

89-R-99001

CURRIE JOHNSON & MYERS, P.A.

ATTORNEYS AT LAW

WHITMAN B. JOHNSON III
wjohanson@curriejohnson.com

1044 River Oaks Drive
Flowood, Mississippi 39232

Telephone: 601-969-1010
Fax: 601-969-5120

www.curriejohnson.com

GULF COAST OFFICE:
2355 Pass Road
Biloxi, Mississippi 39531

Telephone: 228-385-1010
Fax: 228-385-1011

October 30, 2023

FILED

OCT 30 2023

Via Email – rholmes@courts.ms.gov

Clerk of Appellate Courts
Attn: Rules Committee on Civil Practice
and Procedure

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

Re: Proposed Amendments to Rule 26 of the Mississippi Rules of Civil Procedure

Dear Sir:

Please let me state my objections to the proposed amendments to Rule 26 of the Mississippi Rules of Civil Procedure. These proposed amendments allow for automatic designation of rebuttal experts.

I am aware that there have been other attorneys who have objected to the proposed amendments, essentially on grounds that these amendments are not necessary since the rules already require supplementation of opinions of designated experts.

While those objections are certainly warranted, my concern is that this amendment is not specific enough to limit rebuttal opinions to already designated experts. I fear this rule change will allow the plaintiff to designate an entirely new expert despite the fact that the plaintiff's expert deadline has already passed. This amendment will make routine what should otherwise be rare.

Additionally, there is nothing in the current rules which prevents the attorney for the plaintiff from requesting that the trial court grant leave to allow the designation of an entirely new expert, if the defendant has raised an issue that the plaintiff, who has the burden of proof, could not have reasonably anticipated. The more reasonable course of action is to allow the trial court to rule on whether the proposed "rebuttal expert" is actually necessary, as opposed to giving the plaintiff carte blanche to come up with an entirely new expert after the defendant has designated his experts. The case law on rebuttal testimony by the plaintiff clearly requires rebuttal testimony to address something that was outside of the plaintiff's burden of proof duties in their case in chief. *Crawford v. City of Meridian*, 186 So. 2d 250, 253 (Miss. 1966). "The party of upon whom the affirmative of [an] issue devolves is bound to give his evidence in support of the issue in first instance and will not be permitted to hold back part of his evidence and offer it in rebuttal."

MOTION 2018 2403
attachment

Clerk of Appellate Courts
October 30, 2023
Page 2

Essentially, this rule amendment is unwarranted and effectively gives one litigant an advantage over the other.

Sincerely yours,

CURRIE JOHNSON & MYERS, P.A.

A handwritten signature in black ink, appearing to read "Whitman B. Johnson III", with a long horizontal flourish extending to the right.

Whitman B. Johnson III

WBJ/jbm