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**UNIFORM RULES OF PROCEDURE FOR JUSTICE COURT**

[Adopted Effective May 1, 1995]

**RULE 1.00 GENERAL RULES**

**RULE 1.01 SCOPE OF RULES**

These rules govern procedures in justice court and, except where specified, apply to all actions, civil and criminal.

## **RULE 1.02 COURTROOM DECORUM AND SECURITY**

The court shall be opened formally and conducted with dignity and decorum at all times. The judge shall wear a judicial robe at all times when presiding in open court. Each officer of the court shall be responsible for promotion of respect for the court.

No one shall wear or bear firearms or weapons of any description in the courtroom, except bailiffs and any necessary guards of a prisoner, unless authorized by the court.

## **RULE 1.03 FAILURE TO CONFORM TO THESE RULES**

Any person embraced within these rules who violates the provisions hereof may be subject to sanctions, contempt proceedings or other disciplinary actions imposed or initiated by the court.

## **RULE 1.04 USE OF CAMERAS, RECORDING AND BROADCASTING EQUIPMENT**

The use of cameras, recording or broadcasting equipment, or such shall be governed by the Code of Judicial Conduct.

## **RULE 1.05 EARWIGGING THE JUDGE PROHIBITED**

No person shall undertake to discuss with, or in the presence of, or hearing of the judge, the law or facts or alleged facts of any case then pending in the court, or likely to be instituted therein, except in the orderly progress of the trial, and arguments or briefs connected therewith; nor attempt in any manner, except as stated above, to influence the decision of the judge in any manner.

## **RULE 1.06 CLERK'S DUTY TO KEEP PAPERS**

No original record, or any part of a file, record or court papers shall be taken from the clerk's custody without the permission of the clerk of the court. The docket of the court shall at all times remain in the office of the justice court clerk. The clerk shall retain custody of the docket, make all entries thereon, keep it safe and provide it to the court for examination in the office. The docket may be maintained by computer. Failure of a judge to sign the docket shall not invalidate the actions of the court contained therein.

## **RULE 1.07 CORRECTION OF CLERICAL ERRORS**

Clerical mistakes in judgments, orders, or other parts of the record, and errors therein arising from oversight of omission, may be corrected by the court at any time on its own initiative or on motion of any party and, after such notice, if any, as the court orders, up until the time the record is transmitted by the clerk of the justice court to the higher court. Notices of clerical errors corrected shall be given to the parties of the action.

**RULE 1.08 OFFICER OF THE COURT MUST NOT SIGN BONDS**

No officer of the court shall sign any bond of any kind in or to any court of this state.

**RULE 1.09 WITHDRAWAL OF COUNSEL**

When an attorney makes an appearance for a party in a case, that attorney will not be allowed to withdraw as attorney for the party without the permission of the court. The attorney making the request shall give notice to his client and to all attorneys in the cause and certify the same to the court in writing. The court shall not permit withdrawal without prior notice to his client and all attorneys of record.

**RULE 1.10 RECUSAL OF JUDGES**

If a justice court judge recuses himself or is otherwise unable to serve in a case, the case shall be rotated to another justice court judge of the county. If no justice court judge is able to serve because of recusals, or is otherwise unable to serve, then a circuit court judge of the district, in consultation with the recused judge(s), may appoint any justice court judge from a surrounding county to hear the case.

**RULE 1.11 ADDITIONAL RULES**

No rule of procedure, local or otherwise, shall be adopted without the approval of the Mississippi Supreme Court.

**RULE 1.12 PLEADINGS AND MOTIONS  
SUBMITTED TO THE COURT**

All pleadings, motions or any other application to the court shall bear the name, address and phone number of the party filing the same, and, if any attorney is representing the party, the name, office address and phone number of the attorney.

### **RULE 1.13 REQUESTS OF SUBPOENAS**

Requests for subpoenas must be made in writing and delivered to the clerk in a reasonable time before the trial date. The written request to the clerk shall give the address of the witnesses and other information, so as to furnish sure guides to the person serving the subpoena. These requests must be preserved by the clerk.

### **RULE 1.14 SERVICE OF SUBPOENAS**

(a) Every subpoena shall be issued by the clerk under seal of the court, shall state the name and address of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified.

(b) A subpoena may be served by the sheriff, his deputy, a constable, or by any other person who is not a party and is not less than 18 years of age, and his return endorsed thereon shall be prima facie proof of service, or the witness may acknowledge service in writing on the subpoena. Service of the subpoena shall be executed upon the witness personally.

(c) At the request of any party, subpoenas for attendance at a hearing or trial shall be issued by the clerk of the court in which the hearing or trial is held. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the state.

(d) Failure by any person, without adequate excuse, to obey a subpoena served upon him may be subject to the penalties provided in Miss. Code Ann. § 11-9-115.

### **RULE 1.15 APPOINTMENT OF INTERPRETER**

The court may appoint an interpreter pursuant to Miss. Code Ann. § 13-1-301 through § 13-1-315.

### **RULE 1.16 SUMMONS OF JURORS**

When a jury is needed in justice court, the justice court clerk shall notify the circuit court clerk who shall issue summonses for a jury in the same manner as for circuit court. The summonses shall be returnable to justice court.

### **RULE 1.17 PARTICIPANTS MUST BE PROMPT**

Every person whose presence is required for the conduct of the business of the court shall be in prompt attendance.

## **RULE 1.18 CONDUCT OF COUNSEL AND PARTIES**

(a) Each party or its representative shall manifest an attitude of professional respect toward the judge, the opposing attorney, witnesses, defendants, jurors, and others in the courtroom. In the courtroom, attorneys shall not engage in behavior or tactics purposely calculated to irritate or annoy the opposing attorney and shall address the court, not the opposing attorney, on all matters relating to the case.

(b) All objections to testimony must be made to the judge and not to the opposing attorney. The objection must be specific and not general. The attorneys will not be permitted to argue between themselves. Attorneys must stand when addressing the court, examining witnesses, and addressing the jury, except when excused for good cause by the court. Attorneys may directly address the jury panel only during voir dire, opening and closing statements.

(c) Attorneys and/or parties must limit themselves to asking questions and must refrain from making statements, quips, or side remarks in an examination of a witness. The examination of witnesses will be conducted fairly and objectively, with the attorneys and witnesses displaying respect and courtesy to each other. The attorneys may not ask questions merely to embarrass or humiliate the witness.

(d) In opening statements, and in closing arguments, an attorney may not attack the opposing attorney. The attorneys may not call any juror by name, or have any personal contact with the jury whatsoever, nor attempts to converse with or solicit audible answers from the jurors individually. In the argument to the jury, the attorneys will be required to keep within proper bounds, and any attempt to inject improper matter may be stopped by the court without the necessity of an objection. The attorneys will refrain from thanking the jury for acting as jurors and, after return of a verdict by the jury, neither the attorneys, parties, or spectators shall offer their congratulations, thanks, or condemnation to the jury for the verdict returned.

## **RULE 1.19 COMPOSITION OF JURY**

Juries shall consist of six (6) persons and, in the discretion of the court, an alternate juror. Both sides may challenge any juror for cause. Each side shall have two (2) peremptory challenges. These challenges shall not be used in the selection of the alternate juror. Each side shall be allowed one peremptory challenge for the selection of an alternate juror; and this selection shall not be used for regular jurors. Peremptory jury challenges shall be exercised as follows:

(1) The court shall consider all challenges for cause before the parties are required to exercise peremptory challenges.

(2) Next, the plaintiff shall tender to the defendant a full panel of accepted jurors having considered the jury in the order in which they appeared, having exercised any peremptory challenges desired.

(3) Next, the defendant shall go down the juror list accepted by the plaintiff and exercise any peremptory challenges to that panel.

(4) Once the defendant exercises peremptory challenges to the panel tendered, the plaintiff shall then be required to again tender to the defendant a full panel of accepted jurors.

(5) The above procedure shall be repeated until a full panel of jurors has been accepted by both sides.

(6) Once the jury panel is selected, alternate jurors shall be selected following the procedure set forth above for picking the jury panel.

(7) Constitutional challenges for the use of peremptory challenges shall be made at the time each panel is tendered.

### **RULE 1.20 VOIR DIRE OF JURORS**

In the voir dire examination of jurors, the attorney will question the entire venire only on matters not inquired into by the court. Individual jurors may be examined only when proper to inquire as to answers given or for other good cause allowed by the court. No hypothetical questions requiring any juror to pledge a particular verdict will be asked. Attorneys will not offer an opinion on the law. The court may set a reasonable time limit for voir dire.

### **RULE 1.21 ALTERNATE JURORS**

The alternate juror shall take the oath of a juror and hear all evidence and arguments, but shall not retire to deliberate the case unless a juror is excused by the court or becomes unable to serve.

### **RULE 1.22 COMMUNICATIONS WITH JURORS**

Jurors are not permitted to mix and mingle with the attorneys, parties, witnesses, and



spectators in the courtroom, corridors, or restrooms in the courthouse. The court must instruct jurors that they are to avoid all contacts with the attorneys, parties, witnesses or spectators.

Except as provided by these rules, no person or attorney for the person involved in any case may communicate with or offer any favor, however slight, to any person on the jury venire.

### **RULE 1.23 JURY INSTRUCTIONS**

The judge shall instruct the jury on the law applicable to the case.

### **RULE 1.24 JURY DELIBERATIONS**

(a) The court may direct the jury to select one of its members to preside over the deliberations and to write out and return any verdict agreed upon, and admonish the jurors that, until they are discharged as jurors in the cause, they may communicate upon subjects connected with the trial only while the jury is convened in the jury room for the purpose of reaching a verdict.

(b) The jurors shall be kept together for deliberations as the court reasonably directs.

(c) After the jurors have retired to consider their verdict, the court shall not recall the jurors to hear additional evidence.

(d) The jury shall reduce its verdict to writing and present the same to the court.

### **RULE 1.25 APPEALS FROM JUSTICE COURT**

Appeals from justice court shall be governed by the rules approved by the Supreme Court for the governance of appeals to the county or circuit courts.

## **2.00 CIVIL RULES**

### **RULE 2.01 APPLICABILITY OF RULES**

All rules designated as civil rules are applicable only in civil cases. General rules are also applicable in civil cases.

## **RULE 2.02 FORM OF ACTION**

There shall be one form of action known as “civil action.”

## **RULE 2.03 COMMENCEMENT OF CIVIL ACTION**

A civil action shall be commenced in accordance with the provisions of Miss. Code Ann § 11-9-105.

## **RULE 2.04 ISSUANCE OF SUMMONS**

Summons shall be issued and served pursuant to Miss. Code Ann. § § 11-9-107, 11-9-109 and 13-3-5(2).

## **RULE 2.05 COMPUTATION OF TIME**

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the date of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or any other day that the courthouse or the clerk’s office is in fact closed, whether with or without legal authority, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, a legal holiday, or any other day when the courthouse or clerk’s office is closed. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. The Court, in its discretion, may grant an extension of time.

## **RULE 2.06 FAILURE TO APPEAR ON TRIAL DATE**

If the defendant fails to appear on the trial date, and the plaintiff appears, then the court may enter a default judgment as under Rule 2.12. If the plaintiff fails to appear on the trial date, and the defendant appears, the court shall dismiss the case with prejudice. If neither the plaintiff nor the defendant appears on the trial date, the court shall dismiss the case with prejudice.

## **RULE 2.07 COUNTERCLAIMS AND SETOFFS**

Assertions of counterclaims and setoffs shall be liberally allowed when claimed by the defendant. The failure to assert any counterclaim or setoff shall not bar subsequent action upon such claims. Upon the assertion of any counterclaim which exceeds the jurisdictional

limits of justice court, the court shall dismiss the case without prejudice.

### **RULE 2.08 REPRESENTATION BY GUARDIAN AD LITEM**

Whenever a party to an action is an infant, or under legal disability, a representative may sue or defend on behalf of such party. A party defendant who is an infant, or under legal disability and is not represented, may be represented by a guardian ad litem appointed by the court. Cost and reasonable fees of a guardian ad litem may be taxed as costs in the action.

### **RULE 2.09 SUBSTITUTION OF PARTIES**

**(a) Death.** If a party dies and the claim is not thereby extinguished, the court shall, upon motion, order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of the hearing, shall be served on the parties by written notice with certificate of service attached as provided by the Mississippi Rules of Civil Procedure, and upon persons not parties in the manner provided in Rule 4 for service of summons. The action shall be dismissed without prejudice as to the deceased party if the motion for substitution is not made within ninety (90) days after the death is suggested upon the record by service of a statement of the fact of the death as herein provided for the service of the motion.

In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

**(b) Legal Disability.** If a party comes under a legal disability, the court, upon motion served as provided in subdivision (a) of this rule, may allow the action to be continued by or against the surviving parties.

**(c) Transfer of Interest.** In the case of any transfer of interest, the action may be continued by or against the original party, unless the court, upon motion, directs the person to whom the interest is transferred to be substituted in the action or join with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

**(d) Public Officers; Death or Separation from Office.** When a public officer is a party to an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the party, but any

misnomer not affecting the substantial rights of the party shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

## **RULE 2.10 DISMISSAL OF AN ACTION BY WRITTEN MOTION**

A plaintiff may dismiss its action at any time before trial by written notice. Plaintiff's costs shall not be assessed against any other party. Such dismissal is without prejudice.

## **2.11 CONSOLIDATION AND SEPARATION OF TRIALS**

**(a) Consolidation.** When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all of the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary cost or delay.

**(b) Separate Trials.** The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim.

## **RULE 2.12 DEFAULT JUDGMENT**

A judgment by default shall not be different in kind from or exceed an amount which was demanded in the complaint. For good cause shown, the court may set aside a default judgment.

## **RULE 2.13 MISTRIAL**

**(a)** Upon motion of any party, the court may declare a mistrial if there occurs during the trial, either inside or outside the courtroom, misconduct by the party, the party's attorneys, from any other source, or someone acting at the behest of the party or the party's attorney, resulting in substantial and irreparable prejudice to the movant's case.

**(b)** Upon motion of a party or its own motion, the court may declare a mistrial if:

- 1) The trial cannot proceed in conformity with law; or
- 2) It appears there is no reasonable probability of the jury's agreement upon a verdict.

## **RULE 2.14 POST-JUDGMENT ACTIONS**

Unless authorized by law, no post-judgment action shall be instituted upon a judgment until expiration of ten (10) days after its entry.

## **RULE 2.15 ENFORCEMENT OF JUDGMENTS**

Process to enforce a judgment for the payment of money shall be by such procedures as are provided by statute. The procedure on execution, in proceedings supplementary to and in aid of judgment, and in proceedings on and in aid of execution, shall be as provided by statute. To aid in the satisfaction of a judgment, the judgment creditor may examine the judgment debtor, his books, papers or documents, upon any matter relating to his property as provided in Miss. Code Ann. §§ 13-1-261 through 13-1-271; except that no single judgment creditor may cause a judgment debtor to submit to examination under this section more than once in a period of six (6) months.

## **3.00 CRIMINAL RULES**

### **RULE 3.01 APPLICABILITY OF RULES**

All rules designated as criminal rules are applicable only in criminal cases. General rules are also applicable in criminal cases.

### **RULE 3.02 REPRESENTATION BY COUNSEL**

Initial appearance, preliminary hearings, and representation by counsel shall be conducted according to the Uniform Rules of Circuit and County Courts approved by the Mississippi Supreme Court.

### **RULE 3.03 ISSUANCE OF WARRANTS**

Arrest warrants or search warrants shall be issued only by the judge after a judicial determination that probable cause exists based upon the affidavit or other evidence before the court.

### **RULE 3.04 BAIL BONDS**

Bail bonds must be approved by the justice court judge. The judge shall have the authority to require bond on a defendant, to require a certain type of bond, and to set the amount of the bond using his own discretion.

### **RULE 3.05 MULTIPLE OFFENSES**

(1) Two (2) or more offenses which are triable in the same court may be charged in the same affidavit with a separate count for each offense if: (a) the offenses are based on the same act or transaction; or (b) the offenses are based on two (2) or more acts or transactions connected together or constituting parts of a common scheme or plan.

(2) Where two (2) or more offenses are properly charged in separate counts, all such charges may be tried in a single proceeding.

(3) The trier of fact shall return a separate verdict for each count drawn under subsection 1 of this rule.

(4) When a defendant is convicted of two (2) or more offenses charged in separate counts, the court shall impose separate sentences for each such conviction.

(5) Nothing contained in this rule shall be construed to prohibit the court from exercising its authority to suspend either the imposition or the execution of any sentence or sentences imposed, nor to prohibit the court from exercising its discretion to impose such sentences to run either concurrently with or consecutively to each other or to any other sentence or sentences previously imposed upon the defendant.

### **RULE 3.06 JOINDER**

Two or more defendants may be charged in the same affidavit upon which they are to be tried when:

(1) each defendant is charged with accountability for each offense charges; or

(2) each defendant is charged with conspiracy and some of the defendants are also charged with one or more offenses alleged to have been committed in furtherance of the conspiracy; or

(3) even if conspiracy is not charged and all defendants are not charged in each count, but it is alleged that the several offenses charged were part of a common scheme or plan.

### **RULE 3.07 AMENDMENTS OF AFFIDAVITS**

All affidavits may be amended, including amendments to charge a defendant as a

habitual offender or amendment to charge an offense, the proof of which requires proof of earlier convictions, as long as the defendant is not unfairly surprised and is afforded a fair opportunity to prepare a defense in the fact of the amendment. Technical amendments shall be liberally allowed and may be allowed until the case is given to the trier of fact.

### **RULE 3.08 PLEAS**

A defendant may plead not guilty, or guilty, or, with the permission of the court, nolo contendere.

**(a) Entry of a Guilty Plea.** A person who is charged with the commission of a criminal offense and is represented by an attorney may appear before the court at any time the judge may fix, and enter a plea of guilty to the offense charged and be sentenced by the court.

**(b) Voluntariness.** Before the court may accept a plea of guilty, the court must determine that a plea is voluntarily and intelligently made and that there is a factual basis for the plea. A plea of guilty is not voluntary if induced by fear, violence, deception, or improper inducements. A showing that the plea of guilty was voluntary and intelligently made must appear in the record.

**(c) Advice to the Defendant.** When the defendant wishes to plead guilty to an offense charged, it is the duty of the court to address the defendant personally and to inquire and determine:

(1) that the accused is competent to understand the nature of the charge against him;

(2) that the accused understands the nature and consequences of his plea, and the maximum and minimum penalties provided by law;

(3) that the accused understands that by pleading guilty he waives his constitutional right of a trial by jury, the right to confront and cross-examine adverse witnesses, and the right against self-incrimination; and

(4) if the accused is not represented by an attorney, that he is aware of his right to an attorney at every stage of the proceedings and that one will be appointed to represent him if he is indigent.

### **RULE 3.09 MISTRIAL**

(a) Upon motion of the defendant, the court may declare a mistrial at any time during the trial. The court shall declare a mistrial upon the defendant's motion if there occurs during the trial an error or legal defect in the proceedings, or conduct inside or outside the courtroom, resulting in substantial and irreparable prejudice to the defendant's case. If there are two or more defendants, the mistrial shall not be declared as to a defendant who does not make or join in the motion.

(b) Upon motion of the state, the court may declare a mistrial if there occurs during the trial, either inside or outside the courtroom, misconduct by the defendant, his lawyers, or someone acting at the behest of the defendant or his lawyers, resulting in substantial and irreparable prejudice to the state's case. If there are two or more defendants, the mistrial shall not be declared as to a defendant if neither he, his lawyer, nor a person acting at the behest of him or his lawyer, participated in the misconduct, or if the state's case is not substantially and irreparable prejudiced as to him.

(c) Upon motion of a party or its own motion, the court may declare a mistrial if:

- (1) The trial cannot proceed in conformity with law;
- (2) It appears there is no reasonable probability of the jury's agreement upon a verdict; or
- (3) Upon a poll of the jury, there is not unanimous concurrence with the verdict reached.

### **RULE 3.10 SENTENCING**

Where the defendant is adjudged guilty of the offense charged, sentence must be imposed without unreasonable delay. A defendant is adjudged guilty when the defendant has been found guilty by a verdict of the jury, found guilty by the court sitting as trier of fact, on the acceptance of a plea of guilty, or on acceptance of a plea of nolo contendere.