



**UPSHAW • WILLIAMS
BIGGERS & BECKHAM LLP**

ATTORNEYS AT LAW

P.O. BOX 8230 GREENWOOD, MISSISSIPPI 38935-8230

Tommie G. Williams	Richard L. Kimmel	Peter L. Corson	James E. Upshaw 1931-2016
Marc A. Biggers	W. Hugh Gillon, IV	Tommie G. Williams, Jr.	
Glenn F. Beckham*	Patrick M. Tatum	Loraleigh C. Phillips*	*Also admitted in Nevada
F. Ewin Henson, III	J. L. Wilson, IV	Harris F. Powers, III *	*Also admitted in Tennessee
Richard C. Williams, Jr.	Steven C. Cookston*	Victoria M. McKinney	*Also admitted in Louisiana

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OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

October 24, 2023

Honorable D. Jeremy Whitmire
Clerk of Mississippi Appellate Courts
P.O. Box 249
Jackson, MS 39205

RE: Proposed Amendment to Rule 26 Regarding Rebuttal Experts

Dear Mr. Whitmire:

I am a practicing attorney who over 48 years has primarily practiced in defense of civil cases and am a past president of the Mississippi Defense Lawyers Association, although I am not submitting my comments on behalf of the Mississippi Defenses Lawyers Association.

I cannot support the Amendment proposed by the Association for Justice (MJA) to Mississippi Rule of Civil Procedure 26 for specific provisions allowing the designation of Rebuttal experts. Based upon my experience I do not believe that this would be necessary or helpful to parties equally, but rather it would in all likelihood as proposed favor plaintiffs.

Under the current rule, the plaintiffs as parties bearing the burden of proof are charged generally with coming forward first with any and all experts they determine may be needed in their case. The defendants learn from this what proof will be presented and are able to designate their own team of experts which will be necessary to meet the plaintiffs' experts proof. The proposed amendment would allow plaintiff to not completely designate their experts and to come back with a rebuttal designation in response the defendant's designations. This has not been necessary over the years and has not made any problems that I have seen as things now are.

If the Court were to consider adopting something like this, I respectfully submit that to be fair to everyone there should be an allowance of sur-rebuttal in response to the rebuttal experts.

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attachment

GREENWOOD
309 Fulton Street
Greenwood, Mississippi 38930
Telephone 662.455.1613
Fax 662.453.9245

MAILING ADDRESS
P.O. Box 8230 Greenwood, Mississippi 38935-8230

RIDGELAND
713 South Pear Orchard Road, Suite 102
Ridgeland, Mississippi 39157
Telephone 601.978.1996
Fax 601.978.1949

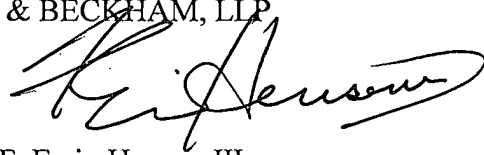
MAILING ADDRESS
P.O. Box 3080 Ridgeland, Mississippi 39158-3080

HERNANDO
2042 McIngvale Road
Hernando, Mississippi 38632
Telephone 662.429.5890
Fax 662.453.9245

MAILING ADDRESS
P.O. Box 8230 Greenwood, Mississippi 38935-8230

Yours very truly,

UPSHAW, WILLIAMS, BIGGERS
& BECKHAM, LLP

A handwritten signature in black ink, appearing to read "F. Ewin Henson III". The signature is written in a cursive style with a large, sweeping initial "F" and a long, horizontal flourish at the end.

F. Ewin Henson III