

Serial: **149640**

**IN THE SUPREME COURT OF MISSISSIPPI  
No. 89-R-99025-SCT**

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

**ORDER**

This matter is before the Court, en banc, on the motion to adopt the Rule For Expedited Small Claims filed by the Advisory Committee on Rules. The Rule would provide for expedited resolution of civil cases seeking damages under \$50,000. This proposal has been posted for public comment, and the Court has received and considered comments from the public. After due consideration, the Court finds that the motion should be granted in part only to implement a pilot program utilizing the Rule For Expedited Small Claims as described below and limited to use in the county courts of three Mississippi counties: Jones, Lee, and Rankin.

IT IS THEREFORE ORDERED that Rule 4.07 and Appendix B of the Uniform Rules of Circuit and County Court Practice, as set forth in Exhibit "A" to this order, are hereby adopted for use only in a pilot program as described below in the county courts of three Mississippi counties: Jones, Lee, and Rankin. In those three county courts the Rule may only be used in civil cases either filed originally in that county court or transferred from the circuit court; it may not be used in cases on appeal from justice court. The Rule may be used in an eligible case only where the county court, in the exercise of its discretion, has entered an order in that particular case making the Rule applicable in that case. The county courts of Jones,

Lee, and Rankin counties are authorized to adopt the Rule For Expedited Small Claims as a local rule, and any conflicting Rules are suspended for the duration of the pilot program. This pilot program will take effect on October 1, 2008, and terminate on September 30, 2010, subject to any further order of this Court extending, terminating, or otherwise modifying the pilot program.

IT IS FURTHER ORDERED the county court shall forward a copy of its order designating an eligible case as subject to the Rule For Expedited Small Claims to all parties and to the Administrative Office of the Courts. In addition, the county court shall forward a copy of its disposition order in that case to the Administrative Office of the Courts. The Administrative Office of the Courts shall maintain a record of all cases proceeding under the Rule, and, subject to this Court's discretion, the Advisory Committee on Rules may survey the parties and their attorneys about the operation of the Rule.

IT IS FURTHER ORDERED that the Clerk of this Court shall spread this Order upon the minutes of this Court and shall forward a certified copy to: West Publishing Company for publication in the *Southern Reporter, Second Series, (Mississippi Edition)* and the *Mississippi Rules of Court*; the county court judges and the circuit clerks in Jones, Lee, and Rankin Counties; the Administrative Office of the Courts; and the Chair of the Advisory Committee

SO ORDERED, this the 4<sup>th</sup> day of September, 2008.

/s/ William L. Waller, Jr.

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

AGREE: SMITH, C.J., WALLER AND DIAZ, P.JJ., CARLSON, GRAVES, DICKINSON,  
RANDOLPH AND LAMAR, JJ.  
DISAGREE: EASLEY, J.

EXHIBIT "A"

**Rule 4.07. Rule For Jones, Lee and Rankin Counties Expedited Small Claims**

The county courts of Jones, Lee and Rankin counties may, in the exercise of their discretion, order certain civil actions to proceed under the Rule for Expedited Small Claims, as set forth in Appendix B to these Rules. Civil actions eligible for assignment include those filed in or transferred to those courts in which the sole relief sought is a money judgment and in which the total claims for all damages by or against any party are less than fifty thousand dollars (\$50,000) or are unspecified. The Rule for Expedited Small Claims apply to eligible cases filed on or after October 1, 2008 through September 30, 2010.

[Adopted effective October 1, 2008.]

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**APPENDIX B**

**Rule 4.07. Rule For Expedited Small Claims**

**For Jones, Lee or Rankin County Courts Only**

The following Rule applies in an eligible case where the county court, in the exercise of its discretion, has entered an order making the **Rule For Expedited Small Claims** applicable in that case. The Rule applies to eligible cases filed on or after October 1, 2008 through September 30, 2010.

**A. Scope.**

1. *Applicability.* This Rule shall apply to civil actions filed in or transferred to Jones, Lee or Rankin County Courts in which the sole relief sought is a money judgment and in which the total claims for all damages by or against any party are:

(i) less than fifty thousand dollars (\$50,000), exclusive of interest, costs, and attorneys' fees, or

(ii) unspecified.

2. *Initiation by Complaint, Counterclaim, or Cross-Claim.* Any complaint (or counterclaim or cross-claim) for which the amount of the claim does not exceed the dollar

limitation of this Rule and is eligible for assignment as a claim proceeding under the provisions of the Rule For Expedited Small Claims.

3. *Order.* Upon service of an answer or reply to a counterclaim, the court, in its discretion, shall enter an order in each eligible case making the Rule For Expedited Small Claims applicable in that case.

**B. Disclosures by a Complaining Party.**

1. *Factual Basis and Legal Theory of Claim; Witnesses, Documents, and Other Items.* Within thirty (30) days from service of an answer or reply to a counterclaim, or service of an order directing the case be litigated under the Rule For Expedited Small Claims, whichever is later, a complaining party must serve on other parties the following:

(a) *Factual Basis and Legal Theory of Claim.* A detailed statement of the factual basis and a detailed statement of the legal theory for each claim.

(b) *Damages.* A detailed statement identifying each category of damages claimed, making available for inspection and copying as under M.R.C.P. 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such detailed statement is based.

(c) *Witnesses.* The name and, if known, the address and telephone number of each individual likely to have discoverable information that the complaining party may use to support its case, identifying the subjects of the information and identifying those individuals whom the party expects to present at trial and those whom the party may call if the need arises.

(d) *Documents and Other Items.* A copy of, or, if furnishing a copy is not feasible, a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that may be relevant to the claims or defenses of any party. If a copy is not furnished, all evidence so identified (as well as all related written and other tangible evidence) shall be made available for an opposing party's inspection and copying as under M.R.C.P. 34 at the earliest reasonable time.

(e) *Injury-specific Medical Authorization and Release.* If the claim includes damages for personal injury, an injury-specific medical authorization and release shall be immediately provided at the request of a defending party.

2. *Certificate of Compliance; Filing; Effect of Nondisclosure.* Within a reasonable time of service of the required disclosures, the complaining party shall file with the court a certificate of compliance with this section. Disclosures, however, need not be filed until used

with respect to any proceeding. Any evidence not disclosed in compliance with this section is presumptively inadmissible.

**C. Disclosures by a Defending Party.**

1. *Answer; Defenses; Witnesses, Documents, and Other Items.* Within the earlier of sixty (60) days from service of the disclosures required by section (b)(1) above or thirty (30) days prior to trial, a defending party must serve on other parties the following:

(a) *Factual Basis and Legal Theory of Affirmative Defenses.* A detailed statement of the factual basis and a detailed statement of the legal theory for each affirmative defense.

(b) *Witnesses.* The name and, if known, the address and telephone number of each individual likely to have discoverable information that the defending party may use to support its case, unless solely for impeachment, identifying the subjects of the information and identifying those individuals whom the party expects to present at trial and those whom the party may call if the need arises.

(c) *Documents and Other Items.* A copy of, or, if furnishing a copy is not feasible, a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that may be relevant to the claims or defenses of any party. If a copy is not furnished, all evidence so identified (as well as all related written and other tangible evidence) shall be made available for an opposing party's inspection and copying as under M.R.C.P. 34 at the earliest reasonable time.

3. *Certificate of Compliance; Filing; Effect of Nondisclosure.* Within a reasonable time of service of the required disclosures, the defending party shall file with the court a certificate of compliance with this section. Disclosures, however, need not be filed until used with respect to any proceeding. Any evidence not disclosed in compliance with this section is presumptively inadmissible.

**D. Discovery; Subpoenas.** Unless the court otherwise orders:

1. *Insurance Agreements.* A party may demand in writing, for inspection and copying as under M.R.C.P. 34, any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

2. *Depositions.* Pursuant to the Mississippi Rule of Civil Procedure, a party may take the deposition of:

a. Any other party; and

b. Up to two nonparties, limited in time to an aggregate of four (4) hours or less.

3. *Interrogatories.* The parties may serve up to ten (10) interrogatories on one another pursuant to M.R.C.P. 33.

4. *Requests for Admission.* The parties may serve up to ten (10) requests for admission pursuant to M.R.C.P. 36.

5. *Deadlines.* All discovery must be strictly completed within ninety (90) days from service of an answer by the applicable defendant. Additional time may be allowed with leave of court upon written motion setting forth manifest necessity for the extension.

6. *Subpoenas.* Notwithstanding any other provision of the Rule For Expedited Small Claims, any party may seek the issuance of subpoenas pursuant to M.R.C.P. 45 for attendance, production, or inspection for a trial or hearing.

#### **E. Expert Witnesses.**

1. *Required Disclosures.* Each party must disclose: the identify of each person whom the party expects to call as an expert witness at trial; the subject matter on which the expert is expected to testify; the substance of the facts and opinions to which the expert is expected to testify; a summary of the grounds for each opinion; and a summary of the expert's qualifications and experience. The direct testimony of any expert shall be strictly limited to the opinions so set forth. Discovery depositions of experts shall not be permitted; however, an expert's trial testimony may be taken by deposition.

2. *Deadlines.* Such disclosures shall be made promptly at the conclusion of discovery, but in no event later than sixty (60) days prior to trial, or, if the evidence is intended solely to contradict or rebut evidence on the same subject identified by another party, within thirty days after disclosure by the other party.

3. *Effect of Noncompliance.* Any evidence not disclosed in compliance with this section is presumptively inadmissible.

**F. Newly discovered evidence.** Promptly after discovery, but in no event later than thirty (30) days prior to trial, a party may supplement, with evidence which by due diligence could not have been discovered earlier, its lists of witnesses, documents, or other things. Any evidence not disclosed in compliance with this section is presumptively inadmissible.

#### **G. Motions.**

1. *Rule 12 Motions.* Any party may file any motion permitted by M.R.C.P. 12.

2. *Summary Judgment.*

*a. Complaining Party.* A complaining party may move for a summary judgment pursuant to M.R.C.P. 56 to collect on an open account or other liquidated debt.

*b. Defending Party.* Before the conclusion of discovery, a defending party may move for a summary judgment pursuant to M.R.C.P. 56 raising:

1. An immunity defense;
2. A defense to a claim of professional malpractice; or
3. Any other matter constituting an avoidance or affirmative defense.

3. *Discovery Disputes.* Before the conclusion of discovery, the parties are expected to resolve discovery disputes, if any. If it is necessary to seek a ruling, the parties may initiate and the judge may dispose of the matter in the most expeditious means available, such as by letter, telephone call or electronic mail.

4. *Applicability of Other Rule.* Neither additional discovery shall be due or obtained, nor additional motions not contemplated by this Rule shall be filed or heard, unless the parties stipulate thereto or the court has ordered otherwise based on the court's determination that such is necessary to obtain a fair, swift and cost-effective determination of the case.

5. *Expenses and Attorneys Fees.* If a motion is denied, the court shall award the prevailing party the reasonable expenses incurred in attending the hearing of the motion and shall award attorneys' fees.

**H. Documents presumptively admissible.** Objections to the authenticity of documents shall be made reasonably in advance of trial. Unless their authenticity is controverted, the following documents shall be presumed admissible and may be introduced in evidence at trial, provided the documents are disclosed in accordance with the requirements of this Rule and, where relevant, the name, address and telephone number of the author of the document is contained in the document or otherwise set forth:

1. Any written contract between the parties;
2. A copy of any billing statement or invoice prepared in the normal course of business;
3. Copies of any correspondence between the parties, except documents inadmissible under Rule 408 of the Mississippi Rule of Evidence;

4. Any document that would be admissible under Rule 803(6) of the Mississippi Rule of Evidence;

5. A bill, report, chart, or record of a hospital, physician, dentist, nurse practitioner, physician's assistant, registered nurse, licensed practical nurse, physical therapist, psychologist or other health care provider, on a letterhead, or billhead or otherwise clearly identifiable as part of the provider's professional record;

6. A bill for drugs, medical appliances or other related expenses on letterhead, or billhead or otherwise clearly identifiable as part of a provider's professional record;

7. A bill for, or estimate of, property damage or loss on a letterhead or billhead. In the case of an estimate, the offering party shall notify the adverse party promptly, but in no event later than thirty (30) days prior to trial whether the property was repaired, in full or in part, and provide the actual bill showing the cost of repairs;

8. A weather or wage loss report or standard life expectancy table to the extent it is relevant without need for authentication; and

9. A photograph, videotape, x-ray, drawing, map, blueprint, or similar evidence to the extent it is relevant without the need for authentication.

The admission of a document under this subsection (h) does not, in any manner, restrict argument or proof relating to the weight of the evidence admitted.

**I. Trial Setting.** After thirty (30) days from the filing of the final answer or responsive pleading, the Court shall set the cause for trial.

**J. Objection to Applicability; Motion; Hearing.** If the court, on its own motion or the motion of any party, determines that the provisions of this Rule are not appropriate for the case, it shall order that the case proceed in accordance with the other Mississippi Rules of Civil Procedure. A motion disputing or objecting to the applicability of this Rule shall ordinarily be filed with the complaint, answer, or reply. The movant shall simultaneously notice a hearing on such motion for the earliest practicable time. In ruling on the motion, the trial court shall consider, among other factors it deems relevant, the nature of the claim(s) and the defense(s), the existence of multiple claims or parties, the complexity of the case, and the need for the examination of a party pursuant to M.R.C.P. 35.

**K. Initiation by Motion.** A party may otherwise initiate the provisions of this Rule by motion. The movant shall simultaneously notice a hearing on such motion for the earliest practicable time. If opposed, the court shall rule on the motion as provided in subsection (j).



If the court orders the case to proceed pursuant to the Rule For Expedited Small Claims, the court shall set forth a schedule for meeting the requirements of this Rule.

[Adopted effective October 1, 2008.]

### **Comment**

The Rule For Expedited Small Claims provides streamlined discovery, motion, and trial procedures for civil actions under fifty thousand dollars (\$50,000). The Rule seeks to facilitate the fair, swift, and cost-effective determination of such actions in ways not necessarily fostered by current practice. Counsel should strive to abide these purposes and make every effort to eliminate unnecessary costs. To these ends, parties are encouraged to proceed in county court whenever possible.

The Rule For Expedited Small Claims applies only when the sole relief sought is a money judgment and only when the total claims for all damages *by or against* any party are less than \$50,000, excluding interest, costs, and attorney's fees. The Rule also applies when no specific amount of damages is sought, for example when a party requests damages in an unspecified amount "not exceeding the jurisdiction of the court." Thus, entry of a judgment in favor of any complaining party under this Rule must be less than \$50,000, excluding interest, costs, and attorney's fees. Likewise, entry of a judgment against any defending party must also be less than \$50,000, exclusive of interest, costs, and fees. By so limiting claims *against* any one party, the Rule avoids the possibility that several smaller claims could be joined, thereby subjecting a defendant to potential liability far in excess of \$50,000 and thereby making the Rule apply to cases that could not fairly be called smaller claims. Because the Rule For Expedited Small Claims applies only when the *sole* relief sought is a money judgment, the Rule does not apply, for example, to: divorce actions; actions seeking, in whole or in part, declaratory or injunctive relief; actions governed by M.R.C.P. 81; or actions governed by Miss. Code Ann. § 11-15-1 *et. seq.*

Section A(2) facilitates application of the Rule by requiring the complaint, counterclaim, or cross-claim contain a statement that the amount of the claim is less than \$50,000 and contain a statement identifying the claim as one proceeding under the Rule For Expedited Small Claims. Because the dollar limitation is applied separately to each party, a counterclaim or cross-claim for \$50,000 or more would take the entire case outside the operation of the Rule. Despite these pleading requirements, the Rule For Expedited Small Claims leaves the current practice of notice pleading under M.R.C.P. 8 undisturbed.

Sections B and C require each party to serve various pretrial disclosures. These provisions are intended to reduce reliance on costly discovery and to facilitate early resolution by speedy trial or by dispositive motion, for example under M.R.C.P. 12(b)(6) or 12(c). Because a complaining party's disclosures need not be made until thirty days from service of an answer,

disclosures are not required in cases where the defendant fails to answer the complaint. Defending parties must serve their required disclosures within sixty days of service of a complaining party's disclosures, but no later than thirty days prior to trial.

Under Section B(1)(a), a complaining party must provide a detailed statement of the factual basis and a detailed statement of the legal theory for each claim. Parallel provisions in section (c)(1)(A) require a defending party to similarly provide a detailed statement of the factual basis and a detailed statement of the legal theory for each affirmative defense.

Section B(1)(b) further obligates a complaining party to provide a detailed statement of each category of damages sought, and requires supporting documents and materials be made available for inspection and copying as under M.R.C.P. 34. Disclosures of witnesses, documents, and other items are governed by Section B(1)(c) and (d), in the case of complaining parties, and Section C(1)(b) and (c), in the case of defending parties. While significant differences remain, the disclosures regarding damages, witnesses, and documents substantially mirror federal practice under Fed. R. Civ. P. 26(a) and corresponding local federal district court Rule.

Witnesses must be identified by name and, where possible, by address and telephone number, and must be designated as either someone whom the party expects to present at trial or someone whom the party may call should the need arise. Copies of documents must be furnished when feasible; otherwise, all documents and other tangible items must be made available for an opposing party's inspection and copying as under M.R.C.P. 34 at the earliest reasonable time following disclosure. In addition to all items that a party may use to support its case, all related written and other tangible evidence must simultaneously be made available for inspection and copying. Hence if a complaining party intends to introduce a portion of a document or file at trial, the rest of the document or file (or any other part of any other writing which ought in fairness be disclosed) must be made available for inspection and copying. *See* M.R.E. 106 ("When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require [introduction of] any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously.")

If the claim includes damages for personal injury, Section B(1)(e) mandates that a complaining party provide an injury-specific medical authorization and release immediately on the request of a defending party.

Sections B(2) and C(3) provide that any evidence not disclosed as required is presumptively inadmissible. Section F does allow, however, a party to supplement its disclosures no later than thirty days prior to trial, but only with evidence which by due diligence could not have been discovered earlier. Sections B(2) and C(2) also provide that only a certificate of compliance need be filed with the court, unless and until disclosures are used with respect to a proceeding in court. Hence those sections supersede the filing

requirements of M.R.C.P. 5(d) and treat the required disclosures essentially as discovery papers, thus reducing unnecessary burdens on court clerks.

Section D identifies the limited additional discovery allowed by the Rule, namely: inspection and copying of relevant insurance agreements; party depositions; depositions of up to two nonparties, limited in length to a combined total of four hours; ten interrogatories; and ten requests for admission. The Rule contemplates that most necessary information will be provided by the mandatory disclosures.

Section D(5) requires that discovery must be strictly completed within ninety days of service of an answer by the applicable defendant. This tracks the current deadline contained in URCCC 4.04. Unlike URCCC 4.04, additional time can be had only on a showing of “manifest necessity,” not merely “good cause.”

Section D(6) provides that subpoenas for trial or hearing remain entirely available. Notwithstanding any other provision of the Rule For Expedited Small Claims, any party may seek the issuance of subpoenas pursuant to M.R.C.P. 45 for attendance, production, or inspection for a trial or hearing.

Expert witness testimony is governed by Section E. Promptly at the conclusion of discovery (but at least sixty days prior to trial) or, in the case of rebuttal experts within thirty days after disclosure by the other party, each party must disclose: the identify of each expert witness; the subject matter of the expert’s expected testimony; the substance of the facts and opinions to which the expert is expected to testify; a summary of the grounds for each opinion; and a summary of the expert’s qualifications and experience. To help contain costs, Section E(1) provides that the direct testimony of any expert is strictly limited to the opinions so set forth. Discovery depositions are not permitted, though an expert’s trial testimony may be taken by deposition. The language identifying the required disclosures tracks M.R.C.P. 26(b)(4)(A)(I) and the deadline for the disclosures tracks URCCC 4.04 and Fed. R. Civ. P. 26(a)(2)(C).

Section G allows motions on a restricted basis. While section G(1) permits any party to file any M.R.C.P. 12 motion, summary judgment is available only in limited contexts.

Section G(2)(a) provides that a complaining party may move for a summary judgment *only* to collect on an open account or other liquidated debt. In this way, the Rule For Expedited Small Claims permits the timely and cost effective prosecution of collection cases. In the vast majority of collection cases, either no answer is filed or the answer effectively admits liability; in those cases, a complaining party may seek a default judgment pursuant to M.R.C.P. 55 or a judgment on the pleadings pursuant to M.R.C.P. 12(c). When an answer contests liability, a complaining party may seek summary judgment pursuant to M.R.C.P. 56, either before or after service of the mandatory disclosures.

Under Section G(2)(b), a defending party may use a motion for summary judgment to raise only certain enumerated defenses: an immunity defense; a defense to a claim of professional malpractice; or any other matter constituting an avoidance or affirmative defense. Because immunity defenses seek to provide immunity from suit, not just from judgment, summary judgment is an appropriate mechanism for the presentation of these defenses; otherwise, the Rule For Expedited Small Claims would effect a material change in the substantive, not just procedural, law. In addition, because of the many costs and burdens that professional liability cases impose on defendants, it is especially important that summary judgment be available in that context too. Finally, affirmative defenses, such as the statute of limitations, are often cost-effectively presented by motion for summary judgment.

Misuse of the often costly mechanism of summary judgment and other motions is avoided by the mandatory award of fees and costs to parties who successfully defend a motion. If summary judgment is denied to either a complaining or a defending party, Section G(5) provides that the court *must* award the prevailing party the reasonable expenses incurred in attending the hearing of the motion *and must* award attorneys' fees. In this way, Section G(5) strengthens the discretionary provisions of M.R.C.P. 26(h).

Section G(4) establishes some of the most important cost containment features of the Rule For Expedited Small Claims. There is neither additional discovery nor additional motions unless the parties stipulate thereto or the court orders otherwise based on the court's determination that such is necessary to obtain a fair, swift and cost-effective determination of the case.

However, nothing in Section G prohibits filing an appropriate motion under Rule 11 of the Mississippi Rules of Civil Procedure.

Section H requires objections to the authenticity of documents be made reasonably in advance of trial and lists certain documents that are presumptively admissible.

Section I provides that, after thirty days from the filing of the final answer or responsive pleading, the Court shall set the matter for trial. In this way, the Rule For Expedited Small Claims seeks to combat undue delay in the trial of smaller claims.

Section J provides that a motion disputing or objecting to the applicability of this Rule shall ordinarily be filed with the complaint, answer, or reply, and requires the movant simultaneously to notice a hearing for the earliest practicable time. In making its ruling, the trial court shall consider, among other things, the nature of the claims and the defenses, the existence of multiple claims or parties, the complexity of the case, and the need for the examination of a party pursuant to M.R.C.P. 35. As the complexity of the factual or legal basis for the claims or defenses increases, the appropriateness of the Rule decreases. The

court may also raise these issues *sua sponte*. Section K further provides that a party may otherwise initiate the provisions of this Rule by motion, governed by the foregoing criteria.