

STATE OF MISSISSIPPI



JIM HOOD  
ATTORNEY GENERAL

OPINIONS  
DIVISION

April 5, 2019

R. Adam Kirk, Esq.  
Grenada County Prosecutor  
Post Office Box 467  
Hernando, Mississippi 38632-0467

Re: Dismissal of Stale Cases

Dear Mr. Kirk:

Attorney General Jim Hood has received your request for an opinion and has assigned it to me for research and response.

**OFFICIAL OPINION**

### Background and Issues Presented

Your request states:

The Grenada County Justice Court has a backlog of stale cases resulting from unserved warrants on various misdemeanor offenses from 1990 to 2014, in which the defendant has not been located after diligent search and inquiry.

The clerk and judges would like clarification regarding whether the court has the authority to dismiss these cases for lack of prosecution.

### Response

Pursuant to the provisions of Mississippi Code Annotated Section 7-5-25, official opinions of the Attorney General are limited to questions involving determinations solely on questions of state law. Opinions of this office may not be issued once a lawsuit has been filed or prosecution has begun. Therefore, to the extent that your inquiries require this office to opine on matters which exceed the limitations established in Section 7-5-25, we decline to respond to your individual inquiries by way of official opinion and provide the following for future guidance.

R. Adam Kirk, Esq.  
April 5, 2019  
Page 2

The Mississippi Court of Appeals has discussed dismissal for failure to prosecute as follows:

The standard of review for dismissal for want of prosecution is abuse of discretion. *Cucos, Inc. v. McDaniel*, 938 So.2d 238, 240 (¶ 5) (Miss. 2006). “[T]he power to dismiss an action for want of prosecution is part of a trial court’s inherent authority.” *Wallace v. Jones*, 572 So.2d 371, 375 (Miss. 1990). Such power is “a means necessary to the orderly expedition of justice and the court’s control of its own docket.” *Watson v. Lillard*, 493 So.2d 1277, 1278 (Miss. 1986). Accordingly, motions to dismiss for failure to prosecute are considered on a case-by-case basis. *Holder v. Orange Grove Med. Specialties P.A.*, 54 So.3d 192, 197 (¶ 17) (Miss. 2010) (citing *Hillman v. Weatherly*, 14 So.3d 721, 726 (¶ 17) (Miss. 2009)). *Cascio v. Alfa Mut. Ins. Co.*, 164 So.3d 452, 457 (Miss. Ct. App. 2013).


Thus, whether or not dismissal for lack of prosecution in a particular case would be appropriate is a factual matter best determined by the court on a case-by-case basis. Prior to the court dismissing a case on its own motion, the court should provide notice to the prosecutor.

If we can be of further assistance, do not hesitate to call us.

# OFFICIAL OPINION

Very truly yours,

JIM HOOD, ATTORNEY GENERAL

By: 

Emiko Hemleben  
Special Assistant Attorney General