

CHAPTER XIV

THE COURT SYSTEM

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INTRODUCTION

Courts must exist for the resolution of disputes in society; hopefully, the speedy and efficient solving of citizens' disputes in a properly functioning court system makes for a more civil society.

The court system in Mississippi has long been described in a variety of sources as antiquated, outdated, and poorly functioning. While our Mississippi court system may lack total perfection, the truth is that it functions fairly well in terms of bottom line results. The further truth is that many changes have occurred in the court system in the last quarter century or so, and these changes have improved the quality of justice received by Mississippi litigants.

The test of the court system (used interchangeable with judicial branch) is how well it serves those who use it - the litigants. If government as a whole is to effectively serve all citizens, then those citizens who wind up in court (for whatever reason) must have a comfortable feeling of fairness, impartiality and confidence in the system. This can be achieved only through the active support and participation of the executive and legislative branches and, further, only with the dedicated, hard work of judges and all persons who serve the courts, such as court clerks, law enforcement officers, administrative personnel, and others.

At first glance, the courts may appear to be confusing, but some study reveals that the overall system of courts is probably less confusing than the operation of the separate courts.

OVERALL

The *1890 Mississippi Constitution* created the Justice Courts (formerly known as Justice of the Peace Courts), Chancery Courts, Circuit Courts, and Supreme Court. Created since the *1890 Constitution* by legislation action are the Municipal Courts, one (1) Family Court, nineteen (19) County Courts, and the relatively new Court of Appeals, first seated in January, 1995.

The Chief Justice of the Mississippi Supreme Court is the chief administrative officer of all courts in Mississippi, and the Supreme Court promulgates and/or approves all rules governing the practices and procedures of all courts. While legislative enactments are seen from time to time, it seems to be generally conceded that the Supreme Court controls the procedural rules for courts, and the legislature controls the substantive law. This situation is always subject to change, and one may expect departures from these courses over time.

Author's Note: This author acknowledges reliance upon the *Supreme Court of Mississippi 1997 Annual Report*; *The Mississippi Code, 1972, Annotated*; the *1890 Mississippi Constitution*; Professor Diane E. Wall's thoughtful and well-written chapter entitled "The Antiquated Judicial System" published in *Mississippi Government and Politics: Modernizers Versus Traditionalists* by the University of Nebraska Press (1992); and the accumulation of the writer's experience in the justice system over nearly 30 years. The organizational chart of the Mississippi court system is taken from page 1 of the *Supreme Court of Mississippi 1997 Annual Report*.

By observation over nearly thirty years' service in the justice system, it seems that many citizens become interested in the judicial branch of government only when they become involved in a case in some fashion. That person's interest is understandable, as is the often considerably lessened interest in the court system of those not or never involved.

The importance of other officials to the court system in terms of support and cooperation has been noted, and this is true from the local level of government to the very highest level. Support of each branch for the other is vital, as is respect for the independence of each and the absence of arrogance and heavy handed actions by all.

JUSTICE COURT

Perhaps the best known and most used, the Justice Court exists in all counties, with 72 counties have one court each, and the 10 counties with two county seats (judicial districts) therein having two courts each, for a total of 92 Justice Courts statewide. These 92 courts are served by 191 judges, with the number in each county being determined by county seat and/or population.

Justice Courts handle civil actions under \$2,500, and criminal law misdemeanors. Additionally, these courts determine in felony criminal charges whether or not to bind a person over to await the action of the county grand jury. Justice Court Judges set bail, issue search warrants, and all trials (except preliminary hearings) may be by jury.

Justice Courts are served by clerks (appointed by the board of supervisors) who are required to receive ongoing continuing education and training each year.

Justice Court Judges are elected for four year terms and are paid regular salaries. A high school diploma is mandated, and Judges must complete continuing educational requirements prior to taking office and in each year of service thereafter.

Appeal from the Justice Courts are to the County Courts (if one is available) or the Circuit Courts, and in either event, a completely new trial is had. There is no court reporter employed in the Justice Courts, but litigants may provide their own reporters if a record of any proceeding is desired.

By definition, the Justice Court is one of limited jurisdiction, but it is both busy and important as it provides most citizens their first contact with the justice system in general.

MUNICIPAL COURT

The Municipal Court serves the cities and towns as the Justice Court serves the counties. There are 223 Municipal Courts with approximately 220 judges in the State. These courts hear misdemeanor criminal offenses and the violations of municipal ordinances. The municipal judge may also conduct felony criminal preliminary hearings.

While most municipal judges are lawyers, no law degree is mandated, and mayors no longer serve as judge. Justice Court Judges may serve as the municipal judge in municipalities located in their justice district. Municipal Judges are appointed by the governing authorities of their jurisdiction and their salaries are set by the same authorities.

Municipal Courts are very important at the grassroots level, with many citizens seeing and visiting only this court. While no court reporter is provided, litigants may provide their own.

COUNTY COURT

County Courts exist in 19 counties, with a total of 23 judges, all of whom are required to be lawyers, at least 26 years old with five years experience in law practice. County Judges are elected for four year terms and their salary is determined by their county's population and classification.

County Court Judges hear civil actions under \$200,000, as well as civil appeals from the Justice and Municipal Courts. They try misdemeanor criminal cases and conduct preliminary hearings, in addition to serving as the Youth (juvenile) Court.

Juries are utilized in County Courts and appeals may be taken to the Chancery or Circuit Court, depending upon the nature of the case. The County Court is a court of record (has a court reporter) and it may be assigned cases from the Chancery and Circuit Courts to assist with heavy case loads or judge recusals.

YOUTH COURT

The Family court, formerly existing in Harrison County, was abolished in 1999 and merged into the Harrison County Court. Outside the counties having County Courts, the Youth Court is held as a division of the Chancery Court, generally by a Chancery Court appointed Youth Court Referee.

The public is excluded from Youth Court, the proceedings are civil, and the court has a wide range of possible option in dealing with those youth who enter its doors. Appeals are to the Chancery and/or Supreme Court.

Like the Justice, Municipal, and County Courts, the Youth Courts are of limited jurisdiction, but all are busy, vital to the justice system, and in need of cooperation and support of all officials and branches of government.

GENERAL JURISDICTION COURTS

Mississippi throughout its history has had two general jurisdiction trial courts, one of which is Chancery and the other of which is Circuit. Judges in these courts, known as Chancellors and Circuit Judges, are required to be 26 years of age, a practicing attorney for at least five years, and a qualified elector. These judges (Chancellors are also known as judge) are elected for four year terms and their salaries and other benefits are set by the legislature. Judges in these two courts of general jurisdiction handle distinctively different types of cases, but all these judges are considered to be of equal rank. These are courts of record, meaning that a court reporter records all proceedings, or should do so. These courts are increased in number over time to reflect the increase in population and case load.

CIRCUIT COURT

There are presently 22 Circuit Court Districts in Mississippi with 49 judges presiding therein. Districts, created by the legislature and/or the federal courts, vary considerably as to size, population and configuration. The Circuit Court tries felony criminal cases (as well as misdemeanors on appeal) and civil actions involving issues of \$200 and above. Appeals from the Circuit Courts are to the Mississippi Supreme Court.

Juries are widely used in the Circuit Court, with a unanimous vote of 12 required for a criminal conviction, but only 9 of 12 required for a decision in a civil proceeding. The Circuit Court with all its attendant costs is generally the most expensive court in a county, but its work is too important to be compromised or sacrificed, and its work must be supported at an efficient and operable level. While it is valuable to continually study the courts and seek improvement therein, it is noted that the alternative to no courts is not acceptable in a civilized society.

CHANCERY COURTS

There are 20 Chancery Court Districts in Mississippi with 45 Chancellors (also known as Judge) presiding therein. These Chancery Judges must possess the same qualifications as Circuit and County Judges, and their districts and salaries are legislatively established. They are elected for four year terms.

The Chancery Court has always been the separate court of equity (as distinguished from the law court circuit) in Mississippi, and the Chancellor generally hears cases without a jury. Juries are permitted only in will contests. An advisory jury is permitted in any case, but as the jury's decision is advisory only and not binding on the Chancellor, this use of a jury seems of little or no use. Advisory juries are rarely utilized but all litigants have the right to request the same.

The Chancery Court handles equity cases involving domestic and family matters such as divorce, child custody and support, property division, adoptions, and all related issues. Additionally, the Chancery Court handles and processes the estates of decedents (without or without a last Will and Testament) and all issues involving minors. This court handles a wide variety of other matters, including issues concerning title to land, contracts, injunctive matters, and commitments of persons impaired through mental disability and/or chemical – substance – alcohol abuse.

In the 63 counties having no County Court, the Chancery Court either hears all youth court proceedings or appoints a Youth Court Referee (Judge) to do so. The Chancery Court is a court of record and its appeals are to the Mississippi Supreme Court.

APPELLATE COURTS

The Mississippi Supreme Court is the court of last resort in the state, and it possesses appellate jurisdiction over all matters. This court has existed throughout statehood (for many years by a separate title and name) and its membership has been increased from three to six to nine members, which is its current size.

In 1993 and 1994, the legislature created a lower Appellate Court, the Mississippi Court of Appeals, and its ten members were seated in January, 1995. This court, an intermediate one, is situated beneath the Supreme Court, but above the Chancery and Circuit Courts. Districts and salaries of justices of the Supreme Court and judges of the Court of Appeals are determined by the legislature.

SUPREME COURT

The nine justices of the Mississippi Supreme Court are elected from three supreme court districts (three from each district), and their qualifications are the same as those for Chancery, Circuit, and county Judges except that the Supreme Court candidate must be 30 years of age. Justices serve eight year terms, the longest of any elected state official. Justices seek election on non-

partisan ballots and, as is the case with all judges, are prohibited from engaging in any politically partisan activity.

The Supreme Court operates on the seniority system, meaning that the Chief Justice is the justice having served the longest tenure on the court and so on through number nine. The Supreme Court does not retry cases, but studies and reaches its decisions on the records of trials from the lower courts. The court generally works in three justice panels and all justices are required to participate in all cases unless recused therefrom.

The functioning of the Supreme Court may be likened to the functioning of any nine member committee. A majority vote is required for decisions, which means five votes may win, or lose, a case.

COURT OF APPEALS

This court was created after many years of effort, and it serves a valuable purpose in disposing of certain appellate cases, all of which are assigned to it by the Supreme Court. The ten judges are elected two from each congressional district as they exist today, and their terms either now are, or will be, eight years. Their chief judge is appointed by the Chief Justice of the Supreme Court for a four year term.

The Supreme Court must retain all cases involving the death penalty, utility rates, annexations, bond issues, election contests, and a statute held unconstitutional by a lower court. Other cases retained by the Supreme Court include attorney discipline, judicial performance, certified questions from a Federal Court, a major question of first impression, as well as others.

The Court of Appeals may be assigned any other matters, and it receives an abundance of cases on all issues. This court has substantially aided in reducing the appellate case backlog in Mississippi. A decision of this court is final, but any litigant aggrieved by any decision may request the Supreme Court to grant discretionary review (known as the certiorari process), and the Supreme Court generally does so in about 20 percent of the reviews sought.

The Supreme Court and Court of Appeals are operating well. Together they have produced vast improvements in the Mississippi justice system.

SUPPORT STAFF AND OTHER PERSONNEL

The judicial branch of government is served at every level by personnel known as officers of the court who play some role or roles in the functioning of the court. Attorneys who practice law are officers of the court even though they may not occupy any official position. Their conduct, activities, obedience to the rules, and quest for justice place them in unique roles, and an overwhelming majority serve honorably, ably and with distinction. Today, all courts have clerks (some have separate administrators) and law enforcement officers, and there are various statewide organizations which serve the courts.

Clerks

The Justice Courts have had clerks since 1984, and these clerks are appointed by the Board of Supervisors and paid salaries by the counties. The Municipal Court Clerks are appointed by the governing authorities of the municipality and their salaries are set by the same.

The Chancery and Circuit Clerks are elected in their respective counties for four year terms and their salaries are paid by their counties pursuant to legislative authorization. The Circuit Clerk also serves as the clerk of the County Court in the 19 counties where such exists, and this service includes the youth court in those 19 counties as well. The Chancery Clerk serves as the Youth Court Clerk in the other 63 counties.

The Supreme Court Clerk also serves as clerk of the Court of Appeals and is appointed by the Supreme Court. The Clerk's salary is set by the legislation. Most of these clerks are assisted by some number of deputy clerks whose qualifications and duties closely parallel the clerk.

The principle function of all court clerks at every level is to receive and file pleadings, documents, and other papers, and to issue certain official documents as required. The clerks charge and collect fees for their services, and some collect fines, past due taxes, and the like.

The clerks keep and maintain official records and minutes of the court, administer the oath to witnesses, assist juries and jurors, attend the courts when in session, and should be generally available to assist the courts as needed.

Law Enforcement Officers

All courts should have a law enforcement officer or officers present at all times as an officer or officers of the court. Their function is to open court, maintain order, and assist as directed by the court.

Municipal courts are served by municipal police, and the Justice Courts are served by constables and/or the Sheriff's department. The County, Chancery and Circuit Courts are generally served by the Sheriff's department, but other law enforcement agencies are also called upon for assistance. The Mississippi Supreme Court has a Marshal, and it and the Court of Appeals may be assisted by the Hinds County Sheriff and the Capitol Police.

Administrators

In relatively recent years, the County, Chancery, and Circuit Courts have obtained staff support generally known as administrators, whose principal duties are the setting and maintaining of dockets and schedules for the courts. These employees are hired by the judges but are deemed to be employees of the Mississippi Administrative Office of Courts. Their duties vary somewhat but overall they are to assist the court as directed. The Supreme Court and Court of Appeals Administrator serves as the administrative officer for both courts and oversees all support functions.

Court Reporters

These officers are state employees, hired by the judges of the County, Chancery, and Circuit Court. Their duties are to accurately transcribe and record all proceedings of the courts in which they serve. These transcripts are required of courts of record for possible appeal purposes.

ADMINISTRATIVE OFFICE OF COURTS

The legislatively-created Mississippi Administrative Office of Courts became effective July 1, 1993. Its mission is to provide for the orderly and efficient handling of all administrative matters in the State court system.

The Administrative Office of Court Director is appointed by the Mississippi Supreme Court, and the duties of the Administrative Office of Courts are varied and wide ranging. Support for the Administrative Office of Courts by all court and judicial personnel is vital for its proper functioning. The interested reader is encouraged to see a current Supreme Court of Mississippi Annual Report for more exhaustive information.

COMMISSION ON JUDICIAL PERFORMANCE

This agency was created in 1979, and it regulates the conduct of judges by enforcing law and ethical canons applicable to them. It receives complaints, conducts hearings, and forwards recommendations concerning judges to the Supreme Court.

MISSISSIPPI JUDICIAL COLLEGE

This agency is charged with the training of all court clerks and their deputies, administrators, all judges and others. Training is mandated for these officials, and the cost is usually borne by the local governments or the court involved. Training generally assists in eliminating mistakes and errors, and local officials are encouraged to be cooperative and supportive.

CONFERENCE OF MISSISSIPPI JUDGES

This organization is composed of judges from the County, Chancery, Circuit, and Court of Appeals, as well as the Supreme Court Justices. Chaired by the Chief Justice, this group traditionally meets twice a year for continuing education and discussion of issues and administrative matters.

OTHER

The State Law Library in Jackson provides law library services to all courts and state officials. It also provides services to the general public.

The Mississippi Bar is an organization all practicing attorneys are required to join and remain a member. The Bar provides services for its members and the general public, including the handling of complaints against attorneys.

The Board of Bar admissions has members appointed by the Supreme Court. Its mission is to govern admissibility of attorneys into law practice in Mississippi. Bar examination are conducted twice a year.

CONCLUSION

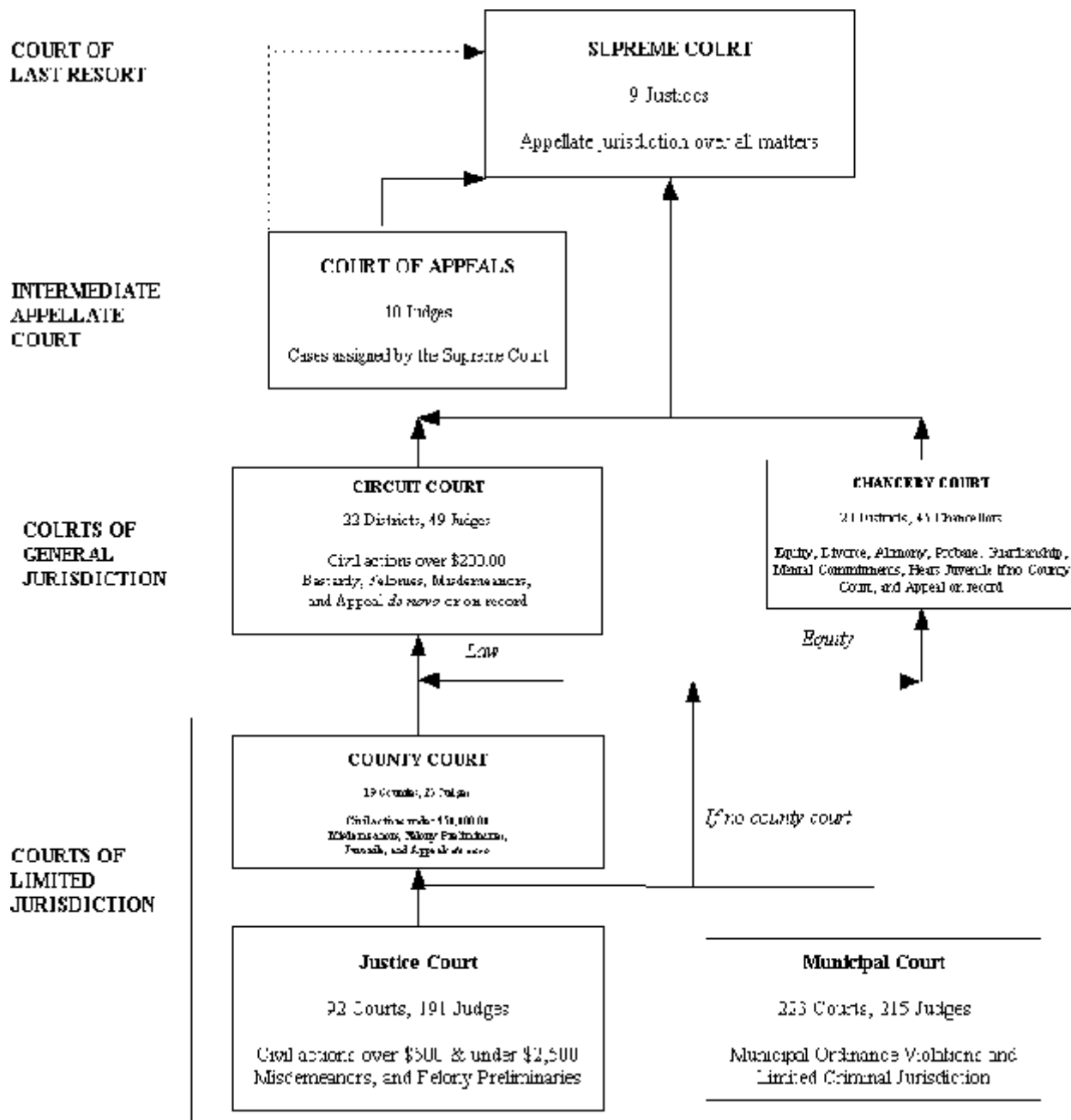
This short summary of the court system in Mississippi is not intended to be exhaustive, but is written for the lay person involved in local government and the general public. While all courts appear to be baffling (and often are), study and understanding reveals that the judicial branch in Mississippi had made remarkable progress in recent years. By and large, litigants receive an excellent quality of justice and, if they do not so feel, there are avenues for them to pursue.

Courts are often criticized, as are the other two branches of government, but the Mississippi system operates well and much better than it has in many years. It has been observed that the judicial branch of government is the weakest, most misunderstood, and least studied branch of government. It is further believed by many that litigation (and the court system) is too complex, lengthy, and costly to perform well in any case. Whether these statements are true or not

depends upon the viewpoint of the person involved, but is important to remember that all citizens have a continuing obligation to improve the courts and the entire justice system.

Courts throughout history have dealt with societal issues, and that will most likely continue to be the pattern. Society (all of us) bears a special responsibility to ensure that society remains civil in its resolution of disputes among its citizens. That responsibility includes an assurance that courts are competent, fair, impartial, and provided with adequate resources for their vital task to society. A civil society must have well-working and smoothly functioning courts, and these courts significantly aid in encouraging a civil society.

Local officials, and the general public are strongly encouraged to read, study, and learn as much as possible about the entire court system. Knowledge and information decrease the uncertainty and apprehension of being in court in a case as a party or witness. In any event, the more knowledge one possesses may avoid that flash of fear and uncertainty when one hears that old saying: "I'll see you in Court!"



MISSISSIPPI'S COURT SYSTEM