



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

January 24, 2023

Wade White, Esq.
Attorney, Neshoba County Board of Supervisors
501 Main Street
Philadelphia, Mississippi 39350

Re: Payment of Constable Bailiffs

Dear Mr. White:

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

Background

You state in your request that Neshoba County has two justice court judges who hold their civil and criminal courts on the same day. You also state that civil cases are normally handled in the morning and criminal cases are held in the afternoon.

Question Presented

Are the constable bailiffs to be paid a fee for the morning civil court and then a separate fee for the evening criminal court, or should the constable bailiff be paid the single fee for the entire day?

Brief Response

A constable that serves as bailiff shall be paid for each day or part thereof for civil court and for criminal court. Thus, a constable that serves as bailiff shall receive a fee between \$55.00 and \$100.00 for attending each day or portion of a day for civil court and shall also receive a separate fee between \$55.00 and \$100.00 for attending each day or portion of a day for criminal court on the same day.

Applicable Law and Discussion

The fee for a constable to serve as a bailiff in a civil case and the fee for a constable to serve as a bailiff in a criminal case are both set by reference to Mississippi Code Annotated Section 19-25-31. Section 19-19-8 states: “[a] constable that serves as a bailiff in justice court for criminal cases may be paid by the county in an amount equal to the allowance paid to riding bailiffs as provided in Section 19-25-31.” Section 25-7-27(1)(e) provides that constables are to be paid an amount

equal to the amount provided under Section 19-25-31 for each day, or part thereof, for which he serves as bailiff in any court in a civil case.

Section 19-25-31 provides:

Each judge of a circuit, chancery or county court, or a court of eminent domain may, in the judge's discretion, by order entered on the minutes of the court, allow the sheriff riding bailiffs to serve in the respective court of such judge, not to exceed four (4) bailiffs. Any such person so employed shall be paid by the county on allowances of the court on issuance of a warrant therefor in an amount between Fifty-five Dollars (\$55.00) and One Hundred Dollars (\$100.00) for each day, or part thereof, for which he or she serves as bailiff when the court is in session. No full-time deputy sheriff shall be paid as a riding bailiff of any court. County court judges shall be limited to one (1) bailiff per each court day.

Although Section 19-25-31 is amended to increase the fees that a constable serving as a bailiff may receive, two previously issued opinions citing the pre-amendment amount of constable fees are still applicable to your question. This office has previously opined:

A constable may serve as bailiff for more than one judge. However, the constable may only receive payment for each day or part thereof, for civil or criminal court, regardless of the number of judges he serves as bailiff on a given day. If the constable serves in both civil court and criminal court on the same day he may be entitled to a \$40.00 fee in the civil court and a \$55.00 fee in the criminal court for a total of up to \$95.00 for that day's service as bailiff.

MS AG Op., *Pratt* at *1 (Oct. 3, 2008); *see also*, MS AG Op., *Dulaney* at *1 (Oct. 26, 2007).

This office also has previously opined that “[b]ased upon the applicable statutes, it is the opinion of this office that a constable is paid per day, or part thereof, for his or her service as a bailiff in civil [court], and separately, for his or her service as a bailiff in a criminal [court].” MS AG Op., *White* *1 (May 13, 2020). Thus, a constable who serves as bailiff shall receive a fee between \$55.00 and \$100.00 for attending each day or portion of a day for civil court and shall also receive a separate fee between \$55.00 and \$100.00 for attending each day or portion of a day for criminal court on the same day.

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/ *Gregory Alston*

Gregory Alston
Special Assistant Attorney General