

# CRIMINAL PRACTICE IN DISTRICT COURT

Generally:

1. § 12 – 12 – 1 the District Court has a quart of limited jurisdiction.
2. § 12 – 12 – 2 District Court is a court of record however, record by tape, video, or court. Reporter is not required. Any party may employ a court reporter (some judges allow tape recordings but permission should be requested in advance.)
3. § 12-12 – 3 all cases are tried by Judge without jury.
4. § 12 – 12 – 5 court may continue a case from time to time to allow cost and fines to be paid – – – only upon a showing of "inability to make immediate payment".
- 5 § 12 – 12 - 6 court has contempt power

## **6. JURISDICTION – – criminal cases**

§12-12-32, *Code of Alabama*, 1975, provides the following:

- (a) Misdemeanors – The district court shall have exclusive original trial jurisdiction over prosecutions of all offenses defined by law or ordinances as misdemeanors, except:
  - (1) Prosecutors by municipalities having municipal courts;
  - (2) Any such prosecution which also involves a felony offense which is within the exclusive jurisdiction of the circuit court, except as the district court is empowered to hold preliminary hearings with respect to felonies and to receive guilty pleas as provided in subsection (b) of this section; and
  - (3) Any misdemeanor for which an indictment has been returned by a grand jury.

(b) Felonies

- (1) The district court may exercise original jurisdiction concurrent with the circuit court to receive pleas of guilty in prosecutions of offenses defined by law as felonies not punishable by sentences of death.
- (2) The district court shall have jurisdiction to hold preliminary hearing in prosecutions for felonies as provided for in Title 15 of this code.

§15-11-2, *Code of Alabama*, 1975, provides the following:

The district court shall exercise exclusive jurisdiction to hold preliminary hearings in prosecutions for felonies.

A preliminary hearing determination by the district court finding no probable cause, and the state shall not be barred from proceeding further.

A. Judge Owens

1. All drug cases
2. DUI's and traffic offenses involving a Jefferson County Deputy Sheriff.

B. Judge Watkins

1. Non-drug felonies
2. DUI's and traffic offenses involving an Alabama State Trooper
3. All worthless checks

C. Judge Ross

1. Non-drug felonies
2. All misdemeanor offenses, except DUI's and traffic offenses

D. Judge Lichtenstein

1. All Municipal Court appeals
2. All District Court appeals
3. Felony DUI's
4. Driver's License Petitions against the Alabama Department of Public Safety  
(Judge Lichtenstein sits as a special Circuit Judge.)

## 7. APPEARANCE

Rule 6.2(a) of the *Alabama Rules of Criminal Procedure* requires counsel to file a notice of appearance before or at a first appearance in any court on behalf of a defendant. All the District Courts require counsel to file a written notice of appearance. Moreover, Rule 6.2(a) requires counsel to set forth in the Notice of Appearance any limitation on his or her representation of the defendant (E-forms are available through Alacourt.gov). Therefore, if you have only been hired to represent the defendant at the preliminary hearing in District Court, you should file a limited notice of appearance setting forth the grounds.

## 8. BAIL/BOND

Bail/Bond is generally controlled by Rule 7.2 of the *Alabama Rules of Criminal Procedure*. Rule 7.2(b) sets forth the bail schedule which contains the recommended range for bail for the different classes of felonies, misdemeanors, municipal ordinance violations, and traffic offenses.

Once you have a client, you must address your client's bond situation. If your client has already made bond before he or she hired you, then this matter is covered for the time being and you are ahead of the game. All your client has to do is worry about paying you and not violating any of the conditions of his bond which could result in returning the client to jail on a bond revocation.

However, if your client is in jail, one of the most important things you can do for your client is to attempt to gain his or her release on bond. Remember, the more money that you save your client from spending on bail, the more money that will be available to pay your fee. How do you help your client with bond?

### A. Sheriff's PreTrial Release

If the defendant is charged with a nonviolent offense and the bond amount is \$5,000.00 or less, the defendant might qualify for a signature or personal recognizance bond through the Jefferson County Sheriff's PreTrial Release Program..

### B. Property Bond

If the defendant has a family member or friend who has property and who is willing to post the property to secure the bond, then that person can take his or her tax assessment card with proper identification to the pretrial release office located on the first floor of the Jefferson County Jail to make the bond. If the bond amount is greater than the value of the property, you can present the property bond to a judge to see if he or she will approve it. Any judge has the authority to approve a property bond. In unusual circumstances, most judges will approve a property bond. Obviously, it will depend on the amount of the bond, the value of the property, the relationship between the property owner and the defendant, and the facts and circumstances surrounding the defendant's charge.

### C. Personal Recognizance Bond

Under 7.2(a) of the *Alabama Rules of Criminal Procedure*, any defendant charged with an offense bailable as a matter of right may be released pending trial on his or her personal recognizance or on an appearance bond unless the court or magistrate determines that the defendant is at risk of flight or poses a danger to the community. This type of bond is used infrequently. However, it is provided by law and should be available to a defendant.

#### D. Bond Reduction

You can file a written motion to reduce bond or to set bond. However, all the judges will address bond reduction issues by simply getting with the Deputy District Attorney handling the case and going to see the judge with the court file. This is a simple and easy process, but it does not guarantee a bond reduction.

#### E. Professional Bail Bonding Company

This should be your last option. Most bonding companies charge a fee of 10% to 15% of the face value of the bond. This is money that will be gone forever and will not be available to pay your fee.

Remember, if you are unsuccessful in obtaining your client's release from jail on bond while his or her case is still pending in District Court, you can address the bond issue to the Circuit Court Duty Judge after you have exhausted all your options at the District Court level.

### 9. COURT SETTINGS

#### A. 48 Hour Hearing (AKA TV Court)

All defendants who have not made bond will be seen by a District Court Judge within 48 hours of their arrest. The purpose of this hearing is to inform each defendant of the nature of the charge, the right to a preliminary hearing, and the amount of the bond.

#### B. First Call/Initial Appearance/Lawyer Arraignment

The purpose of this setting is to inform the court of the identity of the lawyer who will be representing the defendant. You should file a notice of appearance on or before this setting. The defendant will be given every opportunity to hire his or her own lawyer. The court will continue this setting to give the defendant time to hire a lawyer, and all District Judges strongly encourage defendants to hire their own lawyers. If a defendant is truly indigent and cannot hire a lawyer, the court will appoint counsel at this point. After the court knows who will be representing the defendant, the court will set the case for a preliminary hearing. In Watkins' and Ross' courts, first calls are usually set at 10:00 AM, and in Owens's court, this setting is at 9:00 AM.

#### C. Appearance Docket

This setting is unique to Judge Owens's court to facilitate his drug court program. Although a lawyer can appear for his client at a first call, Judge Owens's appearance docket usually requires the defendant's attendance. This setting always starts at 9:00 AM.

#### D. Preliminary Hearing

A preliminary hearing is supposed to be a probable cause hearing. It is not to determine the guilt or innocence of your client. However, it is the most important hearing available to a defendant at the District Court level. It is available to you to begin establishing your client's defense. In any case that will be tried before a jury, having an effective preliminary hearing is critical. No matter what anybody else says about a preliminary hearing, you must understand what a preliminary hearing means to a criminal defense lawyer. A preliminary hearing is not a probable cause hearing; **it is a discovery hearing**. Information is essential to making sound decisions on behalf of your client. Information leads to reasonable settlements. Preliminary hearings are governed by Rules 5.1, 5.2, 5.3, and 5.4 of the *Alabama Rules of Criminal Procedure* and §15-11-1 thru 15-11-15, *Code of Alabama*, 1975. The following are some pointers to consider at the preliminary hearing stage:

1. **File a demand for preliminary hearing pursuant to §15-11-1.(other Counties and Bessemer)**
2. Do not get hung up on the 21 day requirement of Rule 5.1(a). (See allowable delay under Rule 5.1(c)).
3. Subpoena all State's witnesses, especially the alleged victim.
4. Subpoena the arresting officer.
5. Do not have a hearing if the only witness will be a police officer who will simply read the police report of the arresting officer.
6. File a discovery request.
7. Record the preliminary hearing either by court reporter or by tape recorder.
8. Judge Ross' court has a video recorder available to tape the hearing (bring a videotape).
9. If the defendant is charged with a serious felony offense, consider filing a motion for the court to approve the expense of a court reporter.
10. If it appears that an essential witness will not be available for trial (i.e. the witness is elderly and may die before trial), consider not recording the hearing.
11. Consider waiving the hearing if you can get more useful information from the State without a hearing.
12. Consider waiving the hearing if something will come out during the hearing that may cause the court to revoke the defendant's bond.
13. Hearsay evidence is admissible provided that the requirements of Rule 5.3(c)(3) are satisfied.
14. A preliminary hearing is not a suppression motion. (See Rule R.3(b)).
15. Under §15-11-8, it is the duty of the court to examine all witnesses having any knowledge of any facts relevant to the case.
16. Never let the defendant testify at the preliminary hearing.
17. A finding of no probable cause does not prevent the State from presenting the defendant's case to the Grand Jury.

## 10. MISCELLANEOUS

A. You should know and understand the Youthful Offender Statute of §§15-19-1 thru 15-19-7, *Code of Alabama*, 1975. The youthful offender statute also applies to misdemeanor offenses.

B. Any drug conviction will result in a suspension of your client's driver's license for a period of 6 months. This also applies to misdemeanor drug convictions, i.e. possession of marijuana in the second degree.

C. Judge Ross has a deferred prosecution program for minor in possession of alcohol offenses. You should take advantage of this program for your client.

D. You need to know and understand the split sentence provisions of §15-18-8, *Code of Alabama*, 1975. A sentence of 20 years or less can be split.

E. You need to know and understand how *Soles v. State*, \_\_\_\_\_ So.2d \_\_\_\_\_, CR 00-1429( splitting a split), affects the school yard and housing project enhancements of §§13A-12-250 and 13A-12-270, *Code of Alabama*, 1975.

F. Remember that property crimes which are related to drug usage are eligible for Judge Owens's drug court program.

G. Fugitive From Justice warrants (FFJ) always start in District Court. A defendant being held on a FFJ warrant is entitled to a bond under §15-9-43, *Code of Alabama*, 1975. There are only two defenses to extradition proceeding. The warrant from the requesting state is for a different person. In other words, your client is not the person named in the warrant. Or, the warrant from the requesting state is an attempt to collect a civil debt. If the State obtains a Governor's Warrant, then the Defendant must assert his defenses in a habeas corpus petition in Circuit Court.

H. If a Defendant wants to appeal a conviction on a misdemeanor, DUI, or any other traffic offense to the Circuit Court for a trial *de novo*, he or she has 14 days to file notice of appeal and an appeal bond. This 14 day period is jurisdictional, and an appeal filed on the 15<sup>th</sup> day or later will not invoke the jurisdiction of the Circuit Court. Notice of Appeal and appeal bond forms are available in all District Court courtrooms. In most instances, the District Court judge will approve the bond without requiring the Defendant to post any additional securities. If you want jury, you must demand it the notice of appeal. Formal language is not required.

I. The number one complaint that District Judges hear about court appointed lawyers from indigent defendants is that the lawyer does not go to

see the defendant in jail before the preliminary hearing. You should visit your client in jail within a few days of your appointment to the case. How can you know your case if you do not go see your client?

J. If you are going to be late to court, you should call the court and let one of the judge's staff members know that you will be late.

K. In shoplifting cases, if you settle the case for a misdemeanor offense, try to get the State to reduce the charge to criminal trespass, §13-A-7-2 or §13-A-7-3, or criminal tampering second degree, §13-A-7-26.

L. Information is the key to knowing whether a plea offer is reasonable.

1. Know your case.
2. Know your Deputy District Attorney.
3. Know your Judge.

M. Competency issues are governed by Rule 11 of the *Alabama Rules of Criminal Procedure* and are to be addressed in Circuit Court.

N. If you don't know, don't be afraid to ask either the court or another lawyer.

O. On misdemeanor convictions, if possible, try to avoid having your client being placed on probation for a term of one year or receiving a suspended sentence of 30 days or more. This type of conviction can result in criminal history points under the United States Sentencing Guidelines if your client is later prosecuted in federal court.