

Serial: 104770

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99025-SCT

FILED

MAY 29 2003

**OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS**

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

ORDER

This matter has come before the Court en banc on its own motion for consideration of the appropriate manner for assignment of cases in the trial courts of the state in multi-judge districts. Having considered the matter, the Court finds that the amendment of the Uniform Rules of Circuit and County Court Practice by the adoption of a new Rule 1.05A will promote the fair and efficient administration of justice.

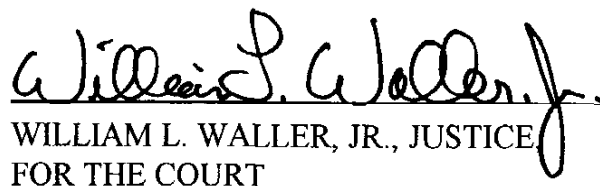
IT IS THEREFORE ORDERED that the Uniform Rules of Circuit and County Court Practice are amended to add a new Rule 1.05A, with its Comment.

IT IS FURTHER ORDERED that this new rule shall be effective upon issuance of this order; however, local practices adopted for the purpose of accommodating the needs of economy and efficiency may be continued for a period of forty-five days from the issuance of this order, and in districts wherein the judges of the district have within such period petitioned the Court under M.R.C.P. 83 for local rules seeking approval of such practices

or of other practices which might otherwise be in variance to this rule, the practices may continue to be used until the Supreme Court has considered the petition.

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, Second Series (Mississippi Edition)* and in the next edition of *Mississippi Rules of Court*.

SO ORDERED, this the 29th day of May, 2003.


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

McRAE, P.J. DISSENTS.

EASLEY, J. DISSENTS WITH SEPARATE STATEMENT JOINED BY McRAE, P.J.

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

**IN RE: UNIFORM RULES OF CIRCUIT
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EASLEY, J., DISSENTS WITH SEPARATE WRITTEN STATEMENT

This rule is not practical under the present judicial system. Mississippi is in dire need of additional judges, judicial staff and funding for the judicial system. Arbitrarily assigning cases to a particular judge will cause a backlog in both the chancery and circuit courts, particularly in rural districts and sub-districts. Once again the majority shows its lack of courtroom experience in trying cases before coming to the Supreme Court. The passage of this rule will cause frustration to both the judiciary and public.

McRAE, P.J., JOINS THIS STATEMENT.

EXHIBIT "A" TO ORDER

UNIFORM RULES OF CIRCUIT AND COUNTY COURT PRACTICE

RULE 1.05A ASSIGNMENT OF CASES

A. In multi-judge districts and courts, all civil cases shall be assigned immediately on the filing of the complaint by such method which shall insure that the assignment shall be random, that no discernable pattern of assignment exists, and that no person shall know to whom the case will be assigned until it has been assigned. If an attorney or party shall attempt to manipulate or defeat the purpose of this rule, the case shall be reassigned to the judge who would have otherwise received the assignment. If the judge who would have received the case under an assignment in compliance with this rule cannot be determined, a new assignment in compliance with the rule shall be made, excluding the judge to whom it was incorrectly assigned. Sanctions, including costs and attorney's fees, may be imposed by that judge on reassignment. Such sanctions may also include suspension from practice in the court imposing them for not more than 30 days and referral to the Bar for further discipline.

B. Decisions regarding this rule shall be subject to review by the Supreme Court under M.R.A.P. 21, and appropriate stays shall be entered by the trial court to allow such review.

C. In districts where motion days are set in advance with judges specifically assigned, preliminary procedural matters may be submitted to the judge assigned such duties, notwithstanding the fact that the case has been assigned to another judge. Furthermore, by local rule approved by the Supreme Court, the trial court may make special provisions accommodating local needs of economy and efficiency which might otherwise be at variance with this rule.

[Adopted effective May 29, 2003.]

Comment

In 2002 the Legislature adopted Miss. Code Ann. § 11-1-56, which required civil case assignments to be delayed until one defendant has filed responsive pleadings. By the adoption of this rule, the Supreme Court has superceded Section 11-1-56, exercising its inherent authority to adopt rules of practice, procedure and evidence to promote justice, uniformity, and the efficiency of the courts, as articulated in *Newell v. State*, 308 So. 2d 71 (Miss. 1975) and *Hall v. State*, 539 So. 2d 1338 (Miss. 1989).

The purpose of this rule is to prevent “judge shopping” within a district or a court. Although voluntary dismissal is allowed under M.R.C.P. 41 at any time prior to service by the adverse party of an answer or summary judgment, when a civil case is so dismissed and then refiled immediately thereafter with no substantial change in the parties or claims, such practice, as an example, may be taken as a wilful violation of this rule. Wilful violation of this rule may constitute an offense subject to suspension and other discipline under Rule 3.4(c) of the Rules of Professional Conduct. Sanctions authorized by this rule are cumulative to discipline under the Rules of Professional Conduct.

The assignment of cases by regular rotation among the judges of the district is not a random assignment as contemplated by this rule since a regular rotation will allow those attentive to the docket to predict the judge who will receive a particular assignment.

A party who believes that a case has been assigned in violation of this rule will first submit the issue to the judge before whom the case is pending; thereafter, either party aggrieved by the judge’s decision on the issue may seek review of that decision by this Court under the provisions of M.R.A.P. 21.

In some districts, local modifications, which to some degree are at variance with the strict provisions of ~~the~~ this rule, may be made while fulfilling the policy of the rule. These modifications are to be made by local rule, on petition of the local district under M.R.C.P. 83 to the Supreme Court. The order by which this Rule 1.05A was adopted provides:

It is further ordered that this new rule shall be effective upon issuance of this order; however, local practices adopted for the purpose of accommodating the needs of economy and efficiency may be continued for a period of forty-five days from the issuance of this order, and in districts wherein the judges of the district have within such period petitioned the Court under M.R.C.P. 83 for local rules seeking approval of such practices or of other practices which might otherwise be in variance to this rule, the practices may continue to be used until the Supreme Court has considered the petition.

[Comment adopted effective May 29, 2003.]