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MISSISSIPPI RULES OF CIVIL PROCEDURE

Adopted Effective 1/1/82

ORDER ADOPTING THE MISSISSIPPI RULES OF CIVIL PROCEDURE
SUPREME COURT OF MISSISSIPPI

Pursuant to the inherent authority vested in this Court by the Constitution of the State of Mississippi, as discussed in *Cecil Newell, Jr. v. State of Mississippi*, 308 So. 2d 71 (Miss. 1975), to promote justice, uniformity, and the efficiency of courts, the rules attached hereto are adopted and promulgated as Rules of Practice and Procedure in all Chancery, Circuit, and County Courts of this State in all civil actions filed on and after January 1, 1982, any and all statutes and court rules previously adopted to the contrary notwithstanding, and in the event of a conflict between these rules and any statute or court rule previously adopted these rules shall control.

The Clerk of this Court is authorized and directed to spread this order and the rules attached hereto at large on the minutes of the Court, and the Clerk is further authorized and directed to forward a certified copy thereof to West Publishing Company for publication in a forthcoming edition of Southern Reporter, Mississippi Cases, the official publication of decisions of this Court.

ORDERED, this the 26th day of May, 1981.

Neville Patterson,
Chief Justice
FOR THE COURT

**ORDER REPEALING COMMENTS TO THE MISSISSIPPI RULES OF
CIVIL PROCEDURE
SUPREME COURT OF MISSISSIPPI**

This matter is before the en banc Court on the Motion for the Amendment of Comments to the Mississippi Rules of Civil Procedure filed by the Supreme Court Rules Advisory Committee. As created by order of this Court originally dated November 9, 1983, the Committee is composed of members who represent the bench, bar, and the law schools of this state. In keeping with its responsibilities and for the purpose of assisting the bench and bar, the Committee has promulgated the notes that follow the Court's rules. These notes, while not official comments of the Supreme Court, are the product of extensive research and review and have been vetted by the members of the Committee as well as other trial judges and practicing members of the bar. The Court expresses its sincere appreciation for the Committee's commitment, diligence, and hard work. Having carefully considered the motion and its attachments, the en banc Court finds that the motion should be granted to the extent provided in this order.

IT IS, THEREFORE, ORDERED that the current Comments to the Mississippi Rules of Civil Procedure are repealed effective July 1, 2014.

IT IS FURTHER ORDERED that the Advisory Committee Notes to the Mississippi Rules of Civil Procedure as contained in Exhibit "A" are approved for publication with the Mississippi Rules of Civil Procedure effective July 1, 2014.

IT IS FURTHER ORDERED that the Clerk of this Court shall spread this order upon the minutes of the Court and shall forthwith forward a true certified copy hereof to West Publishing Company for publication as soon as practical in the advance sheets of *Southern Reporter, Third Series (Mississippi Edition)* and in the next edition of *Mississippi Rules of Court*.

SO ORDERED, this the 9th day of June, 2014.

William L. Waller, Jr.,
Chief Justice
FOR THE COURT

~~MISSISSIPPI RULES OF CIVIL PROCEDURE~~

- ~~(1) Scope of Rules.~~
- ~~(2) One Form of Action.~~
- ~~(3) Commencement of Action.~~
- ~~(4) Summons.~~
- ~~(5) Service of Filing of Pleadings and Other Papers.~~
- ~~(6) Time.~~
- ~~(7) Pleadings Allowed; Form of Motions.~~
- ~~(8) General Rules of Pleading.~~
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- ~~(12) Defenses and Objections—When and How Presented—By Pleading or Motion—Motion For Judgment On the Pleadings.~~
- ~~(13) Counter Claim and Cross Claim—Third Party Practice.~~
- ~~(14) Amended and Supplemental Pleadings.~~
- ~~(14) Pre trial Procedure.~~
- ~~16A. Motions for Recusal of Judges.~~
- ~~(14) Parties Plaintiff and Defendant; Capacity.~~
- ~~(14) Joinder of Claims and Remedies.~~
- ~~(14) Joinder of Persons Needed for Just Adjudication.~~
- ~~(14) Permissive Joinder of Parties.~~
- ~~(14) Misjoinder and Nonjoinder of Parties.~~
- ~~(14) Interpleader.~~
- ~~(14) [Class Actions] [Omitted].~~
- ~~14.0 [Derivative Actions By Shareholders] [Omitted].~~
- ~~14.0 [Actions Related to Unincorporated Associations] [Omitted].~~
- ~~(14) Intervention.~~
- ~~(14) Substitution of Parties.~~
- ~~(14) General Provisions Governing Discovery.~~
- ~~(14) Depositions Before Actions or Pending Appeal.~~
- ~~(14) Persons Before Whom Depositions May Be Taken.~~
- ~~(14) Stipulations Regarding Discovery Procedure.~~
- ~~(14) Depositions Upon Oral Examination.~~
- ~~(14) Depositions Upon Written Questions.~~
- ~~(14) Use of Depositions In Court Proceedings.~~
- ~~(14) Interrogatories to Parties.~~
- ~~(14) Production of Documents and Things and Entry Upon Land For Inspection and Other Purposes.~~
- ~~(15) Physical and Mental Examinations of Persons.~~

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~~(28) — Masters, Referees and Commissioners.~~
~~(28) — Judgments; Costs.~~
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~~MISSISSIPPI RULES OF CIVIL PROCEDURE~~

~~Adopted Effective January 1, 1982~~

~~ORDER ADOPTING THE MISSISSIPPI RULES OF CIVIL PROCEDURE
SUPREME COURT OF MISSISSIPPI~~

~~Pursuant to the inherent authority vested in this Court by the Constitution of the State of Mississippi, as discussed in *Cecil Newell, Jr. v. State of Mississippi*, 308 So. 2d 71 (Miss.1975), to promote justice, uniformity, and the efficiency of courts, the rules attached hereto are adopted and promulgated as Rules of Practice and Procedure in all Chancery, Circuit, and County Courts of this State in all civil actions filed on and after January 1, 1982, any and all statutes and court rules previously adopted to the contrary notwithstanding, and in the event of a conflict between these rules and any statute or court rule previously adopted these rules shall control.~~

~~The Clerk of this Court is authorized and directed to spread this order and the rules attached hereto at large on the minutes of the Court, and the Clerk is further authorized and directed to forward a certified copy thereof to West Publishing Company for publication in a forthcoming edition of Southern Reporter, Mississippi Cases, the official publication of decisions of this Court.~~

~~ORDERED, this the 26th day of May, 1981.~~

~~————— Neville Patterson,
Chief Justice
FOR THE COURT~~

~~ORDER REPEALING COMMENTS TO THE MISSISSIPPI RULES OF CIVIL
PROCEDURE~~

~~SUPREME COURT OF MISSISSIPPI~~

~~This matter is before the en-banc Court on the Motion for the Amendment of Comments to the Mississippi Rules of Civil Procedure filed by the Supreme Court Rules Advisory Committee. As created by order of this Court originally dated November 9, 1983, the Committee is composed of members who represent the bench, bar, and the law schools of this state. In keeping with its responsibilities and for the purpose of assisting the bench and bar, the Committee has promulgated the notes that follow the Court's rules. These notes, while not official comments of the Supreme Court, are the product of extensive research and review and have been vetted by the members of the Committee as well as other trial judges and practicing members of the bar. The Court expresses its sincere appreciation for the Committee's commitment, diligence, and hard work. Having carefully considered the motion and its attachments, the en-banc Court finds that the motion should be granted to the extent provided in this order.~~

~~IT IS, THEREFORE, ORDERED that the current Comments to the Mississippi Rules of Civil Procedure are repealed effective July 1, 2014.~~

~~IT IS FURTHER ORDERED that the Advisory Committee Notes to the Mississippi Rules of Civil Procedure as contained in Exhibit "A" are approved for publication with the Mississippi Rules of Civil Procedure effective July 1, 2014.~~

~~IT IS FURTHER ORDERED that the Clerk of this Court shall spread this order upon the minutes of the Court and shall forthwith forward a true certified copy hereof to West Publishing Company for publication as soon as practical in the advance sheets of *Southern Reporter, Third Series (Mississippi Edition)* and in the next edition of *Mississippi Rules of Court*.~~

~~SO ORDERED, this the 9th day of June, 2014.~~

~~William L. Waller, Jr.,~~

~~Chief Justice~~

~~FOR THE COURT~~

~~CHAPTER SECTION 11. SCOPE OF RULES; --ONE FORM OF ACTION~~

Rule 1. Scope ~~of rules; purpose.~~

~~(a) **Scope.** Unless Rule 81 states otherwise, These rules apply to all civil actions and proceedings in Mississippi circuit, chancery, and county courts govern procedure in the circuit courts, chancery courts, and county courts in all suits of a civil nature, whether cognizable as cases at law or in equity, subject to certain limitations enumerated in Rule 81.~~

~~(b) **Purpose.** The court and all parties must ; however, even those enumerated proceedings are still subject to these rules where no statute applicable to the proceedings provides otherwise or sets forth procedures inconsistent with these rules. These rules shall be construed these rules to secure the a just, speedy, and inexpensive determination of every action.~~

Advisory Committee Notes

~~These rules apply to a civil action as broadly as is judicially feasible regardless if the action is one at law or in equity. But are to be applied as liberally to civil actions as is judicially feasible, whether in actions at law or in equity. However, nothing in the rules should not be interpreted _as abridging or modifying the traditional jurisdictional separations of jurisdiction between Mississippi the law courts and equity courts in Mississippi.~~

~~One of the most important provisions of these rules, The salient provision of mandate in Rule 1(b) reflects the spirit of _is the statement that “These rules shall be construed to secure the just, speedy, and inexpensive determination of every action.” There probably is no provision in these rules more important than this mandate; it reflects the spirit in which the rules werethe rules’ conception and writing conceived and written; the same spirit should guide their interpretation.~~

~~and in which they should be interpreted.~~

~~The primary purpose of pProcedural rules should is to promote the ends of justice. ; ~~These rules seek to do so by establishing a reflect the view thatsingle form of action. The resulting “civil action” unites procedures in law and equity, _this goal can best be accomplished by the establishment of a single form of action, known as a “civil action,” thereby uniting the procedures in law and equity through a simplified procedure that~~~~

minimize~~s~~ technicalities, simplifies rules, -and place~~s~~ considerable discretion in the trial judge for construing the m rules in a manner consistent with the purpose stated in Rule 1(b). ~~that will secure their objectives.~~

Rule 2. One form of action.

~~There shall be~~ one form of action ~~exists: the to be known as~~ “civil action.”

Advisory Committee Notes

Rule 2 does not affect ~~the~~ various remedies ~~that~~ previously ~~have been~~ available in ~~Mississippi the courts of Mississippi~~. ~~The abolition of Abolishing~~ the forms of action furnishes a single, uniform procedure and allows by which a litigant may to present a claim in an orderly manner to in a court empowered to give whatever appropriate and just relief ~~is appropriate and just~~; ~~the~~ substantive and remedial principles ~~that applied applicable~~ prior to ~~the advent of~~ these rules are not remain unchanged. What was an action at law ~~before these rules is still remains~~ a civil action founded on legal ~~principles principles; and~~ what was a bill in equity ~~before these rules is still remains~~ a civil action founded upon equitable principles.

CHAPTER II. COMMENCEMENT OF ACTION:

SECTION 2. COMMENCING AN ACTION; SERVING CE OF PROCESS;
PLEADINGS, MOTIONS, AND ORDERS

Rule 3. Commencement-Commencing of an action.

(a) Filing a ~~Filing of C~~complaint; costs.— Filing a complaint with the court commences a ~~A~~ civil action is commenced by filing a complaint with the court.—When filing a complaint, the plaintiff must make a costs deposit in an amount local rule decides. A required amount becomes effective when a court issues a local rule, and the Mississippi Supreme Court approves it.

(b) Motion for security for costs. If the court orders costs, the clerk or a party may file a motion requiring the plaintiff to give security within 60 days.

(1) The motion must include an affidavit stating:

(A) Whether the plaintiff is a state resident;

(B) For a nonresident plaintiff, that the movant believes the plaintiff lacks sufficient in-state property to satisfy a cost award;

(C) For a resident plaintiff, that the movant believes and has good reason for believing the plaintiff cannot satisfy a cost award;

(D) If the movant is a defendant, that the defendant believes in a meritorious defense and that the affidavit is not filed for delay; and

(E) If the movant is not a defendant, that the affidavit is not filed at the request of a party defendant.

(2) If the plaintiff fails to give the security, the court should dismiss the suit and issue execution for accrued costs.

(3) For good cause shown, the court may extend the 60 days for giving security.

(c) Proceeding in forma pauperis. A party may proceed in forma pauperis according to Miss. Code Ann. §§ 11-53-17 and 11-53-19. On the clerk's motion, a party's motion, or its own, the court may examine facts and circumstances of the affiant's pauperism.

(d) Accounting for costs. Within 60 days of dismissal or final judgment, the clerk must prepare an itemized costs statement and submit it to the parties. The clerk's statement will include a refund of the costs deposit or a bill for additional costs.

~~(a) A costs deposit shall be made with the filing of the complaint, such deposit to be in the amount required by the applicable Uniform Rule governing the court in which the complaint is filed.~~

~~The amount of the required costs deposit shall become effective immediately upon promulgation of the applicable Uniform Court Rule and its approval by the Mississippi Supreme Court.~~

~~(b) Motion for Security for Costs.~~ The plaintiff may be required on motion of the clerk or any party to the action to give security within sixty days after an order of the court for all costs accrued or to accrue in the action. The person making such motion shall state by affidavit that the plaintiff is a nonresident of the state and has not, as affiant believes, sufficient property in this state out of which costs can be made if adjudged against him; or if the plaintiff be a resident of the state, that he has good reason to believe and does believe, that such plaintiff cannot be made to pay the costs of the action if adjudged against him. When the affidavit is made by a defendant it shall state that affiant has, as he believes, a meritorious defense and that the affidavit is not made for delay; when the affidavit is made by one not a party defendant it shall state that it is not made at the instance of a party defendant. If the security be not given, the suit shall be dismissed and execution issued for the costs that have accrued; however, the court may, for good cause shown, extend the time for giving such security.

~~(c) Proceeding In Forma Pauperis.~~ A party may proceed in forma pauperis in accordance with sections 11-53-17 and 11-53-19 of the Mississippi Code Annotated. The court may, however, on the motion of any party, on the motion of the clerk of the court, or on its own initiative, examine the affiant as to the facts and circumstances of his pauperism.

~~—Accounting for Costs.~~ Within sixty days of the conclusion of an action, whether by dismissal or by final judgment, the clerk shall prepare an itemized statement of costs incurred in the action and shall submit the statement to the parties or, if represented, to their attorneys. If a refund of costs deposit is due, the clerk shall include payment with the statement; if additional costs are due, a bill for same shall accompany the statement.

[Amended effective September 1, 1987; amended effective June 24, 1992; amended effective

September 25, 2014;].

Advisory Committee Historical Note

Effective ~~June 6/24/, 1992~~, Rule 3(a) was amended to provide that before they are effective, the amounts of required costs deposits must be promulgated by Uniform Court Rule and approved by the Mississippi Supreme Court. ~~598-602 So. 2d XXI (West Miss. Cas. 1992).~~

Effective ~~9/1/September 1, 1987~~, Rule 3(e) was amended by providing that the amount required as a deposit for filing suit ~~shall~~ will be the amount required by the Uniform Rule governing the court ~~in whereiech~~ the action is filed. ~~508-511 So. 2d XXV (West Miss. Cas. 1988).~~

Advisory Committee Notes

Rule 3(a) establishes a precise date for ~~fixing the commencement~~ commencing of a civil action. ~~Filing a complaint is t~~ The first step in a civil action is the filing of the complaint with the clerk or judge. Service of process ~~upon the defendant~~ is not essential to commencement of the action. ~~But, but~~ Rule 4(h) ~~does~~ requires the summons and complaint to be served ~~service of the summons and complaint~~ within ~~120-90~~ 90 days ~~after the filing of the complaint.~~

~~Ascertaining t~~ The precise date of commencement is important ~~in for~~ determining: (1) whether an action ~~has been brought is~~ prematurely; (2) whether ~~it is barred by~~ a statute of limitations ~~bars an action~~; and (3) ~~and whether a court should retain an action if multiple ones which of two or more courts in which actions~~ involving the same parties and issues have been instituted.

~~should retain the case for disposition, absent special considerations.~~

~~The provisions in~~ Rule 3 ~~seeks to make the assessment, accounting, and funding of costs a uniform procedure.~~ The provisions in Rule 3 seeks to make the assessment, accounting, and funding of costs a uniform procedure. ~~pertaining to costs are intended to make uniform the assessing, accounting for, and funding of costs.~~

Rule 3(c) allows indigents to sue without depositing security for costs. ~~But the court may examine the affiant's financial condition and dismiss the action; however, the indigent affiant may be examined as to affiant's financial condition and the court may, if the allegation of indigency is false, dismiss the action.~~ But the court may examine the affiant's financial condition and dismiss the action; however, the indigent affiant may be examined as to affiant's financial condition and the court may, if the allegation of indigency is false, dismiss the action.

RULE 4. SUMMONS**Rule 4. Summons.**

(a) ~~(a) Summons: Issuance.~~

- (1) When a complaint is filed, the clerk must issue a summons on the plaintiff's written request and:**
- (A) Deliver the summons to the plaintiff for service under Rule 4 (c)(1), 4(c)(3), 4(c)(4), or 4(c)(5);**
 - (B) Deliver the summons to the sheriff of the county where the defendant resides or is found for service under Rule 4(c)(2); or**
 - (C) Effect service by publication under Rule 4(c)(4).**
- (2) The person to whom the summons is delivered must promptly serve the summons and a copy of the complaint.**
- (A) On the plaintiff's request, a summons or copy of one addressed to multiple defendants must be issued for each defendant to be served.**

~~—Upon filing of the complaint, the clerk shall forthwith issue a summons.~~

(b) ~~At the written election of the plaintiff or the plaintiff's attorney, the clerk shall: Form.~~

(1) Content. A summons must:

- (A) Be dated and signed by the clerk;**
- (B) Bear the court's seal;**
- (C) Name the court;**
- (D) Name the parties;**
- (E) Be directed to the defendant;**
- (F) State the name and address of the plaintiff's attorney or an unrepresented plaintiff;**
- (G) State the time in which the defendant must appear and defend; and**
- (H) Notify the defendant a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint.**

(2) Multiple parties. Unless service is by publication, if there are multiple plaintiffs or defendants, the summons may contain in place of the names of all parties:

- (A) The name of the first party on each side; and**

(B) The name and address of the party to be served.

(3) Forms 1 and 2.

(A) Process server. A summons served by a process server must substantially conform to Form 1 in the Appendix.

(B) Sheriff. A summons served by the sheriff must substantially conform to Form 2 in the Appendix.

(c) Service.

(1) Process server. Unless Rule 4(c)(2) or (c)(4) states otherwise, a nonparty age 18 or older may serve a summons and complaint. If completed by a process server, a sum not exceeding the statutory amount payable to the sheriff for service may be taxed as recoverable costs in the action.

(2) Sheriff. On a party's written request, the sheriff of the county where the defendant resides or is found must serve a summons and complaint under Rule 4(d). The sheriff must:

(A) Mark the date the summons was received; and

(B) Return the summons to the clerk who issued it within 30 days.

(3) Mail.

(A) First-class mail and acknowledgment service; requirements. A summons and complaint may be served under Rule 4(d)(1) or (d)(4) by mailing the person first class, postage prepaid:

(i) A copy of the summons and complaint;

(ii) Two copies of a notice and acknowledgment substantially conforming to Form 3 of the Appendix; and

(iii) A self-addressed return envelope, postage prepaid.

~~(4) Service if no acknowledgment received. If the sender does not receive an acknowledgement of service within 20 days, service may be made in a manner this rule~~

~~(A) Deliver the summons to the plaintiff or plaintiff's attorney for service undersubparagraphs (c)(1) or (c)(3) or (c)(4) or (c)(5) of this rule.~~

- ~~(A) Deliver the summons to the sheriff of the county in which the defendant resides or is found for service under subparagraph (c)(2) of this rule.~~
- ~~(A) Make service by publication under subparagraph (c)(4) of this rule.~~
- ~~(1) The person to whom the summons is delivered shall be responsible for prompt service of the summons and a copy of the complaint. Upon request of the plaintiff, separate or additional summons shall issue against any defendants.~~
- ~~(a) **Same: Form.** The summons shall be dated and signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint. Where there are multiple plaintiffs or multiple defendants, or both, the summons, except where service is made by publication, may contain, in lieu of the names of all parties, the name of the first party on each side and the name and address of the party to be served. Summons served by process server shall substantially conform to Form 1A. Summons served by sheriff shall substantially conform to Form 1AA.~~
- ~~(a) **Service:**~~
- ~~(1) *By Process Server.* A summons and complaint shall, except as provided in subparagraphs (2) and (4) of this subdivision, be served by any person who is not a party and is not less than 18 years of age. When a summons and complaint are served by process server, an amount not exceeding that statutorily allowed to the sheriff for service of process may be taxed as recoverable costs in the action.~~
- ~~(1) *By Sheriff.* A summons and complaint shall, at the written request of a party seeking service or such party's attorney, be served by the sheriff of the county in which the defendant resides or is found, in any manner prescribed by subdivision (d) of this rule. The sheriff shall mark on all summons the date of the receipt by him, and within thirty days of the date of such receipt of the summons the sheriff shall return the same to the clerk of the court from which it was issued.~~
- ~~(1) *By Mail.*~~
- ~~(K) A summons and complaint may be served upon a defendant of any class referred to in paragraph (1) or (4) of subdivision (d) of this rule by mailing a copy of the summons and of the complaint (by first class mail, postage prepaid) to the person to be served, together with two copies of a notice and~~

~~acknowledgment conforming substantially to Form 1-B and a return envelope, postage prepaid, addressed to the sender.~~

~~(B) If no acknowledgment of service under this subdivision of this rule is received by the sender within 20 days after the date of mailing, service of such summons and complaint may be made in any other manner permitted allowed by this rule.~~

~~(L) Costs for failing to complete and return acknowledgment. Unless good cause is shown for not completing and returning the notice and acknowledgment of receipt within 20 days, the court must order the person to pay costs for personal service~~

~~(C) Unless good cause, is shown for not doing so, the court shall order the payment of the costs of personal service by the person served if such person does not complete and return within 20 days after mailing the notice and acknowledgment of receipt of summons.~~

~~(M) Oath; affirmation.~~

~~(D) The notice and acknowledgment of receipt of summons and complaint shall ~~be~~ must be executed under oath or ~~or~~ affirmation.~~

(4) Publication.

~~(A) When publication service is authorized; requirements. In a chancery or other proceeding where a statute authorizes process by publication, when the complaint, petition, or account is filed or when the proceeding otherwise commences, the clerk promptly must prepare and publish a summons substantially conforming to Form 4 of the Appendix to the defendant to appear and defend the suit if:~~

~~(A)–~~

~~(1) *By Publication.*~~

~~(i) If the defendant in any proceeding in a chancery court, or in any proceeding in any other court where process According to a sworn complaint or petition or a filed affidavit, the defendant is not a Mississippi resident;~~

~~(ii) According to a sworn complaint or petition or a filed affidavit stating the defendant's post-office address, the defendant cannot be found in Mississippi after diligent inquiry;~~

- (iii) According to a sworn complaint or petition or a filed affidavit, the plaintiff or petitioner does not know the defendant's post-office address after diligent inquiry; or
- (iv) According to another person's filed affidavit for the plaintiff or petitioner, the affiant does not know—and believes the plaintiff or petitioner does not know—the defendant's post-office address after diligent inquiry.

(B) **Duration; where.** The summons must be published weekly for three successive weeks in a public newspaper in the county where the complaint, petition, account, cause, or other proceeding is pending.

- (i) **No newspaper.** If no county newspaper exists, the notice must be posted at the courthouse door of the county where the complaint, petition, account, cause, or other proceeding is pending. And the notice must be published as stated in Rule 4(c)(4)(B) in a public newspaper in an adjoining county or at the seat of state government.
- (ii) **Filing proof.** When completed, proof of publication must be filed in the action or other proceeding.

~~(A) **Time to appear and defend.** The defendant has 30 days by publication is authorized by statute, be shown by sworn complaint or sworn petition, or by a filed affidavit, to be a nonresident of this state or not to be found therein on diligent inquiry and the post office address of such defendant be stated in the complaint, petition, or affidavit, or if it be stated in such sworn complaint or petition that the post office address of the defendant is not known to the plaintiff or petitioner after diligent inquiry, or if the affidavit be made by another for the plaintiff or petitioner, that such post office address is unknown to the affiant after diligent inquiry and he believes it is unknown to the plaintiff or petitioner after diligent inquiry by the plaintiff or petitioner, the clerk, upon filing the complaint or petition, account or other commencement of a proceeding, shall promptly prepare and publish a summons to the defendant to appear and defend the suit. The summons shall be substantially in the form set forth in Form 1-C.~~

- ~~(iii) The publication of said summons shall be made once in each week during three successive weeks in a public newspaper of the county in which the complaint or petition, account, cause or other proceeding is pending if there be such a newspaper, and where there is no newspaper in the county the notice shall be posted at the courthouse door of the county and published as above provided in a public newspaper in an adjoining county or at the seat of government of the~~

~~state. Upon completion of publication, proof of the prescribed publication shall be filed in the papers in the cause. The defendant shall have thirty (30) days from the date of first publication in which to appear and defend.~~

~~(iv) **Street address.** Where a defendant's the post-office address of a defendant is given, the a street address must also, if any, shall also be stated included unless the Rule 4(c)(4)(A) complaint, petition, or affidavit above mentioned, avers states it is unknown that after diligent search and inquiry said street address cannot be ascertained.~~

~~(B) **Clerk's duty.** The clerk has a duty to~~

~~(C) It shall be the duty of the clerk to hand the summons to the plaintiff or petitioner to be published.~~

~~(i) At the plaintiff's or petitioner's request and expense, the clerk may deliver, or, at his request, and at his expense, to hand it the summons to the proper newspaper's publisher for publication publisher of the proper newspaper for publication.~~

~~(ii) Where the absent defendant's post-office address of the absent defendant is stated, it the clerk has a duty to mail a copy of the summons and complaint first class, postage prepaid, shall be the duty of the clerk to send by mail (first class mail, postage prepaid) to the address of the defendant and to record the fact of issuance and mailing t, at his post office, a copy of the summons and complaint and to note the fact of issuing the same and mailing the copy, on the general docket. The clerk's notation will, and this shall be the evidence the summons was mailed of the summons having been mailed to the defendant.~~

~~(D) **Unknown heir; unknown party defendant.**~~

~~(i) **Unknown heir.** In a chancery proceeding with an unknown heir as a party defendant where the plaintiff files an affidavit stating the heir's name is unknown, service may be by publication. The proceedings will be as authorized in the case of a nonresident defendant.~~

~~(ii) **Unknown party defendant.** When a party in interest is unknown, and the plaintiff files an affidavit stating that fact, the unknown party may become a party defendant through service by publication.~~

~~(C) **Additional Rule 4(d)(2) requirements if serving certain individuals.**~~

~~(D) When unknown heirs are made parties defendant in any proceeding in the chancery court, upon affidavit that the names of such heirs are unknown, the plaintiff may have publication of summons for them and such proceedings shall be thereupon in all respects as are authorized in the case of a nonresident defendant. When the parties in interest are unknown, and affidavit of that fact be filed, they may be made parties by publication to them as unknown parties in interest.~~

~~(E) Service on another person under Rule 4(d)(2) must also occur if summons by publication is on:~~

~~(i) Where summons by publication is upon aAny unmarried infant;~~

~~(ii) A, mentally incompetent person; , or~~

~~(1) oAnother person individual who incapable of managing his or her own estate by because reason of advanced age, physical incapacity, or mental weakness is incapable of managing his own estate, summons shall also be had upon such other person as shall be required to receive a copy of the summons under paragraph (2) of subdivision (d) of this rule.~~

~~(iii)~~

~~(5) **Certified mail service on out-of-state person**Service by Certified Mail on Person. Outside State.~~

~~(A) **Certified mail service.** In addition to service by a method according to this rule, a summons may be served on an out-of-state person by sending a copy of the summons and complaint by certified mail, return receipt requested.~~

~~(B) **Requirement if natural person.** Where the defendant is a natural person, the envelope containing the summons and complaint must be marked “restricted delivery.”~~

~~(C) **When complete.** Service by this method will be complete on the delivery date evidenced by the return receipt or returned envelope marked “refused.”~~

~~— In addition to service by any other method provided by this rule, a summons may be served on a person outside this state by sending a copy of the summons and of the complaint to the person to be served by certified mail, return receipt requested. Where the defendant is a natural person, the envelope containing the summons and complaint shall be marked “restricted delivery.” Service by this method shall be deemed complete as of the date of delivery as evidenced by the return receipt or by the returned envelope marked “Refused.”~~

~~(d) (d) Summons and Complaint: Person to Be Served.~~ The summons must be served with a copy of the complaint. Service by sheriff or process server must be made according to Rule 4(d)(1) through (d)(8).

(1) Individual. Other than an unmarried infant or mentally incompetent person, an individual may be served:

~~(1) Personal service.~~ The summons and complaint shall be served together. Service by sheriff or process server shall be made as follows:

(A) Upon an individual other than an unmarried infant or a mentally incompetent personBy delivering a copy of the summons and complaint to the individual personally or to an agent authorized by appointment or law to receive service; or

(B) Residence service. If service under Rule 4(d)(1)(A) cannot be made with reasonable diligence, by leaving a copy of the summons and complaint at the defendant's usual place of abode with the defendant's spouse or other family member age 16 or older and willing to receive service.

(i) Mailing requirement. And the plaintiff must mail a copy of the summons and complaint first class, postage prepaid, to the defendant at the place where a copy of the summons and complaint was left.

(ii) When complete. Service in this manner is complete on the 10th day after mailing.

(2) Unmarried minor; mentally incompetent.

(A) Unmarried minor. An unmarried minor may be served by delivering a copy of the summons and complaint to:

(i) The mother;

(ii) The father;

(iii) The legal guardian of the minor or minor's estate;

(iv) The person who cares for the minor; or

(v) The person with whom the minor lives; and

(vi) Also to the minor if age 12 or older.

(B) Mentally incompetent (not judicially confined); incapable of managing estate. A mentally incompetent person not judicially confined to an institution for the mentally ill or disabled or a person incapable of

managing the person's own estate because of advanced age, physical incapacity, or mental weakness may be served by delivering a copy of the summons and complaint to the person and to:

- (i) The guardian of the person or person's estate; or
- (ii) The conservator of the person or person's estate; and
- (iii) If the person has no guardian or conservator, the individual with whom the person lives or the individual who cares for the person.

(C) **Mentally incompetent (judicially confined).** A mentally incompetent person judicially confined to an institution for the mentally ill or disabled may be served by delivering a copy of the summons and complaint to the confined person and if one, to the person's guardian or guardian of the person's estate.

- (i) **When service is not required.** If the institution's superintendent or similar official or person certifies on the summons or an accompanying certificate that the person is mentally incapable of responding to process, service of the summons and complaint will not be required.
- (ii) **Appointing guardian ad litem if guardian or conservator does not exist.** If the person does not have a guardian or conservator, the court must appoint a guardian ad litem to whom copies will be delivered.

(D) **Person other than minor or mentally incompetent person who is a plaintiff or has adverse interest.**

- (i) **Considered not to exist.** If Rule 4(d)(2)(A), (B), or (C) requires service on a person other than the minor, incompetent, or incapable defendant, and if the other person is a plaintiff in the action or has an interest in it adverse to the defendant, then the other person must be considered not to exist for purposes of service.
- (ii) **Fails to satisfy Rule 4(d)(2)(A), (B), and (C).** And serving the other person fails to satisfy Rule 4(d)(2)(A), (B), or (C).

(E) **Appointing guardian ad litem if person other minor or mentally incompetent person does not exist.**

- (i) **When appointed.** If Rule 4(d)(2)(A) or (B) requires service on a person who does not exist other than the minor, incompetent, or incapable defendant, the court may appoint for the defendant a guardian ad litem to whom a copy of the summons and complaint will be delivered and must do so for a minor under age 12.
- (ii) **Additional service.** Serving the guardian ad litem with a copy of the summons and complaint does not satisfy a requirement in Rule 4(d)(2)(A), (B), and (C) to also deliver a copy to the minor, incompetent, or incapable defendant.

(3) Confined to penal institution; exception for unmarried minor or mentally incompetent.

- (A) **Individual confined to penal institution.** An individual confined to a Mississippi state or local penal institution may be served by delivering a copy of the summons and complaint to the person.
- (B) **Exception for unmarried minor or mentally incompetent.** But if the person is an unmarried minor or mentally incompetent, Rule 4(d)(2) applies.

(4) Corporation, partnership, or other unincorporated association. A domestic or foreign corporation, partnership, or other unincorporated association subject to suit under a common name may be served by delivering a copy of the summons and the complaint to an officer, managing agent, general agent, or other agent authorized by appointment or law to receive process.

(5) State of Mississippi or state department, officer, or institution. The following may be served by delivering a copy of the summons and complaint to the Attorney General of the State of Mississippi:

- (A) The State of Mississippi; and
- (B) A department, officer, or institution of the State of Mississippi.

(6) County. A county may be served by delivering a copy of the summons and complaint to the president or clerk of the board of supervisors.

(7) Municipal corporation. A municipal corporation may be served by delivering a copy of the summons and complaint to the mayor or municipal clerk.

(8) Other governmental entity. A governmental entity not otherwise mentioned in this rule may be served by delivering a copy of the summons and complaint:

- (i) To the person, officer, group, or body responsible for the entity's administration;
- (ii) The appropriate legal officer representing the entity; or
- (iii) A person who is a member of the "group" or "body" responsible for the entity's administration.

(e) Waiver.

(1) Who may waive process; effect of waiver.

- (A) Who may waive process. Other than an unmarried minor or mentally incompetent person, a party defendant may waive service of process, enter an appearance, or both without filing a pleading.
- (B) Effect of waiver. The effect is the same as if the defendant was served with process in the manner required by law on the same date.

(2) Requirements. The waiver of service or entry of appearance must be:

- (A) Written;
- (B) Dated;
- (C) Signed by the defendant; and
- (D) Sworn or acknowledged by the defendant or if not sworn or acknowledged, proven by two subscribing witnesses before an officer authorized to administer oaths.

(3) By guardian, conservator, executor, administrator, or trustee; requirements.

- (A) By guardian or conservator. A guardian or conservator may waive process on the guardian, conservator, and ward.
- (B) By executor, administrator, or trustee. An executor, administrator, or trustee may waive process on the executor, administrator, or trustee in a fiduciary capacity.
- (C) Requirements. In addition to Rule 4(e)(2) requirements, the waiver of service or entry of appearance must:

- (i) Be executed after the day the action was commenced;
- (ii) Filed; and
- (iii) Recorded on the general docket.

(f) Return.

- (1) Who. The person serving the process promptly must file proof of service with the court.
- (2) Form. Unless service is by the sheriff, a person must make proof of service by affidavit.
- (3) Service under Rule 4(c)(3). If service is by mail under Rule 4(c)(3), the sender must make a return by filing the required acknowledgment.
- (4) Service under Rule 4(c)(5). If service is made on an out-of-state person under Rule 4(c)(5), the sender must make a return by filing the return receipt or the returned envelope marked “refused.”
- (5) Failing to make proof of service. Failing to make proof of service does not affect the validity of the service.

(g) Amendment. Unless it clearly appears that material prejudice would result to substantial rights of the party against whom process is issued, the court may allow process or proof of service to be amended:

- (1) At any time;
- (2) In its discretion; and
- (3) On terms it deems just.

(h) Time limit. If a defendant is not served within 90 days after the complaint is filed, and if the party required to serve the defendant cannot show good cause why service was not made within that period, the court—on its own with notice to that party or on a motion—must dismiss the action as to that defendant without prejudice.

~~—,
(—) by delivering a copy of the summons and of the complaint to him personally or to an agent authorized by appointment or by law to receive service of process; or
(—) if service under subparagraph (1)(A) of this subdivision cannot be made with reasonable diligence, by leaving a 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 years who is willing to receive service, and by thereafter mailing a copy of the summons and complaint (by first class mail, postage prepaid) to the person to be served at the place where a copy of the summons and of the~~

complaint were left. Service of a summons in this manner is deemed complete on the 10th day after such mailing.

~~—(A) upon an unmarried infant by delivering a copy of the summons and complaint to any any one of the following: the infant's mother, father, legal guardian (of either the person or the estate), or the person having care of such infant or with whom he lives, and if the infant be 12 years of age or older, by delivering a copy of the summons and complaint to both the infant and the appropriate person as designated above.~~

~~(A) upon a mentally incompetent person who is not judicially confined to an institution for the mentally ill or mentally deficient or upon any other person who by reason of advanced age, physical incapacity or mental weakness is incapable of managing his own estate by delivering a copy of the summons and complaint to such person and by delivering copies to his guardian (of either the person or the estate) or conservator (of either the person or the estate) but if such person has no guardian or conservator, then by delivering copies to him and copies to a person with whom he lives or to a person who cares for him.~~

~~(A) upon a mentally incompetent person who is judicially confined in an institution for the mentally ill or mentally retarded by delivering a copy of the summons and complaint to the incompetent person and by delivering copies to said incompetent's guardian (of either the person or the estate) if any he has. If the superintendent of said institution or similar official or person shall certify by certificate endorsed on or attached to the summons that said incompetent is mentally incapable of responding to process, service of summons and complaint on such incompetent shall not be required. Where said confined incompetent has neither guardian nor conservator, the court shall appoint a guardian ad litem for said incompetent to whom copies shall be delivered.~~

~~(A) where service of a summons is required under (A), (B) and (C) of this subparagraph to be made upon a person other than the infant, incompetent, or incapable defendant and such person is a plaintiff in the action or has an interest therein adverse to that of said defendant, then such person shall be deemed not to exist for the purpose of service and the requirement of service in (A), (B) and (C) of this subparagraph shall not be met by service upon such person.~~

~~(A) if none of the persons required to be served in (A) and (B) above exist other than the infant, incompetent or incapable defendant, then the court shall appoint a guardian ad litem for an infant defendant under the age of 12 years and may appoint a guardian ad litem for such other defendant to whom a copy of the summons and complaint shall be delivered. Delivery of a copy of the summons and complaint to such guardian ad litem shall not dispense with delivery of copies to the infant, incompetent or incapable defendant where specifically required in (A), and (B) of this subparagraph.~~

~~(3) Upon an individual confined to a penal institution of this state or of a subdivision of this state by delivering a copy of the summons and complaint to the individual, except that when the individual to be served is an unmarried infant or mentally incompetent person the provisions of subparagraph (d)(2) of this rule shall be followed.~~

~~(4) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process.~~

~~—Upon the State of Mississippi or any one of its departments, officers or institutions, by delivering a copy of the summons and complaint to the Attorney General of the State of Mississippi.~~

~~(5) Upon a county by delivering a copy of the summons and complaint to the president or clerk of the board of supervisors.~~

~~(5) Upon a municipal corporation by delivering a copy of the summons and complaint to the mayor or municipal clerk of said municipal corporation.~~

~~(5) Upon any governmental entity not mentioned above, by delivering a copy of the summons and complaint to the person, officer, group or body responsible for the administration of that entity or by serving the appropriate legal officer, if any, representing the entity. Service upon any person who is a member of the “group” or “body” responsible for the administration of the entity shall be sufficient.~~

~~(e) **Waiver.** Any party defendant who is not an unmarried minor or mentally incompetent may, without filing any pleading therein, waive the service of process or enter his or her appearance, either or both, in any action, with the same effect as if he or she had been duly served with process, in the manner required by law on the day of the date thereof. Such waiver of service or entry of appearance shall be in writing dated and signed by the defendant and duly sworn to or acknowledged by him or her, or his or her signature thereto be proven by two (2) subscribing witnesses before some officer authorized to administer oaths. Any guardian or conservator may likewise waive process on himself and/or his ward, and any executor, administrator, or trustee may likewise waive process on himself in his fiduciary capacity. However, such written waiver of service or entry of appearance must be executed after the day on which the action was commenced and be filed among the papers in the cause and noted on the general docket.~~

~~(e) **Return.** The person serving the process shall make proof of service thereof to the court promptly. If service is made by a person other than a sheriff, such person shall make affidavit thereof. If service is made under paragraph (c)(3) of this rule, return shall be made by the sender’s filing with the court the acknowledgment received pursuant to such subdivision. If service is made under paragraph (c)(5) of this rule, the return shall be made by the sender’s filing with the court the return receipt or the returned envelope marked “Refused.” Failure to make proof of service does not affect the validity of the service.~~

~~(e) **Amendment.** At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process is issued.~~

~~(e) **Summons: Time Limit for Service.** If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion.~~

~~[Amended effective **May 5/1/, 1982**; **March 3/1/, 1985**; **February 2/1/, 1990**; **July 7/1/, 1998**; **January 1/3/, 2002**.]~~

Advisory Committee Historical Note

Effective ~~January 1/3/, 2002~~, Rule 4(e) was amended to delete a prohibition against waiver of service of process by one convicted of a felony.—~~802-804~~ So. ~~2d~~ XVII (West Miss. Cases 2002).

Effective ~~July 7/1/, 1998~~, Rule 4(f) was amended to state that the person serving process ~~shall~~must promptly make proof of service ~~thereof~~ to the court.

Effective ~~February 2/1/, 1990~~, Rule 4(c)(4)(B) was amended by striking the word “calendar” following the word and figure “thirty (30)”; Rule 4(c)(4) was amended by adding subsection (E); Rule 4(c)(5) was amended by changing the title to reflect service by certified mail; Rule 4(d)(2)(A) was amended by substituting the word “person” for “individual” in reference to the one having care of the infant.—~~553-556~~ So. 2d XXXIII (West Miss. Cas. 1990).

Effective ~~March 3/1/, 1985~~, a new Rule 4 was adopted.—~~459-462~~ So. 2d XVIII (West Miss. Cas. 1985).

Effective ~~May 5/1/, 1982~~, Rule 4 was amended.—~~410-416~~ So. 2d XXI (West Miss. Cas. 1982).

Advisory Committee Notes

Unless summons is by publication, ~~A~~after a complaint is filed, the clerk ~~is required to must~~ issue a separate summons for each defendant ~~except in the case of summons by publication.~~ The summons must contain the information required by Rule 4(b). Under Rule 4(b), ~~which requires th~~the summons ~~must to~~ notify the defendant that, ~~among other things,~~ a failure to appear will result in a default judgment. ~~by default.~~ ~~Although t~~The “judgment by default will be rendered” language ~~may be an overstatement,~~ the strong language is

intends ~~ed~~ to encourage a defendants to appear to protect ~~their~~ the defendant's interests. Forms ~~1A, 21AA, 3, 1B, and 4 1C~~ are provided as suggested forms for the various summonses.

The summons and a copy of the complaint must then be served on each defendant. This rule provides for personal service, residence service, first-class ~~mail~~ and acknowledgement service, certified ~~mail~~ service, and publication service.

~~Rule 4(d)(1)(A) Personal service is~~ authorizes personal service ~~d by Rule 4(d)(1)(A)~~ and requires a copy of the complaint and summons to be delivered ~~delivery of a copy of the complaint and the summons~~ to the person to be served.

~~Rule 4(d)(1)(B) authorizes r~~Residence service ~~is authorized by Rule 4(d)(1)(B)~~ and requires ~~that~~ a copy of the complaint and the summons to be left at the defendant's usual place of abode with the defendant's spouse or other family member ~~who is above the age of sixteen 16 or older~~ and ~~who is~~ willing to accept service. In addition, Rresidence service ~~further~~ requires ~~that~~ a copy of the summons and complaint to be mailed ~~be thereafter mailed~~ to the defendant at the location where the complaint and summons were left.

Personal service and residence service may be made by a process server or the sheriff in the county where the defendant resides or can be found. A party using a process server may pay ~~sue~~ the person any agreed amount ~~that is agreed upon. but o~~ Only ~~that the~~ amount statutorily allowed as payment to the sheriff under Section 25-7-19 of the Mississippi Code of 1972 Annotated ~~section 25 7 19 (Supp. 2013)~~ may be taxed as recoverable costs in the action. ~~Summonses served by process servers should be in~~ substantially conformity with Form ~~1A. and s~~ Summonses served by sheriffs should be in substantially conformity with Form ~~1AA2.~~

~~Rule 4(c)(3) authorizes F~~first-class mail and acknowledgement service. ~~is authorized by Rule 4(c)(3).~~ The plaintiff must mail the defendant: (1) a copy of the summons and complaint; (2), two copies of a notice and acknowledgement conforming substantially to Form ~~1B3; and (3) , and~~ a prepaid-postage ~~paid~~-envelope addressed to the sender. ~~Upon receipt, t~~The defendant may execute the acknowledgement of service under oath or by affirmation. If the defendant fails to execute and return the acknowledgement of service in a timely fashion, the defendant may be ordered to pay ~~the~~ costs incurred by the plaintiff in serving the defendant by another method. This provision ~~is~~ intends ~~ed~~ to encourage a defendant to acknowledge service by first-class mail in order to avoid having to pay ~~the~~ costs that would otherwise be incurred by the plaintiff in serving that defendant. Executing and returning ~~of~~ the acknowledgement of service does not ~~operate as a waiver of~~ objections to jurisdiction or venue. All jurisdictional and venue objections are preserved whether Form

~~1B-3~~ is completed and returned from inside or outside the state. Although Miss. R. Civ. P. M.R.C.P. 4(c)(3) is modeled after Fed. R. Civ. P. 4(d), defendants who execute and return the acknowledgement of service under Miss. R. Civ. P. M.R.C.P. 4(c)(3) are acknowledging actual service, but, whereas defendants who execute and return the waiver under Fed. R. Civ. P. 4(d) are waiving service.

Rule 4(c)(4) authorizes Ppublication service ~~is authorized by Rule 4(c)(4)~~ and is limited to defendants in chancery court proceedings and other proceedings where a statute authorizes service by publication. ~~is authorized by statute.~~ Service by publication is further limited to defendants who are nonresidents or who cannot be found within the state after diligent inquiry. The requirements for service by publication are detailed in the rule and must be strictly followed; otherwise service is ineffective. *See Caldwell v. Caldwell*, 533 So. 2d 413 (Miss. 1988).

Rule 4(c)(5) authorizes service by Ccertified mail ~~service is authorized by Rule 4(c)(5)~~ and is limited to out-of-state persons ~~outside the state.~~ The plaintiff must send a copy of the summons and complaint to the person to be served by certified mail, return receipt requested. Afterwards, the plaintiff ~~and~~ must ~~thereafter~~ mail by first-class mail, postage prepaid, a copy of the summons and complaint to the person to be served at the same address. ~~The P~~proof of ~~S~~service must indicate the date on which the summons and complaint were mailed by first-class mail and must also include as an attachment the signed return receipt or the return envelope marked “refused.” Service ~~upon~~ a foreign corporation, partnership, ~~or~~ unincorporated association is effective even if the certified mail is delivered to and signed for or refused by a person other than the addressee, ~~if~~ the person accepting delivery and signing or refusing delivery is an officer or employee of the defendant ~~who is and~~ authorized to receive ~~or who regularly receives~~ certified mail or regularly receives it. *See Flagstar Bank, FSB v. Danos*, 46 So. 3d 298 (Miss. 2010) (finding service by certified mail ~~upon a~~ foreign corporation effective where ~~the plaintiff~~ addressed ~~the certified mail to the foreign corporation’s~~ registered agent for service of process, ~~and the certified mail was delivered to the proper address,~~ and signed for by ~~the~~ mail clerk rather than ~~the~~ registered agent). Service of process is not effective under Rule 4(c)(5) if the mailing is returned marked ~~“unclaimed, /refused”, “unclaimed” or “undeliverable as addressed.”~~ *See Bloodgood v. Leatherwood*, 25 So. 3d 1047 (Miss. 2010).

Rule 4(d) identifies the person to be served with process when the defendant is: (~~i~~1) a mentally competent married infant or ~~or a~~ mentally competent adult; (~~ii~~2) an unmarried infant; (~~iii~~3) a mentally incompetent person ~~who is~~ not judicially confined to an institution for the mentally ill or ~~mentally~~ deficient; (~~iv~~4) a mentally incompetent person ~~who is~~ judicially confined to an institution for the mentally ill or ~~mentally~~ deficient; (~~v~~5) an individual confined to a state/local penal institution ~~of this state or a subdivision of this~~

~~state~~; ~~(vi6)~~ a domestic ~~or or~~ foreign corporation, partnership, or unincorporated association subject to ~~a~~ suit under a common name; ~~(vii7)~~ the State of Mississippi or one of its departments, officers, or institutions; ~~(viii8)~~ a county; ~~(ix9)~~ a municipal corporation; or ~~(x10)~~ ~~any~~ other governmental entity.

Rule 4(e) provides for waiver of service of the summons and complaint. A waiver must be executed after the day on which the action was commenced and ~~thus~~ may be executed without a summons having been issued.

Rule 4(f) provides that the person serving the process ~~shall~~ must promptly file a return of service with the court. For first-class mail and acknowledgement service, proof of service ~~is to~~ must be made by filing a copy of the executed acknowledgement of service. For certified-mail service, proof of service ~~is to~~ must be made by filing the return receipt or the envelope marked “Refused.” ~~The purpose of the requirement Requiring for~~ prompt filing of the proof of service ~~is to enables~~ the defendant to verify the date of service by examining the proof of service in the court records.

Under Rule 4(h), ~~if a defendant is not provides that if service is not made upon a defendant served~~ within ~~120~~ 90 days after the ~~complaint is filed~~ ing of the complaint, th, the claims against that defendant will be dismissed without prejudice absent good cause for ~~the failing ure~~ to timely serve the defendant. If service cannot be made within the ~~120~~ 90-day period, it is clearly advisable to move the court within the original time period for an extension ~~of time in which to serve the defendant~~. If the motion for extension of time is filed within the ~~120~~ 90-day time period, the time period may be extended for ~~“cause” shown” pursuant under~~ to Rule 6(~~ab~~)(51). If a motion for extension of time is filed outside of the original ~~120~~ 90-day time period, the movant must show “good cause” for the failure ~~to timely serve the defendant pursuant to Rule 4(h)~~. See *Johnson v. Thomas*, 982 So. 2d 405 (Miss. 2008) (~~former 120-day time period~~).

Rule 5. Serving and filing pleadings and other papers.

(a) Service: When required Required.

Except as otherwise provided in these rules,

(1) Service on parties. Unless these rules provide otherwise, all parties must be served with:

(A) A ~~every~~ order stating required by its ~~must~~ terms to be served;

(B) A ~~, every~~ pleading filed after subsequent to the original complaint unless the court otherwise orders otherwise because ~~of~~ there are numerous defendants;

(C) A ~~, every~~ paper relating to discovery paper required to be served upon a party unless the court otherwise orders otherwise;

(D) A ~~, every~~ written motion other than ~~except~~ one ~~which~~ that may be heard ex parte; and

(E) A ~~, and every~~ written notice, appearance, demand, offer of judgment, designation of record on appeal, ~~and~~ or similar paper. shall be served upon each of the parties.

(2) Defaulted party. Service is not required on a party in default for failing to appear. But ~~No~~ service need be made on parties in default for failure to appear except that a pleadings asserting new or additional claims for relief against ~~them~~ the defaulting party shall ~~must~~ be served upon them in ~~according to the manner provided in~~ Rule 4.

(3) Seizing property. If ~~for~~ service of summons. In an action begun by seizing property begins an action, and ~~seizure of property, in which no person is or needs to need be or is named as a~~ defendant, any service required to be made prior to the filing of an answer, claim, or appearance ~~must~~ shall be made upon the person ~~having~~ who had custody or possession of the property at the time of ~~when it was its seizure~~ seized.

(b) Manner.

(1) Attorney of record. Unless the court orders service on a party, service must be made on a party's attorney.

(A) How. Service must be made on an attorney/party by:

- (i) Delivering a copy;
- (ii) By electronically transmitting it;
- (iii) By mailing it to the last known address;
- (iv) If no address is known, by leaving it with the court clerk; or
- (v) If no address is known, by electronically transmitting it to the court clerk.

(B) Defining delivery. Delivering a copy means:

- (i) Handing it to the attorney/party;
- (ii) Leaving it at the attorney's/party's office with a clerk or other person in charge;
- (iii) Leaving it at the attorney's/party's office in a conspicuous place if no one is in charge; or
- (iv) If the office is closed or the attorney/party does not have one, leaving it at the attorney's or party's dwelling house or usual place of abode with a person of suitable age and discretion residing at it.

(C) Defining electronically transmitting. Electronically transmitting means sending by fax or email. Electronic transmission by fax must be to the attorney's fax number listed in the Mississippi Bar's Lawyer Directory. Electronic transmission by email must be to the attorney's email address listed in the Mississippi Bar's Lawyer Directory.

- (i) Service by fax is complete when the sender obtains a proof of fax from the recipient's machine showing the transmission was successfully received.
- (ii) Service by email is complete when sent. But if the email is electronically returned to the sender shortly after transmission because the email address was incorrect, an attachment exceeded a size limit, or other reason, then service by email is not complete.
- (iii) If the sender does not obtain a proof of fax showing the transmission was successfully received or if an email is electronically returned shortly after sending, service is not complete until the sending party obtains an acknowledgment from the recipient.

(D) When complete. Service by mail is complete upon mailing.

(2) Electronic court system. Where a court has adopted the Mississippi Electronic Court system, service allowed or required under these rules must conform with the Administrative Procedures for Mississippi Electronic Courts.

(c) Numerous defendants.

- (1) If there are an unusually large number of defendants, on a motion or its own, the court may order:**
 - (A) That the defendants' pleadings and replies to them do not need to be served between the defendants;**
 - (B) That a crossclaim, counterclaim, or matter constituting an avoidance or affirmative defense in the defendants' pleadings will be considered to be denied or avoided by all other parties; and**
 - (C) That filing the pleading and serving the plaintiff constitutes due notice to all parties.**
- (2) A copy of the order must be served on parties in a manner and form the court directs.**

(d) Filing.

- (1) When.** Before service or within a reasonable time afterwards, a paper after the complaint that requires service on a party must be filed with the court.
- (2) Discovery papers.** Unless the court orders otherwise, discovery papers do not need to be filed until used in a proceeding.
- (3) Proof of service.** Proof a paper was served must be by a signed certificate of service.

(e) Defining filing with the court; electronically filing.

- (1) Filing with court.** Under these rules, pleadings and other papers must be filed with the court clerk. But the court may allow papers to be filed with the judge; if so the judge must note the filing date on the papers and transmit them to the clerk.
- (2) Electronically filing with the court.** By local rule conforming with the Administrative Procedures for Mississippi Electronic Courts, a court may allow pleadings and other papers to be filed, signed, or verified by electronic means. Pleadings and other papers filed electronically in compliance with the procedures are written papers for purposes of these rules.

~~(a) **Service: When Required.** Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided in Rule 4 for service of summons. In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.~~

~~—(1) **Service: How Made.** Whenever under these rules service is required or permitted to be made upon a party who is represented by an attorney of record in the proceedings, the service shall be made upon such attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him; or by transmitting it to him by electronic means; or by mailing it to him at his last known address, or if no address is known, by leaving it with the clerk of the court, or by transmitting it to the clerk by electronic means. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by electronic means is complete when the electronic equipment being used by the attorney or party being served acknowledges receipt of the material. If the equipment used by the attorney or party being served does not automatically acknowledge the transmission, service is not complete until the sending party obtains an acknowledgment from the recipient. Service by mail is complete upon mailing.~~

~~(2) **Electronic Court System Service: How Made.** Where a court has, by local rule, adopted the Mississippi Electronic Court System, service which is required or permitted under these rules shall be made in conformity with the Mississippi Electronic Court System procedures.~~

~~(b) **Service: Numerous Defendants.** In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants, and that any cross-claim, counter-claim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service upon the plaintiff~~

~~constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.~~

~~— **Filing.** All papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter but, unless ordered by the court, discovery papers need not be filed until used with respect to any proceeding. Proof of service of any paper shall be upon certificate of the person executing same.~~

~~(e) **(1) Filing With the Court Defined.** The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.~~

~~**(1) Electronic Filing with Court Defined.** A court may, by local rule, allow pleadings and other papers to be filed, signed, or verified by electronic means in conformity with the Mississippi Electronic Court System procedures. Pleadings and other papers filed electronically in compliance with the procedures are written papers for purposes of these rules.~~

[Amended effective ~~March 3/1/, 1989~~; Amended effective ~~January 1/8/, 2009~~, for the purpose of establishing a pilot program for Mississippi Electronic Court System.]

Advisory Committee Historical Note

Effective ~~March 3/1/, 1989~~, Rule 5(b) and Rule 5(e) were amended by authorizing the service and filing of pleadings and documents by electronic means.—~~536-538 So. 2d XXI (West Miss. Cas. 1989).~~

Advisory Committee Notes

Rule 5 ~~provides promotes (1) expeditious wan-expedient method of exchanging~~ written and electronic communications between parties and ~~(2) an-efficient system-of-filing papers~~ with the clerk. ~~Theis~~ rule presupposes ~~that~~ the court ~~has~~ already ~~has personal gained~~ jurisdiction ~~over the parties~~. A ~~“pleading filed after the original complaintpleading subsequent to the original complaint,”~~ which ~~assertings~~ a claim for relief against a person over whom the court has not ~~at the time~~ acquired jurisdiction ~~at the time~~, ~~—~~ must be served ~~upon such person along with a copy of~~ a summons.

~~in the same manner as the copy of the summons and complaint is required to be served upon the original defendants.~~

~~An ex parte motion does not need to which may be heard ex parte is not required to be served, but should be filed. See also Miss. R. Civ. P. ; see also Rule 81(b). The list of The enumeration of papers in Rule 5(a)(1) which are required to be served is is not exhaustive. A motions with an ; also included are affidavits must also be served in support of or in opposition to a motion under; Rules 6(d) and , and a motion for substitution of parties, Rule 25.~~

~~5~~

~~Rule 5(b)(C) addresses transmission by fax or email. The rule presupposes attorneys maintain up-to-date fax numbers and email addresses in the Mississippi Bar's Lawyer Directory.~~

~~Under Rule 5(b)(C)(i), service by fax is complete when the sender receives a proof of fax. The proof of fax must show the transmission was successful, including the date it was sent, the number of pages transmitted, the recipient's fax number, and other usual confirmatory information. In contrast, under Rule 5(b)(C)(ii), service by email is complete when sent. But if the email is returned shortly afterwards, service is incomplete.~~

~~If the sender fails to obtain a proof of fax or the sender's email is "bounced" back, service is incomplete unless the recipient acknowledges otherwise under Rule 5(b)(C)(iii). These provisions intend to update the rule and align it with modern practice, including service by email.~~

~~7~~

~~An electronic case management system and electronic filing system, known as the Mississippi Electronic Court System (MEC) system is an optional electronic case management and electronic filing system optional f for the chancery, circuit, and county courts. But ; however, the procedures in the Administrative Procedures for Mississippi Electronic Courts of the MEC must be followed where if a court has adopted and implemented the MEC by local rule. Therefore, ; To the extent the Administrative Procedures for Mississippi Electronic Courts addresses serving and filing pleadings and other papers, the MEC procedures address service and filing of pleadings and other papers, the procedures should be followed to satisfy Rule 5(he) and Rule 5(hd). For purposes of Rule 5(ed), the Administrative Procedures for Mississippi Electronic Courts MEC procedures provides reasonable exceptions to the requirement requiring of electronic filing. See, Mississippi Supreme Court Website, State of Mississippi Judiciary Administrative Office of Courts, Administrative Procedures for Mississippi Electronic Courts: Electronic Means for Filing, Signing, Verification, and Service of Pleadings and Papers, <https://courts.ms.gov/mec/mec.html>.~~

Although ~~s~~Service must be made within ~~the times prescribed~~ specified times. But, ~~filing may be permitted to be occur made after service~~ within a reasonable time ~~thereafter~~. Instances ~~Examples where filing occurs before service requiring the pleading to be filed before it is served~~ include a ~~Rule 3~~ (complaint) and ~~any~~ other pleadings stating a claim for relief ~~which is served necessary to serve~~ with a summons. Pursuant to ~~Under~~ Rule 5(c), ~~(numerous defendants) the filing of a pleading, and coupled with service on~~ the plaintiff, ~~constitutes is~~ notice to the parties. Rule 65(b)(C)(ii) requires temporary restraining orders to be filed ~~forthwith~~ in the clerk's office.

To obtain immediate court action, under Rule 5(~~de~~)(1), a party may file papers with the judge, ~~if the latter permits,~~ and obtain ~~an such~~ order ~~as the judge deems proper if allowed~~. Rule 5(~~ed~~)(1) should be read in conjunction with Rules 77(a), ~~(courts always open)~~, 77(b), ~~(trials and hearings; orders in chambers)~~, and 77(c).
~~(clerk's office and orders by clerk).~~

Rule 5(b) ~~does has not~~ apply ~~ication~~ to ~~service serving of~~ summons; Rules 4 and 81(d) ~~that subject is~~ completely covered ~~that subject by Rule 4 and Rule 81(d)~~.

Rule 6. Time.

(a) Computing. ~~The following applies when in computing any time period in of time prescribed or allowed by these rules, local rules, court orders, and statutes silent on how to do so:~~

(1) Days or longer. For days or longer time periods:

(A) Exclude the first day;

(B) Count all days, including intermediate Saturdays, Sundays, and legal holidays; and

(C) Include the last day.

(i) If the last day occurs on a Saturday, Sunday, or legal holiday, continue counting until the next day that is not one.

(ii) If the last day occurs on a day the courthouse or clerk's office is closed, continue counting until the next day it opens.

(2) Hours. For hours:

(A) Begin counting on the event that triggers the time period; and

(B) Count all hours, including intermediate Saturdays, Sundays, and legal holidays.

(i) If the last hour occurs on a Saturday, Sunday, or legal holiday, continue to the same time on the next day that is not one.

(3) "Last day." Unless a statute, local rule, or court order states otherwise:

(A) For electronic filing, the last day ends at midnight in the court's time zone.

(B) For filing by other means, the last day ends when the clerk's office is scheduled to close.

(4) "Legal holiday." A legal holiday means the day defined as one by statute or governor.

(b) Extensions.

~~(b) by order of court, or by any applicable statute, the day 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, as defined by statute, or any other day when 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 the clerk's office is closed. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. In the event any legal holiday falls on a Sunday, the next following day shall be a legal holiday.~~

~~**Enlargement.** When by these rules or by notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may~~

~~(1) When an act may or must be done within a specified time, the court for cause shown may:~~

~~(A) Extend it with or without a motion or notice if acting or requested to do so before the original time or an extension expires.~~

~~(B) Extend it on a motion if the original time expired and if the movant failed to act because of excusable neglect.~~

~~(e) The court may not at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where failure to act was the result of excusable neglect; but it may not extend the time for ~~taking any action acting~~ under Rules 50(b), 52(b), 59(b), 59(d), 59(e), 60(b), and 60(c) except to the extent and under the conditions therein stated, unless one of those rules states otherwise.~~

~~(C)~~

~~(d) **Unaffected by Expiration of court tTerm.** The continued existence or expiration of a court term does not The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited t by a court's power the continued existence or expiration of a term of court. The existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in a civil action consistent with these rules.~~

~~(c)~~

~~**Time for motion, hearing notice, and affidavit; Motion exceptions.**~~

(1) Time for motion and hearing notice; exceptions.

(A) ~~A~~, ~~A~~ written motion and notice of hearing must be served at least 14 days before the hearing except when:

- (i)** The motion may be heard ex parte;
- (ii)** These rules set a different time; or
- (iii)** A court order sets a different time.

(B) For good cause shown, a party may move ex parte for a court order setting a different time.

(2) Time for affidavit; exceptions.

(A) ~~A~~, ~~other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than five days before the time fixed for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supporting an ed by affidavit, the affidavit shall~~ must be served with the motion.

(B) ~~;~~ ~~and, except as otherwise provided Unless in Rule 59(c) states otherwise, an opposing affidavits may~~ must be served no later than seven days be served not later than one day before the hearing.

(i) ~~The~~, ~~unless the court permits may allow them~~ an opposing affidavit to be served at some other time.

~~(e) **Service by mail: additional time.** When a party may or must act within a specified time after service by mail, three days are added after the period would otherwise expire. The additional time~~

~~(e) **Additional Time After Service by Mail.** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three days shall be added to the prescribed period. This subdivision does not apply to responses responding to service of a summons under Rule 4.~~

~~(f)~~

[Amended effective ~~March 3/1/, 1989~~; amended effective ~~June 6/24/, 1992~~; amended effective ~~July 7/1/, 2008~~.]

Advisory Committee Historical Note

Effective ~~June 6/24/~~1992, Rule 6(a) was amended to provide that the legal holidays which cause a period of time to be enlarged are those defined by statute.—598-602 So. 2d XXII-XXIII (West Miss. Cas. 1992).

Effective ~~March 3/1/~~1989, Rule 6(a) was amended to abrogate the inclusion of time periods established by local court rules.—536-538 So. 2d XXI (West Miss. Cas. 1989).

Advisory Committee Notes

~~It is not uncommon for~~ Clerks' offices and courthouses occasionally to be closed ~~occasionally during what are~~ normal working periods, ~~whether by local custom or for a special purpose, such as attendance at a funeral.~~ Rule 6(a) ~~was drafted to~~ obviate otherwise ~~any~~ harsh results ~~that may otherwise ensue~~ when an attorney, ~~faced with an important filing deadline~~ unexpectedly, ~~discovers that~~ the courthouse or ~~the~~ clerk's office is closed. ~~unexpectedly closed.~~

Rule 6(b) gives the court wide discretion to enlarge ~~the~~ various time periods both before and after the allotted time terminates. ~~But actual termination of the allotted time, certain enumerated cases being excepted, a~~ court cannot extend the time for: (1) ~~filing for filing of~~ a motion for judgment notwithstanding the verdict pursuant to Rule 50(b); (2) ~~ii~~ filing for filing a motion to amend the court's findings pursuant under to Rule 52(b); (3) ~~iii~~ filing for filing a motion for new trial pursuant under to Rule 59(b); (4) ~~iv~~ filing for filing a motion to alter or amend the judgment pursuant under to Rule 60(b); (5) ~~vi~~ filing for filing a motion to reconsider a court order transferring a case to another court one pursuant under to Rule 60(c); or (6) ~~vii~~ for entering a sua sponte order requiring a new trial pursuant under to Rule 59(d).

Extending the time period requires a party to show cause for doing so. Importantly, such enlargement is to be made only for cause shown. ~~If the a application motion~~ for additional time is made filed before the period expires, the request may be made ex parte; if it is made filed after the ~~expiration of the~~ period expires, notice of the motion must be given to other parties, ~~and~~ the only cause for which extra time can be allowed is "excusable neglect."

Rule 6(c) does not abolish court terms; it merely provides greater flexibility to ~~the~~ courts in attending performing a the myriad of functions ~~they must perform~~, many of which ~~were heretofore previously possible occurred~~ only during term time. The rule is also consistent with ~~the other~~ provisions ~~elsewhere herein that prescribes~~ specifying a ~~specific~~ number of days for taking certain actions rather than linking time expirations to ~~the~~ opening day, ~~or~~

final day, or ~~any~~ other day of a court term- ~~E.g., of court; e.g.,~~ Rule 6(d) (motions and notices of hearings ~~thereon~~ to be served not less than ~~five~~ 14 days before ~~time fixed for~~ hearing); ~~and~~ Rule 12(a) (defendant to answer within ~~thirty~~ 30 days ~~after service of summons and complaint~~).

| 2

CHAPTER SECTION III. PLEADINGS; AND MOTIONS; OTHER PAPERS

Rule 7. Allowed pleadings; allowed; form motion and other papers; form.f motions

(a) Allowed Pleadings.

(1) Only these pleadings are allowed:

(A) There shall be a complaint;

(B) and an answer to a complaint;

(C) a reply to a counter-claim denominated specifically designated as a counterclaim;

(D) as such; an answer to a cross-claim;

(E) , if the answer contains a cross-claim; a third-party complaint;

(F) , if a person who is not an original party is summoned under the provisions of Rule 14; and an answer to a third-party complaint; and

(G) If ordered by the court, a reply to an answer or third-party answer.

answer, if a third party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third party answer.

(a) No other pleading will be allowed.

(2)

(b) Motion. A request for a court order must be by a filed motion.

(1) Form. Unless filed during a hearing or trial, a motion must:

(A) Be filed in writing;

(B) State with particularity the grounds for seeking an order; and

(C) State the requested relief.

(2) Rules governing captions, signing, and other matters of form in pleadings apply to motions and other papers.

(c) Paper size. Pleadings, motions, and other papers, including depositions, must be on 8 1/2" by 11" paper. Deposition formatting must comply with the Guidelines for Court Reporters according to Mississippi Rule of Appellate Procedure 11(c).

(d) Demurrer, plea abolished. A demurrer, plea, and exception for insufficiency of a pleading will not be used.

~~(b) Motions and Other Papers.~~

~~—An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.~~

~~(1) The rules applicable to captions, signing, or other matters of form of pleadings apply to all motions and other papers provided for by these rules.~~

~~(b) Size of Paper.~~ All pleadings, motions and other papers, including depositions, shall be made on 8 1/2" by 11" paper. The format for all depositions shall comply with the Guidelines for Court Reporters as provided in Mississippi Supreme Court Rule 11.

~~(b) Demurrers, Pleas, etc., Abolished.~~ Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

Advisory Committee Historical Note

Effective ~~November 11/19/~~1992, Rule 7(c) was redesignated Rule 7(d), and a new Rule 7(c), requiring letter-size paper for all pleadings, motions, and other papers was adopted. 606-607 So. 2d XIX-XX (West Miss. Cas. 1993).

~~RULE 8. GENERAL RULES OF PLEADING~~ Rule 8. General pleading rules.

~~(a)~~ (a) Claims for Relief.—A pleading ~~which stating sets forth~~ a claim for relief, ~~whether an original claim, counter claim, cross claim, or third party claim, shall must~~ contain:

~~(1)~~ (1) ~~a~~ short and plain statement of the claim showing that the pleader is entitled to relief, ~~and,; and~~

~~(2)~~—

(2) ~~a~~ demand for judgment for the requested relief.

(A) Relief in the alternative or different types of relief may be demanded.

~~(2)~~ ~~to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.~~

~~(b)~~ Defenses; admissions; denials: Form.
~~of Denials.~~

(1) Requirements. In responding to a pleading, ~~A~~ a party shall ~~must~~:

(A) ~~s~~State in short and plain terms ~~his~~ defenses to each asserted claim; and

(B) ~~asserted and shall a~~ admit or deny the ~~averments~~ allegations asserted against the party.

(2) Denials: responding to substance. A denial must fairly respond to the substance of an allegation.

(3) Denials: general; specific. Subject to Rule 11 obligations, a party may in good faith deny jurisdictional grounds and all other allegations by general denial.

(A) Otherwise, a party must either:

(i) Specifically deny designated allegations; or

(ii) Generally deny all allegations except those specifically admitted.

(4) Partial denials. A party intending in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) Lacking sufficient knowledge or information. ~~upon which the adverse party relies. If he~~ A party lacking is without knowledge or information sufficient to form a belief ~~as to~~ about the truth of an allegation averment, he shall so must state so. The statement ~~and this~~ has the effect of a denial.

(c) Affirmative defenses.

(1) Requirements. In responding to a pleading, a party must affirmatively state an avoidance or affirmative defense, including:

- (A) Accord and satisfaction;**
- (B) Arbitration and award;**
- (C) Assumption of risk;**
- (D) Contributory negligence;**
- (E) Discharge in bankruptcy;**
- (F) Duress;**
- (G) Estoppel;**
- (H) Failure of consideration**
- (I) Fraud;**
- (J) Illegality**
- (K) Injury by fellow servant;**
- (L) Laches;**
- (M) License;**
- (N) Payment;**
- (O) Release;**
- (P) Res judicata;**
- (Q) Statute of frauds;**
- (R) Statute of limitations; and**
- (S) Waiver.**

(2) Mistake. If justice so requires, when a party mistakenly designates a defense as a counterclaim or a counterclaim as a defense, the court must treat the pleading as properly designated and may impose terms for doing so.

(d) Failure to deny. When a responsive pleading is required, an allegation other than one relating to the amount of damages is admitted if not denied. If no responsive pleading is required, the allegation is denied or avoided.

(e) Pleading requirements.

(1) Generally. Each allegation must be simple, concise, and direct. No technical form of a pleading or motion is required.

(2) Consistency; number.

(A) A party may state two or more claims or defenses alternatively or hypothetically in a single count or defense or separately. If one of the statements is sufficient, so is the pleading.

(B) There is no limit on the number of separate claims or defenses a party may state. Separate claims or defenses do not have to be consistent. But obligations stated in Rule 11 apply to all statements.

~~(f) Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials or designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all of its averments, he may do so by general denial subject to the obligations set forth in Rule 11.~~

~~(g) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counter-claim or a counter-claim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been proper designation.~~

~~(h) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.~~

~~(i) Pleading to Be Concise and Direct: Consistency.~~

~~(10) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.~~

~~(11) A party may set forth two or more statements of a claim or defense hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made~~

~~independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has, regardless of consistency. All statements shall be made subject to the obligations set forth in Rule 11.~~

~~(l) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.~~

~~(f) Construction. A pleading must be construed so as to do substantial justice.~~

~~(g) Pleadings Shall Not Be read or submitted. Read or Submitted. Except as admitted into evidence, Pleadings must shall not be considered carried by the jury.~~

~~(m) into the jury room when they retire to consider their verdict, except insofar as a pleading or portion thereof has been admitted in evidence.~~

~~(h) Disclosure Disclosing of Minfancyinority or lLegal dDisability. A Every pleading or motion made by or on behalf of a person under legal disability shall set forth such fact must state so unless disclosed in a previous pleading or motion in the action.~~

~~unless the fact of legal disability has been disclosed in a prior pleading or motion in the same action or proceeding.~~

Advisory Committee Notes

Rule 8 allows claims and defenses to be stated in general terms so that the client's rights of the client are not lost due to counsel's by-poor drafting skills. of counsel. Under Rule 8(a), "it is only necessary that the pleadings provide sufficient notice to the defendant of the claims and grounds upon which relief is sought." See DynaSteel Corp. v. Aztec Industries, Inc., 611 So. 2d 977 (Miss. 1992). All cases must satisfy Rule 8(a) notice-pleading standards. The purpose of Rule 8 is to put parties on notice of the claims against them. E.g., BB Buggies, Inc. v. Leon, 150 So. 3d 90, 101 (Miss. 1994).

Under Rule 8(a), "it is only necessary that the pleadings provide sufficient notice to the defendant of the claims and grounds upon which relief is sought." See DynaSteel Corp. v. Aztec Industries, Inc., 611 So. 2d 977 (Miss. 1992). No "magic words" are required, and the pleadings must only provide sufficient notice of the claims and basis for relief. BB Buggies, Inc., 150 So. 3d at 101 (quoting Estate of Stevens v. Wetzel, 762 So. 2d 293, 295 (Miss. 2000)).

But Rule 8 "does not eliminate the necessity of stating circumstances, occurrences, and events which support the proffered claim." PACCAR Fin. Corp. v. Howard, 615 So. 2d 583, 589 (Miss. 1993). A plaintiff must set forth state direct or inferential fact allegations concerning all elements of a claim. See Penn. Nat'l Gaming, Inc. v. Ratliff, 954 So. 2d 427,

432 (Miss. 2005). Conclusory allegations or legal conclusions masquerading as factual conclusions are insufficient. See *Cook v. Wallot*, 172 So. 3d 788, 801 (Miss. Ct. App. 2013) (quoting *Penn Nat'l Gaming, Inc.*, 954 So. 2d at 431).

To modify child custody, a Motions or pleadings must allege adverse effects due to a material change. The seeking modification of child custody must include an allegation that a material change has occurred which adversely affects the child or children. motion or pleading is insufficient if it alleges that ~~It is not sufficient to allege that~~ an adverse change will occur unless the if the modification is granted. is not granted. See, e.g., *McMurry v. Sadler*, 846 So. 2d. 240, 244 (Miss. Ct. App. 2002).

In cases involving ~~the~~ joinder of multiple plaintiffs, the complaint must identify: (1) contain the allegations identifying the name of by name the defendant or defendants against whom each plaintiff asserts a claim; (2); the alleged harm caused by specific defendants as to each plaintiff; (3), and the location at which at which the harm was caused; and (4) the time period during which when the harm was the harm was caused. See *3M Co. v. Glass*, 917 So. 2d 90, 92 (Miss. 2005); *Harold's Auto Parts, Inc. v. Mangialardi*, 889 So. 2d 493, 495 (Miss. 2004). Failure to provide this “core information” is a violation of Rules 8 and 11. Plaintiffs in such these cases must also plead sufficient facts to support joinder. *Glass*, 917 So. 2d at 93; *Mangialardi*, 889 So. 2d at 495.

Under Rule 8(c), requiring a defendant 's requirement that defendants to plead affirmative defenses when answering is intended to give fair notice of such defenses to the plaintiff for responding to them. s so that they may respond to such defenses. Just as Rule 8(a) requires only that the plaintiff give the defendant notice of a the claims, Rule 8(c) requires only that the defendant give the plaintiff notice of the a defense. “A defendant’s failure to timely and reasonably raise and pursue the enforcement of any affirmative defense or other affirmative matter or right which would serve to terminate or stay the litigation, coupled with active participation in the litigation process, will ordinarily serve as a waiver.” *Kimball Glassco Residential Ctr., Inc. v. Shanks*, 64 So. 3d 941, 945 (Miss. 2011) (citing *MS Credit Ctr., Inc. v. Horton*, 926 So. 2d 167, 180 (Miss. 2006)).

The list of affirmative defenses in Rule 8(c) is not intended to be exhaustive. A defense is an affirmative defense if the defendant bears the burden of proof. See *Natchez Elec. & Supply Co., Inc. v. Johnson*, 968 So. 2d 358, 361 (Miss. 2007). “A matter is an ‘avoidance or affirmative defense’ only if it assumes the plaintiff proves everything he alleges [alleged] and asserts, even so, the defendant wins. Conversely, if, in order to succeed in the litigation, the defendant depends upon the plaintiff failing to prove all or part of his claim, the matter is not an avoidance or an affirmative defense. A defendant does not plead affirmatively

when ~~he merely denies~~[merely denying] what the plaintiff has alleged.” *Hertz Commercial Leasing Div. v. Morrison*, 567 So. 2d 832, 835 (Miss. 1990).

The list of affirmative defenses in Rule 8(c) is not intended to be exhaustive.

~~Examples of some affirmative defenses or matters of avoidance that are not enumerated in Rule 8(c) but which have been recognized by the Supreme Court include: See, e.g., *Loggers, LLC v. 1 Up Techs., LLC*, 50 So. 3d 992, 993 (Miss. 2011) (the failure of a foreign limited liability corporation LLC transacting business in the state to register to do business as a prerequisite to maintaining an action in state court as required by under Mississippi Code Annotated section Miss. Code Ann. § 79-29-1007(1)); *Price v. Clark*, 21 So. 3d 509, 524 (Miss. 2009) (immunity under Mississippi State Tort Claims Act); *Meadows v. Blake*, 36 So. 3d 1225, 1232-33 (Miss. 2010) (no certificate of expert consultation in medical malpractice cases under Miss. Code Ann. § 11-1-58); *Stuart v. Univ. of Miss. Med. Ctr.*, 21 So. 3d 544, 549-50 (Miss. 2009) (noncompliance with 90-day notice requirement under Miss. Code Ann. § 11-46-11(1)); *Ms. Credit Ctr., Inc. v Horton*, 926 So. 2d 167, 179 (Miss. 2006) (right to arbitrate); *Eckmann v. Moore*, 876 So. 2d 975, 989 (Miss. 2004) (apportionment of fault under Miss. Code Ann. § 85-5-7 (Supp. 2011) (see *Loggers, L.L.C. v. 1 Up Technologies, L.L.C.*, 50 So. 3d 992, 993 (Miss. 2011)); -); *Hertz Comm'l Leasing Div. v. Morrison*, 567 So. 2d 832, 834 (Miss. 1990) (contractual acceleration clause as unenforceable penalty); *Bailey v. Georgia Cotton Goods Co.*, 543 So. 2d 180, 182-83 (Miss. 1989) (immunity under the Mississippi State Tort Claims Act (see *Price v. Clark*, 21 So. 3d 509, 524 (Miss. 2009)); failure to comply with the requirement of a certificate of expert consultation in medical malpractice cases as required by Mississippi Code Annotated section 11-1-58 (Supp. 2011) (see *Meadows*~~

~~*v. Blake*, 36 So. 3d 1225, 1232-33 (Miss. 2010)); plaintiff's non-compliance with the 90-day notice requirement contained in Mississippi Code Annotated section 11-46-11(1) (Supp. 2011) (see *Stuart v. University of Miss. Med. Ctr.*, 21 So. 3d 544, 549-50 (Miss. 2009)); the assertion of the right to arbitrate (see *Ms. Credit Ctr., Inc. v Horton*, 926 So. 2d 167, 179 (Miss. 2006)); apportionment of fault pursuant to Mississippi Code Annotated section 85-5-7 (Supp. 2011) (see *Eckmann v. Moore*, 876 So. 2d 975, 989 (Miss. 2004)); argument that a contractual acceleration clause is an unenforceable penalty (see *Hertz Comm'l Leasing Div.*~~

~~*v. Morrison*, 567 So. 2d 832, 834 (Miss. 1990)); the failure of a foreign corporation transacting business in this state to obtain a certificate of authority as prerequisite to maintaining an action under Miss. Code Ann. § in this state as required by Mississippi Code Annotated section 79-415.02); *O'Briant v. Hull*, 208 So. 2d 784, 785 (Miss. 1968) (election of remedies); *Charlot v. Henry*, 45 So. 3d 1237, 1243-44 (Miss. Ct. App. 2010) (-Supp. 2011) (see *Bailey v. Georgia Cotton Goods Co.*, 543 So. 2d 180, 182-83 (Miss. 1989)); election of remedies (see *O'Briant v. Hull*, 208 So. 2d 784, 785 (Miss. 1968)); adverse possession as a defense to neighboring landowner's actions); *Ashburn v. Ashburn*, 970 So.~~

2d 204, 212-13 (Miss. Ct. App. 2007) (~~see Charlot v. Henry, 45 So. 3d 1237, 1243-44 (Miss. Ct. App. 2010); the defense of condonation in a divorce case~~).

The court may deny (~~see Ashburn v. Ashburn, 970 So. 2d 204, 212-13 (Miss. Ct. App. 2007)~~).

A party ~~may be denied~~ leave to amend ~~its~~ an answer to include an affirmative defense if ~~that affirmative defense has been~~ waived. *See Hutzel v. City of Jackson*, 33 So. 3d 1116, 1122 (Miss. 2010).

Rule 9. Pleading special matters.

- (a) **Capacity.**— The capacity in which one sues or is sued must be stated in ~~one's~~ the party's initial pleading.
- (b) **Fraud; ~~m~~Mistake; ~~C~~Condition of the ~~M~~mind.**— In ~~all averments alleging of~~ fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. ~~shall be stated with particularity.~~ Malice, intent, knowledge, and other conditions of ~~mind of~~ a person's mind may be ~~averred~~ alleged generally.
- (c) **Conditions ~~P~~precedent.**— In pleading ~~a the performance or occurrence of~~ conditions precedent, it is sufficient to ~~aver~~ allege generally that all conditions precedent have occurred or been performed ~~or have occurred.~~ A party must deny the performance or occurrence of a condition precedent. A denial of performance or occurrence shall be made specifically and with particularity.
- (d) Official ~~d~~Document ~~or~~ ~~or~~ Act; ~~:~~ ~~O~~Ordinance; ~~or~~ ~~s~~Special ~~s~~Statute.**
- (1)** In pleading an official document or ~~official act,~~ alleging ~~it is sufficient to aver that~~ the document was legally issued or ~~that~~ the act was legally done ~~in~~ is sufficient.
- (d)(2)** An allegation identifying an ordinance or statute by title, approval date, or otherwise is sufficient to ~~compliance with the law.~~ In pleading a municipal or county ~~n~~ ordinance; ~~of a municipality or a county,~~ or a special, local, or private statute; ~~or any~~ right derived from them. ~~therefrom, it is sufficient to identify specifically the ordinance or statute by its title or by the date of its approval, or otherwise.~~
- (e) **Judgment.**— Alleging a judgment or decision without showing jurisdiction to render it is sufficient to ~~In pleading a the judgment or decision of a domestic or foreign court, judgment or decision of a domestic or foreign court,~~ judicial or quasi-judicial tribunal, or, ~~or of a board or officer,~~ it is sufficient to ~~aver the judgment or decision without setting forth matter showing jurisdiction to render it.~~
- (f) **Time and place. ~~and Place.~~** For the purpose of testing the sufficiency of a pleading, ~~averments~~ Alleging of time and place is ~~are~~ material for purposes of testing a pleading's sufficiency ~~and shall be considered like all other averments of material matter.~~
- (g) **Special ~~d~~Damage.**— An ~~When~~ items of special damage ~~are claimed, they shall be~~ must be specifically stated.

~~(h) Fictitious Parties.— If When~~ a party states in a pleading that an opponent's is ignorant of the name is unknown, of an opposing party and so alleges in his pleading, the opposing party may be designated by any name, ~~and when his true name is discovered the pro~~ Process, ~~and all~~ pleadings and proceedings in the action may be amended by substituting the true name and giving proper notice to the opposing party once it is known.

(h)

(i) **Unknown Parties in Interest.**— ~~An In an action where unknown~~ proper parties party are interested in the subject matter of an action ~~of the action, they~~ may be designated as an unknown ~~parties-party~~ in interest.

Advisory Committee Notes

~~A party To desiring to~~ raise an issue as to a party's the legal existence, capacity, or authority, the other party must ~~of a party must~~ assert it such in the answer. If lack of capacity appears affirmatively on the face of the complaint, the defense may be raised by a motion ~~pursuant under to~~ Rule 12(b)(6) or ~~Rule~~ 12(c).

“Circumstances” in Rule 9(b) refers to matters ~~such as the like:~~ (1) the time, place, and contents of ~~the~~ false representations; (2), in addition to the identity of the person who made them; and (3) and what the person obtained as a result.

Under Rule 9(g), ~~requires a detailed pleading of~~ special damages are alleged in detail. But general damages are alleged generally, and only a general pleading of general damages. General damages ~~are damages that~~ are typically caused by, and flow naturally from, ~~the~~ alleged injuries, ~~alleged.~~ Special damages ~~are damages that~~ are unusual or atypical for the type of claim asserted. Special damages ~~are required to be~~ must be plead with specificity so as to give the defendant notice of the nature of the alleged damages. Examples of ~~S~~special damages include, ~~but are not limited to,~~ consequential damages, damages for lost business profit, and punitive damages. *See Puckett Machinery-Mach. Co. v. Edwards*, 641 So. 2d 29, 37-38 (Miss. 1994) (consequential damages must be plead with specificity); *Lynn v. Soterra, Inc.*, 802 So. 2d 162, 169 (Miss. Ct. App. 2001) (~~damages for~~ lost business profits caused by ~~defendant's~~ blocking ~~of a~~ road are likely special damages). ~~If claimant~~ ~~f~~ailing ~~s~~ to plead special damages with specificity could result in the reversal of a damages ~~, an award. for such damages may be reversed.~~ The requirement that special damages must be stated with specificity will be waived if special damages are tried by ~~the~~ express or implied consent of the parties ~~pursuant to~~ under Rule 15(b).

Rule 10. Pleadings Form of pleadings.

(a) Caption; party Names. of Parties. ~~Every p~~A pleading ~~shall~~must contain a caption ~~setting forth~~stating the court name, ~~of the court,~~ the title, ~~the~~ file number, and ~~a designation as in Rule 7(a)~~designation.

(1) In the complaint, the action title ~~of the action shall~~must include the names of all ~~the~~ parties.

(a)(2) ~~In,~~In ~~but in~~ other pleadings, it is sufficient to state the name of the first party on each side with an appropriate indication of all others. ~~parties.~~

(b) Paragraphs; sSeparate sStatement.

(1) The first paragraph of a claim for relief ~~shall~~must contain the names of all parties and their ~~and, if known, the~~ addresses if known. ~~of all the parties.~~

(2) All allegations averments of of a claim or defense ~~shall~~must be ~~made~~asserted in numbered paragraphs.

(A) ~~The~~ contents of each numbered paragraph must of which shall be limited as far as practicable to a statement of a single set of circumstances.

(B) ~~and~~ ~~The~~ paragraph may be referred to by number in all succeeding subsequent pleadings.

(b)(3) Each claim founded ~~up~~on a separate transaction or occurrence and each defense other than a denials shallmust be stated in a separate count or defense ~~whenever~~when a separation doing so facilitates presenting the matters clearly. ~~the clear presentation of the matters set forth.~~

(c) Adoption by rReference; Eexhibits. ~~A S~~statements in a pleading may be adopted by reference ~~in a different part of in~~ the same pleading, ~~or in~~ another pleading, ~~or in~~ any motion. A copy of any a written instrument attached which is as an exhibit to a pleading is a part of the pleading ~~thereof~~ for all purposes.

(d) Copy Mmust Bbe Aattached. ~~When any~~ claim or defense is founded on an account or other written instrument, a copy ~~thereof~~ should be attached ~~to or filed with to~~ the pleading or filed with it unless the pleading alleges sufficient justification for its omission. ~~is stated in the pleading.~~

[Amended effective April 4/13/, 2000.]

Advisory Committee Historical Note

Effective ~~April 4/13/~~2000, Rule 10(d) was amended to suggest ~~,~~ rather than require ~~that~~ documents on which a claim or defense is based to be attached to a pleading. ~~—~~ 753-745 So. 2d XVII ~~—~~ (West Miss. Cas. 2000.)

Advisory Committee Notes

Failure to comply with ~~the requirements of~~ Rule 10(b) requirements is not ~~ground-a basis~~ for ~~dismissal of dismissing~~ the complaint or striking the answer. But on a motion or its own. Instead, the the court, ~~upon a motion or on its own,~~ may order a party to amend the pleading ~~so as~~ to comply with ~~the provisions of~~ Rule 10(b). *See, e.g., 3M Co. v. Glass*, 917 So. 2d 90, 92-94 (Miss. 2005); *Harold's Auto Parts, Inc. v. Mangialardi*, 889 So. 2d 493, 494-95 (Miss. 2004).

Rule 11. Signing of pleadings, and motions, and other papers.

(a) Signature Required.

(1) A Every pleading, or motion, or other paper must be signed by of a party represented by an attorney shall be signed by at least one attorney of record in that the attorney's individual name, whose address shall be stated. An unrepresented party who is not represented by an attorney shall must personally sign that party's name. The pleading, motion, or other paper must state the signer's address, email address, and telephone number.

(2) that party's pleading or motion and state the party's address. Unless a rule or statute specifically states Except when otherwise, specifically provided by rule or statute, a pleadings does not need notto be verified or accompanied by an affidavit. The rule in equity that sworn the allegations in averments of an answer under oath must be overcome by the testimony of from two witnesses or of one witness sustained by and corroborating circumstances is abolished.

(3) The signature of an attorney constitutes a certificate:

(A) That the attorney h has read the pleading, motion, or other paper; or motion;

(B) That to the best of the attorney's knowledge, information, and belief there is good grounds to support it; and

(C) That it is not interposed for delay.

(a)(4) Except on a verified motion for admission pro hac vice, Tthe signature of an attorney who is not regularly admitted to practice in Mississippi, except on a verified application for admission pro hac vice, shall furtheralso constitute certifies a certificate by the attorney that the foreign attorney has been admitted in the case in accordiangee witho the requirements and limitations of Miss. R. App. P. Rule 46(b) of the Mississippi Rules of Appellate Procedure. requirements and limitations.

(b) Sanctions. If aAn unsigned pleading, or motion, or other paper or one is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as false and a sham sham. and false, and Tthe action may proceed as though the pleading, or motion, or other paper had not been served.

- (1) For willful violation of this rule, an attorney may be subjected to appropriate disciplinary action.
- (2) Similar action may be taken if scandalous or indecent matter is inserted.
- ~~(b)(3)~~ (3) If the court decides that a party's ~~if any party files a pleading,~~ motion, or other paper pleading which, in the opinion of the court, is frivolous or intended to harass or is filed for the purpose of harassment or delay, the court may order such a the party, the party's or his attorney, or both, to pay to the opposing party or or parties the reasonable expenses, including reasonable attorney's fees, incurred by such other parties them and by their attorneys, including reasonable attorneys' fees.

[Amended effective ~~March 3/13/, 1991~~; amended effective ~~January 1/16/, 2003~~].

Advisory Committee Historical Note

Effective ~~January 1/16/, 2003~~, Rule 11(a) was amended to provide that the signature of a foreign attorney certifies compliance with ~~MRAP Miss. R. App. P. 46(b)~~ and to make other editorial changes. ____ So. 2d ____ (West Miss. Cases 2003).

Effective ~~March 3/13/, 1991~~, Rule 11(b) was amended to provide for sanctions against a party, his attorney, or both. -574-576 So. 2d XXI (West Miss. Cas. 1991).

Advisory Committee Notes

Good faith and professional responsibility are the ~~bases core~~ of Rule 11. ~~For example,~~ Rule 8(b), ~~for instance,~~ authorizes the use of a general denial subject to Rule 11—“subject to the obligations set forth in Rule 11,” meaning in other words, counsel should do so only when ~~counsel can~~ in good faith he or she can fairly deny all ~~the averments allegations~~ in the adverse pleading. ~~should he do so.~~

Verification will be the exception and not the rule to pleading in Mississippi. No pleading or petition ~~requires need be verification verified~~ or ~~an accompanying accompanied~~ by affidavit unless ~~there is~~ a specific ~~provision to that effect in a rule~~ or ~~statute statutory provision states otherwise~~. See, e.g., ~~M.R.C.P. Miss. R. Civ. P. 27(a)~~ and 65.

The final sentence of Rule 11(b) ~~is intends ed~~ to ensure ~~that~~ the trial court has sufficient power to deal forcefully and effectively with parties or attorneys who may misuse the liberal, notice--pleadings system effectuated by these rules. ~~The Rule It~~ authorizes a court to award a party reasonable attorney's' fees and expenses when an adverse party files a

~~frivolous pleading, motion, or other paper or one intended to harass or delay. “files a motion or pleading which, in the opinion of the court, is frivolous or is filed for the purpose of harassment or delay.” Thus~~Therefore, Rule 11 provides two alternative grounds for the imposition of sanctions: (1) ~~—the filing of a frivolous pleading, motion, or pleading other paper and (2) , and the filing of a pleading, motion, or other paper to pleading for the purpose of harassment or delay.~~ See *Nationwide Mut. Ins. Co. v. Evans*, 553 So. 2d 1117, 1120 (Miss. 1989).

~~Although a finding of bad faith is necessary for sustain the imposition of sanctions based on purposeful harassment or delay, a finding of bad faith But is not necessary for to sustain the imposition of sanctions based upon frivolous pleadings, or motions, or other papers.~~ A pleading, ~~or motion, or other paper~~ is frivolous “only when, objectively speaking, the pleader or movant has no hope of success.” See *In re Spencer*, 985 So. 2d 330, 339 (Miss. 2008). A pleading, motion, or other paper is “frivolous” if its “insufficiency... is so manifest upon a bare inspection of the pleadings, that the court or judge is able to determine its character without argument or research.” *In re Estate of Smith*, 69 So. 3d 1, 6 (Miss. 2011). A defensive pleading is not frivolous unless “conceding it to be true does not, taken as a whole, contain any defense to any part of complainant’s cause of action and its insufficiency as a defense is so glaring that the Court can determine it upon a bare inspection without argument.” *Id. In re Estate of Smith*, 69 So. 3d at 6.

Sanctions against a party are improper in cases: (1) where the party relied strictly on counsel’s advice ~~of counsel~~ and could not be expected to know whether the complaint was supported by law; (2) , where the party relied on counsel’s advice ~~of counsel~~ in filing the pleading and played no significant role in prosecution ~~of the action~~; or (3) where the party was unaware and lacked responsibility for ~~any bad-faith~~ harassment or delay. See *Stevens v. Lake*, 615 So. 2d 1177, 1184 (Miss. 1993).

The Litigation Accountability Act also authorizes a court to impose sanctions upon attorneys ~~and/or and~~ parties who assert “~~any claim or defense that is~~ without substantial justification or , or ... was interposed for delay or harassment.” Miss. Code Ann. § 11-55-5 (Supp. 2011). “Without substantial justification” is defined as ~~any~~ claim that is “frivolous, groundless in fact or in law, or vexatious, as determined by the court.” *Id. Miss. Code Ann. § 11-55-3(a).* ~~(Supp. 2011).~~ “Frivolous” as used in the Act means the same thing as “frivolous” ~~as used~~ in Rule 11: a claim or defense made “without hope of success.” See *In re Spencer*, 985 So. 2d ~~at 330, 338 (Miss. 2008).~~

Rule 12.– Defenses and objections: when and how; Rule 12 motions; consolidating and waiving defenses; hearing. Defenses and objections -- when and how presented -- by pleading or motion -- motion for judgment on the pleadings

(a) (a) When Presented. When presented.

(1) Serving a responsive pleading.

- (A) Answer to complaint.** A defendant ~~shall~~ must serve ~~his~~ an answer within ~~thirty~~ 30 days after ~~being the service served~~ of with the summons and complaint or as Rule 4 states otherwise regarding waiver. ~~upon him or within such time as is directed pursuant to Rule 4.~~
- (B) Answer to crossclaim.** A party ~~must served~~ an answer to with a pleading stating a cross-claim against him shall serve an answer thereto within ~~thirty~~ 30 days after ~~the service upon him being served with a pleading stating one.~~
- (C) Reply to counterclaim.** A ~~The~~ plaintiff ~~shall~~ must serve ~~his~~ a reply to a counter-claim ~~in the answer~~ within ~~thirty~~ 30 days after ~~being served~~ iee of with ~~an the answer or~~ stating one or an order requiring a reply unless the court orders otherwise.

(2) Effect of motion.

- (A) Unless the court orders a different time,** ~~if a reply is ordered by the court, within thirty days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods in Rule 12(a)(1) of time as follows, unless a different time:~~
- (i) If the court denies the motion or postpones its disposition until trial,** the responsive pleading must be served within 10 days after notice of the court's action.
- (ii) If the court grants a motion for a more definite statement, the** responsive pleading must be served within 10 days after service of the more definite statement.
- (B) The court may extend these times only once for a period not to exceed 10** days on counsel's written, filed stipulation.

~~is fixed by order of the court:~~

~~—if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten days after notice of the court's action;~~

~~if the court grants a motion for a more definite statement, the responsive pleadings shall be served within ten days after the service of the more definite statement.~~

~~—The times stated under this subparagraph may be extended, once only, for a period not to exceed ten days, upon the written stipulation of counsel filed in the records of the action.~~

~~**(b) (b) How Presented.**—Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counter claim, cross claim, or third party claim, shall must be asserted in the responsive pleading ~~thereto~~ if one is required. But a party, except that the following defenses may assert defenses in Rule 12(b)(1) through (b)(6) by at the option of the pleader be made by motion. If no responsive pleading is required, a party may assert at trial a defense to that claim. No defense or objection is waived by joining one or more other defenses or objections in a responsive pleading or motion.~~

~~÷~~

~~(2)(1) Lack of subject-matter jurisdiction ~~over the subject matter;~~~~

~~(3)(2) Lack of personal jurisdiction ~~over the person;~~~~

~~(5)(3) Improper venue;~~

~~(6)(4) Insufficient ~~ty of~~ process;~~

~~(7)(5) Insufficient ~~ty of~~ service of process;~~

~~(8)(6) Failure to state a claim upon which relief can be granted; and~~

~~(7) Failure to join a party under Rule 19.~~

~~(9)~~

~~No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56; however, if on such a motion matters outside the pleadings are not presented, and if the motion is granted, leave to amend shall be granted in accordance with Rule 15(a).~~
~~If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56; however, if on such a motion matters outside the pleadings are not presented, and if the motion is granted, leave to amend shall be granted in accordance with Rule 15 (a).~~

(c) Motion for Judgment on the Pleadings.— After the pleadings are closed but ~~within early such enough time as~~ not to delay ~~the~~ trial, ~~any~~ party may move for a judgment on the pleadings.

(d) Matters outside pleadings. On a Rule 12(b)(6) or 12(c) motion, if matters outside the pleadings are presented to the court and not excluded, the motion must be treated as one for Rule 56 summary judgment. All parties must be given reasonable opportunity to present all pertinent material.

(1) When the court grants a Rule 12 (b)(6) or 12(c) motion, leave to amend must be granted according to Rule 15(a) if matters outside the pleadings are not presented.

~~(d)(a) If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56; however, if on such a motion matters outside the pleadings are not presented, and if the motion is granted, leave to amend shall be granted in accordance with Rule 15 (a).~~

~~(e)(a) Preliminary Hearings. The defenses specifically enumerated (1) through (7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment on the pleadings (subdivision (c) of this rule), shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.~~

(e) Motion for More Definite Statement.— If a pleading to which a responsive pleading is ~~permitted~~ allowed is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before ~~interposing his filing a~~ responsive pleading.— The motion ~~shall~~ must point out the pleading defects ~~complained of~~ and the desired details. ~~desired.~~

(1) If a court order granting the motion the motion is granted and the order of the court is not obeyed within ~~ten~~ 10 days after notice of the order or as otherwise stated in it, within such other time as the court may fix, the court may strike the deficient pleading ~~to which the motion was directed~~ or issue make an order it deems just such order as it deems just.

(f) Motion to Strike.— The court may strike from a pleading an insufficient defense or a redundant, immaterial, impertinent, or scandalous matter:

- ~~(1) Upon a party's motion made by a party before responding to a pleading;~~
- ~~(2) or, if no responsive pleading is permitted by these rules required, upon a party's motion made by a party within thirty 30 days after the service of the pleading is served; upon him or~~
- ~~(3) upon the court's On its own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.~~

~~(g)~~

~~(h)(g) Consolidation of Defenses in Motion.— A party who makes a motion under this rule may join with it any other available Rule 12 motions, herein provided for and then available to him. If a the party makes a motion under this rule but omits therefrom any available Rule 12 defense or objection, a party then available to him which this rule permits to be raised by motion, he shall cannot not thereafter make a motion based on raise the omitted defense or objection so omitted, in another motion except unless Rule 12(h) states otherwise. motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.~~

(h) Waiver Waiving or and Preservation of Certain Defenses.

~~(a)~~

~~(1) A defense of Lack of personal jurisdiction, over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived:~~

~~(A) (A) if omitted from a motion in the circumstances described in Rule 12 subdivision (g); or~~

~~(B) (B) if it is not either made raised by a motion under this rule, nor included in a responsive pleading, or in an or an amendment under thereof permitted by Rule 15-(a) to be made as a matter of course.~~

~~(2) F~~

~~(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join an indispensable party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made raised:~~

~~(A) In any pleading permitted allowed or ordered under Rule 7(a); or~~

~~(B) By a motion for judgment on the pleadings; or~~

~~(C) At the trial on the merits.~~

~~(3)~~

~~(3) Whenever it appears by suggestion that the parties or otherwise that the court lacks subject matter jurisdiction of the subject matter, the it court shall must dismiss the action or transfer ~~the action it~~ to the proper court.~~

~~(i) of proper jurisdiction. **Preliminary Hhearings.** Unless the court defers them until trial, the following must be heard and decided before then:~~

~~(1) Defenses in Rule 12(b)(1) through (7) asserted in a pleading or motion; and~~

~~(2) A motion for judgment on the pleadings.~~

~~The defenses specifically enumerated (1) through (7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment on the pleadings (subdivision (c) of this rule), shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.~~

~~(4)–~~

Advisory Committee Notes

~~The A motion for a more definite statement requires merely that:— a more definite statement and —~~and~~ not evidentiary details. As one remedy for a vague or ambiguous pleading, a party—only when a responsive pleading is required—may move ~~The motion will for a more definite statement lie only when a responsive pleading is required, and is one remedy for a vague or ambiguous pleading.~~ A defendant may also file a Rule 12(b)(6) motion ~~as a means of to~~ challenging a vague or ambiguous pleading.~~

~~Ordinarily, Rule 12(f) ordinarily will requires only ~~the~~ objectionable portions of ~~the~~ pleadings to be stricken rather than, and not the entire pleading. Since the issue for the court is whether an allegation is prejudicial to the adverse party, a ~~M~~otions challenging going to redundant or or immaterial allegations, or allegations as to which relevancy is of which there is doubtful should be as to relevancy, should be denied, the issue to be decided being whether the allegation is prejudicial to the adverse party. When a ~~M~~otions to strike an insufficient defense for insufficiency should, if granted, the court should also order be granted with leave to amend.~~

~~Under Rule 12(g), provides that a party making a pre-answer Rule 12 pre-answer motion ~~pursuant to Rule 12~~ may join with such motion ~~it~~ any other available ~~Rule 12~~ pre-answer Rule 12 motions. If a party makes a ~~Rule 12~~ pre-answer Rule 12 motion and omits an available Rule 12 defense or objection, the party may only raise ~~such the~~ omitted defense or objection only as ~~allowed by~~ Rule 12(h)(2) allows. Rule 12(h)(2) allows a party to raise the defense of failure to state a claim, ~~and/or~~ the defense of failure to join an party~~

indispensable party under Rule 19, ~~or both by asserting such defenses in (1) in the answer; (2) in, by raising such defenses in a motion for judgment on the pleadings; or (3) by raising such defenses at the trial on the merits.~~ Rule 12(g) encourages a party to consolidate all available Rule 12 motions ~~so as~~ to avoid successive motions.

Rule 12(h)(1) states that certain specified defenses ~~which are~~ available to a party when ~~the party makes~~ a pre-answer motion, but ~~which are~~ omitted from the pre-answer motion, ~~are waived.~~ ~~The specified defenses including:~~ (1) lack of personal jurisdiction; (2) improper venue; (3) insufficiency of process; and (4) insufficiency of service of process. In addition, ~~under~~ Rule 12(h)(1), ~~further provides that~~ if a party answers rather than ~~files~~ a pre-answer motion, the party must raise ~~any of~~ these specified defenses in the answer or an amended answer made as a matter of course ~~pursuant according to~~ Rule 15(a) to avoid waiv~~er of such defenses.~~

Under Rule 12(h)(3), ~~lack a question~~ of subject matter jurisdiction may be presented at any time, ~~either~~ by motion or answer. ~~Further, it~~ may ~~also~~ be asserted as a motion for relief from a final judgment under Rule 60(b)(4) or ~~may be presented f~~or the first time on appeal. ~~The provision d~~Directing a court ~~lacking without~~ subject matter jurisdiction to transfer the action to ~~a the proper~~ court ~~having jurisdiction that does~~ preserves the traditional Mississippi practice of transferring actions between the circuit and chancery courts. ~~See, as provided by~~ Miss. Const. ~~art. 6, §~~157 (all causes that may be brought in ~~the~~ circuit court ~~whereof the chancery court has jurisdiction shall must~~ be transferred to ~~the~~ chancery court ~~if it has exclusive jurisdiction~~); ~~see also id. § and~~ 162 (all causes that may be brought in chancery court ~~whereof must be transferred to the~~ circuit court ~~if it has exclusive jurisdiction shall be transferred to the circuit court~~), ~~b~~But not reversing ~~for because~~ a court's improperly exercised~~ing~~ its jurisdiction. ~~See~~ Miss. Const. ~~art. 6, §~~147 (~~prohibiting reversals because action brought in wrong court~~).

Rule 13. Counter-claim; ~~and~~ cross-claim.

(a) ~~(a)~~ Compulsory ~~C~~counter-claims.

(1) A pleading ~~shall~~ must state as a counter-claim ~~any~~ claim ~~which at the time of serving the pleading~~ the pleader has against ~~any~~ opposing party at the time of service if:

(A) ~~It~~ arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and

(B) ~~It~~ does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction.

(2) But the pleader does not need ~~to state~~ assert the claim if:

~~(1)~~**(A)** ~~At~~ the time the action was commenced the claim was the subject of another pending action; ~~or~~

~~(2)~~**(B)** ~~The~~ opposing party ~~brought suit~~ sued upon ~~his claim by~~ attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not asserting ~~any~~ counter-claim under this ~~Rule 13~~; or

~~(3)~~**(C)** An insurer is defending ~~the~~ opposing party's claim ~~is one which an insurer is defending~~.

(3) In the event ~~an otherwise~~ compulsory counter-claim is not asserted in reliance upon ~~on~~ any exception stated in paragraph Rule 13(a), ~~re-litigation of the claim may nevertheless be barred by~~ the doctrines of res judicata or collateral estoppel by judgment may subsequently bar the claim ~~if in the event certain~~ issues are determined ~~decided~~ adversely to the party electing ~~to~~ asserting ~~the claim~~.

(b) Permissive ~~C~~counter-~~C~~claims.—A pleading may state as a counter-claim ~~any~~ claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Counter-~~C~~claim ~~E~~exceeding ~~O~~pposing ~~C~~claim.—A counter-claim may or ~~or~~ may not diminish or defeat the opposing party's recovery ~~sought by the opposing party~~.—It may claim greater or different relief compared to ~~exceeding in amount or different in kind from that relief requested~~ ~~sought~~ in the opposing party's pleading ~~of the opposing party~~.

(d) Counter-Claim Against the State of Mississippi.— These rules ~~shall~~ must not be construed to enlarge beyond ~~the~~ limits fixed by law the right to assert a counter-claims or to claim a credits against:

(1) ~~the~~ The State of Mississippi;

(2) ~~a~~ A political subdivision;

(3) ~~, or a~~ An officer in ~~his a~~ representative capacity; or

(4) An agent of the State of Mississippi or a political subdivision~~either~~.

~~(d)~~

(e) Counter-Claim Maturing or Acquired After Pleading.— A claim ~~which either~~ matured or ~~was~~ acquired ~~by the pleader~~ after serving ~~his a~~ pleading may, with the court's permission ~~of the court~~, be presented as a counter-claim by supplemental pleading.

(f) Omitted Counter-Claim.— The court may allow a pleader to assert a counterclaim by amendment on just terms ~~When a the~~ pleader fails to ~~set up~~ assert a counter-claim:

(1) ~~through~~ Through oversight, inadvertence, or excusable neglect; ~~or~~

~~(f)(2)w~~ When justice requires, ~~he may by leave of court set up the counter claim by amendment on such terms as the court deems just.~~

(g) Cross-Claim Against against Co-Party.

(1) A pleading may state as a cross-claim ~~any~~ claim by one party against a ~~co-~~ party arising out of the transaction or occurrence:

(A) ~~that~~ That is the subject matter ~~either~~ of the original action or of a counter-claim ~~therein in it~~ or

(B) That relating to ~~any~~ property ~~that which~~ is the subject matter of the original action.

~~(g)(2)~~ Such ~~The~~ cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of the claim asserted in the action against the cross-claimant.

(h) Claims Exceeding Court's Jurisdiction.— When a counterclaim or cross claim exceeding jurisdictional limits is ~~the~~ filed ~~ing~~ in ~~the~~ county court, by any party of a counter claim or cross claim which exceeds the jurisdictional limits of that court, and on upon the motion by ~~of~~ all parties ~~filed~~ within twenty ~~20~~ days ~~after the filing~~

~~of such counter-claim or cross-claim,~~ the county court ~~shall~~ must transfer the action to the circuit or chancery court with jurisdiction ~~wherein~~ the county court is ~~situated~~located ~~and which would otherwise have jurisdiction.~~

(i) ~~Joining der of Aadditional Pparties.~~—Persons other than ~~those parties made parties~~ to the original action may be made parties to a counter-claim or cross-claim ~~in~~ accordi~~ng ee with the provisions to~~ of Rules 19 and 20.

(j) ~~Separate Ttrial or s; Separate Jjudgment.~~—If the court orders separate trials ~~as provided in under~~ Rule 42(b), judgment on a counter-claim or cross-claim may be rendered ~~in accordi~~ng ee wito~~h the terms of~~ Rule 54(b) when the court has jurisdiction ~~so to do so;~~ even if ~~the claims of~~ the opposing parties' claims have been dismissed or otherwise ~~disposed~~decided ~~of.~~

(k) Appealsd Actions.—When an action in justice court or in another court not subject to these rules is appealed for a trial de novo to one that is subject to them, the following applies:

(1) ~~When an action is commenced in the justice court or in any other court which is not subject to these rules and from which an appeal for a trial de novo lies to a court subject to these rules, a~~Any Rule 13(a) compulsory counter-claim ~~made compulsory by subdivision (a) of this rule shall~~must be stated as an amendment to the pleading within ~~thirty~~30 days after ~~such the~~ appeal has been perfected or ~~otherwise~~ within ~~such further~~additional time ~~as the~~ ~~as the~~ court may allow.

(2) ~~;~~ ~~and o~~Other counter-claims and cross-claims ~~shall~~must be ~~permitted~~allowed as in ~~an other cases.~~original jurisdiction action.

~~(k)~~—The lower court's jurisdiction does not limit the amount of ~~When aa~~ defendant's counter-claim or cross-claim, ~~is asserted by a defendant in such an appealed case,~~ and the defendant ~~shall not be limited in amount to the jurisdiction of the lower court but~~may shall be permitted to claim and recover the full amount ~~of its claim~~ irrespective of the ~~jurisdiction of the~~ lower court's jurisdiction.

(3)

Advisory Committee Notes

~~The purpose of~~ Rule 13 ~~is to~~ grants the court broad discretion to allow claims to be joined ~~in order~~ to expedite ~~the~~ resolution of all ~~the~~ controversies between the parties in one suit and to eliminate ~~the~~ inordinate expense occasioned by circuity of action and multiple litigation.

Subject to ~~the~~ exceptions stated in Rule 13(a), a counterclaims ~~are~~is compulsory if ~~they~~ arising ~~e~~-out of the same transaction or occurrence that is the subject matter of the opposing party's claim. ~~A~~ Compulsory counterclaims ~~is~~ are so closely related to ~~the~~ claims already raised, that ~~they~~ it can be adjudicated in the same action without creating confusion and should be ~~adjudicated in the same action so as~~ to avoid unnecessary expense and duplicative litigation. Rule 13 generally requires a compulsory counterclaims to be asserted in ~~the~~ pending litigation to avoid waiver.

All other counterclaims are permissive and may be asserted by the defending party. If trying the permissive counterclaim in the same case as the original claim ~~is tried~~ will create confusion, prejudice, unnecessary delay, or increased costs, the court has the discretion to order a separate trial on that the counterclaim ~~be tried separately pursuant under to~~ Rule 42(b).

~~Pursuant Under to~~ Rule 13(g), a party may assert a cross-claim against a co-party if the crossclaim arises out of the same transaction or occurrence (1) that is the subject matter of the complaint; (2) ~~or that is~~ a counterclaim ~~thereto~~ the subject matter of the complaint; or (3) that relates to ~~any~~ property ~~that which~~ is the subject matter of the complaint. ~~A~~ Cross-claims may be a derivative claims ~~that~~ asserting that the party against whom the cross-claim is asserted is or may be liable to the cross-claimant for all or part of the claim against the cross-claimant. ~~A Pursuant to Rule 13, e~~cross-claims ~~is~~ are permissive rather than compulsory.

A party asserting a counterclaim or cross-claim may join additional parties as defendants to the counterclaim or cross-claim ~~pursuant under to~~ Rules 19 and 20.

Rule 14. Third-party practice.

(a) ~~When By the Defendant, May Bring in Third Party.~~

(1) ~~When.~~ A defending party may serve a summons and complaint on a nonparty who is or may be liable to the defending party for all or part of the plaintiff's claim against the defendant party:

(A) ~~After the action is commenced~~~~ment of the action;~~

(B) ~~and upon~~~~On being so~~ authorization ed by the court ~~in which~~ where the action is pending;

(C) ~~On a~~ motion; and

(D) ~~f~~For good cause shown ~~shown.~~, a defending party may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him.

(2) ~~Defenses; counterclaim; crossclaim.~~

(A) ~~Defenses.~~ The third-party defendant (e.g., ~~the~~ person served with the summons and third-party complaint), ~~hereinafter called the third party defendant, shall~~ must make assert his defenses to the third-party plaintiff's claim ~~as provided in~~ according to Rule 12.

(B) ~~Counterclaim; crossclaim.~~ The third-party defendant must assert ~~and his~~ a counter-claims against the third-party plaintiff and a cross-claims against other third-party defendants ~~as provided in~~ according to Rule 13.

(3) ~~Defenses; counterclaim: scope.~~

(A) ~~Scope of defenses.~~ The third-party defendant may assert against the plaintiff ~~any~~ defenses ~~which~~ the third-party plaintiff has to the plaintiff's claim.

(B) ~~Scope of counterclaim.~~ The third-party defendant may also assert ~~any~~ claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.

(4) ~~Crossclaim: scope; response.~~

(A) Scope of crossclaim. The plaintiff may assert ~~any claim~~ against the third-party defendant a claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.

(B) Response to crossclaim. If so, ~~and~~ the third-party defendant ~~thereupon shall~~must assert ~~his~~ defenses, counterclaims, and crossclaims ~~as provided in~~according to Rules 12 and ~~his counter claims and cross claims as provided in~~ Rule 13.

(5) Motion to strike, sever, or for separate trial. Any party may move to strike the third-party claim, ~~or~~ for its severance, or for separate trial.

(a)(6) By a third-party defendant. A third-party defendant may proceed under this rule against any nonparty person not a party to the action who is or may be liable to ~~him~~ the third-party defendant for all or part of the plaintiff's claim ~~made in the action~~ against the third-party defendant.

(b) ~~When By the Plaintiff May Bring in Third Party.~~— When a counter-claim is asserted against a plaintiff, ~~the~~ plaintiff may bring in cause a third party ~~to be brought in~~ under circumstances ~~which under this rule would entitle~~ing a defendant to do so under this rule.

(c) ~~[Admiralty and Maritime Claims.]~~ [Omitted].

[Former Rule 14 deleted effective ~~May 5/1/, 1982~~; new Rule 14 adopted effective ~~July 7/1/, 1986~~.]

Advisory Committee Historical Note

Effective ~~July 7/1/, 1986~~, a new Rule 14 was adopted.—486-490 So. 2d XVII (West Miss. Cas. 1986).

Effective ~~May 5/1/, 1982~~, Rule 14 was abrogated.—410-416 So. 2d XXI (West Miss. Cas. 1982).

Advisory Committee Notes

It is essential that a third-party defendant's liability for a ~~the~~ third-party plaintiff's claim be ~~for some form of~~ derivative or secondary ~~liability of the third party defendant to the third party plaintiff~~. Impleader is ~~not un~~available for ~~the~~ asserting of an independent

action by the defendant against a third party, even if the claim arose out of the same transaction or occurrence as the main ~~claim~~one. ~~But~~ ~~Once~~ a third-party claim is properly asserted, ~~however~~, the third-party plaintiff may assert ~~whatever~~ additional claims ~~the third-party plaintiff has~~ against the third-party defendant under Rule 18(a).

The requirement ~~that the third party claim be for of~~ derivative or secondary liability may be met ~~by,~~ for example, ~~by an~~ ~~allegating of~~ a right of contractual or other indemnity (~~contractual or otherwise~~), contribution, subrogation, or warranty. ~~But~~ ~~The~~ rules does not, ~~however~~ create any derivative or secondary ~~such~~ rights. It merely provides a procedure for expediting consideration of derivative or secondary ~~these~~ rights ~~where they are~~ available under substantive law.

An insured party has a derivative claim for indemnity against the insured party's liability insurer; ~~and the insured party~~ may implead the party's liability insurer, if ~~the insured is being~~ sued for damages allegedly covered by the liability policy and if the insurer ~~is~~ ~~disclaiming~~ coverage under pursuant to the liability policy.

A defendant ~~who is~~ subject to joint and several liability for a plaintiff's damages may have a claim against joint tortfeasors for contribution. The fact Generally, in that in Mississippi, ~~liability for damages imposed in civil cases based upon~~ "fault" is generally several only ~~and rather than not~~ joint and several, ~~thereby~~ ~~obviating~~ the need or basis for contribution claims. But under Mississippi Miss. Code Ann. § stated section 85-5-7(4), ~~however, provides that~~ "[j]oint and several liability shall be imposed on all who consciously and deliberately pursue a common plan or design to commit a tortuous act, or ~~who~~ actively take part in it." The statute ~~further also provides states~~ that "[a]ny person held jointly and severally liable under ~~[such]~~this section shall have a right of contribution from ~~his~~ . . . fellow defendants acting in concert." As a result, Thus, Mississippi law grants a defendant ~~who has been~~ held jointly and severally liable for acting in concert has a right of contribution against codefendants ~~who were~~ also acting in concert.

A first-party insurer against loss, sued by its policyholder for ~~such the~~ loss, ~~has~~ a derivative claim for subrogation against, ~~and may implead~~ the person who allegedly caused it; the insurer may implead the person ~~the loss,~~ where a right of subrogation would arise from if the insurer's ~~paidyment of~~ the insured plaintiff's claim.

Because the rule expressly allows third-party claims against one who "may" be liable,²² it is not ~~an~~ ~~objectionable~~ to implead that the third party's liability is contingent on the original plaintiff's recovery against the defendant or third-party plaintiff.

Unlike the analogous federal rule, Rule 14 of the Mississippi Rules of Civil Procedure M.R.C.P. 14 differs from Fed. R. Civ. P. 14 in that M.R.C.P. 14 requires es a defending

party to obtain the court's authorization ~~from the court~~ based ~~up~~ on a showing of good cause before ~~such defending party may serve~~ ing a summons and third-party complaint ~~up~~ on a nonparty. ~~Pursuant Under Rule 14 of the Federal Rules of Civil Procedure, to Fed. R. Civ. P. 14,~~ a defending party must obtain leave of court only if ~~it is~~ filing a third-party complaint more than 14 days after serving ~~its~~ the original answer.

|

Rule 15. Amended and supplemental pleadings.

(a) Amendments.

(1) As a matter of course. A party may amend a pleading as a matter of course:

(A) ~~at any time~~ Before a responsive pleading is served; or,

(B) Within 30 days of service if:

(i) ~~if a pleading is one to which a~~ No responsive pleading is permitted allowed; and

(ii) ~~The action has not been placed set upon for the trial calendar, the party may so amend it at any time within thirty days after it is served.~~

(2) When Rule 12 motion granted. ~~When~~ On sustaining a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted, or a Rule 12(c) pursuant to Rule 12(b)(6), or motion for judgment on the pleadings, pursuant to Rule 12(e) is granted, as long as matters outside the pleadings are not presented at the motion hearing, leave to amend ~~shall~~ must be granted when justice so requires ~~upon~~ upon conditions and within a time period the court as determined~~decided~~ by the court, provided matters outside the pleadings are not presented at the hearing on the motion.

(3) When otherwise. Otherwise, a party may amend a ~~pleading~~ pleading only by leave of court or ~~upon~~ upon the adverse party's written consent of the adverse party; leave ~~shall~~ must be freely given when justice ~~so~~ requires it.

(4) Response to amended pleading. Unless the court orders otherwise, A party ~~shall~~ must plead in response to an amended pleading within the longer of:

(A) ~~within~~ The time remaining for responding ~~se~~ to the original pleading; or

(B) ~~within ten~~ 10 days after ~~service of~~ the amended pleading, ~~whichever period may be longer, unless the court otherwise orders~~ is served.

(b) Amendment to Conform to the Evidence. ~~When~~ Issues not raised by the pleadings ~~are~~ are ~~expressed~~ expressed or implied consent of the parties ~~must, they shall~~ must be treated in all respects as if they had been raised in the pleadings.

(1) When. ~~Such a~~ Amendment of the pleadings as may be necessary to ~~cause them to~~ conform to the evidence and to raise these issues may be requested in made upon a party's motion of any party at any time, including even after judgment. ~~;~~ But failing ~~are so to do so amend~~ does not affect the result of the trial of these issues.

(2) Trial objection. At trial, ~~if~~ evidence is objected to ~~at the trial on the ground that as outside it is not within the~~ issues asserted made by in the pleadings, the court may allow the pleadings to be amended. The court and shall must do so freely ~~when if the~~ presenting of the merits of the action will be subserved ~~thereby~~ and if the objecting party fails to satisfy the court ~~show that the admittssion of such the~~ evidence would prejudice ~~the~~ maintaining of the action or defense ~~upon~~ the merits.

(A) Continuance. The court may grant a continuance to enable the objecting party to meet ~~such the~~ evidence.

~~(e)~~**(3) Amendment when justice so requires.** ~~The A~~ court ~~is to be~~ should liberally ~~in~~ granting permission to amend when justice so requires.

(c) Relation ~~B~~ back of Amendments.

(1) Same conduct, transaction, or occurrence. ~~Whenever~~ the claim or defense ~~asserted in the an~~ amended pleading arose out of the conduct, ~~or~~ transaction, or occurrence ~~set forth~~ stated or attempted to be ~~set forth~~ stated in the original pleading, the amendment relates back to the date of the original pleading.

(2) Amending party. An amendment changing the party against whom a claim is asserted relates back if it arose out of the conduct, transaction, or occurrence stated or attempted to be stated in the original pleading the foregoing provision is satisfied and if, within the period provided stated in by Rule 4(h) for serving ~~of~~ the summons and complaint, the party to be brought in by amendment:

~~(a)~~—

~~(2)~~—~~h~~ Has received ~~such~~ notice of the institution of the action to the extent that the party will not be prejudiced in maintaining the party's defense on the merits; ~~;~~ and

(A)

(B) ~~k~~ Knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

- (3) **Rule 9(h) amendment.** A Rule 9(h) ~~n~~-amendment ~~pursuant to Rule 9(h)~~ is not an amendment changing the party against whom a claim is asserted and ~~such amendment~~ relates back to the date of the original pleading.

(d) Supplemental Pleadings. ~~Upon a motion of a party motion, reasonable notice, and just terms,~~ the court may ~~, upon reasonable notice and upon such terms as are just,~~ permi~~allow~~ ~~the~~ a party to serve a supplemental pleading ~~set~~ating ~~forth~~ transactions, occurrences, or events ~~which that~~ have happened since the ~~_~~date of the original pleading ~~sought to be supplemented.~~;

- (1)** Permission may be granted even though the original pleading is defective in ~~its~~ ~~stati~~ement~~g~~ of a claim for relief or a defense.
- (2)** If the court ~~re~~deems ~~equires it advisable that~~ the adverse party to plead in response to the supplemental pleading, it ~~shall~~ ~~must~~ ~~so~~ order the party to do so and ; specifying the time ~~therefor~~for pleading.

[Amended effective July 1, 1998~~7/1/98~~; amended effective ~~April 17, 2003~~4/17/03 to allow amendments on dismissal under Rule 12(b)(6) or judgment on the pleadings under Rule 12(c) where the court ~~determines~~ decides that justice so requires.]

Advisory Committee Historical Note

Effective July 7/1/1998, Rule 15(c) was amended to state that the relation back period includes the time ~~permitted~~ allowed for service of process under Rule 4(h).

Advisory Committee Notes

Unlike the analogous federal rule, Mississippi Rule of Civil Procedure 15(a) ~~varies from~~ ~~Federal Rule 15(a) in that places no limit on the number of amendments as a matter of~~ course; the federal rule ~~permits~~ allows a party to amend the pleading only once as a matter of course. ~~The Mississippi rule places no limit on the number of such amendments.~~

Rule 16. Pre-trial procedure.

(a) Pretrial conference.

- (1) When.** ~~On In any action the court may on its own or motion or on the a party's~~ motion of any party, the court may order the parties' attorneys to appear at least 20 days before trial for one or more pretrial conferences. And must do so on a motion by all parties.
- (2) Purpose; court action.** At a pretrial conference, the court and parties may consider the following subject matter, and the court may take appropriate action regarding it:
- (A) The possibility of settling the action;
 - (B) Simplifying the issues;
 - (C) Amending the pleadings if desirable or necessary;
 - (D) Itemizing expenses and special damages;
 - (E) Limiting the number of expert witnesses;
 - (F) Exchanging reports by expert witnesses expected to testify at trial;
 - (G) Exchanging medical reports, medical records, billing records, and similar documents to the extent doing so does not waive the physician-patient privilege;
 - (H) Referring matters to a master;
 - (I) Imposing Rule 37 sanctions;
 - (J) Obtaining admissions and stipulations about facts, documents, and other exhibits to avoid unnecessary proof;
 - (K) Proposing jury instructions or findings of fact and conclusions of law subject to subsequent amendments or supplements as justice may require; and
 - (L) Other matters that may aid in disposing of the action.

~~and shall on the motion of all parties, direct the attorneys for the parties to appear before it at least twenty days before the case is set for trial for a conference to consider and determine:~~

- ~~(b) The possibility of settlement of the action;~~
- ~~(c) the simplification of the issues;~~
- ~~(d) the necessity or desirability of amendments to the pleadings;~~
- ~~(e) itemizations of expenses and special damages;~~
- ~~(f) the limitation of the number of expert witnesses;~~
- ~~(g) the exchange of reports of expert witnesses expected to be called by each party;~~

~~(h) the exchange of medical reports and hospital records, but only to the extent that such exchange does not abridge the physician-patient privilege;~~

~~(i) the advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;~~

~~(j) the imposition of sanctions as authorized by Rule 37;~~

~~(k) the possibility of obtaining admissions of fact and of documents and other exhibits which will avoid unnecessary proof;~~

~~(l) in jury cases, proposed instructions, and in non-jury cases, proposed findings of fact and conclusions of law, all of which may be subsequently amended or supplemented as justice may require;~~

~~such other matters as may aid in the disposition of the action.~~ **Pretrial order.**

(b)

~~(1) The court may enter an order reciting the~~ After a pretrial conference, the court may issue an order regarding all action taken at it, including: action taken at the conference

~~(A) Amendments, the amendments allowed to~~ the pleadings;

~~(B), and the a~~ Agreements made by the parties as to any other matters considered at the pretrial conference; considered

~~(C), and H~~ Limiting issues for trial to those not disposed of by admissions or agreements of counsel; and

~~(D) Other similar subject matter. s of counsel; and~~

~~(2) The such order when entered shall control the subsequent course of the action's course, unless the court modifies it to prevent manifest injustice. &~~

~~at the trial to prevent manifest injustice.~~

[Amended effective ~~March 3/1/, 1989; April 4/13/, 2000.~~]

Advisory Committee Historical Note

Effective ~~April 4/13/, 2000~~, Rule 16 was amended to allow the conference to be held ~~pursuant on to~~ the court's motion. ~~753-754 So. 2d. XVII (West Miss. Cas.. 2000.)~~

Effective ~~March 3/1/, 1989~~, Rule 16 was amended to abrogate provisions for a pretrial calendar. ~~536-538 So. 2d XXI (West Miss. Cas. 1989).~~

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Rule 16A. – Recusal motion~~Motions for recusal.~~ of judges

~~Motions~~ A motion seeking ~~the recusal of a judge's recusals shall~~ must be timely filed with the ~~trial judge~~ court. ~~Procedures in t~~ and shall be governed by procedures set forth in the Uniform Rules of Circuit and County Court Practice ~~and or~~ the Uniform Rules of Chancery Court Rules control a motion for recusal.

~~Practice.~~

[Adopted, ~~April 4/4/, 2002.~~]

Advisory Committee Historical Note [Rule 16A]

Effective ~~April 4/4/, 2002~~, Rule 16A and the ~~Comment~~ Advisory Committee Historical Note were adopted. – 813-815 So.

2d LXXXI (West Miss. Cases 2002).

~~CHAPTER SECTION IV4. PARTIES~~

Rule 17. ~~Parties p~~Plaintiff and defendant; capacity.

(a) ~~Real P~~party in ~~H~~interest.

(1) ~~Who may sue.~~ ~~Every An~~ action ~~shall must~~ be prosecuted in the name of the real party in interest. ~~An executor, administrator, guardian, bailee, trustee, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute~~ The following may sue in ~~his a~~ representative capacity without joining ~~with him~~ the party for whose benefit the action is brought:

(A) An executor;

(B) An administrator;

(C) A guardian;

(D) A bailee;

(E) A trustee;

(F) A party with whom or in whose name a contract has been made for the benefit of another; or

(G) A party authorized by statute.

~~(a)(2)~~ **(2) ~~Not basis for dismissal.~~ ~~The court may .~~ ~~Not dismiss an~~ action ~~shall be dismissed on the grounds that~~ it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for the real party in interest's ratification, ieation of commencement of the action by, or joinder, or substitution. ~~The real party in interest's of, the real party in interest; and such ratification, joinder, or substitution shall have~~ the same effect as if the action had been commenced in the name of the real party in interest.**

(b) ~~Subrogation C~~ases.— ~~In a~~ subrogation cases, regardless of whether subrogation has occurred by operation of law, assignment, loan receipt, or otherwise, ~~if the subrogor no longer has a pecuniary interest in the claim~~ the action ~~shall must~~ be brought in the subrogee's name ~~of the subrogee.~~ ~~if the subrogor no longer has a pecuniary interest in the claim~~

(b)(1) ~~If the subrogor still has a pecuniary interest in the claim, the action shall must~~ be brought in the subrogor's and subrogee's names ~~of the subrogor and the subrogee.~~

(c) Infants; or Persons Under Legal Disability.— When ~~ever~~ a party ~~to an action~~ is an infant or ~~is is~~ under legal disability and has a representative duly appointed under ~~the Mississippi laws of the State of Mississippi~~ or the laws of a foreign state or country, the representative may sue or defend on behalf of ~~such that~~ party.

(1) Guardian ad litem. An ~~unrepresented~~ party defendant who is an infant or ~~is~~ under legal disability ~~and is not so represented~~ may be represented by a guardian ad litem appointed by the court when ~~the court considers such appointment necessary for the protection of that defendant's the interest of such defendant.~~ The guardian ad litem ~~shall must:~~

(A) ~~be a Mississippi resident; of the State of Mississippi, shall~~

(B) ~~file his consent and oath with the clerk; and s~~

(C) ~~shall give such~~ bond as the court may require.

(2) The court may ~~make issue any~~ other orders ~~it deems~~ proper for ~~the protection of~~ the defendant.

(3) When ~~the interest of~~ an unborn or unconceived person's ~~interest~~ is before the court, the court may appoint a guardian ad litem for ~~such that person's~~ interest.

(e)(4) If an infant or incompetent person does not have a duly appointed representative, ~~the person~~ may sue by ~~his a~~ next friend.

(d) When Guardian Ad Litem required; How Choselection.— When ~~ever~~ a guardian ad litem ~~is required shall be necessary,~~ the court ~~in which where~~ the action is pending:

(1) ~~shall Must~~ appoint an attorney to serve in that capacity;

(2) ~~In all cases in which a guardian ad litem is required, the court must ascertain Order payment of~~ a reasonable fee or compensation ~~to be allowed and paid to such the~~ guardian ad litem for ~~rendered his services rendered in such cause; and~~

(d)(3) ~~Require the guardian ad litem's fee or compensation to, to~~ be taxed as ~~a~~ part of ~~the costs~~ in ~~such the~~ action.

(e) Public Officers.— When a public officer sues or is sued in ~~his an~~ official capacity, ~~the person~~ may be described as a party by ~~his~~ official title rather than by name; ~~but~~ the court may require ~~his the officer's~~ name to be added.

|

Rule 18.—Joinder: of claims; and remedies.

(a) **Joinder of Claims.**—A party asserting a ~~claim to relief as an original~~ claim, counter-claim, cross-claim, or third-party claim, may join, either as independent or ~~as~~ alternate claims, as many claims as the party has against an opposing party.

(b) **Joinder of Remedies.**—~~Prior to these rules. Whenever~~ a claim ~~is was one heretofore~~ cognizable only after another ~~claim one whas been~~ prosecuted to a conclusion, the two claims may be joined in a single action. ~~;~~ ~~but~~ the court ~~shall must~~ grant relief in that action only ~~in accordance with~~ the parties' relative substantive rights ~~of the parties.~~

~~(b)~~

Advisory Committee Notes

Rule 18(a) eliminates ~~any~~ restrictions on claims that may be joined in actions in ~~the Mississippi courts of Mississippi~~. Rule 18(a) ~~permits allows~~ legal claims, and equitable claims, or ~~any~~ combination of them to be joined in one action; a party may also assert alternative claims for relief, and consistency among the claims ~~is unot being~~ necessary. As a re; consequently, an election of remedies or theories will not be required at the pleading stage ~~of litigation~~.

Since Rule 18(a) deals only with the scope of joinder at the pleading stage and not with questions of trial convenience, jurisdiction, or venue, a party should be ~~permitted allowed~~ to join all claims against an opponent as a matter of right. The rule proceeds on the theory ~~that~~ no inconvenience can result from ~~the~~ joinder of ~~any~~ two or more matters in the pleadings and, but only from trying two or more matters together, ~~if~~ at all.

Rule 19. – Required Joinder of parties needed for just adjudication.

(a) – (a) Persons to Be Joined if Feasible. – A person ~~who is~~ subject to the court's jurisdiction ~~of the court shall~~ must be joined as a party in the action if:

(1) ~~i~~In the person's absence complete relief cannot be accorded among those already parties; or

~~(1) – T~~

(2) he person claims an interest relating to the subject of the action and is so situated that ~~the disposition of the action in~~ the person's absence may:

(A) ~~(i) a~~As a practical matter impair or impede the person's ability to protect that interest; or

~~(2) (B)~~ Subject ~~(ii) leave an existing ny of the persons already parties subject to a~~ substantial risk of incurring double, multiple, or otherwise inconsistent obligations ~~by reason of~~ cause of the person's claimed interest.

(3) If the person has not been ~~so~~ joined as required, the court ~~shall~~ must order that the person be made a party. – ~~If he~~ A person who should join as a plaintiff but refuses to do so, ~~he~~ may be made a defendant or, ~~if n a proper case~~, an involuntary plaintiff.

(b) Determination by Court When ever Joinder is Not Feasible. – If a person as described in ~~Rule~~ subdivision 19(a) hereof cannot be ~~made a party~~ joined, the court ~~shall~~ must determine ~~decide~~ whether in equity and good conscience the action should proceed among ~~the existing~~ parties ~~before it or should~~ be dismissed because, – the absent person is being thus regarded as indispensable. – The factors ~~for~~ the court to considered ~~by the court~~ include:

(1) ~~First, t~~To what extent a judgment rendered in the person's absence might be prejudicial to that person ~~in~~ or those already parties;

(2) ~~second, t~~The extent to which, ~~by~~ protective provisions in the judgment, ~~by the~~ shaping of relief, or other measures can lessen or avoid, the prejudice ~~can be lessened or avoided~~;

(3) ~~third, w~~Whether a judgment rendered in the person's absence will be adequate; and

~~(b) (4)~~ **(4)** ~~fourth, w~~Whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(e) ~~Pleading Reasons for Nonjoinder.~~ ~~To the extent known to the pleader, A~~ pleading asserting a claim for relief ~~shall~~ must state the names, ~~if known to the pleader,~~ of any persons ~~as described in subdivision Rule 19(a)(1) through (2)~~ who are not joined, and the reasons why ~~they are not joined.~~

(c)

Advisory Committee Notes

Compulsory joinder is an exception to the general practice of giving the plaintiff the right to decide who ~~shall~~ will be parties to a law-suit; although a court must ~~take~~ acknowgnizane ~~edge of~~ this traditional prerogative in exercising ~~its~~ discretion under Rule 19, plaintiff's choice will ~~have to~~ be compromised when significant countervailing considerations make ~~the~~ joinder of particular absentees desirable.

There are at least four main questions to be considered under Rule 19: ~~(1) first,~~ the plaintiff's interest in having a forum; ~~second,(2)-~~ the defendant's ~~wish~~ interest in ~~to~~ avoiding multiple litigation, inconsistent relief, or sole responsibility for ~~a~~ liability shared with another; ~~(3)third,~~ an outsider's ~~the~~ interest in joinder of an outsider whom it would have been desirable to join; and ~~(4) fourth,~~ the court's and public's interest ~~of the courts and the public~~ in completely, consistently, and efficiently settling ~~ement of~~ controversies. This list is by no means exhaustive or exclusive; pragmatism controls.

There is no precise formula for determining whether a particular nonparty must be joined under Rule 19(b). The decision has to be made in terms of ~~the~~ general policies of avoiding multiple litigation, providing ~~the~~ parties with complete and effective relief in a single action, and protecting ~~the~~ absent persons from ~~the~~ possible prejudicial effect of due to deciding the cases without them. ~~Account also must be taken of w~~ Whether other alternatives are available to the litigants must also be considered. By its very nature Rule 19(b) ~~calls~~ requires ~~for~~ determinations ~~that are~~ heavily influenced by ~~the~~ facts and circumstances of individual cases.

Rule 20.—Permissive joinder of parties.

(a) Permissiveness who may be joined.

(1) Plaintiffs. All persons may join in one action as plaintiffs if:

(A) They assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) if a question of law or fact common to all of these persons will arise in the action.

(2) Defendants. All persons may be joined in one action as defendants if:

(A) there is asserted against them jointly, severally, or in the alternative, a right to relief is asserted against them jointly, severally, or alternatively with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) A question of law or fact common to all defendants will arise in the action.

(a)(3) if any question of law or fact common to all defendants will arise in the action. Neither a plaintiff nor a defendant needs not be interested in obtaining or defending against all demanded relief. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or subjected to expense by the inclusion of a party against whom the party asserts no claim is asserted against or by and who asserts no claim against the party. The court, and may also order separate trials or make other orders to prevent delay or prejudice.

[Amended February 2/20/, 2004 to make rule gender neutral.]

Advisory Committee Notes

Rule 20(a) permits-allows joinder in a single action of all persons asserting or defending against a joint, several, or alternative right to relief if (1) that right arises out of the same transaction or occurrence or series of transactions or occurrences and (2) presents a

common question of law or fact. The phrase “transaction or occurrence” requires ~~that the existence of~~ be a distinct litigable event linking the parties. Rule 20(a) simply establishes a procedure under which several parties’ demands arising out of the same litigable event may be tried together and, thereby ~~avoiding the court and parties’ the~~ unnecessary loss of time and money to due to the court and the parties that the duplicate presentation of ~~the~~ evidence relating to facts common to more than one demand for relief ~~would entail.~~

Joinder of parties under Rule 20(a) is not unlimited as is joinder of claims under Rule 18(a). Rule 20(a) imposes two specific prerequisites ~~to the~~ joinder of parties: (1) a right to relief must be asserted by or against each plaintiff or defendant relating to or arising out of the same transaction, occurrence, or the same series of transactions or occurrences; and (2) some question of law or fact common to all the parties will arise in the action.

Both of these requirements must be satisfied ~~in order to sustain party joinder~~ under Rule 20(a). *See Am. ~~erican~~ Bankers, Inc. of Florida v. Alexander*, 818 So. 2d 1073, 1078 (Miss. 2001).

~~However, But~~ even if the transaction requirement cannot be satisfied, ~~there always is a possibility~~ always exists that ~~, under the~~ proper circumstances, separate actions can be instituted and then consolidated for trial under Rule 42(a) if there is a question of law or fact common to all ~~the~~ parties. *See Stoner v. Colvin*, ~~236 Miss. 736, 748~~, 110 So. 2d 920, 924 (1959) (courts of general jurisdiction have inherent power to consolidate actions when called for by the circumstances). If ~~the criteria of~~ Rule 20 criteria are otherwise met, the court should consider whether different injuries, different damages, different defensive postures, and other individualized factors will be so dissimilar as to make managing Rule 20 consolidated ~~ement of cases consolidated under Rule 20~~ impractical. *See Illinois Cent. R.R. Co. v. Travis*, 808 So. 2d 928, 934 (Miss. 2002) (citing *Demboski v. CSX Transp., Inc.*, 157 F.R.D. 28 (S.D. Miss. 1994) ~~cited with approval in Illinois Cen. R.R. Co. v. Travis, 808 So. 2d 928, 934 (Miss. 2002).~~).

In order to allow the court to ~~make a promptly~~ determination ~~of~~ whether joinder is proper, the factual basis for joinder should be fully disclosed as early as practicable, and motions questioning joinder should be filed ~~, where possible,~~ sufficiently early to avoid delaying s in the proceedings.

Rule 21.— Misjoinder and nonjoinder of parties.

Misjoinder of parties is not ~~ground a basis~~ for dismissal~~ingal of~~ an action.— Parties may be dropped or added by court order ~~of the court~~ on a party's motion ~~of any party~~ or the court of on its own ~~initiative~~ at any stage of the action and on ~~such~~ terms that as are just. ~~Any~~ claim against a party may be severed and proceeded with separately.

Advisory Committee Notes

Rule 21 applies, for example, when: (1) the joined parties do not meet ~~the requisites of~~ Rule 20 requirements; (2) no relief has been demanded from one or more of the parties joined as defendants; (3) no claim for relief is stated against one or more of the defendants; or (4) one of several plaintiffs does not seek ~~any~~ relief against the defendant and is without ~~any~~ real interest in the controversy.

Rules 17 and 19 should be used as reference points for what is meant by nonjoinder in Rule 21. ~~Thus,~~ Rule 21 simply describes the procedural consequences of failing to join a party as required in Rules 17 and 19.

Rule 22.—Interpleader.

(a) Plaintiff or Defendant.

(1) Plaintiff. When the plaintiff is or may be exposed to double or multiple liability, ~~a persons having with a~~ claims against the plaintiff may be joined as ~~a~~ defendants and required to interplead ~~when their claims are such that the plaintiff is or may be exposed to double or multiple liability.~~

(A) Joinder is proper even though:

(i) ~~It is not ground for objection to the joinder that~~ the claims of the several claimants or the titles on which their claims depend ~~do not have lack~~ a common origin, ~~or are adverse to and independent of one another rather than~~ identical; ~~but are adverse to and independent of one another,~~ or

that

(ii) ~~†~~The plaintiff ~~davenires that he is not~~ liability in whole or in part to ~~oaney or all mof thre~~ claimants.

(2) Defendant. A defendant exposed to similar liability may ~~obtain such is seek~~ interplead ~~erex~~ by way of cross-claim or ~~counter-claim.~~

(a)(3) Relation to Rule 20. ~~The provisions of~~ this rule supplements and does not ~~in~~ ~~any way~~ limit the joinder of parties ~~permitted~~ in Rule 20.

(b) Release Ffrom Lliability; Ddeposit or Ddelivery.

(1) Any party seeking interpleader, ~~as under provided in s~~ Subdivision 22(a):

(A) ~~of this rule, m~~ May deposit ~~with the court~~ the claimed amount ~~claimed with the court;~~

(B) ~~, or d~~ Deliver to the court or as otherwise directed by the court, the claimed property to the court; or

(C) Deliver claimed property as the court otherwise orders claimed.

~~—, and T~~ the court may ~~thereupon order such party discharge the~~ party from liability as to ~~sue those~~ claims, and the action ~~shall~~ continue ~~as~~ between the claimants of ~~tsue~~ money or property.

(2)

Advisory Committee Notes

The protection afforded by interpleader takes several forms. Most significantly, it prevents a stakeholder from being obligated to ~~determine~~ decide at ~~the stakeholder's~~ peril which claimant has the better claim. ~~and, w~~When the stakeholder ~~himself~~ has no interest in the fund, interpleader forces the claimants to contest what essentially is a controversy between them without embroiling the stakeholder in the litigation over the merits of the respective claims. Even if the stakeholder wholly or partly denies liability, ~~either in whole or in part as~~ to one or more ~~of the~~ claimants, interpleader still protects ~~the stakeholder~~ from ~~the vexation of~~ multiple suits and ~~the possibility of multiple~~ liability that could result from adverse determinations in different courts. ~~Thus~~ As a result, interpleader can be employed to reach an early and effective determination of disputed questions ~~while a consequent~~ saving of the parties from trouble and expense. ~~for the parties. LAs like s true of the~~ other liberal joinder provisions in these rules, interpleader ~~also~~ benefits the judicial system by condensing numerous ~~potential~~ individual actions into a single comprehensive unit while saving court, ~~with a resulting savings in court t~~ime and energy.:-

Interpleader also can be used to protect ~~the~~ claimants by bringing them together in one action and by reaching an equitable division of a limited fund. This situation frequently arises when the insurer of an alleged tortfeasor is faced with claims aggregating more than its liability under the policy. ~~If Were an an~~ insurance company were required ~~required~~ to await until claims were ~~reduction of claims~~ judgment, the first claimant to obtain such a judgment or to negotiate a settlement might appropriate all or a disproportionate share of the fund before ~~other is fellow~~ claimants ~~were able to~~ established their claims. The resulting difficulties ~~such~~ a race to judgment poses ~~poses~~ for the insurer, and ~~the~~ unfairness ~~which may result~~ to some claimants, are among ~~the~~ principal evils the interpleader device is intended to remedy.

An additional advantage of interpleader to the claimant is that it normally involves a deposit of ~~the~~ disputed funds or property in court. The deposit, thereby ~~eliminates~~ much of the delay and expense ~~that~~ often associated ~~tends with the~~ enforcement of a money judgment.

The primary test for determining the propriety of interpleading ~~the~~ adverse claimants and discharging the stakeholder is whether the stakeholder legitimately fears multiple vexations directed against a single fund.

Ordinarily, iInterpleader ordinarily is conducted in two “stages.” ~~In the f~~First, the court hears evidence to ~~determine~~ decide whether the plaintiff is entitled to interplead the

defendants. ~~In the s~~Second stage, ~~the court a de~~termination is made on the merits of ~~the~~ adverse claims on the merits and, if appropriate, if appropriate, on the rights of an interested stakeholder's rights.

After the stakeholder has paid the disputed funds into court, or given bond ~~therefor,~~ and once ~~the~~ claimants have had notice and an opportunity to be heard, the court ~~determines~~ decides whether the stakeholder is entitled to interpleader relief. If so, the court will ~~enter an order requiring~~ the claimants to interplead and ~~and,~~ if ~~the stakeholder is~~ disinterested, discharging ~~discharge~~ the stakeholder from the proceeding and ~~from further~~ liability with ~~regarding~~ to the interpleader fund. The court may also permanently enjoin the claimants from ~~further~~ subsequently harassing the stakeholder with the claims or judicial proceedings.

~~There is, however, But no an~~ inflexible rule that the proceeding must be divided into two stages does not exist. The entire action may be disposed of at one time in cases where, for example, the stakeholder has not moved to be discharged or has remained in the action by reason of an interest ~~therein~~ it. In the event that deciding the second one does not resolve another dispute between the stakeholder and prevailing claimant or among prevailing claimants, ~~There~~ may even be a third stage;

~~in the event that the second stage determination leaves unresolved some further dispute, either between the stakeholder and the prevailing claimant or among the prevailing claimants.~~

Trial during stages later than the first is also appropriate for counterclaims raised by the claimants like ~~,~~ such as those alleging an independent liability, and for cross-claims between claimants which are ~~held~~ appropriate for resolution ~~in~~ the course of ~~the~~ interpleader proceedings.

Rule 23. Class actions. ~~omitted~~.

Rule 23.1. Shareholder derivative actions. ~~by shareholders~~ [eOmitted].

Rule 23.2. ~~a~~Actions relating to unincorporated associations. ~~[Omitted].~~

Rule 24. Intervention.

(a) (a) Intervention of Rright.

(1) When. ~~Upo~~On a timely ~~application~~motion, anyone ~~must~~hall be ~~permitted~~ allowed to intervene in an action:

~~(1)(A)~~ ~~w~~When a statute confers an unconditional right to intervene; or

~~(2)(B)~~ ~~w~~When the ~~applicant-movant~~ claims an interest relating to the property or transaction which is the subject of the action, and ~~he is so situated that the~~ as a practical matter, ~~disposition~~g of the action may ~~as a practical matter~~ impair or impede ~~theis~~ ability to protect that interest, unless ~~existing parties~~the applicant's interest is adequately represent ~~ited by existing parties.~~

(b) (b) Permissive Iintervention.

(1) When. ~~Upo~~On a timely ~~mo~~application, anyone may be ~~permitted-allowed~~ to intervene in an action:

~~(1)(A)~~ ~~w~~When a statute confers a conditional right to intervene; or

~~(2)(B)~~ ~~w~~When ~~a common question of law or fact exists between a movant's n~~ applicant's claim ~~or -or~~ defense and the main action ~~have a question of law or fact in common.~~

(2) Government officer or agency: when; factors to consider.

(A) When. ~~An~~ ~~W~~officer or agency may intervene in the action on a timely motion when ~~hen-a~~ party's claim or defense relies:

(i) ~~to an action relies for ground of claim or defense upo~~On any statute ~~or -or~~ executive order administered by a federal ~~or -or~~ state governmental officer ~~or -or~~ agency; ~~or~~

(ii) ~~-or~~On a ~~upon any~~ regulation, order, requirement, or agreement issued or made ~~pursuandert to~~ the statute ~~or -or~~ executive order; ~~;~~

(B) Factors to consider. ~~the officer or agency upon timely application may be permitted to intervene in the action.~~ In exercising ~~its~~ discretion, the court

~~must~~ consider whether the intervention will unduly delay or prejudice ~~the adjudication of the~~ original parties' ~~rights of the original parties.~~

(c) Procedure.

(1) Motion; service. A person ~~desiring~~ to intervene ~~must~~ serve a motion to intervene ~~upon~~ the parties ~~as provided under~~ Rule 5.

(2) Form. The motion ~~must~~ state the grounds ~~therefor it~~ and ~~shall~~ be accompanied by a pleading ~~setting forth~~ the claim ~~or~~ ~~or~~ defense for which intervention is sought.

(3) Statutory right. The same procedure ~~must~~ be followed when ~~a statute gives~~ a right to intervene is based on a statute.

(d) Intervention by the State. ~~A party asserting a statute is unconstitutional must notify the Mississippi Attorney General within enough time to afford an opportunity to intervene and argue that question in any action:~~

(1) ~~(1) To restrain or or enjoin the enforcement, operation, or execution of a Mississippi statute of the State of Mississippi by restraining or or enjoining the action of any state officer; of the State or any political subdivision; thereof, or the action of any agency, board, or commission acting under state law, in which where a claim is asserted that the statute under which the action sought to be restrained or enjoined is to be taken is unconstitutional is asserted; or~~

(2) ~~, or (2) For Rule 57 declaratory relief that includes brought pursuant to Rule 57 in which a declaration or or adjudication of the unconstitutionality of any Mississippi statute of the State of Mississippi is among the relief requested, the party asserting the unconstitutionality of the statute shall notify the Attorney General of the State of Mississippi within such time as to afford him an opportunity to intervene and argue the question of constitutionality.~~

~~(d)~~

Advisory Committee Notes

Rule 24 requires the court to balance ~~the~~ interests of the would-be intervenor against ~~the~~ burdens ~~such~~ intervention might pose on ~~those existing already~~ parties or on the judicial system's economic and efficient disposition of the case. If one of the criteria for intervention as a matter of right is met and if the would-be intervenor files a timely application/motion for intervention, intervention ~~must~~ be allowed. *See Dare v. Stoke*, 62 So. 3d 958, 959 (Miss. 2011). A trial court has discretion when ruling on a timely motion ~~for~~ permissively interventione and "may permissively grant or deny a motion to intervene,

provided there is a common question of law or fact and the motion was timely filed.” See *Madison HMA, Inc. v. St. Dominic-Jackson Mem’l Hosp.*, 35 So. 3d 1209, 1215 (Miss. 2010).

~~Applications—A motion to intervene as of right or for permissive intervention pursuant to Rule 24(a) and Rule 24(b) or to permissively intervene pursuant to Rule 24(b)—must be timely. Rather than including The rule does not set out any specific time limits in the rule, —Instead,~~ trial courts ~~should are to~~ weigh the following four factors when ~~determining—deciding~~ timeliness: “(1) the length of time during which the would-be intervenor actually knew or should have known of ~~his—an~~ interest in the case before ~~he~~ petition~~ing~~ed for leave to intervene; (2) the extent of ~~the~~ prejudice ~~that—the~~ existing parties to the litigation may suffer as a result of the would-be intervenor’s failure to apply for intervention as soon as ~~he—an interest in the case was~~ actually ~~kneown~~ known or reasonably should have ~~been~~ known ~~of his interest in the case~~; (3) the extent of ~~the~~ prejudice ~~that—the~~ would-be intervenor may suffer if ~~his~~ petition for leave to intervene is denied; and (4) the existence of unusual circumstances mitigating ~~either—~~for or against ~~a—dectermidnationg that—the~~ ~~application—motion~~ is timely.” See *Hood ex rel. State Tobacco Litig.ation v. State*, 958 So. 2d 790, 806 (Miss. 2007). ~~A trial court has discretion to The—ddecideetermination of whether a motion n—application to intervene is timely—is committed to the discretion of the trial court~~ and will not be overturned on appeal absent an abuse of discretion.

Rule 25. Substitution of parties.

(a) ~~(a)~~ Death.

(1) ~~Substitution if not extinguished.~~ ~~If a party's dies and the claim is not~~ ~~not thereby extinguished, on a motion to do so, the court must,~~ ~~upon motion,~~ order substitution of the proper parties.

(A) ~~The motion for substitution may be made filed by any party or by the~~ ~~deceased party's successors or or representatives of the deceased party.~~ ~~The motion and a, together with the notice of hearing, must~~ ~~be served~~ on ~~nonthe~~ parties ~~and parties as provided in according to Rules 4 and 5,~~ and upon persons not parties in the manner provided in Rule 4 for the service of summons.

~~(1)~~(B) ~~The action must~~ be dismissed without prejudice as to the deceased party if the motion for substitution is not ~~filed~~ ~~made~~ within ~~ninety 90~~ days after the death is suggested ~~upon in~~ the record by ~~service of~~ a statement of the fact of the death ~~as stated in Rule 25(a)(1)(A), as herein provided for~~ ~~the service of the motion.~~

(2) ~~Continuation.~~ ~~After the a party's 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 ~~or against the~~ ~~surviving~~ ~~plaintiff~~ ~~or only against the surviving defendants,~~ the ~~action~~ does not abate. ~~The~~ death ~~must~~ be suggested ~~upon in~~ the record, and the action ~~must~~ proceed in favor of or against the surviving parties.

(b) ~~Legal Disability.~~ ~~If a party comes under a legal disability, the court upon a~~ motion served as ~~provided stated in Rule 25 subdivision (a)(1)(A), of this rule~~ court may allow the action to be continued by or against ~~this party's~~ representative.

(c) ~~Transferring of Interest.~~ ~~If a case of any transfer of an interest is transferred,~~ the action may be continued by or against the original party; unless ~~on a motion served as~~ ~~stated in Rule 25(a)(1)(A)~~ the court ~~upon motion~~ directs the ~~person to whom the~~ ~~interest is transferred~~ to be substituted ~~or joined~~ in the action ~~or joined with the~~ original party. ~~Service of the motion shall be made as provided in subdivision (a) of this rule.~~

~~Public Officers; Death or Separation From public Officer.~~—When a public officer is a party to an action in ~~an~~his official capacity and ~~during its pendency dies,~~ resigns, or otherwise ceases to hold ~~the~~ office ~~while the action is pending,~~ the action does not abate, and ~~this~~ officer's successor is automatically substituted as a party. ~~Proceedings following the substitution, proceedings must~~ be in the ~~party's~~ name ~~of the party,~~ but ~~any~~ misnomer not affecting the ~~parties'~~ substantial rights ~~of the parties~~ ~~must~~ be disregarded. ~~The court may~~ An order of substitution ~~may be entered at~~ any time; ~~but failing to do so the omission to does enter such an order shall~~ not affect ~~the~~ substitution.

(d)

Advisory Committee Notes

The suggestion of death does not have to identify the decedent's successors or representatives to be substituted as the real party in interest. *See Clark v. Knesal*, 113 So. 3d 531, 536 (Miss. 2013). Although the rule requires ~~that service of~~ the suggestion of death ~~to be served upon a~~ non-party ~~ies be accomplished in~~ accordance with Rule 4, ~~the rule~~ does not indicate which non-party ~~ies~~ must be served with the suggestion of death ~~so as~~ to trigger the ~~ninety~~90-day time period. ~~An~~ Interested non-party ~~ies must be served if the~~ nonparty's ~~whose~~ rights may be cut off by the ~~ninety~~90-day limits ~~must be served~~. *See Hurst v. SW Miss. Legal Servs.*, 610 So. 2d 374, 386 (1992) (defendant's failure to serve ~~the~~ named executrix of ~~the~~ deceased plaintiff's estate with ~~the~~ suggestion of death rendered ~~the suggestion of death~~ ineffective even though ~~the~~ executrix may have had actual notice of ~~the~~ suggestion of death); *Knesal*, 113 So. 3d at 537 (defendant ~~/~~counterplaintiff ~~who~~ was properly served with ~~the~~ suggestion of death could not argue ~~that the~~ failure to serve ~~the~~ plaintiff ~~/~~counter-defendant's ~~non-party~~nonparty successors rendered ~~the~~ suggestion invalid because: (i) ~~the~~ failure to serve ~~the~~ plaintiff ~~/~~counter-defendant's ~~non-party~~ successors did not affect ~~the~~ defendant ~~/~~counter-plaintiff's opportunity to file a motion to substitute; and (ii) service ~~upon the~~ decedent's successor ~~was~~ impossible because ~~there~~ was no existing estate or personal representative ~~upon to whom the suggestion of death could have been served~~). The rule contains no restriction on who may file and serve the suggestion of death; the decedent's lawyer may file and serve it. ~~Id~~*Knesal*, 113 So. 3d at 538.

~~As The~~ general Rule 6(b) provisions ~~of Rule 6(b)~~ apply to motions to substitute; ~~accordingly,~~ the court may extend the period for substitution if timely requested. ~~Similarly~~Likewise, the court may allow substitution ~~at to be made~~ after expiration of the ~~ninety~~90-day period on a showing ~~that that the failing ure~~ to act earlier ~~was the~~ resulted from excusable neglect. *See Knesal id.*, 113 So. 3d at 539.

If the named plaintiff was deceased ~~at w^hen i^time the original complaint~~ was filed, ~~then~~ the original complaint is null and void, and the real party in interest cannot be substituted as the proper plaintiff because no ~~a~~-valid action was ~~n~~ever commenced.

~~CHAPTER~~SECTION 5V. DEPOSITIONS AND DISCOVERY

Rule 26. General provisions governing discovery.

~~(a) **Discovery Methods.** — Parties may obtain discovery by one or more of the following:~~Unless the court orders otherwise under Rule 26(c) or (d), the frequency of discovery methods is unlimited. Parties may obtain discovery by one or more of the following methods:

~~(1) dDepositions ~~upon by~~ oral examination ~~or written questions~~;~~

~~(2) Deposition by written questions;~~

~~(3) written interrogatories;~~

~~(4) production of documents or things;~~

~~(5) or permission to enter ~~upon to~~ land or other property, ~~for~~ inspection and other purposes; and~~

~~(a)(6) rRequests for admission. ~~Unless the court orders otherwise under subdivisions (c) or (d) of this rule, the frequency of use of these methods is not limited.~~~~

~~(b) **Scope of Discovery.** Unless ~~otherwise the court orders otherwise limited by order of the court in~~ accordance ~~with~~ these rules, the scope of discovery is as follows:~~

~~(1) **In General.**~~

~~(A) A Parties may obtain discovery regarding any nonprivileged matter:~~

~~(i) , not privileged, which is rRelevant to ~~the issues raised by a party's~~ claim or defense; and~~

~~(ii) Proportional to the needs of the case.~~

~~(B) Whether a nonprivileged matter is proportional to the needs of the case depends on:~~

~~(i) The importance of the issues at stake in the action;~~

~~(ii) The amount in controversy;~~

~~(iii) The parties' relative access to relevant information;~~

~~(iv) The parties' resources;~~

~~(v) The importance of the discovery in resolving the issues; and~~

(vi) Whether the burden or expense of the proposed discovery outweighs its likely benefit.

(C) The discovery may include:

(i) The existence, description, nature, custody, condition, and location of books, documents, electronic data, magnetic data, or other tangible things;

(ii) The identity and location of persons having knowledge of a discoverable matter; and

(iii) The identity and location of persons who may be called as witnesses at trial, the claims or defenses of any party. The discovery may include the existence, description, nature, custody, condition and location of any books, documents, electronic or magnetic data, or other tangible things; and the identity and location of persons (i) having knowledge of any discoverable matter or (ii) who may be called as witnesses at the trial.

~~(1)(D) It is not ground for objection that the information sought will be inadmissible at the trial if the information within this scope of discovery does not need to be admissible in evidence to be discoverable. sought appears reasonably calculated to lead to the discovery of admissible evidence.~~

(2) Insurance Agreements.—A party may obtain discovery of ~~the existence and contents of~~ any insurance agreement under which ~~any person carrying on~~ an insurance business may be liable to satisfy ~~part or all~~ or part of a possible judgment ~~which may be entered~~ in the action or to indemnify or reimburse for payments made to satisfy the judgment.— The information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of Rule 26(b)(2), this paragraph, an application for insurance ~~is~~ shall not ~~be treated as~~ part of an insurance agreement.

(3) Trial Preparation: Materials.

(A) Documents; tangible things. A party ordinarily may not discover documents and tangible things prepared in anticipation of litigation or for trial by or for another party or party's representative (including that party's attorney, consultant, surety, indemnitor, insurer, or agent). But subject to the provisions of Rule 26 subdivision (b)(4) of this rule, those materials may be discovered if:

~~(i) a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision Rule 26(b)(1); of this rule and~~

~~(ii) prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including that party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that ~~the party is~~ seeking discovery has substantial need of the materials in the preparation of that party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means.~~

~~(3)(B) Protection against disclosure. If a court orders discovery of such materials when on the required showing has been made, the court must still protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative of a party concerning the litigation.~~

~~(C) Previous statement. A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a nonparty may request and obtain person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person on party. If the request is refused, the person may move for a court order, and Rule 37(a)(4) applies to the an award of expenses incurred in relation to the motion. For purposes of Rule 26(b)(3)(C), For purposes of this paragraph, a statement previously made is:~~

~~(i) (A) a written statement signed or otherwise adopted or approved by the person making it; or (B)~~

~~(ii) a contemporaneous stenographic, mechanical, electrical, or other recording, or other recording, or a transcription thereof of one that recites, which is a substantially verbatim recital of the person's an oral statement by the person making it and contemporaneously recorded.~~

~~(4) (4) Trial Preparations: Experts. A party may obtain discovery of facts known and opinions held by experts otherwise, otherwise discoverable under~~

~~Rule 26 subsection (b)(1) of this rule~~ and ~~acquired~~ or developed in anticipation of litigation or for trial, ~~may be obtained~~ only as follows:

~~(A)~~ ~~(i)~~—A party may require another one to provide the following information through interrogatories; otherwise, a party must file a motion, and subject to scope restrictions and other rules—including Rule 26(b)(4)(C) concerning appropriate fees and expenses—the court may order additional discovery as it may deem appropriate:

~~require any other party to~~

~~(i)~~ identify ~~Each person whom~~ the other party expects to call as an expert witness at trial; ~~to~~

~~(ii)~~ state ~~The subject matter on which the expert is expected to testify;~~ and

~~(iii)~~ state ~~The substance of the facts and opinions to which the expert is expected to testify;~~ and

~~(iv)~~ a summary of the grounds for each opinion.

~~(B)~~—

~~(i)~~ ~~Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subsection (b)(4)(C) of this rule, concerning fees and expenses, as the court may deem appropriate.~~

~~—~~ Experts employed only for trial preparation.

~~(B)~~ A party ordinary may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial. But a party may do so only:

~~(i)~~ ~~upon~~ On a showing of exceptional circumstances under which it is impracticable for the party ~~seeking discovery~~ to obtain facts or opinions on the same subject by other means.

~~(D)~~—

~~(C)~~ Unless manifest injustice would result:

~~(i)~~ ~~(i)~~ ~~The court~~ shall require ~~that~~ the party seeking discovery to pay the expert a reasonable fee for time spent in responding to discovery under ~~subsections~~ Rule 26(b)(4)(AA)(ii) and (b)(4)(~~BB~~); ~~of this rule, and~~

~~(ii)~~ The court may ~~require~~ the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred in

obtaining facts and opinions from the expert under Rule 26(b)(4)(A);
and

~~(iii)~~ (iii) ~~-with respect to discovery obtained under subsection (b)(4)(A)(ii) of this rule, the court may require, and with~~ The court must require the party seeking ~~respect to discovery to pay the other party a fair portion of the fees and expenses reasonably incurred in obtaining facts and opinions from the expert obtained under~~ Rsulbsection 26(b)(4)(BB).

~~(E) of this rule, the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.~~

~~(5)~~ (5) ~~Electronic D~~data. ~~-~~ To obtain discovery of data or information that exists in electronic or magnetic form, the requesting party must specifically request its production of electronic or magnetic data and sspecify the form in which it should be the requesting party wants it produced.

(A) The responding party must produce:

(i) ~~-All the~~ electronic or magnetic data;

(ii) ~~-t~~ That is responsive to the request; and

(iii) That is reasonably available to the responding party in its ordinary course of business.

(B) If the responding party cannot- through reasonable efforts- retrieve the requested data or information requested- or produce it in the requested form requested, the responding party must state so in an objection complying with these rules.

(i) If the court orequideres the responding party to comply, -with the request, the court it may also order that the requesting party to pay the reasonable expenses efor any- extraordinary steps required to retrieve and produce the information.

~~(c)~~ ~~(e)~~ Discovery c~~Conference.~~ ~~- At any time after the commencement of the action, tThe court may hold a discovery conference aon the any time -subject of discovery, and musthall do so- if a party requests if requested by any partyone.~~

(1) Content; objection. A party's The request for discovery conference shall must certify that counsel has conferred, or made reasonable efforts to conferdo so ;

~~with opposing counsel concerning the matters set forth in the request, and must~~ include:

2.—~~a~~A statement of the issues to be tried;

(A)

(B) ~~a~~ discovery plan and schedule ~~of discovery~~;

3.—Discovery

4.—~~l~~ limitations to be placed on discovery, if any; and

(C)

(D) ~~o~~ Other proposed discovery orders with respect to discovery.

—Any objections or additions to the requested items ~~contained in the request~~ must be served and filed within no later than ten 10 days after the request is served of the request.

(2) Discovery order. Following the discovery conference, the court must enter issue an order:

(A) ~~S~~ atfixing the issues to be tried; e

(B) E stablishing a discovery plan and schedule ~~of discovery~~;

(C) ~~s~~ Containetting discovery limitations ~~upon discovery, if any~~; and

(D) ~~d~~ Dectermining ~~such~~ other similar matters, including ~~the~~ allocation of expenses, as ~~are~~ necessary for ~~the~~ proper case management of discovery ~~in the case.~~

(3) Rule 16 pretrial conference. Subject to a party's right to move for a prompt discovery conference under Rule 26(c)(1), the court may combine the discovery conference with a Rule 16 pretrial conference.

(4) Sanctions. Unless good cause exists, if a party or attorney fails to cooperate in framing an appropriate discovery plan by agreement, the court may impose sanctions.

(5) Amendment. The court may alter or amend a Rule 26(c) order on a showing of good cause.

~~Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by Rule 16.~~

~~The court may impose sanctions for the failure of a party or counsel without good cause to have cooperated in the framing of an appropriate discovery plan by agreement. Upon a showing of good cause, any order entered pursuant to this subdivision may be altered or amended.~~

(d) ~~(d)~~ Protective Orders.— A party or person from whom discovery is sought may move for a protective order. The motion should be filed with the court where the action is pending or with the court that issued a deposition subpoena.

(1) For good cause shown, the court may issue an order justice requires to protect the party or person from annoyance, embarrassment, oppression, undue burden, or undue expense, including one or more of the following:

~~(1) Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending, or in the case of a deposition the court that issued a subpoena therefor, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:~~

~~(A) Forbidding the discovery not be had;~~

~~(B) Specifying discovery terms and conditions, including time and place;~~

~~(C) Prescribing a discovery method other than the one selected by the requesting party;~~

~~(D) Prohibiting inquiry into certain matters or limiting the discovery scope to certain matters;~~

~~(E) Designating the persons who may be present while conducting the discovery;~~

~~(F) Sealing a deposition to be opened only by court order;~~

~~(G) Precluding disclosure of a trade secret or other confidential research, development, or commercial information or specifying the manner in which it is to be disclosed;~~

~~(2) Requiring specified documents or information to be filed simultaneously in sealed envelopes to be opened as the court directs;~~

~~(3) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;~~

~~(4) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;~~

~~(5) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;~~

- ~~(6) that discovery be conducted with no one present except persons designated by the court;~~
- ~~(7) that a deposition after being sealed to be opened only by order of the court;~~
- ~~(8) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;~~
- ~~(H) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court; and~~
- ~~(9) An~~
- (I) the court may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, oppression, ~~or~~ undue burden, or undue expense, including that the requesting party provision for payment of expenses attendant upon a such deposition or other discovery device by the party seeking same.

(2) If it ~~partly or wholly~~ he motion for a protective order is ~~denies~~ the motion, ~~d in whole or in part,~~ the court on just terms and conditions ~~may~~ may order that the party or person provide or allow the discovery. ~~, on such terms and conditions as are just, order that any party or person provide or permit discovery.~~ Rule 37(a)(4) applies to the award of expenses ~~incurred in relation to the motion.~~

(e) Discovery Sequence and Timing of Discovery. ~~Unless the court orders otherwise on a motion for the convenience of parties and witnesses and the interests of justice, discovery~~ Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact ~~that a party takes a deposition or is conducting other discovery, whether by deposition or otherwise,~~ does ~~shall~~ not operate to delay ~~any~~ any other party's discovery.

(e)
(f) Supplementation of Responses. ~~A party who has responded to a discovery request for discovery with a response that was complete when made served does~~ under not have a duty to supplement the response to with ~~include~~ information subsequently ~~acquired,~~ except as follows:

~~(e)~~

(1) A party has ~~under~~ a duty seasonably to supplement ~~that party's response a response in a timely manner~~ with respect to any question directly addressed to:

(A) ~~(A) the~~ identifying and location of persons;

- ~~(i) (i) Having knowledge of discoverable matters;~~ or
- ~~(ii) (ii) Who may be called as witnesses at the trial; and~~

~~(B) , and (B) the identifying:~~

- ~~(i) of Each person expert witness expected to testify be called as an expert witness at trial;~~
- ~~(ii) The subject matter on which the person is expected to testify; and~~
- ~~(iii) The substance of the testimony.~~

~~(2) —~~

~~(2) A party has under a duty to amend a prior response in a timely manner seasonably to amend a prior response if failing to do so would be a knowing concealment and:~~

~~(A) That party obtains information upon the basis of which (A) the party knows that the response was incorrect when made served; or~~

~~(B) (B) The party learns that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.~~

~~(3) A party has a duty to supplement a response if imposed:~~

~~(3) —~~

~~(A) A duty to supplement responses may be imposed by court order; of the court,~~

~~(B) By the parties' agreement; of the parties, or~~

~~(4)(C) By at any time prior to trial through new requests for supplementation of prior responses prior to trial.~~

[Amended effective ~~March 3/1/, 1989~~; ~~3/March 13/, 1991~~; ~~4April 13/, 2000~~. — Amended effective ~~5/ May 29/, 2003~~ to add Rule 26(5) addressing discovery of electronic data.]

Advisory Committee Historical Note

Effective ~~April 4/13/, 2000~~, Rule 26(c) was amended to allow the court on its own motion to convene a discovery conference; 753-754 So. 2d XVII (West Miss. Cas. 2000).

Effective ~~March 3/13/~~1991, Rule 26(b)(1)(ii) was amended to delete witnesses' oral testimony ~~of witnesses~~ from the listing of matter that a party might ~~be discovered by a party.~~— Rule 26(d) was amended to ~~provide state~~ that the court issuing in the case of deposition subpoena could enter a protective orders ~~might be made by the court that issued a subpoena therefor.~~—574-576 So. 2d XXIII (West Miss. Cas. 1991).

Effective ~~March 3/1/~~1989, Rule 26(b)(1) and Rule 26(f)(1) were amended to ~~include~~provide identifying and supplementing prior identifications of those who may be called as witnesses at trial for the identification of (and supplementation of the prior identification of) those, in addition to experts, ~~who may be called as witnesses at the trial.~~ 536-538 So. 2d XXIV (West Miss. Cas. 1989).

Rule 27. Depositions ~~before action or pending appeal~~ to perpetuate testimony.

(a) ~~(a)~~ Before Aaction.

Petition.

(1) Petition.—A person ~~who desires~~seeking to perpetuate ~~his own~~ testimony ~~or that of another person regarding about~~ any matter ~~that may be~~ cognizable in any Mississippi court ~~of this state~~ may file a verified petition in ~~the~~ circuit or chancery court in the county ~~where of the residence of~~ any expected adverse party resides.—The petition must ask for an order authorizing the petitioner to depose persons named in it to perpetuate their testimony, be titled in the petitioner's name, and show:

(A) ~~shall be entitled in the name of the petitioner and shall show: (1) that~~ the petitioner ~~petitioner~~ expects to be a party to an action n ~~cognizable action~~ cognizable in a Mississippi court ~~of this state~~ but cannot at the time is presently unable to bring the action it ~~or~~ cause it to be brought;

(B) ~~, (2) the~~ subject matter of the expected action and the petitioner's interest ~~therein it;~~

(C) ~~The , (3) the~~ facts which the person dwants to esires to establish by the proposed testimony and the his reasons fto perpetuate r ~~desiring toit;~~ perpetuate it, (4)

(D) ~~The names of or a description of the~~ persons ~~he expected s will to~~ be adverse parties or a description of them and their addresses if so far as known; ~~, and (5)~~

(E) ~~the~~ names and addresses of the persons to be examined ~~each deponent;~~ and

(F) ~~and~~ the substance of the testimony which the petitioner expects to elicit from each deponent.

(2) ~~, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.~~

(2) Notice; and sService.—The petitioner ~~shall thereafter must~~ serve a notice upon each person named in the petition as an expected adverse party with a copy of the petition and notice stating the hearing time and place.

(A) ~~, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition.~~ At least twenty 20 days

before the hearing date, ~~of hearing~~ the notice ~~shall~~ must be served ~~in~~ according to Rule 4 ~~the same manner for service of summons.~~

~~(B)~~ If, ~~but if such service cannot with due diligence an expected adverse party named in the petition cannot be served after due diligence, be made upon any expected adverse party named in the petition,~~ the court may make such order ~~as is just for~~ service by publication or otherwise.

~~(3)~~ (C) For persons not served under Rule 4, the court ~~mu~~, ~~and shall~~ appoint, for persons not served in the manner provided by law, ~~t~~ an attorney who shall represent them, ~~and~~, in case they are not otherwise represented, shall ~~cross~~ examine the deponent if a person is not otherwise represented.

(3) Order; and Examination.

(A) If ~~the court is~~ satisfied ~~that the~~ perpetuation of the testimony may prevent a failure or delay of justice, the court must:

(i) ~~it shall make an order d~~Designateing or describe ing the deponent;

(ii) ~~persons whose depositions may be taken and s~~Specifying the examination subject matter; ~~and~~

(iii) State of the examination and whether a the depositions wshall be taken by upon oral examination or written interrogatories.

(B) ~~A The d~~depositions may then be taken ~~in accordi~~angee witoh these rules, ~~;~~ and the court may issue a Rule 34 ~~make orders of the character provided for by Rule 34.~~

~~(4)~~ (C) For the purpose of applying these rules to a depositions for perpetuating testimony, each reference ~~therein~~ to the court ~~in where~~ ieh the action is pending ~~shall be deemed to refer~~s to the court ~~in whieree~~h the petition ~~for such deposition seeking the testimony~~ was filed.

~~(5)~~ (4) Use of Deposition use.— ~~If a~~ A deposition to perpetuate testimony ~~is taken under these rules,~~ it may be used in any subsequent circuit, chancery, or county action involving the same subject matter ~~subsequently brought in a circuit, chancery or county court in accordi~~angee witoh Rule 32(a).

(b) Pending Appeal.— If a n appeal has been taken from a judgment is of appealed court, or before ~~before the taking of an appeal if th~~the time to do so expires, the ~~herefor~~ has not expired, the court that rendered it in which the judgment was rendered may allow witness the taking of the depositions of witnesses to perpetuate their testimony for use

in ~~the event of further~~additional proceedings ~~in the court.~~— ~~In such case~~ ~~†~~The party wanting ~~he desires~~ to perpetuate the testimony may ~~make a motion~~ for leave to take the deposition.

(1) ~~Rule 27(a)(2) notice and service requirements apply in the court for leave to take the depositions, upon the same notice and service thereof~~ as if the action were pending in the court.

(2) The motion ~~must~~ shall show:

(A) The names and addresses of each deponent;

(B) The substance of testimony the petitioner expects to elicit from each deponent; and

(C) The reasons for perpetuating their testimony.

~~(b)(3)~~ ~~(1) the names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each; (2) the reasons for perpetuating their testimony.~~ On ~~If the court finding s that the~~ perpetuation of the testimony is proper to avoid a failure or delay of justice, ~~it the court may~~ may ~~make an order~~ allowing the depositions to be taken and issue a Rule 34 order. ~~may make orders of the character provided for by Rule 34, and thereupon~~ ~~†~~The depositions may be taken and used in the same manner and under the same conditions as ~~are prescribed in~~ these rules prescribe for depositions taken in pending actions ~~pending in the court.~~

~~(e)~~ **Perpetuation by Action.**— This rule does not limit the power of a court to entertain (c) an action to perpetuate testimony.

Rule 28. Persons before whom depositions may be taken.

(a) Within the United States.— ~~Within the United States, or within a territory, or an insular possession subject to the dominion of the United States jurisdiction, a deposition must~~ shall be initiated by an oath or affirmation administered to the deponent by ~~initiated b~~:

(1) An officer authorized to administer oaths by federal law or the law in the examination place; or

~~(a)(2) A person the court where the action is pending appoints to administer oaths and to take testimony, y an oath or affirmation administered to the deponent by an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or by a person specially appointed by the court in which the action is pending.~~

(b) In a Foreign Country.

(1) In a foreign country, a depositions may be taken:

(A) ~~(1) o~~ On notice before a person authorized to administer oaths by federal law or the law of in the examination place;

(B) ~~in which the examination is held, either by the law thereof or by the law of the United States, or (2) b~~ Before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and to take testimony; ~~or (3)~~

(C) According to pursuant to a letter rogatory.

(2) On a motion, notice, and just and appropriate terms, A ~~a~~ commission or ~~a~~ letter rogatory must ~~shall~~ be issued ~~on application and notice and on terms that are just and appropriate.~~

(A) Showing that taking the deposition in another manner would be impracticable or inconvenient It is not not required to have to the issuance of a commission or a letter rogatory issued.

(B) ~~that the taking of the deposition in any other manner is impracticable or inconvenient; and b~~ Both a commission and a letter rogatory may be issued in proper cases.

(C) A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title.

~~(b)~~**(D)** A letter rogatory may be addressed to “-To the Appropriate Authority in ~~(here name of the country).~~”- Evidence obtained in response to a letter rogatory ~~need does~~ not need to be excluded merely ~~for the reason that because~~ it is not a verbatim transcript, ~~or that because~~ the testimony was not taken under oath, ~~or because of for any~~ similar departure from ~~the~~ requirements for depositions taken within the United States under these rules.

(c) Disqualification for Interest. - ~~A~~ No deposition ~~must~~shall not be taken before a person who is:

- ~~(1) a party's person who is a~~ relative, ~~or~~ employee, ~~or~~ attorney, or counsel ~~of any~~;
- ~~(2) A of the parties, or is a~~ relative or employee of a party's ~~such~~ attorney or counsel; ~~or~~
- ~~(3) is f~~Financially interested in the action.

~~(e)~~

Rule 29. Stipulations ~~regarding about~~ discovery procedure.

Unless the court orders otherwise, the parties ~~may stipulate in~~ may by writing:

(a) ~~stipulation (1) provide t~~ That a depositions ~~may be~~ taken before any person, at any time or place, ~~upon~~ any notice, and in any manner, ~~and when so taken~~ may be used like other depositions; and

(b) To ~~(2) m~~odifying the procedures ~~provided by in~~ these rules for other discovery methods ~~of discovery except, except~~ that ~~stipulations~~ extending the time for Rule 33, 34, and 36 discovery responses requires ~~provided in Rules 33, 34 and 36~~ for responses to discovery ~~may be made only with the court~~ approval ~~of the court~~.

Rule 30. Depositions ~~upon~~ by oral examination.

(a) When ~~a~~ Depositions ~~May~~ Be Taken.

(1) Without leave. ~~After commencement of the action, a~~ Any party may depose ~~take~~ the testimony of any party or person, ~~including a party,~~ by deposition ~~upon~~ oral examination without leave of court.

(2) With leave. Leave of court ~~,~~ granted with or without notice, must be obtained only:

(A) ~~if~~ the plaintiff seeks to take a deposition prior to ~~the expiration of thirty~~ 30 days after a defendant is served with service of the summons unless:

(i) ~~upon any defendant, except that leave is not required~~ (1) if a Δ defendant has served a deposition notice ~~of taking deposition or otherwise sought~~ discovery; ~~,~~ or (2)

(ii) ~~if~~ special notice is given under Rule 30 ~~subsection (b)(2) of this rule.~~

(B) The deposition of a person confined in prison may be taken only by leave of court on terms it orders.

(a)(3) Subpoena. ~~The attendance of w~~ Witness attendances may be compelled by subpoena. ~~The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.~~

(b) General and special Nnotice re of Examination: General Requirements; Special Notice; Non-Stenographic reRecording; Production of Documents and Things; Deposition of Organization.

(1) Notice.

(A) A party ~~desiring wanting~~ to depose ~~take the deposition of any~~ person upon by oral examination must ~~shall~~ give reasonable written notice ~~in writing~~ to all parties ~~every other party to the action.~~ The notice shall ~~stating~~:

(i) ~~the~~ The time and place ~~for r~~ taking the deposition;

(ii) ~~and~~ ~~the~~ The name and address of each de person ent to be examined, if known; and

~~(iii)~~ , and, if the name is unknown, a general description sufficient to identify the ~~im~~ deponent or the particular class or group to which the person belongs.

~~(B)~~ If the deponent is served with a document subpoena ~~duces tecum is to be served on the person to be examined,~~ the materials designated ~~n of the materials to be produced as set forth in the subpoena to be produced~~ must be attached to ~~or included in~~ the notice or included in it.

~~(C)~~ A notice may provide for ~~the deposition taking of testimony~~ by telephone.

~~(1)(D)~~ If necessary, ~~however,~~ to ensure ~~athe full full~~ right to ~~f~~ examination of ~~any deponent, on a party's motion,~~ the court where the action is pending in which the action is pending may, ~~on motion of any party,~~ require ~~that~~ the deposition to be taken in the deponent's presence ~~of the deponent.~~

(2) Special notice.

~~(A)~~ The plaintiff does not have to ~~s~~Leave leave of court ~~is not required for the taking of a deposition by plaintiff~~ if the notice:

~~(i)~~ (A) ~~s~~States that the deponent ~~to be examined~~ is about to go out of the state and will be unavailable ~~for examination unless his deposed ition is taken before expirati~~ within the ~~on of 30 the thirty~~ day period; ~~and (B)~~

~~(ii)~~ ~~s~~Setates ~~forth~~ facts ~~to~~ supporting the statement.

~~(2)(B)~~ The plaintiff's attorney must sign the notice, and ~~theis~~ signature constitutes ~~a certification by him that the statement and supporting facts are true to the best of theis attorney's knowledge, information, and belief the statement and supporting facts are true.~~

~~(C)~~ On a showing that ~~If a party shows that when he was Rule 30(b)(2) special notice was served but that after exercising diligence, a with notice under this subsection (b)(2) he party was unable twas unable through the exercise of diligence to obtain counsel ffor representation him at the taking of the deposition, the deposition may may not be used against him that party.~~

~~(3)~~ For cause shown, ~~T~~the court may ~~for cause shown~~ enlarge or shorten ~~the~~ the time for taking the deposition ~~for taking the deposition.~~

(4) Nonstenographic recording. The deposition notice of deposition required under Rule 30(b)(1) of this subsection (b) may provide state that the testimony will be recorded by nonother than stenographic means.

(A) A deposition notice stating testimony will be recorded by nonstenographic means must, in which event the notice shall designate the manner in which the deposition will be recorded and preserved.

(B) of recording and preserving the deposition.—A court may require that the deposition be taken by stenographic means if necessary to enassure that the recording be accuracyte.

(i) A party's motion to require stenographic means by a party for such an order must shall be addressed to the court in which where the action is pending.

(4)(ii) ; a motion by a witness to require fstenographic means or such an order may be addressed to the court in the distriet jurisdiction where the deposition is taken.

(5) Production of documents and things. ~~The n~~Notice to a party deponent may be accompanied by a Rule 34 request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. ~~—The Rule 34 applies to procedure of Rule 34 shall apply to~~ the request.

(6) Deposition of organization. In a deposition notice or subpoena, a party may in his notice and in a subpoena name as the deponent as the deponent a governmental agency or a public or private corporation, or a partnership, or or association or governmental agency.

(A) The notice or subpoena must and describe with reasonable particularity the matters on which examination is requested.

(B) In that event, tThe named organization must o named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf.

(i) , and may set forth, foFor each designated person, the organization may designated, the matstate the matters on which the person will testify.

~~(ii)~~ A subpoena ~~must~~ shall advise a ~~non-party~~nonparty organization of its duty to designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf.

~~(iii)~~ ~~make such a designation.~~—The designated persons ~~so designated~~ must~~shall~~ testify as to matters known or reasonably available to the organization.

~~(6)(C)~~ This Rule 30~~subsection~~-(b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) For purposes of Rules 30, this Rule, and Rules 28(a), 37(a)(1), 37(b)(1), and 45(b), a deposition ~~shall~~must be ~~deemed considered~~ to ~~be taken occur~~ in the county where the deponent is physically present to answer questions propounded to him.

(c) Examination and ~~C~~cross-~~E~~examination; examination ~~R~~record of Examination; ~~O~~objections.

(1) Examination; cross-examination. Witness ~~—~~Examination and cross- examination ~~of witnesses~~ may proceed as ~~permitted~~ allowed at ~~the~~ trial.

(2) Examination record. Witness ~~The~~ testimony ~~must of the witness shall~~ be stenographically recorded ~~either stenographically or as stated provided Rule 30(b)(4). in subsection (b)(4) of this rule.~~ If requested by a one of the party, ies, ~~the~~ testimony ~~must~~shall be transcribed ~~upon the~~ payment of ~~the~~ reasonable charges ~~therefor.~~

(3) Objections.

(A) ~~All~~ ~~o~~Objections ~~made~~ at the time of ~~the~~ examination ~~to~~ to the following must be noted on the record:

(i) ~~the~~ qQualifications of the person taking the deposition;

(ii) ~~, or to~~ tThe manner in which it is taken;

(iii) ~~of taking it, or to the~~ eEvidence presented at it;

(iv) ~~presented, or to the~~ A party's conduct; ~~of any party,~~ and

(v) ~~any~~ ~~o~~Other objections to the proceedings must, ~~shall~~ be noted ~~upon~~ the record~~transcription or recording.~~

(B) But the examination still proceeds, and ~~E~~evidence objected to ~~must~~shall be taken subject to the objections.

~~(e)(4)~~ **Participation by written question.** ~~Instead lieu of~~ participating in the oral examination, ~~parties a party~~ may serve written questions on the party taking the deposition. ~~The party taking the deposition must, who shall~~ propound them to the witness and ~~See see~~ that ~~the the~~ answers ~~thereto~~ are recorded verbatim.

(d) Motion to ~~T~~erminate or ~~L~~imit ~~E~~xamination.

(1) ~~At any time d~~uring the taking of the deposition, ~~on a party or deponent may~~ move to terminate or limit the examination.

(A) ~~On a showing motion of a party or of the deponent and upon a showing that~~ the examination is ~~being~~ conducted in bad faith or in ~~such an unreasonable~~ manner ~~as unreasonably~~ to annoy, embarrass, or oppress the deponent/~~party, or party,~~ the court ~~in whiewhere the the~~ action is pending may order the officer conducting the examination to cease ~~doing so~~.

(B) The court may also ~~forthwith from taking the deposition or may~~ limit the ~~deposition~~ scope and manner ~~of the taking of the deposition as provided in~~ Rule 26(d).

(C) If the order ~~made~~ terminates the examination, it ~~may shall~~ be resumed ~~thereafter only upon an on the~~ order ~~by of~~ the court ~~in which where~~ the action is pending.

(d)(2) ~~If demanded by the objecting party or deponent, Upon demand of the objecting party or deponent,~~ the taking of the deposition ~~must shall~~ be suspended for the time necessary to ~~move ake a motion~~ for an order. ~~Rule 37(a)(4) applies to the~~ award of expenses ~~incurred in relation to the motion~~.

(e) Submission to ~~W~~witness; ~~C~~hanges; ~~S~~igning. ~~When the testimony is taken by stenographic means; or is recorded by nonother than stenographic means under Rule 30 as provided in subsection (b)(4) of this rule, and if the transcription or recording thereof is to be used at any proceeding in the action, such the transcription or recording must shall be submitted to the witness for examination; unless otherwise waived by the witness and the parties examination is waived by the witness and by the parties.~~

(1) ~~Any ch~~Changes in form or substance ~~which~~ the witness ~~want desires~~ to make ~~must shall~~ be entered ~~upon~~ the transcription or ~~stated~~ in a writing ~~to accompany~~ the recording, ~~together~~ with a statement of the ~~witness'~~ reasons ~~given by the witness~~ for making them.

- (2) The party taking the deposition must promptly serve all parties with Nnotice of suethe changes and reasons for them.
- (3) shall promptly be served upon all parties by the party taking the deposition. The transcription or recording musthall then be affirmed in writing as correct by the witness, unless the parties by stipulate to ion-waiveing the affirmation.
- (4) If the witness does not affirm that the transcription or recording is not affirmed as correct by the witness within thirty 30 days of its submission to him, the reasons for the refusal musthall be stated under penalty of perjury on the transcription or in an accompanying writing to accompany the recording by the party desiring wanting to use sueth transcription or recording.
- (e)(5) The transcription or recording may then be used fully as though affirmed in writing by the witness; unless on a motion to suppress under Rule 32(d)(4), the court holds that the reasons given for the refusingal to affirmation require the deposition to be partly or wholly rejectedion of the deposition in whole or in part.

(f) **Certification; ~~E~~xhibits; ~~C~~opies; ~~N~~notice of ~~F~~iling.**

(1) **Certification.** When a deposition is stenographically taken, the stenographic reporterstenographer must hall certify, under penalty of perjury, on the transcript that the witness was sworn in the stenographer'sis presence and that the transcript is a true record of the witness' the testimony given by the witness.

(A) When a deposition is recorded by nonther than stenographic means as provided iunder R-sublsection 30(b)(4) of this Rule, and thereafter transcribed, the person transcribing it musthall certify, under penalty of perjury, on the transcript:

(i) that The person heard that the witness was sworn on the recording; and

(ii) that ~~that~~ The transcript is a correct writing of the recording.

(4)(B) -A deposition so certified according to this rule musthall be considered prima facie evidence of the witness' testimony of the witness.

(2) **Exhibits.** On a party's request, Ddocuments and things produced for inspection during wihness examination of the witness, musthall, upon the request of a party, be marked for identification and annexed to the deposition. A party may inspect and copy them.

~~(A)~~, and may be inspected and copied by any party. Whenever the person producing materials ~~desires~~ wants to retain the originals, the person may substitute copies ~~for the originals of the originals~~, or afford each party an opportunity to ~~copy~~ make copies thereof.

~~(i)~~ In the event the person producing them retains original materials ~~are retained by the person producing them~~, they ~~must~~ shall be marked for identification, and the person ~~producing them shall~~ must afford each party the subsequent opportunity to compare ~~any~~ copy with the original.

~~(ii)~~ The party ~~must~~ shall also ~~be required to~~ retain the original materials for subsequent use in ~~any~~ proceeding in the same action.

~~(2)(iii)~~ Any party may move for an order that the originals be annexed to and returned with the deposition to the court ~~until, pending~~ final disposition of the case.

(3) **Copies.** ~~Upon~~ payment of reasonable charges ~~therefor~~, the stenographic reporter, or party taking the deposition under the case of a deposition taken pursuant to ~~Rule to subsection 30(b)(4) of this rule~~, the party taking the deposition ~~must~~ shall furnish a copy ~~of the deposition of the deposition~~ to any party or to the deponent.

(4) **Notice of filing.** If ~~all or part of~~ the deposition is ~~partly or wholly~~ filed with the court, the party ~~making the filing~~ doing so ~~must~~ shall give prompt notice thereof to all other parties.

(g) ~~(g)~~ Failure to Attend or to Serve Subpoena; Expenses.

(1) ~~A party failing to attend and proceed with a deposition the party noticed may be ordered to pay reasonable expenses, including reasonable attorney's fees, to another party if that party/party's attorney attends the deposition in person according to the notice. If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.~~

(2) ~~If a witness does not attend a deposition noticed by a party because the party failed to serve a subpoena on the witness, the party who noticed the deposition may be ordered to pay reasonable expenses, including reasonable attorney's fees, to another party if that party/party's attorney attends the deposition with the expectation the witness will be deposed. If the party giving the notice of the~~

~~taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.~~

(h) ~~(h)~~ **Expenses Generally Not Treated as Court Costs.**— No part of ~~the deposition~~ expenses ~~of taking depositions,~~ other than ~~the serving of subpoenas,~~ must ~~hall~~ be adjudged ~~awarded~~, assessed, or taxed as court costs.

[Amended effective ~~March 3/1, 19/89;~~ 7/July 1/, 1997.]

Advisory Committee Historical Note

Effective ~~July 7/1/, 1997,~~ Rule 30(b)(7) was amended to correct the reference to Rule 45. 689-~~692~~ So. 2d XLIX (West Miss. Cas. 1997).

Effective ~~March 3/1/, 1989,~~ Rule 30 was amended to abrogate the requirement that the party taking a deposition out of state pay certain expenses of the other party ~~incident thereto~~. 536-~~538~~ So. 2d XXV (West Miss. Cas. 1989).

[Amended effective ~~July 7/1/, 1997.~~]

Rule 31. Depositions ~~upon~~by written questions.

(a) ~~(a)~~ **Serving Questions; Notice.** ~~After commencement of the action, any party may take depose the testimony of any person or, including a party, by deposition upon written questions. The Witness attendance ~~of witnesses~~ may be compelled by ~~the use~~ of subpoena ~~as provided according to~~ by law. The deposition of a person confined in prison may be taken only by leave of court on ~~such~~ terms ~~ias the court~~ prescribes.~~

(1) A party ~~desiring wanting~~ to take a deposition ~~upon~~by written questions ~~must~~shall serve all parties with the questions ~~in upon every other party with and~~ a notice stating:

(A) The name and address of the deponent if known;

(B) If the name is unknown, a general description sufficient to identify the deponent or the particular class or group to which the person belongs; and

(C) ~~(1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (2) t~~The address and name or descriptive title ~~and address~~ of the officer ~~before~~ whom the deposition ~~is to b~~will be taken.

(2) ~~The A d~~deposition of a public or private corporation, partnership, association, or governmental agency may be taken by ~~upon~~ written questions ~~may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with~~ Rule 30(b)(6).

(3) Within ~~thirty~~30 days after the notice and written questions are served, a party may serve cross ~~questions~~ on all parties. ~~upon all other parties~~.

(4) Within ~~ten~~10 days after being served with cross ~~questions~~, a party may serve redirect questions ~~upon~~ all ~~other~~ parties.

(5) Within ~~ten~~10 days after being served with redirect questions, a party may serve re ~~cross~~ questions ~~upon~~ all ~~other~~ parties.

(6) For cause shown, ~~T~~the court may ~~for cause shown~~ enlarge or shorten the time.

(b) ~~(b)~~ **Officer to Ttake Rresponses and Pprepare Rrecord.**

- (1) ~~The deposing party must deliver Aa~~ copy of the notice and ~~served copies of all~~ questions ~~served shall be delivered by the party taking the deposition~~ to the officer designated in the notice.
- (2) ~~As stated in Rule 30(c), (e), and (f), the designated officer must promptly, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness' testimony~~ in response to the questions and to prepare, certify, and file ~~or mail or mail~~ the deposition ~~with, attaching, thereto~~ the copy of the notice and ~~the~~ questions received by ~~the officer~~im.

Rule 32. ~~Use of d~~Depositions use in court proceedings.

~~(a)~~ **(a) Use of Depositions use.**— If a party was present or represented at a deposition or had reasonable notice of one, ~~At the trial or upon the hearing~~ all or part of the deposition ~~m~~ of a motion of an interlocutory proceeding, any ~~be used against that party to the extent part or all of a deposition, so far as~~ admissible under the rules of evidence applied as though the witness were then present and testifying, ~~may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accorda~~ in ~~g~~ ee with to any of the following provisions:

(1) A party may use any deposition ~~may be used by any party for the purpose of contradicting or impeaching the deponent's testimony of deponent as a witness, or for any other purpose permitted~~ allowed by the Mississippi Rules of Evidence.

(2) An adverse party may use the following for any purpose:

(A) A party's The deposition; or

(B) Anyone's deposition if when taken, the person:

~~(2)(i) Was an officer, director, managing agent, or person designated of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party who is a governmental agency or a public or private corporation, partnership, or association or governmental agency which is a party, may be used by an adverse party for any purpose.~~

(3) A party may use the deposition of a party or nonparty witness~~The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:~~

(A) ~~(A) That the witness is dead; or (B)~~

(B) ~~That the witness is at a greater distance greater than one hundred 100 miles from the trial or hearing location;~~

(C) ~~That the witness place of trial or hearing, or is out is out of the state, unless it appears that the party offering the deposition procured the witness' absence;~~

- ~~(D) of the witness was procured by the party offering the deposition; or (C) That the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D)~~
- ~~(E) That the party offering the deposition has been unable to procure the witness' attendance of the witness by subpoena; or (E) t~~
- ~~(F) That the witness is a medical doctor; or (F)~~
- ~~(3)(G) Upon application a motion and with notice, that the deposition should be used due to such exceptional circumstances, exist as to make it desirable, in the interest of justice, and with due regard to the importance of presenting the witness testimony of witnesses orally in open court, to allow the deposition to be so used.~~
- (4) If a party offers only part of a deposition ~~is offered~~ in evidence ~~by a party~~, an adverse party may require the party in it to introduce any other part which ~~ought~~ in fairness ought to be considered with the introduced part. A party may also introduced, and any party may introduce any other parts.
- (5) Substitution of parties does not affect the right to use depositions previously taken.
- (6) ~~;~~ ~~and, w~~When an action in any court has been dismissed, and another action involving the same subject matter is afterward subsequently brought between the same parties, ~~or~~ their representatives, or their successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter one as if originally taken ~~therefor~~ it.
- (7) A deposition previously taken may also be used as ~~permitted by~~ the Mississippi Rules of Evidence allow.
- (b) **Objections to Admissibility.**— Subject to ~~the provisions of~~ Rule 28(b) and ~~subse32etion (d)(3) of this rule, a party may objection may be made at the a~~ trial or hearing to receive ~~in~~ evidence a ny deposition or part ~~thereof~~ one for any reason ~~which would requiring evidence to be e the excluded sion of the evidence~~ if the witness were then present and testifying.
- [Amended effective ~~October 10/21/, 1999.~~]
- (c) [Abrogated].
- (d) **Effect of deposition Errors and Irrregularityies in Depositions.**

- (1) ~~As to Notice.~~— All errors and irregularities in ~~the noticing e for taking~~ a deposition are waived unless written objection is promptly served ~~upon~~ the party noticing a deposition giving the notice.
- (2) ~~Officer As to Ddisqualification of Officer.~~— ~~Objections~~ Objection to taking a deposition because of disqualification of the officer before whom it is to be taken ~~is are~~ waived unless ~~made~~ asserted:
- (A) ~~b~~ Before the ~~taking of the~~ deposition begins; or
 (2)(B) If afterwards, as soon ~~thereafter~~ as the disqualification becomes known or could be discovered with reasonable diligence.
- (3) ~~As to Taking of of Ddeposition.~~
- (A) An ~~Objections~~ to the competency of a witness or to the competency, relevancy, or materiality of testimony ~~are is~~ not waived by ~~failure failing~~ to make ~~them it~~ before or during the ~~taking of the~~ deposition; unless the grounds ~~fofr~~ the objection ~~is one which~~ might have been obviated or removed if presented at that time.
- (A)—The following
- (B) Errors and irregularities ~~occurring~~ at ~~the~~ oral examination are waived unless objection is timely asserted at the deposition:
- (i) ~~in~~ The manner in which the deposition is taken;
 (ii) ~~of taking the deposition, in~~ The form of the questions or answers;
 (iii) ~~in~~ The oath or affirmation; ;
 (iv) ~~or in~~ The parties' conduct; and
 (B)(v) ~~of the parties, and e~~ Errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless ~~seasonable objection thereof is made at the taking of the deposition.~~
- (C) An ~~Objection s~~ to the form of written questions submitted under Rule 31 ~~are is~~ waived unless served in writing ~~upon~~ the party propounding them within the time allowed for serving ~~the~~ succeeding cross or other questions

and within five days after service of the last authorized questions authorized.

- (4) ~~Deposition As to Completion and Return of Deposition.~~— Errors and irregularities in the manner in which the testimony is transcribed ~~or the deposition is~~ in which the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or ~~some part thereof it is~~ made filed with reasonable promptness after ~~such the~~ defect is, ~~or~~ with due diligence might have been, ascertained.

[Amended effective ~~January 1/10/, 1986; 3March/1/, 1989.~~]

Advisory Committee Historical Note

Effective ~~March 3/1/, 1989~~, Rule 32 was amended by providing that the deposition of a medical doctor may be used by ~~any~~ party for any purpose.— ~~536-538~~ So. 2d XXV (West Miss. Cas. 1989).

Effective ~~January 1/10/, 1986~~, Rule 32 was amended by deleting references to the Mississippi Rules of Evidence; and Rule 32(c) [Effect of Taking or Using Depositions] was abrogated.— ~~478-481~~ So. 2d XXIII (West Miss. Cas. 1986).

Advisory Committee Notes

Miss. R. Evid. M.R.E. 801(d)(1)(A) defines a prior inconsistent statement given under oath as nonhearsay and ~~M.R.E. 801(d)(1)(A)~~ applies when a witness testifies at trial in a manner ~~that is~~ inconsistent with a previous sworn statement. The previous sworn statement, which may have been made during a deposition, is non-hearsay, ~~and is~~ admissible ~~at trial, assuming unless barred by a no other evidentiary rule bars its introduction.~~ See *Craft v. State*, 656 So. 2d 1156, 1164 (Miss. 1995).

Miss. R. Evid. 804(b)(1) ~~permits~~ allows an unavailable witness' deposition testimony to be introduced. ~~the introduction of deposition testimony by a witness who is unavailable at trial. Though the deposition could have been taken in the same proceeding where it is offered or a different one. But of the unavailable witness need not have been taken in the same proceeding as that in which it is offered,~~ the party against whom the deposition

~~testimony is being offered,~~ must have had an opportunity and similar motive to develop the testimony. *See Naylor v. State*, 759 So. 2d 406, 410-11 (Miss. 2000).

If a deposition is offered into evidence at trial, the offering party's attorney is responsible for providing the court with a written transcript ~~of the deposition~~. In addition, if ~~deposition an~~ audio or video ~~recording of the deposition is played is played~~ for the jury ~~at trial~~, the offering party must ~~also~~ provide the court with a true and correct copy of ~~such the~~ audio or video recording. If the entire deposition is not admitted into evidence, ~~the both parties'~~ attorneys ~~for both parties~~ should ensure ~~that~~ the court reporter ~~receives is given~~ an accurate record indicating the specific ~~deposition~~ portions ~~of the deposition that are~~ introduced into evidence ~~at trial~~. ~~Such~~ ~~The~~ record should refer to the page and line numbers of the written ~~deposition~~ transcript ~~of the deposition~~. ~~In addition,~~ ~~T~~he attorneys ~~for both parties also~~ should ensure ~~that~~ the court reporter complies with ~~the Guidelines for Court Reporters in the Mississippi Rules of Appellate Procedure~~. *See Miss. R. App. P. app. 3 (regarding M.R.A.P. Appendix III, governing the manner in which trial transcripts must are to* be prepared and filed).

Rule 32(a) is ~~not inconsistent~~ ~~consistent~~ with *Miss. R. Evid.* 804(a) because Rule 32(a) authorizes the use of certain witness depositions at trial for any purpose even though not all ~~such~~ witnesses are defined as "unavailable ~~witnesses~~" ~~pursuant according to Rule to M.R.E.~~ 804(a). ~~Pursuant Under Miss. R. Evid. to M.R.E.~~ 804(b), ~~a witness'~~ former testimony ~~of a witness~~ is not excluded as hearsay if the witness is unavailable. ~~Under Miss. R. Evid. M.R.E.~~ 1103, ~~provides that any~~ court rule ~~that is~~ inconsistent with the Mississippi Rules of Evidence is repealed. ~~In g~~Generally, deposition testimony may be excluded if the witness is not "unavailable" ~~pursuant under to~~ *Miss. R. Evid.* 804(a). *See, e.g., Parmenter v. J & B Enterprises Enters., Inc.*, 99 So. 3d 207, 219 (*Miss. Ct. App.* 2012) (~~court affirmed trial court's~~ exclusion of ~~clinical psychologist's~~ deposition testimony ~~by the plaintiff's clinical psychologist~~ because plaintiff failed to demonstrate ~~the~~ witness was unavailable as required by *Miss. R. Evid.* 804(b)(1)).

Rule 33. Interrogatories to parties.

(a) Availability; Procedures for Use.— ~~As a matter of right, a ny~~ party may serve up to 30 written interrogatories on another party. The party to whom interrogatories are directed must answer them. ~~If that party as a matter of right upon any other party written interrogatories not to exceed thirty in number to be answered by the party served or, if the party served is a governmental agency or public or or private corporation, or a partnership, or or association, or governmental agency, by an y officer or agent must answer the interrogatories and provide, who shall furnish such information as is available to the party.~~

(1) Each interrogatory ~~shall~~ must consist of a single question.

(2) Interrogatories may, without leave of court, be served:

(A) ~~up~~ ~~On~~ the plaintiff ~~after the action is commenced; ment of the action and~~

(B) ~~up~~ ~~On~~ the defendant ~~any other party with when or after service of the summons and complaint are served or afterwards upon that party.~~

~~(a)(3) Serving more Leave of court than 30 interrogatories requires leave of court to be granted on a showing of necessity, to be granted upon a showing of necessity, shall be required to serve in excess of thirty interrogatories.~~

(b) Answers; ~~and~~ Objections; time.

(1) Answers. To the extent not objected to, ~~e~~Each interrogatory ~~must~~ shall be answered ~~separately; and~~ fully; in writing; ~~and~~ under oath.

(2) Signed. Interrogatory answers must be signed by the person making them. Objections to interrogatories must be signed by the attorney making them. ~~unless~~

(3) Objections. If a party objects to an interrogatory, the ~~it is objected to, in which event the objecting party must~~ shall state ~~the all~~ reasons for ~~the an~~ objection and answer to the extent the interrogatory is not objectionable.

(A) All grounds for an objection must be stated with specificity.

(B) A basis not stated in a timely objection is waived unless the court excuses the failure for good cause shown.

(C) If otherwise proper, an interrogatory is not necessarily objectionable merely because an answering it involves an opinion; a contention that

relates to fact; or the application of law to fact. But the court may order that a party does not have to answer it until after designated discovery has been completed, a pretrial conference, or other later time.

(4) Time. The responding party must serve answers and objections within 30 days of the date the interrogatories were served. But a defendant may serve them within 45 days after the summons and complaint are served on that defendant.

(5) Sanctions. A party may move for a Rule 37(a) order based on an objection or other failure to answer an interrogatory.

~~(3) n and shall answer to the extent the interrogatory is not objectionable.~~

~~(4) The answers are to be signed by the person making them, and the objections signed by the attorney making them.~~

~~(5) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within thirty days after the service of the interrogatories, except that a defendant may serve answers or objections within forty five days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time.~~

~~(6) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown.~~

~~(7) The party submitting the interrogatories may move for an order under Rule 37 (a) with respect to any objection to or other failure to answer an interrogatory.~~

(c) Scope; **u**Use at **t**rial.

(1) Scope. An **i**nterrogatory**ies** may relate to **any** matters **which** ~~that~~ **can** be inquired into under Rule 26(b).

(2) Use. An interrogatory, ~~and the answer_s~~ may be used to the extent allowed by the Mississippi Rules of Evidence. ~~permitted by the rules of evidence.~~

~~— An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time.~~

(d) Option to **p**roduce **b**usiness **r**ecords.— If Rule 33(d)(1) and (d)(2) apply, then a party may answer an interrogatory as stated in Rule 33(d)(3) and (d)(4).

(1) If an ~~Where interrogatory the~~ answer ~~to an interrogatory~~ may be derived or ascertained from the following:

(A) ~~from the~~ The responding party's business records (including electronically stored information) of the party upon whom the interrogatory has been served;

(B) ~~or from an examination~~ Examining, auditing, or inspecting ~~them~~ on of sue; h business records, or

(C) ~~from A~~ a compilation, abstract, or summary based ~~thereon~~ them; and

(2) And if ~~th~~ the burden of deriving or ascertaining the answer is substantially the same for ~~the~~ either party;

(3) Then the responding party may answer by:

(A) ~~y serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to~~ Specify the records from which the answer may be derived or ascertained; and

(B) ~~and to A~~ affording ~~to the~~ other party ~~serving the interrogatory~~ reasonable opportunity to:

(i) ~~E~~ examine, audit, or inspect ~~such the~~ records; and

(ii) ~~to make~~ Make copies, compilations, abstracts, or summaries.

(j)(4) The ~~responding party must also specifies~~ specify the records from which the answer may be derived or ascertained ~~ation with provided shall include~~ sufficient detail to ~~permit allow~~ the ~~interrogating other~~ party to ~~identify~~ readily ~~readily~~ the individual documents from which the answer may be ascertained.

[Amended effective ~~April 4/13/13, 2000.~~]

Advisory Committee Historical Note

Effective ~~April 4/13/2000~~, Rule 33 was amended to require parties to produce all non-objectionable information and to clearly state the ground for objection to each interrogatory. ~~753-754~~. So. 2d XVII (West Miss. Cas. 2000).

Advisory Committee Notes

The ~~thirty-30~~ interrogatories ~~permitted-allowed~~ as a matter of right are ~~to-be~~ computed by counting each distinct question as one of the ~~thirty30,~~ even if labeled a sub-part, subsection, threshold question, or ~~similar designation~~~~the-like~~. Greater lenience for construing several questions as one interrogatory may be appropriate regarding inquiries about witness names or locations; the existence, location, and custodians of documents or physical evidence; and similar -areas capable of being explored with well-suited to non-abusive exploration by interrogatories, such as inquiries into the names and locations of witnesses, or the existence, location, and custodians of documents or physical evidence, greater leniency may be appropriate in construing several questions as one interrogatory.

Rule 33(b)(4) requires that ~~the~~ grounds for any objection be stated with specificity. “‘General objections’ applicable to each and every interrogatory . . . are clearly outside the bounds of this rule.” *See Ford Motor Co. v. Tennin*, 960 So. 2d 379 (Miss. 2007). If an interrogatory is only partially objectionable, the responding party ~~must~~~~shall~~ clearly indicate the extent to which the interrogatory is objectionable and the basis for the partial objection. The responding party must also fully respond to the extent the interrogatory is not objectionable. ~~If, f~~For example, ~~if~~ an interrogatory seeking information about 30 facilities is ~~deemed~~ objectionable, ~~butwhile~~ an interrogatory seeking information about 10 facilities ~~is not, would not have been objectionable,~~ the interrogatory should be answered with respect to the 10 facilities; ~~and~~ the grounds for ~~the~~ objection to providing ~~the~~ information ~~with about respect to~~ the remaining facilities should be stated ~~specifically~~with specificity.

Rule 34. Production of documents and things; ~~and entering upon~~ land for inspection and other purposes.

(a) Scope.— Any party may serve on any other party a request within the scope of Rule 26(b):

- (1)** ~~(1)~~ To produce and permit allow the requesting party making the request, or the party's representative someone acting on his behalf, to inspect and copy, any designated documents or electronically stored information in any medium and from which the respondent can obtain information directly or translate it into a reasonably useable form if necessary, (including writings, drawings, graphs, charts, photographs, phono-records, data, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably useable form); or
- (2)** ~~To inspect, and copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the responding party's possession, custody, or control of the party upon whom the request is served;~~ or ~~(2)~~
- (a)(3)** ~~To permit allow entry up onto~~ designated land or other property in the responding party's possession or control of the party upon whom the request is served ~~for the purpose of inspection and~~, measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26 (b).

(b) Procedure.

- (1) Time.** Without leave of court, Ththe request may, ~~without leave of court,~~ be served upon the plaintiff after the action is commenced ~~ent of the action~~ and upon any other party when it is or after serving that party with ee of the summons and complaint upon n th aftert partywards.
- (2) Content.** The request:
 - (A)** The request sMust shall setate either by individual item or category what is forth the items to be inspected;
 - (B)** Must either by individual item or by category, and ddescribe each item and category with reasonable particularity;
 - (C)** Must . ~~The request shall s~~specify a reasonable time, place, and manner of for making the inspectiong and performing the related acts; and

(D) May specify the form or forms in which electronically stored information is to be produced.

(b)(3) Response.-

(A) Time. The responding party must serve a written answer within 30 days of the date the request was served. But a defendant may serve a written answer within 45 days after the summons and complaint are served on that defendant.

(i) ~~The party upon whom the request is served shall serve a written response within thirty days after the service of the request, except that a defendant may serve a response within forty five days after service of the summons and complaint upon that defendant.—~~The court may allow a shorter or longer time.

(B) Responding to each item. For each item or category, ~~Th~~the response must ~~hall~~state, with respect to each item or category, ~~t~~that inspection and related activities will be permitted ~~allowed~~ as requested or state, ~~unless the request is an~~ objected to, ~~ion~~ and the ~~which event the~~ reasons for ~~objee~~it with specificity ~~ion shall be stated.~~

(i) The responding party may state that copies of documents or electronically stored information will be produced instead of allowing inspection.

(ii) Under Rule 34(2)(b)(2)(B)(i), the production must be completed no later than the time specified in the request or another reasonable time specified in the response.

(C) Producing documents, electronically stored information. The responding party must produce documents as kept in the usual course of business or organize and label them to correspond with categories in the request.

(i) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(ii) A party does not need to produce the same electronically stored information in more than one form.

(4) Objection.

(A) ~~–An objection must state whether responsive materials are being withheld on the basis of that objection.~~

(B) ~~A partial objection must specify the objectionable part of the request and allow the remainder to be inspected.~~

(C) ~~A party may object to~~ ~~If objection is made to part of an item or category, the part shall be specified. The response may state an objection to a the~~ requested form ~~for produce~~ producing ~~ng~~ electronically stored information.

(i) ~~–If the responding party objects to thea requested form –or the request did not specify oneif no form was specified, in the request –the responding party must state the what form or forms the party # intends to be use.~~

(D) ~~Pursuant to Rule 26(b)(5), a~~ responding party may also object under Rule 26(b)(5) to ~~productiong of~~ electronically stored information that is not reasonably accessible because of undue burden or cost.

(E) ~~The party submitting the request may move for a n order under~~ Rule 37(a) order regarding:

(i) ~~A~~ with respect to any objection;

(ii) ~~F to or other~~ failure to respond to the request;

(iii) ~~Failure to respond to or any part thereof one; or~~

(iv) ~~, or any f~~ Failure to permit allow inspection as requested.

(c) Nonparty. ~~This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter onto land.~~

~~The request may specify the form or forms in which electronically stored information is to be produced.~~

~~–When producing documents, the producing party shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request that call for their production. If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a~~

~~reasonably usable form or forms. A party need not produce the same electronically stored information in more than one form.~~

~~(c) **Persons Not Parties.**— This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.~~

[Amended effective ~~July 7/1/, 2013~~, to address production of electronically stored information.]

Advisory Committee Historical Note

Effective ~~July 7/1/, 20/13~~, Miss. R. Civ. P. 34 was amended to specifically authorize a party to request ~~any~~ other party to produce electronically stored information. The amendment established the procedure for requesting production of electronically stored information and the procedure for objecting ~~to that type of such a~~ request.

Rule 35. – Physical and mental examination of persons.

(a) Order. If a party's mental or physical condition (including blood group) is in controversy, the court where the action is pending may order the party to submit to physical or mental examination by a suitably licensed or certified examiner. The court has the same authority to order a party to produce for examination a person over whom the party has custody or legal control.

(1) The court may issue the order only on:

(A) A motion for good cause shown; and

(B) Notice to the person to be examined and to all parties specifying:

(i) The time, place, manner, conditions, and scope of the examination;
and

(ii) The person or persons who will perform it.

(2) A party or person may not be required to travel an unreasonable distance for an examination.

(3) The requesting party must pay the examiner and advance all necessary expenses to be incurred by the party or person complying with the order.

(b) Examiner's report.

(1) If requested by the party against whom the court issue a Rule 35(a) order or the person examined, the party who moved for the examination must deliver a copy of the examiner's detailed written report stating:

(A) The examiner's findings;

(B) All test results, diagnoses, and conclusions; and

(C) All reports of earlier examinations of the same condition.

(2) After delivering the reports and on request, the party who moved for the examination is entitled to receive from the party against whom the order was issued like reports of all prior or subsequent examinations of the same condition. But a party with custody or legal control of the person examined is not required to do so on a showing that the party is unable to obtain the reports.

(3) On a motion, the court may require a party to deliver a report on just terms. If an examiner fails or refuses to do so, the court may exclude the examiner's testimony if offered at trial.

(4) By requesting and obtaining a report of the court-ordered examination or by deposing the examiner, the examined party waives privilege in that action and others involving the same controversy as to the testimony of every other person who has examined the party or subsequently may do so regarding the same mental or physical condition.

(5) Rule 35(b) applies to examinations made by the parties' agreement unless their agreement expressly states otherwise. But it does not preclude discovery of an examiner's report or deposing the examiner according to the provisions of another rule.

(c) **Limited applicability to Title 93 of the Mississippi Code of 1972 Annotated.** This rule does not apply to actions under Miss. Code Ann. §§ 93-1-1 to 93-29-23. But the chancery court has discretion to decide the rule does apply.

— Order for Examination.

~~When the mental or physical condition (including the blood group) of a party or of a person in the custody or under the legal control of a party is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made. A party or person may not be required to travel an unreasonable distance for an examination. The party requesting the examination shall pay the examiner and shall advance all necessary expenses to be incurred by the party or person in complying with the order.~~

(a) Report of Examiner.

~~(0) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to the requesting party a copy of the detailed written report of the examiner setting out the examiner's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition unless, in the case of a report of examination of a person not a party, the party~~

~~shows that the party is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if an examiner fails or refuses to make a report the court may exclude the examiner's testimony if offered at trial.~~

~~By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same mental or physical condition.~~

~~(1) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examiner or the taking of a deposition of the examiner in accordance with the provisions of any other rule.~~

~~(c) **Limited Applicability to Actions Under Title 93 of the Mississippi Code of 1972.** This rule does not apply to actions under Title 93 of the Mississippi Code of 1972, except in the discretion of the Chancery Judge.~~

~~[Adopted effective January 1/16/, 2003.]~~

Advisory Committee Historical Note

Effective ~~January 1/16/, 2003~~, Rule 35 was adopted to allow a court to order a physical or mental examination of a person for good cause on motion. ~~-----~~ So. 2d ~~-----~~ (West Miss. Cases ~~---~~).

Rule 36. Requests for admission.

(a) Request for Admission Scope; procedure.

(1) Scope. For purposes of the pending action only, ~~A~~ a party may serve ~~upon another party or~~ with party a written request ~~for the to~~ admission, ~~for purposes of the pending action only, of~~ the truth of ~~any~~ matters within the scope of Rule 26(b) relating to:

(A) ~~set forth in the request that relate to~~ statements or opinions of fact; or

(B) ~~or of~~ Statements or opinions on the application of law to fact, including the genuineness of ~~any~~ documents described in the request.

(2) Procedure.

(A) ~~Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying.~~ **Time.** The request may, without leave of court, be served on the plaintiff after the action is commenced and on another party when serving that party with the summons and complaint or afterwards.

(B) Form; copy of documents.

(i) Each matter must be separately stated.

(ii) A request to admit the genuineness of a document must be accompanied by a copy of the document unless produced or otherwise made available for inspection and copying.

(3) Response.

~~—~~ **Effect of not responding; time.** The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons upon that party.

(A) ~~Each matter of which an admission is requested shall be separately set forth.~~ The matter is admitted unless, within ~~thirty~~ 30 days after the request is served ~~service of the request~~, or within a such shorter or longer time as the court may allow, the party to whom the request is directed serves ~~upon~~ the requesting party ~~with requesting the admission~~ a written answer or objection ~~or objection~~ addressed to the matter and, ~~signed~~ signed by the party or party's ~~or by his~~ attorney.

(i) But a defendant may serve answers or objections within 45 days after the summons and complaint are served on that defendant, but, unless the court shortens the time.

(4) Answer. If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it.

(A) Responding to substance of the request. A denial must fairly respond to the substance of the requested admission.

(B) Qualification; partial denial; specificity. When good faith requires a party to qualify an answer or partially deny a matter, the party must specify the admitted part and qualify or deny the remainder.

(C) Lack of information or knowledge. An answering party may assert lack of information or knowledge as a reason for failing to admit or deny a request only if the party states:

(i) That the party has made reasonable inquiry; and

(ii) That information known or readily obtainable by the party is insufficient to enable the party to do so.

(5) Objection. , a defendant shall not be required to serve answers or objections before the expiration of forty five days after service of the summons upon him. If a party objects to a request, the reasons for doing so must be stated.

(A) Trial issue. If the responding party considers a matter in a requested admission to present a genuine issue for trial, the party may not object solely on that basis.

(i) Subject to Rule 37(c), the party may deny the matter or state reasons why it cannot be admitted or denied.

(6) Motion for sufficiency.

~~ion is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he~~

shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to Rule 37(c), deny the matter or set forth reasons why he cannot admit or deny it.

(A) The requesting party who has requested the admissions may move to determine/decide the sufficiency of the/an answers or objections.

(B) Unless the court determines/decides that an objection is justified, it must/hall order the responding party to serve at an answer be served.

(C) If the court determines that an answer does not comply with Rule 36 the requirements of this section, it may:

(i) Order either that the matter is admitted;

(ii) Require that an amended answer to be served; or

(iii) The court may, in lieu of these orders, defer its final decision until is/position of the request be made at a pre-trial conference or at a designated time before trial time prior to trial.

(D) Rule 37(a)(4) applies to an the award of expenses incurred in relation to the motion.

Effect of Admission/admission; withdrawing; amending.— Any matter admitted under this rule is conclusively

(7) established unless on a motion, the court on motion permits/allows the admission to be withdrawn or amended of the admission.

(A) A party's admission under this rule is for the purpose of the pending action only. It is not an admission for another purpose and may not be used against that party in another proceeding.

(B) **Withdrawal; amendment.** The court may allow an admission to be withdrawn or amended:

(i) Subject to Rule 16(e) the provisions governing amendment of a final pre-trial order;

~~(ii) , the court may permit withdrawal or amendment w~~When the presentation of the an action's merits ~~of the action~~ will be subserved; ~~thereby~~ and

~~(iii) †~~The party who obtained the admission fails to satisfy the court ~~that~~ withdrawal or amendment will prejudice the party him in maintaining that party's his action or defense on the merits.

~~—Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.~~

Advisory Committee Notes

The purpose of Rule 36 is to identify and establish undisputed facts ~~that are not in dispute~~. *DeBlanc v. Stancil*, 814 So. 2d 796, 802 (Miss. 2002). “[T]he requests must be reasonable and must be unambiguous. A request is ambiguous if the request is subject to more than one reasonable interpretation. The purpose of requests for admissions is to narrow and define issues for trial.” *See Haley v. Harbin*, 933 So. 2d 261, 262-63 (Miss. 2005). “Requests for admissions ‘should not be of such . . . great number and broad scope as to cover all the issues [even] of a complex case, and [o]bviously . . . ~~---~~ should not be sought in an attempt to harass an opposing party.’” *See Id. Haley, 933 So. 2d* at 263.

Rule 36 will be enforced according to its terms; a matters admitted or deemed admitted ~~upon~~ the responding party’s failure to timely respond answer are is conclusively established unless the court exercises , within its discretion to , grants a motion to amend or withdraw the admission. “Any admission that is not amended or withdrawn cannot be rebutted by contrary testimony or ignored by the court even if the party against whom it is directed offers more credible evidence.” *DeBlanc*, 814 So. 2d at 801 (citing 7 James Wm. Moore, et al., *Moore’s Federal Practice* ¶ 36.03[2], at 36, - at 36 (3d ed. 2001)). But in a matter involving ~~However, in the matter of~~ child custody, the trial court may allow an admitted issue to be withdrawn , as justice requires, ~~allow the withdrawal of the issue admitted~~. *Gilcrease v. Gilcrease*, 918 So. 2d 854 (Miss. Ct. App. 2005).

The rule sets out a two-pronged test that trial courts may use when determining whether to grant a motion to withdraw or amend an admission. Courts may consider whether “presentation of the merits --- will be subserved [by amendment or withdrawal] and whether the party who obtained the admission has satisfied the court that withdrawal or amendment would prejudice him or her ---- [A] trial court ‘may,’ but is not required to, consider the two-pronged test in denying a motion to withdraw or amend.” *See Young v. Smith*, 67 So. 3d 732, 740 (Miss. 2011).

~~Because Generally, a~~ party ~~generally lacks~~ ~~has no~~ knowledge ~~concerning of~~ the authenticity or admissibility of ~~the an~~ ~~opponent's~~ ~~single~~ party's medical records. ~~a party does~~ ~~n and, therefore, has not~~ ~~have an~~ obligation to admit the authenticity or admissibility of ~~such an opposing party's medical records~~ ~~documents~~ absent: (1) proper authentication ~~of~~ ~~such records in~~ ~~accordi~~ ~~ance~~ ~~wit~~ ~~h~~ ~~Miss. R. Evid.~~ 901 or 902; and (2) proper demonstration ~~that such records~~ ~~they~~ are records of regularly conducted activity ~~pursua~~ ~~ndert~~ ~~to~~ ~~Miss. R. Evid.~~ 803(6). *See Rhoda v. Weathers*, 87 So. 3d 1036 (Miss. 2012).

Rule 37. Failing ure to ~~make or~~ cooperate in discovery: sanctions.

(a) ~~(a)~~ **Motion for Order Compelling Discovery.**— A party, upon reasonable notice to other parties and all affected persons ~~affected thereby~~, a party may apply move for an order compelling discovery according to this rule ~~as follows~~.

(1) **Appropriate Court.**— A motion ~~an application~~ for an order compelling discovery may be filed with the court ~~in~~ where ~~ich~~ the action is pending.

~~(1)~~

(2) **Specific Motions.**

(A) A party seeking discovery may move for an order compelling an answer, designation, production, or inspection if:

(i) ~~If a~~ deponent fails to answer a question ~~propounded or submitted~~ under Rules 30 or 31;

(ii) ~~or a~~ corporation or other entity fails to make a designation under Rules 30(b)(6) or 31(a);

(iii) ~~or a~~ party fails to answer an interrogatory ~~submitted~~ under Rule 33; or

(iv) ~~or if a~~ party fails to produce documents, fails to respond that inspection will be allowed, or fails to allow inspection as ~~in response to a requested for inspection submitted~~ under Rule 34, ~~fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request.~~

(B) When taking a deposition ~~by~~ oral examination, the proponent of the question may complete or adjourn the examination before ~~he~~ applies moving for an order.

~~(2)~~

(C) If the court partly or wholly denies the motion ~~in whole or in part~~, it may issue a Rule 26(d) make such protective order ~~as it would have been empowered to make on a motion made pursuant to Rule 26(d).~~

(3) **Evasive or Incomplete Answer.**— For purposes of Rule 37(a) ~~this section~~, an evasive or incomplete answer must ~~to~~ be treated as a failure to answer.

~~(3)~~

(4) **Award of Expenses of Motion.**

(A) If the motion is granted, after an opportunity to be heard, the court shall, after opportunity for be hearing, the court must require the party or ~~or~~ deponent whose conduct necessitated the motion; ~~or~~ the party or ~~or~~ attorney who advising suethe conduct; or both of them to pay to the moving party the reasonable expenses, including attorney's fees, incurred to in obtaining the order unless the court finds:

5

(i) ~~including attorney's fees, unless the court finds~~ That that the opposition to the motion was substantially justified; or

(ii) ~~That other circumstances make an expense award of expenses~~ unjust.

(4)

(B) If the motion is denied, after an opportunity to be heard, the court must~~shall~~, after opportunity for hearing, require the moving party; ~~the moving party's~~ of the attorney advising the motion; or both of them to pay to the opposing party or deponent ~~who opposed the motion the~~ reasonable expenses, including attorney's fees, incurred to in opposing the motion, ~~including attorney's fees~~, unless the court finds:

(i) ~~That the making of the motion was substantially justified~~; or

(ii) ~~That other circumstances make an expense award of expense~~ unjust.

(C) If the motion is partly granted ~~in part~~ and denied ~~in part~~, the court may apportion ~~the~~ reasonable expenses incurred in obtaining and opposing ~~relation to~~ the motion among the parties and persons in a just manner.

(b) (b) Failing ure to Ccomply Wwith Oorder.

(1) Court sanctions. ~~Sanctions by Court.~~ Sanctions by Court. ~~If a deponent refuses a deponent fails to~~ be sworn or to answer a question after the court has directed otherwise, ~~after being directed to do so by the court~~, the failure may be considered a contempt of court.

(1)

(2) Sanctions by court where ~~Sanctions by Court in Which action is pending.~~ Action Is Pending. ~~If a party or a party's~~ officer, director, ~~or~~ managing agent, ~~of a party or other a~~ person designated to testify under Rules 30(b)(6) or 31(a) ~~to testify in behalf of a party~~ fails to obey an order to provide or permit allow discovery, including a Rule 37n order made under subsection (a) of ~~this ruler~~, the court ~~in wherich e~~ the action is pending may imaksue additional just

such orders in regard to the failure as are just, and among others the following including:

(2)

~~(A) Establishing matters an order that the matters pertaining to the regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the requesting party's claim of the party obtaining the order;~~

~~(A)~~

~~(B) an order refusing to allow the disobedient party to support or oppose designated claims or defenses or, or prohibiting the disobedient party from introducing designated matters in evidence;~~

~~(B) a~~

~~(C) Partly or wholly n order striking out pleadings or parts thereof;~~

~~(D) , or st Staying further proceedings until the order is obeyed; or~~

~~(E) Partly or wholly d dismissing the action or proceeding; or any part thereof, or~~

~~(F) r Rendering a default judgment by default against the disobedient party; or (C);~~

~~(G) Instead of in lieu of any of the foregoing an order stated in Rule 37(b)(2)(A) through (F) orders or in addition thereto one, an order treating the failure to obey as a contempt of court the failure to obey any orders.~~

~~(D)~~

~~(3) Instead of an order stated in Rule 37(b)(2) or in addition to one, lieu of any of the foregoing orders or in addition, thereto, the court must shall require the disobedient party; failing to obey the order or the attorney advising the party; im or both to pay the reasonable expenses, including attorney's fees, caused by the failure; unless the court finds:~~

~~(A) r That the failure was substantially justified; or~~

~~(B) r That other circumstances make an expense award of expenses unjust.~~

(c) Failing to admit; Expenses on Failure to Admit.

~~(1) If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the requesting party requesting the admissions subsequently thereafter proves the document's genuineness of the document or the matter's truth of the matter, thate party may move apply to the court for an order requiring the other party to pay them party the reasonable expenses, including attorney's fees, incurred in doing so. making that proof, including reasonable attorney's fees.~~

(2) The court ~~must~~ shall ~~issu~~ make the order unless it finds that:

(A) ~~(1)~~ ~~†~~ The request was ~~held~~ objectionable under Rule 36(a);

(B) ~~, or (2)~~ ~~†~~ The requested admission ~~sought~~ was ~~not~~ of substantial importance;

(C) ~~, or (3)~~ ~~†~~ The party failing to admit had reasonable grounds to believe that ~~he~~ the party might prevail on the matter; ~~;~~ or ~~(4)~~

(D) ~~there was o~~ Other good reason for ~~the~~ failure to admit existed.

~~(e)~~

(d) ~~Failing ure of Party to Aattend at Own Ddeposition; or Sserve Answers to Iinterrogatory answeries; or Rrespond to inspection Rrequest for Inspection.~~

(1) If a party or a party's ~~or an~~ officer, director, ~~or~~ managing agent, ~~of a party or other~~ a person designated under Rules 30(b)(6) or 31(a) to testify ~~on behalf of a party~~ fails the following, on a motion, the court where the action is pending may issue a just order regarding the failure, including an order under Rule 37(b)(2)(A) through (G):

(A) ~~(1)~~ ~~†~~ To appear before the officer who is to take the party's ~~is~~ deposition, after being served with ~~a~~ proper notice;

(B) ~~, or (2)~~ ~~†~~ To serve answers or objections to Rule 33 interrogatories after the other party properly served the interrogatories; or

(C) ~~submitted under Rule 33, after proper service of interrogatories, or (3)~~ ~~†~~ To serve a written response to a Rule 34 request for inspection after the other party properly served the request.

(2) ~~submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subsections (A), (B), and (C) of subsection (b)(2) of this rule. Instead of an order or lieu of any order or in addition thereto it, the court must~~ shall require the disobedient party; failing to act or the attorney advising thime paerty; or both to pay ~~the~~ reasonable expenses, including attorney's fees, caused by the failure; unless the court finds:

(A) ~~†~~ That the failure was substantially justified; ~~or~~

(B) ~~†~~ That other circumstances make an expense award ~~of expenses~~ unjust.

~~(d)~~

(3) ~~A~~ The failure to act under Rule described 37(d) in this subsection may not be excused on the basis ~~ground that~~ the requested discovery ~~sought~~ is objectionable

unless the disobedient party ~~failing to act~~ has applied for a Rule 26(d) protective order ~~under Rule 26(d)~~.

(e) Additional Ssanctions.— In addition to ~~the application of those~~ sanctions, ~~specified iunder~~ Rules 26(d) and Rule 37, ~~and other provisions of this rule~~, the court may impose ~~upon any party/ or party's attorney counsel sjust ueh~~ sanctions, ~~as may be just~~, including ~~the payment of~~ reasonable expenses and attorney's² fees, if:

- (1) ~~a~~Any party/ ~~or party's attorney counsel~~ ~~(i)~~ fails ~~without good cause~~ to cooperate in ~~the~~ framing ~~of~~ an appropriate discovery plan by agreement under Rule 26(c) ~~without good cause~~; ~~or~~
- (2) ~~(ii)~~ ~~o~~therwise abuses the discovery process in seeking, making, or resisting discovery.

(e)

CHAPTER SECTION VI. TRIALS

Rule 38. Right to a Jury trial.

(a) Right Preserved. ~~The~~ The right of trial by jury ~~as~~ as declared by the Mississippi Constitution or any Mississippi statute ~~of the State of Mississippi~~ shall be preserved to the parties inviolate.

~~(a)~~

(b) Waiver of Jury Trial.

(1) A Party ~~ies to an action~~ may waive their rights to a jury trial by:

(A) Filing ~~with the court~~ a specific, written stipulation ~~that that~~ the right has been waived with the court; and

(B) Requesting that the action be tried by the court.

(b)(2) The court may exercise ~~in~~ its discretion to ~~require~~ ~~that the action be tried by~~ a jury trial ~~notwithstanding even though a party has filed a the waiver~~ stipulation ~~of waiver~~.

~~Rule 39. Trial by jury or by the court.~~ ~~[Omitted].~~

Rule 40. – Assignment of cases for trial.

(a) Methods.

- (1) A Court ~~shall~~ must provide for placing ~~an~~ actions upon the trial calendar:
- ~~(b)~~
- ~~(1)(A)~~ (A) Without the parties' request of the parties; or
- ~~(2)(B)~~ (B) Upon a party's request of a party and with notice to the other parties; or,
- ~~(C)~~ (C) In a ~~such other~~ manner as the court ~~deems~~ considers expedient.
- ~~(3)~~
- (2) Prior to ~~the~~ calling of a case for trial and subject to the court's sound discretion, the parties must be afforded ample opportunity, ~~in the sound discretion of the court, for~~ completion of discovery.

(b) Notice.

- (1) The court ~~must~~ shall provide ~~by~~ written direction to the clerk when a trial docket will be set.
- (2) At least five days before the date on which the trial docket will be set, ~~the~~ clerk ~~must~~ shall at least five ~~(5)~~ days prior to the date on which the trial docket will be set notify all attorneys and unrepresented parties ~~without attorneys~~ wh ~~in~~ gh cases ~~upon~~ the trial calendar of the time, place, and date ~~when said the~~ docket ~~will~~ shall be set.
- (3) All cases ~~must~~ shall be set on the trial docket at least ~~twenty (20)~~ days before the trial date ~~set for trial~~ unless the parties agree on a shorter period ~~is agreed upon by all parties or a smaller one~~ is available under Rule 55.
- (4) When an action is set for trial, ~~the~~ clerk must prepare a trial docket ~~shall be prepared by the clerk~~ identifying the:
- ~~the time actions are set for trial and shall state~~
- (A) ~~the~~ Case to be tried;
- (B) Trial ~~the~~ date;
- (C) ~~of~~ trial, ~~the~~ Attorneys in the case of record in the case, ~~and~~ nd ~~the~~ place of ~~the~~ Trial location; and
- (D) ~~the~~ place of ~~the~~ Trial location; and

~~(E)~~ — Additionally, said trial docket shall reflect such a Attorneys of record and unrepresented parties representing themselves as were present in person or by a resent personally or by designee when the trial docket was set.

~~(5)~~ Within three days after a case has been placed on the trial docket, ~~T~~the clerk must~~hall~~ within three (3) days after a case has been placed on the trial docket notify a ll-party who was not ies who were not present at the docket setting in personally or by an ~~their~~ attorney of record at the docket setting of ~~as to~~ their trial setting.

~~(A)~~ Notice must~~hall~~ be by personal delivery or ~~by mailing of a notice~~ within said the three (3) day period.

~~(6)~~ Rule 40 does not apply to Mmatters:

~~(A)~~ iIn which a defendant is summoned to appear and defend at a certain time and place ~~certain pursuant to~~ Rule 81; or

~~(B)~~ iIn which a date, time, and place for trial have been previously set ~~shall not be governed by this rule.~~

~~(c)~~

~~(c)~~ Trial by Agreement.— Parties, including those ~~who are~~ in a fiduciary or other representative ~~or fiduciary~~ capacity, may waive any waiting period imposed by these rules or a statute and agree to a time and place for trial.

~~(d)~~

[Amended effective ~~July 7/1/, 1986;~~ 9/September 1/, 1987; ~~3/March 1/, 1989.~~]

Advisory Committee Historical Note

Effective ~~March 3/1/, 1989,~~ Rule 40(a) was amended by abrogating reference to local rules.—~~536-538~~ So. 2d XXX (West Miss. Cas. 1989).

Effective ~~September 9/1/, 1987,~~ Rule 40 was amended by adding subsection (c) ~~providing for~~ the scheduling ~~of~~ trials by agreement of the parties.—~~508-511~~ So. 2d XXVIII (West Miss. Cas. 1987).

Effective ~~July 7/1/, 1986,~~ Rule 40(b) was amended by substantially rewriting it: (1) to shorten the time period ~~provided~~ for giving interested attorneys and parties notice of the setting of the trial docket; (2) to provide for at least ~~twenty~~ 20 days between the time ~~of of~~ ~~the~~ setting ~~of~~ a case on the docket and the ~~time of the~~ trial date; (3) to ~~provid~~require for

certain information to be recorded on the docket; and (4) for other purposes.—486-490 So. 2d XXI (West Miss. Cas. 1986).

Advisory Committee Notes

The ~~twenty~~20-day waiting period ~~does not inapplicable~~ to court hearings ~~conducted by the court~~ in connection with Rule 55 default judgments ~~under Rule 55~~.

Rule 41. – Dismissing an action.~~Dismissal of actions~~

(a) (a) Voluntary D~~dismissal.~~

Effect Thereof.

(1) (1) By P~~plaintiff or~~ By S~~stipulation.~~

(A) Subject to ~~the provisions of~~ Rule 66, or ~~of any~~ Mississippi statute ~~of the State of Mississippi, and upon after the paying ment of~~ all costs, the plaintiff may dismiss an action ~~may be dismissed by the plaintiff without a court order by filing of court:~~

(i) ~~by filing a~~ A notice of dismissal ~~at any time before the adverse party services by the adverse party of~~ an answer or ~~of a~~ motion for summary judgment, ~~whichever first occurs;~~ or

(ii) ~~by filing a~~ A stipulation of dismissal signed by all parties who have appeared in the action.

(ii)

(B) ~~Unless otherwise stated in~~ the notice of dismissal or stipulation states otherwise, ~~the~~ dismissal is without prejudice.

(2) (2) – By court O~~order of~~ Court. ~~— Except as stat~~ provided in Rule 41(a)(1) paragraph (a)(1) of this rule, the plaintiff may an action shall not be dismissed an t the p~~laintiff's~~ winsthout anee save cou~~ourt~~ order on of the court and upon such terms and conditions as the cou~~r~~ the courtt deems considers proper.

(A) ~~A~~ If a counter-claim has been pleaded by a defendant asserted before prior to the service upon him of the plaintiff serves a Rule 41(a)(2) 's-motion will to dismiss remain pending if the , the action may be dismissed but the counter claim shall remain pending for action is dismissed.

(B) ~~adjudication by the court.~~ Unless the court order states otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) Involuntary D~~dismissal:~~ Effect Thereof.

(1) A defendant may move to dismiss the action or a claim if For failure of the plaintiff fails to:

(A) ~~to p~~ rosecute the action;

(B) ~~or to e~~ Comply with these rules; or

~~(C) Obey a any court order of court, a defendant may move for dismissal of an action or of any claim against him.~~

~~(2) In a nonjury action tried by the court:~~

~~(A) The defendant may move for dismissal:~~

~~(i) After the plaintiff has completed presenting evidence;~~

~~(ii) , in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, wWithout waiving thise defendant's right to offer evidence if nthe court denies eventthe motion; is not granted, may move for a dismissal and~~

~~(iii) eOn the basis ground thatthe plaintiff has failed to show a right to relief under uponthe facts and the the law.~~

~~(B) the plaintiff has shown no right to relief. The court may then render a judgment against the plaintiff against the plaintiff or or may defer a elifinal decision ne to render any judgment until the close of all the evidence has been presented.~~

~~(i) If the court renders a judgment on the merits against the plaintiff, the court may make Rule 52(a) findings as provided in Rule 52(a).~~

~~(C) Unless the court in its order for dismissal otherwiseA Rule 41(b) dismissal and all other dismissals operate as an adjudication upon the merits unless:~~

~~(i) A court order states otherwise;~~

~~(ii) Rule 41(b) states otherwise;~~

~~(iii) Dismissal is for lack of jurisdiction;~~

~~(iv) Dismissal is for improper venue; or~~

~~(v) Dismissal is for failure to join a party under Rule 19.~~

~~(b) specifies, a dismissal under this subdivision and any other dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.~~

~~(c) Dismissing a al of Ccounter-claim, Ccross-Cclaim, or Tthird-Pparty Cclaim. This rule e provisions of this rule applies y to the dismissal of any counter-claim, cross-claim, or third-party claim.~~

(1) A claimant's Rule 41(a)(1)(A)(i) voluntary dismissal by the claimant alone pursuant to paragraph (a)(1) of this rule shall be ~~must be made filed~~ before a responsive pleading is served; or,

(2) ~~If there is no responsive pleading, there is none, before the evidence is introduced~~ tion of evidence at a the trial or hearing or trial.

~~(e)~~

(d) Dismissal on ~~C~~lerk's ~~M~~otion.

~~(d)~~

(1) Notice.— ~~In all civil actions wherein there has been no action of record has occurred on the record during the preceding 12twelve months, the court clerk of the court must~~ shall mail notice to the attorneys ~~of record that sue~~ the court will dismiss the case will be dismissed by the court for f ~~wailing~~ tn of ~~prosecute ionit~~ unless:

(A) ~~An action is taken on the record wwithin thirty 30 days fromllowing the said mailing date; ,action of record or~~

(B) ~~A motion showing good cause for not di~~ sm ~~issing the case is filed with the court.~~

~~(1)(2) Effect.~~ Except as stated in Rule 41(d)(1), taken or an application in writing is made to the court and good cause shown why it should be continued as a pending case. If action of record is not taken or good cause is not shown, tthe court must ~~shall~~ dismiss the each such case without prejudice.— But T ~~the~~ cost of filing suea dismissal h ~~order of dismissal~~ with the clerk must ~~shall~~ not be assessed against either party.

(3) Mailing ~~N~~Notice ~~deadline~~ ~~otice~~.

(A) ~~In every eligible case, the clerk must mail Tthe Rule 41(d)(1) notice shall be mailed annually in every eligible case not later than thirty 30 days before June 15 and December 15 of each year.~~

(B) ~~The clerk must present all eligible cases annually on or before June 30 and December 31, and all such cases to shall be presented to the court by the clerk for action therein on or before June 30 and December 31 of each year.~~

(C) ~~Rule 41(d)(1) through (d)(2) does not:~~

(i) ~~Prohibit These deadlines shall not be interpreted as a prohibition the clerk from otherwise mailing notice and dismissing an eligible against mailing of notice and dismisscaseal thereon as cases may become eligible for dismissal under this under Rule 41(d); or~~

~~(ii) Limit the rule. This rule is not a limitation court's power upon any other power that the court may have to dismiss any action upon a motion or otherwise.~~

~~(2) :~~

~~(e) (e) Costs of Previously Dismissed Action previously dismissed action. - If a plaintiff dismisses an action in a court and files another one based on or including the same claim and against the prior defendant, the court:~~

~~(1) If a plaintiff whose action has once been dismissed in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the plaintiff to pay the payment of costs of the previously dismissed action as it decides to be proper; and~~

~~(2) previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.~~

Advisory Committee Notes

After the court clerk ~~has serves given notice pursuant to~~ Rule 41(d) notice, a party seeking to avoid dismissal for lack of prosecution must either take some “action on the f record” or file a motion apply in writing with the court ~~and~~ demonstrating good cause for continuing the case. Rule 41(d) does not define what constitutes “an action ofn the record.” *See Ill. Central R.R. Co. v. Moore*, 99 So. 2d 723, 726 (Miss. 2008) (discussing former “application in writing” and “act of record”).

Pleadings, discovery requests, and deposition notices are “actions ofn the record.” *See Id.* at 728. But simply requesting that the case remain on the court's active docket ~~in an~~ ex parte letter to the court clerk ~~simply requesting that the case remain on the court's active docket~~ is not ~~an a written motion application in writing that~~ demonstrates good cause. *See Id.* at 729-730. Rather than writing a letter to the clerk, a party should file a written motion with the court: (1) that complies with Rule 7(b)(1); and (2) that demonstrates good cause; and (3) that is should served such motion in accordance with *Miss. R. Civ. P. 5. Id.* at 727-730. *But see Cucos, Inc. v. McDaniel*, 938 So. 2d 238, 247 (Miss. 2006) (finding ~~that the~~ trial court did not abuse ~~its~~ discretion in considering ~~the~~ plaintiff's attorney's letter to ~~the~~ clerk requesting that ~~the~~ case remain on ~~the~~ court's active docket as sufficient to prevent dismissal where ~~:(1) the~~ court held a hearing and ~~the~~ plaintiff's lawyer ~~also~~ represented he was trying to schedule conferences so ~~that~~ defense counsel could talk to plaintiff's expert witnesses in ~~an~~ effort to facilitate settlement; ~~(ii)2~~ local practice was to treat ~~sueth~~ letters as sufficient; and ~~(iii)3~~ ~~the~~ plaintiff was not served with ~~a~~ proper copy of ~~the dismissal~~ order ~~of dismissal~~). In Ggenerally, complying with local practice ~~that is~~ inconsistent with the Mississippi Rules of Civil Procedure without more will ~~not~~,

~~standing alone~~, be insufficient to prevent dismissal. See *Ill. Cent. ~~ral~~ R.R. Co. ~~v. Moore~~*, 994 So. 2d at ~~723~~, 728 (~~Miss. 2008~~).

Rule 42. Consolidation; ~~;~~ separate trials.

(a) Consolidation.— ~~If pending. When~~ actions ~~ss~~ involve ~~ing~~ a common question of law or fact ~~are pending before the court,~~ the court may:

(1) ~~it may o~~Order a joint hearing or trial of one or more any matters ~~ss~~ aint issue in the actions;

(2) ~~it may order all the actions eo~~Consolidated the action; ~~or and it~~

(3) ~~Issue manothery. make such~~ orders concerning the proceedings ~~therein as may tend~~ to avoid unnecessary costs or delay.

~~(a)~~

(b) Separate ~~T~~trial.

(1) ~~For convenience, The court, in furtherance of convenience or~~ to avoid prejudice, ~~or when separate trials will be conducive to~~ expedite and ion and economize, the court may order a separate trial of:

(A) ~~A of any~~ claim, cross-claim, counter-claim, or third-party claim; ~~or of~~

(B) ~~a~~Any separate issue; ~~or or~~

(C) ~~of a~~A ny number of claims, cross-claims, counter-claims, third-party claims, or issues.

(2) ~~When ordering a separate trial, the court must,~~ always preserve ing ~~inviolate~~ the right to fa jury trial by jury as ~~declared stated in Miss. Const. by art. 4, § Section 31 of the Mississippi Constitution of 1890.~~

~~(b)~~

(c) Counties ~~Within a Ssingle Ccircuit or or Cchancery Ccourt Ddistrict.~~— ~~When civil a~~lf actions involving ing a common questions of law or fact ~~are pending in or law are pending in~~ different counties of the same single Ccircuit or or cChancery court Court district, all matters presented to the judge prior to trial except dispositive motions, ~~such actions~~ may be consolidated ~~for coordinated, or consolidated pretrial proceedings~~

(1) ~~and, if~~ the actions do not involve jury trials ~~by jury,~~ they may be consolidated for all purposes.

(2) ~~All judges presiding over the cases to be consolidated~~ must agree to the consolidation and on to the judge who will preside over the cases for the purposes of Rule 42(c). ~~stated herein. For the purposes of this rule, “pretrial proceedings” means all matters presented to the judge prior to trial except dispositive motions.~~

~~(e)~~

[Amended ~~February 2/20/, 2004~~ to correct scrivener's error; amended effective ~~September 9/25/, 2014.~~]

Rule 43. Taking ~~of~~ testimony.

- (a) **Form; ~~and~~ Admissibility.**— In all trial, ~~witness s~~ the testimony of witnesses ~~must~~ shall be taken orally in open court, ~~unlexcept ass o~~ otherwise provided by the wise stated in these rules or the Mississippi Rules of Evidence.
- (b) [Abrogated].
- (c) [Abrogated].
- (d) **Affirmation ~~inst Lieaud~~ of an Oath.**— A solemn affirmation may be accepted instead of an oath Whenever under these rules ~~required by these rules~~ an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.
- (e) **Evidence on a Motions.**— ~~If~~ When a motion is based on a non-record fact, ~~s not appearing of the record~~ the court may hear the matter on affidavits or partly or wholly presented by the respective parties, but the court may direct that the matter be heard ~~wholly or partly~~ on oral testimony or depositions.
- (f) Interpreters.**— The court may appoint an interpreter of its ~~choown~~ selection; ~~and may fix his~~ reasonable compensation. ~~The compensation shall be paid out of funds provided according to by law or by one or more of the parties as i the court may directs; and exercise discretion to may be taxed the compensation ultimately as costs, in the discretion of the court.~~
- ~~(f)(1) But~~ However, ~~if an interpreter is required by in the event and to the extent that such interpreters are required to be provided under the provisions of the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990), including related provisions, rules, and regulations, 42 U.S. C. § 12131, et seq. or under rules or regulations promulgated pursuant thereto, such compensation and other compliance costs must be paid by the county where the court is located and not taxed of compliance shall be paid by the county in which the court sits, and shall not be taxed as costs.~~

[Amended effective ~~January 1/10/, 1986~~; amended ~~June 6/5/, 1997~~.]

Advisory Committee Historical Note

Effective ~~July 7/1/~~1998, Rule 43(f) was amended ~~in-regarding to~~ compliance with the Americans with Disabilities Act ~~of 1990 § 201, 42-42 U.S.C. § 12131, et seq. (1990) and related provisions.~~

Effective ~~January 1/10/~~1986, Rule 43(a) was amended to provide that testimony may be taken other than in open court; ~~unas providedr by~~ the Mississippi Rules of Evidence; and to delete references to the admissibility of evidence; Rule 43(b) [Mode and Order of Interrogation]; and Rule 43(c) [Record of Excluded Evidence] were abrogated.— 478-481 So.

2d XXVII (West Miss. Cas. 1986).

Advisory Committee Notes

The admission of telephonic testimony ~~inst-head~~ of ~~a~~-personal appearance in open court by the witness is within the trial court's sound discretion ~~of the trial court~~. See *Byrd v. Nix*, 548 So. 2d 1317 (Miss. 1989) (interpreting Miss. R. Civ. P. 43(a) and Miss. R. Evid. 611(a)).

Rule 44. Proving of of an official rdoecorduments.

(a) (a) Authentication.

(1) Domestic.

(A) The following evidences A an official record or entry in it when admissible and kept within the United States, ~~or any~~ state, district, commonwealth, territory, or territory subject to the United States' administrative or judicial jurisdiction:

~~insular possession thereof, or within the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands, or an entry therein, when admissible for any purpose, may be evidenced~~

(i) ~~by a~~ An official publication of the record; or

(ii) ~~or by a~~ copy attested by a person purporting to be the officer or officer's deputy having with the legal custody of the record, ~~or his~~ deputy.

(B) If the official record is kept outside ~~the State of~~ Mississippi, the copy ~~must~~ be accompanied by a certificate under oath of the officer or officer's deputy such person stating:

(i) The person ~~he~~ is the legal custodian of ~~tsue~~ the record; and ~~that~~

(ii) ~~†~~ The record is kept ~~pursuant according to~~ state law.

~~(†)~~

(2) Foreign.

(A) The following evidences a A foreign official record, ~~or an~~ entry ~~therein it~~, when admissible ~~for any purpose:~~

(i) ~~, may be evidenced by a~~ An official publication ~~thereof~~ the record; ~~;~~
or

(ii) aA copy ~~thereof~~, attested by a person authorized to do so make the attestation, and accompanied by a final certification.

(B) A Rule 44(a)(2)(A)(ii) final certification must certify the ~~as to~~ the genuineness:

(i) ~~o~~ Of the signature and official position ~~(†)~~ of the attesting person; or
~~(†)~~

~~(ii) Of a foreign official whose certificate of genuineness relates to the attestation any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation.~~

~~(C) A Rule 44(a)(2)(A)(ii) final certification may be made by:~~

~~(i) An embassy or legation secretary of an embassy or legation;~~

~~(ii) A consul general, consul, vice consul, or consular agent of the United States; or~~

~~(iii) A diplomatic or consular official of the foreign country assigned or accredited to the United States.~~

~~(D) If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause:~~

~~(i) shown, (i) admit an attested copy without final certification; or (ii)~~

~~(ii) Allow admit an attested summary with or without final certification to evidence the foreign official record to be evidenced by an attested summary with or without a final certification.~~

~~(2)~~

~~(b) Lack of a Record.— If authenticated under Rule 44(a)(1) for a domestic record or under Rule 44(a)(2) for a foreign record, A written statement that after diligent search of designated records revealed no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of this rule in the case of a domestic record, or complying with the requirements of subdivision (a)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records do not contain none such record or entry.~~

~~(b)~~

~~(c) Other proof. A party may prove an official record, an entry, or lack of entry by This rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.~~

~~(e)~~

Advisory Committee Notes

~~Even though a document has been authenticated under as required by this rule, it may still be excluded from evidence if, for example, it is irrelevant, or is hearsay, or is otherwise objectionable. For additional evidentiary rules concerning authentication, see Miss. R. Evid. 901–903.~~

Rule 44 ~~The~~ methods of authentication ~~authorized by Rule 44~~ are additional and supplementary; they are not exclusive of other methods ~~made available by~~ under Mississippi law. A party ~~want~~desiring to introduce an official record in evidence has the option of proceeding under Rule 44 or ~~under any~~ other applicable provision of law.

Rule 44(a)(1) deals with two types of official documents: (1); ~~those kept within the state; the state~~ and (2) those kept ~~without of it the state~~. A copy of the document must be attested to need only as to (1) be attested in the former case, and certified under oath as to (2) in the latter.

Rule 44.1. ~~d~~Determination of foreign law. [~~e~~Qmitted].

Advisory Committee Notes

~~Under Miss. Mississippi Code Ann. etated §13-1-149, (1972) provides that courts must take judicial notice of ~~all~~ foreign law.~~

Rule 45. ~~Subpoena.~~

(a) ~~(a)~~ Form; ~~issuance~~ ~~suance~~.

(1) Requirements. Every subpoena must:

(A) ~~hall b~~Be issued by the clerk under ~~the~~ seal of the court;

(B) ~~, shall s~~State the name of the court and the title of the action; and

(C) ~~, and shall e~~Command each person to whom it is directed to do the following at a specified time and place:

(i) ~~a~~Attend and give testimony; or to

(ii) ~~p~~Produce and permit designated books, documents, electronically stored information, or tangible things in the person's possession, custody, or control and allow them to be inspected in and copying of designated books, documents, electronically stored information, or tangible things in the possession, custody or control of that person; or

(iii) ~~to p~~Allow inspection of the premises to be inspected, at a time and place therein specified.

(2) Combining or separating command to produce or allow inspection; specifying form of electronically stored information.

(A) A command to produce or to permit allow inspection may be joined with a command one to appear at a trial, or hearing, or at deposition. Or it may or may be issued separately.

(B) A subpoena may specify the form or forms in which for producing electronically stored information is to be produced.

~~(+)(3) Issued by clerk.~~ The clerk must ~~hall~~ issue a signed, sealed, but otherwise blank subpoena ~~signed and sealed, but otherwise in blank~~, to a requesting party. That party m requesting it, who s ~~hall~~ fill it in before service. ~~A command to produce or to permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately. A subpoena may specify the form or forms in which electronically stored information is to be produced.~~

(4) Issuing court. The court where the action is pending must issue a sSubpoena:

~~(A) s fTo appear at ttendance at a trial, or hearing, for attendance at a deposition; or~~

~~(2)(B) A subpoena to produce or allow inspection, and for production or inspection shall issue from the court in which the action is pending.~~

~~(C) Foreign litigation.~~

~~(i) ForIn the case of discovery to be taken in foreign litigation, a court clerk for the county where the discovery is to be taken must the subpoena shall be issued by a clerk of a court for the county in which the discovery is to a subpoena. be taken.~~

~~(ii) The foreign subpoena musthall be submitted to the court clerk of court in the county in whereieh discovery is soughtsought to be conducted in this state.~~

~~(3)(iii) When a party submits a foreign subpoena to a court clerk of court in this state, the clerk, in accordance with that court's procedure, musthall promptly issue a subpoena for service upon the the person stated in o which the foreign subpoena is directed. according to that court's procedure.~~

~~(5) A subpoena issued by a court clerk under Rule 45(a)(4)(A) must be issued and served in compliance with Mississippi Rules. In addition, Tthe Rule 45(a)(4)(A)(iii) subpoena must:~~

~~(A) subpoena under subsection (3) must iIncorporate the terms used in the foreign subpoena; and~~

~~(B) and it must eContain or be accompanied by the names, addresses, and telephone numbers of all counsel of record and unrepresented parties in the proceeding to which the subpoena relates.~~

~~and any party not represented by counsel.~~

~~(6) A subpoena issued by a clerk of court under subsection (3) must otherwise be issued and served in compliance with the rules of this state. A motion n application to the court for a protective order or to enforce, quash, or modify a subpoena issued by a court clerk of court under Rule 45(a)(4)(A) subsection (3) must comply with Mississippi the rules of this state and be submitted to the issuing court in the county in whereieh discovery is to be conducted.~~

~~(b) Examination Pplace of Examienation.~~

(1) Resident. A Mississippi resident ~~of the State of Mississippi~~ may be required to attend a deposition or to produce or allow ~~production or~~ inspection only:

(A) ~~i~~In the county where~~in~~ the person resides;

(B) In the county where the person ~~or~~ is employed or transacts ~~his~~ business in person; or

(C) ~~, or a~~At ~~such~~ other convenient place stated s-in s-fixed by an court order of the court.

(2) Nonresident. A ~~non-resident~~ nonresident of ~~M~~this-sissippi ~~ate~~ who is subpoenaed within ~~i~~this state may be required to attend only:

(A) ~~i~~In the county where~~in~~ the person is served; ~~;~~ or

(B) ~~a~~At ~~such~~ another convenient place stated is fixed in by an court order of the court.

(c) Service.

(1) Who. A subpoena may be served by:

(A) ~~a~~ sheriff; ~~, or by~~

(B) Sheriff's ~~is~~ deputy; ~~, or~~

(C) ~~by any o~~Other nonperson ~~who is not a party a~~ and is not less than 18 years of old ~~ager.~~

(2) Personal service. A witness must be personally served with a subpoena.

(3) Proof of service. The person who served the subpoena may endorse a return. ~~, and his return~~ The endorsed ~~the~~ return ~~on is~~ shall be prima facie proof of service. Or the ~~, or the~~ person served may acknowledge service in writing on the subpoena.

(A) Proof of service must be filed with the court clerk where the subpoena was issued a statement:

(i) Certified by the person who served the subpoena;

(ii) Stating the date and manner of service;

(iii) The county where it was served;

(iv) The name of the person who was served; and

(v) The name, address, and telephone number of the person who served it.

~~(4) Service of the subpoena shall be executed upon the witness personally. **Attendance fee.** Unless the court decides otherwise Except when excused by the court upon a showing of indigence, the party causing the subpoena to issue must shall pay tender to a non party nonparty witness the fee for one day's attendance plus mileage as allowed by law at the time the subpoena of is served. the~~

~~(A) But fee for one day's attendance plus mileage allowed by law. When the subpoena is issued on behalf of the State of Mississippi or a state n officer or agency, or agency thereof, fees and mileage do not need ~~not~~ be paid tendered in advance.~~

~~(1)~~

~~— Proof of service shall be made by filing with the clerk of the court from which the subpoena was issued a statement, certified by the person who made the service, setting forth the date and manner of service, the county in which it was served, the names of the persons served, and the name, address and telephone number of the person making the service.~~

~~**(d) (d) Protection of persons Subject to a Subpoenas.**~~

~~**When required. (1) In General.**~~

~~(1) On a timely motion, the issuing court ~~from which a subpoena was issued~~ must shall quash or modify ~~the a~~ subpoena if it:~~

~~(A) (i) Fails to allow reasonable time for compliance;~~

~~(B) (ii) Requires privileged or other protected matter to be disclosed when waiver or another exception does not apply of privileged or other protected matter and no exception or waiver applies; (iii)~~

~~(C) d Designates an improper place for examination;~~ or

~~(B)(D) (iv) s Subjects a person to undue burden or expense.~~

~~(2) **When allowed.** The court may order appearance or production only upon specified conditions ~~if~~ a subpoena:~~

~~(A) (i) Requires a trade secret or other disclosure of a trade secret or other confidential research, development, or commercial information to be disclosed; or (ii)~~

~~(B) r Requires ~~disclosure of~~ an unretained expert's opinion or information:~~

~~(i) n Not describing specific events or occurrences in dispute; and~~

~~(C)(ii)~~ Resulting from the expert's study made not at ~~the a party's~~ request of any party, the court may order appearance or production only upon specified conditions.

(3) ~~(2)~~ **Subpoenas for prProduction or Inspection.**

(A) **No appearance required.** Unless also commanded to appear for a deposition, hearing, or trial, a ~~A~~ person commanded to produce and ~~permit~~ allow inspection and copying of designated books, papers, documents, electronically stored information, or tangible things ~~inspection and copying of designated books, papers, documents, electronically stored information, or tangible things,~~ or to ~~permit-allow~~ inspection of premises does need not ~~need to~~ appear in person at the place of production ~~or~~ ~~or~~ inspection ~~unless~~ commanded by the subpoena to appear for deposition, hearing or trial.

(i) **Time for compliance.** Unless ~~the for good cause shown the~~ court shortens the time for good cause, a subpoena for production or inspection ~~must~~ shall allow ~~not at least less than 10~~ ten days for ~~the person upon whom it is served to comply~~ ing with ~~the~~ subpoena.

(ii) **Notice.** A copy of ~~all~~ the subpoenas ~~must~~ shall be served immediately ~~upon~~ each party ~~in accordance with~~ Rule 5.

(iii) **Protective order.** A subpoena commanding production or inspection ~~will~~ be subject to ~~the provisions of~~ Rule 26(d).

~~(A)~~

(B) **Objection.** Within 10 days after a subpoena is served ~~The person to whom the subpoena is directed may, within ten days after the service thereof or on or before the time on or before the time~~ specified in the subpoena for compliance ~~, if such time is less~~ shorter than ~~10~~ ten days after service, a person may serve ~~upon~~ the party or attorney ~~designated in~~ the subpoena a written objection to inspection ~~g~~ or copying part of any ~~or~~ all of the designated materials, ~~or to inspection g of~~ the premises.

(i) If a person objects, ~~objection is made~~, the party serving the subpoena ~~must~~ shall not be entitled to inspect and copy the material unless the issuing court orders otherwise. ~~except pursuant to an order of the court from which the subpoena was issued.~~

~~(B)~~(ii) Once a person objects, ~~the~~ party serving the subpoena may, ~~if objection has been made,~~ move to compel the production or

~~inspection at any time upon notice to the person served for an order to compel the production or inspection.~~

~~(C) **Avoiding unreasonableness and expense.** On a prompt motion on or before the time specified in the subpoena for compliance, the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may:~~

~~(i) **Quash or modify the subpoena** if it is unreasonable or oppressive; or~~

~~(ii) **Condition the denial of the motion upon the party serving the subpoena advancing e by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.**~~

~~(C)~~

~~(e) **Duties in Responding to a Subpoena.**~~

~~(1) **Producing Documents or Electronically Stored Information.**~~

~~— **(A) Documents.**~~

~~(A) A person responding to a subpoena to produce documents must:~~

~~(i) shall produce them as ~~they are~~ kept in the usual course of business; or~~

~~(ii) shall organize and label them to correspond with ~~the~~ categories in the demand.~~

~~(B) **Form for Producing Electronically Stored Information in unspecified form** ~~Not Specified.~~~~

~~(B) If a subpoena does not specify a form for producing electronically stored information, the responding person ~~responding~~ must produce ~~it~~ electronically stored information:~~

~~(i) In the form or forms in which it is ordinarily maintained; or~~

~~(ii) In a reasonably usable form or forms.~~

~~— **Electronically Stored Information in multiple forms. Produced in Only One Form.**~~

~~(C) The responding person ~~responding does not~~ need ~~not~~ produce the same electronically stored information in more than one form.~~

~~(D) Electronically stored information inaccessible Electronically Stored Information.~~

(D) The responding person does ~~responding need~~ not need to provide discovery of electronically stored information from sources ~~that~~ the person identifies as not reasonably accessible because of undue burden or cost.

(i) On a motion to compel discovery, motion for a protective order, or motion to quash, the responding person ~~responding~~ must show ~~that~~ the information is not reasonably accessible because of undue burden or cost.

(ii) If that showing is made, the court may ~~nonetheless still~~ order discovery from ~~tsue~~ the sources: (1) -if the requesting party shows good cause and (2); considering ~~the~~ Rule 26(b)(6) limitations ~~of Rule 26(b)(5)~~. The court may also specify conditions for the discovery, including those listed in Rule 26(b)(5).

(3) (2) Claiming Pprivilege or Pprotection.

(A) Information Wwithheld.

(A) When information subject to a subpoena is withheld on a claim that it is privileged or ~~subject to protection~~ as trial-preparation materials, the claim ~~must~~ shall be:

(i) Expressly made; ~~expressly~~ and

(ii) ~~shall be~~ supported by a description of the nature of the documents, communications, or things not produced ~~that is~~ sufficient to enable the demanding party to contest the claim.

Information Pproduced.

(B) If information produced in response to a subpoena is subject to a claim that it is of privileged or of protection as trial-preparation material, the producing person making the claim may notify the receiving any party that received the information of the claim and ~~the~~ basis for it. Once notified, the receiving party may promptly present the information to the court under seal for deciding whether it is privileged or protected. The producing person must preserve the information until the claim is resolved. In addition, once the producing person notifies the receiving party of the claim, the receiving ~~After being notified, a party~~ must:

(i) ~~must~~ Promptly return, sequester, or destroy the specified information and ~~any copies it has~~;

(ii) ~~must not~~ Not use or disclose the information until the claim is resolved; ~~and~~ must

(iii) ~~Take~~ Take reasonable steps to retrieve the information if the party disclosed it before being notified; ~~and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.~~

(f) Sanctions.

(1) Rule 26(f) applies ~~On a motion by of a party or of the person served with upon whom a subpoena for the production of books, papers, documents, electronically stored information, or tangible things is served and that upon a show is ng that tthe subpoena power is being exercised:~~

(A) ~~i~~ In bad faith; or

~~(B) In an unreasonable such manner as unreasonably to annoy, embarrass, or oppress the party or the person.~~

~~(2) On a motion as stated in Rule 26(f)(1) upon whom the subpoena is served, the court in whereieh the action is pending:~~

~~(A) Musthall quash order that the subpoena; be quashed and~~

~~(B) mMay issuer such further additional orders if required by as justice may require to curb an abuses of the powers granted under this rule; and~~

~~(C) . To this end, the court mMay impose an appropriate sanction.~~

~~(f)~~

~~(g) Contempt.— The court that issued a subpoena may deem the person served with it to be in contempt if the person Ffails ure by any person without adequate excuse to obey thea subpoena served upon him may be deemed a contempt of the court from which the subpoena issued. without adequate excuse.~~

~~(g)~~

[Amended effective ~~March 3/13/, 1991~~; ~~7Jul/y 1/, 1997~~; ~~7Jul/y 1/, 1998~~; amended effective ~~July 7/1/, 2009~~ to provide a procedure for foreign subpoenas.— This provision ~~shall takes~~ effect and ~~be is en-forced~~ from and after ~~July 7/1/, 2009~~; ~~it, and~~ applies to requests for discovery in cases pending on ~~July 7/1/, 2009~~; amended effective ~~July 7/1/, 2013~~ to authorize a subpoena for electronically stored information]

Advisory Committee Historical Note

Effective ~~March 3/13/, 1991~~, Rule 45(c) was amended to require the party causing a subpoena to issue to tender to a ~~non-party nonparty~~ witness the fee for one day's attendance plus mileage allowed by law.— Rule 45(e) was amended by deleting the provision for tendering the fee for one day's attendance plus the mileage allowed by law to certain witnesses when subpoenaed.— Rule 45(d) was amended to ~~provide require the clerk for the county where the deposition is taken to issue the subpoena that~~ when a deposition is to be taken ~~oin foreign litigation the subpoena shall be issued by the clerk for the county in which the deposition is to be taken.~~— 574-576 So. 2d XXIV-XXV (West Miss. Cas. 1991).

Effective ~~July 7/1/, 1997~~ a new Rule 45 was adopted.

Effective ~~July 7/1/, 2013~~, Rule 45 was amended to specifically authorize a subpoena to command the person to whom it is directed to produce and ~~permit allow~~ inspection and copying of electronically stored information. The same amendment also established a procedure to be used when privileged or trial-preparation material is inadvertently disclosed.

Advisory Committee Notes

A “foreign subpoena” means a subpoena issued under authority of a court of record ~~of~~ in a foreign jurisdiction. “Foreign jurisdiction” means a state other than ~~this state~~ Mississippi. ~~A L~~ Litigants in a foreign jurisdiction who ~~want~~ desire to obtain a subpoena to: (1) depose a Mississippi resident; ~~;~~ (2) to obtain records within Mississippi; ~~;~~ or (3) to inspect premises within Mississippi should follow the procedure established in the Uniform Interstate Depositions and Discovery Act. See Mississippi Code Ann. §§ ~~otated section~~ 11-59-1 to -15. ~~et. seq.~~ See also Miss. R. App. P. 46 ~~See the exclusion in M.R.A.P. 46(b)(11)(i) (request to have subpoena issued under this rule exception to requirements for~~ for a ~~Admission of F~~ foreign A ~~attorneys P~~ pro H ~~hac V~~ vice).

Rule 45(c)(1) regarding ~~advance~~ paying ment a to ~~non-party~~ ies of statutory witness fees and mileage in advance ~~is~~ complementary to Mississippi Code Ann. ~~otated~~ §§25-7-47 to through 25-7-59 (1972).

Rule 45(d)(2) is intended to ensure ~~that~~ be is no confusion as to whether a ~~nonperson not a~~ party with ~~n~~ control, custody, or possession of discoverable evidence may be compelled to produce ~~such it~~ evidence without being sworn as a witness and deposed. The force of a subpoena for production of documentary evidence generally reaches all documents under the control of the person ordered to produce it except as to ~~;~~ saving questions of privilege or unreasonableness.

Rule 46. – ~~Exceptions unnecessary.~~

(a) An exception ~~at any stage or step of the case or matter~~ is unnecessary to lay a foundation for review when:

(1) ~~ever a~~ matter has been called to the court's attention ~~of the court~~ by objection, motion, or otherwise; and

(2) ~~†~~The court has ruled ~~thereon~~ it.

(b) ~~However, But failing to object does not prejudice if~~ a party who has did not have an opportunity to object to a ruling or order at the time it is made, ~~the absence of an objection does not thereafter prejudice him.~~

Rule 47.—Jurors.

(a) Examination of Jurors.

- (1) The qualifications of aAny person called as a juror for ~~the trial of any cause~~ must~~shall~~ be examined under oath or ~~upon~~ affirmation ~~as to his qualifications.~~
- (2) The court may examine a prospective juror or ~~permit allow~~ the parties ~~or~~ ~~or their~~ attorneys to ~~conduct the examination of the prospective jurors or may itself edo~~ conduct the examination.
- ~~(a)~~(3) If n the court examines a prospective juror, ~~latter event, it hemu~~ court ~~shall~~ permit allow the parties ~~or~~ ~~of their~~ attorneys to supplement the examination by ~~with addifurtionalher~~ inquiry.

(b) Jury Sselection and of Jurors; Jury Sservice.—Jurors must~~shall~~ be drawn and selected for jury service according to as provided by statutory lawe.

(c) Challenges.—A party may challenge a juror for cause.

- (1) 12-person jury. In an actions tried before a 12-person jury, each side may exercise four peremptory challenges.
- (2) 6-person jury. In an actions tried before a 6-person jury, each side may exercise two peremptory challenges.
- (3) Multiple parties. Where multiple parties compose one or both sides ~~are composed of multiple parties~~, the court may allow challenges to be exercised separately or jointly. ~~The court, and~~ may also allow additional challenges. But in ; provided, however, in aall actions, the number of challenges allowed for each side must~~shall~~ be identical.

~~(e) Parties may challenge any juror for cause.~~

(d) Alternate Jurors.—~~The~~ A trial judge may exercise , int ~~he~~s discretion to, direct that one or two jurors in addition to the regular panel be called and empaneled to sit as alternate jurors.

- (1) In the order called, an ~~A~~alternate juror must replace a juror s, in the order in which they are called, shall replace jurors ww ho becomes unable or disqualified to perform duties, prior to the time the jury retires to consider its verdict.
- (2) An , become unable or disqualified to perform their duties. ~~A~~alternate juror s must be shall be drawn in the same manner as a regular juror and:

5

- ~~(A) shall have the same qualifications; shall~~
- ~~(B) be subject to the same examination and challenges for cause;~~
- ~~(C) shall take the same oath; and~~
- ~~(D) shall have the same functions, powers, facilities, and privileges as the regular jurors.~~

~~(3) Each party must~~ be allowed one peremptory challenge to alternate jurors in addition to those ~~in Rule 47 provided by subdivision (c) of this rule.~~

~~(A) The additional peremptory challenges provided for herein may be used only against an alternate juror.~~

~~(B) only, and other Rule 47(c) peremptory challenges, provided by subdivision (c) of this rule, may not be used against an alternate juror.~~

~~(d)~~

[Amended effective ~~June 6/24/, 1992.~~]

Advisory Committee Historical Note

Effective ~~June 6/24/, 1992~~, Rule 47 was amended to ~~state provide that that~~ the court may allocate peremptory challenges to a side, rather than ~~to a party and that, and,~~ in the case of multiple parties on a side, ~~the court~~ may allow ~~them peremptory challenges~~ to be exercised jointly or separately ~~and, also not allow may allow~~ additional peremptory challenges. 598-602 So. 2d XXIII (West Miss. Cas. 1992).

Advisory Committee Notes

~~Under~~ Rule 47(c), ~~provides that~~ each side may exercise peremptory challenges to prospective jurors. Under the liberal provisions of these rules for joinder of claims and parties, problems may arise where there are multiple parties comprising a side. ~~If in such cases,~~ it is implicit that the court may apportion the challenges among the parties comprising that side when they cannot agree on the apportionment themselves.

For additional guidelines concerning the method by which peremptory challenges ~~must~~ be exercised, see the Uniform Rules of Circuit and County Court Practice.

Rule 48. – Juries; and jury verdicts.

- (a) **Circuit and Chancery Courts.** – ~~A Juryors~~ in circuit and chancery ~~court~~ actions ~~must~~ consist of ~~12~~twelve persons, plus alternates ~~according s provided by to~~ Rule 47(d). – A verdict or finding ~~by~~of nine or more of the jurors ~~must~~ be taken as the ~~jury's~~ verdict or finding ~~of the jury~~.
- (b) **County Court.** – ~~A Juryies~~ in an action in county ~~courteourt actions~~ ~~must~~ consist of six persons, plus alternates ~~according to as provided by~~ Rule 47(d). – A verdict or finding ~~by~~ of five or more of the jurors ~~must~~ be taken as the ~~jury's~~ verdict or finding ~~of the jury~~.

Rule 49. – Verdict: general; General verdicts and special verdicts.

(a) **General ~~V~~erdicts.** – Jury determination must be by general verdict unless this rule states ~~Except as otherwise provided in this rule, jury determination shall be by general verdict.~~ – The remaining provisions of this rule should not be applied in simple cases where the general verdict will serve the ends of justice.

(b) Special ~~V~~erdict.

(1) The court may require a jury to return only a special verdict in the form of a special written finding ~~upon~~ each issue of fact. – In that event, the court may:

(A) ~~may s~~Submit ~~to the jury~~ written questions susceptible of categorical or other brief answer to the jury; or

(B) ~~may s~~Submit written forms of ~~the~~ several special findings which might properly be made ~~ou~~nder the pleadings and evidence; or

(C) ~~it may u~~Use ~~ansuch~~ other method of submitting the issues and requiring written findings ~~there~~ on them as it deems most appropriate.

(2) The court ~~must~~ shall explain and instruct ~~give to the jury such explanation and instruction~~ concerning the matter ~~thus~~ submitted under Rule 49(b)(1) as ~~may be~~ necessary to enable the jury to make ~~its~~ findings ~~upon~~ each issue.

(A) ~~Wh~~e ~~if~~ ~~in so~~ doing so, if the court omits any issue of fact raised by the pleadings or ~~by the~~ evidence, ~~each~~ party waives ~~theis~~ right to a jury trial by jury of the omitted issue ~~so omitted~~ unless the party demands that it be submitted to the jury before the jury retires ~~he demands its submission to the jury.~~

(i) If a party fails to do so, As to an issue omitted without such demand the court may make a finding as to the omitted issue; or

(b)(ii) ~~if the court~~ if the court ~~it does not make a finding, fails to do so, the court t~~ must ~~shall~~ be deemed to have made a finding done so in ~~in~~ according with ~~the to the~~ judgment on the special verdict.

(c) General ~~V~~erdict ~~A~~ccompanied by ~~A~~answers to ~~I~~nterrogatories.

(1) The court may exercise ~~, in its~~ discretion, ~~may to~~ submit to the jury:

- (A) Written interrogatories on one or more fact issues necessary to be decided for a verdict; and
 (B) to the jury, ~~to~~ Accompanying together with instructions for a general verdict.
- (2) ~~written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict.~~ The court ~~must~~ shall explain give such explanation or instruction as ~~may be~~ necessary to enable the jury both to make answers and to render a general verdict.
- (3) When the general verdict and the answers are harmonious, the appropriate judgment ~~upon~~ the verdict and answers ~~must~~ shall be entered.
- (4) When the answers are consistent with each other ~~yet~~ but one or more is inconsistent with the general verdict:
- (A) ~~A~~ judgment may be entered consistent with the answers, notwithstanding the general verdict; ~~or~~
 (B) ~~The~~ court may return the jury for further consideration of its answers and verdict; or
 (C) The court may order a new trial.
- (5) When the answers are inconsistent with each other, and when ~~and~~ one or more is likewise inconsistent with the general verdict, the court must not enter a judgment and instead shall not be entered, but the court shall:
- (A) ~~Return~~ the jury for further consideration of its answers and verdict; or
 (e)(B) ~~shall~~ Order a new trial.
- (d) Court to Provide Attorneys With Questions.**— Procedures in Rule 49(b) or 49(c) must In not bevent shall the procedures of subdivisions (b) or (c) of this rule be utilized unless the court provides all parties' attorneys with a copy of the written questions to be submitted to the jury, within a reasonable time before final arguments are made to the jury, ~~provides the attorneys for all parties a copy of the written questions to be submitted to the jury.~~

-[Amended effective ~~March 3/1/~~ 1989.]

(d)

Advisory Committee Historical Note

Effective ~~March 3/1/~~1989, Rule 49 was amended to provide for a ~~G~~general ~~V~~verdict ~~A~~accompanied by ~~A~~answers to ~~I~~interrogatories in jury trials.—536-538 So. 2d XXVI-XXVII (West Miss. Cas. 1989).

Advisory Committee Notes

Rule 49 authorizes three types of verdicts: (1)—a general verdict; (2); a special verdict; and (3), ~~and~~ a general verdict accompanied by answers to interrogatories. Trial judges have broad discretion to use special verdicts or general verdicts accompanied by answers to interrogatories. *W.J. Runyon & Son, Inc. v. Davis*, 605 So. 2d 38, 49 (Miss. 1992).

A general verdict is a single determination that disposes of the entire case; in contrast, ~~whereas~~ a special verdict requires the jury to decide specific factual issues. Special verdicts are appropriate in complicated cases where their use might assist in focusing the jury's attention on ~~the~~ specific, relevant ~~factua~~l issues or in other cases ~~in where~~ ~~ich~~ jury bias or prejudice might arise. *Thompson v. Dung Thi Hoang Nguyen*, 86 So. 3d 232, 240 (Miss. 2012). If the special verdict submitted to the jury omits a fact issue raised by the pleadings or evidence, the parties will be deemed to have waived their right to jury trial on ~~that~~such issue unless ~~one jury trial on such issue~~ is demanded before the case is submitted to the jury. In the absence of ~~such~~ a demand, the trial court may make the requisite factual findings.

A court may also submit a general verdict with written interrogatories about specific ~~factua~~l issues to the jury. If the general verdict and interrogatory answers are consistent, the court ~~must~~shall enter a judgment reflecting the verdict and answers. If the interrogatory answers are internally consistent yet ~~but~~ one or more answers is inconsistent with the general verdict, the court may: (1) enter judgment based ~~up~~on the answers despite their inconsistency with the general verdict; (2), ~~instruct~~ the jury to further consider its verdict and answers; ~~or~~ (3) order a new trial. When one of the interrogatory answers is inconsistent with another answer and also inconsistent with the general verdict, the court ~~must~~shall (1) instruct the jury to further consider its verdict and answers; ~~or~~ (2) order a new trial.

A special verdict or general verdict with interrogatories directing the jury to separate economic and non-economic damages is necessary if a defendant is going to seek application of statutory caps on non-economic damages. *See, e.g., Intown Lessee Assocs., LLC v. Howard*, 67 So. 3d 711, 723-24 (Miss. 2011). Likewise, Similarly, ~~aa~~ special verdict or a general verdict with interrogatories may be useful in a case ~~in which~~ ~~twhere~~ the law authorizes ~~fault to be allocated~~edion of fault among ~~the~~ parties ~~determined~~ ~~decided~~ to be at fault. A special verdict or a general verdict with answers to interrogatories may also be useful in cases involving novel or uncertain law. If the trial court is reversed on appeal, the

special verdict or interrogatory answers may make retrial unnecessary if they contain sufficient factual findings on the relevant issues.

Rule 50. Motions ~~s for a directed verdict, and for~~ judgment notwithstanding the verdict.

(a) Motion for ~~d~~Directed ~~V~~Verdict; ~~W~~When Made; ~~E~~Effect.

- (1) When.** A party may move for a directed verdict at the close of the evidence offered by an opponent.
- (2) Specificity.** A motion for a directed verdict must state the specific grounds for it.
- (3) Effect.**

(A) If ~~A~~a party's ~~who~~ ~~motion~~es for a directed verdict ~~at the close of the evidence offered by an opponent~~is denied, the party may offer evidence ~~in the event that the motion is not granted~~ without having reserved the right to do so and to the same extent as if the motion had not been ~~made~~filed.

(B) ~~Denying A~~a motion for a directed verdict ~~is which is not granted~~ is not a waiver of ~~a jury trial by jury eve~~ even though all parties ~~to the action have~~ moved for directed verdicts.

(a)(4) Jury assent not required. ~~A motion for a directed verdict shall state the specific grounds therefor. The A court~~ order ~~of the court~~ granting a motion for a directed verdict is effective without ~~the jury's any~~ assent ~~of the jury~~.

(b) Motion for ~~j~~Judgment ~~N~~Notwithstanding the ~~V~~Verdict; ~~p~~procedure.

- (1) Setting aside verdict and judgment.** A party may file a motion to have the verdict and a judgment entered on it set aside ~~N~~not later than ~~ten~~10 days after ~~the judgment is entered~~ ~~by~~ ~~o~~.
- (2) No verdict returned.** ~~If no verdict was returned, a party may file a motion for judgment within 10 f judgment in accordance with a verdict, a party may file a motion to have the verdict and any judgment entered thereon set aside; or if a verdict was not returned, a party, within ten days after the jury has been discharged, may file a motion for judgment.~~

(b)(A) If no verdict was returned, the court may direct the entry of judgment or ~~may~~ order a new trial.

(c) Conditional ~~R~~rulings ~~when motion is granted~~ on Grant of Motion.

(1) When granted. If a Rule 50(b) ~~the~~ motion for judgment notwithstanding the verdict ~~provided for in subdivision (b) of this rule~~ is granted, the court ~~must~~shall also rule on ~~the a~~ motion for a new trial, ~~if any, by:~~

(A) ~~by d~~Determining whether it should be granted if the judgment is ~~thereafter~~ subsequently vacated or reversed; ~~and~~

(B) ~~shall s~~Specifying the grounds for granting or denying the motion for ~~the a~~ new trial.

(2) No effect on finality of judgment. A court order conditionally granting a ~~If the~~ motion for a new trial as is stated in Rule 50(c)(1) ~~thus conditionally granted, the order thereon~~ does not affect the finality of the judgment.

(3) Conditionally granting a motion for new trial when judgment is reversed. If ~~n case~~ the motion for a new trial has been conditionally granted yet ~~and~~ the judgment is reversed on appeal, the new trial ~~must~~shall proceed unless the appellate court otherwise orders ~~has otherwise ordered~~.

(4) Effect of conditionally denying a motion for new trial on subsequent proceedings if judgment reversed. If ~~n case~~ the motion for a ~~new~~ trial has been conditionally denied, the appellee ~~on appeal~~ may assert error on ~~in~~ that basis ~~in an appeal~~.

(4)(A) Subsequent proceedings if judgment reversed. ~~denial; and i~~If the judgment is reversed on appeal, subsequent proceedings ~~must~~shall be ~~in~~ accordance to with the appellate court's ~~order of the appellate court~~.

(2)(5) Motion for a new trial if verdict set aside. The party whose verdict has been set aside on a motion for a judgment ~~notwithstanding the verdict~~ may file a Rule 59 motion for a new trial ~~pursuant to Rule 59~~ not later than ten 10 days after ~~entry of the a~~ judgment notwithstanding the verdict is entered.

(d) (d) Denying mial of Motion. ~~–~~ If the motion for judgment notwithstanding the verdict is denied, on appeal the prevailing party ~~who prevailed on the motion may~~, as appellee may assert, ~~assert~~ grounds entitling him to for a new trial ~~on if the event~~ the appellate court concludes ~~that~~ the trial court erred in denying the motion for judgment notwithstanding the verdict. ~~–~~ If the appellate court reverses the judgment, this rule ~~nothing in this rule does not~~ precludes it from determining that the appellee is entitled to a new trial or from directing the trial court to determine decide whether a new trial ~~must~~shall be granted.

[Amended effective ~~July 7/1/, 1994~~; ~~7/July-1/, 1997~~.]

Advisory Committee Historical Note

Effective ~~July 7/1/, 1997~~, Rule 50(b) was amended to clarify that Rule 50(b) motions must be filed not later than ~~ten-10~~ days after entry of judgment. 689-~~692~~ So. 2d XLIX (West Miss. Cas. 1997).

Effective ~~July 7/1/, 1994~~, Rule 50(b) was amended so that a motion for directed verdict is not a prerequisite to file a motion for judgment notwithstanding the verdict.—~~632-635~~ So. 2d XXX-XXXI (West Miss. Cas. ~~es~~ 1994).

[Adopted ~~August 8/21/, 1996~~; amended effective ~~July 7/1/, 1997~~.]

Advisory Committee Notes

Rule 50 applies only in cases tried to a jury with power to return a binding verdict. Rule 50(a) enables the court to ~~determine~~ decide whether there is ~~any~~ question of fact to be submitted to the jury and whether ~~any~~ verdict other than the one directed would be erroneous as a matter of law; it is ~~conceived-intended to be~~ a device to save ~~the~~ time and trouble involved in a lengthy jury determination.

Rule 50(b) differs from its federal rule counterpart in that a motion for a directed verdict is no longer a prerequisite to file a motion for a judgment notwithstanding the verdict. *New Hampshire Ins. Co. v. Sid Smith & Associates, Inc.*, 610 So. 2d 340 (Miss. 1992).

A Rule 50(b) motion for judgment notwithstanding the verdict ~~made pursuant to M.R.C.P. 50(b)~~ must be filed within 10 days after entry of the judgment. The trial court has no authority or discretion to extend the 10-day time period. Miss. R. Civ. P. 6(b)~~M.R.C.P. 6(b)~~. A motion for a judgment notwithstanding the verdict is not appropriate for cases tried by a judge sitting without a jury. See Miss. R. Civ. P. 59(e)~~M.R.C.P. 59(e)~~.

Rule 51. – Jury Instructions to jury.

(a) Procedural Instructions. – ~~At the beginning of a trial and during it~~ At the commencement of and during the course of a trial, the court may orally:

(1) ~~Give t~~ Give the jury cautionary and other instructions of law relating to trial procedure and, jury duty and function; and

~~(a)(2) the duty and function of the jury, and may a~~ Acquaint the jury generally with the nature of the case.

(b) Substantive Instructions. – Each party ~~to an action~~ may submit six instructions on the substantive law of the case. – ~~However~~ But, the court may ~~permit~~ allow the submission of additional instructions as justice requires. – The court may also instruct the jury on its own. ~~of its own initiative.~~

(c) When Submitted.

(1) Pretrial hearing. A party must submit proposed Instructions ~~proposed by parties shall be submitted~~ to the court at the Rule 16 pre-trial hearing ~~as provided by Rule 16.~~

(1)(2) No pretrial hearing. If ~~no n the event a~~ pre-trial hearing is ~~not~~ conducted, proposed instructions ~~must~~ shall be delivered to the court and counsel for all parties ~~no t~~ later than 24 twenty four hours prior to the time the action is scheduled to be tried.

(d) Identification. – Instructions will not be identified with a party except as stated in this rule.

(1) Court. The court’s substantive instructions ~~must~~ shall be numbered and prefixed with the letter *C*.

(2) Plaintiff. Plaintiff’s instructions ~~must~~ shall be numbered and prefixed with the letter *P*.

(3) Defendant. Defendant’s instructions ~~must~~ shall be numbered and prefixed with the letter *D*.

(4) Multiparty actions.

(A) In multi-party actions:

- ~~(i)~~ (i) ~~Roman numerals must~~ be used to identify ~~the instructions proposed by instructions of similarly aligned parties similarly aligned;~~
- ~~(ii)~~ (ii) ~~; the Roman numerals shall be p~~laced after the alphabetical designation of *P* or *D*; ~~, as the case may be, and~~
- ~~(iii)~~ (iii) ~~shall e~~Conform to the sequential listing of parties ~~plaintiff or defendant as~~ stated in the complaint.

~~(2)~~

~~Instructions shall not otherwise be identified with a party.~~

(e) Objections.

- (1) ~~A No~~ party may ~~not claim assign as error as to the~~ granting or ~~the d~~denying of an instruction unless ~~the party~~ objects ~~thereto at any time~~ before the instructions ~~is~~are presented to the jury.
- (2) ~~; o~~Opportunity ~~must~~shall be given to ~~make the~~ objection out of the ~~jury's~~ hearing of the jury.
- (3) All objections:

(A) ~~-Must~~shall be stated ~~into~~ the record;

(B) ~~-and shall state d~~Distinctly ~~state~~ the matter ~~to which~~ objected ~~to; n is made~~ and

(C) ~~t~~The grounds ~~therefor~~ ~~objecting.~~

~~(4)~~

(f) Written instructions~~Instructions to be Written.~~ ~~All instructions must be written unless Rule 51(a) states otherwise~~Except as allowed by Rule 51(a), all instructions shall be in writing.

~~(e)~~

(g) When r~~Read; A~~availability ~~to Counsel and Jurors.~~ ~~Instructions must be:~~

- (1) ~~Read~~ Instructions ~~shall be read by the court~~ to the jury at the close of all ~~the~~ evidence and prior to oral argument;
- (2) ~~; they shall be a~~Available to counsel ~~f~~or use during argument; ~~and;~~
- (3) ~~Instructions shall be e~~Carried by the jury into the jury room when ~~it~~retiring ~~es~~ to consider its verdict.

~~(d)~~

Advisory Committee Notes

It is the trial court's responsibility to properly instruct the jury. "[W]here under the evidence a party is entitled to have the jury instructed regarding a particular issue and where

the party requests an instruction which for whatever reason is inadequate in form or content, the trial judge has the responsibility either to reform and correct the proffered instruction . . . himself or to advise counsel on the record of the perceived deficiencies . . . therein and to afford counsel a reasonable opportunity to prepare a new corrected instruction.” *Mississippi Valley Silica Co., Inc. v. Eastman*, 92 So. 3d 666, 669 (Miss. 2012) (quoting *Byrd v. McGill*, 478 So. 2d 302, 303 (Miss. 1985)). See also UCCCR . See Rule 3.07 (-of the Uniform Circuit and County Court Rules for additional provisions governing jury instructions). For example instructions, see the “-See also MMississippi Plain Language Model Jury Instructions-Civil -of 2012” which were prepared by a commission appointed by the Mississippi Supreme Court. Although not formally adopted or approved by ~~the the~~ Mississippi Supreme Court ~~-of Mississippi~~, the “Plain Language Model Jury Instructions”instructions have been placed on its the Supreme Court website as an aid to trial judges and attorneys.

Rule 52. Findings by the court.

(a) EffectProcedure; effect.:

(1) In a nonjury action tried on the facts, the court may:

(A) ~~In all actions tried upon the facts without a jury the court m~~May find the facts specially;

(B) ~~State its conclusions of law separately; and , and s~~

(C) ~~Must~~hall do so upon a party's the request of any party to the suit or when these rules required it.

~~(a)(2) -Effect, by these rules, find the facts specially and state separately its conclusions of law thereon and A judgment must hall be entered accordingly. to the court's findings and conclusions of law.~~

(b) Amendment.

(1) When. ~~Upe~~The court may amend its findings, make additional findings, and amend the judgment ~~n~~on its own or a party's motion ~~of a party~~ filed not later than ~~ten~~10 days after the previous is entered. ~~entry of judgment or entry of findings and conclusions, or upon its own initiative during the same period, the court may amend its findings or make additional findings and may amend the judgment accordingly.~~

(2) Motion for new trial; challenging evidence sufficiency.

(A) The motion may accompany a Rule 59 motion for a new trial ~~pursuant to Rule 59.~~

~~(b)~~**(B)** When the court issues findings of fact ~~are made~~ in a nonjury actions ~~trie~~ tried by the court ~~without a jury~~, the question of the sufficiency of the evidence to support the findings may ~~thereafter~~ be raised subsequently regardless of whether a the party objected to the findings raising the question has made in court or an objection to such findings or has filed a motion to amend them, or a motion for judgment, or ~~a~~ motion for a new trial.

[Amended effective, July 7/1/, 1997.]

Advisory Committee Historical Note

Effective ~~July 7/1/, 1997~~, Rule 52(b) was amended to clarify that a motion to amend the trial court's findings must be filed not later than ~~ten~~ ten-10 days after entry of judgment. 689 So. 2d XLIX (West Miss. Cas. 1997).
[Adopted effective ~~July 7/1/, 1997~~.]

Advisory Committee Notes

Rule 52(a) requires a trial court, in ~~a noncases tried without a jury action~~, to make specific findings of fact and conclusions of law when ~~such findings and conclusions are~~ requested by a party or when ~~such findings and conclusions are~~ required by the Mississippi Rules of Civil Procedure. In the absence of a party's request ~~for such findings and conclusions~~ or a rule requiring ~~them, such findings and conclusions~~, the trial court "may" make ~~such~~ findings and conclusions. See *Gulf Coast Research Lab. ~~oratory~~ v. Amaraneni*, 722 So. 2d 530, 534-35 (Miss. 1998). The principal purpose of the rule is to provide the appellate court with a record regarding what the trial court did, —the facts it found, and the law it applied, ~~in part~~ly so ~~that~~ the appellate court can refrain from deciding issues of fact and ~~issues others the that were not decided by the~~ trial court did not decide. *Tricon Metals & Services, Inc. v. Topp*, 516 So. 2d 236, 239 (Miss. 1987). "In cases of any significant complexity the word 'may' in Rule 52(a) should be construed to read

'generally should.' In other words, in cases of any complexity, tried upon the facts without a jury, the ~~[C]~~ourt generally should find the facts specially and state its conclusions of law ~~... thereon~~." *Id.* In contested complex cases, a trial court's "failure to make findings of ultimate fact and conclusions of law will generally be regarded as an abuse of discretion." *Id.* "[F]indings of fact by the chancellor, together with the legal conclusions drawn from those findings, are required [in cases involving the division of marital assets]." *Ferguson v. Ferguson*, 639 So. 2d 921, 929 (Miss. 1994).

General findings of fact and conclusions of law may technically comply with Rule 52's requirements despite a party's request for specific findings of fact and conclusions of law. See *Lowery v. Lowery*, 657 So. 2d 817, 819 (Miss. 1995) (citing *Century 21 Deep South Prop. v. Corson*, 612 So. 2d 359, 367 (Miss. 1992)). If a trial court fails to make even general findings of fact and conclusions of law when specific findings of fact and conclusions of law are requested by a party, remand to the trial court may be necessary unless the evidence is so overwhelming so as to make findings unnecessary. See *Lowery, v. Lowery*, 657 So. 2d at 817, 819 ~~(Miss. 1995)~~.

A trial court has discretion to adopt a party's proposed findings of fact and conclusions of law. *Rice Researchers, Inc. v. Hiter*, 512 So. 2d 1259, 1266 (Miss. 1987). A trial court's

factual findings, even in cases where the trial court adopts verbatim a party's proposed findings of fact, will be reviewed for abuse of discretion. *Bluewater Logistics, LLC v. Williford*, 55 So. 3d 148, 157 (Miss. 2011). [See also Uniform Chancery Court Rule 4 \(regarding](#)

[See also the Uniform Chancery Court Rules regarding](#) findings by the court).

Rule 53. ~~Masters, referees, and commissioners.~~

(a) Definition; Appointment; and Compensation.

(1) Definition. ~~As used in these rules, the word “master” includes a referee, auditor, examiner, commissioner, and special commissioner.~~

(2) Appointment.

(A) ~~The court may appoint one or more persons in each county to be masters of the court.~~

(B) ~~, and the court in whereich any action is pending may appoint a special master therein it.~~

~~**(a)(3) Compensation.** As used in these rules, the word “Master” includes a referee, an auditor, an examiner, a commissioner, and a special commissioner. The A master ~~must~~hall receive a reasonable compensation for services rendered, as fixed by law or as allowed by the court. Reasonable compensation must be and taxed as in the costs and collected in the same manner as the clerk fees of the clerk.~~

(b) Qualification; exceptions.

(1) Qualification. ~~The A~~ master ~~must~~hall be an attorney at law, and authorized to practice law before all Mississippi courts ~~of the State of Mississippi.~~

(2) Exceptions.

(A) ~~However, i~~In extraordinary circumstances where ~~the a~~ finding to be ~~made~~ issued is of a complex, technical, non--legal nature, a person ~~not her than~~ an attorney who possesses ~~ing the~~ requisite qualifications of ~~a person one~~ skilled in the field, area, or subject of the inquiry may be appointed as a master.

~~**(b)(B)** A ; additionally, persons nother than attorneys may be appointed as a special commissioners to conduct judicially--ordered sales and partitions of real or personal property.~~

(c) Reference: When Made. ~~With the parties’ written consent of the parties, the court may refer any issue of fact or law to a master. Otherwise, a court must issue an order of reference shall be made only upon a showing that some exceptional condition requires it.~~

(d) Powers.

(1) Order appointing master. ~~The~~ An order of reference to ~~the a~~ master may:

- (A) ~~may s~~Specify or limit the master's is powers; ~~and~~
- (B) Fix the time and place for beginning and closing the hearing and filing the master's report; and
- (C) ~~may d~~Direct him the master:
 - (i) ~~t~~To report only upon particular issues;
 - (ii) ~~o~~r ~~t~~To do or perform particular acts; or
 - (iii) ~~o~~r ~~t~~To receive evidence and report only on itevidence only. ~~and~~

(2) Required powers.

(A) **Regulating proceedings.** ~~may fix the time and place for beginning and closing the hearing and for the filing of the master's report.~~ Subject to the specifications and limitations stated in the reference order, ~~the a~~ master has and must~~hall~~ exercise the power:

- (i) ~~t~~To regulate all proceedings in every hearing before the person~~m~~; and
- (ii) ~~and t~~To ~~do take~~ all actions and ~~take all~~ measures necessary or proper for the efficiently performiangee of his duties under according to the reference order.

(B) **Examination; reporting; execution.** A master must have the power to:

- (i) Administer oaths;
- (ii) Examine witnesses in cases pending in a court;
- (iii) Examine and report on all referred matters; and
- (iv) To execute all decrees when directed to do so.

(C) **Witnesses.** In addition, a Mmasters must ~~shall~~ have the power to direct a subpoena to be the issued ~~ance of subpoenas for a~~ witnesses to attend appear before them and to testify in any matter referred to the master or generally in the pending actionause.

(i) If any witness shall fails to appear, the master musthall proceed by process to compel the witness to attend and give evidence.

(3) Other powers. A master ~~He~~ may require evidence to be produced before the person regarding the production before him of evidence upon all matters embraced in the reference order, including the production of all applicable books, papers, vouchers, documents, and writings.

~~(d) applicable thereto. He shall have the power to administer oaths, to take the examination of witnesses in cases pending in any court, to examine and report upon all matters referred to him, and to execute all decrees directed to him to be executed.~~

~~(1) Masters shall have the power to direct the issuance of subpoenas for witnesses to attend before them to testify in any matter referred to them or generally in the cause. If any witness shall fail to appear, the master shall proceed by process to compel the witness to attend and give evidence.~~

(e) Proceedings.

(1) Certified copy. ~~When a reference is made, t~~The clerk musthall forthwith furnish a ~~the~~ master with a certified copy of the reference order. The certified copy of reference, which musthall constitute sufficient certification of the maister's authority.

(2) First meeting. When the master receives the reference order, unless otherwise stated in it, ~~Upon receipt thereof, unless the order of reference otherwise provides,~~ the master musthall forthwith set a time and place for the first meeting of the parties or ~~or their~~ attorneys.

(A) Time. The first meeting ~~must which is to~~ be held ~~in any event~~ within ~~ten~~ 10 days following the date of the order of the reference order.

(B) Notice. The master ~~reference and musthall~~ notify the parties or attorneys of the time and place for the first meeting. or their attorneys.

(3) Master's duty; reasonable diligence. The master has a ~~It is the~~ duty of the ~~master~~ to proceed with ~~all~~ reasonable diligence.

(A) On notice to the master and parties, a ~~Either party, on notice to the parties and master,~~ may move apply to the court for an order requiring the master to speed the proceedings and to make a his report.

(4) Failure to appear. If a party fails to appear at the appointed time and place appointed, the master may proceed ex parte or exercise, in his discretion, may to adjourn the proceedings to until a future subsequent date with y, giving notice of same of it o to the absent party.

~~(f)~~

(f) Statements of Account.—The court may direct order an accounting. to be taken in any cause in vacation or in term, and wWhen the master shall doubts as to the principles upon which the an account ing is shall be taken or as to the propriety of admitting any item of debit or credit claimed by either a party, the master may state those points in writing the points on which he shall doubt and submit thesame tfo r decision to the court in vacation or in term.

~~(g)~~

(g) Report.

~~(h)~~

(1) Contents; and Filing.

(A) Contents.

(i) ~~The A~~ master musthall prepare a report upon the matters submitted to him by the reference order.

(ii) ~~of reference and, i~~If required to make findings of fact and conclusions of law, the master musthall state them forth in the report.

(B) Filing. ~~TH~~e master musthall file the report with the court clerk.

(i) ~~of the court and, u~~Unless the reference order states otherwise directed by the order of reference, the master musthall file with it a transcript of the proceeding and of the original evidence in the original exhibits.

~~(1)(ii)~~ The clerk musthall forthwith mail notice the report has been filed to all parties notice of the filing.

(2) Acceptance; and Objections.—The court musthall accept the master's findings of fact unless manifestly wrong.

(A) Within ~~ten 10~~ days after of being served with notice the report has been filed, of the filing of the report a ny party may serve written objections thereto it upon the other parties.

(B) A motion plication to the court for action upon the report and upon objections thereto it musthall be by motion and upon notice as provided by according to Rule 6(d).

(C) After a hearing, ~~T~~the court ~~after hearing~~ may:

- (i) ~~a~~Adopt the report;
- (ii) ~~or m~~Modify it;
- (iii) ~~or m~~Partly or wholly ~~ay~~reject it; ~~in whole or in any part or may~~
- (iv) ~~r~~Receive ~~further additional~~ evidence; or
- (v) ~~may r~~Recommit it with instructions.

~~(2)~~

(3) ~~Stipulationg as to F~~findings. The effect of a master's report is the same regardless of whether the parties have consented to the reference. ~~But ; however,~~ when the parties stipulate that a master's finding of fact ~~mustshall~~ be final, only ~~a~~ questions of law arising ~~upoutn of~~ the report ~~musthall~~ ~~subsequently thereafter~~ be considered.

~~(3)~~

(4) ~~Draft R~~report. Before filing ~~his a~~ report, a master may submit a draft ~~thereof~~ to counsel for all parties for the purpose of receiving their suggestions.

~~(4)~~

(5) ~~(h)~~Bond; ~~W~~when ~~R~~required.

(A) The court may require a special commissioner appointed to conduct a sale of ~~any~~ property to give bond:

- (i) Under ~~in such~~ penalty and with sufficient sureties ~~as the court to be~~ approved ~~sd and as the court may~~ directs;
- (ii) ~~r~~Payable to ~~the State of~~ Mississippi; ~~and~~
- (iii) ~~e~~Conditioned ~~on the special commissioner to paying~~ according to law all money which may come into ~~the person's~~ hands as ~~such~~ special commissioner.

(B) The bond ~~musthall~~ be filed with the court.

(C) ~~For any~~ breach of ~~a bond its~~ condition, ~~the court may order~~ execution ~~may~~ ~~be issued on order of the court~~ for the sum due. ~~But However, when the~~ court clerk ~~of the court~~ or ~~the~~ sheriff is appointed to make a sale and the order does not provide for a bond, the official bond of the clerk or the sheriff ~~musthall~~ be held as security ~~in the premises~~.

[Amended effective ~~March 3/1/, 1989; April 4/13/, 2000.~~]

Advisory Committee Historical Note

Effective ~~April 4/13/~~2000, Rule 53(c) was amended to give the court discretion to appoint a master on the written consent of the parties without a showing of an exceptional condition.— 753-754—So. 2d. XVII (West Miss. Cas. 2000).

Effective ~~March 3/1/~~1989, Rule 53 was amended to correct a typographical error. 536-538 So. 2d XXVII (West Miss. Cas. 1989).

SECTION 7 ~~CHAPTER VII.~~ JUDGMENT

Rule 54. – Judgments; costs.

(a) **Definitions.** – ~~As used in these rules, a “Judgment” as used in these rules~~ includes a final decree and any order from which an appeal lies.

(b) Judgment Upon Multiple Claims; or Involving Multiple Parties.

(1) When an action presents more than one claim for relief ~~— is presented in an action,~~ whether as a claim, counter-claim, cross-claim, or third-party claim ~~—,~~ or when multiple parties are involved, the court may direct ~~the~~ entry of a final judgment as to one or more but fewer than all ~~of the~~ claims or parties only upon an expressed:

(A) ~~an expressed~~ Determination ~~that~~ there is no just reason for delay; and ~~upon an expressed~~

(B) ~~a~~ Direction for ~~the~~ entry of the judgment.

(2) In the absence of ~~such the expressed~~ determination and direction, regardless of how it is designated, any order or other form of decision; ~~however designated which adjudicates~~ fewer than all ~~of the~~ claims or ~~the~~ rights and liabilities of fewer than all ~~the~~ parties:

(A) ~~Does~~ not terminate the action as to ~~any of the~~ claims or parties; and

(B) ~~The~~ order or other form of decision is subject to revision ~~at any time~~ before ~~the~~ entry of a judgment adjudicating all ~~the~~ claims and ~~the~~ rights and liabilities of all ~~the~~ parties.

~~(b)~~

(c) Demand for Judgment.

(1) Default judgment. A default judgment ~~by default must~~ not be different ~~in kind~~ from or exceed ~~in the~~ amount of that requested ~~prayed for~~ in the demand for judgment.

(2) Judgment other than default. A final judgment other than one by default ~~Except as to a party against whom a judgment is entered by default, every final judgment must~~ grant ~~the~~ relief to the party in whose favor it is rendered as entitled by the proof and within the court’s jurisdiction to award ~~to which the party in whose favor it is rendered is entitled by the proof and which is within~~

~~the jurisdiction of the court to grant, even if the party has not demanded such relief in the party's pleadings. But a ; however, final judgment must~~hall not be entered for a monetary amount greater than that demanded in the pleadings or amended pleadings.

~~(e)~~

(d) Costs.

(1) Automatic; exceptions. ~~Unless a statute Except when expressly states otherwise or the court directs differently provision therefor is made in a statute, costs must~~hall be ~~awarded automatically Howed as of course~~ to the prevailing party ~~unless the court otherwise directs in all civil actions, including those, and this provision is applicable in all cases where in which~~ the State of Mississipp*i* is a party plaintiff ~~in civil actions as in cases of individual suitors.~~

(2) Security. ~~If n all cases where~~ costs are ~~awarded djudged~~ against any party who has given security for costs, ~~the court may order execution may be ordered to issue~~ against ~~tsuehe~~ security.

(3) When taxed. Costs may be taxed by the clerk on one day's notice.

(A) Review. ~~The court may review the clerk's action On a motions served within five days from when the clerk's notice of the receipt of notice of such~~ taxation ~~is received.~~

~~(d) , the action of the clerk may be reviewed by the court.~~

Advisory Committee Notes

Although it ~~is~~ not specifically described in the rule itself, ~~there are~~ several different stages ~~that~~ lead to the creation of a judgment that is final and appealable. It is important to differentiate the various steps ~~that are~~ part of this process.

The first distinction is between the adjudication, either by a decision of the court or a verdict of the jury, and the judgment that is entered ~~thereon it~~. The terms “decision” and “judgment” are not synonymous under these rules. The decision ~~consists is of~~ the court's opinion ~~which comprised nsists~~ of findings of fact and conclusions of law; the rendition of judgment is the pronouncement of that decision and the act ~~that giv~~ing*es* it legal effect.

A second distinction ~~that should be noted~~ is between the judgment itself and the “filing;” or the “entry;” of the judgment. A judgment is the final determination of an action and ~~thus~~ has the effect of terminating the litigation; it is “the act of the court.” “Filing” simply refers to the delivery of the judgment to the clerk for entry and preservation. The “entry” of the judgment is the ministerial notation of the judgment by the ~~court clerk of the court according pursuant~~ to Rules 58 and 79(a); however, it is crucial to the effectiveness of the

judgment and for measuring the time periods for appealing and the filing of various motions.

Rule 54(b) is designed to facilitate the entry of a final judgment upon one or more but fewer than all the claims or as to one or more but fewer than all the parties in an action involving multiple claims or multiple parties, so as to enable the non-prevailing party to perfect an appeal as of right of a final judgment. Absent a Rule 54(b) certification under Rule 54(b), any order in a multiple-party or multiple-claim action that does not dispose of the entire action is interlocutory, even if it appears to adjudicate a separable portion of the controversy. Given that separate, piecemeal appeals of interlocutory orders entered in a single action would usually be inefficient, parties may not appeal interlocutory orders as of right. A party may instead: (1) Instead, a party may request the trial court to certify such an interlocutory order as a final judgment pursuant according to Rule 54(b), in order to take so that an appeal of right may be taken pursuant to Miss. R. App. P. 4; or (2); or, alternatively, a party may petition the Mississippi Supreme Court for permission to appeal an interlocutory order pursuant under to Miss. R. App. P. 5.

If a party attempts to perfect an appeal as of right pursuant according to Miss. R. App. P. 4 as to of an order that does not dispose of all the claims between the parties, such the appeal will be dismissed for lack of jurisdiction unless the order appealed from has been properly certified properly as a final judgment pursuant under to Rule 54(b). See, e.g., *Williams v. Delta Reg'l Med. Ctr.*, 740 So. 2d 284 (Miss. 1999).

Rule 54(b) gives a trial court discretion to certify an interlocutory order as a final judgment if the court determines decides that “there is no just reason for delay” of the appeal. Rule 54(b) certification should be reserved for cases where in which delaying of the appeal might prejudice a party. See *Cox v. Howard, Weil, Laboussie, Friedrichs, Inc.*, 512 So. 2d 897, 900 (Miss. 1987). Courts should grant Rule 54(b) certification “cautiously in the interest of sound judicial administration in order to preserve the established judicial policy against piecemeal appeals.” See *Indiana Lumbermen’s Mut. Ins. Co. v. Curtis Mathes, Mfg. Co.*, 456 So. 2d 750, 752-53 (Miss. 1984).

If the trial court chooses to certify an interlocutory order as a Rule 54(b) final judgment pursuant to Rule 54(b), it must do so in a definite, unmistakable manner. If the reasons for the Rule 54(b) certification are not clear from the record, the trial court should setate forth its findings and reasons for certification. See *Cox*, 512 So. 2d at 900-01.

Rule 54(c) must be read in conjunction with Rule 8, which requires that every pleading asserting a claim to include a demand for the relief to which the pleader believes himself the party is entitled. As a result Thus, Rule 54(c) applies to any demand for relief,

whether ~~made-filed~~ by defendant or plaintiff or presented by way of an original claim, counter-claim, cross-claim, or third-party claim. A default judgment may not extend to matters outside the issues raised by the pleadings or beyond the scope of the relief demanded; a default judgment ~~in a default case that~~ awards relief that ~~either~~ is more than or different in kind from ~~that what is requested~~ originally requested is null and void, and a defendant may attack it collaterally in another proceeding.

Three related concepts should be distinguished in considering Rule 54(d): (1) These are costs; (2) , fees; and , and (3) expenses. “Costs” ~~refer to are those~~ charges ~~that~~ one party has incurred and is permitted-allowed to have an opponent reimbursed ~~by his opponent~~ as part of the judgment in the action. Although “costs” has an everyday meaning synonymous with “expenses,” taxable costs under Rule 54(d) ~~is are~~ more limited and represents ~~those~~ official expenses like , such as court fees, that a court will assess against a litigant. Costs almost always amount to less than a successful litigant’s total expenses in connection with a law suit, and their recovery is nearly always awarded to the successful party.

“Fees” are ~~those~~ amounts paid to the court or one of its officers for particular charges ~~that~~ generally ~~are~~ delineated by statute. Most Fees commonly ~~these~~ include ~~such~~ items like as filing fees, clerk or sheriff ’s ~~and sheriff’s~~ charges, and witnesses’ fees. In most instances, a costs award ~~of costs~~ will include reimbursement for ~~the~~ fees paid by the party in whose favor the cost award is ~~made~~ issued.

“Expenses” include all ~~the~~ expenditures actually ~~made~~ incurred by a litigant in connection with the action. Both fees and costs are expenses but by no means constitute all of them. Absent a special statute or ~~or~~ rule, or an exceptional exercise of judicial discretion, ~~such~~ items like as attorney’s fees, travel expenditures, and investigatory expenses will not qualify either as statutory fees or reimbursable costs. These expenses must be borne by the litigants.

Rule 55. Default.

- (a) **Entry.**— When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as ~~provided stated by in~~ these rules, ~~the clerk must enter the party's default when~~ and that fact is made to appear becomes apparent by affidavit or otherwise, ~~the clerk shall enter his default.~~
- (b) **Judgment.**— In all cases, ~~a the~~ party entitled to a default judgment ~~by default must~~ shall apply move to the court ~~therefor~~ one.
- (1) If the party against whom a default judgment ~~by default~~ is sought has appeared in the action, ~~the party or party's he (or if appearing by representative, his representative)~~ must ~~shall~~ be served with written notice of the application motion for judgment at least three days prior to the hearing ~~on itf such application.~~
- (A) ~~But the court may enter ; however, a default judgment judgment by default may be entered by the court~~ on the day the case is set for trial without ~~such~~ three days' notice.
- (B) The court may conduct a jury or nonjury hearing in its discretion or order references it deems necessary and proper if ~~If in order to enable~~ the court to enter judgment or to carry it into effect ~~it is necessary requires:~~
- (i) ~~to take a~~ An accounting;
- (ii) ~~or to d~~ Determining the amount of damages;
- (iii) ~~or to e~~ Establishing the truth of any allegation verment by evidence;
- or
- (b)(iv) ~~to make an i~~ Investigation ~~of any other matter, the court may conduct such hearing with or without a jury, in the court's discretion, or order such references as it deems necessary and proper.~~
- (c) **Setting Aside Default.**— ~~On a showing of For~~ good cause ~~shown~~, the court may set aside an entry of default. ~~And and,~~ if a default judgment ~~by default~~ has been entered, the court may likewise set it aside ~~in accordi~~ angee wito Rule 60(b).
- (d) **Plaintiffs, Counter-Claimants, and Cross-Claimants.**— The provisions of this rule apply whether the party entitled to ~~the a default~~ judgment ~~by default~~ is a plaintiff, ~~a third-party plaintiff, or a party who has pleaded a cross-claimant,~~ or counter-claimant.— In all cases a judgment by default is subject to the limitation ~~of in~~ Rule 54(c).

~~(e) Proof Required Despite Default in Certain Cases.~~—No judgment by default ~~must~~ be entered against a person under a legal disability or a party to a suit for divorce or annulment of marriage unless the claimant establishes ~~his~~ a claim or rights to relief by evidence. ~~But a , provided, however, that divorces on ground of or irreconcilable differences may be granted pro confesso according to provided by statute.~~

~~(e)~~

Advisory Committee Notes

~~Because Before a default judgment can be entered,~~ the court must have jurisdiction over the party against whom the judgment is sought before a default judgment can be entered, ; ~~which also means that~~ the party must have been effectively served with process.

Entry of default for failure to plead or otherwise defend is not limited to situations involving a failure to answer a complaint; but applies to ~~any of the~~ pleadings listed in Miss. R. Civ. P. 7(a).

The words “otherwise defend” refer to a Rule 12(b)(6) motion. *See* Miss. R. Civ. P. Rule 12(b). The defending party’s mere appearance ~~by the defending party~~ will not keep the party from being in default for failure to plead or otherwise defend; ~~B~~ but if the party appears and indicates a desire to contest the action, the court can exercise its discretion and refuse to enter a default judgment. This approach is in line with the general policy that whenever there is doubt whether a default judgment should be entered, the court ought to allow the case to be tried on the merits.

Rule 55(a) does not represent the only source of authority in these rules for the entry of a default that may lead to judgment. For example, Rule 37(b)(2)(C) and Rule 37(d) both provide for the use of a default judgment as a sanction for violation of the discovery rules.

When the prerequisites of Rule 55(a) are satisfied, the clerk must an enter a ry of default shall be made by the clerk without court any action being taken by the court. The clerk’s function, however, is not perfunctory. Before ~~the clerk can enter~~ a default can be entered, the clerk must examine ~~the filed~~ affidavits ~~filed~~ and be satisfied that the requirements of Rule 55(a) are met. *See* Miss. R. Civ. P. App. A, Forms 36, 37, and 38. These elements of default must be shown by affidavit or other competent proof.

The traditional requirement that “one had to file documents in or actually physically appear before a court” in order to make a Rule 55(b) appearance has been relaxed. If a party has made filed “an indicia of defense or denial of the allegations of the complaint,” ~~such~~

~~the~~ party is entitled to written notice of ~~the a application motion~~ for default judgment at least three days prior to the motion hearing ~~on such application~~. *Wheat v. Eakin*, 491 So. 2d 523, 525 (Miss. 1986). “[I]nformal contacts between parties may constitute an appearance.” *Holmes v. Holmes*, 628 So. 2d 1361, 1364 (Miss. 1993). The Mississippi Supreme Court has found an appearance when “the defendants either 1) served or sent a document to the plaintiff indicating in writing the defendant’s intent to defend, 2) filed a document with the court indicating in writing the defendant’s intent to defend, or 3) had counsel communicate to opposing counsel the defendant’s intent to defend.” *Amer. ~~ican~~ States Ins. Co. v. Rogillio*, 10 So. 3d 463, 467 (Miss. 2009).

A defendant who has filed an answer to the complaint but who has failed to file a timely answer to an amended complaint has entered an appearance for Rule 55(b) purposes. *See Chassaniol v. Bank of Kilmichael*, 626 So. 2d 127, 130-31 (Miss. 1993). A defendant whose attorney has written the plaintiff’s attorney in a divorce case and informed him that the defendant desired to settle the case if possible but intended to defend if no settlement could be reached has entered an appearance for Rule 55(b) purposes. *See Holmes v. Holmes*, 628 So. 2d 1361, 1364 (Miss. 1993). A defendant who has served a motion to set aside the entry of default has entered an appearance for Rule 55(b) purposes. *See King v. Sigrest*, 641 So. 2d 1158, 1162 (Miss. 1994). A defendant ~~,~~ cannot, however, enter a Rule 55(b) appearance before the case has been commenced. *See Kumar v. Loper*, 80 So. 3d 808, 814 (Miss. 2012). The defendant bears the burden of proving that an appearance has been ~~made~~filed. *See Dynasteel Corp. v. Aztec Indus., Inc.*, 611 So. 2d 977, 982 (Miss. 1992).

Although an appearance by a defending party does not immunize defendant from being in default for failure to plead or otherwise defend, it does entitle defendant to at least three days written notice of the ~~application motion to the court~~ for ~~the~~ entry of a default judgment ~~based on his default~~. This enables a defendant in default to appear at a subsequent hearing on the question of damages and contest the amount to be assessed ~~against that party~~. Damages must be fixed before an entry of default judgment, ~~and~~ ~~and~~ there is no estoppel by judgment until the judgment by default has been entered.

When a judgment by default is entered, it is treated as a conclusive and final adjudication of the issues necessary to justify the relief awarded and is given the same effect as a judgment rendered after a trial on the merits. A Rule 55(b) judgment ~~entered pursuant to Rule 55(b)~~ may be reviewed on appeal to the same extent as ~~any~~ other judgment; however, an order denying a motion for a default judgment is interlocutory and not appealable. Miss. R. Civ. P. 54(a).

After entry of default by the clerk, defendant has no further standing to contest the actual factual allegations of the plaintiff’s claim for relief. If a defendant ~~wishes~~ wants an opportunity to challenge plaintiff’s right to recover, a defendant’s only recourse is to show

good cause for setting aside the default under Rule 55(c), and ~~if that, failing that~~, to contest the amount of recovery.

After entry of default by the clerk, the court must conduct an evidentiary hearing on the record to ~~determine~~ decide damages in cases ~~in where which~~ the plaintiff seeks unliquidated damages. *Capitol One Services, Inc. v. Rawls*, 904 So. 2d 1010, 1018 (Miss. 2004). “[L]iquidated damages are set or determined by contract, while unliquidated damages are established by a verdict or award and cannot be determined by a fixed formula.” *Id.* (quoting *Moeller v. American Guar. & Liab. Ins. Co.*, 812 So. 2d 953, 959-60 (Miss. 2002)). ~~Pu~~Underrsuant to Miss. R. Civ. P. 54(c), a default judgment ~~shall~~ must only order the type of relief sought in the demand for judgment (i.e., money damages, equitable relief, etc.), and ~~shall~~ must not order money damages in an amount that exceeds the amount sought in the demand for judgment.

If a default has been entered, ~~but~~ a default judgment has not ~~yet been entered~~, the defending party may move to set aside the entry of default “[f]or good cause ~~shown~~” ~~pursuant to~~ Miss. R. Civ. P. 55(c). If a default judgment has been entered, the defendant may move to set aside the default judgment ~~pursuant to~~ Miss. R. Civ. P. 60(b). The standard for setting aside an entry of default ~~pursuant to~~ Miss. R. Civ. P. 55(c) is more liberal than the standard for ~~setting aside a default judgment doing so pursuant to~~ Miss. R. Civ. P. 60(b). See *King v. Sigrest*, 641 So. 2d 1158, 1162 (Miss. 1994).

Rule 56. – Summary judgment.

- (a) **For ~~C~~claimant.** – ~~After 30 days from when an action is commenced or after the adverse party serves a motion for summary judgment, a party seeking a declaratory judgment or to recover upon a claim, counter-claim, or cross-claim, or to obtain a declaratory judgment may, at any time after the expiration of thirty days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment or a partial summary judgment in that party's favor, upon all or any part thereof.~~
- (b) **For ~~D~~defending ~~P~~party.** – ~~A party against whom a claim, counter-claim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment or partial summary judgment in that party's favor as to all or any part thereof.~~

(c) Motion; and Proceedings Thereon.

- (1) **Notice.** The motion ~~must~~ be served at least ~~ten~~ 1 days before the hearing time date fixed for the hearing.
- (2) **Opposing affidavits.** ~~The adverse party prior to the day of the hearing must serve or serve~~ opposing affidavits with its response to the motion and in any event, not later than 10 days before the hearing.
- (3) **Summary judgment; partial summary judgment.**

~~(A) The Summary judgment or partial summary judgment sought must~~ be rendered ~~forthwith if the pleadings, depositions, interrogatory answers to interrogatories, and admissions, on file, together and with the affidavits in the record, if any, show that there is no genuine issue as to any material fact exists and that the moving party is entitled to a judgment as a matter of law.~~

~~(B) Although a genuine issue as to the amount of damages exists, A summary judgment, interlocutory in character, may be rendered on the issue of liability alone, although there is a genuine issue as to the amount of damages and is interlocutory in character.~~

~~(e) :~~

(d) Case Not Fully Adjudicated on Motion.

- (1) ~~If upon a motion under this rule a trial is necessary because judgment is not rendered on the whole case or for all requested relief, the court must if practicable at the motion hearing judgment is not rendered on the whole case or for all the~~

~~relief asked and a trial is necessary, the court at the hearing of the motion, ascertain what material facts exist without substantial controversy and what material facts are actually disputed in good faith by examining the pleadings and the evidence before it and by interrogating counsel.~~

~~(A) Afterwards, the court must issue an order specifying the facts that appear without substantial controversy, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in disputed controversy, and directing ordering such furadditionalther proceedings as are just in the action as are just.~~

~~(B) The trial must be conducted according to the order, including that Upon the trial of the action the facts so specified in it be shall be deemed established. (d) , and the trial shall be conducted accordingly.~~

(e) Form of Affidavits Affidavit form; Furtheradditional Ttestimony; Ddefense Rrequired.

(1) A Ssupporting or and oopposing affidavit must:

(A) -Musthall be made-based on personal knowledge;

(B) ,sThathe set forth such facts as would be admissible in evidence; and

(C) ,and shall Affirmatively show affirmatively that the affiant is competent to testify to the matter stated therein it.

(2) Sworn or certified copies of all papers or parts of papers thereof referred to in an affidavit musthall be attached to the affidavit thereto or served therewith it.

(3) The court may permit-allow an affidavits to be supplemented or opposed by depositions, interrogatory answers to interrogatories, or ofurther affidavits.

(4) When a motion for summary judgment is made-filed and supported as stated provided in this rule, an adverse party may not rest upon the mere allegations or denials of hin that party'ss pleadings.

(A) By affidavit or otherwise under this rule, the party's ,but his response, by affidavits or as otherwise provided in this rule, must stateet forth specific facts showing that there is a genuine issue for trial exists.

(B) If the party's response fails does not to do so-respond, summary judgment, if appropriate, musthall be entered against that partyim.

~~(e)~~

~~(f) **When Affidavits Are Unavailable.**— If it appears from the nonmovant’s affidavits that for reasons stated the nonmovant should appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify opposition to the motion, his ~~is opposition~~, the court may:~~

~~(1) Deny the motion; refuse the application for judgment or may or~~

~~(2) Order a continuance to permit allow the nonmovant to obtain affidavits to be obtained, take or depositions, or conduct other discovery; to be taken or discovery to be had or~~

~~(3) or Issue may make such an order as is just.~~

~~(f)~~

~~(g) **Affidavits Made in Bad Faith.**— If it appears to the court’s satisfaction should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are is presented under this rule in bad faith or solely for the purpose of delay, the court must ~~shall~~ forthwith order the offending party employing them to pay to the other party’s the amount of the reasonable expenses incurred because the affidavit was ~~high~~ the filing of the affidavits caused him to incur, including reasonable attorney’s fees. The court may also decide, ~~and any~~ offending party or attorney is ~~may be adjudged~~ guilty of contempt.~~

~~(h) **Costs, attorney’s fees to Prevailing Party When Summary Judgment Denied.**— If summary judgment is denied, the court must ~~shall~~ award to the prevailing party ~~the~~ reasonable expenses incurred in attending the motion hearing. The court of the motion and may award attorney’s fees, if it finds that the motion is without reasonable cause, ~~award attorneys’ fees~~.~~

~~(h)~~

Advisory Committee Notes

It is important to distinguish ~~between~~ among: (1) a Rule 56 motion for summary judgment; (2) a Rule 12(b)(6) motion to dismiss for failure to state a claim; and (3) a Rule 12(c) motion for judgment on the pleadings.

When ruling on a Rule 56 motion for summary judgment, the trial court may “pierce the pleadings” and consider extrinsic evidence like, ~~such as~~ affidavits, depositions, interrogatory answers, ~~to interrogatories~~, and admissions.

But ~~W~~hen ruling on a Rule 12(b)(6) motion to dismiss for failure to state a claim, the trial court may not “pierce the pleadings” and must ~~shall~~ only consider the allegations contained in the pleading asserting the claim. Likewise, ~~Similarly~~, wwhen ruling on a Rule

12(c) motion on the pleadings, the trial court ~~must~~ only consider the allegations within the pleadings.

If matters outside the pleadings are presented ~~to~~ and considered ~~by the trial court in connection with on~~ a Rule 12(b)(6) or (b)(c) motion ~~for judgment on the pleadings or a motion to dismiss for failure to state a claim~~, the trial court must treat the motion as one for summary judgment and give all parties a reasonable opportunity to respond accordingly. See Miss. R. Civ. P. 12(b) and (c); *Huff-Cook, Inc. v. Dale*, 913 So. 2d 988, 992 (Miss. 2005). If the ~~trial~~ court converts a Rule 12 motion into a Rule 56 motion, ~~it~~ ~~he~~ ~~trial~~ ~~court~~ must give ~~the~~ parties notice ~~of the of the conversion~~ ~~motion's changed status~~ and at least ~~10 ten~~ days' ~~notice~~ of its intent to conduct a summary judgment hearing on a certain date ~~certain~~. See *Dale*, 913 So. 2d at 988. A trial court's failure to give proper notice constitutes reversible error. See *Palmer v. Biloxi Reg'l Med. Ctr., Inc.*, 649 So. 2d 179, 183 (Miss. 1994).

A trial court ~~need~~ does not need to make findings of fact when ruling on a motion for summary judgment because "a Rule 56 summary judgment hearing is not a nonjury ~~n~~-action ~~'tried upon the facts without a jury'~~ so as to trigger Rule 52 applicability." See *Harmon v. Regions Bank*, 961 So. 2d 693, 700 (Miss. 2007). See also Uniform Rules of Circuit and County Court Practice. A Movant must do more than simply state a meritorious defense.

~~Pursuant to~~ Under Rule 78, oral hearing on a motion for summary judgment is not necessary where ~~such hearing is~~ dispensed with by court order or rule.

Rule 57.—Declaratory judgment.^s

(a) Procedure.—Courts of record within their respective jurisdictions may declare rights, status, and other legal relations regardless of whether of further relief is or could be claimed.—The court may refuse to render or enter order a declaratory judgment where such judgment, doing so if entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

~~(a)~~

(1) The procedure for obtaining a declaratory judgment must~~shall~~ be in accord~~in~~ and~~in~~ accord~~in~~ with~~in~~ these rules.

(2) ~~, and~~ The right to a jury trial by jury may be ~~demanded~~ under ~~the~~ circumstances and in the manner provided~~stated~~ in Rules 38 and 39.

(3) The existence of another adequate remedy does not preclude a judgment for declaratory relief in an ~~actions~~ where it is appropriate.

(4) The court may order a speedy hearing of an action for declaratory judgment and may advance it on the calendar.—The judgment in an action for declaratory relief ~~action~~ may be either affirmative or negative in form and effect.

(b) When Available.

(1) Any person interested under a deed, will, written contract, or other writing ~~s~~constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may:

(A) ~~, may~~ have ~~determined~~ any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise decided; and

(B) ~~o~~Obtain a declaration of rights, status, or other legal relations ~~there~~under it.

~~(1)~~

(2) A contract may be construed either before or after it is ~~there has been a~~ breached thereof. ~~If~~ Where an insurer has denied that ~~or indicated that it may deny that~~ a contract covers a party's claim against an insured or indicated it may do so, that party may seek a declaratory judgment construing the contract to cover the claim.

~~(2)~~

(3) Any person interested as or through an executor, administrator, trustee guardian, ~~or~~ other fiduciary, creditor, devisee, legatee, heir, next of kin, ~~or~~ cestui que trust in the administration of a trust, a decedent's ~~or of the estate of a decedent, an~~ infant, insolvent, or person under a legal disability, may have a declaration of rights or legal relations in respect thereto:

~~(3)~~

- ~~(A) to a~~Ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others;
- ~~(A) or,~~
- (B) ~~to d~~Direct the executors, administrators, or trustees, to do or abstain from doing a ny particular act in ~~their a~~ fiduciary capacity; or;
- ~~(C) to d~~Decide ~~etermine~~ any question arising in the administration of the estate or trust, including a questions of construction of wills and other writings.
- ~~(C)~~
- ~~(4) (4)~~ The enumeration in Rule 57 subdivisions (b1), (2) and (3) of this rule does not limit or restrict the exercise of the general powers stated in paragraph Rule 57(a) in any proceeding where declaratory relief is sought, ~~and in which a~~ judgment will terminate the controversy or remove an uncertainty.

[Amended effective July 7/27/, 2000.]

Advisory Committee Notes

A plaintiff may ask for a declaratory judgment either as sole relief ~~or or~~ in addition ~~t or~~ ~~auxiliary to~~ other relief; likewise, ~~and~~ a defendant may ~~similarly~~ counterclaim ~~therefor~~ one. As a result, Thus the court is not limited only to remedial relief for acts already committed or losses already incurred; it may either substitute or add preventive and declaratory relief. It may be sought ~~upon either~~ legal or equitable claims, and the right to a jury trial is fully preserved as in civil actions generally.

Absent extraordinary circumstances, the failure to order separate trials in order to avoid putting the issue of insurance before ~~the a~~ jury deciding which tries liability and damages ~~as~~ between the insured and the injured party will be deemed an abuse of discretion.

Rule 58. Entering of judgment.

~~Every A judgment must be set forth on a separate document which bears the title of “Judgment.”~~ ~~However~~ But, in the absence of prejudice to a party, a judgment ~~which~~ fully adjudicates the claim as to all parties and ~~which has been~~ entered as ~~stated~~ provided in Miss. R. Civ. P. 79(a) ~~must, in the absence of prejudice to a party,~~ have the force and finality of a judgment even ~~if it is~~ not properly titled. ~~A judgment must~~ be effective only when entered as ~~stated~~ provided in Miss. R. Civ. P. 79(a).

[Amended effective ~~July 7/1/, 2001~~; amended effective ~~May 5/27/, 2004~~ to address finality of improperly titled judgment.]

Advisory Committee Historical Note

Effective ~~July 7/1/, 1994~~, a new Rule 58 was adopted. ~~632-635 So. 2d XXXII-XXXIII~~ (West Miss. Cases 1994).

[Adopted ~~August 8/21/, 1996~~.]

Advisory Committee Notes

The “entry” of the judgment is the ministerial notation of the judgment by the clerk of the court ~~pursuant to~~ Rules 38 and 79(a); however, it is crucial to the effectiveness of the judgment and for measuring time periods ~~for~~ appeal and ~~to the~~ file ~~ing of~~ various motions.

Rule 59. New trials; amending ~~and~~ judgments.

(a) Grounds.

(1) A new trial may be granted to ~~a all or any of the parties and~~ on all or part of the issues:

(A) ~~(1) i~~n a jury n-action ~~in which there has been a trial by jury, for any of the reasons for whai eh new trials previously hasve heretofore been granted in an actions at law in Mississippi the courts; and~~

(B) ~~of Mississippi; and (2) i~~n a nonjury n-action ~~tried without a jury, for any of the reasons for which a rehearings previously hasve heretofore been granted in a suits in equity in Mississippi the courts.~~

~~(a) of Mississippi.~~

(2) On a motion for a new trial in a nonjury n-action ~~without a jury~~, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law, ~~or~~ make new findings and conclusions, and ~~direct order~~ the entry of a new judgment.

(b) Time for motion Time for Motion.— A motion for a new trial ~~musthall~~ be filed not later than ~~ten 10~~ days after the entry of judgment.

~~(b)~~

(c) Affidavit; time. Time for Serving Affidavits.— When a motion for new trial is based ~~upon an~~ affidavit, ~~it must s they shall~~ be filed with the motion. The opposing party has ~~ten 10~~ days after service to file opposing affidavits. ~~The 10-day , which~~ period may be extended for up to ~~twenty 20~~ days either by the court for good cause ~~shown or by~~ the parties' written stipulation. The court may ~~permit allow~~ reply affidavits.

~~(c)~~

(d) On Initiative of By the Court.

(1) Not later than ~~ten 10~~ days after entry of judgment, the court may ~~on its own initiative~~ order a new trial for ~~any~~ reason for which it might have granted a new trial on ~~a party's motion of a party.~~

(2) After giving the parties notice and an opportunity to be heard on the matter, the court may grant a timely motion for a new trial for a reason not stated in the motion.

(3) In either case, the court ~~musthall~~ specify in the order the grounds ~~therefor it.~~

~~(d)~~

(e) Motion to Alter or Amend a Judgment; time.— A motion to alter or amend the judgment ~~must~~ be filed not later than ~~ten~~ 10 days after entry of the judgment.

~~(e)~~

[Amended effective ~~July 7/1/, 1997.~~]

Advisory Committee Historical Note

Effective ~~July 7/1/, 1997~~, Rule 59(b), (c) and (e) were amended to clarify that motions for a new trial and accompanying affidavits, and that motions to alter or amend a judgment, must be filed not later than ~~ten~~ 10 days after entry of judgment. 689 So. 2d XLIX (West Miss. Cases).

Advisory Committee Notes

~~In~~ In a jury trials, the trial court may grant a new trial based ~~upon~~: (1) a prejudicial error by the court in ~~the~~ admittsiong or ~~excludsiong of~~ evidence; (2), ~~an error in the~~ jury instructions; (3); prejudicial comments by the judge or attorneys; (4), ~~a finding that~~ the verdict is against the great weight of the evidence; (5), ~~a finding that~~ the jury's verdict is the result of passion, prejudice, or bias; or (6), ~~or any~~ grounds upon which new trials were granted in actions at law prior to the adoption of these rules. A trial court's ruling on a motion for new trial is reviewed for abuse of discretion.

Although “[i]t is clearly better practice to include all potential assignments of error in a motion for new trial, . . . ~~ww~~ when the assignment of error is based on an issue which has been decided by the trial court and duly recorded in the court reporter's transcript, such as the omission or exclusion of evidence, [the appellate court] may consider it regardless of whether it was raised in the motion for new trial.” See *Kiddy v. Lipscomb*, 628 So. 2d 1355, 1359 (Miss. 1993).

The rule does not authorize a motion for reconsideration after entry of judgment. If a motion is mislabeled as a motion for reconsideration and was filed within ~~ten~~ 10 days after the entry of judgment, the trial court should treat ~~such the~~ motion as a post-trial motion to alter or amend the judgment ~~pursuandert~~ to Miss. R. Civ. P. 59(e). *Boyles v. Schlumberger Tech. Corp.*, 792 So. 2d 262, 265 (Miss. 2001). A party moving to alter or amend the judgment “must show: (i) an intervening change in controlling law, (ii) availability of new evidence not previously available, or (iii) need to correct a clear error of law to prevent manifest injustice.” See *Brooks v. Robertson*, 882 So. 2d 229, 233 (Miss. 2004). A motion to alter or amend the judgment is within the trial court's discretion. When a motion is mislabeled as a motion for reconsideration, does not state that it was brought ~~pursuandert~~

~~to~~ Rule 59, and was filed more than ~~ten-10~~ days after the entry of the final judgment in the case, the trial court should treat ~~sueth~~e motion as one for relief from a judgment ~~pursuandert~~e ~~to~~ Rule 60(b). *See Carlisle v. Allen*, 40 So. 3d 1252, 1260 (Miss. 2010).

A motion for new trial or a motion to alter or amend the judgment ~~made pursuant to~~ Miss. R. Civ. P. 59 must be filed within 10 days after entry of the judgment. The trial court has no authority or discretion to extend the 10-day time period. Miss. R. Civ. P. 6(b). A timely Rule 59 motion for a new trial or to alter or amend the judgment tolls the time ~~in which to for filing~~e a notice of appeal; the ~~thirty30~~30-day time period ~~in which to for filing e~~e a notice of appeal runs from the entry of the order disposing of the post-trial motion. Miss. R. App. P. 4(c). If not filed within ~~ten-10~~ days after entry of the judgment, a Rule 59 motion for a new trial, to alter or amend the judgment, or for reconsideration does not toll the time period ~~in which to for filing e~~e a notice of appeal. Miss. R. App. P. 4(d); *but see Wilburn v. Wilburn*, 991 So. 2d 1185, 1190-191 (Miss. 2008) (~~C~~court refused to address ~~the~~ timeliness of appellant's notice of appeal even though appellant filed a motion to reconsider more than ~~ten-10~~ days after entry of judgment and did not file a notice of appeal within ~~thirty-30~~ days after ~~the~~ entry of judgment ~~and,~~ noted~~ing~~ that the appellee did not object to the untimely motion to reconsider.)

A Rule 60(b) motion for relief from a final judgment ~~pursuant to M.R.C.P. 60(b)~~ is different from ~~a-a Rule 59(e)~~ motion to alter or amend the judgment ~~pursuant to M.R.C.P. 59(e)~~ in that a change in the law after entry of final judgment is not an “extraordinary or compelling circumstance” warranting relief ~~pursuandert to~~ Miss. R. Civ. P. 60(b). *See Regan v. S. Cent. Reg'l Med. Ctr.*, 47 So. 3d 651, 655 (Miss. 2010). Relief ~~pursuandert to~~ Rule 60(b)(6) is reserved for cases involving “exceptional and compelling circumstances” in light of the desire to achieve finality in litigation. *See id.*

Rule 60. Relief from judgment or order.

(a) **Clerical Mistakes.**— ~~On its own or a party's motion, the court may correct a clerical mistakes or error arising from oversight or omission in a 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 after on its own initiative or on the motion of any party and after such notice, if ordered and any, as the court orders up until the time the court clerk transmits the record is transmitted by the clerk of the trial court to the appellate court, and the action remains pending in the appellate court therein. Otherwise, Thereafter, a such mistake or errors may be so corrected only with on the appellate court's order leave of the appellate court.~~

(b) Mistakes, other basis for relief; time for motion; Inadvertence; Newly Discovered Evidence; Fraud, etc.

(1) On a motion and ~~upon such just~~ terms ~~as are just~~, the court may relieve a party ~~or party's or his~~ legal representative from a final judgment, order, or proceeding for the following reasons:

~~(b)~~

~~(1)(A)~~ **(A)** An adverse party's ~~f~~fraud, misrepresentation, or other misconduct ~~of an~~ adverse party;

~~(2)(B)~~ **(B)** a ~~A~~ccident or mistake;

~~(3)(C)~~ **(C)** ~~n~~Newly discovered evidence which by due diligence could not have been discovered ~~in time to move for a new trial under Rule 59(b);~~

~~(4)(D)~~ **(D)** ~~t~~The judgment is void;

(E) ~~t~~The judgment has been satisfied, released, or discharged; ~~or~~

(F) a ~~A~~ prior judgment ~~upon~~ which **the judgment** ~~it~~ is based has been reversed or otherwise vacated;

~~(5)(G)~~ **(G)** ~~or i~~It is no longer equitable that the judgment should have prospective application; **or**

(H) a ~~A~~ny other reason justifying relief from the judgment.

~~(6)~~

(2) Time. The motion ~~must~~ ~~hall~~ be ~~made~~ ~~filed~~ within a reasonable time. ~~For; and for~~ reasons **in Rule 60(b)(1)(A), (2B) and (3C), the motion must not be filed not** more than six months after the judgment, order, or proceeding was entered or taken.

(3) Finality. A **Rule 60** motion ~~under this subdivision~~ does not affect the finality of a judgment or suspend its operation.

(4) Leave from appellate court. Leave to make the motion ~~need does~~ not need to be obtained from the appellate court unless the record has been transmitted ~~to the appellate court and~~ the action remains pending therein it.

(5) Independent action. This rule does not limit ~~the a court's~~ power ~~of a court~~ to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court.

(6) Writs abolished. Writs of coram nobis, coram vobis, audita querela, ~~and~~ bills of review, and bills in the nature of a bill of review, are abolished. The procedure for obtaining any relief from a judgment ~~must~~ be by motion as prescribed in these rules or ~~by~~ an independent action and not otherwise.

(c) ~~(e)~~ Reconsideration of transfer order. An order transferring a case to another court will become effective ~~ten (10)~~ days following the entry date ~~of entry of the order~~. Any motion for reconsideration of the transfer order must be filed prior to the expiration of the 10-day period, ~~for and which~~ no extensions may be granted.

(1) If a motion for reconsideration is filed, all proceedings will be stayed until such time as the motion is decided. ~~But ruled upon; however,~~ if the ~~transferor~~ court fails to rule on the motion for reconsideration within ~~thirty (30)~~ days of ~~the date of filing~~, the motion ~~must~~ be deemed denied.

[Amended effective ~~July 7/1/, 2008~~, to provide for reconsideration of transfer orders entered on or after that date.]

Advisory Committee Notes

The trial court may grant relief from a judgment or order to correct clerical errors ~~pursuant to~~ Rule 60(a), or for other reasons enumerated in Rule 60(b). The trial court may correct a clerical errors at any time. ~~But~~ if the case is on appeal and the trial court clerk has transmitted the record to the appellate court, the trial court must obtain leave from the appellate court before correcting any clerical mistakes. A Motions for relief from a judgment or order based ~~upon~~ one of the reasons enumerated in Rule 60(b) must be made filed within a reasonable time, and in some cases, not more than six months after the judgment or order was entered.

Rule 60(a) only authorizes the trial court to correct clerical errors; it does not authorize any changes to the judgment that are substantive and change the effect or intent of the original judgment. *See Whitney Nat'l Bank v. Smith*, 613 So. 2d 312, 316 (Miss. 1993).

When ruling upon a Rule 60(b) motion, the trial court should balance the litigant's interest in a resolution on the merits of the motion with the desire to achieve finality in litigation. *See Stringfellow v. Stringfellow*, 451 So. 2d 219, 221 (Miss. 1984). Rule 60(b) motions that attempt to merely relitigate the case should be denied. *Id.*

A party moving for Rule 60(b)(1)(A) relief ~~pursuant to Rule 60(b)(1)~~ based upon fraud, misrepresentation or other misconduct of an adverse party must do so within six months after entry of the judgment and ~~must~~ prove the fraud, misrepresentation, or other misconduct by clear and convincing evidence. *See Stringfellow id.*, 451 So. 2d at 221. Relief from a final judgment based upon fraud upon the court may be sought ~~pursuant to~~ Rule 60(b)(5). *See In re Estate of Pearson*, 25 So. 3d 392, 395 (Miss. Ct. App. 2009). “[R]elief based on ‘fraud upon the court’ is reserved for only the most egregious misconduct, and requires a showing of ‘an unconscionable plan or scheme which is designed to improperly influence the court in its decision.’” *Id.* (citing *Wilson v. Johns-Manville Sales Corp.*, 873 F.2d 869, 872 (5th Cir. 1989)).

A party moving for Rule 60(b)(1)(B) relief ~~pursuant to Rule 60(b)(2)~~ based upon an accident or mistake must do so within six months after entry of the judgment. A Rule 60(b)(~~2~~)(B) motion will only be granted upon a showing of exceptional circumstances. Generally, “neither ignorance nor carelessness on the part of an attorney will provide grounds for relief.” *See Stringfellow*, 451 So. 2d at 221.

A party may move to set aside a default judgment ~~pursuant to~~ Rule 60(b)(2)(B). When ruling on ~~such a~~ motion, the trial court may consider: (1) whether the default was caused by excusable neglect or a bona fide technical error; (2) whether the claimant will suffer prejudice if the default judgment is set aside; and (3) whether the defaulting party has a colorable defense to the merits. *See State Highway Comm’n of Miss. v. Hyman*, 592 So. 2d 952, 955 (Miss. 1991). A Movant must show the specific facts of the meritorious defenses by affidavit or other sworn form of evidence. *American Cable Corp. v. Trilogy Commc’unications, Inc.*, 754 So. 2d 545 (Miss. 2000).

A party moving for Rule 60(b)(1)(C) relief ~~pursuant to Rule 60(b)(3)~~ based upon newly discovered evidence must do so within six months after entry of the judgment. To justify relief, the evidence: (i) must have been in existence at the time of trial; (ii) could not have been discovered by due diligence prior to the expiration of the ~~ten~~10-day period ~~in which for filing~~ a Rule 59 motion for new trial ~~could have been filed~~; (iii) must be material and not cumulative; and (iv) must be of a such character ~~that will as to~~ probably produce a different result in the event of a new trial or ~~be of such character as to~~ require a different ruling on summary judgment. *See January v. Barnes*, 621 So. 2d 915, 920 (Miss. 1992).

A party may move to set aside a void judgment ~~pursuant to~~ Rule 60(b)(~~4~~)(D) more than six months after entry of the judgment if the delay in moving for relief was reasonable. *See Ladner v. Logan*, 857 So. 2d 764, 770 (Miss. 2003). A judgment is void if the trial court lacked jurisdiction over the subject matter or the parties or acted in a manner inconsistent with due process of law. *See Bryant, Inc. v. Walters*, 493 So. 2d 933, 938 (Miss. 1986).

A party may move to set aside the judgment ~~pursuant to~~ Rule 60(b)(~~5~~)(E), (F), or (G) if the judgment has been satisfied, released or discharged or a prior judgment upon which it is based has been reversed or otherwise vacated. Rule 60(b)(~~5~~)(E), (F), or (G), however, “does not authorize relief from a judgment on the ground that the law applied by the court in making its adjudication has been subsequently overruled or declared erroneous in another and unrelated proceeding.” *See Regan v. S. Cent. Reg’l Med. Ctr.*, 47 So. 3d 651, 655 (Miss. 2010) (~~former Rule 60(b)(5)~~).

A party may move to set aside the judgment ~~pursuant to~~ Rule 60(b)(~~6~~)(H) if there are “extraordinary and compelling” circumstances justifying relief. When ruling on a Rule 60(b)(~~6~~)(H) motion, the trial court may consider the following factors: “(1) [t]hat final judgments should not lightly be disturbed; (2) that the Rule 60(b) motion is not to be used as a substitute for appeal; (3) that the rule should be liberally construed in order to achieve substantial justice; (4) whether the motion was ~~made~~ filed within a reasonable time; (5) [omitted factor relevant only to default judgments]; (6) whether if the judgment was rendered after a trial on the merits—the movant had a fair opportunity to present his claim or defense; (7) whether there are intervening equities that would make it inequitable to grant relief; and (8) ~~any~~ other factors relevant to the justice of the judgment under attack.” *See Carpenter v. Berry*, 58 So. 3d 1158, 1162 (Miss. 2011).

The trial court has discretion to grant or deny a Rule 60(b) motion, unless the judgment is void—, in which case the court is required to set it aside ~~the judgment~~. *See Sartain v. White*, 588 So. 2d 204, 211 (Miss. 1991).

Motions for relief under this rule are filed in the original action, —, rather than as an independent action.

Rule 60 motions for relief from a judgment filed no later than ~~ten~~ 10 days after entry of judgment toll the time period ~~for filing an in which an appeal may be taken~~. *Miss. R. App. P.* 4(d). Rule 60 motions filed more than ~~ten~~ 10 days after entry of judgment do not toll the time period ~~in for filing an which an appeal may be taken~~. A Rule 60(b) motion for relief from a judgment does not automatically stay execution ~~upon~~ the judgment. The trial court

has discretion to stay execution ~~up~~on the judgment while a Rule 60(b) motion is pending.
Miss. R. Civ. P. 62(b).

Rule 61. Harmless error.

(a) Not a basis for error; exception.

(1) Unless refusing to do so appears inconsistent with substantial justice, none of the following is a basis for granting a new trial; setting aside a verdict; or vacating, modifying, or otherwise disturbing a judgment or order:

(A) An error in either the admission or the exclusion of evidence;

(B) An error and no error in any ruling or order; or

(C) or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice.

(2) At every stage, the court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect a party's substantial rights of the parties.

|

Rule 62. – Staying of proceedings to enforce a judgment.

(a) Automatic Stay; Exceptions. – Except as stated herein this rule, ~~or as otherwise provided~~ by statute, ~~or court by order of the court~~ for good cause shown, no execution ~~shall~~ may be issued ~~upon~~ a judgment, and no enforcement ~~nor shall~~ proceedings may be taken ~~for its enforcement~~ until the expiration of 10 ~~ten~~ days after ~~the later of it is entered or s entry or the disposition of a motion for a new trial is disposed of~~ whichever is later.

(1) Injunction; receivership.

(A) ~~But Unless otherwise ordered by the court~~ orders otherwise, an interlocutory or final judgment in an action for an injunction or ~~in a receivership action~~ must ~~shall~~ not be stayed after it is entered, even if an appeal is taken, ~~during the period after its entry and until an appeal is taken or during the pendency of an appeal.~~

(B) ~~Rule 62(c)~~ The provisions of subdivision (c) of this rule governs the suspending, modifying, restoring, or granting ~~of an injunction~~ during if the pendency of an appeal is taken.

(b) Stay on Motion. – In its discretion and on such proper conditions for the adverse party's security ~~of the adverse party as are proper~~, the a court may stay the execution of a judgment or enforcement ~~any~~ proceedings ~~to enforce a judgment~~ pending the disposition of the following:

(1) a A Rule 59 motion to alter or amend a judgment;

(2) ~~made pursuant to Rule 59, or of a A Rule 60(b)~~ motion for relief from a judgment or ~~order~~ order;

(3) ~~A Rule 50(b) made pursuant to Rule 60(b), or of a~~ motion ~~to set aside a verdict made pursuant to Rule 50(b);~~ or

(4) ~~of a A Rule 52(b) motion for to amendment to the~~ or make additional findings or for additional finding ~~made pursuant to Rule 52(b).~~

(b)

(c) Injunction Pending Appeal. – ~~When~~ an interlocutory or final judgment ~~has been rendered~~ granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction while the judgment is appealed ~~during the pendency of an appeal from such judgment upon such terms as tfor~~ bond or ~~otherwise as it considers~~ proper terms ffor the security of the adverse party's rights of the adverse party. – The court's power ~~of the court~~ to issumake ~~such~~ an order is not terminated by ~~the taking of the~~ appealing.

(e)
(d) Stay Upon Appeal.— Unless Rule 62(a) states otherwise, ~~W~~when an appeal is taken, the appellant may obtain a stay if and, ~~and as~~ authorized by statute or otherwise, ~~may obtain a stay subject to the exceptions contained in subdivision (a) of this rule.~~

~~(d)~~
(e) [Omitted].

~~(e)~~
(f) Stay in Ffavor of the State of Mississippi or a state Agency Thereof.— A court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal ~~When an appeal is taken by the State of Mississippi, its officers, or an officer or its agencies y thereof or on an appeal by directed ion of by a ny department of the state government of same and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required of the appellant.~~

(g) Appellate court's Ppower of Appellate Court Nnot Limited.— ~~The provisions in this r~~Rule 62 does not limit the power of an appellate court, judge, or justice y power of an appellate court or of a judge or justice thereof to:

(1) ~~s~~Stay proceedings during while an appeal is pending;

(2) ~~the pendency of an appeal or to s~~Suspend, modify, restore, or grant an injunction while an appeal is pending; during the pendency of an appeal or

(3) ~~to m~~Issue any appropriate order appropriate to preserve the status quo or the the effectiveness of the judgment subsequently to be entered.

~~(g)~~
(h) Stay involving of Judgment Upon Mmultiple Cclaims or as to Multiple Pparties. ~~When aA~~ court may stay enforcement of has ordered a Rule 54(b) final judgment under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until it enters the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof the stayed judgment to the party in whose favor the judgmentit wais entered.

~~(h)~~
[Amended effective July 1, 1997.]

Advisory Committee Historical Note

Effective ~~July 7/1/, 1997~~, Rule 62(a) was amended to clarify that the stay of enforcement of a judgment expires ~~ten~~ 10 days after the later of the entry of the judgment or the disposition of a motion for a new trial. ~~, and~~ Rule 62(b) was amended to state that a court may stay the execution of or ~~any~~ proceedings to enforce a judgment pending the

disposition of a Rule 50(b) motion to set aside a verdict ~~made pursuant to Rule 50(b)~~. 689-692 So. 2d XLIX (West Miss. Cas. 1997).

Advisory Committee Notes

Federal Rule of Civil Procedure 60 ~~Subdivision (e) of the Federal Rules~~ applies to stays in favor of the United States and ~~;~~ it is omitted from the Mississippi Rules of Civil Procedure.

Rule 63. – Disability of a Judge's inability to proceed.

(a) During Trial. – ~~If for any reason the presiding judge before whom an action has been commenced~~ is unable to proceed with ~~the~~ trial, another judge regularly sitting in or assigned under law to the court ~~in where~~ ~~ieh~~ the action is pending may proceed with and finish the trial ~~upon~~ after certifying in the record ~~that he has~~ familiarized himself with the trial record ~~of the trial~~; ~~b~~ But if such other judge is unable to certify adequate familiarity with the record, ~~satisfied that he cannot adequately familiarize himself with the record,~~ the other judge may exercise ~~he may in his~~ discretion to grant a new trial.

~~(a)~~

(b) After Verdict or Findings. – ~~If for any reason the presiding judge before whom an action has been tried~~ is unable to perform ~~the court~~ duties ~~to be performed by the court~~ after a verdict ~~is returned~~, or ~~after the~~ hearing ~~of~~ a nonjury action, then any other judge regularly sitting in or assigned under law to the trial court ~~in which the action was tried~~ may perform those duties. ~~B;~~ but if unable such other judge is satisfied that he cannot to perform those duties, the other judge may exercise ~~in his~~ discretion grant a new trial.

CHAPTER SECTION VIII.—PROVISIONAL AND FINAL REMEDIES; AND SPECIAL PROCEEDINGS

Rule 64.—Seizing a ure of person or property.

~~After At the commencing an action and during itement of and during the course of an action, every all-remedy ies providing for the seizing ure of a person or property tfor the purpose of securing satisfy action of a potential the judgment ultimately to be entered in the action are is available according to under the circumstances and in the manner provided by law, .—These remedies—includinge attachment, replevin, claim and delivery, sequestration, and other corresponding or equivalent remediefs regardless of the designation and , however designated and regardless of whether the remedy is ancillary to an action or must be obtained by an independent action.~~

[Amended effective ~~September 9/1/, 1987.~~]

Advisory Committee Historical Note

Effective ~~September 9/1/, 1987~~, Rule 64 was amended by deleting “garnishment” as ~~one aof the included~~ -prejudgment remedies. ~~y included in the provisions of the Rule.~~ 508-511 So. 2d XXIX (West Miss. Cas. 1987).

Rule 65.—Injunctions.

(a) ~~(a)~~ Preliminary ~~I~~njunction.

(1) **Notice.**— ~~A~~ ~~No~~ preliminary injunction must ~~hall~~ ~~not~~ be issued without notice to the adverse party.

(2) ~~Consolidation of H~~earing ~~W~~ith ~~T~~rial on ~~M~~erits.— Before or after ~~the~~ ~~commencement of the~~ hearing ~~on application for~~ ~~r~~ a motion for preliminary injunction, the court may ~~order~~ advance the ~~the~~ trial ~~of the action~~ on the merits ~~to be advanced~~ and consolidate it ~~d~~ with the hearing ~~of the application~~.— Even when ~~this~~ consolidation is not ordered, if admissible at trial, any evidence received ~~upon a~~ motion ~~application~~ for a preliminary injunction ~~which would be admissible upon the trial on the merits~~ becomes part of the trial record and does not on the trial and need ~~not~~ be repeated ~~upon~~ ~~at~~ trial.— ~~Rule 65~~ This subdivision (a)(2) ~~must~~ ~~hall~~ be ~~so~~ construed and applied as to preserve ~~save to the~~ party's ies ~~any rights to they may have to trial by a jury trial.~~

~~(2)~~

(b) Temporary ~~R~~estraining ~~O~~order; ~~N~~otice; ~~H~~earing; ~~D~~uration.

(1) **Without notice.** A temporary restraining order may be granted ~~,~~ without notice to the adverse party or ~~or his~~ attorney if:

(A) ~~(1)~~ ~~it~~ clearly appears from specific facts shown by affidavit or ~~by the~~ verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant ~~movant~~ before the adverse party or ~~or his~~ attorney can be heard in opposition; and

(B) ~~(2)~~ ~~the~~ movant ~~applicant~~'s attorney certifies to the court in writing:

(i) ~~the~~ ~~e~~fforts, ~~if any, which have been made~~ to give ~~the~~ notice; and ~~r~~

(ii) ~~e~~Reasons supporting the movant's claim that notice should not be required.

(C) Every temporary restraining order granted without notice must:

(i) ~~hall~~ ~~State the~~ ~~be endorsed with the~~ date and time it is ~~hour of~~ issued; ~~shall~~

(ii) ~~b~~Be filed ~~forthwith~~ in the clerk's office and entered in ~~of the~~ record;

(iii) ~~shall~~ ~~d~~Define the injury;

(iv) ~~and s~~State why ~~it the~~ injury is irreparable;

(v) ~~and~~ ~~State~~ why the order was granted without notice; and

~~(vi) shall expire after entered by its terms, within a such time the court specifies after entry, not to exceed ten 10 days.~~

~~, as the court fixes (except in domestic relations cases, when the ten-day limitation shall not apply);~~

(D) Exceptions to 10-day limit. ~~The 10-day limit in Rule 65(b)(1)(C)(vi) does not apply in domestic relations cases. It also does not apply if in the temporary restraining order the court states reasons for extending the 10-day limitation and:~~

~~(i) unless within the specified time so fixed the order for good cause shown, the court is extends the temporary restraining order ed for a like period; or unless~~

~~(ii) The party against whom the order is directed consents to hat it may be extending it ed for a longer period. The reasons for the extension shall be stated in the order.~~

~~(b)~~

(2) Hearing. ~~In case a temporary restraining order is granted without notice, the motion for a preliminary injunction must shall be set down for hearing at the earliest possible time and take precedence over all matters except older matters ones of the same character.~~

(A) ~~When At the motion comes on for hearing, the party who obtained the temporary restraining order shall must proceed with the application motion for a preliminary injunction or otherwise, and, if he does not do so, the court must shall dissolve the temporary restraining order.~~

(3) ~~On notice of two days to a party who obtained a temporary restraining order or less if the court orders a shorter period, On two days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move to dissolve or modify the temporary restraining order. its dissolution or modification and in that event If so, the court must shall proceed to hear and determine decide tsuehe motion as expeditiously as the ends of justice require.~~

(c) Security. ~~No restraining order or preliminary injunction must shall issue unless the movant except upon the gives ing of security by the applicant, in a such sum as the court deems proper, for the paying ment of such costs, damages, and reasonable attorney's fees as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.~~

(1) But the following are not required to give security:

(A) ; provided, however, no such security shall be required of tThe State of Mississippi; -or o

(B) f-aAn state officer or agency.

(2) In addition, a court has -thereof, and provided further, in the discretion of the court, security may not be required in domestic relations actions to waive security.

(3) .-The provisions of Rule 65.1 applies y to a surety upon a bond or undertaking under this rule.

(e)

(d) Injunction or restraining order: Fform; and Sscope of Injunction or Restraining Order.

(d)

(1) Restraining order.

(A) Form. An Every order that grants ing a restraining order musthall describe in reasonable detail—and not merely refer by reference to the complaint or other document—the act or acts sought to be restrained.

(B) Scope. A restraining order binds only the following:

(i) A party ; it is binding only upon the parties to the action;

(ii) A party's , their officers, agents, servants, employees, and attorneys; and

(iii) A upon those ppersons who acts in active concert or participates ion with them and who receives actual notice of the order by personal service or otherwise.

(1)

(2) Injunction.

(A) Form. An Every order that grantsing an injunction must:

(i) hall sSetate forth the reasons for its issuaingee it;

(ii) shallbBe specific in terms; andshall

(iii) dDescribe in reasonable detail—not merely refer to the complaint or other document—and not by reference to the complaint or other document—the act or acts sought to be restrained.

(B) Scope. An injunction binds only the following:

~~;~~ ~~and is binding only upon t~~

(i) A party to the action;

(ii) A party's officer, agent, servant, employee, and attorney; and

(iii) A person who acts in concert or participates with them and who receives actual notice of the order by personal service or otherwise.

~~— the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.~~

(e) ~~(e) Jurisdiction Unaffected.~~— This rule does not change ~~in~~injunctive powers previously heretofore vested in ~~the~~ circuit and chancery courts ~~remain unchanged by this rule.~~

Advisory Committee Notes

Rule 65 authorizes a party ies to seek temporary restraining orders (TROs) and preliminary injunctions in civil cases ~~in seeking which~~ permanent injunctive or other relief ~~or other relief is being sought~~. AA party may move for a TRO, preliminary injunction, or both, and in appropriate circumstances, obtain a TRO and/or a preliminary injunction relief before the merits of the case are resolved.

In Ggenerally, the purpose of a TRO is to provide temporary and short-term relief until ~~further additional~~ action can be taken in the case.

To obtain a TRO without notice to the adverse party, the party seeking relief must show (1), by affidavit or verified complaint, (2) that ~~it the party~~ will suffer immediate and irreparable injury before the adverse party can be heard in opposition. In addition, ~~that~~ party's e attorney ~~for the party seeking the TRO~~ must certify to the court in writing (1) the efforts made to give the adverse party notice and (2) the reasons why ~~the~~ notice to the adverse party should not be required.

~~If a~~ A TRO ~~is~~ granted without notice, ~~it~~ must contain ~~the~~ information required by Rule 65(b)(1). ~~and~~ In addition, it must expire by its own terms; not more than 10 days after ~~its~~ entered ~~ry~~, except in domestic relations cases. ~~Before its expiration, The court may extend~~ a TRO ~~may be extended by the court~~ for a like period (1) before it expires (2) if the restrained party consents or (3) the court extends the TRO for good cause shown.

The purpose of a preliminary injunction is to provide injunctive relief until the merits of the case are resolved. Preliminary injunctions cannot be granted without notice.

A party who moves in for preliminary injunctive relief ~~pur~~su~~according nt~~ to Rule 65(a) must demonstrate that “(i) there exists a substantial likelihood that the [movant] will prevail on the merits; (ii) the injunction is necessary to prevent irreparable harm; (iii) the threatened injury to the [movant] outweighs the harm an injunction might do to the [opposing party]; and (iv) granting a preliminary injunction is consistent with the public interest.” *See Littleton v. McAdams*, 60 So. 3d 169, 171 (Miss. 2011). A M~~otions~~ for preliminary injunctions ~~are falls~~ within the trial court’s discretion. *See City of Durant v. Humphreys County Mem’l Hosp.*, 587 So. 2d 244, 250 (Miss. 1991).

Rule 65-(c) requires ~~tha movant who seeks a TRO or preliminary injunction to give at~~ proper security ~~be given by the movant obtaining a TRO or preliminary injunction so that~~ ~~proper to~~ pay ~~ment for~~ costs, damages, and reasonable attorneys’ fees ~~may be made~~ to the restrained party in the event it is ~~determined decided~~ that ~~such~~ party was wrongfully enjoined or restrained. ~~Such s~~ Security is not required from the State of Mississippi and may be waived in domestic relations cases. ~~Section 11-13-37 of the Mississippi Code of 1972 Annotated Mississippi Code Annotated §11-13-37 provides codifies~~ an independent statutory basis ~~to for awarding~~ damages and attorneys’ fees ~~if an injunction is dissolved upon dissolution of an injunction.~~

County courts have some authority to issue injunctive relief. ~~See Miss. Code Ann. § 9-9-21 (county court must “have jurisdiction concurrent with the circuit and chancery courts in all matters of law and equity” where the amount in controversy does not exceed \$200K exclusive of interest and costs); see also id. § 99-9-23 (county judge must “have the power to order the issuance of writs of certiorari, supersedeas, attachments, and other remedial writs in all cases” pending in or within county court’s jurisdiction). But cf. id. (county judge must “not have original power to issue writs of injunction, or other remedial writs in equity or in law” unless within the county court’s jurisdiction as stated in the same provision). Mississippi Code Annotated §9-9-21 provides that county courts “shall have jurisdiction concurrent with the circuit and chancery courts in all matters of law and equity wherein the amount of value of the things in controversy shall not exceeds...the sum of ...\$200,000.00.” Mississippi Code Annotated §99-9-23 provides that county courts “shall have the power to order the issuances of writs of certiorari, supersedeas, attachments, and other remedial writs in all cases pending in, or within the jurisdiction of, [the county court].”~~

~~Section 9-9-23, however, further provides that county courts “shall not have original power to issue writs of injunction, or other remedial writs of equity or in law except in those cases hereinabove specified as being within [the court’s] jurisdiction.” The statutes have been interpreted as authorizing a county courts to issue an injunctions in cases falling~~

within the concurrent jurisdiction of ~~the~~ chancery and county court. *See, e.g., Lee v. Coahoma Opportunities, Inc.*, 485 So. 2d 293, 294 (Miss. 1986) (citing ~~Miss. Code Ann. id.~~ § 9-9-21(1)) (stating “A claim for specific performance of a contract of employment plus attendant injunctive relief is well within the jurisdiction of the county court on its equity side”); *Swan v. Hill*, 855 So. 2d 459, 462-63 (Miss. Ct. App. 2003) (holding that the county court had jurisdiction to issue injunctive relief in ~~a~~ case involving property rights).

65.1 ~~s~~Security: ~~proceedings~~ against surety~~ies~~

Whenever these rules require or ~~permit~~ allow a party to the ~~giving of~~ security ~~by a party~~, and security is given in ~~the~~ form of a bond, ~~or~~ stipulation, or other undertaking with one or more sureties, each surety submits ~~himself~~ to the court's jurisdiction ~~of the court~~ and irrevocably appoints the court clerk ~~of the court~~ as an ~~his~~ agent ~~upon~~ whom ~~any~~ papers affecting ~~the~~ liability on the bond or undertaking may be served. ~~The surety's~~ His liability may be enforced on motion without the necessity of an independent action. ~~The~~ motion and ~~such~~ notice of ~~the motion~~ it ~~n~~ as the court orders ~~prescribes~~ may be served on the court clerk ~~of the court~~, who must ~~shall~~ ~~forthwith~~ mail copies to the surety~~ies~~ if the ~~it~~ is ~~are~~ known.

Rule 66. – Receiver.s

An action where ~~in~~ a receiver has been appointed ~~must~~shall not be dismissed unless the court orders otherwise~~except by order of the court.~~ In all other respects, these rules govern the an action seeking to appoint in which the appointment of a receiver or one by or against is sought or which is brought by or against a receiver is governed by these rules.

Rule 67. – Deposit in court.

In any action partly or wholly seeking a money in which any part of the relief sought is judgment for a sum of money or something else that can be the disposition of any other thing delivered, -capable of delivery, a party, upon notice to every all other parties y, and by leave of court, a party may deposit all or part of the sum or thing with the court ~~all or any part of such sum or thing.~~

~~The judge may order~~ Where money is paid into court as to abide e the result of any legal proceeding, ~~the judge may order it to be~~ deposited at interest in a federally insured bank or savings and loan association authorized to receive public funds, to the credit of the court in the action or proceeding in which where the money was paid. – The deposited money ~~so deposited~~ plus any interest must ~~shall~~ be paid only upon the court clerk's check that is of the clerk of the court, attached annexed wto a ith its certified court order for the payment and that is made payable to , and in favor of the person to whom the stated in the order ~~directs the payment to be made.~~

Rule 68.—Offer of judgment.

(a) Time.

- (A) Offer.** At any time ~~more than~~ least fifteen ~~15~~ days before ~~the trial begins,~~ a party defending against a claim may serve an adverse party with upon the adverse party an offer to allow judgment on specified terms ~~to be taken against him for the money or property or to the effect specified in his offer,~~ with accrued costs ~~then accrued.~~
- (B) Acceptance.** ~~Within 10 days after service, If within ten days after the service of the offer~~ the adverse party may serve written notice that that the offer is accepted.

(b) Effect.

- (1) Accepted.** ~~If the offer is accepted, ,~~ either party may then file the offer, ~~and notice of acceptance, and together with~~ proof of service. The court thereof and thereupon the court must ~~then~~ enter judgment.
- (2) Not accepted.** ~~If the An~~ offer is not accepted, it must ~~hall~~ be deemed withdrawn.
- (A)** ~~Evidence of the offer or its withdrawal and evidence thereof~~ is not admissible except in a proceeding to determine ~~decide~~ costs.
- (B)** ~~If the adverse party obtains a judgment that is finally obtained by the offeree is~~ not more favorable than the offer, the ~~offeree~~ adverse party must pay ~~the costs~~ incurred after the offer was filed ~~making of the offer.~~
- (C)** The fact that an offer is made filed but not accepted does not preclude a subsequent offer.
- (3) Effect of a liable party's offer.** ~~When a verdict, order, or judgment decides the one party is liable ity of one party to another has been determined by verdict, order or judgment,~~ but the amount or extent of ~~the~~ liability remains undecided until to be determined by further additional proceedings, the liable party adjudged liable ~~may~~ make an offer of judgment.
- (A)** ~~The liable party's offer, which must~~ hall have the same effect as an offer made filed before trial if ~~it is~~ served within a reasonable time, ~~not at leasts~~ than 10 ~~ten~~ days, ~~prior to the the commencement of~~ hearing to determine ~~decide~~ the amount or extent of liability.

Rule 69. – Execution.

(a) Enforcing a Judgment. – Statutory procedures govern the following:

(1) ~~Process to enforce a money judgment; judgment for the payment of money shall be by such procedures as are provided by statute. – T~~

(2) ~~The procedure on execution, in a proceedings supplementary to and in aid of a judgment; and~~

(3) ~~The procedure on execution in a proceedings on and in aid of execution, shall be as provided by statute.~~

~~(a)~~

(b) Examination by Judgment Creditor. – To aid in the satisfaction of a judgment of ~~at least more than \$100 one hundred dollars~~, a the judgment creditor may examine the judgment debtor or any other person ~~including the , including the debtor's or person's~~ books, papers, or documents ~~of same, upon any nonprivileged matter not privileged~~ relating to the debtor's property.

~~(b)~~

(1) The judgment creditor may examine the judgment debtor or other person:

(A) ~~in open court according to s provided by statute; or~~

(B) ~~may u~~ Utilize the discovery procedures stated in Rules 26 through 37 hereof.

Rule 70.— Judgment for specific acts; vesting title.

(a) Specific Acts.— If a judgment ~~directs orders~~ a party to ~~execute a conveyance of land, or to deliver a deeds or other documents,~~ or to perform any other specific act, and the party fails to comply within the specified time ~~specified~~, the court may ~~direct order~~ the act to be done by some other person it appoints.

(1) The court may order the disobedient party to pay costs of doing so.

~~(a)(2) at the cost of the disobedient party by some other person appointed by the court and the act when so~~ The completed act done has the same like effect as if the disobedient party had done it by the party.

(b) Divesting ment of Ttitle.— If real or personal property is ~~within the State of~~ Mississippi, instead of ordering a the court in lieu of directing a conveyance, the court thereof may enter a judgment divesting a party's the title ~~of any party~~ and vesting it in others.

~~(b)(1) The ; such~~ judgment has the effect of a legally executed conveyance ~~executed in due form of law~~.

(c) Delivering y of Ppossession.— When any order or judgment is for ~~the delivering y of~~ possession, a certified copy of the judgment or order ~~is shall be~~ sufficient authority for the sheriff of the county ~~in where~~ where the property is located to seize ~~same~~ and deliver it to the party entitled to its possession.

(d) Contempt.— In proper cases, ~~The~~ court may also ~~in proper cases~~ adjudge find the party in contempt.

~~(d)~~

Advisory Committee Notes

Rule 70 applies only after a judgment is entered; Rules 6 and 65 ~~provide apply to~~ prejudgment remedies. for remedies prior to judgment. Rule 70 applies only if a judgment ~~directs order~~ a party to ~~execute a conveyance of land, or to deliver a deed s or other documents, or~~ to perform ~~only~~ other specific acts, and the party ~~has fails ed~~ to comply within the time specified in the judgment.

Rule 71.—Process ~~for in behalf of~~ and against nonparty. persons not parties

~~Other than a party's creditor in a divorce proceeding. When the court issues an order is made in favor of a nonparty person who is not a party to the action, other than a creditor of a party to a divorce proceeding, the nonparty may enforce obedience to the order by the same process as if he were a party. ; and w~~When ~~obedience to~~ an order may be lawfully enforced against a nonparty person who is not a party, the nonparty is liable to the same process for enforcing obedience ~~to the order as if he were~~ a party.

Advisory Committee Notes

A court order may be enforced by a ~~non-party nonparty~~ if the ~~non-party nonparty~~ shares an identity of interest with the prevailing party. For example, in a case concerning title to property, a prevailing party's assignee of a prevailing party in a case concerning title to property is entitled to enforce a judgment in the same manner as the party—assignor. Likewise Similarly, a judgment may be against a party's person who is the successor—in interest to a party, but the court must first obtain personal jurisdiction on the successor—in interest. *See, e.g., Mansour v. Charmax Ind., Inc.*, 680 So. 2d 852, 855 (Miss. 1996) (holding that service of process is requirement to personal jurisdiction before Rule 71 can be applied); *Libutti v. U.S.*, 178 F.3d 114, 124-25 (2d Cir. 1999) (holding that the court must have personal jurisdiction over the ~~non-party nonparty~~ against whom the judgment is enforced).

Rule 71aA.— Eminent domain. [Reserved].

CHAPTER SECTION IX 9. APPEALS

-Rules 72 to 76. [Omitted].

~~CHAPTER SECTION X10. – COURTS AND CLERKS~~

~~–Rule 77. Conducting business courts; and clerk’s authority; notice of order or judgment.~~

~~(a) Court Always Open.– The A courts must~~hall be deemed~~ always be considered open for ~~the~~ purposes of filing any pleading or other proper paper; ~~of~~ issuing and returning process; ~~and of~~ making and directing all interlocutory motions, orders, and rules.~~

~~(a)~~

~~(b) Place for Trials and other proceedings and Hearings; Orders in Chambers.~~

~~(1) Trial. Unless a statute provides otherwise, aAll trials upon the merits must~~hall~~ be conducted in open court, ~~except as otherwise provided by statute~~.~~

~~(2) Other acts and proceedings. Within the judicial district, outside of it, or at another place in Mississippi, a judge may All other acts and conduct of proceedings other than trial may be done or conducted by a judge in chambers.~~

~~(A) The court clerk or other official does not have to be present.~~

~~(B) without the attendance of the clerk or other court officials and at any place within the state either within or without the district; Bbut an hearing shall be conducted outside the district must not be conducted without the consent of all affected parties ~~affected thereby~~.~~

~~(b)~~

~~(c) Clerk’s office hours; orders.~~

~~(1) Clerk’s office hours. ’s Office and Orders by Clerk.– During business hours, The clerk’s office must be open each day except Saturday, Sunday, and a legal holiday, and the clerk or deputy clerk must be present.~~

~~(2) Clerk’s orders.~~

~~(A) The court clerk may:~~

~~(i) with the clerk or a deputy clerk in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays. All motions and applications to the clerk for issue ing process;~~

~~(ii) for issue ing process to enforce and execute a judgments;~~

~~(iii) for entering a defaults; and~~

~~(iv) Act on another matter that does not, and for other proceedings which do not require the court's action.~~

~~(B) allowance or order of the court are grantable of course by the clerk; but the court may suspend, alter, or rescind the clerk's action may be suspended or altered or rescinded by the court for upon cause shown.~~

~~(e)~~

(d) Notice of Orders or Judgments.

~~(1) Immediately after entering an order or judgment, the clerk immediately must:~~

~~(A) upon the entry of an order or judgment the clerk shall serve a notice of the entry of it according to in the manner provided for in Rule 5 upon each party who is not in default for failing to appear; and~~

~~(B) , and shall Record mservice ake a note oin the docket of the service.~~

~~(2) Any party may also in addition serve a notice that an order or judgment has been entered according to of such entry in the manner provided in Rule 5 for the service of papers.~~

~~(3) Unless the Mississippi Rules of Appellate Procedure state otherwise, the clerk's failure to serve a notice an order or judgment has been entered does not of the entry by the clerk does not affect the time to appeal, nor relieve a party's failure to appeal within the allowed time, nor authorize the court to do so.~~

~~(d) relieve, a party for failure to appeal within the time allowed, except as permitted by the Mississippi Rules of Appellate Procedure.~~

[Amended effective July 7/1/, 1997.]

Advisory Committee Historical Note

Effective July 7/1/, 1997, Rule 77(d) was amended to allow parties to for serve ice of notices that an order or judgment has been entered of the entry of orders and judgments by parties. – 689-692 So. 2d LXII (West Miss. Cas. 1997.) Effective February 2/1/, 1990, Rule 77 was amended by adding subsection Rule 77(d), which requires ing the court clerk of the court to give notice an order or judgment has been of the entered y of orders and judgments to the interested parties. – 553-556 So. 2d XLII (West Miss. Cas. 1990).

Advisory Committee Notes

Under Rule 77(a), ~~provides that~~ the courts ~~must~~ shall be deemed always open for the purpose of filing papers; ~~and~~ issuing and returning process; and making motions and orders. This does not mean that the clerk's office ~~of the clerk~~ must be physically open at all hours or that ~~paper can be the filed ing of papers can be effected~~ by leaving them in a closed or vacant office. Under Rule 5(e)(1), papers may be filed out of business hours by delivering them to the clerk or ~~to the~~ judge if he or she ~~permits~~ allows. See Miss. Const. art. 3, § 24 (all courts “shall be open”).

Rule 77(b) requires ~~that the a trial on the merits to~~ “all trials upon the merits” be conducted in “open court”; all other acts or proceedings may be done ~~or~~ conducted by a judge in chambers everywhere in the state regardless if the clerk or other ~~“in chambers,”~~ without the necessity of the attendance of the clerk or other court official ~~attends~~ and at any place within the state. ~~However~~ But, no hearing, other than one heard ex parte, ~~wi~~ shall be conducted outside the district without the consent of all ~~parties affected~~ parties affected thereby. See *Corporate Mgmt., Inc. v. Greene Rural Health Ctr. Bd. of Trustees*, 47 So. 3d 142, 146 (Miss. 2010).

Rule 77(d) requires ~~that~~ the clerk to provide a copy ies of all orders and judgments, ~~immediately upon their entry,~~ to all parties who are not in default for failure to appear immediately when entered.

Under Miss. R. App. P. 4(h), ~~provides that~~ a party who did not receive notice of a entry of a judgment or order ~~from the clerk or any~~ party within 21 days of its entry may move the trial court to reopen the time for appeal.

Rule 77(d) gives a prevailing party who wants to ensure that the time for appeal is not reopened ~~pursuant under to~~ Miss. R. App. P. 4(h), ~~the~~ opportunity to serve notice a judgment or order has been of entered y of the judgment or order upon on opposing parties according to in the manner provided in Rule 5. Although a prevailing party ~~ies~~ may take the initiative to assure that ~~their an~~ adversary ~~ies~~ receives effective notice, the clerk retains the duty to give notice a judgment or order has been of entered y of judgments and orders.

Rule 78. ~~–~~ Motion practice.

(a) Regular schedule.

- (1) Each court ~~must~~shall establish procedures for ~~the prompt conducting dispatch of~~ business promptly, including for hearing and deciding a motion that requires notice.
- (2) But regardless of time or place, ~~, at which motions requiring notice and hearing may be heard and disposed of; but~~ the judge ~~— at any time or place without notice or and on such notice~~ the court considers reasonable—, if any, as he considers reasonable ~~may issue an make orders~~ for ~~the advancement~~, conducting, and hearing an of actions.

(b) Submitting on briefs. To expedite ~~its~~ business, the court by rule or order may ~~make provision by rule or order for the allow a submitted motion to be decided submission and determination of motions~~ without an oral hearing ~~upon~~ brief written statements of support reasons in support and opposition.

[Amended effective ~~March 3/1/, 1989~~; amended effective ~~April 4/17/, 2003~~ to allow ~~the a~~ courts, by rule to ~~provide for decidetermination of a~~ motions seeking final judgment without oral argument.]

Advisory Committee Historical Note

Effective ~~March 3/1/, 1989~~, Rule 78 was amended by changing its title to “MOTION PRACTICE” and by abrogating provisions for local rules.— 536-538 So. 2d XXXI (West Miss. Cas. 1989).

Advisory Committee Notes

Rule 78 does not alter any local rules governing motion practice. But ; however, the local rule must be considered in light of Rule 83.

Rule 79. – Clerk Books and records kept by the clerk and entries therein.

(a) General Docket.

- (1) Form; style.** The clerk must keep a book known as the “general docket” of such in the form and style as is required by law.
- (2) Civil action.** The clerk and must enter ~~therein~~ each civil action on the docket to which these rules are made applicable.
- (3) File number.** The file number of each an action must be recorded on each docket page ~~of the docket~~ where an entry ~~of the action~~ is made.
- (4) Entry requirements.**

(A) Type. The following must be recorded in the general docket on the page assigned to the action and marked with the file number:

- (i)** All papers filed with the clerk;
- (ii)** , all Issued process issued and returns; ~~made thereon;~~
- (iii)** all a Appearances;
- (iv)** , o Orders;
- (v)** , v Verdicts; and
- (vi)** j Judgments.

(B) Content. ~~shall be noted in this general docket on the page assigned to the action and shall be marked with its file number. These~~ An entry ies must be brief ~~but~~ include ~~shall show~~ the nature of each filed paper filed or issued writ, ~~issued and~~ the substance of each order or judgment, ~~of the court~~ and ~~of~~ the returns showing execution of process.

(C) Order; judgment.

- (i)** ~~The~~ The docket must show the date an ~~entry of an~~ order or judgment is entered.
 - (ii)** ~~If~~ shall show the date the entry is made. In the event a formal order is entered, the clerk must insert the order in the casefile of the ease.
- (a)**

(b) Minute Book. The clerk must keep a correct copy of every judgment or order.

(b) ~~This record shall be~~ known as the “Minute Book.”

(c) Indexes; Calendars.— Under the court’s direction, the clerk:

(1) Must keep a Suitable indexes of the general docket; and

(2) shall be kept by the clerk under the direction of the court.— There shall be prepared, under the direction of the court, a calendars of all actions ready for trial.

~~(e)~~

(d) Other Books and Records; photocopy.

(1) Other books and records. The clerk ~~must~~ also keep ~~such~~ other books and records as ~~may be~~ required by statute or these rules.

(2) Photocopy. The documents required to be kept under this rule may be recorded by means of an exact-copy photocopy process.

~~(d)~~

(e) Removing the case File in a Case.— The case file ~~of a case~~ ~~must~~ not be removed from the clerk’s office ~~of the clerk~~ ~~except on the clerk’s or court’s permission~~ ~~except by permission of the court or the clerk.~~

~~(e)~~

Advisory Committee Historical Note [Rule 79]

Effective ~~April 4/1/, 2002~~, the Comment to Rule 79(a) was amended to underscore that docket entries must accurately reflect the actual date of entry.—813-815 So. 2d LXXXVIII (West Miss. Cas. ~~es~~ 2002).

Advisory Committee Notes

Rule 79(a) specifies that ~~the a~~ docket entry ~~must~~ reflect the date on which ~~it is~~ ~~entries~~ ~~are~~ made in the general docket. Since several important time periods and deadlines are calculated from the date of the entry of ~~a~~ judgments and orders, these entries must accurately reflect the actual date of the entries rather than another date ~~like, such as when the judge the date on which a judgment or order is signed by the judge.~~ See, e.g. for example, Miss. R. ~~ule~~ Civ. P. 58 (mandating that ~~a~~ judgment is effective only when entered as provided under Rule 79(a)); see also Miss. R. Civ. P. , and Rule 59 (requiring which requires that motions to alter or amend judgments be filed within 10 ~~ten~~ days after the entry of judgment).

| .

Rule 80. – Stenographic report or transcript as evidence. [~~omitted~~].

Advisory Committee Notes

Mississippi has statutory provisions for the appointment, oath, nature and term of office, bond, removal from office, and duties and responsibilities of court reporters. *See* Miss. Code Ann. §§ 9-13-1 to -63; *id.* §§ 9-13-101 to -123; *et seq.* (1972) and Miss. R. App. P. app. 3M.R.A.P. Appendix III.

Rule 81. – Rule A applicability of rules.

(a) General (a) Applicability in General.

(1) These rules apply to all civil proceedings. ~~But they are subject to limited applicability in the following actions generally governed by statutory procedures:~~

~~are subject to limited applicability in the following actions which are generally governed by statutory procedures.~~

~~(2)(A) A proceedings pertaining to the writ of habeas corpus;~~

~~(3)(B) A proceedings pertaining to the disciplining of an attorney;~~

~~(4)(C) A proceedings pursuant under to the Youth Court Law, Miss. Code Ann. §§ 43-21-101 to -127 and the Family Court Law;~~

~~(5)(D) A proceedings pertaining to an election contests;~~

~~(6)(E) A proceedings pertaining to bond validations;~~

~~(7)(F) A proceedings pertaining to the adjudication, commitment, and release of narcotics and alcohol addicts and persons in need of mental treatment;~~

~~(8)(G) An eminent-domain proceedings;~~

~~(9)(H) Title 91 of the Mississippi Code of 1972 Annotated;~~

~~(10)(I) Title 93 of the Mississippi Code of 1972 Annotated;~~

~~(11)(J) Ccreating and maintainiangee a of drainage and water management districts;~~

~~(12)(K) eCreating of and changginge a in municipal boundaryies of municipalities;~~

(L) A proceedings brought under the following:

(i) sections ~~Miss. Code Ann. § 9-5-103;~~

(ii) Miss. Code Ann. ,§ 11-1-23, -29, ~~11-1-29, 11-1-31, 11-1-33, 11-1-35, 11-1-43, 11-1-45, 11-1-47, 11-1-49;~~

(iii) Miss. Code Ann. ;§ -11-5-151 to through ~~11-5-167;~~ and

(iv) Miss. Code Ann. § , and ~~11-17-33, Mississippi Code of 1972.~~

~~(13)~~

(2) To the extent they may conflict with these rules, ~~S~~statutory procedures specifically for a provided for each of the above proceedings stated above in Rule 81(a)(1) must remain in effect and shall control. But to the extent they may be in conflict with these rules; otherwise these rules apply.

(b) **Summary Proceedings.**— In an ex parte matters where ~~no~~ notice is not required, a proceeding must ~~proceedings shall~~ be as summary as ~~the~~ pertinent statutes contemplate.

(c) **~~Publication of Ssummons or Nnotice.~~**— ~~Whenever~~ a statute requires a summons or notice to be published, service ~~in accordance with the methods provided in Rule 4~~ shall be taken to satisfy the statutory requirements of such statute.

(d) Procedure in Ccertain Aactions and Mmatters.— The special procedural rules of ~~procedure set forth in Rule 81(d) this paragraph must~~ shall apply to the actions and matters ~~enumerated stated in Rule 81(d)(1) and subparagraphs (1) and (2) hereof and shall (d)(2) control to the extent they they may be in conflict with any other rules provision of these rules.~~

~~(d)~~

(1) 30 days. The following actions and matters ~~must~~ shall be triable 30 days after the first publication where process is by publication or otherwise 30 days after completion ~~of service of process in any manner other than by publication; or 30 days after the first publication where process is by publication, to wit:~~

(A) aAdoption;

(B) eCorrection a of birth certificate;

(C) aAlteration a of name;

(D) tTermination of parental rights;

(E) pPaternity;

(F) lLegitimation;

(G) uUniform reciprocal enforcement of support;

(H) dDetermination of heirship;

(I) pPartition;

(J) Probatina e of will in solemn form;

(K) eCaveat against probatina e of will;

(L) wWill contest;

(M) wWill construction;

(N) A echild-custody actions;

(O) A child-support actions; and

(P) eEstablishing ment of grandparents' visitation.

~~(1)~~

(2) 30 or 7 days. The following actions and matters ~~must~~ shall be triable 30 days after the first publication where process is by publication or 7 days after completion ~~of service of process in any manner other than by publication;~~

- ~~(A) or 30 days after the first publication where process is by publication, to wit: Removing ~~at~~ of disabilities of minority;~~
 - ~~(B) Temporary relief in a matter for ~~dd~~ivorce, sseparate maintenance, echild custody, or, ~~or~~ echild support ~~matters~~;~~
 - ~~(C) modification or enforcement g a of custody, support, and or alimony judgments;~~
 - ~~(D) eContempt; and~~
 - ~~(E) An estate matters or and wards' minor's business requiring ~~in which~~ notice where the time period is not stated in a statute or Rule 81(d)(1) ~~is required but the time for notice is not prescribed by statute or by subparagraph (1) above.~~~~
- ~~(2)~~
- (3) **Not confessed.** A Complaints and or petitions filed in an ~~the~~ actions or and matters stated in Rule 81(d)(1) or (d)(2) enumerated in subparagraphs (1) and (2) above ~~must~~ hall not be taken as confessed.

(4) Answer.

- ~~(A) **Not required.** An No answer must ~~hall~~ not be required in any action or matter stated ~~enumerated in~~ Rule 81(d)(1) or (d)(2).~~
- ~~(B) **Optional.** ~~subparagraphs(1) and (2) above~~ bBut any defendant or respondent may file an answer or other pleading.~~
- ~~(C) **Court order.** ~~o~~Or the court may require an answer if necessary to develop the issues properly. ~~if it deems it necessary to properly develop the issues.~~~~

~~(4)(i) **Failure to answer.** A party who fails to file a court-ordered ~~n~~ answer after being required so to do must ~~hall~~ not be permitted ~~allowed~~ to present evidence on that ~~is~~ party's behalf.~~

(5) Summons; time and place; continuance

- ~~(A) **Summons.** Up ~~o~~n the filing of any action or matter listed ~~Rule 81(d)~~ in subparagraphs (1) or and (2), a ~~above~~, summons must ~~hall~~ issue that commands ing the defendant or respondent to appear and defend at a time and place, ~~either~~ in term time or vacation and a place, at which it ~~he~~ same must ~~hall~~ be heard.~~
- ~~(B) **Time and place.** Said ~~The~~ time and place must ~~hall~~ be set by special order, general order, or court rule ~~of the court.~~~~
- ~~(C) **Continuance.**~~

(i) No additional summons. If ~~such the~~ action or matter is not heard on the hearing date ~~set for hearing~~, it may by court order signed on that day be continued to a later day ~~for hearing~~ without additional summons on the defendant or respondent.

(ii) Clerk's authority. By order or rule, ~~T~~the court may ~~by order or rule~~ authorize its clerk to set ~~tsuehe~~ actions or matters for original hearing and to continue ~~the same for hearing~~ it on a later date.

~~(5)~~

(6) Rule 5(b) notice ~~must~~ shall be sufficient as to ~~any~~ temporary hearing in a pending action for divorce, separate maintenance, custody, or support ~~action provided~~ the defendant has been -summoned to answer the original complaint.

(e) Proceedings Modified. ~~The f~~Forms of relief formerly obtainable under the following must be obtained by a motion or action:

(1) Wwrits of fieri facias;

(2) ,sScire facias;

(3) ,mMandamus;

(4) ,eError coram nobis;

(5) ,eError coram vobis;

(6) ,sSequestration;

(7) ,pProhibition;

(8) ,qQuo warranto;

(9) ,wWrits in the nature of quo warranto; -and

(10) aAll other writs, ~~shall be obtained by motions or actions seeking such relief.~~

~~(e)~~

(f) Statutory Terminology of Statutes. ~~In applying these rules to any proceedings to an applicable proceeding, which they are applicable, the~~statutory terminology of any statute ~~with which~~ also applies ~~must~~ shall, if inconsistent with these rules, ~~be interpreted taken to mean the an~~ analogous device or procedure proper under these rules. For example:

~~(f) ; thus (and these examples are intended in no way to limit the applicability of this general statement):~~

(1) Bill of complaint, bill in equity, bill, or declaration shall means a complaint as specified in these rules;

(2) Plea in abatement shall means motion;

(3) Demurrer shall be understood to means motion to strike as set out in Rule 12(f);

(4) Plea shall means motion or answer, as whichever is appropriate under these rules;

- (5) *Plea of set-off* or *set-off* ~~shall be understood to mean~~ a permissible counter-claim;
- (6) *Plea of recoupment* or *recoupment* shall refer to a compulsory counter-claim;
- (7) *Cross-bill* shall be understood to refer to a counter-claim, or a cross-claim as, ~~whichever is~~ appropriate under these rules;
- (8) *Revivor*, *revive*, or *revived* ~~, used with~~ reference to an actions, shall refer to ~~the~~ substitution ~~procedure stated~~ in Rule 25;
- (9) *Decree pro confesso* shall be understood to mean a entry of default judgment as provided in Rule 55; and
- (10) *Decree* shall mean a judgment, as defined in Rule 54.

;

(g) No specific (g) Procedure Not Specifically Prescribed.—When no procedure is specifically ~~stat~~prescribed, the court ~~must~~shall proceed in any lawful manner not inconsistent with the Mississippi Constitution of the State of Mississippi; ~~these rules~~; ~~or any~~ applicable statute.

[Amended effective ~~June 6/24/1992~~; ~~4/April 13/2000~~.]

Advisory Committee Historical Note

Effective ~~April 4/13/2000~~, Rule 81(d)(5) was amended to make a continuance effective ~~ual~~ on a signed rather than ~~an~~ entered order.—~~753-754~~ So. 2d XVII (West Miss. Cas. 2000.)

Effective ~~June 6/24/1992~~, Rule 81(h) was deleted.—~~598-602~~ So. 2d XXIII-XXIV (West Miss. Cas. 1992).

Effective ~~January 1/1/1986~~, Rule 81(a) was amended by adding subsections (10)—(12); Rule 81(b) was amended by deleting examples and ~~by deleting~~ a provision that no answers are required in ex parte matters; Rule 81(d) was rewritten to provide for proceedings in a number of specified actions and to abrogate its treatment of domestic relations matters.—~~470, 473~~ So. 2d XVI-XVIII (West Miss. Cas. 1986).

Advisory Committee Notes

Rule 81 complements Rule 1 by specifying which civil actions are partially or not governed ~~only partially, or not at all~~, by the provisions of the M.R.C.P. Mississippi Rules of Civil Procedure.

Rule 81(a) lists 12 categories of civil actions which are not governed entirely by the Mississippi Rules of Civil Procedure M.R.C.P. In each of ~~those actione, s~~ there are statutory

provisions detailing certain procedures to be utilized. *See generally* Miss. Code Ann. §§ 11-43-1, *et seq.*; (habeas corpus); 73-3-301, *et seq.*; (disciplining ~~of attorneys~~); 43-21-1, *et seq.*; (youth court proceedings); 23-15-911 *et seq.* (election contests); 31-13-1, *et seq.*; (bond validation); 41-21-61, *et seq.*; (persons with mental illness or ~~an~~ intellectual disability); 41-30-1, *et seq.*; (adjudication, commitment, and release of alcohol and drug addicts); 11-27-1, *et seq.*; (eminent domain); 91-1-1, *et seq.*; (trusts and estates); 93-1-1, *et seq.*; (domestic relations); 51-29-1, *et seq.*; and 51-31-1, *et seq.*; (creating and ~~maintenan~~ maintaining ~~ee of~~ drainage and water management districts); 21-1-1, *et seq.*; (creating ~~of~~ and changing municipal boundaries ~~of municipalities~~); and those proceedings identified in category (L12) by ~~their C~~ code T ~~title as follows~~: 9-5-103 (bonds of receivers, assignees, executors may be reduced or cancelled, if excessive or for sufficient cause); 11-1-23 (court or judge may require new security); 11-1-29 (proceedings on death of surety on bonds, etc.); 11-1-31 (death of parties on bonds having force of judgment where—citation in anticipation of judgment); 11-1-35 (death of parties on bonds having force of judgment when citation issued and returnable); 11-1-43 ~~through to~~ 11-1-49 (seizure of perishable commodities by legal process); 11-5-151 ~~through to~~ 11-5-167 (receivers in chancery); and 11-17-33 (receivers appointed for nonresident or unknown owners of mineral interests).

~~But However,~~ in any instance in the ~~twelve 12 listed~~ categories ~~in where which the~~ controlling statutes are silent as to a procedure, the Mississippi Rules of Civil Procedure govern.

As to ex parte matters, Rule 81(b) ~~intends to intended to~~ preserve among other things, inter alia, the summary manner in which many of the following matters are handled: matters testamentary, ~~of~~ administration, ~~in~~ minors' or wards' business; ~~and, and in~~ cases of idiocy, lunacy, and persons of unsound mind. ~~are handled.~~ *See* Miss. Code Ann. § 11-5-49 (1972).

Rule 81(c) pertains to an actions or matters where a statute requires ~~that~~ summons or notice ~~be made~~ by publication. In those instances, Rule 4 publication ~~as provided by Rule 4 shall~~ satisfies the statutory requirements ~~of such statute(s)~~.

Rule 81(d) recognizes that ~~there are~~ certain actions and matters ~~whose nature~~ requires special procedural rules, including: of procedure. Basically these (1) a are matters whereof which the State of Mississippi has an interest in the outcome; (2) a matter whose nature or which because of their nature should should not subject a defendant or respondent who fails to answer to a default judgment; and (3) for failure to answer. Furthermore, they are matters that should not be interpreted taken as confessed even in the absence of a defendant's or respondent's the appearance. ~~of the defendant/respondent.~~ Most of the enumerated matters ~~enumerated~~ are peculiar to chancery court. Rule 81(d) divides them ~~actions therein detailed~~ into two categories. ~~This division is~~ based upon the recognition

that ~~because of their simplicity or need for speedy resolution,~~ some matters, ~~because of either their simplicity or need for speedy resolution,~~ should be triable after a short notice to the defendant or /respondent. ~~Yet because of their complexity, ; while others, ; because of their complexity,~~ should afford the defendant or /respondent more time for trial preparation.

Under Rule 81(d)(3), ~~provides that~~ the pleading initiating the action should be commenced by complaint or petition only and ~~shall not be taken as~~ confessed. Initiating a Rule 81(d) actions by “motion” is not intended.

Rule 81(d)(5) recognizes that since no answer is required of a defendant or /respondent, then the issued summons ~~issued must~~ inform the defendant or respondent ~~him~~ of the time and place ~~where he is~~ to appear and defend. If the matter is not heard on the date originally set for ~~the~~ hearing, the court may sign an order on that day continuing the matter to a later date. In addition, ~~The rule also~~ ~~allows~~ ~~provides that a the~~ ~~C~~ourt to may adopt a rule or issue an order authorizing its ~~C~~lerk to set an actions or matters for an original hearings and to continue ~~the the same for~~ hearing for a later date. ~~-(A L) local rules should be filed with the Mississippi Supreme Court as Rule 83 requires~~ ~~ed by Rule 83).~~

According to Rule 81(d)(6), ~~as to provides that as to any~~ temporary hearing in a pending action for divorce, separate maintenance, child custody, or child support, Rule 5(b) notice ~~with the manner prescribed by Rule 5(b) shall~~ be sufficient, ~~if provided~~ the defendant or /respondent has already been summoned to answer.

CHAPTER SECTION 11XI. GENERAL PROVISIONS

Rule 82. Jurisdiction; ~~and~~ venue.

- (a) **Jurisdiction Unaffected.**— These rules must ~~hall~~ not be construed to extend or limit the jurisdiction of a ~~the courts of~~ Mississippi court.
- (b) **Venue ~~of Actions~~.**— Unless this rule states otherwise ~~Except as provided by this rule, applicable statutes control~~ venue of an ~~H~~ actions ~~shall be as provided by statute~~.
- (c) Venue; multiple ~~Where C~~claims ~~or P~~parties ~~Joined~~.**

(1) Where. ~~Where If~~ several claims or parties have been properly joined, the suit may be brought in any county where ~~in which any~~ one of the claims properly could ~~properly~~ have been brought.

(2) Joinder. ~~Whenever~~ an action has been commenced in a proper county, additional claims and parties may be joined , ~~pursuant under to~~ Rules 13, ~~–~~ 14, 22 and 24 ~~, as ancillary thereto,~~ without regard to whether that county would be a proper venue for an independent action on sue ~~the~~ claims or against sue ~~the~~ parties.

~~(e)~~

(d) Improper ~~V~~venue.

(1) Transfer rather than dismiss. When an action is filed laying ~~venue~~ in the wrong county, instead of dismissing the action, ~~the action shall not be dismissed, but~~ the court, on timely motion mu-~~st~~ hall transfer ~~i~~the action to the court where ~~in which it properly~~ might properly have been filed.

(2) Case proceeds. ~~and ~~t~~~~ The case mu-~~st~~ hall proceed as though originally filed therein ~~the court where it is transferred.~~

(3) Transfer expense. The expenses of the ~~transfer~~ transferring the case mu-~~st~~ hall be ~~taxborne by to h~~ the plaintiff.

(4) More than one court. If the action properly might have been filed in more than one court, ~~T~~the plaintiff mu-~~st~~ hall have the right to select the court to which the action wi-~~l~~ shall be transferred ~~in the event the action might properly have been filed in more than one court.~~

~~(d)~~

- (e) Forum ~~N~~on-conveniens.**— If an action ~~With respect to actions~~ is filed in an appropriate venue, and no statute designates or limits ~~where~~ venue ~~is not otherwise designated or limited by statute, then for the parties' and witnesses' convenience or in the interest of justice, the~~ court may , ~~for the convenience of the parties and witnesses or in the interest of justice, ~~t~~~~ transfer any action or any claim in any civil action to a ny court ~~in where ieh~~ the action properly might have been properly filed, ~~and ~~t~~~~ the case mu-~~st~~ hall proceed as though originally filed therein that court.

(e)

[Amended effective ~~February 2/20/2004~~, to add Section 82(e) allowing transfer for forum nonconveniens for cases filed after the effective date.]

Advisory Committee Notes

Under Rule 82(c), ~~provides that~~ if venue is proper for one plaintiff's claim, and ~~if tsuehe~~ plaintiff has been properly joined with other plaintiffs, venue is proper for all plaintiffs' claims. ~~Section 11-11-3(2) of the Mississippi Code of 1972 Annotated §11-11-3(2),~~ however, ~~provides states~~ that "[i]n any civil action where more than one (1) plaintiff is joined, each plaintiff shall independently establish proper venue; it is not sufficient that venue is proper for any other plaintiff joined in the civil action." Under Rule 82(b), ~~states that unless the rule states otherwise "[e]xcept as provided by this rule,~~ venue in all actions ~~must hall~~ be ~~according to s provided by~~ statute." Thus, ~~therefore,~~ ~~is~~ a conflict ~~exists~~ between the rule and the statute.

Under ~~in that~~ the rule, ~~states that~~ venue is proper in cases involving multiple plaintiffs who are properly joined if venue is proper for a single plaintiff's claim; ~~yet under,~~ ~~whereas~~ the statute, ~~provides that~~ in a cases involving multiple plaintiffs, venue must be proper for each plaintiff's claim. No conflict exists ~~There is no conflict~~ in cases involving multiple defendants. *See Penn Nat'l Gaming, Inc. v. Ratliff*, 954 So. 2d 427, 432 (Miss. 2007) ("venue properly established against one defendant generally ~~is~~ proper against all defendants)."~~See Penn Nat'l Gaming, Inc. v. Ratliff~~, 954 So. 2d 427, 432 (Miss. 2007). In cases involving a medical~~malpractice~~ defendant and another defendant, however, venue established by Section 11-11-3 of the Mississippi Code of 1972 Annotated §11-11-3 is only appropriate in the county where the alleged malpractice occurred. *See Adams v. Baptist Memorial Mem'l Hosp.ital-DeSoto, Inc.*, 965 So. 2d 652, 657-58 (Miss. 2007).

Rule 82(e) authorizes a motion to transfer venue to another Mississippi court having proper venue ~~within the state~~ based upon forum non-conveniens. In addition, Section 11-11-3 of the Mississippi Code Annotated of 1972 §11-11-3 authorizes transfer to another Mississippi forum ~~within Mississippi~~ that is more convenient and ~~further authorizes~~ dismissal of the case ~~in Mississippi~~ if a more convenient forum is available in another state. A trial court ruling on a motion to dismiss ~~made filed pursuant under to~~ the statute must ~~determine decide~~ whether, given "the interest of justice" and "the convenience of the parties and witnesses," "a claim or action would be more properly heard in a forum outside this state or in a different county of proper venue within this state." Miss. Code. Ann. § 11-11-3(4)(a). Mississippi Code Annotated §11-113(4)(a). The trial court may consider the factors ~~stated in Section 11-11-3(4)(a)et forth in Mississippi Code Annotated §1111-3(4)(a) of the Mississippi Code Annotated of 1972.-~~

Rule 83. – Local court rules.

(a) When Permissibility ~~is~~ sible.

(1) Judicial conference. The conference of circuit, chancery, and county court judges may ~~hereafter make issue~~ uniform rules and amendments ~~thereto~~ concerning practice in their respective courts not ~~inconsistent~~ with these rules.

(2) Judicial majority. Likewise, ~~any~~ court by action of a majority of the judges ~~thereof~~ may ~~hereafter issue~~ make local rules and amendments ~~thereto~~ concerning practice in their respective courts not inconsistent with these rules.

(A) No majority. In the event there is no majority, the senior judge ~~must~~ shall have an additional vote.

~~(a)~~

(b) Procedure for Approval.

(1) Requirements. All ~~such~~ local rules and uniform rules adopted before being effective must be filed in the Mississippi Supreme Court ~~of Mississippi~~ for approval. The following must be filed with a motion for approval in an electronically formatted medium (e.g., USB flash drive or CD-ROM):

~~(A) –Such motions shall also include a~~ A copy of the motion; and ~~of~~

~~(B) †The proposed rules in an electronically formatted medium (such as USB Flash Drive or CD-ROM).~~

(2) Receipt. ~~Up~~After a proposed rule is received before it is approved, ~~on receipt of such proposed rules and prior to any approval of the same,~~ the Mississippi Supreme Court may submit ~~them~~ it to the Mississippi Supreme Court Advisory Committee on Rules for advice as to whether ~~any such~~ the proposed rule ~~is~~ are consistent or in conflict with these rules or ~~any other rules~~ the Mississippi Supreme Court has adopted ~~by the Supreme Court~~.

~~(b)~~

(c) Publication. – All local and uniform rules ~~hereinafter~~ approved by the Mississippi Supreme Court ~~must~~ shall be submitted for publication in the Southern Reporter (Mississippi cases).

~~(c)~~

[Amended effective ~~March 3/1/, 1989; November 11/29/, 1989; February 2/1/, 1990; March 3/13/, 1991; December 12/16/, 1991;~~ amended ~~March 3/10/, 1994,~~ effective retroactively from and after ~~January 1/1/, 1993;~~ amended ~~October 10/13/, 1995,~~ effective from and after ~~April 4/14/, 1994;~~ amended effective ~~July 7/1/, 2010.~~]

Advisory Committee Historical Note

Rule 83 was amended ~~March 3/10/1994~~, effective retroactively from and after ~~January 1/1/1993~~, by deleting the word “hereinafter” in Rule 83(b) following the words, “uniform rules”; by deleting Rule 83(c) in its entirety; and by renumbering 83(d) as 83(c). ~~632-635~~ So. 2d XXIII-XXIV (West Miss. Cases 1994).

[Adopted ~~August 8/21/1996~~.]

Advisory Committee Notes

Practitioners may access local rules that have been approved by the Mississippi Supreme Court on ~~the Court's~~ its website.

Rule 84. Forms 1, 2, 3, and 4.

Under Rule 4(b)(3)(A), a summons served by a process server must substantially conform to Form 1. Under Rule 4(b)(3)(B), a summons served by the sheriff must substantially conform to Form 2. Under Rule 4(c)(3)(A)(ii), a notice and acknowledgment must substantially conform to Form 3. And under Rule 4(c)(4)(A), a summons by publication must substantially conform to Form 4. The Appendix contains Forms 1, 2, 3, and 4.

Advisory Committee Notes

Former Rule 84 referred to “forms contained in the Appendix of Forms [that] are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.” Prior to December 2015 amendments, Federal Rule of Civil Procedure 84 referred to “forms in the Appendix [that] suffice under these rules and illustrate the simplicity and brevity that these rules contemplate.” The amended Federal Rule of Civil Procedure 84 abrogated the Appendix of Forms. The Committee Note recognized the following: (1) that the purpose for providing illustrations—although useful when the rules were adopted—had been fulfilled; (2) that many alternative sources for forms existed; and (3) that the forms were no longer necessary.

Unlike its federal counterpart, Rule 84 of the Mississippi Rules of Civil Procedure does not abrogate all forms. Rule 84 does not abrogate forms mentioned in Rule 4: Form 1 (formerly Form 1A); Form 2 (formerly Form 1AA); Form 3 (formerly Form 1-B); and Form 4 (formerly Form 1-C). These forms, however, have been updated. In contrast, December 2015 amendments to the Federal Rules of Civil Procedure moved similar forms to the end of Federal Rule of Civil Procedure 4.

Yet like its federal counterpart, Mississippi Rule of Civil Procedure 84 recognizes that the purpose of providing illustrations has been fulfilled. In addition, Rule 84 recognizes that alternative sources for the forms exist and that they are no longer necessary.

~~The forms contained in the Appendix of Forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.~~

Rule 85. Title; citation.

—These rules ~~are~~shall be known as the “Mississippi Rules of Civil Procedure” and may be cited as: Miss. R. Civ. P. or M.R.C.P (e.g., Miss. R. Civ. P. 85 or -M.R.C.P. 85); e.g., M.R.C.P. 85.

APPENDIX: FORMS 1, 2, 3 AND 4

~~A. FORMS~~

~~See Rules 4 and 84 for more information about Forms 1, 2, 3, and 4. These forms are illustrations only. [See Rule 84]~~

~~INTRODUCTORY STATEMENT~~

~~1. The following forms are intended for illustration only. They are limited in number. No attempt is made to furnish a manual of forms.~~

~~2. Except where otherwise indicated, each pleading, motion, and other paper should have a caption similar to that of the summons, with the designation of the particular paper substituted for the word "Summons." In the caption of the summons and in the caption of the complaint all parties must be named but in other pleadings and papers it is sufficient to state the name of the first party on each side, with an appropriate indication of other parties. See M.R.C.P. 4(b), 7(b)(2), and 10(a).~~

~~3. Each pleading, motion, and other paper is to be signed by at least one attorney of record in his individual name (M.R.C.P. 11). The attorney's name is to be followed by his address as indicated in Form 2. In forms following Form 2 the signature and address are not indicated.~~

~~4. If a party is not represented by an attorney, the signature and address of the party are required in place of those of the attorney (M.R.C.P. 11).~~

FORM 1A. SUMMONS Form 1. Process server (front).

(Process Server)

IN THE (Insert court) COURT OF (Insert county) COUNTY, MISSISSIPPI

A.B., Plaintiff(s)

v.

Civil Action No. (Insert case number)

C.D., Defendant(s)

IN THE _____ COURT OF _____ COUNTY, MISSISSIPPI

A.B., Plaintiff(s)

v.

Civil Action, File No. _____ CD., Defendant(s)

SUMMONS

THE STATE OF MISSISSIPPI

TO: (Insert the name and address of the person to be served)

NOTICE TO DEFENDANT(S)

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT, AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS.

You are required to mail or hand deliver a copy of a written response to the Complaint to (Insert attorney's name) _____, the attorney for the Plaintiff(s), whose post office address is (Insert post office address) _____ and whose street address is (Insert street address) _____. Your response must be mailed or delivered within ~~(30)~~ days from the date of delivery of this summons and complaint or a judgment by default will be entered against you for the money or other things demanded in the complaint.

You must also file ~~the original of~~ your original response with the Clerk of this Court within a reasonable time afterward.

Issued under my hand and ~~the court~~ seal ~~of said Court~~, ~~this the~~ (Insert date) _____ day of (Insert year) _____, 19____.

(Insert clerk's signature)

Clerk of (Insert county) County, Mississippi

(Affix seal)

(Seal)

~~[This form shall appear on the reverse side of Form 1A. Summons (Process Server)]~~

Form 1. Process server (back).

PROOF OF SERVICE ~~---~~SUMMONS

(Process Server)

[Use separate proof of service for each person served]

(Insert name of person or entity served) Name of Person or Entity Served

I, (Insert process server's name), the process server identified below, served ~~the undersigned process server, served~~ the summons and complaint upon (Insert name of person or entity served) ~~the person or entity named above~~ in the following manner set forth below (process server must check proper space and provide all additional requested information that is requested and pertinent to the mode of service used):

~~_____ [] FIRST CLASS MAIL AND ACKNOWLEDGEMENT SERVICE. By mailing (by first class mail, postage prepaid and), on the date stated in the attached Notice, to (Insert name) copies of the: (1) copies to the person served, together with copies of the form of notice; (2) and acknowledgement; and (3) self-addressed return envelope, postage prepaid, addressed to the sender (Attach completed acknowledgement of receipt from Form 3) pursuant to M.R.C.P. Form 1B).~~

~~_____ [] PERSONAL SERVICE. I personally delivered copies to _____ On the the (Insert date) of (Insert year), I personally delivered copies to (Insert name) — day of , 19_, where I found said that person(s) in (Insert county) _____ County of the State of (Insert state) _____.~~

~~[] _____ RESIDENCE SERVICE. After exercising reasonable diligence I was unable to deliver copies to said (Insert name) person within (Insert county) County of the State of (Insert state). _____ county, (state). I served the summons and complaint on the (Insert date) of (Insert year), _____ day of _____, 19_, at the usual place of abode of said (Insert name) person by leaving a true copy of the summons and complaint with (Insert name), _____ who is the _____ (Insert wife, husband, son, daughter, or other person) (here insert wife, husband, son, daughter or other person as the case may be), a family member of (Insert name) the family of the person served above the age 16 of sixteen years and willing to receive the summons and complaint. And afterwards on the~~

(Insert date) of (Insert year), and thereafter on the ___ day of _____, 19___, I mailed
~~((by first class mail, postage prepaid) copies to (Insert name) the person served at hat his/~~
~~or her usual place of abode where the copies were left.~~

~~--- [] --- CERTIFIED MAIL SERVICE. --- By mailing to an address outside Mississippi~~
~~(by first class mail, postage prepaid, requiring a return receipt) copies to (Insert name) the~~
~~person served). --- (Attach signed return receipt or the return envelope marked "Refused.")~~

At the time of service I was at least 18 years of age and not a party to this action.

Fee for service: \$--- -- *(Insert amount of fee)*

Process server must list below: *[Please print or type]*

_____ *(Insert name)*

_____ *(Insert social security number)*

_____ *(Insert address)*

_____ *(Insert telephone number)*

Name _____ Social Security No. _____

Address _____

_____ Telephone No. _____

State of *--- (Insert state). ---*

County of *--- (Insert county). ---*

(Insert name) Personally appeared before me, a ~~the undersigned notary public~~
~~authority in the above jurisdiction and whose signature follows, and for the state and~~
~~county and after aforesaid, the within named _____ who being first by me duly sworn,~~
states on oath that the matters and facts ~~set forth~~ in the ~~foregoing previous~~ "Proof of
Service --- Summons" are true and correct as ~~therein~~ stated in it.

(Insert process server's signature)

Process Server (Signature)

Sworn to and subscribed before me the (Insert date) of (Insert year), this the ___ day of
19___.

(Insert process notary public's signature)

Notary Public

~~(Seal)~~ *(Affix seal)*

My ~~C~~ommission ~~E~~xpires: *(Insert date)*

[Adopted effective ~~March 3/1/, 1985~~; amended effective ~~May 5/2/, 1985~~; amended ~~March 3/17/, 1995~~.]

Form 2. Sheriff (front).

FORM 1AA. SUMMONS

IN THE (Insert court) COURT OF (Insert county) COUNTY, MISSISSIPPI

A.B., Plaintiff(s)

v.

Civil Action No. *(Insert case number)*

C.D., Defendant(s)

(Sheriff)

IN THE _____ COURT OF _____ COUNTY, MISSISSIPPI

A.B., Plaintiff(s)

v. _____ Civil Action, File No. _____ C.D., Defendant(s)

SUMMONS

SUMMONS

THE STATE OF MISSISSIPPI

TO: (Insert the name and address of the person to be served)

NOTICE TO DEFENDANT(S)

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT, AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS.

You are required to mail or hand deliver a copy of a written response to the Complaint to (Insert attorney's name), the attorney for the Plaintiff(s), whose post office address is (Insert post office address) and whose street address is (Insert street address). Your response must be mailed or delivered within 30 days from the date of delivery of this summons and complaint or a judgment by default will be entered against you for the money or other things demanded in the complaint.

You must also file your original response with the Clerk of this Court within a reasonable time afterward.

Issued under my hand and court seal, the (Insert date) of (Insert year).

(Insert clerk's signature)

Clerk of (Insert county) County, Mississippi

(Affix seal)

Form 2. Sheriff (back).

~~THE STATE OF MISSISSIPPI~~

~~TO: (Insert the name and address of the person to be served)~~

NOTICE TO DEFENDANT(S)

~~THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS.~~

~~You are required to mail or hand deliver a copy of a written response to the Complaint to _____, the attorney for the Plaintiff(s), whose post office address is _____, and whose street address is _____. Your response must be mailed or delivered within (30) days from the date of delivery of this summons and complaint or a judgment by default will be entered against you for the money or other things demanded in the complaint.~~

~~You must also file the original of your response with the Clerk of this Court within a reasonable time afterward.~~

~~Issued under my hand and the seal of said Court, this ____ day of _____, 19 ____.~~

~~Clerk of _____ County,
Mississippi~~

~~(Seal)~~

~~[This form shall appear on the reverse side of Form 1AA: Summons (Sheriff)]
RECEIVED the (Insert date) of (Insert year).~~

~~(Insert sheriff's signature)
Sheriff of (Insert county) County, Mississippi~~

~~THIS ____ DAY OF _____, 19 ____.
BY
—SHERIFF~~

SHERIFF'S RETURN

State of (Insert state).
County of (Insert county).

~~State of Mississippi)
County of _____)~~

I personally delivered copies of the summons and complaint on the (Insert date) of (Insert year), to: (Insert name).

After exercising reasonable diligence I was unable to deliver copies of the summons and complaint to (Insert name) within (Insert county) County, Mississippi. I served the summons and complaint on the (Insert date) of (Insert year), at the usual place of abode of (Insert name) by leaving a true copy of the summons and complaint with (Insert name), who is the (Insert wife, husband, son, daughter, or other person), a family member of (Insert name) above age 16 and willing to receive the summons and complaint. And afterwards on the (Insert date) of (Insert year), I mailed (first class, postage prepaid) copies to (Insert name) at his/her usual place of abode where the copies were left.

 ~~()~~ I personally delivered copies of the summons and complaint on the day of , 19 , to: .

~~()~~ After exercising reasonable diligence I was unable to deliver copies of the summons and complaint to within County, Mississippi. I served the summons and complaint on the day of , 19 , at the usual place of abode of said , by leaving a true copy of the summons and complaint with , who is the (here insert wife, husband, son, daughter or other person so as the case may be), a member of the family of the person served above the age of sixteen years and willing to receive the summons and complaint, and thereafter on the day of , 19 , I mailed (by first class mail, postage prepaid) copies to the person served at his or her usual place of abode where the copies were left.

~~()~~ I was unable to serve the summons and complaint.

This (Insert date) of (Insert year). This the day of , 19 .

Sheriff of (Insert county), Mississippi.

(Insert deputy sheriff's signature)

Deputy Sheriff

Sheriff of County,

Mississippi

By: , Deputy Sheriff

[Note: All summons issued to the sheriff must be returned within ~~thirty~~ 30 days from the day the summons was received by the sheriff ~~pursuant unto the requirements of~~ Mississippi Rule of Civil Procedure 4(c)(2)].

[Adopted effective ~~March 3/1/, 1985~~; amended effective ~~February 2/1/, 1990~~.]

|

Form 3. Notice and acknowledgment for service by mail (front).

**FORM 1B. NOTICE AND ACKNOWLEDGMENT FOR SERVICE BY MAIL
IN THE (Insert court) COURT OF (Insert county) COUNTY, MISSISSIPPI**

A.B., Plaintiff(s)

v.

Civil Action No. (Insert case number)

C.D., Defendant(s)

IN THE COURT OF _____ COUNTY, MISSISSIPPI

A.B., Plaintiff(s)

~~—(include appropriate designation of other plaintiffs)~~

~~_____ v. _____ Civil Action, File No.~~

~~—C.D., Defendant(s)~~

~~—(include appropriate designation of other defendants)~~

NOTICE

TO: (Insert the name and address of the person to be served)

~~TO: (Insert the name and address of the person to be served)~~

The enclosed summons and complaint are served ~~pursuant~~ according to ~~to~~ Rule 4(c)(3) of the Mississippi Rules of Civil Procedure.

You must sign and date the acknowledgment at the bottom of this page.— If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, you must indicate under your signature your relationship to that entity.— If you are served on behalf of another person and ~~you are~~ authorized to receive process, you must indicate that authority under your signature ~~your authority~~.

If you do not complete and return the form to the sender within 20 days of the date of mailing shown below, you (or the party on whose behalf you are being served) may be required to pay ~~any~~ expenses incurred in serving a summons and complaint.

If you do complete and return this form, you (or the party on whose behalf you are being served) must respond to the complaint within 30 days of the date of your signature. If you fail to do so, judgment by default will be taken entered against you for the relief demanded in the complaint.

I declare that this Notice and Acknowledgement of Receipt of Summons and Complaint was mailed on —(Insert date) of (Insert year).

_____ (Insert date)

(Insert signature)

Signature

Form 3. Notice and acknowledgment for service by mail (back).

**THIS ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT
MUST BE COMPLETED**

I acknowledge that I have received a copy of the summons and ~~of the~~ complaint in the above-~~captioned~~ matter in the State of (Insert state) _____.

(Insert signature)

(Insert relationship to entity/authority to receive service of process)
Signature

(Insert date of signature)
~~(Relationship _____ to
Entity/Authority to Receive
Service of Process)~~

Date of Signature

State of (Insert state).
County of (Insert county).

(Insert name) personally appeared before me, a notary public in the above jurisdiction and whose signature follows, who solemnly and truly declared and affirmed before me that the matters and facts in the previous "Acknowledgment of Receipt of Summons and Complaint" are true and correct as stated in it.

(Insert process server's signature)

Affirmed to and subscribed before me the (Insert date) of (Insert year),

(Insert process notary public's signature)

State of _____
County of _____

~~Personally appeared before me, the undersigned authority in and for the State and County aforesaid, the above named _____, who solemnly and truly declared and affirmed before me that the matters and facts set forth in the foregoing Acknowledgement of Receipt of Summons and Complaint are true and correct as therein stated.~~

~~Affirmed and subscribed before me this ____ day of _____, 19__.~~

(Affix seal)

My commission expires: *(Insert date)*

~~Notary Public
My _____ Commission _____ Expires~~

~~(Seal)~~

~~[Adopted effective **March 3/1/**, 1985; amended effective **May 5/2/**, 1985; amended **March 3/17/**, 1995.]~~

Form 14e. Summons by publication.

IN THE (Insert court) COURT OF (Insert county) COUNTY, MISSISSIPPI

A.B., Plaintiff(s)

v.

Civil Action No. *(Insert case number)*

C.D., Defendant(s)

IN THE COURT OF _____ COUNTY, MISSISSIPPI

~~A.B., Plaintiff(s)~~

~~—(It is sufficient here to state the name— of the first plaintiff with an appropriate designation of other plaintiffs.)~~

~~—v. _____ Civil Action, File No.~~

~~CD., Defendant(s)~~

~~—(It is sufficient here to state the name— of the first defendant with an appropriate designation of other defendants.)~~

SUMMONS

THE STATE OF MISSISSIPPI

TO: *(Insert the name and address of the person to be served)*

~~TO: *(Insert name of the person(s) to be served)*~~

You have been made a Defendant in the suit filed in this Court by *(Insert name of all Plaintiffs)*, Plaintiff(s), seeking *(Insert a brief description of the relief being sought)*. Defendants other than you in this action are *(insert names of all defendants other than the person or persons who are the subject of this summons)*.

You are required to mail or hand deliver a copy of a written response to the Complaint to *(Insert attorney's name)*, the attorney for the Plaintiff(s), whose post office address is *(Insert post office address)* and whose street address is *(Insert street address)*.

YOUR RESPONSE MUST BE MAILED OR DELIVERED NOT LATER THAN 30 DAYS AFTER *(INSERT DATE)* OF *(INSERT YEAR)*, WHICH IS THE DATE OF THE FIRST PUBLICATION OF THIS SUMMONS. IF YOUR RESPONSE IS NOT MAILED OR DELIVERED AS STATED, A JUDGMENT BY DEFAULT WILL BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER RELIEF DEMANDED IN THE COMPLAINT.

You must also file your original response with the Clerk of this Court within a reasonable time afterward.

Issued under my hand and court seal, the (Insert date) of (Insert year).

(Insert clerk's signature)

Clerk of (Insert county) County, Mississippi

(Affix seal)

~~You are required to mail or hand deliver a written response to the Complaint filed against you in this action to _____, Attorney for Plaintiff(s), whose post office address is _____ and whose street address is _____.~~

~~—YOUR RESPONSE MUST BE MAILED OR DELIVERED NOT LATER THAN THIRTY DAYS AFTER THE ___ DAY OF _____, 19___, WHICH IS THE DATE OF THE FIRST PUBLICATION OF THIS SUMMONS. IF YOUR RESPONSE IS NOT SO MAILED OR DELIVERED, A JUDGMENT BY DEFAULT WILL BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER RELIEF DEMANDED IN THE COMPLAINT.~~

~~You must also file the original of your Response with the Clerk of this Court within a reasonable time afterward.~~

~~Issued under my hand and the seal of said Court, this ___ day of _____, 19___.~~

~~Clerk of _____ County,
Mississippi~~

~~(Seal)~~

~~[Adopted effective March 1, 1985; amended effective May 2, 1985.]~~

|

FORM 1D. RULE 81 SUMMONS

(Sheriff or Process Server)

IN THE _____ COURT OF COUNTY, MISSISSIPPI

A. B., Plaintiff(s)

_____ v. _____ Civil Action, File No.

C. D., Defendant(s)

SUMMONS

THE STATE OF MISSISSIPPI

TO: (Insert the name

NOTICE TO DEFENDANT(S)

THE COMPLAINT OR PETITION WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS.

You are summoned to appear and defend against said complaint or petition at ___ O'clock ____ M. on the _____ day of _____ 19 ___, in the courtroom of the County Courthouse at _____, Mississippi, and in case of your failure to appear and defend a judgment will be entered against you for the money or other things demanded in the complaint or petition.

You are not required to file an answer or other pleading but you may do so if you desire.

Issued under my hand and the seal of said Court, this ___ day of _____, 19__.

Clerk of _____ County,

Mississippi (Seal)

(Note: All summons issued to the sheriff must be returned prior to the time the defendant is summoned to appear.)

[Adopted effective January 10, 1986.]

FORM 1DD. RULE 81 SUMMONS

(Summons by Publication)

IN THE COURT OF _____ COUNTY, MISSISSIPPI

A.B., Plaintiff(s)

—(It is sufficient here to state the name—of the first plaintiff with an appropriate designation of other plaintiffs.)

_____ v. _____ Civil Action, File No.

C.D., Defendant(s)

—(It is sufficient here to state the name—of the first defendant with an appropriate designation of other defendants.)

SUMMONS

THE STATE OF MISSISSIPPI

TO: (Insert name of the person(s) to be served.)

You have been made a Defendant in the suit filed in this Court by _____, (Insert name of all Plaintiffs) Plaintiff(s) seeking _____ (Insert a brief description of the relief being sought). Defendants other than you in this action are _____ (Insert names of all defendants other than the person or persons who are the subject of this summons)

You are summoned to appear and defend against the complaint or petition filed against you in this action at ___ o'clock __ M. on the ___ day of _____, 19 __, in the courtroom of the County Courthouse at _____, Mississippi, and in case of your failure to appear and defend, a judgment will be entered against you for the money or other things demanded in the complaint or petition.

You are not required to file an answer or other pleading but you may do so if you desire. — Issued under my hand and the seal of said Court, this ___ day of _____, 19 __.

Clerk of County,

Mississippi (Seal)

FORM 1E. WAIVER OF PROCESS
IN THE _____ COURT OF COUNTY, MISSISSIPPI

A.B. Plaintiff

_____ v. _____ Civil Action, File No. _____

C.D. Defendant

WAIVER OF PROCESS

The undersigned _____ (name _____), whose post office address is _____ and whose street address is _____, does hereby waive the service of summons and _____ (designate any pleading on which service is being waived) upon myself in this cause.

In executing this document I certify that I am not an unmarried minor and am not mentally incompetent.

(In addition the person executing the waiver may add any or all of the following to the document:)

[Furthermore, by the filing of this document, I enter my appearance in this cause] just as if I had been served more than 30 days prior to this date]

[and agree that this action may be heard and disposed of without further notice to me]

[and join in this action and in the prayer for relief]

This the ___ day of _____, 20__.

Name

STATE OF _____)

COUNTY OF _____)

Personally appeared before me, the undersigned authority for the jurisdiction aforesaid, the within named _____ who acknowledged that he signed and delivered the above and foregoing instrument on the day and year therein mentioned.

Given under my hand this the ___ day of _____, 20__.

_____ Notary Public

My Commission Expires:

[In lieu of the above acknowledgment the following oath may be used:]

STATE OF _____)

COUNTY OF _____)

Personally appeared before me the undersigned authority in and for the jurisdiction aforesaid the within named _____ who, being first by me duly sworn, states on oath that the matters and facts set forth in the foregoing instrument are true and correct as therein stated.

Name

Sworn to and subscribed before me this the ___ day of _____, 20__.

Notary Public

My Commission Expires:

~~[Adopted effective February 1, 1990; amended effective July 1, 2009 to delete convicted felony exception.]~~

FORM 2. COMPLAINT ON A PROMISSORY NOTE

1. Defendant on or about _____, 19__, executed and delivered to Plaintiff a promissory note [in the following words and figures: (here set out the note verbatim)]; [a copy of which is hereto annexed as Exhibit A]; [whereby defendant promised to pay to plaintiff or order on _____, 19__, the sum of ___ dollars with interest thereon at the rate of percent per annum] [and agreed to pay a reasonable attorney's fee for collection].

2. Defendant owes to plaintiff [the amount of said note] [\$ _____ that is due on said note] and interest.

Wherefore plaintiff demands judgment against defendant for the sum of _____ dollars, interest, attorney's fee, and costs.

—Attorney for Plaintiff

Address

FORM 3. COMPLAINT ON COVENANT OR AGREEMENT

1. On or about the ___ day of _____, 19__, plaintiff and defendant entered into agreement by which defendant promised [here set out agreement in general terms].

2. Defendant breached the agreement by [here set out breaches in general terms].

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars, interest and costs.

FORM 4. COMPLAINT FOR SPECIFIC PERFORMANCE

1. This is an action for specific performance of a contract to convey real property in County, Mississippi.

2. On _____, 19__, plaintiff and defendant entered into a written contract, a copy being attached and marked Exhibit A.

3. Plaintiff timely tendered the purchase price to defendant and requested a conveyance of the real property described in the contract but defendant refused to accept the tender or to make the conveyance.

4. Plaintiff offers to pay the purchase price.

Wherefore plaintiff demands judgment that defendant be required to perform specifically the contract and for damages.

FORM 5. COMPLAINT ON AN OPEN ACCOUNT

1. Defendant owes plaintiff _____ dollars due by open account.
—Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars, interest and costs.

FORM 6. COMPLAINT ON ACCOUNT STATED

1. Defendant owes plaintiff _____ dollars on an account stated between the plaintiff and defendant on the ___ day of _____, 19__.
Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars, interest and costs.

FORM 7. COMPLAINT FOR GOODS SOLD AND DELIVERED

1. Defendant owes plaintiff _____ dollars for goods sold and delivered by plaintiff to defendant between the ___ day of _____ and the ___ day of _____, 19__.
Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars, interest and costs.

FORM 8. COMPLAINT FOR WORK AND LABOR DONE

1. Defendant owes plaintiff _____ dollars for work and labor done for the defendant by the plaintiff on the ___ day of _____, at defendant's request.
Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars, interest and costs.

FORM 9. COMPLAINT FOR MONEY LENT

1. Defendant owes plaintiff ___ dollars for money lent by plaintiff to defendant on or about the ___ day of _____, 19__.
Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars, interest and costs.

FORM 10. COMPLAINT FOR MONEY PAID BY MISTAKE

1. Defendant owes plaintiff _____ dollars for money paid by plaintiff to defendant by mistake on or about the ___ day of _____, 19__, under the following circumstances:
[here briefly state the circumstances].
—Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars, interest and costs.

FORM 11. COMPLAINT FOR MONEY HAD AND RECEIVED

1. Defendant owes plaintiff _____ dollars for money had and received from one _____ on or about the ___ day of _____, 19__, to be paid by defendant to plaintiff.
Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars, interest and costs.

FORM 12. COMPLAINT FOR MONEY PAID BY PLAINTIFF FOR DEFENDANT

1. Defendant owes plaintiff _____ dollars because of money paid by the plaintiff for the defendant on or about the ___ day of _____, 19__, at defendant's request.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars, interest and costs.

~~FORM 13. COMPLAINT ON A POLICY OF LIFE INSURANCE~~

1. On or about the ___ day of _____, 19___, defendant issued a policy whereby the defendant insured the life of _____ who died on the ___ day of _____, 19___, of which the defendant has had notice.

2. As a result, the amount of the policy is now due and the plaintiff is the beneficiary of the proceeds of the policy.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars, interest and costs.

~~FORM 14. COMPLAINT ON A POLICY OF FIRE INSURANCE~~

1. On or about the ___ day of _____, 19___, defendant insured plaintiffs dwelling house (or other property, as the case may be) against loss or injury by fire and other perils in a policy of insurance, for the term of _____ years.

2. The house (or other property) was wholly destroyed (or was damaged) by fire on the day of _____, 19___, of which the defendant has had notice.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars, interest and costs.

~~FORM 15. COMPLAINT FOR NEGLIGENCE~~

~~OR WANTONNESS~~

1. On or about the ___ day of ___, 19___, upon a public highway [state the name of the street] in [City]; _____ County, Mississippi, the defendant negligently [or wantonly] caused or allowed a motor vehicle to collide with a motor vehicle occupied by the plaintiff.

2. As a proximate consequence of the defendant's said negligence [or wantonness], the plaintiff was caused to suffer the following injuries and damages: [enumerate injuries and damages].

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars and costs.

~~FORM 16. COMPLAINT FOR ASSAULT AND BATTERY~~

1. On or about the ___ day of _____, 19___, the defendant committed an assault and battery on the plaintiff.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars and costs.

~~FORM 17. COMPLAINT FOR FALSE IMPRISONMENT~~

1. On or about the ___ day of _____, 19___, the defendant unlawfully arrested and imprisoned the plaintiff (or caused the plaintiff to be arrested and imprisoned as the case may be) on a charge of larceny (or as the case may be) for ___ days.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars and costs.

FORM 18. COMPLAINT FOR MALICIOUS PROSECUTION

1. On or about the ___ day of _____, 19___, defendant, maliciously, and without probable cause therefor, caused the plaintiff to be arrested under a warrant issued by _____, a justice court judge, on a charge of (as the case may be).
 2. Before the commencement of this action, this charge was judicially investigated, the prosecution ended, and the plaintiff discharged.
- Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars and costs.

FORM 19. COMPLAINT FOR FRAUD

1. On or about the ___ day of _____, 19___, defendant and plaintiff were negotiating concerning the purchase by plaintiff from defendant of the following described property:
[describe property].
 2. At that time defendant represented to plaintiff that [here set out representations with particularity].
 3. The representations made by defendant were false [and defendant knew that they were false] [and defendant, without knowledge of the true facts, recklessly misrepresented them] [and were made with the intention that plaintiff should rely upon them].
 4. Plaintiff believed the representations and in reliance upon them purchased the property.
- Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars and costs.

FORM 20. COMPLAINT ON A WARRANTY

1. On or about the ___ day of _____, 19___, defendant sold a (as the case may be) to the plaintiff on which the defendant gave warranty as shown by Exhibit A which is attached hereto [or insert the substance of the warranty].
2. In fact [here state the breach in general terms].

FORM 21. COMPLAINT FOR CONVERSION

1. On or about the ___ day of _____, 19___, defendant converted to his own use [here describe in general terms the property allegedly converted] of the _____ Company of the value of ___ dollars, the property of plaintiff.
- Wherefore plaintiff demands judgment against defendant in the sum of ___ dollars, interest and costs.

FORM 22. MOTION TO DISMISS PURSUANT TO RULE 12(b)

The defendant moves that the Court proceed as follows:

1. To dismiss the complaint for lack of subject matter jurisdiction in that it is [an action seeking the reformation of a written instrument (or as the case may be)] and plaintiff has a full and adequate remedy [at law] [in equity].
2. To dismiss the complaint for lack of jurisdiction over the person in that [the defendant is a corporation organized under the laws of the State of _____ and was not and is not subject to service of process within the State of Mississippi (or as the case may be)].

~~3. To dismiss the action on the ground of improper venue in that defendant is a domestic corporation domiciled in _____ County, which is not the county in which [this action is brought] [the cause of action occurred or accrued].~~

~~4. To dismiss the complaint because of insufficiency of process in that the summons served on the defendant [was not signed by the clerk] [does not contain the names and addresses of the parties] [is directed to a person other than the defendant named in the complaint] [did not have attached a copy of the complaint] (or as the case may be).~~

~~5. To dismiss the action because of insufficiency of service of process in that the summons served on defendant [was sent by ordinary mail rather than by certified mail] [was served by a process server who is not sheriff of the county in which it was served nor a person eighteen years or older] [was served on a member of defendant's family who is less than sixteen years of age] [was served on _____, who is neither an officer nor the registered agent of the defendant corporation] (or as the case may be).~~

~~6. To dismiss the complaint for failure to state a claim upon which relief can be granted.~~

~~7. To dismiss the complaint for failure to join _____, a [person] [corporation] necessary for just adjudication because [he] [it] is this defendant's [co-tenant, lessee, royalty holder, assignee (or as the case may be)] whose rights are involved in this action.~~

NOTICE OF MOTION

TO:

Attorney for Plaintiff

Address

Please take notice that the undersigned will bring the above motion on for hearing before this court at the _____ County Courthouse in the City of _____, Mississippi, on the day of _____, 19__, at _____ o'clock a. m./p. m. that day or as soon thereafter as counsel can be heard.

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of this Motion to Dismiss and Notice of same on J.K, Counsel of Record for the Plaintiff, A.B., by placing a copy of same in the United States mail, postage prepaid, addressed to his regular business mailing address. This the ___ day of _____, 19__.

Attorney for Defendant

Address

FORM 23. ANSWER PRESENTING DEFENSES UNDER RULE 12 (b)

First Defense

[Improper Venue]

The action is brought in the wrong county because the defendant is a domestic corporation domiciled in _____ County, which is not the county in which this action is brought or in which the cause of action occurred or accrued.

Second Defense

[Admission and Denial]

Defendant admits the allegations contained in paragraphs 1 and 4 of the complaint; alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the complaint; and denies each and every other allegation contained in the complaint.

Third Defense

[Statute of Limitations]

The right of action set forth in the complaint did not accrue within _____ years next before the commencement of this action.

Counter-claim

Here set forth any claim as a counter claim in the manner in which a claim is pleaded in a complaint.

Cross-Claim against Defendant M. N.

Here set forth the claim constituting a cross claim against defendant M. N. in the manner in which a claim is pleaded in a complaint.

FORM 24. MOTION TO BRING IN THIRD PARTY DEFENDANT

Defendant moves for leave, as third party plaintiff, to cause to be served upon E. F. a summons and third party complaint, copies of which are attached as Exhibit A.

FORM 25. THIRD PARTY COMPLAINT

1. Plaintiff, A. B., has filed against defendant, C. D., a complaint, a copy of which is attached as Exhibit A.

2. If the defendant, C. D., is liable to the plaintiff on the occasion complained of in the complaint, it is liable because [here state the grounds upon which C. D., is entitled to recover from E. F., all or part of what A. B. may recover from C. D. The statement should be framed as in an original complaint.]

Wherefore, C. D. demands judgment against third party defendant E. F. for all sums that may be adjudged against defendant C. D. in favor of plaintiff, A. B.

FORM 26. MOTION TO INTERVENE AS A DEFENDANT UNDER RULE 24

{Based upon the Complaint, Form 15}

IN THE CIRCUIT COURT OF _____ COUNTY, MISSISSIPPI

A.B., Plaintiff

_____ v. _____ Civil Action, File No. _____

C.D., Defendant

E.F., Applicant for Intervention

MOTION TO INTERVENE AS A DEFENDANT

~~E. F. moves to intervene as a defendant in this action to assert the defenses set forth in his proposed answer, a copy of which is attached hereto, on the ground that he is the owner of the automobile alleged in the Complaint to have collided with the vehicle occupied by the plaintiff and as such as a defense to plaintiff's claim presenting both questions of law and of fact which are common to the main action.~~

Attorney for E. F.
Applicant for Intervention

Address

NOTICE OF MOTION

{Contents the same as in Form 22}

IN THE CIRCUIT COURT OF _____ COUNTY, MISSISSIPPI

A.B., Plaintiff

_____ v. _____ Civil Action, File No. _____

C.D., Defendant

E.F., Intervener

INTERVENER'S ANSWER

First Defense

~~Intervener denies the allegations stated in paragraphs 1 and 2 of the Complaint in so far as they assert negligence on the part of the defendant.~~

Second Defense

~~Intervener asserts that at the time of the collision stated in the Complaint the plaintiff was operating his vehicle under the influence of alcohol and in a wantonly negligent manner.~~

Third Defense

~~Intervener asserts that at the time of the collision stated in the Complaint defendant was operating intervener's vehicle without intervener's authority, permission, or license.~~

~~FORM 27. MOTION TO DROP DEFENDANT OR FOR SEVERANCE OF CLAIMS~~

~~Defendant, _____, moves the court for an order dropping him as a party defendant herein or in the alternative for an order severing the claim asserted against him by plaintiff herein from the claim asserted against defendant, _____, on the grounds that:~~

- ~~1. The alleged claim asserted against defendant, _____, does not arise from the same transaction, occurrence, or series of transactions or occurrences, as the claim asserted against defendant, _____; nor do the two alleged claims involve questions of law or fact common to both defendants.~~
- ~~2. The moving defendant will be put to undue expense and embarrassment if he is required to proceed with his defense without a severance of the issues.~~
- ~~3. The trial of action will be embarrassing and the jury confused by a joint trial of the claims asserted against the two defendants herein, all to the prejudice of the moving defendant.~~

~~FORM 28. MOTION BY DEFENDANT FOR SEVERANCE OF CLAIMS OF SEVERAL PLAINTIFFS~~

~~Defendant moves the court for an order severing the claims asserted by the respective plaintiffs herein against the defendant, on the grounds that:~~

- ~~1. The alleged claim or claims of each plaintiff differ in material and essential elements and respects from the alleged claim or claims of each of the other plaintiffs.~~
- ~~2. The alleged claims of the plaintiffs do not arise out of the same transaction, occurrence, or series of transactions or occurrences, and do not involve questions of law or fact common to all the plaintiffs.~~
- ~~3. The joining in one action and one complaint of the alleged claims of the plaintiffs is prejudicial to the defendant and injures his substantial rights and will embarrass and delay the trial.~~

~~FORM 29. MOTION BY PLAINTIFF TO ADD DEFENDANT~~

~~Plaintiff moves the court for an order making _____ a party defendant herein and directing the issuance and service of process on him, and for grounds therefor shows:~~

- ~~1. This is an action for [state briefly the nature of the claim for relief].~~
- ~~2. [State facts showing that the proposed additional defendant is an indispensable, necessary or proper party defendant].~~
- ~~3. The said _____ is a citizen and resident of _____, is subject to the jurisdiction of this court as to both service of process and venue and can be made a party defendant herein without depriving the court of jurisdiction.~~

~~FORM 30. MOTION BY DEFENDANT TO BRING IN ADDITIONAL DEFENDANT~~

~~Defendant moves the court for an order making _____ a party defendant herein; directing that process be issued and served upon defendant _____; and requiring plaintiff to serve and file an amended complaint, and for grounds therefor shows:~~

1. This is an action for [state briefly the nature of the claim for relief].
2. [State facts showing that a person needed for just adjudication has not been joined as a defendant].
3. The said _____ is a citizen and a resident of _____, is subject to the jurisdiction of this court as to both service of process and venue, and can be made a party defendant herein without depriving the court of jurisdiction.

FORM 31. MOTION BY DEFENDANT TO ADD ADDITIONAL PLAINTIFF

Defendant moves the court for an order directing that _____ be made a party plaintiff herein, or in the alternative, if _____ refuses to join as a plaintiff, he be made a defendant as provided by Rule 19(a), and for grounds therefor shows:

1. This is an action for [state briefly the nature of the claim for relief].
2. [State facts showing that a person needed for just adjudication has not been joined as a plaintiff].
3. The said _____ is a citizen and resident of _____; he is subject to the jurisdiction of this court as to service of process and venue; and he can be made a party plaintiff (or, as the case may be, a party defendant) herein without depriving the court of jurisdiction.

FORM 32. ANSWER TO COMPLAINT SET FORTH IN FORM 11 WITH COUNTER-CLAIM FOR INTERPLEADER

Defense

Defendant admits the allegations stated in paragraph 1 of the complaint and denies the allegations stated in paragraph 2 to the extent set forth in the counter claim herein.

Counter-claim for Interpleader

1. Defendant received the sum of _____ dollars as a deposit from E. F.
2. Plaintiff has demanded the payment of such deposit to him by virtue of an assignment of same which he claims to have received from E. F.
3. E. F. has notified the defendant that he claims such deposit, that the purported assignment is not valid, and that he holds the defendant responsible for the deposit. Wherefore defendant demands:
 - (1) That the court order E. F. to be made a party defendant to respond to the complaint and to this counter claim.
 - (2) That the court order the plaintiff or E. F. to interplead their respective claims.
 - (3) That the court adjudge whether the plaintiff or E. F. is entitled to the sum of money.
 - (4) That the court discharge defendant from all liability in the action except to the person it shall adjudge entitled to the sum of money.
 - (5) That the court award to the defendant its costs and attorney's fees.

FORM 33. PLAINTIFF'S MOTION FOR SUBSTITUTION DECEASED PARTY DEFENDANT

Plaintiff shows to the court that _____, the above named defendant, died intestate (or testate) on or about the ____ day of _____, 19__; that letters of

administration upon the estate of the said were issued on the ___ day of _____, 19___, to as administrator by the _____ Court of the State of Mississippi (or, that _____ was duly appointed executor of the last will of _____ by the _____ Court of the State of Mississippi and qualified as such executor on the ___ day of _____, 19___): and this is an action for [state briefly nature of action] and the claim of plaintiff was not extinguished by the death of defendant.

Wherefore plaintiff moves the court for an order substituting _____, administrator (or, as the case may be, executor) of the estate of _____, deceased, as party defendant herein.

FORM 34. PRE-TRIAL ORDER

1. Counsel.

Appearing for the plaintiff:

Appearing for the defendant:

2. Nature of the case. [~~Count 1 of] the complaint alleges a cause of action based upon [negligence, breach of warranty, breach of oral contract, etc.].~~

3. Positions of the parties.

a. Plaintiff contends: [~~concise statement of factual and legal contentions].~~

b. Defendant contends: [~~concise statement of factual and legal contentions].~~

4. Stipulations and admissions.

5. Discovery. ~~Discovery proceeding~~6 have been completed except as follows: [~~specify additional discovery proceedings required].~~

6. Additional Orders: [~~as required by the particular case].~~

Ordered that the above allowances and agreements are binding on all parties in the above-styled cause unless this order be hereafter modified by the Court for good cause and to prevent manifest injustice.

Done this ___ day of _____, 19___.

Judge

**FORM 35. MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT,
OR IN THE ALTERNATIVE, FOR NEW TRIAL**

Defendant [Plaintiff] moves the Court to set aside the verdict and judgment entered in the above-styled action on _____, 19___, and to enter judgment in favor of the Defendant [Plaintiff] in accordance with the motion for directed verdict, or, in the alternative, Defendant [Plaintiff] moves the court to set aside the verdict and grant Defendant [Plaintiff] a new trial on the following grounds, to-wit:

1.

2. [~~Herein state grounds]~~ 3.

FORM 36. APPLICATION TO CLERK FOR ENTRY OF DEFAULT AND SUPPORTING AFFIDAVIT

The clerk is requested to enter default against the defendant in the above entitled action for failure to plead, answer or otherwise defend as set out in the affidavit hereto annexed.

Attorney for Plaintiff

State of Mississippi) County of _____)
_____, being duly sworn, deposed and says:

1. That he is attorney of record of the plaintiff, and has personal knowledge of the facts set forth in this affidavit.
2. That the defendant was duly served with a copy of the summons, together with a copy of plaintiff's complaint, on the ___ day of _____, 19__.
3. That more than 30 days have elapsed since the date on which the said defendant was served with summons and a copy of the complaint.
4. That the defendant has failed to answer or otherwise defend as to plaintiff's complaint, or serve a copy of any answer or other defense which he might have upon the undersigned attorney of record for the plaintiff.
5. That this affidavit is executed by affiant herein in accordance with Rule 55(a) of the Mississippi Rules of Civil Procedure, for the purpose of enabling the plaintiff to obtain an entry of default against the defendant, for his failure to answer or otherwise defend as to the plaintiff's complaint.

Attorney for Plaintiff

— Sworn to and subscribed before me this the ___ day of _____, 19__.

Notary Public

FORM 37. DOCKET OF ENTRY OF DEFAULT

Default entered against defendant _____ this ___ day of _____, 19__.

FORM 38. DEFAULT JUDGMENT ENTERED BY COURT

This action came on for hearing on the motion of the plaintiff for a default judgment pursuant to Rule 55(b)(2) of the Mississippi Rules of Civil Procedure, and the defendant having been duly served with the summons and complaint and not being an infant or an unrepresented incompetent person and having failed to plead or otherwise defend, and his default having been duly entered and the defendant having taken no proceedings since such default was entered;

It is Ordered and Adjudged that [here set forth relief granted to plaintiff].

This ___ day of _____, 19__.

Judge

APPENDIX B. ~~STATUTES AFFECTED~~ STATUTES [Deleted in its entirety].

~~[deleted in its entirety.]~~

[Effective ~~June 6/24/, 1992.~~].

**APPENDIX C. – TIME TABLE FOR PROCEEDINGS UNDER THE
MISSISSIPPI RULES OF CIVIL PROCEDURE [Deleted in its entirety].**

~~{deleted in its entirety.}~~

[Effective ~~June 6/24/, 1992.~~].