



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

June 23, 2021

The Honorable Jerry Jones  
Webster County Justice Court  
24 East Fox Avenue  
County Office Building, Suite C  
Eupora, Mississippi 39744

Re: Criminal Affidavits

Dear Judge Jones:

The Office of the Attorney General has received your request for an official opinion.

### **Question Presented**

Should a justice court receive criminal affidavits filed under Mississippi Code Annotated Section 97-45-17, which has been found to be unconstitutional by the Mississippi Court of Appeals in *Edwards v. State* 294 So. 3d 671 (Miss. 2020)?

### **Brief Response**

Yes. Justice court clerks must accept and record all criminal affidavits submitted by complainants.

### **Applicable Law and Discussion**

Section 97-45-17 “makes it a felony to post a message for the purpose of causing injury to any person through the use of any medium of communication, including the Internet or a computer . . . without the victim's consent.” *Edwards*, at 672. As stated in your request, the Mississippi Court of Appeals in *Edwards* ruled that Section 97-45-17 is “substantially overbroad” and, as a result, is “facially invalid and unconstitutional.” *Id.* at 676, 78.

Rule 2.1 of the Mississippi Rules of Criminal Procedure provides, in part:

(a) Commencement. All criminal proceedings shall be commenced either by charging affidavit, indictment, or bill of information.

(b) Docketing the Case.

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(1) Charging affidavit. Anyone bringing a criminal charge in municipal court or justice court shall lodge a charging affidavit with the judge or clerk of the court. *The clerk of the court shall record all charging affidavits on the docket.*

MRCrP 2.1 (emphasis added). After a criminal affidavit is filed by the clerk, the judge is then charged with determining if there is probable cause to believe that the defendant committed the offense alleged in the affidavit. MRCrP 2.2(a)–(b); MS AG Op., *Barton* at \*1 (Mar. 30, 2018).

Justice court clerks must accept and record all criminal affidavits submitted by complainants. MRCrP 2.1. Whether the conduct described in the affidavit is violative of a criminal statute that has been invalidated as unconstitutional, or whether such conduct meets the elements of another crime, is a determination for the judge.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ *Phil Carter*

Phil Carter  
Special Assistant Attorney General

OFFICIAL OPINION