

**NOTICE OF REQUEST FOR COMMENTS REGARDING
PROPOSED MUNICIPAL COURT RULES**

Pursuant to Rule 27(f) of the Mississippi Rules of Appellate Procedure, the Supreme Court now seeks comments from the bench, the bar, and the public on the proposed Municipal Court Rules.

Comments should be filed with the Clerk of the Supreme Court, Gartin Justice Building, P.O. Box 249, Jackson, Mississippi 39205-0249, no later than Monday, December 22, 2008.

Exhibit A

MUNICIPAL COURT RULES

RULE 1. DIGNITY AND DECORUM

Each session of the court shall be opened formally in a fitting and dignified manner which shall be prescribed by the municipal court judge. There shall be no disturbance of the court by unnecessary noise or conversation or disorderly conduct. There shall be no demonstration of approval or disapproval at any stage of any trial or upon rendition of the verdict. The court may order the courtroom cleared of spectators if this rule is not respected and obeyed. It is the duty of the bailiff to see to the enforcement of this rule without being specifically directed to do so by the court.

RULE 2. OPERATION OF THE COURT

Court shall convene on days and times designated by the municipal court judges. All attorneys, prosecutors and officers of the court whose presence is necessary for the hearing in any matter before the court shall be present in court promptly on the date and at the time designated by the court. While a particular case is being heard in the court, only officers of the court will be allowed within the rail constituting the bar of the court. Attorneys not involved in the case and others may be permitted within the rail by the court. Municipal courts determine matters without a jury. *Miss. Code Ann.* § 21-23-7(1).

RULE 3. SECURITY OF THE COURT

No one shall wear or bear firearms or weapons of any description in the courtroom except sworn law enforcement officers. Attire of all court personnel and bailiffs shall be as directed by the court. No prisoner or defendant shall be brought into the courtroom in handcuffs or shackles unless approved by the court. Any behavior that might distract the court or the attorneys is prohibited within the courtroom. All persons entering the courtroom must submit to a metal detector examination and submit all packages and containers for search before entry into courtroom security area.

RULE 4. THE COURT RECORD

No original record or any part of a file, record or court papers shall be taken from the court clerk's custody without permission of the clerk or the court.

RULE 5. SUBPOENAS

Subpoenas shall be issued as necessary to compel the attendance of witnesses. It shall be the responsibility of the attorney to request subpoenas for the attendance of all witnesses to testify. Requests for subpoenas must be made in writing and delivered to the court clerk at least ten (10) days before the day the case is set for trial or hearing and shall be preserved by the clerk until the final disposition of the case. The request shall give the location of the witnesses and other information, so as to furnish a sure guide to the officer serving the subpoena. The court clerk shall maintain an accurate record of all subpoenas issued. No subpoena instanter shall be issued during the trial without the consent of the court.

RULE 6. CAMERAS, RECORDING AND BROADCASTING EQUIPMENT

No cameras, video recorders, audio recorders, transmitting devices, radio or television broadcasting equipment will be permitted within the courtroom or areas immediately adjacent thereto while court is in session. All pagers must be on silent alert and cellular telephone ringers must be off. This rule shall not apply to electronic or other equipment utilized in the preservation or presentation of evidence.

RULE 7. NO EX PARTE COMMUNICATION

There shall be no ex parte communication except as authorized by Canon 3(B)(7) of the Code of Judicial Conduct.

RULE 8. BONDS

No officer of the court shall execute any bond as surety. The court clerk shall file and keep all bonds separately in a safe place where they will be available for presentation at all proper times.

RULE 9. FORFEITURE OF BAIL

Persons charged with crimes over which the court has jurisdiction shall be admitted to bail, if bail is permitted, on such terms and conditions as will reasonably assure the presences of the defendant before the court.

If the defendant is released on cash bail and does not appear as required by the bond, the court may, in addition to forfeiture of bail, direct the court clerk to issue a *capias* to bring the defendant before the court. The court clerk shall give written notice of this rule to each person posting a cash bond.

Judgement on forfeited recognizance or bonds will not be set aside unless it be made to appear to the court that the default was unavoidable except as required by law.

RULE 10. APPOINTMENT OF COUNSEL

The court, in its discretion, may appoint counsel in any case where such is constitutionally required by factors of fundamental fairness.

When any person shall be charged with a misdemeanor likely to be punishable by confinement, the court shall inform the accused of the right to counsel. Upon the request of the defendant, the court, being satisfied that such person is an indigent person and unable to employ counsel and not eligible to be represented by the public defender, will promptly appoint counsel to defend the accused. Such appointment shall be made prior to requesting the defendant to plead to the charge.

An inquiry to determine financial eligibility of a defendant for the appointment of counsel will be made whenever possible prior to the initial counsel appearance and by such persons as the court may direct.

Any counsel appointed to represent a defendant shall have free access to the defendant who shall have compulsory free process to compel the attendance of witnesses in his favor. The defendant shall have such representation available at every critical stage of the proceeding against him where a substantial right may be affected.

It shall be the duty of the court clerk to determine within 48 hours of a person's arrest and the incarceration in the jail whether private counsel or a public defender represents such person. If there be any such persons so confined who are not so represented, and who are entitled pursuant to Rule 12, they immediately will be brought before a judge so that in the court's discretion, counsel may be made available. Priority shall be persons confined in the

city jail to have a speedy trial of the charges against them. The decision to appoint counsel or not appoint counsel shall be appropriately noted by the court.

RULE 11. APPEARANCE BY COUNSEL

When an attorney makes an appearance for a defendant the attorney will not be allowed to withdraw as counsel except with leave of the court.

RULE 12. PRELIMINARY HEARING

At all preliminary hearings such process as is necessary to secure the attendance of witnesses shall be issued for felony offenses four (4) days from the initial appearance and/or upon request of the attorney.

Unless knowingly and effectively waived, defendants charged with felony offenses shall be provided a speedy preliminary hearing.

The defendant shall not be permitted to enter a plea at the preliminary hearing.

No person shall be permitted to waive a preliminary hearing without the assistance of counsel except with permission of the court.

Witnesses produced shall be examined on oath, and in the presence of the defendant, concerning the charged offense. The defendant may cross-examine the witnesses against him, and offer evidence in his own behalf. If the defendant elects to testify personally, he will be warned in advance of taking the stand that anything he says can be used against him at trial. The state may cross-examine the defendant and any other witnesses who are offered in the defendant's behalf.

Objections to evidence on the ground that it was acquired by unlawful means shall not be made at the preliminary hearing.

RULE 13. PLEAS AND PLEA AGREEMENTS

Defense counsel shall not conduct any plea bargaining on behalf of his client without the client's full and complete consent, being certain that the decision to plead is made by the defendant. Defense counsel shall advise defendant of all pertinent matters bearing on the choice of plea to enter and likely results or alternative pleas.

The prosecuting attorney may discuss and agree on pleas. The prosecuting attorney, defendant's counsel, or the defendant, acting pro se, may engage in such discussion with a view toward reaching an agreement. Upon a plea of guilty to the offense charged or to a lesser or related offense, the prosecuting attorney may move for dismissal or remand of other charges or make a recommendation to the court for a particular sentence. Such recommendation or request shall not be binding on the court.

A defendant may plead not guilty or guilty, or with the court's permission, nolo

contendere. It is within the discretion of the court to permit or deny a motion for the withdrawal of a plea. The court shall not accept a nolo contendere plea on any charge that can be enhanced on future violations, i.e., DUI, shoplifting.

If the defendant refuses or neglects to plead, stands mute or pleads evasively, the court will enter a plea of not guilty and will proceed to trial.

RULE 14. MISDEMEANOR INITIAL APPEARANCE

A defendant charged with a misdemeanor offense shall be afforded an initial appearance at which time the defendant may enter a plea to the offense(s) charged. If the defendant pleads guilty, he shall be sentenced at that time. If the defendant pleads not guilty, he shall be given a trial date.

RULE 15. PRETRIAL CONFERENCES

Pretrial conferences may be had and heard at the discretion of the court.

RULE 16. TRIAL IN ABSENTIA

In all cases where proper notice of a trial date has been given to a defendant, the court may proceed to hear the charge and make a final disposition in the absence of the defendant. Said disposition shall be set aside only by order of the court upon notice to the prosecuting attorney.

RULE 17. DISCOVERY

Upon written request 14 days prior to trial, the prosecuting attorney will disclose unto each defendant or his attorney, the following or so much thereof as may be applicable, to wit:

1. Names of all witnesses proposed to be offered by the prosecution upon trial or hearing. The prosecution has a duty to supplement any disclosure previously furnished as soon as determination is made to use witnesses not previously named;
2. Copy of any written statement of the defendant;
3. Copy of the criminal record of the defendant, if proposed for use as impeachment;
4. Copy of laboratory reports or reports of any tests made;
5. Exhibit any physical evidence and photographs to be offered in evidence;
6. Copy of any exculpatory material concerning the defendant; and,
7. Any affidavit used to obtain a search warrant where evidence obtained as a result of the search is to be offered at trial.

The prosecuting attorney is entitled, upon written request, to reciprocal discovery of items 1-7 enumerated above to any extent applicable.

RULE 18. MOTIONS

All evidentiary or dispositive motions shall be filed with the court clerk and noticed to opposing parties at least ten (10) days prior to any trial. Motions for expungement shall be filed with the court clerk together with a filing fee of \$50.00. Upon objection, the matter shall be set for hearing within a reasonable time.

RULE 19. EXCLUSION OF WITNESSES (THE RULE)

At any trial or hearing either party may request that the rule for sequestering witnesses be invoked.

The defendant does not have to testify before his witnesses and has the right to remain in the courtroom and hear all witnesses and their testimony.

Whether a witness may testify when he has remained in the court after the rule has been invoked is within the discretion of the court.

RULE 20. EXAMINATION OF WITNESSES

The examination of witnesses shall be limited to the direct examination, the cross-examination, and the redirect examination concerning matters brought out on cross-examination. Re-cross examination may be permitted in the discretion of the court. Only one attorney at a time shall be permitted to examine or cross-examine a witness.

In all cases, the examination must be conducted in an orderly and decorous manner without improper interruptions from opposing counsel except for the purpose of interposing objections. Counsel and the witness must be courteous to each other. Counsel shall not abuse and mistreat the witness and the witness shall show counsel proper respect. If a witness shall attempt to evade or refuse to answer any proper question, the court will, on request of counsel, require the witness to answer.

All objections to testimony must be made to the court and not to opposing counsel. The objection must be specific and not general. Counsel will not be permitted to argue with each other.

RULE 21. ADMISSIBILITY OF WRITTEN REPORTS

In the prosecution of a criminal offense where testimony of an analysis of a controlled substance or the results of a test determining the alcoholic content of the defendant's blood is called for, the written report shall be admissible as evidence of the facts stated therein; however, on written motion of any party within a reasonable time prior to trial and for good

cause shown, the court may require the official making the analysis to appear as a witness.

RULE 22. SENTENCING

Where the defendant is adjudged guilty of an offense, sentence must be imposed without unreasonable delay. The sentence shall be pronounced in open court, in the presence of the defendant, and duly recorded by the clerk of the court. The court may defer adjudging defendant guilty or passing sentence for a reasonable time to permit a pre-sentence investigation to be made. The court may continue the defendant on the same bail.

In all cases where enhancement is required or allowed, the court may conduct a separate hearing as to prior convictions.

RULE 23. PAYMENT OF FINES

It shall be the duty of the court clerk to collect all fines assessed by the court and to follow all procedures and rules established by the court respecting the payment of all fines that are to be paid in installments and the reporting of delinquencies to the court. It will be at the discretion of the court not to allow an installment under the amount of \$200.00. Failure to comply with an assessed fine to be paid in installments shall subject the defendant to contempt proceedings.

RULE 24. REVOCATION HEARINGS

Proceedings to revoke suspended sentences may be instituted upon the petition of the prosecuting attorney. A copy of the petition shall be served on the defendant and no hearing shall be had on less than five (5) days notice to the defendant.

RULE 25. APPEALS

Appeals shall made in accordance with Rule 5.04 of the Uniform Rules of Circuit and County Court Practice.

RULE 26. REMANDS/DISMISSALS

All remands and dismissals of cases shall be adjudicated in open court.

[Adopted effective _____].

