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Clerk of Appellate Courts
P O Box 249
Jackson, MS 39205

**OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS**

Re: Mississippi Rules of Civil Procedure
Revision Project

Dear Clerk:

These are comments to the Revision Project.

Rule 4(h). The undersigned agrees with The Winn Brown Law Firm's letter filed October 15, 2015, suggesting Rule 4(h) be deleted.

Rule 10(d). This rule should be deleted it serves no purpose. Any "account or written instrument" may be obtained in discovery. Additionally, the Rule uses the word "should." The purpose of the Rules is to require something, not make a mere suggestion. It is difficult to see the benefit of a suggestion contained in the Rules. What is a trial court to do with a suggestion when a party complains the adverse party did not follow the suggestion?

Rule 56(c) requires a Court consider various matters in deciding whether to grant summary judgment, one of which is "the pleadings." Then, Rule 56(e) says that "an adverse party may not rest upon the mere allegations or denials of his pleadings . . ." If an adverse party may not rest upon allegations and denials, then why should a Court even consider them as required by subsection (c)? These sections seem contradictory. It would be better if subsection (c) required a Court to consider "admissions" in pleadings. This Court has use this standard in a couple of recent cases. *Borsage v. LWC MS properties, LLC*, 158 So 3d 1137, 1142 ¶ 14 (Miss. 2015); and, *Columbus Cheer Company v. City of Columbus*, 155 So. 3d 744, 745 ¶ 4 (Miss. 2014). Rather than changing the Rule by case law, wouldn't it be more honest to change the Rule itself.

Rule 58 says that a judgment shall be effective "only" when "entered" pursuant to M.R.C.P. 79(a). Rule 79(a) says a judgment is "entered" when it is "noted" in the clerk's "general docket" with the required additional information. The date when a judgment (or anything else) is "noted" on the general docket is almost never known by a lawyer who obtains a copy of the judgment from the clerk. A lawyer can call the clerk to obtain this information, but when a lawyer obtains a copy of the judgment from the clerk, the docket information is almost never shown.

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What is almost always known, however, is the date the judgment was filed. The filing date is a piece of information that is almost always known when a lawyer obtains a copy of the judgment from the clerk. Rule 58 should be changed from "entered" to "filed." That would provide more clarity, and provides more attorneys with the information they need. Rule 5(e) already defines filing.

Rule 59(e). In one sentence, Rule 59(e) sets a "filing" deadline based on the "entry" of a judgment. Why the difference? Rule 59(e) could be changed to reflect "filing" rather than "entry."

Sincerely,

SMITH & McARTY PLLC



Robert L. McArty

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