

RESOLUTION CLARIFYING AND DECLARING THAT MADISON COUNTY PUBLIC DEFENDERS ARE INDEPENDENT CONTRACTORS AND NOT MADISON COUNTY EMPLOYEES; TO FACTUALLY CONFIRM THE INDEPENDENT CONTRACTOR STATUS OF THE PUBLIC DEFENDERS; AND TO RESCIND AND ADJUST THE RECEIPT OF CERTAIN EMPLOMENT BENEFITS PREVIOUSLY RECEIVED BY PUBLIC DEFENDERS AS BEING DUE ONLY TO MADISON COUNTY EMPLOYEES AND FOR OTHER PURPOSES

WHEREAS, Madison County received an Opinion from the Mississippi Attorney General's Office, dated July 5, 2013, concerning whether its Public Defenders (PD) would be classified as Independent Contractors or as county "employees" and that said AG Opinion discussing the employment status of the Madison County PDs is attached hereto as if fully set forth herein; and

WHEREAS, said Opinion indicated that the Attorney General's Office could not itself make such a factual determination, but offered to Madison County abundant references in the nature of case law and previous AG Opinion whereby Madison County, applying such case law precedent and by comparison to previous AG Opinions, by Order of the Madison County Board of Supervisors and proper entry in its Minutes, could make such a factual determination which would be consistent with case law and previous AG Opinions; and

WHEREAS, among the factual questions as posed by said Opinion which are to be answered by Madison County in determining whether the Madison County Public Defenders are Independent Contractors or employee include the following:

1. Whether Madison County has established the Office of Public Defender pursuant to § 25-32-1 (Ms Code of 1972 Annotated) based on an examination of its Minutes (MS AG Op., *Robertson* July 25, 2006);
2. Whether the PDs serve on a "full-time" or "part-time" basis and are paid a salary by the county and are not appointed on a case-by-case basis once the Office of Public Defender had been established (MS AG Op., *Robertson* July 25, 2006).
3. The extent of control exercised over the details of the work;
4. Whether or not the one employed is engaged in a distinct occupation or business;
5. The skill required in the particular occupation;
6. Whether the employer supplies the tools and place of work for the person doing the work;
7. The length of time for which the person is employed;
8. The method of payment whether by the time or by the job;
9. Whether or not the work is a part of the regular business of the employer;
10. The primary factor is the right to or degree of control. (emphasis original); and

WHEREAS, the Mississippi Attorney General's Office opined that "these factors are applicable in making determinations regarding the status of individuals for purposes of reporting to and determining benefits payable by the Public Employees Retirement System. MS AG Op. *Ready* (January 17, 2001); MS AG Op., *Gore* (June 3, 2008)". Further, that the AG Office found that "Similar factors have been considered by the Mississippi Supreme Court for many years when determining if an individual is an independent

contractor or employee. See *Kisner v. Jackson*, 159 Miss. 424, 132 So. 90 (1931). MS AG Op., *Slay* (January 29, 2010)”; and

WHEREAS, Madison County was encouraged to inspect its Minutes and to make other factual determinations in order to conclude whether the Madison County Public Defenders are to be classified as Independent Contractors or as Madison County employees; and

WHEREAS, the conclusions previously reached by Madison County and which are confirmed herein, are that the Madison County Public Defenders serve as Independent Contractors and not serve as county “employees”. Therefore, all of the benefits and privileges appertaining to county employees only, including the benefit of county provided health insurance, shall be rescinded as a benefit not being due to the Public Defenders, as Independent Contractors, and that all other relevant employment adjustments will be made as consistent with the factual determination made by Order of the Madison County Board of Supervisors.

THEREFORE, pursuant to a review of its Minutes, and upon an examination of relevant case law and AG Opinions the Madison County Board of Supervisors has determined and re-confirmed that the Madison County Public Defenders are classified as Independent Contractors and not as Madison County “employees”. The aforesaid factual determination is based upon the following factual observations:

1. Madison County has never established an “Office of Public Defender”, as contemplated by Miss. Code Ann. § 24-32-1, *et seq.*.
2. The majority of its 11 public defenders, if not all, maintain independent private practices of law, as their work with Madison County is not considered “full-time”;
3. Madison County does not provide a central office or dedicated office space for any of its public defenders beyond those premises reasonably known for public defenders to conduct their constitutional duties such as the county courthouse or county jail;
4. Madison County offers financial compensation for public defenders on a monthly basis. Said compensation is determined and set by the Circuit Court and is done in consultation with the Board of Supervisors;
5. Madison County does not participate and has never offered retirement support to the public defenders through the Mississippi State Public Employee’s Retirement System (PERS), or any other retirement program;
6. Madison County does not “control” or exercise any direction over the work of the public defenders. There are no predetermined work hours set by the county. The demands of the job are determined by the caseload pursuant to assignment of the courts they appear before and based upon the specific needs of the indigent defendants they represent;
7. The county does not require any special training nor does it require attendance at training sessions or classes. The only requirements are those as imposed by the Mississippi Bar Association or the Judge(s) they appear before.
8. Madison County does not maintain or demand any specific job performance or reporting requirements as relates to the public defenders. The county understands that the public defenders are accountable to the Senior Circuit Judge and appreciates that the courts will monitor the performance and professional standing of the public defenders.
9. Madison County exercises no financial control over the public defenders. The public defenders pay all of his/her own expenses including computers, telephones, clerical,

- office equipment, transportation, supplies, office rent, professional dues and subscriptions, and legal research services. Madison County does provide a stipend which has been classified as a “secretarial allowance”, but there is no accountability by the public defender to the county for any expenditures related to a “secretary”.
10. The length of the relationship between the public defender and the county is indeterminate. The court has the authority and the right to terminate the services of the public defender and not Madison County.
 11. Each public defender has the opportunity to offer professional services to the general public beyond those which are assigned to them by the court and may realize a profit or loss within their office as determined by their own actions or expenses incurred.
 12. The public defenders do not have any official interaction with the Board of Supervisors, County Administrator, or any other county employee, except for employees of the courts and jails. However, the public defenders may have had occasional contact with the county Human Resource Department regarding the provision of health care and other benefits.
 13. Pursuant to the provision of health care to the public defenders, there appears in the Minutes of the Board of Supervisors, an entry of November 4, 1996, which is entitled “In the Matter of Authorizing Public Defenders to be Considered County Employees for Purposes of Participating in the County Health Insurance Program and Authorize the Payment of the Employer Portion of Health Insurance Premiums by the County”.
 14. Upon due investigation of the Minutes, a factual determination has been made that the Minutes of November 4, 1996 reflects that the decision was made to provide the health insurance to the public defenders “as if they were county employees” but that they, in fact, are/were not. It appears that the county appreciated the distinction between independent contractors and employees, but nonetheless extended the privilege of health insurance benefits to the public defenders in an “exercise of charity”, contrary to the laws prohibiting “public donation” and in a manner which is not considered to be in the best interests of Madison County. Therefore, the Madison County Board of Supervisors rescinds the action authorized by the aforesaid Minute entry of November 4, 1996, which offered to the public defenders the benefits of health insurance and other employee benefits to which, in their capacity as independent contractors, and not as county employees, they were not and are not eligible to receive.
 15. Pursuant to Internal Revenue classifications, Madison County has never recognized the status of public defenders as employees by recording their compensation on IRS Forms W-2, but always as Independent Contractors by recording their compensation only on IRS Forms 1099.

FURTHER THEREFORE, be it known that pursuant to an examination of its Minutes and in accordance with case law precedent and AG Opinions, that the Madison County Board of Supervisors officially re-confirms and declares that the Madison County Public Defenders are considered to be, intended as, and factually are to be classified as “Independent Contractors” and are not to be classified as Madison County “employees”.

All such benefits as authorized and due only to eligible Madison County employees, including the employee benefit of health, life, dental, vision, pharmacy and other such insurance benefits offered by Madison County shall be terminated as to eligibility, use or enrolled membership by the public defenders and said termination shall be effective as of December 31, 2013.

Following the reading of the foregoing resolution, Supervisor _____ moved the adoption of the resolution, and Supervisor _____ seconded the motion for its adoption. The matter was then put to a roll call vote, and the result was as follows:

Supervisor Karl Banks	voted: _____
Supervisor John Bell Crosby	voted: _____
Supervisor Paul Griffin	voted: _____
Supervisor Ronny Lott	voted: _____
Supervisor Gerald Steen	voted: _____

The motion having received the affirmative vote of a majority of the members present, the President declared the motion carried and the resolution adopted this, the 16th day of September, 2013.

Board of Supervisors
Madison County, Mississippi

Gerald Steen, President

ATTEST:

Arthur Johnston, Chancery Clerk