

FEES COLLECTED BY CHANCERY CLERKS

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The Chancery Clerk is legally responsible for virtually all monies that come into the county. As County Treasurer and County Auditor, he is responsible for receiving settlements from all other fee generating offices such as Circuit Clerk, Justice Court Clerk, and others. He receives and accounts for the Tax Collector's monthly collections settlement. And, of course, he makes all disbursements of county funds by pay warrant as approved by the Board of Supervisors. In addition to these weighty responsibilities, the Chancery Clerk also receives fees for services performed by his office – fees for filing land records, court records, appeal costs, delinquent tax payments, and copying and notarization services are just a few of the many fees for which the Chancery Clerk must account. They can be categorized into seven (7) broad types, each of which is discussed below.

I.
Court Filing Fees

Section 1.01 What They Are: Miss. Code Ann. § 25-7-9(2) enumerates the amount of fees to be charged for filing the initial pleading on the various types of matters over which the Chancery Court has jurisdiction, as follows:

(a) Divorce to be contested	\$75.00
(b) Divorce uncontested	\$30.00
(c) Alteration of birth or marriage certificate	\$25.00
(d) Removal of minority	\$25.00
(e) Guardianship or conservatorship	\$75.00
(f) Estate of deceased, intestate	\$75.00
(g) Estate of deceased, testate	\$75.00
(h) Adoption	\$75.00
(i) Land dispute	\$75.00
(j) Injunction	\$75.00
(k) Settlement of small claim	\$30.00
(l) Contempt in child support	\$75.00
(m) Partition suit	\$75.00
(n) Any cross-complaint	\$25.00

All *ex parte* matters not enumerated above carry a fee of \$25.00 in accordance with UNIFORM CHANCERY COURT RULE 9.01.

Section 1.02 In addition to these standard filing fees, the following fees are also applicable to all court filings and represent fees to be paid over to the *State Treasury*:

Court Education and Training Fee	
(MISS. CODE ANN. § 37-26-3)	\$2.00
Court Constituents' Fee	
(MISS. CODE ANN. § 37-26-9(4))	\$.50

Civil Legal Assistance Fund Fee	
(MISS. CODE ANN. § 25-7-9(1)(k)) \$5.00
Comprehensive Electronic Court Systems Fund Fee	
(MISS. CODE ANN. § 25-7-13 (1)(c)) \$10.00

Section 1.03 The following fees are also applicable to all court filings and represent fees to be paid over to the *County Treasury* if your **Board of Supervisors has approved them by prior Order spread upon the minutes:**

Court Administrator’s Fee	
(MISS. CODE ANN. § 9-17-5) \$2.00
Law Library Fee	
(MISS. CODE ANN. § 19-7-31) \$2.50

The following fee is applicable to all court filings **where a plea or answer is to be filed or where the services of a court reporter are required**, and it is paid over to the *County Treasury*:

Court Reporter’s Tax Fee	
(MISS. CODE ANN. § 9-13-21) \$10.00

Section 1.04 Finally, the following fee is applicable to all court filings (for all courts) in counties which have adopted the Local Government Records program managed by the Mississippi Department of Archives and History and represents the Archive Fee. It was deemed applicable to court filings by the Attorney General via OPINION TO H. T. HOLMES, Docket No. 2008-00445 (September 5, 2008). One half is paid to the **County Treasury** and one half to the **State Treasury**:

Archive Fee	
(MISS. CODE ANN. § 25-60-5) \$1.00

Section 1.05 A word about the Court Reporter’s Tax Fee: Although an argument can be made that this fee ought to be assessed to the appropriate party by the judge upon termination of the case and although at least one Attorney General’s Opinion (OPINION TO JIMMY JONES, Docket # 2001-0295 (May 18, 2001)) states that it should be collected “at the end of the case,” a more efficient practice may be to include this fee as a part of the total filing fee charged up-front to the plaintiff, since most of the cases which will involve the filing of an answer or the use of a court reporter can be determined at the time of filing by reference to the type of case. For example, a contested divorce, paternity suit, and partition action will each require an answer to be filed, and a guardianship, conservatorship, and probating an estate will most likely require the services of a court reporter. Hence, in each of these cases and in others as set forth below, this fee is automatically included in the total fees collected by the office for court filings. The Court can adjust the applicability of the fee at the conclusion of the matter, and if a court reporter is not used, the Chancellor can order a refund of this portion of the fee. For those in which the fee is

not tendered up front but an answer is later filed or the services of a court reporter are ultimately utilized, the Court can also subsequently order the payment of the Court Reporter’s Tax Fee at the conclusion of the matter.

Section 1.06 More about the Court Reporter’s Tax Fee: This fee is not to be charged to the defendant unless the court so orders. The statute from which this fee springs clearly states that it is to be collected in the same manner in which the Jury Tax is collected and paid in Circuit Court. See MISS. CODE ANN. § 9-13-21. The Jury Tax is controlled by MISS. CODE ANN. § 9-7-133 and is collected by Circuit Clerks *up front from plaintiffs as a part of the filing fee.* Defendants in civil cases do not pay the Jury Tax. Thus, the Court Reporter’s Tax Fee should be collected in the same manner, and not by charging the defendant.

Section 1.07 Thus, in the chart below, the “Base Fee” column lists the base fee enumerated in MISS. CODE ANN. § 25-7-9(2) and the “County/State Add On” column lists the total of the additional fees discussed above, other than the Archive fee. (Where only \$22.00 is listed in the “County/State Add On” column, the Court Reporter’s Tax Fee is most likely not applicable and should not be charged up front.) Note that the County/State Add On will be increased by \$1.00 in counties which have adopted the Archive fee, and the total fee will also increase by that same \$1.00.

CASE DESCRIPTION	BASE FEE	COUNTY/STATE ADD ON	TOTAL
ADOPTION-UNCONTESTED	\$75.00	\$22.00	\$ 97.00
ADOPTION-CONTESTED	75.00	32.00	107.00
A & D COMMITMENT-INVOLUNTARY	75.00	32.00	107.00
A & D COMMITMENT-VOLUNTARY	25.00	22.00	47.00
BIRTH CERTIFICATE CORRECTION	25.00	22.00	47.00
BOND VALIDATION	75.00	32.00	107.00
CASE TRANSFER	As applicable	As applicable	As applicable
COMPLAINTS	75.00	32.00	107.00
CONSERVATORSHIP	75.00	32.00	107.00
CONTEMPT OR MODIFICATION (REOPENING)	75.00	25.00	100.00
COUNTER CLAIM or CROSS CLAIM ¹	25.00	N/A	25.00
DIVORCE-CONTESTED	75.00	32.00	107.00
DIVORCE-UNCONTESTED (JOINT)	30.00	22.00	52.00
DOMESTIC	75.00	32.00	107.00
ESTATE-MUNIMENT OF TITLE ONLY	30.00	22.00	52.00
ESTATE-TESTATE OR INTESTATE	75.00	32.00	107.00

¹See discussion below.

FOREIGN JUDGMENT	75.00	32.00	107.00
GUARDIANSHIP	75.00	32.00	107.00
INJUNCTION	75.00	32.00	107.00
JOINT MODIFICATION (OPEN/CLOSE)	25.00	N/A	25.00
LAND DISPUTE	75.00	32.00	107.00
MENTAL COMMITMENT	75.00	32.00	107.00
MINORITY REMOVAL	25.00	22.00	47.00
MUNIMENT OF TITLE	30.00	22.00	52.00
MINOR'S SETTLEMENT (UNDER \$10,000)	30.00	22.00	52.00
MINOR'S SETTLEMENT (OVER \$10,000)	75.00	32.00	107.00
NAME CHANGE	25.00	22.00	47.00
PARTITION SUIT (LAND)	75.00	32.00	107.00
PATERNITY	75.00	32.00	107.00
SEPARATE MAINTENANCE	75.00	32.00	107.00
STIPULATED AGREEMENT (DHS)	25.00	22.00	47.00
TEMPORARY RESTRAINING ORDER	75.00	32.00	107.00
WRIT OF GARNISHMENT	25.00	22.00	47.00

Section 1.08 A note about filing fees under uniform acts: The Chancery Clerk's ability to charge a filing fee up front is limited in suits brought under certain uniform acts. For example, a filing fee shall not be charged to persons filing for relief under the Domestic Violence Protection Act (MISS. CODE ANN. § 93-21-1 *et seq*). Indeed, MISS. CODE ANN. § 93-21-7 (Supp. 2007) specifically states that the petitioner must not be charged a filing fee. The court is empowered to assess such to the respondent at the conclusion of the matter, however. Similarly, pursuant to MISS. CODE ANN. § 93-25-53, filing fees for registration and enforcement of court rulings issued under the Uniform Interstate Family Support Act (UIFSA) may not be charged to the petitioner. Rather, the court must adjudicate court costs, including the filing fee, at the conclusion of the matter.

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) does not contain similar language prohibiting the clerk for charging a fee; therefore, the fee set forth above for enforcement of foreign judgments would appear to apply to requests for registration and enforcement petitions filed under UCCJEA.

Section 1.09 A word about the fabled \$25.00 fee for filing a “counterclaim” against a cross plaintiff: This fee has been the source of a great deal of consternation and misunderstanding among the members of the bar and the clerks of the various chancery courts in Mississippi. In truth, the fee is almost never applicable. Pursuant to UNIFORM CHANCERY COURT RULE 9.01 and MISS. CODE ANN. § 25-7-9(2)(n), any time one plaintiff brings a claim

against another plaintiff in the course of the same lawsuit – or anytime one defendant brings a claim against another defendant in the course of the same lawsuit – the Chancery Clerk should charge the filing party an additional \$25.00. This type of claim may be brought as a separate pleading or it may be contained within another pleading.

The Rule reads “Upon filing a counterclaim or crossclaim by a Cross-Plaintiff: a deposit of \$25.00.” While it is reasonable to read Rule 9.01 to apply **anytime** a counterclaim is filed and **anytime** a crossclaim is filed, the Attorney General has opined that the fee is applicable only when one or the other of these pleadings is filed **by one plaintiff against another plaintiff or by one defendant against another defendant in the same case.** (OPINION TO JOHN REEVES, Docket No. 2006-00129 (April 21, 2006)). Thus, the \$25.00 fee **is not applicable** and not chargeable against the defendant who simply files a counterclaim against the plaintiff as a part of his answer. **If the pleading is denominated a “counterclaim,” chances are the fee is not applicable.**

The reason this fee exists is because when one plaintiff brings a claim against a co-plaintiff or when one defendant brings a claim against a co-defendant, we really have the makings of a separate lawsuit (plaintiff versus plaintiff or defendant versus defendant) within the main or master lawsuit (plaintiffs versus defendants) which may require the issuance of separate process and may lead to a severance or bifurcation of the case such that the plaintiff versus plaintiff case or the defendant versus defendant case may be tried separately. Because there is the potential for so much additional work on the part of the clerk’s office in these particulars, Rule 9.01 provides for this additional fee. Again, it should only be charged when a plaintiff is suing another plaintiff or a defendant is suing another defendant within the same case.

Section 1.10 Where They Go: These fees should be deposited in a separate account known as the *Court Fee Clearing Account*. The “Base” fees should be settled each week (or each month) to the *General Fee Clearing Account* (a/k/a the “Fee Account” or the “Fee Journal Account”) with the appropriate entries being made on the Fee Journal and with the “Add-on” fees being settled to the State and County Treasuries, according to the fee type set forth above.

II.

Land Record Filing Fees

Section 2.01 Subsections (1) (b), (c), (d) and (e) of MISS. CODE ANN. §25-7-9 set forth the filing fees for most of the land records which are recorded in our offices. Subsection (b)(i) contains the abbreviation “etc.” which can and should be read to encompass almost any type of record for which a fee is not otherwise specifically provided for.

Section 2.02 During the 2007 Legislative Session, MISS. CODE ANN. §25-7-9 was amended (via HB 1166) to clarify that the fee charged for filing **any** instrument governed by the Subsection (b)(i) catch-all is applicable per each deed of trust to be marginally notated. This provision was enacted in 2006 as to Cancellations only. Now, the provision is applicable to Cancellations, Assignments, Partial Releases, Subordinations, Modifications and Substitutions of

Trustee, and any other instrument requiring a marginal notation. In addition, the fee for making a marginal notation increased from \$.50 to \$1.00. These changes went into effect July 1, 2007.

Section 2.03 If an instrument references only one deed of trust to be notated, the standard filing fee in Madison County will be \$13.00. The fee is calculated as follows:

\$10.00 -	Instrument to be filed (Cancellation, Assignment, Partial Release, etc.) (MISS. CODE ANN. §25-7-9(1)(b)(i)).
\$ 1.00 -	Marginal notation to be made on the deed of trust (MISS. CODE ANN.25-7-9(1)(e)(ii)).
\$ 1.00 -	Sectional or subdivision index entry fee (MISS. CODE ANN. §25-7-9(1)(b)(ii)).
<u>\$ 1.00 -</u>	Archive fee
\$13.00	(MISS. CODE ANN. §25-60-5(1)).

Section 2.04 In OPINION TO VICKIE WALTERS, Docket No. 2008-00656 (December 19, 2008), the Attorney General clarified how fees for recording assignments, cancellations, modifications, sub-ordinations, releases, or amendments of more than one deed of trust which are combined in a single filing are to be calculated. The Opinion makes it clear that with regard to these types of instruments multiple types of fees are – or may be – applicable. First, there is a **\$10.00 filing fee** which is applicable *per book and page listed* on the instrument presented for filing. Second, there is the **\$1.00 marginal notation fee** which is applicable *per each marginal notation* which is required to be made. Third, there is the **\$1.00 sectional or subdivision index entry fee** which is applicable *per section or subdivision lot* referenced in the underlying deed of trust or other affected instrument. Finally, there is the **\$1.00 archive fee** which is applicable *per instrument filed*.

Section 2.05 A note about the sectional or subdivision index entry fee: Mississippi’s recording statutes appear to give the clerk discretion as to whether to index these instruments in the sectional or subdivision indexes or not. Thus, this fee should be charged only if instruments such as assignments, cancellations, subordinations, modifications, etc. are actually indexed by the clerk in the sectional or subdivision index. In some counties, such instruments are not so indexed. Either practice is acceptable.²

Section 2.06 Another note about the sectional or subdivisional index entry fee: Depending on the legal description contained in the underlying deed(s) of trust, the \$1.00 fee for making a sectional or subdivision index entry may only be applicable one time. If each deed of trust listed on the instrument pertains to the same section or subdivision lot, then the \$1.00 index entry fee should only be charged one time. Contrarily, if each deed of trust covers different sections of land or different subdivision lots, the \$1.00 index entry fee will be applicable for

²If you are not indexing these instruments or you are requested not to index these instruments, one Chancery Clerk suggests you consider getting a statement in the body of the instrument indicating that the filer did not want the instruments so indexed.

each. In view of the Walters Opinion, it would not be correct to simply charge a fee of \$13.00 times each book and page listed on a combination assignment, cancellation, etc. type of instrument. Rather, the underlying deed of trust must be reviewed to ascertain how many different sections or subdivision lots are covered in order to know how many index entries are to be made.

Section 2.07 To illustrate how the fees are calculated, a recent document found at Book 2349 at Page 843³ of the Madison County land records modified six (6) different deeds of trust already on record. The filer incurred the following fees:

(1) The Filing Fee

§ 25-7-9(1)(b)(i) -- \$10.00 per book and page listed on the instrument \$10.00 x 6 = **\$ 60.00**

(2) The Sectional or Subdivision Index Entry Fee

§ 25-7-9(1)(b)(ii) -- \$1.00 per section or subdivision index entry \$1.00 x 71 = **\$ 71.00**
(There were 67 different lots and 4 different sections referenced in the deeds of trust.)

(3) The Marginal Notation Fee

§ 25-7-9(1)(e)(ii) -- \$1.00 per marginal notation to be made \$1.00 x 6 = **\$ 6.00**

(4) The Archive Fee

§ 25-60-5 -- \$1.00 Local Government Records Program fee **\$ 1.00**

TOTAL \$138.00

Section 2.08 There is a strong rationale which underlies and supports such a substantial fee in recording this instrument. Indeed, a deputy clerk marked the document filed, applied the attestation and seal, scanned the document, indexed it in the general index, pulled each deed of trust affected by it, read the legal description of each, ascertained the identity of the sixty-seven lots and four sections, made a total of 71 separate corresponding index entries, and then made a marginal notation on each of the six affected deeds of trust. A second deputy proofed all of the above as a part of our quality control efforts and re-traced the filing/recording deputy's steps. Consequently, it took a significant amount of the morning for the office to complete these tasks – all of which were related to only this one document. Whereas, recording a simple deed, deed of trust, or single assignment, modification, cancellation, or similar instrument would take a significantly shorter amount of time.

³This instrument is available, together with all of the associated indexing data, at www.madison-co.com/chanceryclerk. Once there, click on “Search Land Records” and key in the Book and Page reference. Then, click on “more information” to see the myriad of index entries which were made. You can also view the marginal notations.

In Madison County, we have suggested that banks and other institutions filing these types of instruments always file separate instruments for each deed of trust to be marginally notated and submit the standard filing fee of \$13.00 per separate instrument.

Section 2.09 A word about oil and gas instruments: Oil and Gas instruments are not effected by this new law, except as to the marginal notation fee increase (from \$.50 to \$1.00).

Section 2.10 The following fee schedule provides additional details about how land fees are calculated.

Deeds (Warranty, Timber, Quit Claim, Trustee’s Deeds, etc.)/Leases/Plats/Covenants/Townhouse & Condominium Liens/Construction Liens/Lis Pendens

includes indexing for the first fifteen (15) pages & one (1) section or subdivisional lot.....	\$12.00
each additional section or subdivisional lot.....	1.00
each additional page more than fifteen (15).....	1.00
(Please advise if mineral stamps are to be affixed)	

Deeds of Trust/Assignments of Rents and Leases

includes indexing for first fifteen (15) pages & one (1) section or subdivisional lot.....	17.00
each additional section or subdivisional lot.....	1.00
each additional page more than fifteen (15).....	1.00

Assignments/Partial Releases/Releases/Amendments/Supplements/Cancellations/Authority to Cancel/Amendment or Supplement to Covenants/Subordinations/Modifications/Substitution of Trustees/UCC Terminations or Continuations in Land Records, etc.

includes indexing for the first fifteen (15) pages & one (1) referenced book & page & one (1) section or subdivisional lot	13.00
each additional referenced book & page.....	10.00
each additional section or subdivisional lot	1.00
each additional marginal notation.....	1.00
each additional page more than fifteen (15).....	1.00

General Power of Attorney/Trust Agreements

includes indexing for the first fifteen (15) pages & one (1) section or subdivisional lot.....	12.00
each additional section or subdivisional lot.....	1.00
each additional page more than fifteen (15).....	1.00
(If document has no legal description, reduce the amount by \$1.00)	

Oil & Gas Leases/Mineral Deeds/Royalty Deeds, etc.

includes indexing for the first fifteen (15) pages & one (1) section or subdivisional lot.....	20.00
each additional section or subdivisional lot.....	1.00
each additional page more than fifteen (15).....	1.00
(Plus Mineral Stamps as shown below)	

Oil & Gas Assignments/Releases/Cancellations

includes indexing for the first fifteen (15) pages & one (1) referenced book & page & one (1) section or subdivisional lot and one (1) assignee.....	21.00
each additional assignee.....	18.00
each additional section or subdivisional lot.....	1.00
each additional book & page marginal notation when applicable.....	1.00
each additional page over fifteen (15).....	1.00
(Plus Mineral Stamps as shown below, if instructed)	

Mineral Stamp Fees

- 1 - 10 years ----- .03 cents per net mineral acre
- 11 - 20 years ----- .06 cents per net mineral acre
- 20+ years ----- .08 cents per net mineral acre
- Reserving Minerals on Deeds are .08 cents per net mineral acre

(Mineral Stamps, if applicable, are \$1.00 minimum)

Copies

Certifying copies of documents.....	1.00
Copies made by clerk or employee, per page.....	.50
Copies made by individual, per page.....	.25

UCC Filing Fees

includes indexing for the first fifteen (15) pages & one (1) section or subdivisinal lot.....	11.00
each additional debtor.....	4.00
each additional page over fifteen (15).....	1.00
each additional section or subdivisinal lot.....	1.00
UCC Searches.....	5.00
Copies per page on searches	
*One Name Per Search Form.....	2.00

Because Madison County has elected to participate in the Local Government Records Program, our fees include an additional \$1.00 per instrument where applicable under Miss. Code Ann. §25-60-5.

Section 2.11 In addition to the above fees, the Chancery Clerk is allowed a fee of \$2.00 per mobile home certificate filed by the Tax Assessor pursuant to MISS. CODE ANN. § 27-53-15. This fee is collected as a part of a \$12.00 fee received by the assessor at the time he issues such certificate. (The purpose of the certificate is to establish that the mobile home has been classified as real property by the assessor at the request of the mobile home owner.) The Tax Assessor should pay this fee to the clerk at the time of filing in the office of the clerk.

Section 2.12 Certain other code sections also address land record filings. MISS. CODE ANN. § 27-45-23 provides the basis for applying the filing fee for land deeds to the filing of tax deeds. MISS. CODE ANN. § 85-8-13(2) authorizes the Chancery Clerk to charge a filing fee of \$10.00 for filing federal tax liens, discharges of such liens, and federal judgments which impose or cancel a lien on real or personal property. MISS. CODE ANN. § 35-3-13 allows the Chancery Clerk to bill the county \$1.00 for each certificate of military discharge recorded in his office. This same statute, however, prohibits the clerk from charging a fee to the veteran, whether for filing the initial certificate or for preparing a certified copy thereof. Under MISS. CODE ANN. § 41-43-38, the Chancery Clerk may charge the same fees as allowed by section 25-7-9 for filing records pertaining to cemeteries.

Section 2.13 Where They Go: It is certainly permissible for these fees to be deposited each day in the clerk’s *General Fee Clearing Account*. However, a better practice may be to establish a separate account to be denominated the *Land Record Fee Clearing Account*, particularly where your county has enacted the \$1.00 archive fee. If a separate account is used, a weekly or monthly settlement to the *General Fee Clearing Account* should occur, and the fees received by the clerk should be recorded on the Fee Journal in the appropriate column.

III.
Tax Redemption Fees

Section 3.01 What They Are: Chancery Clerks perform a host of acts associated with the collection, recording and releasing of delinquent taxes and the liens they impose. Most of the money collected by clerks in the redemption of taxes is not fee money; rather, it is money held in trust (that is, in a fiduciary capacity) for the benefit of the tax purchaser. Only certain fees are ultimately settled to the *General Fee Clearing Account* and thereby recorded on the Fee Journal. The monies collected by the Chancery Clerk in the redemption of taxes are best categorized by how they are payable by settlement each month, to-wit:

A.
Monies Due to Purchaser

1. The amount of the delinquent tax (Section 27-45-3)
2. The interest from February 1 to date of sale (1%) paid by purchaser (Section 27-41-9)
3. The publisher's fee paid by purchaser (25-7-21(3))
4. The interest owed to purchaser at 1.5 % per month from date of sale (Section 27-45-3).

B.
Monies Due to County Treasury

5. Damages at 5% of amount of delinquent tax *without* interest, etc. (Section 27-45-1)
6. Actual postage cost, if redeemed after notice sent to newspaper (Section 27-43-3)
7. Publisher's actual fee per parcel (if paid with county funds) (Section 27-43-3)

C.
Monies Due to Sheriff⁴

8. Fee for serving first notice (Section 27-43-3)
9. Fee for serving second notice (Section 27-43-3)

D.
Monies Due to Chancery Clerk

10. Ascertaining record owners (Section 27-43-3)
11. Abstracting the list of lands sold for taxes (Section 25-7-21(4)(a))
12. Issuing first sheriff's notice to owner (Section 27-43-3)
13. Mailing first owner's notice (Section 27-43-3)
14. Issuing second sheriff's notice to owner (Section 27-43-3)

⁴These monies could be payable to the Sheriff of another county if notice was issued to that Sheriff in that county.

15. Mailing second owner's notice (Section 27-43-3)
16. Issuing each lienor's notice (Section 27-43-11)
17. Publisher's actual fee (if paid by the clerk, not county) (Section 27-43-3)
18. Recording each redemption (Section 27-7-21(4)(d))
19. Abstracting each redemption in section or subdivision index (Section 25-7-21(4)(e))
20. Certifying the amount necessary to redeem (Section 25-7-9(1)(a))
21. Certifying release from sale (Section 25-7-9(1)(a))
22. 3% fee on the total amount necessary to redeem (Section 25-7-21)

Section 3.02 Reminder: Collect the redemption fees from the purchaser when you issue a tax deed. If the property taxes on a particular piece of property are not redeemed, remember to collect the fees set forth in MISS. CODE ANN. §§ 27-43-3, 27-43-11 **from the purchaser** after maturity when a tax deed is requested. (Many of our computer programs calculate these sums automatically.) These three code sections clearly state that if the taxes are not redeemed, these costs are "to be taxed as part of the cost against the purchaser." In addition, MISS. CODE ANN. § 25-7-21 (4) sets forth the recording fee for a tax deed at \$10.00 and carries forward the index entry fee of \$1.00. A closer examination of these statutes is warranted.

MISS. CODE ANN. § 27-43-3 reads, in part,

For examining the records to ascertain the record owner of the property, the clerk shall be allowed a fee of Fifty Dollars (\$50.00); for issuing the notice the clerk shall be allowed a fee of Two Dollars (\$2.00) and, for mailing same and noting such action on the tax sales record, a fee of One Dollar (\$1.00); and for serving the notice, the sheriff shall be allowed a fee of Four Dollars (\$4.00). For issuing a second notice, the clerk shall be allowed a fee of Five Dollars (\$5.00) and, for mailing same and noting such action on the tax sales record, a fee of Two Dollars and Fifty Cents (\$2.50), and for serving the second notice, the sheriff shall be allowed a fee of Four Dollars (\$4.00). The clerk shall also be allowed the actual cost of publication. **Said fees and cost shall be taxed against the owner of said land if the same is redeemed, and if not redeemed, then said fees are to be taxed as part of the cost against the purchaser.**

This same language is brought forward into the provision of the code that deals with the fee for issuing lienors notices, MISS. CODE ANN. § 27-43-11, to-wit:

For examining the records to ascertain the names and addresses of lienors, the chancery clerk shall be allowed a fee of Seven Dollars (\$7.00) in each instance for each lien where a lien is found of record, and **said fees shall be taxed against the owner of said land, if same is redeemed, and if not redeemed, then said fees are to be taxed as part of the cost against the purchaser. . . .**

This language, however, is **not** brought forward in MISS. CODE ANN. § 25-7-21 (4) which, although it is headed “Tax Collectors,” also enumerates fees chargeable and collectable by the Chancery Clerk for delinquent taxes. It provides, in part:

- (4) Fees of chancery clerk for collection of delinquent taxes:
 - (a) For abstracting the list of lands sold for taxes, for each separately described section or subdivision lot \$ 1.00
 - (b) For filing and recording deed to land sold for taxes \$10.00
 - (c) For abstracting each deed in the sectional index, per section or subdivision lot \$ 1.00
 - (d) For recording redemption of each \$10.00
 - (e) For abstracting each redemption in the sectional index, per section or subdivision lot \$ 1.00
 - (f) And, in addition, three percent (3%) on the amount necessary to redeem.

Thus, while the fee for filing and recording a tax deed and the \$1.00 index entry fee would obviously be chargeable to the tax purchaser seeking a tax deed, the remaining fees set forth in MISS. CODE ANN. § 25-7-21 (4) would not.

It seems also likely that the tax purchaser should pay the filing and index entry fee associated with the recording of each of the two (2) clerk’s affidavits required by the third paragraph of MISS. CODE ANN. § 27-43-3 and the recent Court of Appeals cases interpreting those provisions of law. These should be recorded right behind every tax deed issued and recorded. The amount of this filing fee per affidavit, is governed by the general fee statute, MISS. CODE ANN. § 25-7-9 (1)(b)(i). The \$1.00 fee for certifying the tax deed and certifying each affidavit as allowed by MISS. CODE ANN. § 25-7-9 (1)(a) also seems applicable. Finally, under MISS. CODE ANN. § 25-7-9 (1)(b)(ii), the Chancery Clerk is entitled to a fee of \$1.00 for indexing each affidavit in the sectional or subdivision index as the case may be. (This is also carried forward into subsection (c) of § 25-7-21 (4) as noted above.)

Section 3.03 In summary, the following fees may be collected when issuing and recording a tax deed. Obviously, some will not be collected if the service for which they are applicable is not performed, e.g., if a 2nd Notice to Owners was not issued, the associated fee would not apply.

- (1) Clerk’s Fee for Ascertaining Record Owner(s) (§ 27-43-3) \$50.00
- (2) Clerk’s Fee for Issuing 1st Notice to Owners (§ 27-43-3) 2.00
- (3) Clerk’s Fee for Mailing and Notating 1st Notice (§ 27-43-3) 1.00
- (4) Sheriff’s Fee for Serving Notice (§ 27-43-3) 4.00

(3) Clerk's Fee for Issuing 2 nd Notice to Owners (§ 27-43-3)	5.00
(6) Clerk's Fee for Mailing and Notating 2 nd Notice (§ 27-43-3)	2.50
(7) Sheriff's Fee for Serving 2 nd Notice (§ 27-43-3)	4.00
(8) Clerk's Fee for Ascertaining Lienors, per lienor identified (§ 27-43-11)	7.00
(9) Clerk's Fee for Filing Tax Deed (§ 25-7-21 (4)(b))	10.00
(9) Clerk's Fee for Certifying Tax Deed (§ 25-7-9 (1)(a))	1.00
(10) Clerk's Fee for Indexing Tax Deed (§ 25-7-21 (4)(c))	1.00
(11) Archive Fee for Tax Deed (§ 25-60-5)	1.00
(12) Clerk's Fee for Filing 1 st Affidavit (§ 25-7-9 (1)(b)(i))	10.00
(14) Clerk's Fee for Certifying 1 st Affidavit (§ 25-7-9 (1)(a))	1.00
(15) Clerk's Fee for Indexing 1 st Affidavit (§ 25-7-9 (1)(b)(ii))	1.00
(16) Archive Fee for 1 st Affidavit (§ 25-60-5)	1.00
(17) Clerk's Fee for Filing 2 nd Affidavit (§ 25-7-9 (1)(b)(i))	10.00
(18) Clerk's Fee for Certifying 2 nd Affidavit (§ 25-7-9 (1)(a))	1.00
(19) Clerk's Fee for Indexing 2 nd Affidavit (§ 25-7-9 (1)(b)(ii))	1.00
(20) Archive Fee for 2 nd Affidavit (§ 25-60-5)	1.00
(21) Actual Cost of Publication (pro rata) (§ 27-43-3)	as applicable

Section 3.04 Actual postage costs are also collected by some Chancery Clerks. Although not specifically addressed in statute, it seems reasonable to pass this cost along to the purchaser requesting a tax deed. Where a tax deed has not been requested, an argument can be made that amounts equal to these costs should be withheld or offset from any subsequent month's settlement to the purchaser who has had the property mature to him. In that circumstance, if the purchaser later came in and requested a tax deed, he would only be required to pay the filing fee.

Section 3.05 A word about the \$50.00 fee for ascertaining record owners: MISS. CODE ANN. § 27-43-3 sets forth the procedure for giving notice to the record owner of property which is about to mature and provides that "[f]or examining the records to ascertain the record owner of the property, the clerk shall be allowed a fee of Fifty Dollars (\$50.00)." The statute also sets forth many of the other fees to which the clerk and other officers are allowed pertaining to the issuance and service of notice. Again, these fees and costs, including the fee for examining the records to ascertain record owner, "shall be taxed against the owner of said land **if the same is redeemed**, and if not redeemed, then said fees are to be taxed as part of the cost against the purchaser."

Section 3.06 In view of the fact that MISS. CODE ANN. § 27-45-3 requires that only the owner, or someone for him with his consent, or someone who is "interested in" the land may redeem the land sold for taxes, if the clerk examines the records (e.g., examines the current land roll, the direct and reverse indices to deeds, and other public records) each time he issues a redemption in order to comply with § 27-45-3, it seems logical that the clerk should charge and collect the \$50.00 fee each time even if he has not yet issued the notices contemplated by § 27-43-3. Thus, in Madison County, we review the current year land roll and search the general index and note the record owner on each release we issue; therefore, we affix the \$50.00 fee to each parcel immediately upon receiving the certified list of lands sold for taxes from the Tax Collector.

However, there may be room for debate on whether this fee should apply only when notices have been issued.

Section 3.07 Where They Go: The total amount collected on each redemption should be deposited in a separate account, known as the “*Tax Sale Redemption Account*” or something similar. Once a month – and no later than the 20th day of the following month -- a settlement is made wherein each purchaser is paid an amount equal to the amount he paid at the tax sale for the property plus interest from the date of sale calculated at 1.5% per month. One check to the county is also issued, representing the total damages and penalties (items B 5, 6, and 7, above) received on all redemptions that month. Another check should be issued to the county reflecting the interest earned on this account. This check may be issued monthly or annually. The clerk should also issue a check to the sheriff or sheriffs for service fees if they are incurred, and finally, the clerk may issue himself a check representing the fees due to himself (items D 10 through 22, above). This check should be deposited to the *General Fee Clearing Account* and entered on the Fee Journal in the appropriate column.

IV.

Court Escrow/Registry Monies

Section 4.01 What They Are: MISS. CODE ANN. § 9-1-43(4) mandates that each Chancery Clerk establish in the county depository a “chancery court clerk clearing account” into which he must deposit garnishment, attachment and child support monies received by virtue of any judgment of the court; as well as fees for service of process in another county; and any other monies which are not public monies but which are to be held by the court in a trust, fiduciary, or custodial capacity.

Section 4.02 The statute goes on to recite that the Chancery Clerk shall account for all monies deposited in and disbursed from such account and shall be authorized and empowered to draw and issue checks on such account at such times, in such amounts and to such persons as shall be proper and in accordance with law. A good rule of thumb is that an order of the court is almost always necessary before money can be disbursed from this account. The court will often order a party in a case to tender or deposit certain sums with the clerk which may be the subject of dispute in the lawsuit. These funds must be strictly guarded and accounted for. As one authority has observed:

[T]he clerk is the court’s treasurer, and all money paid into court is to be there held by him under the security of his official bond. This money is not to be disbursed without an order from the court.

Bridges & Shelton, GRIFFITH MISSISSIPPI CHANCERY PRACTICE (2000 Ed.), § 97. Occasionally, the clerk may be allowed a fee out of the proceeds he is holding in this account. In this rare circumstance, it is absolutely essential that the court specifically state in its order that the clerk is entitled to the fee and state the amount.

Section 4.03 Where They Go: Despite the title mandated by statute, this account is commonly known as the *Court Escrow Account* or the *Court Registry Account*. As a general rule – and with some exceptions (like appeal record fees discussed below) – no fees are to be deposited into or drawn out of this account. Rather, the bulk of the deposits are made up of funds to which some litigant is entitled but a final adjudication of that entitlement has not yet been made. Disbursements should be made only upon order of the court.

Section 4.04 A word about appeal record fees: MISS. CODE ANN. § 25-7-13(6) provides that a fee of \$2.00 per page is applicable for furnishing a transcript of records and certifying records. The statute refers to **circuit** clerks specifically but goes on to state that it shall be applicable “to all officers for making and certifying copies of records or papers which they are authorized to copy and certify.” Since the entire record on appeal must be certified, section 25-7-13(6) is the basis to be used in estimating the costs of appeal pursuant to Rule 11 (b)(1) of the MISSISSIPPI RULES OF APPELLATE PROCEDURE (hereinafter, “MRAP”). *See, Cook v. Whiddon*, 866 So. 2d 494, 502 (Miss. Ct. App. 2004)(confirming that “section 25-7-13(6) is the appropriate statute for the chancery clerk” in calculating per page fees for preparing appeal records from chancery court). *See also, McDonald v. McDonald*, 850 So. 2d 1182, 1189–91 (Miss. Ct. App. 2004)(containing a lengthy, in-depth discussion of clerk’s appeal costs and the importance of posting fee notices).

MRAP 11 (b) provides that the attorney is to make the estimate and post a sum in that amount; however, if the clerk and/or the court reporter are dissatisfied with that amount, either may apply to the court to have it increased under MRAP 11(b)(2).

Under MRAP 11(c), the clerk should disburse actual fees earned by the court reporter in preparing the transcript upon the receipt and filing of her notice of completion. The entirety of the appeal cost deposit is “provisional, subject to adjustment after the transcript has been completed and its actual cost ascertained.” MRAP 11(b)(2). Thus, when the record is complete in its entirety and ready to be transmitted to the Supreme Court, the clerk should prepare a certificate of costs showing receipts by way of deposit(s) as compared to actual costs incurred by the clerk (such as binder costs, the \$2.00 per page fee, and any expenses associated with reproducing or delivering oversized or bulky items as well as the court reporter’s fee).

The certificate should show that either additional appeal costs should be paid by the appellant, or that a refund is due from the clerk to the appellant if the estimate was more than the actual costs, or that the balance is zero and no additional funds are owed. If additional costs are determined to be owed, delivery of the record should await receipt of them.

The initial cost deposit should be deposited in the *Court Escrow Account*, and, upon the filing of the certificate of costs, the actual fees due the clerk should be paid over to the *General Fee Clearing Account*, and reflected on the Fee Journal as court fees. Any excess should be refunded to the appellant’s attorney prior to the fees being paid to the clerk. The court reporter’s costs should also be paid out of this account.

Reproduced below is an example of a certificate of costs prepared and filed in Madison County Chancery Court:

IN THE CHANCERY COURT OF MADISON COUNTY, MISSISSIPPI

LINDA STRIBLING

PLAINTIFF

VS

CAUSE NO. 1998-406

CARL WILLIAM STRIBLING

DEFENDANT

CERTIFICATE OF COSTS

Receipts

Appeal Docket fee (Paid by Barney Comans)	\$100.00
Advance to Chancery Clerk	<u>\$1,000.00</u>
TOTAL RECEIPTS	\$1,100.00

Expenditures

Clerk's Fees for Preparing Clerk's Papers	158 pages @ \$2.00 per page = \$316.00
	44 pages @ \$2.00 per page = \$88.00
	3 record certifications = \$ 6.00
Clerk's Fees for Preparing Exhibits	631 pages @ \$2.00 per page = \$1,262.00
Binder Costs	3 @ \$4.00 per binder = \$12.00
Docket fee (paid over to Supreme Court)	\$100.00
Court Reporter's Transcript (Delora Weaver (August 17, 2005))	\$201.60
TOTAL EXPENDITURES BY CLERK	\$1,873.60

BALANCE DUE THE CHANCERY CLERK **(\$1,873.60 - \$1,100.00) = \$773.60**

SO CERTIFIED this the 16th day of September, 2005.

ARTHUR JOHNSTON, CHANCERY CLERK

BY: _____ D.C.

V.
Mineral Stamp Fees

Section 5.01 What They Are: A mineral documentary tax is to be levied and collected “upon the filing and recording of every lease and other writing” in which a leasehold interest in oil, gas or other minerals is transferred in the state. The tax is also applicable anytime the interest is assigned or extended and whenever a deed or other instrument transfers or reserves any interest in such minerals. It does not apply to a mortgage or lien on such interest and does not apply to lands or interests passing by descent or by will. MISS. CODE ANN. § 27-31-77 (1972).

Section 5.02 The minimum tax payable is \$1.00 and the tax is computed at the rate of three (3) cents per acre when the primary term expires ten years or less from the date of execution; six (6) cents per acre when the primary term expires fifteen years or less from the date of execution; and eight (8) cents per acre if the term extends more than twenty years from the date of such execution.

Section 5.03 The Chancery Clerk retains a commission of five (5) percent of the gross tax, and the balance must be deposited monthly, half to the county general fund and half to the school district fund.

Section 5.04 A note about the 2007 amendment to the mineral stamp laws: Although the Legislature did away with the requirement that clerks purchase stamps from the State Tax Commission and “affix” them to documents transferring or reserving a mineral interest, the Mineral Stamp Documentary Tax must still be collected and accounted for by the clerk’s office. The law merely allows clerks to replace the traditional gummed-back stamps with an ink stamp.

Section 5.05 Where They Go: The funds collected as mineral documentary tax should be deposited into a separate clearing account known as the *Mineral Stamp Account*. The clerk’s commission amounts should be paid over to the clerk’s *General Fee Clearing Account* and the balance settled one half to the county general fund and one half to the school district fund.

VI.
Fees Paid Through County Payroll or as a Claim on the Docket of Claims

Section 6.01 What They Are: A number of fees, particularly those set forth in MISS. CODE ANN. § 25-7-9(1) are to be paid to the Chancery Clerk from the county treasury. A good practice is to enter an annual order of the Board of Supervisors on the minutes supporting these fees, and a monthly memorandum or other documentation should be presented to the Board supporting each month’s request for payment. Those fees which are payable through county payroll⁵ are as follows:

⁵The county must pay the employer match portions for PERS and FICA purposes on these fees. This enures to the benefit of the clerk.

- (1) § 25-7-9(1)(f) – For attendance on the Board of Supervisors: Clerk and one deputy, each \$20.00 (per meeting);
- (2) § 25-7-9(1)(g), *as amended in 2004* – Semi-annual allowance as Clerk of the Board of Supervisors: \$3,000.00 payable in one half in July and one half in January;
- (3) § 27-105-343, *as amended in 2004* – For services as County Treasurer: the sum of \$2,500 per annum, payable in equal monthly installments;
- (4) § 25-3-19 – For services as County Auditor: an annual sum of \$5,300.00, payable in equal monthly installments;
- (5) § 25-7-9(1)(h), *as amended in 2005* – For attendance on the Chancery Court as approved by the Chancellor: For each day, first Chancellor sitting: \$50.00 per day each for himself and two deputies;
- (6) § 25-7-9(1)(h), *as amended in 2005* – For attendance on the Chancery Court as approved by the Chancellor: For each day, second Chancellor sitting: \$50.00 per day, Clerk only;
- (7) § 25-7-9(1)(i), *as amended in 2005* – Clerk and two deputies, allowance of five (5) extra days for the Clerk and two deputies for attendance upon the Court to get up records: \$50.00 per day each for himself and two deputies **per term of court**;
- (8) § 25-7-9(1)(j) – For public services not otherwise specifically provided for, contingent upon the approval of the Court, an annual sum not to exceed \$5,000.00 payable \$416.67 per month;
- (9) § 25-3-21 – For copying tax rolls, a statutory fee of \$.03 per assessment, per copy of each real roll and \$.015 per assessment, per copy of each personal roll for the current year;
- (10) § 27-33-37(m) – If the Board employs the Clerk to collect and assemble data and information and to perform the services required of the Board by § 27-33-37(e) and to make investigations required of the Board in connection with administering the Homestead Exemption Law as directed by the Board as follows: for the first 2,000 applications, \$1.00 per application; for the next 2,000 applications, \$.75 each, for the next 2,000 applications, \$.50 each, for the next 2,000 applications, \$.35 each, all over the above number, \$.25 each;

- (11) § 19-15-1 – For the preservation of county records, if and as ordered and authorized by the Board of Supervisors and in accordance with a contract between the county and the Clerk approved by said Board.

Section 6.02 In addition to the above listed fees, if the Board employs the clerk in one of the statutory positions such as County Administrator, Comptroller, Purchase Clerk, Inventory Clerk, Receiving Clerk, etc., monthly payments representing the pro rata salary for such position or positions should also be paid to the clerk through payroll.⁶

Section 6.03 The following fees are also duly payable by the county if allowed by the Court and/or the Board. They are technically not payable through county payroll but should be tendered to the clerk through a claim on the claims docket. See OPINION TO TRAVIS CHILDERS, Docket # 2002-0024 (January 25, 2002) for the rationale behind paying these fees on the docket of claims. However, there may be adverse federal income tax consequences associated with the receipt of both salary (W-2 wage income) and fees (W-9 non-wage income) from the same “employer” (that is, the county). State requirements may thus be in conflict with federal income tax rules or laws, such that the latter trumps the former. Consult your accountant about this.

- (12) § 41-21-79, *et al* and M.R.C.P. 3 (c) and (d) – For pauper’s oaths both in general and in connection with commitment proceedings for paupers: \$107.00 per case as ordered by the Court;
- (13) § 25-7-9(1) – For recording fees due the Chancery Clerk for recording instruments relating to county-owned real estate, and oaths and bonds of public officials, both elected and appointed – standard recording fees payable after-the-fact;
- (14) § 41-21-79, *et al* – If allowed by Court order, for administrative services performed in connection with commitment proceedings (both alcohol/drug and mental) such as consultations with family or friends, scheduling physicians, providing insurance information to hospitals, and making arrangements for pre-screenings and follow-ups: \$60.00⁷ per commitment, as ordered by the Court;
- (15) § 35-3-13 – For Recording Certificates of Discharge of Veterans (DD-214s), payable \$1.00 each. (See discussion in Section II above.)

⁶These sums should be recorded on the Fee Journal and are to be listed as monies received outside the salary limitation set forth in MISS. CODE ANN. § 9-1-43. In addition, the fees received as items (10) and (11) above and item (14) below are also outside the salary cap.

⁷This is the fee allowed by the Chancery Court in Madison County. The amount may vary from county to county. In addition, not all counties allow the Chancery Clerk to collect this fee for alcohol and drug commitments.

Section 6.04 **A word about the administrative fee for commitment proceedings:** If allowed and ordered by the Court, the fees (more accurately described as “costs”) set forth in item (15) above are in addition to the standard filing fee for a commitment. OPINION TO BETH BRITT, Docket # 98-0689 (November 25, 1998). Based on language found in this opinion – namely, a statement that these services could be performed by anyone else, including a social worker – and because the statute (MISS. CODE ANN. § 41-21-79) does not specifically state that the services shall be performed by the Chancery Clerk, it seems likely that these fees should be classified as revenue not subject to the salary limitation of MISS. CODE ANN. § 9-1-43. In addition, MISS. CODE ANN. § 41-21-79 provides that these costs shall be paid by the county unless the respondent (person being committed) is not indigent, in which case they should be assessed to and paid by him or her at the time of filing.

Section 6.05 **Where They Go:** The above fees received from the county treasury (whether paid through payroll or as a claim on the claims docket) should be deposited each month in the *General Fee Clearing Account* and recorded on the Fee Journal in the appropriate column.

VII. **Miscellaneous Fees**

Section 7.01 **What They Are:** A number of other fees are chargeable and collectable by the Chancery Clerk. These include copy fees, research fees, fees for notary services, abstracting judgments, certifying papers, performing UCC lien searches, processing passport applications, fiduciary/custodial fees, and interest earned on accounts. Unless noted specifically otherwise below, these fees are subject to (that is, inside) the salary limitation imposed by MISS. CODE ANN. § 9-1-43.

Section 7.02 **Copy Fees.** While still a fee for which the Chancery Clerk is accountable, MISS. CODE ANN. § 9-1-43(6) provides that “the State Auditor shall not take exception to the furnishing of copies or the rendering of services as a notary by any clerk free of charge.” This language does not relieve the Chancery Clerk of properly recording fees received for copying or notary services in the Fee Journal, it simply allows the clerk to avoid an audit finding for not charging for these services.

Section 7.03 **Notary Fees.** By virtue of their office, all Mississippi Chancery Clerks are notaries public. MISS. CODE ANN. § 25-7-29 allows notaries to charge a fee of not less than \$2.00 nor more than \$5.00 for performing a list of acts, one of which is “notarial procurement and seal” which is probably a catch-all. But, under MISS. CODE ANN. § 25-7-33 the fee for acknowledging a writing concerning real or personal estate is just \$.25, and under MISS. CODE ANN. § 25-7-45, the fee for administering and certifying an oath or affidavit is \$.25. There is some debate as to which of these fees to charge in which circumstances. The code sections may provide a Chancery Clerk the basis to charge a modest fee for filing a certificate of claims in an estate case or taking a proof of claim, since both must be certified to by him or her. General notary services unrelated to the services governed by MISS. CODE ANN. §§ 25-7-33 or 25-7-45 would appear to carry the higher fee of \$2.00 to \$5.00.

Section 7.04 Fees for Posting Notices (including Notices of Foreclosure). In OPINION TO GERALD GEX, Docket # 03-0112 (March 14, 2003), the Attorney General opined that a Chancery Clerk may charge the fees set forth in MISS. CODE ANN. §§ 25-7-33 and 25-7-45 to a person or entity requesting the Chancery Clerk to post a notice and sign an affidavit verifying that such was posted. The opinion does not address whether the notary fee set forth in MISS. CODE ANN. § 25-7-29 is applicable, which would justify a fee of up to \$5.00 for each such notice posted and each affidavit executed by the Chancery Clerk averring to that fact. The GEX opinion makes it clear that the Chancery Clerk has no statutory duty to post such notices; however, he is not precluded from doing so if he or she so desires. Accordingly, it may be that such fees would be reportable on the Fee Journal as revenue outside the salary limitation imposed by MISS. CODE ANN. § 9-1-43. A more conservative approach, however, is that such fees would be within the salary limitation.

Section 7.05 Fees for Certifying and Copying Records on File. As set forth above, MISS. CODE ANN. § 25-7-13(6) provides that a fee of \$2.00 per page is applicable “to all officers *for making and certifying* copies of records or papers which they are authorized to copy and certify.” This code section is the basis for a \$2.00 charge for certifying a record, and it would appear that this \$2.00 fee is applicable **for each page of the certified document (that is, on a per page basis)**. On the other hand, MISS. CODE ANN. § 25-7-9(1) clearly states that “for the act of certifying copies of filed documents, for each complete document” the Chancery Clerk should charge \$1.00. It would therefore appear that this fee is applicable **for each certified document (that is, on a per document basis)**. The two sections should be read together to produce a fee of \$2.00 for each page of a document to be certified and \$1.00 per each document. Thus, a three-page document of record which is sought to be certified would incur a fee of \$7.00. MISS. CODE ANN. § 25-7-13(6) would also be the basis of charging a fee for abstracting a decree for enrollment in the Judgment Roll in the Circuit Clerk’s Office and certifying documents under the Acts of Congress.

Section 7.06 Fee for Making Final Record in Chancery. MISS. CODE ANN. § 25-7-13(6) would also appear to provide a basis for the Chancery Clerk to receive a fee for “making” final records in chancery as required by subsection (1) of MISS. CODE ANN. § 9-5-161, if and when required by the Chancellor. A fee of \$2.00 per page made would appear to be appropriate. Several Chancery Clerks have suggested that a Chancellor enter an order directing the making of the final record, specifying which orders or decrees are to be included therein, and directing the payment of the \$2.00 per page fee by the county. However, when a recording of such orders or decrees in the land records is requested by a party to the lawsuit rather than ordered by the Chancellor, the usual and customary recording fee would appear to be applicable pursuant to subsection (2) of MISS. CODE ANN. § 9-5-161, rather than the \$2.00 fee.

Section 7.07 Record Search Fees. It may be permissible for a Chancery Clerk, under certain circumstances, to lawfully charge and receive a fee for searching and reviewing public records. Mississippi’s Open Records Act (MISS. CODE ANN. § 25-61-7) allows a public entity to establish such fees so long as they are “reasonably calculated to reimburse it for, and it no case to exceed,

the actual cost” of searching, reviewing, duplicating and mailing copies of public records. This is best accomplished by the establishment, by the Board of Supervisors, of a standard, per hour research fee. The Board should specify that this fee is applicable to all county offices and officials. A word of caution, however -- a Chancery Clerk should not be in the business of conducting official research into the records for private citizens or concerns. A better practice would be to simply make the records available to the requestor for his or her own research and perusal. At any rate, should a fee be charged, it should be deposited directly to the *General Fee Clearing Account* and would be reportable on the Fee Journal as revenue outside the salary limitation imposed by MISS. CODE ANN. § 9-1-43. The same would likely apply to UCC lien search fees, if such searches continue to be performed by Chancery Clerks.

Section 7.08 Fiduciary Fees. A Chancery Clerk may be awarded fees for service as a court-appointed guardian, conservator, executor, administrator, special commissioner or other custodial-type positions. These fees are outside the salary limitation of MISS. CODE ANN. § 9-1-43 and should be carefully documented, justified to the court, and disclosed to all parties to the lawsuit in which the service arises. In most matters of this type, annual accountings are required to be filed (unless waived by the court). At the time the annual accounting is filed it is appropriate for the clerk serving in this capacity to request his or her fee as a part of the court’s approval of the accounting. In the case of service as a special commissioner or master appointed to sell or partition real estate, the fee can be awarded upon confirmation of the sale. MISS. CODE ANN. § 11-21-29 (1972). Often, a guardianship or conservatorship will not have sufficient funds to allow a fee; however, MISS. CODE ANN. § 93-13-67 provides for a minimum fee of \$100.00. Compensation for the clerk’s services as an administrator or executor of an estate must be applied for upon submission of a final accounting, although under certain circumstances, interim fees or fees for temporary service may be allowed. MISS. CODE ANN. §§ 91-7-299; 91-7-59.

Section 7.09 Court-Ordered Fees for Collection and Distribution of Child Support Payments. If allowed and ordered by the Court, the Chancery Clerk may receive a fee for collecting, accounting for, and disbursing child support payments that are ordered to be paid into the registry of the Court. Here again, it is imperative that the Court specifically authorize this fee in each case. MISS. CODE ANN. § 93-11-111 (3) allows the Department of Human Services to receive a fee of up to \$15.00 per month “to defray the department's administrative costs incurred in receiving and distributing” such payments. An argument can be made that if the clerk is performing the same administrative services under court order, a similar fee would be proper.

Section 7.10 Passport Application Processing Fees. Many Chancery Clerks also serve as Passport Acceptance Agents through the U. S. Department of State and the U. S. Department of Homeland Security.⁸ Passport processing fees vary depending on the age of the applicant and the type of delivery service requested. As an approved agent, the clerk receives a fee of \$25.00 per application. There is no authority under federal law for an agent to waive this fee. In addition, the clerk may offer passport photo services for an additional charge. As a part of the

⁸For more information on becoming a Passport Acceptance Agent, go to www.travel.gov.

clerk's annual order approving fees, a good practice may be to have the Board of Supervisors acknowledge or designate the clerk as the county's (or one of the county's) passport acceptance agent and acknowledge that he will collect such fees as are allowed and required by federal law (22 U.S.C. § 214; 22 CFR Part 51.61) in connection with the processing of such applications including a reasonable fee for passport photos taken using office equipment.

Section 7.11 A note about the nature of a Chancery Clerk's passport acceptance agency:

The Chancery Clerk's ability to become a passport acceptance agent is derived solely from federal regulation and from his role as clerk of the court, **not** due to any duty or administrative service arising out of his role as clerk of the board. Therefore, the approval of the clerk's application to become a passport acceptance agent by the Board of Supervisors is not necessary, nor can there be any requirement that the clerk share his passport fees with the county. Title 22 of the CODE OF FEDERAL REGULATIONS Part 51.21 sets forth the entities which the U. S. Secretary of State (upon his approval) has designated as passport acceptance agents and Subpart B (b) (3) thereof specifically lists the "clerk of any State court of record or a judge or clerk of any probate court" as being so designated. Certainly, therefore, the Board does not have the ability to prevent a Chancery Clerk from becoming a passport agent or to force the clerk to share his fees with the county general fund any more than the Board would be able to prevent the clerk from serving as a guardian or conservator of an estate or force him to share in his court-awarded fees for such service. Any argument that the Board could do such in the case of passports is pre-empted by federal law and federal regulation.

Section 7.12 The only aspect of a Chancery Clerk's passport acceptance agency which may require Board approval is his ability to charge a fee for the passport photo since such is not specifically authorized by state or federal law but is probably within a county's "home rule" authority under MISS. CODE ANN. § 19-3-40. However, a strong argument can be made that because passport photographs are required to be submitted as a part of the passport application (22 CFR Part 51.25), photo services are a part of the application itself - or at most a logical extension of a clerk's passport duties - and the authority to collect the cost thereof is inherent in such duties, particularly since a faulty photo or one of insufficient quality will result in the rejection of the application and require additional work on the part of the Chancery Clerk and the applicant. By taking passport photos in the office, the Chancery Clerk can be assured that this aspect of the process is done correctly.

Section 7.13 Because the services for which these fees are collected are not mandated by state statute, but are optional with the Chancery Clerk, they would not be subject to the salary limitation of MISS. CODE ANN. § 9-1-43.

Section 7.14 Fees Associated with Bond Issuances. MISS. CODE ANN. § 31-13-5 states that the official having custody of the records pertaining to a bond issuance shall transmit "a certified copy of all legal papers pertaining to the issuance of said bonds" to the State Bond Attorney. In the case of bonds issued by the county or an agency of the county, this official would be the Chancery Clerk. Thus, MISS. CODE ANN. § 25-7-13(6) may also provide a basis of charging a

fee for copying and certifying the documents in the bond transcript. This fee would most likely be paid through the bond proceeds themselves as a part of the official “costs of issuance.”

Section 7.15 Interest. Finally, the interest that a Chancery Clerk earns on his General Fee Clearing Account is allowable as a fee to him. Such interest is not subject to the salary limitation of MISS. CODE ANN. § 9-1-43. If a separate Land Record Fee Clearing Account is utilized, the interest it earns is also most likely payable to the clerk in the same fashion. However, interest earned on the remaining accounts is not allowable as a fee. The reason should be obvious: the monies kept in these accounts belong to persons or entities other than the Chancery Clerk; thus, the interest earned cannot be the Chancery Clerk’s.

Section 7.16 Where They Go: All of the miscellaneous fees should be deposited in the Chancery Clerk’s *General Fee Clearing Account* and recorded on the Fee Journal in the appropriate column.