



FIRST CIRCUIT COURT DISTRICT OF MISSISSIPPI

PAUL S. FUNDERBURK

CIRCUIT JUDGE

PO DRAWER 1100, TUPELO, MISSISSIPPI 38802
FIRSTCIRCUITCOURT.MS.GOV

COURT ADMINISTRATOR
ANGELA STEWART
astewart@leecomms.com
662.432.2365

DEPUTY COURT ADMINISTRATOR
JILL S. REINHARD
jreinhard@co.lee.ms.us
662.432.2364

STAFF ATTORNEY
JUSTIN C. MOODY
jmoody@co.lee.ms.us
662.432.2362

July 10, 2023

TO: Justice and Municipal Court Judges
RE: Rule 7.2 of the Mississippi Rules of Criminal Procedure and Continuity of Representation

Dear Sir/Madam:

On April 13, 2023, a unanimous Mississippi Supreme Court issued En Banc Order No. 89-R-99038-SCT, Serial 246151. A copy of the Order is attached hereto.

The En Banc Order delineated certain amendments to Rule 7.2 of the Mississippi Rules of Criminal Procedure, which became effective on July 1, 2023. More specifically, the amendment mandates continuity of representation of criminal defendants by their court-appointed counsel.

To maintain compliance with these changes, every indigent criminal defendant shall be appointed counsel at his/her initial appearance. Counsel appointed to represent a criminal defendant at his/her initial appearance shall continue to represent said criminal defendant at all proceedings before the court of initial appearance unless and until new counsel is appointed or retained. The court of initial appearance shall maintain jurisdiction of the criminal defendant up until an indictment is returned or a criminal information is filed in the appropriate circuit court. An attorney representing an indigent criminal defendant shall not be allowed to withdraw unless substituted by another attorney. Continuous representation must be preserved.

As you will ascertain from the En Banc Order and amendments, the Supreme Court's intention was that there should never be a "dead zone"—a time during which any defendant is not represented by counsel. If you have not done so, please familiarize yourselves with MRCrP 7 in its current, amended form and see that your local court practices and procedures conform to its mandates.

Thank you in advance.

Paul S. Funderburk
Senior Circuit Judge

Serial: 246151

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99038-SCT

FILED

APR 13 2023

IN RE: MISSISSIPPI RULES OF CRIMINAL PROCEDURE

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

EN BANC ORDER

This matter is before the Court, *en banc*, on the Court's own motion.

On February 3, 2023, the Court issued a request for public comment on proposed amendments to the Mississippi Rules of Criminal Procedure. After due consideration, the Court finds that, in the interest of promoting the fair and efficient administration of justice, the Mississippi Rules of Criminal Procedure should be, and they hereby are, amended in accordance with Exhibit A, which by reference is incorporated into and made a part of this order. Such amendments shall take effect on July 1, 2023.

The Clerk of this Court shall spread this order and the amended rules attached hereto upon the minutes of the Court and provide a certified copy to West Publishing Corporation for publication in the advance sheets of *Southern Reporter, Third Series (Mississippi Edition)*, and in the next edition of the *Mississippi Rules of Court*.

SO ORDERED, this the 13th day of April, 2023.


JAMES W. KITCHENS, PRESIDING JUSTICE

ALL JUSTICES AGREE.

EXHIBIT A

MISSISSIPPI RULES OF CRIMINAL PROCEDURE

RULE 7 COUNSEL

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Rule 7.2 Procedure for Appointment of Counsel for Indigent Defendants; Appearance; Withdrawal

(a) Procedure for Appointment of Counsel for Indigent Defendants.

(1) *Generally.* A procedure shall be established in each circuit, county, municipal, and justice court for the appointment of counsel for each indigent defendant entitled thereto.

(2) *Appointment of Multiple Attorneys.* In all death penalty trial proceedings, the court shall appoint two (2) attorneys pursuant to the standards in Rule 7.4. At the time of the appointment, and subject to court approval, the appointed attorney may recommend co-counsel so long as co-counsel is willing to accept the appointment and meets all of the requirements of Rule 7.4. If the appointed attorney does not recommend co-counsel upon accepting an appointment, the court shall select co-counsel. In non-death penalty cases, the appointment of multiple attorneys is within the discretion of the court.

(b) **Entry of Appearance.** At or before a first appearance in any court on behalf of a defendant, an attorney, whether privately retained or court-appointed, shall file an entry of appearance or, in lieu thereof, the court shall note the attorney's appearance on the record.

(c) **Duty of Continuing Representation.** Counsel representing a defendant at any stage ~~in the proceedings~~ shall continue to represent that defendant in all further proceedings in the ~~trial court~~ case, including filing a notice of appeal, unless counsel is allowed to withdraw for good cause as approved by the court and new counsel is retained or appointed (unless the right to counsel has been properly waived pursuant to Rule 7.1(c)).

(d) **Withdrawal.** When an attorney makes an appearance for any party in a case, that attorney will not be allowed to withdraw as attorney for the party without the permission of the court. The attorney making the request shall give notice to his/her client and to all attorneys in the cause and certify the same to the court in writing. The court shall not permit withdrawal without prior notice to his/her client and all attorneys of record.

Comment

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

Rule 7.2(c) effectuates a defendant's right to be represented by counsel in any criminal proceeding and through all stages of the criminal process. See MRCrP 7.1(a) & cmt. ~~Some courts have the usual procedure which is that following termination,~~ Apart from court-approved withdrawal, counsel will continue to represent the defendant through all stages of the trial proceedings case, including filing a notice of appeal. See M.R.A.P. 6(b). In addition to being familiar with the case, continued representation guarantees that a defendant's right of appeal is not lost in the period between termination of trial counsel's responsibilities and retention or appointment of appellate counsel.

Nothing in Rule 7.2 limits the ability of a court to establish a procedure pursuant to Rule 7.2(a)(1) for appointing an attorney to represent a defendant for a limited purpose or time, after which another attorney is appointed or retained to represent the defendant for subsequent proceedings. In that event, trial counsel should be substituted as soon as practicable and continuous representation must be preserved.

Rule 7.2(d) is consistent with former Rule 1.13 of the Uniform Rules of Circuit and County Court Practice. ~~Normally appointed counsel will not be permitted to withdraw prior to filing a notice of appeal.~~ If the court allows counsel to withdraw, the court shall see that new counsel is retained or appointed before granting permission to withdraw, unless the right to counsel has been properly waived pursuant to Rule 7.1(c). In this way, subsection (d) maintains the integrity of the trial date, while also protecting the interests of the defendant and aiding the trial court in providing continuity in legal representation.

~~Nothing in Rule 7.2(a) or (c) limits the ability of a court to establish the ability to represent a defendant for a limited purpose or time after which another attorney is appointed or retained to represent the defendant for subsequent proceedings.~~