

# MEMORANDUM

RE: Executive Summary of the Mississippi Rules of Criminal Procedure

DATE: December 9, 2016

---

In releasing the Mississippi Rules of Criminal Procedure, the Rules Committee on Criminal Practice and Procedure wished to provide the public with an executive summary of the new Rules. This memo attempts to highlight the Rules that create significant new procedures and/or alter current practice. Those Rules are, as follows:

**-Rule 1.1 (General Provisions - Scope)**

-broad scope, as the Rules “govern the procedure in all criminal proceedings, from arrest through post-trial motions, in all trial courts” in Mississippi, “except as otherwise provided . . . .”

-replace the Uniform Rules of Circuit and County Court (“URCCC”) and the Uniform Rules of Procedure for Justice Court

**-Rule 3 (Issuance of Arrest Warrant or Summons)**

-new procedure which gives the judge discretion to cause a summons to be issued in those cases in which an arrest warrant is not necessary to secure the presence of the defendant and there is little concern that the defendant will flee

**-Rule 5.1(b)(3) & (c)(2)(A) (Arrest and Initial Appearance - Procedure upon Arrest)**

-directs that an individual taken into custody, and not released on personal recognizance or execution of an appearance bond, is to receive an initial appearance before a judge no later than forty-eight (48) hours after arrest

**-Rule 6.1(a) (Preliminary Hearing - Right to a Preliminary Hearing)**

-provides that a defendant charged with a felony (and not under indictment) is entitled to a preliminary hearing upon request

**-Rule 7.4 (Counsel - Standards for Appointment of Trial and Appellate Counsel in Death Penalty Cases)**

-new procedure outlining standards of eligibility for appointed counsel in the trial and appellate stages of death-penalty litigation

**-Rule 8.2(a) (Release - Right to Release)**

-outlines factors for consideration by the judge setting bail

**-Rule 8.2(c) (Release - Bond Guidelines)**

-general guide for courts in setting bail for individuals charged with bailable offenses that does not obviate a judge's general discretion in the matter

**-Rule 8.5(c) (Release - Review by Circuit Court)**

-mandates periodic review of release conditions for all felony defendants who are eligible for bail and have been in jail for over ninety (90) days

**-Rule 9(a) (Trial Setting - Trial Docket)**

-trial shall be set no later than two-hundred-and-seventy (270) days after arraignment (or waiver thereof)

**-Rule 12 (Mental Examinations)**

-provides a comprehensive procedure for examinations and hearings regarding competency, sanity, intellectual disability, etc.

**-Rule 12.3(b) (Mental Examinations - Examination; Commitment)**

-a defendant committed to a mental health facility for purposes of a mental examination must be placed "in the least restrictive appropriate setting" and remain there "for no longer than reasonably necessary to conduct the examination . . . ."

**-Rule 12.5(a) (Mental Examinations - Hearing)**

-deviates from URCCC 9.06 in that, in the absence of a motion following a court-ordered mental examination, a competency hearing is permissible, but not mandatory

**-Rule 14.1(a) (Indictment - Contents Generally)**

-indictment must include "statement of the essential facts and elements constituting the offense charged"

**-Rule 14.1(b) (Indictment - Enhanced Punishment for Subsequent Offenses)**

-new procedure wherein, if the State seeks enhanced punishment for subsequent offenses, it must either reference the prior conviction(s) in the indictment or in a "formal notice" filed at least thirty (30) days before trial or entry of a guilty plea, absent written waiver of the thirty (30) day requirement by the defendant

**-Rule 15.1(a) (Arraignment and Pleas - Service of Indictment)**

-arraignment, unless waived, shall be held within thirty (30) days after service of the indictment

**-Rule 15.4(a) (Arraignment and Pleas - Plea Bargaining - Entering into Plea Agreements)**

-new procedure in which, if the trial court rejects the sentence recommendation within a plea agreement, the defendant must be advised of such and given the opportunity to withdraw the plea

**-Rule 16.2(a) (Pretrial Motions - Effect of Granting Motion Based on Defective Charge)**

-outlines permissible procedures when a motion to dismiss is granted based upon a defect in instituting the prosecution or in the charge

**-Rule 17.5 (Disclosure and Discovery - Depositions)**

-new procedure for depositions “to preserve testimony for trial[,]” which is based upon Federal Rule of Criminal Procedure 15

**-Rule 17.10 (Disclosure and Discovery - Discovery in Municipal and Justice Courts)**

-new procedure regarding discovery in justice/municipal courts

**-Rule 20(b)(2) (Duties of Court Reporters - Court Reporters in justice/municipal court proceedings)**

-new procedure

**-Rule 22(f) (Jury Instructions - When Read)**

-slightly changes current practice regarding post-argument jury instructions

**-Rule 24.2(d) (Verdict - Lesser-Included Offense or Attempt)**

-deviates from URCCC 3.10 in that there is no provision for instruction on “lesser-related” offenses, which is consistent with *Hye v. State*, 162 So. 3d 750 (Miss. 2015)

**-Rule 24.4(b) (Verdict - Partial Verdicts and Mistrial - Multiple Counts)**

-expansion of partial verdicts to address cases involving multiple counts

**-Rule 25.1(b)(7) (Post-Trial Motions - Grounds)**

-expands grounds justifying a new trial via catch-all provision

**-Rule 25.1(c) (Post-Trial Motions - Timeliness)**

-time to file motion for a new trial begins running after entry of judgment (i.e., “both adjudication of guilt and sentence”)

**-Rule 25.3 (Post-Trial Motions - Denial by Operation of Law)**

-new to Mississippi practice

**-Rule 26.2 (Judgment - Time)**

-new rule that replaces URCCC 11.01

**-Rule 26.3(b) (Judgment - Presentence Report - Content)**

-expands possible content within the presentence report, as noted in the Comment

**-Rule 26.6 (Judgment - Fine, Restitution, and/or Court Costs following Adjudication of Guilt)**

-new rule that replaces URCCC 11.04

-section (d) provides that a defendant who fails to pay a fine, restitution, or court costs must first be summoned to appear and show cause

-section (e) provides specific restrictions on incarceration for non-payment and has unique requirements in the context of justice/municipal court

**-Rule 29.1(c) (Appeals from Justice or Municipal Court - Dismissal)**

-new procedure involving the requirement of a deficiency notice before dismissal of defective appeal

**-Rule 30.1(a) (Appeals from County Court - Notice of Appeal)**

-new procedure in that the notice of appeal is filed with the circuit court clerk, not the county court clerk (as provided in URCCC 12.03(A.))

**-Rule 32 (Contempt)**

-provides a comprehensive procedure regarding contempt