

Serial: **212466**

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99038-SCT

IN RE: MISSISSIPPI RULES OF CRIMINAL PROCEDURE

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."

After due consideration, the Court finds that, in the interest of promoting the fair and efficient administration of justice, the Mississippi Rules of Criminal Procedure 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

JAMES W. KITCHENS, JUSTICE
FOR THE COURT

ALL JUSTICES AGREE.

EXHIBIT A

MISSISSIPPI RULES OF CRIMINAL PROCEDURE

Rule 8.7 Transfer and Disposition of Bond.

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(d) Forfeiture. If at any time it appears to the court that a defendant has failed to appear, the court shall proceed as appropriate pursuant to Mississippi Code Sections 99-5-25, or 21-23-8, or 99-5-11, and any related statutes or regulations which may apply.

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Comment

Rule 8.7(a) is consistent with current Mississippi practice regarding appearance bonds. The last sentence of section (c) addresses the situation where a bail bond company attempts to surrender the principal solely on the basis of nonpayment of the fee or commission, or any portion thereof, which was not collected at the time of issuance of the bond. Mississippi Code Section 83-39-25 plainly directs that the professional bail agent “shall charge and collect” the premium, commission, or fee due. However, if the bail agent nevertheless elects to contract with the principal to issue bail on the payment of less than the full amount due, any subsequent collection effort is merely a contractual matter which may be resolved in civil court, not in criminal court by means of incarceration for nonpayment. *See Brooks v. Pennington*, 995 So. 2d 733 (Miss. Ct. App. 2007). The statutes governing bail permit wide latitude to the surety to surrender a person on bail; however, nonpayment of a contractual obligation between the principal and professional bail agent is not, standing alone, a proper basis for surrender. Section (d) defers to the extensive statutory procedure governing forfeiture of bail bonds provided in Mississippi Code Sections 99-5-25, and 21-23-8, and 99-5-11.

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Rule 17.5 Depositions.

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Comment

Rule 17.5 is based upon Federal Rule of Criminal Procedure 15. As with federal practice, taking a deposition requires a court order and a showing of “exceptional circumstances.” Depositions may be ordered by the court to preserve testimony or to take the statement of a witness in order that the witness may be released from incarceration. *See* Miss. Code Ann. § 99-15-7 (detention of material witness).

Section (c) gives the defendant a right to be present, as the purpose of the deposition is perpetuation of testimony for use at trial. A deposition cannot be used at trial without the defendant's consent if the defendant was not present at its taking and did not waive the right to be present in writing. See *Pointer v. Texas*, 380 U.S. 400, 85 S. Ct. 1065, 13 L. Ed. 2d 923 (1965).

If deposition testimony is used at trial, the rights of the defendant under the Confrontation Clauses of Federal and State Constitutions must be respected. See *Connors v. State*, 92 So. 3d 676 (Miss. 2012); *Davis v. Washington*, 547 U.S. 813, 126 S. Ct. 2266, 165 L. Ed. 2d 224 (2006); *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004).

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Rule 18.1 Trial by Jury.

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Comment

Article 3, Section 31 of the Mississippi Constitution provides that “[t]he right of a trial by jury shall remain inviolate . . .” Miss. Const. art. 3, § 31. Petit jurors shall be summoned and impaneled as provided by law. See Miss. Code Ann. § 13-5-1, *et seq.* In felony cases, conviction requires the unanimous consent of twelve (12) impartial jurors. See *Markham v. State*, 209 Miss. 135, 46 So. 2d 88 (1950). Mississippi Code Section 13-5-1 sets forth the qualifications for competent jurors.