

Serial: 249597

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99015-SCT

FILED

DEC 07 2023

IN RE: LOCAL RULES

OFFICE OF THE CLERK
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COURT OF APPEALS

EN BANC ORDER

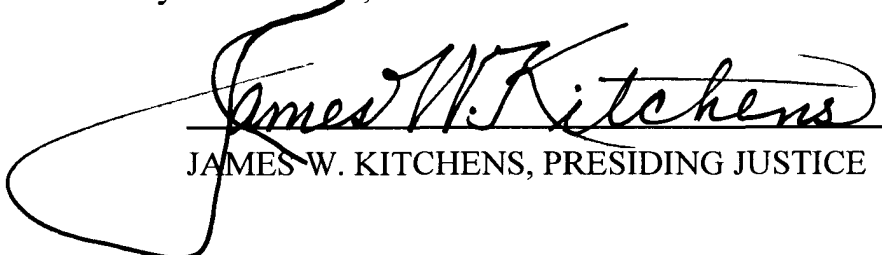
Before the Court, *en banc*, is the Motion for Approval of Local Rule filed by the Circuit Court Judges for the First Circuit Court District of Mississippi.

After due consideration, we find that the motion should be, and it hereby is, granted.

IT IS, THEREFORE, ORDERED that the motion is granted. Local Rule 10 for the First Circuit Court District of Mississippi, attached as Exhibit A, is approved and effective upon entry of this order.

IT IS FURTHER ORDERED that the Clerk of this Court shall spread this order upon the minutes of the Court and send a certified copy to West Publishing Company for publication in the advance sheets of *Southern Reporter, Third Series (Mississippi Edition)*, and in the next edition of the *Mississippi Rules of Court*.

SO ORDERED, this the 7th day of December, 2023.


JAMES W. KITCHENS, PRESIDING JUSTICE

ALL JUSTICES AGREE.

EXHIBIT A

LOCAL RULES FOR FIRST CIRCUIT COURT DISTRICT OF MISSISSIPPI

RULE 10. APPOINTMENT OF COUNSEL FOR INDIGENT CRIMINAL DEFENDANTS

Pursuant to Rule 7.2(a)(1) of the Mississippi Rules of Criminal Procedure, the Court hereby establishes a procedure for the appointment of counsel for each indigent defendant entitled thereto:

- (a) **Order of Appointment.** When the Court¹ has determined that a person is indigent, counsel is appointed and an order shall be entered to that effect in MEC and/or the court file.
- (b) **Appointment of Public Defender.** In justice courts that have a public defender system, the justice court public defenders shall represent all persons entitled to appointed counsel whenever authorized by law and able to do so. In municipal courts that have a public defender system, the municipal court public defenders shall represent all persons entitled to appointed counsel whenever authorized by law and able to do so. In circuit courts that have a public defender system, the circuit court public defenders shall represent all persons entitled to appointed counsel whenever authorized by law and able to do so. If the public defenders cannot represent the defendant, a private attorney shall be appointed.
- (c) **Appointment of Private Attorneys.**
 - 1. Appointments of private attorneys shall be made on an impartial and equitable basis. The appointments shall be distributed among the attorneys on a rotation system. Cases shall be assigned to attorneys of sufficient experience, skill, and competence to render effective assistance of counsel to defendants. Complex cases shall be assigned to attorneys with sufficient levels of experience and competence to provide effective representation. Less-experienced attorneys should be assigned cases which are within their capabilities, but should be given the opportunity to expand their experience under supervision.

¹ The “Court” as used in this rule is the municipal court, the justice court, or the circuit court.

2. The Court will maintain a court-appointed attorney list from which attorneys shall be appointed to represent indigent defendants. Attorneys may contact the Court Administrator and request that they be placed on, or removed from, the court-appointed list. The Court will make the court-appointed list of attorneys available upon request.
3. The Court will generally attempt to appoint attorneys from the court-appointed attorney list on a rotational basis, subject to the Court's discretion to make exceptions due to:
 - i. the nature and complexity of the case;
 - ii. an attorney's experience;
 - iii. the nature and disposition of the defendant;
 - iv. a language or communication consideration;
 - v. a conflict of interest;
 - vi. the availability of an attorney, taking into consideration an immediate need to address issues involved in the case;
 - vii. geographic considerations;² and
 - viii. other relevant factors that may be involved in a specific case.
4. If the Court, in its sole discretion, varies from the rotational basis, it may appoint any qualified attorney, whether or not the attorney is on the court-appointed list. However, a circuit court public defender shall not be appointed as defense counsel in the municipal or justice courts unless he or she is on the court-appointed list. If an attorney on the court-appointed list is appointed outside the rotational basis established, that attorney's name shall be placed at the end of the rotation.
5. The Court will monitor attorney performance on a continuing basis to ensure the competency of attorneys on the list. An attorney may be removed from the appointment list at the discretion of the Court. If an attorney is under consideration for removal from the list, written notification will be given indicating the concerns with his or her performance which give rise to consideration for removal, and the attorney will be given the opportunity to respond—in writing or in person—before a final decision is made. An attorney who has been

² The Court may appoint an attorney who is in the closest geographic proximity to the Court before considering the appointment of another attorney in order to avoid the costs of travel time for attorneys and mileage expenses, for the convenience of the defendant in consulting with a local attorney, and for the convenience of the Court in scheduling cases.

removed from the list may be considered for reinstatement after the deficiencies contained in the notice have been resolved.

- (d) **Compensation.** An attorney appointed to represent an indigent defendant is entitled to compensation for services rendered as provided by contract with the municipality or county or as provided by law.
- (e) **Expenses.** As used herein, the term “compensation for services” shall include any reasonable expenses necessarily incurred by appointed counsel in defense of an indigent client, including fees and expenses of experts or professional persons, provided that the incurring of such expenses has been approved in advance by the presiding judge, with such approval being within the sound discretion of the Court.
- (f) **Continuing Legal Education.** The public defenders and private attorneys appointed through the rotational system shall complete annual training or educational programs in the area of criminal defense accredited by the Mississippi Office of State Public Defender and the Mississippi Commission on Continuing Legal Education. Part-time defenders shall complete six (6) hours of such training and full-time defenders shall complete twelve (12) hours of such training.
- (g) **Continuity of Appointment.** Any attorney who is appointed to represent a person in municipal court or justice court on a felony charge shall continue representing that person until an indictment or information is filed in circuit court and new counsel is appointed by the circuit court.³
 - 1. The municipal court or justice court shall conduct the initial appearances and preliminary hearings on the felony charge and hear motions for bond and motions to reduce bond (if municipal or justice court granted or denied bond) filed by the defendant or his/her attorney *prior to indictment or information.*
 - 2. The attorney appointed to represent an indigent person in circuit court shall remain as counsel until withdrawal is granted and new counsel is substituted. *See MRCrP 7.2(d).*
- (h) **Notice of Appointment.** Any attorney who is appointed to represent a person in municipal court or justice court on a felony charge shall notify the Circuit Court Administrator of that appointment within five (5) days of the date the defendant is

³ This rule does not limit a municipal court’s or justice court’s authority to enter an order substituting counsel prior to indictment.

bound over for consideration by the grand jury. Counsel shall notify the Circuit Court Administrator of the date of arrest, the charges, and bond status or conditions, if any.