

PURSUANT TO RULE 27(f) OF THE MISSISSIPPI RULES OF APPELLATE PROCEDURE, THE RULES COMMITTEE ON CIVIL PRACTICE AND PROCEDURE SEEKS COMMENTS FROM THE BENCH, THE BAR AND THE PUBLIC ON THE PROPOSED AMENDMENT TO **RULE 16 OF THE MISSISSIPPI RULES OF CIVIL PROCEDURE**

Comments should be filed with the Clerk of the Supreme Court, Gartin Justice Building, P.O. Box 249, Jackson, Mississippi 39205-0249.
Deadline: **June 9, 2012.**

IN THE SUPREME COURT OF MISSISSIPPI

IN RE: THE MISSISSIPPI RULES
OF CIVIL PROCEDURE

RULES 89-R-99001

**MOTION TO AMEND RULE16
OF THE MISSISSIPPI RULES OF CIVIL PROCEDURE**

The Advisory Committee on Rules (“Committee”) recommends that the Court adopt amendments to Rule 16 of the Mississippi Rules of Civil Procedure, its comment, and a proposed form. In support thereof, the Committee would show unto the Court the following:

1.

Over the past several years, the Mississippi Supreme Court has referred to the Committee various inquiries and requests from members of the Mississippi Bar asking for consideration of a rule requiring mandatory scheduling orders/trial settings. After due consideration and discussion, the Committee determined that a rule pertaining to scheduling orders and trial settings would be beneficial to both the bench and the bar.

2.

The proposed amendment to Rule 16 is “self-executing”—meaning the lawyers, rather than the judge, is responsible for drafting the scheduling order. To keep a judge’s involvement to a minimum, the proposed amendment directs the court administrator to provide attorneys with a trial date and then sets automatic dates for all other deadlines based on the trial date. As the proposed amendment mandates all the deadlines, there is no room for disagreement among the attorneys and, therefore, no need to involve the judge. Once the agreed Scheduling Order is prepared, it is submitted to the Judge for signature and entry. The proposed amendment further provides for how the Scheduling Order may be modified.

3.

The proposed amendment applies to all cases other than those specifically exempted—the categories of cases exempted include suits on open accounts or other liquidated debts; M.R.C.P. Rule 81 cases; and cases to be arbitrated which are governed by statute.

4.

The proposed amended Rule 16 is attached hereto as Exhibit A and incorporated herein by reference as though copied at length herein. M.R.C.P. Rule 16 currently requires the court to hold a pretrial conference at the request of all parties and authorizes the court to hold a pretrial conference on its own motion or the motion of any party. After any such conference, the court may enter a pretrial order. The proposed amendment to Rule 16 leaves these provisions intact and the proposed amendment would be inserted as a subsection to Rule 16.

5.

The Committee further proposed an amendment to the Historical Note and the Comment as set forth in Exhibit A hereto.

6.

For the Court's further consideration, the Committee submits a proposed Agreed Scheduling Order form for adoption. A copy of the proposed form is attached as Exhibit B hereto.

7.

The proposed amendment requiring the entry of scheduling orders would further promote the ends of justice and facilitate the just, efficient, and speedy determination of every action.

WHEREFORE, PREMISES CONSIDERED, the Committee respectfully requests that the Court consider the proposed amendment to Rule 16 of the Mississippi Rules of Civil Procedure, its comment and historical note, and the proposed Agreed Scheduling Order form. Further, the Committee requests that should the Court adopt the proposed amendment, the amendment to Rule 16 be effective for any and all cases filed after the adoption of the proposed amendment.

Respectfully submitted, this, the 14th day of September, A.D., 2011.

MISSISSIPPI SUPREME COURT ADVISORY
COMMITTEE ON RULES

BY: _____
COLETTE A. OLDMIXON, CHAIR

RULE 16. PRE-TRIAL PROCEDURE

(a) Scheduling Order.

(1) Within 45 days of any defendant being served with the complaint or 45 days after any defendant has appeared, the attorneys of record and any unrepresented party that has appeared in the case, shall confer for the purpose of drafting an Agreed Scheduling Order. The Agreed Scheduling Order shall contain:

(A) A trial date that shall be provided by the court administrator or other court personnel upon request by counsel of record for any party or upon request by an unrepresented party that has appeared in the case. If, in a multi-county district, a trial date cannot be assigned when requested because there has not yet been an order establishing terms of court for the following calendar year, the court administrator or other court personnel shall provide a trial date as soon after October 1 as is reasonably possible.

(B) A deadline by which motions for summary judgment must be filed, which deadline shall be 90 days before the trial date;

(C) A deadline by which motions challenging expert testimony pursuant to M.R.E. 702 must be filed, which deadline shall be 90 days before the trial date;

(E) A discovery deadline by which all discovery must be completed, which deadline shall be 30 days before the deadline for filing motions for summary judgment;

(F) A deadline by which defendant(s) must serve responses to expert interrogatories, which deadline shall be 75 days before the discovery deadline;

(G) A deadline by which plaintiff(s) must serve responses to expert interrogatories, which deadline shall be 120 days before the discovery deadline; and

(H) A deadline by which motions to join additional parties and/or amend the pleadings must be served, which deadline shall be 90 days after any defendant has been served with the complaint or has entered an appearance in the case.

Upon agreement of the parties or by order of the Court for good cause shown, the deadlines required by subsections (a)(1)(B) – (H) may be modified.

(2) Within 15 days of conferring pursuant to subsection (a)(1), the attorneys of record and any unrepresented parties participating in the conference shall submit an Agreed Scheduling Order to the judge for signature and entry into the record. The attorneys of record and all unrepresented parties participating in the conference are jointly responsible for arranging the conference, conducting the conference, obtaining a trial date from the court administrator or other court personnel, drafting the Agreed Scheduling Order and submitting the Agreed Scheduling Order to the judge.

EXHIBIT 1

(3) The following categories of cases are exempt from the requirements in subsections (a)(1) and (2):

(A) cases the principal purpose of which is to collect on an open account or other liquidated debt;

(B) cases governed by M.R.C.P. 81; and

(C) cases that will be arbitrated and governed by the statutory arbitration provisions found at Miss. Code Ann. §11-15-1 et. seq.

If the parties in any case exempted by subsection (a)(3)(A) or (B) above unanimously desire a scheduling order, then an Agreed Scheduling Order may be jointly drafted and submitted to the judge. In a case that is not otherwise exempt from the requirements in subsections (a)(1) and (2), a court may, upon joint motion by all the parties, exempt such case from such requirements.

(b) Pre-trial Conference

(1) In any action the court may on its own motion or on the motion of any party, and shall on the motion of all parties, direct the attorneys for the parties to appear before it at least twenty days before the case is set for trial for a conference to consider and determine:

~~(a)~~ (A) The possibility of settlement of the action;

~~(b)~~ (B) the simplification of the issues;

~~(c)~~ (C) the necessity or desirability of amendments to the pleadings;

~~(d)~~ (D) itemizations of expenses and special damages;

~~(e)~~ (E) the limitation of the number of expert witnesses;

~~(f)~~ (F) the exchange of reports of expert witnesses expected to be called by each party;

~~(g)~~ (G) the exchange of medical reports and hospital records, but only to the extent that such exchange does not abridge the physician-patient privilege;

~~(h)~~ (H) the advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;

~~(i)~~ (I) the imposition of sanctions as authorized by Rule 37;

~~(j)~~ (J) the possibility of obtaining admissions of fact and of documents and other exhibits which will avoid unnecessary proof;

~~(k)~~ (K) in jury cases, proposed instructions, and in non-jury cases, proposed findings of fact and conclusions of law, all of which may be subsequently amended or supplemented as justice may require;

~~(l)~~ (L) such other matters as may aid in the disposition of the action.

(2) The court may enter an order reciting the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any other matters considered, and limiting issues for trial to those not disposed of by

admissions or agreements of counsel; and such order when entered shall control the subsequent course of the action, unless modified at the trial to prevent manifest injustice.

[Amended effective March 1, 1989; April 13, 2000, _____.]

Advisory Committee Historical Note

Effective _____, Rule 16 was amended so as to require, in most cases, the entry of a scheduling order containing a trial date and other deadlines.

Effective April 13, 2000, Rule 16 was amended to allow the conference to be held pursuant to the court's motion. 753-754 So. 2d. XVII (West Miss. Cas. 2000.)

Effective March 1, 1989, Rule 16 was amended to abrogate provisions for a pretrial calendar. 536-538 So.2d XXI (West Miss. Cas. 1989).

Comment

Rule 16 governs ~~the~~ pretrial conferences and scheduling orders. ~~It provides that such a Pretrial conferences~~ may be held on the court's own motion or on the motion of any party and *shall* be held on the motion of all parties. ~~It authorizes the amending or supplementing of proposed jury instructions, or of proposed findings of fact and conclusions of law in non jury cases, after they have been preliminarily agreed upon in the pretrial conference. Also, it provides that the court may enter a pretrial order, and if such order is entered it "shall control the subsequent course of action unless modified."~~ In most cases, a scheduling order setting a trial date and other deadlines is required. M.C.A. § 9-5-3 and M.C.A. § 9-7-3 provide that, with respect to multi-county chancery and circuit court districts, an order be entered by October 1 each year establishing the terms of court for the following calendar year. In the event such an order is not entered, the statutes provide that the court terms will be the same as the previous year. Thus, Rule 16(a)(1)(A) provides that if a trial date cannot be assigned when requested because the terms of court have not yet been set for the next calendar year, a trial shall date shall be assigned as soon after October 1 as is reasonably possible.

[Comment amended April 18, 1995; April 13, 2000, _____.]

IN THE _____ COURT OF _____ COUNTY, MISSISSIPPI

A.B., Plaintiff(s)

v.

Civil Action, File No.

C.D., Defendant(s)

AGREED SCHEDULING ORDER

This Scheduling Order, including the deadlines herein established, can be modified only by order of the court upon a showing of good cause. IT IS HEREBY ORDERED:

1. The action is set for trial commencing on: _____.
2. Motions for joinder of parties or amendments to the pleadings shall be served by: _____.
3. Plaintiff shall serve responses to Defendant's expert interrogatories by: _____.
4. Defendant shall serve responses to Plaintiff's expert interrogatories by: _____.
5. All discovery shall be completed by: _____.
6. Motions for summary judgment and/or motions challenging expert testimony pursuant to M.R.E. 702 shall be filed by: _____.

ORDERED: _____

[date]

[signature of Judge]