Mississippi Secretary of State
2008 Business Reform Committees
Minutes of Business Courts Study Group Meeting #3
July 9, 2008

The third meeting of the Business Courts Study Group was called to order on Wednesday, July 9, 2008 at 11:15 A.M. at the Office of the Secretary of State, 700 North Street, Jackson, Mississippi. A roster of members attending in person or by telephone, along with the Secretary of State personnel in attendance, is included as Exhibit A.

Assistant Secretary of State, Policy and Research, Cheryn Baker welcomed the Committee and called the roll of those members attending by telephone. Baker asked for a motion that the minutes from the June 11, 2008 meeting would be adopted as recorded. The motion was made and seconded and the minutes were adopted. Next, Baker asked for the sub-committee reports.

Judicial Selection Sub-Committee Report

This sub-committee met and discussed primarily whether to elect or appoint Business Court judges. No consensus was reached; some members favor election while others favor appointment. The sub-committee also discussed having circuit judges appoint special masters to facilitate business litigation, with the circuit court judge signing final orders. This was objectionable to most of the committee in that business litigation would ultimately be returned to the circuit courts, not accomplishing the Committee's goals.

The sub-committee also discussed the constitutionality of judicial appointment as a threshold issue. The group planned to meet Chief Justice to discuss procedure in determining this issue. A Committee member objected to the group meeting with the Supreme Court on this issue and recommended requesting an Attorney General opinion as an alternative. A different Committee member voiced agreement with this proposal. Some discussion ensued, including a discussion of statutory authority for designating retired judges to facilitate dockets in emergency situations, recusal, or overcrowded dockets. One member noted that in Hinds County, the Chief Justice had used this authority to designate a circuit judge to hear criminal cases exclusively.

Jurisdiction Sub-Committee Report

Chair James Holland distributed materials concerning jurisdiction in the Nevada Business Court; more specifically the definition of "business matters." He noted that Nevada categorized certain matters as being within the purview of the Business Court and "carved-out" other matters as being specifically outside the purview of this court. Chair Holland then noted matters discussed by the sub-committee:

1) The constitutional and statutory provisions the sub-committee would have to navigate in granting jurisdiction.

2) Whether a new court or a pilot program was in the best interest of the Committee's goals.
3) Whether jury trials should be allowed in the Business Court, and how to avoid the constitutional right to a trial by jury if jury trials were not desired.
4) The authority of the judiciary and/or the legislature to create an inferior court.
5) Whether to make the Business Court mandatory or optional for certain types of cases. And finally;
6) The type of cases to be considered.

Chair Holland noted that the sub-committee had thought it best to discard issues such as appointment and jury trials that would become obstacles and stop the process. He concluded by noting that the group would be circulating a checklist of the types of cases to include and exclude to the entire group. He asked the members to respond with positive or negative feedback on the ideas.

Procedure and Technology Sub-Committee Report

Chair Amanda Jones noted that most of the sub-committee members preferred implementing a separate docket within the existing court system through a pilot program and had discussed whether it should be instituted judicially or legislatively. Next, she acknowledged the existence of a proposed electronic filing system with state funding. The Supreme Court and the judiciary have been working to develop and implement an electronic filing program. The sub-committee's recommendation would be to use the existing system rather than create a new one. She stated that the sub-committee had plans to meet with a company that provides electronic filing for two Mississippi counties. Jones noted that the sub-committee was in favor of written opinions by the future Business Court.

Fees and Funding Sub-Committee Report

Tom Grantham noted that the sub-committee had decided to proceed on multiple fronts until decisions were made about creating a new court or a pilot program and about jurisdiction. He noted several areas of focus:
1) Funding the Business Court through existing funds.
2) Special filing fees.
3) A "loser-pays" approach.
Concerning the "loser-pays" approach, he noted that the sub-committee had no interest in recommending such a system as it regarded attorney's fees and other court costs, but thought it may be viable to study for filing fees only. One member commented on the effectiveness of Mississippi Rules of Civil Procedure, Rule 11 sanctions and some discussion ensued. Another member expressed opposition to a "loser-pays" system, opining that Rule 11 and other available sanctions were more than sufficient to prevent frivolous litigation. Additional information on funding in Maine and North Carolina was requested. Grantham stated that the sub-committee was contacting representatives from Maine, North Carolina and Delaware as possible participants in the next sub-committee

meeting. He noted that the group's next meeting was scheduled for July 21 by teleconference.

Other Business

Baker stated that the Division was working on additional research, particularly adding Connecticut's and Arizona's business courts to the business courts survey. She noted that both states charge additional filing fees in their business courts. She also noted that the Division was working on additional research on the constitutional and statutory concerns of the Committee. Baker concluded by referencing the handout of member comments in the materials and invited members who had not done so already to email their comments to the Division.

Further Discussion

Chairman Justice Pittman made some brief comments favoring a pilot program using the existing court system. Secretary of State Hosemann discussed some pilot program options and locations if the Group recommends a pilot program.

With no further business to discuss, the meeting was adjourned at 12:20 P.M.

Respectfully Submitted,

Cheryn Baker
Assistant Secretary of State
Policy and Research Division

EXHIBIT A
to the Minutes of Business Courts Committee Meeting 3

Attending:
Ed Pittman
James Holland
Amanda Jones
Carolyn Boteler
Henry Chatham
Dodds Dehmer
Tom Grantham
Christopher Graves
Joel Hill
David Landrum
Shane Langston
John Laws
David Mockbee
James Mozingo
David Paradise
Ron Peresich
Joy Phillips
Charlie Ross
Lex Taylor
Christopher Van Cleave
Dan Waring

By telephone:
Larry Edwards
Bill Painter
Dale Persons
Tom Rhoden

Secretary of State Personnel Attending:
Delbert Hosemann, Secretary of State
Cory Wilson, Chief of Staff
Cheryn Baker, Assistant Secretary of State, Policy and Research
Doug Jennings, Senior Attorney, Policy and Research
Phillips Strickland, Division Coordinator
Jeff Lee, Intern

Number of Mississippi Supreme Court, Mississippi Court of Appeals and Fifth Circuit decisions under selected acts (from Westlaw)

ACT	2007	2006	2005	2004	2003	2002	2001	2000
Mississippi Limited Partnership Act					1			
Mississippi Business Corporation Act		2	3	3	2	4	1	1
Mississippi LLC Act	1	1	4	1				
Mississippi Nonprofit Corporation Act			1		1			1
Mississippi Professional Corporation Act				1				1
Mississippi Trademark laws							1	
Mississippi Uniform Securities Law			1			1		1
Mississippi Uniform Trade Secrets Act				1		1		1
Mississippi Uniform Partnership Act		1						

Summary of Cases under the Mississippi Business Corporation Act, § 79-4-1.01, et seq.

1. Herring Gas Co., Inc. v. Newton, 941 So.2d 839 (Miss. 2006) rehearing denied, certiorari dismissed 942 So.2d 164. Appealed from Harrison County Chancery Court.
   Statutes: § 79-4-6.27 (Transfer or registration restrictions)

2. Speetjens v. Malaco Inc. 929 So.2d 303 (Miss. 2006). Appealed from Madison County Chancery Court.
   Statutes: § 79-4-7.42 (Written demand)

3. Carson v. McNeal, 375 F.Supp.2d 509 (S.D.Miss. 2005). Appealed from Hinds County Circuit Court.
   Statutes: § 79-4-15.01 (Activities requiring certificate; exempt activities); § 79-4-15.02 (Transacting business without authority, effects)

4. City of Clarksdale v. BellSouth Telecommunications, Inc., 428 F.3d 206 (C.A.5 (Miss.) 2005). Appealed from the United States District Court for the Northern District of Mississippi.
   Statutes: § 79-4-15.07 (Registered office and agent required)

5. Syngenta Crop Protection, Inc. v. Monsanto Co., 908 So.2d 121 (Miss. 2005). Appealed from Bolivar Court Circuit Court.
   Statutes: § 79-4-15.05 (Effect of certificate), § 79-4-15.10 (Service on corporation)

6. Cuba Timber Co., Inc. v. Boswell 339 F.Supp.2d 773 (S.D.Miss. 2004). Appealed from Lauderdale County Court.
   Statutes: § 79-4-15.02 (Transacting business without authority, effects)

7. Holloway v. Dane, 316 B.R. 876 (S.D.Miss. 2004). Appealed from Hinds County Circuit Court.
   Statutes: § 79-4-3.02 (General corporate powers); § 79-4-7.40 (Definitions); § 79-4-7.41 (Qualifying shareholders)

8. Ross v. National Forms & Systems Group, Inc., 882 So.2d 245 (Miss. 2004), certiorari denied 882 So.2d 772. Appealed from Hinds County Circuit Court.
   Statutes: § 79-4-8.31 (Liability of director; burden of proof)

9. King's Daughters and Sons Circle Number Two of Greenville v. Delta Regional Medical Center, 856 So.2d 600 (Miss. 2003), rehearing denied, certiorari granted, certiorari denied 864 So.2d 282. Appealed from Washington County Circuit Court.
   Statutes: § 79-4-3.02 (General corporate powers)

10. Paradise Corp. v. Amerihost Development, Inc. 848 So.2d 177 (Miss. 2003). Appealed from Warren County Circuit Court.
    Statutes: § 79-4-11.01 (Definitions); § 79-4-11.07 (Effects)

11. Hardy v. Brock, 826 So.2d 71 (Miss. 2002). Appealed from Hinds County Circuit Court
    Statutes: § 79-4-6.22 (Shareholder liability); § 79-4-8.01 (Board required; role); § 79-4-8.41 (Authority and duties); § 79-4-8.42 (Standard of conduct)

12. Strong v. First Family Financial Services, Inc., 202 F.Supp.2d 536 (S.D.Miss. 2002). Appealed from Jasper County Circuit Court.
    Statutes: § 79-4-11.07 (Effects)

13. Tallahatchie Valley Elec. Power Ass'n v. Mississippi Propane Gas Ass'n, Inc. 812 So.2d 912 (Miss. 2002) rehearing denied. Appealed from Hinds County Chancery Court.
    Statutes: § 79-4-3.02 (General corporate powers); § 79-4-3.04 (Challenging power to act)

14. Richton Bank & Trust Company v. Bowen, 798 So.2d 1268 (Miss. 2001). Appealed from Perry County Chancery Court.
    Statutes: § 79-4-13.01 (Definitions); § 79-4-13.30 (Time; venue; parties; proceedings)

15. Northfield Ins. Co. v. Odom Industries, Inc., 119 F.Supp.2d 631 (S.D.Miss. 2000). Appealed from Wayne County Circuit Court.
    Statutes: § 79-4-15.02 (Transacting business without authority, effects)

§ 79-4-1.01. Short title,

A corporation is a legal entity separate and distinct from its shareholders. Tallahatchie Valley Elec. Power Ass'n v. Mississippi Propane Gas Ass'n, Inc. (Miss. 2002) 812 So.2d 912, rehearing denied. Appealed from Hinds County Chancery Court.

§ 79-4-3.02. General corporate powers

A corporation is a legal entity separate and distinct from its shareholders. Tallahatchie Valley Elec. Power Ass'n v. Mississippi Propane Gas Ass'n, Inc. (Miss. 2002) 812 So.2d 912, rehearing denied. Appealed from Hinds County Chancery Court.

In Mississippi, an action to redress injuries to a corporation, whether arising in contract or tort, cannot be maintained by a stockholder in his own name, but must be brought by the corporation because the action belongs to the corporation and not the individual stockholders whose rights are merely derivative; this rule applies even though the

complaining stockholder owns all or substantially all of the stock of the corporation. Holloway v. Dane (S.D.Miss. 2004) 316 B.R. 876. Appealed from Hinds County Circuit Court.

Parent corporation of community hospital's manager had duty to not compete against client of its subsidiary, i.e., the community hospital, and, thus, could not purchase hospital that was competitor of the community hospital, even though parent had no direct contractual relationship with community hospital. King's Daughters and Sons Circle Number Two of Greenville v. Delta Regional Medical Center, 2003, 856 So.2d 600, rehearing denied, certiorari granted, certiorari denied 864 So.2d 282. Appealed from Washington County Circuit Court.

§ 79-4-3.04. Challenging power to act

Non-profit association representing companies engaged in sale and distribution of propane gas had standing to bring, on behalf of association member, action for declaratory and injunctive relief asserting ultra vires challenge to rural electric power association's acquisition, through a subsidiary, of business corporation engaged in distribution and sale of propane gas. Tallahatchie Valley Elec. Power Ass'n v. Mississippi Propane Gas Ass'n, Inc. (Miss. 2002) 812 So.2d 912, rehearing denied. Appealed from Hinds County Chancery Court.

§ 79-4-6.22. Shareholder liability

Officer of corporation acted corporately as opposed to individually, and thus could not be held individually liable for alleged misfeasance on part of corporation, absent any evidence that officer directly participated in alleged misfeasance or that the corporate shield should be pierced due to use of corporate entity to perpetrate a fraud, frustration of contractual expectations, or a disregard of corporate formalities. Hardy v. Brock (Miss. 2002) 826 So.2d 71. Appealed from Hinds County Circuit Court.

§ 79-4-6.27. Transfer or registration restrictions

The existence of a restriction on transferability of stock in family-owned corporation, which was created in amended charter of the corporation, was not noted on transferor-stockholder's certificate, and thus was not enforceable to prevent transfer of shares to non-family members. Herring Gas Co., Inc. v. Newton, 2006, 941 So.2d 839, rehearing denied, certiorari dismissed 942 So.2d 164. Appealed from Harrison County Chancery Court.

§ 79-4-7.40. Definitions

In Mississippi, an action to redress injuries to a corporation, whether arising in contract or tort, cannot be maintained by a stockholder in his own name, but must be brought by the corporation because the action belongs to the corporation and not the individual

stockholders whose rights are merely derivative; this rule applies even though the complaining stockholder owns all or substantially all of the stock of the corporation. Holloway v. Dane (S.D.Miss. 2004) 316 B.R. 876. Appealed from Hinds County Circuit Court.

§ 79-4-7.41. Qualifying shareholders

In Mississippi, a stockholder may bring an action in his own name when the complaining stockholder has suffered an individual injury that is distinct from the alleged injury to the corporation. Holloway v. Dane (S.D.Miss. 2004) 316 B.R. 876. Appealed from Hinds County Circuit Court.

§ 79-4-7.42. Written demand

There is no futility exception to the statutory requirement that a shareholder make a written demand before commencing a derivative action. Speetjens v. Malaco Inc. (Miss. 2006) 929 So.2d 303. Appealed from Madison County Chancery Court.

§ 79-4-8.01. Board required; role

Corporate officer's assistance in the everyday sales and business operations of the corporation, without more, could be a basis for piercing corporate shield and hold officer liable for any misfeasance on part of corporation. Hardy v. Brock (Miss. 2002) 826 So.2d 71. Appealed from Hinds County Circuit Court.

§ 79-4-8.31. Liability of director; burden of proof

Trial court did not abuse its discretion in denying defendant's motion to dismiss corporation's action for breach of fiduciary duty based on corporation's and shareholder's misrepresentations during discovery, where defendant failed to prove that misrepresentations regarding prior lawsuit involving shareholder rose to level of being manifestly false. Ross v. National Forms & Systems Group, Inc., 2004, 882 So.2d 245, certiorari denied 882 So.2d 772. Appealed from Hinds County Circuit Court.

§ 79-4-8.41. Authority and duties

Officer of corporation acted corporately as opposed to individually, and thus could not be held individually liable for alleged misfeasance on part of corporation, absent any evidence that officer directly participated in alleged misfeasance or that the corporate shield should be pierced due to use of corporate entity to perpetrate a fraud, frustration of contractual expectations, or a disregard of corporate formalities. Hardy v. Brock (Miss. 2002) 826 So.2d 71. Appealed from Hinds County Circuit Court.

§ 79-4-8.42. Standard of conduct

In order to pierce the corporate shield, a plaintiff must prove the following: (1) some frustration of contractual expectations regarding the party to whom he looked for performance; (2) flagrant disregard of corporate formalities by the defendant corporation and its principals; (3) a demonstration of fraud or other equivalent misfeasance on part of corporate shareholder. Hardy v. Brock (Miss. 2002) 826 So.2d 71. Appealed from Hinds County Circuit Court.

§ 79-4-11.01. Definitions

A "de facto merger" exists when there is a continuity of management, personnel, assets and operations, and a continuity of shareholders; the predecessor dissolves shortly thereafter, and the successor assumes the predecessor's obligations. Paradise Corp. v. Amerihost Development, Inc. (Miss. 2003) 848 So.2d 177. Appealed from Warren County Circuit Court.

§ 79-4-11.07. Effects

District court had diversity jurisdiction over lawsuit filed by borrowers against out of state lenders, although one lender had been Mississippi corporation; Mississippi corporation merged with surviving Delaware corporation and no longer had separate existence. Strong v. First Family Financial Services, Inc. (S.D.Miss. 2002) 202 F.Supp.2d 536. Appealed from Jasper County Circuit Court.

Successor corporation and predecessor did not enter into a de facto merger, but rather an asset purchase, and thus de facto merger theory did not render successor liable for writ of garnishment against predecessor; there was no continuity of management, personnel, assets, operations, or shareholders, predecessor did not cease operations, liquidate and dissolve as soon as legally and practically possible, and successor did not assume any liabilities, but rather only purchased the retail operation portion of predecessor. Paradise Corp. v. Amerihost Development, Inc. (Miss. 2003) 848 So.2d 177. Appealed from Warren County Circuit Court.

§ 79-4-13.01. Definitions

The chancellor's determination of "fair value" of stock is a question of fact, which will not be disturbed on appeal unless there is manifest error. Richton Bank & Trust Company v. Bowen (Miss. 2001) 798 So.2d 1268. Appealed from Perry County Chancery Court.

§ 79-4-13.30. Time; venue; parties; proceedings

Shares in bank held by shareholders who dissented from merger were properly valued without taking marketability or minority status into consideration; under valuation statute in effect at the time, discretion about "fair value" lay with the chancellor. Richton Bank & Trust Company v. Bowen (Miss. 2001) 798 So.2d 1268. Appealed from Perry County Chancery Court.

§ 79-4-15.01. Activities requiring certificate; exempt activities

Under Mississippi statute providing that "[a] foreign corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State," mortgage lender, a foreign corporation, did not need a certificate of authority to engage in mortgage transactions with borrowers in Mississippi, where statute specifically excluded "[c]reating or acquiring indebtedness, mortgages and security interests in real or personal property," and "[s]ecuring or collecting debts or enforcing mortgages and security interests in property securing the debt" from definition of "transaction of business." Carson v. McNeal (S.D.Miss. 2005) 375 F.Supp.2d 509. Appealed from Hinds County Circuit Court.

§ 79-4-15.02. Transacting business without authority, effects

Mississippi "door-closing" statute, prohibiting foreign corporation operating in state without certificate of authority issued by Secretary of State from maintaining proceeding in any court of state, did not apply to foreign insurer which was specifically authorized by Insurance Commissioner to sell insurance in state on nonadmitted basis. Northfield Ins. Co. v. Odom Industries, Inc. (S.D.Miss. 2000) 119 F.Supp.2d 631. Appealed from Wayne County Circuit Court.

Under Mississippi statute providing that "[a] foreign corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State," even if exception for "[c]reating or acquiring indebtedness, mortgages and security interests in real or personal property," and "[s]ecuring or collecting debts or enforcing mortgages and security interests in property securing the debt" did not apply to mortgage lender, a foreign corporation, fact that lender lacked a certificate of authority would not render loans and deeds of trust securing loans invalid or unenforceable. Carson v. McNeal (S.D.Miss. 2005) 375 F.Supp.2d 509. Appealed from Hinds County Circuit Court.

State court's dismissal of Alabama company's cross-claim against county worker alleging slander on basis of Mississippi's door-closing statute, which precluded foreign corporations from maintaining actions in Mississippi courts until they obtained a certificate of authority, operated as res judicata to bar company's subsequent slander action against worker filed in federal court, even though state court decision was wrong; company did not seek reconsideration of state court ruling or appeal dismissal order, and state court concluded, albeit wrongly, that all Mississippi courts were permanently inaccessible to company for prosecution of particular slander claim. Cuba Timber Co., Inc. v. Boswell (S.D.Miss. 2004) 339 F.Supp.2d 773. Appealed from Lauderdale County County Court.

§ 79-4-15.05. Effect of certificate

Trial court lacked authority to subpoena nonresident nonparty corporations to appear in state and produce documents located outside the state, even though nonresidents were

subject to personal jurisdiction of the court by virtue of certification to do business in state and having registered agents in state, and subpoenas were served on registered agents; statute allowing service of process on registered agent conflicted with requirement that subpoena be served personally on the designated witness, and service of process on registered agents did not extend to subpoenas. Syngenta Crop Protection, Inc. v. Monsanto Co. (Miss. 2005) 908 So.2d 121. Appealed from Bolivar Court Circuit Court.

§ 79-4-15.07. Registered office and agent required

Mississippi law governing service of process on a corporation authorizes service on a registered-agent corporation, not a human employee thereof. City of Clarksdale v. BellSouth Telecommunications, Inc. (C.A.5 (Miss.) 2005) 428 F.3d 206. Appealed from the United States District Court for the Northern District of Mississippi.

§ 79-4-15.10. Service on corporation

Trial court lacked authority to subpoena nonresident nonparty corporations to appear in state and produce documents located outside the state, even though nonresidents were subject to personal jurisdiction of the court by virtue of certification to do business in state and having registered agents in state, and subpoenas were served on registered agents; statute allowing service of process on registered agent conflicted with requirement that subpoena be served personally on the designated witness, and service of process on registered agents did not extend to subpoenas. Syngenta Crop Protection, Inc. v. Monsanto Co. (Miss. 2005) 908 So.2d 121. Appealed from Bolivar Court Circuit Court.

Cases under the Mississippi Limited Partnership Act, Miss. Code Ann. § 79-14-101, et seq.

§ 79-14-502. Liability for contributions; penalties

Oral promise, if any, by deceased limited partner to repay surviving partner for unequal contributions to limited partnership was a collateral obligation and, thus, barred by the statute of frauds; surviving partner made contributions to limited partnership, and not deceased partner, and deceased partner was not personally liable to repay surviving partner. In re Estate of Fitzner (Miss. 2003) 881 So.2d 164. Appealed from Lowndes County Chancery Court.

Summary of Cases under the Mississippi LLC Act, § 79-29-101, et seq.

1. Peoples Bank v. Bryan Bros. Cattle Co., 504 F.3d 549 (5th Cir. 2007). Appealed from the United States District Court for the Northern District of Mississippi.
   Statutes: § 79-29-701 (Nature of limited liability company interest)

2. Era Franchise Systems, Inc. v. Mathis, 931 So.2d 1278 (Miss. 2006). Appealed from Covington County Chancery Court.
   Statutes: § 79-29-1101 (Proper plaintiff)

3. Blanton v. Prins, 938 So.2d 847 (Miss. 2005). rehearing denied, certiorari denied 937 So.2d 450. Appealed from Forrest County Chancery Court.
   Statutes: § 79-29-1102 (Demand)

4. KBL Properties, LLC v. Bellin (Miss. 2005) 900 So.2d 1160, rehearing denied. Appealed from DeSoto County Chancery Court.
   Statutes: § 79-29-108 (Nature of business; powers); § 79-29-306 (Limited liability company agreement); § 79-29-503 (Sharing of profits and losses); § 79-29-702 (Assignment of limited liability company interest)

5. Lend Lease Asset Management, L.P. v. Cobra Security, Inc., 912 So.2d 471 (Miss. 2005). Appealed from Lafayette County Chancery Court.
   Statutes: § 79-29-803 (Winding up)

6. Prime Rx, LLC v. McKendree, Inc., 917 So.2d 791 (Miss. 2005), rehearing denied. Appealed from Madison County Circuit Court .
   Statutes: § 79-29-305 (Liability to third parties)

7. Keszenheimer v. Boyd, 2004 WL 1925435 (Miss.App.2004). Appealed from Hinds County Circuit Court.
   Statutes: § 79-29-920 (Responsibility for professional services)

§ 79-29-108. Nature of business; powers

Call for additional capital contributions to limited liability company (LLC) was not mandatory and was valid, even though minority member's interest declined to near zero as result of his failure to contribute additional capital; the resolution authorizing the raising of additional equity entitled, rather than required, members to invest, the member knew that dilution of his interest would occur if he did not contribute, and the operating agreement did not prohibit raising of additional capital. KBL Properties, LLC v. Bellin (Miss. 2005) 900 So.2d 1160, rehearing denied. Appealed from DeSoto County Chancery Court.

§ 79-29-305. Liability to third parties

Customers were liable for amount due on open account with company; first customer admitted that she was only member of second customer, which was a limited liability company (LLC), first customer was sole proprietor of business before business became LLC, and first customer and company had never entered into written agreement to form any business. Prime Rx, LLC v. McKendree, Inc. (Miss. 2005) 917 So.2d 791, rehearing denied. Appealed from Madison County Circuit Court .

§ 79-29-306. Limited liability company agreement

Member's offer to buy another member's minority interest or to sell was proper and valid, even though the operating agreement prohibited member from conveying any interest without written consent of all members; the buy-sell offer was not conveyance. KBL Properties, LLC v. Bellin (Miss. 2005) 900 So.2d 1160, rehearing denied. Appealed from DeSoto County Chancery Court.

§ 79-29-503. Sharing of profits and losses

Call for additional capital contributions to limited liability company (LLC) was not mandatory and was valid, even though minority member's interest declined to near zero as result of his failure to contribute additional capital; the resolution authorizing the raising of additional equity entitled, rather than required, members to invest, the member knew that dilution of his interest would occur if he did not contribute, and the operating agreement did not prohibit raising of additional capital. KBL Properties, LLC v. Bellin (Miss. 2005) 900 So.2d 1160, rehearing denied. Appealed from DeSoto County Chancery Court.

§ 79-29-701. Nature of limited liability company interest

Under Mississippi law, an individual owner of a limited liability company (LLC) owned by multiple parties, cannot encumber specific LLC property in a personal loan agreement with a creditor. Peoples Bank v. Bryan Bros. Cattle Co. (C.A.5 (Miss.) 2007) 504 F.3d 549. Appealed from the United States District Court for the Northern District of Mississippi.

§ 79-29-702. Assignment of limited liability company interest

Member's offer to buy another member's minority interest or to sell was proper and valid, even though the operating agreement prohibited member from conveying any interest without written consent of all members; the buy-sell offer was not conveyance. KBL Properties, LLC v. Bellin (Miss. 2005) 900 So.2d 1160, rehearing denied. Appealed from DeSoto County Chancery Court.

§ 79-29-803. Winding up

Receiver was not obligated to pay past due bill for services rendered by shopping mall creditor prior to the mall going into receivership; the failure to pay the bill did not result in lack of maintenance or waste of the mall property. Lend Lease Asset Management, L.P. v. Cobra Security, Inc. (Miss. 2005) 912 So.2d 471. Appealed from Lafayette County Chancery Court.

§ 79-29-920. Responsibility for professional services

Former client failed to establish that partner personally participated in negligent or wrongful acts or directly supervised someone who committed wrongful conduct; client simply offered that partner was member of law firm, he did not allege with specificity any actions or inactions on partner's part that were negligent, did not allege that partner directly supervised or controlled anyone who acted negligently, and although client alleged that partner was actively involved in his representation, he did not assert how partner acted negligently. Keszenheimer v. Boyd, 2004, (Miss.App.2004) 2004 WL 1925435. Appealed from Hinds County Circuit Court.

§ 79-29-1101. Proper plaintiff

Member of limited liability company was pursuing a direct legal action rather than a true shareholder's derivative action, where member was asserting his own personal claims, in addition to derivative claims of company, in a direct action that would benefit him alone, to the exclusion of the other equity owner of the company. Era Franchise Systems, Inc. v. Mathis (Miss. 2006) 931 So.2d 1278. Appealed from Covington County Chancery Court.

§ 79-29-1102. Demand

The purpose of the demand requirement before bringing a derivative action is to allow the corporation or limited liability company to take action, if it determines that such action is warranted, to prevent divisive legal action. Blanton v. Prins, 2005, 938 So.2d 847, rehearing denied, certiorari denied 937 So.2d 450. Appealed from Forrest County Chancery Court.

Summary of cases under the Mississippi Nonprofit Corporation Act, § 79-11-101, et seq.

1. City of Picayune v. Southern Regional Corp., 916 So.2d 510 (Miss. 2005). Appealed from Pearl River County Chancery Court.
   Statutes: § 79-11-127 (Definitions); § 79-11-155 (Challenging power to act)

2. Pilgrim Rest Missionary Baptist Church By and Through Bd. of Deacons v. Wallace, 835 So.2d 67 (Miss. 2003). Appealed from Hinds County Chancery Court.
   Statutes: § 79-11-127 (Definitions); § 79-11-131 (Alternative procedure for meetings)

3. Longanecker v. Diamondhead Country Club, 760 So.2d 764 (Miss. 2000). Appealed from Hancock County Chancery Court.
   Statutes: § 79-11-177 (Members' rights and obligations); § 79-11-193 (Proceedings on behalf of corporation)

§ 79-11-127. Definitions

A non-profit charitable corporation acquires its existence and authority from the State and, as such, is a creature of statute. City of Picayune v. Southern Regional Corp. (Miss. 2005) 916 So.2d 510. Appealed from Pearl River County Chancery Court.

Chancery court order, in church dispute regarding pastor's continued employment, that established procedure to identify church members and hold election whether to retain pastor was authorized by nonprofit corporation law, where church was a "religious society" under Nonprofit, Nonshare Corporations and Religious Societies Law, and "religious corporation" under Nonprofit Corporation Act subject to authority of court to order election upon petition by church members. Pilgrim Rest Missionary Baptist Church By and Through Bd. of Deacons v. Wallace (Miss. 2003) 835 So.2d 67. Appealed from Hinds County Chancery Court.

§ 79-11-131. Alternative procedure for meetings

Chancery court order, in church dispute regarding pastor's continued employment, that established procedure to identify church members and hold election whether to retain pastor was authorized by nonprofit corporation law, where church was a "religious society" under Nonprofit, Nonshare Corporations and Religious Societies Law, and "religious corporation" under Nonprofit Corporation Act subject to authority of court to order election upon petition by church members. Pilgrim Rest Missionary Baptist Church By and Through Bd. of Deacons v. Wallace (Miss. 2003) 835 So.2d 67. Appealed from Hinds County Chancery Court.

§ 79-11-155. Challenging power to act

A member of a non-profit corporation is a stakeholder in the corporation and has the power to effectuate change in corporate management. City of Picayune v. Southern Regional Corp. (Miss. 2005) 916 So.2d 510. Appealed from Pearl River County Chancery Court.

§ 79-11-177. Members' rights and obligations

Different assessments for security fees for improved and unimproved property did not create different classes of members in property owners association, a non-profit corporation, and did not violate statute requiring that all members have same rights and obligations, as distinction was rationally based on purpose of fee in that owners of improved lots were more likely to use and need benefits of security, and distinction did not affect other rights or obligations of members in any way. Longanecker v. Diamondhead Country Club (Miss. 2000) 760 So.2d 764. Appealed from Hancock County Chancery Court.

§ 79-11-193. Proceedings on behalf of corporation

Property owners association, a non-profit corporation, did not waive defense of failure to make demand, a requirement for bringing derivative action, where association denied that demand had been made, and it filed a motion to dismiss for failure to make demand prior to trial. Longanecker v. Diamondhead Country Club (Miss. 2000) 760 So.2d 764. Appealed from Hancock County Chancery Court.

Cases under the Mississippi Professional Corporation Act, Miss. Code Ann. § 79-10-1, et seq.

§ 79-10-37. Compulsory acquisition of shares after death or disqualification of shareholder

Attorney was required to relinquish her shares in law firm professional corporation upon termination of her employment; while both professional corporation's bylaws and Professional Corporation Act failed to state explicitly whether shareholder could continue to own stock once shareholder was no longer performing legal work for corporation, attorney's employment agreement provided for valuation of attorney's shares upon termination of employment. Jowett v. Scruggs, 2004, 901 So.2d 638, rehearing denied, certiorari denied 901 So.2d 1273. Appealed from Jackson County Chancery Court.

§ 79-10-41. Court action to appraise shares

Evidence supported CPA's valuation of professional corporation, a medical clinic, by combining value from asset-based approach, $383,594, with the higher value from a capitalized excess earnings method, $518,198, to arrive at value of 435,000. In re Dissolution of Jackson Arthritis Clinic and Osteoporosis Center, P.A. (Miss. 2000) 755 So.2d 418. Appealed from Hinds County Chancery Court.

Cases under the Mississippi trademark laws, Miss. Code Ann. § 75-25-1, et seq.

§ 75-25-1. Definitions

Bank's "Citizens" and "Citizens Bank" marks were insufficiently strong to warrant protection from infringement by competitor who sought to open branch in town after having done business in neighboring communities for many years; terms, if not generic, were commonly used, especially by financial institutions. Citizens Nat. Bank of Meridian v. Citizens Bank of Philadelphia (S.D.Miss. 2001) 157 F.Supp.2d 713, affirmed 35 Fed.Appx. 391, 2002 WL 761301. Not clear where this case is appealed from.

Summary of cases under the Mississippi Uniform Securities Act, Miss. Code Ann. § 75-71-101, et seq.

1. Pacific Life Ins. Co. v. Heath, 370 F.Supp.2d 539 (S.D.Miss. 2005). Appealed from Harrison County Circuit Court.
   Statutes: § 75-71-501 (Fraud or deceit prohibited)

2. Eisenberg v. Grand Bank for Savings, 207 F.Supp.2d 553 (S.D.Miss. 2002), affirmed 70 Fed.Appx. 765, 2003 WL 21683600. Not clear which court this case is appealed from.
   Statutes: § 75-71-301 (Registration of broker-dealers and agents); § 75-71-501 (Fraud or deceit prohibited); § 75-71-717 (Liability for illegal or fraudulent sales)

3. Holden v. Marietta Corp., 185 F.Supp.2d 656 (N.D.Miss. 2001). Not clear which court this case is appealed from.
   Statutes: § 75-71-717 (Liability for illegal or fraudulent sales)

4. Russell v. Southern National Foods, Inc., 754 So.2d 1246 (Miss. 2000). Appealed from Forrest County Chancery Court.
   Statutes: § 75-71-203 (Transactions exempted); § 75-71-717 (Liability for illegal or fraudulent sales)

§ 75-71-203. Transactions exempted

Mississippi Securities Act's stock registration requirements did not apply to stock subscriptions of new corporation's incorporators. Russell v. Southern National Foods, Inc. (Miss. 2000) 754 So.2d 1246. Appealed from Forrest County Chancery Court.

§ 75-71-301. Registration of broker-dealers and agents

Under Mississippi law, as predicted by the district court, defrauded investor was entitled, under theory of unjust enrichment, to recover from another defrauded investor funds transferred to him by purported broker, even if broker owed second investor pre-existing debt, where proceeds of first investor's funds were easily traceable to second investor, and second investor's pre-existing liquidated claim against broker was for much less than sum transferred. Eisenberg v. Grand Bank for Savings, FSB (S.D.Miss. 2002) 207 F.Supp.2d 553, affirmed 70 Fed.Appx. 765, 2003 WL 21683600. Not clear which court this case is appealed from.

§ 75-71-501. Fraud or deceit prohibited

Under Mississippi law, broker-dealer did not have fiduciary relationship with client that imposed duty of informing client that arbitration agreement was included in new account form, even if client trusted broker-dealer's agent and had confidence in him to manage

her money and take care of her. Pacific Life Ins. Co. v. Heath (S.D.Miss. 2005) 370 F.Supp.2d 539. Appealed from Harrison County Circuit Court.

Under Mississippi law, as predicted by the district court, defrauded investor was entitled, under theory of unjust enrichment, to recover from another defrauded investor funds transferred to him by purported broker, even if broker owed second investor pre-existing debt, where proceeds of first investor's funds were easily traceable to second investor, and second investor's pre-existing liquidated claim against broker was for much less than sum transferred. Eisenberg v. Grand Bank for Savings, FSB (S.D.Miss. 2002) 207 F.Supp.2d 553, affirmed 70 Fed.Appx. 765, 2003 WL 21683600. Not clear which court this case is appealed from.

§ 75-71-717. Liability for illegal or fraudulent sales

Under Mississippi law, as predicted by the district court, defrauded investor was entitled, under theory of unjust enrichment, to recover from another defrauded investor funds transferred to him by purported broker, even if broker owed second investor pre-existing debt, where proceeds of first investor's funds were easily traceable to second investor, and second investor's pre-existing liquidated claim against broker was for much less than sum transferred. Eisenberg v. Grand Bank for Savings, FSB (S.D.Miss. 2002) 207 F.Supp.2d 553, affirmed 70 Fed.Appx. 765, 2003 WL 21683600. Not clear which court this case is appealed from.

Allegations that individual involved in start-up of frozen food corporation failed to disclose his purported bankruptcy and option and promissory note purportedly held by his wife did not support liability for fraud and misrepresentation under statute barring offering or sale of security through materially false or misleading statements, given absence of showing that knowledge of purported bankruptcy or option would have caused investors to act differently, and given absence of showing of requisite intent to deceive. Russell v. Southern National Foods, Inc. (Miss. 2000) 754 So.2d 1246. Appealed from Forrest County Chancery Court.

Genuine issue of material fact as to whether minority shareholder would have sold his shares to purchaser corporation in exchange for shares of purchaser corporation if shareholder had known of corporation's misrepresentations as to its financial condition, precluded summary judgment on issue of shareholder's actual reliance on such misrepresentations, for purpose of shareholder's fraud action. Holden v. Marietta Corp. (N.D.Miss. 2001) 185 F.Supp.2d 656. Not clear which court this case is appealed from.

Summary of cases under the Mississippi Uniform Trade Secrets Act, Miss. Code Ann. § 75-26-1, et seq.

1. Pepper v. International Gaming Systems, LLC, 312 F.Supp.2d 853 (N.D.Miss. 2004). Not clear which court appealed from.
   Statutes: § 75-26-13 (Limitations period)

2. Marshall v. Gipson Steel, Inc., 806 So.2d 266 (Miss. 2002). Appealed from Lauderdale County Chancery Court.
   Statutes: § 75-26-3 (Definitions)

3. Union Nat. Life Ins. Co. v. Tillman, 143 F.Supp.2d 638 (N.D.Miss. 2000). Not clear which court appealed from.
   Statutes: § 75-26-3 (Definitions); § 75-26-5 (Injunctions; protective orders)

§ 75-26-3. Definitions

Insurer's customer information sheet was "trade secret" under Mississippi Uniform Trade Secrets Act; nondisclosure provision of employee's contract listed customer information as trade secret, and such information was acquired as result of employee's confidential relationship with insurer. Union Nat. Life Ins. Co. v. Tillman (N.D.Miss. 2000) 143 F.Supp.2d 638. Not clear which court appealed from.

Process by which bids for steel fabrication were estimated was readily ascertainable by proper means, and thus was not a trade secret of fabricator, although process had independent economic value to fabricator, as process could be reverse engineered, according to testimony by court-appointed expert regarding bidding process. Marshall v. Gipson Steel, Inc. (Miss. 2002) 806 So.2d 266. Appealed from Lauderdale County Chancery Court.

§ 75-26-5. Injunctions; protective orders

Preliminarily enjoining former employee of insurer from selling insurance to insurer's customers in violation of his employment contract was consistent with the public interest, so as to support grant of injunction; public has interest in not allowing parties to unilaterally breach binding contracts and disclose trade secrets, and not allowing employee to sell insurance to his former customers for a one year period, nor to use any of the trade secrets revealed to him by insurance company, would not unduly reduce customers' choice of insurance providers. Union Nat. Life Ins. Co. v. Tillman (N.D.Miss. 2000) 143 F.Supp.2d 638. Not clear which court appealed from.

§ 75-26-13. Limitations period

Material issues of fact, as to when owner of copyrighted software that improved computer bingo games saw advertisement for allegedly infringing product in magazine, and as to whether alleged infringers affirmatively concealed infringement, precluded summary judgment that copyright infringement suit was barred by expiration of statute of limitations. Pepper v. International Gaming Systems, LLC (N.D.Miss. 2004) 312 F.Supp.2d 853. Not clear which court appealed from.

Cases under the Uniform Partnership Act, Miss. Code Ann. § 79-13-101, et seq.

§ 79-13-101. Definitions

A "joint venture" is indistinguishable from a "partnership" except that a joint venture is a business relationship limited to specified undertakings for profit, while a partnership undertakes general and continuing business of a particular kind. Pennebaker v. Gray, 924 So.2d 611 (Miss. Ct. App. 2006). Appealed from Hinds County Chancery Court.

Nature of cases filed in selected Chancery districts, fiscal years 2004-2007

	First District[1]	Fifth District[2]	Third District[3]	Tenth District[4]	Eighth District[5]
Appeals (from administrative agencies, boards, etc.)	10	102	3	16	5
Business/Commercial					
Accounting	5	23	7	19	11
Corp. Dissolution	1	81	2	4	6
Partnership Dissolution	4	5	9	0	5
Debt Collection	19	34	20	14	21
Employment	1	7	1	1	0
Execution	0	1	1	1	1
Foreign Judgment	2	10	0	3	0
Garnishment	1	14	0	2	2
Injunction/TRO	1	1	1	1	0
Other	45	374	42	45	26
Receivership	6	2	2	2	1
Replevin	3	1	0	2	1
Stockholder Suit	0	2	2	2	1
Total Business/Commercial (includes items not listed above)	88	556	85	96	100

[1] Alcorn, Itawabma, Monroe, Pontotoc, Prentiss, Lee, Tishomingo, and Union
[2] Hinds County
[3] DeSoto, Grenada, Montgomery, Panola, Tate, and Yalobusha
[4] Forrest, Lamar, Marion, Pearl River, and Perry
[5] Hancock, Harrison, and Stone

	First District	Fifth District	Third District	Tenth District	Eighth District
Non-Domestic / Minors (adoptions, removal of minority, etc.)	613	419	346	676	521
Civil Rights	13	7	6	24	7
Contract					
Breach of Contract	40	98	60	108	169
Specific Performance	22	15	13	32	27
Insurance	2	9	2	13	7
Other	23	178	18	29	37
Total Contract (includes items not listed above)	88	301	93	187	243
Domestic Relations	17,344	13,474	15,866	11,935	9,629
Probate	5,629	6,989	4,710	5,287	4,455
Real Property	461	689	424	568	677
Statutes/Rules	226	1,133	180	174	202
Torts/Personal Injury	20	48	22	37	29
Total	24,492	23,718	21,735	19,000	15,868

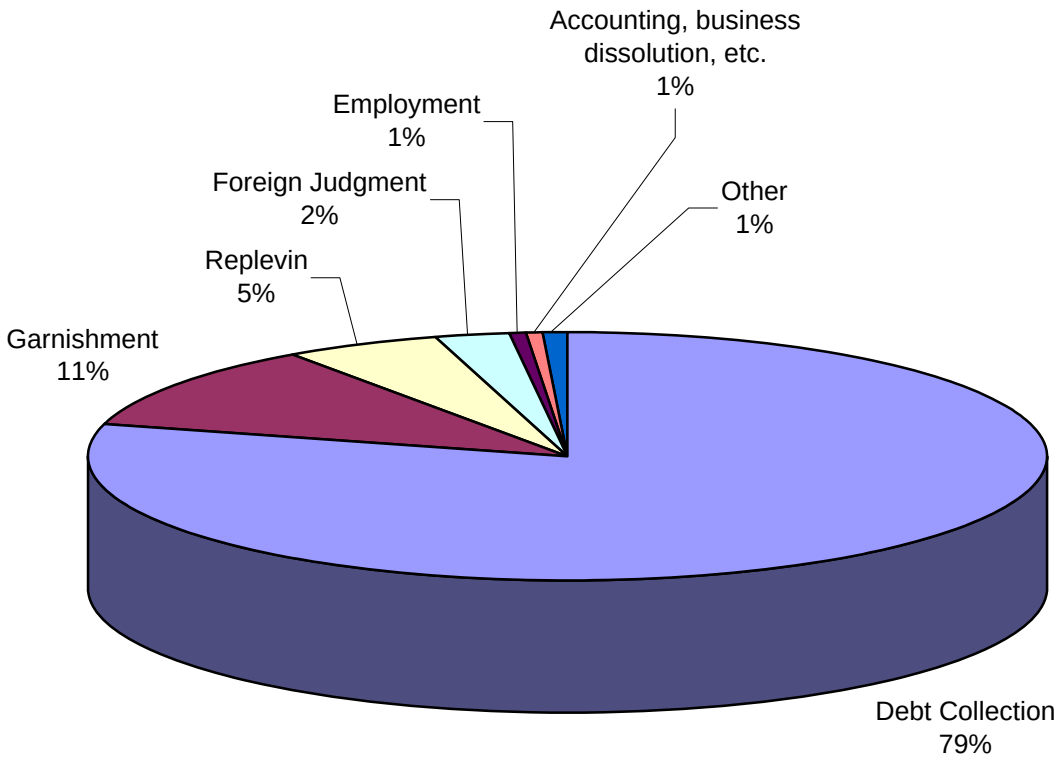
NATURE OF CASES FILED IN MS CIRCUIT COURTS

	FY2007	FY2006	FY2005	FY2004
Business and Commercial				
Debt Collection	11724	9592	11340	11252
Garnishment	1649	1398	2122	1962
Replevin	778	761	1051	1552
Foreign Judgment	356	331	385	351
Employment	95	45	51	37
Accounting, business dissolution, examination of debtor, execution, injunction, pension, receivership, stockholder suit	89	75	100	139
Other (detailed information not available)	106	130	143	171
Total Business and Commercial	**14797**	**12332**	**15192**	**15464**
Contracts				
Breach of Contract and Installment Contract	720	511	621	666
Insurance	249	92	112	111
Other (detailed information not available)	56	60	64	70
Product Liability under Contract	9	8	11	8
Promissory Notes	2	9	10	7
Specific Performance	9	3	5	6
Injunction	0	0	0	0
Accounting (business)	0	0	0	0
Total Contracts	**1045**	**683**	**823**	**868**
Total Business Commercial and Contracts	**15842**	**13015**	**16015**	**16332**
Civil-Non Business, Non-Commercial				
Personal and Property Injury	4456	4946	7207	5698
Mass Torts	506	1894	863	212
Appeals	1310	1213	1270	1486
Civil Rights	916	844	978	970
Statutes	477	508	463	490
Probate and Real Property	294	192	211	227
Not Supplied	163	81	103	109
Domestic Relations	18	18	18	81
Total Non-Business, Non-Commercial	**8140**	**9696**	**11113**	**9273**
Total of all civil cases filed for the fiscal year	**23982**	**22711**	**27128**	**25605**
Total of all civil cases that are business or contract cases	**66.1%**	**57.3%**	**59.0%**	**63.8%**
Disposed Criminal Cases (filed unavailable)	**29107**	**19613**	**20961**	**21160**
Total of all Circuit Court cases that are business or contract cases	**29.8%**	**30.8%**	**33.3%**	**34.9%**

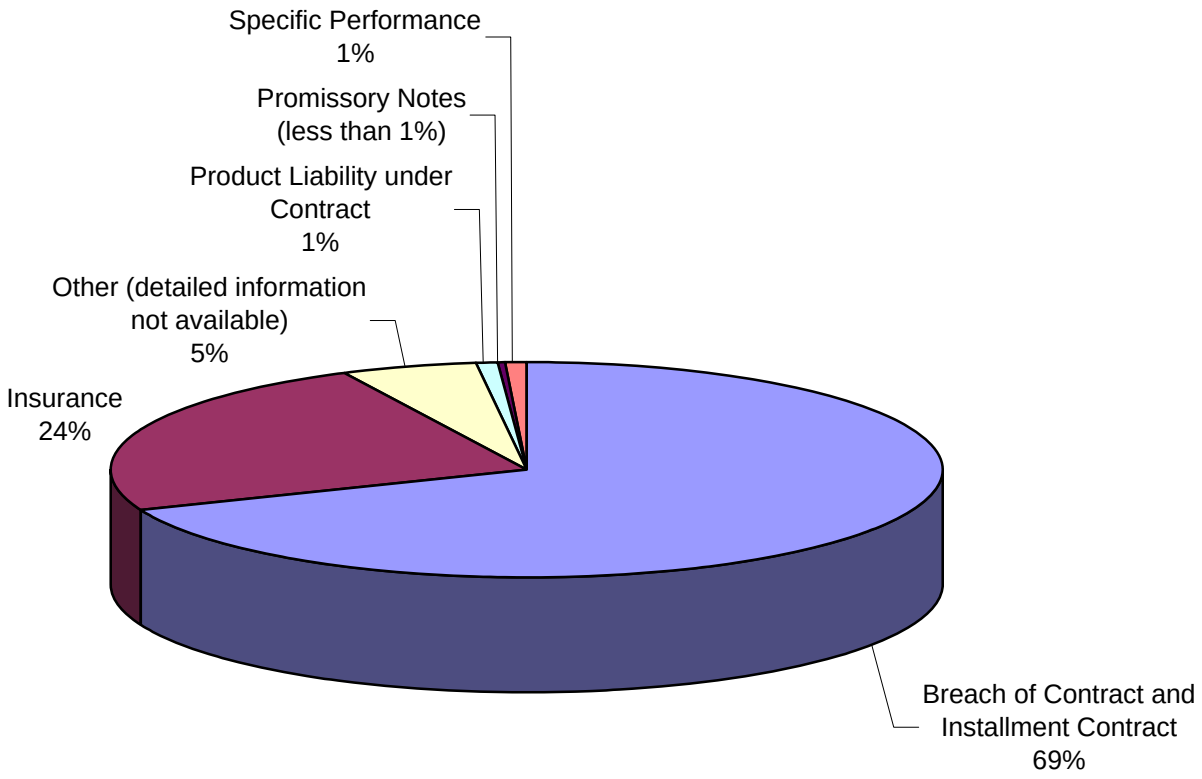
NATURE OF CASES FILED IN MS CHANCERY COURTS

	FY 2007	FY 2006	FY 2005	FY 2004	FY 2003
Business and Commerical					
Accounting	37	25	53	27	47
Replevin	7	5	2	1	9
Injunction or Restraining Order	2	1	3	2	6
Bankruptcy, business dissolution, debt collection, employment, examination of debtor, execution, foreign judgment, garnishment, pension, receivership, stockholder suit	124	108	178	206	1
Other (detailed information not available)	208	148	233	194	0
Total	**378**	**287**	**469**	**430**	**63**
Contracts					
Breach of Contract and Installment Contract	375	174	232	185	243
Other (detailed information not available)	131	140	103	116	90
Specific Performance	54	52	63	52	50
Insurance	12	15	25	12	23
Injunction or Restraining Order	1	4	2	0	3
Product Liability Under Contract	1	0	0	1	3
Promissory Note	0	0	1	0	1
Accounting (Business)	0	1	1	0	0
Total	**574**	**386**	**427**	**366**	**413**
Total Business Commericial and Contracts	**952**	**673**	**896**	**796**	**476**
Civil Non-Business, Non-Commercial					
Domestic Relations	49617	43388	63328	12841	43314
Probate	18461	16462	22317	8129	18498
Real Property	1634	1378	2309	603	1583
Children and Minors/Non-domestic	1595	1336	1808	710	1455
Statute/Rules	702	1188	1030	263	909
Not Supplied	0	0	199	0	341
Personal Injury and Property Damage	92	125	140	56	194
Appeals	62	74	97	44	63
Civil Rights	54	42	43	9	30
Mass Torts	7	8	10	7	13
Total civil non-business, non-commercial	**72224**	**64001**	**91281**	**22662**	**66400**
Total of all cases filed for the fiscal year	73176	64674	92177	23458	66876

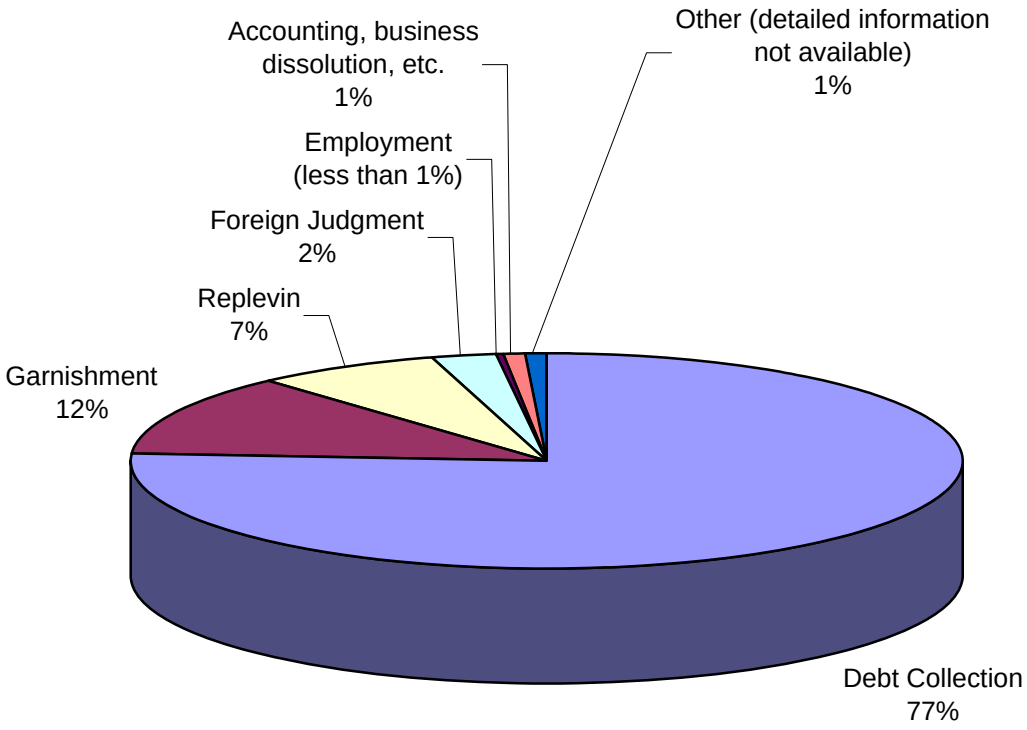
Breakdown of Types of Business and Commercial Cases Filed in MS Circuit Courts -- FY 2007



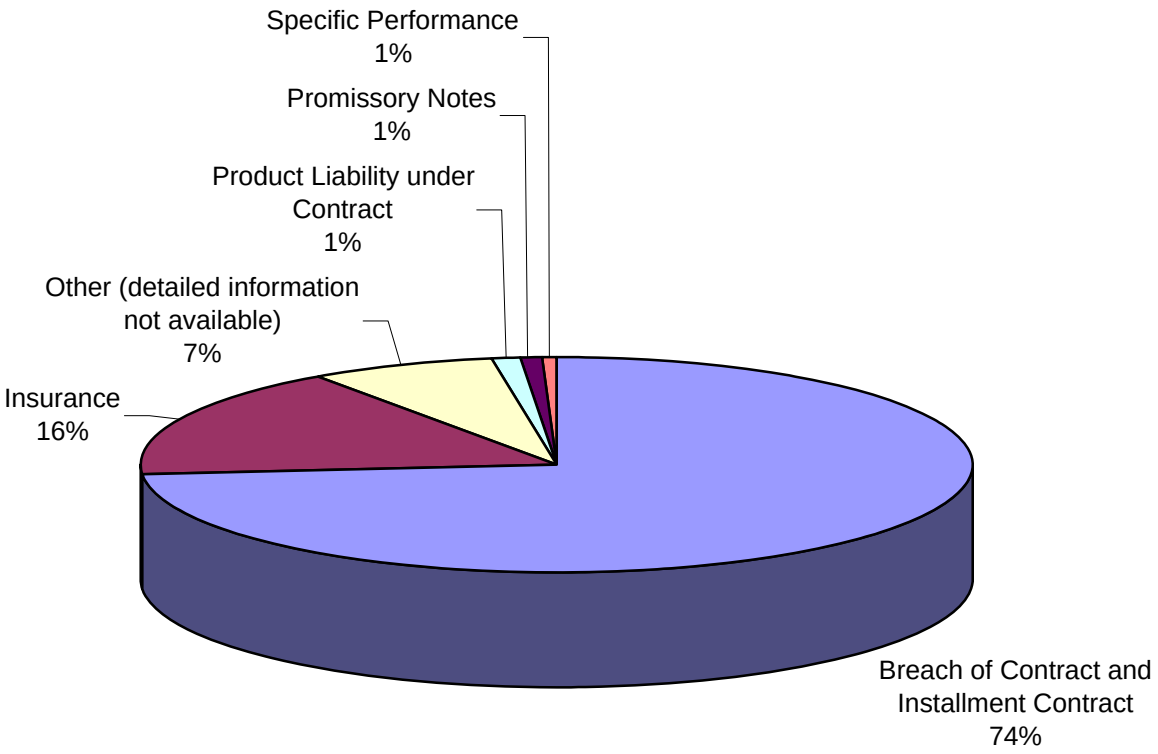
Breakdown of Types of Contract Cases Filed in MS Circuit Courts -- FY 2007



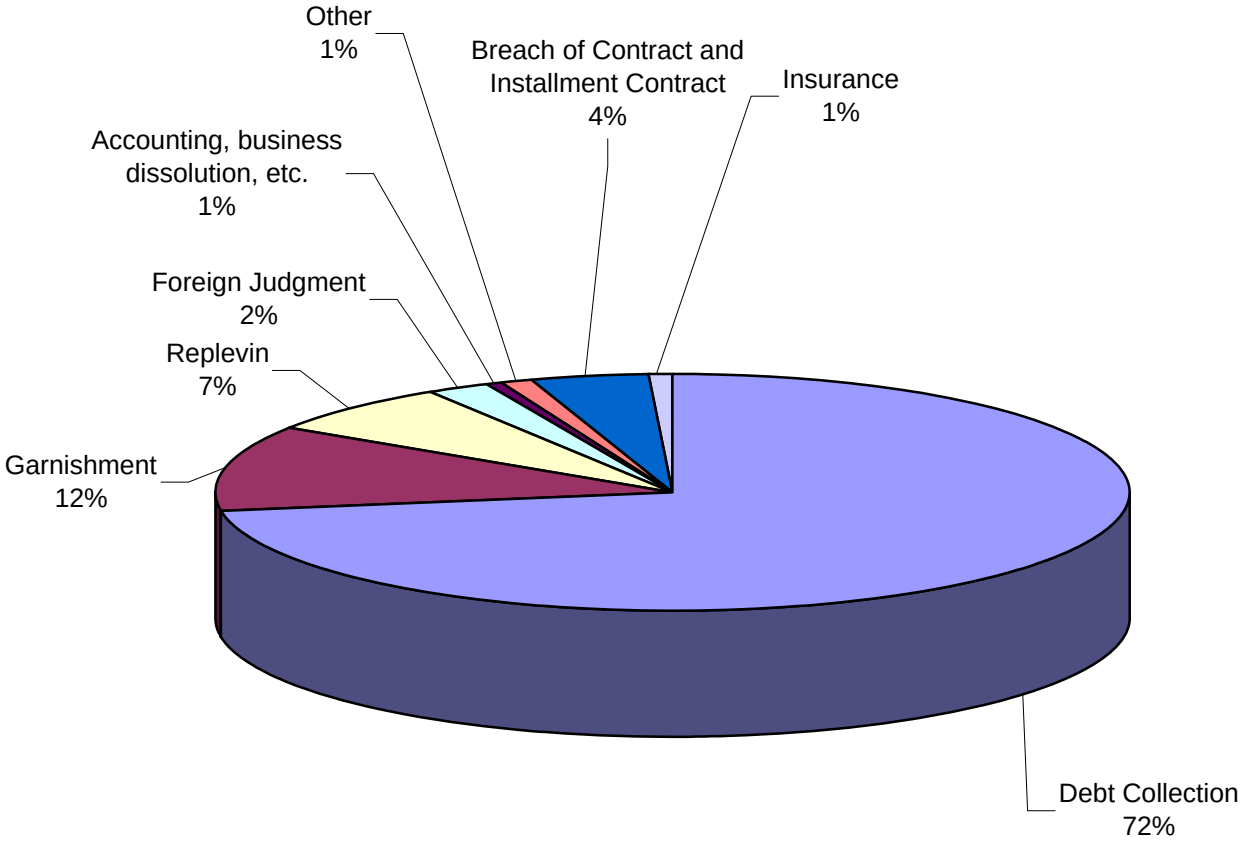
Breakdown of Types of Business and Commercial Cases Filed in MS Circuit Courts - FY 2004-2007



Breakdown of Types of Contract Cases Filed in MS Circuit Courts - FY 2004-2007



Breakdown of Types of Business/Commercial and Contract Cases Filed in MS Circuit Courts - FY 2004-2007



SUPREME COURT OF MISSISSIPPI

2007

ANNUAL REPORT

SUPREME COURT OF MISSISSIPPI
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JAMES W. SMITH, JR.
CHIEF JUSTICE
WILLIAM L. WALLER, JR.
OLIVER E. DIAZ, JR.
PRESIDING JUSTICES

CHUCK EASLEY
GEORGE C. CARLSON, JR.
JAMES E. GRAVES, JR.
JESS H. DICKINSON
MICHAEL K. RANDOLPH
ANN H. LAMAR
JUSTICES

JACK E. POOL
COURT ADMINISTRATOR
AND COUNSEL

HUBBARD T. SAUNDERS, IV
DEPUTY COURT
ADMINISTRATOR
AND COUNSEL

A MESSAGE FROM CHIEF JUSTICE JAMES W. SMITH, JR.

IN 2007, we have continued the initiatives developed since 2004–eliminating the backlog of appeals and petitions before the Supreme Court, developing and disseminating technology to the trial courts in an orderly and expeditious manner, further expanding access to the courts and legal assistance to the underprivileged, and promoting a unified effort among the courts of all levels in the state to administer justice in an efficient manner without fear or favor.

Mississippi has a Judiciary performing its proper functioning as an independent branch of state government and addressing the needs of the state in a mutually respectful and cooperative spirit with the Legislative and Executive branches, recognizing that each branch has its important role in a free society.

This year the appellate courts decided 1207 appeals and numerous petitions for certiorari, petitions for interlocutory appeal, petitions for mandamus and motions of various types, all within the time limits previously established for efficient responsiveness. The circuit and chancery courts have decided over 72,000 civil and criminal cases. More than $92,000 has been distributed to provide access to the courts by the underprivileged. All of this has been accomplished using less than one percent of the state's general fund appropriations.

As the year ended, the appellate courts, along with the Administrative Office of Courts, the Clerk of the Supreme Court and the Court of Appeals, the Board of Bar Admissions, and the Commission on Continuing Legal Education prepared to move into the new Carroll Gartin Justice Building. Although construction will continue for two or three more years, the facility will immediately make for a more efficient setting for responding to the challenges of the twenty-first century. We thank the Legislature for recognizing this need and making the new justice facility possible.

Much of our success has been the result of dedicated members of the bench, bar, and the citizenry working through committees and task forces appointed by the Supreme Court to address the issues of our time.

The Criminal Rules Study Committee is nearing the completion of a multi-year project to revise the criminal procedural rules and will submit its recommendation to the Supreme Court in the fall of 2008.

The Justice Court Task Force has completed its assigned review of the justice courts and reported timely to the Legislature its recommendations for improvements in the system.

The Mississippi Access to Justice Commission continues to be a nationwide trend setter putting Mississippi in the forefront of efforts to direct funding and to bring innovative approaches to the goal of assuring equal justice to all our citizens.

The Task Force on Youth Court Rules of Procedure, created in 2007, will complete its assignment of providing fair and efficient procedural rules for our youth courts. This is a further development of our nationally recognized MYCIDS youth court case management system.

IN 2008, we will continue to improve the efficient management of our courts, adopting innovative approaches in pursuing the most traditional goals of the American judicial system–making the courts available as a fair and just forums for the adjudication of disputes among our citizens and the administration of justice.

James W. Smith, Jr.
Chief Justice
Supreme Court of Mississippi

SUPREME COURT OF MISSISSIPPI
2007 ANNUAL REPORT

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MISSISSIPPI JUDICIAL SYSTEM

The Mississippi Judiciary is made up of Justice and Municipal Courts at the most basic level, County, Chancery, and Circuit Courts composing the trial courts of record and two appellate courts, the Court of Appeals, and, at the top of the pyramid, the Supreme Court.

There are 82 Justice Courts with 191 Judges. These Courts are not courts of record and have jurisdiction over Civil Actions involving sums of $2,500 or less and misdemeanors. they also hold preliminary hearings in felony cases. Appeals from the Justice Courts may be to county or circuit courts and the cases appealed are tried de novo in the appellate court.

The towns and cities have 223 Municipal Courts with 215 Judges. They have limited criminal jurisdiction and jurisdiction over violations of municipal ordinances. Appeals from the Municipal Courts may be to county or circuit courts and the cases appealed are tried de novo in the appellate court.

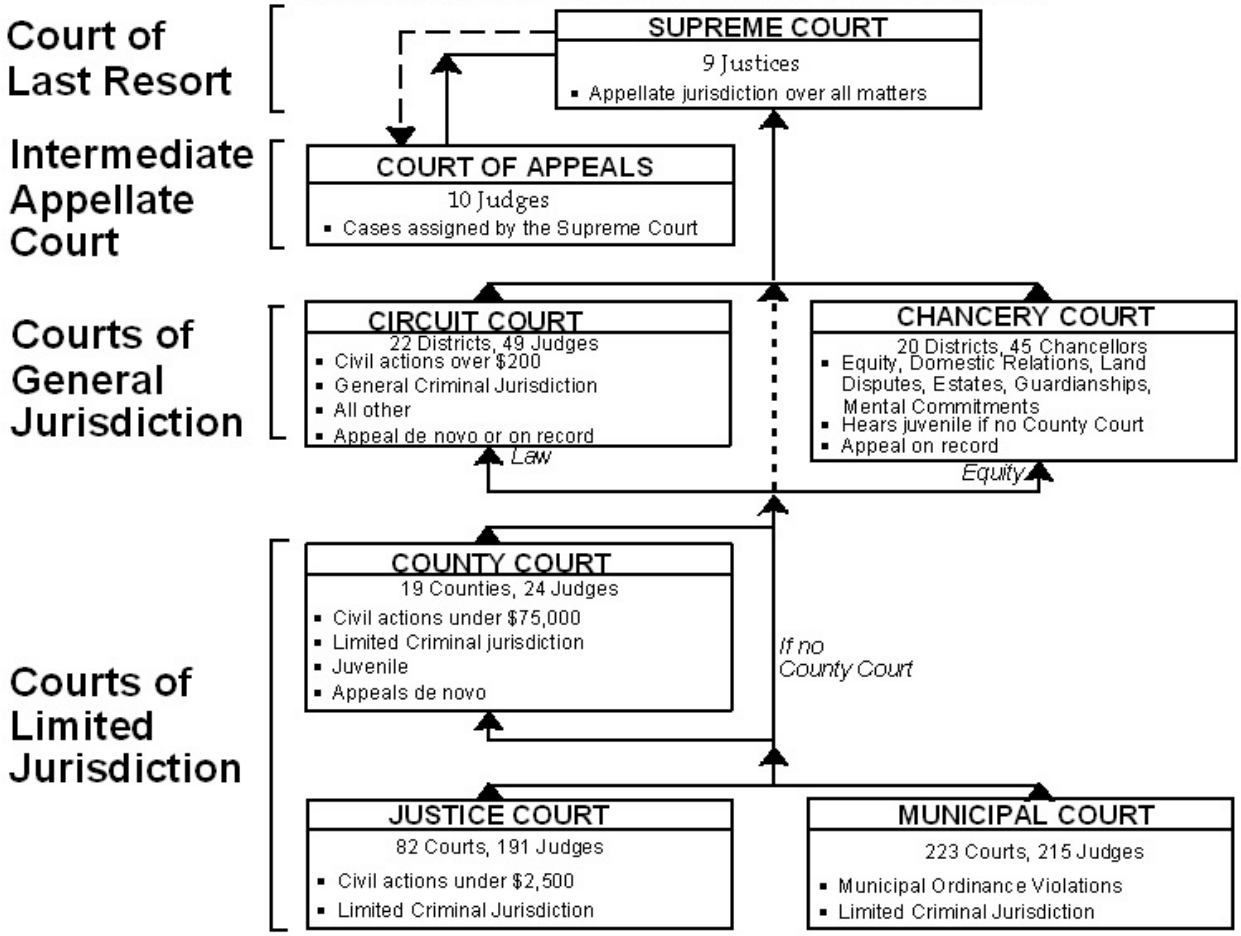
There are 19 County Courts with 23 judges. These courts have concurrent civil jurisdiction with the Chancery and Circuit Courts in suits seeking $200,000 or less. They also have limited criminal jurisdiction and appellate jurisdiction from the Justice Courts and Municipal Courts. In counties with County Courts, the Youth Courts function as a division of the County Courts handling juvenile matters.

There are Chancery Courts in each county which are organized into 20 districts with 48 chancellors. They have jurisdiction as specified by the constitution over, generally concerning matters of equity, domestic relations, land disputes, estates, guardianships, and mental commitments. In counties without County Courts, they handle Youth Court functions. They also receive appeals on the record from County Courts in matters over which they have concurrent subject matter jurisdiction.

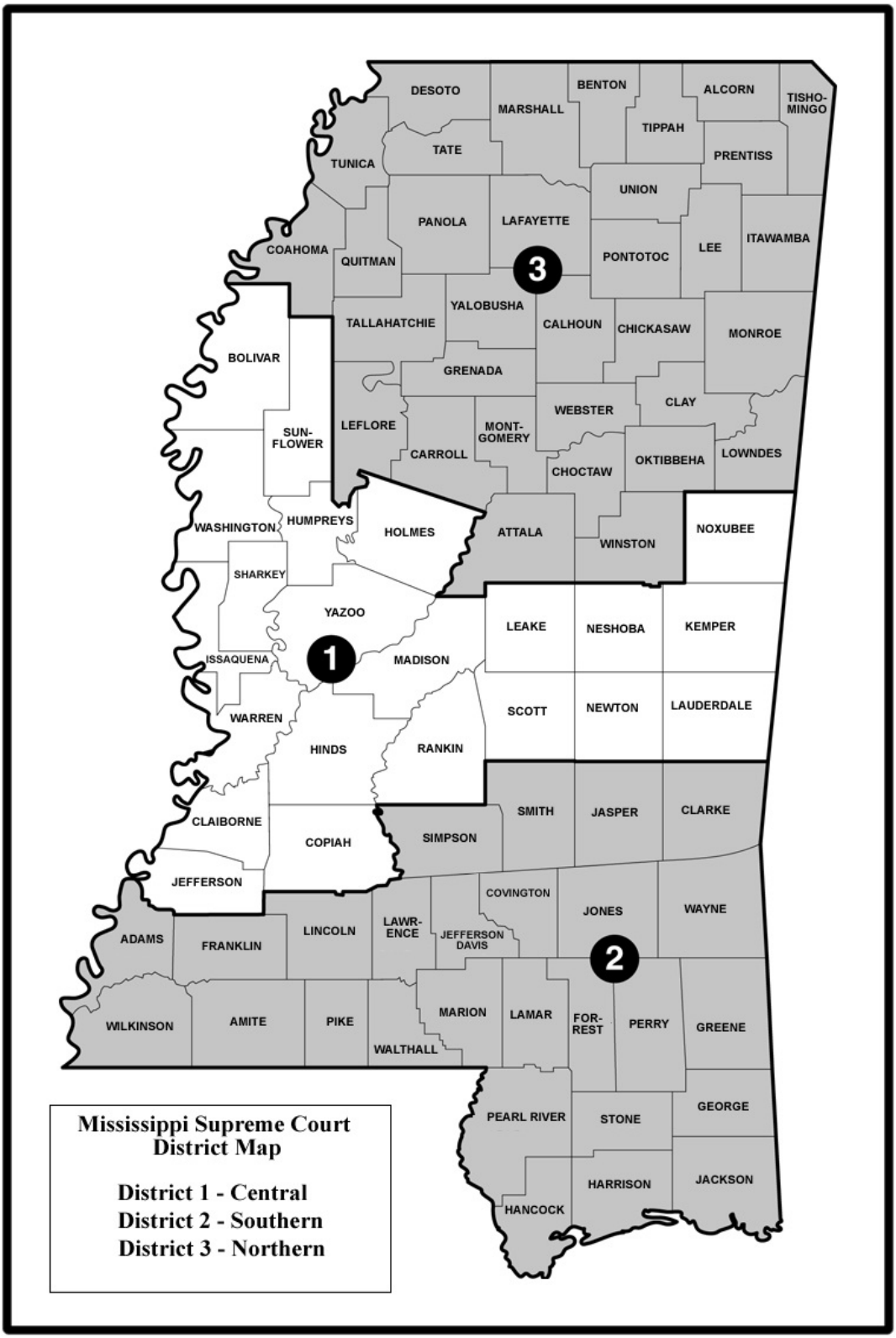
The Circuit Courts are the general jurisdiction trial courts in Mississippi. There are Circuit Courts in each county organized into 22 districts with 51 judges. They have jurisdiction of all civil actions at law seeking recovery in excess of $200 and of all criminal cases under state law. They receive appeals de novo from the Justice Courts and on the record from County Courts.

Appeals from the Chancery, Circuit, and Youth Courts are to the Supreme Court. With the exception of certain appeals which must be retained by the Supreme Court (e.g. Death Penalty, Utility Rate, Annexation Cases, etc.) the Supreme Court may either retain the cases or assign them to the Court of Appeals. All decisions of the Court of Appeals are subject to discretionary review by the Supreme Court on petition for writ of certiorari. There are nine justices on the Supreme Court and ten judges on the Court of Appeals.

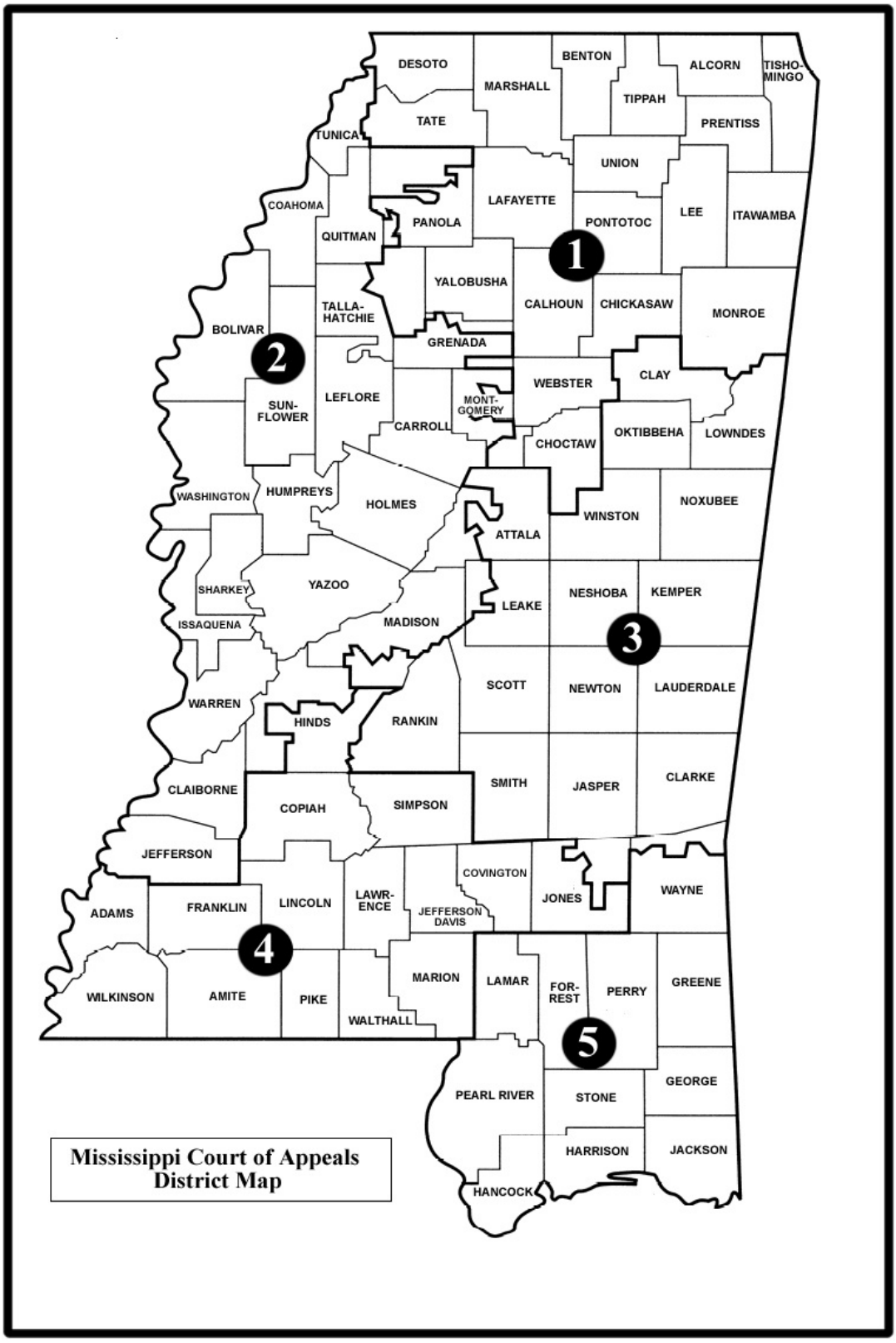
ORGANIZATIONAL CHART



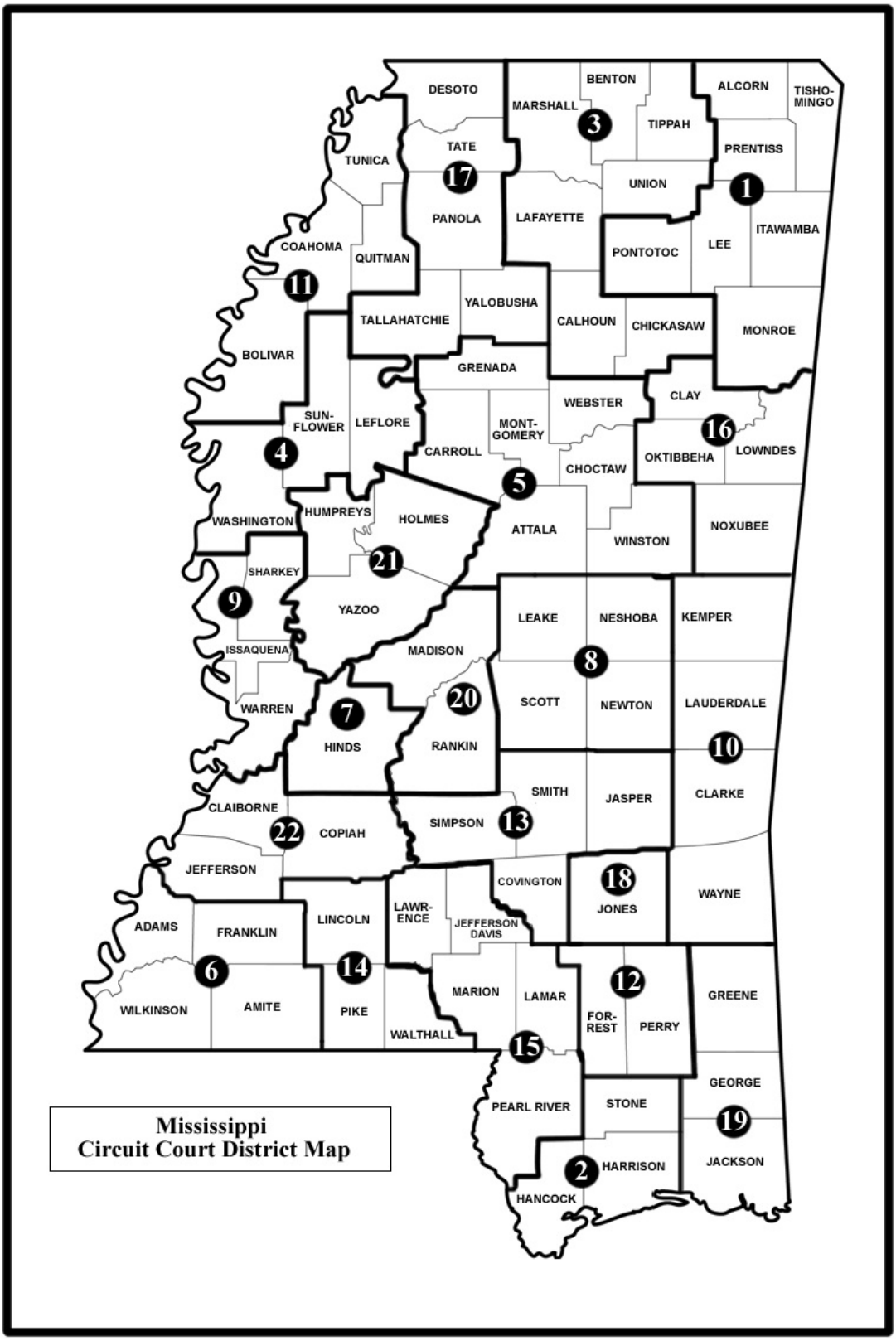
SUPREME COURT DISTRICTS



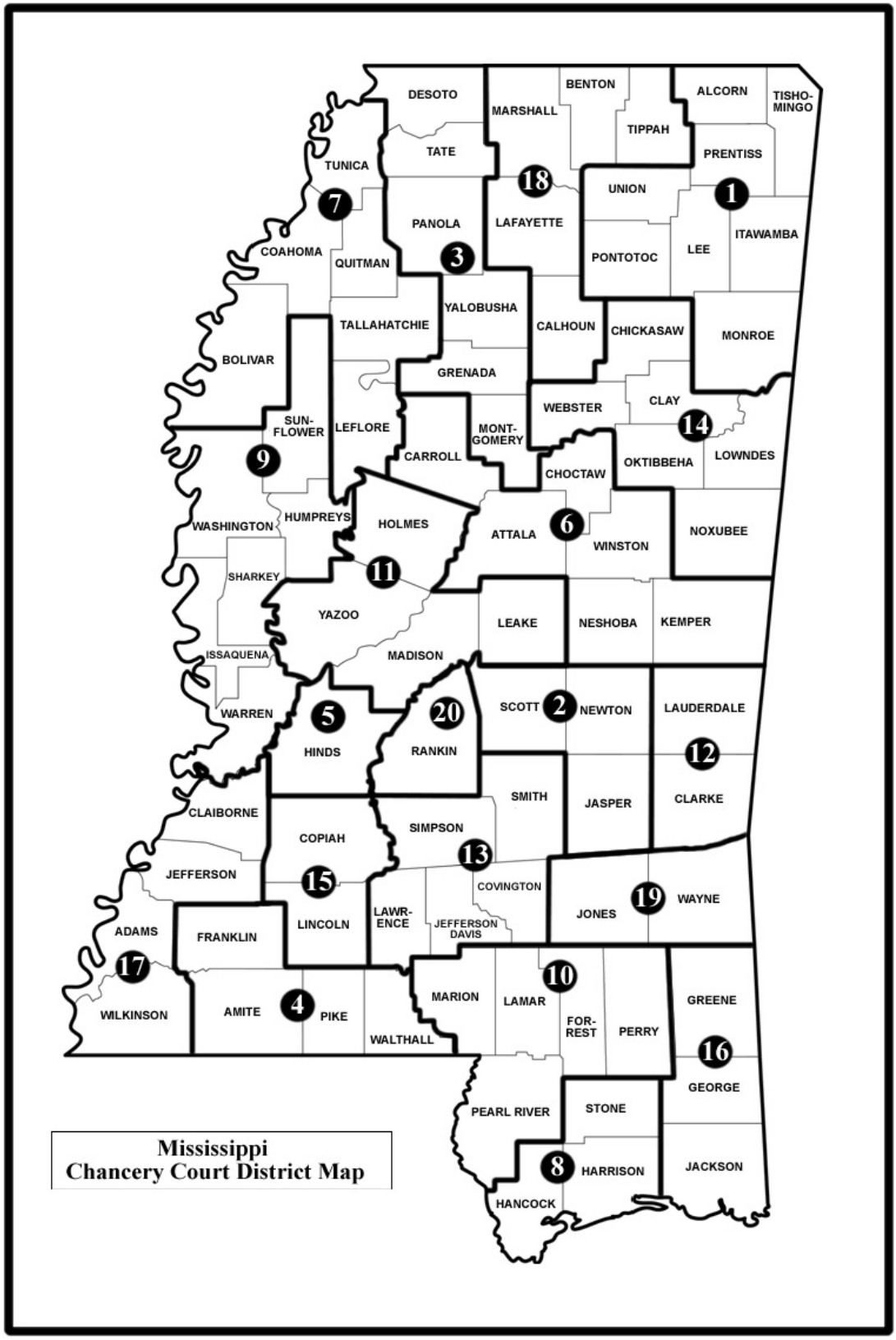
COURT OF APPEALS DISTRICTS



CIRCUIT COURT DISTRICTS



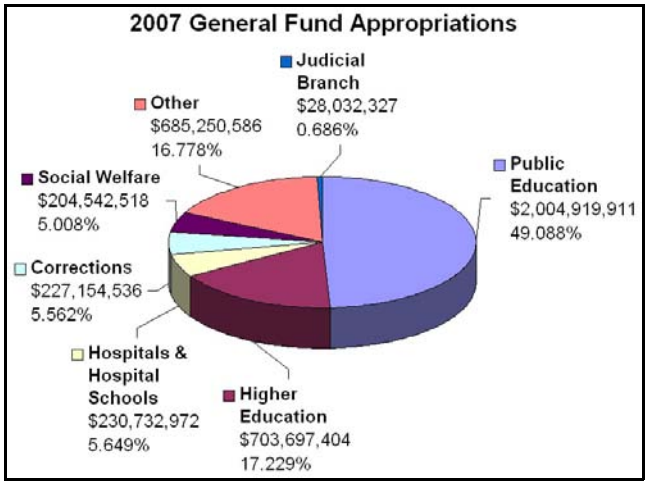
CHANCERY COURT DISTRICTS



FUNDING AND ADMINISTRATION OF THE COURTS

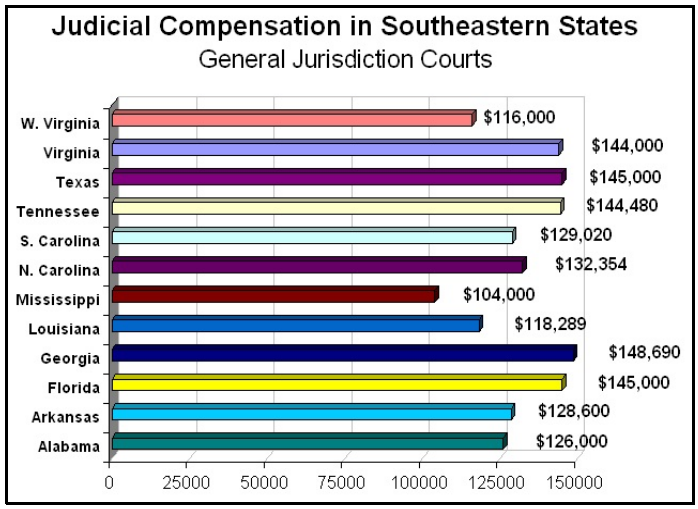
The state judiciary is funded primarily by general fund appropriations with additional funding for specific mandates by way of grants and special funds. In August, the Supreme Court submitted to the Legislature the judiciary's annual detailed report of spending for fiscal year 2007 with its appropriations request for 2008.

For fiscal year 2007, the entire general fund appropriations for all three branches of state government was $4,084,330, 254. The appropriation for the Administrative Office of Courts and all courts of record in the state (the Supreme Court, The Court of Appeals, the 82 circuit courts, the 82 chancery courts, and the 17 county court), was $28,032,327. This represent performance of all judicial functions by these courts of less than seven tenths per cent of the general fund expenditure.



Judicial Compensation

For fiscal year 2008, the judiciary is seeking pay increases for the judicial officers, which will be the first pay raise for these judges in five years. Currently, the average pay of general jurisdiction trial judges in the eleven surrounding states is over $134,000. In contrast, Mississippi chancery and circuit judges receive $104,000. Unlike other states which complements judges salaries by COLAs, longevity pay, and local supplements, Mississippi judges salaries are limited to the state appropriation. In present value terms, this 2003 salary scale pays these Mississippi judges the equivalent of



$88,561. Any hope of retaining our best judges and recruiting superior candidates for judicial office requires that this pay disparity be addressed now.

OUTREACH AND INNOVATION

Throughout 2007, the Supreme Court has continued its efforts to make the courts and to justices more accessible to the public and to enhance the ability of the courts to effectively use the technological developments available. Several initiatives have been put in place in this regard.

Mississippi Access to Justice Commission

The Access to Justice Commission was created by the Mississippi Supreme Court in 2006, to develop a unified strategy to improve access to the civil courts for the poor. The Commission draws together those organizations particularly concerned with providing legal services to the poor in Mississippi, and evaluates, develops and recommends policies, programs and initiatives which will assist the judiciary in meeting needs for civil legal services to the poor. Co-Chairs are Chancery Judge Denise Owens and former Mississippi Bar President Joy Lambert Phillips. The Commission includes members of the judiciary, a representative of the Governor, legislators, business and community leaders, and members of the clergy. Representatives of entities which provide legal services to the poor are ex-officio members.

Drug Courts

In 2003, the Mississippi Legislature adopted the "Alyce Griffin Clarke Drug Court Act." The act created the necessary framework for expansion of the drug court model throughout Mississippi. Since its passage, nearly 2,500 Mississippians have benefited from this effective alternative in dealing with the problems of substance abuse. The State Drug Court Advisory Committee deserves special recognition for its leadership and commitment to meaningful solutions to the problems of the criminal justice system.

Drug court programs offer a collaborative effort from the court, probation officers, substance abuse treatment providers, and others. This "team" approach is used to provide the drug court participants with the most effective plan in dealing with their addiction. The program involves court ordered treatment, random and frequent drug testing, intensive supervision, the use of sanctions and incentives and numerous face-to-face appearances before the judge. The philosophy of drug court programs is that this model will result in higher recovery rates from addiction, reduced criminal behaviour, lower recidivism rates, and an overall return to productive citizenship.

Mississippi currently has twenty-one certified drug courts and an additional eight programs in the planning stages. The increase in the number of certified drug court programs operating in this state reflects a growing trend that started in the 14th Circuit Court District in 1999. The drug court

model offers an alternative to the drain on resources of the criminal justice system posed by expensive incarceration of non-violent drug addicted defendants.

In a report released by the Mississippi Department of Corrections, during fiscal year 2005, the average cost per inmate day in the Mississippi State Penitentiary was $39.71 and $14,494.15 annually. The average cost of participation in drug court is approximately $2,500 annually. In 2003, the State Auditor's office reported that Mississippi could save $5.4 million dollars annually based on 500 people enrolled in drug court. With nearly three times that number currently enrolled in drug court, the cost effectiveness of the drug court program versus incarceration is clearly obvious. However, there are other financial incentives to further promote drug court creation and expansion efforts.

Justice Court Task Force

The 2007 Mississippi Legislature by Senate Bill 2567 called for a task force to study the Justice Court system. The Justice Court Task Force was forthwith organized and has performed its duties under the direction of Justice Michael Randolph. It is charged with the study and assessment of duties and services provided by Justice Court judges, training, salaries, jurisdictional limits, and the need for Uniform Rules of Procedure for Justice Courts. It was also asked to make recommendations as to whether jury trials should occur in Justice Courts, the time and manner of Justice Court elections, and feasibility of non-partisan elections for Justice Court judges. The Task Force has held nine public hearings and conducted extensive study and discussions of these matters and will present its findings and recommendations to the current legislative session.

The Task Force is made up of nine voting members and four ex-officio members. Supreme Court Justice Michael K. Randolph of Hattiesburg is Task Force chairman. Membership includes judges of the Circuit, County and Justice Courts, two Circuit Court clerks, and a county supervisor. Two state senators and two state representatives are ex-officio members.

Court Administration–Electronic Filing and Case Management

The Supreme Court has embarked on a major long range initiative to develop a uniform electronic case filing and court management system for distribution to the chancery and circuit courts and their respective clerk's offices. Strategic goals and policy standards have been adopted, and, with the assistance of the Department of Information Technology Services, the Court has completed a needs analysis based on interviews with representative judges and clerks. During the current year, the Court has entered into an agreement with the Administrative Office of United States Courts and, with a federal grant, is studying the electronic filing and case management system now used in the federal district courts to determine whether that system can be adapted to a state court system. This study should be

completed in the early spring and, if the results are favorable, could lead to the adaption of the system for Mississippi with great benefit and cost savings.

The Supreme Court continues to disseminate the Mississippi Youth Court Information Delivery System (MYCIDS) to the youth courts in the various counties. At this writing, the system is being used in twenty counties, is being installed in four more, and additional 24 youth courts have requested it. The only limitation on the Court's ability to distribute the system statewide is the personnel available to the Court's Information Technology Department to perform the installation and train the youth court personnel in its use. This most successful case management system is highly regarded nationally.

The Supreme Court and Administrative Office of Courts function with a technology staff of a director, three systems administrators, two project managers, and three programer/analysts. These staff members distribute and maintain all computer hardware and soft ware to the trial courts and appellate courts, distribute and install MYCIDS and train, develop and maintain the appellate court case management system (CITS), maintain the Judicial Branch web site, and advise the court on future technology initiatives. Although the Court has not sought expansion of this office for FY 2008, it will be necessary to address their needs in the near future.

Cameras in the Courtroom

Since 2003, under the Rules for Electronic and Photographic Coverage of Judicial Proceedings, news camera coverage has been permitted in Mississippi's trial courts of record and appellate courts, with some restrictions. With some skepticism, the camera coverage rules were adopted to make judicial proceedings more accessible to the public and to promote a better understanding of the workings of the judiciary. The rules give the judges the ability to control the manner of the coverage to prevent distraction or disrupt court proceedings and protect the privacy of jurors and certain litigants and witnesses. The rules restrict electronic coverage of some proceedings, including most domestic matters, motions to suppress evidence, and of certain types of witnesses.

Camera and video coverage inside the courtroom has become routine in some of our jurisdictions, such as the Jackson metropolitan area. No significant disruptions have been reported as a result of the use of electronic news gathering equipment in courtrooms, and minor violations have been handled without incident. although there have been instances in which members of the media violated court rules. Making this electronic media access work smoothly without disruptions to court proceedings, especially in trials attracting a high degree of media interest, requires considerable attention. The Administrative Office of Court's single public information officer. No doubt, in the near future it will be necessary to increase staffing of that office.

THE APPELLATE COURTS OF MISSISSIPPI

All appeals from the circuit, chancery and youth courts of the state come to the Supreme Court. By statute, certain appeals must be retained in and decided by the Supreme Court; others may be assigned by the Supreme Court to the Court of Appeals. Retained cases include those which involve:

(a) the imposition of the death penalty;
(b) utility rates;
(c) annexations;
(d) bond issues;
(e) election contests;
(f) a trial court's holding a statute unconstitutional;
(g) bar discipline matters;
(h) judicial performance matters; and
(i) certified questions from federal court.

In deciding whether other cases should be assigned to the Court of Appeals, the Supreme Court considers the uniqueness of the case, the likelihood that its decision will be of important precedential value, whether it raises issues of first impression, and the relative workloads of the two appellate courts.

While the Supreme Court does consider the overall workload in assigning cases , there can be no valid comparison of the workload of the two courts just by examining the raw numbers of cases decided. The Supreme Court's retention of all death penalty cases and other particularly complex matters such as annexation and bond issue appeals, its handling of virtually all interlocutory appeals and all petitions for writ of certiorari from the Court of Appeals, and its unique judicial administration responsibilities give it heavy responsibilities that cannot be measured by a simple examination of the number of appeals decided.

Currently, and for some time now, both appellate courts are deciding cases within 270 days following the completion of briefing, and, in most cases, the decisions are made even more expeditiously. All petitions for writ of certiorari from the Court of Appeals are either granted, denied or dismissed by the Supreme Court within 90 days following the filing of the responses to the petitions, and all cases on review by certiorari are decided within 180 days after the ppetitions are granted. Petitions for interlocutory appeal are generally granted, denied, or dismissed within 45 days after the responses are filed.

STATISTICAL SUMMARY FOR APPELLATE COURTS

APPELLATE COURTS COMBINED

There were 1065 new appeals or special actions filed in 2007. The Supreme Court and the Court of Appeals decided 1207 during the period. Excluding 31 cases on certiorari, 777 appeals received decisions on the merits, and 399 were dismissed. Of those decided on the merits, 532 (68%) were civil cases, 218 (28%) were criminal, and 27 (3%) were special actions receiving other dispositions in the Supreme Court.[1] Of the 532 direct civil appeals receiving decisions on the merits, 371 (70%) were affirmed, and 161 (30%) were reversed. Of the 218 direct criminal appeals receiving decisions on the merits, 202 (93%) were affirmed, and 16 (7%) were reversed. There were 1359 cases on the merits pending before the Appellate Courts as of December 31, 2007.

SUPREME COURT

In 2007, Supreme Court disposed of 475 cases, including 31 cases on certiorari. Of the 444 non-certiorari cases, 215 received decisions on the merits. The remaining 229 were dismissed. Of those decided on the merits, 141 (66%) were civil, and 47 (21%) were criminal. There were 27 (7%) special actions receiving other dispositions in the Supreme Court. Of the 141 direct civil appeals decided on the merits, 64 (45%) were affirmed, and 77 (55%) were reversed. Of the 47 direct criminal appeals decided on the merits, 43 (91%) were affirmed, and 4 (9%) were reversed.

The Supreme Court disposed of a total of 3383 motions and petitions during 2007. This included 94 motions for rehearing, of which 91 (97%) were denied, 2 (2%) were granted and 1 (3%) was dismissed. Pursuant to M.R.A.P. 5, the Court disposed of 193 petitions for interlocutory appeal; 137 (71%) were denied, 34 (18%) were granted, and 22 (11%) were dismissed. The Court disposed of 188 petitions for writ of certiorari: 135 (72%) were denied, 25 (13%) were granted, and 28 (15%) were dismissed.

The Supreme Court heard oral argument in 17 cases in 2007.

COURT OF APPEALS

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[1]Of the cases decided on the merits, 27 decided by the Supreme Court and identified here as "special actions" are excluded from the count of cases affirmed or reversed. These are special actions as to which affirmed or reversed is not an accurate description of the disposition, e.g., attorney disciplinary and judicial performance matters and applications for leave to file petitions for post-conviction relief in death penalty cases.

In 2007, the Court of Appeals disposed of 732 cases. Of this number, 562 received decisions on the merits. The remaining 170 were dismissed. Of those decided on the merits, 391 (70%) were civil, and 171 (30%) were criminal. Of the 391 civil cases decided on the merits, 307 (79%) were affirmed, and 84 (21%) were reversed. Of the 171 criminal appeals decided on the merits, 159 (93%) were affirmed, and 12 (7%) were reversed.

The Court of Appeals disposed of a total of 2576 motions and petitions during 2007. This included 273 motions for rehearing, of which 253 (93%) were denied, 1 (0%) was granted, 16 (6%) were dismissed, and 3 (1%) received other dispositions.

The Court of Appeals heard oral argument in 64 cases in 2007.

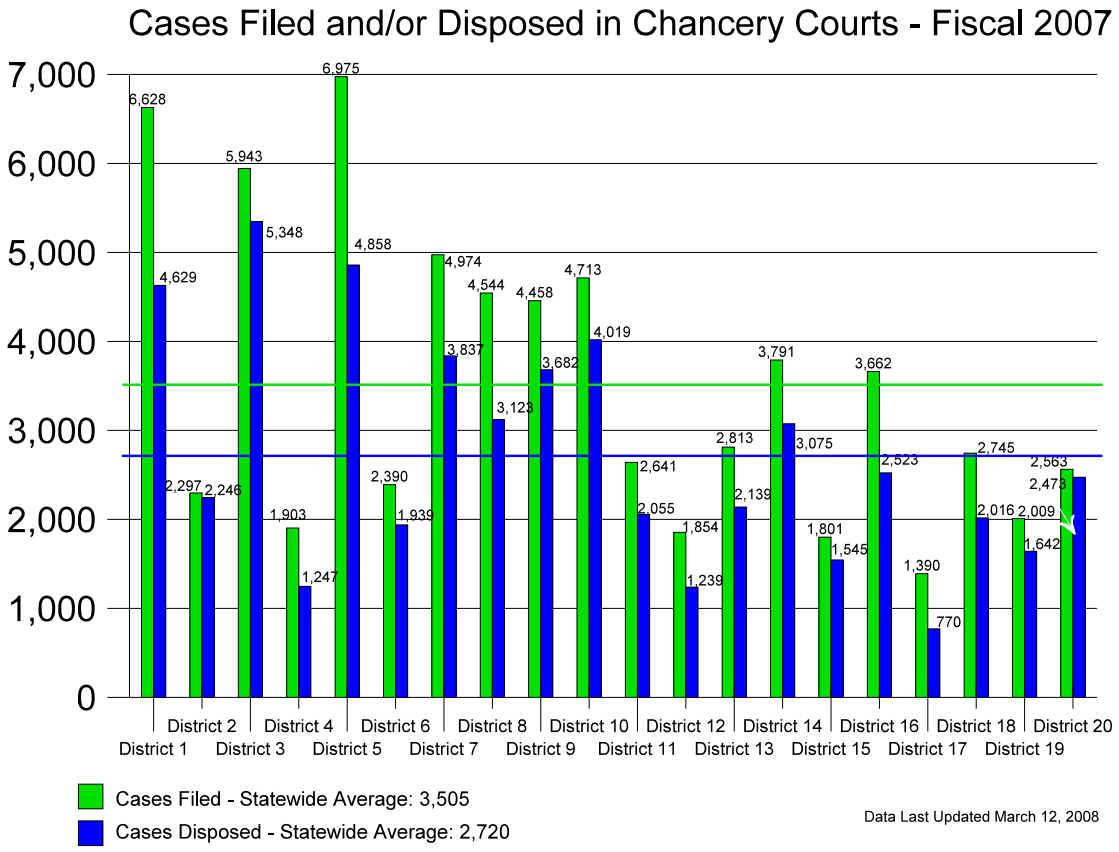
TRIAL COURT SYSTEM

THE MISSISSIPPI TRIAL COURTS OF RECORD

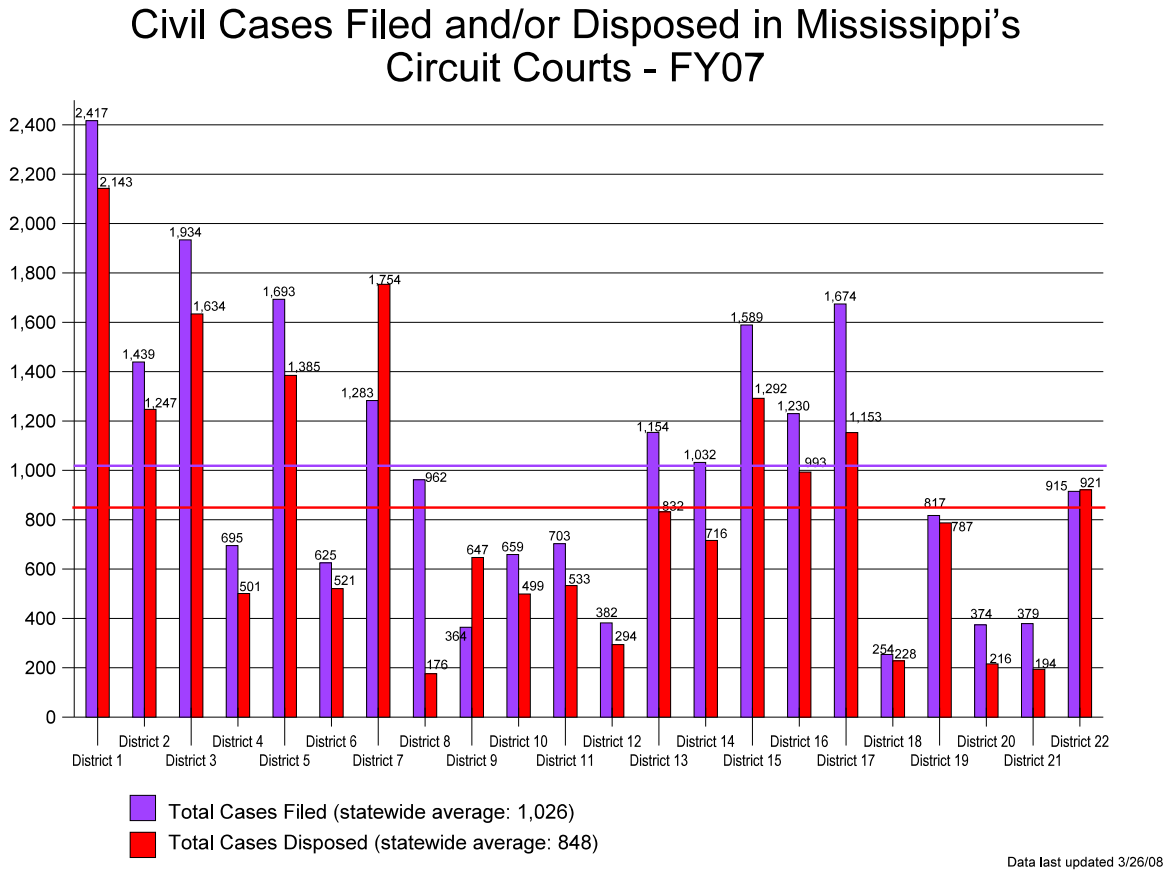
The trial courts in Mississippi without jurisdictional limits on the amounts in controversy are the Chancery and Circuit Courts. The state is divided into twenty Chancery Court Districts and twenty-two Circuit Court Districts. Each district has from one to four judges, depending on the size of the district and its case load. The courts are served by independently elected chancery and circuit clerks in each county.

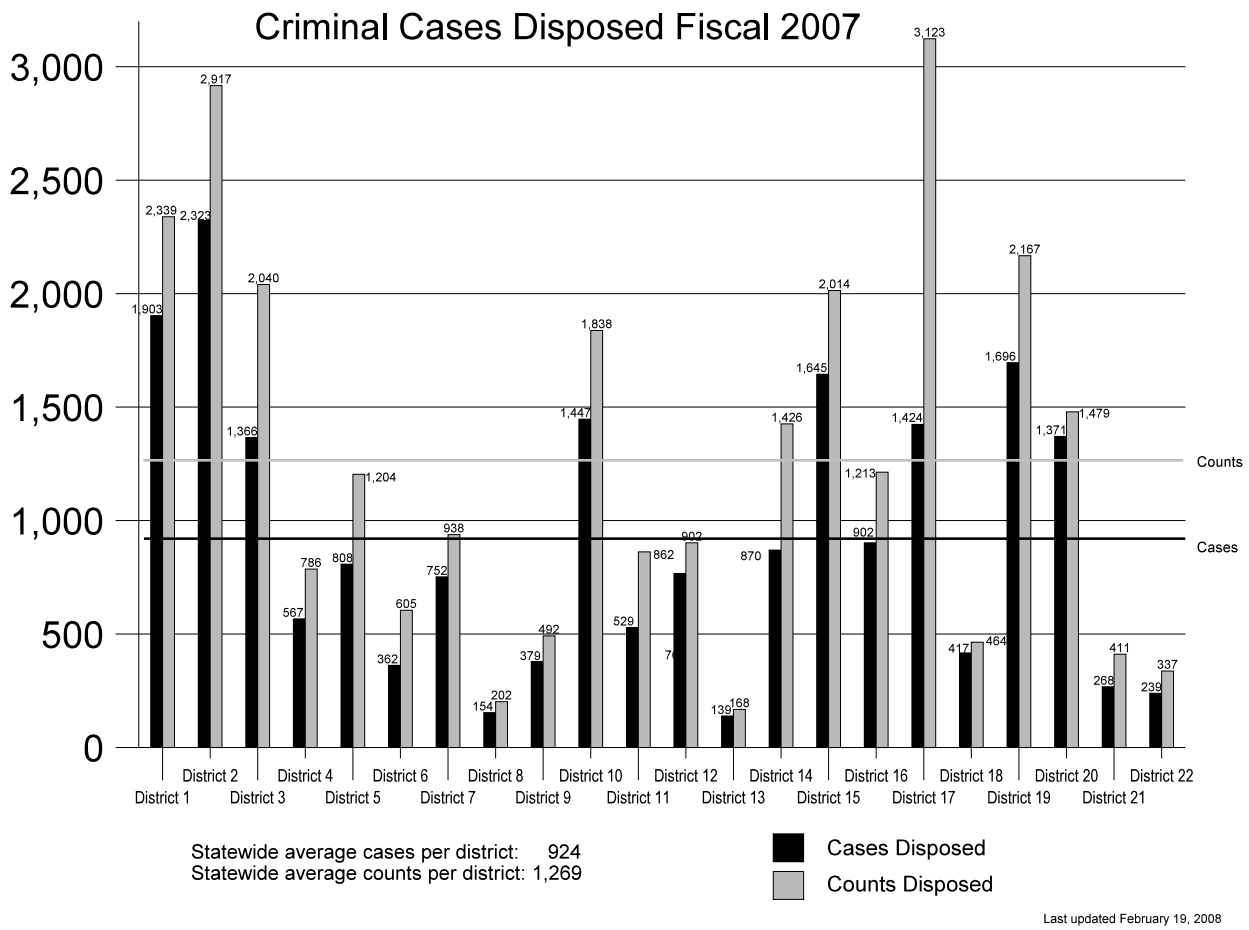
The chancery and circuit clerks for each district are required by law to report the activities of the courts to the Administrative Office of Courts. The data, as reported, reflect the following.

CHANCERY COURTS



CIRCUIT COURTS





COUNTY AND YOUTH COURTS

Please contact the Administrative Office of Courts for statistics for the County Courts and Youth Courts.

ADMINISTRATIVE OFFICE OF COURTS

The Administrative Office of Courts was created on July 1, 1993, to support the judicial system by providing efficient administration of the non-judicial business of the State's courts. The AOC offices are located in Jackson at the Mississippi Court of Appeals' building at 656 North State Street, and will be relocated in the newly constructed Gartin Justice Building at 450 High Street. The duties of the AOC, specified in Miss. Code Ann. §§ 9-21-1, 3, 9, 29 (Rev. 2002), are:

- To assist the Chief Justice of the Supreme Court with his duties as the chief administrative officer of all of the courts in the state;

- To assist in the prevention of unnecessary delay in the conduct of trials of the state courts;

- To promulgate standards, rules and regulations for computer and/or electronic filing and storage of all court records and court-related records maintained throughout the state in courts and in offices of circuit and chancery clerks;

- To collect case statistics from all civil, criminal and youth courts in the state;

- To coordinate and conduct studies and projects to improve the administration of justice;

- To support the Judicial Advisory Study Committee, including research and clerical assistance;

- To require the filing of reports and the collection and compilation of statistical data and financial information;

- To make recommendations regarding the state of the dockets and the effective number of judges and other court personnel;

- To prescribe uniform administrative and business records, forms, systems and records;

- To devise and promulgate youth court tracking forms;

- To prepare and submit budget recommendations necessary for the maintenance and operation of the judicial system;

- To develop and implement personnel policies for non-judicial court employees;
- To procure, distribute, exchange, transfer and assign equipment, books, forms, and supplies as are acquired for the court system;
- To prepare and submit an annual report on the work of the judicial system;
- To take necessary steps in the collection of unpaid fines and court costs; and
- To perform any additional administrative duties assigned by the Supreme Court.

The AOC processes payroll for the support staff of the chancery and circuit judges, as well as the official court reporters; administers the office and rent allowances for the trial judges; maintains inventory records for equipment purchased with state funds; approves the trial judges' travel reimbursements for in-state and out-of-state travel; collects statistical data from the chancery, circuit, county, and youth courts; collects data on cases handles by family masters; administers special funds for civil legal assistance, comprehensive electronic court systems, drug courts, and the Board of Certified Court Reporters; and oversees several federal grants awarded to the AOC for the benefit of the judiciary.

The AOC also works closely with several study groups created to improve the administration of justice:

• The Mississippi Judicial Advisory Study Committee is a statutory body that meets quarterly. It makes policy recommendations to promote the administration of justice and the operation of the courts to both the Supreme Court and the Mississippi Legislature. In 2007, the committee approved resolutions supporting the increased funding of support staff and office allowances for the trial judges and legislation that would enable counties to establish an Office of Public Guardian.

• The State Drug Court Advisory Committee oversees the development and operation of Mississippi's drug courts. In 2007, the number of drug court participants grew approximately 28%. The AOC also released the Drug Court Case Management system (DCCM) to all operational drug court programs. The DCCM is a state of the art case management system that allows drug courts to track individuals from the initial screening process to completion of the program. The DCCM will allow for uniform data collection statewide thus allowing state and local evaluators quick and easy access for data analysis.

• The Commission on Children's Justice is charged with improving child welfare. In 2007, the commission set out to accomplish the following objectives: (1) improving as well as expediting the Termination of Parental Rights (TPR) process in order to comply with the requirements of the Court Improvement Progam grant; (2) the securing of additional federal grant funds; (3) utilizing funding to implement agency cross-training to improve quality of the overall youth court process; (4) providing a resource which clarifies and creates new Uniform Youth Court Rules for the state of Mississippi; (5) expansion of MYCIDS (Mississippi Youth Court Information Delivery System) into twenty-one (21) counties; (6) building a strong collaboration with MDHS in the development of a Permanency Module in addition to completing the implementation into MYCIDS software; (7) planning the development and implementation of statewide cross-training of MDHS social workers, youth court counselors and other youth court related staff; and (8) implementing a collaboration with Tribal Courts including the review of Tribal Codes.

• The Mississippi Access to Justice Commission is charged with finding ways to provide economically disadvantaged Mississippians access to legal help. In the past year, the Commission has begun planning hearings to be held in 2008 to help educate lawmakers and city and state leaders about the plight of the poor in Mississippi and the legal services available to them. A DVD is also being produced to further spotlight the positive effects legal services corporations can have on poor citizens. Also, the Commission is taking a number of steps to encourage responsible and effective pro bono and pro se representation.

• The Uniform Criminal Rules Study Committee continues to examine the procedural rules of criminal cases that direct Mississippi's Bar and the bench. The Committee meets monthly to discuss the rules of Mississippi and other states. It is preparing a draft of suggested rules that the Committee feels will address the issues that prosecutors, defense counsel and judges currently face.

• The Public Defenders Task Force continues to encourage productive conversations between prosecutors and defenders as the Task Force considers possible legislative measures that will assist in the creation of an adequately funded and well-trained public defender system. The Task Force is currently meeting to discuss what the next steps of the Task Force will be in light of the legislation the Task Force successfully submitted to the Mississippi Legislature in 2007, including the extension of the repealer of the Task Force by four years; the inclusion of a representative from the Mississippi Bar and a

representative from the Magnolia Bar to the Task Force; and approval of a public defender training component.

The AOC continues to strive in its efforts to assist the Chief Justice in the efficient and effective administration of the non-judicial business of the state courts.

MISSISSIPPI JUDICIAL ADVISORY STUDY COMMITTEE

The same legislation which created the Administrative Office of Courts also created the twenty-one member Mississippi Judicial Advisory Study Committee. Its members have been appointed by various entities as directed by statute. The chairs of the Senate and House Judiciary Committee are designated by statute as non-voting members of the Committee. The Committee is required by statute to meet not less than quarterly and has appointed consulting groups in areas of particular concern, including both civil and criminal law, to develop\op recommendations as required by statute to te made to the Legislature, the Supreme Court, and the Administrative Office of Court.

The Committee is submitting its detailed, mandated report to the Legislature by a separate document.

BOARD OF BAR ADMISSIONS

The Board of Bar Admissions has the primary obligation to administer the laws and rules governing admission to practice law in the State of Mississippi. The Board's efforts are primarily directed at the preparation, administration and evaluation of Bar Admission examinations in February and July of each year and the investigation and evaluation of the character and fitness of each person seeking admission to practice law in the State of Mississippi.

In 2007, the Board received and processed the following number of applications:

Applications for Registration as a Law Student - 90
Applications for Examination - 444

The total applications processed/being processed in 2007 were 534

In 2007, the Board tested the following number of applicants:

February 2007 bar exam - 141
July 2007 bar exam - 247

The total number of applicants tested in 2007 - 388

MISSISSIPPI COMMISSION ON CONTINUING LEGAL EDUCATION

The Mississippi Commission on Continuing Legal Education (CLE) has the primary responsibility to exercise general supervisory authority over the administration of the "Rules for Mandatory Continuing Legal Education" and to adopt, repeal, and amend regulations consistent with these rules. The objective of the Mississippi Commission on CLE is to ensure that each member of the Bar complies with the rules and regulations established by the Commission and meet the mandatory CLE requirements in a timely and efficient manner.

The Commission strives to meet the needs of the members of the Mississippi Bar regarding continuing legal education by keeping abreast of national changes in programming formats and topics. Members of the Commission and its administrator are active in the national organization of regulatory CLE boards.

The Mississippi Commission on CLE approved for credit 450 programs that were held in the state of Mississippi, 2400 programs held outside the state of Mississippi and 1740 programs that were given by teleconference or online through live webcasts and on-demand programs.