Hancock County Justice Court Study

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Hancock County Justice Court Study

There have been generic problems with Mississippi’s Justice Court systems since the 1976 amendment that made radical improvements in the system, revamping it from Justices of the Peace to the current, more judicial character of the Court. These generic problems seem to affect all jurisdictions to some extent, and have been pointed out in a number of studies, which include: Auditor Steve Patterson’s 1996 study, the 1999 study of the Administrative Office of Courts and the 2007 Supreme Court Task Force Report. The earlier studies focused, to some large degree, on collection of fines and costs, while the Task Force Report made recommendations relative to qualification of judges, training, election, and compensation, as well as recommending an increased jurisdictional amount for civil cases, jury trials and routine procedure. While these reports are dated, much content is quite sound.

Patterson’s conclusions concerned themselves primarily with fines, assessments and costs which were being under-collected by the state’s Justice Courts, largely as a result of (1) permission by Judges and other court officers to allow some individuals to ignore legislatively sanctioned and court-imposed fees and costs; (2) failure to establish follow-ups for unpaid fines and costs, thereby permitting our most law abiding citizens to pay while not demanding fines, costs and delinquent penalties from others; and (3) the failure of Boards of Supervisors to meet the statutory mandate to exercise proper oversight and management of their county Justice Courts. Some of the specific weaknesses found by the Auditor in 1996 can still be found in Hancock County today. These weaknesses include:

1. partial payment privileges, discretionary with the judges, being granted far too often;
2. inefficiencies and lack of training resulting in lost or mislaid tickets/affidavits, etc.;
3. a substantial percentage of cases being dismissed by Judges;
4. an inability or lack of effort to collect fines from out-of-state drivers;
5. insufficient use of third party collectors
6. inconsistent follow-up on delinquent partial-pay accounts.

Auditor Patterson found, in 1996, that the system, statewide, was producing only 63% of revenue within its purviews, while allowing approximately 37% of fines to go unpaid. This analysis did not include judge sanctioned dismissals or reductions in fine amounts that occur with regularity. It only dealt with actual fines, costs and assessments that were imposed by the court.

Our study of Hancock County finds that the Hancock County Justice Court was producing less than 25% of the revenue within its purview as of the end of calendar year 2011, and if accounts of the more senior judges are to be believed, there is an estimated $1 million in uncollected moving vehicle violation fines which have been adjudicated but without collection follow-through.
Collection issues, while of significant concern to the Board as a source of revenue generation, are not the only issues that were uncovered when we investigated the Hancock County Justice Court. We submit this report of our investigation process, findings and recommendations.

Process

The principal investigators [PIs], Joe Young and Lydia Quarles, began an investigation of the Hancock County Justice Court soon after the contract with the county was approved. The function of the investigation was established in the original contract. The very first day that the PIs were on the ground in Hancock County to begin an investigation, the former Justice Court Clerk announced her retirement. Thereafter, various personnel changes were made in the clerk’s office, such that the current personnel are not reflective of the prior office. However, despite the announcement of the retirement, the PIs went on with the investigation that they had scheduled for two days, predominately interviewing individuals who had a connection with the court and its administration, including: (1) law enforcement officials from state, county and local agencies, as well as agencies in adjacent counties; (2) attorneys who appear regularly in the Hancock County Justice Court; (3) various county officials, including the County Administrator and Board Attorney; (4) members of the populace. The PIs also had the opportunity to view the operation of the clerk’s office throughout these first two days of investigation.

After the initial investigation, the PIs reassessed Hancock County’s situation and realized that with personnel changes, it was more incumbent on the Hancock County Board of Supervisors to find and hire competent staff than to point out inadequacies of the prior staff, so the PIs sought to amend the contract with Hancock County, ultimately agreeing on a Memorandum of Understanding.

The PIs have interviewed various employees of the justice court systems in the comparable counties, as well as attorneys and law enforcement that frequent those jurisdictions. Additionally, the PIs have interviewed the owner of Delta Computer, who handles the county’s justice court data, and an employee of Delta Computer who is the director of the justice court data center of Delta Computer. (The Board will recall that in return for authorizing provision of data, the counties which shared their data with us are to receive copies of the report.)

With the assistance of the Board of Supervisors, as well as the Boards of the comparable counties, the PIs have collected and analyzed data on collections, salaries, job design, docket management, etc. The PIs have also analyzed data on job design and salaries of municipal and justice court clerks throughout the State.

The PIs have also interviewed each of Hancock County’s Justice Court Judges, collectively and individually, and have encouraged them to contact us individually to give us additional information or insight. The PIs have also interviewed Hancock County’s Prosecuting Attorney on several occasions.

Finally, the PIs have researched best practices, not only in the state of Mississippi, but in other relevant jurisdictions.
The breadth of our analysis centered on various issues:

I. **Human Resources**
   A. Leadership
   B. Training
   C. Time on Task
   D. Customer Service

II. **Collections**
   A. Rate
   B. Process
   C. “Time-pays”
   D. “Mary Beth”
   E. Past Collection Efforts
   F. Current Collection Efforts
   G. Collection of Assessments

III. **Court Related Issues**
   A. Decorum
   B. Appearance Dates
   C. Recusals
   D. Standing Orders
   E. Established Forms
   F. Rules of Professional Conduct

IV. **Comparisons with Comparable Counties**
   A. Docket Comparisons
   B. Employee Comparisons
C. Collection Comparisons

Findings

FINDING ONE: A NEGATIVE IMPRESSION

At the time the PIs initially interviewed individuals, the impression of the Hancock County Justice Court, from every quarter, was very negative. While all of the complaints cannot be enumerated here, those which were repeatedly mentioned are as follows: rudeness; phone does not get answered; clerk/deputy clerks are not helpful; system establishing court dates is neither intuitive nor accommodating of individuals schedules, whether the individual is law enforcement or a party to litigation; absence of professional demeanor; failure of subpoenas to be timely issued; problems in locating files, getting information to those seeking information.

FINDING TWO: INEFFICIENT OR UNCOOPERATIVE STAFF

Our own personal experience at that time included: rudeness; constant ringing of the phone; obviously harassed employees who did not bother to cover their personal animus; absence of professional demeanor; long waits, as experienced by ourselves and other individuals who sought to be served at the window at the Justice Court Clerk’s office.

FINDING THREE: INEFFICIENT PROCESSING OF TICKETS, AFFIDAVITS, FINES AND ASSESSMENTS

By the time the contract had been amended and the PIs returned, literally hundreds of unprocessed tickets and affidavits had been uncovered, as well as fine payments that had not been processed. Bank statements exceeding one year in age had not been balanced. Filing was not occurring on any regular basis. In short, the Justice Court Clerk’s office had been poorly attended and not managed on a professional basis. This finding certainly supports the likelihood that the pending embezzlement investigation of a former employee(s) of the court system could have easily occurred; there were no safeguards or checks and balances on payments and the processing of payments.

FINDING FOUR: LACK OF LEADERSHIP

No leadership was evident in the clerk’s office, resulting in the issues set forth in findings one, two and three, as well as collection issues, addressed below.
FINDING FIVE: IRREGULARITIES IN COLLECTION

There are collection issues and these may give rise to other issues, to be determined by the Office of the State Auditor, which continues to investigate issues of irregularity with the Hancock County Justice Court. Collection issues will be detailed in recommendations to follow, but suffice to say that the collection rate on fines, costs and assessments in calendar 2011 appears to be no more than 22% in Hancock County.

FINDING SIX: PERSONNEL ISSUES

There are personnel issues, most of which have been addressed with the hiring of new clerk/deputy clerk. There are also some issues associated with the Judges that may be out of the purview of the Board of Supervisors, as the Judges are duly elected county officials in their own rights, but the Board must remember that it has, along with the Judicial Performance Committee, general oversight of the county justice court system.

FINDING SEVEN: FEELINGS OF ANIMUS

There is a feeling of hostility on the part of some judges toward the Board of Supervisors. These feelings may or may not be unfounded, but they contribute to an unsuitable situation. Neither the Board nor the Judges may truly understand their respective roles in the operation of the county’s justice court system, which has led to these feelings. Generally, hostility arises from a lack of information or lack of understanding of factors perceived as personally directed, thus expressions such as “witch hunt”, etc. The feeling of hostility is exacerbated by the fact that the Judges do not believe that the Board members realize the quality/quantity of work associated with the Hancock County Justice Court and the conditions under which they operate. The Judges also expressed the fact that the Board was not “appreciative” of the Court as a source of revenue, paid staff little, etc.

FINDING EIGHT: IRREGULARITIES WITH JUDICIAL PERSONNEL

There are some processes that are occurring in the Hancock County Justice Court which may require the investigation or involvement of your board attorney or your prosecutor. These include: courtroom decorum; ex parte contact between a Judge and a party; whether an initial hearing should occur when a judge phones in a bond and the arrested individual cannot make bond; reasons for recusal; percentage of dismissals; percentage of reduced fines and sentences; suspending legislatively approved assessments; using seals and/or signature stamps on orders/dockets; use of “time-pays”; how
continuances are processed; length of time for receiving handwritten tickets; concerns regarding Mississippi Commission on Judicial Performance involvement and Code of Judicial Conduct.

Recommendations

The PIs had made some initial recommendations which have been already implemented. These are:

- Use regular size file folders instead of envelopes for court records
- Establish email addresses for all clerk’s office staff
- Establish training session for deputy clerks (This has occurred and your county administrator and all clerks have a copy of the materials provided on USB. USBS are provided for each of you.)

A substantial number of recommendations remain, as their implementation will require input/approval of the Board of Supervisors, the Judges or both.

RECOMMENDATIONS WHICH REQUIRE BOARD OF SUPERVISORS’ POLICY DECISIONS AND/OR IMPLEMENTATION

1. **Phone lines.** One of the chief complaints that citizenry, law enforcement and attorneys have is the inability to get anyone to answer the phone. Without going into detail, a chief reason for this complaint had to do with a lack of leadership. However, there is no doubt that the court receives a great many phone calls, with some days more hectic than others. We believe that this can be solved by the use of routing calls to particular offices, providing basic information by saying, for example, “press 1 for directions”; “to inquire about paying fines, press 2”; “to inquire about court dates, press 3”; “for information on filing a civil affidavit, press 4”; etc.

   We believe that an additional resolution of the number of calls may result from an online presence for the Justice Court, which we recommend. (See below, item 5)

2. **Job descriptions.** The Board of Supervisors had addressed job descriptions for employees in the clerk’s office but never took board action reflected in the minutes. We recommend that you take this action. We were provided a copy of the job descriptions that you had previously considered, together with a “best practices” recommendation and some basic thoughts from your PIs. These documents are attached as Exhibit A. We also recommend that you consider developing a Chief Deputy Clerk position with duties commensurate with the Clerk who would exhibit oversight when the Clerk is absent or otherwise occupied. This is meant, as well, to provide a succession plan should the clerk leave.
Salaries, are, of course, an issue here. We believe that a Chief Deputy should carry commensurate responsibility with the clerk, and carry a relatively commensurate salary. We have compared salaries with other surrounding counties, as well as municipal court clerks throughout the state. These will be discussed subsequently.

3. **Code of conduct.** Ethical requirements of individuals in positions such as your deputy clerks are quite important. These requirements should be established and violations should be dealt with appropriately. The American Judicature Society has established a Code of Conduct for Non-Judicial Court Employees that addresses the ethical obstacles that are faced by your clerk and deputies. We suggested to your clerk that she adopt it by resolution and append it to any “rules and regulations” she was developing in addition to your county employee handbook, but we also indicated that our preference would be for the Board to Adopt same. The Code of Conduct for Non-Judicial Court Employees promulgated by the American Judicature Society is attached as Exhibit B.

4. **Collection procedures.** The Justice Court uses a variety of collection procedures. They seem to be “judge specific”. After the adjudication has been made, so far as the PIs can tell there was very little interest in collection that did not come in voluntarily. This could be a result of the potential embezzlement investigation lodged with the State Department of Audit. Or it could be a result of poor leadership in the office. The PIs find that there is a disconnect between the Board and the Justice Court, and that disconnect may have caused some unreliability or lack of effort with collections. Your current clerk does understand the importance of collection. It is my understanding that your County Administrator is currently looking into possible outside collection agencies.

To be fair, in attempting to impose sentence, the Judges, in their discretion, have relied on various methods of collection, including use of the Community Service Program in lieu of fines for those who are unemployed and cannot pay; allowing structured time payments (which have not been followed up, generally); using ASAP (“Mary Beth”) to monitor and collect.

Another issue uncovered by the PIs is that Judges occasionally and perhaps inadvertently forget to require the payment of assessments required by the legislature when they suspend sentences. This is dangerous for the county as well as for the Judge. If and when these assessments are not paid, the county will be approached by the Department of Audit and a possible result will be that the bond of each Judge who has been dilatory will be sought for state recompense. The ultimate result will be action by the bonding company against the Judge. See Attorney General’s opinion attached hereto as Exhibit C.

The PIs acknowledge that the sentence meted out is in the sole discretion of the judge who hears the case or accepts the plea, but the Board might consider suggesting the following:

- A discrete agreement among the judges about fines so that they will be equitably imposed
- An understanding with the judges that the Justice Court is a revenue-producing arm of county government that can significantly enhance the safety and welfare of the community if utilized properly

- An understanding between the judges, the Board, and the clerk’s office that if a judge should refuse to require the payment of assessments, the deputy in the court will remind/correct the judge, for the judge’s own benefit

Your PIs advise that all collections be placed under one umbrella and that only one collection vehicle be used. If the county enters into a contract with a collection service, it can, in its capacity of court oversight, require use of that service if a defendant cannot pay the fine and assessments on the day of court.

According to information revealed to the PIs, there are a great number of uncollected tickets in the file cabinets in the “kitchen” or “break room” of the justice court building. These should be immediately turned over for collection to the collection agency that the county chooses.

An AMNESTY is another option available for collection of some fines. While your PIs do not recommend an amnesty, because that is a policy decision that is in the Board’s discretion, one of the PIs has had personal experience with an amnesty drive which was quite successful. A helpful Attorney General’s opinion on this issue is available should the Board have interest in such a process.

5. **Online presence.** An online presence which will allow individuals to assess and pay their tickets without appearing at court would be an excellent way to enhance collections, particularly for employed individuals who do not want to take leave from work to come to court and for out of state individuals. This presence could also provide information about the Justice Court system, introduce your Judges, explain jurisdictional guidelines, provide a downloadable form civil affidavit, and provide other reasonable information, like driving instructions. (For example, the PIs are told that when the address of the Justice Court building is keyed into a GPS, the location specified is not the Justice Court building. One of the PIs decided to explore this and entered the address into two different GPS systems in two different vehicles which were not the same make or model. This issue was thus verified.)

6. **Additional training for clerks.** While Quarles did some training with the clerk’s staff, and the clerk has also undertaken training, the PIs recommend either sending all deputy clerks to training provided by the Mississippi Judicial College or requesting of the Executive Director, Cynthia Davis, that she commission someone to come down for a period to teach the manual that is provided for clerks’ training, ask her the cost, etc. Quarles is also available to teach the manual at your request.

7. **Analysis** of the data follows.
QUESTIONS/RECOMMENDATIONS WHICH REQUIRE POLICY DECISIONS AND/OR IMPLEMENTATION BY JUSTICE COURT JUDGES

1. **Initial hearing/phonning in bond amount.** Should an individual be held until the next court date if he cannot make bond? Do judges refuse to come in to hear facts/make determination whether incarceration is valid/merely phone in bond amount?

2. A justice court judge does not need a seal. It is not statutory. See the Attorney General’s opinion attached hereto as Exhibit D.

3. There should be no signature stamps on original justice court documents. Judges should sign each document. See the Attorney General’s opinion attached hereto as Exhibit E.

4. Your county prosecuting attorney is working on standing orders, which we highly recommend. We have found your county prosecuting attorney to be quite competent and capable; he sees the big picture and can ably assist the Court in developing consistency.

5. **Phone call screening** in order to find out whether an individual calling in wants to talk with the judge about a case. There is an AG opinion on this dated June 9, 1995. We have been advised by the clerk’s office that they “sometimes” screen calls. This is a discussion that the judges may want to have. There was a perception among individuals that your PI’s interviewed that there have been numerous evidences of ex parte discussions between a party (acquaintance or friend) and a judge either in phone or in person (office or home). This was one of the most sensitive issues with those being interviewed and, of course, it is an issue that can result in sanctions, if not removal, of a judge.

6. **Recusals.** The issue of judge recusals was raised by a significant number of individuals that the PIs interviewed. When an individual runs for the position of Justice Court Judge, he/she knows that they will occasionally have before them individuals that they would rather not see before them. However, the fact that a Justice Court Judge knows someone, or even is a friend or acquaintance of someone, is not a reason for recusal. The appropriate response would be to (in open court) let the opposing party know the relationship and ask if that party would feel more comfortable with the judge recusing himself. If not, the judge should go forward. E.g., an individual is arrested on DUI. This individual is the judge’s next door neighbor. The judge would rather not hear this case, but he is the elected official and the matter ended up on his docket. The appropriate thing for the Judge to do would be to say to the prosecutor in open court: Mr.
Prosecutor, the defendant is my next door neighbor and I am very fond of him/her. Knowing this information, would you wish that I recuse myself. If the prosecutor says no, that he thinks the judge can be fair, the judge should hear the case. Hancock is a very small county and on occasion all 3 judges have wanted to recuse, which presents a difficulty. Reasons for recusal are very specific, and found in the Mississippi Rules of Judicial Conduct. “I’d rather not” is not a valid reason for recusal.

Recusals are a matter of discretion of the judicial officer, but the PI investigation suggested that recusals were fairly common and not based on reasons validated by the Mississippi Code of Judicial Conduct. The relevant portions of the code are found here:

E. Disqualification.

(1) Judges should disqualify themselves in proceedings in which their impartiality might be questioned by a reasonable person knowing all the circumstances or for other grounds provided in the Code of Judicial Conduct or otherwise as provided by law, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

Commentary

Under this rule, a judge should disqualify himself or herself whenever the judge’s impartiality might be questioned by a reasonable person knowing all the circumstances, regardless whether any of the specific rules in Section 3E(1) apply.
A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

For procedures concerning motions for recusal and review by the Supreme Court of denial of motions for recusal as to trial court judges, see M.R.C.P. 16A, URCCC 1.15, Unif. Chanc. R. 1.11, and M.R.A.P. 48B. For procedures concerning motions for recusal of judges of the Court of Appeals or Supreme Court justices, see M.R.A.P. 27(a).

A very solid analysis of recusal is attached hereto as Exhibit F.

5. **Decorum/professionalism.** The judge is in control of his courtroom. However, we have observed each judge and believe that a more professional demeanor is required and that they should demand more decorum in their courtroom. Instructing the bailiffs by standing order as to how to handle disruptions, etc., would be valuable. The courtroom that was built subsequent to Katrina is a lovely courtroom. It is, however, quite large, which makes it difficult to discipline. Because attorneys are allowed a great deal of leeway in comportment within the bar and before the bench, this sends the message that comportment is lax. We would suggest that the judges confer with the prosecuting attorney on ways that attorney comportment could be increased to a more professional level. We believe that your prosecuting attorney’s strong relationships with the bar would allow him to convey the need for attention to professional demeanor and decorum as an incentive to the defendants, defendants’ relatives and citizens who appear in the courtroom.
Analysis of Hancock County Justice Court Profile with Profiles of Comparable Counties

All data provided was provided by agreement with Delta and by agreement of the comparable counties with the understanding that a copy of the report would be provided to them as well.

All data has been completely scrubbed by the Stennis Institute; any incomplete data has been removed. Each datum removed from these records has been identified, cataloged, and a full explanation for removal provided. Data has not been removed unless to place it in the count would corrupt the material.

(Explanation: the majority of the data that was removed was data where there was an obvious error – dates in 2015, for example, or fines in excess of a million dollars.)

See attached spreadsheet.
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<th>ITEMS TO COMPARE</th>
<th>HANCOCK COUNTY CURRENT</th>
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<tr>
<td>NUMBER OF JUDGES</td>
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<tr>
<td>NUMBER OF CLERKS</td>
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<td>TOTAL CLERKS SALARIES</td>
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<td>DO YOU ACCEPT PAYMENTS ONLINE?</td>
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<td>DO YOU USE A COLLECTION AGENCY?</td>
<td>YES SINCE JULY 17, 2013</td>
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<tr>
<td>WHAT IS THE SCHEDULE ROTATION FOR JUDGES?</td>
<td>ONE JUDGE ON 3 WEEK ROTATION</td>
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<td>HOW MANY DAYS A WEEK DO YOU HOLD COURT?</td>
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<td>11,718</td>
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<td>Hancock Co Before Study</td>
<td>Pearl River County</td>
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<td>Volume of Work/Low Salary</td>
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<td>YES</td>
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<td>MARY BETH</td>
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<td>CERTAIN DAYS FOR TRIALS</td>
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Hancock County- Job Description
Court Department Justice Court Clerk

Purpose of Position

To oversee the Justice Court, provide administrative support and supervise Deputy Justice Court Clerks

Major Duties and Responsibilities

Manage all expenses for the Justice Court
• Receive payments and document payments
• Issue receipts upon payment of court fees
• Acquire knowledge of rules and regulations regarding the payment of fees
• Set trial dates upon payment of fees
• Carry out paperwork concerning subpoenas
• Document all monies exchanged throughout each month
• Maintain continuing education requirements with Mississippi Judicial College

Oversee criminal and civil cases
• File several hundred cases each month
• Oversee the safety and upkeep of each docket
• Document appeals
• Document and record actions and pleadings
• Recognize affidavits
• Issue warrants as directed
• Approve bonds in all cases
• Maintain uniform case record
• Document and present all records filed in the Justice Com1

Perform other duties as assigned

Job Context

The Justice Court Clerk is a full-time, permanent position in the Court Department. The person in this position is supervised less than weekly, and supervises six additional employees. The Justice Court Clerk works regular hours year-round and occasionally works overtime, and occasionally at night. The person in this position never works shift work, and is always on call. 100% of the work in this positions indoors and 0% is outdoors. The position has accountability for monetary, fiscal, budgetary, and legal issues related to the work for which this position is responsible.

There is no exposure to chemicals and/or hazardous materials. The Justice Court Clerk is
recommended to have an Associate's Degree in a related field. Certification through the MS Judicial College is required. Eight years of experience is recommended. The stress level associated with this position is very high. Physical work required for this position includes, but is not limited to, lifting heavy boxes and stair climbing.

**Knowledge, Skills, and Abilities**

**Knowledge:**
- Computerized software, including word processing and spreadsheets
- Work projection, budget planning, cost control, personnel management
- Understanding of the legal system
  - Basic layout of governmental property
- General functions and operations of county government
  - General office and filing practices and procedures
  - Federal and state statutes concerning employee safety
  - Safety procedures and policies concerning departmental equipment
  - Proper grammar and proper use of English in speaking and writing
  - Mathematical skills, including addition, subtraction, division and multiplication
  - First Aid techniques

**Skills and Abilities:**
- Prioritize daily work flow and make decisions within specified time restraints
- Understand and carry out instructions
- Work as a team member with other employees
- Work autonomously when necessary
- Meet specified or required deadlines
- Handle multiple tasks simultaneously with frequent interruptions
- Communicate effectively with visitors, residents, elected officials, other employees, etc
- Maintain confidentiality
- Deal tactfully and effectively with others in a professional manner
- Develop, implement, and follow governmental procedures
- Maintain work records and to prepare written reports of activities and projects
Hancock County- Job Description
Court Department- Deputy Justice Court Clerk

Purpose of Position

Issue all processes necessary for the operation of Justice Court and accept payments for traffic violations, citations, and criminal affidavits.

Major Duties and Responsibilities

Manage inventory of traffic violations
- Log Highway Patrol tickets
- Log violations for driving under the influence
- Forward copies to the Driver Improvement Branch
- Take payment on walk-ins and issue receipts

Oversee criminal and civil cases
- File several hundred cases each month
- Handle docket pages, nisi, scire facia, contempt of comi warrants, failure to appear suspensions, and time pay cards
- Oversee the safety and upkeep of each docket
- Document appeals
- Document and record actions and pleadings
- Recognize affidavits and tickets
- Issue warrants as directed by the judge
- Approve bonds in all cases
- Maintain uniform case record
- Provide Public Access records to individuals checking on records, assist in circulating paperwork and abstracts of record
- Document and present all records filed in the Justice Court

Perform other duties as assigned

Job Context

The Deputy Justice Court Clerk is a full-time, permanent position in the Court Department. The person in this position is supervised less than weekly, and does not supervise any additional employees. The Deputy Justice Court Clerk works regular hours year-round, and never works overtime or shift work and is never on call. 100% of the work in this position is indoors. The position has accountability for monetary and legal issues related to the work for which this position is responsible.

There is no exposure to chemicals and/or hazardous materials. The Deputy Justice Court...
Clerk is required to have a Bachelor's Degree. There are no required years of experience for this position, but 2 years of experience are recommended. The stress level associated with this position varies with activities (for example, dealing with people and affidavits is tense due to the environment). Physical work required for this position includes, but is not limited to, lifting heavy boxes and stair climbing.

**Knowledge, Skills, and Abilities**

**Knowledge:**
- Computerized software, including word processing and spreadsheets
- Work projection, budget planning, cost control, personnel management
- Understanding of the legal system
- Basic layout of governmental property
- General functions and operations of county government
- General office and filing practices and procedures
- Federal and state statutes concerning employee safety
- Safety procedures and policies concerning departmental equipment
- Proper grammar and proper use of English in speaking and writing
- Mathematical skills, including addition, subtraction, division and multiplication
- First Aid techniques

**Skills and Abilities:**
- Prioritize daily work flow and make decisions within specified time restraints
- Understand and carry out instructions
- Work as a team member with other employees
- Work autonomously when necessary
- Meet specified or required deadlines
- Handle multiple tasks simultaneously with frequent interruptions
- Communicate effectively with visitors, residents, elected officials, other employees, etc.
- Maintain confidentiality
- Deal tactfully and effectively with others in a professional manner
- Develop, implement, and follow governmental procedures
- Maintain work records and to prepare written reports of activities and projects
HANCOCK COUNTY JUSTICE COURT
CLERK JOB DESCRIPTION

It is the purpose of the Justice Court Clerk to collect and receipt all monies owed to the Justice Court and make an accurate settlement each month to the Chancery Clerk of the county. It shall also be the responsibility of the Clerk to act as administrator/supervisor to the deputy clerks who are employed in order to ensure that the office functions smoothly and efficiently. She shall ensure that all deputy clerks are aware of their duties and responsibilities to the Court. It shall further be the duty of the Clerk to work with the Justice Court Judges to assure that all dealings between the clerk’s office and the judges are professional and sound.

The Clerk will answer directly to the Board of Supervisors of Hancock County, and indirectly to the County Administrator.

The Clerk’s responsibility includes:

- Maintenance and retention or all records, including, but not limited to, dockets, correspondence, computer generated materials, cases, files, tickets, receipts, affidavits, bank statements, checks, warrants and any document pertaining to court cases, including documents or things which may be introduced in evidence in a civil or criminal trial;
- Administration of court procedures consistent with the Mississippi Code and other applicable laws;
- Supervision of the deputy clerks, and appropriate admonitions consistent with the Hancock County Employee Handbook;
- Cooperation with the Hancock County Chancery Clerk and County Administrator to assure that the proper county and state procedures are followed with regards to monies collected by the office.
HANCOCK COUNTY JUSTICE COURT
DEPUTY CLERK JOB DESCRIPTION

It is the purpose of the Justice Court Deputy Clerk to follow all instructions of the Justice Court Clerk. Each deputy clerk will have a specific job description, but will also be required to function with proficiency in other areas of the office as a result of diligent cross-training of all deputies, in order to ensure the smooth operation of the office at all times.

Each work day, the deputy will carry out his/her specific job duties and any other assigned by the Clerk. She will also be responsible for scheduling vacation time through the Clerk and completing appropriate leave forms, in order that the court is sufficiently staffed at all times.

The deputy clerks shall behave in a professional manner when meeting and greeting the public, attorneys, and law enforcement officers who may be involved in court proceedings as bailiffs or witnesses. S/he will be respectful to the judges and demonstrate deference.

The deputy clerks will be required by the Clerk to be accurate and timely in the accomplishment of her assigned duties and to act in a manner which is in accord with standards of professional conduct. S/he will be expected to work with all branches of law enforcement and to assist officers with forms and information which is necessary to the smooth operation of the court.

The deputy clerk will answer directly to the Justice Court Clerk.

***

All Hancock County Justice Court personnel will be expected to follow all personnel policies as they are adopted by the Hancock County Board of Supervisors. In addition, all personnel will be expected to follow the requirements established by the Clerk in order to tabulate and transfer the total number of hours worked each pay period per employee.
AMERICAN JUDICATURE SOCIETY

CODE OF CONDUCT FOR NON-JUDICIAL COURT EMPLOYEES

Section One: Abuse of Position

A) No employee shall use or attempt to use his or her official position to secure unwarranted privileges or exemptions for the employee or others.

B) No employee shall accept, solicit, or agree to accept any gift, favor or anything of value based upon any understanding, either explicit or implicit, that the official actions, decisions or judgment of any employee would be influenced thereby. Gifts that do not violate this prohibition against abuse of position are further regulated in Section Three, Subsection B.6.

C) No employee shall discriminate by dispensing special favors to anyone, whether or not for remuneration, nor shall any employee so act that the employee is unduly affected or appears to be affected by kinship, rank, position or influence of any party or person.

D) No employee shall request or accept any fee or compensation, beyond that received by the employee in his or her official capacity, for advice or assistance given in the course of his or her public employment.

E) Each employee shall use the resources, property and funds under the employee's official control judiciously and solely in accordance with prescribed statutory and regulatory procedures.

F) Each employee shall immediately report to the appropriate authority any attempt to induce him or her to violate any of the standards set out above.

Section Two: Confidentiality

A) No court employee shall disclose to any unauthorized person for any purpose any confidential information acquired in the course of employment, or acquired through unauthorized disclosure by another.

B) Confidential information includes, but is not limited to, information on pending cases that is not already a matter of public record and information concerning the work product of any judge, law clerk, staff attorney or other employee including, but not limited to, notes, papers, discussions and memoranda.

C) Confidential information that is available to specific individuals by reason of statute, court rule or administrative policy shall be provided only by persons authorized to do so.

D) Every court employee shall report confidential information to the appropriate authority when the
employee reasonably believes this information is or may be evidence of a violation of law or of unethical conduct. No court employee shall be disciplined for disclosing such confidential information to an appropriate authority.

E) Court managers should educate court employees about what information is confidential and, where appropriate, should designate materials as confidential.

F) Court employees are not precluded from responding to inquiries concerning court procedures, but a court employee shall not give legal advice. Standard court procedures, such as the method for filing an appeal or starting a small claims action, should be summarized in writing and made available to litigants. All media requests for information should be referred to the court employee designated for that purpose.

G) No court employee shall either initiate or repeat ex parte communications from litigants, witnesses or attorneys to judges, jury members or any other person.

H) A former court employee should not disclose confidential information when disclosure by a current court employee would be a breach of confidentiality.

Section Three: Conflict of Interest

A) Every court employee shall avoid conflicts of interest, as defined below, in the performance of professional duties. Even though no misuse of office is involved, such a conflict of interest involving a court employee can seriously undermine the community's confidence and trust in the court system. Therefore, every court employee is required to exercise diligence in becoming aware of conflicts of interest, disclosing conflicts to the designated authority and ending them when they arise.

1) A conflict of interest exists when the court employee's objective ability or independence of judgment in the performance of his or her job is impaired or may reasonably appear to be impaired or when the court employee, or the employee's immediate family, as defined below, or business would derive financial gain as a result of the employee's position within the court system.

2) No conflict of interest exists if any benefit or detriment accrues to the employee as a member of a profession, business or group to the same extent as any other member of the profession, business or group who does not hold a position within the court system.

3) For the purposes of this Code, "immediate family" shall include the following, whether related by marriage, blood or adoption: spouse; dependent children; brother; sister; parent; grandparent; grandchildren; father-in-law, mother-in-law; sister-in-law, brother-in-law; son-in-law, daughter-in-law; stepfather, stepmother; stepson, stepdaughter; stepbrother, stepsister; half-brother, half-sister.

B) Prohibited Activities:

1) No court employee shall enter into any contract with the court system for services, supplies, equipment, leases or realty, apart from the employment contract relating to the employee's position, nor use that position to assist any member of his or her immediate family in securing a contract with the court system in a manner not available to any other interested party.

2) No court employee shall receive tips or other compensation for representing, assisting or
consulting with parties engaged in transactions or involved in proceedings with the court system.

3) No court employee shall participate in any business decision involving a party with whom either the court employee or any member of the employee's immediate family is negotiating for future employment.

4) No former court employee shall engage in transactions or represent others in transactions or proceedings with the court system for one year after termination of employment in any matter in which the former employee was substantially involved or in any dealings with offices or positions that the former employee once held.

5) No court employee shall knowingly employ, advocate or recommend for employment any member of his or her immediate family.

6) No court employee shall solicit, accept or agree to accept any gifts, loans, gratuities, discounts, favors, hospitality or services under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the court employee in the performance of official duties.

a) Nothing in this section shall prohibit an employee from accepting a public award presented in recognition of public service.

b) Nothing in this section shall prohibit an employee from receiving a commercially reasonable loan made as part of the ordinary transaction of the lender's business.

c) Nothing in this section shall prohibit any person from donating a gift to a group of employees, e.g. all the employees of an office or unit of the court system, provided that the value and circumstances of the gift are such that it could not be reasonably inferred that the gift would influence the employees in the performance of their official duties or that such influence was the purpose of the donor, and provided that any employee accepting such a gift promptly report the gift to the supervisor, who shall be responsible for its proper distribution. Gifts received with the understanding that they will influence employees' official actions, decisions or judgments are prohibited as abuse of office in Section One, Subsection B.

d) Nothing in this section shall prohibit any person or group from donating a gift of historical or other significant value that is given for the benefit of the court system, provided that such a gift is received on behalf of the court system by the appropriate designated authority.

C) To secure conformity to the above standards, every court employee who has authority to enter into or to approve contracts in the name of the court system shall file a financial disclosure statement with the appropriate designated authority upon beginning employment in such position, at termination of employment, and annually while so employed. Such disclosure shall include all sources of and contractual arrangements for personal income, including investments and real property, business entity income and business position income held or received by themselves, their spouses or their dependent children, and shall follow the guidelines established by the appropriate designated authority.

D) Each full-time court employee's position with the court system must be the employee's primary
employment. Outside employment is permissible only if it complies with all the following criteria:

1) The outside employment is not with an entity that regularly appears in court or conducts business with the court system, and it does not require the court employee to have frequent contact with attorneys who regularly appear in the court system; and

2) The outside employment is capable of being fulfilled outside of normal working hours and is not incompatible with the performance of the court employee's duties and responsibilities; and

3) The outside employment does not require the practice of law; and

4) The outside employment does not require or induce the court employee to disclose confidential information acquired in the course of and by reason of official duties; and

5) The outside employment shall not be within the judicial, executive or legislative branch of government without written consent of both employers; and 6) Where a conflict of interest exists or may reasonably appear to exist or where the outside employment reflects adversely on the integrity of the court, the employee shall inform the appropriate designated authority prior to accepting the other employment.

Section Four: Political Activity

A) Each employee retains the right to vote as the employee chooses and is free to participate actively in political campaigns during non-working hours. Such activity includes, but is not limited to, membership and holding office in a political party, campaigning for a candidate in a partisan election by making speeches and making contributions of time or money to individual candidates, political parties or other groups engaged in political activity. An employee who chooses to participate in political activity during off-duty hours shall not use his or her position or title within the court system in connection with such political activities.

B) With the exception of officers of the court who obtain their position by means of election, no employee shall be a candidate for or hold partisan elective office. With the same exception, an employee who declares an intention to run for partisan elective office shall take an unpaid leave of absence upon the filing of nomination papers. If elected, he or she shall resign. An employee may be a candidate for non-partisan office without separating from employment, provided that the employee complies with the requirements in this Code concerning performance of duties, conflicts of interest, etc.

C) No employee shall engage in any political activity during scheduled work hours, or when using government vehicles or equipment, or on court property. Political activity includes, but is not limited to:

1) Displaying campaign literature, badges, stickers, signs or other items of political advertising on behalf of any party, committee, agency or candidate for political office;

2) Using official authority or position, directly or indirectly, to influence or attempt to influence any other employee in the court system to become a member of any political organization or to take part in any political activity;
3) Soliciting signatures for political candidacy;

4) Soliciting or receiving funds for political purposes.

D) No employee shall discriminate in favor of or against any employee or applicant for employment on account of political contributions or permitted political activities.

Section Five: Performance of Duties

A) Every court employee shall endeavor at all times to perform official duties properly and with diligence. Every court employee shall apply full-time energy to the business and responsibilities of the employee’s office during working hours.

B) Every court employee shall carry out responsibilities as a servant of the public in as courteous a manner as possible.

C) Every court employee shall maintain or obtain current licenses or certificates as a condition of employment as required by law or court rule.

D) No court employee shall alter, falsify, destroy, mutilate, backdate or fail to make required entries on any records within the employee’s control. This provision does not prohibit alteration or expungement of records or documents pursuant to a court order.

E) No court employee shall discriminate on the basis of nor manifest, by words or conduct, bias or prejudice based on race, religion, national origin, gender, sexual orientation or political affiliation in the conduct of service to the court.

F) No court employee shall give legal advice or recommend the names of private attorneys.

G) No court employee shall refuse to enforce or otherwise carry out any properly issued rule or order of court, nor shall court employees exceed that authority. No court employee shall be required to perform any duties outside the scope of the assigned job description.

H) Every court employee shall immediately report violations of this Code to the appropriate designated authority.

I) Court employees who are law students, attorneys or members of other professional groups are also bound by the appropriate professional duties of those roles.

Section Six: Court Managers

A) Court managers regularly shall update their education.

B) Court managers shall require employees subject to their direction and control to observe the ethical standards set out in this Code.

C) Court managers shall diligently discharge their administrative responsibilities, maintain professional competence in judicial administration and facilitate the performance of other court employees.
D) Court managers shall take action regarding any unethical conduct of which they may become aware, initiating appropriate disciplinary measures against an employee for any such conduct and reporting to appropriate authorities evidence of any unethical conduct by judges or lawyers.

E) Court managers shall not act as leaders in or hold office in any political organization, make speeches for any political organization or publicly endorse a candidate for political office.

*This Model Code was drafted by David T. Ozar, Cynthia Kelly and Yvette Begue and approved for promulgation by the AJS Executive Committee.*
AG Opinion

Mandatory Statutory Assessments

Honorable Eugene Knight
2001 WL 1229328
August 31, 2001

2001 WL 1229328 (Miss.A.G.)
Office of the Attorney General
State of Mississippi
Opinion No. 2001-0523

August 31, 2001

Honorable Eugene Knight
Simpson County ✧Justice Court✦ Judge
Post Office Box 298
Magee, Mississippi 39111

Re: Suspension of State Assessments

Dear Judge Knight:

Attorney General Mike Moore has received your letter of request and has assigned it to me for research and reply. Your letter states:

Section 99-19-25 authorizes the ✧justice courts✧ to suspend sentence or any part thereof in most misdemeanor cases. In misdemeanor cases that a suspended sentence is authorized, may the ✧justice court✧ judge suspend the state assessments as well as the fine? If the state assessments may be suspended, is the ✧justice court✧ clerk still required to pay the fees to the state?
Section 9-11-5(1) states in part that the county board of supervisors is to provide courtrooms for the justice court; the appropriateness of which is to be determined by the board. If the justice court finds that a 16’ x 16’ bedroom in a 60+ year-old house is not sufficient for holding trials, what recourse does the justice court have in trying to assure that there are adequate facilities?

In response to your first question, MS AG Op., Peterson (October 11, 1996) states that a justice court judge is without the authority to suspend the mandatory state assessments.

In response to your last question, MS AG Op., Smith (August 1, 1997) states that if the board of supervisors fails to provide an adequate courtroom for the justice court, a writ of mandamus may be sought in circuit court requiring the board of supervisors to fulfill their statutory duties. If we may be of further service to you, let us know.

Very truly yours,

Mike Moore
Attorney General

By: David K. Scott
Special Assistant Attorney General

2001 WL 1229328 (Miss.A.G.)

END OF DOCUMENT
Harmon A. "Robbie" Robinson  
2002 WL 1057893  
March 29, 2002

2002 WL 1057893 (Miss.A.G.)
Office of the Attorney General  
State of Mississippi  
Opinion No. 2002-0138  

March 29, 2002

Re: Justice Court Seal

Harmon A. “Robbie” Robinson  
Clay County Chancery Clerk  
Post Office Box 815  
West Point, Mississippi 39773

Dear Mr. Robinson:

Attorney General Mike Moore has received your letter of request and has assigned it to me for research and reply. Your letter states:

I am seeking clarification regarding the Justice Court seal, and the use and design of the notary public seal as used by the Justice in their capacity as ex officio notaries public under the notary public statute.

The first question would seek an answer to the question does Mississippi law require the Justice Court to have a court seal to authenticate the acts of the Justice, and is it statutorily
required for the Justice Court to place a seal on any of its acts, instruments, orders, etc to authenticate same?

As to Justice Judges and Clerks acting under the authority of Section 25-33-17 of the Mississippi Code relating to notaries public, what is the official design for said seal that is to be used by the Justice Court for notarial services, and more specifically would it be statutorily correct to have the Justice Court Clerk's name in the center of the seal around the margin of the eagle, which is required by Section 25-33-19?

This final question relates to my first question in paragraph two. If your opinion is that a seal is required to authenticate the acts and instruments of the Justice Court would the notary seal used by the Justice Court be sufficient to authenticate said acts? In response to your first question, we invite your attention to the Mississippi Supreme Court case of Murphy v. State, 144 So. 699 (1932), in which the court stated:

We take judicial knowledge of the fact that justices of the peace are not required to have seals or to authenticate their acts under seal: and, such being the rule, it applies to ex officio justices of the peace. Thus, there is no requirement that a justice court place a seal on any of its acts, instruments, orders, etc. to authenticate them, unless a statute specifically so requires. In response to your second question, Mississippi Code Annotated Sections 25-33-17 and 25-33-19 provide:

25-33-17. Ex-officio notaries public

All justice court judges and clerks, clerks of the circuit and chancery courts and assistant secretaries of state are notaries public by virtue of their office, and shall possess all the powers and discharge all the duties belonging to the office of notary public, and may authenticate all their acts, instruments and attestations by the common seal of office; and all acts done by them of a notarial character shall receive the same credit and legal effect as are attached to the acts of notaries public.

25-33-19. Seal of ex-officio notaries public

The board of supervisors of every county shall provide a notarial seal, with the inscription æœnotary publicæŒ around the margin and the image of an eagle in the center, which seal shall be kept in the office of the clerk of the circuit court; and all ex-officio notaries public may at all times have access to and use such seal for the authentication of any notarial act necessary to be so authenticated. It is the opinion of this office that the notarial seal as described in Section 25-33-19 is the seal which is to be used by justice court judges and clerks when notarizing a document and that it would not be proper to place the name of a clerk on such a seal. Your final question is moot based on the above responses. If we may be of further service to you, let us know.

Very truly yours,

Mike Moore
Attorney General

EXHIBIT D
AG Opinion

Judge Signs Each Court Record and Docket (Paper Form)

Sadie Rayborn
1997 WL 221294
April 11, 1997

1997 WL 221294 (Miss.A.G.)

Office of the Attorney General
State of Mississippi

Opinion No. 97-0218

April 11, 1997

Re: Court Docket

Sadie Rayborn
Marion County Justice Court Clerk
500 Courthouse Square, Suite 2
Columbia, Mississippi 39429

Dear Ms. Rayborn:

Attorney General Mike Moore has received your letter of request and has assigned it to me for research and reply. Your letter asks about the need to keep a court docket if the information is stored in a computer.

In response, Mississippi Code Annotated Section 9-10-11 States:

It shall be the duty of the justice court to keep a uniform case record developed by the Attorney General on each case, civil and criminal, brought before it. Upon disposition, each record shall be signed by the justice court judge. It shall be the duty of a justice court, when required, to furnish to either party a certified copy of all proceedings, and of all papers and process relating thereto, in any action before it.
Further, Mississippi Code Annotated Section 9-11-13 states:

Each justice of the peace shall, at the beginning and in front of all his entries in his docket, make and subscribe substantially the following entry, to-wit:

A docket of proceedings in matters civil and criminal before __________, a justice of the peace of the county of __________, in the State of Mississippi, in District No. ______ of said county, for the election of justices of the peace. Witness my signature.

________________________
Justice of the Peace

The above quoted statutes require that a justice court judge sign a court record of each case and a court docket. Therefore, it is the opinion of this office that a docket must be maintained in paper form. This opinion does not preclude a justice court from also maintaining a docket on computer in addition to the paper docket.

If we may be of further service to you, let us know.

Very truly yours,

Mike Moore
Attorney General

By: David K. Scott
Special Assistant Attorney General

1997 WL 221294 (Miss.A.G.)

END OF DOCUMENT
Judicial Disqualification Based on Campaign Contributions

In 1999, the ABA amended the model code to add a new Canon 3(E)(1)(e) that provides a judge shall disqualify himself or herself from a case where “the judge knows or learns by means of a timely motion that a party or a party’s lawyer has within the previous [ ] year[s] made aggregate* contributions to the judge’s campaign in an amount that is greater than [[[$ ] for an individual or [$ ] for an entity]] [[is reasonable and appropriate for an individual or an entity]].”

The rule was retained in Rule 2.11(A)(4) of the 2007 model code, with a few minor changes: “The judge knows or learns by means of a timely motion that a party, a party’s lawyer, or the law firm of a party’s lawyer has within the previous [insert number] year[s] made aggregate contributions to the judge’s campaign in an amount that is greater than $[insert amount] for an individual or $[insert amount] for an entity [is reasonable and appropriate for an individual or an entity].”

Further, in 2009, reversing a decision of the West Virginia Supreme Court of Appeals, the United States Supreme Court held that, where campaign contributions from the principal of one of the parties “had a significant and disproportionate influence” on the election of one of the justices on the state court, the risk of actual bias was “sufficiently substantial” to require that justice’s disqualification under the Due Process Clause of the U.S. Constitution. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 129 S. Ct. 2252 (2009). The $2.5 million contributed to unseat the incumbent (directly to the challenger and to a § 527 political organization) “eclipsed” the total spent by the challenger’s campaign committee and “exceeded” by $1 million the total spent by the campaign committees of both candidates combined.

I. Only 3 states have adopted a version of the model rule.

A. Effective September 1, 2009, the Arizona Supreme Court adopted a new code that provides, in Rule 2.11(A)(4), that a judge shall disqualify when “the judge knows or learns by means of a timely motion that a party, a party’s lawyer, or the law firm of a party’s lawyer has within the previous four years made aggregate contributions to the judge’s campaign in an amount that is greater than the amounts permitted pursuant to
A.R.S. § 16-905.” (A.R.S. § 16-905 sets campaign contribution limits.)

B. In 2010, the California legislature passed a statute that amends § 170.1 of the Code of Civil Procedure to provide that a judge is disqualified if:

(9)(A) The judge has received a contribution in excess of one thousand five hundred dollars ($1500) from a party or lawyer in the proceeding, and either of the following applies: (i) The contribution was received in support of the judge’s last election, if the last election was within the last six years. (ii) The contribution was received in anticipation of an upcoming election.

The disqualification “may be waived by the party that did not make the contribution unless there are other circumstances that would prohibit a waiver . . . .” The amended rule further provides that a judge shall be disqualified based on a contribution under $1500 if the judge believes his or her recusal would further the interests of justice, the judge believes there is a substantial doubt as to his or her capacity to be impartial, or if a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. Finally, the amendment requires a judge to “disclose any contribution from a party or lawyer in a matter that is before the court that is required to be reported under subdivision (f) of Section 84211 of the Government Code, even if the amount would not require disqualification under this paragraph.”

C. Effective April 1, 2010, the Utah Supreme Court adopted a new code that provides, in Rule 2.11(A)(4), that a judge shall disqualify when “the judge knows or learns by means of a timely motion that a party, a party’s lawyer, or the law firm of a party’s lawyer has within the previous three years made aggregate contributions to the judge’s retention in an amount that is greater than $50.” (Utah appoints its judges and has only retention elections.)

D. Statements that Alabama and Mississippi have adopted a rule similar to the model code provision are not accurate.

1. Although a 1975 Alabama statute requires disqualification when a judge as a candidate “received a substantial contribution from a party to the case, including attorneys for the party,” that statute has never been pre-cleared by the U.S. Department of Justice under the Voting Rights Act and is, therefore, not enforceable. See Alabama Advisory Opinion 99-725. A three-judge panel sitting in the U.S. District Court for the Middle District of Alabama dismissed for lack of standing and ripeness a challenge to the statute, finding that a 15-year “stalemate” between the Alabama Supreme Court and the Alabama Attorney General has meant that the statute has not been implemented or enforced, “not even once.” Little v.
Strange (June 21, 2011) (https://ecf.almd.uscourts.gov/cgi-bin/show_public_doc?2011cv0107-47). The Alabama Supreme Court has not adopted the rules required by the statute because it believes pre-clearance is necessary while the Alabama Attorney General has maintained that the statute does not need to be pre-cleared, although the U.S. Department of Justice disagrees.

2. The Mississippi code of judicial conduct has a rule providing that “a party may file a motion to recuse a judge based on the fact that an opposing party or counsel of record for that party is a major donor to the election campaign of such judge.” A provision allowing a party to file a motion, however, falls far short of the ABA model rule requiring a judge to disqualify.

II. 2 state supreme courts have, even after the decision in Caperton, expressly rejected proposals to adopt a specific campaign contribution amount that would trigger disqualification.

A. Although the Nevada Supreme Court adopted a new code of judicial conduct, effective January 19, 2010, the court did not adopt a provision recommended by its Commission on the Amendment to the Nevada Code of Judicial Conduct that would have required a judge to disqualify if the “judge has received financial or electoral campaign support within the previous 6 years from a party, or a party’s affiliated entities or constituents, or a party’s lawyer or the law firm of a party’s lawyer in an aggregate amount that exceeds $50,000” or if “the judge has received aggregate campaign support exceeding 5% of the judge’s total financial or electoral backing within the previous 6 years from a party, or a party’s affiliated entities or constituents, or a party’s lawyer or the law firm of a party’s lawyer.”

B. In 2010, the Wisconsin Supreme Court rejected a petition by the League of Women Voters of Wisconsin to amend the code to require disqualification for contributions over $1,000 within the preceding 2 years and a petition by a former justice of the court that proposed that a judge would be disqualified from a case based on a contribution over $10,000.

Instead, the Court adopted new rules that provide:

60.04 (7) Effect of Campaign Contributions. A judge shall not be required to recuse himself or herself in a proceeding based solely on any endorsement or the judge’s campaign committee’s receipt of a lawful campaign contribution, including a campaign contribution from an individual or entity involved in the proceeding.¹

¹ Comments to the rule provide:
60.04 (8) Effect of Independent Communications. A judge shall not be required to recuse himself or herself in a proceeding where such recusal would be based solely on the sponsorship of an independent expenditure or issue advocacy communication (collectively, an “independent communication”) by an individual or entity involved in the proceeding or a donation to an organization that sponsors an independent communication by an individual or entity involved in the proceeding.  

Wisconsin vigorously debated an elective judiciary during the formation and adoption of the Wisconsin Constitution in 1848. An elective judiciary was selected and has been part of the Wisconsin democratic tradition for more than 160 years.

Campaign contributions to judicial candidates are a fundamental component of judicial elections. Since 1974 the size of contributions has been limited by state statute. The limit on individual contributions to candidates for the supreme court was reduced from $10,000 to $1,000 in 2009 Wisconsin Act 89 after the 2009 supreme court election. The legislation also reduced the limit on contributions to supreme court candidates from political action committees, from $8,625 to $1,000.

The purpose of this rule is to make clear that the receipt of a lawful campaign contribution by a judicial candidate’s campaign committee does not, by itself, require the candidate to recuse himself or herself as a judge from a proceeding involving a contributor. An endorsement of the judge by a lawyer, other individual, or entity also does not, by itself, require a judge’s recusal from a proceeding involving the endorser. Not every campaign contribution by a litigant or attorney creates a probability of bias that requires a judge’s recusal.

Campaign contributions must be publicly reported. Disqualifying a judge from participating in a proceeding solely because the judge’s campaign committee received a lawful contribution would create the impression that receipt of a contribution automatically impairs the judge’s integrity. It would have the effect of discouraging “the broadest possible participation in financing campaigns by all citizens of the state” through voluntary contributions, see Wis. Stat. § 11.001, because it would deprive citizens who lawfully contribute to judicial campaigns, whether individually or through an organization, of access to the judges they help elect.

Involuntary recusal of judges has greater policy implications in the supreme court than in the circuit court and court of appeals. Litigants have a broad right to substitution of a judge in circuit court. When a judge withdraws following the filing of a substitution request, a new judge will be assigned. When a judge on the court of appeals withdraws from a case, a new judge also is assigned. When a justice of the supreme court withdraws from a case, however, the justice is not replaced. Thus, the recusal of a supreme court justice alters the number of justices reviewing a case as well as the composition of the court. These recusals affect the interests of non-litigants as well as non-contributors, inasmuch as supreme court decisions almost invariably have repercussions beyond the parties.

Comments to the rule provide:

Independent expenditures and issue advocacy communications are different from campaign contributions to a judge’s campaign committee. Contributions are regulated by statute. They are often solicited by a judge’s campaign committee, and they must be accepted by the judge’s campaign committee. Contributions that are accepted may be returned. By contrast, neither a judge nor the judge’s campaign committee has any control of an independent expenditure or issue advocacy communication because these expenditures or communications must be completely independent of the judge’s campaign, as required by law, to retain their First Amendment protection.
III. 9 state supreme courts have adopted new disqualification rules that do not have specific triggers like the ABA model, but that expressly or impliedly incorporate the decision in *Caperton*.

A. Effective September 8, 2011, the **Georgia** Supreme Court amended the code of judicial conduct to require that a judge is disqualified when:

> [T]he judge has received or benefited from an aggregate amount of campaign contributions or support so as to create a reasonable question as to the judge’s impartiality. When determining impartiality with respect to campaign contributions or support, the following may be considered:

(i) amount of the contribution or support;
(ii) timing of the contribution or support;
(iii) relationship of contributor or supporter to the parties;
(iv) impact of contribution or support;
(v) nature of contributor’s prior political activities or support and prior relationship with the judge;
(vi) nature of case pending and its importance to the parties or counsel;
(vii) contributions made independently in support of the judge over and above the maximum allowable contribution which may be contributed to the candidate; and
(viii) any factor relevant to the issue of campaign contributions or support that causes the judge’s impartiality to be questioned.

*Commentary:* A judge shall recuse when the judge knows or learns by means of a timely motion that a particular party, party’s lawyer, or law firm of a party’s lawyer has within the current or immediately preceding election cycle of a judicial campaign for public election made aggregate contributions in an amount that is greater than the maximum allowable contribution permitted by law.

There is a rebuttable presumption that there is no per se basis for disqualification where the aggregate contributions are equal to or less than the maximum allowable contribution permitted by law. However, because the presumption is rebuttable, a judge who knows or learns by means of a timely motion that a party, party’s lawyer, or law firm of a party’s lawyer has within the current or immediately preceding

A judge is not required to recuse himself or herself from a proceeding solely because an individual or entity involved in the proceeding has sponsored or donated to an independent communication. Any other result would permit the sponsor of an independent communication to dictate a judge’s non-participation in a case, by sponsoring an independent communication. Automatically disqualifying a judge because of an independent communication would disrupt the judge’s official duties and also have a chilling effect on protected speech.
election cycle of a judicial campaign for public election made aggregate contributions permitted by law, should weigh the considerations in subsection I (d) of Canon 3E in deciding whether recusal may be appropriate.

Where a motion to recuse is based upon campaign contributions to the judge and the aggregate of contributions alleged would result in a rebuttable presumption that there is no per se basis for disqualification under the provisions of this Canon, any affidavit, it required to be filed by court rule must specify additional factors demonstrating a basis for disqualification pursuant to the considerations set forth in subsection I (d) of Canon 3E. In the absence of such additional facts, the affidavit shall not be deemed legally sufficient to require assignment to another judge under applicable court rules.

In summary, Canon 3E provides that:

(1) If contributions made to a judicial candidate or to that candidate’s campaign committee are permitted by the law and do not exceed the maximum allowable contribution, then there is no mandatory requirement that the judge recuse.

(2) If (a) a judicial candidate has knowledge of a contribution made to the candidate or the candidate’s campaign committee that exceeds the maximum allowable contribution permitted by law, and, (b) after having such knowledge, the violation is not corrected in a timely manner (i.e., usually accomplished by returning the contribution), then the judge shall recuse.

(3) If a judge has knowledge of a pattern of contributions made by a particular party, party’s lawyer, or law firm of a party’s lawyer that include contributions (a) made to a judicial candidate or to that candidate’s campaign committee and/or (b) made to a third party attempting to influence the election of the judicial candidate, then the judge should consider whether recusal is appropriate in accordance with the considerations in subsection I(d) of Canon 3E.

The amendments also provide that “the public filing of a ‘Campaign contribution disclosure report’ or ‘Financial disclosure statement’ shall be deemed a disclosure to all parties of the information contained therein.” New terminology defines “aggregate” contributions as “not only contributions in cash or in kind made directly to a candidate or a candidate’s campaign committee within the current or immediately preceding election cycle but also all contributions made indirectly or independently with the knowledge that they will be used to influence the election of the judge;” defines “support” “as non-monetary assistance to a candidate; and adopts the definitions of “campaign committee,” “contribution,” “campaign contribution disclosure report,” “financial disclosure statement,” and “election cycle” from the Georgia Government Transparency and Campaign Finance Act of 2010.
B. Effective May 3, 2010, the **Iowa** Supreme Court approved a new code that provides, in Rule 51:2.11(A)(4), that a judge is disqualified when:

The judge knows or learns by means of disclosure mandated by law or a timely motion that the judge’s participation in a matter or proceeding would violate due process of law as a result of: (a) Campaign contributions made by donors associated or affiliated with a party or counsel appearing before the court; or (b) Independent campaign expenditures by a person other than a judge’s campaign committee, whose donors to the independent campaign are associated or affiliated with a party or counsel appearing before the court.

C. In November 2009, the **Michigan** Supreme Court amended court rules regarding disqualification to provide, in Rule 2.003(C)(1)(b):

Disqualification of a judge is warranted for reasons that include . . . the judge, based on objective and reasonable perceptions, has either (i) a serious risk of actual bias impacting the due process rights of a party as enunciated in *Caperton v. Massey*, __ US __; 129 S. Ct. 2252; 173 L. 2d. 2d 1208 (2009); or (ii) has failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Code of Judicial Conduct.

D. In February 2010, the **Missouri** Supreme Court revised the code of judicial conduct to add a comment that states:

A candidate for judicial office should consider whether his or her conduct may create grounds for recusal for actual bias or a probability of bias pursuant to *Caperton v. A.T. Massey Coal Co.*, __ U.S. ____ (2009), or whether the conduct otherwise may create grounds for recusal under this Rule 2 if the candidate is elected to or retained in judicial office.

E. Effective January 1, 2012, the **New Mexico** Supreme Court adopted a new code that states in comments to the disqualification rule:

[6] In *Caperton v. Massey Coal Co.*, 129 S. Ct. 2252 (2009), the United States Supreme Court held that the failure of a state supreme court justice to recuse when a party had made extraordinary and disproportionate contributions in support of the justice’s candidacy in the previous election violated the opposing party’s due process rights. The Court applied an objective standard and stated "that there is a serious risk of actual bias - based on objective and reasonable perceptions - when a person with a personal stake in a particular case had a significant and disproportionate
influence in placing the judge on the case by raising or directing the judge’s election campaign when the case was pending or imminent.” Id. at 2263-64. The Court recognized that states may, in their codes of judicial conduct, set more stringent standards for disqualification than imposed by the due process clause. Id. at 2267. A judge’s impartiality might reasonably be questioned under Paragraph (A) of this rule as a result of campaign contributions even though they are not so extraordinary and disproportionate as to violate a person’s due process rights. The intent of the Code of Judicial Conduct is to insulate judges from this type of bias; Rules 21-402(D) and 21-403 NMRA contemplate that a judge or judicial candidate not solicit or be informed of campaign contributions from attorneys and litigants. Despite these prohibitions, a judge may become aware of contributions made on behalf of the judge’s campaign.

[7] Excessive contributions to a judge’s campaign by a party or a party’s attorney may also undermine the public’s confidence in a fair and impartial judiciary. An appearance of impropriety may result when attorneys or parties appearing before a judge generate large amounts of money for a campaign, either by contributing directly to the campaign, by contributing to political action committees supporting the judge, or by organizing large fund raisers. However, contributions made by attorneys to the campaigns of judicial candidates would not require a judge’s disqualification in the absence of extraordinary circumstances.

F. Effective July 1, 2012, the North Dakota Supreme Court adopted a new code of judicial conduct that includes a comment that states:

[4] The fact that a lawyer in a proceeding, or a litigant, contributed to the judge's campaign, or publicly supported the judge in the judge’s election does not of itself disqualify the judge. However, the size of contributions, the degree of involvement in the campaign, the timing of the campaign and proceeding, the issues involved in the proceeding, and other factors known to the judge may raise questions as to the judge's impartiality under paragraph (A). See Rule 4.6.

G. In December 2010, the Oklahoma Supreme Court adopted a new code of judicial conduct, effective April 15, 2011, that includes a rule requiring disqualification when:

The judge knows or learns by means of a timely motion that a party, a party’s lawyer, or the law firm of a party’s lawyer has within the previous four (4) years made aggregate contributions to the judge’s campaign in an amount that a reasonable person would believe could affect the fairness of the judge’s consideration of a case involving the party, the party’s lawyer or the law firm of the party’s lawyer. The judge should consider what the public perception would be as to such contributions affecting the judge’s ability to be fair to the parties. Contributions
within the limits allowed by the Oklahoma Ethics Commission will not normally require disqualification unless other factors are present.

H. Effective July 1, 2012, the Tennessee Supreme Court adopted a new code of judicial conduct that includes a provision requiring disqualification when:

(4) The judge knows or learns by means of a timely motion that a party, a party’s lawyer, or the law firm of a party’s lawyer has made contributions or given such support to the judge’s campaign that the judge’s impartiality might reasonably be questioned.

Comment [7]
The fact that a lawyer in a proceeding, or a litigant, contributed to the judge’s campaign, or supported the judge in his or her election does not of itself disqualify the judge. Absent other facts, campaign contributions within the limits of the “Campaign Contributions Limits Act of 1995,” Tennessee Code Annotated Title 2, Chapter 10, Part 3, or similar law should not result in disqualification. However, campaign contributions or support judicial candidate receives may give rise to disqualification if the judge’s impartiality might reasonably be questioned. In determining whether a judge’s impartiality might reasonably be questioned for this reason, a judge should consider the following factors among others:

(1) The level of support or contributions given, directly or indirectly, by a litigant in relation both to aggregate support (direct and indirect) for the individual judge’s campaign and to the total amount spent by all candidates for that judgeship;
(2) If the support is monetary, whether any distinction between direct contributions or independent expenditures bears on the disqualification question;
(3) The timing of the support or contributions in relation to the case for which disqualification is sought; and
(4) If the supporter or contributor is not a litigant, the relationship, if any, between the supporter or contributor and (i) any of the litigants, (ii) the issue before the court, (iii) the judicial candidate or opponent, and (iv) the total support received by the judicial candidate or opponent and the total support received by all candidates for that judgeship.

I. The Washington Supreme Court adopted a new code of judicial conduct, effective January 1, 2011, that provides in Rule 2.11(D):

A judge may disqualify himself or herself if the judge learns by means of a timely motion by a party that an adverse party has provided financial support for any of the judge’s judicial election campaigns within the last six years in an amount that causes the judge to conclude that his or her impartiality might reasonably be questioned. In making this determination the judge should consider: (1) the total amount of
financial support provided by the party relative to the total amount of the financial support for the judge’s election, (2) the timing between the financial support and the pendency of the matter, and (3) any additional circumstances pertaining to disqualification.

IV. Effective July 15, 2011, the Chief Administrative Judge of the New York State Unified Court System adopted an assignment rule (§ 151.1) for cases involving contributors to judicial campaigns (www.nycourts.gov/rules/chiefadmin/151.shtml#section151_1):

(A) (1) No matter shall be assigned to a judge, other than in an emergency, or as dictated by the rule of necessity, or when the interests of justice otherwise require, if such assignment would give rise to a campaign contribution conflict as defined in section (B) of this Part.

(2) An assignment in derogation of this Part, due to administrative error or oversight, shall not (a) diminish the authority of the assigned judge; (b) give rise to any right, claim or cause of action; (c) impose any additional ethical obligation upon the assigned judge; or (d) diminish the assigned judge’s obligation to consider recusal in light of campaign contributions.

(3) Nothing in this Part shall abridge the right of a party to move for recusal of an assigned judge at any time, or limit the arguments or evidence that may be marshaled for or against such recusal motion (see, e.g., §§ C[1] and D of this Part).

(B) (1) Individual Contributions: For purposes of this Part, a campaign contribution conflict shall exist when –

(a) an attorney appearing as counsel of record in a matter before a judge, or appearing in the matter as co-counsel or special counsel to such counsel of record, or
(b) such attorneys’ law firm or firms, or
(c) a party in the matter –
individually has contributed $2,500 or more to such judge’s campaign for elective office during the window period defined in Part 100.0(Q) of these Rules.

(2) Collective Contributions: For purposes of this Part, a campaign contribution conflict shall exist when the sum of all contributions to a judge’s campaign for elective office made during the window period defined in Part 100.0(Q) of these Rules by –

(a) an attorney appearing as counsel of record in a matter before such judge, and attorneys appearing in the matter as co-counsel or special counsel to such counsel of record, and
(b) each such attorneys’ law firm or firms, and
(c) each client of each such attorney in the matter –
totals $3,500 or more.

(3) Term of Conflict (Conflict Period):
(a) A contribution shall be considered for conflicts purposes under this Part for a period of two years commencing on the day that the State Board of Elections first publishes the report of such contribution; provided, that if the candidate receiving such contribution is
not a judge at the time of such report, then such two-year period shall commence on the day that he or she first assumes judicial office.

(b) If a person or entity makes more than one contribution to a candidate during such candidate’s window period, as defined in Part 100.0(Q) of these Rules, then for conflicts purposes hereunder such contributions shall be totaled and treated as if made as a single contribution. In such cases, the conflict period for such contributions shall be extended to two years following the day on which the State Board of Elections publishes the report of the last of such contributions (unless paragraph (a) of this subsection requires a later date, in which case such later date shall govern).

(C) The Chief Administrator of the Courts shall:
(1) publish periodically a listing or database of contributions and contributors to judicial candidates, as disclosed by public filings, in a manner designed to assist the identification of campaign contribution conflicts under this Part, as well as contributions which, while not causing a campaign contribution conflict under this Part, may be pertinent to a motion to recuse;
(2) establish a procedure whereby parties may waive application of this Rule and permit assignment of a judge affected by a campaign contribution conflict;
(3) provide for local administrative resolution of issues arising under this Part by local court clerks and administrative judges, with minimal involvement by assigned judges; and
(4) with advice and consent of the Administrative Board of the Courts, take such further steps as may be necessary to give effect to this Part.

(D) Notwithstanding any provision of this Part, a judge shall be mindful of the ethical responsibility to consider the propriety of recusal in any proceeding in which the judge’s impartiality reasonably might be questioned in consequence of campaign contributions.

(E) This Part shall take effect on July 15, 2011, and shall apply to all campaign contributions first reported as received on or after such date.

Prepared by Cynthia Gray, Director, American Judicature Society Center for Judicial Ethics
Principal Investigators

Lydia Quarles, J.D.

Lydia Quarles is a Project Manager at the John C. Stennis Institute, Mississippi State University. She received her Juris Doctorate from Cumberland School of Law, Samford University, and her MA and BA from Mississippi University for Women, in political science and communication. After over a dozen years in the private practice of law in Alabama and Mississippi, she joined the Mississippi Workers Compensation Commission as an Administrative Judge in 1993. Eight years later, in 2001, she was appointed Commissioner of the agency. In 2006, she resigned to join the Stennis Institute. She is a fellow of the Mississippi Bar Foundation, a recipient of the Mississippi Bar's Distinguished Service Award, and a member of the Mississippi School for Math and Science Foundation Board. Quarles was recently honored by the American Bar Association's Administrative Law and Regulatory Practice Section, receiving the Mary C. Lawton Award for lasting contributions to the Mississippi Workers Compensation Commission in the areas of alternative dispute resolution and access for Hispanic workers. She is also the recipient of the Joan Fisk Bishop Award, a national award of the American Society of Public Administration, for her work promoting women in public administration.

Joe B. Young

Joe B. Young is a Project Manager at the John C. Stennis Institute, Mississippi State University. A former Pike County Tax Assessor/Collector, served from 1983 until he resigned in 2011. Subsequently he joined the Stennis Institute. Young graduated from Mississippi College and obtained an MS degree. He is well respected in Mississippi government circles as an ad valorem tax expert, and is often busy speaking on behalf of Stennis on the topics of taxes and administrative budgeting. He and his wife, Ramona, have three (3) sons, all alumni of Mississippi State University.
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