

Serial: 95171

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99025-SCT

FILED

APR 18 2002

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

*RE: UNIFORM RULES OF CIRCUIT
AND COUNTY COURTS*

ORDER


This matter has come before the Court en banc on Motion to Amend/Adopt Certain Uniform Circuit and County Court Rules filed by the Supreme Court Advisory Committee on Rules, and the Court, having considered the petition, finds that it should be granted to the extent and with modifications as set forth herein and that such amendments and additions will promote the fair and efficient administration of justice.

IT IS THEREFORE ORDERED that the Motion to Amend/Adopt Certain Uniform Circuit and County Court Rules filed by the Supreme Court Advisory Committee on Rules is granted to the extent set forth herein; that Rule 2.01 of the Uniform Rules of Circuit and County Court is amended as set forth in Exhibit "A" hereto, and that a new Rule 3.14 thereto is adopted as set forth in Exhibit "B" hereto.

IT IS FURTHER ORDERED that the Clerk of this Court shall spread this order on the minutes of this Court and that it be submitted to West Publishing Company for

publication in the *Southern Reporter (Mississippi Edition)* and in the *Mississippi Rules of Court*.

SO ORDERED, this the 15th day of April, 2002.


WILLIAM L. WALLER, JR., JUSTICE,
FOR THE COURT

EASLEY, J., NOT PARTICIPATING

EXHIBIT "A" TO ORDER

UNIFORM RULES OF CIRCUIT AND COUNTY COURT

RULE 2.01 SUBPOENAS

A. Except as set forth below, 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]

EXHIBIT "B" TO ORDER

UNIFORM RULES OF CIRCUIT AND COUNTY COURT

(The following Rule 3.14 is all new material)

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.]