

Jackson County Justice Court

82-R-99024



Lisa B. Fairley
Court Administrator

March 3, 2020

Constables
Ty Thompson
Calvin W. Hutchins
Shane Langfitt
Kerry Fountain

Judges
Matthew Lachaussee
Sheila Osgood
Jason Thornton
Daniel D. Guice, III

FILED

MAR 06 2020

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

Clerk of Appellate Courts
P.O. Box 209
Jackson, MS 39205

RE: Comments on Proposed Rules of Procedure of Justice Court

Dear Clerk:

After reviewing the proposed amendments to the Rules of Procedure for Justice Court, I am submitting the following comments for consideration:

Rule 7(c): This rule addresses the reimbursement of expenses for judges who are appointed to hear cases in other counties. It is my opinion that Justice Court judges should receive a fee in addition to the expenses for travelling to another county to hear a case. Justice Court Judge is a part time position, and many judges have other jobs. I was recently appointed to hear a highly publicized case in Hancock County. The trial lasted over 4 hours, and it took me nearly an hour to get to the courthouse. I also had to review the file prior to the trial. I ended up spending all day away from my business to hear a case where I was only entitled to receive a mileage reimbursement. I understand the rationale for Circuit, Chancery and County Court Judges receiving only expense reimbursement because they hold full time positions. As a part time judge, if I am appointed to hear cases in another county, I have to set those cases on days I am not scheduled to be in my own Justice Court. In the future, I will be hesitant to accept any appointments under the current rules.

Rule 9: I would recommend that jury trials for civil actions in Justice Court should not be allowed. Most Justice Courts are not equipped to handle a jury trial. I am now in my 5th year as a Justice Court Judge, and I have never had this issue come up. However, it does not make sense to me to allow a civil litigant a jury trial when a criminal defendant who faces less than 6 months in jail is not allowed a jury trial. The civil litigant can appeal an adverse decision and receive a jury trial in County or Circuit court. To my knowledge, jury trials are extremely rare in justice court. I believe we should take this opportunity to take them out of civil cases altogether.

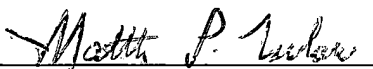
Rule 14(d)(3) If the rules are going to require mailing the summons in all cases where service was made by posting, there needs to be more clarification on the procedure. The rule should specifically state who is responsible for the mailing, who pays for the mailing, what happens if the mail is returned, etc. If the clerks must mail the summons, the 3 day time period from posting is not sufficient as many times, the constable does not present the return within 3 days. I

understand the desire to offer more protection to the defendant in cases of service by posting. However, in my experience, the mailing requirement currently in place has very little practical effect. My comments to Rule 23(e) below address the best way to protect defendants served by posting. This mailing requirement will have very little positive effect while the proposed Rule 23 (e) will have a negative impact on these defendants. This rule will also create an unnecessary burden on the clerks if the rule places the mailing duty on the clerks.

Rule 14(m) There currently is no time limit for service in Justice Court. The proposed 60 day time limit seems to be very short. Going from no time limit to a 60 day time limit which is half of the 120 day time limit in the Rules of Civil Procedure seems extreme. I would recommend at the very least amending that to 120 days to follow the Rules of Civil Procedure. As an attorney who has handled thousands of cases in Justice Courts, this rule is going to create problems for the clerks. In Circuit or County Court, the clerk issues the summons, and the plaintiff is responsible for getting the defendant served within the 120 days. If the defendant has not been served in 120 days, the plaintiff knows he must file for an extension. That process does not require any work from the clerk's office. In Justice Court, the clerk gets the summons to the constable or sheriff to serve, and the plaintiff just waits for the court date. This rule may cause cases to get dismissed through no fault of the plaintiff who may not know the summons has not been served. It will also place an added burden on the clerks to track service and notify the plaintiff when service is not complete.

Rule 23(e) I would recommend keeping the language of current Justice Court Rule 2.19 which states, "For good cause shown, the Court may set aside a default judgment." There is no time limit on that rule, but the defendant must show good cause. I believe this is an important safeguard under a set of rules that still allows posting of a summons. The current rule provides protection to a defendant who is served by posting a summons at an address where the defendant no longer resides. In many of those situations, the defendant only becomes aware of the lawsuit and default judgment after a garnishment is filed or the default judgment appears on a credit report. It can be months or years after the default judgment is entered that a defendant first has notice of the lawsuit and default judgment. The way Rule 23(e) is written, a request to set aside the default judgment must be made within the 30 day period to appeal. However, a defendant who was served by posting at a bad address does not know the appeal period has started and is left with no recourse.

Thank you for your consideration of these comments. I also believe it would be helpful to address these proposed rules at the next Justice Court Judges conference in Philadelphia in April. The judges and clerks are in the best position to analyze the practical effects these rules may have in Justice Court.



Matthew Lachaussee

Jackson County Justice Court Judge- District 1