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Clerk of Appellate Courts
ATTN: Justice Court Rules Committee
Post Office box 249
Jackson, MS 39205

FILED

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OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

Re: Comments on Proposed Amendments to the
Uniform Rules of Procedure for Justice Court

To Whom It May Concern:

Please accept this letter as the comments to the "Final Approved Amended Justice Court Rules" which were submitted for further comment on or about February 14, 2020.

Many of the Rules as proposed are sufficient or better than the current applicable Rules, or lack thereof, but there are a few proposed rules that are concerning enough to warrant amendment in order to make the entire process practical.

Our concerns are found within the "Civil Rules", beginning with Rule 12(a).

1. While Rule 12(a) substantially tracks the language of Miss. Code Ann. 11-9-105, it does not acknowledge that there may be a justification for not stating or attaching a "statement of account" to the Complaint as the Mississippi Rules of Civil Procedures does. (When any claim or defense is founded on an account or other written instrument, a copy thereof should be attached to or filed with the pleading *unless sufficient justification for its omission is stated* in the pleading. Miss. R. Civ. Pro 10(d). *Emphasis added.*)
 - a. We would propose that Rule 12(a) read as follows, in pertinent part:
 - i. "A civil action is commenced by filing the complaint with the court. The complaint shall state the evidence of the debt, statement of account (unless sufficient justification for its omission is stated in the complaint), or other basis for the civil action and make specific demand for damages and/or other relief allowed by law."
 - b. This alteration would accomplish many purposes.
 - i. It would ensure that private documents, such as medical records, which are protected under federal law, are not arbitrarily required by courts to be

placed in the public domain, thereby protecting both Defendants from an invasion of their privacy and Courts from breaking federal law.

- ii. Plaintiffs would not be required to submit lengthy contracts or statements that would in turn not need to be filed by court clerks.
2. Rule 14 appears to be an improvement in defining many aspects of Justice Court process, but the inclusion of Rule 14(m), which mandates that a Judge shall dismiss an action where service of process has not been made upon with defendant within sixty (60) days after the filing of the complaint, entirely negates any progress made by the proposed alterations. *It is worth noting that Plaintiffs have 120 days to serve named Defendants for suits filed in County, Circuit, and Federal Courts.
- a. Rule 14(m) is impractical in all jurisdictions, but impossible in larger jurisdictions. In practice, Plaintiffs have no idea whether a complaint has been served until they appear for their initial court date. This court date, more often than not, is at least 60-90 days from the date of filing.
 - i. This fact alone is sufficient to remove this subsection from the proposed rules. In practice, 14(m) will amount to:
 1. Constant dismissals of legitimate causes of action,
 2. Clerk's offices being inundated with Motions for Extension of Time for cases, even where process has been served, and
 3. Endless phone calls to already busy Justice Court clerks and staff by plaintiff's attempting to check process before their 60 days expires.
 - a. Many of these courts do not keep computer records and have to pull physical files in order to obtain an update requested by a party.
 - b. Viewing Rule 14 as a whole, considering Rule 14(m) and its 60-day drop dead date, subsections (f) and (g) become impossible as well, as neither dictates any sort of time frame and both anticipate that a Plaintiff is aware of the status of process.
 - i. The Rule give the constable has no time frame in which to attempt process, but Rule 14(f) allows the clerk to forward process to the sheriff "when any process has not been returned by the constable as required by this rule." In other words, since the rule places no time limitation upon the constable, this subsection has no practical use. It also would appear not to apply to process that was returned "Unable to Locate".
 - ii. Subsection (g) has the same issues as subsection (f), but does at least allow for the Plaintiff to request service by a process server of its choosing presumably by asserting that process has not been returned as required. However, the issue still remains as is in subsection (f).
 - c. Subsection (m) should be removed, or amended, and Plaintiffs should have the option to control service of process in their own cases.
 - i. Compliance with subsection (m) is impractical in most jurisdictions and impossibly in many. Its removal is the easiest solution, but an alternative amendment to the subsection could read as follows:
 1. **(m) Time limit for service.** The justice court judge may dismiss without prejudice any action where, without good cause, it appears

from the court file that service of process has not been made upon the defendant within one hundred and eighty (180) days after the initial hearing date. The plaintiff may file a motion for enlargement of time.

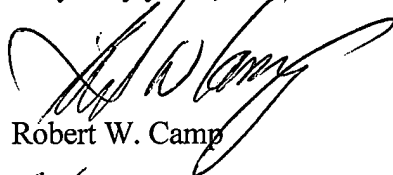
ii. Subsections (f) and (g) should be alternative methods of process to be made by motion of the Plaintiff after the first failed attempt at process by the Constable, whether such process is not returned by said constable or returned as "Unable to Locate". Each subsection would read as follows:

1. **(f) Service By Sheriff:** When any process has not been returned by the constable at the time of the initial hearing date, or has been returned by the constable as "Unable to Locate", the Plaintiff may make a written request for service by the sheriff of the county of the defendant's usual place of abode or, if the defendant is an entity, to the sheriff of the county of the entity's place of business, to serve process upon the defendant in like manner as required of a constable under this rule.

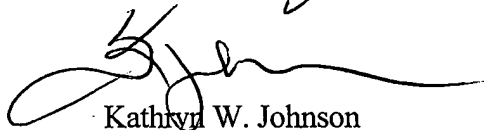
2. **(g) Service By Process Server:** When any process has not been returned by the constable at the time of the initial hearing date, or has been returned by the constable as "Unable to Locate", the Plaintiff may make a written request for service by a process server. Upon receiving a written request, the justice court clerk shall promptly deliver a true copy of the summons and complaint to the plaintiff or the plaintiff's attorney for service of process by a process server in like manner as required of a constable under this rule. The process server must be at least eighteen (18) years of age and not be a party to the action.

Thank you for your consideration. Should you have any questions or wish to contact me, please do so.

Very truly yours,



Robert W. Camp



Kathryn W. Johnson

RWC/kwj
Enclosure