

**PURSUANT TO RULE 27(f) OF THE MISSISSIPPI RULES OF APPELLATE  
PROCEDURE, THE SUPREME COURT SEEKS COMMENTS FROM THE BENCH, THE  
BAR AND THE PUBLIC ON THE PROPOSED ADOPTION OF 26A OF THE  
MISSISSIPPI RULES OF CIVIL PROCEDURE**

**Comments should be filed with the Clerk of the Supreme Court, Gartin Justice Building, P.O.  
Box 117, Jackson, MS 39205, no later than September 28, 2007.**

IN THE SUPREME COURT OF MISSISSIPPI

IN RE: RULES OF CIVIL PROCEDURE

RULES \_\_\_\_\_

**MOTION TO ADOPT AND AMEND MISSISSIPPI RULES OF CIVIL PROCEDURE**

The Advisory Committee on Rules (Committee) recommends that the Court adopt new Rule 26A. The text of this proposal is attached and a computer disk in Word Perfect 12 format accompanies this motion. The first attachment is a version unencumbered by revision marks and notations. The second attachment shows changes and notes that explain the reason for the changes.

**1. SUBSTANCE OF THE PROPOSED RULE**

Proposed Rule 26A provides a procedure for expedited resolution of civil cases seeking damages under \$50,000. This matter had been submitted to the Court earlier and the Court referred it back to the Committee to consider the many comments submitted by interested parties, members of the Bar and other judges. Changes to the original proposal have been incorporated into this latest version that addresses many of the valid concerns expressed to the Court.

The comments generated by the earlier submission fell into four main categories:

1. Those who favored the concept and who offered suggestions to improve the Rule.
2. Those who opposed the concept but who offered suggestions to improve the Rule.
3. Those who opposed the concept and who explained their objections.
4. Those who believed that the proposal was generated by one group or another trying to

promote some agenda related either to advancing or rolling back “tort reform.”

The Committee gave serious consideration to the issues raised in categories 1-3.

The Proposed Rule 26A now delays plaintiff’s disclosures until after an answer is filed. Paragraph (b)(1). This precludes the need to serve documents in cases that can be finalized by default judgment. The Rule also permits a plaintiff to move for summary judgment or for judgment on the pleadings before making disclosure in cases where the answer or response of the defendant does not rise to the level of a denial or defense to the claim. Defendants may also file for summary judgments before discovery is complete in certain instances. Paragraph (g).

The Rule contains the list of documents that would be considered presumptively admissible. Paragraph (l). The trial court will give priority trial settings under this Rule. Paragraph (j). The Rule also provides procedures for objecting to the applicability of Proposed Rule 26A and for initiating the provisions of the Rule. See Paragraphs (k) and (l).

The Committee believes that these changes incorporated into this proposal address most of the concerns expressed to the Court. Proposed Rule 26A would provide a means by which some practitioners and parties could litigate a matter in a timely and less expensive manner than may heretofore have been possible, thereby giving substance to the construction under M.R.C.P. to secure the just, speedy and inexpensive determination of every action.

Respectfully submitted,

ADVISORY COMMITTEE ON RULES

By: \_\_\_\_\_  
CHAIRMAN

Date: \_\_\_\_\_

**Rule 26A. DISCOVERY AND PRETRIAL PRACTICE IN ACTIONS UNDER \$50,000.**

**(a) Scope of Rule.**

(1) *Applicability.* This Rule shall apply to civil actions in which the sole relief sought is a money judgment and in which the total claims for all damages by or against any party are less than fifty thousand dollars (\$50,000), exclusive of interest, costs, and attorneys' fees.

(2) *Initiation by Complaint, Counterclaim, or Cross-Claim.* The complaint (or counterclaim or cross-claim) shall contain a statement that the amount of the claim does not exceed the dollar limitation of this Rule and a statement identifying the claim as one proceeding under the provisions of this Rule 26A.

**(b) Disclosures by a Complaining Party.**

(1) *Factual Basis and Legal Theory of Claim; Witnesses, Documents, and Other Items.* Within thirty days from service of an answer or reply to a counterclaim, a complaining party must serve on other parties the following.

(A) *Factual Basis and Legal Theory of Claim.* A detailed statement of the factual basis and a detailed statement of the legal theory for each claim.

(B) *Damages.* A computation of each category of damages claimed, making available for inspection and copying as under M.R.C.P. 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based.

(C) *Witnesses.* The name and, if known, the address and telephone number of each individual likely to have discoverable information that the complaining party may use to support its case, unless solely for impeachment, identifying the subjects of the information and identifying those individuals whom the party expects to present at trial and those whom the party may call if the need arises;

(D) *Documents and Other Items.* A copy of, or, if furnishing a copy is not feasible, a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that may be used to support its case, unless solely for impeachment. If a copy is not furnished, all evidence so identified (as well as all related written and other tangible evidence timely requested by an opposing party) shall be made available for an opposing party's inspection and copying as under M.R.C.P. 34 at the earliest reasonable time.

(E) *Injury-specific Medical Authorization and Release.* If the claim includes damages for personal injury, an injury-specific medical authorization and release shall be immediately provided at the request of a defending party.

(F) *Certificate of Compliance; Filing.* Within a reasonable time of service of the required

disclosures, the complaining party shall file with the court a certificate of compliance with this section. Disclosures, however, need not be filed until used with respect to any proceeding.

(2) *Effect of Noncompliance.* Any evidence not disclosed in compliance with this section is presumptively inadmissible.

**(c) Disclosures by a Defending Party.**

(1) *Answer; Defenses; Witnesses, Documents, and Other Items.* Within the earlier of sixty (60) days from service of the disclosures required by section (b)(1) above or thirty (30) days prior to trial, a defending party must serve on other parties the following:

(A) *Factual Basis and Legal Theory of Affirmative Defenses.* A detailed statement of the factual basis and a detailed statement of the legal theory for each affirmative defense.

(B) *Witnesses.* The name and, if known, the address and telephone number of each individual likely to have discoverable information that the defending party may use to support its case, unless solely for impeachment, identifying the subjects of the information and identifying those individuals whom the party expects to present at trial and those whom the party may call if the need arises.

(C) *Documents and Other Items.* A copy of, or, if furnishing a copy is not feasible, a description by category and location of all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that may be used to support its case, unless solely for impeachment. If a copy is not furnished, all evidence so identified (as well as all related written and other tangible evidence timely requested by an opposing party) shall be made available for an opposing party's inspection and copying as under M.R.C.P. 34 at the earliest reasonable time.

(D) *Certificate of Compliance; Filing.* Within a reasonable time of service of the required disclosures, the defending party shall file with the court a certificate of compliance with this section. Disclosures, however, need not be filed until used with respect to any proceeding.

(2) *Effect of Noncompliance.* Any evidence not disclosed in compliance with this section is presumptively inadmissible.

**(d) Discovery; Subpoenas.** Unless the court otherwise orders:

(1) *Insurance Agreements.* A party may demand in writing, for inspection and copying as under M.R.C.P. 34, any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(2) *Depositions.* Pursuant to the Mississippi Rules of Civil Procedure, a party may take the deposition of:

A. Any other party; and

B. Up to two nonparties, limited in time to an aggregate of four (4) hours or less.

(3) *Interrogatories*. The parties may serve up to ten (10) interrogatories on one another pursuant to M.R.C.P. 33.

(4) *Requests for Admission*. The parties may serve up to ten (10) requests for admission pursuant to M.R.C.P. 36.

(5) *Deadlines*. All discovery must be strictly completed within sixty (60) days from service of an answer by the applicable defendant. Additional time may be allowed with leave of court upon written motion setting forth manifest necessity for the extension.

**(e) Expert Witnesses.**

(1) *Required Disclosures*. Each party must disclose: the identity of each person whom the party expects to call as an expert witness at trial; the subject matter on which the expert is expected to testify; the substance of the facts and opinions to which the expert is expected to testify; a summary of the grounds for each opinion; and a summary of the expert's qualifications and experience. The direct testimony of any expert shall be strictly limited to the opinions so set forth. Discovery depositions of experts shall not be permitted; however, an expert's trial testimony may be taken by deposition.

(2) *Deadlines*. Such disclosures shall be made promptly at the conclusion of discovery, but in no event later than sixty (60) days prior to trial, or, if the evidence is intended solely to contradict or rebut evidence on the same subject identified by another party, within thirty days after disclosure by the other party.

(3) *Effect of Noncompliance*. Any evidence not disclosed in compliance with this section is presumptively inadmissible,

**(f) Newly discovered evidence.** No later than thirty (30) days prior to trial, a party may supplement, with evidence which by due diligence could not have been discovered earlier, its list of witnesses, documents, or other things. Any evidence not disclosed in compliance with this section is presumptively inadmissible.

**(g) Subpoenas; Dispositive Motions .**

(1) *Subpoenas*. Any party may seek the issuance of subpoenas pursuant to M.R.C.P. 45 for attendance, production, or inspection for a trial or hearing.

(2) *Rule 12 Motions*. Any party may file any motion permitted by M.R.C.P. 12.

(3) *Motions for Summary Judgment, Complaining Party*. At any time after the commencement

of the action, a complaining party may move for a summary judgment pursuant to M.R.C.P. 56 to collect on an open account or other liquidated debt.

*(4) Motions for Summary Judgment, Defending Party.* Before the conclusion of discovery, a defending party may move for a summary judgment pursuant to M.R.C.P. 56 raising:

- A. An immunity defense;
- B. A defense to a claim of professional malpractice; or
- C. Any other matter constituting an avoidance or affirmative defense.

*(5) Expenses and Attorneys Fees.* If summary judgment is denied, the court shall award the prevailing party the reasonable expenses incurred in attending the hearing of the motion and shall award attorneys' fees.

**(h) Applicability of Other Rules.** Otherwise, neither additional discovery shall be due or obtained, nor additional motions not contemplated by this Rule shall be filed or heard, unless the parties stipulate thereto or the court has ordered otherwise based on the court's determination that such is necessary to obtain a fair, swift and cost-effective determination of the case.

**(i) Documents presumptively admissible.** Objections to the authenticity of documents shall be made reasonably in advance of trial. Unless their authenticity is controverted, the following documents shall be presumed admissible and may be introduced in evidence at trial, provided the documents are disclosed in accordance with the requirements of this Rule and, where relevant, the name, address and telephone number of the author of the document is contained in the document or otherwise set forth;

- (1) Any written contract between the parties;
- (2) A copy of any billing statement or invoice prepared in the normal course of business;
- (3) Copies of any correspondence between the parties, except documents inadmissible under Rule 408 of the Mississippi Rules of Evidence;
- (4) Any document that would be admissible under Rule 803(6) of the Mississippi Rules of Evidence;
- (5) A bill, report, chart, or record of a hospital, physician, dentist, nurse practitioner, physician's assistant, registered nurse, licensed practical nurse, physical therapist, psychologist or other health care provider, on a letterhead, or billhead or otherwise clearly identifiable as part of the provider's professional record;

(6) A bill for drugs, medical appliances or other related expenses on letterhead, or billhead or otherwise clearly identifiable as part of a provider's professional record;

(7) A bill for, or estimate of, property damage or loss on a letterhead or billhead. In the case of an estimate, the offering party shall notify the adverse party no later than thirty (30) days prior to trial whether the property was repaired, in full or in part, and provide the actual bill showing the cost of repairs;

(8) A weather or wage loss report or standard life expectancy table to the extent it is relevant without need for authentication; and

(9) A photograph, videotape, x-ray, drawing, map, blueprint, or similar evidence to the extent it is relevant without the need for authentication.

The admission of a document under this subsection (h) does not, in any manner, restrict argument or proof relating to the weight of the evidence admitted.

**(j) Trial Setting.** After thirty (30) days from the filing of the final answer or responsive pleading, the Court shall set the cause for trial.

**(k) Objection to Applicability; Motion; Hearing.** A motion disputing or objecting to the applicability of this Rule shall be filed with the complaint, answer, or reply. The movant shall simultaneously notice a hearing on such motion for the earliest practicable time. In ruling on the motion, the trial court shall consider, among other factors it deems relevant, the nature of the claim(s) and the defense(s), the existence of multiple claims or parties, the complexity of the case, and the need for the examination of a party pursuant to M.R.C.P. 35. If the court determines that the provisions of this Rule are not appropriate for the case, it shall order that the case proceed in accordance with the other Mississippi Rules of Civil Procedure.

**(l) Initiation by Motion.** A party may otherwise initiate the provisions of this rule by motion. The movant shall simultaneously notice a hearing on such motion for the earliest practicable time. If opposed, the court shall rule on the motion as provided in subsection (k). If the court orders the case to proceed pursuant to this Rule 26A, the court shall set forth a schedule for meeting the requirements of this Rule.

## **Rule 26A. DISCOVERY AND PRETRIAL PRACTICE IN ACTIONS UNDER \$50,000.**

### **(a) Scope of Rule.**

*(1) Applicability.* ~~This Rule shall apply to civil actions in which the sole relief sought is a money judgment and in which the total claims for all damages sought by or against any a party are less than fifty thousand dollars (\$50,000), exclusive of interest, costs, and attorneys' fees, shall be subject to the provisions of this Rule. In computing the amount of the claim for purposes of this Rule, the dollar limitation is applied separately to each party, regardless of how that party's claim is designated, and excludes requests for costs and attorneys' fees.~~

*REPORTER 'S NOTE: THERE WERE CONCERNS THAT SEVERAL SMALLER CLAIMS COULD BE JOINED AND THEREBY SUBJECT A DEFENDANT TO POTENTIAL LIABILITY FAR IN EXCESS OF \$50, 000 [AND THUS MAKE THE RULE APPLY TO CASES THAT COULD NOT FAIRLY BE CALLED 'SMALLER CLAIMS. ' ] ACCORDINGLY, (A) (1) HAS BEEN AMENDED TO PROVIDE THAT THE TOTAL CLAIMS AGAINST ANY PARTY SHALL BE LESS THAN \$50,000.*

*THERE ARE OTHER WAYS TO ADDRESS THIS CONCERN. FOR EXAMPLE, THE RULE COULD PROVIDE THAT IT APPLIES ONLY TO CASES WITH 2 OR FEWER PLAINTIFFS [WHICH WOULD THEREBY ALLOW FOR THE JOINDER OF LOSS OF CONSORTIUM CLAIMS, FOR EXAMPLE].*

*FURTHER, SOME SUGGESTED THAT THE RULE, AND NOT JUST THE COMMENT, SHOULD LIMIT THE AMOUNT OF THE AWARD TO UNDER \$50, 000.*

~~(2) *Inapplicability.* This Rule shall not apply to, among others, actions:~~

~~A. *The principle purpose of which is to collect on an open account or other liquidated debt;*~~

~~B. *Including claims for punitive damages;*~~

~~C. *Seeking injunctive or declaratory relief;*~~

~~D. *Governed by M.R.C.P. 81; and*~~

~~E. *Governed by Miss. Code Ann. §11-15-1 et. seq.*~~

*REPORTER'S NOTE: BY FAR, THE APPLICATION OF THE RULE TO COLLECTION CASES DREW THE GREATEST AND MOST POWERFUL CRITICISM. INSTEAD OF EXEMPTING COLLECTION CASES FROM THE RULE, HOWEVER, THE COMMITTEE PREFERRED TO ALLOW SUMMARY JUDGMENT IN COLLECTION CASES.*

~~(b)(1)~~ *(2) Initiation by Complaint, Counterclaim, or Cross-Claim. The complaint (or counterclaim or cross-claim) shall contain a statement that the amount of the claim does not exceed the dollar limitation of this Rule and a statement identifying the claim as one proceeding under the provisions of this Rule 26A.*

*REPORTER 'S NOTE: THE PROPOSED AMENDMENT TO THIS SUBSECTION CONFIRMS THAT COUNTERCLAIMS AND CROSS-CLAIMS CAN FALL WITHIN THE PROVISIONS OF THIS RULE.*

~~(2) Factual-basis and legal theory.~~ The complaint shall set forth separately the amounts of any special, general, or other damages sought. The complaint shall also include a detailed statement of the factual basis and a detailed statement of the legal theory for each claim.

**(b) Disclosures by a Complaining Party.**

(1) Factual Basis and Legal Theory of Claim; Witnesses, Documents, and Other Items. Within thirty days from service of an answer or reply to a counterclaim, a complaining party must serve on other parties the following:

*REPORTER'S NOTE: DELAYING THE PLAINTIFF'S DISCLOSURES SERVES SEVERAL PURPOSES. FIRST, IT ELIMINATES THE NUMEROUS OBJECTIONS THAT THE RULE REINTRODUCES "CODE PLEADING" AND WOULD THEREBY CAUSE ATTENDANT CONFLICT AND EXPENSE OVER COMPLIANCE WITH THE RULE'S HEIGHTENED PLEADING REQUIREMENTS.*

*MOREOVER, THE PROPOSED AMENDMENTS WOULD LESSEN COSTS IN CASES WHERE THE DEFENDANT DOES NOT ANSWER THE COMPLAINT. LIKewise, EARLY SETTLEMENT TALKS COULD TAKE PLACE UNBURDENED BY THE FACT THAT THE PLAINTIFF ALREADY INCURRED SUBSTANTIAL COSTS IN FILING THE COMPLAINT AND MAKING DISCLOSURES.*

*FINALLY, THE FACT THAT BOTH THE PLAINTIFF'S AND DEFENDANT'S DISCLOSURES ARE 'SERVED,' RATHER THAN FILED WITH THE COMPLAINT OR ANSWER, REDUCES UNNECESSARY BURDENS ON COURT CLERKS.*

(A) Factual Basis and Legal Theory of Claim. A detailed statement of the factual basis and a detailed statement of the legal theory for each claim.

(B) Damages. A ~~computation~~ of detailed statement identifying each category of damages claimed, making available for inspection and copying as under M.R.C.P. 34 ~~the~~ all documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based.

(C) Witnesses. The name and, if known, the address and telephone number of each individual likely to have discoverable information that the complaining party may use to support its case, unless solely for impeachment, identifying the subjects of the information and identifying those individuals whom the party expects to present at trial and those whom the party may call if the need arises.

(D) Documents and Other Items. A copy of, or, if furnishing copy is not feasible, a description by category and location of all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that may be used to support its case, unless solely for impeachment. If a copy is not furnished, all evidence so identified (as

well as all related written and other tangible evidence timely requested by an opposing party) shall be made available for an opposing party's inspection and copying as under M.R.C.P. 34 at the earliest reasonable time.

*REPORTER'S NOTE: MANY SUGGESTED THE EMPLOYMENT OF DISCLOSURES MODELED ON THE FEDERAL SYSTEM. ACCORDINGLY, WHILE SIGNIFICANT DIFFERENCES REMAIN, THE DISCLOSURES REGARDING DAMAGES, WITNESS, AND DOCUMENTS NOW MORE CLOSELY TRACK FED. R. CIV. P. 26.*

(E) (iv) Injury-specific Medical Authorization and Release. If the claim includes damages for personal injury, an injury-specific medical authorization and release shall be immediately provided at the request of a defending party.

(F) Certificate of Compliance; Filing. Within a reasonable time of service of the required disclosures, the complaining party shall file with the court a certificate of compliance with this section. Disclosures, however, need not be filed until used with respect to any proceeding.

~~(i) Witnesses.~~ The complaint shall set forth the names, addresses, and telephone numbers of all witnesses the party intends to call at trial:

~~(ii) Expert witnesses.~~ In addition to identifying any expert witness, the complaint shall also set forth the conclusions and foundations therefor of any expert shall be strictly limited to the conclusions and foundations so set forth. Discovery depositions of experts shall not be permitted; however, an expert's trial testimony may be taken by deposition:

~~(iii) Documents and other items.~~ The complaint shall also set forth a list of exhibits, documentary evidence the party intends to use at trial. All written and other tangible evidence identified (as well as all related written and other tangible evidence timely requested by a defending party) shall be made available for an opposing party's inspection and copying at the earliest reasonable time, but no later than thirty (30) days prior to trial:

(2) *Effect of Noncompliance.* Any evidence not disclosed in compliance with this section is presumptively inadmissible.

**(c) Disclosures by a Defending Party.**

(1) *Answer; Defenses; Witnesses, Documents, and Other Items.* The answer shall specifically admit or deny the allegations of the complaint. The answer shall contain a detailed statement of the factual basis and a detailed statement of the legal theory for each affirmative defense. Within the earlier of sixty (60) days from service of the disclosures required by section (b)(1) above or thirty (30) days prior to trial, a defending party must serve on other parties the following:

*REPORTER 'S NOTE: MANY MISREAD THE DEADLINE FOR FILING DEFENSE DISCLOSURES. THE SUGGESTED AMENDMENTS HOPE TO MAKE THE DEADLINE UNAMBIGUOUS.*

**~~(2) Witnesses, documents, and other items.~~**

(A) Factual Basis and Legal Theory of Affirmative Defenses. A detailed statement of the factual basis and a detailed statement of the legal theory for each affirmative defense.

(B) Witnesses. The name and, if known, the address and telephone number of each individual likely to have discoverable information that the defending party may use to support its case, unless solely for impeachment, identifying the subjects of the information and identifying those individuals whom the party expects to present at trial and those whom the party may call if the need arises.

(C) Documents and Other Items. A copy of, or, if furnishing a copy is not feasible, a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that may be used to support its case, unless solely for impeachment. If a copy is not furnished, all evidence so identified (as well as all related written and other tangible evidence timely requested by an opposing party) shall be made available for an opposing party's inspection and copying as under M.R.C.P. 34 at the earliest reasonable time.

(D) Certificate of Compliance; Filing. Within a reasonable time of service of the required disclosures, the defending party shall file with the court a certificate of compliance with this section. Disclosures, however, need not be filed until used with respect to any proceeding.

~~(i) Witnesses.~~ With the answer, or within ninety (90) days thereafter (but no later than thirty (30) days prior to trial), a defending party shall file a statement setting forth the names, addresses, and telephone numbers of all witnesses the party intends to call at trial.

~~(ii) Expert witnesses.~~ In addition to identifying any expert witness, the statement shall also set forth the conclusions and foundations therefor of any expert testimony the party intends to offer at trial. The direct testimony of any expert shall be strictly limited to the conclusions and foundations so set forth. Discovery depositions of experts shall not be permitted; however, an expert's trial testimony may be taken by deposition.

~~(iii) Documents and other items.~~ The statement shall also set forth a list of exhibits and documentary evidence the party intends to use at trial. All written and other tangible evidence identified (as well as all related written and other tangible evidence timely requested by an opposing party) shall be made available for an opposing party's inspection and copying at the earliest reasonable time, but no later than thirty (30) days prior to trial.

~~(2) Effect of Noncompliance.~~ Any evidence not disclosed in compliance with this section is presumptively inadmissible.

**(D)(e) Discovery; Subpoenas.** Unless the court otherwise orders:

(1) *Insurance Agreements.* A party may demand in writing, for inspection and copying as under M.R.C.P. 34, any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part of all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(2) *Depositions.* Pursuant to the Mississippi Rules of Civil Procedure, a party may take the deposition of:

A. Any other party; and pursuant to the Mississippi Rules of Civil Procedure,

B. Up to two nonparties, limited in time to an aggregate of four (4) hours or less.

(3) *Interrogatories.* The parties may serve up to ten (10) five (5) interrogatories on one another pursuant to M.R.C.P. 33.

(4) *Requests for Admission.* The parties may serve up to ten (10) requests for admission pursuant to M.R.C.P. 36.

(5) *Deadlines.* All discovery must be strictly completed within ninety (90) days from service of an answer by the applicable defendant. Additional time may be allowed with leave of court upon written motion setting forth manifest necessity for the extension.

*REPORTER'S NOTE: MANY SUGGESTED THAT ADDITIONAL DISCOVERY BE ALLOWED. THIS SUBSECTION HAS BEEN AMENDED TO ALLOW TWO NONPARTY DEPOSITIONS TOTALING LESS THAN 4 HOURS; 10, NOT 5, INTERROGATORIES; AND 10 REQUESTS FOR ADMISSION. REQUESTS FOR PRODUCTION OF DOCUMENTS HAVE BEEN OMITTED, AS THEY SHOULD BE SUPERFLUOUS GIVEN THE REQUIRED DISCLOSURES.*

*IN ADDITION, MANY SUGGESTED THAT THE DISCOVERY DEADLINES CONTAINED IN URCCC 4.04 BE STRICTLY ENFORCED. HENCE SUBSECTION (4,) NOW PROVIDES THAT DISCOVERY MUST BE 'STRICTLY' COMPLETED WITHIN THE 90 DAY DEADLINE SET FORTH THEREIN; ADDITIONAL TIME CAN BE HAD ONLY ON A SHOWING OF 'MANIFEST NECESSITY.'*

**(e) Expert Witnesses.**

(1) Required Disclosures. Each party must disclose: the identify of each person whom the party expects to call as an expert witness at trial; the subject matter on which the expert is expected to testify; the substance of the facts and opinions to which the expert is expected to testify; a summary of the grounds for each opinion; and a summary of the expert's qualifications and experience. The direct

testimony of any expert shall be strictly limited to the opinions so set forth. Discovery depositions of experts shall not be permitted; however, an expert's trial testimony may be taken by deposition.

(2) Deadlines. Such disclosures shall be made promptly at the conclusion of discovery, but in no event later than sixty (60) days prior to trial, or, if the evidence is intended solely to contradict or rebut evidence on the same subject identified by another party, within thirty days after disclosure by the other party.

(3) Effect of Noncompliance. Any evidence not disclosed in compliance with this section is presumptively inadmissible.

*REPORTER 'S NOTE: THERE WERE MANY COMMENTS CONCERNING THE TIMING OF EXPERT WITNESS DISCLOSURES, INCLUDING: IT IS IMPRACTICAL TO MAKE THE REQUIRED DISCLOSURES WITH THE COMPLAINT OR ANSWER AND BEFORE THE CASE IS MORE FULLY DEVELOPED; IT IS UNDULY COSTLY TO DESIGNATE EXPERTS SO EARLY IN A CASE, BEFORE ISSUES ARE WINNOWNED; OTHERWISE UNNECESSARY EXPERTS WOULD HAVE TO BE DESIGNATED AS A PROPHELACTIC MEASURE; IT IS UNFAIR NOT TO ALLOW 'REBUTTAL' EXPERTS; AND SO ON. THE SUBSECTION AS SET FORTH ATTEMPTS TO AMELIORATE THESE CONCERNS.*

THE LANGUAGE IDENTIFYING THE REQUIRED DISCLOSURES NOW TRACKS M.R.C. P. 26(B)(4)(A)(I). THE DEADLINE FOR THE DISCLOSURES TRACKS FED. R. CIV. P. 26(A)(2)(C).

**(f) Newly discovered evidence.** No later than thirty (30) days prior to trial, a party may supplement, with evidence which by due diligence could not have been discovered earlier, its list of witnesses, documents, or other things. Any evidence not disclosed in compliance with this section is presumptively inadmissible.

**(g) Subpoenas; Dispositive Motions.**

(1) Subpoenas. Any party may seek the issuance of subpoenas pursuant to M.R.C.P. 45 for attendance, production, or inspection for a trial or hearing.

*REPORTER 'S NOTE: THIS PROPOSED REVISION CLARIFIES THAT SUBPOENAS ARE TO BE ISSUED ONLY FOR A TRIAL OR HEARING.*

(2) Rule 12 Motions. Any party may file any motion permitted by M.R.C.P. 12. ~~Unless otherwise ordered by the court, disposition of such motions shall be without hearing, without hearing~~

*REPORTER 'S NOTE: SEVERAL COMMENTS SUGGESTED THAT UNLESS SET FOR HEARING, DISPOSITIVE MOTIONS WOULD LANGUISH AND UNDUE DELAY WOULD*

ACTUALLY BE EXASCERBATED.

(3) Motions for Summary Judgment, Complainant Party. At any time after the commencement of the action, a complaining party may move for a summary judgment pursuant to M.R.C.P. 56 to collect on an open account or other liquidated debt.

(4) Motions for Summary Judgment, Defending Party. Before the conclusion of discovery, a defending party may move for a summary judgment pursuant to M.R.C.P. 56 raising:

A. An immunity defense;

B. A defense to a claim of professional malpractice; or

C. Any other matter constituting an avoidance or affirmative defense.

(5) Expenses and Attorneys' Fees. If summary judgment is denied, the court shall award the prevailing party the reasonable expenses incurred in attending the hearing of the motion and shall award attorneys' fees.

*REPORTER'S NOTE: TO FACILITATE TIMELY AND COST EFFECTIVE PROSECUTION OF COLLECTION CASES, MOTIONS FOR SUMMARY JUDGMENT ARE PERMITTED TO COLLECT ON AN OPEN ACCOUNT OR OTHER LIQUIDATED DEBT.*

*MOREOVER, ONE FIRM SUGGESTED THAT DEFENSIVE MOTIONS FOR SUMMARY JUDGMENT SHOULD BE PERMITTED AT LEAST IN A LIMITED NUMBER OF CONTEXTS, AND FURTHER SUGGESTED THAT THE RULE COULD PROVIDE FOR THE 'STRICT ENFORCEMENT' OF M.R.C. P. 56(H). BECAUSE IMMUNITY DEFENSES SEEK TO PROVIDE IMMUNITY **FROM SUIT**, NOT JUST FROM JUDGMENT, A MECHANISM SHOULD ALLOW FOR THE PRESENTATION OF THESE DEFENSES; OTHERWISE, THE RULE WOULD EFFECT A DRAMATIC CHANGE IN THE SUBSTANTIVE, NOT JUST PROCEDURAL, LAW. IN ADDITION, BECAUSE OF THE MANY COSTS AND BURDENS THAT PROFESSIONAL LIABILITY CASES IMPOSE ON DEFENDANTS, IT IS ESPECIALLY IMPORTANT THAT SUMMARY JUDGMENT BE AVAILABLE IN THAT CONTEXT TOO. FINALLY, THE SUBCOMMITTEE CONSIDERED IT APPROPRIATE TO ALLOW AFFIRMATIVE DEFENSES, SUCH AS THE STATUTE OF LIMITATIONS, TO BE RAISED ALSO.*

*MISUSE OF MOTIONS FOR SUMMARY JUDGMENT IS AVOIDED BY THE MANDATORY AWARD OF FEES AND COSTS TO PARTIES WHO SUCCESSFULLY DEFEND A MOTION FOR SUMMARY JUDGMENT.*

**(h)(3) Applicability of Other Rules.** Otherwise, neither additional discovery shall be due or obtained, nor additional motions not contemplated by this Rule shall be filed or heard, unless the parties stipulate thereto or the court has ordered otherwise based on the court's determination that such is necessary to obtain a fair, swift and cost-effective determination of the case.

*REPORTER'S NOTE: SOME QUESTIONED WHETHER AMENDMENT TO PLEADINGS SHOULD BE ALLOWED.*

**(i)(h) Documents presumptively admissible.** Objections to the authenticity of documents shall be made reasonably in advance of trial. Unless their authenticity is controverted, the following documents shall be presumed admissible and may be introduced in evidence at trial, provided the documents are disclosed in accordance with the requirements of this Rule and, where relevant, the name, address and telephone number of the author of the document is contained in the document or otherwise set forth:

*REPORTER'S NOTE: THE LIST OF PRESUMPTIVELY ADMISSIBLE DOCUMENTS RECEIVED WIDESPREAD ACCLAIM.*

*NONETHELESS, SEVERAL SUGGESTED THAT, INSTEAD, THE RULE SHOULD EMPLOY A PRETRIAL ORDER.*

- (1) Any written contract between the parties;
- (2) A copy of any billing statement or invoice prepared in the normal course of business;
- (3) Copies of any correspondence between the parties, except documents inadmissible under Rule 408 of the Mississippi Rules of Evidence;
- (4) Any document that would be admissible under Rule 803(6) of the Mississippi Rules of Evidence;
- (5) A bill, report, chart, or record of a hospital, physician, dentist, nurse practitioner, physician's assistant, registered nurse, licensed practical nurse, physical therapist, psychologist or other health care provider, on a letterhead, or billhead or otherwise clearly identifiable as part of the provider's professional record;
- (6) A bill for drugs, medical appliances or other related expenses on letterhead, or billhead or otherwise clearly identifiable as part of a provider's professional record;
- (7) A bill for, or estimate of, property damage or loss on a letterhead or billhead. In the case of an estimate, the offering party shall notify the adverse party no later than thirty (30) days prior to trial whether the property was repaired, in full or in part, and provide the actual bill showing

the cost of repairs;

(8) A weather or wage loss report or standard life expectancy table to the extent it is relevant without need for authentication; and

(9) A photograph, videotape, x-ray, drawing, map, blueprint, or similar evidence to the extent it is relevant without the need for authentication.

The admission of a document under this subsection (h) does not, in any manner, restrict argument or proof relating to the weight of the evidence admitted.

**(j) Trial Setting.** After thirty (30) days from the filing of the final answer or responsive pleading, the Court shall set the cause for trial.

*REPORTER 'S NOTE: SEVERAL COMMENTS NOTED THAT, UNLESS THE RULE REQUIRED THAT THE CASE BE SET FOR TRIAL, IT WOULD DO LITTLE TO ALLEVIATE DELAY.*

**(k)(3) Objection to Applicability; Motion; Hearing.** A motion disputing or objecting to the applicability of this Rule shall be filed with the complaint, answer, or reply. The movant shall simultaneously notice a hearing on such motion for the earliest practicable time. In ruling on the motion, the trial court shall consider, among other factors it deems relevant, the nature of the claim(s) and the defense(s), the existence of multiple claims or parties, the complexity of the case, and the need for the examination of a party pursuant to M.R.C.P. 35. If the court determines that the provisions of this Rule are not appropriate for the case, it shall order that the case proceed in accordance with the other Mississippi Rules of Civil Procedure.

**(L)(d) Initiation by Motion.** A party may otherwise initiate the provisions of this rule by motion; ~~filed with the answer or otherwise.~~ The movant shall simultaneously notice a hearing on such motion for the earliest practicable time. If opposed, the court shall rule on the motion as provided in subsection ~~(k)e(3)~~. If the court orders the case to proceed pursuant to this Rule 26A, the court shall set forth a schedule for meeting the requirements of this Rule.

*REPORTER'S NOTE: SOME QUESTIONED WHETHER IT IS FAIR TO ALLOW A DEFENDANT TO INITIATE THE PROVISIONS OF THE RULE AND THEREBY CAP THE PLAINTIFF'S AWARD AT \$50,000.*

#### Comment

*REPORTER'S NOTE: THE COMMENT HAS NOT GENERALLY BEEN AMENDED TO*

**REFLECT PROPOSED REVISIONS TO THE RULE. A REVISED COMMENT WILL BE PREPARED ONCE THE RULE IS IN SUBSTANTIALLY FINAL FORM.**

M.R.C.P. 26A provides streamlined discovery, motion, and trial procedures for civil actions under fifty thousand dollars (\$50,000). The Rule seeks to provide a fair, swift, and cost-effective determination of such actions. Counsel should strive to abide these purposes, and make every effort to eliminate unnecessary costs. To these ends, parties are encouraged to proceed in county court whenever possible.

Subsection (a) provides that the Rule applies when the sole relief sought by a party is a money judgment in which the total claims for all damages are less than \$50,000, excluding costs and attorney's fees. Thus entry of a judgment in favor of a complaining party under this Rule shall be less than \$50,000, excluding costs and attorney's fees. The Rule specifically excludes actions including claims for punitive damages. Moreover, because the Rule applies only when the *sole* relief sought is a money judgment, the Rule does not apply, for example, to: divorce actions; ~~or~~ actions seeking, in whole or in part, declaratory or injunctive relief; actions governed by M.R.C.P. 81; or actions governed by Miss. Code Ann. § 11-15-1 et. seq. Subsection (b)(1) facilitates application of the Rule by providing that the complaint shall contain a statement that the amount of the claim is less than \$50,000 and a statement identifying the claim as one proceeding under Rule 26A. Because the dollar limitation is applied separately to each party, regardless of how that party's claim is designated, a counter-claim or cross-claim for \$50,000 or greater would take the entire case outside the operation of this Rule. Subsection (d) further provides that a party may otherwise initiate the provisions of this Rule by motion, filed with the answer or otherwise; if initiated by motion, the party must simultaneously notice a hearing on such motion for the earliest practicable time.

Importantly, subsection (b)(2) requires the complaint to include a *detailed* statement of the factual basis and a *detailed* statement of the legal theory for each claim. This goes beyond the notice pleading ordinarily required by M.R.C.P. 8(a). Parallel provisions in subsection (c)(1) require a defending party to *specifically* admit or deny the allegations of the complaint, and to set forth a *detailed* statement of the factual basis and a *detailed* statement of the legal theory for each affirmative defense. These provisions are intended to reduce the need for discovery and to facilitate early resolution by dispositive motion, for example under M.R.C.P. 12(b)(6) or 12(c).

Subsection (b)(3) requires the complaint to identify the witnesses, exhibits, and documentary evidence a complaining party intends to call or use at trial. All written and other tangible evidence must be made available for an opposing party's inspection and copying at the earliest reasonable time, but no later than thirty (30) days prior to trial. In addition, all related written and other tangible evidence timely requested by a defending party must simultaneously be made available for inspection and copying. Hence if a complaining party intends to introduce a portion of a document or file at trial, the rest of the document or file (or any other part of any other writing which ought in fairness be disclosed) must be made available for inspection and copying. See M.R.E. 106 ("When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him at that time to introduce any

other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously.”) In the same vein, if the claim includes damages for personal injury, a complaining party shall provide an injury-specific medical authorization and release *immediately* on the request of a defending party. Parallel provisions in subsection (c)(2) require a defending party to provide comparable disclosure. While any evidence not disclosed in compliance with these sections is presumptively inadmissible, subsection (f) does allow a party to supplement its list, no later than thirty (30) days prior to trial, with evidence which by due diligence could not have been discovered earlier.

Subsection (b)(3) and (c)(2) also require that if a party intends to offer expert testimony at trial, the conclusions and foundations therefor must be submitted in writing to the opposing party with the party’s list of witnesses. To facilitate the cost-effective determination of these actions, the direct testimony of any expert is strictly limited to the conclusions and foundations therefor set forth in the required disclosure. Discovery depositions are not permitted, though an expert’s trial testimony may be taken by deposition.

Subsection (c)(3) provides that a motion disputing or objecting to the applicability of this Rule may be filed with the answer, and requires the movant to simultaneously notice a hearing on such motion for the earliest practicable time. In ruling on the motion, the trial court shall consider, among other factors it deems relevant, the nature of the claim(s) and the defense(s), the existence of multiple claims or parties, the complexity of the case, and the need for the examination of a party pursuant to M.R.C.P. 35. As the complexity of the factual or legal basis for the claims or defenses increases, the appropriateness of this Rule decreases. Perhaps most fundamentally, the existence of multiple complaining parties (joined in the present case or otherwise anticipated) whose aggregate claims against any single defending party significantly exceed \$50,000, mark the case as one that should not ordinarily proceed pursuant to this Rule.

Subsection (e) sets forth the limited additional discovery allowed by this Rule, namely inspection and copying of relevant insurance agreements, party depositions, and five (5) interrogatories. The Rule contemplates that most necessary information is to be provided by the mandatory disclosures.

Subsection (g) establishes some of the most important cost containment features of the Rule. Other than motions permitted by M.R.C.P. 12 (which ordinarily should be disposed of without hearing), there shall be neither additional discovery nor additional motions unless the parties stipulate thereto or the court orders otherwise based on the court’s determination that such is necessary to obtain a fair, swift and cost-effective determination of the case. Rule (g)(2) notes, however, that the subpoena power remains unaffected.

Subsection (h) requires objections to the authenticity of documents be made reasonably in advance of trial and lists certain documents that are presumptively admissible.