

89-R-99001

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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 THE M.R.C.P. FORMS

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

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 the Forms authorized by M.R.C.P. 84. The Committee proposes retaining Forms 1A, 1AA, 1B, 1C, 1D, 1DD and 1E as they are. The Committee proposes omitting the large majority of the remaining forms based on the Committee's determination that they no longer serve a useful purpose. The Committee recommends retaining a revised version of Form 33 (Plaintiff's Motion for Substitution – Deceased Party Defendant) and renumbering it Form 2. The revised form could be used to move for substitution of a deceased party plaintiff or a deceased party defendant. The Committee also recommends retaining Forms 36, 37 and 38 concerning entry of default and default judgment with minor revisions and renumbering them Forms 3, 4 and 5. Forms 36 and 37 would be revised simply to change the dates on the form from 19__ to 20__. Form 38 would be revised to change the dates on the form and to change the reference to Rule 55(b)(2) to Rule 55(b).

Appendix A. Forms.

Form 1A. Summons.

[no proposed amendment]

Form 1AA. Summons.

[no proposed amendment]

Form 1B. Notice and Acknowledgment for Service by Mail.

[no proposed amendment]

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Form 1C. Summons by Publication.

[no proposed amendment]

Form 1D. Rule 81 Summons.

[no proposed amendment]

Form 1DD. Rule 81 Summons.

[no proposed amendment]

Form 1E. Waiver of Process.

[no proposed amendment]

~~**Form 2. Complaint on a Promissory Note.**~~

[delete form]

~~**Form 3. Complaint on Covenant or Agreement.**~~

[delete form]

~~**Form 4. Complaint for Specific Performance.**~~

[delete form]

~~**Form 5. Complaint on Open Account.**~~

[delete form]

~~**Form 6. Complaint on Account Stated.**~~

[delete form]

~~**Form 7. Complaint for Goods Sold and Delivered.**~~

[delete form]

~~**Form 8. Complaint for Work and Labor Done.**~~

[delete form]

~~Form 9. Complaint for Money Lent.~~

[delete form]

~~Form 10. Complaint for Money Paid by Mistake.~~

[delete form]

~~Form 11. Complaint for Money Had and Received.~~

[delete form]

~~Form 12. Complaint for Money Paid by Plaintiff for Defendant. Form 13.
Complaint on Policy of Life Insurance.~~

[delete form]

~~Form 14. Complaint on Policy of Fire Insurance.~~

[delete form]

~~Form 15. Complaint for Negligence or Wantonness.~~

[delete form]

~~Form 16. Complaint for Assault and Battery.~~

[delete form]

~~Form 17. Complaint for False Imprisonment.~~

[delete form]

~~Form 18. Complaint for Malicious Prosecution.~~

[delete form]

~~Form 19. Complaint for Fraud.~~

[delete form]

~~Form 20. Complaint on a Warranty.~~

[delete form]

~~Form 21. Complaint for Conversion.~~

[delete form]

~~Form 22. Motion to Dismiss Pursuant to Rule 12(b).~~

[delete form]

~~Form 23. Answer Presenting Defenses Under Rule 12(b).~~

[delete form]

~~Form 24. Motion to Bring in Third Party Defendant.~~

[delete form]

~~Form 25. Third Party Complaint.~~

[delete form]

~~Form 26. Motion to Intervene as a Defendant Under Rule 24.~~

[delete form]

~~Form 27. Motion to Drop Defendant or for Severance of Claims.~~

[delete form]

~~Form 28. Motion by Defendant for Severance of Claims of Several Plaintiffs.~~

[delete form]

~~Form 29. Motion by Plaintiff to Add Defendant.~~

[delete form]

~~Form 30. Motion by Defendant to Bring in Additional Defendant.~~

[delete form]

~~Form 31. Motion by Defendant to Add Additional Plaintiff.~~

[delete form]

Form 32. Answer to Complaint Set Forth in Form 11 with Counter Claim for Interpleader.

[delete form]

Form 33. 2. Plaintiff's Motion for Substitution - Deceased Party Plaintiff or Deceased Defendant.

Plaintiff [*Plaintiff, defendant or any party's successor or representative*] shows to the court that _____, the above-named defendant [*plaintiff or defendant*], died intestate (or testate) on or about the _____ day of _____, 19__ 20__ ; that letters of administration upon the estate of ~~the said~~ _____ were issued on the _____ day of _____, 19__ 20__, to _____ as administrator by the _____ Court of the State of Mississippi (or, that _____ was duly appointed executor of the last will of _____ by the _____ Court of the State of Mississippi and qualified as such executor on the _____ day of _____, 19__ 20__): and this is an action for [*state briefly nature of action*] and the claim of plaintiff [*of Plaintiff _____ or against Defendant _____*] was not extinguished by the death of ~~defendant~~ [*Plaintiff _____ or Defendant _____*].

Wherefore plaintiff [*plaintiff, defendant or any party's successor or representative*] moves the court for an order substituting _____, administrator (or, as the case may be, executor) of the estate of _____, deceased, as party defendant [*plaintiff or defendant*] herein.

As amended, renumbered Form 2 would read:

Form 2. Motion for Substitution - Deceased Plaintiff or Deceased Defendant.

[*Plaintiff, defendant or any party's successor or representative*] shows to the court that _____, the above-named [*plaintiff or defendant*], died intestate (or testate) on or about the _____ day of _____, 20__ ; that letters of administration upon the estate of _____ were issued on the _____ day of _____, 20__, to _____ as administrator by the _____ Court of the State of Mississippi (or, that _____ was duly appointed executor of the last will of _____ by the _____ Court of the State of Mississippi and qualified as such executor on the _____ day of _____, 20__): and this is an action for [*state briefly nature of action*] and the claim [*of Plaintiff _____ or against Defendant _____*] was not extinguished by the death of [*Plaintiff _____ or Defendant _____*].

Wherefore [*plaintiff, defendant or any party's successor or representative*] moves the court for an order substituting _____, administrator (or, as the case may

be, executor) of the estate of _____, deceased, as party [plaintiff or defendant] herein.

Form 34. Pre-trial Order.

[delete form]

Form 35. Motion for Judgment Notwithstanding the Verdict, or in the Alternative, for New Trial.

[delete form]

Form 36. Application to Clerk for Entry of Default and Supporting Affidavit.

The clerk is requested to enter default against the defendant _____ in the above entitled action for failure to plead, answer or otherwise defend as set out in the affidavit hereto annexed.

Attorney for the Plaintiff

State of Mississippi

County of _____

_____, being duly sworn, deposed and says:

1. That he is attorney of record of the plaintiff, and has personal knowledge of the facts set forth in this affidavit.
2. That the defendant was duly served with a copy of the summons, together with a copy of plaintiff's complaint, on the _____ day of _____, 19____, 20____.
3. That more than 30 days have elapsed since the date on which the said defendant was served with summons and a copy of the complaint.
4. That the defendant has failed to answer or otherwise defend as to plaintiff's complaint, or serve a copy of any answer or other defense which he might have upon the undersigned attorney of record for the plaintiff.
5. That this affidavit is executed by affiant herein in accordance with Rule 55(a) of the Mississippi Rules of Civil Procedure, for the purpose of enabling the plaintiff to obtain an

entry of default against the defendant, for his failure to answer or otherwise defend as to the plaintiff's complaint.

Attorney for the Plaintiff

Sworn to and subscribed before me this the _____ day of _____, 19____ 20____.

Form 4 37. Docket of Entry of Default.

Default entered against defendant _____ this the _____ day of _____, 19____ 20____.

Form 5 38. Default Judgment Entered by Court.

This action came on for hearing on the motion of the plaintiff for a default judgment pursuant to Rule 55(b)(2) of the Mississippi Rules of Civil Procedure, and the defendant having been duly served with the summons and complaint and not being an infant or an unrepresented incompetent person and having failed to plead or otherwise defend, and his default having been duly entered and the defendant having taken no proceedings since such default was entered,

It is Ordered and Adjudged that [*here set forth relief granted to plaintiff*].

This _____ day of _____, 19____ 20____.

The motion to amend M.R.C.P. Forms was unanimously approved by the Committee on January 10, 2020. The Supreme Court Advisory Committee on Rules therefore moves that the above proposed amendment to M.R.C.P. Forms be considered by the Mississippi Supreme Court.

SO MOVED, this the 7th day of February, 2020.

SUPREME COURT ADVISORY COMMITTEE ON RULES



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