PURSUANT TO RULE 27(f) OF THE MISSISSIPPI RULES OF APPELLATE PROCEDURE, THE RULES COMMITTEE ON CRIMINAL PRACTICE AND PROCEDURE EXTENDS THE DEADLINE FOR COMMENTS FROM THE BENCH, THE BAR AND THE PUBLIC ON THE **PROPOSED MISSISSIPPI RULES OF CRIMINAL PROCEDURE.**

As announced on September 9, 2011, the Rules Committee on Criminal Practice and Procedure is seeking public comments from the bench, the bar, and the public regarding the proposed Mississippi Rules of Criminal Procedure. Upon the request of several groups, the Rules Committee has decided to extend the deadline for public comments until February 16, 2012.

Comments should be filed with the Clerk of the Supreme Court, Gartin Justice Building, P. O. Box 249, Jackson Mississippi 39205-0249. Deadline: **February 16, 2012.**

MISSISSIPPI RULES OF CRIMINAL PROCEDURE

Rule 1 General Provisions

Rule 1.1 Scope.
These are the Mississippi Rules of Criminal Procedure and shall govern the procedure in all criminal proceedings in all courts within the State of Mississippi, except traffic violations in justice and municipal courts. They may be cited as "MRCrP____."

Rule 1.2 Purpose and Construction.
These Rules are to be interpreted to provide for the just and speedy determination of every criminal proceeding, to secure simplicity in procedure and fairness in administration, to eliminate unjustifiable delay and expense, and to protect the fundamental rights of the individual while preserving the public welfare.

Rule 1.3 Computation and Enlargement of Time.
(a) Computation. In computing any period of time prescribed or allowed by these Rules, 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. In the event any legal holiday falls on a Sunday, the next following day shall be a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(b) 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 at any time in its discretion:

> (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or
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> (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 a court may not, except as provided elsewhere in these Rules, extend the time for making a motion for new trial, for taking an appeal, or for making a motion for a judgment of acquittal.

(c) Unaffected by Expiration of Term. The doing of any act or the taking of any proceeding permitted by these Rules is not affected or limited by the existence or expiration of a term of court.

(d) Motions. A written motion, other than one which may be heard *ex parte*, and notice of the hearing thereof must be served not later than 5 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. Except as otherwise provided in these Rules or permitted by the court, opposing affidavits must be served not later than 1 day before the hearing.

(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 and the notice or paper is served by mail, 3 days shall be added to the prescribed period.

Rule 1.4 Definitions.

Unless otherwise defined in a particular Rule, whenever they appear in these Rules, the terms below shall have the following meanings.

(a) "Charge" means a complaint, indictment, or bill of information.

(b) "Complaint" includes criminal affidavit.

(c) "Indictment" includes a true bill from the grand jury or a bill of information in lieu thereof.

(d) "Law Enforcement Officer" means a law enforcement officer certified pursuant to Miss. Code Ann. § 45-6-11, or any other officer, employee or agent of the State of Mississippi or any political subdivision thereof who is required by law to:

(1) maintain public order;

(2) make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses; or

(3) investigate the commission or suspected commission of offenses.

(e) "Offense" means conduct for which a sentence to a term of imprisonment, or the death penalty, or for which a fine is provided by any law of this State or by any law or ordinance of a political subdivision of this State.

(f) "Person" means a human being, and where appropriate, a public or private corporation, an unincorporated association, a partnership, a similar legal entity, a government, or a governmental instrumentality.

(g) "Prosecuting Attorney" means any municipal or county attorney, district attorney, attorney general, and others acting under their specific direction and authority, or such other person appointed or charged by law with the responsibility for prosecuting an offense.

(h) "Sentencing Court" includes the court which imposed or imposes sentence and any court to which jurisdiction has been transferred.

(i) "Supervising officer" includes those acting under the specific direction and authority of a public or private supervisor or supervising agency.

Rule 1.5 Information on Each Pleading and Motion.
All pleadings, motions, or other applications to the court shall bear the name, address, and office phone number of the attorney who will try the case and, if different from the attorney who will try the case, the name, address, and office phone number of the attorney who will be prepared to argue the pleading, motion or other application.

Rule 1.6 Size of Paper.
All pleadings and other papers filed in any proceeding governed by these Rules shall be on paper measuring 8 1/2 inches x 11 inches. Notwithstanding the foregoing, exhibits or attachments to pleadings may be folded and fastened to pages of the specified size. An exhibit or attachment not in compliance with the foregoing provisions may be filed only if it appears that compliance is not reasonably practicable.

Rule 1.7 Service of Copies and Certificate of Service.
Unless otherwise ordered by the court, all pleadings, motions, or applications to the court, except the initial pleading or indictment, must be served by any form of service authorized by Rule 5 of the Mississippi Rules of Civil Procedure on all attorneys of record for the parties, or on the parties when not represented by an attorney, and the person filing the same shall also file an original certificate of service certifying that a correct copy has been provided to the attorneys or to the parties, the manner of service, and to whom it was served. Except as allowed by this Rule or allowed by the court for good cause shown, the clerk may not accept for filing any document which is not accompanied by a certificate of service.

Rule 1.8 Interactive Audiovisual Devices.
(a) General Provisions. When the appearance of a defendant or counsel is required in any court, subject to the provisions of this Rule, the appearance may be made by the use of an interactive audiovisual device, including video conferencing equipment. An interactive audiovisual device shall, at a minimum, operate so as to enable the court and all parties to view and converse with each other simultaneously.

(b) Requirements. In using an interactive audiovisual device the following are required:

(1) a full record of the proceedings shall be made as provided in applicable statutes and rules;

(2) the court shall determine that the defendant knowingly, intelligently, and

voluntarily agrees to appear at the proceeding by an interactive audiovisual device; and

(3) provisions shall be made to allow for confidential communications between the defendant and counsel before and during the proceeding.

(c) Proceedings. Appearance by interactive audiovisual device, including video conferencing, may be permitted in the discretion of the court at any proceeding except that:

(1) written stipulation of the parties is required in all proceedings before the commencement of the proceeding, except in initial appearance and not guilty arraignment;

(2) this Rule 1.8 shall not apply to any trial, evidentiary hearing, or probation violation hearing; and

(3) this Rule 1.8 shall not apply to any felony sentencing.

Rule 1.9 Local Court Rules.

(a) When Permissible. Any court by action of a majority of the judges thereof may hereafter make local rules and amendments thereto concerning practice in their respective courts not inconsistent with these Rules. In the event there is no majority, the senior judge shall have an additional vote.

(b) Procedure for Approval. All such local rules adopted before being effective must be submitted to the Supreme Court of Mississippi for approval. Upon receipt of such proposed rules and before any approval of the same, the Supreme Court may submit them to the Supreme Court Advisory Committee on Rules for advice as to whether any such rules are consistent or in conflict with these Rules or any other rules adopted by the Supreme Court.

(c) Publication. All local rules hereinafter approved by the Supreme Court shall be submitted for publication on the court's website and in the Southern Reporter (Mississippi cases).

Rule 2 Commencement of Criminal Proceedings

Rule 2.1 Commencement of Criminal Proceedings.
(a) Commencement. All criminal proceedings shall be commenced either by complaint or by indictment.

(b) Complaint. A complaint is a written statement made upon oath before a judge, clerk of the court, or other officer authorized by law to administer oaths, setting forth essential underlying facts and circumstances constituting an offense and alleging that the defendant committed the offense.

Rule 2.2 Duty of Judge upon Making of a Complaint.
(a) Probable Cause Determination. If it appears from the complaint and the evidence, if any, submitted that there is probable cause to believe that the offense complained of has been committed and that there is probable cause to believe that the defendant committed it, the judge shall proceed under Rule 3.1.

(b) Evidence. The finding of probable cause must be based upon evidence, which may be hearsay in whole or in part provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. Before ruling on a request for a warrant, the judge may examine under oath the complainant and any witnesses the complainant may produce.

Rule 3 Arrest Warrant or Summons upon Commencement of Criminal Proceedings

Rule 3.1 Issuance of Arrest Warrant or Summons.
(a) Issuance. Upon a finding of probable cause made pursuant to Rule 2.2, or upon a finding that such a determination has previously been made, the judge shall immediately cause to be issued a summons or an arrest warrant. More than one summons or warrant may issue on the same complaint.

(b) Summons; Subsequent Issuance of Arrest Warrant. *(1) Summons.* If the defendant is not in custody, if the offense charged is bailable as a matter of right, and if there is no reason to believe that the defendant will not respond to the summons, a summons may be issued, at the sole discretion of the issuing judge.

(2) Subsequent Issuance of Arrest Warrant. If a defendant who has been duly summoned fails to appear, or if after issuance of a summons there is reasonable cause to believe that the defendant will fail to appear, or if for any reason the summons cannot be served or delivered, an arrest warrant shall issue.

(c) Docketing Case. A case shall be docketed upon service of a summons or upon the defendant's arrest.

(d) Traffic Citations Unaffected. The use of tickets, citations, or affidavits for traffic violations shall be as otherwise provided by law.

Rule 3.2 Contents of Arrest Warrant or Summons; Execution, Return; Arrest without a Warrant.

(a) Arrest Warrant. An arrest warrant issued upon a complaint must be signed by the issuing judge. The arrest warrant must contain the complete name of the defendant, or if the name is unknown, any name or description by which the defendant can be identified with reasonable certainty; it must contain the location of the defendant, if known; it must state the offense with which the defendant is charged; and it must command that the defendant be arrested and brought before the issuing judge, or, if the issuing judge is unavailable, before the nearest or most accessible judge having jurisdiction. If the defendant is bailable as a matter of right, the arrest warrant may state the conditions of the defendant's release on recognizance or an amount of an appearance bond or a secured appearance bond predetermined by the court.

(b) Summons. The summons must be in the same form as the arrest warrant, except that it must summon the defendant to appear at a stated time and place within a reasonable time from the date of issuance. At the discretion of the issuing judge, the summons may command the defendant to report to a designated place to be photographed and fingerprinted before appearance in response to the summons. Failure to so report for photographing or fingerprinting shall result in issuance of a warrant for the defendant's arrest unless good cause for such failure is shown. If, upon the defendant's appearance, the defendant has not been photographed and fingerprinted, the issuing judge shall direct that the defendant be promptly photographed and fingerprinted.

(c) Execution of Arrest Warrant, Return. *(1) By Whom.* The arrest warrant shall be directed to and may be executed by any officer authorized by law within the State of Mississippi.

(2) Manner of Execution. An arrest warrant shall be executed by arrest of the defendant.

(3) Return. The officer executing an arrest warrant must endorse thereon the manner and date of execution, must subscribe the officer's name, and must promptly return the arrest warrant to the clerk of the court specified in the arrest warrant.

(d) Service of Summons. The summons may be served by any officer authorized by law in the same manner as a summons in a civil action, except that service may not be by publication. In addition, at the officer's discretion, a summons may be served by certified mail, requiring a signed receipt or some equivalent thereof. In the event the summons is served by certified mail, return of the receipt signed by the defendant shall be prima facie evidence of service. The officer serving the summons must make return of the summons in the same manner as provided in Rule 3.2(c)(3) for making return of an arrest warrant.

(e) Defective Arrest Warrant. An arrest warrant shall not be invalidated nor shall any person in custody thereon be discharged because of a defect in form. The arrest warrant may be amended by the court to remedy such defect.

(f) Cancellation. At the request of the prosecuting attorney, any unexecuted warrant must be returned to the judge by whom it was issued who shall cancel it if the judge finds the interests of justice would be served.

(g) Reissuance. At the request of the prosecuting attorney made at any time while the complaint is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the judge to any authorized person for execution or service.

(h) Arrest without a Warrant. A law enforcement officer or private person may arrest a person without a warrant as provided by law. In all cases of arrests without a warrant, the person making such arrest must inform the accused of the object and cause of the arrest, except when the accused is in the actual commission of the offense, or is arrested on pursuit. A private person making an arrest shall deliver the person arrested without unnecessary delay to a judge or law enforcement officer. If the person arrested is taken to a law enforcement officer, the officer shall proceed as provided in Rule 5.1.

Rule 4 Search Warrants

Rule 4.1 Issuance of Search Warrants.

(a) Definition of Search Warrant. A search warrant is a written order, in the name of the State, county, or municipality, signed by a judge authorized by law to issue search warrants, directed to any law enforcement officer as defined by Rule 1.4(d), commanding the officer to search for and seize a person or property. "Property" includes documents, books, papers, any other tangible objects, and information.

(b) Persons or Property Subject to Search and Seizure.

A search warrant authorized by this Rule may be issued for any of the following:

(1) evidence of a crime;

(2) contraband, fruits of crime, or other things criminally possessed;

(3) property designed for use, intended for use, or which is being or has been used in committing a crime; and

(4) a person to be arrested, or who is unlawfully restrained.

(c) Hearsay. The finding that there is probable cause to believe that the grounds for the application exist may be based upon hearsay evidence, in whole or in part, provided that there is a substantial basis for believing the evidence under the totality of the circumstances before the judge, including the credibility of the informer and the basis of the informer's knowledge.

Rule 4.2 Warrant on Affidavit.

(a) In General. A warrant other than under Rule 4.3 shall issue on sworn affidavit presented to the issuing judge authorized by law to issue search warrants, establishing grounds for issuing the warrant.

(b) Examination. Before ruling on a request for a warrant, the judge may further examine, under oath, the affiant and any witnesses the affiant may produce. Such additional sworn examination shall be recorded by a court reporter, by recording equipment, or preserved by other means, and shall be considered part of the affidavit for purposes of those proceedings; provided, however, that in reproducing any additional sworn testimony, the confidentiality of confidential informants shall be preserved.

(c) Issuance. If the judge is satisfied that probable cause to believe that grounds for the application exist, the judge shall issue a warrant naming or describing the person or property to be seized, and naming or describing the person or place to be searched.

Rule 4.3 Warrant Upon Remote Communication.

(a) General Rule. When reasonable under the circumstances, a judge may issue a warrant based upon sworn testimony communicated by telephone or other reliable electronic means. The finding of probable cause for a warrant upon such testimony may be based on the same kind of evidence as is sufficient for a warrant upon affidavit.

(b) Recording and Certification of Testimony. *(1) Oath.* When a telephone caller informs the judge that the purpose of the telephone call is to request a warrant, the judge shall immediately place under oath each person whose testimony forms a basis of the application and each person applying for the warrant.

(2) Preparation of the Record.

(A) If a voice-recording device is available, the judge must record by means of such device all of the call after the caller informs the judge that the purpose of the call is to request a warrant.

(B) Otherwise, an accurate and complete record must be made by other means.

(C) If a voice-recording device is used or a stenographic record made, the judge must have the record transcribed, must certify the accuracy of the transcription, and must file a copy of the original record and the transcription with the court.

(D) If a record is made by other means, the judge must file a signed copy with the court.

(c) Application. The person who is requesting the warrant shall prepare a document to be known as a duplicate original warrant and must read or otherwise transmit the contents of such duplicate original warrant verbatim to the issuing judge. If the applicant reads the contents of the proposed duplicate original warrant, the judge must enter what is so read on a document to be known as the original warrant. If the applicant transmits the contents by reliable electronic means, the transmission may serve as the original warrant.

(d) Modification. The issuing judge may modify the original warrant. The judge must transmit any modified warrant to the applicant by reliable electronic means or direct the applicant to modify the proposed duplicate original warrant accordingly.

(e) Issuance. If the judge is satisfied that there is probable cause to believe that the grounds for the application exist, the judge shall order the issuance of a warrant and immediately sign the original warrant, enter on its face the exact date and time it is issued, and transmit it by reliable electronic means to the applicant or direct the person requesting the warrant to sign the judge's name on the duplicate original warrant.

(f) Contents. The contents of a warrant upon remote communication shall be the same as the contents of a warrant upon affidavit.

(g) Additional Rule for Execution. The person who executes the warrant must enter the exact time of execution on the face of the duplicate original warrant.

(h) Motion to Suppress Precluded. Absent a finding of bad faith, evidence obtained pursuant to a warrant issued under this Rule 4.3 is not subject to a motion to suppress on the ground that the circumstances were not such as to make it reasonable to dispense with a written affidavit.

Rule 4.4 Contents of Search Warrants; Time of Execution; Incidental Authority.
(a) Contents of Search Warrant. The search warrant shall be directed to and served by a law enforcement officer. It shall command such officer (or such officer's designees) to search, within a specified time not to exceed 10 days, the person or place named for the person or property specified and to bring an inventory thereof before the court. The warrant shall designate the court to which the warrant and an inventory of the property seized shall be returned. The judge shall endorse the warrant, showing the hour, date, and the name of the law enforcement officer to whom the warrant was delivered for execution. A copy of such warrant and the endorsement thereon shall be admissible in evidence in the courts.

(b) Time of Execution. A search warrant must be executed in the daytime unless the issuing judge states in the warrant, according to the character of the application, that it may be executed any time of the day or night.

(c) Authority to Break and Enter. To execute the warrant, the law enforcement officer may break into any house, dwelling, vehicle, or structure, or any part thereof, or anything therein, if:

(1) after notice of the officer's authority and purpose, the officer receives no response within a reasonable time;

(2) after notice of the officer's authority and purpose, the officer is refused admittance; or

(3) the particular circumstances and the objective articulable facts are such that a reasonable officer would believe that giving notice of the officer's authority and purpose before entering would endanger the safety of any person or result in the destruction of evidence.

(d) Incidental Seizure of other Property. A law enforcement officer executing a search

warrant may seize any property discovered in the course of the execution of the warrant if the officer has reasonable cause to believe that the item is subject to seizure under subsection 4.1(b) of this Rule, even if the property is not enumerated in the warrant.

(e) Photographs, etc. A law enforcement officer executing a search warrant may make or cause to be made photographs, measurements, impressions or scientific tests.

(f) Incidental Search of a Person. A law enforcement officer executing a search warrant directing a search of any premises or vehicle may search any person present on the premises or in the vehicle if either of the following applies:

(1) it is reasonably necessary to protect the officer or others from the use of any weapon that may be concealed upon the person; or

(2) it reasonably appears that property or items enumerated in the search warrant may be concealed upon the person.

Rule 4.5 Execution and Return with Inventory; Custody of Property; Return of Papers to Court.

(a) Receipt and Inventory. The law enforcement officer taking property or items under the search warrant shall give to the person from whom or from whose premises the property was taken, or shall leave at the place from which the property was taken, a copy of the search warrant endorsed with a copy of an inventory of the property taken. The inventory shall be made in the presence of the person from whose possession or premises the property was taken, if that person is present, and shall be verified by the law enforcement officer executing the search warrant.

(b) Return of Papers to Court. The law enforcement officer executing the search warrant must promptly return the search warrant, along with any inventory of property seized, to the court specified in the search warrant, who must forward the documents to the appropriate clerk for retention. Unexecuted search warrants must be returned to and may be destroyed by the court.

(c) Custody of Property. All property or things taken pursuant to a warrant shall be retained in the custody of the seizing officer or agency, subject to the order of the court in which the warrant was issued, or any other court in which such property or things is sought to be used as evidence.

Rule 4.6 Unlawfully Seized Property; Disposition of Seized Property.
(a) Motion for Return of Unlawfully Seized Property. A person aggrieved by an unlawful search and seizure may move the court for the return of the property seized on the ground that the person is entitled to lawful possession of the property which was illegally seized. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the property shall be restored. If a motion for return of property is made or comes on for hearing after an indictment or information is filed, it may be treated also as a motion to suppress evidence.

(b) Motion to Suppress. A motion to suppress may be made after indictment. However, any evidence that is seized pursuant to a search warrant shall not be suppressed as a result of a violation of these Rules except as required by the United States Constitution or the Constitution of the State of Mississippi.

(c) Disposition of Seized Property.
(1) Generally. When property is seized pursuant to a search warrant, it shall be retained under the direction of the judge. If seized property is not to be used as evidence, or is no longer needed as evidence, it shall be disposed of as follows.

(2) Property Governed by Statute. If there is a specific statute concerning disposition of the seized property, disposal of the property shall be in accordance therewith.

(3) Procedure in Absence of Statutory Provisions. If there is no specific statute concerning disposition of the seized property, the seized property shall be returned to the owner, unless:

> (A) a statute declares the property to be contraband, in which event the court shall order the property destroyed, if the court determines that destruction is in the public interest; otherwise
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> (B) if the court does not order destruction of contraband property, or if the owner of noncontraband property does not claim it within 6 months after it is no longer needed as evidence, the court shall order:
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> > (i) sale of the property at a public sale or auction, if the court concludes that such will probably result in a bid greater than the costs of the sale. The proceeds of the sale shall be administered by the court; or
> >
> > (ii) if the court concludes that the cost of a public sale would probably exceed the highest bid, the court may order the property transferred to a

public or a nonprofit institution or destroyed, or may otherwise order such disposition as it deems appropriate.

(4) Motions; Ex Parte Orders. The court may, on its own motion or the motion of any interested person, render an *ex parte* order for the disposition of property as herein provided. Otherwise, the court, in its discretion, may require a motion from the apparent owner or the person in possession of the property at the time of the seizure.

(5) Destruction of Controlled Substances. Unless otherwise provided by law, an official laboratory may destroy any controlled substance, controlled substance paraphernalia, or both, in its possession without an order of court after a period of 5 years from the date of seizure. Any laboratory intending to destroy a controlled substance, controlled substance paraphernalia, or both, pursuant to this subsection shall give the seizing agency and the district attorney 30 days written notice filed with the clerk before such destruction. If the seizing agency or the district attorney objects to such destruction, no destruction shall occur.

Rule 5 Arrest and Initial Appearance

Rule 5.1 Procedure upon Arrest.

(a) Telephone Call. Any person under arrest must be afforded a reasonable opportunity to make a telephone call to, or otherwise make effective communication with, any person the accused may choose, without undue delay.

(b) On Arrest without a Warrant. A person arrested without a warrant:

(1) may, unless prohibited by law, be notified in writing by a law enforcement officer to appear either at a specified time and place or at a time and place set forth in a subsequent notice and may be released;

(2) shall be released by a law enforcement officer upon execution of an appearance bond set according to Rule 8, unless the charge upon which the person was arrested is not a bailable offense, and directed to appear either at a specified time and place or at a time and place set forth in a subsequent notice;

(3) if not released pursuant to subsections (b)(1) or (b)(2) above, the accused must be taken without undue delay, except in no event later than 48 hours after arrest, before a judge who shall proceed as provided in Rule 5.2 for initial appearances.

If the person arrested is not taken before a judge as so required, then, unless the offense for which the person was arrested is not a bailable offense, the person must be released upon execution of an appearance bond in the amount of the minimum bond set in Rule 8, and shall be directed to appear either at a specified time and place or at a time and place set forth in a subsequent notice; or

(4) in the event the defendant is released on the minimum bond amount provided in the bail schedule, the prosecuting attorney may file a motion with the court to reconsider the bond amount and the conditions of release, and the procedures thereafter shall be in accordance with Rule 8.

If a person arrested without a warrant has been released and directed to appear without having been taken before a judge for a probable cause determination, the officer or private person who made the arrest shall without undue delay make a complaint before a judge as provided in Rule 2.1. If the judge finds probable cause, the complaint shall be served on the defendant in the manner provided in Rule 3.2 for service of summons, or shall be delivered to the defendant at the time of the defendant's appearance. If no complaint is filed, or if the judge does not find probable cause, the proceedings shall be terminated and the person arrested shall promptly be notified and advised that an appearance will not be required. Notification shall be made by the judge or clerk of the court by mail directed to the defendant at the defendant's last known address.

(c) On Arrest with a Warrant.
(1) If provision therefor has been made by the judge issuing the arrest warrant, a person arrested with a warrant shall be released on an appearance bond in the amount set in accordance with Rule 8 and directed to appear either at a specified time and place or at a time and place set forth in a subsequent notice.

(2) If the person arrested cannot meet the conditions of release provided in the warrant, or if no such conditions are prescribed:

(A) if such person was arrested pursuant to a warrant issued on a complaint, the accused must be taken without undue delay, except in no event later than 72 hours after arrest, before a judge, who shall proceed as provided in Rule 5.2. If the person arrested has not been taken before a judge as required herein, unless the charge upon which the person was arrested is not a bailable offense, such person shall be released upon execution of an appearance bond in the amount of the minimum bond set forth in Rule 8 and shall be directed to appear either at a specified time and place or at a time and place set forth in a subsequent notice; or

(B) if such person was arrested pursuant to a warrant issued upon an indictment, the accused must be taken without undue delay before a circuit judge, who shall proceed as provided in Rule 8.

(3) Upon request, the defendant shall be given a copy of the charges.

Rule 5.2 Initial Appearance.

(a) Generally. Every person in custody and not under indictment shall be taken, without unnecessary delay and in accordance with Rule 5.1, before a judge for an initial appearance. At the defendant's initial appearance, the judge shall:

(1) ascertain the defendant's true name and address, and amend the formal charge if necessary to reflect this information, instructing the defendant to notify the court promptly of any change of address;

(2) inform the defendant of the charges and provide the defendant with a copy of the complaint; and

(3) if the arrest has been made without a warrant, determine whether probable cause exists to believe that the defendant committed the charged offense, in accordance with the procedures for making a probable cause determination provided in Rule 2.2(a). If the judge finds there is probable cause, a complaint shall promptly be prepared, filed, and served on the defendant. If the judge finds no probable cause for the warrantless arrest, or if the judge fails to make a probable cause determination, the defendant must be released.

(b) Further Requirements. At the defendant's initial appearance, the judge shall also advise the defendant of the following:

(1) that the defendant has the right to remain silent and that any statements made may be used against the defendant;

(2) if the defendant is unrepresented, that the defendant has the right to assistance of an attorney, and that if the defendant is unable to afford an attorney, an attorney will be appointed as required by law;

(3) that the defendant has the right to communicate with an attorney, family or friends, and that reasonable means will be provided to enable the defendant to do so; and

(4) the conditions under which the defendant may obtain release, if any.

(c) Felony Cases. When a defendant is charged by complaint with commission of a felony, the judge shall also:

(1) inform the defendant of the right to demand a preliminary hearing and the procedure by which that right may be exercised; and

(2) if so demanded, set the time for a preliminary hearing in accordance with Rule 6.1.

(d) Initial Appearance Not Required. In all cases where the defendant is released from custody, or has been indicted by a grand jury, the defendant shall not be entitled to an initial appearance.

Rule 6 Preliminary Hearing

Rule 6.1 Right to a Preliminary Hearing; Waiver; Postponement.

(a) Right to a Preliminary Hearing. *(1) Generally.* A defendant who has been released from custody, or who has been indicted by a grand jury, shall not be entitled to a preliminary hearing. Otherwise, a defendant charged by complaint with the commission of a felony and in custody may demand a preliminary hearing.

(2) When Commenced. If demanded, the preliminary hearing shall commence within 30 days following the demand for preliminary hearing unless:

(1) the complaint has been dismissed;

(2) the hearing is subsequently waived;

(3) the hearing is postponed as provided in subsection (d); or

(4) before commencement of the hearing, the defendant is released from custody or an indictment charging the same offense has been returned by the grand jury.

(b) Waiver. A preliminary hearing, once demanded, may be subsequently waived in open court or by written waiver, signed by the defendant and defendant's counsel, if any.

(c) Delay. *(1) Release on Recognizance.* If a preliminary hearing has not been

commenced within 30 days as required by subsection (a), unless postponed as provided in subsection (d), the defendant shall be released on recognizance.

(2) Non-bailable Offenses; Notice to Circuit Court. However, if the defendant is charged with a non-bailable offense, or if release is prohibited by Article 3, § 29, paragraph (2), of the Mississippi Constitution of 1890, the court shall immediately notify a judge of that circuit of the delay and the reasons therefor. The circuit judge may thereupon order the hearing be set for a specified time.

(d) Postponement. Upon motion of any party, or upon the judge's own initiative, the preliminary hearing may be postponed beyond the time limits specified in subsection (a), upon a finding that circumstances exist that justify delay, and in that event the court shall enter a written order detailing the reasons for the finding and shall give the parties prompt notice thereof.

Rule 6.2 Proceedings at Preliminary Hearing.

(a) Procedure. At a preliminary hearing the judge shall determine probable cause and the conditions for release, if any. All parties shall have the right to cross-examine the witnesses testifying and, subject to the provisions herein, introduce evidence. Only evidence that is relevant to these questions shall be admitted.

At the close of the prosecution's case, including cross-examination of prosecution witnesses by the defendant, the judge shall determine and state for the record or state in open court whether the prosecution's case establishes probable cause. The defendant may then make a specific offer of proof, including the names of witnesses who would testify or produce the evidence offered. The judge shall allow the defendant to present the offered evidence, unless the judge determines that it would be insufficient to rebut the finding of probable cause.

(b) Process. Unless otherwise ordered by the court for good cause shown, process shall issue to secure the attendance of witnesses requested by the defendant, the prosecuting attorney, or the court.

(c) Hearsay Evidence. The findings by the court shall be based on substantial evidence, which may be hearsay, in whole or in part.

(d) Suppression Motions Inapplicable. Objections to evidence on the ground that it was acquired by unlawful means are not properly made at the preliminary hearing.

(e) Amendment of Complaint. The complaint may be amended at any time to conform to the evidence, unless substantial rights of the defendant would be prejudiced.

(f) Presenting the Case to the Grand Jury. If from the evidence it appears that there is probable cause to believe that a felony has been committed, and that the defendant committed it, the judge shall bind the defendant over to await action of the grand jury.

(g) Discharge of the Defendant. If from the evidence it appears that there is no probable cause to believe that a felony has been committed or that the defendant committed it, the defendant shall be discharged from custody. The discharge of the defendant shall not preclude the state from presenting the same offense to a grand jury.

Rule 7 Counsel

Rule 7.1 Right to Counsel; Waiver.

(a) Right to be Represented by Counsel. A defendant shall be entitled to be represented by counsel in any criminal proceeding, except in those petty offenses such as traffic violations where there is no prospect of imprisonment or confinement after a judgment of guilty. The right to be represented shall include the right to consult in private with an attorney, or the attorney's agent, as soon as feasible after a defendant is taken into custody, at reasonable times thereafter, and sufficiently in advance of a proceeding to allow adequate preparation therefor.

(b) Right to Appointed Counsel. An indigent defendant shall be entitled to have an attorney appointed in any criminal proceeding which may result in punishment by loss of liberty, in any other criminal proceeding in which the court concludes that the interests of justice so require, or as required by law.

(c) Waiver of Right to Counsel. A defendant may waive the right to counsel in writing or on the record, after the court has ascertained that the defendant knowingly, intelligently, and voluntarily desires to forego that right. At the time of accepting a defendant's waiver of the right to counsel, the court shall inform the defendant that the waiver may be withdrawn and counsel appointed or retained at any stage of the proceedings. When a defendant waives the right to counsel, the court may appoint an attorney to advise the defendant during any stage of the proceedings. Such advisory counsel shall be given notice of all matters of which the defendant is notified.

(d) Unreasonable Delay in Retaining Counsel. If a nonindigent defendant appears without counsel at any proceeding after having been given a reasonable time to retain

counsel, the cause shall proceed. If an indigent defendant who has refused appointed counsel in order to obtain private counsel appears without counsel at any proceeding after having been given a reasonable time to retain counsel, the court shall appoint counsel unless the indigent defendant waives the right under this Rule. If the indigent defendant continues to refuse appointed counsel, the cause shall proceed.

(e) Withdrawal of Waiver. A defendant may withdraw a waiver of the right to counsel at any time but will not be entitled to repeat any proceeding previously held or waived solely on the grounds of the subsequent appointment or retention of counsel.

Rule 7.2 Procedure for Appointment of Counsel for Indigent Defendants; Appearance; Withdrawal.

(a) Procedure for Appointment of Counsel for Indigent Defendants. *(1) Generally.* A procedure shall be established in each Circuit for appointment of counsel by the Circuit Court, or by limited jurisdiction courts, for each indigent person entitled thereto.

(2) Appointment of Two Attorneys; Death Penalty Cases. In all trial proceedings, the court may appoint 2 attorneys. In all death penalty trial proceedings, the court shall appoint 2 attorneys pursuant to the standards in Rule 7.4. At the time of the appointment and subject to the approval of the court, lead counsel may select co-counsel so long as co-counsel is willing to accept the appointment and, in death penalty cases, meets all of the requirements of Rule 7.4. If lead counsel does not name co-counsel upon accepting an appointment, the court shall select co-counsel.

(b) Notice of Appearance. Before or at a first appearance in any court on behalf of a defendant, an attorney, whether privately retained or appointed by the court, shall file a notice of appearance or, in lieu thereof, the court shall note of record the attorney's appearance.

(c) Duty of Continuing Representation. Counsel representing a defendant at any stage following indictment shall continue to represent that defendant in all further proceedings in the trial court, including filing of notice of appeal, unless counsel withdraws for good cause as approved by the court.

(d) Withdrawal. Counsel may be permitted to withdraw for good cause shown; however, no attorney shall be permitted to withdraw after a case has been set for trial except upon written motion stating the attorney's reasons therefor.

Rule 7.3 Determination of Indigency; Appointment of Counsel; Compensation.
(a) Standard for Indigency. The term "indigent" as used in these Rules means a person who is not financially able to employ counsel.

(b) Affidavit of Substantial Hardship. A defendant desiring to proceed as an indigent shall complete under oath an affidavit concerning that defendant's financial resources, on a form approved by the court. The defendant may be examined under oath regarding defendant's financial resources by the judge responsible for determining indigency; the defendant shall, before said questioning, be advised of the penalties for perjury as provided by law.

(c) Reconsideration. After a determination of indigency or non-indigency has been made, if there has been a material change in circumstances, either the defendant, the appointed attorney, or the prosecutor may move for reconsideration.

(d) Order of Appointment. Whenever counsel is appointed, the court shall enter an order to that effect, a copy of which shall be given or sent to the defendant, the attorney appointed, and the prosecutor.
(e) Appointment of Public Defender. In counties which have a public defender, the public defender shall represent all persons entitled to appointed counsel whenever authorized by law and able in fact to do so.

(f) Other Appointments. If the public defender is not appointed, a private attorney shall be appointed to the case. All criminal appointments shall be made in a manner fair and equitable to the members of the bar, taking into account the skill likely to be required in handling a particular case.

(g) Requests for Representation Before Indictment. A request for appointment of counsel under Rule 7.1 shall be made and processed as if proceedings had already commenced in Circuit Court.

(h) Appointment of Counsel During Appeal. The trial or appellate court shall appoint new counsel for a defendant legally entitled to such representation on appeal, when prior counsel is permitted to withdraw.

(i) Compensation. A private attorney appointed to represent an indigent is entitled to compensation for services rendered as provided by law. A private attorney so appointed shall be entitled to compensation for services rendered whether or not a criminal case reaches circuit court. Otherwise, no appointed counsel may request or accept any payment or promise of payment for assisting in the representation of a defendant.

(j) Expenses. As used herein the term "compensation for services" shall include any reasonable expenses necessarily incurred by appointed counsel in defense of an indigent client, including fees and expenses of expert or professional persons, provided that the incurring of such expenses has been approved in advance by, and in the sound discretion of, the court.

Rule 7.4 Standards for Appointment of Trial and Appellate Counsel in Death Penalty Cases.

(a) In General. To be eligible for appointment in a death penalty case, an attorney:

(1) shall have been a member in good standing of the State Bar of Mississippi for at least 5 years immediately preceding the appointment, or admitted *pro hac vice* pursuant to an order entered under M.R.A.P. 46 and be a member in good standing of that attorney's home jurisdiction for a like period immediately preceding the appointment;

(2) shall have practiced in the area of state criminal litigation for 3 years immediately preceding the appointment;

(3) shall have in the 3 years before appointment completed 12 hours training or educational programs in the area of death penalty defense through a program accredited by the Mississippi Commission on Continuing Legal Education or by the American Bar Association; and

(4) shall have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to death penalty cases.

(b) Lead Trial Counsel.

To be eligible for appointment as lead trial counsel, an attorney must meet the qualifications set forth in subsection (a) of this Rule and the following:

(1) shall have practiced in the area of state criminal litigation for 5 years immediately preceding the appointment;

(2) shall have been lead counsel in at least 5 felony jury trials that were tried to completion, including at least 1 death penalty murder jury trial that was tried to completion in which the attorney was lead or co-counsel; and

(3) shall be familiar with the American Bar Association Guidelines for the

(c) Appellate Counsel. To be eligible for appointment as appellate counsel on behalf of a defendant sentenced to death, an attorney must meet the qualifications set forth in section (a) of this Rule and, within 5 years immediately preceding the appointment, have been lead counsel in an appeal or post-conviction proceeding in a case in which a death sentence was imposed, as well as prior experience as lead counsel in the appeal of at least 3 felony convictions and at least 1 post-conviction proceeding. Alternatively, an attorney must have been lead counsel in the appeal of at least 6 felony convictions, at least 2 of which were appeals from murder convictions, and lead counsel in at least 2 post-conviction proceedings.

(d) Exceptional Circumstances. In exceptional circumstances enumerated by the trial judge on the record, an attorney may be appointed who does not meet the qualifications set forth in sections (a)(1)-(3), (b) and (c) of this Rule, providing that the attorney's experience, stature and record enable the court to conclude that the attorney's ability significantly exceeds the standards set forth in this Rule.

Rule 8 Release

Rule 8.1 Definitions and Requirements.

(a) Personal Recognizance. A release on defendant's "personal recognizance" means release without any condition of an undertaking relating to, or a deposit of, security.

(b) Unsecured Appearance Bond. An "unsecured appearance bond" is an undertaking to pay a specified sum on money to the clerk of the circuit, county, justice, or municipal court, for the use of the State of Mississippi or the municipality, on the failure of a person released to comply with its conditions.

(c) Secured Appearance Bond. A "secured appearance bond" is an appearance bond secured by deposit with the clerk of security equal to the full amount thereof.

(d) Cash Deposit Bond. A "cash deposit bond" is an appearance bond secured by deposit with the clerk of security, in the form of a cash deposit or certified funds, in an amount set by the judge.

(e) Security. "Security" is cash, certified funds, or a surety's undertaking, deposited with the clerk to secure an appearance bond.

(f) Surety. A "surety" is someone (other than the person released) who executes an appearance bond and is therefore bound to pay its amount, if the person released fails to appear for any proceeding as ordered by the court. A surety, except one governed by Miss. Code Ann. § 89-39-1, must file with an appearance bond a sworn affidavit or certification:

> (1) stating that the surety is not an attorney, judicial official, or person authorized to take bail (or if the surety is an attorney, judicial official, or person authorized to take bail, then the affidavit or certification shall state the surety's relationship to the person released). An attorney, judicial official, or person authorized to accept an appearance bond shall not be precluded from being a surety for a member of the surety's immediate family. For purposes of this Rule, the term "immediate family" shall be limited to include only: a spouse, a sibling, a spouse's sibling, a lineal ancestor or descendant, a lineal ancestor or descendant of a spouse, a sibling, or a spouse's sibling or a minor or incompetent person dependent upon the surety for more than 1/2 of their support;
>
> (2) stating that the surety owns property in this state, which property, when aggregated with that of other sureties, is worth the amount of the appearance bond (provided that the property must be exclusive of property exempt from execution and its value equaling the amount of the appearance bond must be above and over all liabilities, including the amount of all other outstanding appearance bonds entered into by the surety) and specifying that property and the exemptions and liabilities thereon; and
>
> (3) specifying the number and amount of other outstanding appearance bonds entered into by the surety.

(g) Insurer. The terms "insurer," "professional bail agent," "soliciting bail agent," "bail enforcement agent," and personal surety agent" shall be defined as in Miss. Code Ann. § 83-39-1, et seq.

(h) Compliance Required. All agents and insurers shall comply fully with Miss. Code Ann. § 83-39-1, et seq., and § 99-5-1, et seq., and all related statutes and regulations.

Rule 8.2 Right to Pretrial Release on One's Own Personal Recognizance or on Bond.
(a) Right to Release. Any defendant charged with an offense bailable as a matter of right may be released pending or during trial on the defendant's own personal recognizance or on an appearance bond unless the court before which the charge is filed or pending

determines that such a release will not reasonably assure the defendant's appearance as required, or that the defendant's being at large will pose a real and present danger to others or to the public at large. If such a determination is made, the court may impose the least onerous condition or conditions contained in Rule 8.3 or 8.4 that will reasonably assure the defendant's appearance or that will eliminate or minimize the risk of harm to others or to the public at large. In making such a determination, the court may take into account the following:

(1) the age, background and family ties, relationships and circumstances of the defendant;

(2) the defendant's reputation, character, and health;

(3) the defendant's prior criminal record, including prior releases on recognizance or on unsecured or secured appearance bonds, and other pending cases;

(4) the identity of responsible members of the community who will vouch for the defendant's reliability;

(5) violence or lack of violence in the alleged commission of the offense;

(6) the nature of the offense charged, the apparent probability of conviction, and the likely sentence, insofar as these factors are relevant to the risk of nonappearance;

(7) the type of weapon used, e.g., knife, pistol, shotgun, sawed-off shotgun, assault or automatic weapon, explosive device, etc;

(8) threats made against victims or witnesses;

(9) the value of property taken during the alleged commission of the offense;

(10) whether the property allegedly taken was recovered or not; damage or lack of damage to property allegedly taken;

(11) residence of the defendant, including consideration of real property ownership, and length of residence in the defendant's place of domicile;

(12) in cases where the defendant is charged with a drug offense, evidence of selling or distribution activity that should indicate a substantial increase in the

amount of bond;

(13) consideration of the defendant's employment status and history, the location of defendant's employment, e.g., whether employed in the county where the alleged offense occurred, and the defendant's financial condition;

(14) any enhancement statutes related to the charged offense; and

(15) any other fact or circumstance bearing on the risk of nonappearance or on the danger to others or to the public.

(b) Bond Schedule. The following schedule is established as a general guide for circuit, county, justice, and municipal courts in setting bail for persons charged with bailable offenses. Except in situations where release is required in the minimum scheduled amount pursuant to Rule 5.1(b) or (c), or any other Rule, courts may and should exercise discretion in setting bail above or below the scheduled amounts, as supported by consideration of the factors listed in Rule 8.2(a). When a statute limits a judge's bail authority, such statutory limits shall apply to the extent any of the amounts listed below are in conflict therewith.

SECURED OR UNSECURED APPEARANCE BOND SCHEDULE

Recommended Range

FELONIES:			
Capital felony	$25,000	to	No Bail Allowed
Manslaughter (or any other non-capital crime involving loss of human Life)	$10,000	to	$1,000,000
Drug Distribution and Trafficking	$5,000	to	$1,000,000
All other non-capital felonies			
- punishable by maximum 20 years or more	$20,000	to	$250,000
- punishable by maximum 10 years to 20 years	$10,000	to	$100,000
- punishable by maximum up to 10 years	$5,000	to	$50,000
MISDEMEANORS (not included elsewhere in the schedule):			
- punishable by maximum 1 year	$500	to	$2,000
- punishable by maximum 6 mos.	$250	to	$1,000
- punishable by less than 6 mos.	$100	to	$500
- punishable by fine only	$50	to	Max. Fine/Costs*

Municipal Ordinance Violations	$100	to $1,000
Traffic Related Offenses:		
Misdemeanor DUI and DWLS	$500	to $2,000
Reckless/careless driving	$100	to $300
Speeding	$50	to Max. Fine/Costs*
Other traffic violations	$50	to Max. Fine/Costs*

*Maximum amount of fine(s), court costs, and statutory assessments which might be due upon conviction.

Rule 8.3 Release after Conviction and Sentencing.
(a) No Release when Sentence Exceeds Twenty Years. A defendant shall not be released pending appeal to the Supreme Court if the defendant has been convicted:

(1) of felony child abuse;

(2) of sexual battery of a minor; or

(3) of any offense and who for that offense has been sentenced to punishment by death, by life imprisonment, or by imprisonment for a term in excess of 20 years.

(b) Release. *(1) When Filed.* A person convicted and sentenced for a felony, not enumerated in section (a), may file an application for release concurrently with the filing of a notice of appeal.

(2) When Available. Such person may be released from imprisonment on bail pending a appeal to the Supreme Court, within the discretion of the judge, if the defendant shows by clear and convincing evidence that:

(A) release would not constitute a special danger to any other person or to the community;

(B) that a condition or a combination of conditions may be placed on release that will reasonably assure the appearance of the defendant as required;

(C) that the defendant has complied with MRAP 11(b) and will properly prosecute the appeal; and

(D) only when the peculiar circumstances of the case render it proper.

Rule 8.4 Conditions of Release.
(a) Mandatory Conditions. Every order of release under this Rule shall contain the conditions that the defendant:

(1) appear to answer and to submit to the orders and process of the court having jurisdiction of the case;

(2) refrain from committing any criminal offense; and

(3) promptly notify the court of any change of address.

(b) Additional Conditions. An order of release may include any one or more of the following conditions reasonably necessary to secure a defendant's appearance or to protect the public:

(1) execution of an appearance bond in an amount specified by the court, either with or without requiring that the defendant deposit with the clerk security in an amount as required by the court;

(2) execution of a secured appearance bond;

(3) placing the defendant in the custody of a designated person or organization agreeing to supervise the defendant;

(4) restrictions on the defendant's travel, associations, or place of abode during the period of release;

(5) restrictions on the defendant's direct or indirect contact with any specified person or persons;

(6) return to custody after specified hours;

(7) Participation in and successful completion of any drug, alcohol, anger management, mental health, or other treatment required by the court;

(8) Participation in G.E.D. classes and testing or in any other educational activities required by the court; or

(9) Any other conditions which the court deems reasonably necessary.

Rule 8.5 Procedure for Determination of Release Conditions

(a) Initial Decision. If a defendant has not been released from custody and is brought before a court for initial appearance, a determination of the conditions of release shall be made. The judge must issue an order containing the conditions of release and must inform the defendant of the conditions, the possible consequences of their violation, and that a warrant for arrest of the defendant may be issued immediately upon report of a violation.

(b) Amendment of Conditions. If the defendant is in custody, the court may, for good cause shown, either on its own initiative or on application of either party, modify the conditions of release, after first giving the parties an adequate opportunity to respond to the proposed modification.

(c) Review by Circuit Court. No later than 7 days before the commencement of each term of court, the officials having custody of felony defendants who are being held in jail pending trial or extradition shall provide the presiding judge, the district attorney, and the clerk of the circuit court for the county in which such defendant is being held, the names of all defendants in their custody, the charge or charges upon which they are being held, and the date they were most recently taken into custody. The circuit court or the court's designee shall review the conditions of release for every felony defendant who is eligible for bail and has been in jail for more than 90 days.

Rule 8.6 Review of Conditions; Revocation

(a) Issuance of Warrant. Upon motion of the prosecuting attorney or on the court's own motion stating with particularity

(1) the facts or circumstances constituting a material breach of the conditions of release,

(2) that material misrepresentations or omissions of fact were made in securing the defendant's release, or

(3) that revocation is otherwise required by law,

the court having jurisdiction over the defendant released may secure the defendant's presence in court by issuing an order to appear before the court to show cause or an arrest warrant under Rule 3.1 to secure the defendant's presence in court. A copy of the motion

shall be served with the order or warrant, and a hearing must be held on the motion without undue delay, except in no event later than 72 hours after the arrest of the defendant released, as provided in Rule 5.1.

(b) Hearing; Review of Conditions; Revocation of Release. If, after a hearing on the matters set forth in the motion, the court finds that the defendant released has not complied with or has violated the conditions of release, or that material misrepresentations or omissions of fact were made in securing the defendant's release, the court may modify the conditions or revoke the release. If a ground alleged for revocation of the release is that the defendant released has violated the condition under Rule 8.3(a)(2) by committing a criminal offense, or that there was a misrepresentation or omission concerning other charges pending against the defendant released, the court may modify the conditions of release or revoke the release, if the court finds that there is probable cause (or if there has already been a finding of probable cause) to believe that the defendant released committed the other offense or offenses charged.

(c) Cases Governed by Article 3, Section 29(2). In cases governed by Article 3, section 29(2) of the Mississippi Constitution of 1890, on motion of the prosecuting attorney or on the court's own motion, a court having jurisdiction over the defendant may revoke the defendant's bond by order and without further action by the court.

Rule 8.7 Transfer and Disposition of Bond

(a) Transfer Upon Supervening Indictment. An appearance bond or release order issued to assure the defendant's presence for proceedings following the filing of a complaint shall automatically be transferred to the same, related, or lesser charge prosecuted by indictment, even though the complaint is superseded by return of the indictment unless, following indictment, the judge presiding, for good cause, shall order revocation or modification of the conditions of release, as provided in Rule 8.6(a) and (b).

(b) Filing and Custody of Appearance Bonds and Security. Appearance bonds and security shall be filed with the clerk of the court in which the case is pending. Whenever the case is transferred to another court, any appearance bond and security shall be transferred also.

(c) Surrender of Defendant by Surety. At any time, a surety may surrender to the sheriff a defendant released, and the sheriff shall certify such surrender to the court. The defendant may then obtain other sureties under the same conditions of release. In municipal ordinance cases, surrender may be to the chief of police of the municipality, who shall certify to the court the defendant's surrender. In the event that a Professional

Bail Agent, Soliciting Bail Agent, or Insurer has provided a surety bond or other form of bail for a defendant without first obtaining payment in full for the premium on the bond, that defendant may not be surrendered because the defendant, or anyone assuming financial responsibility on the defendant's behalf for the bond premium, has failed to make any agreed-upon payment to the surety following release.

(d) Forfeiture. If at any time it appears to the court that a defendant fails to appear, the court shall proceed as appropriate pursuant to Miss. Code Ann. § 99-5-25 or § 21-23-8 and any related statutes or regulations which may apply.

(e) Exoneration. At any time that the court finds there is no further need for an appearance bond, the court shall exonerate the appearance bond and order the return of any security deposited with the clerk.

Rule 9 Trial Setting

(a) Trial Docket. Within 60 days after arraignment (or waiver thereof), the case shall be set for trial. Trial shall be set for no later than 270 after arraignment (or waiver thereof). A docket of cases ready for trial shall be maintained by the clerk or the court administrator. Cases set by the judge for hearing must be ready at the appointed time.

(b) Priorities in Scheduling. Insofar as is practicable, trials of criminal cases shall have priority over trials of civil cases. In determining priority among criminal cases, the court shall consider, among others, the following factors:

(1) the right of a defendant to a speedy trial under the constitutions and laws of the United States and the State of Mississippi;

(2) whether the defendant is in custody;

(3) whether the defendant's pretrial liberty may present unusual risks;

(4) the relative gravity of the offense charged; and

(5) the relative complexity of the case.

(c) Duty of Prosecutor. The prosecutor shall advise the court of facts relevant to determining the order of cases on the docket.

(d) Motion for Continuance. A continuance may be granted by written order of the court on its own motion, or on the motion of a party stating with specificity the reasons justifying the continuance and supported by affidavits as required by the court.

Rule 10 Presence of Defendant, Witnesses, and Spectators

Rule 10.1 Right of Defendant to be Present; Waiver.

(a) Right to Be Present. The defendant has the right to be present at the arraignment and at every stage of the trial, including the selection of the jury, the giving of additional instructions pursuant to Rule 22.3, the return of the verdict, and sentencing.

(b) Waiver of the Right to Be Present. (1) Except as provided in subsection (2), a defendant may waive the right to be present at any proceeding in the following manner:

(A) with the consent of the court, by an understanding and voluntary waiver in open court or by a written consent executed by the defendant and by the defendant's attorney of record, filed in the case;

(B) by the defendant's absence from any proceeding, upon the court's finding that such absence was voluntary and constitutes an understanding and voluntary waiver of the right to be present. The court may infer that the absence was voluntary and constitutes an understanding and voluntary waiver if the defendant had notice of the time and place of the proceeding, had notice of the right to be present at it, and was warned that the proceeding would go forward in the defendant's absence should the defendant fail to appear; or

(C) if the defendant was initially present at trial, or if the defendant pleaded guilty or *nolo contendere*, the defendant also waives the right to be present when the defendant is voluntarily absent after the plea was entered or after trial has begun, regardless of whether the court informed the defendant of an obligation to remain during trial or sentencing.

(2) A defendant may not waive the right to be present:

(A) during the imposition of a sentence in a death penalty case; or

(B) if the defendant is not represented by counsel at the proceeding at which the defendant is absent, except:

(i) in minor misdemeanor cases;

(ii) in proceedings conducted after the defendant has been adjudicated guilty; or

(iii) when the defendant has waived the right to counsel.

(c) Effect. If the defendant waives the right to be present, the trial may proceed to completion, including the verdict's return and sentencing, during the defendant's absence.

(d) Obtaining Presence of Unexcused Defendant. If a defendant is not present at the trial, or at any stage thereof, or at any other proceeding, and the defendant's right to be present has not been waived or the absence has not been excused, the court, by order, may direct law enforcement officers to bring the defendant forthwith before the court for the trial or proceeding.

(e) Appearance of a Corporation. A corporation may appear by counsel for all purposes at any proceeding.

Rule 10.2 Effect of Defendant's Disruptive Behavior.

(a) Disruptive Conduct. A defendant who engages in disruptive or disorderly conduct after having been warned by the court that such conduct will result in the defendant's expulsion from a proceeding shall forfeit the right to be present at that proceeding.

(b) Re-acquisition of Right. The court shall grant any defendant so excluded reasonable opportunities to return to the court upon the defendant's personal assurance of good behavior. Any subsequent disruptive conduct on the part of the defendant may result in exclusion without additional warning.

(c) Continuing Duty of Court. The court shall employ every practicable means to enable a defendant removed from a proceeding under this Rule to hear, observe or be informed of the further course of the proceeding, and to consult with counsel at reasonable intervals.

Rule 10.3 Presence of Witnesses and Spectators.

(a) Witnesses. The court may, and at the request of either party shall, exclude prospective witnesses from the courtroom during opening statements and the testimony of other witnesses. The court shall also direct them not to communicate with each other

concerning the case until all have testified. If the court finds that a party's claim that a person is a prospective witness is not made in good faith, the person shall not be excluded from the courtroom. Once a witness has testified on direct examination and has been made available to all parties for cross-examination and excused by the court, the witness shall be allowed to remain in the courtroom unless the court finds, upon application of a party or witness, that the presence of the witness would be prejudicial to a fair trial.

(b) Spectators. *(1) Proceedings to be Open.* All proceedings shall be open to the public unless the court finds, upon application of the defendant, that an open proceeding presents a clear and present danger to the defendant's right to a fair trial by an impartial jury.

(2) Exception for Certain Crimes. In prosecutions for rape, adultery, fornication, sodomy or crime against nature the court may, in its discretion, exclude from the courtroom all persons except such as are necessary in the conduct of the trial.

(3) Victims. Notwithstanding the foregoing, the victim has the right to be present throughout all criminal proceedings.

(c) Removal. Any or all individuals may be removed from the courtroom for engaging in disorderly, disruptive, or contemptuous conduct, or when their conduct or presence constitutes a threat or menace to the court, parties, attorneys, witnesses, jurors, officials, members of the public, or a fair trial.

(d) Record of Closed Proceedings. A complete record of any closed proceedings shall be kept and made available to the public following the completion of trial or disposition of the case without trial.

(e) Investigator. If an exclusion order is entered, both the defendant and the prosecutor shall nevertheless be entitled to the presence of one investigator at counsel table.

(f) Electronic Coverage of Proceedings. Electronic coverage of judicial proceedings shall be governed by the Rules for Electronic and Photographic Coverage of Judicial Proceedings.

Rule 11 Change of the Place of Trial

Rule 11.1 Change of Venue.

(a) Grounds. In any criminal case, any defendant shall be entitled to a change of venue, if a fair and impartial trial cannot be had for any reason.

(b) Prejudicial Pretrial Publicity. Whenever the grounds for change of venue are based on pretrial publicity, the defendant shall be required to prove that the dissemination of the prejudicial material will probably result in the defendant being deprived of a fair trial.

(c) Time for Filing Motion. A motion for change of venue shall be made at the earliest opportunity before empanelling the trial jury.

(d) Waiver. The defendant loses the right to challenge venue pursuant to this Rule when the defendant allows a proceeding to commence or continue without objection after learning of the cause for challenge.

(e) Renewal. When an action is remanded by an appellate court for a new trial on one or more offenses charged in the indictment or information, all rights to change of venue are renewed, and no event connected with the first trial shall constitute a waiver.

Rule 11.2 Transfer to another County

(a) Proceedings on Transfer. The judge, if a change in venue is granted pursuant to Rule 11.1, shall direct that a certified copy of the order granting the change of venue be transmitted to the circuit clerk of the county to which the venue has been changed. The circuit clerk of the county to which the venue has been changed must file the certified order and designate a docket number for said case for future reference. Unless otherwise directed by the judge, all pleadings, motions, orders of the court, and other matters thereafter filed shall bear both the original number of the county of original venue and the assigned number of the county of changed venue and shall be filed with the circuit clerk of the county of original venue. The judge may hear or determine all pretrial and post-trial matters in the county to which venue has been changed or in any county of the judge's district.

(b) Place of Trial. In all cases in which venue has been changed it shall be within the judge's discretion, after the jury has been selected, to conduct the trial in the county of original venue, or in the county to which venue has been transferred.

(c) Costs. All costs of a trial transferred from one county to another county, including the cost of transporting the jury from one county to another where the same is ordered, shall be borne by the county of original venue. The clerk of the county of original venue shall handle any appeal.

Rule 12 Incompetency and Mental Examinations

Rule 12.1 Effect of Incompetency; Definition.
(a) Effect of Incompetency. A person shall not be tried, convicted, or sentenced for a criminal offense while, as a result of a mental illness, defect, or disability, the person is unable to understand the proceedings or to assist in the person's defense.

(b) Definition of Mental Illness, Defect, or Disability. Mental illness, defect, or disability means a psychiatric or neurological disorder that is evidenced by behavioral or emotional symptoms, including congenital mental conditions, conditions resulting from injury or disease, and developmental disabilities. The presence of a mental illness, defect or disability alone is not grounds for finding a defendant incompetent to stand trial.

Rule 12.2. Examination of Defendant's Mental Condition.
(a) Competency to Stand Trial or Be Sentenced. If at any time before or after indictment the court, on its own motion or the motion of any party, has reasonable grounds to believe that the defendant is incompetent as set forth in Rule 12.1, the court shall order the defendant to submit to a mental examination.

(b) Insanity Defense. If the defendant has timely raised a defense of insanity pursuant to Rule 17.3(b), the court, on its own motion or the motion of any party, may order the defendant to submit to a mental examination to investigate the defendant's mental condition at the time of the offense.

(c) Mental Retardation in Death Penalty Cases. If at any time the court, on its own motion or the motion of any party, has reasonable grounds to believe that the defendant's mental retardation may bar imposition of a sentence of death, the court, on its own motion or the motion of any party, may order the defendant examined to determine whether the defendant is mentally retarded.

(d) Contents of Motion; Order. The motion shall state the facts upon which the mental examination is sought. The mental examination shall be conducted by a competent psychiatrist or psychologist selected by the court in accordance with Miss. Code § 99-13-11.

(e) Medical and Criminal History Records. All available medical and criminal history records shall be provided to the examining mental health expert as and when ordered by the court.

Rule 12.3 Appointment of Experts.

(a) Grounds for Appointment. If the court determines that reasonable grounds for an examination exist, it shall appoint a qualified psychiatrist or psychologist to examine the defendant and, if necessary, to testify regarding the defendant's mental condition. If necessary, the court may appoint more than one examiner.

(b) Examination; Commitment. The court may order that a defendant be examined in an appropriate mental health facility, and it may commit a defendant to the Mississippi State Hospital or other appropriate mental health facility for a reasonable period of time necessary to conduct the examination if:

(1) the defendant cannot be examined on an out-patient basis;

(2) examination in an out-patient setting is unavailable; or

(3) commitment for examination is indispensable to a clinically valid diagnosis and report.

A court may not order a defendant committed for a time longer than that reasonably necessary to conduct the examination.

(c) Reports. *(1) Opinion on Competency.* If the court so orders, a psychiatrist or psychologist appointed by the court pursuant to this Rule shall submit a report containing an opinion as to whether the defendant is incompetent as defined in Rule 12.1 and the basis therefor. The report may also include additional findings and opinions concerning whether the defendant's mental condition creates a present danger to the defendant or to others.

(2) Cause and Treatment of Incompetency. If the opinion is that the defendant is incompetent as defined in Rule 12.1, the report shall also state the psychiatrist's or psychologist's opinion of:

(A) the condition causing the defendant's incompetency and the nature thereof;

(B) the treatment required for the defendant to attain competency;

(C) the most appropriate form and place of treatment, in view of the defendant's therapeutic needs and potential danger to the defendant or to others, and an explanation of appropriate treatment alternatives;

(D) the likelihood of the defendant's attaining competency under treatment and the

probable duration of the treatment;

(E) the availability of the various types of acceptable treatment in the local geographic area, specifying the agencies or the settings in which the treatment might be obtained and whether the treatment would be available on an out-patient basis; and

(F) whether the treatment identified in Rule 12.3(c)(2)(ii) is in the best medical interest of the defendant in light of the defendant's medical condition.

(3) Mental Condition at Time of the Offense. In addition, if the court so orders, the report shall contain a statement of the psychiatrist's or psychologist's opinion of the following:

(A) the mental condition of the defendant at the time of the alleged offense;

(B) if the psychiatrist's or psychologist's opinion is that at the time of the alleged offense the defendant suffered from a mental disease or defect, the relation, if any, of such disease or defect to the alleged offense, including

(i) whether the defendant knew the nature and quality of the act the defendant was doing; and

(ii) if the defendant did know it, whether the defendant knew that what the defendant was doing was wrong; and

(C) such other matters as the court may deem appropriate.

(4) Mental Retardation in Death Penalty Cases. In addition, if the court so orders in a death penalty case, the report shall contain a statement of the psychiatrist's or psychologist's opinion as to whether the defendant is mentally retarded.

(d) Additional Expert Assistance. The court may, in its discretion, appoint additional experts and order the defendant to submit to physical, neurological, psychiatric, or psychological examinations, if necessary for an adequate determination of the defendant's mental condition.

(e) Costs. Reasonable fees and expenses incurred by persons appointed by the court, other than as employees of the State of Mississippi, may be assessed as part of the costs of the proceeding. If the defendant is indigent, any cost or expense incurred in connection with such examinations shall be paid by the county in which the action is

pending.

Rule 12.4 Disclosure of Mental Health Evidence.
(a) Reports of Appointed Experts. The reports of experts made pursuant to Rule 12.3 shall be submitted to the court within 10 working days of the completion of the examination and be made available to all parties, except that any statements of the defendant (or summaries thereof) concerning the offense charged shall be made available only to the defendant. Upon receipt, the clerk shall copy and distribute the expert's report to the court and to defense counsel. Defense counsel is responsible for editing a copy for the state which is to be returned to the clerk within 72 hours of receipt and made available to the state. All original reports shall be filed with the clerk, under seal.

(b) Reports of Other Experts. At least 15 working days before any hearing, any party shall make available to any other party for examination and reproduction:

(1) the names and addresses of mental health experts who have personally examined the defendant in connection with the case or examined any evidence in the case;

(2) the data resulting from mental examinations, scientific tests, experiments, or comparisons in connection with the case; and

(3) all written reports or statements made by mental health experts in connection with the case.

This provision does not limit the state's duty to disclose such information under other rules, or the duty to produce exculpatory evidence.

Rule 12.5 Hearing and Orders
(a) Hearing. If after submission of the reports to the court, reasonable grounds to doubt the defendant's competency remain, the court shall promptly hold a hearing to determine the defendant's competency. The parties may introduce other evidence regarding the defendant's mental condition or, by written stipulation, submit the matter on the experts' reports.

(b) Procedure. Any time a competency hearing is held, the defendant shall be represented by counsel and, if the defendant is financially unable to obtain adequate representation, counsel shall be appointed for the defendant. The defendant shall also be

afforded an opportunity to testify, to present evidence, to subpoena witnesses, and to confront and cross-examine witnesses who appear at the hearing.

(c) Finding of Competence. If the court finds that the defendant is competent to stand trial, then the court shall make the finding a matter of record and order the case to proceed to trial.

(d) Finding of Incompetence; No Restoration. If the court finds by a preponderance of the evidence that the defendant is incompetent to stand trial, but finds no substantial probability that the defendant will be restored to competency within a reasonable period of time, it shall proceed pursuant to subsection (g) below.

(e) Finding of Incompetence; Restoration. If the court finds by a preponderance of the evidence that the defendant is incompetent to stand trial, but finds that there is a substantial probability that the defendant will be restored to competency within a reasonable period of time, it shall order competency restoration treatment, and may enter an order committing the defendant to the Mississippi State Hospital or other appropriate mental health facility. The competency restoration treatment order shall require that the defendant be examined, and a written report be furnished to the court, every 4 calendar months, stating:

(1) whether there is a substantial probability that the defendant will become competent to stand trial within the foreseeable future; and

(2) whether progress toward that goal is being made.

All such treatment orders shall further specify the place where treatment will occur; whether the treatment is inpatient or outpatient; transportation to the treatment site; length of treatment; and transportation after treatment. The treatment order shall also specify that the court shall be notified if the defendant regains competency before the expiration of the treatment order. Upon notice to the parties, the treatment order may be modified by the court.

(f) Consent to Treatment. The defendant's attorney, as the defendant's representative, shall not waive any hearing required by this Rule, but is authorized to consent, on behalf of the defendant, to necessary surgical, psychiatric, or medical treatment, and procedures.

(g) Release from Commitment. If within a reasonable time after entry of a treatment order pursuant to section (e) above, there is neither a determination that there is a substantial probability that the defendant will become competent to stand trial nor

progress toward that goal, the court shall, on the request of any party or on the court's own motion:

(1) order that civil proceedings as provided in § 41-21-61 to 41-21-107 of the Mississippi Code be instituted; or

(2) release the defendant and dismiss the charges without prejudice.

In addition, the court may order appointment of a guardian as provided by law.

Rule 12.6 Subsequent Hearings

(a) Grounds. The court shall hold a hearing to redetermine the defendant's competency:

(1) on receiving a report from an authorized treating official stating that in the official's opinion the defendant has become competent to stand trial;

(2) on motion of the defendant, accompanied by the certificate of a mental health expert stating that in the expert's opinion the defendant is competent to stand trial;

(3) at the expiration of competency restoration treatment ordered pursuant to Rule 12.5(d); or

(4) on the court's motion at any time.

The parties may, by written stipulation, submit the matter on the experts' reports.

(b) Finding of Competency. If the court finds by a preponderance of the evidence that the defendant is competent, the regular proceedings shall recommence without delay. The defendant shall be entitled to repeat any proceeding if there are reasonable grounds to believe the defendant was prejudiced by the defendant's previous incompetency.

(c) Finding of Continuing Incompetency. If the court finds that the defendant is still incompetent, the court shall proceed in accordance with Rules 12.5(e) or (g).

Rule 12.7 Privilege

(a) General Restriction. No evidence of any kind obtained under this Rule 12 shall be admissible at any proceeding to determine guilt or innocence unless the defendant presents evidence intended to rebut the presumption of sanity.

(b) Privileged Statements of Defendant. *(1) Charged Events.* No statement of the defendant obtained under this Rule 12, or evidence resulting therefrom, concerning the events which form the basis of the charges against the defendant shall be admissible at the trial of guilt or innocence, or at any subsequent proceeding to determine guilt or innocence, without the defendant's consent.

(2) Other Events. No statement of the defendant or evidence resulting therefrom obtained under this Rule 12, concerning any other events or transactions, shall be admissible at any proceeding to determine the defendant's guilt or innocence of criminal charges based on such events or transactions.

Rule 13 The Grand Jury

Rule 13.1 Selection and Preparation of Grand Jurors.

(a) Summons. Grand jurors shall be summoned and empanelled as provided by law.

(b) Service of Grand Jury. *(1) Generally.* Grand juries may serve both in term time and vacation and any circuit judge may empanel a grand jury (including an appropriate number of alternate grand jurors) in term time or vacation.

(2) Number of Grand Jurors. The grand jury shall consist of at least 15 persons, but not more than 20 persons, the exact number to be within the discretion of the judge empanelling the jury. If during the service of a grand jury the number of grand jurors, including alternates, able to serve on the grand jury shall become less than 15, then the circuit judge may have additional grand jurors summoned and empanelled.

(3) Convening the Grand Jury; Adjournment. Upon empanelment, a grand jury may be convened and reconvened by order of the court. The grand jury will continue to serve until the next grand jury is empanelled and it may return indictments to court in term or vacation notwithstanding intervening terms of court between the time the grand jury is empanelled and the time an indictment is returned. The court may adjourn the grand jury in its discretion.

(c) *Voir Dire*. *(1) Examination of Prospective Jurors*. The examination of prospective grand jurors shall include, but need not be limited to, inquiries to determine that a juror is qualified according to law and that the juror will act impartially and without prejudice.

(2) Empanelling Conclusive Evidence of Grand Jury Competency. After the grand jurors have been sworn and empanelled, no objection shall be raised, by plea or otherwise, to the

grand jury, but the empanelling of the grand jury shall be conclusive evidence of its competency and qualifications. However, any party interested may challenge or except to the array for fraud.

Rule 13.2 Instructions, Duties, and Powers of Grand Jury.

(a) Charge to the Grand Jury. *(1) By Whom.* Only the circuit judge shall deliver the charge to the grand jury, except that the circuit clerk may read the charge as proposed by the circuit judge when the judge shall be unable to deliver the charge by reason of physical infirmity.

(2) Charge. The circuit judge shall charge the grand jury according to the matters required by law and other statutes as the judge deems fit and proper. In addition, the court shall inform the grand jurors of:

(A) their duty to be present at each session of the grand jury;

(B) their duty to inquire into every matter presented pursuant to law;

(C) their duty to return an indictment only if they are convinced that there is probable cause to believe that an offense has been committed and that the person under investigation committed it;

(D) their right to request the presentation of additional evidence by the prosecutor; and

(E) those grand jury matters which are confidential and the penalties for wrongful disclosure thereof.

(b) Access to Papers, Records, Accounts, and Books of County Officers. The grand jury shall have free access at all proper hours to the papers, records, accounts and books of all county officers, for all examinations which, in its discretion, it may see fit to make, and may make report to the court in relation thereto.

Rule 13.3 Grand Jury Foreperson.

(a) Selection of Foreperson; Oath. *(1) Foreperson and Acting Foreperson.* The court shall appoint a foreperson of the grand jury, and an acting foreperson to act in the foreperson's absence, to whom the following oath shall be administered in open court, in the presence of the rest of the grand jurors.

"You, as foreperson of this grand inquest, shall diligently inquire into, and true presentment make, of all such matters and things as shall be given you in charge, or otherwise come to your knowledge, touching the present service. The counsel of the state, your fellows, and your own you will keep secret. You shall not present any person through malice, hatred or ill will, nor shall you leave any person unpresented through fear, favor or affection, or for any reward, hope or promise thereof, but in all your presentments, you shall present the truth, the whole truth, and nothing but the truth, to the best of your skill and understanding. So help you God."

(2) Oath of Other Grand Jurors. The following oath shall be administered to the other jurors:

"The same oath that your foreperson has now taken before you on the foreperson's part, you, and each of you, shall well and truly observe, and keep on your respective parts. So help you God."

(3) Replacement of Foreperson. If a foreperson or acting foreperson becomes unable to continue service as a grand juror, the court shall appoint another member of the grand jury as replacement. The fact that the original foreperson or acting foreperson was replaced shall not be grounds for attacking the validity of the acts or indictments of the grand jury.

(b) Powers of Foreperson. The foreperson shall preside over the grand jury proceedings and act as the court's representative by maintaining order, administering oaths, excluding unauthorized persons and persons acting in an unauthorized manner, appointing such officers within the grand jury as are necessary for its orderly functioning, and performing such other duties as may be imposed on the foreperson by law or by order of the court.

(c) Duties of Foreperson. It is the duty of the foreperson to:

(1) preside over the grand jury proceedings;

(2) issue or cause to be issued subpoenas and subpoenas *duces tecum* for any witnesses whom the grand jury may require to give evidence, and if witnesses so summoned fail to appear, to endorse the returned subpoenas as defaulted;

(3) perform the following functions with respect to witnesses appearing before the grand jury:

(A) swear witnesses before the grand jury or cause them to be sworn by the prosecutor; and

(B) maintain a list of all witnesses summoned and in attendance before the grand jury during each session; and

(4) endorse any indictment returned by the grand jury a "True Bill" and sign the foreperson's name thereto; and

(5) submit a written report of the proceedings of the grand jury to the court or clerk.

Rule 13.4 Recalcitrant Witnesses; Contempt.

(a) Recalcitrant Witnesses. When a witness under examination before the grand jury refuses to testify, to answer a question or to give evidence, the grand jury shall proceed with the witness in open court. The foreperson shall then distinctly state to the court the question or evidence requested and the refusal of the witness. If, after inquiry, the court shall decide that the witness is bound to testify, answer or give the evidence, the court shall so inform the witness. If the witness persists in refusing to answer the question, or testify, or to give evidence, the court shall proceed with the witness as in cases of similar refusal in open court.

(b) Request for Contempt Proceedings. The foreperson may also request the court to initiate a contempt proceeding against any person whose conduct violates these Rules or disrupts the grand jury proceedings.

Rule 13.5 Persons Authorized to be Present During Sessions of the Grand Jury; Grand Jury Secrecy.

(a) Persons Authorized to be Present. No person other than the witness under examination, prosecutors authorized to present evidence to the grand jury, and the interpreter, if any, shall be present during sessions of the grand jury. No person other than the grand jurors shall be present during their deliberation and voting.

(b) Grand Jury Secrecy. *(1) Generally.* A grand juror, except when called as a witness in court, shall keep secret the proceedings and actions taken in reference to matters brought before the grand jury for 6 months after final adjournment of the grand jury and the name and testimony of any witness appearing before the grand jury shall be kept secret.

(2) Announcements Concerning Deliberations Prohibited. No attorney general, district attorney, county attorney, or any other prosecuting attorney or any other officer of the court shall announce to any unauthorized person what the grand jury will consider in its deliberations. If such information is disclosed, the disclosing person may be found in contempt of court punishable by fine or imprisonment.

(3) Disclosure of Indictments Prohibited. No grand juror, witness, attorney general, district attorney, county attorney, other prosecuting attorney, clerk, sheriff or other officer of the court shall disclose to any unauthorized person that an indictment is being found or returned into court against a defendant or disclose any action or proceeding in relation to the indictment before the finding of an indictment or within 6 months thereafter or before the defendant is arrested or gives bail or recognizance.

Rule 13.6 Grand Jury Proceedings.

(a) Number of Grand Jurors Necessary to Indict; Grand Jury Not To Do Certain Things. A grand jury has the power to indict any person upon affirmative vote of 12 or more grand jurors. The grand jury report should not accuse any person by name of an offense, malfeasance, or misfeasance unless an indictment is returned. If accusations are included in a grand jury report, the comments may be expunged upon the motion of the individual, or on motion of the court.

(b) Return of Indictment. When an indictment is found, it must be endorsed "A True Bill," and the indictment must be signed by the foreperson and one of the prosecuting attorneys.

(c) Presentment of Indictments and Grand Jury Reports. All indictments and grand jury reports must be presented to the clerk of the circuit court by the foreperson or the foreperson's designee, must be endorsed with the foreperson's name, and must be accompanied by the foreperson's affidavit that all indictments were concurred in by twelve (12) or more members of the grand jury and that at least fifteen (15) grand jurors were present during all deliberations. Indictments and reports must be marked "filed" and dated and signed by the clerk. Unless the party indicted is in custody or on bond or recognizance, entry of the indictment shall be by number only, and no publicity may be given to the existence of the indictment. An arrest warrant for the person indicted shall immediately issue and be served. After the arrest of the person indicted, and before arraignment, a copy of the indictment shall be served on such person.

(d) Notice of Supervening Indictment. If the defendant has previously been released on bond or on recognizance, or had an initial appearance under Rule 5.2, the court or the

circuit clerk may prepare and send to the defendant, defendant's counsel, or defendant's bondsperson a notice of indictment in lieu of issuing a warrant or summons.

(e) Failure to Return an Indictment. If the defendant is in custody or has been conditionally released, and the charge has been presented to the grand jury and no indictment is returned, the foreperson shall promptly so report to the court in writing, and, unless the court shall order otherwise, the defendant held shall be released forthwith from custody or if the defendant has previously been conditionally released, the defendant shall be relieved of any obligation made in connection with such conditional release.

Rule 13.7 Appearance of Persons Under Investigation.

(a) Appearance. A person under investigation by the grand jury may be invited to appear before the grand jury, or, upon that person's written request, may be permitted to appear before the grand jury. Unless immunity has been granted to the witness as provided in section (b) hereof, the witness shall be advised of the right to remain silent, that anything the witness says may be used against the witness in a court of law, that the witness has the right to consult in private with an attorney outside the grand jury room at reasonable intervals while giving testimony, that, if the witness is unable to employ counsel because of indigency as defined in Rule 7.3, the court will appoint an attorney to represent the witness, and that the witness can at any time stop giving testimony and refuse to answer further questions.

(b) Immunity, Privilege, and Compulsion of Testimony. In any investigation before a grand jury, the court, on written motion of the prosecuting attorney may, in writing, order that any material witness be granted immunity from prosecution for the offense or offenses under investigation and any related or lesser included offense or offenses thereof. In considering whether to grant immunity, the court shall take into consideration the possibility that the testimony of the witness may tend to incriminate the witness for another offense or offenses against the State of Mississippi, or for an offense or offenses over which the United States government, or another state or territory of the United States, or a foreign jurisdiction with which the United States has treaties of extradition has jurisdiction. In such case, the court shall grant immunity only if the prosecuting attorney has procured binding assurance from the appropriate officials that the witness shall be granted immunity from prosecution for such other offense or offenses and any related or lesser included offenses thereof. Immunity granted by court order pursuant to this rule may be pleaded in bar of any prosecution of the witness for any offense for which immunity was granted.

(c) Compelling a Witness to Testify. No witness granted immunity under section (b)

above (other than a person under investigation) may refuse to testify on the ground that such testimony may self incriminate. No person under investigation shall be compelled to testify.

Rule 13.8 Challenge to Grand Jury Proceedings.
(a) Grounds. The grand jury proceedings may be challenged only by motion for a new finding of probable cause alleging that the defendant was denied a substantial procedural right, or that an insufficient number of qualified grand jurors concurred in the finding of the indictment.

(b) Timeliness. A motion under section (a) may be filed only after an indictment is returned and at or before arraignment or by such later date as may be set by the court; provided, however, that if counsel is appointed for the first time at arraignment, the court shall give counsel a reasonable time within which to file the motion.

Rule 13.9 Dismissal
(a) By the Prosecutor. The prosecuting attorney may, with leave of court having jurisdiction thereof, dismiss an indictment or complaint, or any count thereof.

(b) Unnecessary Delay. The court may dismiss an indictment or complaint, or any count thereof, if unnecessary delay occurs in bringing a defendant to trial.

(c) Abandonment of Prosecution. If no indictment has been returned by the grand jury within 6 months after the filing of the complaint, or before the discharge of the 2nd regularly scheduled grand jury in the County in which the complaint has been filed, whichever occurs later, the prosecution shall be deemed abandoned and the clerk shall enter a dismissal of the prosecution, unless the prosecuting attorney shows the court good cause why the complaint should not be dismissed.

(d) Effect of Dismissal. Dismissal of a prosecution shall be without prejudice to commencement of another prosecution, unless the court orders that the interests of justice require that the dismissal be with prejudice. The former practice of "*nolo prosequi*", remand, pass to the inactive file, and all similar practices, however named, are hereby abolished.

(e) Release of Defendant; Discharge of Bond. When a prosecution is dismissed or abandoned, the defendant shall be released from custody, unless the defendant is in custody on some other charge, and any bond shall be discharged or money deposited in

lieu thereof shall be refunded.

Rule 14 Indictment

Rule 14.1 Scope of Rules Applicable to Felony Cases.
Rule series 14 and 15 of these Rules are mandatory in felony proceedings but apply at the discretion of the court in misdemeanor proceedings.

Rule 14.2 Definition; Nature and Contents.
(a) Definition of Indictment. An indictment is a written statement charging the defendant or defendants named therein with the commission of an indictable offense, presented to the court by a grand jury, endorsed "A True Bill," and signed by the foreperson.

(b) Contents Generally. *(1) Elements and Notice.* The indictment upon which the defendant is to be tried shall be a plain, concise and definite written statement of the essential facts constituting the offense charged and shall fully notify the defendant of the nature and cause of the accusation. Formal and technical words are not necessary in an indictment, if the offense can be substantially described without them.

(2) Other Matters. An indictment shall also include the following:

(1) the name of the accused;

(2) the date on which the indictment was filed in court;

(3) a statement that the prosecution is brought in the name and by the authority of the State of Mississippi;

(4) the county and, in multi-district counties, the judicial district in which the indictment is brought;

(5) the date and, if applicable, the time at which the offense was alleged to have been committed. Failure to state the correct date shall not render the indictment insufficient;

(6) the signature of the foreperson of the grand jury issuing it; and

(7) the words "against the peace and dignity of the state."

(3) Surplussage. The court on motion of the defendant may strike from the indictment any surplussage, including unnecessary allegations or aliases.

(c) Enhanced Punishment for Subsequent Offenses and Allegations Required to be Found by the Jury. (1) In cases involving enhanced punishment for subsequent offenses, the indictment must include both the principal charge and a charge of previous convictions. The indictment must allege with particularity the nature or description of the offenses constituting the previous convictions, the state or federal jurisdiction of any previous conviction, and the date of judgment.

(2) The indictment must include all allegations required to be found by a jury.

(d) Charging the Offense. The indictment shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged to have violated.

(e) Incorporation by Reference. A count may incorporate by reference facts alleged in another count.

(f) Notice of Necessarily Included Offenses. Specification of an offense in an indictment shall constitute a charge of that offense and of all offenses necessarily included therein.

(g) Motion for a Bill of Particulars. A motion for a Bill of Particulars may be made at any reasonable time before trial, which motion shall be granted for good cause shown.

Rule 14.3 Joinder and Consolidation for Trial

(a) Joinder of Offenses. The indictment may charge a defendant in separate counts with two or more offenses triable in the same court if the offenses charged - whether felonies or misdemeanors or both - are:

(1) of the same or similar character;

(2) based on the same act or transaction; or

(3) connected with or constitute parts of a common scheme or plan.

(b) Joinder of Defendants. The indictment may charge two or more defendants if they are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses. The defendants may be charged in one or more counts together or separately. All defendants need not be charged in each count.

(c) Trial of Joined Offenses. (1) Where two (2) or more offenses are properly charged in separate counts of a single indictment, all such charges may be tried in a single proceeding.

(2) The trier of fact shall return a separate verdict for each count of an indictment drawn under subsection (a) of this Rule.

(d) Sentencing. When a defendant is convicted of 2 or more offenses charged in separate counts of an indictment, the court shall impose separate sentences for each such conviction. Nothing contained in this Rule, however, shall be construed to prohibit the court from exercising its authority to suspend either the imposition or execution of any sentence or sentences imposed, nor to prohibit the court from exercising its discretion to impose such sentences to run either concurrently with or consecutively to each other or to any other sentence or sentences previously imposed upon the defendant.

(e) Consolidation. If offenses or defendants are charged in separate indictments, the court on its own initiative or on motion of any party may order that the charges be tried together or that the defendants be joined for the purposes of trial if the offenses or the defendants, as the case may be, could have been joined in a single indictment. Proceedings thereafter shall be the same as if initially under a single indictment. However, the court shall not order that the offenses or the defendants, as the case may be, be tried together without first providing the defendant or defendants and the prosecutor an opportunity to be heard. Any such order shall be made sufficiently before trial.

Rule 14.4 Severance.

(a) Relief From Prejudicial Joinder. If it appears that a defendant or the prosecution is prejudiced by a joinder of offenses or of defendants, the court may order an election or separate trials of counts, grant a severance of defendants, or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance, the court may order the prosecutor to deliver to the court for inspection, in camera, any statements or confessions made by the defendants that the prosecution intends to introduce in evidence at the trial. However, without a finding of prejudice, the court may, with the agreement of all the parties, order a severance of defendants or an election of separate trials of counts

or charges.

(b) Timeliness and Waiver. A defendant's motion to sever offenses or defendants must be made not more than 7 days after arraignment or filing of a written plea of not guilty before trial, or, in the event the court has ordered charges or defendants to be tried jointly, pursuant to Rule 14.2, then within 7 days of the court's order, in any event, before trial. If, after the expiration of these time periods, a ground not previously known arises, or becomes known, either before or during trial, and that ground could not have been discovered previously through the exercise of due diligence, the defendant may move for severance of any or all counts, but must do so at the earliest opportunity. The right to move for severance is waived if a proper motion is not timely made.

(c) Severance during Trial. No severance of offenses or defendants may be ordered after trial has commenced unless the defendant consents or a mistrial has properly been declared as to such offense or defendant. Severance of offenses during trial, upon motion of the defendant or with the defendant's consent, shall not bar a subsequent trial of that defendant on the offenses severed.

Rule 14.5 Amendment of Indictments; Defects in Indictments.
(a) Amendment of Indictments. All indictments may be amended as to form but not as to the substance of the offense charged. Indictments may also be amended to charge the defendant as an habitual offender or otherwise subject the defendant to enhanced punishment for prior convictions. Amendment shall be allowed only if the defendant is afforded a fair opportunity to present a defense and is not unfairly surprised.

(b) Raising Defect in Charge. Defects in the charging document shall be raised by proper motion.

(c) Effect of Defect in Charge. (1) A motion to dismiss the indictment may be based upon objections to the composition of the grand jury, venire, the legal insufficiency of or defect in the indictment, or the failure of the indictment to charge an offense.

(2) No charge shall be deemed invalid, nor shall the trial, judgment, or other proceedings thereon be stayed, arrested, or in any manner affected, for any defect or imperfection in the charge which does not tend to prejudice the substantial rights of the defendant upon the merits.

Rule 15 Arraignment and Pleas

Rule 15.1 Necessity of Arraignment.
(a) Service of Indictment. Arraignment shall be held within 30 days after the filing of an indictment. When arraignment cannot be held within the time specified because the defendant has not yet been arrested or served, or is in custody elsewhere, it shall be held as soon as possible. Before arraignment, a copy of the indictment must be served on the defendant.

(b) In General. An arraignment must be conducted in open court and must consist of:

(1) ensuring that the defendant has a copy of the indictment;

(2) reading the indictment to the defendant or stating to the defendant the substance of the charge; and then

(3) asking the defendant to plead to the indictment;

(4) determining whether the defendant is represented by counsel and, if not, appoint counsel if appropriate under Rule 7;

(5) reviewing the bond previously set, if appropriate;

(6) advising the defendant of the right to a jury trial, if applicable; and

(7) advising the parties in attendance of any dates set for further proceedings and other important deadlines. At arraignment or thereafter, the court may set reasonable deadlines for pretrial motions.

(c) Waiving Reading of Indictment. Reading of the indictment may be waived if the defendant is represented by counsel.

(d) Waiving Appearance. A defendant need not be present for the arraignment if the defendant, in a written waiver signed by both the defendant and the defendant's attorney, has waived appearance and has affirmed that the defendant received a copy of the indictment and that the plea is not guilty.

(e) Video Conferencing. Video conferencing may be used to arraign a defendant.

(f) Codefendants. Defendants who are jointly charged may be arraigned separately or jointly in the discretion of the court. If codefendants are arraigned jointly and charged with the same offense, the indictments need be ready only once, with stated identification

of each defendant.

(g) Waiving Arraignment. Arraignment is deemed waived where the defendant proceeds to trial without objection.

Rule 15.2 Proceedings at Arraignment

(a) Pleas. A defendant may plead not guilty, guilty, or (with the permission of the court) no contest.

(b) Failure or Refusal to Plead. If a defendant fails or refuses to plead, or if a guilty plea is not accepted, the court shall enter a plea of not guilty and set the case for trial.

(c) Absence of Defendant. If a defendant is not present at arraignment and has not waived appearance, the court may, in addition to forfeiture of bail, direct the clerk to issue a bench warrant to bring the defendant before the court.

Rule 15.3 Entry of Plea of Guilty or No Contest.

(a) Defendant's Presence at Plea. *(1) Defendants Generally*. A defendant charged with the commission of a felony, who wishes to plead guilty, is required to plead personally. The court may require the personal appearance of a defendant charged with a misdemeanor.

(2) Organizational Defendants. An organizational defendant need not be present if represented by counsel who is present.

(b) Entry of Plea. A person charged with a criminal offense in county or circuit court, who is represented by counsel, may appear before the court at any time the judge may fix, be arraigned, enter a plea of guilty (or, with the court's consent, no contest) to the offense charged, and be sentenced at that time or some future time set by the court.

(c) No contest Plea. Before accepting a plea of no contest, the court must consider the parties' views and the public interest in the effective administration of justice.

(d) Conditional Plea. With the consent of the court and the prosecutor, a defendant may enter a conditional plea of guilty or no contest, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.

(e) Colloquy with Defendant. When the defendant wishes to plead guilty or no contest, it is the duty of the trial court to address the defendant to inquire and determine the following on the record.

(1) That the plea is voluntarily and intelligently made and that there is a factual basis for the plea. A plea is not voluntary if induced by force, threats, or promises (other than promises in a plea agreement disclosed to the court).

(2) That the defendant understands:

(A) the nature of the charge and the material elements of the offense to which the plea is offered;

(B) the mandatory minimum penalty, if any, and the maximum possible penalty provided by law, including any enhanced sentencing provisions;

(C) if applicable, the fact that the sentence may run consecutively to or concurrently with another sentence or sentences;

(D) the fact that the defendant has the right to plead not guilty, or not guilty by reason of insanity, and to persist in such a plea if it has already been made, or to plead guilty;

(E) the fact that the defendant has the right to remain silent and may not be compelled to testify or give evidence against the defendant, but has the right, if the defendant wishes to do so, to testify on the defendant's own behalf;

(F) the fact that, by entering a plea of guilty or no contest, the defendant waives the constitutional rights:

(i) of trial by jury;

(ii) to confront witnesses against the defendant;

(iii) to cross-examine witnesses or have them cross-examined in the defendant's presence;

(iv) to testify and present evidence and witnesses on the defendant's own behalf; and

(v) to have the aid of compulsory process in securing the attendance of witnesses;

(G) the fact that, if the defendant is not represented by counsel, that the defendant has the right to an attorney at every stage of the proceedings and that one will be appointed to represent the defendant if the defendant is indigent;

(H) the fact that, if the plea of guilty is accepted by the court, there will not be a further trial on the issue of the defendant's guilt;

(I) the fact that, except as provided in section (d) above, by pleading guilty or no contest the defendant waives the right to have the appellate courts review the proceedings by way of direct appeal, and may seek review only by filing a motion for post-conviction relief;

(J) the government's right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath; and

(K) that if the defendant is not a citizen of the United States, the plea may have immigration consequences. Specifically, the court shall state, "If you are not a citizen of the United States, pleading guilty or no contest to a crime may affect your immigration status. Admitting guilt may result in deportation even if the charge is later dismissed. Your plea or admission of guilt could result in your deportation or removal, could prevent you from ever being able to get legal status in the United States, or could prevent you from becoming a United States citizen." The court shall also give the advisement in this section before any admission of facts sufficient to warrant finding of guilt, or before any submission on the record. The defendant shall not be required to disclose the defendant's legal status in the United States to the court.

(3) That the defendant has an opportunity to state any objections to defense counsel or to the manner in which defense counsel has conducted or is conducting the defense.

Rule 15.4 Plea Negotiations and Agreements.

(a) Entering into Plea Agreements. The prosecutor and defendant's attorney, or defendant acting *pro se*, may engage in discussions with a view toward reaching an agreement that, upon the entry of a plea of guilty or no contest to a charged offense or to a lesser or related offense, the prosecutor either will move for dismissal of other charges or will recommend (or will not oppose) the imposition or suspension of a particular sentence, or will do both.

(b) Disclosure of Plea Agreement. If a plea agreement has been reached by the parties, the court shall require the disclosure of the agreement in open court at or before the time a plea is offered. The court may accept or reject the agreement or may defer its decision as to acceptance or rejection until receipt of a presentence report.

(c) Acceptance or Rejection of Plea Agreements. (1) If the court accepts the plea agreement, the court shall inform the parties that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

(2) If the court rejects the plea agreement, the court shall:

(A) so inform the parties;

(B) advise the defendant and the prosecutor personally in open court that the court is not bound by the plea agreement;

(C) advise the defendant that if the defendant pleads guilty or no contest, the disposition of the case may be either more or less favorable to the defendant than that contemplated by the plea agreement;

(D) afford the defendant the opportunity to withdraw the defendant's offer to plead guilty or no contest;

(E) afford the prosecutor the opportunity to change the prosecutor's recommendations; and

(F) afford the parties the opportunity to submit further plea agreements.

(d) Withdrawing a Guilty or No contest Plea. A defendant may withdraw a plea of guilty or no contest:

(1) before the court accepts the plea, for any reason or no reason;

(2) after the court accepts the plea, but before it imposes sentence:

(A) if the court rejects a plea agreement made pursuant to section (a); or

(B) on a showing of manifest injustice.

(e) Finality of Guilty or No Contest Plea. After the court imposes sentence, the defendant may not withdraw a plea of guilty or no contest, and the plea may be set aside only on direct appeal, as provided in Rule 15.3(d), or on collateral review.

Rule 16. Pleadings and Pretrial Motions

Rule 16.1 Generally.

(a) Pleadings. The pleadings in a criminal proceeding are the indictment, the information in lieu thereof, the complaint, and the pleas of not guilty, guilty, and no contest.

(b) Form of Pretrial Motions. Rule 35.1 applies to a pretrial motion.

Rule 16.2 Time for Making Motions.

(a) Motions That May Be Made Before Trial. A party may raise by pretrial motion any defense, objection, or request that the court can determine without a trial of the general issue.

(b) Motions That Must Be Made Before Trial. Absent good cause shown, the following must be raised before trial:

(1) a motion alleging a defect in instituting the prosecution;

(2) a motion alleging a defect in the indictment -- but at any time while the case is pending, the court may hear a claim that the indictment fails to invoke the court's jurisdiction or to state an offense;

(3) a motion to suppress evidence;

(4) a motion to sever charges or defendants;

(5) a motion for discovery; and

(6) a motion for a change of venue.

(c) Admissibility of Evidence. *(1) Generally.* On motion of either party or on its own motion, the court may order that the question of the admissibility of any specified evidence be submitted for pre-trial determination as if a motion to suppress had been filed by the party opposed to the introduction of the evidence.

(2) Orders in Limine. For good cause shown, the court may order that any party, witness, or attorney refrain from asking certain questions, giving certain answers, or in any manner directly or indirectly referring to or alluding to any otherwise inadmissible fact, matter, or circumstance during the course of trial in the presence of jurors or the venire.

(d) Notice of the Prosecution's Intent to Use Evidence. (*1) At the Discretion of the Prosecuting Attorney.* At the arraignment or upon the cause being set for trial, or as soon thereafter as practicable, the prosecuting attorney may notify the defendant of its intent to use specified evidence at trial in order to afford the defendant an opportunity to object before trial under Rule 16.2(b)(3).

(2) At the Defendant's Request. At the arraignment or upon the cause being set for trial, whichever occurs first, or as soon thereafter as practicable, the defendant may, in order to have an opportunity to move to suppress evidence under Rule 16.2(b)(3), request notice of the prosecuting attorney's intent to use (in its evidence-in-chief at trial) any evidence that the defendant may be entitled to discover under Rule 17.2.

Rule 16.3 Motion Deadline; Hearings and Rulings on Motions.
(a) Motion Deadline. The court may, at the arraignment or upon the cause being set for trial, or as soon thereafter as practicable, set a deadline for the parties to make pretrial motions and may also schedule a motion hearing.

(b) Ruling on a Motion Generally. The court must decide every pretrial motion before trial unless it finds good cause to defer a ruling. The court must not defer ruling on a pretrial motion if the deferral will adversely affect a party's right to appeal. When factual issues are involved in deciding a motion, the court must state its essential findings on the record.

(c) Waiver of a Defense, Objection, or Request. A party waives any Rule 16.2(b) defense, objection, or request not raised by the deadline the court sets under Rule 16.3(a) or by any extension the court provides. For good cause, the court may grant relief from the waiver.

Rule 16.4 Effects of Rulings.
(a) Effect of Granting Motion Based on Defective Charge. If the court grants a motion to dismiss based on a defect in instituting the prosecution or in the charge, the court shall order the defendant released, or, on motion of the prosecuting attorney, may, pending the filing of a new charge, order the defendant's pre-trial release continued or may order the defendant held in custody for a reasonable specified time not to exceed 72 hours. This Rule does not affect any statutory period of limitations.

(b) Motion to Suppress. If a motion to suppress is granted, any suppressed property that was seized shall be restored to its owner or last possessor, unless otherwise subject to lawful detention.

(c) Statutes of Limitations Tolled. The running of the time prescribed by an applicable statute of limitations shall be tolled by the issuance of the charging instrument until such time as the court grants a motion to dismiss based on a defect in the commencement of the proceedings or in the charge, unless the court in granting the motion finds that the state has not made a good faith effort to proceed properly and that the defendant has been prejudiced by any resulting delay.

Rule 17 Disclosure

Rule 17.1 Scope of Rule 17.
Rule series 17 applies in felony cases and in trials of misdemeanor cases in circuit and county court.

Rule 17.2 Disclosure by the Prosecution.
(a) Disclosure; Scope. The prosecuting attorney shall make available to the defendant the following material and information within the prosecution's possession or control:

(1) the names and addresses of all persons whom the prosecuting attorney intends to call as witnesses in the case-in-chief together with their written or recorded statements;

(2) all statements of the defendant and of any person who will be tried with the defendant;

(3) all original and supplemental reports prepared by a law enforcement agency in

connection with the particular crime with which the defendant is charged;

(4) the names and addresses of experts who have personally examined a defendant or any evidence in the particular case, together with the results of physical examinations and of scientific tests, experiments, or comparisons that have been completed;

(5) a list of all papers, documents, photographs, or tangible objects (including electronic, magnetic, optical, or other recording or data compilation) that the prosecuting attorney intends to use at trial or which were obtained from or purportedly belong to the defendant;

(6) a list of all prior convictions of the defendant;

(7) a list of all prior acts of the defendant which the prosecuting attorney intends to use at trial to prove motive, intent, or knowledge, or otherwise use at trial;

(8) all material or information which tends to mitigate or negate the defendant's guilt as to the offense charged, or which would tend to reduce the defendant's punishment therefor;

(9) whether there has been any electronic surveillance of any conversations to which the defendant was a party, or of the defendant's business or residence;

(10) whether a search warrant has been executed in connection with the case; and

(11) whether the case has involved an informant, and, if so, the informant's identity, if the defendant is entitled to know either or both of these facts under Rule 17.5(b)(2).

(b) Time for Disclosure. Unless otherwise ordered by the court, or agreed to by the parties, the prosecuting attorney shall make available the materials and information listed in Rule 17.2(a) not later than 30 days after arraignment or the cause being set for trial, whichever occurs first.

(c) Prior Felony Convictions of Witnesses. (1) In a felony case, at least 30 days before trial, or 30 days after a request from the defendant, whichever occurs first, the prosecuting attorney shall make available to the defendant a list of the prior felony convictions of witnesses whom the prosecuting attorney then intends to call at trial.

(2) In a misdemeanor case in circuit or county court, at least 10 days before trial, the prosecuting attorney shall make available to the defendant a list of the prior felony convictions of witnesses whom the prosecuting attorney intends to call at trial.

(3) In a felony case, at least 30 days before trial, or 30 days after a request from the defendant, whichever occurs first, the prosecuting attorney shall make available to the defendant a list of the prior felony convictions that the prosecuting attorney intends to use to impeach a disclosed defense witness at trial.

(4) In a misdemeanor case, at least 10 days before trial the prosecuting attorney shall make available to the defendant a list of the prior felony convictions that the prosecuting attorney intends to use to impeach a disclosed defense witness at trial.

(d) Additional Disclosure upon Request and Specification. The prosecuting attorney shall, within 30 days of a written request, unless otherwise ordered by the court, make available to the defendant for examination, testing, and reproduction the following:

(1) any specified items contained in the list submitted under Rule 17.2(a)(5);

(2) any 911 calls existing at the time of the request that can reasonably be ascertained by the custodian of the record to be related to the case; and

(3) any written reports, statements, and examination notes made by experts listed in subsections (a)(1) and (a)(4) of this Rule in connection with the particular case.

The prosecuting attorney may impose reasonable conditions (including an appropriate stipulation concerning chain of custody) to protect physical evidence produced under this section.

(e) Extent of Duty. The prosecuting attorney's obligation under this Rule extends to material and information in the possession or control of any of the following:

(1) the prosecuting attorney, or members of the prosecuting attorney's staff; and

(2) any law enforcement agency or other agency or person who has participated in the investigation of the case, if the prosecuting attorney knew, or through reasonable diligence should have known, of the existence of the material or information.

(f) Disclosure by Order of the Court. Upon motion of the defendant showing that the

defendant has substantial need in the preparation of the defendant's case for material or information not otherwise covered by Rule 17.2, and that the defendant is unable without undue hardship to obtain the substantial equivalent by other means, the court in its discretion may order any person to make it available to the defendant. The court may, upon the request of any person affected by the order, vacate, or modify the order if compliance would be unreasonable or oppressive.

(g) Disclosure of Rebuttal Evidence. Upon receipt of the notice of defenses required from the defendant under Rule 17.3(b), the prosecuting attorney shall timely disclose the names and addresses of all persons whom the prosecuting attorney intends to call as rebuttal witnesses together with their written or recorded statements. If the notice of defenses includes alibi, the disclosure shall also specify the names and addresses of all persons on whom the prosecuting attorney intends to rely to establish the defendant's presence at the scene of the alleged offense.

Rule 17.3 Disclosure by Defendant.

(a) Physical Evidence. At any time after the filing of an indictment, upon written request of the prosecuting attorney and not less than 72 hours notice to defense counsel, the defendant shall, in connection with the particular crime with which the defendant is charged:

(1) appear in a line-up;

(2) speak for identification by witnesses;

(3) be fingerprinted, palm-printed, foot-printed, or voice printed;

(4) pose for photographs not involving re-enactment of an event;

(5) try on clothing;

(6) permit the taking of samples of the defendant's hair, blood, saliva, urine, or other specified materials that involves no unreasonable intrusions of the defendant's body;

(7) provide specimens of the defendant's handwriting; and

(8) submit to a reasonable physical or medical inspection of the defendant's body, provided such inspection does not include psychiatric or psychological

examination.

The defendant shall be entitled to the presence of counsel at the taking of such evidence. This Rule shall supplement and not limit any other procedures established by law.

(b) Notice of Defenses. Within the time specified in Rule 17.3(d), the defendant shall provide a written notice to the prosecuting attorney specifying all defenses as to which the defendant intends to introduce evidence at trial, including, but not limited to, alibi, insanity, self-defense, defense of others, entrapment, impotency, marriage, insufficiency of a prior conviction, mistaken identity, necessity and good character. The notice shall specify for each defense the persons, other than the defendant, whom the defendant intends to call as witnesses at trial in support thereof. If the notice of defenses includes alibi, the notice shall also specify each specific place the defendant claims to have been at the time of the alleged offense. It may be signed by either the defendant or defendant's counsel, and shall be filed with the court. For good cause, the court may grant an exception to any of the foregoing requirements. Evidence of an intention to rely on a defense, later withdrawn, or of a statement made in connection with that intention, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

(c) Disclosure by Defendant; Scope. Simultaneously with the notice of defenses submitted under Rule 17.3(b), the defendant shall make available to the prosecuting attorney for examination and reproduction the following material and information known to the defendant to be in the possession or control of the defendant:

(1) the names and addresses of all persons, other than that of the defendant, whom the defendant intends to call as witnesses at trial, together with their relevant written or recorded statements;

(2) the names and addresses of experts whom the defendant intends to call at trial, together with the results of the defendant's physical examinations and of scientific tests, experiments, or comparisons that have been completed; and

(3) a list of all papers, documents, photographs, and other tangible objects (including electronic, magnetic, optical, or other recording or data compilation) that the defendant intends to use at trial.

(d) Time for Disclosure. Unless otherwise ordered by the court, the defendant shall disclose the materials and information listed in Rules 17.3(b) and 17.3(c) not later than 20 days after the prosecuting attorney's disclosure pursuant to Rule 17.2(b).

(e) Additional Disclosure upon Request and Specification. Unless otherwise ordered by the court, the defendant, within 10 days of a written request, shall make available to the prosecuting attorney for examination, testing, and reproduction the following:

(1) any specified items contained in the list submitted under Rule 17.3(c)(3); and

(2) any completed written reports, statements, and examination notes made by experts listed in Rule 17.3(c) (1) and (2) of this Rule in connection with the particular case.

The defendant may impose reasonable conditions (including an appropriate stipulation concerning chain of custody) to protect the physical evidence produced under this section or to allow time to complete any examination or testing of such items.

(f) Scope of Disclosure. The defendant's obligation under this Rule extends to material and information within the possession or control of the defendant, the defendant's attorneys, staff, agents, investigators, or any other persons who have participated in the investigation or evaluation of the case and who are under the defendant's direction or control.

(g) Disclosure by Order of the Court. Upon motion of the prosecuting attorney showing that the prosecuting attorney has substantial need in the preparation of its case for material or information not otherwise covered by Rule 17.3, that the prosecuting attorney is unable without undue hardship to obtain the substantial equivalent by other means, and that disclosure thereof will not violate the defendant's constitutional rights, the court in its discretion may order any person to make such material or information available to the prosecuting attorney. The court may, upon request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

Rule 17.4 Depositions.

(a) Availability. Upon motion of any party or a witness, the court may in exceptional circumstances order the examination of any person except the defendant upon oral deposition under the following circumstances:

(1) a party shows that the person's testimony is material to the case and that there is a substantial likelihood that the person will not be available at the time of trial; or

(2) a witness is incarcerated for failure to give satisfactory security that the witness will appear to testify at a trial or hearing.

(b) Motion for Taking Deposition; Notice; Service. A motion for deposition shall specify the time and place for taking the deposition and the name and address of each person to be examined, together with designated papers, documents, photographs, or other tangible objects, not privileged, to be produced at the same time and place. The court may change such terms and specify any additional conditions governing the conduct of the proceeding. The moving party shall notice the deposition in the manner provided for in civil actions and serve a subpoena upon the deponent, specifying the terms and conditions set forth in the court's order granting the deposition, and give notice of the deposition in writing to every other party to the action.

(c) Manner of Taking. Except as otherwise provided herein or by order of the court, depositions shall be taken in the manner provided in civil actions. With the consent of the parties, the court may order that a deposition be taken on written interrogatories in the manner provided in civil actions. Any statement of the witness being deposed which is in the possession of any party shall be made available for examination and use at the taking of the deposition to any party who would be entitled thereto at trial. A deposition may be recorded by other than a certified court reporter. If a deposition is recorded by other than a certified court reporter, the party taking the deposition shall provide the opposing party with a copy of the recording within 14 days after the taking of the deposition or not less than 10 days before trial, whichever is earlier. The parties may stipulate, or the court may order, that a deposition be taken by telephone or similar audio or visual means.

(d) Presence of Defendant. A defendant shall have the right to be present at any examination. If a defendant is in custody, the officer having custody shall be notified by the moving party of the time and place set for the examination and shall, unless the defendant waives, in writing, the right to be present, produce the defendant at the examination and remain with the defendant during it.

(e) Use. Depositions may be used in the manner provided by law.

Rule 17.5 General Standards.
In all disclosure under this Rule the following shall apply:

(a) Statements. *(1) Definition.* Whenever it appears in Rule 17 the term "statement" shall mean:

(A) a writing signed or otherwise adopted or approved by a person;

(B) a mechanical, electronic, or other recording of a person's oral communications

or a transcript thereof; and

(C) a writing containing a verbatim record or a summary of a person's oral communications.

(2) Superseded Notes. Handwritten notes that have been substantially incorporated into a document or report within 20 working days of the notes being created, or that have been otherwise preserved electronically, mechanically or by verbatim dictation, shall no longer themselves be considered a statement.

(b) Materials Not Subject to Disclosure. *(1) Work Product.* Disclosure shall not be required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of the prosecuting attorney, members of the prosecuting attorney's legal or investigative staff or law enforcement officers, or of defense counsel or defense counsel's legal or investigative staff.

(2) Informants. Disclosure of the existence of an informant or of the identity of an informant who will not be called to testify shall not be required where disclosure would result in substantial risk to the informant or to the informant's operational effectiveness, provided the failure to disclose will not infringe the constitutional rights of the accused.

(c) Use of Materials. Any materials furnished to an attorney pursuant to this Rule shall not be disclosed to the public but only to others to the extent necessary for the proper conduct of the case.

(d) Requests for Disclosure. All requests for disclosure required by Rule 17 shall be made to the opposing party.

(e) Filing of Papers; Exception for Misdemeanor Offenses Filed in Limited Jurisdiction Courts. For misdemeanor offenses triable in limited jurisdiction courts, materials disclosed by the parties pursuant to Rule 17.2 and Rule 17.3, or notices of their service, shall not be filed with the court unless they are filed as attachments or exhibits to other documents when relevant to the determination of an issue before the court. On motion of a party or on the court's own motion, for good cause, the court may order the general standard shall not apply and that discovery papers shall be filed with the court to the extent helpful or necessary to maintain efficient and appropriate case management.

Rule 17.6 Excision and Protective Orders.
(a) Discretion of the Court to Deny, Defer, or Regulate Disclosure. Upon motion of

any party showing good cause, the court may at any time order that disclosure of the identity of any witness be deferred for any reasonable period of time not to extend beyond 5 days before the date set for trial, or that any other disclosures required by this Rule be denied, deferred, or regulated when it finds:

(1) that the disclosure would result in a risk or harm outweighing any usefulness of the disclosure to any party; and

(2) that the risk cannot be eliminated by a less substantial restriction of discovery rights.

(b) Discretion of the Court to Authorize Excision. Whenever the court finds, on motion of any party, that only a portion of a document, material, or other information is subject to disclosure under these Rules, it may authorize the party disclosing it to excise that portion of the material that is not subject to disclosure and to disclose the remainder.

(c) Protective and Excision Order Proceedings. On motion of the party seeking a protective or excision order, or submitting to the court for a determination as to whether any document, material, or other information is subject to disclosure, the court may permit the party to present the material or information for inspection by the judge *in camera*. Counsel for all other parties shall be entitled to be present when such presentation is made.

(d) Preservation of Record. If the court enters an order that any material, or any portion thereof, is not subject to disclosure under this Rule, the entire text of the material shall be sealed and preserved in the record to be made available to the appellate court in the event of an appeal.

Rule 17.7 Continuing Duty to Disclose; Final Disclosure Deadline; Extension.
(a) Continuing Duties. The duties prescribed in this Rule shall be continuing duties and each party shall make additional timely disclosure whenever new or different information subject to disclosure is discovered.

(b) Additional Disclosure. Any party that determines additional disclosure may be forthcoming within 30 days of trial shall immediately notify the other parties of the circumstances and when the disclosure will be available.

(c) Final Deadline for Disclosure. Unless otherwise permitted, all disclosure required by this Rule shall be completed at least 7 days before trial.

(d) Disclosure After the Final Deadline. Absent agreement by the parties, a party seeking to use material or information not disclosed at least 7 days before trial shall obtain leave of court by motion, supported by affidavit or testimony under oath, to extend the time for disclosure and use the material or information. If the court finds that the material or information could not have been discovered or disclosed earlier even with due diligence and the material or information was disclosed immediately upon its discovery, the court shall grant a reasonable extension to complete the disclosure and grant leave to use the material or information. Absent such a finding, the court may either deny leave or grant a reasonable extension to complete the disclosure and leave to use the material or information, and if granted the court may impose any sanction listed in Rule 17.8 other than preclusion or dismissal.

(e) Extension of Time for Scientific Evidence. Upon a motion filed before the final deadline for disclosure in Rule 17.7(c), supported by affidavit from a crime laboratory representative or other scientific expert that additional time is needed to complete scientific or other testing, or reports based thereon, and specifying the additional time necessary, the Court shall, unless it finds that the request for extension resulted from dilatory conduct, neglect, or other improper reason on the part of the moving party or person listed in Rule 17.2(f) or 17.3(f), grant a reasonable extension in which to complete the disclosure. The period of time of the extension shall be excluded by the court from all time periods prescribed in Rules 17.2(c) 17.2(e), 17.3 (d), 17.3(e), 17.7(b), and 17.7(c).

Rule 17.8 Sanctions.

(a) Failure to Make Disclosure. If a party fails to make a disclosure required by Rule 17, any other party may move to compel disclosure and for appropriate sanctions. The court shall order disclosure and shall impose any sanction it finds appropriate, unless the court finds that the failure to comply was harmless or that the information could not have been disclosed earlier even with due diligence and the information was disclosed timely upon its discovery. All orders imposing sanctions shall take into account the significance of the information not timely disclosed, the impact of the sanction on the parties, the culpability of the party failing to make the disclosure, and the stage of the proceedings at which the disclosure is ultimately made. Available sanctions include, but are not limited to:

(1) granting a continuance or declaring a mistrial when necessary in the interests of justice;

(2) holding a witness, party, person acting under the direction or control of a party, or counsel in contempt;

(3) imposing costs of continuing the proceedings;

(4) in extraordinary circumstances, precluding or limiting the calling of a witness, use of evidence, or argument in support of or in opposition to a charge or defense;

(5) in extraordinary circumstances, dismissing the case with or without prejudice; or

(6) any other appropriate sanction.

(b) Motion for Sanctions. No motion brought under Rule 17.8(a) will be considered or scheduled unless a separate statement of moving counsel is attached certifying that, after personal consultation or good faith efforts to do so, counsel have been unable to satisfactorily resolve the matter.

Rule 18 Trial by Jury; Waiver; Selection and Preparation of Petit Jury.

Rule 18.1 Trial by Jury.

(a) Generally. *(1) Number of Jurors; Qualifications.* The number of jurors required to try a case and render a verdict shall be as provided by law. Jurors shall have the qualifications required by law.

(2) Misdemeanor Cases. Misdemeanor cases may be tried before either a 6 or 12 person jury, in the discretion of the court. In cases where the maximum possible sentence is 6 months or less, the case may be tried without a jury, in the discretion of the court.

(3) Alternate Jurors. The court may in its discretion qualify such alternate jurors as it deems necessary.

(b) Waiver. The defendant may waive the right to trial by jury with consent of the prosecution and the court. In a death penalty case, the defendant may also waive the right to have a jury determine the penalty if the prosecution and the court concur.

(1) Voluntariness. Before accepting a waiver the court shall address the defendant personally, advise the defendant of the right to a jury trial, and ascertain that the waiver is knowing, voluntary, and intelligent.

(2) Form of Waiver. A waiver of jury trial under this Rule shall be made in writing or in open court on the record.

(3) Withdrawal of Waiver. With the permission of the court, the defendant may withdraw the waiver of jury trial or sentencing but no withdrawal shall be permitted after the court begins taking evidence.

Rule 18.2 Jury Information.
Before the *voir dire* examination, each party shall be furnished with a list of the names and addresses of the prospective jurors present and qualified to serve. Each party shall also be furnished with the employment status, occupation, employer, residency status, education level, prior jury duty experience, felony conviction status, and such other information as the court may require.

Rule 18.3 Challenges.
(a) Challenge to the Jury Panel. Any party may challenge the panel on the ground that in its selection there has been a material departure from the requirements of law. Challenges to the panel shall be in writing or on the record, specifying the facts on which the challenge is based. They shall be made and decided before any individual juror is examined.

(b) Challenge for Cause. When there is reasonable ground to believe that a juror cannot render a fair and impartial verdict, the court, on its own initiative, or on motion of any party, shall excuse the juror from service in the case. A challenge for cause may be made at any time, but may be denied for failure of the party making it to exercise due diligence.

(c) Peremptory Challenges.
(1) In General. Both parties shall be allowed the following number of peremptory challenges for the selection of jurors:

(A) if the offense charged is punishable by death or life imprisonment:

(i) 12, if no alternate jurors are to be impaneled,

(ii) 13, if 1 or 2 alternate jurors are to be impaneled,

(iii) 14, if 3 or 4 alternate jurors are to be impaneled, or

(iv) 15, if 5 or 6 alternate jurors are to be impaneled;

(B) in all cases tried before a 12 person jury:

(i) 6, if no alternate jurors are to be impaneled,

(ii) 7, if 1 or 2 alternate jurors are to be impaneled,

(iii) 8, if 3 or 4 alternate jurors are to be impaneled, or

(iv) 9, if 5 or 6 alternate jurors are to be impaneled; and

(C) in all cases tried before a 6 person jury,

(i) 3, if no alternate jurors are to be impaneled, or

(ii) 4, if 1 or 2 alternate jurors are to be impaneled,

(2) Joint Trial of Several Defendants. When two or more defendants are jointly tried, two additional challenges shall be allowed to the defense and to the prosecuting attorney for each additional defendant. When two or more defendants are jointly tried and cannot agree by whom the peremptory challenges shall be exercised, they shall be exercised in the manner prescribed by the court.

(4) Agreement Among the Parties. The parties may agree to exercise fewer than the allowable number of peremptory challenges.

Rule 18.4 Procedure for Selecting a Jury.
(a) Swearing Panel. All members of the panel shall swear or affirm that they will answer truthfully all questions concerning their qualifications.

(b) Inquiry by the Court; Brief Opening Statements. The court shall initiate the examination of jurors by identifying the parties and their counsel, briefly outlining the nature of the case, and explaining the purposes of the examination. The court shall ask any questions which it thinks necessary relating to the prospective jurors' qualifications to serve in the case on trial. The parties may, before *voir dire* and with the court's consent, present brief opening statements to the entire jury panel. On its own motion the court may require counsel to do so.

(c) *Voir Dire* Examination. The court may permit the parties to conduct the examination of the prospective jurors or may itself conduct the examination. If the court

conducts the examination, the parties shall be permitted to supplement the court's examination with further questions. The court may impose reasonable limitations with respect to questions allowed during a party's examination of the prospective jurors, giving due regard to the purpose of such examination. In addition, the court may terminate or limit *voir dire* for good cause. Nothing in this Rule shall preclude the use of written questionnaires to be completed by the prospective jurors, in addition to oral examination.

(d) Scope of Examination. The examination of prospective jurors shall be limited to inquiries directed to bases for challenge for cause or to information to enable the parties to exercise intelligently their peremptory challenges.

(e) Challenge for Cause. At any time that cause for disqualifying a juror appears, the court shall excuse the juror before the parties are called upon to exercise their peremptory challenges. Challenges for cause shall be made out of the hearing of the jurors, but shall be of record.

(f) Exercise of Peremptory Challenges. Following examination of the jurors, the parties shall exercise their peremptory challenges as follows:

(1) the court shall consider all challenges for cause before the parties are required to exercise peremptory challenges;

(2) next, the prosecuting attorney shall tender a full panel of accepted jurors (including a sufficient number of alternates as deemed necessary by the court) having considered the jury in the order in which they appear, having exercised any peremptory challenges desired;

(3) next, the defendants shall go down the juror list accepted by the prosecuting attorney and exercise any peremptory challenges to that panel;

(4) once the defendants exercise peremptory challenges to the panel tendered, the prosecuting attorney shall then be required to tender sufficient additional jurors to constitute a full panel of accepted jurors (including a sufficient number of alternates as deemed necessary by the court);

(5) next, the defendants shall go down the list of the additional jurors tendered to created a full panel and exercise any additional peremptory challenges; then

(6) the above procedure shall be repeated until a full panel of jurors has been accepted by all parties (including a sufficient number of alternates as deemed

necessary by the court).

Constitutional challenges to the use of peremptory challenges shall be made at the time each panel is tendered. Peremptory challenges shall be made out of the hearing of the jurors, but shall be of record.

(g) Selection of Jury. Just before the jury retires to begin deliberations, the clerk shall, by lot, determine the juror or jurors to be designated as alternates. Alternates, upon being physically excused by the court, shall be instructed to continue to observe the admonitions to jurors until they are informed that a verdict has been returned or the jury discharged. If a deliberating juror is excused due to inability or disqualification to perform required duties, the court may substitute an alternate juror, choosing from among the alternates in the order previously designated, unless disqualified, to join in the deliberations. If an alternate joins the deliberations, the jury shall be instructed to begin deliberations anew.

Rule 18.5 Oath and Preliminary Instruction.

(a) Oath. The court shall on the record of each trial give the jurors the following oath, or remind the jurors that they are still under the following oath:

> " Do you solemnly swear (or affirm) that you will well and truly try all issues that may be submitted to you, or left to your decision by the court, during the present term, and true verdicts give according to the evidence and the law. So help you God."

(b) Preliminary Instructions. Immediately after the jury is sworn, the court may instruct the jury concerning its duties, its conduct, the order of proceedings, and the elementary legal principles that will govern the proceeding.

Rule 18.6 Note Taking by Jurors.

(a) Note Taking Permitted in the Discretion of the Court. The court may, in its discretion, permit jurors to take written notes concerning testimony and other evidence. If the court permits jurors to take written notes, jurors shall have access to their notes during deliberations. Immediately after the jury has rendered its verdict, all notes shall be collected by the bailiff or clerk and destroyed. In a death penalty case, jurors shall have access to their notes from the trial and all phases of the sentencing proceedings until the jury renders a penalty verdict or is dismissed.

(b) Instructions. The court shall instruct the jury as to whether note taking will be permitted. If the court permits jurors to take written notes, the trial judge shall give both a preliminary instruction and an instruction at the close of all the evidence on the appropriate use of juror notes. These instructions shall be given in the following manner.

(1) Preliminary Instruction: Note Taking Forbidden.

> "You may not take notes during the course of the trial. There are several reasons for this. It is difficult to take notes and, at the same time, pay attention to what a witness is saying. Further, in a group the size of yours, certain persons will take better notes than others will, and there is a risk that jurors who do not take good notes will depend on jurors who do. The jury system depends upon all jurors paying close attention and arriving at a decision. I believe that the jury system works better when the jurors do not take notes.
>
> You will notice that we do have an official court reporter making a record of the trial; however, we will not have typewritten transcripts of this record available for your use in reaching a decision in this case."

(2) Preliminary Instruction: Note Taking Permitted.

> "If you would like to do so, you may take notes during the course of the trial. On the other hand, you are not required to take notes if you prefer not to do so. Each of you should make your own decision about this. If you decide to take notes, be careful not to get so involved in note taking that you become distracted from the ongoing proceedings.
>
> Notes are only a memory aid and a juror's notes may be used only as an aid to refresh that particular juror's memory and assist that juror in recalling the actual testimony. Each of you must rely on your own independent recollection of the proceedings. Whether you take notes or not, each of you must form and express your own opinion as to the facts of this case. An individual juror's notes may be used by that juror only and may not be shown to or shared with other jurors.
>
> You will notice that we do have an official court reporter making a record of the trial; however, we will not have typewritten transcripts of this record available for your use in reaching a decision in this case."

(3) Use of Notes During Deliberations.

Jury Instruction #

"Members of the Jury, shortly after you were selected I informed you that you could take notes and I instructed you as to the appropriate use of any notes that you might take. Most importantly, an individual juror's notes may be used by that juror only and may not be shown to or shared with other jurors. Notes are only a memory aid and a juror's notes may be used only as an aid to refresh that particular juror's memory and assist that juror in recalling the actual testimony. Each of you must rely on your own independent recollection of the proceedings. Whether you took notes or not, each of you must form and express your own opinion as to the facts of this case. Be aware that during the course of your deliberations there might be the temptation to allow notes to cause certain portions of the evidence to receive undue emphasis and receive attention out of proportion to the entire evidence. But a juror's memory or impression is entitled to no greater weight just because he or she took notes, and you should not be influenced by the notes of other jurors.

Thus, during your deliberations, do not assume simply because something appears in your notes that it necessarily took place in court."

Rule 18.7 Jury Sequestration.
(a) Death Penalty Cases. In a death penalty case, the jury shall be sequestered during the entire trial.

(b) Other Cases. In all other cases, the jury may be sequestered on request of either the defendant or the prosecution made at least 48 hours in advance of the trial. The court may, in its discretion, either grant or refuse the request to sequester the jury. The court may, on its own initiative, sequester a jury at any stage of a trial.

(c) Admonitions to Jurors. In all cases, the court, among other matters it deems proper, shall admonish the jurors that they are not to:

(1) discuss among themselves any subject connected with the trial until the case is submitted to them for deliberation;

(2) converse with anyone else on any subject connected with the trial, until they are discharged as jurors in the case;

(3) permit themselves to be exposed to outside comments or news accounts of the proceedings, until they are discharged as jurors in the case; or

(4) form or express any opinion on the case until it is submitted to them for deliberation.

If the jurors are permitted to separate, they may also be admonished not to view the place where the offense was allegedly committed.

Rule 19 Trial

Rule 19.1 Proceedings at Trial.

(a) Order of Proceedings. The trial shall proceed in the following order unless otherwise directed by the court.

(1) The indictment or complaint shall be read or summarized, and the plea of the defendant stated.

(2) The prosecuting attorney may make an opening statement.

(3) The defendant may then make an opening statement or may defer such opening statement until the close of the prosecution's evidence. If there are two or more defendants, they shall proceed in the order of the filing of their respective charges or, if they are charged in the same instrument, they shall proceed in the order they appear therein, unless they have agreed to a different order.

(4) The prosecuting attorney shall offer the evidence in support of the charge.

(5) The defendant may then make an opening statement if it was deferred, and offer evidence in defense.

(6) The prosecuting attorney shall then be allowed to offer evidence in rebuttal.

(7) If the court on a showing of good cause allows a case-in-chief to be reopened, and if either party is allowed to present further evidence, the other party may present evidence in response thereto.

(8) The judge shall then charge the jury.

(9) The prosecuting attorney may then make a closing argument to the jury. The defendant may then make a closing argument to the jury. Failure of the prosecuting attorney to make a closing argument shall not deprive the defendant of

the right to argue. The prosecuting attorney may then make a rebuttal argument, but not to exceed 1/2 of the prosecuting attorney's allotted time. If after the prosecuting attorney's initial closing argument a defendant declines to make a closing argument, the prosecuting attorney shall make no further argument.

With the permission of court, the parties may agree to any other method of proceeding.

(b) Enhanced Punishment for Subsequent Offenses, etc. In cases involving enhanced punishment for subsequent offenses, or involving non-capital sentencing allegations required to be found by a jury, the trial shall proceed as follows.

(1) Reading of the Charges. When the indictment or complaint is read or summarized, all references to prior convictions or sentencing allegations shall be omitted.

(2) Separate Trials Required. The trial shall proceed initially as though the prior convictions were not alleged or the sentencing allegations made. In the trial on the principal charge, neither the previous convictions nor the sentencing allegations shall be mentioned by the prosecution or the court except as provided by the Mississippi Rules of Evidence.

(3) Trial of Sentencing Allegations. The trial court without a jury shall determine allegations of previous convictions. Any issue of non-capital sentencing allegations required to be found by the jury shall be tried, unless the defendant has admitted to the allegations.

Rule 19.2 Bifurcated Trials.

(a) Death Penalty Cases. In a death penalty case, the trial shall be conducted in accordance with §§ 99-19-101 and 99-19-103 of the Mississippi Code of 1972, as amended, and applicable court decisions.

(b) Cases Where the Jury May Impose Life. (1) In all cases not involving the death penalty, where the jury may impose a life sentence, the court may conduct a bifurcated trial. If the defendant is found guilty, a sentencing trial shall be held before the same jury, if possible; if the defendant pleads guilty, a sentencing trial shall be held before a jury.

(2) At the sentencing hearing:

(1) the prosecution may introduce evidence of aggravation of the offense of which the defendant has been adjudged guilty;

(2) the defendant may introduce any evidence of extenuation or mitigation;

(3) the prosecution may introduce evidence in rebuttal of the evidence of the defendant; and

(4) a record shall be made of the above proceeding and shall be maintained in the office of the clerk of the trial court as a part of the record.

Rule 19.3 Additional Duties of Court Reporters.
(a) Felony Cases. In all felony cases, the court reporter shall fully record the voir dire and selection of the jury, opening statements, and closing arguments, whether or not such is ordered by the judge or requested by a party. This duty may not be abrogated by the judge or waived by the defendant, and is in addition to all other duties.

(b) Other Cases. In all other cases in courts of record, the court reporter shall fully record the voir dire and selection of the jury, opening statements, and closing arguments, if directed to do so by the judge.

Rule 20 Motion for a Judgment of Acquittal.
(a) Before Submission to the Jury. After the prosecution closes its evidence or after the close of all the evidence, the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction. The court may on its own motion consider whether the evidence is insufficient to sustain a conviction. If the court denies a motion for a judgment of acquittal at the close of the prosecution's evidence, the defendant may offer evidence without waiving opposition thereto.

(b) Reserving Decision. The court may reserve decision on the motion, proceed with the trial (when the motion is made before the close of all the evidence), submit the case to the jury, and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict. If the court reserves decision, it must decide the motion on the basis of the evidence at the time the ruling was reserved.

(c) After Jury Verdict or Discharge.

(1) Time for a Motion. A defendant may move for a judgment of acquittal, or renew such a motion, within 10 days after entry of judgment of conviction. When the jury is discharged without returning a verdict, the motion shall be made within 10 days after discharge; if a new trial is scheduled to begin within the 10 days, the motion shall be made at a time set by the court before the new trial begins.

(2) Ruling on the Motion. If the jury has returned a guilty verdict, the court may set aside the verdict, dispose of a motion for a new trial, and enter a judgment of acquittal. If the jury has failed to return a verdict, the court may enter a judgment of acquittal. The state may appeal when the court sets aside a verdict of guilty and enters a judgment of acquittal.

(3) No Prior Motion Required. A defendant is not required to move for a judgment of acquittal before the court submits the case to the jury as a prerequisite for making such a motion after jury discharge.

(d) Conditional Ruling on a Motion for a New Trial.

(1) Motion for a New Trial. If the court enters a judgment of acquittal after a guilty verdict, the court must also conditionally determine whether any motion for a new trial should be granted if the judgment of acquittal is later vacated or reversed. The court must specify the reasons for that determination.

(2) Finality. The court's order conditionally granting a motion for a new trial does not affect the finality of the judgment of acquittal.

(3) Appeal.

(A) Grant of a Motion for a New Trial. If the court conditionally grants a motion for a new trial and an appellate court later reverses the judgment of acquittal, the trial court must proceed with the new trial unless the appellate court orders otherwise.

(B) Denial of a Motion for a New Trial. If the court conditionally denies a motion for a new trial, an appellee may assert that the denial was erroneous. If the appellate court later reverses the judgment of acquittal, the trial court must proceed as the appellate court directs.

(e) Denial by Operation of Law. A motion for a judgment of acquittal pending 30 days after entry of judgment of conviction shall be deemed denied as of the 30th day. However, the parties may agree in writing, or the court may order, that the motion be continued past the 30th day to a date certain within 90 days; any motion still pending on the date to which it is continued shall be deemed denied as of that date. The motion may be continued from time to time as provided in this Rule.

Rule 21 Jury Instructions.

(a) Procedural Instructions. At the commencement of and during the course of a trial, the court may orally give the jury cautionary and other instructions of law relating to trial procedure and the duty and function of the jury, and may acquaint the jury generally with the nature of the case. Every oral instruction shall be recorded by the court reporter as it is delivered to the jury. All other instructions shall be in writing.

(b) Substantive Instructions. *(1) By the Parties.* At least 24 hours before trial, or at such other time during the trial as the court directs, each party must file with the clerk jury instructions on the forms of verdict and the substantive law of the case. Except for good cause shown, the court shall not entertain a request for instructions which have not been pre-filed. At the conclusion of testimony, each party must present to the judge up to 6 pre-filed substantive instructions. The court, for good cause shown, may allow more than 6 instructions to be presented.

(2) By the Court. The court may also instruct the jury. The court's instructions must be in writing and must be submitted to the parties, who, in accordance with section (e) below, must make their specific objections on the record. The court shall not express an opinion on the evidence.

(c) Identification. *(1) Caption.* All instructions shall be captioned at the top of the page "Jury Instruction # " in order to allow the court to number the instructions given in such sequence as it deems proper.

(2) Identifying Submitted Instructions. All instructions submitted shall be identified with letters and numerals placed in the bottom right corner of each page. The state's instructions shall be numbered and prefixed with the letter S. A defendant's instructions shall be numbered and prefixed with the letter D. In actions with multiple defendants, Roman numerals shall be used to identify the proposed instructions of each defendant; the Roman numerals shall be placed after the alphabetical designation D, and shall conform to the sequential listing of defendants as stated in the indictment or complaint. Instructions shall not otherwise be identified with a party. The court's written instructions

shall be numbered and prefixed with the letter C. All letters and numerals identifying an instruction with a party or the court, as required by this section (c)(2), shall be redacted from the copy of given instructions carried by the jury into the jury room.

(d) Objections. A party who objects to any portion of the instructions or to a failure to give a requested instruction must inform the court on the record of the specific objection and the grounds for the objection before the instructions are presented to the jury. An opportunity must be given to object out of the jury's hearing. Failure to object in accordance with this Rule precludes appellate review.

(e) Rulings on Instructions. The court shall confer with the parties and inform them before closing arguments how it intends to rule on the requested instructions. The court shall mark each request "given" or "refused," and the request shall thereby become a part of the record.

(f) When Read. Instructions shall be read by the court to the jury before closing arguments. Instructions will not be given after closing arguments have begun, except when justice so requires, in which case all parties shall have an opportunity to submit other instructions. All given instructions shall be available to the parties for use during closing arguments, and will be carried by the jury into the jury room when the jury retires to consider its verdict.

Rule 22 Deliberation

Rule 22.1 Retirement of Jurors.

(a) Retirement. After closing arguments, the court may instruct the jury on the selection of a foreperson. The jurors shall then retire in the custody of a court officer and consider their verdict.

(b) Permitting the Jury to Disperse. Except in cases in which the jury has been sequestered, the court may permit the jurors to disperse after their deliberations have commenced, instructing them when to reassemble, and giving the admonitions of Rule 18.7.

Rule 22.2 Materials used During Deliberation.

Upon retiring for deliberation the jurors shall take with them:

(a) forms of verdict approved by the court, which shall not indicate in any manner

whether the offense described therein is a felony or misdemeanor unless the statute upon which the charge is based directs that the jury make this determination;

(b) a copy of the written instructions;

(c) their notes (if any); and

(d) such tangible evidence and equipment as the court in its discretion shall direct.

Rule 22.3 Additional Instructions and Further Review of Evidence.
(a) Additional Instructions. After the jurors have retired to consider their verdict, if they request additional instructions, the court may recall them to the courtroom and give appropriate additional instructions. The court may also give other instructions, so as not to give undue prominence to the instructions requested. Such instructions may be given only after the parties have been given notice and an opportunity to state any objections thereto on the record.

(b) Further Review of Evidence.
After the jurors have retired to consider their verdict, if they desire to have any testimony repeated, the court may recall them to the courtroom and order the testimony read or played back. The court may also order other testimony read or played back, so as not to give undue prominence to the particular testimony. Such testimony may be read or played back only after the parties have been given notice and an opportunity to state any objections thereto on the record.

Rule 22.4 Assisting Jurors at Impasse.
If the court determines that the jury has reached an impasse in its deliberations, the court may, in the presence of counsel, inquire of the jurors to determine whether and how the court and counsel can assist them in their deliberative process. After receiving the jurors' response, if any, the judge may direct that further proceedings occur as appropriate.

Rule 22.5 Discharge.
(a) Discharge. The court shall discharge the jurors:

(1) as set forth in Rule 23.1;

(2) upon expiration of such time as the court deems proper, if it appears that there is no reasonable probability that the jurors can agree upon a verdict; or

(3) when a manifest necessity exists for their discharge.

(b) Mistrial Entered. In all cases in which the jury is discharged without a verdict being returned, a mistrial shall be ordered and the reason therefor given.

Rule 23 Verdict

Rule 23.1 Time and Form of Verdict.

The verdict of the jury shall be unanimous, shall be in writing, and shall be returned in open court. The verdict need not be signed. The clerk or the court shall then read the verdict in open court in the presence of the jury. If neither any party nor the court desires to poll the jury, or when a poll of the jury reveals the verdict is unanimous, and if the verdict is in the form required by Rule 23.3, the court shall order the verdict filed and entered of record. The court shall then discharge the jurors, unless a bifurcated hearing is necessary.

Rule 23.2 Types of Verdict.

(a) General Verdicts. Except as otherwise specified by this Rule, the jury shall in all cases render a verdict finding the defendant either guilty or not guilty.

(b) Insanity Verdicts. When the jury determines that a defendant is not guilty by reason of insanity, the verdict shall so state.

(c) Different Offenses. If the jury is instructed on different counts, offenses, or degrees of offenses, the verdict shall specify each count, offense, or degree of which the defendant has been found guilty or not guilty.

(d) Lesser Offense or Attempt. The jury may be instructed on any of the following:

(1) an offense necessarily included in the offense charged; or

(2) an attempt to commit the offense charged or an offense necessarily included therein, if such attempt is an offense.

Rule 23.3 Necessity for Forms of Verdict.
Forms of verdicts shall be submitted to the jury for each offense charged and, where warranted by the evidence, for all lesser included or attempt offenses as provided in Rule 23.2(d). The defendant may not be found guilty of any offense for which no form of verdict has been submitted to the jury. If the verdict returned is not fully responsive, the court shall direct the jury to retire for further deliberations. The court may correct or complete the verdict, as to form merely, in open court in the presence of the parties and the jury.

Rule 23.4 Partial Verdicts and Mistrial.
(a) Multiple Defendants. If there are multiple defendants, the jury may return a verdict at any time during its deliberations as to any defendant about whom it has agreed.

(b) Multiple Counts. If the jury cannot agree on all counts as to any defendant, the jury may return a verdict on those counts on which it has agreed.

(c) Mistrial. If the jury cannot agree on a verdict on one or more defendants or counts, the court may declare a mistrial as to those defendants or counts.

Rule 23.5 Jury Poll.
After a verdict is returned but before the jury is discharged, the court shall on a party's request, or may on its own, poll the jurors individually. If the poll reveals a lack of unanimity, the court shall direct the jury to retire and deliberate further.

Rule 24 Post-Trial Motions

Rule 24.1 Motion for a New Trial.
(a) Motion by Defendant; Grounds. The court on written motion of the defendant may vacate any judgment and grant a new trial. If the case was tried without a jury, the court may take additional testimony and enter a new judgment.

(b) Grounds. The court may grant a new trial for any of the following reasons:

(1) if required in the interests of justice;

(2) if the verdict is contrary to law or the weight of the evidence;

(3) when new and material evidence is recently discovered which would probably produce a different result at a new trial, and such evidence could not have been discovered sooner, by reasonable diligence;

(4) if the jury has received any evidence, papers or documents, not authorized by the court, or the court has admitted illegal testimony, or excluded competent and legal testimony;

(5) if the jurors, after retiring to deliberate on the verdict, separated without leave of court;

(6) if the court has misdirected the jury in a material matter of law, or has failed to instruct the jury on all questions of law necessary for their guidance; or

(7) if for any other reason the defendant has not received a fair and impartial trial.

(c) Timeliness. A motion for a new trial shall be made within 10 days after entry of judgment and sentence.

(d) Court's Own Motion. The court may, on its own motion and with the consent of the defendant and notice to the prosecuting attorney, order a new trial before the entry of judgment and sentence.

Rule 24.2 Motion in Arrest of Judgment.

(a) Power of the Court. The court, on written motion of the defendant or on its own motion, shall arrest judgment if the charging instrument does not charge an offense, or if the court was without jurisdiction.

(b) Timeliness. A motion in arrest of judgment shall be filed within 10 days after entry of judgment and sentence. The court may act on its own motion in arresting judgment only during the period in which a motion in arrest of judgment would be timely.

Rule 24.3 Denial by Operation of Law.

A motion for a new trial or in arrest of judgment pending 30 days after entry of judgment and sentence shall be deemed denied as of the 30th day. However, the parties may agree in writing, or the court may order, that the motion be continued past the 30th day to a date certain within 90 days; any motion still pending after the date to which it is continued shall be deemed denied as of that date. The motion may be continued from time to time as

provided in this Rule.

Rule 24.4 Clerical and Technical Errors.
After giving any notice it considers appropriate, the court may correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission, or correct a sentence that resulted from arithmetical, technical, or other clear error.

Rule 25 Procedure after Verdict or Finding of Not Guilty by Reason of Insanity.
When any person is indicted for an offense and acquitted on the ground of insanity at the time of the offense charged, and the court certifies that the person is still insane and dangerous, the court shall:

(1) immediately give notice of the case to the chancellor or clerk of the chancery court;

(2) order that civil proceedings as provided in § 41-21-61 to 41-21-107 of the Mississippi Code be instituted; and

(3) remand the person to custody to await the action of the chancery court.

Rule 26 Judgment

Rule 26.1 Definitions; Scope.
(a) Judgment. The term "judgment" means the adjudication of the court based on the verdict of the jury, on the plea of the defendant, or on its own finding following a non-jury trial, that the defendant is guilty or not guilty.

(b) Sentence. The term "sentence" means the pronouncement by the court of the penalty imposed upon the defendant after a judgment of guilty.

(c) Determination of Guilt. The term "determination of guilt" means a verdict of guilty by a jury, a finding of guilt by a court following a non-jury trial, or the acceptance by the court of a plea of guilty or no contest.

(d) Scope. Rule 26 shall not apply to misdemeanor offenses and shall apply to death

penalty cases only to the extent that the procedure is not otherwise provided by law.

Rule 26.2 Judgment; Time.
(a) On Acquittal. When a defendant is acquitted of any charge, or of any count of any charge, judgment pertaining to that count or to that charge shall be pronounced and entered immediately.

(b) On Conviction. (1) On a determination of guilt on any charge, or on any count of any charge, judgment pertaining to that count or to that charge shall be pronounced and entered together with the sentence. Pronouncement of judgment may be delayed if necessary until such time as sentence can be pronounced.

(2) On a determination of guilt for any felony offense, the court shall, after receipt of the presentence report, unless a presentence report is not required, conduct a sentence hearing and pronounce sentence, or shall set a date for a sentence hearing and pronouncement of sentence.

(3) Sentence shall be imposed without unreasonable delay.

Rule 26.3 Presentence Report.
(a) When Available. On written motion of either party, or on the court's own motion, the court may require a written report of a presentence investigation in any case in which it has either discretion over the penalty to be imposed or authority to suspend execution of the sentence. Such report must be presented to and considered by the court before imposition of sentence or other disposition.

(b) Content. The presentence report may contain, but is not limited to, the following information:

(1) a description of the offense and the circumstances surrounding it, not limited to aspects developed for the record as part of the determination of guilt;

(2) a statement of the defendant's criminal and juvenile record, if any;

(3) a statement considering the economic, physical, and psychological impact of the offense on the victim and the victim's immediate family;

(4) the defendant's financial condition;

(5) the defendant's educational background;

(6) a description of the defendant's employment background, including any military record and present employment status and capabilities;

(7) the social history of the defendant, including family relationships, marital status, residence history, and alcohol or drug use;

(8) information about environments to which the defendant might return or to which the defendant could be sent should probation be granted;

(9) information about special resources which might be available to assist the defendant, such as treatment centers, rehabilitative programs, or vocational training centers;

(10) a physical and mental examination of the defendant, if ordered by the court; and

(11) any other information required by the court.

(c) Excluded Content. The report shall not include:

(1) sources of information obtained on a promise of confidentiality; or

(2) information which would disrupt an existing police investigation.

(d) Notice of Objections. Before the day of the sentence hearing, each party shall notify the court and all other parties of any objection it has to the contents of any report.

(e) Special Duty of the Prosecuting Attorney. The prosecuting attorney shall disclose to the defendant any information within the prosecuting attorney's possession or control, not already disclosed, which would tend to reduce the punishment to be imposed.

(f) Corrections to Presentence Report. If the court sustains any objections to the contents of a presentence report, the court may take such action as it deems appropriate under the circumstances, including, but not limited to:

(1) excision of objectionable language or sections of the report;

(2) ordering a new presentence report with specific instructions and directions; and

(3) ordering the original (objectionable) presentence report sealed.

Rule 26.4 Diagnostic Evaluation and Mental Health Examination.
At any time before sentence is pronounced, the court may order the defendant to undergo a physical or mental examination, including diagnostic evaluation. Reports under this Rule shall be due at the same time as the presentence report, unless the court orders otherwise. The cost of such examination or evaluation shall be assessed as part of the court costs.

Rule 26.5 Disclosure of the Presentence, Diagnostic, and Mental Health Reports
(a) Disclosure to the Parties. A copy of all presentence, diagnostic, and mental health reports shall be furnished to the prosecuting attorney and the defendant. A portion of any report not made available to one party shall not be made available to any other.

(b) Date of Disclosure. Reports ordered under Rules 26.3 and 26.4 shall be made available to the parties at least 2 days before the date set for sentencing.

(c) Disclosure After Sentencing.
(1) After sentencing, all diagnostic, mental health, and presentence reports shall be furnished to persons having direct responsibility for the custody, rehabilitation, treatment, and release of the defendant.

(2) Neither a presentence report nor any statement made in connection with its preparation shall be admissible as evidence in any proceeding bearing on the issue of guilt of the defendant.

(d) No Public Disclosure. Reports prepared under Rules 26.3, 26.4, and 26.5 are not matters of public record, but shall be filed under seal.

Rule 26.6 Sentence Hearing.
(a) Generally. If the court has either discretion as to the penalty to be imposed or power to suspend execution of the sentence, the court shall conduct a sentence hearing in all felony cases, unless waived by the parties with consent of the court. The sentence hearing may commence immediately after a determination of guilt or may be continued to a later date. If a presentence report is required, the sentence hearing shall not be conducted until copies thereof have been furnished or made available to the court and the parties, as provided by Rule 26.3.

(b) Prior Convictions; Enhanced Punishment.
(1) If a hearing is necessary in order to establish an alleged prior conviction or convictions in the record, the court, on its own motion or the motion of either party, after a determination of guilt, shall hold a hearing.

(2) At a reasonable time before the hearing, the defendant shall be given notice of the prior conviction or convictions upon which the prosecution intends to proceed.

(3) The prosecution must establish the defendant's prior convictions beyond a reasonable doubt. If the defendant disputes any conviction presented by the prosecution, the court may allow the prosecution to present additional evidence of the disputed conviction, either by way of rebuttal or at a future time to be set by the court. If the prosecution fails to meet its burden of proof to establish one or more prior convictions, the defendant shall not be sentenced as an habitual or enhanced offender.

(c) Evidence. Other disputed facts shall be determined by the preponderance of evidence. Evidence may be presented by both the prosecuting attorney and the defendant as to any matter that the court deems probative on the issue of sentence. Such matters may include, but are not limited to, the nature and circumstances of the offense, the defendant's character, background, mental and physical condition, and history, the gain derived by the defendant or the loss suffered by the victim as a result of defendant's commission of the offense, and any other facts in aggravation or in mitigation of the penalty.

Rule 26.7 Pronouncement of Judgment and Sentence.
(a) Pronouncement of Judgment. Judgment shall be pronounced in open court. A judgment of conviction shall set forth the plea, the verdict, the findings, if any, and the adjudication. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly.

(b) Pronouncement of Sentence. In pronouncing sentence, the court shall:

(1) afford the defendant an opportunity, personally or through the defendant's attorney, to make a statement in the defendant's behalf before imposing sentence;

(2) state that a credit will be allowed on the sentence, as provided by law, for time during which the defendant has been incarcerated on the present charge;

(3) explain to the defendant the terms of the sentence;

(4) inform the defendant as to the defendant's right to appeal; provided, however, in cases in which the defendant has entered a plea of guilty, the court shall advise the defendant of the right to appeal only in those cases in which the defendant:

(A) has entered a plea of guilty, but before entering the plea of guilty has expressly reserved the right to appeal with respect to a particular issue or issues; or

(B) has timely filed a motion to withdraw the plea of guilty and the motion has been denied, either by order of the court or by operation of law.

When informing the defendant of the right to appeal, the court shall also advise the defendant that if the defendant is indigent as provided in Rule 7.3, counsel will be appointed to represent the defendant on appeal and that a copy of the record and the reporter's transcript will be provided at no cost to the defendant for purposes of appeal to the Mississippi Supreme Court.

Rule 26.8 Fine, Restitution, or Other Monetary Obligation following Adjudication of Guilt.

(a) Method of Payment--Installments. When the defendant is sentenced to pay a fine, restitution, or other monetary obligation, the court may permit payment to be made within a specified period of time or in specified installments. Restitution shall be payable as promptly as possible in light of the defendant's ability to pay.

(b) Method of Payment--To Whom. Unless the court expressly directs otherwise:

(1) the payment of a fine, restitution, other monetary obligation shall be made to the clerk of court; and

(2) monies received from the defendant shall be applied as follows:

(A) first, to pay any court costs assessed against the defendant;

(B) second, to pay any restitution the defendant has been ordered to make;

(C) third, to pay any fines imposed against the defendant; and

(D) fourth, to pay any assignment of the sum made by the defendant to the defendant's attorney.

The clerk shall, as promptly as practicable, forward restitution payments to the victim.

(c) Failure to Pay a Fine, Restitution, Other Monetary Obligation, or to Comply with Court Orders; Notice; Time Limits.
(1) For Defendants Not under the Supervision of the Court or an Agency. If a defendant fails to pay a fine, restitution, or other monetary obligation, or is known by the court to have failed to comply with a term or condition of sentence within the prescribed time, the court shall, within 5 days, notify the prosecuting attorney.

(2) For Defendants under the Supervision of the Court or an Agency. If a defendant under the supervision of the court or an agency fails to pay a fine, restitution, or other monetary obligation, or is known by the court to have failed to comply with any other term or condition of probation within the prescribed time, the court shall give notice of such failure to the defendant's supervising officer within the time limits set under sections (c)(1) and (3).

(3) Time Limits--Restitution and Non-Monetary Obligations. If the payment or performance of an obligation does not involve the court, delinquency times shall run from the date on which the court or the supervising agency becomes aware of failure to pay or comply.

(d) Court Action upon Failure of Defendant to Pay Fine, Restitution, or Other Monetary Obligation or to Comply with Court Orders. Upon the defendant's failure to pay a fine, restitution, or other monetary obligation, or failure to comply with court orders, the court may require the defendant to show cause why said defendant should not be held in contempt of court and may issue a summons or warrant for the defendant's arrest, and may:

(1) inquire and cause an investigation to be made into the reasons for nonpayment, including whether nonpayment was willful or due to indigency;

(2) reduce the obligation to an amount the defendant is able to pay, or release the defendant from the obligation;

(3) continue or modify the schedule of payments;

(4) direct the clerk to issue execution for any portion remaining unpaid;

(5) if the order is a result of a traffic violation, suspend the defendant's privilege to operate a motor vehicle; and

(6) direct that the defendant be incarcerated until the unpaid obligation is paid, subject, however, to section (e) of this Rule.

(e) Incarceration for Nonpayment of Fine, Restitution, or other Monetary Obligation.

(1) Incarceration shall not automatically follow the nonpayment of a fine, restitution, or other monetary obligation. Incarceration may be employed only after the court has examined the reasons for nonpayment and finds, on the record, that the defendant could have satisfied payment but refused to do so.

(2) After consideration of the defendant's situation, means, and conduct with regard to the nonpayment, the court shall determine the period of any incarceration, subject to the limitations set forth in Miss. Code Ann. §§ 99-19-20 and 99-37-9.

(3) If, at the time the fine, restitution or other monetary obligation was ordered, a sentence of incarceration was also imposed, the aggregate of the period of incarceration imposed pursuant to this rule and the term of the sentence originally imposed may not exceed the maximum term of imprisonment authorized for the offense.

Rule 26.9 Consecutive or Concurrent Sentences.

Unless otherwise prohibited by law, the court may direct that the sentence being imposed will be served concurrently with or consecutively to any other sentence previously or simultaneously imposed upon the defendant by any court of the State of Mississippi. When sentencing orders are silent, sentences shall run concurrently. A court shall not, however, order a defendant's sentence to run concurrently with a sentence imposed by a court of any foreign jurisdiction until having first determined which court has primary jurisdiction over the defendant and will accept custody of the defendant for service of the defendant's sentence.

Rule 26.10 Re-Sentencing.

Where a judgment or sentence, or both, have been set aside by a post-trial motion, an appeal, or by collateral attack, the court may not impose a sentence for the same offense, or a different offense based on the same conduct, which is more severe than the prior sentence unless: (1) it concludes, on the basis of evidence concerning conduct by the defendant occurring after the original sentencing proceeding, that the prior sentence is inappropriate, or (2) the original sentence was unlawful and on remand it is corrected and a lawful sentence imposed, or (3) other circumstances exist under which there is no reasonable likelihood that the increase in the sentence is the product of actual

vindictiveness by the sentencing judge.

Rule 26.11 Entry of Judgment and Sentence; Warrant of Authority to Execute Sentence.
(a) Entry of Judgment and Sentence. The judgment of conviction and the sentence thereon are presumptively complete and valid as of the time of their oral pronouncement in open court.

(b) Warrant of Authority. The clerk shall forthwith enter the exact terms of the judgment and sentence in the court's minutes. A certified copy, signed by the sentencing judge, shall be furnished to the appropriate officer or agency and no other authority shall be necessary to carry into execution any sentence entered therein.

If the sentence is for death or imprisonment, the appropriate officer or agency shall receive the defendant for execution of the sentence upon delivery of a signed, certified copy of the judgment of conviction and sentence.

Rule 27 Probation

Rule 27.1 Granting Probation.
To the extent the sentencing court is given authority to suspend execution of sentence and to place an offender on probation, the court may impose such conditions and regulations as will promote the offender's rehabilitation and protect the public. Community service may be required. The supervising officer shall issue instructions consistent with the conditions and regulations imposed by the court and necessary for their implementation. All conditions of probation must be incorporated into a court's written order, and a copy thereof must be given to the offender. In addition, the court or supervising officer shall explain to the offender the purpose and scope of the imposed conditions and regulations and the consequence of violating those conditions and regulations.

Rule 27.2 Modification and Clarification of Conditions and Regulations.
The sentencing court, with or without a hearing, may modify or clarify any condition or regulation imposed by it and any instructions issued by a supervising officer. A supervising officer may modify or clarify any instructions which the officer has issued. An offender or supervising officer, at any time before absolute discharge, may request the sentencing court to modify or to clarify any condition or regulation. The sentencing court may, where appropriate, hold a hearing. A written copy of any order of modification or

clarification shall be given to the offender, following which the offender shall have 10 days to request a hearing.

Rule 27.3 Extension of Term of Probation; Termination; Order of Discharge.
(a) Extension of Term. At any time during a term of probation the court, for good cause shown, may extend the term of probation up to the maximum period permitted by law.

(b) Early Termination. At any time during a term of probation and after notice to the prosecuting attorney, the sentencing court may, on motion of the offender, the supervising officer, or the court's own motion, terminate probation and discharge the offender absolutely.

(c) Termination on Completion of Term. Probation terminates automatically on successful completion of the term of probation set by the court.

(d) Order of Discharge. On completion or early termination of a term of probation, the court shall order the offender to be discharged absolutely, and the clerk of the court, upon request, shall furnish the offender with a certified copy of the order of discharge.

Rule 27.4 Initiation of Revocation Proceedings; Securing the Offender's Presence; Arrest.
(a) Initiation of Revocation Proceedings. *(1) Petition by Supervising Officer or Prosecuting Attorney*. If there is reasonable cause to believe that the offender has violated a condition or a regulation of probation or has acted contrary to the instructions issued by the supervising officer, the supervising officer or the prosecuting attorney may petition the sentencing court to revoke probation.

(2) Initiation by the Court. The sentencing court, on its own motion, may initiate proceedings to revoke probation by an order to show cause specifying the alleged violation of conditions, regulations, or instructions.

(b) Securing the Offender's Presence. Pursuant to a petition to revoke or an order to show cause, the sentencing court may, when appropriate, issue a warrant for the offender's arrest or issue a summons directing the offender to appear on a specified date for a revocation hearing.

(c) Arrest by Supervising officer. The offender may be arrested without a warrant by the supervising officer responsible for the offender's supervision or by the officer's agent for

violation of a condition of probation or regulation imposed or instructions issued.

Rule 27.5 Initial Appearance After Arrest.
When a offender is arrested pursuant to Rule 27.4(b) or Rule 27.4(c), the supervising officer shall be notified immediately (unless the officer made the arrest), and the offender shall be taken without unnecessary delay before a court or agency authorized by law, who shall:

(a) inform the offender of the alleged violation and furnish the offender with a written copy thereof;

(b) inform the offender that any statement the offender makes before the hearing may be used against the offender;

(c) advise the offender of the right to request counsel, and to have counsel appointed if the offender is indigent and the requirements of Rule 27.6(c) are met;

(d) set the date of the revocation hearing, if not set previously; and

(e) determine whether the offender is to be released pending the revocation hearing or is to be held without bond.

Rule 27.6 Revocation of Probation.
(a) Hearing. A hearing to determine whether probation should be revoked shall be held before the sentencing court within a reasonable time after the offender's initial appearance under Rule 27.5.

(b) Summary Disposition. The offender may waive the hearing under Rule 27.6(a) and the sentencing court may make a final disposition of the issue, if:

(1) the offender has been given sufficient prior notice of the charges and sufficient notice of the evidence to be relied upon; and

(2) the offender admits, under the requirements of Rule 27.6(d), commission of the alleged violation.

(c) Presence. The offender is entitled to be present at the hearing.

(d) Counsel. (1) The offender may be represented by retained counsel. (2) Presumptively, counsel should be appointed to represent an indigent offender if the offender makes a timely and colorable claim that:

(1) the offender has not committed the alleged violation of the conditions or regulations of probation or the instructions issued by the supervising officer; or

(2) even when the violation is a matter of public record or is uncontested, there are substantial reasons that justify or mitigate the violation and make revocation inappropriate, and those reasons are complex or otherwise difficult to develop or present.

(e) Admissions by the Offender. Before accepting an admission by an offender that the offender has violated a condition or regulation of probation or an instruction issued by the supervising officer, the court shall determine that the offender understands the following:

(1) the nature of the violation to which an admission is offered;

(2) the right to be represented by counsel as provided by Rule 27.6(c);

(3) the right to testify and to present witnesses and other evidence on the offender's own behalf and to cross-examine adverse witnesses under subsection (e)(1); and

(4) that, if the alleged violation involves a criminal offense for which the offender has not yet been tried, the offender may still be tried for that offense, and although the offender may not be required to testify, that any statement made by the offender at the present proceeding may be used against the offender at a subsequent proceeding or trial.

The court shall also determine that the offender waives these rights, that the admission is voluntary and not the result of force, threats, coercion, or promises, and that there is a factual basis for the admission.

(f) Nature of the Hearing.
(1) The judge must be reasonably satisfied from the evidence that a violation of the conditions or regulations of probation or the instructions occurred. Each party shall have the right to present evidence and the right to confront and to cross-examine adverse witnesses who appear and testify in person. The court may receive any reliable, relevant evidence not legally privileged, including hearsay.

(2) If the alleged violation involves a criminal offense for which the offender has not yet been tried, the offender shall be advised at the beginning of the revocation hearing that, regardless of the outcome of the revocation hearing, the offender may still be held for that offense and that any statement made by the offender at the hearing may be used against the offender at a subsequent proceeding or trial.

(3) In cases involving breach of a condition of probation because of nonpayment of a fine, restitution, or other monetary obligation, incarceration shall not automatically follow nonpayment. Incarceration may be employed only after the court has examined the reasons for nonpayment and finds, on the record, that the offender could have satisfied payment but refused to do so.

(g) Disposition. If the court finds that a violation of the conditions or regulations of probation or instructions occurred, it may revoke, modify, or continue probation.

(h) Record. The judge shall make a written statement or state for the record the evidence relied upon and the reasons for revoking probation.

Rule 27.7 Other Proceedings.
The following proceedings shall also be conducted in accordance with this Rule 27:

(a) to terminate a period of post-release supervision and recommit the offender; and

(b) to impose any other previously suspended sentence.

Rule 28 Retention of Records and Evidence.
The clerk of the court shall receive and maintain all papers, documents, and records filed and all evidence admitted in criminal cases. All records and evidence of the proceedings shall be retained according to law.

Rule 29 Appeals from Justice or Municipal Court

Rule 29.1 Notice of Appeal; Filing; Contents.
(a) Notice of Appeal. Any person convicted of an offense in a justice or municipal court, including a person convicted upon a plea of guilty or *nolo contendere*, may perfect an appeal to county court or, if no county court has jurisdiction, then to circuit court, by

filing a written notice of appeal.

(b) Filing; Time. The notice of appeal shall be filed with the clerk of the circuit court within 30 days from the entry of the judgment or order appealed from.

(c) Contents. The notice of appeal shall specify:

(1) the party or parties taking the appeal;

(2) the current residence address and the current mailing address, if different, of each party taking the appeal;

(3) the judgment or order from which the appeal is taken; and

(4) that the appeal is taken for a trial *de novo*.

(d) Defects in the Notice of Appeal; Dismissal. If the defendant fails to comply substantially with the requirements of this Rule as to content of the notice of appeal, the county or circuit court, on its own motion or on motion of a party, may order the notice amended. If a defendant fails to amend the notice as required by the court, the court may dismiss the appeal with prejudice and with costs. The county or circuit court shall promptly notify the lower court of any such dismissal.

Rule 29.2 Record; Costs.

(a) Record. Upon receiving the notice of appeal and upon defendant's compliance with Rule 29.2(b), the clerk of the circuit court shall promptly notify the lower court and the appropriate prosecuting attorney. Within 10 days after receipt of such notice, the judge or clerk of the lower court shall deliver to the clerk of the circuit court a certified copy of the record and all original papers in the case. If, after such notice to the lower court and appropriate prosecuting attorney, the judge or clerk of the lower court fails to transmit the records to the clerk of the circuit court within the time prescribed, the prosecution thereof shall be deemed abandoned and the defendant shall stand discharged, with prejudice, and any bond shall be automatically terminated.

(b)(1) Cost Deposit or Bond. Simultaneously with the notice of appeal, a defendant shall post with the circuit clerk a cash deposit, or surety bond approved by the circuit clerk, for all estimated court costs incurred both in the appellate and lower courts (including but not limited to unpaid fees, court costs, and amounts imposed pursuant to statute). The amount of such cash deposit or bond shall be determined by the clerk of the

circuit court in an amount of not less than $100 nor more than $2,500. Posting the cash deposit or bond shall stay the imposition of the judgment imposed by the lower court as it relates to fees, court costs, and amounts imposed pursuant to statute. Upon forfeiture, the costs of lower court shall be recovered after the costs of the appellate court.

(2) Appeals without Prepayment of Fees or Costs. A defendant who desires to proceed without payment of a cash deposit or cost bond shall:

(i) file in the county or circuit court a motion for leave to so proceed; and

(ii) if the defendant desires to proceed on appeal in forma pauperis, complete under oath an affidavit concerning that defendant's financial resources, on a form approved by the court. The defendant may be examined under oath regarding the defendant's financial resources by the county or circuit judge; the defendant shall, before said questioning, be advised of the penalties for perjury as provided by law.

If the motion is granted, the defendant may so proceed without prepayment of fees or costs in either court.

(3) Dismissal for Noncompliance. A defendant's failure to comply with this Rule 29.2(b) shall be grounds for the county or circuit court, on its own motion or on motion of a party, to dismiss the appeal with prejudice and with costs. The county or circuit court shall promptly notify the lower court of any such dismissal.

Rule 29.3 Appearance Bonds.

(a) Appearance Bond. If the defendant has been ordered incarcerated, the justice or municipal court may require the defendant to post an appearance bond in accordance with Rule 8 to assure the appearance of the defendant before the county or circuit court. An appearance bond originally posted with the justice or municipal court to assure the appearance of the defendant before that court shall serve to assure the appearance of the defendant before the county or circuit court on appeal. The approval and filing of the appearance bond shall stay the imposition of the judgment of incarceration imposed by the justice or municipal court. The clerk of the justice or municipal court shall transmit any appearance bond to the circuit clerk.

(b) No Appearance Bond. The failure of the defendant to post an appearance bond shall not prevent the county or circuit court from acquiring jurisdiction of the appeal. After acquiring jurisdiction of the appeal, the county or circuit court may modify the appearance bond. If the defendant remains in custody, the case shall be set for trial at the

earliest practicable time.

(c) Failure to Appear. If the defendant fails to appear at the time and place set by the court, the county or circuit court may dismiss the appeal with prejudice and with costs, and order forfeiture of the appearance bond. The county or circuit court shall promptly notify the lower court of any such dismissal.

(d) Time in Custody Credited. All time the defendant has been in custody on the present charge shall be credited against any sentence imposed.

29.4 Proceedings.
The appeal shall be a trial *de novo*. In appeals from justice or municipal court when the maximum possible sentence is 6 months or less, the case may be tried without a jury at the court's discretion.

Rule 30 Appeals from County Court

Rule 30.1 Notice and Filing.
Any person adjudged guilty of a criminal offense by a county court, where the case was not a felony action transferred to that court from circuit court, may appeal to the circuit court having jurisdiction by filing written notice with the clerk of the county court within 30 days of the entry of the final judgment. The clerk, upon receiving written notice of appeal, shall immediately send notice to the prosecuting attorney.

Thereafter, appeals shall proceed as if in the Supreme Court and in accordance with the Mississippi Rules of Appellate Procedure. If a new trial is granted, the cause shall be remanded to the docket of the circuit court and a new trial held therein *de novo*.

Rule 30.2 Bond.
Defendants shall be entitled to release pursuant to Rule 8. All time that the defendant has been in custody on the present charge shall be credited against any sentence imposed.

Rule 31 Appeals to the Mississippi Supreme Court and Court of Appeals.
All appeals to the Mississippi Supreme Court and Court of Appeals shall be taken in accordance with the Mississippi Rules of Appellate Procedure.

Rule 32 Post-Conviction Collateral Relief.
Applications for post-conviction collateral relief shall be governed by Miss. Code Ann. §99-39-1 et. seq.

Rule 33 Contempt

Rule 33.1 Applicability; Indirect and Direct Contempt Defined.
(a) Applicability. Rule 33 applies to both civil and criminal contempt.

(b) Indirect Contempt. "Indirect contempt," also known as "constructive contempt" means any contempt other than a direct contempt.

(c) Direct Contempt. "Direct contempt" means contempt committed:

(1) in the presence of the judge presiding in court; or

(2) so near to the judge as to interrupt the court's proceedings.

(d) Criminal Contempt. "Criminal contempt" means either:

(1) misconduct of a person that obstructs the administration of justice and that is committed either in the presence of the judge presiding in court or so near thereto as to interrupt its proceedings;

(2) willful disobedience or resistance of any person to a court's lawful writ, subpoena, process, order, rule, or command, where the primary purpose of the finding of contempt is to punish the contemnor; or

(3) any other willfully contumacious conduct which obstructs the administration of justice, or which lessens the dignity and authority of the court, may be held in contempt of court.

(e) Civil Contempt. "Civil contempt" means willful, continuing failure or refusal of any person to comply with a court's lawful writ, subpoena, process, order, rule or command that by its nature is still capable of being complied therewith.

Rule 33.2 Direct Contempt.
(a) Summary Imposition of Sanctions. The court against which a direct civil or criminal

contempt has been committed may summarily impose sanctions on the person who committed it if:

(1) the presiding judge has personally perceived the conduct constituting the contempt and has personal knowledge of the identity of the person committing it;

(2) the contempt has interrupted the order of the court or interfered with the dignified conduct of the court's business; and

(3) the punishment imposed does not exceed 30 days incarceration or a fine of $500.

The court shall afford the alleged contemnor an opportunity, consistent with the circumstances then existing, to present exculpatory or mitigating information. If the court summarily finds and announces on the record that direct contempt has been committed, the court may defer imposition or execution of sanctions until the conclusion of the proceeding during which the contempt was committed.

(b) Order of Contempt. Either before sanctions are imposed, or promptly thereafter, the court shall issue a written order stating, or shall state on the record, that a direct contempt has been committed and specifying:

(1) whether the contempt is civil or criminal;

(2) the evidentiary facts known to the court from the judge's own personal knowledge as to the conduct constituting the contempt, and as to any relevant evidentiary facts not so known, the basis of the court's findings;

(3) the sanction imposed for the contempt;

(4) in the case of civil contempt, how the contempt may be purged; and

(5) in the case of criminal contempt:

(A) if the sanction is incarceration, a determinate term; and

(B) any condition under which the sanction may be suspended, modified, revoked, or terminated.

(c) Affidavits. In a summary proceeding, affidavits may be offered for the record by the

contemnor before or after sanctions have been imposed.

(d) Review and Record. *(1) Review.* The contemnor may seek review by writ of habeas corpus or by appeal to the Mississippi Supreme Court.

(2) Record. The appellate record in cases of direct contempt in which sanctions have been summarily imposed shall consist of:

(1) the order of contempt;

(2) if the proceeding during which the contempt occurred was recorded, a transcript of that part of the proceeding; and

(3) any affidavits offered or evidence admitted in the proceeding.

(e) No Summary Imposition of Sanctions. In any proceeding involving a direct contempt for which the court determines not to impose sanctions summarily, the judge, reasonably promptly after the conduct, shall issue a written order specifying the evidentiary facts within the personal knowledge of the judge as to the conduct constituting the contempt and the identity of the contemnor. Thereafter, the proceeding shall be conducted pursuant to Rule 33.3 or Rule 33.4, whichever is applicable, and Rule 33.5 in the same manner as a indirect contempt.

Rule 33.3 Indirect Criminal Contempt; Commencement; Prosecution.
(a) Nature of the Proceedings. All criminal contempts not adjudicated pursuant to Rule 33.2 shall be prosecuted by means of complaint, unless the prosecuting attorney elects to proceed by indictment. Except as otherwise provided by these Rules, the case shall proceed as a criminal case in the court in which the contempt is alleged to have been committed.

(b) Disqualification of the Judge. The contempt charges shall be heard by a judge other than the trial judge whenever the nature of the alleged contemptuous conduct is such as is likely to affect the trial judge's impartiality.

Rule 33.4 Indirect Civil Contempt.
(a) Commencement. A civil contempt proceeding may be commenced by the filing of a complaint for contempt with the clerk of the court whose injunction, stipulation, order or judgment is claimed to have been violated. No filing fee shall be required in connection

with the filing of the complaint for civil contempt. The proceeding shall be considered part of the action out of which the contempt arose.

(b) Contents of the Complaint. The complaint for civil contempt shall:

(1) contain a complete verbatim statement of the injunction, stipulation, order or judgment involved, or a copy thereof if available, and the name of the issuing judge where appropriate;

(2) identify the court that issued the injunction, order or judgment, or in which the stipulation was filed;

(3) contain the case caption and the docket number of the case in which the injunction, order or judgment was issued, or the stipulation was filed;

(4) include a short, concise statement of the facts on which the asserted contempt is based;

(5) include a request for the issuance of a summons as specified below;

(6) be verified or supported by affidavits; and

(7) otherwise comply with applicable provisions of the Rules of Civil Procedure.

(c) Summons. The summons shall issue only on a judge's order and shall direct the parties to appear before the court not later than 7 days after service thereof for the purpose or purposes specifically stated therein of:

(1) scheduling a trial;

(2) considering whether and when the filing of an answer is necessary;

(3) considering whether discovery is necessary;

(4) holding a hearing on the merits of the complaint; or

(5) considering such other matters or performing such other acts as the court may deem appropriate.

(d) Trial. The complaint for contempt shall be tried to the court in accordance with

MRCP 52(a) and judgment shall be entered pursuant to MRCP 58.

(e) Service of the Summons and Complaint. The following shall be served upon the contemnor in accordance with the provisions of MRCP 81, unless the court orders some other method of service or notice -

(1) a copy of the summons;

(2) a copy of the complaint for contempt;

(3) a copy of any accompanying affidavits; and

(4) if incarceration to compel compliance is sought, notice to the alleged contemnor in the following form:

TO THE PERSON ALLEGED TO BE IN CONTEMPT OF COURT:

1. It is alleged that you have disobeyed a court order, are in contempt of court, and should go to jail until you obey the court's order.

2. You have the right to have a lawyer. If you already have a lawyer, you should consult the lawyer at once. If you do not now have a lawyer, please note:

(a) A lawyer can be helpful to you by:

(1) explaining the allegations against you;

(2) helping you determine and present any defense to those allegations;

(3) explaining to you the possible outcomes; and

(4) helping you at the hearing.

(b) Even if you do not plan to contest that you are in contempt of court, a lawyer can be helpful.

(c) If you want a lawyer but do not have the money to hire one, you may ask the court to appoint one for you.

3. IF YOU DO NOT APPEAR FOR A SCHEDULED COURT HEARING BEFORE THE JUDGE, YOU WILL BE SUBJECT TO ARREST.

Rule 33.5 Indirect Contempt; Further Proceedings.
(a) Consolidation of Criminal and Civil Contempts. If a person has been charged with more than one contempt pursuant to Rule 33.3, Rule 33.4, or both, the court may consolidate the proceedings for hearing and disposition.

(b) When Judge Disqualified. A judge who enters an order pursuant to 33.2(e) or who institutes an indirect contempt proceeding on the court's own initiative pursuant to Rule 33.3 or Rule 33.4, and who reasonably expects to be called as a witness at any hearing on the matter, is disqualified from sitting at the hearing unless:

(1) the alleged contemnor consents; or

(2) the alleged contempt consists of a failure to obey a prior order or judgment.

(c) Failure to Appear at Hearing. *(1) Generally.* If after proper notice the alleged contemnor fails to appear personally at the time and place set by the court, the court may enter an order directing the contemnor be taken into custody and brought before the court or judge designated in the order.

(2) Civil Contempt. If, after proof of proper notice, the alleged contemnor in a civil contempt proceeding fails to appear in person or by counsel at the time and place set by the court, the court may proceed *ex parte*.

(d) Disposition. When a court makes a finding of contempt, the court shall issue a written order that specifies the sanction imposed for the contempt. In the case of a civil contempt, the order shall specify how the contempt may be purged. In the case of a criminal contempt, if the sanction is incarceration, the order shall specify a determinate term and any condition under which the sanction may be suspended, modified, revoked, or terminated.

Rule 33.6 Bail. A contemnor committed for contempt is entitled to the same consideration, with respect to bail pending appeal, as a defendant convicted in a criminal proceeding.

Rule 34 Subpoenas.
(a) Generally. Except as set forth below, the procedures for subpoenas in criminal proceedings shall conform to Rule 45 of the Mississippi Rules of Civil Procedure. This Rule shall not apply to proceedings before a grand jury.

(b) For Production of Documentary Evidence and of Objects. In proceedings governed by these Rules, a subpoena may command the person to whom it is directed to produce the books, papers, documents, photographs, or other objects designated therein. The subpoenaing party shall forthwith provide a copy of the subpoena on issuance to all attorneys of record for the parties, or to any party when not represented by an attorney. The court on motion made promptly, and in any event made at or before the time specified in the subpoena for compliance therewith, may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that matters designated in the subpoena be produced before the court at a time before the trial or before the time when they are to be offered in evidence and upon their production may permit the matters or portions thereof to be inspected, photographed, and copied by the parties and their attorneys.

Rule 35 Motions

Rule 35.1 Motions: Form, Content, Rights of Reply, and Length.
(a) In General. A party applying to the court for an order must do so by motion.

(b) Form and Content of a Motion. A motion -- except when made during a trial or hearing -- must be in writing, unless the court permits the party to make the motion by other means. A motion shall contain a concise statement of the precise relief requested and shall state the specific factual grounds and specific legal authority in support thereof. A motion may be supported by affidavit. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion or if the matter is presented in an agreed order.

(c) Rights of Reply. Unless otherwise ordered by the court, each party may file and serve a response, and the moving party may file and serve a reply, which shall be directed only to matters raised in a response. Responses and replies shall be in the form required for motions. If no response is filed, the motion shall be deemed submitted on the record before the court.

Rule 35.2 Hearing; Oral Argument.

Upon request of any party, or on its own initiative, the court may set any motion for hearing. The court may limit or deny oral argument on any motion. It is the duty of the movant, when a motion or other pleading is filed, including a motion for a new trial, to pursue the motion to hearing and decision. Failure to pursue a pretrial motion to hearing and decision before trial is deemed an abandonment of that motion; however, the motion may be heard after the commencement of trial in the discretion of the court.

Rule 35.3 Waiver of Formal Requirements.
Upon request of a party, or on its own initiative, the court may waive a requirement specified in this Rule, or overlook a formal defect in a motion or request.

Rule 35.4 Service and Filing.
Unless otherwise specified in these Rules, the manner and sufficiency of service and filing of motions, requests, petitions, applications, and all other pleadings and documents shall be governed by Rule 5 of the Mississippi Rules of Civil Procedure.

Rule 35.5 Presentation of Orders to the Court.
With the exception of default or agreed orders and judgments, all proposed orders and judgments to be signed by the court shall be submitted directly to the court by an attorney and not through the clerk or through correspondence, unless otherwise permitted by the court. All orders or judgments presented to the court shall be signed by the attorney presenting the same.

Rule 35.6 Entry of Order and Duty of Clerk.
Immediately upon entry of an order or judgment of the court, the clerk of court shall make a diligent effort to assure that all attorneys of record have received notice of the entry of the order.