

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

May 10, 2019

Gene Barton, Esq.
County Prosecutor, Chickasaw County
Post Office Box 147
Okolona, Mississippi 38860-0147

Re: Returning Bonds to Court of Judge's Choice

Dear Mr. Barton:

OFFICIAL OPINION

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

Background and Issues Presented

Your request states:

I have been questioned by the Justice Court Judge concerning the return date on bonds in light of the fact there is no preliminary hearing granted for individuals out on bond unless they specifically request it. The judges would like to have the bonds returnable to the meeting of the grand jury instead of returning to a justice court date with the understanding that if an individual files a request in the Justice Court he would be allowed a preliminary hearing. Is this proper procedure to proceed upon or should the bond still be returnable to the next date of the Justice Court?

A follow-up phone conversation indicated that your request is actually asking if it is proper for the Justice Court Judge to have the bonds returnable to a date certain in circuit court and not to the actual meeting of the grand jury. You also mentioned that any person who requests a preliminary hearing via their attorney is granted one.

Brief Response

Yes. The judge may set the return to be a date certain in circuit court after the meeting of the grand jury.

Discussion and Legal Analysis

Mississippi Rules of Criminal Procedure Rule 8.4 governs the conditions of release. Rule 8.4(a) states, in pertinent part:

(a) Mandatory Conditions. Every order of release under this Rule shall contain the conditions that the defendant:

(1) appear in court, when required, and comply with all orders of the court;

* * *

(b)(10) any other conditions which the court deems reasonably necessary.

The comment to Rule 8.4 states "Section (b)(10) vests the judge setting bond conditions with broad latitude to insure appearance of the defendant and protection of the public, and gives the judge flexibility in fashioning conditions of release." As long as the release states the date certain and the court before which the defendant is to appear, it is permissible for a Justice Court Judge to make the defendant's bond returnable to the circuit court of the county. Generally, it would make sense to have the bond returnable to the court that would hear the case.¹

You mentioned in our conversation on April 22, 2019 that any person who requests a preliminary hearing via their attorney would be granted one. We note here that Article 3, Section 24 of the Mississippi Constitution provides that any person can represent themselves pro se in any action. If a defendant asks for a preliminary hearing prior to a grand jury indictment, without the assistance of counsel, he or she is still entitled to such hearing.

¹ In any felony case where a defendant is indicted, Rule 8.7 of the Mississippi Rules of Criminal Procedure provides that the appearance bond shall automatically transfer to the "same, related or lesser charge subsequently prosecuted by indictment" unless the judge for good cause orders the bond to be revoked or modified. In the event that the grand jury returns a no-true bill such that a bond is no longer needed, Rule 8.7(e) provides "the court shall cancel the appearance bond and order the return of any security deposited with the clerk."

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

Very truly yours,

JIM HOOD, ATTORNEY GENERAL

By: 

Emiko Hemleben
Special Assistant Attorney General

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