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Rules Committee on Civil Practice and Procedure
P.O. Box 249
Jackson, Mississippi 39205

Re: Rule Changes for Rules 16 and 26

Dear Sir or Madam:

I write in support of several changes to the Mississippi Rules of Civil Procedure. First, with the proposed amendments to Rule 16, it would seem that an automatic stay of the setting of the trial date and discovery deadlines should be entered if, in a personal injury action, the plaintiff certifies under oath, or the plaintiff's attorney certifies to the Court, that the plaintiff is still under the active care of a treating physician. This would allow for plaintiffs who are forced to file a lawsuit due to the pending statute of limitations to continue to treat so that the case may be tried and all potential claims for injury could be put before the jury. It would save the parties a significant amount of time in amending discovery answers and expert designations.

Furthermore, any amendment to Rule 26 in regard to experts should provide that plaintiffs should not be required to disclose the opinions of the treating doctors if reasonably diligent efforts are made to obtain the same, but the doctor refuses or is unwilling to provide those opinions short of a deposition. This will prevent doctors from being harried into writing opinion letters for every patient who is involved in litigation. The doctor's primary purpose is to treat patients, not to give opinions for litigation. This will prevent needless litigation and frivolous motions regarding the need to obtain written opinions from treating doctors. Furthermore, it would seem that each party, after having received an expert designation, should have an opportunity to designate rebuttal experts if necessary. The current setup, wherein the plaintiff's expert must be designated first and the defendant's expert then designated, does not provide for an adequate ability for the plaintiff's expert to rebut the opinions of the defense expert. This put plaintiffs at a disadvantage in that they have to anticipate what the defendant's expert(s) will testify to in order to address the arguments made by the defense expert.

Finally, an amendment should be made to either Rule 4(h) or Rule 55(c) of the Mississippi Rules of Civil Procedure. As the Mississippi Supreme Court has issued rulings throughout the years, a plaintiff's cause of action is likely to be dismissed if the plaintiff does not serve the defendant within 120 days, as

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"good cause" is often tough to prove. Contrarily, the Court's interpretation of Rule 55(c) of the Mississippi Rules of Civil Procedure has provided a much more lenient standard for defendant to show "good cause." The application of these two rules, ***as applied*** by the Courts, violate the Equal Protection Clause of the United States Constitution. Why are doubts resolved in favor of letting a case get litigated when a default is entered, but not when a plaintiff does not serve the defendant within 120 days? Why are the merits of the case not considered when the defendant is not served within 120 days, but the "colorable defense" of a defendant considered?

Thank you for your consideration of these suggestions. Should you have any questions or wish to discuss this further, please feel free to contact me.

Very truly yours,

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