

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 PROPOSED AMENDMENTS TO THE MISSISSIPPI RULES OF CRIMINAL PROCEDURE.

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

Deadline: **Friday, December 8, 2017.**

Provided below are the proposed amendments to selected rules, with highlights and strikeouts denoting changes from the current rules.

RULE 3 ARREST WARRANT OR SUMMONS UPON COMMENCEMENT OF CRIMINAL PROCEEDINGS

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Rule 3.2 Content of Arrest Warrant or Summons; Execution, Return

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(d) Service of Summons. ~~The summons shall be served by any officer authorized by law to execute arrest warrants.~~ The summons shall **may** be served by personally delivering a copy of the summons to the defendant **by any officer authorized by law to execute arrest warrants or by delivering a copy of the summons by U.S. mail, addressed to the defendant at the defendant's usual residence, business or post office address.** The officer serving the summons shall make return of the summons in the same manner as provided in Rule 3.2(c)(3) for making return of an arrest warrant.

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Comment

Where circumstances dictate issuance of an arrest warrant rather than a summons, yet there is reason for use of recognizance release, Rule 3.2(a) gives the issuing judge the flexibility of allowing a personal recognizance release, subject to the mandatory conditions of release in Rule 8.4(a). The release of an arrested defendant on recognizance would not preclude the defendant's having to appear at the initial hearing, but might preclude the defendant's spending the night in jail unnecessarily. Alternatively, the issuing judge has

discretion to set an appearance bond or secured appearance bond in the warrant, if the defendant is bailable as a matter of right.

Rule 3.2(c)(1) states that an arrest warrant be directed to and executed by “any officer authorized by law within the State of Mississippi.” Mississippi law authorizes a broad range of officers to make arrests. See Miss. Code Ann. §§ 99-3-1(1), 99-3-2.

Rule 3.2(d) is designed to make service of the summons as easy and expeditious as possible. The function of the summons is solely to apprise the defendant of the charges and to notify the defendant to appear. Delivery of a copy of the summons by U.S. mail is similar to the procedure utilized for summoning persons whose names are drawn for jury duty. See Miss. Code Ann. § 13-5-28. A defendant’s failure to respond to a mailed summons does not provide valid grounds for the issuance of a contempt-based arrest warrant.

Under Rule 3.2(e), a mere defect in form will not invalidate an arrest warrant. Normally, aliases, fictitious names, and descriptions are matters of form and may be amended if judicially determined to be incorrect.

RULE 13 THE GRAND JURY

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Rule 13.3 Grand Jury Foreperson.

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(b) Powers and Duties of Foreperson. The foreperson is empowered to preside over the grand jury proceedings, issue or cause to be issued subpoenas (*ad testificandum* and *duces tecum*), and swear all witnesses. A record shall be kept by the foreperson and returned to court, certified and signed by the foreperson, of the names of all witnesses sworn before the grand jury. The foreperson shall also submit a written report of the proceedings of the grand jury to the court or clerk; endorse any indictment returned by the grand jury as a “True Bill” and sign the foreperson’s name thereto; and return a “No True Bill” list to the circuit clerk, to be kept under seal, although the clerk is allowed to disclose to a defendant that his/her case has received a “No True Bill.”

**RULE 18 TRIAL BY JURY; WAIVER; SELECTION AND PREPARATION OF
PETIT JURY; PROHIBITED DISCLOSURES**

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Rule 18.9. Prohibited Disclosures

Prior to the conclusion of the trial, no defense attorney, prosecuting attorney, clerk, deputy clerk, law enforcement official or other officer of the court, may release or authorize release of any statement for dissemination by any means of public communication on any matter concerning:

- (1) The prior criminal record of the defendant or the defendant's character or reputation;
- (2) The existence or contents of any confession, admission or statement given by the defendant; or the refusal or failure of the defendant to make any statement;
- (3) The defendant's performance on any examinations or tests, or the defendant's refusal or failure to submit to an examination or test;
- (4) The identity, testimony, or credibility of prospective witnesses;
- (5) The possibility of a plea of guilty to the offense charged, or a lesser offense; and
- (6) The defendant's guilt or innocence, or other matters relating to the merits of the case, or the evidence in the case.

Comment

Rule 18.9 is based upon former Rule 9.01 of the Uniform Rules of Circuit and County Court.

RULE 25 POST-TRIAL MOTIONS

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Rule 25.3 Denial By Operation Of Law.

A motion for a new trial or a motion to vacate judgment pending thirty (30) days after entry of judgment shall be deemed denied as of the thirtieth (30th) day **after the motion was filed**. However, the parties may agree in writing, or the court may order, that the motion be continued past the thirtieth (30th) day to a date certain within ninety (90) days **after the motion was filed**; 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.

Comment

*Rule 25.3 is new to Mississippi practice. The Rule promotes finality by providing that a motion for a new trial or a motion to vacate judgment shall not remain pending in the trial court for more than thirty (30) days **after the motion was filed**. This Rule thereby addresses the problem of when a timely post-trial motion is filed but is not decided or even noticed for a hearing. Such a case is then essentially in limbo, as the pending post-trial motion indefinitely postpones the running of the period for filing a notice of appeal and indefinitely delays finality in the case. This deadline may be extended by written agreement of the parties or court order to a date certain within ninety (90) days **after the motion was filed**. Multiple extensions of the deadline, which should be rare, are nonetheless permitted by Rule 25.3.*

RULE 26 JUDGMENT

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Rule 26.6 Fine, Restitution, and/or Court Costs following Adjudication of Guilt.

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(d) Court Action upon Failure of Defendant to Pay Fine, Restitution, and/or Court Costs. Upon the defendant's failure to pay a fine, restitution, and/or court costs, the court

first must require the defendant to appear and show cause why said defendant should not be held in contempt of court. A summons requiring the defendant's appearance shall be personally served on the defendant and shall set forth the time and location of the hearing. If the defendant fails to appear, the court may issue a warrant for the defendant's arrest. During the hearing, the court shall inquire and cause an investigation to be made into the reasons for nonpayment, including whether nonpayment was willful or due to indigency or economic inability to pay. In that review:

(1) If it appears to the satisfaction of the court that nonpayment is not willful, the court shall enter an order allowing the defendant additional time for payment, reducing the amount thereof or of each installment, or revoking the fine or order of restitution or the unpaid portion thereof in whole or in part. **However, the court shall not suspend or reduce an assessment imposed pursuant to Mississippi Code Section 99-19-73.**

(2) If the court finds nonpayment is willful and finds the defendant in contempt of court, the court may direct that the defendant be incarcerated until the unpaid obligation is paid, subject, however, to section (e).