

Serial: 212464

**IN THE SUPREME COURT OF MISSISSIPPI**

**No. 89-R-99025-SCT**

***IN RE: UNIFORM RULES OF CIRCUIT AND COUNTY COURT PRACTICE***

**EN BANC ORDER**

On December 15, 2016, by unanimous order of the Court, the Mississippi Rules of Criminal Procedure were adopted. The Court's *en banc* order provided that this new body of rules take effect July 1, 2017, and adjudicated that the Mississippi Rules of Criminal Procedure “. . . shall govern the procedure in all criminal proceedings in the Circuit, County, Justice and Municipal Courts of this State.”

Inasmuch as said Mississippi Rules of Criminal Procedure have the effect of altering, duplicating, supplementing and/or replacing certain of the existing provisions of Mississippi's Uniform Rules of Circuit and County Court Practice, the Court finds and adjudicates that said Uniform Rules of Circuit and County Court Practice should be, and they hereby are, amended in accordance with Exhibit A, which by reference is incorporated in and made a part of this order. Such amendments shall take effect on July 1, 2017.

The Clerk of this Court shall spread this order and the amended rules attached hereto on the minutes of the Court, and the Clerk shall provide a certified copy thereof to West Publishing Company for publication in a forthcoming edition of the Southern Reporter, Mississippi Cases, which is the official publication of the decisions of this Court, and in the next edition of the Mississippi Rules of Court.

SO ORDERED, this the 15th day of May, 2017.

/s/ James W. Kitchens

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JAMES W. KITCHENS, JUSTICE  
FOR THE COURT

ALL JUSTICES AGREE.

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## UNIFORM **CIVIL** RULES OF CIRCUIT AND COUNTY COURT PRACTICE

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## 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;** LOCATION OF RULES APPLICABLE IN ALL PROCEEDINGS~~

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 Series 1, 2 and 3 of these rules apply to all proceedings, civil or criminal.~~

### 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](http://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**

~~A.~~ Except as set forth below, ~~the~~ the procedures for subpoenas in both civil and criminal matters shall conform to Rule 45 of the Mississippi Rules of Civil Procedure. This rule shall not apply to proceedings before a grand jury.

~~B. Subpoenas Duces Tecum in Criminal Cases for Production at Trial or Hearing.~~ A subpoena in a criminal case may, without a motion or hearing, require the production of books, papers, documents or other objects at the date, time and place at which the trial, hearing or proceeding at which these items are to be offered in evidence is scheduled to take place.

~~C. 1. Subpoenas Duces Tecum in Criminal Cases for Production other than at Trial or Hearing.~~ No subpoena in a criminal case may require the production of books, papers, documents or other objects at a date and time or place other than the date, time and place at which the trial, hearing or proceeding at which these items are to be offered in evidence is scheduled to take place, unless the court has entered an order pursuant to this rule authorizing the issuance of such subpoena.

~~2. Motions; Service; Opposition.~~ A hearing on a motion for the issuance of a subpoena duces tecum shall be set at the time the motion is filed and served. The hearing shall be set no earlier than ten (10) days after filing and service of the motion. Except for good cause shown, all motions for subpoenas

~~duces tecum shall be served on: (1) the custodian of the books, papers, documents or other objects which would be subject to the subpoena; (2) all parties; (3) all persons whose books, papers, documents or other objects would be subject to the subpoena; and (4) all persons who may have a claim that privileged material would be subject to the subpoena. Any party to the action or other interested person may file an opposition or response.~~

~~**3. Supporting Affidavit or Declaration.** Motions seeking subpoenas duces tecum under this rule shall be supported by an affidavit or declaration stating facts which establish: (1) the documents or objects sought are evidentiary and relevant; (2) the documents or objects sought are not otherwise reasonably procurable in advance of the trial, hearing or proceeding by exercise of due diligence; (3) the moving party cannot properly prepare for trial without such production and inspection in advance of trial and the failure to obtain such inspection may tend unreasonably to delay the trial; and (4) the application is made in good faith and is not intended for the purpose of general discovery.~~

~~**4. Immediate Lodging with Court.** Any subpoena duces tecum issued under this subsection shall be returnable to and the items sought thereunder produced before the court. In the event that materials subject to a subpoena are received by a party, an attorney, or an attorney's agent or investigator directly from the subpoenaed person, any person receiving such materials shall immediately notify the court and shall immediately lodge such materials with the court. The materials shall not be opened, reviewed or copied by a recipient without a prior court order.~~

~~**D. Sanctions.** Violation of this rule may provide a basis for sanctions.~~

[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 ~~or indictment~~, 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 WITNESSES**

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 ~~in civil or criminal cases~~ 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.

~~In criminal cases if there are two or more defendants, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed; if the jury cannot agree with respect to all defendants, the defendant or defendants as to whom it does not agree may be tried again.~~

~~In criminal cases if different counts are charged in the indictment or if the court instructs the jury as to related or lesser offenses, the jurors shall, if they convict the defendant, make it appear by their verdict on which counts or of which offenses they find the defendant guilty.~~

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, ~~unless a bifurcated hearing is necessary~~. 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. ~~In a criminal case where the verdict is unanimous and in a civil case~~ **W**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 ~~unless a bifurcated hearing is necessary~~. ~~If a juror dissents in a criminal case or in a civil case~~ **I**f 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**

~~SCOPE OF CIVIL RULES~~

~~Rule Series 4 and 5 shall apply only in civil proceedings.~~

**Rule 4.021**

## 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 4.032 MOTION PRACTICE

The provisions of this rule shall apply to all written motions ~~in civil actions~~.

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 4.043**  
**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 4.054**  
**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 4.065**  
**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 4.076**  
**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.

**Rule 6.01**

~~SCOPE OF RULES APPLICABLE ONLY  
IN CRIMINAL PROCEEDINGS~~

~~Rule Series 6 through 12 are applicable only to criminal proceedings. For the purpose of these rules a misdemeanor is defined as a criminal offense punishable by a maximum possible sentence of confinement for one year or less, fine, or both.~~

**Rule 6.02**

~~BAIL~~

~~A. Pretrial bail shall be governed by §§ 29 of the Mississippi Constitution of 1890.~~

~~B. In all cases involving murder, manslaughter, rape, armed robbery, kidnaping, or other crime punishable by incarceration for a term of twenty (20) years or more, bond shall be 100% of the bail set, unless otherwise ordered by the court. Bail shall be taken in the following form:~~

State of Mississippi

County of \_\_\_\_\_

We, \_\_\_\_\_, principal, and \_\_\_\_\_ and \_\_\_\_\_, sureties, agree to pay the State of Mississippi \_\_\_\_\_ dollars, unless, principal, shall appear at the next term of the Circuit Court of County, and there remain from day to day and term to term until discharged by the trial court or the Supreme Court of Mississippi, to answer a charge of \_\_\_\_\_.

Signed: \_\_\_\_\_

\_\_\_\_\_

Approved \_\_\_\_\_.

~~C. All other persons permitted to make bail may, in lieu of a 100% bond, make a cash bail bond provided the following requirements are met:~~

- ~~1. The accused must never have been convicted in any court of this state, another state or a federal court, of a crime punishable by more than one year's imprisonment, been charged with escape, or had an order nisi entered on a previous bond;~~
- ~~2. The amount of the bond must be set by the proper authority;~~
- ~~3. A return date must be set by the proper authority;~~



~~D. The clerk shall in all cases collect the fee imposed by § 83-39-31 of the Mississippi Code of 1972 on the face value of the bond by calculating the fee on the amount of the bond, not the amount deposited.~~

~~E. The circuit judge has the discretion to waive or modify any requirements of this rule, except for the collection of the fee as set by § 83-39-31.~~

~~F. The sheriff, upon proof that all of the foregoing conditions have been met, shall approve all written bonds and return them to the circuit clerk. The circuit clerk shall file and keep these bonds separately in a safe place where they can be kept for presentation at trial or on demand of the court.~~

~~[Adopted effective May 1, 1995; amended effective August 26, 1999]~~

### **Rule 6.03**

#### **INITIAL APPEARANCE**

~~Every person in custody shall be taken, without unnecessary delay and within 48 hours of arrest, before a judicial officer or other person authorized by statute for an initial appearance.~~

~~Upon the defendant's initial appearance, the judicial officer or other person authorized by statute shall ascertain the defendant's true name and address, and amend the formal charge if necessary to reflect this information. The defendant shall be informed of the charges against him/her and provided with a copy of the complaint. If the arrest has been made without a warrant, the judicial officer shall determine whether there was probable cause for the arrest and note the probable cause determination for the record. If there was no probable cause for the warrantless arrest, the defendant shall be released. The judicial officer shall also advise the defendant of the following:~~

- ~~1. That the defendant is not required to speak and that any statements made may be used against him/her;~~
- ~~2. If the defendant is unrepresented, that the defendant has the right to assistance of an attorney, and that if the defendant is unable to afford an attorney, an attorney will be appointed to represent him/her;~~
- ~~3. That the defendant has the right to communicate with an attorney, family or friends, and that reasonable means will be provided to enable the defendant to do so;~~
- ~~4. Conditions under which the defendant may obtain release, if any;~~
- ~~5. That the defendant has the right to demand a preliminary hearing while the defendant remains in custody.~~

### **Rule 6.04**

#### **PRELIMINARY HEARING**

~~At a preliminary hearing the judicial officer shall determine probable cause and the conditions for release, if any. A finding of probable cause may be based on hearsay evidence. Objections to evidence on the ground that it was acquired by unlawful means are not properly made at the preliminary hearing.~~

~~If from the evidence it appears that there is probable cause to believe that an offense has been committed, and that the defendant committed it, the judicial officer shall bind the defendant over to await action of the grand jury. If from the evidence it appears that there is no probable cause to believe that an offense has been committed or that the defendant committed it, the defendant shall be discharged from custody. The discharge of the defendant shall not preclude the state from instituting a subsequent prosecution for the same offense.~~

**Rule 6.05**

~~**WAIVER OF INITIAL APPEARANCE  
AND PRELIMINARY HEARING**~~

~~In all cases wherein the defendant shall post bond and is released from custody, or is allowed release on his/her own recognizance, or has been indicted by a grand jury, the defendant shall not be entitled to an initial appearance. A defendant who has been indicted by a grand jury shall not be entitled to a preliminary hearing.~~

**Rule 6.06**

~~**CHANGE OF VENUE**~~

~~A change of venue may be granted, in the discretion of the judge, upon a showing of good cause. The judge, if the change is granted, shall direct that a certified copy of the order granting the change of venue be transmitted to the circuit clerk of the county to which the venue has been changed. The circuit clerk of the county to which the venue has been changed must file the certified order and designate a docket number for said case for future reference. Unless otherwise directed by the presiding judge, all pleadings, motions, orders of the court or other matters that are thereafter filed shall bear both the original number of the county of original venue and the assigned number of the county of changed venue and shall be filed with the circuit clerk of the county of original venue. The presiding judge may hear or determine all pretrial and post-trial matters in the county to which venue has been changed or in any county of the presiding judge's district. In all cases in which venue has been changed it shall be within the presiding judge's discretion, after the jury has been selected, to conduct the trial in the county of original venue, or in the county to which venue has been transferred. All costs of a trial transferred from one county to another county, including the cost of transporting the jury from one county to another where the same is ordered, shall be borne by the county of original venue. The clerk of the county of original venue shall handle any appeal.~~

**Rule 6.07**

~~**ALL APPLICATIONS TO BE MADE BY MOTION**~~

~~\_\_\_\_\_ An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion or if the matter is presented in an agreed order.~~

**Rule 6.08**  
**~~INTERACTIVE AUDIOVISUAL DEVICES~~**

~~**(a) General Provisions.** When the appearance of a defendant or counsel is required in circuit, county, municipal or justice court, subject to the provisions of this Rule, the appearance may be made by the use of interactive audiovisual equipment, including video conferencing equipment. Interactive audiovisual equipment shall at a minimum operate so as to enable the court and all parties to view and converse with each other.~~

~~**(b) Requirements.** In using interactive audiovisual equipment the following are required:~~

- ~~\_\_\_\_\_ (1) a full record of the proceedings shall be made as provided in applicable rules;~~
- ~~\_\_\_\_\_ (2) the court shall determine that the defendant knowingly, intelligently, and voluntarily agrees to appear at the proceeding by interactive audiovisual means; and~~
- ~~\_\_\_\_\_ (3) provisions shall be made to allow for confidential communications between the defendant and counsel before and during the proceeding. Defense counsel shall be present at the location with the defendant during the proceedings.~~
- ~~\_\_\_\_\_ (4) Appearance by interactive audiovisual equipment, including video conferencing, may be permitted in the discretion of the court at any proceeding except that this rule shall not apply to any trial, probation violation hearing, or any plea or sentencing.~~

~~\_\_\_\_\_~~  
Comment

~~\_\_\_\_\_ Section (b) preserves a defendant's right to be present personally by providing that a defendant must consent to appear by interactive audiovisual means. While section (b)(4) generally puts the use of such technology in the discretion of the court, Rule 6.08 is inapplicable to trials, probation violation hearings, and pleas and sentencing. By the adoption of this rule, the Supreme Court has superceded Section 99-1-23 of the Mississippi Code, exercising its inherent authority to adopt rules of practice, procedure and evidence to promote justice, uniformity, and the efficiency of the courts. See *State v. Delaney*, 52 So. 3d 348, 351 (Miss. 2011); *Hall v. State*, 539 So. 2d 1338 (Miss. 1989); *Newell v. State*, 308 So. 2d 71 (Miss. 1975).~~

~~[Adopted effective April 18, 2013.]~~

**Rule 7.01**  
**~~CHARGE TO THE GRAND JURY~~**

~~—The circuit judge shall charge the grand jury according to the matters required by law and other statutes as the judge deems fit and proper. Only the circuit judge shall deliver the charge to the grand jury, except that the circuit clerk may read the charge as proposed by the circuit judge when the judge shall be unable to deliver the charge by reason of physical infirmity. A sample charge which may be used is attached as an appendix to these rules.~~

**Rule 7.02**

**~~GRAND JURY~~**

~~—Grand juries may serve both in term time and vacation and any circuit judge may impanel a grand jury in term time or vacation. The grand jury shall consist of at least 15 persons, but not more than 20 persons, the exact number to be within the discretion of the judge impaneling the jury. Upon impanelment, a grand jury may be convened and reconvened by order of the court. The grand jury will continue to serve until the next grand jury is impaneled and it may return indictments to court in term or vacation notwithstanding intervening terms of court between the time the grand jury is impaneled and the time an indictment is returned. The court may appoint the clerk of court to accept the grand jury indictments. The court may adjourn the grand jury in its discretion. The court shall appoint one member of the grand jury as foreman, who shall take the oath prescribed in § 13-5-45 of the Mississippi Code of 1972. In the event a foreman shall become unable to continue service as a grand juror, the circuit judge shall appoint another member as foreman. The fact that the original foreman was replaced shall not be grounds for attacking the validity of the acts or indictments of the grand jury. If during the service of a grand jury the number of grand jurors able to serve on the grand jury shall become less than 15, then the circuit judge may have additional grand jurors summoned and impaneled. These additional jurors shall be charged in the same manner as the original jurors.~~

**Rule 7.03**

**~~GRAND JURY NOT TO DO CERTAIN THINGS~~**

~~—A grand jury has the power to indict any person upon affirmative vote of 12 or more grand jurors. The grand jury report should not accuse any person by name of an offense, malfeasance or misfeasance unless an indictment is returned. If accusations are included in a grand jury report, the comments may be expunged upon the motion of the individual(s), or on motion of the court.~~

**Rule 7.04**

**~~GRAND JURY SECRECY~~**

~~—A grand juror, except when called as a witness in court, shall keep secret the proceedings and actions taken in reference to matters brought before the grand jury for six months after final adjournment of the grand jury and the name and testimony of any witness appearing before the grand jury shall be kept secret. No grand juror, witness, attorney general, district attorney, county attorney, other prosecuting attorney, clerk, sheriff or other officer of the court shall disclose to any unauthorized person that an indictment is being found or returned into court against a defendant or disclose any action or proceeding in relation to the indictment before the finding of an indictment or within six months thereafter~~

~~or before the defendant is arrested or gives bail or recognizance. No attorney general, district attorneys, county attorneys, or any other prosecuting attorneys or any other officer of the court shall announce to any unauthorized person what the grand jury will consider in its deliberations. If such information is disclosed, the disclosing person may be found in contempt of court punishable by fine or imprisonment.~~

**Rule 7.05**

~~RECALCITRANT WITNESSES BEFORE GRAND JURY~~

~~When a witness under examination before the grand jury refuses to testify, to answer a question or to give evidence, the grand jury shall proceed with the witness in open court. The foreman shall then distinctly state to the court the question or evidence requested and the refusal of the witness. If, after inquiry, the court shall decide that the witness is bound to testify, answer or give the evidence, the court shall so inform the witness. If the witness persists in refusing to answer the question, or testify, or to give evidence, the court shall proceed with the witness as in cases of similar refusal in open court.~~

**Rule 7.06**

~~INDICTMENTS~~

~~The indictment upon which the defendant is to be tried shall be a plain, concise and definite written statement of the essential facts constituting the offense charged and shall fully notify the defendant of the nature and cause of the accusation. Formal and technical words are not necessary in an indictment, if the offense can be substantially described without them. An indictment shall also include the following:~~

- ~~1. The name of the accused;~~
- ~~2. The date on which the indictment was filed in court;~~
- ~~3. A statement that the prosecution is brought in the name and by the authority of the State of Mississippi;~~
- ~~4. The county and judicial district in which the indictment is brought;~~
- ~~5. The date and, if applicable, the time at which the offense was alleged to have been committed. Failure to state the correct date shall not render the indictment insufficient;~~
- ~~6. The signature of the foreman of the grand jury issuing it; and~~
- ~~7. The words "against the peace and dignity of the state."~~

~~The court on motion of the defendant may strike from the indictment any surplussage, including unnecessary allegations or aliases.~~

~~[Adopted effective May 1, 1995; amended August 26, 1999.]~~

**Rule 7.07**

**MULTIPLE COUNT INDICTMENTS**

~~A. Two (2) or more offenses which are triable in the same court may be charged in the same indictment with a separate count for each offense if: (1) the offenses are based on the same act or transaction; or (2) the offenses are based on two (2) or more acts or transactions connected together or constituting parts of a common scheme or plan.~~

~~B. Where two (2) or more offenses are properly charged in separate counts of a single indictment, all such charges may be tried in a single proceeding.~~

~~C. The trier of fact shall return a separate verdict for each count of an indictment drawn under subsection (A) of this rule.~~

~~D. When a defendant is convicted of two (2) or more offenses charged in separate counts of an indictment, the court shall impose separate sentences for each such conviction.~~

~~E. Nothing contained in this rule shall be construed to prohibit the court from exercising its authority to suspend either the imposition or execution of any sentence or sentences imposed, nor to prohibit the court from exercising its discretion to impose such sentences to run either concurrently with or consecutively to each other or to any other sentence or sentences previously imposed upon the defendant.~~

**Rule 7.08**

**JOINDER OF DEFENDANTS**

~~Two or more defendants may be charged in the same indictment upon which they are to be tried when:~~

~~1. Each defendant is charged with accountability for each offense charged; or~~

~~2. Each defendant is charged with conspiracy and some of the defendants are also charged with one or more offenses alleged to have been committed in furtherance of the conspiracy; or~~

~~3. Even if conspiracy is not charged and all defendants are not charged in each count, but it is alleged that the several offenses charged were part of a common scheme or plan.~~

**Rule 7.09**

**AMENDMENT OF INDICTMENTS**

~~All indictments may be amended as to form but not as to the substance of the offense charged. Indictments may also be amended to charge the defendant as an habitual offender~~

~~or to elevate the level of the offense where the offense is one which is subject to enhanced punishment for subsequent offenses and the amendment is to assert prior offenses justifying such enhancement (e.g., driving under the influence, Miss. Code Ann. § 63-11-30). Amendment shall be allowed only if the defendant is afforded a fair opportunity to present a defense and is not unfairly surprised.~~

**Rule 8.01**  
**ARRAIGNMENT**

~~Arraignment, unless waived by the defendant, shall be held within thirty (30) days after the defendant is served with the indictment. At or within sixty (60) days of arraignment (or waiver thereof), the court shall enter an order setting a date for trial. Unless good cause be shown, and a continuance granted by written order setting forth the reason for the continuance, an accused shall be brought to trial no later than two hundred seventy (270) days following arraignment (or waiver thereof).~~

~~Arraignment shall be held in open court, and shall consist of (i) reading the indictment to the accused; and, (ii) calling upon the defendant to plead to the charge in the indictment. Prior to arraignment a copy of the indictment shall be served on the defendant. Defendants who are jointly charged may be arraigned separately or jointly within the discretion of the court. If codefendants are arraigned at the same time and charged with the same offense, the indictments need be read only once, with stated identification of each defendant.~~

~~In all cases waiver of the reading of the indictment may be permitted if the defendant is represented by an attorney. Arraignment is deemed waived when the defendant proceeds to trial without objection.~~

~~[Adopted effective May 1, 1995; Amended effective July 1, 2008, to provide that the matter shall be set for trial at or within 60 days of arraignment. Effective as to all arraignments on and after July 1, 2008.]~~

**Rule 8.02**  
**REVIEW OF BOND AND**  
**SETTING OF DEADLINES FOR PRETRIAL MOTIONS**

~~At arraignment, the court shall review the amount of bond previously set, and, if the bond is not binding until the date of trial, the bond may be continued until the date of trial. At arraignment or thereafter, the court may set a reasonable deadline for the filing and hearing of all pretrial motions. Pretrial motions shall include, but are not limited to: motions to dismiss, to suppress evidence, to request discovery, for continuance, for severance, for appointment of experts, for mental examination, or any other motions addressed to matters which may delay the trial.~~

**Rule 8.03**  
**DEFENDANT'S PRESENCE AT PLEA**

~~— The defendant, charged with the commission of a felony, who wishes to enter a plea of guilty is required to plead personally. The defendant's personal appearance may be required by the court when the defendant is charged with a misdemeanor.~~

~~— If the defendant, on arraignment, refuses or neglects to plead, stands mute, or pleads evasively, the court will enter a plea of not guilty and will proceed to trial.~~

~~— If the defendant is released on bail, and does not appear to be arraigned, or as required by the bond, the court may in addition to forfeiture of bail, direct the clerk to issue a *caapias* to bring the defendant before the court.~~

#### **Rule 8.04**

### **ENTRY OF GUILTY PLEAS, PLEA BARGAINING, WITHDRAWAL OF GUILTY PLEAS**

#### **A. Entry of Guilty Pleas**

- ~~1. A defendant may plead not guilty, or guilty, or with the permission of the court, *nolo contendere*.~~
- ~~2. *Entry of Guilty Plea.* A person who is charged with commission of a criminal offense in county or circuit court, and is represented by an attorney may, at his/her own election, appear before the court at any time the judge may fix, and be arraigned and enter a plea of guilty to the offense charged, and may be sentenced by the court at that time or some future time appointed by the court.~~
- ~~3. *Voluntariness.* Before the trial court may accept a plea of guilty, the court must determine that the plea is voluntarily and intelligently made and that there is a factual basis for the plea. A plea of guilty is not voluntary if induced by fear, violence, deception, or improper inducements. A showing that the plea of guilty was voluntarily and intelligently made must appear in the record.~~
- ~~4. *Advice to the Defendant.* When the defendant is arraigned and wishes to plead guilty to the offense charged, it is the duty of the trial court to address the defendant personally and to inquire and determine:
  - ~~a. That the accused is competent to understand the nature of the charge;~~
  - ~~b. That the accused understands the nature and consequences of the plea, and the maximum and minimum penalties provided by law;~~~~

~~c. That the accused understands that by pleading guilty (s)he waives his/her constitutional rights of trial by jury, the right to confront and cross-examine adverse witnesses, and the right against self-incrimination; if the accused is not represented by an attorney, that (s)he is aware of his/her right to an attorney at every stage of the proceeding and that one will be appointed to represent him/her if (s)he is indigent.~~

~~5. *Withdrawal of Plea of Guilty.* It is within the discretion of the court to permit or deny a motion for the withdrawal of a guilty plea.~~

~~6. *Sufficiency of Motion.* In order to be sufficient, a motion to withdraw a plea of guilty must show good cause.~~

~~7. *Inadmissibility of Withdrawn Guilty Plea.* The fact that the defendant may have entered a plea of guilty to the offense charged may not be used against the defendant at trial if the plea has been withdrawn.~~

#### ~~B. **Plea Bargaining**~~

~~1. The prosecuting attorney is encouraged to discuss and agree on pleas which may be entered by the defendant. Any discussions or agreements must be conducted with defendant's attorney, or if defendant is unrepresented, the discussion and agreement may be conducted with the defendant.~~

~~2. The prosecuting attorney, defendant's attorney, or the defendant acting pro se, may reach an agreement that upon an entry of a plea of guilty to the offense charged or to a lesser or related offense, the attorney for the state may do any of the following:~~

~~a. Move for a dismissal of other charges; or~~

~~b. Make a recommendation to the trial court for a particular sentence, with the understanding that such recommendation or request will not be binding upon the court.~~

~~3. Defense attorneys shall not conclude any plea bargaining on behalf of the defendant without the defendant's full and complete consent, being certain that the decision to plead is made by defendant. Defense attorneys must advise defendant of all pertinent matters bearing on the choice of plea, including likely results or alternatives.~~

~~4. The trial judge shall not participate in any plea discussion. The court may designate a cut-off date for plea discussions and may refuse to consider the recommendation after that date. After a recommended disposition on the plea has been reached, it may be made known to the court, along with the reasons for the recommendation;~~

~~prior to the acceptance of the plea. The court shall require disclosure of the recommendation in open court, with the terms of the recommendation to be placed in the record.~~

**Rule 8.05**

**~~PRO SE DEFENDANTS~~**

~~When the court learns that a defendant desires to act as his/her own attorney, the court shall on the record conduct an examination of the defendant to determine if the defendant knowingly and voluntarily desires to act as his/her own attorney. The court shall inform the defendant that:~~

- ~~1. The defendant has a right to an attorney, and if the defendant cannot afford an attorney, the state will appoint one free of charge to the defendant to defend or assist the defendant in his/her defense.~~
- ~~2. The defendant has the right to conduct the defense and that the defendant may elect to conduct the defense and allow whatever role (s)he desires to his/her attorney.~~
- ~~3. The court will not relax or disregard the rules of evidence, procedure or courtroom protocol for the defendant and that the defendant will be bound by and have to conduct himself/herself within the same rules as an attorney, that these rules are not simple and that without legal advice his/her ability to defend himself/herself will be hampered.~~
- ~~4. The right to proceed pro se usually increases the likelihood of a trial outcome unfavorable to the defendant.~~
- ~~5. Other matters as the court deems appropriate.~~

~~After instructing the defendant and ascertaining that the defendant understands these matters, the court will ascertain if the defendant still wishes to proceed pro se or if the defendant desires an attorney to assist him/her in his/her defense. If the defendant desires to proceed pro se, the court should determine if the defendant has exercised this right knowingly and voluntarily, and, if so, make the finding a matter of record. The court may appoint an attorney to assist the defendant on procedure and protocol, even if the defendant does not desire an attorney, but all disputes between the defendant and such attorney shall be resolved in favor of the defendant.~~

**Rule 9.01**

**~~PRETRIAL PUBLICITY~~**

~~Prior to conclusion of the trial, no defense attorney, prosecuting attorney, clerk, deputy clerk, law enforcement official or other officer of the court, may release or authorize release of any statement for dissemination by any means of public communication on any matter concerning:~~

- ~~1. The prior criminal record of the defendant or the defendant's character or reputation;~~

- ~~2. The existence or contents of any confession, admission or statement given by the defendant; or the refusal or failure of the defendant to make any statement;~~
- ~~3. The defendant's performance on any examinations or tests, or the defendant's refusal or failure to submit to an examination or test;~~
- ~~4. The identity, testimony, or credibility of prospective witnesses;~~
- ~~5. The possibility of a plea of guilty to the offense charged, or a lesser offense; and~~
- ~~6. The defendant's guilt or innocence, or other matters relating to the merits of the case, or the evidence in the case.~~

~~**Rule 9.02**~~  
~~**TRIAL DOCKET**~~

~~A docket of cases ready for trial shall be maintained by the clerk or the court administrator. Cases set by the judge for hearing must be ready at the appointed time.~~

~~**Rule 9.03**~~  
~~**SEVERANCE**~~

~~The granting or refusing of severance of defendants in cases not involving the death penalty shall be in the discretion of the trial judge.~~

~~The court may, on motion of the state or defendant, grant a severance of offenses whenever:~~

- ~~1. If before trial, it is deemed appropriate to promote a fair determination of the defendant's guilt or innocence of each offense; or~~
- ~~2. If during trial, upon the consent of the defendant, it is deemed necessary to achieve a fair determination of the defendant's guilt or innocence of each offense.~~

~~**Rule 9.04**~~  
~~**DISCOVERY**~~

~~A. Subject to the exceptions of subsection "B," below, the prosecution must disclose to each defendant or to defendant's attorney, and permit the defendant or defendant's attorney to inspect, copy, test, and photograph upon written request and without the necessity of court order the following which is in the possession, custody, or control of the State, the existence of which is known or by the exercise of due diligence may become known to the prosecution:~~

- ~~1. Names and addresses of all witnesses in chief proposed to be offered by the prosecution at trial, together with a copy of the contents of any statement;~~

~~written, recorded or otherwise preserved of each such witness and the substance of any oral statement made by any such witness;~~

- ~~2. Copy of any written or recorded statement of the defendant and the substance of any oral statement made by the defendant;~~
- ~~3. Copy of the criminal record of the defendant, if proposed to be used to impeach;~~
- ~~4. Any reports, statements, or opinions of experts, written, recorded or otherwise preserved, made in connection with the particular case and the substance of any oral statement made by any such expert;~~
- ~~5. Any physical evidence and photographs relevant to the case or which may be offered in evidence; and~~
- ~~6. Any exculpatory material concerning the defendant.~~

~~Upon a showing of materiality to the preparation of the defense, the court may require such other discovery to the defense attorney as justice may require.~~

~~B. The court may limit or deny disclosure authorized by subsection "A" if it finds that there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment, resulting from such disclosure, which outweighs any usefulness of the disclosure to the defense attorneys.~~

~~The following is not subject to disclosure:~~

- ~~1. *Work Product.* Disclosure shall not be required of legal research or of records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the prosecuting or defense attorney or members of legal staff.~~
- ~~2. *Informants.* Disclosure of an informant's identity shall not be required unless the confidential informant is to be produced at a hearing or trial or a failure to disclose his/her identity will infringe the constitutional rights of the accused or unless the informant was or depicts himself/herself as an eyewitness to the event or events constituting the charge against the defendant.~~

~~C. If the defendant requests discovery under this rule, the defendant shall, subject to constitutional limitations, promptly disclose to the prosecutor and permit the prosecutor to inspect, copy, test, and photograph the following information and material which corresponds to that which the defendant sought and which is in the possession, custody, or control of the defendant or the defendant's attorney, or the existence of which is known, or by the exercise of due diligence may become known, to the defendant or defendant's counsel:~~

- ~~1. Names and addresses of all witnesses in chief which the defendant may offer at trial, together with a copy of the contents of any statement, written, recorded or otherwise preserved of each such witness and the substance of any oral statements made by any such witness;~~
- ~~2. Any physical evidence and photographs which the defendant may offer in evidence;~~
- ~~3. Any reports, statements, or opinions of experts, which the defendant may offer in evidence.~~

~~D. Except as is otherwise provided or in cases where the witness would be forced to reveal self-incriminating evidence, neither the attorney for the parties nor other prosecution or defense personnel shall advise persons having relevant material or information, except the accused, to refrain from discussing the case with the opposing attorneys or showing the opposing attorneys any relevant material, nor shall they otherwise impede the opposing attorney's investigation of the case.~~

~~E. Both the state and the defendant have a duty to timely supplement discovery. If, subsequent to compliance with these rules or orders pursuant thereto, a party discovers additional material or information which is subject to disclosure, that party shall promptly notify the other party or the other party's attorney of the existence of such additional material, and if the additional material or information is discovered during trial, the court shall also be notified.~~

~~F. The attorney receiving materials on discovery is responsible for those materials and shall not distribute them to third parties.~~

~~G. Upon a showing of cause, the court may at any time order that specified disclosures be restricted or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled must be disclosed in time to permit the party's attorney to make beneficial use thereof.~~

~~When some parts of certain material are discoverable under these rules, and other parts are not discoverable, as much of the material should be disclosed as is consistent with the rules.~~

~~Material excised pursuant to judicial order shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal.~~

~~In the event there are matters arguably within the scope of a party's discovery request or an order for discovery, and the opposing party is of the opinion that the requesting party is not entitled to discovery of same, the opposing party shall, as soon as is reasonably practicable, file with the clerk of the court a written statement describing the nature of the information or the materials at issue as fully as is reasonably possible without disclosure of same and stating the grounds for objection to disclosure. Subject to the limitations otherwise provided in these rules, determinations such as whether the matters requested in discovery are relevant to the case, exculpatory, possible instruments of impeachment, and the like, may be made only by the party requesting or to receive the discovery.~~

~~H. Upon request of any person, the court may permit any showing of cause for denial or regulation of disclosures, or portion of such showing, to be made in camera. A record shall be made of such proceedings. If the court enters an order granting relief following a hearing in camera, the entire record of such hearing shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal.~~

~~I. If at any time prior to trial it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the court may order such party to permit the discovery of material and information not previously disclosed, grant a continuance, or enter such other order as it deems just under the circumstances.~~

~~If during the course of trial, the prosecution attempts to introduce evidence which has not been timely disclosed to the defense as required by these rules, and the defense objects to the introduction for that reason, the court shall act as follows:~~

- ~~1. Grant the defense a reasonable opportunity to interview the newly discovered witness, to examine the newly produced documents, photographs or other evidence; and~~
- ~~2. If, after such opportunity, the defense claims unfair surprise or undue prejudice and seeks a continuance or mistrial, the court shall, in the interest of justice and absent unusual circumstances, exclude the evidence or grant a continuance for a period of time reasonably necessary for the defense to meet the non-disclosed evidence or grant a mistrial.~~
- ~~3. The court shall not be required to grant either a continuance or mistrial for such a discovery violation if the prosecution withdraws its efforts to introduce such evidence.~~

~~The court shall follow the same procedure for violation of discovery by the defense.~~

~~Discovery material shall not be filed with the clerk unless authorized by the court.~~

~~Willful violation by an attorney of an applicable discovery rule or an order issued pursuant thereto may subject the attorney to appropriate sanctions by the court.~~

#### **Rule 9.05**

#### **~~ALIBI DEFENSE DISCOVERY~~**

~~Upon the written demand of the prosecuting attorney stating the time, date, and place at which the alleged offense was committed, the defendant shall serve within ten days, or at such other time as the court may direct, upon the prosecuting attorney a written notice of the intention to offer a defense of alibi, which notice shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon which the defendant intends to rely to establish such alibi.~~

~~Within ten days thereafter, but in no event less than ten days before the trial, unless the court otherwise directs, the prosecuting attorney shall serve upon the defendant or the defendant's attorney a written notice stating the names and addresses of the witnesses upon whom the state intends to rely to establish the defendant's presence at the scene of the alleged offense and any other witnesses to be relied on to rebut testimony of any of the defendant's alibi witnesses.~~

~~If, prior to or during trial, a party learns of an additional witness whose identity, if known, should have been included in the information previously furnished, the party shall promptly notify the other party or the party's attorney of the name and address of such additional witness.~~

~~Upon the failure of either party to comply with the requirements of this rule, the court may use such sanctions as it deems proper, including:~~

- ~~1. Granting a continuance;~~
- ~~2. Limiting further discovery of the party failing to comply;~~
- ~~3. Finding the attorney failing to comply in contempt; or~~
- ~~4. Excluding the testimony of the undisclosed witness.~~

~~This rule shall not limit the right of the defendant to testify in his/her own behalf.~~

~~For good cause shown, the court may grant an exception to any of the requirements of this rule.~~

#### **Rule 9.06**

#### **COMPETENCE TO STAND TRIAL**

~~If before or during trial the court, of its own motion or upon motion of an attorney, has reasonable ground to believe that the defendant is incompetent to stand trial, the court shall order the defendant to submit to a mental examination by some competent psychiatrist selected by the court in accordance with § 99-13-11 of the Mississippi Code Annotated of 1972.~~

~~After the examination the court shall conduct a hearing to determine if the defendant is competent to stand trial. After hearing all the evidence, the court shall weigh the evidence and make a determination of whether the defendant is competent to stand trial. If the court finds that the defendant is competent to stand trial, then the court shall make the finding a matter of record and the case will then proceed to trial. If the court finds that the defendant is incompetent to stand trial, then the court shall commit the defendant to the Mississippi State Hospital or other appropriate mental health facility. The order of commitment shall require that the defendant be examined and a written report be furnished to the court every four calendar months, stating:~~

- ~~A. Whether there is a substantial probability that the defendant will become mentally competent to stand trial within the foreseeable future; and~~
- ~~B. Whether progress toward that goal is being made.~~

~~The defendant's attorney, as the defendant's representative, shall not waive any hearing authorized by this rule, but is authorized to consent, on behalf of the defendant, to necessary surgical or medical treatment and procedures.~~

~~If at any time during such commitment, the court decides, after a hearing, that the defendant is competent to stand trial, it shall enter its order so finding and declaring the defendant competent to stand trial, after which the court shall proceed to trial.~~

~~If at any time during such commitment, the proper official at the Mississippi State Hospital or other appropriate mental health facility shall consider that the defendant is competent to stand trial, such official shall promptly notify the court of that effect in writing, and place the defendant in the custody of the sheriff. The court shall then proceed to conduct a hearing on the competency of the defendant to stand trial. If the court finds the defendant is not competent to stand trial, it shall order the defendant committed as provided above. If the court finds the defendant is competent to stand trial, then the case shall proceed to trial.~~

~~If within a reasonable period of time after commitment under the provisions of this rule, there is neither a determination that there is substantial probability that the defendant will become mentally competent to stand trial nor progress toward that goal, the judge shall order that civil proceedings as provided in § § 41-21-61 to 41-21-107 of the Mississippi Code of 1972 be instituted. Said proceedings shall proceed notwithstanding that the defendant has criminal charges pending against him/her. The defendant shall remain in custody until determination of the civil proceedings.~~

**Rule 9.07**  
**INSANITY DEFENSE**

~~If a defendant intends to rely upon the defense of insanity at the time of the alleged crime, the defendant shall, within the time provided for filing pretrial motions or at such later time as the court may direct, serve upon the prosecuting attorney and the clerk of the court a written notice of the intention to offer a defense of insanity. If there is a failure to comply with the requirements of this subsection, the court may use such sanctions as it deems proper, including:~~

- ~~1. Granting a continuance, and, in its discretion, assessing costs against the appropriate attorney or party;~~
- ~~2. Limiting further discovery of the party failing to comply;~~
- ~~3. Finding the attorney failing to comply in contempt; or~~
- ~~4. Excluding the testimony of appropriate witnesses.~~

~~The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.~~

~~Within ten days thereafter, but in no event less than ten days before the trial unless the court otherwise directs, the defendant shall serve upon the prosecuting attorney the names and addresses of the witnesses upon whom the defendant intends to rely to establish the defense of insanity.~~

~~—— If a defendant intends to introduce expert testimony relating to a mental disease, defect, or other condition bearing upon the issue of whether the defendant had the mental state required for the offense charged, the defendant shall, within the time provided for the filing of pretrial motions or at such time as the court may direct, serve upon the prosecuting attorney and the clerk of the court notice of such intention, with the names and addresses of such expert witnesses upon whom the defendant intends to rely.~~

~~—— The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.~~

~~—— The court may, upon motion of the prosecuting attorney, require the defendant to be examined by a competent psychiatrist selected by the court. No statement made by the accused in the course of any examination provided for by this rule shall be admitted in evidence against the defendant on the issue of guilt in any criminal proceeding.~~

~~The prosecuting attorney shall serve notice on the defendant promptly, but in no event less than ten days prior to trial, stating the names and addresses of any witnesses upon whom the state intends to rely relating to the issue of the defendant's mental condition at the time of the alleged offense or the defendant's mental state required for the offense charged.~~

~~If, prior to or during trial, either party learns of an additional witness whose identity should have been included in the notice under this rule, the party shall promptly notify the other party of the name and address of such additional witness.~~

~~—— Upon the failure of either party to comply with the requirements of this rule, or failure by the defendant to submit to an examination when ordered under this rule, the court may use such sanctions as it deems proper, including:~~

- ~~1. Granting a continuance, and, in its discretion, assessing costs against the appropriate attorney or party;~~
- ~~2. Limiting further discovery of the party failing to comply;~~
- ~~3. Finding the attorney failing to comply in contempt; or~~
- ~~4. Excluding the testimony of appropriate witnesses.~~

~~—— For good reason shown, the court may grant an exception to the requirements of this rule.~~

### **Rule 9.08**

### **OMNIBUS HEARING**

~~An omnibus hearing may be held at request of an attorney or on the court's own initiative if the defendant has entered a plea of not guilty. The hearing shall be set at least three days prior to trial; however, the court should allow the attorneys sufficient time to conduct further investigation, complete discovery and continue plea discussions.~~

~~At the omnibus hearing the trial court, on its own initiative, and utilizing an appropriate check list form which the court may direct the attorneys to sign, should:~~

- ~~1. Ensure that rules regarding provision of an attorney have been complied with;~~
- ~~2. Ascertain whether the parties have completed discovery, and if not make orders appropriate to expedite completion;~~
- ~~3. Ascertain whether there are requests for additional disclosures such as medical and scientific reports or other discretionary disclosures;~~
- ~~4. Make rulings on any motions then pending and ascertain whether any additional motions will be made at the hearing or continued portions thereof;~~
- ~~5. Ascertain whether there are any procedural or constitutional issues which should be considered;~~
- ~~6. Upon agreement of the attorneys, or upon a finding that the trial is likely to be protracted or otherwise unusually complicated, continue the omnibus hearing; and~~
- ~~7. Upon the accused's request, permit the accused to change his/her plea.~~

~~All motions prior to trial should ordinarily be reserved for and presented at the omnibus hearing unless the court otherwise directs. Check list forms should be utilized at the omnibus hearing to ensure that all requests, errors and issues are considered. A sample check list is attached in the appendix.~~

~~Any and all issues should be raised either by the attorneys or by the court without prior notice and, if appropriate, informally disposed of. If additional discovery, investigation or formal presentation is necessary for a fair and orderly determination of any issue, the omnibus hearing should be continued until all matters raised are properly disposed of.~~

~~A verbatim record should be made of all proceedings at the hearing. In addition, at the conclusion of the hearing a summary memorandum may be made indicating disclosures made, rulings and orders of the court, stipulations and other matters determined or pending.~~

~~Stipulations by any party shall be binding upon that party at trial unless set aside or modified by the court in the interests of justice. The defendant and the defendant's attorney shall sign any stipulation made by the defense.~~

~~**Rule 10.01**~~  
~~**JURY SELECTION**~~

~~In jury selection challenges for cause shall be stated to the court.~~

~~In cases wherein the punishment may be death or life imprisonment, the defendant and the prosecution shall have twelve (12) peremptory challenges for the selection of the regular twelve jurors. These challenges may not be used in the selection of an alternate juror or jurors.~~

~~———— In felony cases not involving the possible sentence of death or life imprisonment, the defendant and the prosecution shall have six (6) peremptory challenges for the selection of the twelve regular jurors. These challenges may not be used in the selection of an alternate juror or jurors.~~

~~In all criminal misdemeanor actions tried in county court a six (6) person jury shall be used whether the case originated in county court or was appealed from lower court. The defendant and the prosecution shall each have three (3) peremptory challenges in a trial with a six person jury. These challenges shall not be used in the selection of an alternate juror or jurors.~~

~~———— In all cases, in the discretion of the court, the court may direct the selection of a sufficient number of alternate jurors and when the court has elected to so impanel an alternate or alternates, the defendant and the prosecution shall each have peremptory challenges as follows:~~

- ~~———— a. ——— In death penalty cases the peremptory challenges shall equal the number of alternate jurors the court has ordered to be selected.~~
- ~~———— b. ——— In all other cases the peremptory challenges shall be one challenge for each two alternate jurors, or part thereof, ordered by the court to be selected.~~

~~These challenges for alternate jurors may not be used in the selection of regular jurors. The selection process of alternate jurors will be the same as for regular jurors.~~

~~———— Juries shall be selected in the same manner, and peremptory challenges exercised in the same manner as provided in these rules for civil cases. The prosecution shall exercise its challenges first.~~

~~In all cases defendants tried jointly shall be entitled to only the number of challenges to which one defendant would otherwise be entitled.  
[Amended April 18, 1995.]~~

~~**Rule 10.02**  
**JURY SEQUESTRATION**~~

~~———— In any case where the state seeks to impose the death penalty, the jury shall be sequestered during the entire trial.~~

~~———— In all other criminal cases, the jury may be sequestered upon request of either the defendant or the state made at least 48 hours in advance of the trial. The court may, in the exercise of sound judicial discretion, either grant or refuse the request to sequester the jury. In the absence of a request, the court may, on its own initiative, sequester a jury at any stage of a trial.~~

~~**Rule 10.03**  
**OPEN AND CLOSING STATEMENT**~~

~~\_\_\_\_\_ The prosecuting attorney may make an opening statement to the jury, confining the statement to the facts the prosecutor expects to prove. The defense may make an opening statement to the jury at the conclusion of the state's opening statement or prior to the defendant's case in chief. The statement shall be confined to a statement of the defense and the facts the defendant expects to prove in support thereof.~~

~~\_\_\_\_\_ At the conclusion of the evidence, the prosecution may make an argument to the jury. The defendant may then make an argument to the jury. Failure of the state to argue shall not deprive the defendant of the defendant's right to argue. The state may then make a rebuttal argument, but not to exceed one-half of the allotted time.~~

**Rule 10.04**

**~~\_\_\_\_\_~~ BIFURCATED TRIALS**

~~\_\_\_\_\_ A. \_\_\_\_\_ In any case where the state seeks to impose the death penalty, the trial shall be conducted in accordance with § § 99-19-101 and 99-19-103, of the Mississippi Code of 1972 as amended and applicable court decisions.~~

~~\_\_\_\_\_ B. \_\_\_\_\_ In all cases not involving the death penalty, wherein the jury may impose life sentence, the court may conduct a bifurcated trial. If the defendant is found guilty of an offense for which life imprisonment may be imposed, a sentencing trial shall be held before the same jury, if possible, or before the court if jury waiver is allowed by the court.~~

~~\_\_\_\_\_ At the sentencing hearing:~~

~~\_\_\_\_\_ 1. \_\_\_\_\_ The state may introduce evidence of aggravation of the offense of which the defendant has been adjudged guilty.~~

~~\_\_\_\_\_ 2. \_\_\_\_\_ The defendant may introduce any evidence of extenuation or mitigation.~~

~~\_\_\_\_\_ 3. \_\_\_\_\_ The state may introduce evidence in rebuttal of the evidence of the defendant.~~

~~\_\_\_\_\_ 4. \_\_\_\_\_ A record shall be made of the above proceeding and shall be maintained in the office of the clerk of the trial court as a part of the record in that court.~~

~~\_\_\_\_\_ C. \_\_\_\_\_ Upon conviction, or after a plea of guilty, in cases where the court has sentencing authority, there may be a hearing before the trial judge as follows:~~

~~\_\_\_\_\_ 1. \_\_\_\_\_ A presentence investigation may be conducted and a report thereof shall be made as required for cases where the court has discretion in imposition of sentence. Contents of this report shall be disclosed only to the parties. A copy of said report shall be delivered to both the prosecutor and the defendant or the defense attorney within a reasonable time prior to sentencing so as to afford a reasonable opportunity for verification of the material. Prior to the sentencing proceeding each party is required to notify the opposing party and the court of any part of the report which the party intends to controvert by the production of evidence.~~

- ~~2. The state may introduce evidence of aggravation of the offense of which the defendant has been adjudged guilty.~~
- ~~3. The defendant may introduce evidence to contradict or supplement any information contained in the presentence investigation report.~~
- ~~4. The defendant may introduce any evidence of extenuation or mitigation.~~
- ~~5. The state may introduce evidence in rebuttal of the evidence of the defendant.~~
- ~~6. A record shall be made of the above proceedings and shall be maintained in the office of the clerk of the trial court as a part of the record in that court.~~

~~**Rule 10.05**  
**NEW TRIALS**~~

~~The court on written motion of the defendant may grant a new trial on any of the following grounds:~~

- ~~1. If required in the interests of justice;~~
- ~~2. If the verdict is contrary to law or the weight of the evidence;~~
- ~~3. Where new and material evidence is recently discovered which would probably produce a different result at a new trial, and such evidence could not have been discovered sooner, by reasonable diligence of the attorney;~~
- ~~4. If the jury has received any evidence, papers or documents, not authorized by the court, or the court has admitted illegal testimony, or excluded competent and legal testimony;~~
- ~~5. If the jurors, after retiring to deliberate upon the verdict, separated without leave of court, and~~
- ~~6. If the court has misdirected the jury in a material matter of law, or has failed to instruct the jury upon all questions of law necessary for their guidance.~~

~~A motion for a new trial must be made within ten days of the entry of judgment. The trial judge may hear and determine a motion for new trial at any time and in any county or judicial district within the trial judge's jurisdiction.~~

~~The court may, with the consent of the defendant, order a new trial of its own initiative before the entry of judgment and imposition of sentence.~~

~~The court, on motion of a defendant, may vacate judgment and dismiss the case without prejudice if the indictment or complaint did not charge an offense, or if the court was without~~

~~jurisdiction, and bind the defendant over to the action of the grand jury, or take other proper steps regarding the defendant.~~

**Rule 11.01**  
**SENTENCING**

~~Where the defendant is adjudged guilty of the offense charged, sentence must be imposed without unreasonable delay. A defendant is adjudged guilty when the defendant has been found guilty by a verdict of the jury, found guilty by the court sitting as the trier of fact, on the acceptance of a plea of guilty, or on acceptance of a plea of nolo contendere.~~

~~The sentence shall be pronounced in open court at any time after conviction, in the presence of the defendant (except when the offense of which the defendant has been adjudged guilty is a misdemeanor), and recorded in the minutes of the court.~~

**Rule 11.02**  
**PRESENTENCE INVESTIGATION AND REPORT**

~~Upon acceptance of a plea of guilty, or upon a finding of guilt, and where the court has discretion as to the sentence to be imposed, the court may direct that a presentence investigation and report be made.~~

~~The report of the presentence investigation may contain, but is not limited to, the following information:~~

- ~~1. A description of the offense and the circumstances surrounding it, not limited to aspects developed for the record as part of the determination of guilt;~~
- ~~2. Any prior criminal convictions of the defendant, or juvenile adjudications of delinquency;~~
- ~~3. The defendant's financial condition;~~
- ~~4. The defendant's educational background;~~
- ~~5. A description of the employment background of the offender, including any military record and including present employment status and capabilities;~~
- ~~6. The social history of the defendant, including family relationships, marital status and residence history;~~
- ~~7. Information about environments to which the offender might return or to which the offender could be sent should probation be granted;~~
- ~~8. Information about special resources which might be available to assist the defendant such as treatment centers, rehabilitative programs or vocational training centers; and~~

- ~~9. A physical and mental examination of the defendant if it is ordered by the court.~~

~~**Rule 11.03**~~

~~**ENHANCEMENT OF PUNISHMENT**~~

~~In cases involving enhanced punishment for subsequent offenses under state statutes:~~

- ~~1. The indictment must include both the principal charge and a charge of previous convictions. The indictment must allege with particularity the nature or description of the offense constituting the previous convictions, the state or federal jurisdiction of any previous conviction, and the date of judgment.~~

~~The indictment shall not be read to the jury.~~

- ~~2. Separate trials shall be held on the principal charge and on the charge of previous convictions. In the trial on the principal charge, the previous convictions will not be mentioned by the state or the court except as provided by the Mississippi Rules of Evidence.~~

- ~~3. If the defendant is convicted or enters a plea of guilty on the principal charge, a hearing before the court without a jury will then be conducted on the previous convictions.~~

~~**Rule 11.04**~~

~~**POST-CONVICTION FINES, PAYMENT  
OF FINES, AND INDIGENTS**~~

~~Matters concerning post-conviction fines, payment of fines, indigents and imprisonment for nonpayment of fines shall be governed by § 99-19-20 of the Mississippi Code of 1972.~~

~~**Rule 11.05**~~

~~**ENTRY OF ORDER AND DUTY OF CLERK**~~

~~Immediately upon entry of an order or judgment of the court, the clerk of court shall make a diligent effort to assure that all attorneys of record have received notice of the entry of the order.~~

~~**Rule 12.01**~~

~~**POST-CONVICTION BAIL**~~

~~A convicted defendant shall be entitled to bail, pending an appeal as prescribed by § 99-35-115 of the Mississippi Code of 1972.~~

~~The condition of the appeal bond shall be that the defendant will render himself or herself in execution and will obey every order and judgment of the Supreme Court or every order and judgment of the trial court affirmed by the Supreme Court. The sheriff shall not accept the appeal bond unless the appeal has been perfected.~~

—— If a defendant is admitted to bail pending appeal, the trial court clerk shall so notify the clerk of the Supreme Court.

**Rule 12.02**

**~~APPEALS FROM JUSTICE OR MUNICIPAL COURT~~**

**A. Notice and Filing:**

**1. Mandatory Bonds or Cash Deposits.** Any person adjudged guilty of a criminal offense by a justice or municipal court may appeal to county court or, if there is no county court having jurisdiction, then to circuit court by filing simultaneously a written notice of appeal, and both a cost bond and an appearance bond (or cash deposit) as provided herein within 30 days of such judgment with the clerk of the circuit court having jurisdiction. This written notice of appeal and posting of the cost bond and the appearance bond or cash deposit perfects the appeal. The failure to post any bond or cash deposit required by this rule shall be grounds for the court, on its own motion or by motion of another, to dismiss the appeal with prejudice and with costs. The clerk of the court shall not accept, file and docket the written notice of appeal without the accompanying cost bond and appearance bond or cash deposit, unless the court has allowed the defendant to proceed in forma pauperis. After the filing of the written notice of appeal and the cost bond and the appearance bond or cash deposit, all further correspondence concerning the case by parties of either side shall be mailed directly to the circuit clerk for inclusion in the file.

**2. Contents of Notice of Appeal.** The written notice of appeal shall specify the party or parties taking the appeal; shall specify the current residence address and the current mailing address, if different, of each party taking the appeal; shall designate the judgment or order from which the appeal is taken; shall be addressed to county or circuit court, whichever appropriate; and shall state that the appeal is taken for a trial de novo. Upon a failure of the defendant to comply with the requirement of this rule as to content of the written notice of appeal, the court, in its discretion, may order the notice amended or the case dismissed with prejudice and with costs. If the defendant fails to amend the notice as required by the court, the court shall dismiss the appeal with prejudice and with costs.

**3. Record.** The circuit clerk, upon receiving written notice of appeal, shall notify the lower court and the appropriate prosecuting attorney.

It shall be the duty of the judge from whose judgment the appeal is taken to deliver to the clerk of the circuit court, within 10 days after the filing of the appearance bond and the cost bond or cash deposit, as required herein, are given and approved, a certified copy of the record in the case with all the original papers in the case. The judge of the lower court may direct the clerk of the lower court to certify and transmit the copy of the record in the case and all the original papers in the case within the time allowed by this rule.

**B. Bonds:**

**1. Appearance Bond.** Unless excused by the making of an affidavit as specified in § 99-35-7 of the Mississippi Code of 1972, a cash deposit, or bond with sufficient resident sureties (or licensed guaranty companies) to be approved by the circuit clerk shall be given and conditioned on appearance before the county or circuit court from day to day and term to term until the appeal is finally determined or dismissed. The amount of such cash deposit or appearance bond shall be

determined by the judge of the lower court. If the defendant fails to appear at the time and place set by the court, the court may dismiss the appeal with prejudice and with costs and order forfeiture of the appearance bond or cash deposit.

~~**2. Cost Bond.** Unless excused by the making of an affidavit of poverty as specified above, every defendant who appeals under this rule shall post a cash deposit, or bond with sufficient resident sureties (or licensed guaranty companies) to be approved by the circuit clerk for all estimated court costs, incurred both in the appellate and lower courts (including, but not limited to fees, court costs, and amounts imposed pursuant to statute). The amount of such cash deposit or bond shall be determined by the judge of the lower court payable to the state in an amount of not less than One Hundred Dollars (\$100) nor more than Twenty-Five Hundred Dollars (\$2,500). Upon a bond forfeiture, the costs of lower court shall be recovered after the costs of the appellate court.~~

~~**3. Time in Custody Credited.** All time the defendant is in custody pending an appeal shall be credited against any sentence imposed by the court.~~

~~**C. Proceedings.** Upon the filing with the circuit clerk of the notice of appeal and bonds or cash deposits required by this rule, unless excused therefrom with the clerk, the prior judgment of conviction shall be stayed.~~

~~The appeal shall be a trial de novo. In appeals from justice or municipal court when the maximum possible sentence is six months or less, the case may be tried without a jury at the court's discretion. The record certified to the court on appeal from the lower court is competent evidence. However, no motions may be allowed which deprive the accused of the right to a trial on the merits. Amendments will be liberally allowed so as to bring the merits of a case fairly to trial.~~

~~[Amended May 13, 1996; amended November 26, 1996; Amended June 28, 2007.]~~

### **Rule 12.03**

#### **APPEALS FROM COUNTY COURT**

~~**A. Notice and Filing.** Any person adjudged guilty of a criminal offense by a county court, where the case was not a felony action transferred to that court from circuit court, may appeal to the circuit court having jurisdiction by filing written notice with the clerk of the county court within 30 days of the entry of the final judgment. Extensions may be granted as proscribed in Miss.Sup.Ct.R. 4(g).~~

~~Appeals may be heard in any county within the jurisdiction of the circuit court and shall be considered solely on the record made in county court. If no prejudicial error be found, the circuit court shall affirm and enter judgment in like manner as affirmances in the Supreme Court. If prejudicial error be found, the circuit court shall reverse as is provided for reversals in the Supreme Court. If a new trial is granted, the cause shall be remanded to the docket of the circuit court and a new trial held therein de novo.~~

~~The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment or order from which the appeal is taken; state that the appeal is to circuit court; and state~~

~~that the appeal is taken on the record. The clerk, upon receiving written notice of appeal, shall immediately send notice to the prosecuting attorney.~~

~~——— B. — **Bond.** Unless otherwise excused by law, a sufficient bond shall be given within the time prescribed for taking of the appeal. The amount of the bond shall be set by the judge or clerk of the county court in which the judgment was rendered. The bond shall be conditioned on appearance before the circuit court during the term to which appeal is taken, and if the defendant fails to so appear, the circuit court shall dismiss the appeal, remand the case for execution of judgment, and order forfeiture of the bond.~~

~~——— The giving of bond or a sufficient affidavit that appellant is unable to give an appeal bond shall act as supersedeas. All time that the appellant is in custody pending an appeal shall be automatically deducted from the sentence imposed by the court.~~

~~——— C. — **Record on Appeal.** The practices and procedures with respect to the trial transcript and the record on appeal shall be the same as if the appeal had been taken from the circuit court to the Supreme Court.~~

~~——— D. — **Briefs on Appeal.** The briefs filed in the cause shall be in conformity with the practice in the Supreme Court, and the time of filing and service of the briefs shall be in conformity with the practice in the Supreme Court, except the parties should file only an original and one copy of each brief. The consequences of failure to timely file a brief shall be the same as in the Supreme Court.~~

~~——— E. — **Felony Transfers.** Final judgments in felony cases transferred from circuit court to county court shall be appealed to the Supreme Court in the same manner as if the judgment were rendered in the circuit court.~~

~~——— F. — **Oral Argument.** The court may, in its discretion, decide the case on the briefs or may hear oral arguments on the issues. A party desiring oral argument must request the same in writing by motion within 10 days of the time the last brief is due. The court may designate the issues on which it will hear oral argument. The court may direct oral argument in cases where no party has requested oral argument.~~

#### **Rule 12.04 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.~~

## ~~APPENDIX A.~~

### ~~SAMPLE CHARGE TO GRAND JURY~~

~~You have been summoned and sworn as a grand juror of the Circuit Court for \_\_\_\_\_ County (\_\_\_\_ Judicial District) of the \_\_\_\_\_ Judicial Circuit of the State of Mississippi. As members of the Grand Jury, you are a part of the judicial branch of state government, an arm of this circuit court. The law of this state provides that grand juries are empaneled and charged concerning their duties only by the circuit judge. In compliance with this law, the court, before you begin your work, instructs you concerning your duties as members of the grand jury. It is mandatory that you follow these instructions and should you deem, during your service, need of additional instructions, you should present this request to the court. The law of this state specifies the express powers of grand juries. The grand jury has the power of indictment or presentment in a crime and the additional authority to issue reports.~~

~~———— The Grand Jury is an ancient and honored institution. Its existence is firmly imbedded in the system of Anglo-Saxon justice which we inherited from England. It is guaranteed in the constitution, which provides that no person may be placed on trial for a felony unless he or she has been indicted by a grand jury. This provision stands as a barrier against unjust prosecution by persons in authority. The grand jury is the means, not only of bringing to trial persons accused of crime, but also to protect persons from unfounded accusations whether presented by legal officers or by others who may be motivated by public clamor or private malice. Your duty is to allow or to deny issuance of an indictment. There are from 15 to 20 members of a grand jury and 12 members must agree before you can approve an indictment. The words "true bill" are used to indicate an indictment that you have approved. Each indictment must be signed by the foreman and one of the prosecuting attorneys.~~

~~———— You will hear only one side of a case. It is not your duty to decide the guilt or innocence of the accused. It is your duty to determine whether there is sufficient evidence or probable cause to require an accused to stand trial. If the evidence establishes a probability that a crime was committed and that the defendant committed the crime, then you should return a "true bill." If you do not have an indictment before the grand jury, you may return a presentment, which is an instruction for an indictment to be drawn. If the evidence fails to establish a probability that a crime was committed and that the defendant is guilty of that crime, then you must refuse to return a "true bill." You should prepare a list of the cases upon which you have refused to return a "true bill" and return that list to the court.~~

~~———— No public purpose would be served by indicting a person when it appears to you that the evidence is not sufficient to sustain a conviction. Unjust or unfounded indictments should not be returned against anyone. On the other hand, it is equally important that indictments be returned against those who, upon the evidence, appear to be probably guilty of the commission of a crime. Anyone you indict shall receive a speedy public trial to determine their guilt or innocence.~~

~~———— You must be fair and just in your deliberations to the best of your ability and understanding. Your oath requires that you do not indict any person through malice, hatred or ill will; nor will you fail to indict any person through fear, favor, regard, reward, or hope of reward. You must be guided by an impartial spirit free from personal, social, racial, religious or political bias or feeling.~~

~~———— You are cautioned that rumor and hearsay testimony are unreliable. Also, that no person may be compelled to be a witness against himself/herself. A witness who testifies about his/her own participation in crime must first be advised in your presence of his/her constitutional rights by the prosecuting attorney(s) before you may accept such evidence. You determine what witnesses you will permit to appear and testify before you.~~

~~———— The district attorney, county attorney and attorney general are by law the representatives of the State of Mississippi in all criminal prosecutions. It is the duty of the district attorney and county attorney to be present with the grand jury in the room to present the evidence, to examine the witnesses and to give advice on any matter of law which may be raised. You are entitled to the legal advice of the prosecuting attorney(s) on matters of law unless you are instructed to the contrary by the court. You are, however, the sole judges of the facts and the prosecuting attorney(s) may not influence you as to whether an indictment will be approved. After the testimony is taken and you are discussing what action you will take, the prosecuting attorney(s) will withdraw from your jury room. They are not permitted to be present during your deliberations nor when a ballot is taken and they may not influence your decision on any question of fact. You may request the advice and assistance of the attorney general of the state. You are also at liberty at any time to call for further instructions from the court, although the instruction which the prosecuting attorney(s) give you will usually be sufficient.~~

~~———— You are an independent body. You, as well as the prosecuting attorney(s), have the right to require the clerk of this court to issue subpoenas for witnesses to be brought before you to testify. Your foreman shall keep a record of the names of all witnesses sworn before the grand jury. This list of witnesses, certified and signed by the foreman, shall be returned to the court.~~

~~———— The grand jury has the important duty of making certain mandatory investigations and inspections. The grand jury must:~~

- ~~———— 1. You must make a personal inspection of the county jail, its condition, sufficiency for the safekeeping of prisoners, and their accommodation and health, and make a report on the same to the court.~~
- ~~———— 2. You must examine the tax collector's books and his/her reports and settlements, and make a report on the same to the court.~~
- ~~———— 3. You must examine the status of forest protection in the county, and in doing so, you are charged in particular of the crimes of setting fires as set forth in § 95-5-25 and § 97-17-13 of the Mississippi Code of 1972.~~

~~———— In addition, you, the grand jury, may make additional investigations and make reports on the same on your own initiative. Thus, you may investigate how officials are conducting their public trust, and make investigations as to the proper conduct of public institutions. This gives you the power to inspect such institutions, and if you decide, to call before you those in charge of their operations, and such other persons who can testify in that regard. If, as a result of such an investigation, it is determined that an improper condition exists, you may recommend a remedy. You shall have free access at all proper hours to papers, records, accounts and books of all county officers, including written reports of prior grand juries, for all examinations which in your discretion~~

~~you may see fit to make, and may report to the court in relation thereto. While you may indict any person, you should not accuse any person by name of an offense, malfeasance, or misfeasance unless an indictment is returned. It is not your duty or responsibility to make reports praising performance of public duty by certain or all public officials. This is their duty under the law and their oath of office requires their diligent performance of lawful duties, and any such report by you could serve no purpose other than that of partisan politics.~~

~~— The law requires that the circuit court shall charge you particularly concerning enforcement of the following laws:~~

- ~~1. Those against unlawful gambling and handling of intoxicating liquors;~~
- ~~2. Those relating to gambling with minors and the giving or selling to them tobacco, narcotics, or liquors;~~
- ~~3. Those providing for the assessment, collection and disbursement of the public revenues, state and county;~~
- ~~4. Those defining the duties of public officers;~~
- ~~5. Those relating to the collection and paying over of fines and forfeitures;~~
- ~~6. Those relating to providing fire escapes in hotels, theaters and other buildings;~~
- ~~7. Those relating to the management of 16th section school trust lands;~~
- ~~8. The law in relation to the illegal possession and sale of barbiturate acid and narcotics, and all other substances under the Controlled Substances Act, § 49-29-101 and following sections;~~
- ~~9. Section 47-1-31, prisoners, records, treatment and condition;~~
- ~~10. Section 47-1-27, responsibility of custodian of county prisoners;~~
- ~~11. Section 45-11-1, fire protection and safety;~~
- ~~12. Schools;~~
- ~~13. Motels, hotels, lodging houses, public buildings;~~
- ~~14. Handling of juveniles (In Harrison County only - The purposes and provisions of Chapter 23 of Title 43, "Family Court.");~~
- ~~15. Ambulance service;~~
- ~~16. Pollution of streams;~~

- ~~\_\_\_\_\_17. Hospitals;~~
- ~~\_\_\_\_\_18. Nursing homes;~~
- ~~\_\_\_\_\_19. Elections, corrupt practices, Section 23-3-27, et seq.;~~
- ~~\_\_\_\_\_20. The condition of the county roads and the performance of the duties of contractors, overseers and supervisors under § 65-7-119; and~~
- ~~\_\_\_\_\_21. Such other statutes as the circuit judge deems proper.~~

~~\_\_\_\_\_The oath which you have taken contains essential principles which govern you in your deliberations. The oath is your promise that you will keep secret what takes place in the grand jury room. A grand juror, except when called as a witness in court, shall not disclose any proceedings or action in relation to offenses brought before it for six months after the adjournment of the grand jury upon which the juror served. A grand juror shall not disclose the name or testimony of any witness who has been before the grand jury. Any disclosure of secrets within the six month period is punishable by fine or imprisonment for contempt of court.~~

~~\_\_\_\_\_The purpose of the secretary requirement is two-fold:~~

- ~~\_\_\_\_\_1. Accusations may be brought before you which you find unfounded. If publicity were given to the fact that the grand jury investigated a person, that person's reputation might be ruined even though the person is entirely innocent; and~~
- ~~\_\_\_\_\_2. If anyone charged with a crime learns of your investigation, that person would be given an opportunity to escape and defeat the process of criminal justice.~~

~~\_\_\_\_\_This requirement of secrecy demands that you do not communicate to anyone what has been said or done in the grand jury room unless you are ordered by a judge in open court to reveal it. You should report any person asking you, or attempting to ask you, what has occurred in the grand jury room. It does not matter if the attempt was in person, by phone, letter or otherwise; you should report such a question or attempt to the court and to the prosecuting attorney(s).~~

~~\_\_\_\_\_I want to thank each one of you for taking time out of your busy lives to perform this important civic duty. You are making a personal sacrifice, but I believe you will find this experience one of the most interesting in your lives. Furthermore, at the end of your service, you will have the satisfaction of having helped render justice among your neighbors.~~

**~~CHECKLIST FOR ACTION TAKEN AT OMNIBUS HEARING~~**

~~\_\_\_\_\_IN THE \_\_\_\_\_ COURT OF \_\_\_\_\_ COUNTY,  
\_\_\_\_\_ JUDICIAL DISTRICT~~

~~State of Mississippi~~

~~Plaintiff~~

v. \_\_\_\_\_ No. \_\_\_\_\_  
\_\_\_\_\_ Defendant

~~ACTION TAKEN AT OMNIBUS HEARING~~

~~A. Discovery by Defendant~~

~~(Number circled shows action taken)~~

~~1. The defense states it has obtained full discovery and (or) has inspected the prosecution file, (except) (If the prosecution has refused discovery of certain materials, the defense attorney shall state the nature of the material:~~

~~\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_).~~

~~2. The prosecution states it has disclosed all evidence in its possession favorable to defendant on the issue of guilt.~~

~~3. The defendant requests and moves for ----:~~

~~3(a) Discovery of all oral, written or recorded statements made by defendant to investigating officers or to third parties and in the possession of the prosecution. (Granted) (Denied)~~

~~3(b) Inspection of all physical or documentary evidence in state's possession. (Granted) (Denied)~~

~~-~~

~~4. Defendant, having had discovery of Items #2 and #3, requests and moves for discovery and inspection of all further or additional information coming into the state's possession as to Items #2 and #3. (Granted) (Denied)~~

~~5. The defense requests the following information and the prosecution states ----:~~

~~5(a) The prosecution (will) (will not) rely on prior acts or convictions of a similar nature for proof of knowledge or intent.~~

~~5(b) Expert witness (will) (will not) be called:~~

~~(1) Name of witness, qualification and subject of testimony, and reports (have been) (will be) supplied to the defense.~~

~~5(c) Reports or tests of physical or mental examinations in the control of the prosecution (have been) (will be) supplied.~~

~~5(d) Reports of scientific tests, experiments or comparisons, and other reports of experts in the control of the prosecution pertaining to this case, (have been) (will be) supplied.~~

~~5(e) Inspection and/or copying of any books, papers, documents, photographs or tangible objects which the prosecution ----:~~

~~— (1) — obtained from or belonging to the defendant, or~~

~~— (2) — which will be used at the hearing or trial, (have been) (will be) supplied to the defendant.~~

~~5(f) Information concerning a prior conviction or persons whom the prosecution intends to call as witnesses at the hearing or trial (has been) (will be) supplied to the defendant.~~

~~5(g) Prosecution to use prior felony conviction for impeachment of defendant if he testifies:~~

~~— Date of Conviction \_\_\_\_\_~~

~~— Offense \_\_\_\_\_~~

~~— (1) — Court rules it (may) (may not) be used.~~

~~— (2) — Defendant stipulates to prior conviction without production of witnesses or certified copy. (Yes) (No)~~

~~5(h) Any information state has, indicating entrapment of the defendant (has been) (will be) supplied.~~

~~\_\_\_\_\_ B. Motions Requiring Separate Hearing~~

~~— The defense moves ----:~~

~~— 6(a) — To suppress physical evidence in state's possession on the ground of:~~

~~— (1) — Illegal Search, or~~

~~— (2) — Illegal Arrest.~~

~~— 6(b) — Hearing of motions to suppress physical evidence set for \_\_\_\_\_~~

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

~~6(c) To suppress admissions or confessions made by defendant on the grounds of:~~

~~(1) Delay in arraignment;~~

~~(2) Coercion or unlawful inducement;~~

~~(3) Violation of the Miranda Rule;~~

~~(4) Unlawful arrest;~~

~~(5) Improper use of Line-up (Wade & Gilbert); or~~

~~(6) Improper use of photographs.~~

~~6(d) Hearing to suppress admissions or confessions set for:~~

~~(1) Date of Trial \_\_\_\_\_ or (2) \_\_\_\_\_~~

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

~~Prosecution to State:~~

~~6(e) Proceedings before the grand jury (were) (were not) recorded;~~

~~6(f) Transcriptions of the grand jury testimony of the accused, and all persons whom the prosecution intends to call as witnesses at a hearing or trial (have been) (will be) supplied.~~

~~6(g) Hearing re supplying transcripts set for \_\_\_\_\_~~

~~6(h) The prosecution to state:~~

~~(1) There (was) (was not) an informer (or lookout) involved;~~

~~(2) The informer (will) (will not) be called as a witness at the trial;~~

~~(3) It has supplied the identity of the informer; (4)~~

~~(4) It will claim privilege of non-disclosure.~~

~~6(i) The prosecution to state:~~

~~There (has) (has not) been any ----:~~

~~(1) Electronic surveillance of the defendant or his premises;~~

~~(2) Leads obtained by electronic surveillance of defendant's person or premises;~~

~~(3) All material will be supplied; or~~

~~6(j) Hearing on disclosure set for \_\_\_\_\_.~~

### ~~C. Miscellaneous Motions~~

~~The defense moves ----:~~

~~7(a) To dismiss for failure of indictment to state an offense. (Granted) (Denied)~~

~~7(b) To dismiss the indictment (or count \_\_ thereof) on the ground of duplicity. (Granted) (Denied)~~

~~7(c) To sever case of defendant \_\_\_\_\_ and for a separate trial thereon. (Granted) (Denied)~~

~~7(d) To sever count \_\_\_ of the indictment and for a separate trial thereon. (Granted) (Denied)~~

~~7(e) For a Bill of Particulars. (Granted) (Denied)~~

~~7(f) To take a deposition of witness for testimonial purposes and not for discovery. (Granted) (Denied)~~

~~7(g) To require the prosecution to secure the appearance of witness \_\_\_\_\_ who is subject to state direction at the trial or hearing. (Granted) (Denied)~~

~~7(h) To inquire into the reasonableness of bail. (Granted) (Denied).~~

~~7(i) Other.~~

### ~~D. Discovery by the Prosecution~~

~~D.1 Statements by the defense in response to prosecution requests:~~

~~8. Competency, Insanity and Diminished Mental Responsibility.~~

~~8(a) There (is) (is not) any claim of incompetency of defendant to stand trial.~~

~~8(b) Defendant (will) (will not) rely on a defense of insanity at the time of the offense.~~

~~8(c) Defendant (will) (will not) supply the names of his witnesses, both lay and professional, on the above issue;~~

~~8(d) Defendant (will) (will not) permit the prosecution to inspect and copy all medical reports under his control or the control of his attorney.~~

~~8(e) Defendant (will) (will not) submit to a psychiatric examination by a court-appointed doctor on the issue of his sanity at the time of the alleged defense.~~

~~9. Alibi~~

~~9(a) Defendant (will) (will not) rely on an alibi; and~~

~~9(b) Defendant (will) (will not) furnish a list of his alibi witnesses.~~

~~10. Scientific Testing~~

~~Defendant (will) (will not) furnish results of scientific tests, experiments or comparisons and the names of persons who conducted the tests.~~

~~11. Nature of the Defense~~

~~11(a) The defense attorney states the general nature of the defense is ----:~~

~~(1) Lack of knowledge or contraband;~~

~~(2) Lack of special intent;~~

~~(3) Diminished mental responsibility;~~

~~(4) Entrapment; or~~

~~(5) General Denial. Put prosecution to proof.~~

~~11(b) The defense attorney states there (is) (is not) (may be) a probability of a disposition without trial;~~

~~11(c) Defendant (will) (will not) waive a jury and ask for a court trial;~~

~~11(d) Defendant (may) (will) (will not) testify.~~

~~\_\_\_\_\_ 11(e) Defendant (may) (will) (will not) call additional witnesses.~~

~~\_\_\_\_\_ 11(f) Character witnesses (may) (will) (will not) be called.~~

~~\_\_\_\_\_ 11(g) The defense attorney will supply the prosecution with the names of additional witnesses for defendant \_\_\_\_\_ days before trial.~~

~~\_\_\_\_\_ D.2. Rulings on prosecution request and motions.~~

~~\_\_\_\_\_ The defendant is directed by the court, upon timely notice to the defense attorney,~~

~~\_\_\_\_\_ 12(a) To appear in a lineup;~~

~~\_\_\_\_\_ 12(b) To speak for voice identification by witnesses;~~

~~\_\_\_\_\_ 12(c) To be fingerprinted;~~

~~\_\_\_\_\_ 12(d) To pose for photographs (not involving a reenactment of the crime);~~

~~\_\_\_\_\_ 12(e) To try on articles of clothing;~~

~~\_\_\_\_\_ 12(f) To permit taking of specimens of materials under fingernails;~~

~~\_\_\_\_\_ 12(g) To permit taking samples of blood, hair and other materials of his body which involved no unreasonable intrusion;~~

~~\_\_\_\_\_ 12(h) To provide samples of his handwriting;~~

~~\_\_\_\_\_ 12(i) To submit to a physical external inspection of his body.~~

#### ~~\_\_\_\_\_ E. Stipulations~~

~~\_\_\_\_\_ It is stipulated between the parties:~~

~~\_\_\_\_\_ 13(a) That if \_\_\_\_\_ was called as a witness and sworn, he/she would testify that:~~

~~\_\_\_\_\_ 13(b) That the official report of the chemist may be received in evidence as proof of the weight and nature of the substance referred to in the indictment.~~

~~\_\_\_\_\_ 13(c) That if \_\_\_\_\_, the official state chemist, were called, qualified as an expert and sworn as a witness, he would testify that: the substance referred to in the indictment has been chemically tested and is \_\_\_\_\_, contains \_\_\_\_\_, and the weight is \_\_\_\_\_.~~

~~\_\_\_\_\_ 13(d) That there has been a continuous chain of custody in state agents from the time of the seizure of the contraband to the time of the trial.~~

~~\_\_\_\_\_ 13(e) Miscellaneous stipulations: \_\_\_\_\_~~

~~\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.~~

~~\_\_\_\_\_ F. Conclusion - The Defense Attorney States~~

~~\_\_\_\_\_ 14(a) That the defense attorney knows of no problems involving delay in arraignment, the Miranda Rule or illegal search or arrest, or any other constitutional problem except as set forth above.~~

~~\_\_\_\_\_ 14(b) That the defense attorney has inspected the check list on this form, and knows of no other motion, proceeding or request which he decides to press, other than those checked thereon.~~

~~\_\_\_\_\_ Dated: \_\_\_\_\_~~

~~\_\_\_\_\_ So Ordered: \_\_\_\_\_~~

Approved:

\_\_\_\_\_  
\_\_\_\_\_  
Attorney for the State of Mississippi

\_\_\_\_\_  
\_\_\_\_\_  
Attorney for the Defendant

~~APPENDIX B~~

~~Rule 4.07. Rule For Expedited Small Claims  
for Jones, Lee or Rankin County Courts Only  
[Omitted]~~