

**IN THE MISSISSIPPI COMMISSION ON JUDICIAL PERFORMANCE**

**IN THE MATTER OF  
HON. JOHN C. ROSS**

**CAUSE NO. \_\_\_\_\_**

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**PRIVATE COMPLAINT<sup>1</sup>**

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**I. INTRODUCTION**

1. Corinth, Mississippi Municipal Court Judge John C. Ross operates a modern-day debtors' prison, jailing the poor for their inability to pay money bail and fines.

2. Judge Ross has directed that bail be set pursuant to a secured bail schedule, in which the amount of money a person is required to pay for release is based solely on the offense(s) of arrest. If a person is arrested and cannot afford to pay money bail, they languish in jail for up to a week (or even longer if there is a holiday) before their first court appearance. Once defendants are brought to court, Judge Ross fails to review their bail amounts. Instead, Judge Ross simply asks defendants if they admit or deny their charges. Persons who admit the charges are adjudged guilty without Judge Ross determining that their plea was knowing, intelligent, and voluntary. Persons who deny the charges are held over for a subsequent trial date that is often four or five weeks later. Thus, persons are routinely held on unaffordable bail for up to a week before their first appearance, and often much longer if they are disputing the charge.

3. Persons who are adjudicated guilty and given a fine are required to pay the entire fine or make a significant down-payment. If they cannot do so, defendants are jailed and required to sit out their fines at a rate of \$25 per day. No inquiry into their ability to pay ever occurs.

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<sup>1</sup> The undersigned files this complaint against Judge Ross as obligated under Rule 8.3(b) of the Mississippi Rules of Professional Conduct.

4. These bail and fine practices are in direct conflict with well-established law that prohibits wealth-based discrimination. Judge Ross’s persistent failure to follow the law and his disregard for the constitutional rights of arrestees and defendants constitute violations of Canons 1, 2, and 3 of the Mississippi Code of Judicial Conduct (“Code”) and merit appropriate sanctions under Article 6, Section 177A of the Mississippi Constitution (“Section 177A”).

## II. FACTUAL BACKGROUND<sup>2</sup>

### A. Judge Ross Detains Arrestees Solely Because They Are Unable To Pay Money Bail.

5. John C. Ross is the sole municipal court judge for the Corinth Municipal Court.

6. Judge Ross follows a standard practice related to the setting of bail: he has adopted a secured bail schedule, in which the amount of money a person is required to pay for release is based solely on the offense(s) of arrest. This bail schedule is enforced by the City of Corinth’s Municipal Police Department, which detains arrestees at the Alcorn County Correctional Facility. *See* Declaration of Sara Wood (“Wood Decl.”) ¶ 5 (noting that the County Jail sets bail for municipal arrestees based on a bail schedule). If a municipal arrestee can afford to pay the monetary amount, the person is released from jail. If a municipal arrestee cannot afford to pay the monetary amount, the person remains detained until the next municipal court date. As discussed in greater detail below, this blind use of a secured bail schedule creates an illegal and unconstitutional system of wealth-based discrimination, in violation of the Fourteenth Amendment to the U.S. Constitution. *See infra* ¶ 61.

7. Judge Ross holds court “on Monday of each week. If a holiday falls on Monday, court [is] held on Thursday.”<sup>3</sup> By state law and local ordinance, Judge Ross determines when court is held. *See* Miss. Code Ann. § 21-23-7 (1); Corinth Mun. Code pt. 1, § 5-6.

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<sup>2</sup> Parts II.A and II.B set out general background facts of how Judge Ross’s practices. Part II.C provides examples of specific examples of these general practices.

8. When persons appear in municipal court for an initial appearance, Judge Ross does nothing to review the bail amount set pursuant to the schedule. He does not inquire into the person's ability to pay, consider non-financial conditions of release, or make findings that the predetermined monetary amount is the least onerous condition of release that will secure public safety or court appearance.

9. Additionally, the Rules of Criminal Procedure require Judge Ross to advise the defendant of their right to counsel and to appoint counsel if the person is indigent. *See* MRCrP 5.2(a)(4), 7.1(b). However, Judge Ross typically does not even *inform* the arrestee of their right to counsel unless the person is charged with a felony offense. *See* Wood Decl. ¶ 9 (numerous in-court observations suggest Judge Ross fails to discuss counsel if charge is a misdemeanor). Even for felony arrestees, Judge Ross fails to consider the relevant factors for indigency under the Rules of Criminal Procedure. *See id.* at ¶ 10 (Judge Ross explained his refusal to appoint counsel by citing employment or income only). Under MRCrP 7.3, a person is indigent for purposes of appointed counsel if they are “financially unable to employ counsel.” In making that determination, a judge is required to consider a person's income and sources of income; employment status; real or personal property owned; debt; and the number and age of any dependent(s). *See* Comment to MRCrP 7.3; Miss. Code Ann. § 25-32-9(1). Yet, Judge Ross presumes without further inquiry that a person with *any* income or employment can afford an attorney. Wood Decl. ¶ 10.

10. Notwithstanding the Rules of Criminal Procedure, Judge Ross's standard practice at the initial appearance involves asking misdemeanor or municipal defendants one question: “do you admit or deny the charges?” Wood Decl. ¶ 6. If a person denies the charges and is already

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<sup>3</sup> City of Corinth, Mississippi, City Court, <http://cityofcorinthms.com/departments/city-court/> (last visited Dec. 4, 2017).

detained, Judge Ross schedules a trial date generally for four to five weeks later and sends the person back to jail. The only way these defendants can obtain their pretrial release is by paying the monetary amount predetermined by the bail schedule.

**B. Judge Ross Systematically Jails and Threatens to Jail Defendants Who Cannot Pay Fines and Court Costs.**

11. If a defendant charged with a misdemeanor or municipal offense pleads guilty at their initial appearance, Judge Ross generally imposes a sentence of a fine. *See* Wood Decl. ¶ 7.

12. Prior to adjudicating a defendant charged with a misdemeanor or municipal offense guilty, Judge Ross does not inform defendants of their constitutional rights under the Fifth, Sixth, and Fourteenth Amendments to remain silent, to have a trial, to present evidence in their own defense, or (in applicable cases) to be represented by an attorney and judged by a jury of their peers. Judge Ross does not determine in open court whether defendants are knowingly, voluntarily, and intelligently entering a guilty plea and waiving their rights. *See, e.g.*, MRCrP 15.3(c). In the typical case, these defendants are not represented by counsel before pleading guilty.

13. State law permits a judge to order a fine to be paid immediately or imprisoned until the fine is paid only “if the defendant is financially able to pay a fine and the court so finds.” Miss. Code Ann. § 99-19-20; *see also* MRCrP 26.6(e) (“Incarceration shall not follow the nonpayment of a fine, restitution, and/or court costs. Incarceration may be employed only after the court has conducted a hearing and examined the reasons for nonpayment and finds, on the record, that the defendant could have made payment but refused to do so.”); *Cassibry v. State*, 453 So. 2d 1298, 1299 (Miss. 1984) (If a defendant is “‘financially unable to pay a fine’ and the trial court so finds, [the defendant] may not be imprisoned, *period.*” (emphasis in original)).

14. However, Judge Ross’s standard practice is to not inquire into a person’s ability to pay when imposing a fine and court costs. Instead, he requires those who are assessed a fine to pay it all, or to make a substantial down payment, immediately. *See, e.g.*, Sample Court Records at 1, attached as Ex. A to the Declaration of Samuel Brooke (“Brooke Decl.”) (noting Judge Ross’s sentence in the “Remarks By Court” section of the court records as allowing the defendant to “be released on part pay with \$300.00 down”).<sup>4</sup>

15. Defendant Ross orders any person who cannot pay this amount to be jailed until the fine is paid in full, the down-payment has been paid, or the person has sat out the fine at a rate of one day for each \$25 owed.

16. The clerk’s office has a sign that memorializes this policy, stating that any fine below \$299 must be paid in full on the day of court and that any fine above \$300 requires a down payment in the amount of half the fine, and that any person who does not pay will be incarcerated:

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<sup>4</sup> *See also id.* at 9 (noting in the “Remarks By Court” section in the court records that the defendant “came to court from jail[;] plead guilty to pay or sit out”); *see also* Wood Decl. ¶ 7; Jail Logs July 2016 at 5, attached as Ex. B to Brooke Decl. (noting in Entry #1 that defendant “pled guilty can be put on part-pay for \$405.00 down,” but defendant was not released until six days later).



See Part-Pay Sign, attached as Ex. D to Brooke Decl.

17. If Judge Ross does not order the defendant to pay the fine amount in full but instead allows the person to pay in installments, he typically directs the defendant to go to the clerk's office to arrange for a payment plan, which the court refers to as "part pay."

18. Deputy clerks, under Judge Ross's direction,<sup>5</sup> detain in the clerk's office any person who Judge Ross orders to pay a fine until the individual can come up with the minimum amount needed to participate in a payment plan. If a person is unable to make the required down-payment by the end of the day, they are jailed until the fine is paid or the person has sat out the fine at a rate of \$25 per day. *See, e.g.*, Sample Court Records at 1, attached as Ex. A to Brooke

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<sup>5</sup> "The clerk of the court . . . shall be under the direction of the municipal judge." Miss. Code Ann. § 21-23-11.

Decl. (noting the defendant “came to court from jail[,] plead guilty[, and] can be released on partpay with \$300.00 down” and that the defendant sat in jail for over one month to pay off the fines).

19. Judge Ross generally instructs the deputy clerks to require a person to pay an additional \$50 fee to participate in a payment plan<sup>6</sup> and requires any person placed on a payment plan to pay a minimum of \$100 per month toward the balance on the fine and court costs. The sign in the clerk’s office also refers to these “additonal [sic] fees” for participation in a payment plan.

20. While state law requires any payment plan to be “realistic,” *Cassibry*, 453 So. 2d at 1299, Judge Ross does not tailor the amount of the payment plan to what a defendant can realistically afford to pay. *See* Wood Decl. ¶ 7. He instead uses a standard \$100 per month plan. *See, e.g.*, Declaration of Latonya James (“James Decl.”) ¶ 5; Declaration of Kenneth Lindsey (“Lindsey Decl.”) ¶¶ 4-5.


21. Judge Ross typically requires a person on a payment plan to return to court once per month to make their payments. If the individual cannot make their payment, Judge Ross sends them to the clerk’s office with a “Notice” that the person must pay that day or go to jail. In the example below, Judge Ross told Latonya James “[\$]100 today or jail:”

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<sup>6</sup> This “party pay fee” is noted as “PPF \$50” on the Part Pay Affidavits defendants are required to sign. *See* Sample Court Records at 3, attached as Ex. A to Brooke Decl.

*The City Of Corinth Mississippi*

MAILING ADDRESS  
P.O. BOX 669  
PHONE 662-286-2236  
FAX 662-286-1315



2837 SOUTH HARPER ROAD  
SUITE A  
CORINTH, MS 38834

JOHN C. ROSS, JUDGE  
Corinth, Mississippi 38835-0669

**NOTICE**

TO: \_\_\_\_\_ DOCKET #: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**SUBJECT: COURT APPEARANCE NOTICE**

NOTICE is given to you that the case(s) of the City of Corinth  
vs. Latonya James are set for hearing on  
Sept 23 2017 at 10:00 o'clock A.m.

On this date be prepared for a hearing concerning your pending charges. You must produce any and all witnesses that you want present or to testify on your behalf in this matter.

Failure to appear at this time will result in you being in contempt of this court and a warrant will be issued for your arrest.

It is also possible that you may be prosecuted in your absence.

100 Today or Jail  
Approved by The Corinth Municipal Court  
Judge John C. Ross  
cc: Defendant  
Defendant's Attorney  
Bonding Company  
Bal by 9/25/17

010aPRO - CITYCOR26

See Latonya James “Notice,” attached as Ex. E to Brooke Decl.<sup>7</sup>

22. Judge Ross does not inquire into ability to pay or willfulness before sending a person to the clerk’s office with instructions to jail them for non-payment. *See* MRCrP 26.6(d) (requiring willfulness finding before jailing someone for non-payment).

23. Those detained at the clerk’s office—whether on the date of adjudication or on a payment date thereafter—are permitted to make phone calls to family and friends to try to arrange for payment. *See* James Decl. ¶ 9; Lindsey Decl. ¶ 8. The clerk’s office contains a phone

<sup>7</sup> See also Kenneth Lindsey “Notice” (stating “[\$]100 today or jail”), attached as Ex. F to Brooke Decl.; Larry Wilbanks “Notice” (stating “[\$]200 Today or Jail”), attached as Ex. G to Brooke Decl.



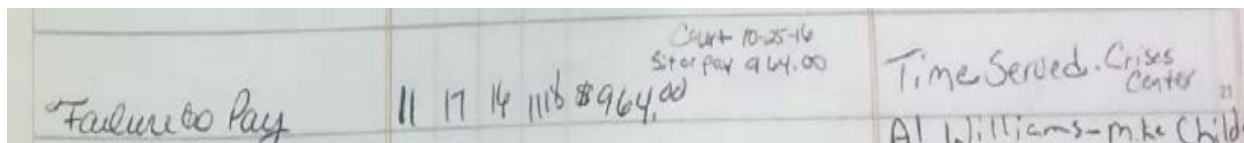
that people are permitted to use to make phone calls to try to arrange for payment. Above the phone is a sign that instructs people to keep the call to three minutes or less.

24. If family, friends, or co-workers bring money to pay the fine before the end of the business day, the deputy clerks permit the person to leave the clerk's office and go home.

25. If a person cannot find someone to bring them the money they need by the end of the business day, at the direction of Judge Ross, a law enforcement officer arrests that person and requires them to sit out the fine at a rate of \$25 per day.

26. Judge Ross does not provide or appoint counsel to anyone for whom he is considering jailing for non-payment. Nor does Judge Ross provide notice before the proceedings that the person's ability to pay will be a critical issue at the hearing if they are unable to pay.

27. If a person is unable to pay their required monthly payment and fails to appear in court, Judge Ross issues a failure to pay warrant. *See, e.g.*, Sample Court Records at 5–6, attached as Ex. A to Brooke Decl. The jail logs in the Alcorn County Sheriff's Office document when a person is arrested on a failure to pay warrant. In the example below, an individual was jailed for more than a month on a failure to pay warrant before serving out the rest of the sentence at a crisis center:



Jail Logs Oct. 2016 at 4 (Entry #21—arrested on 10/15/16), attached as Ex. C to Brooke Decl.<sup>8</sup>

28. The Municipal Court clerk's minute entries also document when a person is jailed for non-payment. To illustrate, in the sample minutes below, Judge Ross ordered a detained individual to "pay or sit out" his fine and court costs:

<sup>8</sup> *See also id.* at 1 (noting in Entry #24 defendant arrested on October 3 on a "(w) FTP"—failure to pay warrant—who was ordered to "pay or sit out \$535.00" and who was released on October 25 with "time served").

DEFENDANT WAS FINED: \$91.75

PLUS ASSESSMENTS: \$163.25

I CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF MY COURT RECORD AS RECORDED IN DOCKET: 16M02828

**REMARKS BY COURT:**

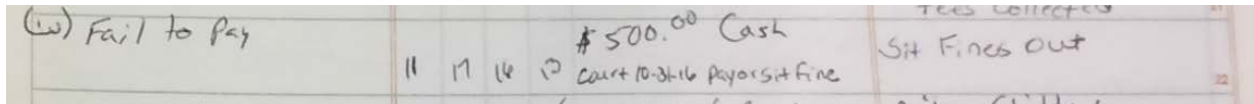
>> 11/04/2016 8:55 WILLIS63 DEFENDANT WAS GIVEN CREDIT FOR 19 REG. DAYS SERVED FROM 10/12/16-11/01/16: \$475.00. >> 10/19/2016 8:04 GSEAWRIGHT 10/17/2016 CAME TO COURT FROM JAIL. **PLEAD GUILTY TO PAY OR SIT OUT**

SIGNED Shea Willis

TITLE Deputy Clerk

Sample Court Records at 9, attached as Ex. A to Brooke Decl.

29. An individual jailed for non-payment can be released from jail if the fine and court costs are paid in full. In the example below, an individual was ordered to pay or sit out \$500 and was released from jail only after he spent nearly a month in jail:



Jail Logs Oct. 2016 at 6 (Entry #22), attached as Ex. C to Brooke Decl.

**C. Corinth Municipal Court Proceedings and Practices**

30. SPLC attorneys and investigators have observed Judge Ross conduct multiple court sessions and have recorded and transcribed four “jail dockets,” i.e., the portion of the court proceedings concerning persons brought into court from the Alcorn County Correctional Facility. These transcripts are attached and summarized below, as well as the experiences of other individual people who have been jailed or threatened with jail because they cannot afford to pay a monetary amount.

*i. April 24, 2017*

31. On Monday, April 24, 2017, five defendants from the jail docket pled guilty to their charges, and Judge Ross ordered them to pay or sit out their fines and court costs. Judge Ross informed these defendants that they would be released from jail if they paid the fine and

court costs or made a substantial down-payment. Alternatively, if they could not afford to pay the fine and court costs, Judge Ross instructed the defendants that they would be required to sit out the fine and court costs at a credit of \$25 per day. Judge Ross did not consider whether any of these defendants could afford to pay their fine and court costs before requiring them to either pay it or remain in jail. *See generally* April 24, 2017 Transcription, attached as Ex. H to Brooke Decl.

32. In the example below, Judge Ross refused to release the defendant unless he paid the entire fine amount assessed for shoplifting and failing to pay a previously ordered fine:

THE COURT: Michael [last name omitted<sup>9</sup>] . . . , you're here on a failure to pay previous ordered fines. You now [owe] city court \$679, which you must pay or remain in jail until you serve that much time, but you also had a shoplifting second charge. Do you admit the shoplifting charge?

DEFENDANT: Yes, sir.

THE COURT: You admit it?

DEFENDANT: Yes, sir.

THE COURT: Okay. Mr. [Defendant] – I'm sorry. The total of your fines, Mr. [Defendant], comes to \$1,471. Because this is a failure to pay and a shoplifting second, you will have to stay in jail until you've served enough time to pay all of that, or you can pay \$1,474. Okay. Good luck to you.

DEFENDANT: Yes, sir.

April 24, 2017 Transcription at 5:2–19, attached as Ex. H to Brooke Decl.

33. Judge Ross also failed to review at least one defendant's release conditions or to inform him of his right to an attorney. *See id.* at 3:25–4:8 (Defendant pled not guilty and Judge Ross set his court date for four weeks later).

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<sup>9</sup> To protect defendants' privacy, the undersigned will refer to defendants only by their first names in this complaint. The transcripts of the audio recordings, attached as exhibits to the declaration of Samuel Brooke, contain the full names as spoken by Judge Ross in open court.

*ii. August 14, 2017*

34. On Monday, August 14, 2017, five defendants from the jail docket pled guilty to their charges, and Judge Ross ordered them to pay or sit out their fines and court costs. Judge Ross informed these defendants that they would be released from jail if they paid the fine and court costs or made a substantial down-payment. Alternatively, if they could not afford to pay the fine and court costs, Judge Ross instructed the defendants that they would be required to sit out the fine and court costs at a credit of \$25 per day. Judge Ross did not consider whether any of these defendants could afford to pay their fine and court costs before requiring them to either pay it or remain in jail. *See generally* August 14, 2017 Audio Transcription, attached as Ex. I to Brooke Decl.

35. In the example below, Judge Ross refused to allow a woman who had been sitting in jail for more than a month to be released without full payment of her court-ordered fines:

THE COURT: Jessica [last name omitted]? Ms. [Defendant], you're here because you failed to pay a previous ordered fine. You now owe the city court \$1,288.25, which you will have to pay or remain in jail to serve out this time.

DEFENDANT: Sir, I can't sit -- like, I've been here since July 8th.

THE COURT: You don't [have] very many days [left] right now.

DEFENDANT: I know.

THE COURT: You got here July 7th.

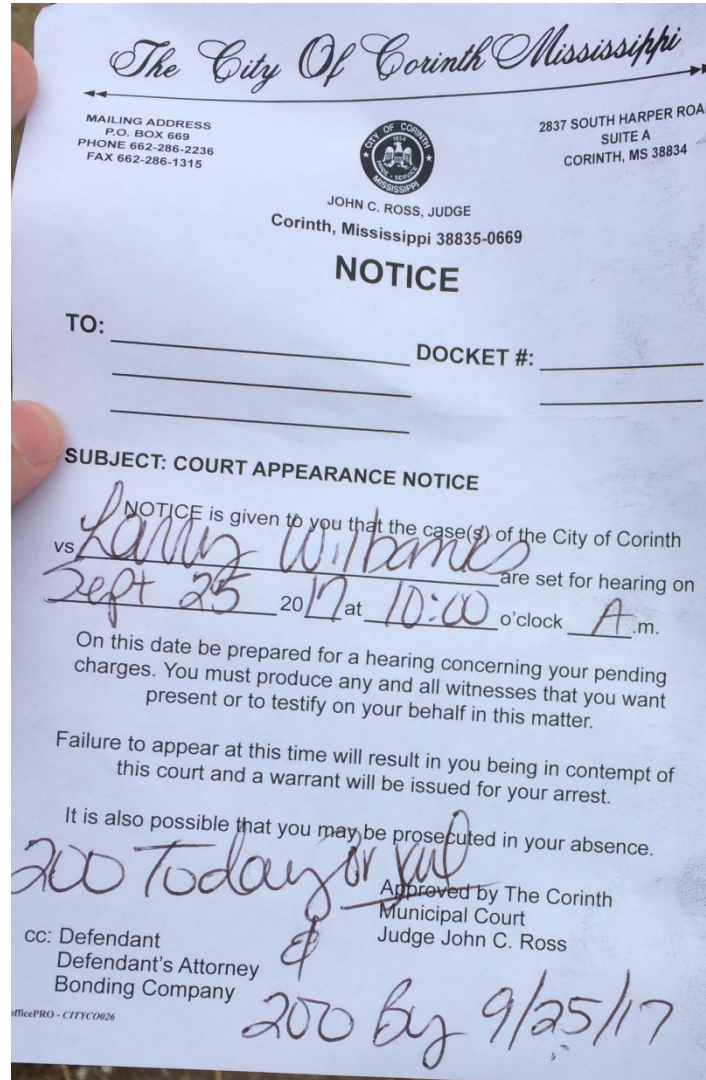
DEFENDANT: July 7th? I knew it was July.

THE COURT: They'll figure it out for you. Good luck to you.

DEFENDANT: Thank you.

August 14, 2017 Audio Transcription at 2:3–19, attached as Ex. I to Brooke Decl.

36. In addition to observing the August 14, 2017 jail docket, an SPLC attorney and investigator observed Judge Ross instruct three additional people who were not brought to court from the jail that they were required to pay a specific amount of money that day or they would be incarcerated. In the example below, for instance, Judge Ross instructed Larry Wilbanks “[\$]200 today or jail.”



See Larry Wilbanks “Notice,” attached as Ex. G to Brooke Decl.

37. Another one of these defendants was Kenneth Lindsey. Mr. Lindsey had been ordered to appear in court on August 14, 2017, to make a \$100 payment towards his fines. Mr.

Lindsey has submitted a declaration in support of this complaint, stating that he could not afford to make his payment on August 14, 2017 because he has liver cancer and Hepatitis C, for which he receives disability benefits, was not working, and had spent all of his money for his medical treatment. Lindsey Decl. ¶¶ 2–3, 6.

38. When Mr. Lindsey tried to explain this to Judge Ross, the judge told him that paying his \$100 fine took priority over chemotherapy, *id.* at ¶ 7, handed him the above notice, and told him to go to the clerk’s office. *Id.* After Mr. Lindsey went to the clerk’s office, the clerk told him to make calls to come up with his \$100 payment, or else he would go to jail. *Id.* at ¶ 8. Mr. Lindsey had to borrow money from a family member to make his payment, and he feared he would be placed in jail simply because he was poor, since he has seen many people jailed before for non-payment. *Id.* at ¶ 9.

39. An SPLC investigator and attorney also observed Latonya James in court on August 14, 2017, who has also submitted a declaration in support of this complaint. Ms. James had been ordered to appear in court to make a \$100 payment on her fine. James Decl. ¶ 5. When Ms. James appeared in court, she told Judge Ross that she could not afford to pay her fine, *id.* at ¶ 7, because she was unemployed, had just given birth to her daughter prematurely, and had spent all her money to pay for diapers and other necessities, *id.* at ¶¶ 3, 6. In response, Judge Ross told Ms. James that she would be imprisoned if she did not make a payment, *id.* at ¶ 8. Rather than inquiring about her ability to pay the fine, Judge Ross handed Ms. James a Notice on which he wrote “[\$]100 today or jail.” James Decl. ¶¶ 7, 8; *see also supra* ¶ 21. Ms. James was detained in the clerk’s office for several hours until her brother traveled four hours roundtrip to bring her \$100. *Id.* at ¶ 15. While she was waiting, a law enforcement officer came into the

clerk's office and told Ms. James that "the judge said to go ahead and arrest me if I did not pay the fine before the end of the day." *Id.* at ¶ 12.

*iii. October 9, 2017*

40. On Monday, October 9, 2017, ten defendants from the jail docket pled guilty to their charges, and Judge Ross ordered them to pay or sit out their fines and court costs. Judge Ross informed these defendants that they would be released from jail if they paid the fine and court costs or made a down-payment toward the fine and court costs or they could sit it out at a rate of \$25 per day. Judge Ross did not consider whether any of these defendants could afford to pay their fine and court costs before requiring them to either pay it or remain in jail. *See* October 9, 2017 Audio Transcription, attached as Ex. J to Brooke Decl.

41. In the example below, Judge Ross ordered the defendant to pay \$155 to get out of jail, otherwise he would have to sit it out:

THE COURT: Jeffery [last name omitted], if you'll come up, please Mr. [Defendant], you're here on an old driver's license charge. Do you admit that charge or deny it?

DEFENDANT: I admit it.

THE COURT: You admit it?

DEFENDANT: Why yes, sir. (Inaudible.)

THE COURT: All right. Mr. [Defendant], your fine is \$305. The clerk tells me you've got enough credit for being here to reduce the charge of your fine down to \$155. If you want to get out, you can pay the 155-dollar or you can still get your credit for staying. Do you understand that? Good luck to you.

October 9, 2017 Audio Transcription at 7:24–8:14, attached as Ex. J to Brooke Decl.

42. At least one defendant also pled not guilty to a charge, after which Judge Ross set the court date for five weeks out, without reviewing the defendant's conditions of release and without informing the defendant of their right to an attorney. *Id.* at 3:11–22.

43. Judge Ross summarily found one defendant guilty of failure to pay previously ordered fines. He did not let her speak, let alone defend herself or submit a plea. *Id.* at 5:17–21.

44. One of the defendants from the October 9, 2017, jail docket later contacted an SPLC investigator to provide further context about her experience in the Corinth Municipal Court. She has submitted a declaration in support of this complaint. Ms. Tillman informed the undersigned that she is homeless and has been staying with friends in Corinth and the surrounding towns. Declaration of Jamie Tillman (“Tillman Decl.”) ¶ 1. Ms. Tillman is unemployed, has no income, and receives food stamps. *Id.* at ¶ 3.

45. On October 4, 2017, Ms. Tillman was arrested by the Corinth Police Department for public drunkenness. Tillman Decl. ¶ 5. The jail told her that she would not be released from jail unless she paid \$300. *Id.* at ¶ 6. Because she could not afford to pay this amount, she remained in jail until she was brought to the Corinth Municipal Court on October 9, 2017. *Id.* at ¶ 9.

46. At Ms. Tillman’s court date, Judge Ross—as reflected in the attached transcript—asked her if she admitted or denied the charge. Tillman Decl. ¶ 9; *see also* October 9, 2017 Audio Transcription at 4:22–25, attached as Ex. J to Brooke Decl. Ms. Tillman told Judge Ross that she would do anything to be released from jail. Tillman Decl. ¶ 9. He then told her “a payment of \$255 will get you out of here.” *Id.* When she told Judge Ross she could not pay that amount, he told her she would get credit for jail time. *Id.*

47. Ms. Tillman told the undersigned that Judge Ross did not ask her about her income or ability to pay the fine before telling her that she would be required to pay her fine or sit it out in jail. *Id.* at ¶ 11. Indeed, the transcripts of the hearing reflect that Judge Ross did not ask her any questions about her ability to pay her fine. *See* October 9, 2017 Audio Transcription



at 4:22–5:16, attached as Ex. J to Brooke Decl. Instead, Ms. Tillman was brought back to the jail and released only after sitting out her fine in jail for 10 days. Tillman Decl. ¶ 12.

*iv. October 30, 2017*

48. On Monday, October 30, 2017, Judge Ross ordered three defendants from the jail docket to pay or sit out their fines and court costs. Judge Ross informed these defendants that they would be released from jail if they paid the fine and court costs or made a down-payment toward the fine and court costs or they could sit it out at a rate of \$25 per day. Judge Ross did not consider whether any of these defendants could afford to pay their fine before requiring them to either pay the fine or remain in jail. *See generally* October 30, 2017 Audio Transcription, attached as Ex. K to Brooke Decl.

49. In the example below, Judge Ross ordered the defendant to pay \$345 or sit out his fine at a rate of \$25 per day:

THE COURT: James [last name omitted]? Mr. [Defendant], you're here on a possession of a drug paraphernalia charge. Do you admit that charge or deny it?

DEFENDANT: Admit.

THE COURT: You admit it. Okay. Mr. [Defendant], your fine with that is \$395. You've already got \$50 worth of credit, so if you could pay the \$345, you could get out of jail. Do you understand that?

DEFENDANT: Could I get partial payment?

THE COURT: No, sir, but you're earning \$25 a day. Do you understand that? You had two other charges.

DEFENDANT: How much do I owe?

THE COURT: \$345.

DEFENDANT: \$25 a day?

CLERK: About 16 days.

THE COURT: Good luck to you.

October 30, 2017 Audio Transcription at 3:5–24, attached as Ex. K to Brooke Decl.

50. On that day another defendant, Defendant Joshua, was charged with a felony, so Judge Ross instructed him to fill out the indigency form for appointment of counsel. *Id.* at 4:7–10. After Joshua had filled out the form, Judge Ross reviewed it and concluded that he could not appoint any person a lawyer if they had income:

THE COURT: Mr. [Defendant], you stated here you got employment with Mr. Richard Hubert. Did you still have that job?

DEFENDANT: Yes, sir can.

THE COURT: Well, we can't appoint you an attorney if you have a job, so you'll have to --

DEFENDANT: I mean, I don't know.

THE COURT: Contact them and see if you still have the job, and maybe he can pay some of those fines. We can't appoint you an attorney if you have income.

October 30, 2017 Audio Transcription at 7:2–13, attached as Ex. K to Brooke Decl.

*v. December 1, 2017*

51. Sammy Brown was arrested by the Corinth Police Department for public drunkenness on December 1, 2017, and transported to the Alcorn County Correctional Facility. Declaration of Sammy Brown (“Brown Decl.”) ¶ 2; Wood Decl. ¶ 12. He submitted a declaration in support of this complaint. He was not told his bond amount when he was initially booked into the jail, but later learned from the jail that his bond amount is \$600. Brown Decl. ¶ 3. The jail also told him that Judge Ross would likely impose a fine when he eventually went to court, and then require him to pay the fine and court costs immediately or to sit out the fine in jail for 11 days. *Id.* at ¶ 4. Mr. Brown has not been to court for his initial appearance, but was told that he will be brought to court on Monday, December 11, 2017, if he cannot afford to pay bail. *Id.* at ¶ 10; Wood Decl. at ¶ 11.

52. Mr. Brown is indigent and cannot afford to buy his release from jail. Brown Decl. ¶¶ 5, 10. He is unemployed, lives with his father, and his only source of income is his disability check, which he has been receiving since he was a young child. *Id.* at ¶¶ 6, 9. Mr. Brown will have to sit in jail for 10 days because he is too poor to buy his release.

*vi. December 4, 2017*

53. On Monday, October 30, 2017, an SPLC investigator and attorney observed Brian Keith Howell in court, who has also submitted a declaration in support of this complaint. Mr. Howell was brought into the Municipal Court from the Alcorn County Correctional Facility seven days after his arrest because he was unable to afford the predetermined secured bond amount. Declaration of Brian Keith Howell (“Howell Decl.”) ¶¶ 2, 4–5. Judge Ross did not review Mr. Howell’s bond amount but instead asked how he pled on the three charges against him. *Id.* at ¶ 8. When Mr. Howell pled guilty, Judge Ross imposed over \$1,000 in fines. *Id.* at ¶ 9.

54. Mr. Howell is indigent, does not have steady employment, and cannot afford to pay the fine. *See generally* Howell Decl. Two years ago, he was run over by a truck. *Id.* at ¶ 5. He was hospitalized for over a month after doctors amputated his leg, and he also lost his spleen and suffered nerve damage to his arm from the accident. *Id.* Mr. Howell is now wheelchair-bound because of this accident, and has been using a broken wheelchair in the jail. *Id.* at ¶ 10.

55. During his court hearing on December 4, Mr. Howell tried to explain to Judge Ross that he was in the process of applying for disability, but Judge Ross refused to listen. Howell Decl. ¶¶ 9, 12. Judge Ross did not ask him any questions about his accident, what he could afford to pay, or why he is wheelchair-bound. *Id.* at ¶¶ 8–9. Instead, he simply told Mr. Howell his fine amount and sent him back to jail. *Id.* at ¶ 9. Mr. Howell will miss Christmas,

New Years, and several of his kids' birthdays because he cannot afford to buy his way out of jail. *Id.* at ¶ 10.

### III. ALLEGATIONS

56. The Mississippi Constitution authorizes sanctions against any judge for, *inter alia*, “willful misconduct in office; . . . willful and persistent failure to perform his duties; [or] conduct prejudicial to the administration of justice which brings the judicial office into disrepute . . . .” Miss. Const. art. 6, § 177A. A judge may “through negligence or ignorance not amounting to bad faith, behave in [a] manner prejudicial to the administration of justice so as to bring the judicial office into disrepute.” *Miss. Comm’n on Judicial Performance v. Harris*, 131 So. 3d 1137, 1142 (Miss. 2013) (citation omitted). “[M]isconduct does not have to be embedded in any form of bad behavior’—ignorance and incompetence can amount to conduct that violates Section 177A of the Mississippi Constitution.” *Id.* (citation omitted).

57. Violations of the Mississippi Code of Judicial Conduct (“the Code”) are a basis for sanctions under Section 177A of the Mississippi Constitution. Canons 1, 2A, and 3 of the Code require, respectively, a judge to uphold the integrity and independence of the judiciary; avoid impropriety and the appearance of impropriety, in part by complying with the law and acting in a manner that promotes public confidence in the judiciary; and perform the adjudicative and administrative duties of judicial office impartially and diligently.

58. Judge Ross routinely violates arrestees’ and defendants’ constitutional rights, fails to follow the Mississippi Rules of Criminal Procedure, and disregards long-standing state and federal law. Because Judge Ross’s conduct violates Canons 1, 2, and 3 of the Code, sanctions are warranted under Section 177A of the Mississippi Constitution.

**A. Judge Ross’s Failure to Review Arrestees’ Financial Conditions of Release at Initial Appearances Violates Canons 1, 2, and 3.**

59. Judge Ross warrants sanctions under Section 177A because he routinely fails to determine at the initial appearance whether it is necessary to detain a person pretrial.

60. Rule 8 of the Mississippi Rules of Criminal Procedure requires Judge Ross to determine whether an arrestee should be released on their personal recognizance or subject to “the least onerous condition(s)” of release at the initial appearance. MRCrP 8.2(a); *see also* MRCrP 8.5(a) (“When a defendant is brought before a court for initial appearance, a determination of the conditions of release shall be made.”). The Rule is “based on the presumption of innocence of the accused . . . and the policy that a defendant should be released pending trial whenever possible.” Comment, MRCrP 8.2. Thus, a defendant should be released on their “personal recognizance” “unless the judge determines that the defendant’s presence would not be reasonably assured or that the defendant poses a real and present danger of harm to others.” *Id.*

61. Long-standing state and federal law prohibits procedures that limit pretrial release to those who can pay money bail and requires those who cannot pay to remain in jail. *Lee v. Lawson*, 375 So. 2d 1019, 1023 (Miss. 1979) (“A consideration of the equal protection and due process rights of indigent pretrial detainees leads us to the inescapable conclusion that a bail system based on monetary bail alone would be unconstitutional.”); *Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th Cir. 1978) (en banc) (“[U]tilization of a master bond schedule provides speedy and convenient release for those who have no difficulty in meeting its requirements. The incarceration of those who cannot, without meaningful consideration of other alternatives, infringes on both due process and equal protection requirements.”). The U.S. District Court for the Southern District of Mississippi recently reiterated this principle, emphasizing that

No person may, consistent with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, be held in custody after an arrest because the person is too poor to post a monetary bond. If the government generally offers prompt release from custody after arrest upon posting a bond pursuant to a schedule, it cannot deny prompt release from custody to a person because the person is financially incapable of posting such a bond.

*Thompson v. Moss Point*, No. 1:15CV182, 2015 WL 10322003, \*1 (S.D. Miss. Nov. 6, 2015).

62. Judge Ross requires every arrestee to pay a monetary amount to be released from jail. This amount is based solely on the offense(s) of arrest, as memorialized in the court's bail schedule. Judge Ross does not make any determination before or at the initial appearance that this amount is necessary to ensure appearance or public safety.

63. Judge Ross's failure to evaluate whether secured money bail is the least onerous condition that will ensure public safety and appearance violates Rule 8 of the Mississippi Rules of Criminal Procedure and the Due Process and Equal Protection Clauses of the Fourteenth Amendment, which in turn violates his responsibility to uphold and comply with the law, as codified in Canons 1 (requiring a judge to "comply with the law," *Commentary*, Canon 1, Miss. Code of Judicial Ethics (2002)), 2A (requiring a judge to "respect and comply with the law"), and 3B(2) (requiring a judge to "be faithful to the law") of the Code of Judicial Ethics. *See, e.g., Miss. Comm'n on Judicial Performance v. Willard*, 788 So. 2d 736, 743 (Miss. 2001) (judge's failure to follow correct procedural safeguards violated Cannons 1, 2A, 3A, and 3B(1)).

**B. Judge Ross's Failure to Advise Arrestees of Their Right to Counsel at Initial Appearance Hearings Violates Canons 1, 2, and 3.**

64. Judge Ross's conduct warrants sanctions under Section 177A because he routinely fails to advise indigent arrestees of their right to counsel and fails to appoint counsel for indigent misdemeanor and municipal arrestees.

65. Rule 5 of the Mississippi Rules of Criminal Procedure requires Judge Ross to inform defendants who are unrepresented at the initial appearance that they have a right to an

attorney. MRCrP 5.2(4).

66. Long-standing Mississippi law also requires Judge Ross to “inform the defendant of . . . her right to an attorney [and] her right to communicate with her attorney,” among other rights, at the initial appearance. *Swinney v. State*, 829 So. 2d 1225, 1231 (Miss. 2002); *see also Veal v. State*, 585 So. 2d 693, 699 (Miss. 1991).

67. Judge Ross does not inform persons who are arrested for misdemeanor and municipal offenses of their right to an attorney.

68. Rule 7 of the Mississippi Rules of Criminal Procedure requires Judge Ross to appoint counsel to represent indigent defendants “in *any* criminal proceeding which *may* result in punishment by loss of liberty.” MRCrP 7.1(b) (emphasis added); *see also* Comment to MRCrP 7.1 (noting the right to counsel attaches upon issuance of a warrant or when initial appearance should have been held). Rule 7 also requires Judge Ross to consider a variety of factors to determine whether a defendant is indigent and qualifies for court appointed counsel. *See* Comment to MRCrP 7.3 (“In making a determination of indigency, the court should consider factors such as the defendant’s income and sources of income; employment status; real or personal property owned; outstanding obligations; and the number and age(s) of any dependant(s) [sic]. *See* Miss. Code Ann. § 25-32-9(1).”).

69. Additionally, Judge Ross does not consider the relevant factors when determining whether to appoint counsel to persons charged with felonies. Instead, Judge Ross denies counsel to anyone that has income or is employed, regardless of the amount earned.

70. Judge Ross’s failure to (1) inform misdemeanor defendants of their right to counsel, and (2) consider all relevant factors when evaluating felony defendants’ indigency status violate Rules 5 and 7 of Mississippi Rules of Criminal Procedure and long-standing state

law, which in turn violates Canons 1, 2A, and 3B(2), which all require Judge Ross to comply with the law.

**C. Judge Ross’s Practice of Jailing and Threatening to Jail Defendants Who Are Unable to Pay Court-Imposed Fines Violates Canons 1, 2, and 3.**

71. Judge Ross warrants sanctions under Section 177A because he routinely jails defendants who fail to pay their court-imposed fines without any consideration of indigency.

72. The Fourteenth Amendment prohibits Judge Ross from jailing persons who fail to pay court-imposed fines without a judicial determination that the person has an ability to pay and willfully refused to pay. *See Tate v. Short*, 401 U.S. 395, 398 (1971) (“[T]he Constitution prohibits the State from imposing a fine as a sentence and then automatically converting it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full.”); *Bearden v. Georgia*, 461 U.S. 660 (1983); *Williams v. Illinois*, 399 U.S. 235 (1970); *see also Frazier v. Jordan*, 457 F.2d 726, 727–28 (5th Cir. 1972) (the Fourteenth Amendment prohibits municipal court from requiring person to pay fine immediately or serve a specified number of days in jail).

73. The Mississippi Rules of Criminal Procedure and long-established state law also prohibit Judge Ross from requiring a person to pay a fine or sit out the fine in jail without any inquiry into ability to pay. *See, e.g.,* MRCrP 26.6(e) (“Incarceration shall not follow the nonpayment of a fine, restitution, and/or court costs. Incarceration may be employed only after the court has conducted a hearing and examined the reasons for nonpayment and finds, on the record, that the defendant could have made payment but refused to do so.”); *Cassibry*, 453 So. 2d at 1299 (If a defendant is “‘financially unable to pay a fine’ and the trial court so finds, [the defendant] may not be imprisoned, *period*.”); *Jones v. State*, 564 So. 2d 848, 851 (Miss. 1990) (If a court “makes release from prison contingent upon *payment of a fine*, it is mandatory” for the



court to “make an inquiry as to whether the convicted defendant is in fact able to pay the fine, and make a finding on this question.”) (citations omitted, emphasis original).

74. Judge Ross requires detained defendants to pay all or a significant portion of their fines and court costs to be released from jail without any inquiry into their ability to pay.

75. Judge Ross instructs his deputy clerks to detain anyone in the clerk’s office who receives a fine and is not incarcerated prior to their adjudication until they pay the fine or come up with the minimum amount needed to participate in a payment plan. If a person is unable to make the required down-payment by the end of the day, she is jailed until the fine is paid or the person has sat out the fine at a rate of \$25 per day.

76. Judge Ross’s failure to evaluate whether a person willfully failed to pay before jailing that person for non-payment violates the Mississippi Rules of Criminal Procedure Rule 26.6, as well as the due process and equal protection clauses of the federal Constitution, which in turn violates Canons 1, 2A, and 3B(2), which all require Judge Ross to comply with the law.

**D. Judge Ross’s Habitual Failure to Appoint Counsel or Provide Adequate Alternative Safeguards before Jailing a Person for Non-Payment Violates Canons 1, 2, and 3.**

77. Judge Ross warrants sanctions under Section 177A because he routinely jails defendants for non-payment without appointing counsel or providing adequate alternative procedural safeguards.

78. The Fourteenth Amendment to the U.S. Constitution requires Judge Ross to appoint counsel or provide adequate alternative safeguards before jailing a person for non-payment. *See Turner v. Rogers*, 564 U.S. 431 (2011) (the Fourteenth Amendment right to counsel requires government to provide counsel or adequate procedural safeguards, including notice, the use of a form to gather financial information, and written findings before jailing a person for non-payment).

79. The Sixth Amendment to the U.S. Constitution and Mississippi law require Defendant Ross to inform the defendant of their right to counsel and to provide counsel to indigent defendants at every critical stage of criminal proceedings when the case results in a jail or prison sentence. *See Scott v. Illinois*, 440 U.S. 367 (1979) (defendant entitled to appointed counsel prior to actual imprisonment); *see also Alabama v. Shelton*, 535 U.S. 654, 658 (2002) (“We hold that a suspended sentence that may ‘end up in the actual deprivation of a person’s liberty’ may not be imposed unless the defendant was accorded ‘the guiding hand of counsel’ in the prosecution for the crime charged.” (quoting *Argersinger v. Hamlin*, 407 U.S. 25, 40 (1972))); *Terry v. State*, 718 So. 2d 1097, 1106-07 (Miss. 1998) (emphasizing the defendant’s “fundamental” constitutional right to be “informed . . . of her right to consult with an attorney,” and the judge’s obligation to explain “the ramifications of the charges against her and the possible sentence to be imposed if she were found guilty”); MRCrP 7.1(b) (“An indigent defendant shall be entitled to have an attorney appointed in any criminal proceeding which may result in punishment by loss of liberty, in any other criminal proceeding in which the court concludes that the interests of justice so require, or as required by law.”).

80. Judge Ross’s failure to appoint counsel or provide adequate alternative safeguards before jailing a person for nonpayment violate his ethical obligation to “be faithful to[,]” “maintain professional competence in[,]” and “respect and comply with the law” under Canons 1, 2A, and 3B(2), respectively.

81. By failing to develop an adequate procedure for the appointment of counsel for each indigent defendant, Judge Ross also violates Canon 3C(1), which requires him to “diligently discharge” his administrative responsibilities and “maintain professional competence in judicial administration.”

#### IV. CONCLUSION

82. Based on the foregoing allegations, Judge Ross has continually violated defendants' constitutional rights, failed to follow the clear mandate of the Mississippi Rules of Criminal Procedure and Mississippi law, and disregarded Canons 1, 2, and 3 of the Mississippi Code of Judicial Conduct. In so doing, Judge Ross has "willful[ly] and persistent[ly] fail[ed] to perform his duties" and engaged in "conduct prejudicial to the administration of justice which brings the judicial office into disrepute," for which he should be sanctioned pursuant to Section 177A of the Mississippi Constitution. *See Miss. Comm'n on Judicial Performance v. Britton*, 936 So. 2d 898, 906 (Miss. 2006) ("[I]mmeasurable harm occurs when a judge who is trusted as the gatekeeper to justice for all our citizens, fails to learn and apply fundamental tenets of the law.").

The allegations and statements of fact set forth above and in any additional attached pages are true and correct to the best of the undersigned's knowledge, information, and belief.

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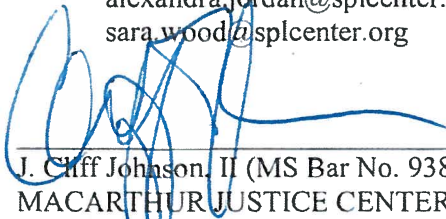
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RESPECTFULLY SUBMITTED this fifth day of December, 2017.



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