

LOCAL RULES
FOR
_____ CIRCUIT COURT DISTRICT OF MISSISSIPPI

RULE __. PROCEDURE FOR APPOINTMENT OF COUNSEL FOR INDIGENT
DEFENDANTS

- a) There shall be a designated public defender [or indigent defense coordinator] for each county in the district. The office or offices of public defender in the district shall be established in accordance with Miss. Code Sec. 25-32-1 through 25-32-19. The public defender [or indigent defense coordinator] shall have practiced criminal litigation for five (5) years immediately preceding the appointment. The public defender shall represent all indigent felony defendants, personally or by an assistant if assistant public defenders are authorized, unless there is a conflict of interests or an excessive workload. Contact information for the public defender [or indigent defense coordinator] shall be publicly available at each court and detention facility.
- b) If the public defender [or indigent defense coordinator] is unable to represent a client, the public defender [or indigent defense coordinator] shall assign the case to a private attorney from a list of conflict attorneys prior to the initial appearance or within 24 hours of determining the need for assignment. The list of attorneys shall be compiled by the public defender [or indigent defense coordinator]. Assignments shall be made in a manner that is fair and equitable to all members of the bar. Cases shall be assigned based on attorney's ability, training, and experience. No case that includes a violent felony charge carrying a sentence of more than twenty (20) years shall be assigned to an attorney who has practiced criminal litigation for less than five (5) years unless the attorney is directly supervised by an attorney with requisite experience.
- c) Compensation for indigent defense providers shall be sufficient to ensure the recruitment and retention of qualified and skilled advocates taking into consideration the rates being paid to prosecutors performing similar functions, overhead costs, and prevailing attorney fees in the jurisdiction. The public defender and assistant public defender compensation shall be set forth in the order establishing the office. Conflict attorneys shall be compensated [on a part-time contract basis at a rate of \$ _____ per month for up to ____% of fulltime workload] [at an hourly rate of \$ _____ pursuant to sections 99-15-15 through 99-15-21].
- d) When a person is arrested and charged with a felony the arresting authority, or the sheriff, shall ascertain if the person is represented by counsel. If the person does not have legal counsel, he shall be provided an opportunity to sign an affidavit of indigence. If a person makes an initial appearance without counsel, he shall be provided with an opportunity to sign the affidavit at that time. The affidavit shall be transmitted to the public defender. The public defender shall assume representation of the person unless unable to do so because of conflict of

interest or excessive workload. If the public defender cannot assume representation, he shall assign other counsel as set forth in paragraph (b).

- e) The public defender or assigned counsel shall meet with the client no later than the initial appearance or within 24 hours of assignment if the person remains in custody. If the client is released from custody the attorney shall attempt to contact the client to schedule a meeting during usual business hours at the attorney's office. Once public defender or conflict counsel is assigned to a client, he shall continue to represent the client unless allowed to withdraw by the circuit court in accordance with MRCrP Rule 7.2(c).
- f) Each justice, county, or municipal court shall have a designated indigent defense attorney for misdemeanor cases. If a municipality elects to handle felony initial appearances and preliminary hearings the misdemeanor indigent defense attorney shall represent the accused until the case is dismissed or bound over to the grand jury. If bound over the attorney shall immediately notify the public defender of the action. The public defender shall assume representation as set forth above and the misdemeanor defender shall be withdrawn.
- g) The misdemeanor defender in justice or county court may handle representation of a client from initial appearance through binding over to the grand jury. Immediately upon a case being bound over to the grand jury the misdemeanor attorney shall notify the public defender of the action. The public defender or assigned conflict counsel shall assume representation in accord with e) above. The misdemeanor public defender shall be withdrawn as counsel automatically upon acknowledgement by the public defender of receipt of notice.
- h) The public defender and all conflict attorneys shall complete training or educational programs in criminal defense accredited by the Mississippi Office of State Public Defender and the Mississippi Commission on Continuing Legal Education. Part-time defenders shall complete at least six (6) hours and full-time defenders at least twelve (12) hours each year.
- i) All defense counsel representing indigent criminal defendants should be supervised and systematically reviewed for quality and efficiency according to established standards approved by the Supreme Court of Mississippi.

Comments

MRCrP 7.2(a) requires that **each circuit** shall establish governing local procedures for the appointment of counsel for indigent defendants. Local court rules are promulgated pursuant to Rule 1.9. Rule 7.2(a) & comment (emphasis added).

This Rule is guided by MRCrP Rule 7, the *ABA Ten Principles of a Public Defense Delivery System* and *The Final Report to the Mississippi Legislature of the Mississippi Public Defender Task Force*. Paragraph (a) is consistent with existing practice and statutory law. Sixty-seven of eighty-two counties representing over 90% of workload have a full-time or part-time public defender. MRCrP Rule 7.3(e) designates the public defender as primary counsel. And recognizes there will be cases the public defender cannot handle. MRCrP 7.3(e) and comment; Miss. Code Sec. 25-32-13.

The “indigent defense coordinator” is needed in those counties that choose not to establish a public defender to enable independence and sufficient time for private defenders. *The Right to Counsel in Mississippi*, Report of the Sixth Amendment Center, March 2018, chapters IV and VII and Mississippi Public Defender Taskforce *Final Report*, page 21, principle 3. The indigent defense coordinator may be the public defender of an adjoining county in the district or serve more than one county in a district.

The litigation experience in paragraphs (a) and (b) and training requirement in paragraph (h) are based on Mississippi *Rules of Professional Conduct*. See *Right to Counsel* chapter V; Task Force principle 7; ABA principles 6 and 9. Guidance on assignment to private counsel is primarily based on MRCr Rule 7.3(f).

Paragraph (c) is based on MRCrP 7.3(f); Task Force principle 4; and ABA principle 8.

Paragraphs (d) and (e) are based on Miss. Code Sec. 25-32-9; *In re: Office of the Hinds County Public Defender*, 2015-M-00397, En Banc Order, May 21, 2015; MRCrP Rule 5.2(4); Task Force principle 7; and ABA principles 3 & 7.

Paragraphs (f) and (g) are necessitated by MRCrP 7.2(c) as amended effective July 1, 2023.

Paragraph (i) is based on Task Force principle 7 and ABA principle 10.