



MISSISSIPPI CONSTABLES ASSOCIATION

89-R-99024

March 5, 2020

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Clerk of Appellate Courts
ATTN: Justice Court Rules Committee
P.O. Box 249
Jackson, MS 39205

FILED

MAR 05 2020

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

Re: Comments on Proposed Amendments to
The Uniform Rule of Procedure for Justice Court

To the Committee:

The Mississippi Constables Association would like to make the following comments to the "Proposed Amendments to the Rules of Procedure for Justice Court".

Our concerns are twofold. One is with the service of process fee provision in Rule 14(n)(1) proposed to read as follows: "No fees for service shall be paid to a constable who has not served process in substantial compliance to the rule".

The proposed language does not appear to take into consideration a statutory change made to constable fees in the 2019 Regular Session of the Legislature. Section 25-7-27. Because of practical issues that create confusion in the service of process and when a constable should or should not be paid, the Legislature amended the fee statute to clarify that a constable is entitled to be paid for attempts to serve process in certain situations even though service is not finally completed.

Section 25-7-27

(1) Marshals and constables shall charge the following fees:

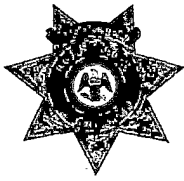
(a) (i) In all civil and criminal cases, for each service of process, summons, warrant, writ or other notice \$45.00

(ii) In all cases where there is more than one (1) defendant residing at the same household, for service on each additional defendant \$ 5.00

(iii) For service of each process of every kind and nature issued from outside the county where it is to be served, the fees provided in subparagraphs (i) and (ii) of this paragraph, as applicable, shall be assessed.

(iv) When a complaining party has provided erroneous information to the clerk of the court relating to the service of process on the defendant or defendants and process cannot be served after diligent search and inquiry on oath thereof of the marshal or constable, as the case may be, charged with serving such process, the fees provided in subparagraphs (i) and (ii) of this paragraph, as applicable, shall be assessed.

(v) When process has been attempted in one (1) county but the defendant is not found, and process must be served on that defendant in another county, the clerk shall notify the complaining party that an additional fee or fees must be paid before the process can be delivered to the other county.



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The new fee structure took effective on January 1, 2020. The proposed language of the proposed new Rule would appear to be in conflict with both 25-7-27(1)(a)(iv) and (v), above. In the factual situation in (iv), the Legislature determined that a constable was entitled to be paid a fee because he or she had been provided incorrect information, had made a “diligent search and inquiry” and had exerted considerable effort and expense.

In the factual situation in (iv), a common situation is that the constable attempts to serve the summons and finds that the party has moved to another county. Under previous law, the constable would not get paid even though he or she had attempted to serve the summons, but through his or her efforts had found that the party had moved to another county. The fee paid initially by the complaining party would be sent to the Justice Court of the second county to pay the constable there to serve the summons. Under the new language in (v), the Legislature provided that the complaining party must pay a new fee to be used to pay the constable in the county to which the party has moved. The initial fee now goes to the constable of the county in which the suit was filed.

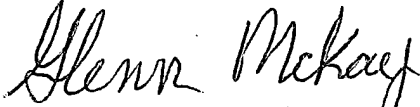
We suggest the addition of language that recognizes that the policy of the State is that the constable be paid in certain situations as outlined in the statute governing constable fees even though service process is not actually completed. A suggestion is the addition of language to the second sentence in Rule 14(n)(1) to have it read as follows: “No fees for service shall be paid to a constable who has not served *or attempted to serve* process in substantial compliance to the rule *and applicable statutes*”.

Our second concern is the provision of Rule 14(m) that mandates a judge to dismiss a case if process has not been served within sixty (60) days. There are some factual situations that may dictate that the judge have some discretion rather than dismissal being mandatory. There may be some emergency circumstances, such as, hurricane or flood. The recent floods in the Delta have made some areas inaccessible and, even in those that might be possibly accessible, the parties may be temporarily evacuated. It might be advisable to authorize the judge to temporarily suspend the Rule.

In situations where it has been determined that the defendant has moved to another county and process must be reissued to that county, the judge may be empowered to extend the time for service of process.

The Constables Association will be available for further discussion or comment and appreciates the opportunity to submit these comments.

Glenn McKay, President


Mississippi Constables Association