorized person in serving or attempting to serve or execute any legal writ or process, shall be guilty of a misdemeanor.

Against the Sheriff

§ 19-25-41 Failure to return execution:

If any sheriff or other officer properly authorized to act for him, shall fail to return any execution to him directed, on the return day thereof, the plaintiff in execution shall be entitled to recover judgment against the sheriff or other officer, and his sureties, for the amount of the execution and all costs, with lawful interest thereon until the same shall be paid, and with five percent (5%) on the full amount of the judgment as damages, to be recovered by motion before the court to which the execution is returnable, on five days' notice first being given thereof. However, after the sheriff or other officer, or the sureties, shall have paid the amount of money and damages recovered, then the original judgment and execution shall be

vested in the officer or his sureties paying the recovery and damages, for his or their benefit, and execution may issue on the original judgment, in the name of the plaintiff, for the use and benefit and at the cost and charges of the officer or his sureties in whom the judgment may be so vested. Nothing herein contained shall affect any other remedy against officers for failing to return executions, and the remedy given by this section shall apply in favor of county treasuries, clerks, and other officers and witnesses, for the recovery of all jury taxes, fees, and costs, with interest and damages thereon, in the same manner as to plaintiffs in execution. In any proceeding against a sheriff or other officer for failing to return any process, proof that the process was put in the post office, duly addressed to him, and that the postage was paid thereon, shall be prima facie evidence of the receipt thereof by the officer.

CHAPTER 19

GARNISHMENTS

CHARTS

CHAPTER 19

GARNISHMENTS

Issuance of Garnishment

§ 13-3-155 Execution on other court judgments:

The clerk of the circuit court in whose office any judgment or decree shall be enrolled, may issue execution and writs of garnishment thereon, directed to the sheriff of his county, returnable before the court which rendered the judgment or decree.

MRCP 69(a) states:

(a) Enforcement of Judgment. Process to enforce a judgment for the payment of money shall be by such procedures as are provided by statute. The procedure on execution, in proceedings supplementary to and in aid of judgment, and in proceedings on and in aid of execution, shall be as provided by statute.

§ 11-35-1 On judgment or decree:

On the suggestion in writing by the plaintiff in a judgment or decree in any court upon which an execution may be issued, that any person, either natural or artificial, including the state, any county, municipality, school district, board or other political subdivision thereof, is indebted to the defendant therein, or has effects or property of the defendant in his, her or its possession, or knows of some other person who is indebted to the defendant, or who has effects or property of the defendant in his, her or its possession, it shall be the duty of the clerk of such court to issue a writ of garnishment, directed to the sheriff or proper officer, commanding him to summon such person, the state, county, municipality, school district, board or other political subdivision thereof, as the case may be, as garnishee to appear at the term of court to which the writs of garnishment may be returnable, to answer accordingly.

> [G]arnishment has never been available in this state at the commencement of and during the course of an action. Mississippi law allows a creditor to proceed against another said to be indebted to the creditor's debtor only after the creditor has obtained a judgment against such debtor. . . . Garnishment is not a pure, independent action but instead is more in the nature of an ancillary or auxiliary proceeding, growing out of, and dependent on, another original or primary action or proceeding. Garnishment is a process which may be resorted to in aid of an execution

for the enforcement of a judgment recovered in the principal action or proceeding. This Court observed . . . that garnishment was the process by which money and goods due a judgment . . . debtor by third persons were attached. Garnishment is a process to enforce a judgment. . . . ***First Mississippi Nat. Bank v. KLH Indus., Inc.*, 457 So. 2d 1333, 1337 (Miss. 1984).**

Form of Garnishment & How Served

§ 11-35-5 Writ on judgment or decree:

The writ of garnishment, when issued on a judgment or decree, may be in the following form, to wit:

THE STATE OF MISSISSIPPI

Whereas, _____ recovered a judgment in _____ court of _____ county, on the ___ day _____, A. D. _____, for the sum of _____ dollars and costs, against _____, and the judgment has not been satisfied, and said _____ having made the proper suggestion for a writ of garnishment against _____:

We therefore command you to summon said _____ to appear in said court, at _____, on the ___ day of _____, A. D. _____, then and there to answer, on oath in writing, whether (here copy in full every particular that a garnishee is required to answer). And have you then and there this writ, with your proceedings indorsed thereon.

Witness my signature (and if by a clerk, add an official seal), this _____ day of _____, A. D. _____.

_____

The writ must be signed by the officer who issues it, and his official character should be written after his name.

§ 11-35-7 Writ issued by sheriff:

When the sheriff issues a writ of garnishment in executing an attachment, it may be in the following form:

> THE STATE OF MISSISSIPPI.
>
> To _____, garnishee:
>
> Whereas, the undersigned holds an attachment writ against _____, as defendant at the suit of _____, as plaintiff, and it appearing that you should be summoned as garnishee:
>
> We therefore command you to appear in the _____ court, at _____, on the ___ day of _____, A. D. _____, being the return day of said attachment, then and there in said attachment suit to answer (here copy in full every particular that a garnishee is required to answer). Herein fail not, under penalty of having judgment rendered against you for the whole amount of plaintiff's demand.
>
> Witness my signature, this ___ day of _____, A. D. _____.

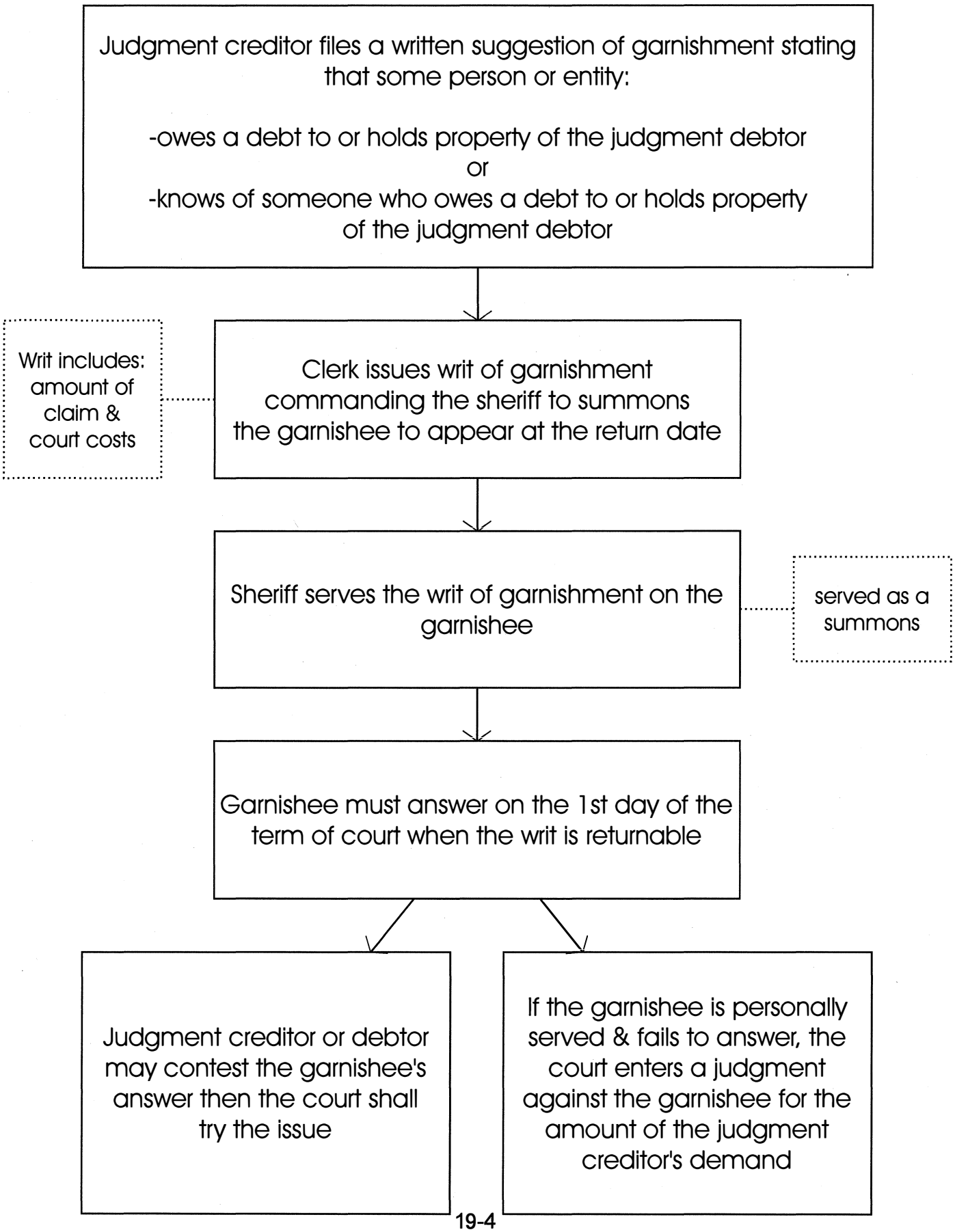
The original must be returned to the court properly indorsed with the mode of service and the defendant served, as in other cases.

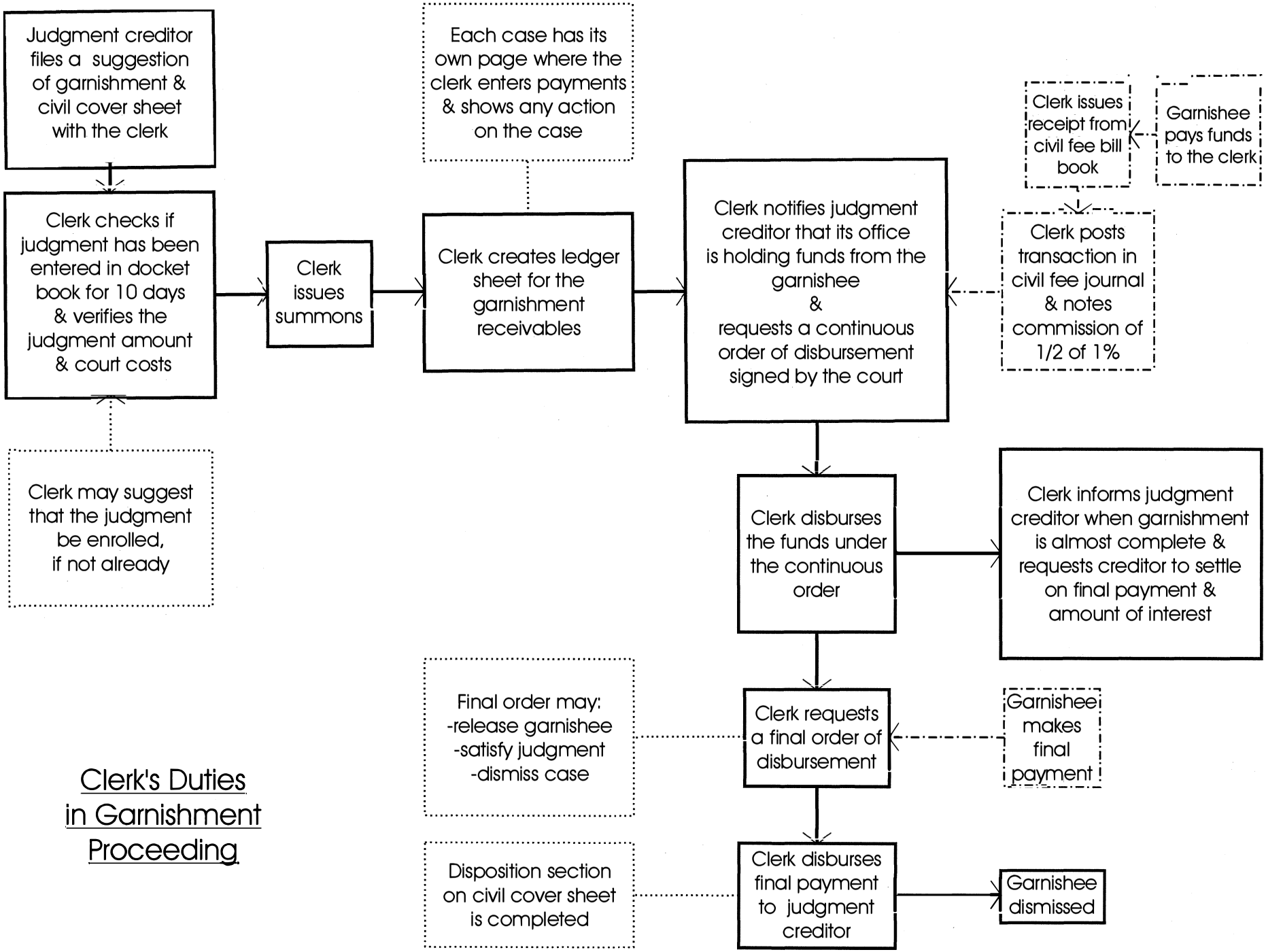
§ 11-35-9 Service of writ:

A writ of garnishment, whether issued in a case of attachment or on a judgment or decree, shall be served as a summons is required by law to be executed; but if the garnishee be not personally served, and make default, judgment nisi shall be rendered against him, and a scire facias awarded, returnable to the next term, unless the court be satisfied that the garnishee can be personally served at once, in which case it may be returnable instanter.

> ***See* § 11-35-11 Service upon government employees; § 11-35-13 Default judgment against state prohibited; § 11-35-15 Fee for serving state officer; § 11-35-17 Fee for serving other officers; § 11-35-19 Penalty for not answering writ; and § 11-35-21 Effect of writ.**
>
> ***See* Mississippi Rule of Civil Procedure 4.**

GARNISHMENTS





Clerk's Duties in Garnishment Proceeding

WRIT OF GARNISHMENT	ANSWER Either admits or denies indebtedness	
Person/entity is indebted to the judgment debtor	Not indebted	Admits indebtedness at the time of the service of the writ or since that time & lists: -how much is owed -when due -how the debt is evidenced -what interest it bears
Person/entity has property of the judgment debtor in his/her/its possession	Not indebted	Admits indebtedness at the time of the service of the writ or since that time & lists: -what property of the judgment debtor is in his/her/its possession or control
Person/entity knows of someone who is indebted to the judgment debtor	Does not know of any such person	Does know of such a person & lists: -who -where that person resides -what amount is owed
Person/entity knows of someone who has property of the judgment debtor in his/her/its possession	Does not know of any such person	Does know of such a person & lists: -who -where that person resides
Person/entity is indebted to the judgment debtor for wages, salary, or other compensation	Not indebted	Admits indebtedness at the time of the service of the writ or since that time & admits that the judgment debtor is an employee & lists: -time interval between pay periods

Answer to Garnishment

§ 11-35-25 Garnishee's answer:

(1) Every person duly summoned as a garnishee shall answer on oath as to the following particulars, viz.:

(a) Whether he be indebted to the defendant or were so indebted at the time of the service of the writ on him, or have at any time since been so indebted; and, if so indebted, in what sum, whether due or not, and when due or to become due, and how the debt is evidenced, and what interest it bears;

(b) What effects of the defendant he has or had at the time of the service of the writ on him, or has had since, in his possession or under his control;

(c) Whether he knows or believes that any other person is indebted to the defendant; and, if so, whom, and in what amount, and where he resides; and

(d) Whether he knows or believes that any other person has effects of the defendant in his possession or under his control; and, if so, whom, and where he resides.

(2) In addition to answering as to the particulars in subsection (1) of this section, each person duly summoned as a garnishee in any case in which he be indebted to the defendant for wages, salary or other compensation shall answer on oath as to whether the defendant is an employee of the garnishee and, if so, the time interval between pay periods of the defendant including any specific day of a week or month on which such defendant is regularly paid.

§ 11-35-27 Time to file answer:

Except as otherwise provided in Section 11-35-23, garnishees shall, in all cases in the circuit or chancery court, answer on the first day of the return term, and, in the courts of justices of the peace, they shall answer by noon on the return day of the writ, unless the court, for cause shown, shall grant further time; and, if upon the answer of any garnishee, it appear that there is any estate of the defendant in the hands of any person not summoned, an alias writ may at once be issued, to be levied on the property in the hands of such person, or he may be summoned as garnishee.

RESULTS OF CERTAIN ANSWERS & DEFENSES ASSERTED BY THE GARNISHEE		
Statute	**Answer**	**Result**
§ 11-35-35	Garnishee admits possession of the judgment debtor's property & delivers the same to the sheriff	Property used to satisfy garnishment
§ 11-35-29	Garnishee admits indebtedness or possession of the judgment debtor's property but does not pay or give the same to the sheriff	Court may enter judgment against the garnishee in favor of the judgment creditor for amount of debt admitted or the value of the property
§ 11-35-35	Garnishee admits a debt to the judgment debtor but asserts that it is not yet due	Garnishment proceeding is stayed until the debt's maturity
§ 11-35-33	Garnishee admits indebtedness or possession of the judgment debtor's property but states that the judgment debtor may claim that the same is exempt from garnishment	Court shall try the issue
§ 11-35-39	Garnishee may plead that the judgment creditor's original judgment is void	If the original judgment is void, no judgment is rendered against the garnishee
§ 11-35-41	Garnishee admits indebtedness or possession of the judgment debtor's property but asserts that another person claims an interest in the property	Court shall try the issue between the third person and the judgment creditor
§ 11-35-41	Garnishee admits indebtedness or possession of the judgment debtor's property but asserts that another person claims an interest in the property and the garnishee turns the money or property over to the court	Garnishee is discharged of liability for the amount given to the court

Certain Answers & Defenses to Garnishment

§ 11-35-35 Debt not yet due:

If a garnishee admit an indebtedness not then due, execution shall be stayed until its maturity; and if he admit the possession of goods or chattels of the defendant, such goods or chattels shall be delivered to the sheriff; but, in attachment cases, the garnishee may replevy the property by giving a bond for the same, as the defendant in attachment may do, and subject to the same proceedings and liabilities.

§ 11-35-37 Immunity of garnishee paying over:

If a garnishee shall pay over or deliver, in pursuance of the judgment or process of the court, any money or property belonging to the defendant, before notice of sale, assignment, or transfer thereof by the defendant to any other person, such garnishee shall not thereafter be liable for the debt or property to the vendee or assignee thereof.

§ 11-35-29 Judgment:

If the garnishee admits indebtedness to or the possession of effects of the defendant, and he have not paid or delivered the same to the sheriff, judgment may be rendered against him in favor of the plaintiff for the amount of the debt admitted, or for the property, or the value thereof (to be assessed if necessary), admitted to be in his possession; but the judgment shall not be for a greater sum than the plaintiff's demand.

§ 11-35-33 Claiming exemptions:

Any garnishee who answers admitting an indebtedness, or the possession of property due or belonging to the defendant, may show by his answer that he is advised and believes that the defendant does or will claim the debt or property, or some part thereof, as exempt from garnishment, levy, or sale. Upon the filing of such answer, the clerk or justice of the peace shall issue a summons or make publication, if defendant be shown by oath to be absent from the state, for the defendant, notifying him of the garnishment and the answer, and requiring him to assert his right to the exemption. Proceedings against the garnishee shall be stayed until the question of the debtor's right to the exemption be determined. If the defendant fail to appear, judgment by default may be taken against him, adjudging that he is not entitled to the property or debt as exempt; but if he appear, the court shall, on his motion, cause an issue to be made up and tried between him and the plaintiff.

§ 11-35-39 Pleading voidness of judgment:

The garnishee may plead that the judgment under which the writ of garnishment was issued is void, and if his plea be sustained, no judgment shall be rendered against him.

> We are of the opinion the true rule is that a judgment against a garnishee cannot stand where the judgment in the main action has been reversed. The garnishment proceedings grow out of and are incidental to the main judgment, and a judgment against a garnishee rests upon the main judgment which gives it life, and when the main judgment is annulled the garnishment judgment must fall with it. ***Grain Dealers Mut. Ins. Co. v. Langlinais*, 126 So. 2d 869, 869 (Miss. 1961) (citations omitted).**

§ 11-35-41 Bringing in third party:

When a garnishee, by his answer or by affidavit at any time before final judgment against him, or after such judgment if he had no such notice before the judgment was rendered, shall show that he has been notified that another person claims title to or an interest in the debt or property, which has been admitted by him, or found on a trial to be due or to be in his possession, the court shall suspend all further proceedings, and cause a summons to issue or publication to be made for the person so claiming to appear and contest with the plaintiff the right to such money, debt, or property. In such case, if the answer admit an indebtedness, and the garnishee pay the money into court, he shall thereupon be discharged from liability to either party for the sum so paid. And whenever such garnishee shall by said answer or affidavit show that he has been notified that another person claims title to or interest in such debt or property, it shall be lawful for such third person of his own motion to come in and claim the debt or property, and the claim shall be tried as other claimant's issues are tried whether summons or publication has been made to bring him in or not.

Failure to Answer to Garnishment

When Garnishee Is Not Personally Served

§ 11-35-9 Service of writ:

A writ of garnishment, whether issued in a case of attachment or on a judgment or decree, shall be served as a summons is required by law to be executed; but if the garnishee be not personally served, and make default, judgment nisi shall be rendered against him, and a scire facias awarded, returnable to the next term, unless the court be satisfied that the garnishee can be personally served at once, in which case it may be returnable instanter.

When Garnishee Is Personally Served

§ 11-35-31 Failure to answer:

If a garnishee, personally summoned, shall fail to answer as required by law, or if a scire facias on a judgment nisi be executed on him, and he fail to show cause for vacating it, the court shall enter a judgment against him for the amount of plaintiff's demand; and execution shall issue thereon, provided, however, that the garnishee may suspend the execution by filing a sworn declaration in said court showing the property and effects in his possession belonging to the debtor, and his indebtedness to the debtor, if any, or showing that there be none, if that be true; and by such act and upon a hearing thereon, the garnishee shall limit his liability to the extent of such property and effects in his hands, and such indebtedness due by him to the debtor, plus court costs and reasonable attorney's fees of the judgment creditor in said garnishment action.

Contest of a Garnishee's Answer

§ 11-35-45 Contest of answer by plaintiff:

If the plaintiff believe that the answer of the garnishee is untrue, or that it is not a full discovery as to the debt due by the garnishee, or as to the property in his possession belonging to the defendant, he shall, at the term when the answer is filed, unless the court grant further time, contest the same, in writing, specifying in what particular he believes the answer to be incorrect. Thereupon, the court shall try the issue at once, unless cause be shown for a continuance, as to the truth of the answer, and shall render judgment upon the facts found, when in plaintiff's favor, as if they had been admitted by the answer, but if the answer be found correct, the garnishee shall have judgment for costs against the plaintiff.

§ 11-35-47 Contest of answer by defendant:

The defendant may contest, in writing, the answer of the garnishee, and may allege that the garnishee is indebted to him in a larger sum than he has admitted, or that he holds property of his not admitted by the answer, and shall specify in what particular the answer is untrue or defective. Thereupon an issue shall be made up and tried; but the plaintiff may take judgment for the sum admitted by the garnishee, or for the condemnation of the property admitted to be in his hands, notwithstanding the contest.

Effect of Garnishment on Non-Wages & on Wages

§ 11-35-23 Nature of garnishment:

(1)(a) Except for wages, salary or other compensation, all property in the hands of the garnishee belonging to the defendant at the time of the service of the writ of garnishment shall be bound by and subject to the lien of the judgment, decree or attachment on which the writ shall have been issued. If the garnishee shall surrender such property to the sheriff or other officer serving the writ, the officer shall receive the same and, in case the garnishment issued on a judgment or decree, shall make sale thereof as if levied on by virtue of an execution, and return the money arising therefrom to satisfy the judgment; and if the garnishment issued on an attachment, the officer shall dispose of the property as if it were levied upon by a writ of attachment. And any indebtedness of the garnishee to the defendant, except for wages, salary or other compensation, shall be bound from the time of the service of the writ of garnishment, and be appropriable to the satisfaction of the judgment or decree, or liable to be condemned in the attachment.

(b) If the garnishee is a bank or other financial institution and its indebtedness to the defendant consists of funds that the defendant has on deposit with the bank or other financial institution at the time of service of the writ of garnishment, then the garnishee shall be held to account for only such funds on deposit between the time of service of the writ of garnishment and the time of service of its answer to such writ, and the garnishee shall have no obligation to account for additional deposits accruing after the time of service of its answer. If the bank or other financial institution is not indebted to the defendant at the time of service of the writ of garnishment or does not have possession of property of the defendant at the time of service of such writ, then the bank or other financial institution may serve its answer and thereafter shall not be held to account for any indebtedness that arises subsequent to service of its answer or property that may come into its hands subsequent to such service. The financial institution may submit its Answer of Indebtedness at any time within the thirty (30) days allowed for response.

(2) The court issuing any writ of garnishment shall show thereon the amount of the claim of the plaintiff and the court costs in the proceedings and should at any time during the pendency of said proceedings in the court a judgment be rendered for a different amount, then the court shall notify the garnishee of the correct amount due by the defendant under said writ.

(3)(a) Except for judgments, liens, attachments, fees or charges owed to the state or its political subdivisions; wages, salary or other compensation in the hands of the garnishee belonging to the defendant at the time of the service of the writ of garnishment shall not be bound by nor subject to the lien of the judgment, decree or attachment on which the writ shall have been issued when the writ of garnishment is issued on a judgment based upon a claim or debt that is less than One Hundred Dollars ($100.00), excluding court costs.

(b) If the garnishee be indebted or shall become indebted to the defendant for wages, salary or other compensation during the first thirty (30) days after service of a proper writ of garnishment, the garnishee shall pay over to the employee all of such indebtedness, and thereafter, the garnishee shall retain and the writ shall bind the nonexempt percentage of disposable earnings, as provided by Section 85-3-4, for such period of time as is necessary to accumulate a sum equal to the amount shown on the writ, even if such period of time extends beyond the return day of the writ. Unless the court otherwise authorizes the garnishee to make earlier payments or releases and except as otherwise provided in this section, the garnishee shall retain all sums collected pursuant to the writ and make only one (1) payment into court at such time as the total amount shown due on the writ has been accumulated, provided that, at least one (1) payment per year shall be made to the court of the amount that has been withheld during the preceding year. Should the employment of the defendant for any reason be terminated with the garnishee, then the garnishee shall not later than fifteen (15) days after the termination of such employment, report such termination to the court and pay into the court all sums as have been withheld from the defendant's disposable earnings. If the plaintiff in garnishment contest the answer of the garnishee, as now provided by law in such cases, and proves to the court the deficiency or untruth of the garnishee's answer, then the court shall render judgment against the garnishee for such amount as would have been subject to the writ had the said sum not been released to the defendant; provided, however, any garnishee who files a timely and complete answer shall not be liable for any error made in good faith in determining or withholding the amount of wages, salary or other compensation of a defendant which are subject to the writ.

(4) Wages, salaries or other compensation as used in this section shall mean wages, salaries, commissions, bonuses or other compensation paid for employment purposes only.

(5) The circuit clerk may, in his or her discretion, spread on the minutes of the county or circuit court, as the case may be, an instruction that all garnishment defendants shall send all garnishment monies to the attorney of record or in the case where there is more than one (1) attorney of record, then to the first-named attorney of record, and not to the clerk. The payment schedule shall be the same as subsection (3)(b) of this section.

(6) All payments made pursuant to a garnishment issued out of the justice court shall be made directly to the plaintiff or to the plaintiff's attorney as indicated by the plaintiff in his or her suggestion for writ of garnishment. The employer shall notify the court and the plaintiff or the plaintiff's attorney when a judgment is satisfied or when the employee is no longer employed by the employer.

(7) If the plaintiff in a garnishment is the Department of Employment Security, the garnishee shall make monthly payments to the department until such time as the total amount shown due on the writ has been accumulated.

§ 85-3-4 Wages, salaries or other compensation:

Wages, Salaries or other Compensation

(1) The wages, salaries or other compensation of laborers or employees, residents of this state, shall be exempt from seizure under attachment, execution or garnishment for a period of thirty (30) days from the date of service of any writ of attachment, execution or garnishment.
(2) After the passage of the period of thirty (30) days described in subsection (1) of this section, the maximum part of the aggregate disposable earnings (as defined by Section 1672(b) of Title 15, United States Code Annotated) of an individual that may be levied by attachment, execution or garnishment shall be:

(a) In the case of earnings for any workweek, the lesser amount of either,

(i) Twenty-five percent (25%) of his disposable earnings for that week, or

(ii) The amount by which his disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage (prescribed by section 206 (a)(1) of Title 29, United States Code Annotated) in effect at the time the earnings are payable; or

(b) In the case of earnings for any period other than a week, the amount by which his disposable earnings exceed the following "multiple" of the federal minimum hourly wage which is equivalent in effect to that set forth in subparagraph (a)(ii) of this subsection (2): The number of workweeks, or fractions thereof multiplied by thirty (30) multiplied by the applicable federal minimum wage.

The statute as passed contemplated the possibility that the federal minimum wage might be changed and that if so, the withholding amount should be recalculated accordingly. **Garnishment of Employee's Wages, Opinion No. 91-0450 (Miss. A. G. July 3, 1991).**

(3)(a) The restrictions of subsection (1) and (2) of this section do not apply in the case of:

(i) Any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by state law, which affords substantial due process, and which is subject to judicial review.
(ii) Any debt due for any state or local tax.

(b) Except as provided in subparagraph (b)(iii) of this subsection (3), the maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed:

(i) Where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), fifty percent (50%) of such individual's disposable earnings for that week; and
(ii) Where such individual is not supporting such a spouse or dependent child described in subparagraph (b)(i) of this subsection (3), sixty percent (60%) of such individual's disposable earnings for that week;
(iii) With respect to the disposable earnings of any individual for that workweek, the fifty percent (50%) specified in subparagraph (b)(i) of this subsection (3) shall be deemed to be fifty-five percent (55%) and the sixty percent (60%) specified in subparagraph (b)(ii) of this subsection (3) shall be deemed to be sixty-five percent (65%), if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the period of twelve (12) weeks which ends with the beginning of such workweek.

"Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld. ***See*** **15 U.S.C.A. § 1672 (1981).**

§ 11-35-24 Multiple garnishments:

(1) Where more than one (1) garnishment has been issued against an employee of a garnishee, such garnishee shall comply with the garnishment with which he was first served. In the event more than one (1) garnishment on an employee is received on the same day, the writ of garnishment which is the smallest amount shall be satisfied first. However, in every case, garnishments issued pursuant to court ordered child support shall have first priority, even if previous garnishments are in effect or pending.

(2) Any such conflicting or subsequent garnishments on an employee of the garnishee shall be returned to the court issuing such writ of garnishment with a statement by the garnishee that a previous garnishment is in effect. Such statement shall operate as a stay of the subsequent garnishment until satisfaction of any prior garnishments has been made.

(3) Upon satisfaction of the writ of garnishment in progress, the garnishee shall immediately begin collection of such writ of garnishment with next priority.

(4) Good faith compliance with this section shall release the garnishee from any liability for failure of compliance with this section.

PRIORITY OF MULTIPLE GARNISHMENTS
1. Court-ordered support payments, even if other garnishments are in effect
2. Garnishment which is served first
3. The smallest garnishment if more than one is served on same day

Dismissal of Garnishment Proceedings for Failure to Prosecute

MRCP 41(b) states:

> **(b) Involuntary Dismissal: Effect Thereof.** For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him.
>
> After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief.
>
> The court may then render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court may make findings as provided in Rule 52(a).
>
> Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any other dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

Bankruptcy & Garnishments

Section 362, Section 11 of the United States Code provides for an automatic stay of proceedings against the property of the debtor upon filing of the petition. This stay applies to a garnishment that had been issued prior to the petition but is still ongoing. 11 U.S.C. 362 also provides for damages, attorneys fees and even punitive damages for wilful violations of the automatic stay. While we cannot interpret the bankruptcy code so as to afford you immunity, we have examined the case law surrounding the automatic stay and liability for violating the stay. Official notice from the bankruptcy court is not required. Written notice is not required. Oral notification that a bankruptcy petition has been filed is sufficient. Based on the above we advise all clerks to not issue garnishments upon notification of the filing of a bankruptcy petition and, if one has been issued previously, to notify the garnishee (usually the employer of the debtor) to cease withholding on the garnishment. The clerk is advised to also notify the garnishor (the judgment creditor). It is not the clerk's duty to follow the bankruptcy or to determine if a particular debt was discharged. The creditor should protect his or her interest in any bankruptcy proceeding and should present proof that a bankruptcy proceeding was dismissed or a particular debt was not discharged by the bankruptcy court or that the bankruptcy court lifted the stay regarding the debt

owed that particular creditor. In addition, if money has been received from a garnishment and then the clerk is informed of a filing of a bankruptcy petition, then the status of that money (i.e. to whom should it be paid) should be resolved by the bankruptcy court not the state court clerk. We advise all clerks to notify the bankruptcy court by letter of the existence of the money, with a copy to the garnishor and garnishee, and to follow the directions of the bankruptcy trustee, if any, or the bankruptcy court. **Re: Bankruptcy (Miss. A. G. June 17, 1992).**

CHAPTER 20

CRIMINAL TRIAL PROCEDURES

CHARTS

CHAPTER 20

RULES OF COURT
&
CRIMINAL TRIAL PROCEDURES

Rules of Court - Duties & Responsibilities

Mississippi Rules of Criminal Procedure (MRCrP)

MRCrP 1.3 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 court 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 court clerk's office is in fact closed. In the event any legal holiday falls on a Sunday, the next day shall be a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

MRCrP 1.7 states in part:

> (c) Filing With the Court Defined.
> (1) Generally. 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 the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk.

MRCrP 2.1 provides in part:

> (b) Docketing the Case.
> . . . .
> (2) Indictment. After the grand jury returns an indictment, the circuit clerk shall mark the indictment "filed" and such entries shall be dated and signed by the circuit clerk. The circuit clerk shall, within ten (10) days after adjournment of the term of court, record the indictments in the "Secret Record of Indictments," which

shall be indexed and kept secret. The circuit clerk shall issue a capias to the sheriff of the county where the indictment was returned. A copy of the indictment shall be attached to the capias. Upon the execution of the capias and the officer's return thereon, the case shall be assigned a cause number in the criminal docket and this cause number shall be put on the capias instanter.

MRCrP 9 states in part:

> A docket of cases set for trial shall be maintained by the clerk or the court administrator.

MRCrP 11.2 states:

> If a change of venue is granted pursuant to Rule 11.1, the judge shall direct that a certified copy of the order granting the change of venue be transmitted to the circuit clerk of the county to which the venue has been changed. The circuit clerk of the county to which the venue has been changed must file the certified order and designate a docket number for said case for future reference. Unless otherwise directed by the judge, all pleadings, motions, orders of the court, and other matters thereafter filed shall bear both the original number of the county of original venue and the assigned number of the county of changed venue, and shall be filed with the circuit clerk of the county of original venue. . . . The clerk of the county of original venue shall handle any appeal.

MRCrP 12.4 provides in part:

> (a) Generally. The reports of experts made pursuant to Rule 12.3 shall be submitted to the court clerk within ten (10) working days of the completion of the examination. All original reports shall be filed with the clerk, under seal. Upon receipt, the clerk shall copy and distribute the expert's report to the trial judge and to defense counsel. Defense counsel may redact any statements of the defendant (or summaries thereof) concerning the offense charged. A copy of the redacted report must be returned to the clerk within five (5) working days of its receipt and made available to the State. Any dispute regarding the extent of redaction shall be resolved by the trial judge.

MRCrP 12.5 provides in part:

> (d) Finding of Incompetence. If the court finds that the defendant is incompetent to stand trial, then the court may commit the defendant to the Mississippi State Hospital, other appropriate mental health facility, or other place of treatment, either inpatient or outpatient, based on the report of a psychiatrist or psychologist pursuant to Rule 12.3(c)(2)(C) and (E). The order of commitment shall be filed

with the court clerk and shall require that the defendant be examined by staff psychiatrist(s) and/or psychologist(s), and a written report be furnished to the court not less than every four (4) calendar months. . . .

MRCrP 13.2 provides in part:

> (a) Charge to the Grand Jury.
> (1) By Whom. Only the circuit judge may deliver the charge to the grand jury, except that the circuit clerk or deputy court clerk may read the charge as proposed by the circuit judge when the judge shall be unable to deliver the charge by reason of physical infirmity.

MRCrP 13.3 provides in part:

> (b) Powers and Duties of Foreperson. The foreperson is empowered to preside over the grand jury proceedings, issue or cause to be issued subpoenas (ad testificandum and duces tecum), and swear all witnesses. A record shall be kept by the foreperson and returned to court, certified and signed by the foreperson, of the names of all witnesses sworn before the grand jury. The foreperson shall also submit a written report of the proceedings of the grand jury to the court or clerk; endorse any indictment returned by the grand jury as a "True Bill" and sign the foreperson's name thereto; and return a "No True Bill" list to the circuit clerk, to be kept under seal, although the clerk is allowed to disclose to a defendant that his/her case has received a "No True Bill."

MRCrP 13.5 provides in part:

> (3) Disclosure of Indictments Prohibited. No grand juror, witness, attorney general, district attorney, county attorney, other prosecuting attorney, clerk, sheriff or other officer of the court shall disclose to any unauthorized person that an indictment is being found or returned into court against a defendant or disclose any action or proceeding in relation to the indictment before the finding of an indictment, within six (6) months thereafter, or before the defendant is arrested or gives bail or recognizance.

MRCrP 13.6 states in part:

> All indictments and grand jury reports must be presented to the clerk of the circuit court by the foreperson or the foreperson's designee, must be endorsed with the foreperson's name, and must be accompanied by the foreperson's affidavit that all indictments were concurred in by twelve (12) or more members of the grand jury and that at least fifteen (15) grand jurors were present during all deliberations. Indictments and grand jury reports must be marked "filed," and such entries must

be dated and signed by the clerk. . . .

MRCrP 15.2 states in part:

> (c) Absence of Defendant. If the defendant is released on bail or recognizance, and does not appear to be arraigned, or as required by the bond or recognizance, the court may, in addition to forfeiture of bail, direct the clerk to issue a bench warrant to bring the defendant before the court.

MRCrP 18.9 states in part:

> Prior to the conclusion of the trial, no defense attorney, prosecuting attorney, clerk, deputy clerk, law enforcement official or other officer of the court, may release or authorize release of any statement for dissemination by any means of public communication on any matter concerning:
>
> (1) The prior criminal record of the defendant or the defendant's character or reputation;
>
> (2) The existence or contents of any confession, admission or statement given by the defendant; or the refusal or failure of the defendant to make any statement;
>
> (3) The defendant's performance on any examinations or tests, or the defendant's refusal or failure to submit to an examination or test;
>
> (4) The identity, testimony, or credibility of prospective witnesses;
>
> (5) The possibility of a plea of guilty to the offense charged, or a lesser offense; and
>
> (6) The defendant's guilt or innocence, or other matters relating to the merits of the case, or the evidence in the case.

MRCrP 28 states:

> The clerk of the court shall receive and maintain all papers, documents, and records filed, and all evidence admitted, in criminal cases. All records and evidence of the proceedings shall be retained according to law.

MRCrP 34.5 states:

> Immediately upon entry of an order or judgment of the court, the clerk of court shall make a diligent effort to ensure that all attorneys of record have received notice of the entry of the order.

Criminal Trial Procedures

Pre-Trial Procedures

MRCrP 3.2 states in part:

> (c) Execution of Arrest Warrant, Return.
> (3) Return. After execution, the officer returning an arrest warrant shall write thereon the manner and date of execution, shall print and sign the officer's name and state the officer's badge number, and shall promptly return the arrest warrant to the clerk of the court specified in the arrest warrant.

MRCrP 5.2 states:

> (a) Generally. Every person in custody and not under indictment shall be taken, without unnecessary delay and in accordance with Rule 5.1, before a judge for an initial appearance. At the defendant's initial appearance, the judge shall:
> (1) ascertain the defendant's true name, age, and address, and amend the formal charge if necessary to reflect this information, instructing the defendant to notify the court promptly of any change of address;
> (2) inform the defendant of the charges and provide the defendant with a copy of the charging affidavit;
> (3) if the arrest has been made without a warrant, determine whether there was probable cause for the arrest and note the probable cause determination for the record. If there was no probable cause for the warrantless arrest, the defendant shall be released;
> (4) if the defendant is unrepresented, advise of the right to assistance of an attorney, and that if the defendant is unable to afford an attorney, an attorney will be appointed as required by law. If the indigent defendant is unrepresented and desires representation, counsel shall be appointed pursuant to Rule 7.2, Rule 7.3 and local rule promulgated pursuant to Rule 1.9; and
> (5) advise the defendant of:
>
> > (A) the right to remain silent and that any statements made may be used against the defendant;
> > (B) the right to communicate with an attorney, family or friends, and that reasonable means will be provided to enable the defendant to do so; and
> > (C) the conditions, if any, under which the defendant may obtain release.
>
> (b) Felony Cases. When a defendant is charged with commission of a felony, the judge shall also:
> (1) inform the defendant of the right to a preliminary hearing and the procedure by which that right may be exercised; and
> (2) if requested, set the time for a preliminary hearing in accordance with Rule 6.1.

(c) Initial Appearance Not Required. In all cases where the defendant is released from custody, or has been indicted by a grand jury, the defendant shall not be entitled to an initial appearance.

MRCrP 6.01 states:

Right to a Preliminary Hearing; Waiver; Postponement.
(a) Right to a Preliminary Hearing.
(1) Generally. A defendant who has been charged with a felony is entitled to a preliminary hearing upon request. But a defendant who has been indicted by a grand jury is not entitled to a preliminary hearing.
(2) When Commenced. The preliminary hearing shall be held within fourteen (14) days following the demand for preliminary hearing unless:
(A) the charging affidavit has been dismissed;
(B) the hearing is subsequently waived, as provided in section (b);
(C) the hearing is postponed as provided in section (d); or
(D) before commencement of the hearing, an indictment charging the same offense has been returned by the grand jury.

MRCrP 8.1 states:

Whenever the terms below appear in these Rules, they shall have the following meanings:
(a) Personal Recognizance. A release on defendant's "personal recognizance" means release without any condition relating to, or a deposit of, security.
(b) Unsecured Appearance Bond. An "unsecured appearance bond" is an undertaking to pay a specified sum of money to the clerk of the circuit, county, justice, or municipal court, for the use of the State of Mississippi or the municipality, on the failure of a person released to comply with its conditions.
(c) Secured Appearance Bond. A "secured appearance bond" is an appearance bond secured by deposit with the clerk of security equal to the full amount thereof.
(d) Cash Deposit Bond. A "cash deposit bond" is an appearance bond secured by deposit with the clerk of security, in the form of a cash deposit or certified funds, in an amount set by the judge. The following requirements shall be met for a cash deposit bond:
(1) The accused must never have been convicted in any court of this state, another state or a federal court, of a crime punishable by more than one (1) year's imprisonment, currently is not charged with or previously been convicted of escape, or had an order nisi entered on a previous bond;

(2) The amount of the bond must be set by the proper authority;
(3) A return date must be set by the proper authority;
(4) The accused must tender to the clerk of the circuit court ten percent (10%) of the amount of the bond as set, in cash, or $250.00 in cash, whichever is greater;
(5) The accused must sign an appearance bond guaranteeing his/her appearance and binding himself/herself unto the State of Mississippi in the full amount of the bond as set to be used in the case of default;
(6) The accused, by affidavit duly notarized, must swear in substantially the following form:

> State of Mississippi
> County of _____
> Personally appeared before me, the undersigned authority in and for said county and state, _____, who after being duly sworn states:
> (a) I have never been convicted in any court of this state, another state, or a federal court of a crime punishable by more than one (1) year's imprisonment. I am not charged with escape and I have never been convicted of escape. I have had no order nisi entered on a bail bond executed by me.
> (b) The proper authority has set the sum of $_____ as the amount of bail bond to be executed by me. This bond was set by _____.
> (c) A return date has been set for this bond. Its return date is and was set by _____.
> (d) I have tendered to the clerk of the Circuit Court of _____ County, Mississippi, ten percent (10%) of the amount of said bond in cash, which sum is not less than $250.00. Said cash is my property. I authorize the clerk of said court to dispose of the same as follows: If the bond is forfeited, the cash tendered will be paid by the clerk, less a fee of not more than $10.00, to the county, and the amount so paid will be credited on the bond forfeited. If I appear on the return day and a final disposition is made of the case, the amount deposited with the clerk, less a fee of not more than $10.00 to be retained by the clerk, will be disposed of as ordered by the court.
> (e) I agree to report to the clerk of the court by telephone, or in person, and in writing on the first Monday of each month as to my current address and telephone number. If I fail to do so, I agree that the bond may be declared in default.

(7) The amount of money tendered under this rule shall not be disbursed to any person except on written order of the court. The money deposited with the clerk shall be disbursed in the following manner: first, to pay any court costs assessed against the defendant; second, to pay any restitution the defendant has been ordered to make; third, to pay any fines imposed against the defendant; fourth, to pay any assignment of the sum made by the defendant to defendant's attorney; and fifth, any refund to the defendant or other disbursements as allowed by the court.

(e) Security. "Security" is cash, certified funds, or a surety's undertaking deposited with the clerk to secure an appearance bond.

(f) Surety. A "surety" is someone (other than the person seeking release) who executes an appearance bond and is therefore bound to pay its amount, if the person released fails to appear for any proceeding as ordered by the court. A surety, except one governed by Mississippi Code Section 83-39-1 et. seq., shall file with the appearance bond an affidavit or sworn certification:

(1) stating that the surety is not an attorney, judicial official, or person authorized to accept bail;

(2) stating that the surety owns property in this state, which property, standing alone or when aggregated with that of other sureties, is worth the amount of the appearance bond (provided, that the property shall be exclusive of property exempt from execution and its value equaling the amount of the appearance bond shall be above and over all liabilities, including the amount of all other outstanding appearance bonds entered into by the surety) and specifying that property and the exemptions and liabilities thereon; and

(3) specifying the number and amount of other outstanding appearance bonds entered into by the surety.

Generally, an attorney, judicial official, or person authorized to accept bail (e.g., a sheriff) may not be a surety. However, an attorney, judicial official, or person authorized to accept bail may be a surety for a member of the surety's immediate family. For purposes of this Rule, the term "immediate family" shall be limited to include only: a spouse, a sibling, a spouse's sibling, a lineal ancestor or descendant, a lineal ancestor or descendant of a spouse, or a minor or incompetent person dependent upon the surety for more than one-half (½) of his/her support. In such cases, the attorney, judicial official, or person authorized to accept bail shall file with the appearance bond an affidavit stating the surety's position, the surety's relationship to the person seeking release, and the information required in Rule 8.1(f)(2) and (3).

(g) Bail. "Bail" is a monetary amount for or condition of pretrial release

from custody, normally set by a judge at the initial appearance.
(h) Insurer. The terms "insurer," "professional bail agent," "soliciting bail agent," "bail enforcement agent," and "personal surety agent" shall be defined as in Mississippi Code Section 83-39-1, et seq.
(i) Compliance Required. All agents and insurers shall comply fully with Mississippi Code Sections 83-39-1, et seq., and 99-5-1, et seq., and all related statutes and regulations.

MRCrP 8.3 states in part:

> If a defendant is admitted to bail pending appeal, the trial court clerk shall so notify the clerk of the Supreme Court.

MRCrP 8.4 provides in part:

> (b) Additional Conditions. . . .
> (1) execution of an appearance bond in an amount specified by the court, either with or without requiring that the defendant deposit with the clerk security in an amount as required by the court; . . . .

MRCrP 8.5 provides in part:

> (c) Review by Circuit Court. No later than seven (7) days before the commencement of each term of circuit court in which criminal cases are adjudicated, the official(s) having custody of felony defendants being held for trial, grand jury action, or extradition within the county (or within the county's judicial districts in which the court term is to be held) shall provide the presiding judge, the district attorney, and the clerk of the circuit court the names of all defendants in their custody, the charge(s) upon which they are being held, and the date they were most recently taken into custody. The senior circuit judge, or such other judge as the senior circuit judge designates, shall review the conditions of release for every felony defendant who is eligible for bail and has been in jail for more than ninety (90) days.
>
> The clerk of the circuit court shall maintain the lists required by section (c). ***Cmt.***

MRCrP 8.7 provides in part:

> (b) Filing and Custody of Appearance Bonds and Security. Appearance bonds and security shall be filed with the clerk of the court in which the case is pending. Whenever the case is transferred to another court, any appearance bond and security shall be transferred also. . . .

(e) Cancellation of Bond. At any time that the court finds there is no further need for an appearance bond, the court shall cancel the appearance bond and order the return of any security deposited with the clerk.

MRCrP 15.1 provides:

(a) Service of Indictment. Before arraignment, a copy of the indictment shall be served on the defendant. Arraignment, unless waived by the defendant, shall be held within thirty (30) days after the defendant is served with the indictment. When arraignment cannot be held within the time specified because the defendant is in custody elsewhere, it shall be held as soon as possible.
(b) In General. An arraignment, unless waived, shall be conducted in open court and must consist of:

(1) ensuring that the defendant has a copy of the indictment;
(2) reading the indictment to the defendant or stating to the defendant the substance of the charge;
(3) asking the defendant to plead to the indictment;
(4) determining whether the defendant is represented by counsel and, if not, appointing counsel, if appropriate, under Rule 7;
(5) reviewing the bond previously set, if appropriate; and
(6) setting reasonable deadlines for the filing and hearing of all pretrial motions.

Pretrial motions shall include, but are not limited to, motions: to dismiss, to suppress evidence, to request discovery, for continuance, for severance, for appointment of experts, for mental examination, or for any other matters which may delay the trial.
(c) Waiving Reading of Indictment. Reading of the indictment may be waived if the defendant is represented and attended by counsel.
(d) Waiving Appearance. A defendant need not be present for the arraignment if the defendant, in a written waiver signed by both the defendant and the defendant's attorney, has waived appearance and has affirmed that the defendant received a copy of the indictment and that the plea is not guilty.
(e) Video Conferencing. Video conferencing may be used to arraign a defendant pursuant to Rule 1.8.
(f) Codefendants. Defendants who are jointly charged may be arraigned separately or jointly. If codefendants are arraigned at the same time and charged with the same offense, the indictments need be read only once, with stated identification of each defendant.
(g) Waiving Arraignment. Arraignment is deemed waived when the defendant proceeds to trial or enters a guilty plea without objection.

Discovery

MRCrP 17.4 states in part:

> (1) In General. If a defendant intends to rely upon the defense of insanity at the time of the alleged crime, the defendant shall, within the time provided for filing pretrial motions or at such later time as the court may direct, serve upon the prosecuting attorney and the clerk of the court a written notice of the intention to offer a defense of insanity.

MRCrP 17.6 states in part:

> (d) Filing Discovery Material. Discovery material shall not be filed with the clerk unless authorized by the court.

MRCrP 17.7 states in part:

> (c) Protective and Excision Order Proceedings. In the event there are matters arguably within the scope of a party's discovery request or an order for discovery, and the opposing party is of the opinion that the requesting party is not entitled to discovery of same, the opposing party shall, as soon as is reasonably practicable, file with the clerk of the court a written statement describing the nature of the information or the materials at issue as fully as is reasonably possible without disclosure of same and stating the grounds for objection to disclosure. Subject to the limitations otherwise provided in these Rules, determinations such as whether the matters requested in discovery are relevant to the case, exculpatory, possible instruments of impeachment, and the like may be made only by the party requesting or to receive the discovery.

Trial Docket

MRCrP 9 states:

> A docket of cases set for trial shall be maintained by the clerk or the court administrator.

Jury Instructions

MRCrP 22 states in part:

> (b) Substantive Instructions.
> (1) By the Parties. At least twenty-four (24) hours before trial, or at such other time during the trial as the court directs, each party must file with the clerk and

deliver to all counsel jury instructions on the forms of verdict and the substantive law of the case. Except for good cause shown, the court shall not entertain a request for instructions which have not been pre-filed. At the conclusion of testimony, each party may present to the judge up to six (6) pre-filed substantive instructions. The court, for good cause shown, may allow more than six (6) instructions to be presented.

(2) By the Court. The court's instructions, if any, must be in writing and must be submitted to the parties who, in accordance with section (d), must make their specific objections on the record. The court shall not comment upon the evidence.

(c) Identification.

. . . .

(2) Identifying Submitted Instructions. All instructions submitted shall be identified with letters and numerals placed in the bottom right corner of each page. The court's written instructions shall be numbered and prefixed with the letter C. The State's instructions shall be numbered and prefixed with the letter S. A defendant's instructions shall be numbered and prefixed with the letter D. In actions with multiple defendants, Roman numerals shall be used to identify the proposed instructions of each defendant; the Roman numerals shall be placed after the alphabetical designation D, and shall conform to the sequential listing of defendants as stated in the indictment. Instructions shall not otherwise be identified with a party. . . .

(e) Rulings on Instructions. Prior to closing argument, the court shall rule on the requested instructions, marking each "given" or "refused," and all such instructions shall become part of the record. . . .

Trial Procedures

MRCrP 19.1 provides:

(a) Order of Proceedings. Following the impanelment of the jury, the trial shall proceed in the following order unless otherwise directed by the court:

(1) A summary of the charge and the plea of the defendant may be provided by the court. In summarizing the charge, all references to prior conviction(s) alleged as sentencing enhancers shall be omitted.

(2) The prosecuting attorney may make an opening statement to the jury, confining the statement to the facts the prosecutor expects to prove.

(3) The defendant (personally or by counsel) may make an opening statement to the jury at the conclusion of the State's opening statement or prior to the defendant's case-in-chief. The statement shall be confined to a statement of the defense and the facts, if any, the defendant expects to prove in support thereof.

(4) The prosecuting attorney shall offer the evidence in support of the charge.

(5) The defendant (personally or by counsel) may then make an opening statement, if it was deferred, and offer evidence in defense.

(6) The prosecuting attorney shall then be allowed to offer evidence in rebuttal.

(7) The court may allow surrebuttal for good cause.

(8) The judge shall then read the instructions to the jury. The court clerk may read the instructions to the jury when the judge is unable by reason of physical infirmity.

(9) The prosecuting attorney may then make a closing argument to the jury. Thereafter, the defendant may make a closing argument to the jury. Failure of the prosecuting attorney to make a closing argument shall not deprive the defendant of the right to argue. The prosecuting attorney may then make a rebuttal argument, not to exceed one-half (½) of the prosecuting attorney's allotted time. If, after the prosecuting attorney's initial closing argument, a defendant declines to make a closing argument, the prosecuting attorney shall make no further argument.

(b) Enhancement of Punishment.

(1) Sentencing enhancements based upon prior conviction(s). In cases involving enhanced punishment based upon prior conviction(s), the trial shall proceed as follows:

(A) Separate trials shall be held on the principal charge and on the charge of previous conviction(s). In the trial on the principal charge, the previous conviction(s) will not be mentioned by the state or the court except as provided by the Mississippi Rules of Evidence.

(B) If the defendant is convicted or enters a plea of guilty on the principal charge then, unless there is an agreement or ruling to the contrary, a hearing before the court without a jury will be conducted on the previous conviction(s).

(2) Elevated crimes based upon facts required to be found by a jury.

(A) Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum shall be submitted to a jury and must be proved beyond a reasonable doubt.

(B) When a prior conviction is an element of the principal charge, the fact of a prior conviction shall be submitted to a jury and proved beyond a reasonable doubt. However, the defendant may stipulate to, or waive proof regarding, the prior conviction and the trial court shall accept such a stipulation. The stipulation then shall be submitted to the jury with a proper limiting instruction.

MRCrP 19.2 provides:

> (a) Death Penalty Cases. In any case in which the State seeks to impose the death penalty, the trial shall be conducted in accordance with Mississippi Code Sections 99-19-101 and 99-19-103, as amended, and applicable court decisions.
> (b) Cases in Which the Jury May Impose Life Sentence.
>
> (1) In all cases not involving the death penalty, in which the jury may impose a life sentence, the court may conduct a bifurcated trial. If the defendant is found guilty of an offense for which life imprisonment may be imposed, a sentencing trial shall be held before the same jury, if possible, or before the court if jury waiver is allowed by the court.
> (2) At the sentencing hearing:
>
> (A) the prosecution may introduce evidence of aggravation of the offense of which the defendant has been adjudged guilty;
> (B) the defendant may introduce any evidence of extenuation or mitigation;
> (C) the prosecution may introduce evidence in rebuttal of the evidence of the defendant; and
> (D) a record shall be made of the above proceeding and shall be maintained in the office of the clerk of the trial court as a part of the record.

Jury Selection

MRCrP 18.3 states in part:

> Both parties shall be allowed the following number of peremptory challenges for the selection of jurors:
>
> (A) Selection of Regular Jurors: Regarding regular jurors, the defendant and the prosecution shall each have peremptory challenges, as follows:
>
> (i) In cases wherein the punishment may be death or life imprisonment, the defendant and the prosecution each shall have twelve (12) peremptory challenges for the selection of the regular twelve (12) jurors.
> (ii) In felony cases not involving the possible sentence of death or life imprisonment, the defendant and the prosecution each shall have six (6) peremptory challenges for the selection of the twelve (12) regular jurors.
> (iii) The defendant and the prosecution each shall have two (2) peremptory challenges in a trial with a six (6) person jury.
>
> These challenges may not be used in the selection of alternate juror(s).

MRCrP 18.3 states in part:

> When the court has elected to impanel alternate juror(s), the defendant and the prosecution shall each have peremptory challenges, as follows:
>
> (i) In death penalty cases, the peremptory challenges shall equal the number of alternate jurors the court has ordered to be selected.
>
> (ii) In all other cases, the peremptory challenges shall be one (1) challenge for each two (2) alternate jurors, or part thereof, ordered by the court to be selected.
>
> These challenges for alternate jurors may not be used in the selection of regular jurors.

MRCrP 18.6 states in part:

> (a) Note Taking Permitted in the Discretion of the Court. The court may 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. Those notes shall be secured in the custody of the clerk when court is not in session. Immediately after the jury has rendered its verdict, all notes shall be collected by the bailiff or clerk and destroyed.

Jury Verdict

MRCrP 24.1 states:

> When the jurors have agreed upon a verdict they shall be returned to the courtroom by the bailiff(s). The court shall ask the foreperson or the jury panel whether an agreement has been reached on a verdict. If the foreperson or the jury panel answers in the affirmative, the judge shall call upon the foreperson or any member of the panel to deliver the verdict, in writing, to the clerk or the court. The verdict of the jury shall be unanimous, but need not be signed. The court shall examine the verdict and, if found to be in proper order, the clerk or the court then shall read the verdict in open court in the presence of the jury. If neither party nor the court desires to poll the jury, or when a poll of the jury reveals the verdict is unanimous, and if the verdict is in the form required by Rule 24.3, the court shall order the verdict filed and entered of record. The court then shall discharge the jurors, unless a bifurcated hearing is necessary.
>
> ***See* MRCrP 24.5.**

Post-Trial Procedures

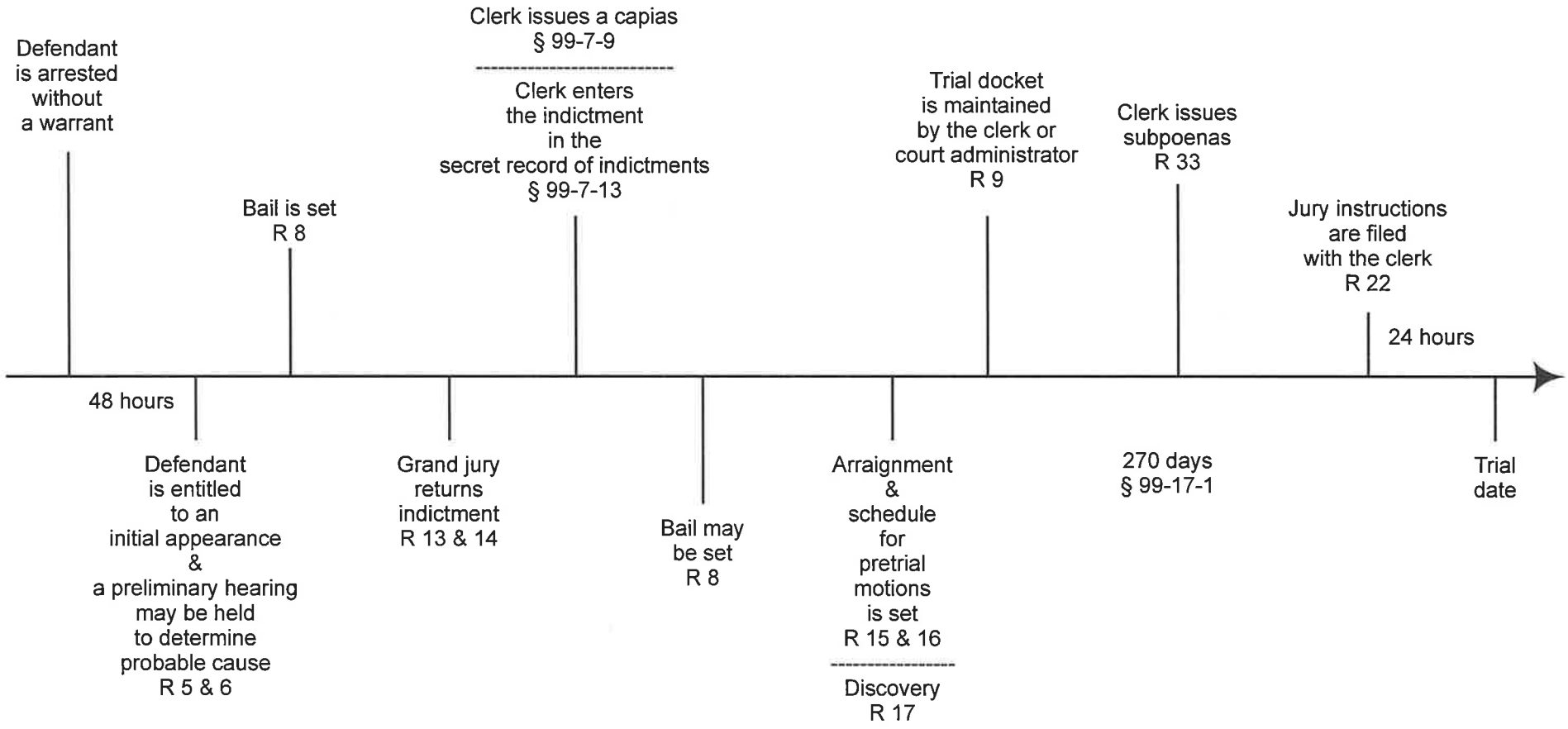
MRCrP 26.6 provides in part:

> (c) Method of Payment; To Whom. Unless the court expressly directs otherwise:
>
> (1) the payment of a fine, restitution, and/or court costs shall be made to the clerk of court; and
>
> (2) monies received from the defendant shall be applied as follows:
>
> (A) first, to pay any and all court costs (as designated by statute) assessed against the defendant;
>
> (B) second, to pay any restitution the defendant has been ordered to make; and
>
> (C) third, to pay any fines imposed against the defendant.
>
> The clerk shall, as promptly as practicable, forward restitution payments to the victim.

MRCrP 26.8 provides:

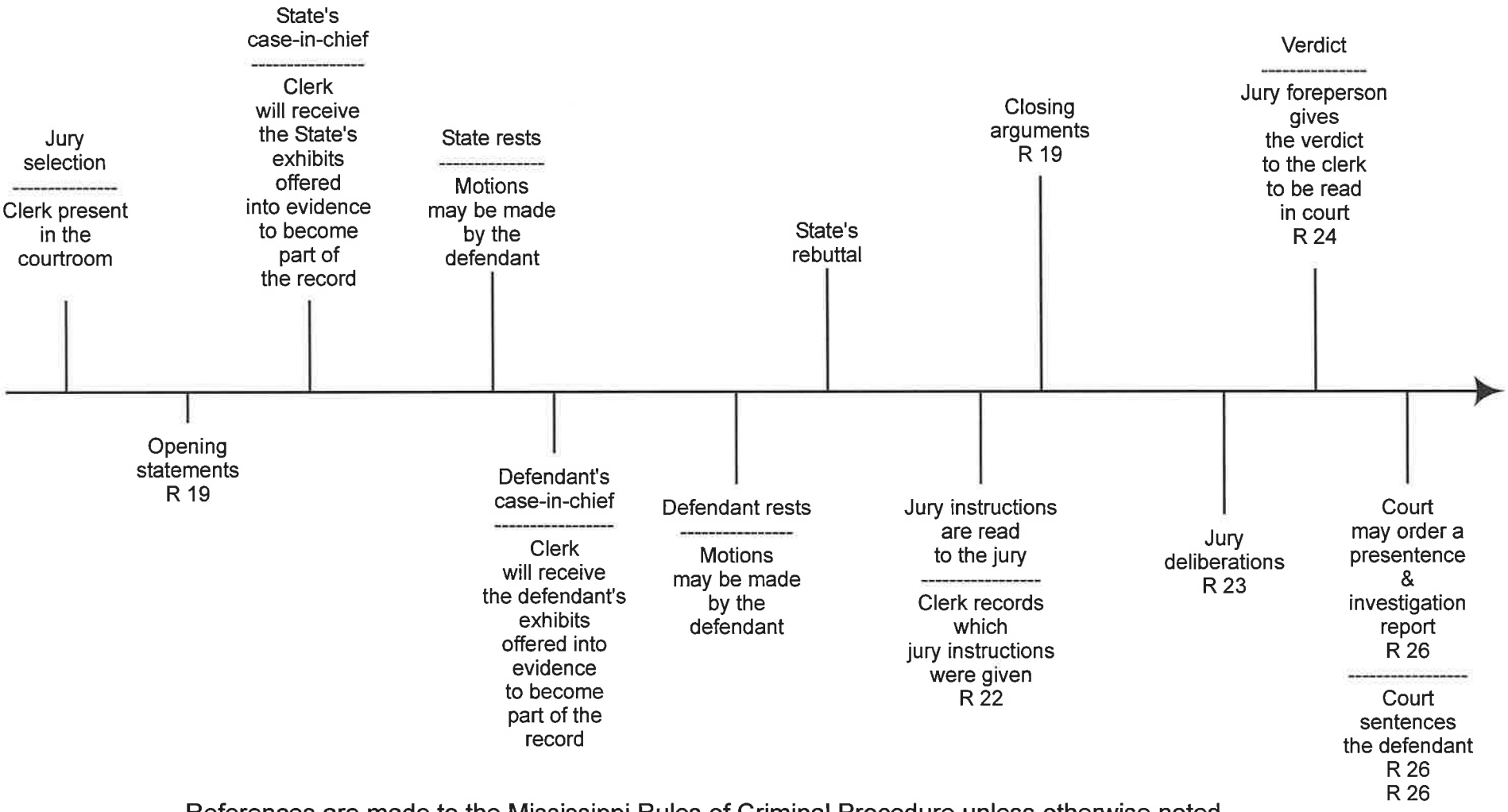
> (a) Entry of Judgment and Sentence. The judgment is complete and valid upon its entry in the minutes.
>
> (b) Entry of Order and Duty of Clerk. Immediately upon entry of an order or judgment of the court, the clerk of the court shall make a diligent effort to assure that all attorneys of record have received notice of the entry of the order or judgment.

CRIMINAL PRE-TRIAL PROCEDURES



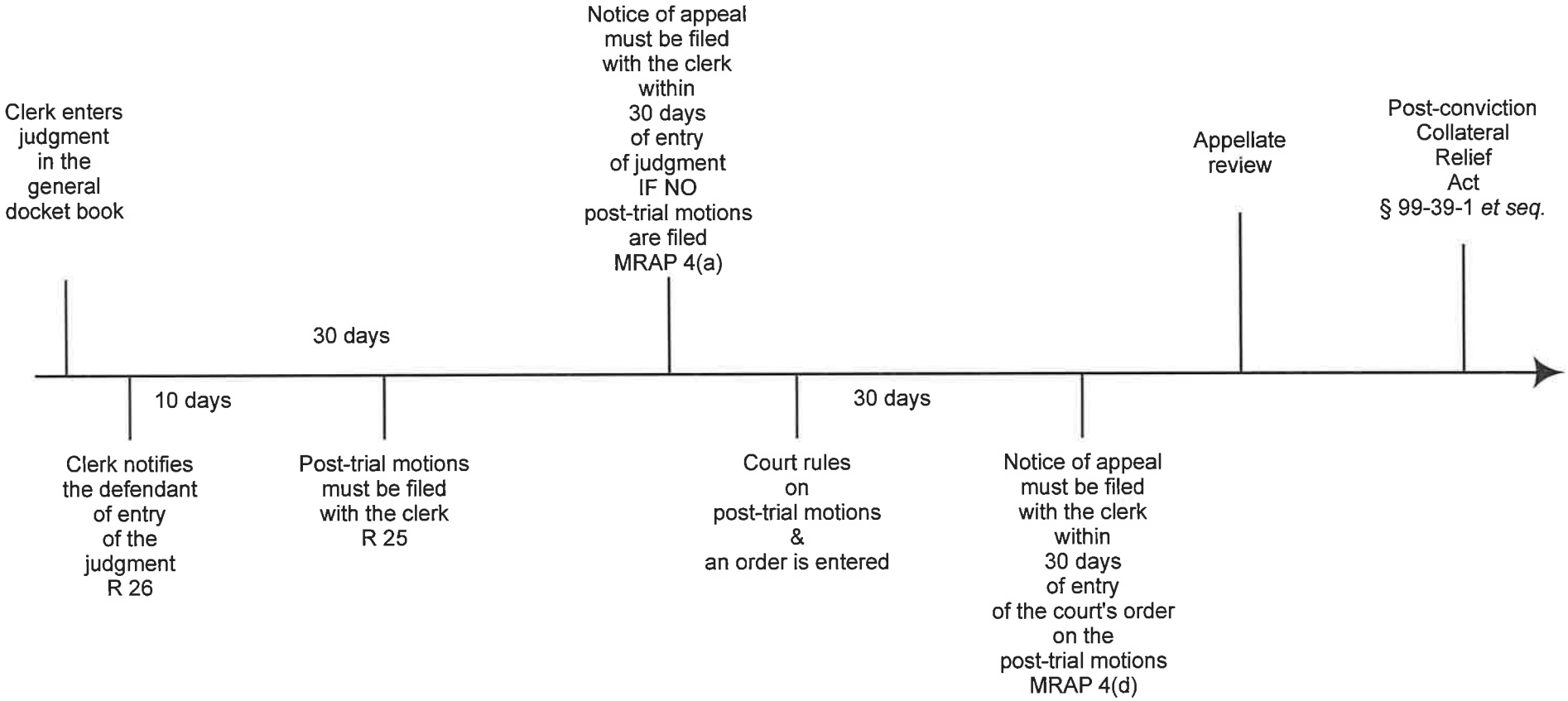
References are made to the Mississippi Rules of Criminal Procedure unless otherwise noted.

CRIMINAL TRIAL PROCEDURES



References are made to the Mississippi Rules of Criminal Procedure unless otherwise noted.

CRIMINAL POST-TRIAL PROCEDURES



References are made to the Mississippi Rules of Criminal Procedure unless otherwise noted.

CHAPTER 21

SELECTED CRIMINAL OFFENSES

CHAPTER 21

SELECTED CRIMINAL OFFENSES			
CRIMINAL OFFENSE	**STATUTE**	**LIMITATION OF ACTION**	**STATUTE**
Accessory after the fact	§ 97-1-5	2 years	§ 99-1-5
Arson 1. first degree, burning dwelling house or outbuilding 2. first degree, burning established place of worship 3. second degree, other buildings or structures 4. third degree, personal property 5. fourth degree, attempt to burn 6. insured property 7. willfully or negligently firing woods, etc.	 § 97-17-1 § 97-17-3 § 97-17-5 § 97-17-7 § 97-17-9 § 97-17-11 § 97-17-13	 none	 § 99-1-5
Assault 1. aggravated 2. simple	 § 97-3-7(2) § 97-3-7(1)	 none 2 years	 § 99-1-5
Burglary 1. inhabited dwelling; breaking in armed with deadly weapon 2. breaking out of dwelling 3. breaking inner door of dwelling by one lawfully in house 4. breaking and entering building other than dwelling 5. with explosives	 § 97-17-23 § 97-17-25 § 97-17-29 § 97-17-33 § 97-17-37	 none	 § 99-1-5

CRIMINAL OFFENSE	STATUTE	LIMITATION OF ACTION	STATUTE
Carjacking	§ 97-3-117	2 years	§ 99-1-5
Conspiracy to commit a crime	§ 97-1-1	5 years	§ 99-1-5
Controlled or counterfeit substance 1. dispensing amphetamines for weight control 2. possession of controlled substance 3. possession of marijuana in motor vehicle 4. possession of paraphernalia 5. sale, etc. of controlled substance 6. sale, etc. of counterfeit substance 7. sale of paraphernalia 8. trafficking in controlled substances 9. unlawful advertisement of paraphernalia	 § 41-29-139(e) § 41-29-139(c) § 41-29-139(c)(2)(B) § 41-29-139(d)(1) § 41-29-139(a)(1) § 41-29-139(a)(2) § 41-29-139(d)(2) § 41-29-139(g)(1) § 41-29-139(d)(4)	2 years	§ 99-1-5
Crimes Against Children 1. abuse 2. exploitation of 3. sexual battery 4. touching or handling for lustful purposes	 § 97-5-39 § 97-5-33 § 97-3-95 § 97-5-23	none	§ 99-1-5
Desecration of cemetery	§ 97-29-25	2 years	§ 99-1-5

CRIMINAL OFFENSE	STATUTE	LIMITATION OF ACTION	STATUTE
Destroying or defacing certain cemetery property, public buildings, schools or churches, or property thereof	§ 97-17-39	2 years	§ 99-1-5
Driving under the influence - felony	§ 63-11-30(2)(c)	2 years	§ 99-1-5
Embezzlement 1. by agents, bailees, trustees, servants and persons generally 2. property held in trust or received on contract 3. property borrowed or hired	 § 97-23-19 § 97-23-25 § 97-23-27	none	§ 99-1-5
Escape 1. aiding escapees 2. aiding felons 3. concealing or harboring escaped prisoner 4. from custody, or under arrest, wilful failure to return to jail	 § 97-9-33 § 97-9-29 § 97-9-41 § 97-4-49	2 years	§ 99-1-5
Extortion	§ 97-3-82	2 years	§ 99-1-5
False pretenses	§ 97-19-39	none	§ 99-1-5
Forgery	§ 97-21-7 *et seq.*	none	§ 99-1-5
Kidnaping	§ 97-3-53	none	§ 99-1-5

CRIMINAL OFFENSE	STATUTE	LIMITATION OF ACTION	STATUTE
Larceny 1. grand larceny 2. petit larceny	§ 97-17-41 § 97-17-43	none	§ 99-1-5
Leaving scene of accident 1. accident resulting in personal injury or death 2. accident resulting in property damage to attended vehicle	§ 63-3-401 § 63-3-403	2 years	§ 99-1-5
Manslaughter 1. killing without malice in the heat of passion 2. all other killings	§ 97-3-35 § 97-3-47	none	§ 99-1-5
Murder	§ 97-3-19	none	§ 99-1-5
Perjury	§ 97-9-59	2 years	§ 99-1-5
Prostitution	§ 97-29-49	2 years	§ 99-1-5
Rape 1. statutory rape 2. assault with intent to ravish	§ 97-3-65 § 97-3-71	none	§ 99-1-5

CRIMINAL OFFENSE	STATUTE	LIMITATION OF ACTION	STATUTE
Receiving embezzled goods	§ 97-23-25	2 years	§ 99-1-5
Receiving stolen property	§ 97-17-70	2 years	§ 99-1-5
Robbery 1. unarmed 2. threat to injure person or relative at another time 3. use of deadly weapon	§ 97-3-73 § 97-3-77 § 97-3-79	none	§ 99-1-5
Sexual battery Note: Exception for § 97-3-95(1)(c), (d) or (2).	§ 97-3-95	2 years	§ 99-1-5

CRIMINAL OFFENSE	STATUTE	LIMITATION OF ACTION	STATUTE
Trespass			
1. defacing, altering or destroying notices posted on land	§ 97-17-91	2 years	§ 99-1-5
2. destruction or carrying away of vegetation	§ 97-17-89		
3. entering lands of another without permission	§ 97-17-93		
4. entry on premises where atomic machinery, rockets and other dangerous devices are manufactured, etc.	§ 97-17-95		
5. inciting or soliciting etc., persons to go into or upon, or remain in or upon, buildings, premises or lands of another	§ 97-17-99		
6. going into or upon, or remaining in or upon, buildings, premises or lands of another after being forbidden to do so	§ 97-17-97		
7. going upon enclosed lands of another	§ 97-17-85		
8. less than larceny	§ 97-17-61		
9. wilful or malicious	§ 97-17-87		
Weapons		2 years	§ 99-1-5
1. Carrying concealed weapon	§ 97-37-1		
2. Exhibiting in rude, angry, or threatening manner	§ 97-37-19		
3. Possession by convicted felon	§ 97-37-5		

*****This chart provides only a partial listing of criminal offenses in Mississippi.*****

CHAPTER 22

BAIL AND BAIL BONDS

CHARTS

CHAPTER 22

BAIL AND BAIL BONDS

Right to Bail

Mississippi Constitution Article 3, § 29(1) provides:

> (1) Excessive bail shall not be required, and all persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses
>
> (a) when the proof is evident or presumption great; or
>
> (b) when the person has previously been convicted of a capital offense or any other offense punishable by imprisonment for a maximum of twenty (20) years or more.

Procedure of Setting Bail

MRCrP 8.1 states:

> Whenever the terms below appear in these Rules, they shall have the following meanings:
>
> (a) Personal Recognizance. A release on defendant's "personal recognizance" means release without any condition relating to, or a deposit of, security.
>
> (b) Unsecured Appearance Bond. An "unsecured appearance bond" is an undertaking to pay a specified sum of money to the clerk of the circuit, county, justice, or municipal court, for the use of the State of Mississippi or the municipality, on the failure of a person released to comply with its conditions.
>
> (c) Secured Appearance Bond. A "secured appearance bond" is an appearance bond secured by deposit with the clerk of security equal to the full amount thereof.
>
> (d) Cash Deposit Bond. A "cash deposit bond" is an appearance bond secured by deposit with the clerk of security, in the form of a cash deposit or certified funds, in an amount set by the judge. The following requirements shall be met for a cash deposit bond:

(1) The accused must never have been convicted in any court of this state, another state or a federal court, of a crime punishable by more than one (1) year's imprisonment, currently is not charged with or previously been convicted of escape, or had an order nisi entered on a previous bond;

(2) The amount of the bond must be set by the proper authority;

(3) A return date must be set by the proper authority;

(4) The accused must tender to the clerk of the circuit court ten percent (10%) of the amount of the bond as set, in cash, or $250.00 in cash, whichever is greater;

(5) The accused must sign an appearance bond guaranteeing his/her appearance and binding himself/herself unto the State of Mississippi in the full amount of the bond as set to be used in the case of default;

(6) The accused, by affidavit duly notarized, must swear in substantially the following form:

> State of Mississippi
> County of _____
> Personally appeared before me, the undersigned authority in and for said county and state, _____, who after being duly sworn states:
>
> (a) I have never been convicted in any court of this state, another state, or a federal court of a crime punishable by more than one (1) year's imprisonment. I am not charged with escape and I have never been convicted of escape. I have had no order nisi entered on a bail bond executed by me.
>
> (b) The proper authority has set the sum of $_____ as the amount of bail bond to be executed by me. This bond was set by _____.
>
> (c) A return date has been set for this bond. Its return date is and was set by _____.
>
> (d) I have tendered to the clerk of the Circuit Court of

_____ County, Mississippi, ten percent (10%) of the amount of said bond in cash, which sum is not less than $250.00. Said cash is my property. I authorize the clerk of said court to dispose of the same as follows: If the bond is forfeited, the cash tendered will be paid by the clerk, less a fee of not more than $10.00, to the county, and the amount so paid will be credited on the bond forfeited. If I appear on the return day and a final disposition is made of the case, the amount deposited with the clerk, less a fee of not more than $10.00 to be retained by the clerk, will be disposed of as ordered by the court.

(e) I agree to report to the clerk of the court by telephone, or in person, and in writing on the first Monday of each month as to my current address and telephone number. If I fail to do so, I agree that the bond may be declared in default.

(7) The amount of money tendered under this rule shall not be disbursed to any person except on written order of the court. The money deposited with the clerk shall be disbursed in the following manner: first, to pay any court costs assessed against the defendant; second, to pay any restitution the defendant has been ordered to make; third, to pay any fines imposed against the defendant; fourth, to pay any assignment of the sum made by the defendant to defendant's attorney; and fifth, any refund to the defendant or other disbursements as allowed by the court.

(e) Security. "Security" is cash, certified funds, or a surety's undertaking deposited with the clerk to secure an appearance bond.

(f) Surety. A "surety" is someone (other than the person seeking release) who executes an appearance bond and is therefore bound to pay its amount, if the person released fails to appear for any proceeding as ordered by the court. A surety, except one governed by Mississippi Code Section 83-39-1 et. seq., shall file with the appearance bond an affidavit or sworn certification:

(1) stating that the surety is not an attorney, judicial official, or person authorized to accept bail;

(2) stating that the surety owns property in this state, which property, standing alone or when aggregated with that of other sureties, is worth the amount of the appearance bond (provided,

that the property shall be exclusive of property exempt from execution and its value equaling the amount of the appearance bond shall be above and over all liabilities, including the amount of all other outstanding appearance bonds entered into by the surety) and specifying that property and the exemptions and liabilities thereon; and

(3) specifying the number and amount of other outstanding appearance bonds entered into by the surety.

Generally, an attorney, judicial official, or person authorized to accept bail (e.g., a sheriff) may not be a surety. However, an attorney, judicial official, or person authorized to accept bail may be a surety for a member of the surety's immediate family. For purposes of this Rule, the term "immediate family" shall be limited to include only: a spouse, a sibling, a spouse's sibling, a lineal ancestor or descendant, a lineal ancestor or descendant of a spouse, or a minor or incompetent person dependent upon the surety for more than one-half (½) of his/her support. In such cases, the attorney, judicial official, or person authorized to accept bail shall file with the appearance bond an affidavit stating the surety's position, the surety's relationship to the person seeking release, and the information required in Rule 8.1(f)(2) and (3).

(g) Bail. "Bail" is a monetary amount for or condition of pretrial release from custody, normally set by a judge at the initial appearance.

(h) Insurer. The terms "insurer," "professional bail agent," "soliciting bail agent," "bail enforcement agent," and "personal surety agent" shall be defined as in Mississippi Code Section 83-39-1, et seq.

(i) Compliance Required. All agents and insurers shall comply fully with Mississippi Code Sections 83-39-1, et seq., and 99-5-1, et seq., and all related statutes and regulations.

MRCrP 8.3 states in part:

> If a defendant is admitted to bail pending appeal, the trial court clerk shall so notify the clerk of the Supreme Court.

MRCrP 8.4 provides in part:

> (b) Additional Conditions. . . .
> (1) execution of an appearance bond in an amount specified by the court, either

with or without requiring that the defendant deposit with the clerk security in an amount as required by the court; . . . .

MRCrP 8.5 provides in part:

> (c) Review by Circuit Court. No later than seven (7) days before the commencement of each term of circuit court in which criminal cases are adjudicated, the official(s) having custody of felony defendants being held for trial, grand jury action, or extradition within the county (or within the county's judicial districts in which the court term is to be held) shall provide the presiding judge, the district attorney, and the clerk of the circuit court the names of all defendants in their custody, the charge(s) upon which they are being held, and the date they were most recently taken into custody. The senior circuit judge, or such other judge as the senior circuit judge designates, shall review the conditions of release for every felony defendant who is eligible for bail and has been in jail for more than ninety (90) days.
>
> The clerk of the circuit court shall maintain the lists required by section (c). ***Cmt.***

MRCrP 8.7 provides in part:

> (b) Filing and Custody of Appearance Bonds and Security. Appearance bonds and security shall be filed with the clerk of the court in which the case is pending. Whenever the case is transferred to another court, any appearance bond and security shall be transferred also. . . .
>
> (e) Cancellation of Bond. At any time that the court finds there is no further need for an appearance bond, the court shall cancel the appearance bond and order the return of any security deposited with the clerk.

Alternative Forms of Bail

§ 99-5-1 Form of bail:

Bail may be taken in the following form, viz:

State of Mississippi,
_____ County.

We _____, principal, and _____ and _____, sureties, agree to pay the state of Mississippi _____ dollars, unless the said _____ shall appear at the next term of the circuit court of _____ county, and there remain from day to day and term to term until discharged by law, to answer a charge of _____.

Signed _____
_____
Approved _____
_____

When the bail is for appearance before any committing court or a judge, the form may be varied to suit the condition.

When a bond is taken from a professional bail agent, the following must be preprinted or stamped clearly and legibly on the bond form: full name of the professional bail agent, Department of Insurance license number, full and correct legal address of the professional bail agent and complete phone number of the professional bail agent. In addition, if the bond is posted by a limited surety professional bail agent, the name of the insurer, the legal address of the insurer on file with the department and phone number of the insurer must be preprinted or stamped, and a true and correct copy of an individual's power of attorney authorizing the agent to post such bond shall be attached.

If the bond is taken from a soliciting bail agent, the full name of the soliciting bail agent and the license number of such agent must be preprinted or stamped clearly and legibly along with all information required for a professional bail agent and a true and correct copy of an individual's power of attorney authorizing such soliciting bail agent to sign the name of the professional bail agent.

Any professional bail agent and/or soliciting bail agents who issue a bail bond that does not contain this required information may have their license suspended up to six (6) months and/or be fined not more than One Thousand Dollars ($1,000.00) for the first offense, may have their license suspended up to one (1) year and/or be

fined not more than Five Thousand Dollars ($5,000.00) for the second offense and shall have their license permanently revoked if they commit a third offense. The court or the clerk of the court shall notify the department when any professional bail agent or soliciting bail agent or insurer issues a bail bond that contains information that misleads a court about the proper delivery by personal service or certified mail of a writ of scire facias, judgment nisi or final judgment.

§ 99-5-3 Form of bail; taken in open court by entry on minutes:

Bail taken in open court may be entered on the minutes as follows, to wit:

> The State v. A.B.
> No. _____
>
> > Came the said A.B. and C.D. and E.F. and agreed to pay the state of Mississippi _____ dollars, unless the said A.B. shall appear at the present term of this court, and remain from day to day, and from term to term until discharged by law, to answer a charge of _____.

Who May Set Bail

Circuit Court Judge

Mississippi Constitution Article 6, § 156 Jurisdiction of Circuit Court, states:

> The circuit court shall have original jurisdiction in all matters . . . criminal in this state not vested by this Constitution in some other court. . . .

County Court Judge

§ 9-9-21 Jurisdiction of county court:

(1) The jurisdiction of the county court shall be as follows: It shall have jurisdiction concurrent with the justice court in all matters, civil and criminal of which the justice court has jurisdiction; and it shall have jurisdiction concurrent with the circuit and chancery courts in all matters of law and equity wherein the amount of value of the thing in controversy shall not exceed, exclusive of costs and interest, the sum of Two Hundred Thousand Dollars ($200,000.00), and the jurisdiction of the county court shall not be affected by any setoff, counterclaim or cross-bill in such actions where the amount sought to be recovered in such setoff, counterclaim or cross-bill exceeds Two Hundred Thousand Dollars ($200,000.00). . . .

Justice Court Judge

§ 99-5-11 All conservators of the peace may take recognizance or bond; certificate of default; alias warrant; when protection order registry must be checked; when bond not required:

(1) All justice court judges and all other conservators of the peace are authorized, whenever a person is brought before them charged with any offense not capital for which bail is allowed by law, to take the recognizance or bond of the person, with sufficient sureties, in such penalty as the justice court judge or conservator of the peace may require, for his appearance before the justice court judge or conservator of the peace for an examination of his case at some future day. And if the person thus recognized or thus giving bond fails to appear at the appointed time, it shall be the duty of the justice court judge or conservator of the peace to return the recognizance or bond, with his certificate of default, to the court having jurisdiction of the case, and a recovery may be had therein by scire facias, as in other cases of forfeiture. The justice court judge or other conservator of the peace shall also issue an alias warrant for the defaulter.

(2) In circumstances involving an offense against any of the following: (a) a current or former spouse of the accused or child of that person; (b) a person living as a spouse or who formerly lived as a spouse with the accused or a child of that person; (c) a parent, grandparent, child, grandchild or someone similarly situated to the accused; (d) a person who has a current or former dating relationship with the accused; or (e) a person with whom the accused has had a biological or legally adopted child, the justice court judge or other conservator of the peace shall check, or cause to be made a check, of the status of the person for whom recognizance or bond is taken before ordering bail in the Mississippi Protection Order Registry authorized under Section 93–21–25, and the existence of a domestic abuse protection order against the accused shall be considered when determining appropriate bail.

(3) After the court considers the provisions of subsection (2) of this section, a misdemeanant may be released on his or her own recognizance unless:

(a) The misdemeanant:
(i) Is on probation or parole;
(ii) Has other unresolved charges pending; or
(iii) Has a history of nonappearance; or

(b) The court finds that:
(i) The release of the misdemeanant would constitute a special danger to any other person or to the community; or

(ii) Release of the misdemeanant on his or her own recognizance is highly unlikely to assure the appearance of the misdemeanant as required.

Municipal Court Judge

§ 21-23-8 Bail forfeiture; reason; procedure:

(4) (a) The municipal judge shall set the amount of bail for persons charged with offenses in municipal court and may approve the bond or recognizance therefor.
(b) In instances where the municipal judge is unavailable and has not provided a bail schedule or otherwise provided for the setting of bail, it is lawful for any officer or officers designated by order of the municipal judge to take bond, cash, property or recognizance, with or without sureties, in a sum to be determined by the officer, payable to the municipality and conditioned for the appearance of the person on the return day and time of the writ before the court to which the warrant is returnable, or in cases of arrest without a warrant, on the day and time set by the court or officer for arraignment, and there remain from day to day and term to term until discharged.
(c) All bonds shall be promptly returned to the court, together with any cash deposited, and be filed and proceeded on by the court in a case of forfeiture. The chief of the municipal police or a police officer or officers designated by order of the municipal judge may approve bonds or recognizances.
(d) All bonds and recognizances in municipal court where the municipal court shall have the jurisdiction to hear and determine the case may be made payable to the municipality and shall have the effect to bind the principal and any sureties on the bond or recognizance until they shall be discharged by due course of law without renewal.

Sheriff - Emergency Circumstances

§ 19-25-67 Duty to maintain peace:

[The sheriff] may take bonds, with good and sufficient sureties, of any person whom he may arrest with or without a warrant for any felony that is bailable as a matter of law. He may fix the amount of such bonds, only in emergency circumstances. "Emergency circumstances" means a situation in which a person is arrested without a warrant and cannot be taken before a judicial officer for a determination of probable cause within a reasonable time, or within forty (48) hours, whichever is the lesser, after the arrest.

Mittimus from the Court

§ 99-5-31 Mittimus:

When a defendant charged with a criminal offense shall be committed to jail by a court, judge, justice or other officer, for default in not giving bail, it is the duty of such court or officer to state in the mittimus

the nature of the offense,
the county where committed,
the amount of bail, and
the number of sureties required,

and to direct the sheriff of the county where such party is ordered to be confined to release him, on his entering into bond as required by the order of the court or committing officer; and this shall apply to a case where, on habeas corpus, an order for bail may be made.

Who Takes a Bail Bond

§ 99-5-15 Release of defendant:

It is the duty of the sheriff or other officer having custody of such defendant, upon his compliance with the order of the committing court or officer, to release him from custody; and he shall approve the sureties on the bond, except admitted and authorized fidelity and surety insurance companies acting as surety, and for that purpose may examine them on oath, or take their affidavit in writing, and may administer such oath.

§ 99-5-19 Special bail:

If any person, except a properly authorized judge, authorized to release a criminal defendant neglects to take a bail bond, or if the bail bond from any cause is insufficient at the time he took and approved the same, on exceptions taken and filed before the close of the next term, after the same should have been returned, and upon reasonable notice thereof to the person, he shall stand as special bail, and judgment shall be rendered against him as such, except when bond is tendered by a fidelity or insurance company or professional bail agent or its bail agent authorized by Mississippi state license to act as bail surety.

The person taking and approving a bail bond from a fidelity or insurance company or professional bail agent or its bail agent with a valid Mississippi state license shall bear no financial liability on the bail bond in the event of a bail bond forfeiture or default.

§ 99-5-17 Return of bail bond to clerk:

It is the duty of the sheriff taking a bail-bond to return the same to the clerk of the circuit court of the county in which the offense is alleged to have been committed on or before the first day of the next term thereof.

§ 99-5-23 Bonds deemed valid and binding:

All bonds, recognizances, or acknowledgments of indebtedness, conditioned for the appearance of any party before any court or officer, in any state case or criminal proceeding, which shall have the effect to free such party from jail or legal custody of any sort, shall be valid and bind the party and sureties, according to the condition of such bond, recognizance, or acknowledgment, whether it was taken by the proper officer or under circumstances authorized by law or not, or whether the officer's return identify it or not.

It shall not be an objection to any bail-bond or recognizance that it is in the form of an acknowledgment before a court or officer and is without the signature of any person, or is without the indorsement of approval by any officer; but all persons who, by their acknowledgment before any officer of liability to pay a sum of money to the state if some person shall not appear before some court or officer in a criminal prosecution, procure the discharge from custody of such person, shall be bound accordingly upon the recognizance. An obligation signed by a person to obtain the discharge from custody of another shall not be invalid, if it have that effect, because it does not have indorsed on it the approval of any officer, or because the taking thereof be not recited in the return of the officer.

Form of a Bond

§ 99-5-5 Bonds payable to state:

All bonds and recognizances taken for the appearance of any party, either as defendant, prosecutor, or witness in any criminal proceeding or matter, shall be made payable to the state, and shall have the effect to bind the accused and his sureties on the bond or recognizance until the principal shall be discharged by due course of law, and shall be in full force, from term to term, for a period of three (3) years, except that a bond returnable to the Supreme Court shall be in full force for a period of five (5) years.

If it is necessary to renew a bond, it shall be renewed without additional premium. At the end of the applicable period, a bond or recognizance that is not renewed shall expire and shall be uncollectible unless the collection process was started on or before the expiration date of such bond or recognizance. Any bond or

recognizance taken prior to July 1, 1996, shall expire on July 1, 1999. If a defendant is charged with multiple counts in one (1) warrant only one (1) bond shall be taken.

§ 99-5-7 Fidelity or surety companies providing bail:

Bail may be given to the sheriff or officer holding the defendant in custody, by a fidelity or surety insurance company authorized to act as surety within the State of Mississippi. Any such company may execute the undertaking as surety by the hand of officer or attorney authorized thereto by a resolution of its board of directors, a certified copy of which, under its corporate seal, shall be on file with the clerk of the circuit court and the sheriff of the county, and such authority shall be deemed in full force and effect until revoked in writing by notice to said clerk and sheriff.

§ 99-5-9 Cash 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" . . . .
(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 (¼) of the full amount fixed under subsection (1) or the amount of the actual deposit whichever is greater.

§ 99-5-21 Bond good though it does not describe offense:

All bonds and recognizances taken in criminal cases, whether they describe the offense actually committed or not, shall have the effect to hold the party bound thereby to answer to such offense as he may have actually committed, and shall be valid for that purpose until he be discharged by the court.

Denial of Bail

Court May Deny Bail if Release Would Constitute a Special Danger

Mississippi Constitution Article 3, § 29(3) provides:

> In the case of offenses punishable by imprisonment for a maximum of twenty (20) years or more or by life imprisonment, a county or circuit court judge may deny bail for such offenses when the proof [of guilt] is evident or the presumption [of guilt] great upon making a determination that the release of the person or persons arrested for such offense would constitute a special danger to any other person or to the community or that no condition or combination of conditions will reasonably assure the appearance of the person as required.

MRCrP 8.2 states in part:

> (a) Right to Release. Any defendant charged with an offense bailable as a matter of right shall be released pending or during trial on the defendant's personal recognizance or on an appearance bond unless the court before which the charge is filed or pending determines that such a release will not reasonably assure the defendant's appearance as required, or that the defendant's being at large will pose a real and present danger to others or to the public at large. . . .

Denial of Bail; Right to Hearing in Certain Cases

Mississippi Constitution Article 3, § 29(4) provides:

> In any case where bail is denied before conviction, the judge shall place in the record his reasons for denying bail. Any person who is charged with an offense punishable by imprisonment for a maximum of twenty (20) years or more or by life imprisonment and who is denied bail prior to conviction shall be entitled to an emergency hearing before a justice of the Mississippi Supreme Court. The provisions of this subsection (4) do not apply to bail revocation orders.

WHEN A DEFENDANT IS NOT ENTITLED TO BAIL		
Type of Criminal Offense	**When**	**Constitutional Provision**
Capital offenses	(a) proof of the defendant's guilt is evident and/or the presumption of guilt is great or (b) the defendant has previously been convicted of a capital offense or an offense punishable by a maximum of 20 years or more imprisonment	§ 29(1)
Offenses punishable by a maximum of 20 years or more or life imprisonment - the court may deny bail	(a) proof of the defendant's guilt is evident and/or the presumption of guilt is great and (b) the defendant's release would constitute a special danger to another person or the community or (c) no condition(s) will reasonably assure the defendant's appearance at trial	§ 29(3)

Revocation of Bail

Mississippi Constitution Article 3, § 29(2) provides:

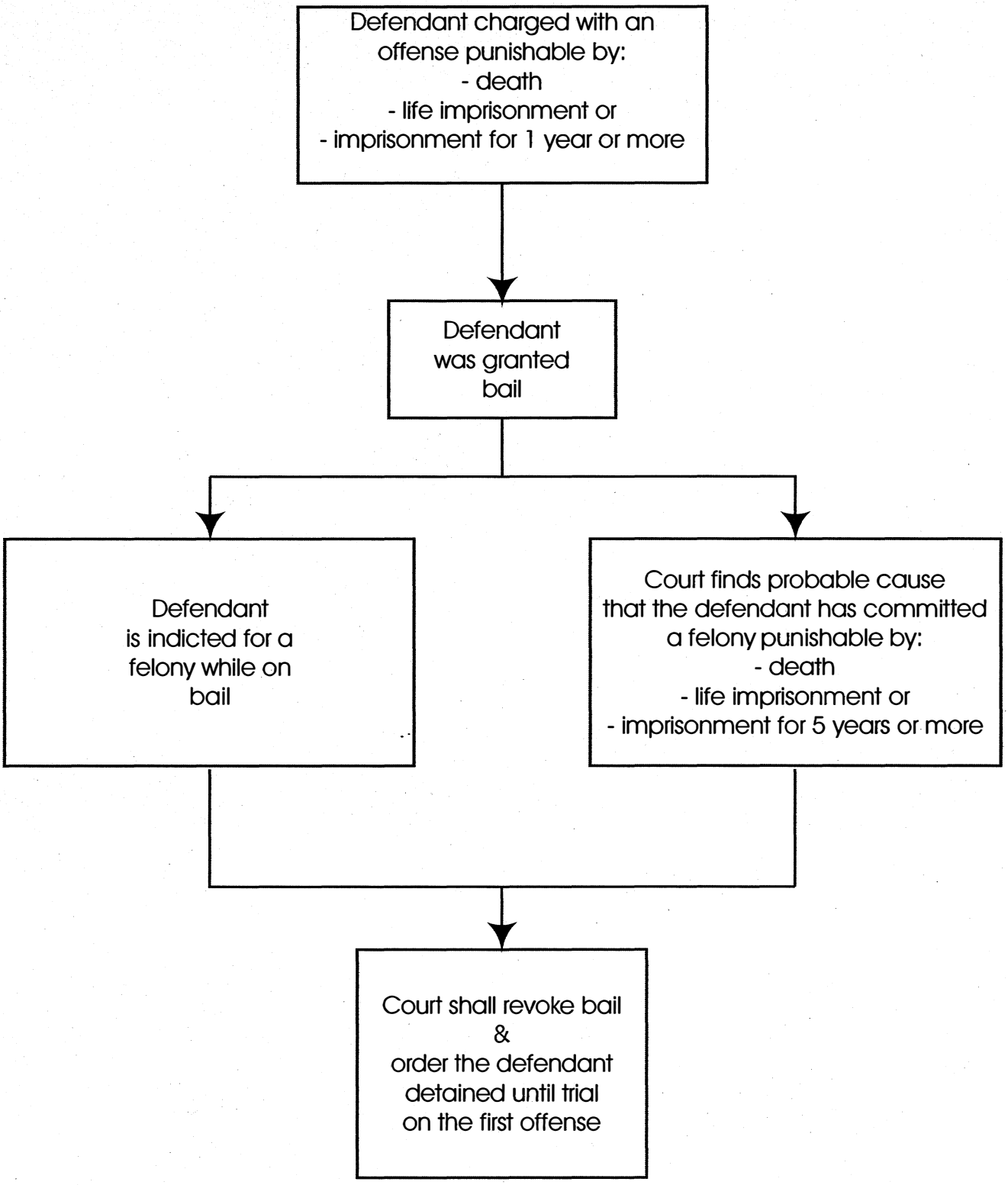
> If a person charged with committing any offense that is punishable by death, life imprisonment or imprisonment for one (1) year or more in the penitentiary or any other state correctional facility is granted bail and
>
> (a) if that person is indicted for a felony committed while on bail;
>
> or
>
> (b) if the court, upon hearing, finds probable cause that the person has committed a felony while on bail,
>
> then the court shall revoke bail and shall order that the person be detained, without further bail, pending trial of the charge for which bail was revoked.
>
> For the purposes of this subsection (2) only, the term "felony" means any offense punishable by death, life imprisonment or imprisonment for more than 5 years under the laws of the jurisdiction in which the crime is committed. In addition, grand larceny shall be considered a felony for the purposes of this subsection.

MRCrP 8.6 states in part:

> (b) Hearing; Review of Conditions; Revocation of Release. If, after a hearing on the matters set forth in the motion, the court finds that the released defendant has materially breached the conditions of release, the court may modify the conditions or revoke the release. If a ground alleged for revocation of the release is that the defendant has committed a criminal offense or has made misrepresentations or omissions in informing the court of other charges pending against the defendant, the court may modify the conditions of release or revoke the release, if the court finds that there is probable cause to believe that the defendant committed the other pending offense(s).
>
> (c) Cases Governed by Article 3, Section 29(2) of the Mississippi Constitution. In cases governed by Article 3, section 29(2) of the Mississippi Constitution of 1890, on motion of the prosecuting attorney or on the court's own motion, a court having jurisdiction over the defendant may revoke the defendant's bail

REVOCATION OF BAIL

§ 29(2) of the Mississippi Constitution



Bail Bonds

According to ***Black's Law Dictionary***:

> A bond given to a court by a criminal defendant's surety to guarantee that the defendant will duly appear in court in the future and, if the defendant is jailed, to obtain the defendant's release from confinement.
>
> The effect of the release on bail bond is to transfer custody of the defendant from the officers of the law to the surety on the bail bond, whose undertaking is to redeliver the defendant to legal custody at the time and place appointed in the bond.

Bail Bond Agents

Types of Bail Bond Agents

§ 83-39-1 Definitions:

(d) "Professional bail agent" means any individual who shall furnish bail, acting as a licensed personal surety agent or as a licensed limited surety agent representing an insurer as defined by this chapter. The above definition shall not include, and this chapter does not apply to, any individual who is not licensed under this chapter who acts as personal surety in instances where there is no compensation charged or received for such service.

(e) "Soliciting bail agent" means any person who, as an agent or employee of a professional bail agent, or as an independent contractor, for compensation or otherwise, shall solicit, advertise or actively seek bail bond business for or on behalf of a professional bail agent and who assists the professional bail agent in presenting the defendant in court when required or assists in the apprehension and surrender of the defendant to the court or keeps the defendant under necessary surveillance.

(f) "Bail enforcement agent" means a person who assists the professional bail agent in presenting the defendant in court when required, or who assists in the apprehension and surrender of the defendant to the court or who keeps the defendant under necessary surveillance. Nothing herein shall affect the right of professional bail agents to have counsel or to ask assistance of law enforcement officers.

(g) "Limited surety agent" means any individual who is appointed by an insurer by power of attorney to execute or countersign bail bonds in connection with judicial

proceedings, and who is duly licensed by the commissioner to represent such insurer for the restricted lines of bail, fidelity and surety, after successfully completing a limited examination by the department for the restricted lines of business.

(h) "Personal surety agent" means any individual who, having posted the necessary qualification bond with the commissioner as required by § 83-39-7, and duly licensed by the commissioner, may execute and sign bail bonds in connection with judicial proceedings. All new personal surety agents licensed after July 1, 1994, shall complete successfully a limited examination by the department for the restricted lines of business.

(i) "Surety" means the insurer or the personal surety agent guaranteeing the bail bond and for the purpose of process does not mean the agent of such insurer or personal surety agent.

(j) "Bail" means the use of money, property or other security to cause the release of a defendant from custody and secure the appearance of a defendant in criminal court proceedings, or the monitoring or supervision of defendants who are released from custody on recognizance, parole or probation, except when such monitoring or supervision is conducted after conviction, sentencing or other adjudication and solely by public employees.

License Required

§ 83-39-3 Individual license required:

(1) No person shall act in the capacity of professional bail agent, soliciting bail agent or bail enforcement agent, as defined in Section 83-39-1, or perform any of the functions, duties or powers of the same unless that person shall be qualified and licensed as provided in this chapter. The terms of this chapter shall not apply to any automobile club or association, financial institution, insurance company or other organization or association or their employees who execute bail bonds on violations arising out of the use of a motor vehicle by their members, policyholders or borrowers when bail bond is not the principal benefit of membership, the policy of insurance or of a loan to such member, policyholder or borrower.

(2) (a) No license shall be issued or renewed except in compliance with this chapter, and none shall be issued except to an individual. No firm, partnership, association or corporation, as such, shall be so licensed. No professional bail agent shall operate under more than one (1) trade name. A soliciting bail agent and bail enforcement agent shall operate only under

the professional bail agent's name. No license shall be issued to or renewed for any person who has ever been convicted of a felony or any crime involving moral turpitude or who is under twenty-one (21) years of age. No person engaged as a law enforcement or judicial official or attorney shall be licensed hereunder. A person who is employed in any capacity at any jail or corrections facility that houses state, county or municipal inmates who are or may be eligible for bail, whether the person is a public employee, independent contractor, or the employee of an independent contractor, may not be licensed under this section.
(b)(i) No person who is a relative of either a sworn state, county or municipal law enforcement official or judicial official, or an employee, independent contractor or the contractor's employee of any police department, sheriff's department, jail or corrections facility that houses or holds federal, state, county or municipal inmates who are or may be eligible for bail, shall write a bond in the county where the law enforcement entity or court in which the person's relative serves is located. "Relative" means a spouse, parent, grandparent, child, sister, brother, or a consanguineous aunt, uncle, niece or nephew. Violation of this prohibition shall result in license revocation.
(ii) No person licensed under this chapter shall act as a personal surety agent in the writing of bail during a period he or she is licensed as a limited surety agent, as defined herein.
(iii) No person licensed under this chapter shall give legal advice or a legal opinion in any form.

(3) The department is vested with the authority to enforce this chapter. The department may conduct investigations or request other state, county or local officials to conduct investigations and promulgate such rules and regulations as may be necessary for the enforcement of this chapter. The department may establish monetary fines and collect such fines as necessary for the enforcement of such rules and regulations. All fines collected shall be deposited in the Special Insurance Department Fund for the operation of that agency.

(4) (a) Each license issued hereunder shall expire biennially on the last day of September of each odd-numbered year, unless revoked or suspended prior thereto by the department, or upon notice served upon the commissioner by the insurer that the authority of a limited surety agent to act for or on behalf of such insurer had been terminated, or upon notice served upon the commissioner that the authority of a soliciting bail agent or bail enforcement agent had been terminated by such professional bail agent.
(b) A soliciting bail agent or bail enforcement agent may, upon termination by a professional bail agent or upon his cessation of employment with a professional bail agent, be relicensed without having to

comply with the provisions of subsection (7)(a) and (b) of this section, if he has held a license in his respective license category within ninety (90) days of the new application, meets all other requirements set forth in Section 83-39-5 and subsection (7)(b) of this section, and notifies the previous professional bail agent in writing that he is submitting an application for a new license.

(5) The department shall prepare and deliver to each licensee a license showing the name, address and classification of the licensee, and shall certify that the person is a licensed professional bail agent, being designated as a personal surety agent or a limited surety agent, a soliciting bail agent or a bail enforcement agent. In addition, the license of a soliciting bail agent or bail enforcement agent, shall show the name of the professional bail agent and any other information as the commissioner deems proper.

(6) The commissioner, after a hearing under Section 83-39-17, may refuse to issue a privilege license for a soliciting bail agent to change from one (1) professional bail agent to another if he owes any premium or debt to the professional bail agent with whom he is currently licensed. The commissioner, after a hearing under Section 83-39-17, shall refuse to issue a license for a limited surety agent if he owes any premium or debt to an insurer to which he has been appointed. If a license has been granted to a limited surety agent or a soliciting bail agent who owed any premium or debt to an insurer or professional bail agent, the commissioner, after a hearing under Section 83-39-17, shall revoke the license.

(7) (a) Before the issuance of any initial professional bail agent, soliciting bail agent or bail enforcement agent license, the applicant shall submit proof of successful completion of forty (40) classroom hours of prelicensing education approved by the Professional Bail Agents Association of Mississippi, Inc., and conducted by persons or entities approved by the Professional Bail Agents Association of Mississippi, Inc., unless the applicant is currently licensed under this chapter on July 1, 2014, and has maintained that license in compliance with the continuing education requirements of subsection (8) of this section. The hours required by this subsection shall be classroom hours and may not be acquired through correspondence or over the Internet. Any applicant who has met all continuing education requirements as set forth in subsection (8)(a) of this section and has been properly licensed under this chapter within ninety (90) days of submitting an application for a license shall not be subject to the prelicensing education requirement.

(b) All applicants for a professional bail agent, soliciting bail agent or bail enforcement agent license applying for an original license after July 1, 2014, shall successfully complete a limited examination by the department

for the restricted lines of business before the license can be issued; however, this examination requirement shall not apply to any licensed bail soliciting agent and bail enforcement agent transferring to another professional bail agent license, any licensed bail soliciting agent applying for a bail enforcement agent license, and any licensed bail enforcement agent applying for a bail soliciting agent license. An applicant shall only be required to successfully complete the limited examination once.

(c) Beginning on July 1, 2011, in order to assist the department in determining an applicant's suitability for a license under this chapter, the applicant shall submit a set of fingerprints with the submission of an application for license. The department shall forward the fingerprints to the Department of Public Safety for the purpose of conducting a criminal history record check. If no disqualifying record is identified at the state level, the Department of Public Safety shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. Fees related to the criminal history record check shall be paid by the applicant to the commissioner and the monies from such fees shall be deposited in the special fund in the State Treasury designated as the "Insurance Department Fund."

(8) (a) Before the renewal of the license of any professional bail agent, soliciting bail agent or bail enforcement agent, the applicant shall submit proof of successful completion of continuing education hours as follows:

(i) There shall be no continuing education required for the first licensure year;

(ii) Except as provided in subparagraph (i), eight (8) classroom hours of continuing education for each year or part of a year of the two-year license period, for a total of sixteen (16) hours per license period.

(b) If an applicant for renewal failed to obtain the required eight (8) hours for each year of the license period during the actual license year in which the education was required to be obtained, the applicant shall not be eligible for a renewal license but shall be required to obtain an original license and be subject to the education requirements set forth in subsection (7). The commissioner shall not be required to comply with Section 83-39-17 in denying an application for a renewal license under this paragraph (b).

(c) The education hours required under this subsection (8) shall consist of classroom hours approved by the Professional Bail Agents Association of Mississippi, Inc., and provided by persons or entities approved by the Professional Bail Agents Association of Mississippi, Inc. The hours required by this subsection shall be classroom hours and may not be acquired through correspondence or over the Internet.

(d) The continuing education requirements under this subsection (8) shall not be required for renewal of a bail agent license for any applicant who is sixty-five (65) years of age and who has been licensed as a bail agent for a continuous period of twenty (20) years immediately preceding the submission of the application as evidenced by submission of an affidavit, under oath, on a form prescribed by the department, signed by the licensee attesting to satisfaction of the age, licensing, and experience requirements of this paragraph (d).

(9) No license as a professional bail agent shall be issued unless the applicant has been duly licensed by the department as a soliciting bail agent for a period of three (3) consecutive years immediately preceding the submission of the application. However, this subsection (9) shall not apply to any person who was licensed as a professional bail agent before July 1, 2011.

(10) A nonresident person may be licensed as a professional bail agent, bail soliciting agent or bail enforcement agent if:

(a) The person's home state awards licenses to residents of this state on the same basis; and

(b) The person has satisfied all requirements set forth in this chapter.

(11) 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.

(12) 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.

Proof of License

§ 83-39-23 Proof of licensing:

No sheriff or other official shall accept bond from a professional bail agent unless the bail agent is licensed under this chapter and unless the bail agent shall exhibit to the court a valid certificate or license issued by the department, and the license of the bail agent shall not have been suspended or revoked. The department shall provide notice to the sheriff and municipal law enforcement and to the courts of every county and municipality of any suspension or revocation of a professional, soliciting or bail enforcement license. The department, upon request, may furnish to any sheriff, district, circuit, county or justice court judge or municipal judge additional information which would appropriately identify the duly licensed professional bail agent and insurers whose operation is covered by this chapter.

Bail Bond Agent's Fee

§ 83-39-25 Maximum fees; collateral or security interests:

(1) A professional bail agent or his agent shall charge and collect for his premium, commission, or fee an amount of ten percent (10%) of the amount of bail per bond posted by him, or One Hundred Dollars ($100.00), whichever is greater, except on a bond on a defendant who is charged with a capital offense, or on a defendant who resides outside the State of Mississippi, in which case the premium, commission or fee shall be fifteen percent (15%) of the amount of bail, per bond posted by him, or One Hundred Dollars ($100.00), whichever is greater.

(2) A professional bail agent or his agent shall also charge an additional Fifty Dollars ($50.00) processing fee on each bond issued by him.

(3) Nothing herein shall prohibit a professional bail agent or his agent from holding collateral or taking a security interest in collateral for the purpose of insuring the payment of the premium of the bond posted or indemnifying the professional bail agent for losses incurred due to a forfeiture of a bond or the costs of apprehension and surrender of the principal.

(4) Any fee charged by a professional bail agent or his agent for court-approved electronic monitoring or drug testing shall not be considered part of the premium, commission or fee charged under this section.

§ 83-39-31 Bond fees:

(1) Upon every defendant charged with a criminal offense who posts a cash bail bond, a surety bail bond, a property bail bond or a guaranteed arrest bond certificate conditioned for his appearance at trial, there is imposed a fee equal to two percent (2%) of the face value of each bond or Twenty Dollars ($20.00), whichever is greater, to be collected by the clerk of the court when the defendant appears in court for final adjudication or at the time the defendant posts cash bond unless subsection (4) applies.

(2) Upon each defendant charged with a criminal offense who is released on his own recognizance, who deposits his driver's license in lieu of bail, or who is released after arrest on written promise to appear, there is imposed a fee of Twenty Dollars ($20.00) to be collected by the clerk of the court when the defendant appears in court for final adjudication unless subsection (4) applies.

(3) Upon each defendant convicted of a criminal offense who appeals his conviction and posts a bond conditioned for his appearance, there is imposed a fee equal to two percent (2%) of the face value of each bond or Twenty Dollars ($20.00), whichever is greater. If such defendant is released on his own recognizance pending his appeal, there is imposed a fee of Twenty Dollars ($20.00). The fee imposed by this subsection shall be imposed and shall be collected by the clerk of the court when the defendant posts a bond unless subsection (4) applies.

(4) If a defendant is found to be not guilty or if the charges against a defendant are dismissed, or if the prosecutor enters a nolle prosequi in the defendant's case or retires the defendant's case to the file, or if the defendant's conviction is reversed on appeal, the fees imposed pursuant to subsections (1), (2), (3) and (7) shall not be imposed.

(5) The State Auditor shall establish by regulation procedures providing for the timely collection, deposit, accounting and, where applicable, refund of the fees imposed by this section. 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.

(6) It shall be the duty of the clerk or any officer of the court authorized to take bonds or recognizances to promptly collect, at the time such bonds or recognizances are received or taken, all fees imposed pursuant to this section. In all cases, the clerk or officer of the court shall deposit all fees so collected with the State Treasurer, pursuant to appropriate procedures established by the State Auditor, for deposit into the State General Fund.

(7) In addition to the fees imposed by this section, there shall be an assessment of Ten Dollars ($10.00) imposed upon every criminal defendant charged with a criminal offense who posts a cash bail bond, a surety bail bond, a property bail bond or a guaranteed arrest bond to be collected by the clerk of the court and deposited in the Victims of Domestic Violence Fund created by Section 93-21-117, unless subsection (4) applies.

Bail Bond Agent's Duties

§ 83-39-13 Annual financial statements; office location of professional bail agents; Bail Bond Database:

(1) Each professional bail agent licensed under this chapter, under oath, shall provide to the Insurance Department an annual financial statement. The annual financial statement shall show assets, liabilities and net worth as of the end of the most recent calendar year. The statement shall be submitted annually to the department by June 1.

(2) (a) For purposes of applicable examinations, a professional bail agent licensed in this state shall maintain at least one (1) office physically located in any municipality or county in this state, to serve as his principal place of business operations where records pertaining to his bail agent business conducted in Mississippi are maintained and this office location shall be registered with the Insurance Department.
(b) When applying for an original or renewal license as a professional bail agent, the applicant shall indicate the address of the office location to serve as his principal place of business operations, and this address shall be evidenced on the face of the license issued to the licensee.
(c) If for any reason the professional bail agent changes the location of his principal place of business operations, removes to another state, or no longer continues in the profession as a bail agent, the bail agent shall register the new location with the department, or notify the department of his removal from the state or his cessation of business as a professional bail agent as appropriate.

(3) On or before October 1, 2016, the Mississippi Insurance Department shall establish a Bail Bond Database within the department for the reporting of all bail bonds written by personal surety agents and limited surety agents in this state. By November 15, 2016, each bail agent must input his or her bail bond information into the Bail Bond Database for all bonds written from and after October 1, 2016. By the fifteenth day of each subsequent month, each bail agent must update the Bail Bond Database regarding his or her bail bond information for bail bonds written from and after October 1, 2016, and each update must be current through

the last day of the previous month. Any bail agent who fails to comply with the provisions of this subsection (3) shall be assessed a fine in an amount not to exceed One Thousand Dollars ($1,000.00) per violation.

Bail Bond Agent's Prohibited Acts

§ 83-39-27 Unlawful activities:

It is unlawful for a licensee to engage in any of the following activities:

(a) Specify, suggest or advise the employment of any particular attorney to represent his principal.

(b) Pay a fee or rebate or give or promise to give anything of value to a jailer, policeman, peace officer, clerk, deputy clerk, any other employee of any court, district attorney or any of his employees or any person who has power to arrest or to hold any person in custody.

(c) Pay a fee or rebate or give anything of value to an attorney in bail bond matters, except in defense of any act on a bond, or as counsel to represent such bail agent, his agent or employees.

(d) Pay a fee or rebate or give or promise to give anything of value to the person on whose bond he is surety.

(e) Pay a fee or rebate or give or promise to give anything of value to any person, other than a soliciting bail agent, for the purpose of procuring a bail bond.

(f) Accept anything of value from a person on whose bond he is surety, or from others on behalf of such person, except the fee or premium on the bond, but the bail agent may accept collateral security or other indemnity.

(g) Coerce, suggest, aid and abet, offer promise of favor or threaten any person on whose bond he is surety or offers to become surety, to induce that person to commit any crime.

(h) Give legal advice or a legal opinion in any form.

(i) Refuse to return collateral security or other indemnity when the fee or premium on the bond has been fully paid or when the bail agent's obligation on the bond has been terminated.

TYPES OF APPEARANCE BAIL BONDS

An appearance bond is the type of bail bond used to release a defendant from custody but will also insure the defendant's presence at subsequent criminal proceedings and at trial.

Type of Bail Bond	Rule or Statute	Description
Licensed Bail Bond	§ 83-39-1 *et seq.*	An individual who shall furnish bail, acting as a licensed personal surety agent or as a licensed limited surety agent representing an insurer.
Unsecured Appearance Bond Secured Appearance Bond	MRCrP 8.1	The accused must tender to the clerk of the circuit court ten percent (10%) of the amount of the bond as set, in cash, or $250.00 in cash, whichever is greater. . . .
Personal Surety Bail Bond	§ 83-39-31(1)	(1) Upon every defendant charged with a criminal offense who posts a cash bail bond, a surety bail bond, a property bail bond or a guaranteed arrest bond certificate conditioned for his appearance at trial, there is imposed a fee equal to two percent (2%) of the face value of each bond or Twenty Dollars ($20.00), whichever is greater, to be collected by the clerk of the court when the defendant appears in court for final adjudication or at the time the defendant posts cash bond unless subsection (4) applies.

Type of Bail Bond	Rule or Statute	Description
Cash Bail Bond	§ 83-39-31(1) § 99-5-9	An amount of cash set by the court is deposited with the sheriff or other officer having custody of the defendant in lieu of a surety or property bail bond. The sheriff delivers the money to the county treasurer.
Recognizance Bail Bond	§ 83-39-31(2) § 99-5-11 MRCrP 8.1	Court allows the defendant to give his promise to appear at court in lieu of any other type of bond. (5) The accused must sign an appearance bond guaranteeing his/her appearance and binding himself/herself unto the State of Mississippi in the full amount of the bond as set to be used in the case of default. . . .
Insurance Bail Bond	§ 99-5-7	An insurance company can write a bond for a criminal defendant to appear at trial or other court proceeding.

Penalties for Violating Duties

§ 83-39-29 Criminal penalties:

(1) The department may provide information to the district attorney in the district in which a professional bail agent, a soliciting bail agent or bail enforcement agent is domiciled so that proper legal action may be pursued against any licensee who is alleged to have violated any provision of Chapter 39, of Title 83. Such licensee is guilty of a misdemeanor and shall be subject to a fine of not more than One Thousand Dollars ($1,000.00), imprisonment in the county jail for not more than one (1) year, or both. Any insurer violating any provision of Chapter 39, of Title 83 may be fined in an amount not to exceed Fifty Thousand Dollars ($50,000.00).

(2) Any person or entity who acts or attempts to solicit, write or present a bail bond as a professional bail agent, soliciting bail agent, or bail enforcement agent as defined in this chapter and who is not licensed under this chapter is guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than One Thousand Dollars ($1,000.00), imprisonment in the county jail for not more than one (1) year, or both.

(3) Any person who acts or attempts to act, represents himself to be, or impersonates a professional bail agent, a soliciting bail agent or a bail enforcement agent as defined in this chapter by attempting to arrest or detaining any person, and who is not licensed under this chapter, is guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than Five Thousand Dollars ($5,000.00), imprisonment for not more than one (1) year, or both.

(4) A bail agent, bail enforcement agent or bail enforcement agent from another state shall report to the sheriff's department of the county in which he is attempting to locate a fugitive prior to beginning to look for the fugitive to prove his licensing and legal right to the fugitive. Failure to prove licensing shall be an offense punishable by a fine not to exceed One Thousand Dollars ($1,000.00).

(5) Any person charged with a criminal violation who has obtained his release from custody by having a professional bail agent, insurer, agent of a bail agent or insurer, or any person other than himself furnish his bail bond and who fails to appear in court, at the time and place ordered by the court, is guilty of "bond jumping" and, upon conviction, shall be subject to a fine of not more than One Thousand Dollars ($1,000.00), imprisonment in the county jail for not more than one (1) year, or both, and payment of restitution for reasonable expenses incurred returning the defendant to court.

(6) Any person who knowingly and intentionally aids and abets any person in the commission of the offense of bond jumping, whether the person committing the principal offense is actually convicted, shall be guilty of aiding and abetting bond jumping and, upon conviction, shall be subject to a fine of not more than One Thousand Dollars ($1,000.00) or imprisonment in the county jail for not more than one (1) year, or both, and payment of restitution for reasonable expenses incurred in returning the defendant to court. Any person who is convicted of aiding and abetting shall be jointly and severally liable for payment of restitution for reasonable expenses incurred in returning the defendant to court.

(7) Any bail agent who is prejudiced or injured by the commission of any of the offenses set forth in this section shall have standing to file a complaint alleging the commission of the offense or offenses.

License Requirements

Application

§ 83-39-5 License application:

Any person desiring to engage in the business of professional bail agent, soliciting bail agent, or bail enforcement agent in this state shall apply to the department for a license on forms prepared and furnished by the department. The application for a license, or renewal thereof, shall set forth, under oath, the following information:

(a) Full name, age, date of birth, social security number, residence during the previous five (5) years, occupation and business address of the applicant.

(b) Spouse's full name, occupation and business address.

(c) A photograph of the applicant and a full set of fingerprints for the initial application and, thereafter, as requested by the department.

(d) A statement that he is not licensed to practice law in the State of Mississippi or any other state and that no attorney or any convicted felon has any interest in his application, either directly or indirectly.

(e) Any other information as may be required by this chapter or by the department.

(f) In the case of a professional bail agent, a statement that he will actively engage in the bail bond business.

(g) In the case of a soliciting bail agent, a statement that he will be employed or used by only one (1) professional bail agent and that the professional bail agent will supervise his work and be responsible for his conduct in his work. A professional bail agent shall sign the application of each soliciting bail agent employed or used by him.

Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64 of the Mississippi Code.

License Fees

§ 83-39-11 License fees:

Each license application and application for license renewal to engage in the business of professional bail agent shall be accompanied by a fee of One Hundred Dollars ($100.00). Each license application and application for license renewal to engage in the business of soliciting bail agent or bail enforcement agent shall be accompanied by a fee of Forty Dollars ($40.00).

Prelicensing and Continuing Education

§ 83-39-3 License required; qualifications; prohibitions; prelicensing and continuing education; criminal history check; expiration:

(7)(a) Before the issuance of any initial professional bail agent, soliciting bail agent or bail enforcement agent license, the applicant shall submit proof of successful completion of forty (40) classroom hours of prelicensing education approved by the Professional Bail Agents Association of Mississippi, Inc., and conducted by persons or entities approved by the Professional Bail Agents Association of Mississippi, Inc., unless the applicant is currently licensed under this chapter on July 1, 2014, and has maintained that license in compliance with the continuing education requirements of subsection (8) of this section. The hours required by this subsection shall be classroom hours and may not be acquired through correspondence or over the Internet. Any applicant who has met all continuing education requirements as set forth in subsection (8)(a) of this section and has been properly licensed under this chapter within ninety (90) days of submitting an application for a license shall not be subject to the prelicensing education requirement.
(b) All applicants for a professional bail agent, soliciting bail agent or bail enforcement agent license applying for an original license after July 1, 2014, shall successfully complete a limited examination by the department for the restricted

lines of business before the license can be issued; however, this examination requirement shall not apply to any licensed bail soliciting agent and bail enforcement agent transferring to another professional bail agent license, any licensed bail soliciting agent applying for a bail enforcement agent license, and any licensed bail enforcement agent applying for a bail soliciting agent license. An applicant shall only be required to successfully complete the limited examination once.

(c) Beginning on July 1, 2011, in order to assist the department in determining an applicant's suitability for a license under this chapter, the applicant shall submit a set of fingerprints with the submission of an application for license. The department shall forward the fingerprints to the Department of Public Safety for the purpose of conducting a criminal history record check. If no disqualifying record is identified at the state level, the Department of Public Safety shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. Fees related to the criminal history record check shall be paid by the applicant to the commissioner and the monies from such fees shall be deposited in the special fund in the State Treasury designated as the "Insurance Department Fund."

(8)(a) Before the renewal of the license of any professional bail agent, soliciting bail agent or bail enforcement agent, the applicant shall submit proof of successful completion of continuing education hours as follows:

(i) There shall be no continuing education required for the first licensure year;

(ii) Except as provided in subparagraph (i), eight (8) classroom hours of continuing education for each year or part of a year of the two-year license period, for a total of sixteen (16) hours per license period.

(b) If an applicant for renewal failed to obtain the required eight (8) hours for each year of the license period during the actual license year in which the education was required to be obtained, the applicant shall not be eligible for a renewal license but shall be required to obtain an original license and be subject to the education requirements set forth in subsection (7). The commissioner shall not be required to comply with Section 83-39-17 in denying an application for a renewal license under this paragraph (b).

(c) The education hours required under this subsection (8) shall consist of classroom hours approved by the Professional Bail Agents Association of Mississippi, Inc., and provided by persons or entities approved by the Professional Bail Agents Association of Mississippi, Inc. The hours required by this subsection shall be classroom hours and may not be acquired through correspondence or over the Internet.

(d) The continuing education requirements under this subsection (8) shall not be required for renewal of a bail agent license for any applicant who is sixty-five (65) years of age and who has been licensed as a bail agent for a continuous period of

twenty (20) years immediately preceding the submission of the application as evidenced by submission of an affidavit, under oath, on a form prescribed by the department, signed by the licensee attesting to satisfaction of the age, licensing, and experience requirements of this paragraph (d).

Qualification Bond

§ 83-39-7 Qualification bond; amount; conditions; forfeiture; return of defendants held in other jurisdictions:

(1)(a) Each applicant for a professional bail agent license who acts as personal surety shall be required to post a qualification bond in the amount of Thirty Thousand Dollars ($30,000.00). . . .
(2) The qualification bond shall be made by depositing with the commissioner the aforesaid amount of bonds of the United States, the State of Mississippi or any agency or subdivision thereof, or a certificate of deposit issued by an institution whose deposits are insured by the Federal Deposit Insurance Corporation and made payable jointly to the owner and the Department of Insurance, or shall be written by an insurer as defined in this chapter, shall meet the specifications as may be required and defined in this chapter, and shall meet such specifications as may be required and approved by the department. The bond shall be conditioned upon the full and prompt payment of any bail bond issued by such professional bail agent into the court ordering the bond forfeited. The bond shall be to the people of the State of Mississippi in favor of any court of this state, whether municipal, justice, county, circuit, Supreme or other court. . . .

Transfer of Qualification Bond

§ 83-39-8 Transfer of qualification bond; effect:

If a professional bail agent who acts as a personal surety agent dies, the personal representative of the estate may contract with licensed professional bail agents, soliciting bail agents or bail enforcement agents to assist him in managing and closing the business affairs of the professional bail agent. The licensed professional bail agent, soliciting bail agent or bail enforcement agent contracted by the personal representative may, on behalf of the personal representative, present defendants in court when required, assist in the apprehension and surrender of defendants to the court, or keep defendants under necessary surveillance. Nothing herein shall give the personal representative the authority to execute and sign bail bonds in connection with judicial proceedings.

License Issued by the Department of Insurance

§ 83-39-9 License issuance:

The department of insurance upon receipt of the license application, the required fee, and proof of good moral character and, in the case of a professional bail agent, an approved qualification bond in the required amount, shall issue to the applicant a license to do business as a professional bail agent, soliciting bail agent or bail enforcement agent as the case may be. No licensed professional bail agent shall have in his employ in the bail bond business any person who could not qualify for a license under this chapter, nor shall any licensed professional bail agent have as a partner or associate in such business any person who could not so qualify.

Denial of a License or a Renewal of a License

Grounds

§ 83-39-15 Denial, suspension, nonrenewal and revocation of license; grounds:

(1) The department may deny, suspend, revoke or refuse to renew, as may be appropriate, a license to engage in the business of professional bail agent, soliciting bail agent, or bail enforcement agent for any of the following reasons:

(a) Any cause for which the issuance of the license would have been refused had it then existed and been known to the department.
(b) Failure to post a qualification bond in the required amount with the department during the period the person is engaged in the business within this state or, if the bond has been posted, the forfeiture or cancellation of the bond.
(c) Material misstatement, misrepresentation or fraud in obtaining the license.
(d) Willful failure to comply with, or willful violation of, any provision of this chapter or of any proper order, rule or regulation of the department or any court of this state.
(e) Conviction of felony or crime involving moral turpitude.
(f) Default in payment to the court should any bond issued by such bail agent be forfeited by order of the court.
(g) Being elected or employed as a law enforcement or judicial official.
(h) Engaging in the practice of law.
(i) Writing a bond in violation of Section 83-39-3(2)(b)(i) and (ii).
(j) Giving legal advice or a legal opinion in any form.
(k) Acting as or impersonating a bail agent without a license.

(l) Use of any other trade name than what is submitted on a license application to the department.
(m) Issuing a bail bond that contains information intended to mislead a court about the proper delivery by personal service or certified mail of a writ of scire facias, judgment nisi or final judgment.

(2) In addition to the grounds specified in subsection (1) of this section, the department shall be authorized to suspend the license, registration or permit of any person for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license, registration or permit for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license, registration or permit suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license, registration or permit suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

(3) In addition to the sanctions provided in this section, the department may assess an administrative fine in an amount not to exceed One Thousand Dollars ($1,000.00) per violation. Such administrative fines shall be in addition to any criminal penalties assessed under Section 99-5-1.

Right to Notice and a Departmental Hearing

§ 83-39-17 Notice and hearing:

Before any license shall be refused or suspended or revoked, or the renewal thereof refused hereunder, the commissioner of insurance shall give notice of his intention to do so, by registered mail, to the applicant or licensee and to the insurer or professional bail agent appointing or employing the applicant or licensee, as the case may be, and shall set a date, not less than twenty (20) days from the date of mailing the notice, when the applicant or licensee and a duly authorized representative of the insurer or professional bail agent may appear to be heard and produce evidence. This notice shall constitute automatic suspension of license.

In the conduct of the hearing, the commissioner or any regular salaried employee specially designated by him for this purpose shall have power to administer oaths, to require the appearance of and examine any person under oath, and to require the production of books, records, or papers relevant to the inquiry upon his own initiative or upon the request of the applicant or licensee. Upon the termination of

the hearing, findings shall be reduced to writing and, upon approval by the commissioner, shall be filed in his office and notice of the findings sent by registered mail to the applicant or licensee and the insurer or professional bail agent concerned.

Judicial Hearing

§ 83-39-21 Judicial proceeding to terminate license:

The commissioner of insurance, in his discretion, in lieu of the hearing provided for in Section 83-39-17, may file a petition to suspend or revoke any license authorized hereunder in a court of competent jurisdiction of the county or district in which the alleged offense occurred. In such cases, subpoenas may be issued for witnesses, and mileage and witness fees paid by the defendant, if found guilty. If costs cannot be made and collected from the defendant, the costs shall be assessed against the qualification bond if the defendant is a professional bail agent, and if the defendant is a soliciting bail agent or bail enforcement agent, against the employing professional bail agent or his qualification bond. Any court of competent jurisdiction within this state may suspend or revoke the license of any person licensed under this chapter for any of the following reasons:

(a) Misappropriation, conversion or unlawful withholding of monies belonging to insured principals or others and received in the conduct of business under a license provided by this chapter.

(b) Fraudulent or dishonest practices in the conduct of the business under a license provided by this chapter.

(c) The commission of any act which would prohibit or restrict the licensee from holding a license under this chapter.

The court which suspends or revokes a license under the terms of this chapter, or the clerk thereof, shall promptly furnish the commissioner a copy of the suspension or revocation order.

Right to Appeal

§ 83-39-19 Appeals; procedures:

Any person aggrieved by an act of the commissioner under the provisions of this chapter may appeal therefrom, within thirty (30) days after receipt of notice thereof, to the circuit court of the county in which is located the domicile of said person by writ of certiorari, upon giving bond with the surety or sureties and in such penalty as shall be approved by the circuit clerk of said county, conditioned that such appellant will pay all costs of the appeal in the event such appeal is not prosecuted successfully.

The said circuit court shall have the opportunity and jurisdiction to hear said appeal and render its decision in regard thereto, either in termtime or vacation time.

Actions taken by the commissioner or department in suspending a license, registration or permit when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section.

Any appeal of a suspension of a license, registration or permit that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section.

Bond Forfeiture

When Bond Is Forfeited - Defendant Fails to Appear

§ 99-5-25 Forfeiture of bail bonds; procedures:

(1) (a) The purpose of bail is to guarantee appearance and a bail bond shall not be forfeited for any other reason.

(b) If a defendant in any criminal case, proceeding or matter fails to appear for any proceeding as ordered by the court, then the court shall order the bail forfeited and a judgment nisi and a bench warrant issued at the time of nonappearance. The clerk of the court shall notify the surety of the forfeiture by writ of scire facias, with a copy of the judgment nisi and bench warrant attached thereto, within ten (10) working days of such order of judgment nisi either by personal service or by certified mail. Failure of the clerk to provide the required notice within ten (10) working days shall constitute prima facie evidence that the order should be set aside. Any felony warrant issued by a court for nonappearance shall be put on the National Crime Information Center (NCIC) until the defendant is returned to custody.

(c) The judgment nisi shall be returnable for ninety (90) days from the date of issuance. If during such period the defendant appears before the court, or is arrested and surrendered, then the judgment nisi shall be set aside and a copy of the judgment that is set aside shall be served on the surety by personal service or certified mail. If the surety produces the defendant or provides to the court reasonable mitigating circumstances upon such showing, then the forfeiture shall not be made final. If the forfeiture is made final, a copy of the final judgment shall be served on the surety within ten (10) working days by either personal service or certified mail. Reasonable mitigating circumstances shall be that the defendant is incarcerated in another jurisdiction, that the defendant is hospitalized under a doctor's care, that the defendant is in a recognized drug rehabilitation program, that the defendant has been placed in a witness protection program and it shall be the duty of any such agency placing such defendant into a witness protection program to notify the court and the court to notify the surety, or any other reason justifiable to the court.

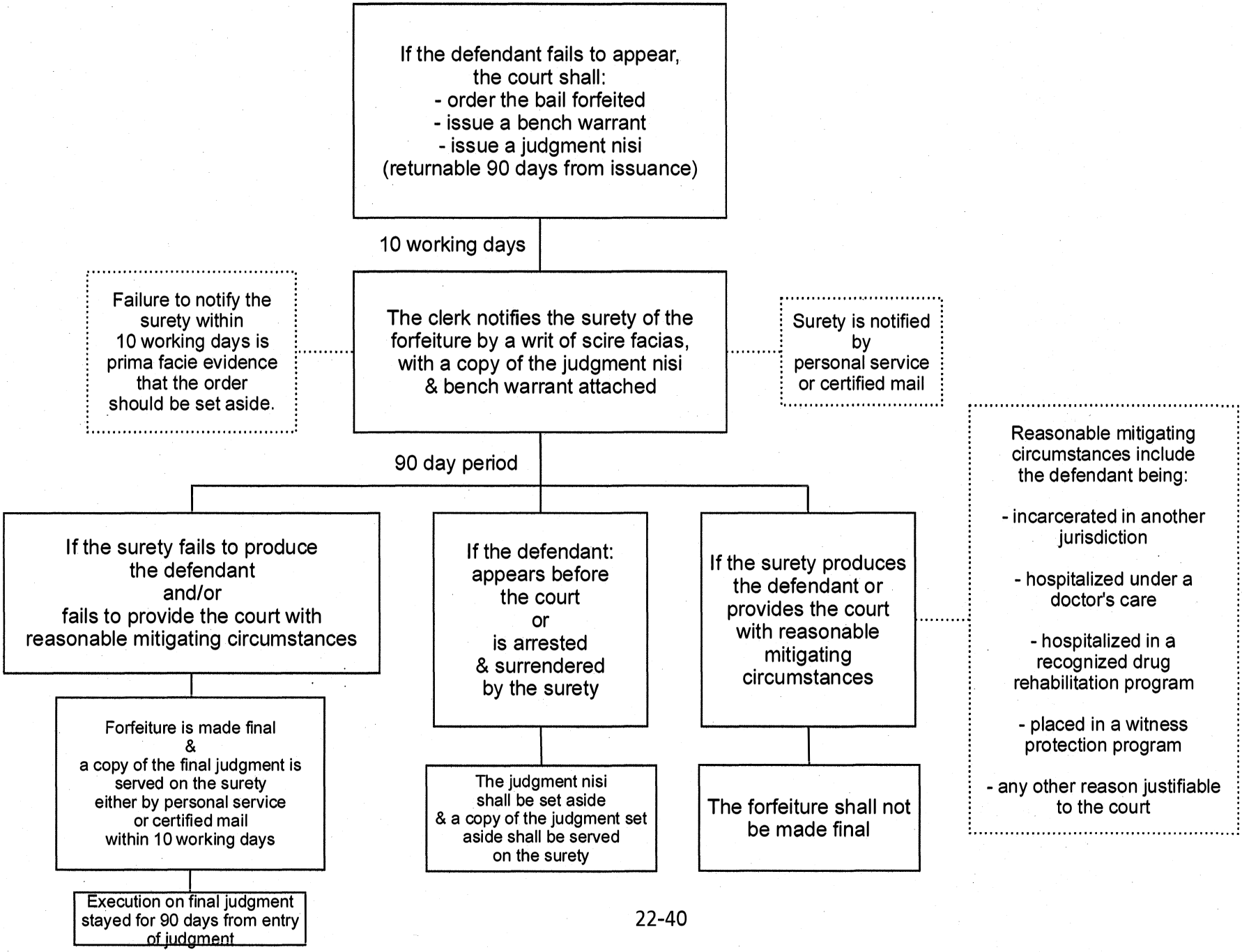
(d) Execution upon the final judgment shall be automatically stayed for ninety (90) days from the date of entry of the final judgment. If, at any time before execution of the final judgment, the defendant appears in court either voluntarily or in custody after surrender or arrest, the court shall on

its own motion direct that the forfeiture be set aside and the bond exonerated as of the date the defendant first appeared in court.

(2) If a final judgment is entered against a surety licensed by the Department of Insurance and has not been set aside after ninety (90) days, or later if such time is extended by the court issuing the judgment nisi, then the court shall order the department to revoke the authority of the surety to write bail bonds. The commissioner shall, upon notice of the court, notify the surety within five (5) working days of receipt of revocation. If after ten (10) working days of such notification the revocation order has not been set aside by the court, then the commissioner shall revoke the authority of the surety and all agents of the surety and shall notify the sheriff of every county of such revocation.

(3) If within eighteen (18) months of the date of the final forfeiture the defendant appears for court, is arrested or surrendered to the court, or if the defendant is found to be incarcerated in another jurisdiction and a hold order placed on the defendant, then the amount of bail, less reasonable extradition cost, excluding attorney fees, shall be refunded by the court upon application by the surety.

BAIL BOND FORFEITURE ACCORDING TO § 99-5-25



How Forfeiture Affects Bail Bond Agent's License & Bond

Bail Bond Agent's Authority to Write Bail Bonds May Be Revoked

§ 99-5-25 Forfeiture of bond; scire facias:

(2) If a final judgment is entered against a surety licensed by the Department of Insurance and has not been set aside after ninety (90) days, or later if such time is extended by the court issuing the judgment nisi, then the court shall order the department to revoke the authority of the surety to write bail bonds.

The commissioner shall, upon notice of the court, notify the surety within five (5) working days of receipt of revocation. If after ten (10) working days of such notification the revocation order has not been set aside by the court, then the commissioner shall revoke the authority of the surety and all agents of the surety and shall notify the sheriff of every county of such revocation.

Bail Bond Agents's License May Be Suspended & Qualification Bond May Be Forfeited

§ 83-39-7 Qualification bond; amount; conditions; forfeiture; return of defendants held in other jurisdictions:

(3) If any bond issued by a professional bail agent is declared forfeited and judgment entered thereon by a court of proper jurisdiction as authorized in Section 99-5-25, and the amount of the bond is not paid within ninety (90) days, that court shall order the department to declare the qualification bond of the professional bail agent to be forfeited and the license revoked.

If the bond was not forfeited correctly under Section 99-5-25, it shall be returned to the court as uncollectible.

The department shall then order the surety on the qualification bond to deposit with the court an amount equal to the amount of the bond issued by the professional bail agent and declared forfeited by the court, or the amount of the qualification bond, whichever is the smaller amount.

The department shall, after hearing held upon not less than ten (10) days' written notice, suspend the license of the professional bail agent until such time as another qualification bond in the required amount is posted with the department.

The revocation of the license of the professional bail agent shall also serve to revoke the license of each soliciting bail agent and bail enforcement agent employed or used by such professional bail agent.

In the event of a final judgment of forfeiture of any bail bond written under the provisions of this chapter, the amount of money so forfeited by the final judgment of the proper court, less all accrued court costs and excluding any interest charges or attorney's fees, shall be refunded to the bail agent or his insurance company upon proper showing to the court as to which is entitled to same, provided the defendant in such cases is returned to the sheriff of the county to which the original bail bond was returnable within twelve (12) months of the date of such final judgment, or proof made of incarceration of the defendant in another jurisdiction, and that a "Hold Order" has been placed upon the defendant for return of the defendant to the sheriff upon release from the other jurisdiction, the return to the sheriff to be the responsibility of the professional bail agent, then the bond forfeiture shall be stayed and remission made upon petition to the court, in the amount found in the court's discretion to be just and proper.

A bail agent licensed under this chapter shall have a right to apply for and obtain from the proper court an extension of time delaying a final judgment of forfeiture if such bail agent can satisfactorily establish to the court wherein such forfeiture is pending that the defendant named in the bail bond is lawfully in custody outside of the State of Mississippi.

(4) The qualification bond may be released by the department to the professional bail personal surety agent upon an order to release the qualification bond issued by a court of competent jurisdiction, or upon written request to the department by the professional bail personal surety agent no earlier than five (5) years after the expiration date of his last license.

Bail Bond Agent's Remedies after Forfeiture

Forfeited Bail May Be Refunded to Bail Bond Agent

§ 99-5-25 Forfeiture of bond; scire facias:

(3) If within eighteen (18) months of the date of the final forfeiture the defendant appears for court, is arrested or surrendered to the court, or if the defendant is found to be incarcerated in another jurisdiction and a hold order placed on the defendant, then the amount of bail, less reasonable extradition cost, excluding attorney fees, shall be refunded by the court upon application by the surety.

Bail Bond Agent May Surrender the Defendant

§ 99-5-27 Surrender of principal on bond; liability; authority to make arrest; interview of defendant:

(1) (a) "Surrender" means the delivery of the defendant, principal on bond, physically to the sheriff or chief of police or in his absence, his jailer, and it is the duty of the sheriff or chief of police, or his jailer, to accept the surrender of the principal when presented and such act is complete upon the execution of verbal or written surrender notice presented by a bail agent and shall relieve the bail agent of liability on the principal's bond.

(b) A bail agent may surrender the principal if the principal is found to be detained on another charge. If the principal is found incarcerated in another jurisdiction, the bail agent may surrender him by verbal or written notice of surrender to the sheriff or chief of police, or his jailer, of that jurisdiction and the notice of surrender shall act as a "Hold Order" and upon presentation of written surrender notice to the court of proper jurisdiction, the court shall order a "Hold Order" placed on the principal for the court and shall relieve the bail agent of liability on the principal's bond, with the provision that, upon release from incarceration in the other jurisdiction, return of the principal to the sheriff shall be the responsibility of the bail agent. The bail agent shall satisfy the responsibility to return a principal held by a "Hold Order" in another jurisdiction upon release from the other jurisdiction either by personally returning the principal to the sheriff at no cost to the county or, where the other jurisdiction will not release the principal to any person other than a law enforcement officer, by reimbursing to the county the reasonable cost of the return of the principal, not to exceed the cost that would be entailed if the first option were available.

(c) The surrender of the principal by the bail agent, within the time period provided in Section 99-5-25, shall serve to discharge the bail agent's liability to the State of Mississippi and any of its courts; but if this is done after forfeiture of the bond or recognizance, the court shall set aside the judgment nisi or final judgment upon filing of surrender notice by the bail agent.

(2) (a) A bail agent, at any time, may surrender the principal to any law enforcement agency or in open court in discharge of the bail agent's liability on the principal's bond if the law enforcement agency that was involved in setting the original bond approves of such surrender, to the State of Mississippi and any of its courts and at any time may arrest and transport its principal anywhere or may authorize another to do so, may be assisted by any law enforcement agency or its agents anywhere upon request of bail and may receive any information available to law enforcement or the courts pertaining to the principal for the purpose of safe surrender or for any reasonable cause in order to safely return the principal to the custody of law enforcement and the court.

(b) A bail agent, at any time, may arrest its principal anywhere or authorize another to do so for the purpose of surrender of the principal on bail bond. Failure of the sheriff or chief of police or his jailer, any law enforcement agency or its agents or the court to accept surrender by a bail agent shall relieve the bail agent of any liability on the principal's bond, and the bond shall be void.

(3) A bail agent, at any time, upon request by the defendant or others on behalf of the defendant, may privately interview the defendant to obtain information to help with surrender before posting any bail bond on behalf of the defendant. All licensed bail agents shall have equal access to jails or detention facilities for the purpose of such interviews, the posting of bail bonds and the surrender of the principal.

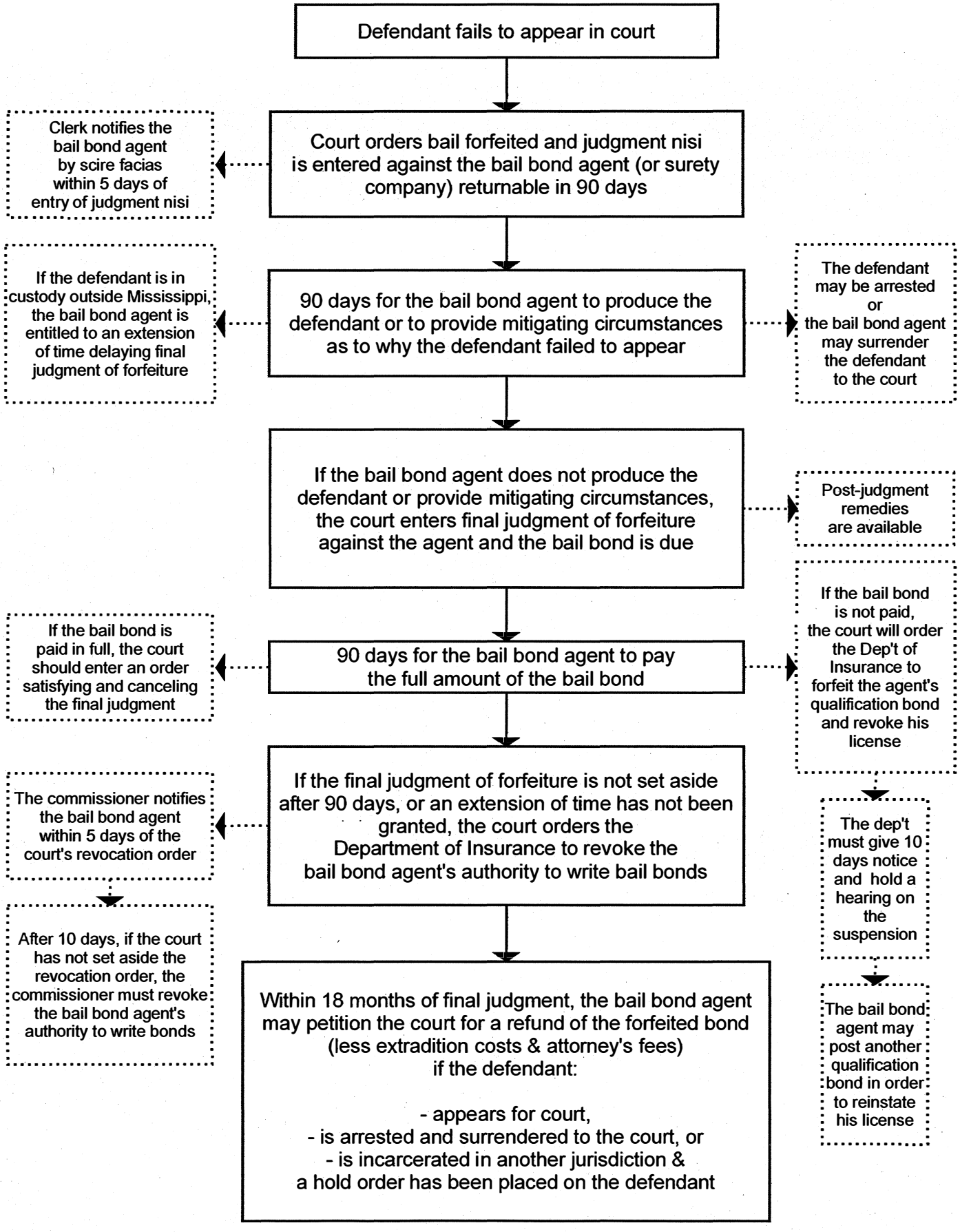
(4) Upon surrender, the court, after full review of the defendant and the pending charges, in open court, may discharge the prisoner on his giving new bail, but if he does not give new bail, he shall be detained in jail.

Bail Bond Agent May Have the Sheriff Arrest the Defendant

§ 99-5-29 Surety may cause arrest of principal:

The sheriff or a constable in a proper case, upon the request of a surety in any bond or recognizance, and tender of the legal fee for executing a capias in a criminal case, and the production of a certified copy of the bond of recognizance, shall arrest, within his county, the principal in the bond or recognizance. The surety or his agent shall accompany the officer to receive the person.

BAIL BOND AGENT'S RELIEF FROM FORFEITURE



References: §§ 83-39-7; 99-5-25; 99-5-27

CHAPTER 23

DRIVING UNDER THE INFLUENCE

CHART

CHAPTER 23

DRIVING UNDER THE INFLUENCE

Driving Under the Influence

§ 63-11-30 Operation under influence of alcohol or other impairing substance:

(1) It is unlawful for a person to drive or otherwise operate a vehicle within this state if the person:

(a) Is under the influence of intoxicating liquor;
(b) Is under the influence of any other substance that has impaired the person's ability to operate a motor vehicle;
(c) Is under the influence of any drug or controlled substance, the possession of which is unlawful under the Mississippi Controlled Substances Law; or
(d) Has an alcohol concentration in the person's blood, based upon grams of alcohol per one hundred (100) milliliters of blood, or grams of alcohol per two hundred ten (210) liters of breath, as shown by a chemical analysis of the person's breath, blood or urine administered as authorized by this chapter, of:

(i) Eight one-hundredths percent (.08%) or more for a person who is above the legal age to purchase alcoholic beverages under state law;
(ii) Two one-hundredths percent (.02%) or more for a person who is below the legal age to purchase alcoholic beverages under state law; or
(iii) Four one-hundredths percent (.04%) or more for a person operating a commercial motor vehicle.

(2) Except as otherwise provided in subsection (3) of this section (Zero Tolerance for Minors):

(a) First offense DUI.

(i) Upon conviction of any person for the first offense of violating subsection (1) of this section where chemical tests under Section 63-11-5 were given, or where chemical test results are not available, the person shall be fined not less than Two Hundred Fifty Dollars ($250.00) nor more than One Thousand Dollars ($1,000.00), or imprisoned for not more than forty-eight (48) hours in jail, or both; the court shall order the person to attend and complete an alcohol safety education program as provided in

Section 63-11-32 within six (6) months of sentencing. The court may substitute attendance at a victim impact panel instead of forty-eight (48) hours in jail.

(ii) Suspension of commercial driving privileges is governed by Section 63-1-216.

(iii) A qualifying first offense may be nonadjudicated by the court under subsection (14) of this section. The holder of a commercial driver's license or a commercial learning permit at the time of the offense is ineligible for nonadjudication.

(iv) Eligibility for an interlock-restricted license is governed by Section 63-11-31 and suspension of regular driving privileges is governed by Section 63-11-23.

(b) Second offense DUI.

(i) Upon any second conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, the person shall be guilty of a misdemeanor, fined not less than Six Hundred Dollars ($600.00) nor more than One Thousand Five Hundred Dollars ($1,500.00), shall be imprisoned not less than five (5) days nor more than six (6) months and sentenced to community service work for not less than ten (10) days nor more than six (6) months. The minimum penalties shall not be suspended or reduced by the court and no prosecutor shall offer any suspension or sentence reduction as part of a plea bargain.

(ii) Suspension of commercial driving privileges is governed by Section 63-1-216.

(iii) Eligibility for an interlock-restricted license is governed by Section 63-11-31 and suspension of regular driving privileges is governed by Section 63-11-23.

(c) Third offense DUI.

(i) For a third conviction of a person for violating subsection (1) of this section, the offenses being committed within a period of five (5) years, the person shall be guilty of a felony and fined not less than Two Thousand Dollars ($2,000.00) nor more than Five Thousand Dollars ($5,000.00), and shall serve not less than one (1) year nor more than five (5) years in the custody of the Department of Corrections. For any offense that does not result in serious injury or death to any person, the sentence of incarceration may be served in the county jail rather than in the State Penitentiary at the discretion of the circuit court judge. The minimum penalties shall not be suspended or reduced by the court and no prosecutor shall

offer any suspension or sentence reduction as part of a plea bargain.

(ii) The suspension of commercial driving privileges is governed by Section 63-1-216.

(iii) The suspension of regular driving privileges is governed by Section 63-11-23.

(d) Fourth and subsequent offense DUI.

(i) For any fourth or subsequent conviction of a violation of subsection (1) of this section, without regard to the time period within which the violations occurred, the person shall be guilty of a felony and fined not less than Three Thousand Dollars ($3,000.00) nor more than Ten Thousand Dollars ($10,000.00), and shall serve not less than two (2) years nor more than ten (10) years in the custody of the Department of Corrections.

(ii) The suspension of commercial driving privileges is governed by Section 63-1-216.

(iii) A person convicted of a fourth or subsequent offense is ineligible to exercise the privilege to operate a motor vehicle that is not equipped with an ignition-interlock device for ten (10) years.

(e) Any person convicted of a second or subsequent violation of subsection (1) of this section shall receive an in-depth diagnostic assessment, and if as a result of the assessment is determined to be in need of treatment for alcohol or drug abuse, the person must successfully complete treatment at a program site certified by the Department of Mental Health. Each person who receives a diagnostic assessment shall pay a fee representing the cost of the assessment. Each person who participates in a treatment program shall pay a fee representing the cost of treatment.

(f) The use of ignition-interlock devices is governed by Section 63-11-31.

(3) Zero Tolerance for Minors.

(a) This subsection shall be known and may be cited as Zero Tolerance for Minors. The provisions of this subsection shall apply only when a person under the age of twenty-one (21) years has a blood alcohol concentration of two one-hundredths percent (.02%) or more, but lower than eight one-hundredths percent (.08%). If the person's blood alcohol concentration is eight one-hundredths percent (.08%) or more, the provisions of subsection (2) shall apply.

(b) (i) A person under the age of twenty-one (21) is eligible for nonadjudication of a qualifying first offense by the court pursuant to subsection (14) of this section.

(ii) Upon conviction of any person under the age of twenty-one (21) years for the first offense of violating subsection (1) of this section where chemical tests provided for under Section 63-11-5 were given, or where chemical test results are not available, the person shall be fined Two Hundred Fifty Dollars ($250.00); the court shall order the person to attend and complete an alcohol safety education program as provided in Section 63-11-32 within six (6) months. The court may also require attendance at a victim impact panel.

(c) A person under the age of twenty-one (21) years who is convicted of a second violation of subsection (1) of this section, the offenses being committed within a period of five (5) years, shall be fined not more than Five Hundred Dollars ($500.00).

(d) A person under the age of twenty-one (21) years who is convicted of a third or subsequent violation of subsection (1) of this section, the offenses being committed within a period of five (5) years, shall be fined not more than One Thousand Dollars ($1,000.00).

(e) License suspension is governed by Section 63-11-23 and ignition interlock is governed by Section 63-11-31.

(f) Any person under the age of twenty-one (21) years convicted of a third or subsequent violation of subsection (1) of this section must complete treatment of an alcohol or drug abuse program at a site certified by the Department of Mental Health.

(4) DUI test refusal. In addition to the other penalties provided in this section, every person refusing a law enforcement officer's request to submit to a chemical test of the person's breath as provided in this chapter, or who was unconscious at the time of a chemical test and refused to consent to the introduction of the results of the test in any prosecution, shall suffer an additional administrative suspension of driving privileges as set forth in Section 63-11-23.

(5) Aggravated DUI.

(a) Every person who operates any motor vehicle in violation of the provisions of subsection (1) of this section and who in a negligent manner causes the death of another or mutilates, disfigures, permanently disables or destroys the tongue, eye, lip, nose or any other limb, organ or member of another shall, upon conviction, be guilty of a separate felony for each victim who suffers death, mutilation, disfigurement or other injury and shall be committed to the custody of the State Department of Corrections for a period of time of not less than five (5) years and not to exceed twenty-five (25) years for each death, mutilation, disfigurement or other injury, and the imprisonment for the second or each subsequent conviction, in the discretion of the court, shall commence either at the

termination of the imprisonment for the preceding conviction or run concurrently with the preceding conviction. Any person charged with causing the death of another as described in this subsection shall be required to post bail before being released after arrest.

(b) A holder of a commercial driver's license who is convicted of operating a commercial motor vehicle with an alcohol concentration of eight one-hundreths percent (.08%) or more shall be guilty of a felony and shall be committed to the custody of the Department of Corrections for not less than two (2) years and not more than ten (10) years.

(c) The court shall order an ignition-interlock restriction on the offender's privilege to drive as a condition of probation or post-release supervision not to exceed five (5) years unless a longer restriction is required under other law. The ignition-interlock restriction shall not be applied to commercial license privileges until the driver serves the full disqualification period required by Section 63-1-216.

(6) DUI citations.

(a) Upon conviction of a violation of subsection (1) of this section, the trial judge shall sign in the place provided on the traffic ticket, citation or affidavit stating that the person arrested either employed an attorney or waived his right to an attorney after having been properly advised. If the person arrested employed an attorney, the name, address and telephone number of the attorney shall be written on the ticket, citation or affidavit. The court clerk must immediately send a copy of the traffic ticket, citation or affidavit, and any other pertinent documents concerning the conviction or other order of the court, to the Department of Public Safety as provided in Section 63-11-37.

(b) A copy of the traffic ticket, citation or affidavit and any other pertinent documents, having been attested as true and correct by the Commissioner of Public Safety, or his designee, shall be sufficient proof of the conviction for purposes of determining the enhanced penalty for any subsequent convictions of violations of subsection (1) of this section. The Department of Public Safety shall maintain a central database for verification of prior offenses and convictions.

(7) Out-of-state prior convictions. Convictions in another state, territory or possession of the United States, or under the law of a federally recognized Native American tribe, of violations for driving or operating a vehicle while under the influence of an intoxicating liquor or while under the influence of any other substance that has impaired the person's ability to operate a motor vehicle occurring within five (5) years before an offense shall be counted for the purposes of determining if a violation of subsection (1) of this section is a second, third, fourth or subsequent offense and the penalty that shall be imposed upon

conviction for a violation of subsection (1) of this section.

(8) Charging of subsequent offenses.

(a) For the purposes of determining how to impose the sentence for a second, third, fourth or subsequent conviction under this section, the affidavit or indictment shall not be required to enumerate previous convictions. It shall only be necessary that the affidavit or indictment states the number of times that the defendant has been convicted and sentenced within the past five (5) years for a second or third offense, or without a time limitation for a fourth or subsequent offense, under this section to determine if an enhanced penalty shall be imposed. The amount of fine and imprisonment imposed in previous convictions shall not be considered in calculating offenses to determine a second, third, fourth or subsequent offense of this section.

(b) Before a defendant enters a plea of guilty to an offense under this section, law enforcement must submit certification to the prosecutor that the defendant's driving record, the confidential registry and National Crime Information Center record have been searched for all prior convictions, nonadjudications, pretrial diversions and arrests for driving or operating a vehicle while under the influence of an intoxicating liquor or while under the influence of any other substance that has impaired the person's ability to operate a motor vehicle. The results of the search must be included in the certification.

(9) License eligibility for underage offenders. A person who is under the legal age to obtain a license to operate a motor vehicle at the time of the offense and who is convicted under this section shall not be eligible to receive a driver's license until the person reaches the age of eighteen (18) years.

(10) License suspensions and restrictions to run consecutively. Suspension or restriction of driving privileges for any person convicted of or nonadjudicated for violations of subsection (1) of this section shall run consecutively to and not concurrently with any other administrative license suspension.

(11) Ignition interlock. If the court orders installation and use of an ignition-interlock device as provided in Section 63-11-31 for every vehicle operated by a person convicted or nonadjudicated under this section, each device shall be installed, maintained and removed as provided in Section 63-11-31.

(12) DUI child endangerment. A person over the age of twenty-one (21) who violates subsection (1) of this section while transporting in a motor vehicle a child under the age of sixteen (16) years is guilty of the separate offense of endangering a child by driving under the influence of alcohol or any other substance which has

impaired the person's ability to operate a motor vehicle. The offense of endangering a child by driving under the influence of alcohol or any other substance which has impaired the person's ability to operate a motor vehicle shall not be merged with an offense of violating subsection (1) of this section for the purposes of prosecution and sentencing. An offender who is convicted of a violation of this subsection shall be punished as follows:

(a) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a first conviction shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than One Thousand Dollars ($1,000.00) or shall be imprisoned for not more than twelve (12) months, or both;

(b) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a second conviction shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than One Thousand Dollars ($1,000.00) nor more than Five Thousand Dollars ($5,000.00) or shall be imprisoned for one (1) year, or both;

(c) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a third or subsequent conviction shall be guilty of a felony and, upon conviction, shall be fined not less than Ten Thousand Dollars ($10,000.00) or shall be imprisoned for not less than one (1) year nor more than five (5) years, or both; and

(d) A person who commits a violation of this subsection which results in the serious injury or death of a child, without regard to whether the offense was a first, second, third or subsequent offense, shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than Ten Thousand Dollars ($10,000.00) and shall be imprisoned for not less than five (5) years nor more than twenty-five (25) years.

(13) Expunction.

(a) Any person convicted under subsection (2) or (3) of this section of a first offense of driving under the influence and who was not the holder of a commercial driver's license or a commercial learning permit at the time of the offense may petition the circuit court of the county in which the conviction was had for an order to expunge the record of the conviction at least five (5) years after successful completion of all terms and conditions of the sentence imposed for the conviction. Expunction under this subsection will only be available to a person:

(i) Who has successfully completed all terms and conditions of the sentence imposed for the conviction;

(ii) Who did not refuse to submit to a test of his blood or breath;

(iii) Whose blood alcohol concentration tested below sixteen one-hundredths percent (.16%) if test results are available;
(iv) Who has not been convicted of and does not have pending any other offense of driving under the influence;
(v) Who has provided the court with justification as to why the conviction should be expunged; and
(vi) Who has not previously had a nonadjudication or expunction of a violation of this section.

(b) A person is eligible for only one (1) expunction under this subsection, and the Department of Public Safety shall maintain a permanent confidential registry of all cases of expunction under this subsection for the sole purpose of determining a person's eligibility for expunction, for nonadjudication, or as a first offender under this section.

(c) The court in its order of expunction shall state in writing the justification for which the expunction was granted and forward the order to the Department of Public Safety within five (5) days of the entry of the order.

(14) Nonadjudication.

(a) For the purposes of this chapter, “nonadjudication” means that the court withholds adjudication of guilt and sentencing, either at the conclusion of a trial on the merits or upon the entry of a plea of guilt by a defendant, and places the defendant in a nonadjudication program conditioned upon the successful completion of the requirements imposed by the court under this subsection.

(b) A person is eligible for nonadjudication of an offense under this Section 63-11-30 only one (1) time under any provision of a law that authorizes nonadjudication and only for an offender:

(i) Who has successfully completed all terms and conditions imposed by the court after placement of the defendant in a nonadjudication program;
(ii) Who was not the holder of a commercial driver's license or a commercial learning permit at the time of the offense;
(iii) Who has not previously been convicted of and does not have pending any former or subsequent charges under this section; and
(iv) Who has provided the court with justification as to why nonadjudication is appropriate.

(c) Nonadjudication may be initiated upon the filing of a petition for nonadjudication or at any stage of the proceedings in the discretion of the court; the court may withhold adjudication of guilt, defer sentencing, and upon the agreement of the offender to participate in a nonadjudication program, enter an order imposing requirements on the offender for a period of court supervision before the order of nonadjudication is entered.

Failure to successfully complete a nonadjudication program subjects the person to adjudication of the charges against him and to imposition of all penalties previously withheld due to entrance into a nonadjudication program. The court shall immediately inform the commissioner of the conviction as required in Section 63-11-37.

(i) The court shall order the person to:

1. Pay the nonadjudication fee imposed under Section 63-11-31 if applicable;

2. Pay all fines, penalties and assessments that would have been imposed for conviction;

3. Attend and complete an alcohol safety education program as provided in Section 63-11-32 within six (6) months of the date of the order;

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

b. If the court determines that the person violated this section by operating a vehicle when under the influence of a substance other than alcohol that has impaired the person's ability to operate a motor vehicle, including any drug or controlled substance which is unlawful to possess under the Mississippi Controlled Substances Law, the person must submit to a one-hundred-twenty-day period of a nonadjudication program that includes court-ordered drug testing at the person's own expense not less often than every thirty (30) days, during which time the person may drive if compliant with the terms of the program, or suffer a one-hundred-twenty-day suspension of the person's regular driver's license, during which time the person will not operate any vehicle.

(ii) Other conditions that may be imposed by the court include, but are not limited to, alcohol or drug screening, or both, proof that the person has not committed any other traffic violations while under court supervision, proof of immobilization or impoundment of vehicles owned by the offender if required, and attendance at a victim-impact panel.

(d) The court may enter an order of nonadjudication only if the court finds, after a hearing or after ex parte examination of reliable documentation of compliance, that the offender has successfully completed all conditions imposed by law and previous orders of the court. The court shall retain jurisdiction over cases involving nonadjudication for a period of not more than two (2) years.

Clerk's Duty

(e) (i) The clerk shall immediately forward a record of every person placed in a nonadjudication program and of every nonadjudication order to the Department of Public Safety for inclusion in the permanent confidential registry of all cases that are nonadjudicated under this subsection (14).
(ii) Judges, clerks and prosecutors involved in the trial of implied consent violations and law enforcement officers involved in the issuance of citations for implied consent violations shall have secure online access to the confidential registry for the purpose of determining whether a person has previously been the subject of a nonadjudicated case and

1. is therefore ineligible for another nonadjudication;
2. is ineligible as a first offender for a violation of this section; or
3. is ineligible for expunction of a conviction of a violation of this section.

(iii) The Driver Services Bureau of the department shall have access to the confidential registry for the purpose of determining whether a person is eligible for a form of license not restricted to operating a vehicle equipped with an ignition-interlock device.
(iv) The Mississippi Alcohol Safety Education Program shall have secure online access to the confidential registry for research purposes only.

> Section 63-11-30(14) . . . does provide . . . for a confidential registry of all cases that are nonadjudicated under Section 63-11-30(14):
>
> > (e)(i) The clerk shall immediately forward a record of every person placed in a nonadjudication program and of every nonadjudication order to the Department of Public Safety for inclusion in the permanent confidential registry of all cases that are nonadjudicated under this subsection (14). **Re: Opinion Request - DUI Non-Adjudication under**

Miss. Code Ann. Section 63-11-30(14) and effect, if any, of Miss. Code Ann. Section 21-23-7(13), Opinion No. 2017-00044 (Miss. A.G. Mar. 16, 2017).

§ 63-11-37 Duty of trial judge:

(1) It shall be the duty of the trial judge, upon conviction of a person under Section 63-11-30, to mail or otherwise deliver in a method prescribed by the commissioner a true and correct copy of the traffic ticket, citation or affidavit evidencing the arrest that resulted in the conviction and a certified copy of the abstract of the court record within five (5) days to the Commissioner of Public Safety at Jackson, Mississippi. The trial judge in municipal and justice courts shall show on the docket and the trial judge in courts of record shall show on the minutes:

(a) Whether a chemical test was given and the results of the test, if any; and
(b) Whether conviction was based in whole or in part on the results of such a test.

(2) The abstract of the court record shall show the date of the conviction, the results of the test if there was one, and the penalty, so that a record of same may be made by the Department of Public Safety.

(3) For the purposes of Section 63-11-30, a bond forfeiture shall operate as and be considered as a conviction.

Clerk's Fine for Failure to Comply

(4) A trial court clerk who fails to provide a true and correct copy of the traffic ticket, citation or affidavit evidencing the arrest that resulted in the conviction and a copy of the abstract of the court record within five (5) days of the availability of that information as required in subsection (1) of this section is guilty of a civil violation and shall be fined One Hundred Dollars ($100.00), for which civil fine the clerk bears sole and personal responsibility. Each instance of failure is a separate violation.

DUI Penalties
§ 63-11-30(2) & (5)

	Minimum Sentence	Maximum Sentence	Minimum Fine	Maximum Fine
DUI - 1st	----	48 hours	$250.00	$1,000.00
DUI - 2nd	5 days	6 months	$600.00	$1,500.00
DUI - 3rd	1 year *In the county jail if no serious injury or death or in the penitentiary at the discretion of the circuit judge.	5 years *In the county jail if no serious injury or death or in the penitentiary at the discretion of the circuit judge.	$2,000.00	$5,000.00
DUI - 4rd	2 years	10 years	$3,000.00	$10,000.00
Aggravated DUI	5 years	25 years	----	----

CHAPTER 24

INTERVENTION COURTS

CHAPTER 24

INTERVENTION COURT

Who Is Eligible to Participate in Intervention Court

§ 9-23-15 Alternative sentencing eligibility criteria and conditions:

(1) In order to be eligible for alternative sentencing through a local intervention court, the participant must satisfy each of the following criteria:

(a) The participant cannot have any felony convictions for any offenses that are crimes of violence as defined in Section 97-3-2 within the previous ten (10) years.

(b) The crime before the court cannot be a crime of violence as defined in Section 97-3-2.

(c) Other criminal proceedings alleging commission of a crime of violence cannot be pending against the participant.

(d) The participant cannot be charged with burglary of a dwelling under Section 97-17-23(2) or 97-17-37.

(e) The crime before the court cannot be a charge of driving under the influence of alcohol or any other drug or drugs that resulted in the death of a person.

(f) The crime charged cannot be one of trafficking in controlled substances under Section 41-29-139(f), nor can the participant have a prior conviction for same.

(2) Participation in the services of an alcohol and drug intervention component shall be open only to the individuals over whom the court has jurisdiction, except that the court may agree to provide the services for individuals referred from another intervention court. In cases transferred from another jurisdiction, the receiving judge shall act as a special master and make recommendations to the sentencing judge.

(3) (a) As a condition of participation in an intervention court, a participant may be required to undergo a chemical test or a series of chemical tests as specified by the intervention court. A participant is liable for the costs of all chemical tests required under this section, regardless of whether the costs are paid to the intervention court or the laboratory; however, if testing is available from other sources or the program itself, the judge may

waive any fees for testing. The judge may waive all fees if the applicant is determined to be indigent.

(b) A laboratory that performs a chemical test under this section shall report the results of the test to the intervention court.

(4) A person does not have a right to participate in intervention court under this chapter. The court having jurisdiction over a person for a matter before the court shall have the final determination about whether the person may participate in intervention court under this chapter. However, any person meeting the eligibility criteria in subsection (1) of this section shall, upon request, be screened for admission to intervention court.

§ 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 [intervention] 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.

§ 9-23-13 Court intervention services:

(1) An intervention court's alcohol and drug intervention component shall provide for eligible individuals, either directly or through referrals, a range of necessary court intervention services, including, but not limited to, the following:

(a) Screening using a valid and reliable assessment tool effective for identifying alcohol and drug dependent persons for eligibility and appropriate services;
(b) Clinical assessment; for a DUI offense, if the person has two (2) or more DUI convictions, the court shall order the person to undergo an assessment that uses a standardized evidence-based instrument performed by a physician to determine whether the person has a diagnosis for alcohol and/or drug dependence and would likely benefit from a court-approved medication-assisted treatment. . . . Upon considering the results of the assessment, the court may refer the person to a rehabilitative program that offers one or more forms of court-approved medications that are approved for the treatment of alcohol and/or drug dependence by the United States Food and Drug Administration;
(c) Education;
(d) Referral;

(e) Service coordination and case management; and
(f) Counseling and rehabilitative care.

(2) Any inpatient treatment or inpatient detoxification program ordered by the court shall be certified by the Department of Mental Health, other appropriate state agency or the equivalent agency of another state.

(3) All intervention courts shall make available the option for participants to use court-approved medication-assisted treatment while participating in the programs of the court in accordance with the recommendations of the National Drug Court Institute.

Intervention Court Fees

§ 9-23-19 Special fund; gifts, grants, and other funding sources:

(1) All monies received from any source by the intervention court shall be accumulated in a fund to be used only for intervention court purposes. Any funds remaining in this fund at the end of a fiscal year shall not lapse into any general fund, but shall be retained in the Intervention Court Fund for the funding of further activities by the intervention court.

(2) An intervention court may apply for and receive the following:

(a) Gifts, bequests and donations from private sources.
(b) Grant and contract money from governmental sources.
(c) Other forms of financial assistance approved by the court to supplement the budget of the intervention court.

(3) The costs of participation in an alcohol and drug intervention program required by the certified intervention court may be paid by the participant or out of user fees or such other state, federal or private funds that may, from time to time, be made available.

(4) The court may assess such reasonable and appropriate fees to be paid to the local Intervention Court Fund for participation in an alcohol or drug intervention program; however, all fees may be waived if the applicant is determined to be indigent.

I write to you on behalf of the Mississippi Circuit Clerk's Association requesting an official opinion regarding two issues: the collection of Drug Court supervision fees and the clerk's commission provided for in Sec. 25-7-13(5). As you are aware, by law and/or court order, circuit clerks collect fines, fees and assessments for both civil and criminal cases filed within the circuit court. Circuit clerks are also, in some counties, collecting monthly drug court supervision fees as ordered by the court. By statute, circuit clerks may retain a commission on "all money coming into his hands, by law or order of the court," said commission may not exceed one-half of one percent (½ of 1%), and said commission must be fixed by the court.

Question 1) In the absence of a special court order directing clerks to collect drug court supervision fees, are circuit clerks required by statute to collect said fees?

> Response 1) No. Absent a court order, there is no statutory requirement that circuit clerks collect fees paid by participants in a drug court program. However, the drug court judge does have the authority to enter an order directing the applicable clerk to collect drug court fees if it accords with the regulations of the Administrative Office of Court.

Question 2) Are circuit clerks allowed to retain the commission on drug court supervision fees collected?

> Response 2) No. Section 9-23-19(1) specifically provides that "(a)ll monies received from any source by the drug court shall be accumulated in a fund to be used only for drug court purposes." Thus, the clerk could not retain a commission for such funds. However, it is our opinion that a judge could set compensation under Section 9-23-9 for services rendered by the clerk.

Question 3) Are circuit clerks allowed to retain the commission on all fees, costs and assessments collected on civil and criminal cases?

> Response 3) As an initial matter, your question regarding "all fees, costs and assessments" is too broad for us to answer without more information regarding the specific fees, costs or assessments. For the purposes of this response, we will consider fees and assessments to be set by statute, such as those outlined in Section 99-19-73, as opposed to costs, which are within a judge's discretion. As a general matter, circuit clerks do not have the authority to retain a commission on statutory fees or assessments. However, a circuit clerk could retain a commission on costs that are not set by statute if the judge issued an order authorizing such commission under Section 25-7-13(5).

A drug court is not an independent court. Rather, it is established by and as a part of chancery, circuit, county, youth, municipal and justice courts in

accordance with Mississippi and Federal law and regulations promulgated by the Administrative Offices of Courts. A drug "court may assess such reasonable and appropriate fees to be paid to the local drug court fund for participation in an alcohol or drug intervention program." According to Section 9-23-11(6), "(a) certified drug court may appoint the full-or part-time employees it deems necessary for the work of the drug 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." Absent a court order, there is no statutory requirement that circuit clerks collect fees paid by participants in a drug court program. Circuit clerks are not allowed to retain the commission on drug court supervision fees collected. However, it is our opinion that a judge could set compensation under Section 9-23-9 for services rendered by the clerk. As a general matter, a circuit clerk does not have the authority to retain a commission on statutory fees or assessments, but he could retain a commission on costs that are not set by statute if the judge issued an order authorizing such commission under Section 25-7-13(5). **Re: Collection of Drug Court Supervision Fees and Circuit Clerk's Commission Pursuant to Section 25-7-13(5) of the Mississippi Code, Opinion No. 2018-00183 (Miss. A.G. July 20, 2018).**

***See* § 9-23-9 State Intervention Courts Advisory Committee.**

When a Participant Successfully Completes Intervention Court

§ 9-23-23 Completion of program; expunction of record:

If the participant completes all requirements imposed upon him by the intervention court, including the payment of fines and fees assessed and not waived by the court, the charge and prosecution shall be dismissed. If the defendant or participant was sentenced at the time of entry of plea of guilty, the successful completion of the intervention court order and other requirements of probation or suspension of sentence will result in the record of the criminal conviction or adjudication being expunged. However, no expunction of any implied consent violation shall be allowed.

CHAPTER 25

COMMITMENTS TO THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

CHAPTER 25

COMMITMENTS TO THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

§ 99-19-45 Commitment papers and probation orders:

The clerks of the circuit court of the counties in the State of Mississippi shall furnish the Mississippi Department of Corrections, within five (5) days after adjournment of court, a commitment paper showing the

name,
sex,
race and
social security number of the person convicted and
crime committed,

along with certified copies of the sentencing order and indictment, as well as any subsequent order entered by the court in such cause.

Commitment papers are sent to the department of corrections by the circuit clerk pursuant to Section 99-19-45. **Re: Refusing State Prisoners, Opinion No. 93-0832 (Miss. A. G. Jan. 12, 1994).**

Additionally, Miss. Code Ann. Section 99-19-45 (1972) requires commitment paperwork to contain the social security number of the person convicted. . . . With regard to release of social security numbers by local government bodies, previous opinions of this office have cited as authority Miss. Code Ann. Section 25-1-111 (1972), which requires state agencies to take reasonable steps to secure the social security number of individuals from disclosure to members of the general public. It continues to the opinion of this office that a local government public body should include in its public records policy a provision similar to that found in Section 25-1-111 for the protection of social security numbers in its possession. Accordingly, where a local government body has public records in its possession which it intends to place on the internet, and such public records contain both nonexempt information as well as social security numbers, it is our opinion that the public body should establish a policy requiring the social security numbers be redacted before the records are placed online. **Re: Public Records on Internet, Opinion No. 2008-00530 (Miss. A.G. Nov. 3, 2008).**

The clerks shall also furnish the Department of Corrections, within five (5) days after adjournment of such court, a certified copy of the probation order of an individual who is placed on probation under the supervision of the Division of Community Corrections of the department. Such order shall provide the

name of the person placed on probation,
crime,
term of sentence,
date of sentence,
period of probation,
sex,
race and
brief history of the crime committed.

As compensation for such services they shall receive the sum of Fifty Cents (50¢) for each transcript, and the sum shall be paid out of the treasury of the county, with the approval of the board of supervisors, on the filing of a bill for such service.

Commitment Form

§ 99-19-47 Commitment form:

The following form, to be furnished by the county, shall be used in transmitting the required data:

Commitment of _____ (insert name of person)
Circuit Court, County of _____.

To the Mississippi Department of Corrections:

You are hereby notified that at the _____ term, 2_____, of the circuit court, Judge _____ presiding, the following named person was tried, convicted and sentenced to a term in the State Penitentiary, as follows:

Name _____ Alias _____
Crime_____ Social Security No. _____
_____ Sex _____
Race _____
Appealed _____
Remarks:
_____
_____
_____

Dated _____, 2_____

_____ Clerk

Probation Form

§ 99-19-48 Probation:

The following form, to be furnished by the county, shall be used in transmitting the required data for any individual placed on probation under the supervision of the Division of Community Corrections of the Department of Corrections:

Circuit Court, County of _____.

To the Mississippi Department of Corrections:

You are hereby notified that at the _____ term, 2_____, of the circuit court, Judge _____ presiding, the following named person was tried, convicted and sentenced to a term in the State Penitentiary. The sentence was suspended and the person was placed on probation:

Name_____	Alias _____
Date of sentence _____	Crime_____
Term of sentence_____	Sex _____
Race _____	Appealed _____

Remarks: Give brief summary of crime committed.

_____
_____
_____

Dated _____, 2_____.

_____ Clerk.

CHAPTER 26

COMMITMENTS DUE TO INCOMPETENCE TO STAND TRIAL

CHAPTER 26

COMMITMENTS DUE TO INCOMPETENCE TO STAND TRIAL

Jurisdiction of Circuit Court

§ 41-21-63 Commitment; 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.

(b) If a circuit court with jurisdiction over unresolved felony charges enters an order concluding that the person is incompetent to stand trial and is not restorable to competency in the foreseeable future, the matter should be referred to the chancery court to be subject to civil commitment procedures under Sections 41-21-61 through 41-21-107. The order of the circuit court shall be in lieu of the affidavit for commitment provided for in Section 41-21-65. The chancery court shall have jurisdiction and shall proceed with civil commitment procedures under Sections 41-21-61 through 41-21-107.

(3) The circuit court shall have jurisdiction under Sections 99-13-7, 99-13-9 and 99-13-11.

(4) Before the release of a person referred for civil commitment under this section and committed under Sections 41-21-61 through 41-21-107, the Department of Mental Health must notify the district attorney of the county where the offense was committed. The district attorney must notify the crime victim or a family member who has requested notification under Section 99-43-35 and the sheriffs of both the county where the offense was committed and the county of the committed person's destination.

§ 99-13-7 Acquittal for insanity; presumption of continued illness and dangerousness; restoration of sanity hearing; standard of proof; counsel; application of subsection:

(1) When any person is indicted for an offense and acquitted on the ground of insanity, the jury rendering the verdict shall state in the verdict that ground and whether the accused has since been restored to his sanity and whether he is dangerous to the community. If the jury certifies that the person is still insane and dangerous, the judge shall order him to be conveyed to and confined in one of the state psychiatric hospitals or institutions.

(2) There shall be a presumption of continuing mental illness and dangerousness of the person acquitted on the ground of insanity. The presumption may be challenged by the person confined to the state psychiatric hospital or institution and overcome by clear and convincing evidence that the person has been restored to sanity and is no longer dangerous to the community. The court ordering confinement of the person to a state psychiatric hospital or institution shall conduct the hearing to determine whether the person has been restored to sanity and is no longer dangerous to the community. The person shall have the right to counsel at the hearing and if the person is indigent, counsel shall be appointed. The provisions of this subsection shall not apply to a person found by the jury to have been restored to sanity and no longer a threat to the community.

> ***See* § 41-21-88 Release of person acquitted of criminal charge by reason of insanity; court order requirement; notification of sheriffs and victims:**
>
> > A person committed pursuant to Section 99-13-7 shall not be released for any reason without order of the court having confined the person. Prior to release, the sheriff of the county where the offense was committed, the sheriff of the county of the committed person's destination and the crime victim or an immediate family member shall be notified of the release.

§ 99-13-9 Acquittal for intellectual disability:

When any person is indicted for an offense and acquitted on the ground of having an intellectual disability, the jury rendering the verdict shall state in the verdict that ground and whether the accused constitutes a danger to life or property and to the peace and safety of the community. If the jury certifies that the person with an intellectual disability is dangerous to the peace and safety of the community or to himself, the court shall immediately give notice of the case to the chancellor or the clerk of the chancery court, whose duty it shall be to proceed with the person

according to the law provided in the case of persons with an intellectual disability, the person with an intellectual disability himself being remanded to custody to await the action of the chancery court.

§ 99-13-11 Mental examinations of accused:

In any criminal action in which the mental competency of a person charged with a felony is in question, the circuit or county court or judge in vacation on motion duly made by the defendant or the district attorney, or on the motion of the court or judge, may order the person to submit to a mental examination by a competent psychiatrist or psychologist selected by the court to determine his ability to make a defense; any cost or expense in connection with such mental examination shall be paid by the county in which the criminal action is pending.

Mental Competency Examination

MRCrP 12.1 provides:

(a) Mental Competency. There is a presumption of mental competency. In order to be deemed mentally competent, a defendant must have the ability to perceive and understand the nature of the proceedings, to communicate rationally with the defendant's attorney about the case, to recall relevant facts, and to testify in the defendant's own defense, if appropriate. The presence of a mental illness, defect, or disability alone is not grounds for finding a defendant incompetent to stand trial. If as a result of mental illness, defect, or disability, a defendant lacks mental competency, then the defendant shall not be tried, convicted, or sentenced for a criminal offense. . . .

MRCrP 12.2 states:

(a) Competency to Stand Trial or Be Sentenced. If at any time before or after indictment, the court, on its own motion or the motion of any party, has reasonable grounds to believe that the defendant is mentally incompetent, the court shall order the defendant to submit to a mental examination. . . .

(d) Contents of Motion; Order. The motion shall state the facts upon which the mental examination is sought. The mental examination shall be conducted by a competent psychiatrist and/or psychologist approved by the court.

(e) Medical and Criminal History Records. All available medical and criminal history records shall be provided to the examining mental health expert as and when ordered by the court. A certificate of compliance shall be filed with the court documenting that the records were submitted as ordered.

MRCrP 12.3 provides:

> (a) Grounds for Appointment. If the court determines that reasonable grounds for a mental examination exist, it shall appoint a competent psychiatrist and/or psychologist to examine the defendant and, if necessary, to testify regarding the defendant's mental condition. The court has discretion to appoint more than one (1) examiner.
>
> (b) Examination; Commitment. The court may order that a defendant be examined in an appropriate mental health facility, and it may commit a defendant to the Mississippi State Hospital or other appropriate mental health facility for no longer than reasonably necessary to conduct the examination if:
>
> (1) the defendant cannot be examined on an outpatient basis;
> (2) examination in an outpatient setting is unavailable; or
> (3) commitment for examination is indispensable to a clinically valid diagnosis and report.
>
> The examination and inpatient consultation shall be in the least restrictive appropriate setting.
>
> (c) Reports.
>
> (1) Opinion on Competency. A psychiatrist and/or psychologist appointed by the court pursuant to this Rule shall submit a report containing an opinion as to whether the defendant is competent, and the basis therefor. The report may also include additional findings and opinions concerning whether the defendant's mental condition creates a present danger to the defendant and/or others.
> (2) Cause and Treatment of Incompetency. If the opinion referenced in (c)(1) is that the defendant is incompetent under the standards in Rule 12.1, the report shall also state the psychiatrist's and/or psychologist's opinion of:
>
> (A) the condition causing the defendant's incompetency and the nature thereof;
> (B) the treatment, if any, required for the defendant to attain competency;
> (C) the most appropriate form and place of treatment, in view of the defendant's therapeutic needs and potential danger to the defendant and/or others, and an explanation of appropriate treatment alternatives;
> (D) the likelihood of the defendant's attaining competency under treatment and the probable duration of the treatment; and
> (E) the availability of the various types of acceptable treatment in the local geographic area, specifying the agencies or the settings in which the treatment might be obtained and whether the treatment

would be available on an outpatient basis.

(3) Opinion on Mental Condition at Time of the Offense. In addition, if the court so orders, the report shall contain a statement of the psychiatrist's and/or psychologist's opinion of the following:

(A) the mental condition of the defendant at the time of the alleged offense;

(B) if the psychiatrist's and/or psychologist's opinion is that at the time of the alleged offense the defendant suffered from a mental disease or defect, the relation, if any, of such to the alleged offense, including:

(I) whether the defendant knew the nature and quality of the defendant's actions; and

(ii) if so, whether the defendant knew that the actions were wrong.

and

(C) such other matters as the court may deem appropriate.

(4) Opinion on Intellectual Disability in Death Penalty Cases. In addition, if the court so orders in a death penalty case, the report shall contain a statement of the psychiatrist's and/or psychologist's opinion as to whether the defendant is intellectually disabled and, if so, to what extent.

(d) Additional Expert Assistance. For good cause shown, the court may appoint additional experts and order the defendant to submit to physical, neurological, psychiatric, or psychological examinations, if necessary for an adequate determination of the defendant's mental condition.

(e) Costs. Any cost or expense in connection with the court-ordered mental examination(s) shall be paid by the county in which such criminal action originated.

MRCrP 12.4 states:

(a) Generally. The reports of experts made pursuant to Rule 12.3 shall be submitted to the court clerk within ten (10) working days of the completion of the examination. All original reports shall be filed with the clerk, under seal. Upon receipt, the clerk shall copy and distribute the expert's report to the trial judge and to defense counsel. Defense counsel may redact any statements of the defendant (or summaries thereof) concerning the offense charged. A copy of the redacted report must be returned to the clerk within five (5) working days of its receipt and made available to the State. Any dispute regarding the extent of redaction shall be resolved by the trial judge. . . .

Finding of Incompetence

MRCrP 12.5 provides:

> (a) Hearing. After submission of the reports, the court, upon its own motion or the motion of any party, shall promptly hold a hearing to determine the defendant's competency. . . .
>
> (d) Finding of Incompetence. If the court finds that the defendant is incompetent to stand trial, then the court may commit the defendant to the Mississippi State Hospital, other appropriate mental health facility, or other place of treatment, either inpatient or outpatient, based on the report of a psychiatrist or psychologist pursuant to Rule 12.3(c)(2)(C) and (E). The order of commitment shall be filed with the court clerk and shall require that the defendant be examined by staff psychiatrist(s) and/or psychologist(s), and a written report be furnished to the court not less than every four (4) calendar months, stating:
>
> > (1) Whether there is a substantial probability that the defendant will become mentally competent to stand trial within the foreseeable future; and
> > (2) Whether progress toward competency is being made.
>
> (e) Release from Commitment. If, within a reasonable time after entry of a commitment order, there is neither a determination that there is a substantial probability that the defendant will become mentally competent to stand trial nor progress toward competency, the court shall order that civil proceedings as provided in Mississippi Code Section 41-21-61, et. seq., be instituted. Said proceedings shall advance notwithstanding that the defendant has criminal charges pending against him/her. The defendant shall remain in custody until determination of the civil proceedings.

CHAPTER 27

YOUTH COURT

CHAPTER 27

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 28

PROTECTION FROM DOMESTIC ABUSE

CHAPTER 28

PROTECTION FROM DOMESTIC ABUSE

Jurisdiction - Justice, County or Chancery Court

§ 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.

(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.

(4) A record shall be made of any proceeding in justice or municipal court that involves domestic abuse.

Petition is Filed

§ 93-21-7 Petition to seek relief; waiver of filing fees in domestic abuse cases; additional cost of court for order of protection; Domestic Violence Court Forms Fund:

(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.

(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.

§ 93-21-9 Contents of petition:

(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 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 Parties are Divorced

(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.

(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 Protective Order for a Child under Jurisdiction of the 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.

Request for 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.

General Provisions

(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.

(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.

(9) The Attorney General, in cooperation with the Mississippi Supreme Court and the Mississippi Judicial College, shall develop a standardized form petition to be used when requesting a domestic abuse protection order.

Notice & Hearing

§ 93-21-11 Notice and hearing; temporary ex parte orders; temporary ex parte protective order relief:

(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.

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.

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 Other relief; duration; amendment; title:

(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.

Appeals to Chancery Court

§ 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.

§ 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.

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, and 97-3-7(11) 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, 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. A separate copy of any order shall be provided to the sheriff's department TAC officers of the county of the issuing court. The copy may be provided in electronic format. Each qualifying protection order submitted to the Mississippi Protection Order Registry shall be automatically transmitted to the National Criminal Information Center Protection Order File. Failure of the clerk to enter the order into the registry or to provide a copy of the order to law enforcement shall have no effect on the validity or enforcement of an otherwise valid protection order.

Any information regarding the registration of a domestic violence protection order, the filing of a petition for a domestic violence protection order, or the issuance of a domestic violence protection order which is maintained in the Mississippi Protection Order Registry which would tend to reveal the identity or location of the protected person(s) shall not constitute a public record and shall be exempt from disclosure pursuant to the Mississippi Public Records Act of 1983. This information may be disclosed to appropriate law enforcement, prosecutors or courts for protection order enforcement purposes.

Domestic Violence Training Fund

§ 93-21-31 Domestic Violence Training Fund:

(1) There is hereby created in the State Treasury a special fund designated as the Domestic Violence Training Fund. The fund shall be administered by the Attorney General. Money remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund and any interest earned from the investment of monies in the fund shall be deposited to the credit of the fund. Monies appropriated to the fund shall be used by the Attorney General for the general administration and expenses of the Domestic Violence Division which provides training to law enforcement, prosecutors, judges, court clerks and other professionals in the field of domestic violence awareness, prevention and enforcement.

(2) The clerks of the various courts shall remit the proceeds generated by this act to the Department of Finance and Administration as is done generally for other fees collected by the clerks.

Foreign Protection Orders

§ 93-21-16 Protective orders from other jurisdictions; validity and enforcement:

(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.

Uniform Interstate Enforcement of Domestic Violence Protection Orders Act

Filing the Foreign Protection Order

§ 93-22-9 Registration of order:

(1) It is not required that any foreign protection order be registered in Mississippi; however, any individual may register a foreign protection order in this state on behalf of the individual or any protected person. To register a foreign protection order, an individual shall present a certified copy of the order to the chancery clerk's office of any county in this state.

(2) Upon presentation of a protection order, the chancery clerk shall enter the order into the Mississippi Domestic Abuse Protection Order Registry as provided in Section 93-21-25.

(3) At the time of registration, an individual registering a foreign protection order shall file an affidavit by the protected individual that, to the best of the individual's knowledge, the order is in effect at the time of the registration.

(4) The failure to register a foreign protection order pursuant to the provisions of this section shall have no effect on the validity or enforceability of the order by Mississippi law enforcement or courts.

Court Enforcement of the Foreign Protection Order

§ 93-22-5 Judicial enforcement of order:

(1) A tribunal of this state shall enforce the terms of a valid foreign protection order, including terms that provide relief that a tribunal of this state would lack power to provide but for this section. A tribunal of this state shall enforce a valid foreign protection order issued by a tribunal, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition, or motion filed by or on behalf of an individual seeking protection. A tribunal of this state may not enforce an order issued by a tribunal that does not recognize the standing of a protected individual to seek enforcement of the order. In a proceeding to enforce a foreign protection order, the tribunal shall follow the procedures of this state for the enforcement of protection orders.

(2) A tribunal of this state shall enforce the provisions of a valid foreign protection order which governs custody and visitation. The custody and visitation provisions of the order must have been issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state.

(3) A tribunal of this state may not enforce under this chapter an order or provision of an order with respect to support.

(4) A protection order is valid if it:

(a) Identifies the protected individual and the respondent;

(b) Is in effect at the time enforcement is being sought;

(c) Was issued by a tribunal that had jurisdiction over the parties and matter under the law of the issuing state; and

(d) Was issued after the respondent was provided with reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was given notice and afforded an opportunity to be heard within a reasonable time after the issuing of the order, consistent with the rights of the respondent to due process.

(5) A person authorized under the law of this state to seek enforcement of a foreign protection order establishes a prima facie case for its validity by presenting an order valid on its face.

(6) Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

(7) A tribunal of this state may enforce the provisions of a mutual foreign protection order which favor a respondent only if:

(a) The respondent filed a written pleading seeking a protection order from the tribunal of the issuing state; and

(b) The tribunal of the issuing state made specific findings in favor of the respondent.

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/form_categories/domestic-violence/

CHAPTER 29

RESERVED

CHAPTER 30

APPEALS TO CIRCUIT COURT

CHARTS

CHAPTER 30

APPEALS TO CIRCUIT COURT

Civil Appeals from Justice or Municipal Court to Circuit Court

UCRCCC 5.01, Appeals to be on the Record/Exceptions, states:

> Except for cases appealed directly from justice court or municipal court, all cases appealed to circuit court shall be on the record and not a trial de novo. Direct appeals from justice court and municipal court shall be by trial de novo.

UCRCCC 5.02, Duty to Make Record, states:

> In appeals on the record it is the duty of the lower court or lower authority (which includes, but is not limited to, state and local administrative agencies and governing authorities of any political subdivision of the state) to make and preserve a record of the proceedings sufficient for the court to review. Such record may be made with or without the assistance of a court reporter. The time and manner for the perfecting of appeals from lower authorities shall be as provided by statute.

UCRCCC 5.04, Notice of Appeal, states:

> The party desiring to appeal a decision from a lower court must file a written notice of appeal with the circuit court clerk. A copy of that notice must be provided to all parties or their attorneys of record and the lower court or lower authority whose order or judgment is being appealed. A certificate of service must accompany the written notice of appeal. The court clerk may not accept a notice of appeal without a certificate of service, unless so directed by the court in writing. In all appeals, whether on the record or by trial de novo, the notice of appeal and payment of costs must be simultaneously filed and paid with the circuit court clerk within thirty (30) days of the entry of the order or judgment being appealed. The timely filing of this written notice and payment of costs will perfect the appeal. The appellant may proceed in forma pauperis upon written approval of the court acting as the appellate court. The written notice of appeal must specify the party or parties taking the appeal; must designate the judgment or order from which the appeal is taken; must state if it is on the record or an appeal de novo; and must be addressed to the appropriate court.

UCRCCC 5.07, Procedure on Appeals by Trial De Novo, states:

In appeals by trial de novo, the circuit court clerk, upon the filing of the written notice of appeal, must enter the case on the docket, noting that it is an appeal with trial de novo. The appeal will proceed as if a complaint and answer had been filed, but the court may require the filing of any supplemental pleading to clarify the issues. All proceedings on an appeal de novo will be governed by the Mississippi Rules of Civil Procedure, where applicable, the Mississippi Rules of Evidence, and these Rules.

UCRCCC 5.08, Supersedeas, states:

The perfecting of an appeal, whether on the record or by trial de novo, does not act as supersedeas. In cases being appealed that involve a money judgment, the party against whom money judgment was rendered may post with the court clerk of the court acting as the appellate court a bond that is 125% of the money judgment, such bond to be approved by the circuit clerk. The posting of this bond shall automatically act as a supersedeas solely on the money judgment, but not any other part of the order or judgment. Upon application the court may reduce the amount of the supersedeas bond. In appeals from lower authorities, when the statute provides for automatic supersedeas, the statute shall govern. In all other cases the court may grant a supersedeas upon proof of the party requesting the same, applying the same standards as for a preliminary injunction. However, except in those cases in which the statute provides for automatic supersedeas, no supersedeas will be granted on appeals from a denial, revocation or suspension of a license to practice a profession or a trade. The court may grant an expedited hearing, may alter the briefing schedules, and may require the record to be expedited. In all cases in which a discretionary supersedeas is granted, the court may require a bond sufficient to protect the interests of the other parties.

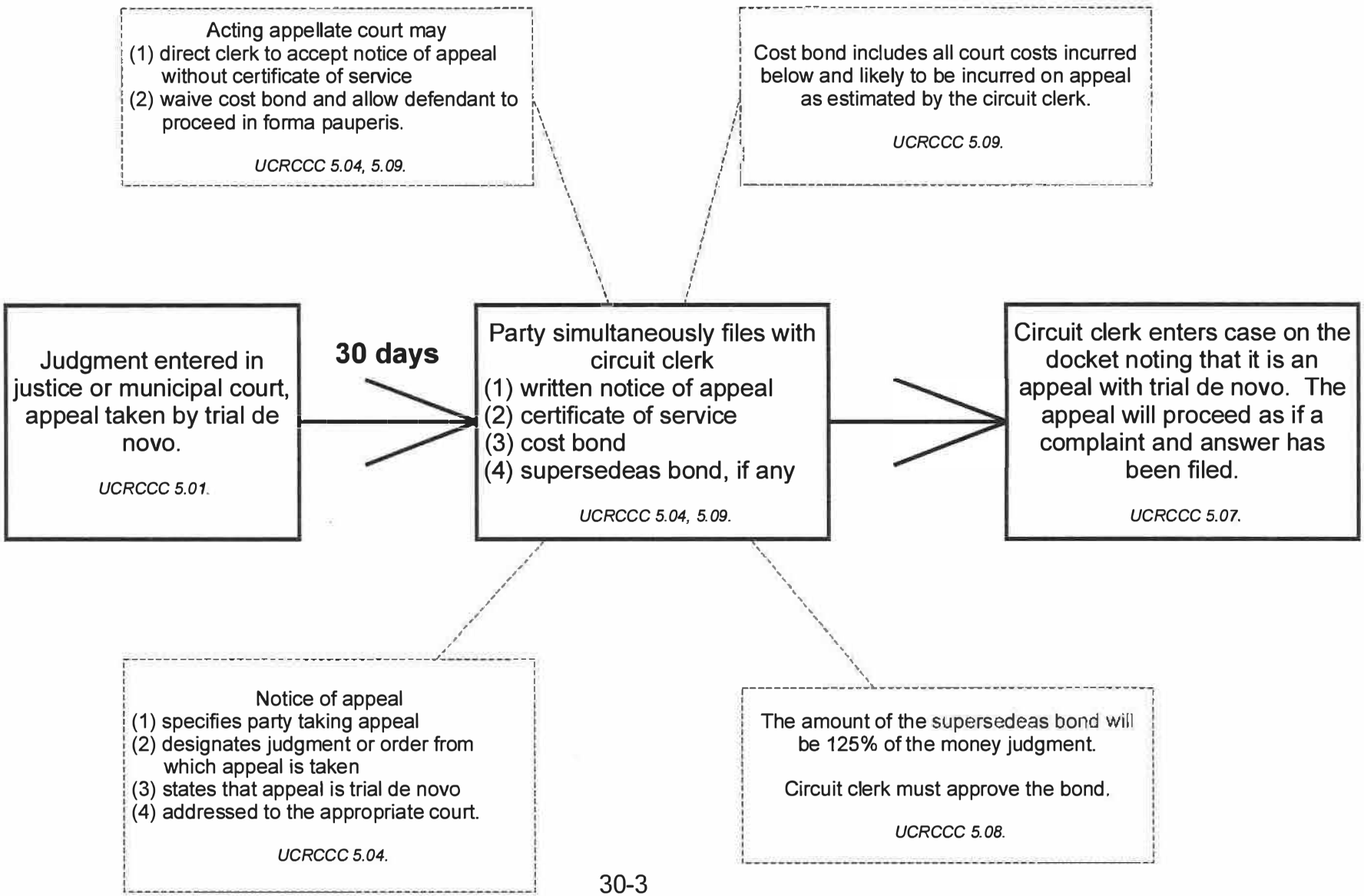
UCRCCC 5.09, Cost Bond, states:

In all appeals, unless the court allows an appeal in forma pauperis, the appellant or appellants shall pay all court costs incurred below and likely to be incurred on appeal as estimated by the circuit court clerk. Should a dispute arise, a party may apply to the court for relief.

UCRCCC 5.10, Writ of Certiorari, states:

The availability of writs of certiorari shall be as provided by the Constitution and Statutes of the State of Mississippi. Upon the filing of a record pursuant to a writ of certiorari, the case shall proceed as an appeal on the record.

CIVIL APPEALS FROM JUSTICE OR MUNICIPAL COURT



Checklist for Civil Appeals from Justice or Municipal Court to Circuit Court

Uniform Civil Rules of Circuit and County Court 5.01 through 5.09

Appellant files with circuit clerk within 30 days after entry of order or judgment (5.04):

_____ Written Notice of Appeal (5.04)
- _____ Specifies party taking the appeal
- _____ Designates the judgment or order from which appealed
- _____ States that appeal is for a trial de novo
- _____ Addressed to the appropriate court

_____ Certificate of Service (5.04)
(Clerk may not accept notice of appeal without a certificate of service unless directed by the court in writing.)

_____ Cost Bond (unless in forma pauperis)
(Includes all court costs incurred below and likely to be incurred on appeal as estimated by the circuit court clerk. (5.09))

_____ Notice of appeal and payment of costs must be simultaneously filed and paid. (5.04)

_____ Supersedeas Bond, if any
(In cases being appealed that involve a money judgment, the party against whom money judgment was rendered may post with the clerk of the court acting as the appellate court a bond that is 125% of the money judgment, such bond to be approved by the circuit clerk. The posting of this bond shall automatically act as a supersedeas solely on the money judgment, but not any other part of the order or judgment. (5.08))

Notice of Appeal

_____ Stamp original and all copies with the filing date

Copy of notice of appeal provided to:
- _____ All parties or their attorneys of record
- _____ Lower court

_____ Enter Case on Docket Noting that it is an appeal with trial de novo (5.07)

Civil Appeals from County Court to Circuit Court

UCRCCC 5.01, Appeals to be on the Record/Exceptions, states:

> Except for cases appealed directly from justice court or municipal court, all cases appealed to circuit court shall be on the record and not a trial de novo. . . .

UCRCCC 5.02, Duty to Make Record, states:

> In appeals on the record it is the duty of the lower court or lower authority (which includes, but is not limited to, state and local administrative agencies and governing authorities of any political subdivision of the state) to make and preserve a record of the proceedings sufficient for the court to review. Such record may be made with or without the assistance of a court reporter. The time and manner for the perfecting of appeals from lower authorities shall be as provided by statute.

UCRCCC 5.04, Notice of Appeal, states:

> The party desiring to appeal a decision from a lower court must file a written notice of appeal with the circuit court clerk. A copy of that notice must be provided to all parties or their attorneys of record and the lower court or lower authority whose order or judgment is being appealed. A certificate of service must accompany the written notice of appeal. The court clerk may not accept a notice of appeal without a certificate of service, unless so directed by the court in writing. In all appeals, whether on the record or by trial de novo, the notice of appeal and payment of costs must be simultaneously filed and paid with the circuit court clerk within thirty (30) days of the entry of the order or judgment being appealed. The timely filing of this written notice and payment of costs will perfect the appeal. The appellant may proceed in forma pauperis upon written approval of the court acting as the appellate court. The written notice of appeal must specify the party or parties taking the appeal; must designate the judgment or order from which the appeal is taken; must state if it is on the record or an appeal de novo; and must be addressed to the appropriate court.

UCRCCC 5.05, Filing of Record in Appeals on the Record, states:

> In appeals in which the appeal is solely on the record, the record from the lower court or lower authority must be filed with the court clerk within thirty (30) days of filing of the notice of appeal. Provided, however, in cases involving a transcript, the court reporter or lower authority 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.

UCRCCC 5.06, Briefs on Appeals on the Record, states:

> Briefs filed in an appeal on the record must conform to the practice in the Supreme Court, including form, time of filing and service, except that the parties should file only an original and one copy of each brief. . . .

UCRCCC 5.08, Supersedeas, states:

> The perfecting of an appeal, whether on the record or by trial de novo, does not act as supersedeas. In cases being appealed that involve a money judgment, the party against whom money judgment was rendered may post with the court clerk of the court acting as the appellate court a bond that is 125% of the money judgment, such bond to be approved by the circuit clerk. The posting of this bond shall automatically act as a supersedeas solely on the money judgment, but not any other part of the order or judgment. Upon application the court may reduce the amount of the supersedeas bond. In appeals from lower authorities, when the statute provides for automatic supersedeas, the statute shall govern. In all other cases the court may grant a supersedeas upon proof of the party requesting the same, applying the same standards as for a preliminary injunction. However, except in those cases in which the statute provides for automatic supersedeas, no supersedeas will be granted on appeals from a denial, revocation or suspension of a license to practice a profession or a trade. The court may grant an expedited hearing, may alter the briefing schedules, and may require the record to be expedited. In all cases in which a discretionary supersedeas is granted, the court may require a bond sufficient to protect the interests of the other parties.

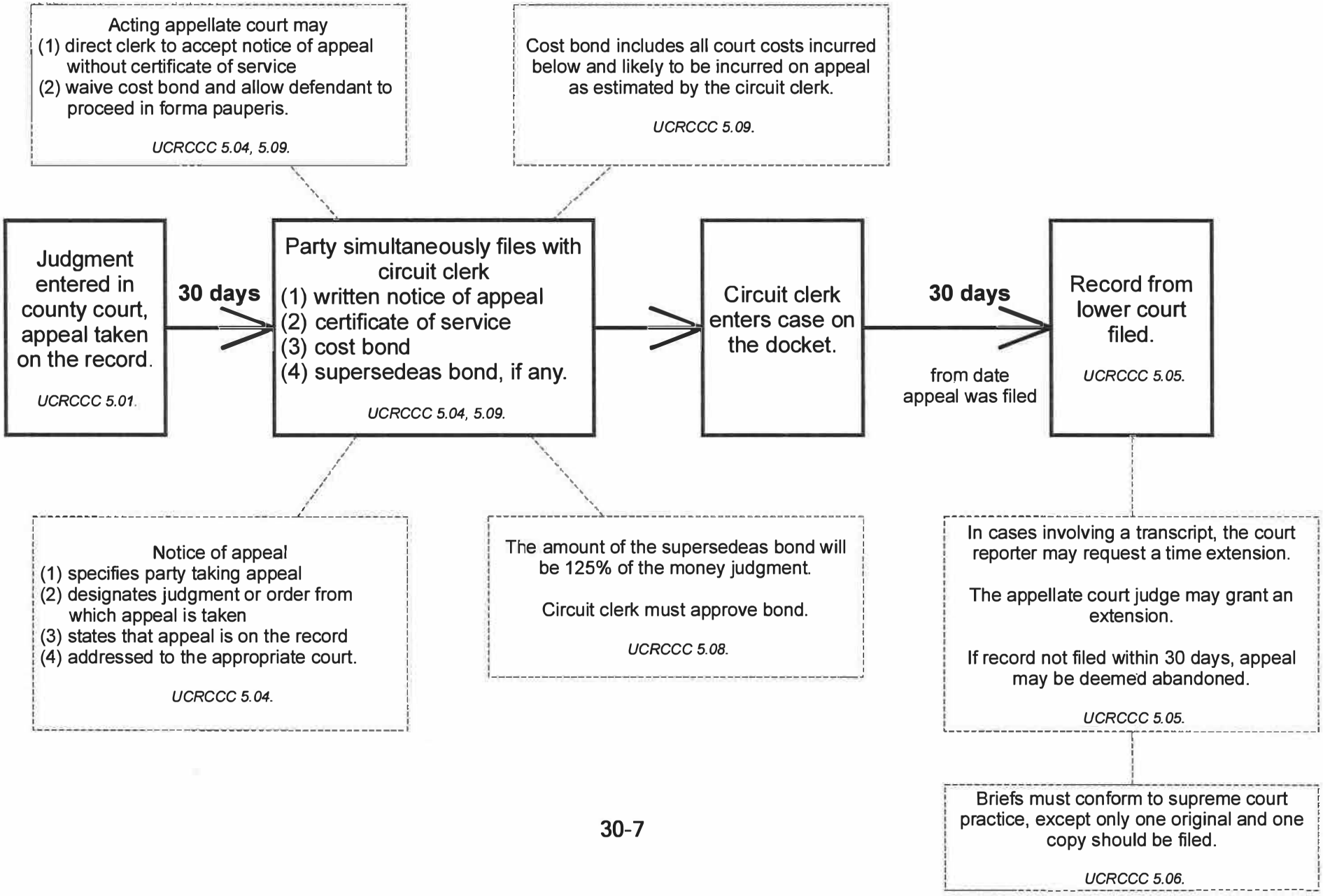
UCRCCC 5.09, Cost Bond, states:

> In all appeals, unless the court allows an appeal in forma pauperis, the appellant or appellants shall pay all court costs incurred below and likely to be incurred on appeal as estimated by the circuit court clerk. Should a dispute arise, a party may apply to the court for relief.

UCRCCC 5.10, Writ of Certiorari, states:

> The availability of writs of certiorari shall be as provided by the Constitution and Statutes of the State of Mississippi. Upon the filing of a record pursuant to a writ of certiorari, the case shall proceed as an appeal on the record.

CIVIL APPEALS FROM COUNTY COURT



Checklist for Civil Appeals from County Court to Circuit Court

Uniform Civil Rules of Circuit and County Court 5.01 through 5.09

Appellant files with the circuit clerk within 30 days after entry of order or judgment (5.04):

_____ Written Notice of Appeal (5.04)
- _____ Specifies party taking the appeal
- _____ Designates the judgment or order from which appealed
- _____ States that appeal is on the record
- _____ Addressed to the appropriate court

_____ Certificate of Service (5.04)
(Clerk may not accept notice of appeal without a certificate of service unless directed by the court in writing.)

_____ Cost Bond (unless in forma pauperis) (5.09)
(Includes all court costs incurred below and likely to be incurred on appeal as estimated by the circuit court clerk.)

_____ Notice of appeal and payment of costs must be simultaneously filed and paid. (5.04)

_____ Supersedeas Bond, if any (5.08)
(In cases being appealed that involve a money judgment, the party against whom money judgment was rendered may post with the clerk of the court acting as the appellate court a bond that is 125% of the money judgment, such bond to be approved by the circuit clerk. The posting of this bond shall automatically act as a supersedeas solely on the money judgment, but not any other part of the order or judgment.)

Notice of Appeal

_____ Stamp original and all copies with the filing date

Copy of notice of appeal provided to:
- _____ All parties or their attorneys of record
- _____ Lower court

_____ Enter case on the docket noting that it is an appeal on the record

Record of the Lower Court Proceedings

_____ Record filed within 30 days of filing of the notice of appeal, unless extension is granted by appellate court judge. (5.05)
(Failure to file record of lower court within 30 days or by extension date may be deemed abandonment of the appeal and the court may dismiss the same with costs to the appealing party.)

Briefs

_____ Briefs filed in an appeal on the record must conform to the practice in the supreme court, including form, time of filing and service, except that the parties should file only an original and one copy of each brief. (5.06)

Appeals from an Administrative Agency to Circuit Court

UCRCCC 5.01, Appeals to be on the Record/Exceptions, states:

> Except for cases appealed directly from justice court or municipal court, all cases appealed to circuit court shall be on the record and not a trial de novo. . . .

UCRCCC 5.02, Duty to Make Record, states:

> In appeals on the record it is the duty of the lower court or lower authority (which includes, but is not limited to, state and local administrative agencies and governing authorities of any political subdivision of the state) to make and preserve a record of the proceedings sufficient for the court to review.
>
> Such record may be made with or without the assistance of a court reporter.
>
> The time and manner for the perfecting of appeals from lower authorities shall be as provided by statute.

UCRCCC 5.03, Scope of Appeals From Administrative Agencies, states:

> On appeals from administrative agencies the court will only entertain an appeal to determine if the order or judgment of the lower authority:
>
> 1. Was supported by substantial evidence; or
>
> 2. Was arbitrary or capricious; or
>
> 3. Was beyond the power of the lower authority to make; or
>
> 4. Violated some statutory or constitutional right of the complaining party.

UCRCCC 5.04, Notice of Appeal, states:

> The party desiring to appeal a decision from a lower court must file a written notice of appeal with the circuit court clerk. A copy of that notice must be provided to all parties or their attorneys of record and the lower court or lower authority whose order or judgment is being appealed.
>
> A certificate of service must accompany the written notice of appeal. The court clerk may not accept a notice of appeal without a certificate of service, unless so directed by the court in writing.

In all appeals, whether on the record or by trial de novo, the notice of appeal and payment of costs must be simultaneously filed and paid with the circuit court clerk within thirty (30) days of the entry of the order or judgment being appealed.

The timely filing of this written notice and payment of costs will perfect the appeal. The appellant may proceed in forma pauperis upon written approval of the court acting as the appellate court.

The written notice of appeal must specify the party or parties taking the appeal; must designate the judgment or order from which the appeal is taken; must state if it is on the record or an appeal de novo; and must be addressed to the appropriate court.

UCRCCC 5.05, Filing of Record in Appeals on the Record, states:

In appeals in which the appeal is solely on the record, the record from the lower court or lower authority must be filed with the court clerk within thirty (30) days of filing of the notice of appeal.

Provided, however, in cases involving a transcript, the court reporter or lower authority 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.

UCRCCC 5.06, Briefs on Appeals on the Record, states:

Briefs filed in an appeal on the record must conform to the practice in the Supreme Court, including form, time of filing and service, except that the parties should file only an original and one copy of each brief. . . .

UCRCCC 5.07, Procedure on Appeals by Trial De Novo, states:

> In appeals by trial de novo, the circuit court clerk, upon the filing of the written notice of appeal, must enter the case on the docket, noting that it is an appeal with trial de novo.
>
> The appeal will proceed as if a complaint and answer had been filed, but the court may require the filing of any supplemental pleading to clarify the issues.
>
> All proceedings on an appeal de novo will be governed by the Mississippi Rules of Civil Procedure, where applicable, the Mississippi Rules of Evidence, and these Rules.

UCRCCC 5.08, Supersedeas, states:

> The perfecting of an appeal, whether on the record or by trial de novo, does not act as supersedeas. In cases being appealed that involve a money judgment, the party against whom money judgment was rendered may post with the court clerk of the court acting as the appellate court a bond that is 125% of the money judgment, such bond to be approved by the circuit clerk.
>
> The posting of this bond shall automatically act as a supersedeas solely on the money judgment, but not any other part of the order or judgment. Upon application the court may reduce the amount of the supersedeas bond. In appeals from lower authorities, when the statute provides for automatic supersedeas, the statute shall govern.
>
> In all other cases the court may grant a supersedeas upon proof of the party requesting the same, applying the same standards as for a preliminary injunction. However, except in those cases in which the statute provides for automatic supersedeas, no supersedeas will be granted on appeals from a denial, revocation or suspension of a license to practice a profession or a trade.
>
> The court may grant an expedited hearing, may alter the briefing schedules, and may require the record to be expedited. In all cases in which a discretionary supersedeas is granted, the court may require a bond sufficient to protect the interests of the other parties.

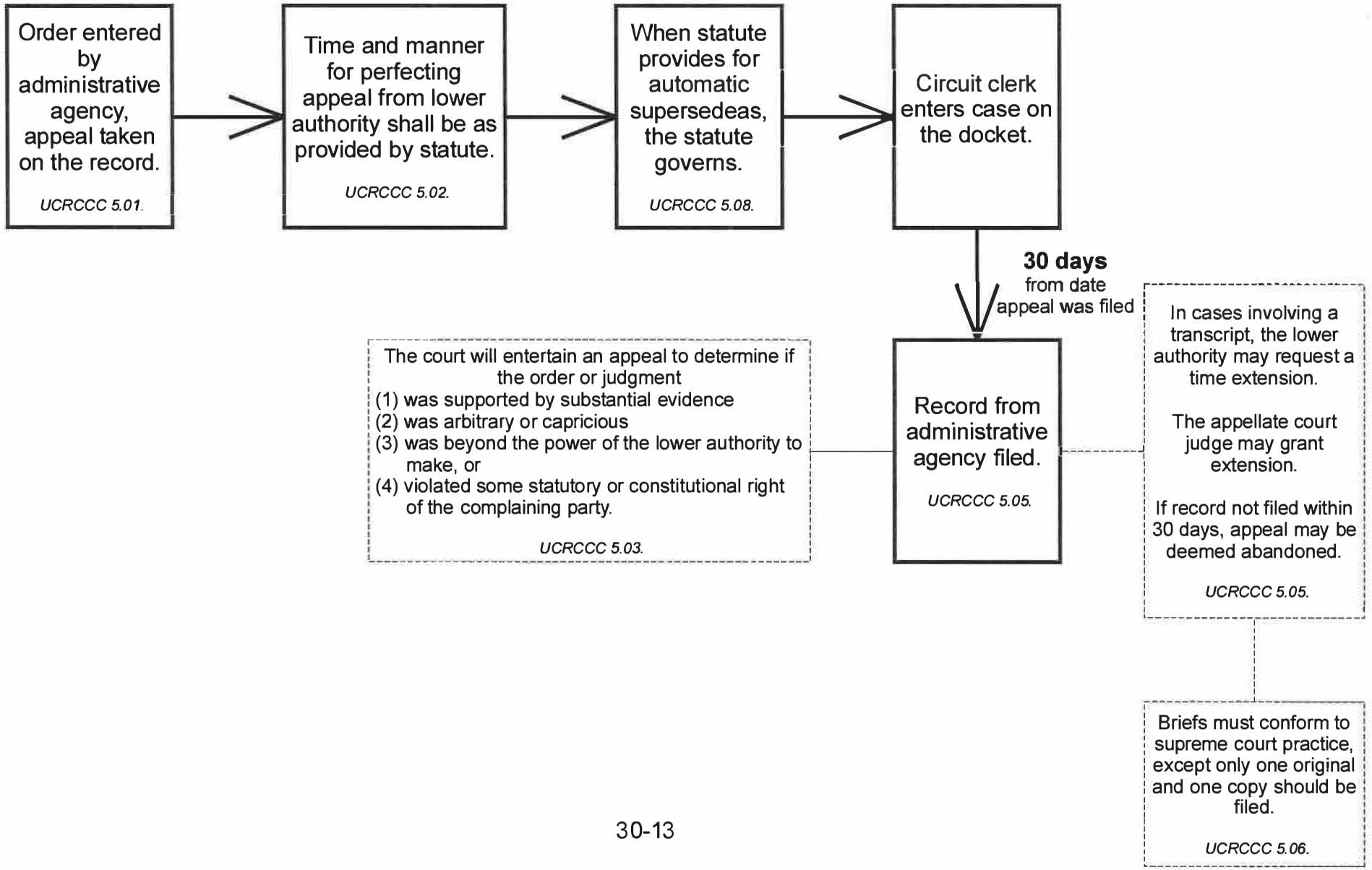
UCRCCC 5.09, Cost Bond, states:

> In all appeals, unless the court allows an appeal in forma pauperis, the appellant or appellants shall pay all court costs incurred below and likely to be incurred on appeal as estimated by the circuit court clerk. Should a dispute arise, a party may apply to the court for relief.

UCRCCC 5.10, Writ of Certiorari, states:

> The availability of writs of certiorari shall be as provided by the Constitution and Statutes of the State of Mississippi. Upon the filing of a record pursuant to a writ of certiorari, the case shall proceed as an appeal on the record.

APPEALS FROM ADMINISTRATIVE AGENCIES



Checklist for Appeals from an Administrative Agency to Circuit Court

Uniform Civil Rules of Circuit and County Court 5.01 through 5.09

The time and manner for the perfecting of appeals from lower authorities (administrative agencies) shall be as provided by statute. (5.02)

_____ Written Notice of Appeal (5.04)
- _____ Specifies party taking the appeal
- _____ Designates the administrative agency judgment or order from which appealed
- _____ States that appeal is on the record
- _____ Addressed to the appropriate court

_____ Certificate of Service (5.04)

Notice of Appeal

_____ Stamp original and all copies with the filing date

Copy of notice of appeal provided to:
- _____ All parties or their attorneys of record
- _____ Lower authority (administrative order)

_____ Enter case on the docket noting it is an appeal on the record

Record of the Lower Court Proceedings

_____ Record filed within 30 days of filing of the notice of appeal, unless extension is granted by appellate court judge. (5.05)
(Failure to file record of lower court within 30 days or by extension date may be deemed abandonment of the appeal and the court may dismiss the same with costs to the appealing party.

Briefs

_____ Briefs filed in an appeal on the record must conform to the practice in the supreme court, including form, time of filing and service, except that the parties should file only an original and one copy of each brief. (5.06)

Criminal Appeals from Justice or Municipal Court to Circuit Court

MRCrP 29.1, Notice of Appeal; Contents; Defects; Dismissal, states:

> (a) Notice of Appeal. Any person adjudged guilty of a criminal offense by a justice or municipal court may appeal to county court or, if there is no county court, to circuit court, by filing simultaneously a written notice of appeal, and both a cost bond and an appearance bond (or cash deposit), as provided in Rules 29.3(a) and 29.4(a), with the clerk of the circuit court having jurisdiction within thirty (30) days of such judgment.
>
> This written notice of appeal and posting of the cost bond and the appearance bond (or cash deposit) perfects the appeal. After the filing of the written notice of appeal, cost bond, and appearance bond (or cash deposit), all further correspondence concerning the case shall be mailed directly to the circuit clerk for inclusion in the file.
>
> > Section (a) requires the notice of appeal to be filed with the clerk of the circuit court within thirty (30) days of entry of the judgment appealed from. *See Murray v. State*, 870 So. 2d 1182, 1184 (Miss. 2004) (holding the thirty (30) day deadline in procedural rule governs over conflicting statute). Under section (a), and unlike Rule 4(e) of the Mississippi Rules of Appellate Procedure, pending post-trial motions do not extend the time for taking an appeal; nor is the time for filing a notice of appeal extended if the lower court judge stays execution of the judgment. **Cmt.**
>
> (b) Contents. The written notice of appeal shall specify the party or parties taking the appeal; specify the current residence address and the current mailing address, if different, of each party taking the appeal; designate the judgment or order from which the appeal is taken; be addressed to county or circuit court, whichever appropriate; and state that the appeal is taken for a trial de novo.
>
> (c) Defects in the Notice of Appeal; Dismissal. Upon a failure of a party to comply with the requirements of this rule as to content of the written notice of appeal, the court, on its own motion or on motion of a party, shall direct the clerk of the court to give written notice to the party in default, apprising the party of the nature of the deficiency.
>
> If the party in default fails to correct the deficiency within fourteen (14) days after notification, the appeal shall be dismissed by the clerk of the court. The county or circuit court shall promptly notify the lower court of any such dismissal.
>
> > Section (c) requires that the lower court be promptly notified of any dismissal, so that execution of its judgment may proceed. **Cmt.**

MRCrP 29.2, Record, states:

> Upon receiving written notice of appeal, and upon the defendant's compliance with Rules 29.3(a) and 29.4(a), the circuit clerk shall promptly notify the lower court and the appropriate prosecuting attorney.
>
> Within ten (10) days after receipt of such notice, the judge or clerk of the lower court shall deliver to the clerk of the circuit court a certified copy of the record and all original papers in the case.

MRCrP 29.3, Cost Bonds, states:

> (a) Cost Bonds. Unless excused by the county or circuit court by the making of an affidavit of poverty like that specified in Mississippi Code Section 99-35-7, every defendant who appeals under this rule shall post a cash deposit, or bond with sufficient resident sureties (or licensed guaranty companies) to be approved by the circuit clerk, for all estimated court costs incurred both in the appellate and lower courts (including, but not limited to, fees, court costs, and amounts imposed pursuant to statute).
>
> The amount of such cash deposit or bond shall be determined by the judge of the lower court, payable to the State in an amount of not less than One Hundred Dollars ($100.00) nor more than Twenty-Five Hundred Dollars ($2,500.00). Upon a bond forfeiture, the costs of the lower court shall be recovered after the costs of the appellate court.
>
> > ***See also*** **Miss. Code Ann. § 99-35-1** ("Any person appealing a judgment of a justice court or a municipal court under this section shall post bond for court costs relating to such appeal"). The purpose of the cost bond is to cover all estimated court costs, broadly defined, in both the trial and appellate court. Posting the cash deposit or bond stays execution of the judgment imposed by the lower court as it relates to fees, court costs, and amounts imposed pursuant to statute. **Cmt.**
> >
> > ***See*** **Mississippi Rule of Criminal Procedure 8.1. Definitions and Requirements:**
> >
> > > (d) Cash Deposit Bond. A "cash deposit bond" is an appearance bond secured by deposit with the clerk of security, in the form of a cash deposit or certified funds, in an amount set by the judge. The following requirements shall be met for a cash deposit bond:
> > >
> > > > (1) The accused must never have been convicted in any court of this state, another state or a federal court, of a

crime punishable by more than one (1) year's imprisonment, currently is not charged with or previously been convicted of escape, or had an order nisi entered on a previous bond;
(2) The amount of the bond must be set by the proper authority;
(3) A return date must be set by the proper authority;
(4) The accused must tender to the clerk of the circuit court ten percent (10%) of the amount of the bond as set, in cash, or $250.00 in cash, whichever is greater;
(5) The accused must sign an appearance bond guaranteeing his/her appearance and binding himself/herself unto the State of Mississippi in the full amount of the bond as set to be used in the case of default;
(6) The accused, by affidavit duly notarized, must swear in substantially the following form:

State of Mississippi
County of _____

Personally appeared before me, the undersigned authority in and for said county and state, _____, who after being duly sworn states:
(a) I have never been convicted in any court of this state, another state, or a federal court of a crime punishable by more than one (1) year's imprisonment. I am not charged with escape and I have never been convicted of escape. I have had no order nisi entered on a bail bond executed by me.
(b) The proper authority has set the sum of $ _____ as the amount of bail bond to be executed by me. This bond was set by _____.
(c) A return date has been set for this bond. Its return date is _____ and was set by _____.
(d) I have tendered to the clerk of the Circuit Court of _____ County, Mississippi, ten percent (10%) of the amount of said bond in cash, which sum is not less than $250.00. Said cash is my property. I authorize the clerk of said court to dispose of the same as follows: If the bond is

forfeited, the cash tendered will be paid by the clerk, less a fee of not more than $10.00, to the county, and the amount so paid will be credited on the bond forfeited. If I appear on the return day and a final disposition is made of the case, the amount deposited with the clerk, less a fee of not more than $10.00 to be retained by the clerk, will be disposed of as ordered by the court.
(e) I agree to report to the clerk of the court by telephone, or in person, and in writing on the first Monday of each month as to my current address and telephone number. If I fail to do so, I agree that the bond may be declared in default.

(7) The amount of money tendered under this rule shall not be disbursed to any person except on written order of the court. The money deposited with the clerk shall be disbursed in the following manner: first, to pay any court costs assessed against the defendant; second, to pay any restitution the defendant has been ordered to make; third, to pay any fines imposed against the defendant; fourth, to pay any assignment of the sum made by the defendant to defendant's attorney; and fifth, any refund to the defendant or other disbursements as allowed by the court. . . .

(b) Dismissal for Noncompliance. A defendant's failure to comply with Rule 29.3(a) shall be grounds for the court, on its own motion or on motion of a party, to dismiss the appeal, with costs. The county or circuit court shall promptly notify the lower court of any such dismissal.

Section (b) further provides that the lower court be promptly notified of the dismissal, so that execution of its judgment may proceed. **Cmt.**

MRCrP 29.4, Appearance Bonds, states:

(a) Appearance Bond. Unless excused by the county or circuit court by the making of an affidavit as specified in Mississippi Code Section 99-35-7, a cash deposit, or bond with sufficient resident sureties (or licensed guaranty companies) to be approved by the circuit clerk, shall be given and conditioned on appearance before the county or circuit court from day to day and term to term until the appeal is finally determined or dismissed.

The amount of such cash deposit or appearance bond shall be determined by the judge of the lower court.

> The filing and approval of an appearance bond stays imposition of the sentence of incarceration. *See* Miss. Code Ann. § 99-35-3 (providing for appearance bonds). **Cmt.**
>
> ***See* Mississippi Rule of Criminal Procedure 8.1. Definitions and Requirements:**
>
> > (b) Unsecured Appearance Bond. An "unsecured appearance bond" is an undertaking to pay a specified sum of money to the clerk of the circuit, county, justice, or municipal court, for the use of the State of Mississippi or the municipality, on the failure of a person released to comply with its conditions.
> > (c) Secured Appearance Bond. A "secured appearance bond" is an appearance bond secured by deposit with the clerk of security equal to the full amount thereof.

(b) Failure to Appear. If the defendant fails to appear at the time and place set by the court, the court may dismiss the appeal with prejudice and with costs, and order forfeiture of the appearance bond or cash deposit.

The county or circuit court shall promptly notify the lower court of any such dismissal.

(c) Time in Custody Credited. All time the defendant is in custody on the present charge shall be credited against any sentence imposed by the court.

> Under section (c), a defendant's sentence includes credit for time already spent in custody on the present charge. **Cmt.**

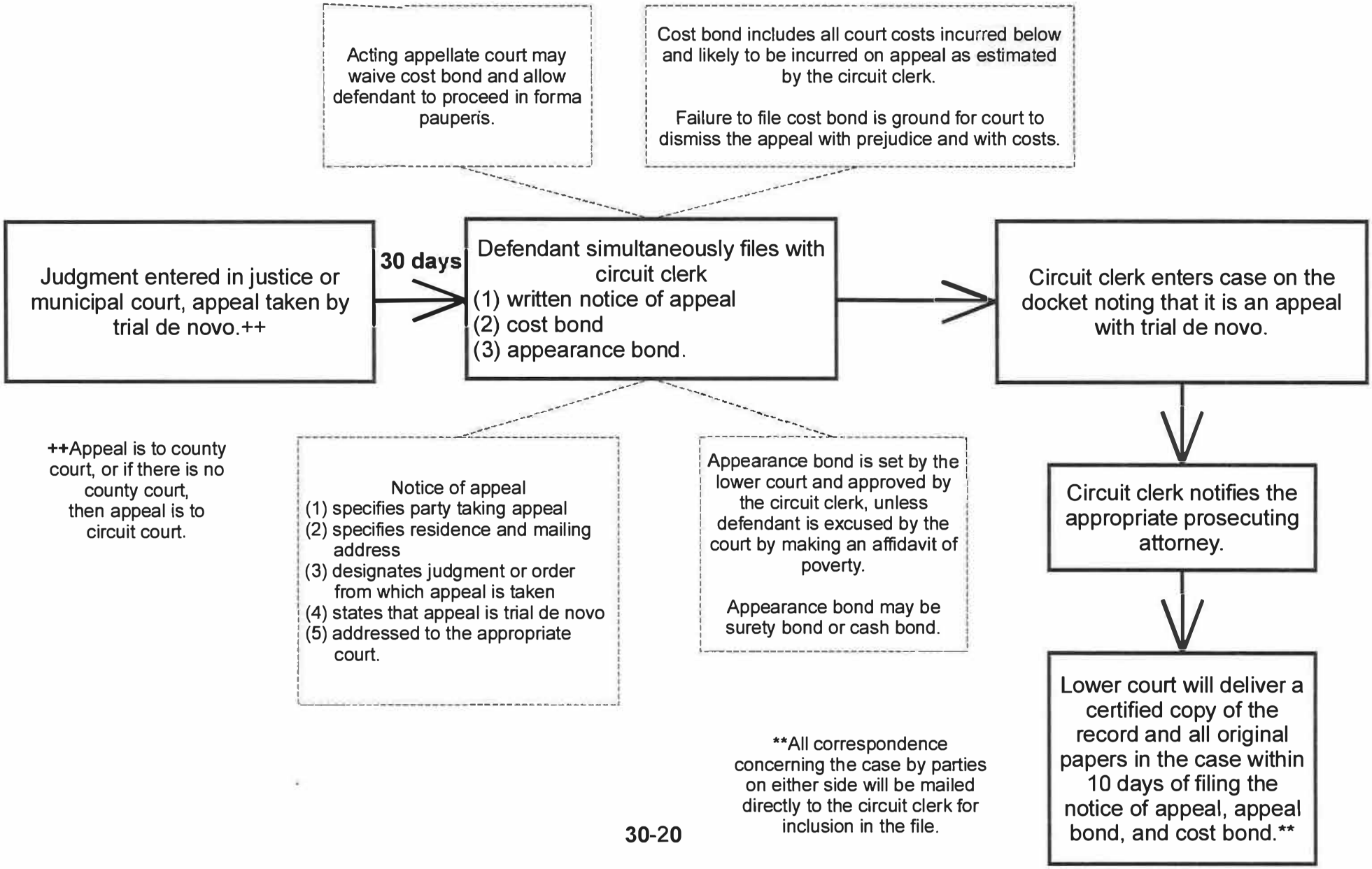
MRCrP 29.5, Proceedings, states:

Upon the filing with the circuit clerk of the written notice of appeal and bonds or cash deposits required by this Rule, unless excused therefrom, the prior judgment of conviction shall be stayed.

The appeal shall proceed as a trial de novo. In appeals from justice or municipal court, when the maximum possible sentence is six (6) months or less, the case may be tried without a jury.

> As under Rule 18.1(a)(3), a jury trial is discretionary if a defendant's maximum possible sentence is six (6) months or less. **Cmt.**

CRIMINAL APPEALS FROM JUSTICE OR MUNICIPAL COURT
Mississippi Rule of Criminal Procedure 29



Checklist for Criminal Appeals from Justice or Municipal Court to Circuit Court

Mississippi Rule of Criminal Procedure 29

Defendant files with the circuit clerk within 30 days of entry of judgment:

_____ Written notice of appeal to either county or circuit court
- _____ Specifies the party taking the appeal
- _____ Specifies current residence and mailing address
- _____ Designates the judgment or order from which appealed
- _____ States appeal is taken de novo
- _____ Addressed to either county or circuit court

_____ Cost bond (unless in forma pauperis)

_____ Appearance bond

Notice of Appeal

_____ Stamp original and all copies with the filing date

Copy of notice of appeal provided to:
- _____ All parties or their attorneys of record
- _____ Lower court

_____ Notify the appropriate prosecuting attorney

_____ Enter case on the docket noting that it is an appeal for trial de novo

Record of the Lower Court Proceeding

_____ Certified copy of the record with all the original papers in the case; from lower court judge/clerk within 10 days of appeal bond and cost bond

(Future correspondence will be mailed directly to the circuit clerk for inclusion in the file.)

Criminal Appeals from County Court to Circuit Court

MRCrP 30.1, Notice of Appeal; Contents; Proceedings, states:

> (a) Notice of Appeal. Any person adjudged guilty of a criminal offense by a county court, where the case was not a felony action transferred to that court from circuit court, may appeal to the circuit court having jurisdiction by filing written notice with the clerk of the circuit court within thirty (30) days of the entry of the final judgment. Extensions may be granted as provided in Mississippi Rule of Appellate Procedure 4(g).
>
> > Essentially, a defendant may appeal a conviction in county court to the circuit court that has jurisdiction by filing a written notice of appeal with the clerk of the circuit court within thirty (30) days after entry of the final judgment. This includes cases that originated in county court and cases appealed to county court from justice or municipal court under Rule 29.1. Once the notice of appeal is filed, the case proceeds according to the Mississippi Rules of Appellate Procedure. Appeal of a conviction in circuit court is to the Mississippi Supreme Court, whether the case originated in county court, or in justice or municipal court. **Cmt.**
>
> (b) Contents. The notice of appeal shall specify the party or parties taking the appeal; designate the judgment or order from which the appeal is taken; state that the appeal is to circuit court; and state that the appeal is taken on the record. The clerk, upon receiving written notice of appeal, shall immediately send notice to the prosecuting attorney. Thereafter, appeals shall proceed as if in the Supreme Court and in accordance with the Mississippi Rules of Appellate Procedure.
>
> (c) Proceedings. On appeal, legal arguments may be heard in any county within the jurisdiction of the circuit court and shall be considered solely on the record made in county court. If no prejudicial error be found, the circuit court shall affirm and enter judgment in like manner as affirmances in the Supreme Court. If prejudicial error be found, the circuit court shall reverse as is provided for reversals in the Supreme Court. If a new trial is granted, the cause shall be placed on the docket of the circuit court and a new trial held therein de novo.

MRCrP 30.2, Bond, states:

> Defendants who appeal a conviction in county court to circuit court shall be entitled to release pursuant to Rule 8.3. All time that the defendant has been in custody on the present charge shall be credited against any sentence imposed.
>
> > Rule 30.2 directs that Rule 8.3 governs release of defendants who appeal a conviction in county court to circuit court. A . . . defendant is entitled to

credit for time in custody on the present charge against any sentence imposed. **Cmt.**

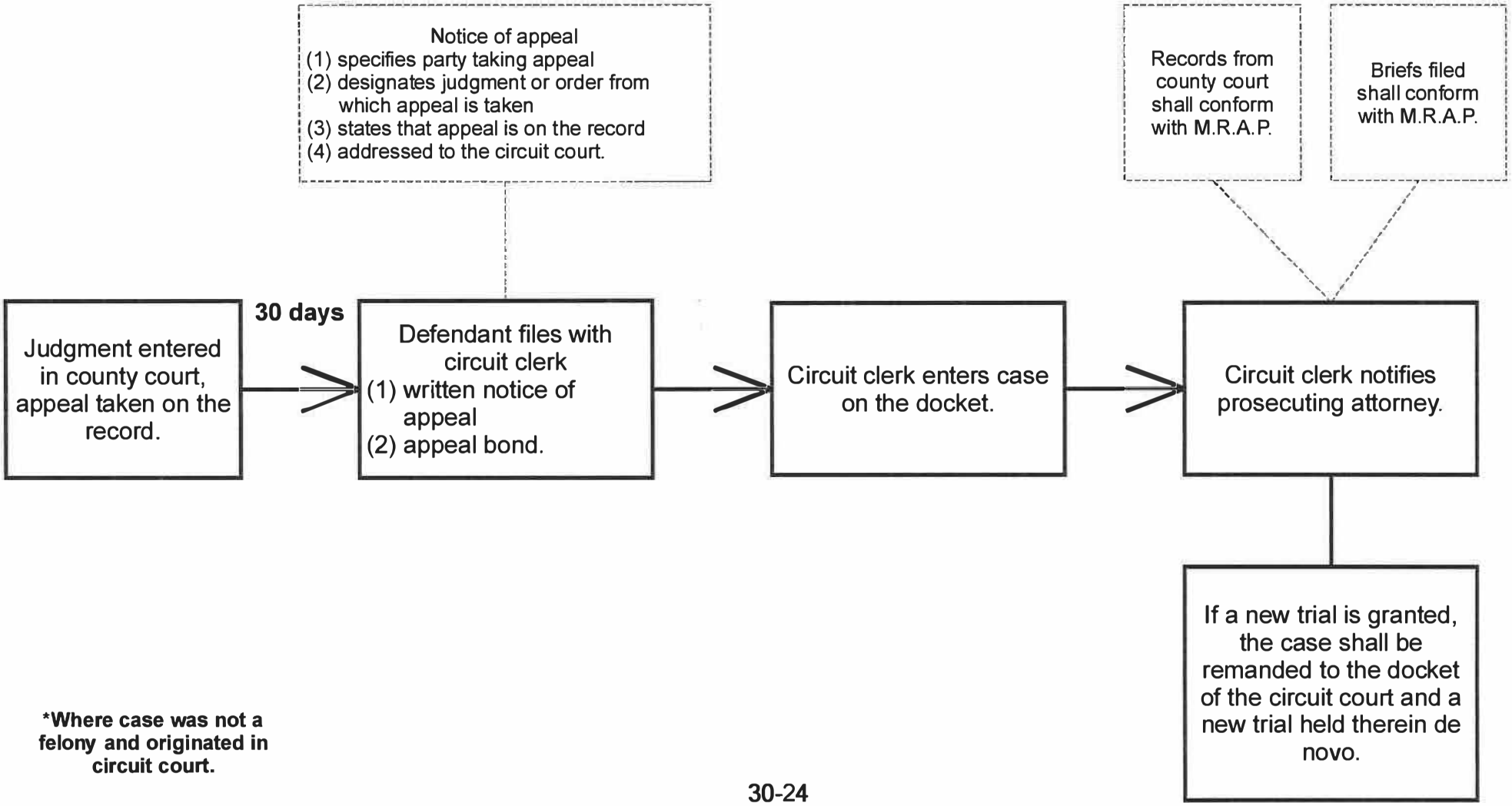
***See* Rule 8.3, Release after Conviction and Sentencing,** states:

> A convicted defendant shall be entitled to bail pending appeal as prescribed by Mississippi Code Section 99-35-115. A condition of the appeal bond shall be that the defendant will obey every order and judgment of the Supreme Court or Court of Appeals or every order and judgment of the trial court affirmed by the Supreme Court or Court of Appeals. The sheriff shall not accept the appeal bond unless the appeal has been perfected. If a defendant is admitted to bail pending appeal, the trial court clerk shall so notify the clerk of the Supreme Court.

MRCrP 30.3, Felony Transfers, states:

> Final judgments in felony cases transferred from circuit court to county court shall be appealed to the Supreme Court in the same manner as if the judgment were rendered in the circuit court.
>
> As provided in Rule 30.3, Rule 30.1 does not apply to felony cases transferred by a circuit court to a county court for disposition. Nor does Rule 30.1 apply to a case assigned to a county court judge pursuant to Mississippi Code Section § 9-9-35, which remains throughout a circuit court case. **Cmt.**

CRIMINAL APPEALS FROM COUNTY COURT*
Mississippi Rules of Criminal Procedure 30 & 8.3



***Where case was not a felony and originated in circuit court.**

Checklist for Criminal Appeals from County Court to Circuit Court

Mississippi Rule of Criminal Procedure 30

Defendant files with the clerk of the county court within 30 days of judgment:

_____ Written notice of appeal
- _____ Specifies the party taking the appeal
- _____ Designates the judgment or order from which appealed
- _____ States appeal is taken on the record
- _____ Addressed to the circuit court

_____ Appeal bond
- _____ Set by the county court judge or clerk unless excused by law from making a bond
- _____ Conditioned upon the appellant's appearance at trial

Notice of Appeal

_____ Stamp original and all copies with the filing date

Copy of notice of appeal provided to:
- _____ All parties or their attorneys of record
- _____ Lower court

_____ Notify the prosecuting attorney

_____ Enter case on the docket noting it is an appeal on the record

Records from county court

_____ Trial record & transcript shall conform with Mississippi Rules of Appellate Procedure

Briefs filed by the parties

_____ Briefs shall conform with Mississippi Rules of Appellate Procedure

Remittance of Fees & Fines

§ 99-35-13 Remittance of fines and forfeitures:

In the event there is an acquittal or the case is nolle prosequi, the order of the court shall direct that any fine or forfeiture paid in the lower court be remitted, and a certified copy of the said order shall be sufficient authority for the remittance of said fine or forfeiture by the board of supervisors in the event the case was appealed from a judgment of a justice of the peace, or by the governing authorities of a municipality in the event the case was appealed from a judgment of a mayor or police justice of a city, town or village.

> In August of 1995, Nathan Mitchell was arrested for various misdemeanors. He was convicted of public intoxication, resisting arrest and disturbing the peace by the Municipal Court of Gulfport on January 12, 1996. He received a suspended sentence and fines totaling $950. On February 12, 1996, Mitchell appealed the three convictions to the County Court of Harrison County. He obtained an appeal bond in the amount of $950 to cover the amount of the fine assessed in municipal court. Mitchell also paid, in cash, to the Circuit Clerk of Harrison County, the sum of $100 for each charge that he was appealing. In the records of the appeal, the three $100 payments were characterized by the circuit clerk as "filing fees." These are the charges at issue in this case. Mitchell also paid $20 as an "appearance bond fee." There is no explanation in the record of this last $20 assessment. No dispute regarding that fee is made and we ignore it in our analysis. A trial in county court was conducted on May 28 and 29, 1997. Mitchell was found not guilty on each charge. The $20 appearance bond fee was refunded. Mitchell also demanded that the three $100 "filing fees" be returned, but the circuit clerk initially denied the request. Later this charge was refunded after Mitchell's lawyer made demand. On April 7, 1998, Mitchell brought suit to challenge on statutory and constitutional grounds the clerk's practice of requiring the $100 payment on appeals from municipal to county court. The defendants' summary judgment motion was granted. Mitchell appealed. . . . The trial court found that the $100 charged by the circuit clerk had long been referred to within the clerk's office as a "filing fee," the designation having predated this clerk's service. . . . [In] order to docket an appeal from a criminal case that commenced in municipal court, a $100 "fee" had to be paid. The trial court held that charging a filing fee for a criminal appeal would be improper, relying on section 25–7–13. The Supreme Court has held that the circuit clerk should not charge the filing fee under section 25–7–13 for docketing an appeal from a lower tribunal as opposed to filing a complaint. In *Staples*, the only relief given was a refund of the fee. The "fee" in Mitchell's criminal appeal has already been refunded. However, because of Mitchell's claim of an

improper even if temporary violation of his rights under color of state law, we examine the propriety of the clerk's requiring this payment. . . . We agree with Mitchell that when the lower court accepted the circuit clerk's argument that the payment of a $100 “fee” should be transformed into the required cost bond, that the new creation was not without its blemishes. Among the differences between what occurred in this case and the provisions of the rule are that this clerk required the payment of $100 in cash, while Rule 12.02 requires a bond of not less than $100 nor more than $1,000, with the option of payment in cash. Mitchell has never argued that this distinction creates his constitutional claim. Secondly, the amount of the bond is to be set on a case-specific basis by the municipal judge, not set as a universal amount by the circuit clerk. However, the cost bond must be delivered to the circuit clerk. If the municipal court does not obtain the cost bond, we find no taking of property without due process of law if the circuit clerk then requires that it be provided as opposed to the circuit clerk's demanding that the municipal judge demand the bond. . . . The trial court found that the clerk had been collecting a proper charge but doing so in an improper manner. The proof is weak that the circuit clerk realized that security for costs was needed. There is some suggestion that the clerk may have been mechanically applying the filing fee requirement for a complaint to the filing of an appeal. From Mitchell's viewpoint, a certain serendipity factor is unfairly in play. We find no unfairness. Even if it is fortuitous for the circuit clerk that this other security was needed and was not being collected, the need was no less real for an appellant. If the wrong label was used to collect what had to be collected, injury did not occur. The court further found that court costs are not subject to an automatic refund even if the municipal court defendant is acquitted on appeal. That issue is not before us since the circuit clerk refunded the entirety of the $300 upon demand by Mitchell's counsel. We agree that since Mitchell could not appeal without posting a bond of between $100 and $1,000 to secure costs, this $100 per conviction fee may properly be recast as the necessary bond. As did the circuit court judge in granting summary judgment, we find relevant that Rule 12.02 does not permit the circuit clerk to docket the appeal without the bond. Cash is a possible form of bond. . . . Even without a specific provision in the rule, there is a statute that every “court shall have control over all proceedings in the clerk's office,” and is to exercise that control in a manner consistent with the Rules of Civil Procedure. The circuit clerk is the clerk for a county court, and therefore for purposes of proceedings then occurring in his court, a county judge could exercise this authority. The reference in section 9–1–29 to the civil rules certainly cannot mean that the clerk is uncontrollable in criminal cases. Instead, the civil rules only provide analogous procedures for exercising control. One civil rule states that any action of the clerk that is normally done without court order “may be

suspended or altered or rescinded by the court upon cause shown." Under the express authority of section 9–1–29, such a motion could have been filed in this case. Regardless of the statute, considering a motion such as this is within the powers of the court. A trial court has inherent power to manage its docket and protect the integrity of the judicial process. Specifically addressing the inherent powers of circuit courts sitting in review of a justice court decision about an appeal bond, the Supreme Court held that the circuit court should hear evidence on the appellant's complaints about the bond. Also of importance is that the Supreme Court has concluded that a criminal defendant may file a motion with the circuit court on appeal from a justice or municipal court to correct deficiencies in his appearance bond. We find that the same right exists under section 99–35–1 for complaints about the cost bond. If a litigant has complaints about the validity of demands being made by the court's clerk, the clerk's court is available to hear them. Therefore, we reject Mitchell's argument that he was without remedy in the initial appeal. Had such a complaint been made and these issues thoroughly explored, the proper relief would have been to have security for costs imposed from $100 to $1,000 in amount and not to collect a "fee." The effect would have been very close to what the circuit clerk had already required but would have had an accurate label. According to the trial court's opinion in this case, the circuit clerk has altered her procedures to conform to Rule 12.02. We find no injury to Mitchell in this case. ***Mitchell v. Parker*, 804 So. 2d 1066, 1068-72 (Miss. Ct. App. 2001) (citations omitted) (discussing prior versions of rules).**

The general statute authorizing fees provides that the clerk of the circuit court should charge for the following services:

> (a) Docketing, filing, marking and registering each complaint, petition, indictment and all answers, claims, orders, continuances and other papers filed therein, issuing each writ, summons, subpoena or other such instruments and swearing witnesses, taking and recording bonds and pleas, recording judgments, orders, fiats and certificates. . . .

We hold that this section does not authorize the circuit clerk to charge the customary filing fee in cases where, as here, the circuit court is acting as an appellate court. Accordingly, we order the clerk to refund the charge of $44.50. ***Staples v. Blue Cross & Blue Shield of Mississippi, Inc.*, 585 So. 2d 747, 749–50 (Miss. 1991) (citing Miss. Code Ann. § 25–7–13).**

CHAPTER 31

APPEALS TO THE MISSISSIPPI SUPREME COURT

APPENDIX

CHAPTER 31

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 31

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

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[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.