

**ORIGINAL**

**FILED**

**AUG 23 2017**

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

**IN THE MATTER OF:  
AMENDMENTS TO THE MISSISSIPPI UNIFORM RULES OF PROCEDURE FOR  
JUSTICE COURT**

MISC. NO. 89-R-99024

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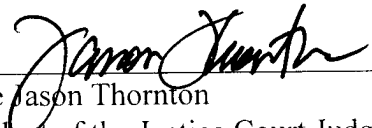
**PETITION TO AMEND THE MISSISSIPPI UNIFORM RULES OF PROCEDURE FOR  
JUSTICE COURT TO IMPROVE THE UNIFORMITY, EFFICIENCY, AND CLARITY  
OF JUSTICE COURT PROCEDURES**

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COMES NOW the Board of the Mississippi Justice Court Judges Association and by unanimous agreement petitions the Mississippi Supreme Court to amend the Mississippi Uniform Rules of Procedure for Justice Court, as set forth in the attached Exhibit A, to improve the uniformity, efficiency, and clarity of justice court procedures. Any petition previously submitted to this Honorable Court by the Mississippi Justice Court Judges Association, or its Board, concerning the adoption, repeal, or amendments of the Mississippi Uniform Rules of Procedure for Justice Court is hereby withdrawn.

Submitted this the 21 day of August 2017.

BOARD OF THE JUSTICE COURT JUDGES ASSOCIATION

BY:   
Judge Jason Thornton  
President of the Justice Court Judges Association

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**MOTION#**

3311

**EXHIBIT A OF PETITION MISC. NO. \_\_\_\_\_.**

The Board of the Mississippi Justice Court Judges Association recommends that the Mississippi Supreme Court adopt the following amendments to the Uniform Rules of Procedure for Justice Court:

**UNIFORM RULES OF PROCEDURE FOR JUSTICE COURT**

**1.00 GENERAL RULES.**

1.01 Scope of Rules.

1.02 Courtroom Decorum and Security.

1.03 Use of Cameras, Recording and Broadcasting Equipment.

1.04 ~~Ex Parte Communications~~ ~~Earwigging the Judge Prohibited.~~

1.05 Court Records and Docket ~~Clerk's Duty to Keep Papers.~~

1.06 Correction of Clerical Errors.

1.07 Recusal of Judges.

1.08 Appointment of Interpreter.

1.09 Summons of Jurors.

~~1.10 Participants Must Be Prompt.~~

1.10~~+~~ Conduct of Counsel and Parties.

**2.00 CIVIL RULES**

2.01 Applicability of Rules.

2.02 Failure to Conform to These Rules.

2.03 Additional Rules.

2.04 Officer of the Court Must Not Sign Bonds.

2.05 Form of Action.

2.06 Commencement of Civil Action.

2.07 Pleadings and Motions Submitted to the Court.

2.08 Service of Process ~~Issuance of Summons.~~

2.09 ~~Requests of~~ Subpoenas.

~~2.10 Service of Subpoenas.~~

2.10~~+~~ Computation of Time.

2.11~~2~~ Default Judgments and Dismissals ~~Failure to Appear on Trial Date.~~

2.12~~3~~ Counterclaims and Setoffs.

2.13~~4~~ Representation By Guardian Ad Litem.

2.14~~5~~ Substitution of Parties.

2.15~~6~~ Withdrawal of Counsel.

~~2.17 Dismissal of an Action by Written Motion.~~

2.16~~8~~ Consolidation and Separation of Trials.

~~2.19 Default Judgment.~~  
2.17 Jury Trials.  
~~2.20 Composition of Jury.~~  
~~2.21 Voir Dire of Jurors.~~  
~~2.22 Alternate Jurors.~~  
~~2.23 Communications With Jurors.~~  
~~2.24 Jury Instructions.~~  
~~2.25 Jury Deliberations.~~  
~~2.1826~~ Mistrial.  
~~2.1927~~ Post-judgment Actions.  
~~2.208~~ Enforcement of Judgements.  
2.21 Contempt of Court.  
~~2.229~~ Civil Appeals From Justice Court.

### 3.00 CRIMINAL RULES

3.01 Applicability of Rules.

## UNIFORM RULES OF PROCEDURE FOR JUSTICE COURT

[Adopted Effective May 1, 1995; Amended Effective July 1, 2017]

### RULE 1.00 GENERAL RULES

#### RULE 1.01 SCOPE OF RULES

These are the Uniform Rules of Procedure for Justice Court and may be cited as URPJC: e.g., URJCP 1. They shall ~~These rules~~ govern procedures in justice court and, except where specified, apply to all actions, civil and criminal.

#### RULE 1.02 COURTROOM DECORUM AND SECURITY

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. Each officer of the court shall be responsible for promotion of respect for the court.

No one shall ~~carry wear or bear~~ firearms or weapons of any description in the courtroom, except:

(1) the bailiffs;

(2) and any necessary guards of a prisoner; ~~or~~

(3) other law enforcement or security authorized by the court to do so unless authorized by the court.

A justice court judge may carry a firearm or weapon in the courtroom upon completing a

weapons training course approved by the Board of Law Enforcement Officer Standards and Training pursuant to section 97-37-7 of the Mississippi Code.

#### RULE 1.03 USE OF CAMERAS, RECORDING AND BROADCASTING EQUIPMENT

Any attorney of record or self-represented litigant may record or have recorded any justice court proceeding by audio-recording device or stenographically consistent with section 9-13-32 of the Mississippi Code. ~~Any other~~ The use of cameras, recording devices, or broadcasting equipment; ~~or such~~ shall be governed by the Code of Judicial Conduct.

#### RULE 1.04 EX PARTE COMMUNICATIONS ~~EARWIGGING THE JUDGE PROHIBITED~~

The judge shall not allow any person to discuss in his/her presence the law or facts or alleged facts of any case then pending in the court, or likely to be instituted therein, except as allowed by law in the orderly progress of proceedings under these rules or to influence his/her decision in any manner that is prohibited by these rules or the Mississippi Code of Judicial Conduct.

~~No person shall undertake to discuss with, or in the presence of, or hearing of the judge, the law or 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 manner.~~

#### RULE 1.05 COURT RECORDS AND DOCKET ~~CLERK'S DUTY TO KEEP PAPERS~~

(a) Clerk's duty to keep papers. No original record, or any part of a file, record or court papers shall be taken from the clerk's custody without the permission of the clerk of the court.

(b) Docket. The docket of the court shall at all times remain in the office of the justice court clerk. The clerk shall retain custody of the docket, make all entries thereon, keep it safe and provide it to the court for examination in the office. The docket may be maintained by computer. Failure of a judge to sign the docket shall not invalidate the actions of the court contained therein.

(c) Judge to sign uniform case record. The judge shall sign the uniform case record of each case pursuant to section 9-11-11 of the Mississippi Code.

#### RULE 1.06 CORRECTION OF CLERICAL ERRORS

Upon the motion of any party or the judge's own initiative, the judge may correct clerical errors in any judgments, orders, or other parts of the record up until the time a certified copy of the record in the case is transmitted by the clerk to the higher court on appeal. Notice of any corrected clerical errors shall be given to all parties in the case.

~~Clerical mistakes in judgments, orders, or other parts of the record, and errors therein arising from oversight or omission, may be corrected by the court at any time on its own initiative or on motion of any party and, after such notice, if any, as the court orders, up until the time the record is transmitted by the clerk of the justice court to the higher court. Notices of clerical errors corrected shall be given to the parties of the action.~~

#### RULE 1.07 RECUSAL OF JUDGES

(a) Disqualified judge to enter a written order of recusal. Any justice court judge who is disqualified under Canon 3E of the Code of Judicial Conduct from participating in a case shall enter a written order of recusal. Parties and their attorneys may waive a judge's disqualification pursuant to Canon 3F of the Code of Judicial Conduct.

(b) Reassigning case if judge is disqualified. If a judge is disqualified from participating in a case, the justice court clerk shall assign the action to another justice court judge of the county. If all the justice court judges in the county are disqualified from participating in the case, then a circuit court judge of the district may appoint any justice court judge from another county to hear it.

(c) Reimbursement of expenses. Any justice court judge assigned or appointed to participate in a case under subdivision (b) of this rule shall be entitled to reimbursement of expenses pursuant to section 25-3-41 of the Mississippi Code and as otherwise allowed by law.

~~If a justice court judge recuses himself or is otherwise unable to serve in a case, the case shall be rotated to another justice court judge of the county. If no justice court judge is able to serve because of recusals, or is otherwise unable to serve, then a circuit court judge of the district, in consultation with the recused judge(s), may appoint any justice court judge from a surrounding county to hear the case.~~

#### RULE 1.08 APPOINTMENT OF INTERPRETER

(a) Interpreters for the deaf or hearing impaired. Interpreters for the deaf or hearing impaired in civil actions shall be appointed pursuant to sections 13-1-301 through 13-1-315 of the Mississippi Code.

(b) Foreign language interpreters. Upon the motion of any party, the judge shall determine whether a foreign language interpreter is needed for a party or witness to ensure the fair administration of justice. Any appointment of a foreign language interpreter shall be pursuant to applicable rules and policies of the Mississippi Supreme Court and the Administrative Office of Courts.

(c) Interpreter's oath. Any interpreter appointed by the court under this rule shall take an oath to make a true translation pursuant to Rule 604 of the Mississippi Rules of Evidence and section

9-21-77 of the Mississippi Code.

~~The court may appoint an interpreter pursuant to Miss. Code Ann. § 13-1-301 through § 13-1-315.~~

RULE 1.09 SUMMONS OF JURORS

When a jury is needed in justice court, the justice court clerk shall notify the circuit court clerk who shall issue summonses for a jury in the same manner as for circuit court. The summonses shall be returnable to justice court.

~~RULE 1.10 PARTICIPANTS MUST BE PROMPT~~

~~Every person whose presence is required for the conduct of the business of the court shall be in prompt attendance.~~

RULE 1.10+ CONDUCT OF COUNSEL AND PARTIES

(a) Prompt attendance required. Prompt attendance is required by the attorneys and parties, the witnesses, and all other persons whose presence is required to conduct the business of the court.

(b) Professional courtesy and respect to all participants. The attorneys and parties must show professional courtesy and respect toward the judge, the jurors, the opposing attorneys and parties, the witnesses, and all other court personnel and participants within the courthouse. At no time may an attorney engage in behavior or tactics purposely calculated to irritate or annoy the opposing attorney.

(c) When addressing the court. When addressing the court, the attorneys and parties must:

- (1) stand unless excused for good cause by the court;
- (2) give specific grounds on any objections to testimony; and
- (3) make all objections to the judge, and not to opposing counsel.

(d) When addressing the jury panel. When addressing the jury panel, the attorneys and parties must stand unless excused for good cause by the court. Attorneys may directly address the jury panel only during voir dire, opening statements and closing arguments.

(e) When examining witnesses. When examining witnesses, the attorneys and parties must:

- (1) stand when examining witnesses, except when excused for good cause by the court;
- (2) limit themselves to asking questions; and
- (3) refrain from making statements, quips, or side remarks.

Any examination of witnesses is to be conducted fairly and objectively, with the attorneys, parties, and witnesses showing courtesy and respect to one another. Attorneys and parties may

not ask questions merely to embarrass or humiliate the witness.

(f) When making an opening statement or closing argument. When making an opening statement or closing argument, the attorneys and parties must:

(1) not denigrate or ridicule the opposing attorney;

(2) not call any juror by name;

(3) not have any personal contact with the jury whatsoever;

(4) not attempt to converse with or solicit audible answers from the jurors individually; and

(5) not thank the jury for acting as jurors.

The attorneys and parties are required to keep within proper bounds, and any attempt to inject an improper matter may be stopped by the court without the necessity of an objection. After the return of the verdict, the attorneys, the parties, and any spectators shall not express to the jury any congratulations, thanks, or condemnation for the verdict returned.

~~(a) Each party or its representative shall manifest an attitude of professional respect toward the judge, the opposing attorney, witnesses, defendants, jurors, and others in the courtroom. In the courtroom, attorneys shall 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.~~

~~(b) 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 directly address the jury panel only during voir dire, opening and closing statements.~~

~~(c) Attorneys and/or parties 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.~~

~~(d) In opening statements, and in closing arguments, an attorney 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 attempts 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, or spectators shall offer their congratulations, thanks, or condemnation to the jury for the verdict returned.~~

## 2.00 CIVIL RULES

### RULE 2.01 APPLICABILITY OF RULES

All rules designated as civil rules are applicable only in civil cases. General rules are also applicable in civil cases.

### RULE 2.02 FAILURE TO CONFORM TO THESE RULES

Any person embraced within these rules who violates the provisions hereof may be subject to sanctions, contempt proceedings or other disciplinary actions imposed or initiated by the court.

### RULE 2.03 ADDITIONAL RULES

No rule of procedure, local or otherwise, shall be adopted without the approval of the Mississippi Supreme Court.

### RULE 2.04 OFFICER OF THE COURT MUST NOT SIGN BONDS

No officer of the court shall sign any bond of any kind in or to any court of this state.

### RULE 2.05 FORM OF ACTION

There shall be one form of action known as "civil action."

### RULE 2.06 COMMENCEMENT OF CIVIL ACTION

A civil action is commenced by filing the complaint with the court. A complaint under these rules is a written, sworn declaration that states the evidence of the debt, statement of account, or other basis for the civil action and makes a specific demand for damages and/or other relief allowed by law. The plaintiff may file a single complaint against multiple defendants if it is alleged that each of them is liable on the claim.

~~A civil action shall be commenced in accordance with the provisions of Miss. Code Ann § 11-9-105.~~

### RULE 2.07 PLEADINGS AND MOTIONS SUBMITTED TO THE COURT

(a) Pleadings and motions to be signed. All pleadings, motions or any other application to the court shall be signed by the party making the submission or, if represented by counsel, by the attorney of record.

(b) Information to be provided. All pleadings, motions or any other application to the court shall



bear the name, address, and telephone number of the party filing the same and, if any attorney is representing the party, the attorney's name, office address, and telephone number.

(c) Size of paper. All pleadings and other papers filed in any civil action governed by these rules shall be on paper measuring 8 ½ inches x 11 inches. But exhibits or attachments to pleadings may be folded and fastened to pages of the specified size if compliance is not reasonably practicable.

(d) Electronic filing and storage. Pleadings, motions or any other application to the court may be filed and stored by computer or electronic means pursuant to rules and policies established by the Mississippi Supreme Court and the Administrative Office of Courts.

All pleadings, motions or any other application to the court shall bear the name, address and phone number of the party filing the same, and, if any attorney is representing the party, the name, office address and phone number of the attorney.

#### RULE 2.08 SERVICE OF PROCESS-ISSUANCE OF SUMMONS

(a) Service of process defined. Service of process for civil actions in justice court means serving a true copy of the summons and complaint upon the defendant in accordance with this rule.

(b) Issuance of summons and form. Summons shall be issued by the justice court clerk. Any summons issued under this rule shall name the court and the parties; be directed to the defendant; state the name and address of the plaintiff's attorney or, if unrepresented, of the plaintiff; state the date and time within which the defendant must appear and defend; notify the defendant that a failure to appear and defend may result in a default judgment against the defendant for the relief demanded in the complaint; be signed by the justice court clerk; and bear the court's seal.

(c) Service by constable upon defendants located within the state. Upon the filing of the complaint, the justice court clerk shall promptly deliver a true copy of the summons and complaint to the constable of the county of the defendant's usual place of abode or, if the defendant is an entity, to the constable of the county of the entity's location, to serve process upon the defendant. Within ten (10) days thereafter, unless service has been waived, the constable shall file an affidavit showing proof of service with the justice court clerk.

(d) Manner of service upon mentally competent adults or married infants located within the state.

(1) Personal service. The constable shall deliver a true copy of the summons and complaint to the defendant or to an agent authorized by appointment or by law to receive process. Service shall be deemed complete upon the date of service.

(2) Service upon a family member. If service under paragraph (d)(1) cannot be made with reasonable diligence, then the constable shall deliver a true copy of the summons and complaint at the defendant's usual place of abode with the defendant's spouse or some other person of the defendant's family above the age of sixteen (16) years who is willing to receive service, and

within three (3) days thereafter, by mailing a true copy of the summons and complaint, by first class mail, postage prepaid, to the defendant at the address where the true copy of the summons and complaint were properly delivered to a person willing to receive service. Service shall be deemed complete on the 10th day after the mailing.

(3) Service by posting. If service under paragraphs (d)(1) and (d)(2) cannot be made with reasonable diligence, then the constable shall serve process by posting a true copy of the summons and complaint on a door of the defendant's usual place of abode and in a public, conspicuous place at the justice court courthouse and, within three (3) days thereafter, by mailing a true copy of the summons and complaint to the defendant at the defendant's usual place of abode, either:

(i) by first class mail, postage prepaid, but only if the constable files with the justice court clerk a sworn affidavit that a true copy of the summons and complaint had been posted as required herein and that a true copy of the summons and complaint had been mailed by first class mail, postage prepaid, to the defendant at the defendant's usual place of abode within three (3) days of the posting; or

(ii) by certified mail, return receipt requested.

Service shall be deemed complete on the 10th day after the first class mailing or, if by certified mail, return receipt requested, upon the court receiving the return receipt, whether returned delivered or undeliverable.

(e) Manner of service upon persons or entities located within the state other than mentally competent adults or married infants. The constable shall serve process in the manner provided by Rule 4 of the Mississippi Rules of Civil Procedure for the following persons or entities located in the state: an unmarried infant or mentally incompetent person (M.R.C.P. 4(d)(2)); a person confined to a penal institution (M.R.C.P. 4(d)(3)); a domestic or foreign corporation or a partnership or other unincorporated association (M.R.C.P. 4(d)(4)); the State of Mississippi or any one of its departments, officers or institutions (M.R.C.P. 4(d)(5)); a county (M.R.C.P. 4(d)(6)); a municipal corporation (M.R.C.P. 4(d)(7)); and any other governmental entity (M.R.C.P. 4(d)(8)).

(f) Service by sheriff upon defendants located within the state. When any process has not been returned by the constable as required by this rule, then the justice court clerk shall direct the sheriff of the county of the defendant's usual place of abode or, if the defendant is an entity, to the sheriff of the county of the entity's location, to serve process upon the defendant in like manner as required of a constable under this rule.

(g) Service by process server upon defendants located within the state. When any process has not been returned by the constable as required by this rule, the plaintiff may make a written request for service by a process server instead of the sheriff. Upon receiving a written request, the justice court clerk shall promptly deliver a true copy of the summons and complaint to the plaintiff or the plaintiff's attorney for service of process by a process server in like manner as required of a constable under this rule. The process server must be at least eighteen (18) years of age and not be a party to the action.

(h) Service by certified mail, return receipt requested upon persons or entities located outside the state. When the defendant is a person or entity located outside the state, the plaintiff may make a written request for service by certified mail, return receipt requested. Upon receiving a written request, the justice court clerk shall promptly deliver a true copy of the summons and complaint to the plaintiff or the plaintiff's attorney for service of process by certified mail, return receipt requested. Within twenty (20) days thereafter, the sender shall file with the justice court clerk the return receipt or the return envelope marked "Refused." Where the defendant is a natural person, the envelope shall be marked "Restricted Delivery." Service of process by this method shall be deemed complete from the date of delivery as evidenced by the return receipt or the return envelope marked "Refused."

(i) Service upon multiple defendants. If there are multiple defendants, then a separate true copy of the summons and complaint shall be served on each defendant named in the action.

(j) Validity of service. Nothing in this rule shall invalidate any service of process for being made untimely or for an untimely filed return.

(k) Waiver. Any defendant who is not an unmarried infant or a mentally incompetent person may waive the service of process or enter an appearance, with the effect of being duly served with lawful process, in the manner provided under Rule 4(e) of the Mississippi Rules of Civil Procedure.

(l) Amendment. The justice court judge may allow any service of process or proof of service under this rule to be amended for good cause shown, unless it clearly appears that material prejudice would result to the substantial rights of defendant.

(m) Time limit for service. The justice court judge shall dismiss without prejudice any action where, without good cause, it appears from the court file that service of process has not been made upon the defendant within sixty (60) days after the filing of the complaint. The plaintiff may file a motion for enlargement of time prior to the expiration of the sixty (60) day period.

(n) Fees for service of process.

(1) By constable. Service of process by the constable may be taxed as court costs for an amount not exceeding the statutory amount allowed by law. No fees for service shall be paid to a constable who has not served process in substantial compliance to this rule.

(2) By sheriff. Service of process by the sheriff may be taxed as court costs for an amount not exceeding the statutory amount allowed by law. No fees for service shall be paid to a sheriff who has not served process in substantial compliance to this rule.

(3) By process server. Service of process by a process server may be taxed as court costs for an amount not exceeding the statutory amount allowed by law to the constable for service of process.

(4) By certified mail, return receipt requested. Service of process by certified mail, return receipt requested on a person or entity located outside the state may be taxed as court costs for an

amount not exceeding the amount of postage for the mailing.

Summons shall be issued and served pursuant to Miss. Code Ann. §§ 11-9-107, 11-9-109 and 13-3-5(2).

#### RULE 2.09 REQUESTS OF SUBPOENAS

(a) Generally. Subpoenas for a trial or hearing in justice court shall conform to Rule 45 of the Mississippi Rules of Civil Procedure.

(b) Request for subpoena. Every request for subpoena of a witness in a civil action shall:

(1) be in writing;

(2) contain the mailing and physical addresses of the witness and other information so as to furnish a sure guide to the person serving the subpoena;

(3) be delivered to the justice court clerk in a reasonable time before the trial date; and

(4) be signed and dated by the party requesting the subpoena.

The justice court clerk shall preserve each written request for subpoena within the court file.

(c) Issuance of subpoenas. Every subpoena in civil actions shall:

(1) be issued by the justice court clerk under the seal of the justice court;

(2) state the name and address of the court and the title of the action; and

(3) command each person to whom it is directed to attend and give testimony at a specified date, time and place, and to bring to the hearing specified books, papers, documents or other objects in the control and possession of the witness that are to be offered into evidence.

(d) Service of subpoena. A subpoena in civil actions shall be served upon the witness personally by:

(1) the sheriff;

(2) the deputy sheriff;

(3) a constable; or

(4) any other person who is not a party and eighteen (18) years of age or older.

The endorsed return, or a written acknowledgment on the subpoena by the witness, shall be prima facie proof of service. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the state.

(e) Enforcement of subpoenas. The judge may enforce a subpoena in civil actions by any means allowed by the Mississippi Code, including the issuance of an attachment pursuant to section 11-9-115 of the Mississippi Code, or these rules.

Requests for subpoenas must be made in writing and delivered to the clerk in a reasonable time before the trial date. The written request to the clerk shall give the address

of the witnesses and other information, so as to furnish sure guides to the person serving the subpoena. These requests must be preserved by the clerk.

#### RULE 2.10 SERVICE OF SUBPOENAS

(a) Every subpoena shall be issued by the clerk under seal of the court, shall state the name and address of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified.

(b) A subpoena may be served by the sheriff, his deputy, a constable, or by any other person who is not a party and is not less than 18 years of age, and his return endorsed thereon shall be prima facie proof of service, or the witness may acknowledge service in writing on the subpoena. Service of the subpoena shall be executed upon the witness personally.

(c) At the request of any party, subpoenas for attendance at a hearing or trial shall be issued by the clerk of the court in which the hearing or trial is held. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the state.

(d) Failure by any person, without adequate excuse, to obey a subpoena served upon him may be subject to the penalties provided in Miss. Code Ann. § 11-9-115.

#### RULE 2.10~~4~~ COMPUTATION OF TIME

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the date of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or any other day that the courthouse or the clerk's office is in fact closed, whether with or without legal authority, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, a legal holiday, or any other day when the courthouse or clerk's office is closed. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. The court, in its discretion, may grant an extension of time.

#### RULE 2.11~~2~~ DEFAULT JUDGMENTS AND DISMISSALS ~~FAILURE TO APPEAR ON TRIAL DATE~~

(a) When only the defendant fails to appear. If the defendant fails to appear on the trial date, and the plaintiff appears, then the judge may enter a default judgment provided:

- (1) there is a factual basis to support the claim by a preponderance of the evidence; and
- (2) the judgment is not different in kind from or exceed an amount of that demanded in the complaint.

For good cause shown, the judge may set aside a default judgment. In making this determination, the judge must weigh the following factors: the nature and legitimacy of a defendant's reasons for default, whether the defendant has a colorable defense to the merits of the claim, and the nature and extent of prejudice that a plaintiff would suffer if the default is set aside.

(b) When only the plaintiff fails to appear. If the plaintiff fails to appear on the trial date, and the defendant appears, then the judge shall dismiss the case with prejudice.

(c) When both the plaintiff and defendant fail to appear. If both the plaintiff and the defendant fail to appear on the trial date, then the judge shall dismiss the case without prejudice.

(d) When the plaintiff files a motion for dismissal. If the plaintiff files prior to trial a written motion for the dismissal of the case, then the judge may dismiss the action without prejudice. Plaintiff's costs shall not be assessed against the defendant.

~~If the defendant fails to appear on the trial date, and the plaintiff appears, then the court may enter a default judgment as under Rule 2.19. If the plaintiff fails to appear on the trial date, and the defendant appears, the court shall dismiss the case with prejudice. If neither the plaintiff nor the defendant appears on the trial date, the court shall dismiss the case with prejudice:~~

#### RULE 2.123 COUNTERCLAIMS AND SETOFFS

Counterclaims and setoffs shall be liberally allowed by the court. Failure to assert any counterclaim or setoff shall not bar a subsequent civil action of those claims. The judge shall dismiss without prejudice any counterclaim that exceeds the jurisdictional limits of justice court.

~~Assertions of counterclaims and setoffs shall be liberally allowed when claimed by the defendant. The failure to assert any counterclaim or setoff shall not bar subsequent action upon such claims. Upon the assertion of any counterclaim which exceeds the jurisdictional limits of justice court, the court shall dismiss the case without prejudice.~~

#### RULE 2.134 REPRESENTATION BY GUARDIAN AD LITEM

The judge may appoint a guardian ad litem who is an attorney to represent an infant or a vulnerable person as defined under Section 43-47-5 of the Mississippi Code. The appointed guardian ad litem may sue or defend the civil action on behalf of such persons. Reasonable costs and fees of the guardian ad litem may be taxed as court costs.

~~Whenever a party to an action is an infant, or under legal disability, a representative may sue or defend on behalf of such party. A party defendant who is an infant, or under legal disability and is not represented, may be represented by a guardian ad litem appointed by the court. Cost and reasonable fees of a guardian ad litem may be taxed as costs in the action.~~

#### RULE 2.145 SUBSTITUTION OF PARTIES

(a) If a party dies. If a party dies and the claim is not thereby extinguished, any party or the successors or representatives of the deceased party may file, within ninety (90) days of the party's

death, a motion for the substitution of parties. Notice of the motion and the hearing date shall be issued and served on the parties in the same manner as required for service of summons under these rules. The judge shall dismiss without prejudice the action if the motion for substitution of parties is not filed timely.

In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) If a party comes under a legal disability. Upon the motion of any party, the judge may allow a civil action to be continued by or against a representative of a party who comes under a legal disability. Notice of the motion and hearing date shall be issued and served on the parties in the same manner as required for service of summons under these rules.

(c) If there is a transfer of interest. Upon the motion of any party, the judge may direct that the person to whom the interest was transferred be substituted for, or joined with, the original party in the civil action. Notice of the motion and hearing date shall be issued and served on the parties in the same manner as required for service of summons under these rules.

(d) If a party is a public officer who dies or resigns in office. A civil action shall not abate if a party is a public officer acting in his official capacity who dies, resigns, or otherwise ceases to hold office. Instead, the public officer's successor shall be substituted as a party. The judge may enter an order of substitution at any time in the course of the action, but its omission shall not affect the substitution.

~~(a) Death. If a party dies and the claim is not thereby extinguished, the court shall, upon motion, order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of the hearing, shall be served on the parties by written notice with certificate of service attached as provided by the Mississippi Rules of Civil Procedure, and upon persons not parties in the manner provided in Rule 4 for service of summons. The action shall be dismissed without prejudice as to the deceased party if the motion for substitution is not made within ninety (90) days after the death is suggested upon the record by service of a statement of the fact of the death as herein provided for the service of the motion. In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.~~

~~(b) Legal Disability. If a party comes under a legal disability, the court, upon motion served as provided in subdivision (a) of this rule, may allow the action to be continued by or against the surviving parties.~~

~~(c) Transfer of Interest. In the case of any transfer of interest, the action may be continued by or against the original party, unless the court, upon motion, directs the person to whom the interest is transferred to be substituted in the action or join with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.~~

~~(d) Public Officers; Death or Separation from Office. When a public officer is a party to an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the party, but any misnomer not affecting the substantial rights of the party shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.~~

#### RULE 2.156 WITHDRAWAL OF COUNSEL

An attorney who has made an entry of appearance may not withdraw from the case except with the permission of the court upon a showing of good cause after notice of withdrawal has been served on the attorney's client and all attorneys of record. Permission to withdraw shall not be unreasonably denied.

~~When an attorney makes an appearance for a 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 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 client and all attorneys of record.~~

#### RULE 2.17 DISMISSAL OF AN ACTION BY WRITTEN MOTION

~~A plaintiff may dismiss its action at any time before trial by written notice. Plaintiff's costs shall not be assessed against any other party. Such dismissal is without prejudice.~~

#### RULE 2.168 CONSOLIDATION AND SEPARATION OF TRIALS

(a) Consolidating actions. When two or more civil actions with a common question of law or fact are pending before the court, the judge may:

(1) order a joint hearing or trial of any or all matters pertaining to the common question of law or fact;

(2) order all the actions consolidated for trial; or

(3) make such orders concerning proceedings on the action so as to avoid unnecessary costs or delay.

(b) Separate trials. The judge may order a separate trial of any claim in a civil action for reasons of:

(1) avoiding prejudice;



- (2) expediting the resolution of claims in the action; or
- (3) economical considerations neutral to the litigation.

~~(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all of the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary cost or delay.~~

~~(b) Separate Trials. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim.~~

#### RULE 2.19 DEFAULT JUDGMENT

~~A judgment by default shall not be different in kind from or exceed an amount which was demanded in the complaint. For good cause shown, the court may set aside a default judgment.~~

#### RULE 2.17 JURY TRIALS

(a) When a jury trial may be demanded. A jury trial may be demanded in civil actions under section 11-9-143 of the Mississippi Code.

(b) Summons of jurors. When a jury is needed in a civil action, the justice court clerk shall notify the circuit court clerk who shall issue summonses for a jury in the same manner as for circuit court. The summonses shall be returnable to justice court.

(c) Composition of jury. Juries in civil actions shall consist of six (6) persons and, in the discretion of the court, an alternate juror.

(d) Voir dire. Voir dire is the procedure whereby the court and the attorneys or parties ask questions of the venire to ensure the selection of a fair and impartial jury. It shall proceed in the following order:

(1) The judge asks questions of the venire.

(2) The plaintiff or the plaintiff's attorney asks questions of the venire, but not on matters that have already been thoroughly addressed by the judge.

(3) The defendant's attorney or the defendant asks questions of the venire, but not on matters that have already been thoroughly addressed by the judge.

Individual jurors may be examined only by leave of court upon good cause shown. No hypothetical questions shall be allowed requiring any juror to pledge a particular verdict. Attorneys or parties shall not offer an opinion on the law. The judge may set a reasonable time limit for voir dire.

(e) Selecting the jury panel. The jury panel in civil actions shall be selected, in the order of their appearance on the venire, as follows:

(1) The court shall consider all challenges for cause.

(2) The plaintiff's attorney or the plaintiff may use one or both of its peremptory challenges, then tender to the defendant a full panel of accepted jurors.

(3) The defendant's attorney or the defendant may use one or both of its peremptory challenges, then tender to the plaintiff a full panel of accepted jurors.

(4) Steps (2) and (3) of this subdivision are then repeated until a full panel of jurors has been accepted by both sides.

Each side shall have two (2) peremptory challenges. Objections on their use shall be made at the time the panel is tendered to the opposing party. Upon the motion of any party or the judge's own initiative, the judge shall excuse any juror from service in the case if there is reasonable ground to believe that such juror cannot render a fair and impartial verdict.

(f) Alternate jurors. Once a jury panel is selected in a civil action, an alternate juror is selected following the same procedure set forth above for selecting the jury panel, except that each side is only allowed one peremptory challenge. The alternate juror shall take the oath of a juror and hear all evidence and arguments, but may not retire to deliberate the case unless a juror is excused by the court or becomes unable to serve.

(g) Communications with jurors. Jurors are not permitted to mix and mingle anywhere in the courthouse with the attorneys, the parties, the witnesses, or spectators. The judge must instruct jurors to avoid all contact with the attorneys, the parties, the witnesses, and any spectators.

(h) Jury instructions. The judge shall provide the jury with written instructions on the law applicable to the case.

(i) Jury deliberations. The judge shall:

(1) direct the jury to select one of its members to preside over the deliberations;

(2) direct the jury to return its verdict in writing to the court; and

(3) admonish the jurors that, until discharged as jurors in the cause, they may only discuss the case with other members of the jurors when convened in the jury room for the purpose of reaching a verdict.

Unless otherwise authorized by the court, the jurors shall not disperse once deliberations have begun. After the jurors have retired to consider their verdict, the judge shall not recall the jurors to hear additional evidence.

(j) Materials allowed during deliberation. When retiring for deliberation in a civil action, the jurors are allowed to take with them:

(1) the form of verdict approved by the court;

(2) a copy of the written jury instructions;

- (3) any tangible evidence that was admitted at the trial; and
- (4) their personal notes made during the course of the trial.

(k) Returning the verdict. Any agreed upon verdict shall be unanimous, in writing, and returned in open court. Any verdict returned may be appealed pursuant to these rules.

(l) Jury poll. After a verdict is returned but before the jury is discharged, the judge shall on the request of either side, or may on his own initiative, poll the jurors individually. The judge shall direct the jury to retire and deliberate further if the poll reveals that the verdict is not unanimous or less than the stipulated majority.

#### ~~RULE 2.20 COMPOSITION OF JURY~~

~~Juries shall consist of six (6) persons and, in the discretion of the court, an alternate juror. Both sides may challenge any juror for cause. Each side shall have two (2) peremptory challenges. These challenges shall not be used in the selection of the alternate juror. Each side shall be allowed one peremptory challenge for the selection of an alternate juror; and this selection shall not be used for regular jurors. 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 appeared, having exercised any peremptory challenges desired.~~
- ~~(3) Next, the defendant shall go down the juror list accepted by the plaintiff and exercise any peremptory challenges 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 picking the jury panel.~~
- ~~(7) Constitutional challenges for the use of peremptory challenges shall be made at the time each panel is tendered.~~

#### ~~RULE 2.21 VOIR DIRE OF JURORS~~

~~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 2.22 ALTERNATE JURORS~~

~~The alternate juror shall take the oath of a juror and hear all evidence and arguments, but shall not retire to deliberate the case unless a juror is excused by the court or becomes unable to serve.~~

#### ~~RULE 2.23 COMMUNICATIONS WITH 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. 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 2.24 JURY INSTRUCTIONS~~

~~The judge shall instruct the jury on the law applicable to the case.~~

#### ~~RULE 2.25 JURY DELIBERATIONS~~

~~(a) 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.~~

~~(b) The jurors shall be kept together for deliberations as the court reasonably directs.~~

~~(c) After the jurors have retired to consider their verdict, the court shall not recall the jurors to hear additional evidence.~~

~~(d) The jury shall reduce its verdict to writing and present the same to the court.~~

#### ~~RULE 2.1826 MISTRIAL~~

(a) For misconduct by the defendant. Upon motion of the plaintiff, the judge shall declare a mistrial if there occurs during the trial misconduct by the defendant, the defendant's attorney, or a defendant's witness resulting in substantial and irreparable prejudice to the plaintiff's action. But if there are two or more defendants, the judge shall not declare a mistrial as to any defendant who is not an offending party and who requests that the trial continue.

(b) For misconduct by the plaintiff. Upon motion of the defendant, the judge shall declare a mistrial if there occurs during the trial misconduct by the plaintiff or a plaintiff's witness resulting in substantial and irreparable prejudice to the defense.

(c) Other reasons for declaring a mistrial. Upon motion of any party or the judge's own initiative, the judge shall declare a mistrial if:

(1) the trial cannot proceed in conformity with law; or

(2) the jury is deadlocked and there is no reasonable probability of a unanimous verdict.

~~(a) 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, from any other source, 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.~~

~~(b) 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 2.1927 POST-JUDGMENT ACTIONS

Unless authorized by law, no post-judgment action shall be instituted upon a judgment until expiration of ten (10) days after its entry.

#### RULE 2.208 ENFORCEMENT OF JUDGMENTS

(a) Statutory procedures to govern. Procedures to enforce a civil judgment shall be pursuant to the Mississippi Code and any applicable rules and policies of the Mississippi Supreme Court and the Administrative Office of Courts.

(b) Examining books, papers, and documents of judgment debtor. The judgment creditor may examine the judgment debtor and his books, papers, or documents pursuant to sections 13-1-261 through 13-1-271 of the Mississippi Code.

~~Process to enforce a judgment for the payment of money shall be by such procedures as are provided by statute. The procedure on execution, in proceedings supplementary to and in aid of judgment, and in proceedings on and in aid of execution, shall be as provided by statute. To aid in the satisfaction of a judgment, the judgment creditor may examine the judgment debtor, his books, papers or documents, upon any matter relating to his property as provided in Miss. Code Ann. §§ 13-1-261 through 13-1-271; except that no single judgment creditor may cause a judgment debtor to submit to examination under this section more than once in a period of six (6) months.~~

#### RULE 2.21 CONTEMPT OF COURT

Procedures for criminal or civil contempt of court shall be pursuant to Rule 32 of the Mississippi Rules of Criminal Procedure.

## RULE 2.229 CIVIL APPEALS FROM JUSTICE COURT

Civil appeals from justice court shall be governed by Rules 5.01, 5.04, 5.07, 5.08 and 5.09 of the Uniform Rules of Circuit and County Court. Either party aggrieved by a justice court judgment rendered in a case of unlawful entry and detainer, may, after final judgment, appeal to the circuit court of the county pursuant to section 11-51-83 of the Mississippi Code. The availability of writs of certiorari shall be as provided by the Mississippi Constitution and section 11-51-93 of the Mississippi Code.

~~Appeals from justice court shall be governed by the rules approved by the Supreme Court for the governance of appeals to the county or circuit courts.~~

## 3.00 CRIMINAL RULES

### RULE 3.01 APPLICABILITY OF RULES

Rules of criminal procedure in justice court are governed by the Mississippi Rules of Criminal Procedure (MRCrP). All rules designated as criminal rules are applicable only in criminal cases. General rules are also applicable in criminal cases.