

89-R-99001

FILED
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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. 43

MOTION TO AMEND M.R.C.P. 43

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. 43 as discussed below. The amendment re-designates subsections (d), (e) and (f) as (b), (c) and (d).

Rule 43. Taking of Testimony

(a) Form and Admissibility. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules or the Mississippi Rules of Evidence.

(b) [Abrogated].

(e) [Abrogated].

(d) (b) Affirmation in Lieu of Oath. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(e) (c) Evidence on Motions. When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

(f) (d) Interpreters. The court may appoint an interpreter of its own selection and may assess ~~fix~~ his reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct and may be taxed ultimately as costs, in the discretion of the court. However, in the event and to the extent that such interpreters are required to be provided under the provisions of the Americans with Disabilities Act, 42 U.S.C. § 12131, et seq. or under rules or regulations promulgated pursuant thereto, such compensation and other costs of compliance shall be paid by the county in which the court sits, and shall not be taxed as costs.

[Amended effective January 10, 1986; June 12, 1997; _____.]

Advisory Committee Historical Note

Effective _____, Rule 43 was amended to re-designate former Rule 43(d) [Affirmation in Lieu of Oath] as Rule 43(b); to re-designate former Rule 43(e) [Evidence on Motions] as Rule 43(c); and to re-designate former Rule 43 (f) [Interpreters] as Rule 43(d).

Effective July 1, 1998, Rule 43(f) [Interpreters] was amended in regard to compliance with the Americans with Disabilities Act, 42 U.S.C. §1213, et seq.

EXHIBIT 2019-3487

Effective January 10, 1986, Rule 43(a) was amended to provide that testimony may be taken other than in open court, as provided by the Mississippi Rules of Evidence, and to delete references to the admissibility of evidence; Rule 43(b) [Mode and Order of Interrogation], and Rule 43(c) [Record of Excluded Evidence] were abrogated. 478-481 So.2d XXVII (West Miss.Cas.1986).

Advisory Committee Notes

The admission of telephonic testimony in lieu of a personal appearance in open court by the witness is within the sound discretion of the trial court. See *Byrd v. Nix*, 548 So. 2d 1317 (Miss. 1989) (interpreting M.R.C.P. 43(a) and M.R.E. 611(a)).

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

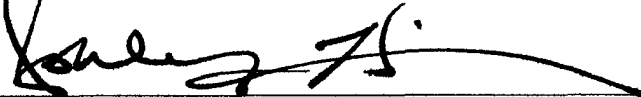
The previous subsections (b) [Mode and Order of Interrogation] and (c) [Record of Excluded evidence] were abrogated in 1986. Re-lettering the subsections will make the rule consistent with F.R.C.P. 43. The previous versions of F.R.C.P. 43(b) and (c) were deleted in 1972 and have since been re-designated. The motion to amend M.R.C.P. 43 was unanimously approved by the Committee on March 1, 2019.

The Supreme Court Advisory Committee on Rules therefore moves that the above proposed amendment to M.R.C.P. 43 be considered by the Mississippi Supreme Court.

SO MOVED, this the

6th day of September

SUPREME COURT ADVISORY COMMITTEE ON RULES



JUDGE ASHLEY HINES, CHAIR

P.O. Box 1315
Greenville, MS 38702-1315
Phone: 662-334-2652
Fax: 662-335-2381