UNIFORM CIVIL RULES OF CIRCUIT AND COUNTY COURT PRACTICE

Table of Rules

2.05 Trial Briefs.

2.06. Service of Copies and Certificate of Service.

2.07. Habeas Corpus in Preconviction and Extradition Matters.

3.01 Prompt Attendance and Informing Court of Presence of Expert Witness.

3.02 Conduct of Attorneys.

3.03 Number of Petit Jurors Summoned; Circuit and County and Eminent Domain Court May Use Same Venire.

3.04 Communication With Jury.

3.05 Voir Dire.

3.06 Conduct of Jurors.

3.07 Jury Instructions.

3.08 Duty of Bailiff.

3.09 Unnecessary Witnesses.

3.10 Jury Deliberations and Verdict.

3.11 Jury Recess.

3.12 Mistrials.

3.13 Assessment of Costs Upon Settlement of Case.

3.14 Note Taking by Jurors.

4.01 Cost Deposit.

4.02 Motion Practice.

4.03 Discovery Deadlines and Practice.

4.04 Jury Selection Process.

4.05 Interlocutory Appeal from County Court.

4.06 Rule for Jones, Lee and Rankin Counties Expedited Small Claims. [Omitted]

5.01 Appeals to Be on the Record/Exceptions.

UNIFORM CIVIL RULES OF CIRCUIT AND COUNTY COURT PRACTICE

Adopted Effective May 1, 1995; Amended Effective July 1, 2017

Rule 1.01
DESIGNATION OF RULE NAME AND PROPER CITATION

These rules are the Uniform Civil Rules of Circuit and County Court and may be cited as "UCRCCC _.__." The word "court" shall mean both circuit and county court unless otherwise indicated.

Rule 1.02
COURT DECORUM

The court shall be opened formally and conducted with dignity and decorum at all times. The judge shall wear a judicial robe at all times when presiding in open court. The wearing of a robe is discretionary where court facilities make it infeasible. Each officer of the court shall be responsible for the promotion of respect for the court.

Rule 1.03
SANCTIONS

Any person embraced within these rules who violates the provisions hereof may be subjected to sanctions, contempt proceedings or other disciplinary actions imposed or initiated by the court.

Rule 1.04

CAMERAS

There shall be no broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that the court may authorize the same in accordance with the Code of Judicial Conduct.

Comment

Section 3B(12) of the Code of Judicial Conduct prohibits broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto except as authorized by rule or order of the Supreme Court. The Supreme Court has now adopted the Rules for Electronic and Photographic Coverage of Judicial Proceedings which provides detailed guidance for such coverage.

[Adopted effective April 17, 2003 as to proceedings conducted from and after July 1, 2003.]

Rule 1.05
INFORMATION ON EACH PLEADING AND MOTION

All pleadings, motions, or other applications to the court shall bear the name, address, and office phone number of the attorney who will try the case and, if different from the attorney who will try the case, the name, address, and office phone number of the attorney who will be prepared to argue the pleading, motion or other application.

Rule 1.05A ASSIGNMENT OF CASES

A. In multi-judge districts and courts, all civil cases shall be assigned immediately on the filing of the complaint by such method which shall insure that the assignment shall be random, that no discernable pattern of assignment exists, and that no person shall know to whom the case will be assigned until it has been assigned. If an attorney or party shall attempt to manipulate or defeat the purpose of this rule, the case shall be reassigned to the judge who would have otherwise received the assignment. If the judge who would have received the case under an assignment in compliance with this rule cannot be determined, a new assignment in compliance with the rule shall be made, excluding the judge to whom it was incorrectly assigned. Sanctions, including costs and attorney's fees, may be imposed by that judge on reassignment. Such sanctions may also include suspension from practice in the court imposing them for not more than 30 days and referral to the Bar for further discipline.

B. Decisions regarding this rule shall be subject to review by the Supreme Court under M.R.A.P. 21, and appropriate stays shall be entered by the trial court to allow such review.

C. In districts where motion days are set in advance with judges specifically assigned, preliminary procedural matters may be submitted to the judge assigned such duties, notwithstanding the fact that the case has been assigned to another judge. Furthermore, by local rule approved by the Supreme Court, the trial court may make special provisions

accommodating local needs of economy and efficiency which might otherwise be at variance with this rule.

[Adopted effective May 29, 2003.]

Comment

In 2002 the Legislature adopted Miss. Code Ann. § 11-1-56, which required civil case assignments to be delayed until one defendant has filed responsive pleadings. By the adoption of this rule, the Supreme Court has superceded Section 11-1-56, exercising its inherent authority to adopt rules of practice, procedure and evidence to promote justice, uniformity, and the efficiency of the courts, as articulated in *Newell v. State*, 308 So. 2d 71 (Miss. 1975) and *Hall v. State*, 539 So. 2d 1338 (Miss. 1989).

The purpose of this rule is to prevent "judge shopping" within a district or a court. Although voluntary dismissal is allowed under M.R.C.P. 41 at any time prior to service by the adverse party of an answer or summary judgment, when a civil case is so dismissed and then refiled immediately thereafter with no substantial change in the parties or claims, such practice, as an example, may be taken as a wilful violation of this rule. Wilful violation of this rule may constitute an offense subject to suspension and other discipline under Rule 3.4(c) of the Rules of Professional Conduct. Sanctions authorized by this rule are cumulative to discipline under the Rules of Professional Conduct.

The assignment of cases by regular rotation among the judges of the district is not a random assignment as contemplated by this rule since a regular rotation will allow those attentive to the docket to predict the judge who will receive a particular assignment.

A party who believes that a case has been assigned in violation of this rule will first submit the issue to the judge before whom the case is pending; thereafter, either party aggrieved by the judge's decision on the issue may seek review of that decision by this Court under the provisions of M.R.A.P. 21.

In some districts, local modifications, which to some degree are at variance with the strict provisions of this rule, may be made while fulfilling the policy of the rule. These modifications are to be made by local rule, on petition of the local district under M.R.C.P 83 to the Supreme Court. The order by which this Rule 1.05A was adopted provides:

> It is further ordered that this new rule shall be effective upon issuance of this order; however, local practices adopted for the purpose of accommodating the needs of economy and efficiency may be continued for a period of forty-five days from the issuance of this order, and in districts wherein the judges of the district have within such period petitioned the Court under M.R.C.P. 83 for local rules seeking approval of such practices or of other practices which might otherwise be in variance to this rule, the practices may continue to be used until the Supreme Court has considered the petition.

[Comment adopted effective May 29, 2003.]

Rule 1.06
CORPORATIONS MUST BE REPRESENTED BY COUNSEL

All corporations that are party plaintiffs must be represented by an attorney licensed to practice law in this state, whose name must appear on the pleading prior to the filing of the pleading.

Rule 1.07
SIGNING OF BONDS BY OFFICER OF COURT

No officer of the court shall sign any bond of any kind in or to any court of this state.

Rule 1.08
SUBSTITUTION OF COPIES

Substitution of a copy for an original exhibit will be permitted only after verification of the copy by the court reporter and permission of the judge.

Rule 1.09
COUNTY COURT USE OF CHANCERY COURT RULES

In cases which have been assigned by the chancery court to the county court, the county court shall use the Uniform Rules of Chancery Court Practice.

Rule 1.10
EARWIGGING PROHIBITED

No person shall undertake to discuss with or in the presence or hearing of the judge the law or the facts or alleged facts of any case then pending in the court or likely to be instituted therein, except in the orderly progress of the trial, and arguments or briefs connected therewith; nor attempt in any manner, except as stated above, to influence the decision of the judge in any such case or matter.

Rule 1.11
PRESENTATION OF ORDERS TO THE COURT

With the exception of default or agreed orders and judgments, all proposed orders and judgments to be signed by the court shall be submitted directly to the court by an attorney and not through the clerk or through correspondence, unless otherwise permitted by the court. All orders or judgments presented to the court shall be signed by the attorney presenting the same.

Rule 1.12
REMOVAL OF RECORDS FROM THE OFFICE OF THE CLERK

No record, or any part of a file of court papers, shall be taken from the clerk's custody without a written order from the judge to the clerk. The clerk shall keep a register of all files checked out by permission of the court and the same shall be redelivered to the clerk on the

day provided for in the order from the judge, or, if none is provided, before the opening of the next term.

Rule 1.13
WITHDRAWAL OF COUNSEL FROM A CASE

When an attorney makes an appearance for any party in a case, that attorney will not be allowed to withdraw as attorney for the party without the permission of the court. The attorney making the request shall give notice to his/her client and to all attorneys in the cause and certify the same to the court in writing. The court shall not permit withdrawal without prior notice to his/her client and all attorneys of record.

Rule 1.14
LOCAL PRACTICE

Attorneys having cases or practicing before a court shall contact the clerk of the court to ascertain the practices of the local courts. There will be no local rules of court unless such rules are approved by the Supreme Court of Mississippi.

Rule 1.15
MOTIONS FOR RECUSAL OF JUDGES

Any party may move for the recusal of a judge of the circuit or county court if it appears that the judge's impartiality might be questioned by a reasonable person knowing all the circumstances, or for other grounds provided in the Code of Judicial Conduct or otherwise as provided by law. A motion seeking recusal shall be filed with an affidavit of the party or the party's attorney setting forth the factual basis underlying the asserted grounds for recusal and declaring that the motion is filed in good faith and that the affiant truly believes the facts underlying the grounds stated to be true. Such motion shall, in the first instance, be filed with the judge who is the subject of the motion within 30 days following notification to the parties of the name of the judge assigned to the case; or, if it is based upon facts which could not reasonably have been known to the filing party within such time, it shall be filed within 30 days after the filing party could reasonably discover the facts underlying the grounds asserted. The subject judge shall consider and rule on the motion within 30 days of the filing of the motion, with hearing if necessary. If a hearing is held, it shall be on the record in open court. The denial of a motion to recuse is subject to review by the Supreme Court on motion of the party filing the motion as provided in M.R.A.P. 48B.

[Adopted April 4, 2002.]

Rule 1.16
ELECTRONIC FILING AND SERVICE PROCEDURES

A court may, by local rule, allow pleadings and other papers to be served, filed, signed, or verified by electronic means in conformity with the Mississippi Electronic Court System procedures. Pleadings and other papers filed electronically in compliance with the procedures are written papers for purposes of these rules. Please refer to the Administrative Procedures

for Mississippi Electronic Court System on the Supreme Court's website at www.mssc.state.ms.us

[Adopted effective January 8, 2009, for purposes of a pilot program for the Mississippi Electronic Court System.]

Rule 2.01
SUBPOENAS

The procedures for subpoenas shall conform to Rule 45 of the Mississippi Rules of Civil Procedure.

[Adopted effective May 1, 1995; amended April 18, 2002; July 1, 2017.]

Rule 2.02
SCOPE OF AUTHORITY OF COURT

The court is empowered to hear and determine all motions, appeals or other applications to the court, which the court may hear and determine without a jury, in term or vacation, and may hear or determine the same in any county in the judicial district of the court, or in a county to which venue has been transferred.

Rule 2.03
RESCHEDULING TRIALS

No case set for trial shall be continued or rescheduled for trial except by permission of the court.

Rule 2.04
DUTIES OF MOVANT

It is the duty of the movant, when a motion or other pleading is filed, including motions for a new trial, to pursue said motion to hearing and decision by the court. Failure to pursue a pretrial motion to hearing and decision before trial is deemed an abandonment of that motion; however, said motion may be heard after the commencement of trial in the discretion of the court.

Rule 2.05
TRIAL BRIEFS

Unless otherwise directed by the court, the submission of a trial brief on the merits of a case or particular issues is within the discretion of the parties. A copy of any such brief submitted shall be simultaneously served upon opposing attorneys. No memorandum or brief required or permitted by this rule shall be filed with the clerk. Memorandum or briefs shall not exceed 25 pages in length and shall be accompanied by copies of all authorities cited therein.

Rule 2.06
SERVICE OF COPIES AND CERTIFICATE OF SERVICE

Unless otherwise ordered by the court, all pleadings, motions, or applications to the court, except the initial pleading, must be served by any form of service authorized by Rule 5 of the Mississippi Rules of Civil Procedure on all attorneys of record for the parties, or on the parties when not represented by an attorney, and the person filing the same shall also file an original certificate of service certifying that a correct copy has been provided to the attorneys or to the parties, the manner of service, and to whom it was served. Except as allowed by this rule or allowed by the court for good cause shown, the clerk may not accept for filing any document which is not accompanied by a certificate of service.

Rule 2.07
HABEAS CORPUS IN PRECONVICTION AND EXTRADITION MATTERS

A. Habeas Corpus in Cases Other Than Post-Conviction and Extradition

1. The writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his/her liberty, or by which rightful custody of the person is withheld from the person entitled thereto.

2. If the person for which habeas relief is sought is charged with a crime in this state for which the accused may be imprisoned or confined to jail, and the accused is indigent and makes an affidavit of indigence, then the court shall appoint an attorney, if one has not already been appointed. The court may appoint an attorney for an indigent seeking relief hereunder even though the indigent has not been formally charged with a crime in this state.

3. The proceedings and judgments shall in all cases be entered on record.

4. The motion for the writ of habeas corpus shall be in writing, sworn to and signed by the person for whose relief it is intended, or by someone on his/her behalf, and shall contain the following matters:

   a. A description of where and by whom the movant is deprived of his/her liberty;

   b. The facts and circumstances of the restraint;

   c. The form of the relief sought;

   d. The grounds upon which relief is sought; and

   e. If desired, a request for a copy of transcripts of any prior proceeding if the movant qualifies as an indigent under § 99-15-15 of the Mississippi Code of 1972, specifying what portions are necessary to decide the issues, and why they are necessary.

5. The motion for writ of habeas corpus shall be filed with the clerk of any court of competent jurisdiction of the county where the movant is detained. The proper respondent and, in cases where the person for whom habeas relief is sought is charged with a crime, the prosecuting attorney must receive three (3) days written notice, with a copy of the motion attached, prior to any hearing or consideration by the court. Such three (3) day notice may be waived for grounds sufficiently urgent and necessary to due process and the grounds therefore shall be found by the court and made a part of the record. If no court has entertained any proceeding on the movant's matter, excepting bond, the motion for habeas corpus shall be filed with the clerk of the circuit court in the county in which the movant is detained.

6. The court shall give preliminary consideration of the motion for the writ of habeas corpus as follows:

a. The motion shall be examined promptly by the judge of the court in which the motion is filed.

b. If the motion, upon examination, does not substantially comply with the requirements of this rule, it need not be entertained on its merits and the clerk shall so notify the movant.

c. If, from the showing made by the motion, it is manifest that the person on whose behalf it is presented is not entitled to any relief, the court can refuse to grant the writ and enter an appropriate order.

d. Upon granting the writ, the court shall order the respondent to file an answer within a reasonable time and in an appropriate court.

e. Upon granting the writ, the court shall also order the respondent to bring or cause to bring the person for whom habeas relief is sought before the court at the time and place of the hearing on the writ.

f. If the movant requests transcripts of any prior proceeding and the movant qualifies as an indigent as under § 99-15-15 of the Mississippi Code of 1972, the judge shall order the portions of the transcripts the court deems necessary to the issues to be made available to the movant within a reasonable time before the date of the hearing on the writ.

7. The respondent upon whom the writ of habeas corpus is served shall file a response in writing. The response shall be filed by the date and in the court designated in the writ of habeas corpus and a copy served as provided in these rules. The response must respond to all the allegations of the motion including the following matters:

a. Whether the respondent has or has not the person in custody or power or restraint.

b. If the respondent does have the movant in custody or power or restraint, the respondent shall state the authority and cause of the restraint.

c. If the movant is restrained by virtue of any writ, warrant, or other written authority a copy of such shall be attached to the answer.

d. If the respondent has had the movant in restraint at any time prior to or subsequent to the date on the writ of habeas corpus, but such person has escaped or been transferred to the custody of another, a description of the escape or if transfer, the time, place, for what cause, and by what authority such transfer took place.

8. A party shall be entitled to invoke the processes of discovery available under the Mississippi Rules of Civil Procedure, if and to the extent that the court, in the exercise of its discretion and for good cause shown, grants leave to do so, but not otherwise.

9. Upon a hearing of the matter:

a. The court shall either discharge, or commit, or admit to bail, or remand the movant or award custody to the party entitled thereto as the law and the evidence shall require. The court may make any temporary order in the cause during the progress of the proceeding that justice may require.

b. The order rendered by the court shall be conclusive until reversed and shall be a bar to another writ of habeas corpus in the same cause, except by appeal or civil action for false imprisonment.

B. Habeas Corpus in Extradition Matters

1. The motion for the writ of habeas corpus in extradition matters shall be in writing, sworn to and signed by the person for whose relief it is intended, or by someone in his/her behalf, and shall contain the following matters:

a. A description of where and by whom the movant is deprived of liberty;

b. The facts and circumstances of the restraint;

c. The form of the relief sought; and

d. The grounds upon which relief is sought, which is limited to those areas specified in subsection six (6) below.

2. Upon issuance of the rendition warrant by the proper authorities of the State of Mississippi, the person detained thereunder shall not be entitled to bond.

3. If no court has entertained any proceeding on the movant's matter, excepting bond or the denial of bond, the motion for habeas corpus shall be filed with the clerk of the circuit court in the county in which the movant is detained.

4. The court shall give preliminary consideration of the motion for the writ of habeas corpus as follows:

a. The motion shall be examined promptly by the judge of the court in which the motion is filed.

b. If the motion, upon examination, does not substantially comply with the requirements of this rule, it need not be entertained on its merits and the clerk shall so notify the movant.

c. If, from the showing made by the motion, it is manifest that the person whom, or on whose behalf, it is presented is not entitled to any relief, the court can refuse to grant the writ and enter an appropriate order.

d. Upon granting the writ the court shall order the respondent to file an answer within a reasonable time and in an appropriate court.

e. Upon granting the writ the court shall also order the respondent to bring or cause to bring the movant before the court at the time and place of the hearing on the writ.

f. The Attorney General of Mississippi must receive three days written notice, with a copy of the motion for habeas corpus attached, prior to any hearing or consideration by the court.

5. The respondent upon whom the writ of habeas corpus is served shall file a response in writing. The response shall be filed by the date and in the court designated in the writ of habeas corpus and a copy served as provided in these rules. The response must respond to all the allegations of the motion including the following matters:

a. Whether the respondent has or has not the movant in custody or power or restraint.

b. If the respondent does have the movant in custody or power or restraint, the respondent shall state the authority and cause of the restraint.

c. If the movant is restrained by virtue of any writ, warrant, or other written authority a copy of such shall be attached to the answer.

d. If the respondent has had the movant in restraint at any time prior to or subsequent to the date on the writ of habeas corpus, but such person has escaped or been transferred to the custody of another, a description of the escape or if

transfer, the time, place, for what cause, and by what authority such transfer took place.

6. The hearing before the court shall be a limited hearing and the court may inquire only into:

a. Whether the extradition documents on their face are in order;

b. Whether the movant for habeas relief has been charged with a crime in the demanding state;

c. Whether the movant is the person named in the request for extradition; and

d. Whether the movant for habeas relief is a fugitive.

The introduction into evidence of the rendition warrant issued by the proper official of the State of Mississippi creates a presumption that all the requirements for extradition have been met and constitutes a prima facie case for the state.

7. Extradition is a civil matter and does not entitle the subject of extradition to a court appointed attorney if the subject is indigent.

Rule 3.01
PROMPT ATTENDANCE AND INFORMING COURT OF PRESENCE OF EXPERT WITNESS

Every person whose presence is required for the conduct of the business of the court shall be prompt in attendance. Any attorney or party who subpoenas an expert witness to testify shall inform the court of the presence of such witness at the time of such witness' initial appearance.

Rule 3.02
CONDUCT OF ATTORNEYS

Attorneys should manifest an attitude of professional respect toward the judge, the opposing attorney, witnesses, defendants, jurors, and others in the courtroom. In the courtroom, attorneys should not engage in behavior or tactics purposely calculated to irritate or annoy the opposing attorney and shall address the court, not the opposing attorney, on all matters relating to the case.

All objections to testimony must be made to the judge and not to the opposing attorney. The objection must be specific and not general. The attorneys will not be permitted to argue between themselves. Attorneys must stand when addressing the court, examining witnesses, and addressing the jury, except when excused for good cause by the court. Attorneys may direct remarks to the jury panel only during voir dire, opening and closing statements.

Attorneys must limit themselves to asking questions and must refrain from making statements, quips, or side remarks in an examination of a witness. The examination of witnesses will be conducted fairly and objectively, with the attorneys and witnesses displaying respect and courtesy to each other. The attorneys may not ask questions merely to embarrass or humiliate the witness. No more than one attorney per party shall be allowed to examine a witness.

In opening statements, and in closing arguments, the attorneys may not attack the opposing attorney. The attorneys may not call any juror by name, or have any personal contact with the jury whatsoever, nor attempt to converse with or solicit audible answers from the jurors individually. In the argument to the jury, the attorneys will be required to keep within proper bounds, and any attempt to inject improper matter may be stopped by the court without the necessity of an objection. The attorneys will refrain from thanking the jury for acting as jurors and after return of a verdict by the jury neither the attorneys, parties, nor spectators shall offer their congratulations, thanks or condemnation to the jury for the verdict returned.

After a verdict concerning the case, attorneys are prohibited from harassing or exhibiting disrespect for the jurors. The jurors shall be instructed by the court to report any harassment or objectionable conduct from any party, attorney, or representative of any party or attorney to the court immediately.

It is the duty of the court to enforce this rule of its own motion and without objection being made, but the court's failure to do so, where there is no objection made, will not constitute a ground for exception.

Rule 3.03
NUMBER OF PETIT JURORS SUMMONED; CIRCUIT AND COUNTY AND EMINENT DOMAIN COURT MAY USE SAME VENIRE

The court may direct the clerk of court concerning the number of petit jurors needed to be summoned for jury duty. The circuit and county court may employ the same jury venire in the selection of petit juries. Special Courts of Eminent Domain may employ the jury venire of either county or circuit court in the selection of petit juries, or may direct the clerk of court concerning the number of petit jurors needed to be summoned for jury duty.

Rule 3.04
COMMUNICATION WITH JURY

Except as provided by these rules, no person or attorney for the person involved in any case may communicate with or offer any favor, however slight, to any person on the jury venire.

Rule 3.05
VOIR DIRE

In the voir dire examination of jurors, the attorney will question the entire venire only on matters not inquired into by the court. Individual jurors may be examined only when proper to inquire as to answers given or for other good cause allowed by the court. No hypothetical questions requiring any juror to pledge a particular verdict will be asked. Attorneys will not offer an opinion on the law. The court may set a reasonable time limit for voir dire.

Rule 3.06
CONDUCT OF JURORS

Jurors are not permitted to mix and mingle with the attorneys, parties, witnesses and spectators in the courtroom, corridors, or restrooms in the courthouse. The court must instruct jurors that they are to avoid all contacts with the attorneys, parties, witnesses or spectators.

Rule 3.07
JURY INSTRUCTIONS

At least twenty-four hours prior to trial each of the attorneys must number and file the attorney's jury instructions with the clerk, serving all other attorneys with copies of the instructions. Except for good cause shown, the court will not entertain a request for additional instruction or instructions, which have not been pre-filed. At the conclusion of testimony, the attorneys must select no more than six jury instructions on the substantive law of the case from the instructions prefiled and present them to the judge. The court, for good cause shown, may allow more than six instructions on the substantive law of the case to be presented. The attorneys must dictate into the record their specific objections to the requested instructions stating the grounds for each objection. Instructions will not be given after closing argument has begun except in extreme cases of injustice and in such cases the adverse parties shall have an opportunity to submit other instructions.

The judge may instruct the jury. The court's instructions must be in writing and must be submitted to the attorneys, who in accordance with this rule, must dictate their specific objections into the record.

All instructions shall be captioned at the top of the page "Jury Instruction #__" in order to allow the court to number the instructions given in such sequence as it deems proper. All letters and numerals identifying instructions submitted by parties for the court's consideration shall be in conformity with Rule 51(b)(2), Mississippi Rules of Civil Procedure, and shall be placed in the bottom right hand corner of each page.

All instructions will be read by the court in whatever order the court chooses, will be available for the attorneys during their argument, and will be carried by the jury into the jury room when they retire to consider their verdict.

Rule 3.08
DUTY OF BAILIFF

The bailiff will escort the impaneled jury each time they enter or leave the courtroom during the trial and after the verdict. All attorneys, litigants, and spectators will be seated when the jury enters or leaves the courtroom.

Rule 3.09
UNNECESSARY WITNESSES

No party shall subpoena unnecessary witnesses to repeatedly prove the same fact or set of facts. The court may, in its discretion, tax the per diem and mileage of all unnecessary witnesses against the party or attorney for the party causing them to be subpoenaed whether or not they are called to testify. In all cases, the mileage and per diem of any witness not called to testify will be taxed against the party causing them to be subpoenaed, unless good cause to the contrary be shown. Attorneys are directed to confer with their witnesses prior to commencement of trial, and no recesses shall be permitted for conferring with witnesses who were accessible before trial.

Rule 3.10
JURY DELIBERATIONS AND VERDICT

The court may direct the jury to select one of its members to preside over the deliberations and to write out and return any verdict agreed upon, and admonish the jurors that, until they are discharged as jurors in the cause, they may communicate upon subjects connected with the trial only while the jury is convened in the jury room for the purpose of reaching a verdict.

The jurors shall be kept together for deliberations as the court reasonably directs.

The court shall permit the jury, upon retiring for deliberation, to take to the jury room the instructions and exhibits and writings which have been received in evidence, except depositions.

After the jurors have retired to consider their verdict the court shall not recall the jurors to hear additional evidence.

The court, after notice to all attorneys, may recall the jury after it has retired and give such additional written instructions to the jury as the court deems appropriate.

If the jury, after they retire for deliberation, desires to be informed of any point of law, the court shall instruct the jury to reduce its question to writing and the court in its discretion, after affording the parties an opportunity to state their objections or assent, may grant additional written instructions in response to the jury's request.

If it appears to the court that the jury has been unable to agree, the court may require the jury to continue their deliberations and may give an appropriate instruction.

If it appears to the court that there is no reasonable probability of agreement, the jury may be discharged without having agreed upon a verdict and a mistrial granted.

When the jurors have agreed upon a verdict they shall be conducted into the courtroom by the officer having them in charge. The court shall ask the foreman or the jury panel if an agreement has been reached on a verdict. If the foreman or the jury panel answers in the affirmative, the judge shall call upon the foreman or any member of the panel to deliver the verdict in writing to the clerk or the court. The court may then examine the verdict and correct it as to matters of form. The clerk or the court shall then read the verdict in open court in the presence of the jury. The court shall inquire if either party desires to poll the jury, or the court may on its own motion poll the jury. If neither party nor the court desires to poll the jury, the verdict shall be ordered filed and entered of record and the jurors discharged from the cause. If the court, on its own motion, or on motion of either party, polls the jury, each juror shall be asked by the court if the verdict rendered is that juror's verdict. Where the required number of jurors have voted in the affirmative for the verdict, the court shall order the verdict filed and entered of record and discharge the jury. If less than the required number of jurors cannot agree, the court may: 1) return the jury for further deliberations or 2) declare a mistrial. No motion to poll the jury shall be entertained after the verdict is ordered to be filed and entered of record or the jury is discharged.

If a verdict is so defective that the court cannot determine from it the intent of the jury, the court shall, with proper instructions, direct the jurors to reconsider the verdict. No verdict shall be accepted until it clearly reflects the intent of the jury. If the jury persists in rendering defective verdicts the court shall declare a mistrial.

While it is appropriate for the court to thank jurors at the conclusion of a trial for their public service, such comments should not include praise or criticism of their verdict.

After the verdict has been received by the court and entered on the record, the testimony or affidavits of the jurors shall not be received to impeach the verdict, except as permitted by the Mississippi Rules of Evidence.

Rule 3.11
JURY RECESS

Within the discretion of the court, a recess of jury deliberations may be held. The jury may be reconvened at the time and place set by the court. In cases in which the jury is not sequestered the judge shall instruct the jury as to the following:

1. That the jurors are not to converse with anyone, including family members or another juror, about the case or on any subject connected with the trial. However, a juror may inform another about the juror's schedule.

2. That the jurors are not to form or express an opinion on the case or any subject connected with the trial.

3. That the jurors are not to view any place connected with the case or subject connected with the trial.

4. That the jurors are not to read, listen to, or watch any news account or other matter relating to the case or other subject connected with the trial.

5. That the jurors shall report to the court any communications or attempts to communicate with them on the case or subject connected with the trial.

6. On such other matters as the court deems appropriate.

When the jury is reconvened, the court, in its discretion, may poll the jury to determine if the jury has complied with the court's instructions.

In cases where the jury has been sequestered the court may instruct the jury on as many of the above matters as are appropriate.

Rule 3.12
MISTRIALS

Upon motion of any party, the court may declare a mistrial if there occurs during the trial, either inside or outside the courtroom, misconduct by the party, the party's attorneys, or someone acting at the behest of the party or the party's attorney, resulting in substantial and irreparable prejudice to the movant's case.

Upon motion of a party or its own motion, the court may declare a mistrial if:

1. The trial cannot proceed in conformity with law; or

2. It appears there is no reasonable probability of the jury's agreement upon a verdict.

Rule 3.13
ASSESSMENT OF COSTS UPON SETTLEMENT OF CASE

The court may assess all costs, including fees and mileage of jurors who have been required to be present for the trial, against whichever party litigant or attorney it deems appropriate, for failure of an attorney to try the case or for failure to notify the court of settlement of a case before 5:00 P.M. on the day before the trial.

Rule 3.14
NOTE TAKING BY JURORS

1. Note Taking Permitted in the Discretion of the Court. The court may, in its discretion, permit jurors to take written notes concerning testimony and other evidence. If the court permits jurors to take written notes, jurors shall have access to their notes during deliberations. Immediately after the jury has rendered its verdict, all notes shall be collected by the bailiff or clerk and destroyed.

2. Instructions. The court shall instruct the jury as to whether note taking will be permitted. If the court permits jurors to take written notes, the trial judge shall give both a preliminary instruction and an instruction at the close of all the evidence on the appropriate use of juror notes. These instructions shall be given in the following manner.

(a) Preliminary Instruction: Note Taking Forbidden

You may not take notes during the course of the trial. There are several reasons for this. It is difficult to take notes and, at the same time, pay attention to what a witness is saying. Further, in a group the size of yours, certain persons will take better notes than others will, and there is a risk that jurors who do not take good notes will depend on jurors who do. The jury system depends upon all jurors paying close attention and arriving at a decision. I believe that the jury system works better when the jurors do not take notes.

You will notice that we do have an official court reporter making a record of the trial; however, we will not have typewritten transcripts of this record available for your use in reaching a decision in this case.

(b) Preliminary Instruction: Note Taking Permitted

If you would like to do so, you may take notes during the course of the trial. On the other hand, you are not required to take notes if you prefer not to do so. Each of you should make your own decision about this. If you decide to take notes, be careful not to get so involved in note taking that you become distracted from the ongoing proceedings.

Notes are only a memory aid and a juror's notes may be used only as an aid to refresh that particular juror's memory and assist that juror in recalling the actual testimony. Each of you must rely on your own independent recollection of the proceedings. Whether you take notes or not, each of you must form and express your own opinion as to the facts of this case. An individual juror's notes may be used by that juror only and may not be shown to or shared with other jurors.

You will notice that we do have an official court reporter making a record of the trial; however, we will not have typewritten transcripts of this record available for your use in reaching a decision in this case.

(c) Use of Notes During Deliberations.

Jury Instruction # _____

Members of the Jury, shortly after you were selected I informed you that you could take notes and I instructed you as to the appropriate use of any notes that you might take. Most importantly, an individual juror's notes

may be used by that juror only and may not be shown to or shared with other jurors. Notes are only a memory aid and a juror's notes may be used only as an aid to refresh that particular juror's memory and assist that juror in recalling the actual testimony. Each of you must rely on your own independent recollection of the proceedings. Whether you took notes or not, each of you must form and express your own opinion as to the facts of this case. Be aware that during the course of your deliberations there might be the temptation to allow notes to cause certain portions of the evidence to receive undue emphasis and receive attention out of proportion to the entire evidence. But a juror's memory or impression is entitled to no greater weight just because he or she took notes, and you should not be influenced by the notes of other jurors.

Thus, during your deliberations, do not assume simply because something appears in your notes that it necessarily took place in court.

[Adopted effective April 18, 2002.]

Rule 4.01
COST DEPOSIT

A cost deposit shall be made with the clerk of court at the time of the filing of the complaint in the amount set forth under section 25-7-13 of the Mississippi Code.

[Adopted effective May 1, 1995; amended effective June 29, 1995; amended March 22, 2001; amendment suspended April 12, 2001; March 22, 2001 amendment repealed October 11, 2007; amended December 1, 2015.]

[**Note:** The March 22, 2001 amendment to Rule 4.02 which added paragraph 2 requiring an additional cost deposit of $1,000.00 on filing of a complaint pursuant to Miss. Code. Ann. § 11-27-81 has been suspended pending further order of the Supreme Court, by order entered April 12, 2001.]

Rule 4.02
MOTION PRACTICE

The provisions of this rule shall apply to all written motions.

1. The original of each motion, and all affidavits and other supporting evidentiary documents shall be filed with the clerk in the county where the action is docketed. The moving party at the same time shall mail a copy thereof to the judge presiding in the action at the judge's mailing address. A proposed order shall accompany the court's copy of any motion which may be heard *ex parte* or is to be granted by consent. Responses and supporting evidentiary documents shall be filed in the same manner.

2. In circuit court a memorandum of authorities in support of any motion to dismiss or for summary judgment shall be mailed to the judge presiding over the action at the time that the motion is filed. Respondent shall reply within ten (10) days after service of movant's memorandum. A rebuttal memorandum may be submitted within five (5) days of service of the reply memorandum. Movants for summary judgment shall file with the clerk as a part of the motion an itemization of the facts relied upon and not genuinely disputed and the respondent shall indicate either agreement or specific reasons for disagreement that such facts are undisputed and material. Copies of motions to dismiss or for summary judgment sent to the judge shall also be accompanied by copies of the complaint and, if filed, the answer.

3. Accompanying memoranda or briefs in support of other motions are encouraged but not required. Where movant has served a memorandum or brief, respondent may serve a reply within ten (10) days after service of movant's memorandum or brief. A rebuttal memorandum or brief may be served within five (5) days of service of the reply memorandum.

4. No memorandum or brief required or permitted by this rule shall be filed with the clerk. Memoranda or briefs shall not exceed 25 pages in length. If any memorandum, brief or other paper submitted in support of a legal argument in any case cites or relies upon any authority other than a Mississippi or federal statute, Mississippi or federal Rule of Court, United States Supreme Court case, or a case reported in the Southern or Federal Reporter series, a copy of such authority must accompany the brief or other paper citing it.

5. All dispositive motions shall be deemed abandoned unless heard at least ten days prior to trial.

[Adopted effective May 1, 1995; amended May 23, 2002.]

Rule 4.03
DISCOVERY DEADLINES AND PRACTICE

A. All discovery must be completed within ninety days from service of an answer by the applicable defendant. Additional discovery time may be allowed with leave of court upon written motion setting forth good cause for the extension. Absent special circumstances the court will not allow testimony at trial of an expert witness who was not designated as an expert witness to all attorneys of record at least sixty days before trial.

B. When responding to discovery requests, interrogatories, requests for production, and requests for admission, the responding party shall, as part of the responses, set forth immediately preceding the response the question or request to which such response is given. Responses shall not be deemed to have been served without compliance to this subdivision.

C. No motion to compel shall be heard unless the moving party shall incorporate in the motion a certificate that movant has conferred in good faith with the opposing attorney in an effort to resolve the dispute and has been unable to do so. Motions to compel shall quote verbatim each contested request, the specific objection to the request, the grounds for the objection and the reasons supporting the motion.

Rule 4.04
JURY SELECTION PROCESS

A. Peremptory jury challenges shall be exercised as follows:

1. The court shall consider all challenges for cause before the parties are required to exercise peremptory challenges.

2. Next, the plaintiff shall tender to the defendant a full panel of accepted jurors having considered the jury in the order in which they appear, having exercised any peremptory challenges desired.

3. Next, the defendant shall go down the juror list accepted by the plaintiff and exercise any peremptory challenge(s) to that panel.

4. Once the defendant exercises peremptory challenges to the panel tendered, the plaintiff shall then be required to again tender to the defendant a full panel of accepted jurors.

5. The above procedure shall be repeated until a full panel of jurors has been accepted by both sides.

6. Once the jury panel is selected, alternate jurors shall be selected following the procedure set forth above for selecting the jury panel.

B. Constitutional challenges to the use of peremptory challenges shall be made at the time each panel is tendered.

[Amended April 18, 1995.]

Rule 4.05
INTERLOCUTORY APPEAL FROM COUNTY COURT

An appeal from an interlocutory order in county court may be sought in the Supreme Court as provided in Rule 5 of the Mississippi Rules of Appellate Procedure.

[Adopted effective July 1, 2008.]

Rule 4.06
RULE FOR JONES, LEE AND RANKIN COUNTIES
EXPEDITED SMALL CLAIMS

[Omitted]

Rule 5.01
APPEALS TO BE ON THE RECORD/EXCEPTIONS

Except for cases appealed directly from justice court or municipal court, all cases appealed to circuit court shall be on the record and not a trial de novo. Direct appeals from justice court and municipal court shall be by trial de novo.

Rule 5.02
DUTY TO MAKE RECORD

In appeals on the record it is the duty of the lower court or lower authority (which includes, but is not limited to, state and local administrative agencies and governing authorities of any political subdivision of the state) to make and preserve a record of the proceedings sufficient for the court to review. Such record may be made with or without the assistance of a court reporter. The time and manner for the perfecting of appeals from lower authorities shall be as provided by statute.

Rule 5.03
SCOPE OF APPEALS FROM ADMINISTRATIVE AGENCIES

On appeals from administrative agencies the court will only entertain an appeal to determine if the order or judgment of the lower authority:

1. Was supported by substantial evidence; or

2. Was arbitrary or capricious; or

3. Was beyond the power of the lower authority to make; or

4. Violated some statutory or constitutional right of the complaining party.

Rule 5.04
NOTICE OF APPEAL

The party desiring to appeal a decision from a lower court must file a written notice of appeal with the circuit court clerk. A copy of that notice must be provided to all parties or their attorneys of record and the lower court or lower authority whose order or judgment is being appealed. A certificate of service must accompany the written notice of appeal. The court clerk may not accept a notice of appeal without a certificate of service, unless so directed by the court in writing. In all appeals, whether on the record or by trial de novo, the notice of appeal and payment of costs must be simultaneously filed and paid with the circuit court clerk within thirty (30) days of the entry of the order or judgment being appealed. The timely filing of this written notice and payment of costs will perfect the appeal. The appellant may proceed in forma pauperis upon written approval of the court acting as the appellate court. The written notice of appeal must specify the party or parties taking the

appeal; must designate the judgment or order from which the appeal is taken; must state if it is on the record or an appeal de novo; and must be addressed to the appropriate court.

[Amended May 13, 1996; amended November 26, 1996.]

Rule 5.05
FILING OF RECORD IN APPEALS ON THE RECORD

In appeals in which the appeal is solely on the record, the record from the lower court or lower authority must be filed with the court clerk within thirty (30) days of filing of the notice of appeal. Provided, however, in cases involving a transcript, the court reporter or lower authority may request an extension of time. The court, on its own motion or on application of any party, may compel the compilation and transmission of the record of proceedings. Failure to file the record with the court clerk or to request the assistance of the court in compelling the same within thirty (30) days of the filing of the written notice of appeal may be deemed an abandonment of the appeal and the court may dismiss the same with costs to the appealing party or parties.

Rule 5.06
BRIEFS ON APPEALS ON THE RECORD

Briefs filed in an appeal on the record must conform to the practice in the Supreme Court, including form, time of filing and service, except that the parties should file only an original and one copy of each brief. The consequences of failure to timely file a brief will be the same as in the Supreme Court.

Rule 5.07
PROCEDURE ON APPEALS BY TRIAL DE NOVO

In appeals by trial de novo, the circuit court clerk, upon the filing of the written notice of appeal, must enter the case on the docket, noting that it is an appeal with trial de novo. The appeal will proceed as if a complaint and answer had been filed, but the court may require the filing of any supplemental pleading to clarify the issues. All proceedings on an appeal de novo will be governed by the Mississippi Rules of Civil Procedure, where applicable, the Mississippi Rules of Evidence, and these Rules.

[Amended May 13, 1996.]

Rule 5.08
SUPERSEDEAS

The perfecting of an appeal, whether on the record or by trial de novo, does not act as supersedeas. In cases being appealed that involve a money judgment, the party against whom money judgment was rendered may post with the court clerk of the court acting as the appellate court a bond that is 125% of the money judgment, such bond to be approved by the circuit clerk. The posting of this bond shall automatically act as a supersedeas solely on the money judgment, but not any other part of the order or judgment. Upon application the court

may reduce the amount of the supersedeas bond. In appeals from lower authorities, when the statute provides for automatic supersedeas, the statute shall govern. In all other cases the court may grant a supersedeas upon proof of the party requesting the same, applying the same standards as for a preliminary injunction. However, except in those cases in which the statute provides for automatic supersedeas, no supersedeas will be granted on appeals from a denial, revocation or suspension of a license to practice a profession or a trade. The court may grant an expedited hearing, may alter the briefing schedules, and may require the record to be expedited. In all cases in which a discretionary supersedeas is granted, the court may require a bond sufficient to protect the interests of the other parties.

[Amended May 13, 1996.]

Rule 5.09
COST BOND

In all appeals, unless the court allows an appeal in forma pauperis, the appellant or appellants shall pay all court costs incurred below and likely to be incurred on appeal as estimated by the circuit court clerk. Should a dispute arise, a party may apply to the court for relief.

[Amended May 13, 1996.]

Rule 5.10
WRIT OF CERTIORARI

The availability of writs of certiorari shall be as provided by the Constitution and Statutes of the State of Mississippi. Upon the filing of a record pursuant to a writ of certiorari, the case shall proceed as an appeal on the record.