



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

October 29, 2021

William W. Simmons, Esq.  
Attorney, City of Meridian  
Post Office Drawer 5514  
Meridian, Mississippi 39302

Re: Conflict Between Statute and Court Rules

Dear Mr. Simmons:

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

### **Question Presented**

Is it permissible for the police department to issue a warrant or otherwise pursue collection of unpaid fines after providing written notice via U.S. mail, pursuant to Mississippi Code Annotated Section 63-1-53(1), without personally serving a summons pursuant to Rule 26.6(d), Mississippi Rules of Criminal Procedure?

### **Brief Response**

When a statute conflicts with a rule of criminal procedure adopted by the Mississippi Supreme Court, the rule controls. Accordingly, the procedural rule in Rule 26.6(d) would control over Section 63-1-53(1).

### **Applicable Law and Discussion**

As you note in your request, Rule 26.6(d) requires personal service on a defendant in an action for failure to pay fines, restitution, and/or court costs, providing that “[a] summons requiring the defendant’s appearance shall be personally served on the defendant and shall set forth the time and location of the hearing. If the defendant fails to appear, the court may issue a warrant for the defendant’s arrest.” However, Section 63-1-53, applicable to fines, fees, and assessments for violations of Title 63, allows the court to pursue collection if, after ninety days after notice by U.S. first class mail, the defendant has not paid the entire amount of all fines, fees, and assessments.

In its December 15, 2016, *en banc* order adopting the Mississippi Rules of Criminal Procedure, the Mississippi Supreme Court said:

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The Mississippi Constitution mandates certain procedural requirements in the criminal law of this State. And the Mississippi Legislature and this Court, acting on the respective authority vested in them by the Mississippi Constitution, have articulated additional procedural requirements. In order to promote justice, uniformity, and efficiency in our courts, we find it necessary and reasonable now to combine all of the requirements governing criminal procedure in the courts of this State into a singular set of rules. Therefore, *pursuant to the inherent authority vested in this Court by the Constitution of the State of Mississippi, as discussed in Newell v. State, 308 So. 2d 71 (Miss. 1975), we adopt the rules attached hereto as the Mississippi Rules of Criminal Procedure, which shall govern the procedure in all criminal proceedings in the Circuit, County, Justice and Municipal Courts of this State.* These rules shall take effect on July 1, 2017.

*In re: Adoption of Miss. Rules of Criminal Procedure*, No. 89-R-99038-SCT (Miss. 2016) (emphasis added).

In *State v. Delaney*, the court said:

It is now well established that “the constitutional concept of separation of powers dictates that it is within the inherent power of this Court to promulgate procedural rules to govern judicial matters.” *State v. Blenden*, 748 So. 2d 77, 88 (Miss. 1999) (citing *Newell v. State*, 308 So. 2d 71 (Miss. 1975)). *See also* Miss. Const. art. 1, §§ 1, 2 (providing for separation of governmental powers). *Thus, when a statute conflicts with this Court's rules regarding matters of judicial procedure, our rules control.* *Stevens v. Lake*, 615 So. 2d 1177, 1183–84 (Miss. 1993).

52 So. 3d 348, 351 (Miss. 2011) (emphasis added). Accordingly, the procedural rule in Rule 26.6(d) would control over Section 63-1-53(1). Thus, the defendant must be personally served pursuant to Rule 26.6(d).

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