

**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 AMENDMENT TO RULE 12.02 OF THE UNIFORM RULES OF CIRCUIT AND COUNTY COURT**

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

IN THE SUPREME COURT OF MISSISSIPPI

IN RE: UNIFORM RULES OF CIRCUIT  
AND COUNTY COURT

RULES \_\_\_\_\_

**MOTION TO AMEND CERTAIN RULES  
OF UNIFORM RULES OF CIRCUIT AND COUNTY COURT**

The Advisory Committee on Rules (“Committee”) recommends that the Court amend URCCC 12.02. By letter to the Advisory Committee, Melvin Mitchell, a city prosecutor, raised several questions regarding appearance bonds under URCCC 12.02. Generally, he noted that while the procedure for issuing cost bonds was well defined, the procedure governing appearance bonds was not. In addition, he noted that the Rule might be clarified regarding the option of posting a cash deposit in lieu of bond. This proposed amendment seeks to address his well-taken concerns as well as the work of the Subcommittee. Suggested amendments to URCCC are underlined; suggested deletions are ~~stricken through~~.

The proposed amendments serve several purposes.

- Throughout the Rule, reference is made to “cash deposits” to clarify that such may be posted in lieu of bond.
- The first paragraph of Rule 12.02(A) is amended to specify that both a cost bond and an appearance bond shall accompany the notice of appeal.
- The second paragraph of Rule 12.02(A) is amended to require that the notice of appeal set forth an appellant’s current address.
- The first paragraph of Rule 12.02(B) is amended to specify that the amount of the appearance

bond (or cash deposit in lieu thereof) shall be set by the lower court. No minimum amount is required, as it is in the discretion of the lower court to determine, for example, that the cost bond suffices to guarantee the appellant's appearance in an appropriate case.

- The second paragraph of Rule 12.02(B) is amended to make clear what items are properly included in court costs and is amended to increase the maximum cost bond amount. *It appears to be very rare for defendants to be incarcerated pending an appeal from municipal or justice court. The ordinary practice is to set the appearance bond in an amount equal or greater to the amount of the fine, and in an amount greater than the cost of bond. Because the appearance bond is typically tied to the fine, the list of items included in the cost bond do not include "fines." This approach would be in accord with the practice recognized in Mitchell v. Parker, 804 So.2d 1066 (Miss. Ct. App. 2001).*
- The first paragraph of Rule 12.02(C) is amended to note that the prior judgment of conviction is stayed on filing of the notice of appeal and required bonds.
- Paragraph headings have been included to enhance clarity.

Respectfully submitted,

ADVISORY COMMITTEE ON RULES

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

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

## Rule 12.02

### APPEALS FROM JUSTICE OR MUNICIPAL COURT

#### **A. Notice and Filing; Mandatory Bonds or Cash Deposits.**

1. Any person adjudged guilty of a criminal offense by a justice or municipal court may appeal to county court or, if there is no county court having jurisdiction, then to circuit court by filing simultaneously a written notice of appeal, and both a cost bond and an appearance bond (or cash deposits) as provided herein within 30 days of such judgment with the clerk of the circuit court having jurisdiction. This written notice of appeal and posting of cost and appearance bonds or cash deposits perfects the appeal. The failure to post any bond or cash deposit required by this rule shall be grounds for the court, on its own motion or by motion of another, to dismiss the appeal with prejudice and with costs. The clerk of the court shall not accept, file and docket the written notice of appeal without the accompanying cost and appearance bonds or cash deposits, unless the court has allowed the defendant to proceed in forma pauperis. After the filing of the written notice of appeal and cost and appearance bonds or cash deposits, all further correspondence concerning the case by parties of either side shall be mailed directly to the circuit clerk for inclusion in the file.

**2. Contents of Notice of Appeal.** The written notice of appeal shall specify the party or parties taking the appeal; shall specify the current residence address and the current mailing address, if different, of each party taking the appeal; shall designate the judgment or order from which the appeal is taken; shall be addressed to county or circuit court, whichever appropriate; and shall state that the appeal is taken for a trial de novo. Upon a failure of the defendant to comply with the requirement of this rule as to content of the written notice of appeal, the court, in its discretion, may order the notice amended or the case dismissed with prejudice and with costs. If the defendant fails to amend the notice as required by the court, the court shall dismiss the appeal with prejudice and with costs.

**3. Record.** The circuit clerk, upon receiving written notice of appeal, shall notify ~~the appropriate prosecuting attorney, or if none,~~ the lower court and the appropriate prosecuting attorney.

It shall be the duty of the judge from whose judgment the appeal is taken to deliver to the clerk of the circuit court, within 10 days after the ~~appeal~~ appearance bond and cost bond or cash deposits, as required herein, are given and approved, a certified copy of the record in the case with all the original papers in the case. The judge of the lower court may direct the clerk of the lower court to certify and transmit the copy of the record in the case and all the original papers in the case within the time allowed by this rule.

#### **B. Bonds .**

**1. Appearance Bond.** Unless excused by the making of an affidavit as specified in § 99-35-7 of the Mississippi Code of 1972, a cash deposit, or bond with sufficient resident sureties (or licensed guaranty companies), to be approved by the circuit clerk, ~~or of cash~~ shall be given and conditioned on appearance before the county or circuit court from day to day and term to term until the appeal is finally

determined or dismissed. The amount of such cash deposit or appearance bond shall be determined by the judge of the lower court. If the defendant fails to appear at the time and place set by the court, the court may dismiss the appeal with prejudice and with costs and order forfeiture of the appearance bond or cash deposit.

**2. Cost Bond.** Unless excused by the making of an affidavit of poverty as specified above, every defendant who appeals under this rule shall post a cash deposit, or bond with sufficient resident sureties (or licensed guaranty companies) to be approved by the circuit clerk, ~~or cash~~ for all estimated court costs, incurred both in the appellate and lower courts (including, but not limited to fees, court costs, and amounts imposed pursuant to statute). The amount of such cash deposit or bond shall be determined by the judge of the lower court payable to the state in an amount of not less than One Hundred Dollars (\$100) nor more than ~~One Thousand~~ Twenty-Five Hundred Dollars (\$2,500). Upon a bond forfeiture, the costs of lower court shall be recovered after the costs of the appellate court.

**3. Time in Custody Credited.** All time the defendant is in custody pending an appeal shall be credited against any sentence imposed by the court.

**C. Proceedings.** Upon the filing with the circuit clerk of the notice of appeal and bonds or cash deposits required by this rule, unless excused therefrom with the clerk, the prior judgment of conviction shall be stayed ~~by the higher court upon receipt of the bonds required by this rule or excuse therefore.~~

The appeal shall be a trial de novo. In appeals from justice or municipal court when the maximum possible sentence is six months or less, the case may be tried without a jury at the court's discretion. The record certified to the court on appeal from the lower court is competent evidence. However, no motions may be allowed which deprives the accused of the right to a trial on the merits. Amendments will be liberally allowed so as to bring the merits of a case fairly to trial.

[Amended May 13, 1996; amended November 26, 1996.]