

PURSUANT TO RULE 27(f) OF THE MISSISSIPPI RULES OF APPELLATE PROCEDURE, THE RULES COMMITTEE ON CRIMINAL PRACTICE AND PROCEDURE SEEKS COMMENTS FROM THE BENCH, THE BAR AND THE PUBLIC ON THE PROPOSED AMENDMENT TO **RULE 7.09** OF THE UNIFORM RULES OF CIRCUIT AND COUNTY COURT PRACTICE.

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

Deadline: **Tuesday, April 29, 2014.**

Provided below are versions of: (1) the proposed amended rule with highlights and strikeouts denoting changes from the current rule, and (2) the proposed amended rule.

Rule 7.09
AMENDMENT OF INDICTMENTS

Pursuant to Rules 7.06 and 11.03, the indictment returned by the grand jury shall include both the principal charge and, if applicable, a charge of previous conviction(s). However, for good cause shown, the indictment may be amended as follows:

A. All indictments may be amended as to form but not as to the substance of the offense charged. Amendment may be allowed only if the defendant is afforded a fair opportunity to present a defense and is not unfairly surprised.

B. Indictments may also be amended to allege prior conviction(s) for the purpose of enhancing the sentence. charge the defendant as an habitual offender or to elevate the level of the offense where the offense is one which is subject to enhanced punishment for subsequent offenses and the amendment is to assert prior offenses justifying such enhancement (e.g., driving under the influence, Miss. Code Ann. § 63-11-30). The request to amend an indictment to allege prior conviction(s) shall be by written motion, filed with the court clerk and properly served, and the motion shall state the specific amendment to be offered. The order ruling on the motion shall be entered by the court at least thirty days before the trial begins. Amendment shall be allowed only if the defendant is afforded a fair opportunity to present a defense and is not unfairly surprised.

[Adopted effective May 1, 1995; amended effective —, 2014.]

Comment

“No person shall be held to answer for a capital, or otherwise infamous crime, unless

on a presentment or indictment of a Grand Jury. . . .” U.S. Const. amend. V; Miss. Const. art. 3, § 27. “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.” U.R.C.C.C. 7.06. “The indictment must allege with particularity the nature or description of the offense constituting the previous convictions” U.R.C.C.C. 11.03(1). *See also Boyd v. State*, 113 So. 3d 1252 (Miss. 2013).

Rule 7.09 allows an indictment to be amended only upon a showing of good cause. Subsection B. recognizes that allegations that a defendant’s sentence should be enhanced because the defendant is a recidivist should be presented to, and included in the indictment returned by, the grand jury. If an indictment returned by the grand jury does not include the defendant’s status as a recidivist, then the indictment may be amended to include such status only upon a showing of good cause. The requirement that the order ruling on the motion be entered at least thirty days before trial begins is new.

[Comment adopted effective —, 2014.]

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