

89-R-99001

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OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

IN RE: AMENDMENT OF M.R.C.P. 54

MOTION TO AMEND M.R.C.P. 54

Comes now the Supreme Court Advisory Committee on Rules, pursuant to M.R.A.P. 27(f), and moves the Mississippi Supreme Court to amend M.R.C.P. 54 as discussed below. Members of the Committee believe that the current provision in Rule 54(d) limiting all judgments (by default and otherwise) to the amount demanded in the pleadings or amended pleadings encourages plaintiffs to overstate the amount of damages. The amendment would not alter the existing provision that limits a default judgment to the amount demanded in the pleadings. The amendment would allow a plaintiff to recover more than the amount demanded in the pleadings upon adequate proof at trial. The amendment would prevent technical missteps or clumsy drafting from depriving the plaintiff of a deserved recovery, particularly in cases where damages are uncertain at the time of filing and in cases where damages continue after filing. The amendment does not authorize recovery on claims that were not alleged. The amendments to the Advisory Committee Historical Note and the Advisory Committee Notes simply renumber the subsections of Rule 54 to reflect an earlier 2018 amendment adding a new subsection (c) and renumbering what had previously been 54(c) as 54(d).

Rule 54. Judgments; Costs

(a) **Definitions.** “Judgment” as used in these rules includes a final decree and any order from which an appeal lies.

(b) **Judgment Upon Multiple Claims or Involving Multiple Parties.** When more than one claim for relief is presented in an action, whether as a claim, counter-claim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an expressed determination that there is no just reason for delay and upon an

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expressed direction for the entry of the judgment. In the absence of such determination and direction, any order or other form of decision, however designated which adjudicates fewer than all of the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Judgment Summarily Dismissing a Motion for Post-Conviction Collateral Relief. When a court summarily dismisses a motion for post-conviction collateral relief under section 99-39-11(2) of the Mississippi Code, the order must identify the files, records, transcripts, and correspondence the court relied on and direct that certified copies of those documents be placed in the motion cause number's file.

(d) Demand for Judgment; Relief to be Granted. ~~A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled by the proof and which is within the jurisdiction of the court to grant, even if the party has not demanded such relief in his pleadings; however, final judgment shall not be entered for a monetary amount greater than that demanded in the pleadings or amended pleadings. A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment should grant the relief to which each party is entitled if such relief is within the jurisdiction of the court to grant, even if the party has not demanded that relief in its pleadings.~~

(e) Costs. Except when express provision therefor is made in a statute, costs shall be allowed as of course to the prevailing party unless the court otherwise directs, and this provision is applicable in all cases in which the State of Mississippi is a party plaintiff in civil actions as in cases of individual suitors. In all cases where costs are adjudged against any party who has given security for costs, execution may be ordered to issue against such security. Costs may be taxed by the clerk on one day's notice. On motions served within five days of the receipt of notice of such taxation, the action of the clerk may be reviewed by the court.

[Amended effective July 1, 2018; amended effective _____.]

Advisory Committee Historical Note

Rule 54 was amended effective July 1, 2018 to include a new subsection (c) concerning summary dismissals of motions for post-conviction collateral relief. What had previously been M.R.C.P. 54(c) [Demand for Judgment] is now M.R.C.P. 54(d). What had previously been M.R.C.P. 54(d) [Costs] is now M.R.C.P. 54(e).

Rule 54(d) was amended effective _____ so as to remove the language providing that "final judgment shall not be entered for a monetary amount greater than that demanded in the pleadings." A claimant may recover more than the amount demanded in the pleadings upon proper proof at trial. Default judgments are still limited to the amount demanded in the pleadings.

Advisory Committee Notes

Although it is not specifically described in the rule itself, there are several different stages that lead to the creation of a judgment that is final and appealable. It is important to differentiate the various steps that are part of this process. The first distinction is between the adjudication, either by a decision of the court or a verdict of the jury, and the judgment that is entered thereon. The terms "decision" and "judgment" are not synonymous under these rules. The decision consists of the court's opinion which consists of findings of fact and conclusions of law; the rendition of judgment is the pronouncement of that decision and the act that gives it legal effect.

A second distinction that should be noted is between the judgment itself and the "filing," or the "entry," of the judgment. A judgment is the final determination of an action and thus has the effect of terminating the litigation; it is "the act of the court." "Filing" simply refers to the delivery of the judgment to the clerk for entry and preservation. The "entry" of the judgment is the ministerial notation of the judgment by the clerk of the court pursuant to Rules 58 and 79(a); however, it is crucial to the effectiveness of the judgment and for measuring the time periods for appeal and the filing of various motions.

*Rule 54(b) is designed to facilitate the entry of a final judgment upon one or more but fewer than all the claims or as to one or more but fewer than all the parties in an action involving multiple claims or multiple parties, so as to enable the non-prevailing party to perfect an appeal as of right of a final judgment. Absent a certification under Rule 54(b), any order in a multiple-party or multiple-claim action that does not dispose of the entire action is interlocutory, even if it appears to adjudicate a separable portion of the controversy. Given that separate, piecemeal appeals of interlocutory orders entered in a single action would usually be inefficient, parties may not appeal interlocutory orders as of right. Instead, a party may request the trial court to certify such an interlocutory order as final judgment pursuant to Rule 54(b), so that an appeal of right may be taken pursuant to M.R.A.P. 4, or, alternatively, a party may petition the Supreme Court for permission to appeal an interlocutory order pursuant to M.R.A.P. 5. If a party attempts to perfect an appeal as of right pursuant to M.R.A.P. 4 of an order that does not dispose of all the claims between the parties, such appeal will be dismissed for lack of jurisdiction unless the order appealed from has been properly certified as a final judgment pursuant to Rule 54(b). See, e.g., *Williams v. Delta Reg'l Med. Ctr.*, 740 So. 2d 284 (Miss. 1999).*

Rule 54(b) gives a trial court discretion to certify an interlocutory order as a final judgment if the court determines that "there is no just reason for delay" of the appeal. Rule

54(b) certification should be reserved for cases in which delay of the appeal might prejudice a party. See Cox v. Howard, Weil, Laboussie, Friedrichs, Inc., 512 So. 2d 897, 900 (Miss. 1987). Courts should grant Rule 54(b) certification “cautiously in the interest of sound judicial administration in order to preserve the established judicial policy against piecemeal appeals.” See Indiana Lumbermen’s Mut. Ins. Co. v. Curtis Mathes, Mfg. Co., 456 So. 2d 750, 752-53 (Miss. 1984).

If the trial court chooses to certify an interlocutory order as a final judgment pursuant to Rule 54(b), it must do so in a definite, unmistakable manner. If the reasons for the Rule 54(b) certification are not clear from the record, the trial court should set forth its findings and reasons for certification. See Cox, 512 So. 2d at 900-01.

Rule ~~54(e)~~ 54(d) must be read in conjunction with Rule 8, which requires that every pleading asserting a claim include a demand for the relief to which the pleader believes himself entitled. Thus, Rule ~~54(e)~~ 54(d) applies to any demand for relief, whether made by defendant or plaintiff or presented by way of an original claim, counter-claim, cross-claim, or third-party claim. A default judgment may not extend to matters outside the issues raised by the pleadings or beyond the scope of the relief demanded; a judgment in a default case that awards relief that either is more than or different in kind from that requested originally is null and void and defendant may attack it collaterally in another proceeding.

Three related concepts should be distinguished in considering Rule ~~54(d)~~ 54(e): These are costs, fees, and expenses. Costs refer to those charges that one party has incurred and is permitted to have reimbursed by his opponent as part of the judgment in the action. Although costs has an everyday meaning synonymous with expenses, taxable costs under Rule ~~54(d)~~ 54(e) is more limited and represents those official expenses, such as court fees, that a court will assess against a litigant. Costs almost always amount to less than a successful litigant’s total expenses in connection with a law suit and their recovery is nearly always awarded to the successful party.

Fees are those amounts paid to the court or one of its officers for particular charges that generally are delineated by statute. Most commonly these include such items as filing fees, clerk’s and sheriff’s charges, and witnesses’ fees. In most instances an award of costs will include reimbursement for the fees paid by the party in whose favor the cost award is made.

Expenses include all the expenditures actually made by a litigant in connection with the action. Both fees and costs are expenses but by no means constitute all of them. Absent a special statute or rule, or an exceptional exercise of judicial discretion, such items as attorney’s fees, travel expenditures, and investigatory expenses will not qualify either as statutory fees or reimbursable costs. These expenses must be borne by the litigants.

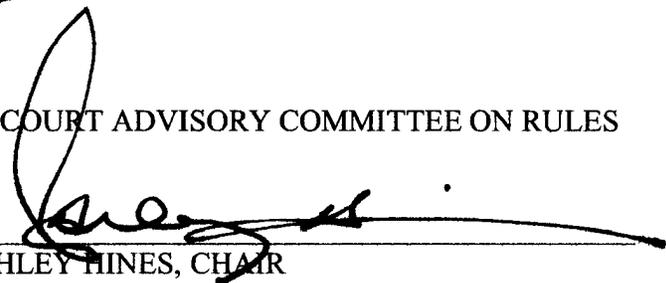
[Advisory Committee Note adopted effective July 1, 2014; amended effective _____.]

The proposed amendment to M.R.C.P. 54(d) is consistent with F.R.C.P. 54(c). The motion to amend M.R.C.P. 54 was unanimously approved by the Committee on May 16, 2019.

The Supreme Court Advisory Committee on Rules therefore moves that the above proposed amendment to M.R.C.P. 54 be considered by the Mississippi Supreme Court.

SO MOVED, this the 6th day of June, 2019.

SUPREME COURT ADVISORY COMMITTEE ON RULES



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