

Serial: 132179

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99015-SCT

***IN RE: LOCAL RULES OF THE FOURTH
CIRCUIT COURT DISTRICT OF MISSISSIPPI***

ORDER

This matter is before the Court en banc on the Petition To Rescind Local Rules filed by the Honorable Betty W. Sanders of the Fourth Circuit Court District. The Fourth Circuit Court District requests that the existing local rules be rescinded and replaced with a new set of local rules. The Fourth Circuit Court District also seeks approval of the proposed new local rules. The proposed new local rules are attached as Exhibit A.

Having considered the petition, the Court finds that the new local rules will promote the fair and efficient administration of justice and that the petition should be granted.

IT IS THEREFORE ORDERED that the Petition to Rescind the Local Rules of the Fourth Circuit Court District and approval of the proposed new local rules is hereby granted. The new local rules, attached as Exhibit A, shall supersede and replace any and all former local rules of the Fourth Circuit District Court.

IT IS FURTHER ORDERED that the Clerk of this Court shall record this order upon the minutes of the Court and shall forthwith forward a true certified copy hereof to West Publishing Company for publication as soon as practical in the advance sheets of *Southern Reporter, Second Series (Mississippi Edition)*. The Clerk shall also forward a copy of the

new local rules as set forth in Exhibit A attached hereto to West Publishing Company for publication in the *Mississippi Rules of Court*.

SO ORDERED, this the 22nd day of May, 2006.

/s/ William L. Waller, Jr.

WILLIAM L. WALLER, JR., PRESIDING JUSTICE

EXHIBIT A
LOCAL RULES
FOR
FOURTH CIRCUIT COURT DISTRICT OF MISSISSIPPI

[Renumbered and codified by order of the Supreme Court effective May 25, 2006.]

RULE 1. ASSIGNMENT OF CASES

(a) All Civil Cases filed after May 25, 2006 in the Circuit Court of this District shall be assigned promptly after filing by the Senior Circuit Judge or their designee on a random basis that will assure the equal distribution of cases between the four judges so that no discernible pattern of assignment exists and that no person shall know to whom the case will be assigned until such time as this has been accomplished.

(b) The Circuit Clerk of each of the counties of this district shall promptly mail to the Senior Circuit Judge or their designee a notice of the filing of all Civil Cases by use of a form made available by the Administrative Office of Courts. Process shall issue for Defendant upon the filing of the complaint in accordance with Rule 4, MRCP.

(c) After the cases have been randomly assigned, a number shall then be assigned to each case and summons issued bearing the appropriate designation of a judge as follows: The year in which the case is filed followed by the next sequential number followed in parenthesis by the initials of the name of the assigned judge: (BWS) for Sanders; (H) for Hines; (CMC) for Carey-McCray; and (RS) for Smith. Example: 2006-001CI(BWS).

(d) An original and one copy of the complaint and answer and any subsequent filing shall be filed with the Clerk, and said copies shall be forwarded by the Clerk to the judge to whom the case has been assigned.

(e) (1) A party filing an appeal from a county court or an administrative agency shall have 40 days from the date the record is filed with the clerk to file the Appellant's Brief. Appellee shall have 30 days from the date on which Appellant's Brief is due to file a Reply Brief. Appellant shall file any Rebuttal Brief within 14 days after the filing of Appellee's Reply Brief.

(2) The clerk shall keep track of all appeals and shall promptly transmit copies of the original Briefs to the judge to whom the case is assigned.

(3) Appellant's Brief and Appellee's Reply Brief shall not exceed fifteen (15) pages of 8-1/2 x 11" paper. Appellant's Rebuttal Brief shall not exceed five (5) pages.

(4) Any requests for extension of time shall be made in writing to the judge to whom the case is assigned. Extensions of time shall be granted only upon written order of the Court.

RULE 2. TRIAL SETTINGS

(a) All Civil Cases shall be assigned by computer generated random assignment of judges based on pre-set percentages.

(b) Civil matters assigned in accordance with Rule 1(a) and Rule 2(a) will be scheduled for trial by agreement of counsel, in term time or otherwise, to insure the rapid disposition of the cases in accordance with the rules of discovery and time standards.

(c) Criminal cases are randomly assigned after arraignment. A docket is published by each Court Administrator setting the cases for trial.

(d) Both Civil and Criminal Dockets shall be approved by the responsible judge before finally prepared and promulgated.

(e) If any attorney has a conflict, counsel must immediately notify the court administrator.

(f) In the event the Court Administrator is unable to resolve any conflict between attorneys in civil matters and between the defense attorney and the District Attorney in criminal matters, the respective judge shall resolve the conflict and set the case for trial.

RULE 3. SCHEDULING ORDER

(a) Within 30 days after issue is joined in a case, but no later than 60 days after the complaint is filed, counsel are required to present to the Court a proposed Scheduling Order, in the form attached hereto, setting forth deadlines for the joining of other parties and amending the pleadings; service of motions; and the completion of discovery. If more than 90 days discovery time is requested, the proposed Order should be accompanied by an explanation of the necessity for the protracted period. The proposed Order shall provide that motions to add parties or to amend the pleadings must be served no more than 30 days after the date of the Scheduling Order. All counsel are required to make a realistic estimate of the time needed for discovery but all requested periods of discovery shall remain under the supervision of the Court, and lengthened or shortened as the case dictates, and the Court shall

enter a Scheduling Order accordingly. In the event counsel are unable to agree upon the terms of the Scheduling Order or fail to submit a proposed order to the Court within the time required by this paragraph, discovery shall be limited to the time provided in the Mississippi Rules of Civil Procedure. Extensions of deadlines will be granted by the Court only upon a showing of good cause.

(b) Upon completion of discovery and the filing of a Pretrial Order, in the form attached hereto, a case shall be scheduled for trial.

(c) A request for a pretrial conference may be made by any party after completion of discovery and prior to the filing of the Pretrial Order.

RULE 4: MOTION PRACTICE

(a) **Applicability.** The provisions of this rule apply to all written motions filed in civil actions.

(b) **Filing; Proposed Orders.** The original of each motion, and all affidavits and other supporting documents shall be filed with the Clerk where the action is filed. The moving party at the same time shall mail two (2) copies thereof to the Judge presiding in the action at their home office mailing address.

A proposed Order shall accompany the court's copy of all motions not agreed to, the moving party shall submit two (2) orders, one(1) granting the motion and another denying the motion.

(c) **Responses.** The original of any response to the motion, all opposing affidavits, and other supporting documents shall be filed with the Clerk where the action is filed and any response to the motion and all objections shall be filed and copies distributed as provided in Paragraph (b) of this rule.

(d) **Memoranda; Documents Required With Motions to Dismiss or for Summary Judgment; Failure to Submit Required Documents.** At the time the motion is served, other than motions or applications which may be heard ex parte or those involving necessitous or urgent matters, counsel for movant shall mail to the Judge the original memorandum of authorities upon which he relies and pertinent portions of the pleadings filed in the case. Counsel for respondent shall submit the original memorandum of authorities in reply *including any affidavits, etc., in response to motions for summary judgment* and shall do so within ten (10) days after service of movant's memorandum. Counsel for movant desiring to submit a rebuttal memorandum may do so within five (5) days after the service of the respondent's memorandum. Any requests for extension of time shall be made in writing to

the Judge before whom the motion is noticed. Memoranda submitted in connection with any dispositive motion shall be accompanied by separate proposed findings and conclusions.

(e) Length of Memoranda. Movant's Memorandum and Respondent's Reply Memorandum shall not exceed 25 pages, and Movant's Rebuttal Memorandum shall not exceed 15 pages. Memoranda and other submissions required by Paragraph (D), except as therein provided, are not to be filed with the Clerk's office.

(f) Notice and Hearings. All motions in which a hearing is requested before Judge Sanders shall be set and governed in accordance with the instructions on her website.

All motions shall be decided by the Court without a hearing or oral argument unless otherwise ordered by the Court on its own motion, or, in its discretion, upon written motion made by either counsel.

The scheduling of an evidentiary hearing or oral argument, where allowed, shall be set at such time and place as may suit the convenience of counsel and the judge assigned to the case. The Court may, in its discretion, hear oral argument by telephonic conference.

(g) Urgent or Necessitous Matters. Where the motion relates to an urgent or necessitous matter, counsel for the movant shall, prior to the filing of the motion, contact the Court Administrator, and arrange a definite time and place for the hearing of the motion. In such cases, counsel for movant shall endorse upon the motion a separate certificate giving notice to the other parties of the time and place fixed by the Court for hearing of the motion. The court, upon receipt of the motion, may, at its own discretion, direct counsel as to the submission of memorandum of the authorities of the court's questions.

(h) Services. Movant and respondent shall serve copies of all motions, responses, and/or memoranda upon opposing counsel. Where service is by mail, three (3) days shall be added to the period prescribed in Paragraph (d) of this rule.

(i) Court Reporters. The floating court reporter shall be assigned to any special judge or judicial officer appointed to hear cases in this district.

(j) Untimely Motions. Any motion served beyond the motion deadline imposed in the scheduling order allowed pursuant to Rule 3, with the exception of in limine evidentiary motions, may be denied solely because the motion is served untimely.

(k) Sanctions-Frivolous Motion or Opposition. A patently frivolous motion or opposition to a motion on patently frivolous grounds may result in the imposition of appropriate sanctions, including the assessment of costs and attorneys' fees.

(l) Sanctions-Unreasonable Delays. Delays, or continuances, or waste of the court's time occasioned by the failure of a party to follow the procedures outlined in this rule may result in the imposition of appropriate sanctions, including assessments of costs and attorneys' fees.

(m) In this regard, counsel shall notify the assigned Judge immediately if a submitted motion is resolved by the parties or if the case in which the motion has been pending is settled.

(n) All pleadings shall, in addition to other requirements, clearly indicate the complete name, mailing address, telephone number and bar roll number of counsel filing same and shall be signed by the attorney. Any proposed order shall bear the name of the attorney submitting same.

RULE 5. PRETRIAL CONFERENCES AND PRETRIAL ORDERS

(a) Cases in which Conference to Be Held; Scheduling. A pretrial conference may be held in all civil actions pursuant to the scheduling orders.

(b) Whenever possible, pretrial conferences shall be separately scheduled at a date, place and hour and for such period of time as the subject matter of the particular case may require, but in all events, pretrial conferences shall be scheduled in such manner as not to cause undue or inordinate inconvenience to opposing counsel.

RULE 6. CONTINUANCES

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

RULE 7. CONFLICTS, RECUSAL

(a) In the event a case is assigned to a Judge having a conflict as contemplated by the Canon (3) et seq. of the Code of Judicial Conduct, the judge shall then advise the Senior Circuit Judge of such conflict and return all materials connected with the matter.

(b) Upon receipt of such notification the Senior Circuit Judge shall proceed to reassign the case to another judge, returning the disqualified Judge's name to the pool so that the judge will draw another case to replace the one returned.

(c) In the event all Judges of the District disqualify themselves, the Senior Circuit Judge shall make proper application to the Mississippi Supreme Court for the appointment of a judge.

RULE 8. FILING OF DISCOVERY MATERIALS

(a) Interrogatories under Rule 33, M.R.C.P., and the answers thereto, Request for Production and Inspection under Rule 34, M.R.C.P., Request for Admissions under Rule 36, M.R.C.P., and responses thereto, and depositions under Rules 30 and 31, M.R.C.P., shall be served upon other counsel of parties as provided by the Rules, but *shall not* be filed with the Circuit Court Clerk. The party responsible for services of the discovery material shall retain the original and become the custodian.

(b) If relief is sought under the Mississippi Rules of Civil Procedure concerning any interrogatories, requests for production or inspection, request for admissions, answers to interrogatories, responses to requests for admissions of depositions, copies of the *portions* of the interrogatories, requests, answers, responses or depositions *in dispute* shall be filed with the appropriate Circuit Court Clerk and with the assigned Judge contemporaneously with any motion filed under said Rules.

(c) If interrogatories, requests, answers, responses of depositions are to be used at trial or are necessary for pre-trial motion which might result in a final order on any issue, the portions to be used shall be considered an exhibit and filed with the Clerk at the outset of the trial or at the filing of the motion insofar as their use can be reasonably anticipated.

(d) When documentation of discovery not previously in the record is needed for appeal purpose, upon an application and order of the Court, or by stipulation of counsel, the necessary discovery papers shall be filed with the Clerk.

(e) The Clerks of this Court are authorized and directed to return forthwith any discovery materials submitted for filing which does not comply with the requirements set forth herein above. This order shall be spread on the minutes of this Court and a copy thereof made available to any attorney and/or party requesting same.

RULE 9. VIDEOTAPE DEPOSITIONS

The videotaping of a deposition in addition to the preparation of the usual written transcript shall be permitted as provided by court order or stipulation.

(a) The videotape deposition of a witness shall also be taken in the usual manner by a qualified shorthand or machine reporter and a written transcript prepared for use in subsequent court proceedings.

(b) The time and place of the taping of the deposition shall be set by notice served in the same manner as for a regular deposition, except it shall state that a videotape deposition is being taken.

(c) The videotape operation technician shall certify as to the correctness and completeness of the videotape.

(d) At the beginning of the deposition the parties and counsel shall be shown in the visual portion of the deposition.

(e) During the deposition the witness shall be recorded in as near to courtroom atmosphere and standards as possible. There will not be any "zoom in" procedures to unduly emphasize any portion of the testimony, but "zoom in" will be allowed for exhibits and charts to make them visible to the jury. The camera shall focus as much as possible on the witness. The attorneys may be shown on introduction, the beginning of examination and during objections.

(f) It shall not be necessary for a witness to view and/or approve the videotape of a deposition.

(g) Any party may purchase a duplicate original or edited tape from the video operator technician at any time.

(h) Objections to the admissibility of any portion of a video deposition shall be made to the party offering such deposition not less than 20 days prior to the status conference and, if the parties cannot agree on the objections, written objections shall be filed with the judge stating the grounds of the objection along with the transcript not less than ten (10) days prior to such conference and the judge shall make a final ruling and the party offering the deposition shall have the objectionable testimony deleted from the tape.

[Adopted by order entered in the trial court and approved by the Supreme Court by order entered May 25, 2006.]