

89-R-99001

**FILED**

**JUN 12 2020**

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

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**HICKS LAW FIRM** PLLC

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**A T T O R N E Y S A T L A W**

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June 9, 2020

- Clerk of Appellate Courts  
Post Office Box 249  
Jackson, MS 39205

Re: Comment on Motion to Amend M.R.C.P. 6 and 56

To Whom It May Concern:

I want to extend my appreciation to the Supreme Court's Rules Committee on Civil Practice and Procedure for drafting proposed amendments to Rules 6 and 56 of the M.R.C.P.

The proposed amendment to 56(c) includes a requirement that a motion for summary judgment be filed "at least 60 days before the time fixed for the hearing." I believe this well-intentioned proposed amendment, drafted for the purpose of allowing reasonable time for responses and rebuttals, may create unintentioned conflicts with other deadlines, including a trial date. Scheduling conflicts or the lack of sufficient hearing dates may reduce the opportunity for a hearing on the motion for summary judgment or cause opposing attorneys to argue waiver of the motion. In my view, as the rules committee is moving in the direction of reasonable scheduling deadlines, there should be a complete overhaul of the rules on this matter and consideration of a proposed amendment regarding mandatory scheduling orders, similar to federal court.

Another proposed amendment to M.R.C.P. 56(c) includes a requirement for filing an itemization of facts as part of the motion. This proposed amendment incorporates U.C.C.C.R. 4.02 which requires an itemization of facts relied on and not generally disputed. In my experience, the itemization is superfluous and unnecessary, as the attorneys rarely agree on facts not in dispute. I recommend adopting the exact language of F.R.C.P. 56 (c). Although the proposal states it is to make the rule commensurate with the federal rule, the federal rule is very different from the proposal.

Finally, the parties should not be required to seek leave of court to present live testimony at a summary judgment hearing. Live testimony should be an automatic option for the parties and assists the court in determining whether genuine issues of material facts exist.

**MOTION#**

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Clerk of Appellate Courts

June 8, 2020

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I applaud the Committee for deleting the mandatory award of reasonable expenses incurred if summary judgment is denied. I propose an amendment allowing the court discretion to award expenses and fees in the event of a finding of bad faith and recommend adopting the exact language of the comparable federal rule, F.R.C.P. 56 (h).

Best Regards,

Clark

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