

Detailed Table of Contents

Dedication to Ruma Haque	iii
Detailed Table of Contents	v
Foreword	xv
Preface	xvii
Meetings and Minutes	1
Regular, Special and Recess Meetings of the Board	1
Quorum and Fine for Non-Attendance	2
Board Minutes	2
Emergency Exception to Minute Book Order Rule	4
Publication of Proceedings	5
Signing of Minutes	5
Content of Minutes	7
Reviewability of Factual Findings	7
§11-51-75 as Exclusive Remedy	10
Sliding Scale Appellate Review	11
Zoning and Land Use Challenges	12
Nunc Pro Tunc Orders	13
Home Rule	19
Broad Authority	19
Open Meetings Act	23
Public Policy	23
Deliberative Stages Open to Public	23
Executive Sessions	23
Procedure for Executive Session	24
Litigation Exception	25
Personnel Matters Exception	25
Triggering Coverage Under the Open Meetings Act	27
Summary of Requirements	28
Liberal Construction	29
Dealing With the Media	30
Ethical Requirements for Government Officials	33
Conflicts of Interest	33
Section 109	33

Mississippi Ethics in Government Act	33
Statements of Economic Interest	33
Prohibited Acts, Relationships and Interests	34
Meaning of “Contractor” and “Member” of Board	36
Requesting Advisory Opinions from the Mississippi Ethics Commission	37
Ethical Lawyering	39
Public Law Ethics Primer for Government Lawyers	39
Sources of Ethical Rules	40
Mississippi Rules Of Professional Conduct	40
Confidentiality	41
Conflicts of Interest	41
Prohibited Transactions	42
Former Clients	43
Imputed Disqualification	43
Successive Government and Private Employment	44
Former Judges, Arbitrators and Third-Party Neutrals	45
Entity Approach to Identifying the Client	47
Communications with Persons Represented by Counsel	47
Mississippi Bar Ethics Opinions	48
ABA Model Rules of Professional Conduct	49
Rule 1.7 Conflicts of Interest: Current Clients	50
Rule 1.9 Duties to Former Clients	52
Lawyers Moving Between Firms	53
Rule 1.11: Former and Current Government Officers and Employees	53
Ethics 2000 Commission and the Rule 1.11 Debate	56
Appearance of Impropriety	56
Rule 1.13 Organization as Client	57
Presence of Third Party During Communication	58
ABA Formal Opinions	59
Opinions of Attorney General on Separation of Powers	62
Mississippi Ethics in Government Act & MEC Advisory Opinions	62
Section 109	63
Declaration of Public Policy	63
Prohibited and Authorized Conduct	64
Good Faith Immunity	64
Limitations	65
Advisory Ethics Opinions	65
Section 109 Cases Decided by the Mississippi Supreme Court	67
MEC Advisory Opinions Affecting Public or Private Lawyers	69
Ethical Lawyering as a Habit	93
Ethical Considerations for Attorneys in the Public Sector	94
Conflicts of Interest in Section 1983 Defense Representation	94

Separation of Powers	97
“Core” Powers	97
Applicability to Local Government	97
Core Executive Functions vs. Non-Judicial Functions	98
Nepotism	99
Official Attorney General Opinions	103
Practical Limitations	103
Written vs. Oral Opinions	104
Taxes, Tax Levies and Tax Exemptions	105
Assessment Rates	106
Goal of §112	106
Discriminatory Assessment Ratios Prohibited	107
Ad Valorem Tax Levies and Exemptions	107
Exemptions Narrowly Construed	108
Budget and Finance	109
Fiscal Year Basis	109
Budget Preparation	109
Form of Budget	109
Uniform System of Accounts	109
No Deficit Spending	110
Personal Liability of Supervisor	110
Budget Revision Through Interfund Transfer	111
Emergency Revision	111
Clerk’s Monthly Report to Board	111
Last-Year-Of-Term Prohibitions	112
Bond Issues and Short-Term Financing	113
Public Purposes	113
Diversion of Bond Proceeds	114
Tax Anticipation Notes	114
Short-Term Financing	114
Competitive Bids Under Public Purchase Law	115
Public Sector Employment	119
Personnel Policies	119
Hiring and Termination of Employees	119
At-Will Doctrine	119
Public Policy Exception	120
Discharge Without Reference to Manual	120

Effect of Listing Reasons for Discharge	121
Effective Disclaimer	121
Retaliation for Reporting Illegal Conduct	122
Appeal and Grievance Procedures	123
Annual Leave, Sick Leave and Retirement	124
FMLA	125
Balancing Needs of Families and Interests of Employers	126
Right to Reinstatement	126
“Employee” as Ambiguous Term as used in FMLA	127
Legal Holidays	128
Courthouse Closure	128
Political Activities of County Personnel	129
Election Code Restrictions	132
Protected Speech in the Public Workplace	132
Basic First Amendment Principles	133
Low Value Speech	133
High Value Speech	133
“Marketplace of Ideas”	134
Controversial Expressive Conduct	134
Prior Restraints in Public Employment	134
Overbroad Regulations	135
Discharge and Disciplinary Action in Retaliation for Protected Speech	135
Mount Healthy Defense	135
Private Conversations by Public Employees	136
Personal Employment Grievances	136
Investigation Leading to Employee Discipline	137
Grievances Involving Matters of Public vs. Private Concern	138
Allegations of Corruption and Waste	138
Board Attorney as Public Figure	139
Vortex Public Figure	141
First Amendment & Emergencies, Safety and Crowd Control Measures	141

Mississippi Public Records Act of 1983	143
Public Records Cases	143
Fees Not Set at Profit-Making Level	144
No Constitutional Right of Access	144
Investigative and Criminal Justice Reports	145
Public Access to Computerized Information	146
Trade Secrets and Confidential Commercial or Financial Information	147
Broader Protection Provided under Public Records Act	147
Data Processing Software As Trade Secret	149
AG Opinions on Public Records Act	149

Vacancies in Public Office	153
Removal From Office	154
Removal Cases Under §25-5-1 and §25-1-59	154
Rights of the Public	155
No Opportunity for Hearing	155
Removal by Order of Supervisors	155
Embezzlement and Other Criminal Acts by County Personnel	157
Embezzlement	157
Statutory Provisions Relating to Embezzlement, Fraud and Other Criminal Acts	158
Violation of Trust in Handling Public Monies	159
General Statute on Embezzlement	159
The Cigar Box Case	159
Statutes Applicable to Justice Courts, Justice Court Clerks and Their Deputies	161
Problems Experienced by Justice Court Clerks' Offices	163
Embezzlement Decisions in Mississippi and Other States	166
Corruption of Power	166
Money Earmarked for Specific Purpose	167
The Trusted Bookkeeper	168
Disrespect for Legal System	168
Possession of Fines By Virtue of Office	169
Larceny vs. Embezzlement	170
Missing Case Files and Receipt Books	170
Series of Takings Constituting One Embezzlement Offense	171
The "Someone Else Did It" Defense	172
Deputy Clerk in Charge of Cash, Deposits and Records	173
Prison Term vs. Probation	174
Distinct Amounts Taken on Different Dates	175
Quasi-Judicial Immunity	176
Seeds of Embezzlement	178
Litigation and Defenses: A Practical Perspective	179
An Overview of Civil Rights Litigation under §1983	180
Final Policymaking Authority	181
Policy Violating Civil Rights	182
Single Incident of Unconstitutional Activity	182
Failure to Train/Negligent Hiring	183
Adequacy of Training Procedures	183
Direct Causal Link	184
Deliberate Indifference	185
Single Hiring Decision	185
Police Pursuit Liability Under 42 U.S.C. §1983	186
Independent Contractors in Prison Setting: No Immunity	187

Qualified Immunity	187
Failure to Protect: Prisoners and Pretrial Detainees	188
Objective Reasonableness vis a vis Subjective Deliberate Indifference	189
Failure to Protect Against Private Violence	189
Custodial Situations	190
Public Housing: Subsidy Not Same as Custody	190
No Affirmative Duty to Protect from Domestic Violence	190
No Special Relationship Arising from Promise of Aid	191
Workplace Violence	192
School Violence	192
Allegations of the Sanders suit	193
Zero Tolerance and IDEA	194
State-Created Danger	195
Degree of Knowledge and Culpability	196
Post-DeShaney Litigation Trends	196
ADA Litigation	197
Substantially Limited in Major Life Activity	198
“Direct Threat” Standard	198
Migraine Headaches Not Disability	199
High Blood Pressure Controlled Through Medication	201
Expert Testimony and ADA Claims	202
Applicability of <i>Daubert</i> to Other than Scientific Testimony	203
Mississippi’s Modified <i>Daubert</i> Test	203
Sexual Harassment Litigation	204
Title VII of the Civil Rights Act of 1964	204
Meritor Savings Bank v. Vinson	204
The <i>Harris</i> Case	205
No General Civility Code	206
EEOC Enforcement Guidance	206
Elements of Prima Facie Case of Sexual Harassment	207
Title VII Litigation After <i>Faragher</i> and <i>Ellerth</i>	207
Vicarious Liability for Misuse of Supervisors Authority	207
Facts of <i>Ellerth</i>	208
Facts of <i>Faragher</i>	209
Opportunity to Screen, Train and Monitor	210
Applying the Affirmative Defense	210
Relevance of Policy and Complaint Procedure:	211
Larger visavis smaller employers	211
Factors Rendering a Sexual Harassment Policy Vulnerable to Attack:	212
Recent Decisions Addressing the Adequacy of Sexual Harassment Policies	213
Reasonable care to prevent and correct harassment	215
No personal copies of policy given to ACBP employees	215
Well-publicized policy not enough to discharge duty of care	215

Effective precautions and sensible complaint procedure	216
General environment of discrimination and harassment	216
History of substandard treatment	216
Components of an effective policy	216
Communicating Complaint Process to Employees	217
Factors relevant to extending protection to employer	217
Realistic preventative and protective measures	218
No training or enforcement evident	218
Lack of well-publicized and enforced policy	219
Failure to use existing mechanism to report	220
Reasonable care demonstrated	220
Nipping hostile environment in the bud	221
Lip Service vs. Meaningful Monitoring and Enforcement	221
The Preemptive Strike	222
Mediation of Sexual Harassment Complaints	222
Proactive Risk Management	223
Voting Rights Act Litigation on the Local Government Level	223
A Different Legal Climate	224
Section 2 and Section 5: The Federal Arsenal	224
Section 2's Results Test: Legislative History	225
The Dole Compromise	226
Senate Report Factors	227
Section 5's Non-Retrogression Test	228
The Search for the Correct Benchmark	230
Racial Gerrymander Litigation	231
Development of the Race-Predominant Standard	231
“Race or Politics” as predominant explanation for district boundaries	232
Implementation of a Coherent Constitutional Standard	235
Nature and Scope of Judicial Deference	235
Nonretrogression as "absence of backsliding"	237
“Abject surrender” to a minority district maximization agenda	238
Presumption of Legislative Good Faith	239
Changes in governing body’s size to remedy Section 2 violation	240
Impact of <i>Holder</i>	241
Reasonable Alternative Practice as Benchmark	242
Change in Size as Impermissible Remedy	243
Probative Value of Minority-Preferred Candidate’s Electoral Success	244
Clearly Erroneous Standard	244
Fact-Intensive Section 2 Inquiry	245
Close Analysis of Unusually Complex Factual Patterns	246
Consistent Electoral Success by Minority-Preferred Candidates	246
Sinister Plots and Conspiracies (and other Special Circumstances)	247
Relevance in Absence of Electoral Manipulation	247

Laches & Baseline for Retrogression Analysis	248
Singular Combination of Unique Factors	248
Key precedent	249
Representatives of Choice not limited to Candidates of Same Race	250
Minority-Preferred Candidate as Minority or Non-Minority	250
Overreliance on Bivariate Ecological Regression Analysis	251
Individualized Determination of "Minority-Preferred" Status	252
Counting Primary Election Winners as well as General Election Winners	253
Rationale behind Geographical Compactness	255
Deviation Over 10% Unsupported by Substantial, Legitimate State Concerns	255
Deviation to Redress Minority Vote Dilution Without Showing of Compactness	256
Judicial Review of Legislative Plans	257
Congressional Intent in Adopting the Dole Compromise	260
Judicial Deference to Legislative Choices	261
Violation Anew of Constitutional or Statutory Voting Rights	262
Size Element of the Dilution Concept	262
Current splits in the circuits and other legal issues in VRA litigation	263
White v. White elections	263
Causation Evidence and Proof of Racial Animus in the Electoral System	264
Expert Witnesses and Lay Witnesses	266
Amended Rule 701: Lay Opinion	266
Daubert applicability to Voting Rights litigation	267
Responsiveness Evidence	268
Minority Influence Districts	269
No Discriminatory Intent or Purposeful Discrimination	269
Practical Suggestions for Attorneys Representing Governmental Entities	270
Research: Secondary Authorities	272
Immunity: Sovereign, Legislative, Official and Governmental	275
Ministerial Acts and Immunity for Discretionary Acts	275
Exceeding Authority, Intentional Torts and Wilful Wrongdoing	276
"An Exercise of Poor Judgment" Not Enough	276
Case-by-Case Determinations	277
Sovereign Immunity Distinguished	278
Local Government and Legislative Immunity: <i>Bogan v. Scott-Harris</i>	278
Facts of <i>Bogan</i>	279
Rationale for Extending Immunity	279
Impact of <i>Bogan</i> on Local Government	280
Political vs. Litigation Hazards	280
What is a "Legislative Act"?	280
Sphere of Legitimate Legislative Activity"	281
Legislative Immunity Not a Panacea	282
Waiver of Legislative Immunity	282

Extension of Legislative Immunity to Local Government Legislators	283
Mississippi Tort Claims Act	283
Liability Insurance Coverage: Exclusions, Notice and Duty to Defend	284
Limitations, Tolling and Substantial Compliance with MTCA	285
Exemptions from Liability under MTCA	289
The Inmate Exemption	289
Respondeat Superior and State Law Claims	290
Impact of §19-25-19	290
Qualified Immunity	290
Liability Under §19-25-19	291
Loss of Qualified Immunity	292
MUTCD and Proof of the Standard of Care	292
Ministerial vs. Discretionary Duties	294
Discretionary Public Duty	294
Definition of "Ministerial"	294
Statutory Minimum Standards	294
Grossly Negligent and Constructively Intentional Conduct	295
Police Protection Exemption	295
High-Speed Pursuit	296
Acting with Reckless Disregard for Plaintiff's Safety	298
Political Subdivisions other than the State	299
Lack of Jurisdiction of State Highway System (no legal duty)	299
Scope of Employment	300
Obvious to One Exercising Due Care	300
Excess Coverage	301
Settlement of Small Claims	301
Claims Within Deductible	302
Interlocal Cooperation Agreements	303
Pooling of Scant Resources	304
Careful Drafting Essential	304
Typical Reasons for Disapproval	304
Procedure for Interlocal Cooperation Agreement Approval	305
Road and Bridge Maintenance, Repair and Construction Work on Private Property; School Bus	
Turnarounds; Drainage; Abandonment; and Maintenance and Repair of Cemeteries	309
Public Roads	309
County Road Register	312
Public Road Easement	313
Public Acceptance	313
Private Roadway	314
Cul de Sac	314
Private Roads	315

County Work on Public School Grounds and Roads	316
Drainage Work	318
Abandonment	321
Limited Immunity	322
Establishment of Private Right of Way	323
Work On and Cleanup of Private Property	324
Maintenance and Repair of Cemeteries	325
Conclusion	329
Appendix A	331
Appendix B	333
Appendix C	335
Exhibit "A"	337
Exhibit "B"	339