

IN THE CIRCUIT COURT OF MARION COUNTY, MISSISSIPPI

IN RE: PROCEDURE FOR APPOINTING
COUNSEL FOR INDIGENT DEFENDANTS;
WITHDRAWAL

CAUSE NO. 46:23MR5000

ORDER

WHEREAS, Rule 7.2(a)(1) of the Mississippi Rules of Criminal Procedure (MRCrP) requires that a procedure be established in each circuit court “for the appointment of counsel for each indigent defendant entitled thereto;” and,

WHEREAS, on April 13, 2023, the Supreme Court of Mississippi amended MRCrP Rule 7.2(c), effective July 1, 2023, to require that indigent defendants entitled to court-appointed counsel be provided continuous representation prior to being indicted “in all further proceedings in the case...;” and, furthermore, that counsel will no longer be allowed to withdraw simply “for good cause as approved by the court,” but when there is good cause as approved by the court “**and new counsel is retained or appointed (unless the right to counsel has been properly waived pursuant to Rule 7.1(c)).**

IT IS, THEREFORE, ORDERED, that to more fully comply with MRCrP Rule 7.2(c), as amended effective July 1, 2023:

a) A public defender, part-time public defender, or assistant public defender shall represent all indigent felony defendants unless there is a conflict of interests, and shall continue to represent said defendant from the time of appointment in all further proceedings in the case and shall not be allowed to withdraw as counsel except for good cause as approved by the court and new counsel is retained or appointed (unless the

right to counsel has been properly waived pursuant to Rule 7.1(c)). Contact information for the public defender shall be publicly available at each court and detention facility.

b) 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 or she shall be provided an opportunity to sign an affidavit of indigence stating he or she is an indigent and unable to afford counsel. Upon signing such affidavit, a public defender shall represent said person unless the right to counsel is waived. The affidavit executed by the alleged indigent defendant shall list all assets available to the indigent for the payment of attorney's fees, including any real or personal property, the alleged indigent's employment status, number of dependents, income from any source, the ability of his or her parents or spouse to provide an attorney's fee, and any other information which might prove or disprove a finding of indigency.

c) If a person makes an initial appearance without counsel, he or she 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 or she shall assign other counsel as set forth in paragraph (d).

d) If the public defender is unable to represent a client, the public defender shall assign the case to another public defender in the office. If the client cannot be represented by any of the public defenders in the office, the court shall appoint a private attorney from a list of conflict attorneys prior to the initial appearance or within 24 hours

of determining the need for assignment.

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 feasible and the person remains in custody, but in no event no later than 72 hours after assignment. 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 a 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), as amended.


f) The misdemeanor defender in municipal or justice 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 d) above. The misdemeanor public defender shall be withdrawn as counsel automatically upon acknowledgement by the public defender of receipt of notice.

IT IS FURTHER, ORDERED, that any counsel appointed by the court to represent an indigent defendant shall continue to represent said defendant from the time of appointment in all further proceedings in the case, and shall not be allowed to withdraw as counsel except for good cause as approved by the court and new counsel is retained or appointed (unless the right to counsel has been properly waived pursuant to Rule 7.1(c)). Appointed counsel shall advise every client that failure by the client

to maintain contact with counsel and to keep counsel updated with client's contact information may result in the issuance of a warrant should the client fail to make or appear for scheduled appointments with his attorney or fail to appear for court.

IT IS FURTHER ORDERED AND ADJUDGED that this order be spread on the minutes of the Marion County Circuit Clerk and a copy delivered to the Board of Supervisors of Marion County, Mississippi, and copies mailed to the municipal, justice, and county courts of Marion County, Mississippi, the detention centers in Marion County, and to the Public Defenders of Marion County.

SO ORDERED on this 30 day of June, 2023.


PRENTISS HARRELL
SENIOR CIRCUIT JUDGE