

BEFORE THE MISSISSIPPI ETHICS COMMISSION

JOSHUA TOM

COMPLAINANT

VS.

PUBLIC RECORDS CASE NO. R-18-029

MADISON COUNTY CIRCUIT CLERK

RESPONDENT

ORDER OF DISMISSAL

This matter came before the Mississippi Ethics Commission through a Public Records Complaint filed by Joshua Tom on behalf of the ACLU of Mississippi against the Madison County Circuit Clerk (the “circuit clerk”). The Ethics Commission has jurisdiction over this matter pursuant to Section 25-61-13, Miss. Code of 1972. The hearing officer presented a Recommendation of Dismissal to the Ethics Commission at its regular meeting held on November 9, 2018, in accordance with Rule 5.6, Rules of the Mississippi Ethics Commission. This Order of Dismissal is entered in accordance with Rule 5.6.

I. FINDINGS OF FACT

1.1 On July 26, 2018, Joshua Tom filed a public records request with the Madison County Circuit Clerk via fax for all records regarding six individuals.¹

1.2 In the complaint, Mr. Tom states that on August 3, 2018, he received an email from Deputy Clerk Marla Wray to notify him that she had copied the records for the requested individuals, and had redacted social security numbers, birthdate and ages from the documents. She also indicated “mental evaluations that are sealed were excluded from these copies.” She stated the cost was \$754.00 (754 pages @ \$1.00 page).

1.3 On August 6, 2018, Mr. Tom called the clerk’s office to complain about the cost of the copies. On the phone, Deputy Clerk Wray indicated she spent 6 hours copying the records. Deputy Clerk Laurie Prince continued the phone conversation with Mr. Tom, and directed him to Section 25-7-13-1(f) as the basis for copy charges.

1.4 On August 7, 2018, Mr. Tom notified the circuit clerk and Deputy Clerk Laurie Prince via email that he found the cost to produce the records at \$1.00 per page excessive and in violation of the Mississippi Public Records Act.

1.5 Deputy Clerk Prince responded by notifying Mr. Tom that the Madison County Circuit Clerk charges \$1.00 per page for copies. However, “if someone from your office wants to come here and make whatever copies that you think you need, it will cost \$.50 per page.” Further, “we do not charge hourly for any services.”

¹ Mr. Tom also faxed a request on July 20, 2018 for all records regarding a single individual. It is not clear whether the clerk’s office received this fax on July 20, but Mr. Tom resubmitted the request on August 1, 2018. Whether the clerk received the request on July 20 and whether she timely responded will not be addressed herein, because it was not raised in the complaint.

1.6 Aggrieved, Mr. Tom filed this complaint with the Ethics Commission, arguing that the Mississippi Public Records Act and not Section 25-7-13, should control the fees charged by the Circuit Court for public records requests.

1.7 In her response, Anita Wray, the Madison County Circuit Clerk states that her office spent 44 hours searching, assembling, redacting and copying the records. She states that the six hours cited by Deputy Clerk Wray was the time spent by her on August 5, 2018 to copy the documents. Further, in support of the response, Deputy Clerk Wray submitted an affidavit stating that prior to copying the records on August 3, 2018, she contacted the ACLU via telephone to notify them that the cost would exceed \$100, and received a call back confirming that “they would pay the \$1 per page and to make the copies.” Finally, Circuit Clerk Wray states that charges as calculated under the Mississippi Public Records Act would have exceeded the statutory charge under Section 25-7-13(2)(f), and would have totaled \$893.66.²

II. CONCLUSIONS OF LAW

2.1 The Mississippi Public Records Act of 1983 (the “Act”), codified at Section 25-61-1, et seq., Miss. Code of 1972, provides that public records shall be available for inspection by any person unless otherwise provided by law and places a duty upon public bodies to provide access to such records. Section 25-61-2 and Section 25-61-5. “Public records” are defined as all documents or records “having been used, being in use, or prepared, possessed or retained for use in the conduct, transaction or performance of any business, transaction, work, duty or function of any public body.” Section 25-61-3(b).

2.1 The court files maintained by the circuit clerk are public records, and the clerk’s office must provide Mr. Tom reasonable access to those files. Section 25-7-13 of the Mississippi Code provides separate statutory authority for a circuit clerk to charge fees for services provided by the clerk or through the clerk’s office. Pursuant to Section 25-7-13(2)(f), the circuit clerk is required to charge fees for providing copies of records on file in the clerk’s office:

(2) ...[T]he clerks of the circuit courts shall charge the following fees:

...

(f) Furnishing copies of any papers of record or on file and entering marginal notations on documents of record:

If performed by the clerk or his employee, per page.....\$1.00

If performed by any other person, per page.....\$.25

(emphasis added).

2.2 Mr. Tom complains that the cost associated with obtaining copies of court files is excessive and that Section 25-7-13 is in conflict with the Public Records Act. He argues, “[i]f Section 25-7-13 controls, the circuit clerk can charge substantially more than ‘the actual cost of searching, reviewing and/or duplicating’ public records” as prescribed by Section 25-61-7(1) of the Act. Mr. Tom urges the Commission “to clarify the law regarding two conflicting Mississippi

² 44 hours x \$17.74 per hour = \$780.56
 \$00.15 per page x 754 pages = \$113.10
 Total cost = \$893.66

statutes.” He argues that because these statutes conflict, the rules of statutory construction in Mississippi require that these statutes be harmonized, resulting in a conclusion that the Public Records Act controls.

2.3 Although Section 25-7-13(2) and 25-61-7(1) appear in the same title, they are found in different chapters, and while not in clear conflict, they may be ambiguous as to the intent of the Legislature. “When statutes are ambiguous and potentially in conflict. . . we look to the rules of statutory construction for guidance.” Tunica County v. Hampton Co. Nat. Sur., LLC, 27 So.3d 1128, 1133 (Miss. 2009). “The most fundamental rule of statutory construction is the plain meaning rule, which provides that if a statute is not ambiguous, then this Court must apply the statute according to its terms.” State ex rel. Hood v. Madison County Bd. of Supervisors, 873 So.2d 85, 90 (Miss.2004) (citations omitted). Another “longstanding rule of statutory construction is that the terms of a specific statute control over a general statute.” Lenoir v. Madison County, 641 So.2d 1124,1128 (Miss 1994).

2.4 The Mississippi Supreme Court also stated:

It is a well-settled rule of statutory construction that "when two statutes pertain to the same subject, they must be read together in light of legislative intent." Lenoir v. Madison County, 641 So.2d 1124, 1129 (Miss.1994). "It is a general rule that in construing statutes this Court will not only interpret the words used, but will consider the purpose and policy which the legislature had in view of enacting the law. The court will then give effect to the intent of the legislature." State ex rel. Hood v. Madison County ex rel. Madison County Bd. of Supervisors, 873 So.2d 85, 88 (Miss.2004).

Following the rules of statutory construction, repeal of statutes by implication is not favored. Roberts v. Miss. Republican Party State Executive Comm., 465 So.2d 1050, 1051 (Miss.1985). "In order for a subsequent act to repeal a former one expressly, it must point out the statute repealed with sufficient certainty.... And where in a subsequent statute there is no express repeal of a former, the court will not hold the former to be repealed by implication, unless there is a plain and unavoidable repugnancy between them." Id. (quoting Ex parte McInnis, 54 So. 260, 262 (Miss.1910) (citations omitted)). If the subsequent statute does not repeal the former, each statute cited must be given effect. We have said that "statutes on the same subject, although in apparent conflict, should if possible be construed in harmony with each other to give effect to each." Miss. Gaming Comm'n v. Imperial Palace of Miss., 751 So.2d 1025, 1029 (Miss.1999) (quoting Roberts, 465 So.2d at 1050, 1052 (internal quotes omitted)). This Court has stated that "[i]n construing statutes, all statutes *in pari materia* are taken in consideration, and a legislative intent deduced from a consideration as a whole." Miss. Gaming Comm'n, 751 So.2d at 1029 (quoting Roberts, 465 So.2d at 1052).

27 So.3d at 1133-1134.

2.5 With these rules of statutory construction in mind, Mississippi Code Section 25-7-1, which dates back to 1892, states that “It shall be lawful for the Clerk of the Supreme Court, the

clerks of the circuit and chancery courts . . . and other officers and persons named in this chapter to demand, receive, and take the several fees hereinafter mentioned and allowed for any business by them respectively done by virtue of their several offices, and no more.” Further, Section 25-7-13(2)(f) requires that the circuit clerk “*shall* charge the following fees” of \$1.00 per page for “furnishing copies of any papers of record or on file and entering marginal notations on documents of record . . . if performed by the clerk or his employee.” (emphasis added).

2.6 Section 25-7-13 clearly and specifically sets out the applicable fees circuit clerks shall charge for various services, including providing copies of documents. “[W]here the language in a statute is plain and unambiguous, ‘it is not within the province of this court to add to the law as the Legislature has written it.’” City of Tchula v. Miss. Public Serv. Comm’n, 187 So.3d 597, 599 (Miss. 2016). “No citation is needed for the principle that, where the [statute’s] words are clear and concise, courts and agencies are bound to apply their usual and ordinary meaning.” Id. At 601. Indeed, the statute clearly requires circuit clerks to assess statutorily enumerated fees for services rendered, “and no more.” Section 25-7-1.

2.7 Additionally, there is nothing in the Mississippi Public Records Act that can be read as an “express repeal” of the circuit clerk’s statutory fee structure. As such, the Commission cannot hold Section 25-7-13 to be repealed by implication, “unless there is a plain and unavoidable repugnancy between them.” Roberts, at 1051.³ In the case at bar, the circuit clerk has provided evidence that the total cost of providing the records as calculated under the Mississippi Public Records Act would have exceeded the statutory charge under Section 25-7-13(2)(f). This shows these statutes can be construed in harmony with each other to give effect to each. Accordingly, fees charged by the circuit clerk in this case does not violate the Public Records Act.

WHEREFORE, the complaint is hereby dismissed this the 9th day of November, 2018.

MISSISSIPPI ETHICS COMMISSION

BY:

TOM HOOD, Executive Director

³ In Roberts, the Supreme Court evaluated a similar statutory conflict. In this case, Mississippi Department of Public Safety [DPS] relied upon Section 45-1-21 to charge \$75,000 to provide a database of the all driver’s license records. Specifically, Section 45-1-21 allows DPS to “establish and collect . . . a proper fee, commensurate with the service rendered and the cost of the service for the furnishing of any record or abstract thereof. . .” The Mississippi Supreme Court did not find this statute to be in conflict with the Public Records Act’s admonition in Section 25-61-7, that a public body may not establish or collect fees in excess of the actual cost of search, review and/or duplication of public records. The Court held that the “words ‘compensatory,’ ‘commensurate with’ and ‘in no case to exceed,’ found in the two statutes, all refer to the same thing – the actual cost of providing copies of the records,” and the charge of \$75,000 for documents to have violated both statutes.