MISSISSIPPI RULES OF CIVIL PROCEDURE

~~2.~~1. Scope; purpose ~~of Rules~~.

~~3.~~2. One form~~Form~~ of action~~Action~~.

3. Commencing an action.

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~~5.~~4. Summons.

5. Serving and filing pleadings and other papers.

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~~9.~~7. ~~Pleadings~~ Allowed pleadings; motion and other papers: form~~; Form of Motions~~.

8. General pleading rules.

~~10.~~9. ~~Rules of~~ Pleading special matters.

~~11. Pleading Special Matters.~~

~~13.~~10. ~~Form of~~ Pleadings form.

~~14.~~11. Signing pleadings, motions,~~of Pleadings~~ and other papers~~Motions~~.

~~15.~~ Defenses and objections: when~~Objections -- When~~ and how; Rule 12 motions; consolidating~~How Presented -- By Pleading or Motion -- Motion For Judgment On the Pleadings.~~

~~17.~~12. ~~Counter-Claim~~ and waiving defenses; hearing~~Cross-Claim~~.

13. Counterclaim; crossclaim.

~~18.~~14. Third-party practice~~Party Practice~~.

~~19.~~15. Amended and supplemental pleadings~~SupplementalPleadings~~.

16. Pretrial procedure.
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16A. ~~Motions for~~ Recusal motion~~of Judges~~.

~~21.~~17. ~~Parties~~ Plaintiff and defendant; capacity~~Defendant; Capacity~~.

~~22.~~18. Joinder: claims; remedies ~~of Claims and Remedies~~.

19. Required joinder of parties.

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~~25.~~20. Permissive joinder~~Joinder~~ of parties~~Parties~~.

~~26.~~21. Misjoinder and nonjoinder~~Nonjoinder~~ of parties~~Parties~~.

~~27.~~22. Interpleader.

~~28.~~23. ~~[~~Class actions.~~Actions]~~ [Omitted].

~~28.1~~23.1 Shareholder derivative actions.~~[Derivative Actions By Shareholders]~~ [Omitted].

~~28.2~~23.2 ~~[~~Actions relating~~Related~~ to unincorporated associations.~~Unincorporated Associations]~~ [Omitted].

~~29.~~24. Intervention.

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~~32.~~26. General provisions governing discovery~~Provisions Governing Discovery~~.

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~~34.~~28. Persons before whom depositions may be taken~~Before Whom Depositions May Be Taken~~.

~~35.~~29. Stipulations about discovery procedure~~Regarding Discovery Procedure~~.

30. Depositions by oral examination.

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~~1. Depositions Upon Written Questions.~~

~~(1)~~

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34. Producing documents and things; entering land for inspecting and other purposes.

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~~45. Jury~~ Trial by jury or by the court.~~of Right.~~

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~~52.~~43. Taking testimony~~of Testimony~~.

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~~62.~~53. Masters, referees,~~Referees~~ and commissioners~~Commissioners~~.

~~63.~~54. Judgment; costs~~Judgments; Costs~~.

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~~65.~~56. Summary judgment~~Judgment~~.

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58. Entering judgment.

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~~71.~~60. Relief from judgment~~From Judgment~~ or order~~Order~~.

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~~73.~~ Seizing a person~~Stay of Proceedings To Enforce A Judgment.~~

~~75. Disability of A Judge.~~

~~77.~~64. ~~Seizure of Person~~ or property~~Property~~.

~~78.~~65. Injunctions.

~~78.1~~65.1 Security: proceeding against surety~~Proceedings Against Sureties~~.

66. Receiver.

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~~81.~~67. Deposit in court~~Court~~.

~~82.~~68. Offer of judgment~~Judgment~~.

~~83.~~69. Execution.

~~84.~~70. Judgment for specific acts; vesting title~~For Specific Acts; Vesting Title~~.

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71A. [Eminent Domain] [Reserved].

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77. Conducting business; clerk's authority; notice of order or judgment.

~~77. Courts and Clerks.~~

78. Motion practicePractice.

79. Clerk records.

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80. [Stenographic reportReport or transcript as evidence.~~Transcript As Evidence]~~ [Omitted].

81. Rule applicability.

~~81. Applicability of Rules.~~

82. Jurisdiction; venue ~~and Venue~~.

83. Local court rules~~Court Rules~~.

84. Forms 1, 2, 3, and 4.

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APPENDIX: FORMS 1, 2, 3, AND 4.

~~Appendix A. Forms.~~

Form 1. Process server (front).~~1A. Summons.~~

Form 1. Process server (back).~~1AA. Summons.~~

Form 2. Sheriff (front).

~~Form 1B. Notice And Acknowledgment For Service By Mail.~~

Form 2. Sheriff (back).~~1C. Summons By Publication.~~

Form 3. Notice and acknowledgment for service by mail (front).

~~Form 1D. Rule 81 Summons.~~

Form ~~1DD. Rule 81 Summons.~~

~~(1) —~~

~~Form~~ ~~1E. Waiver of Process.~~

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

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

~~(1) —~~

~~Form~~ ~~4. Complaint For Specific Performance.~~

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

Form 6. Complaint on Account Stated.

Form 7. Complaint for Goods Sold and acknowledgmentDelivered.

Form 8. Complaint for Work and Labor Done.

Form 9. Complaint for Money Lent.

Form 10. Complaint for serviceMoney Paid by Mistake.

Form 11. Complaint for Money Had and Received.

Form 12. Complaint for Money Paid by mail (back).Plaintiff for Defendant.

Form 13. Complaint on Policy of Life Insurance.

Form 14. Complaint On Policy of Fire Insurance.

Form 15. Complaint for Negligence or Wantonness.

Form 16. Complaint for Assault and Battery.

Form 17. Complaint for False Imprisonment.

Form 18. Complaint for Malicious Prosecution.

Form 19. Complaint for Fraud.

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

~~Form 21.~~ **Complaint for Conversion.**

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

~~Form 4.~~ **Summons23. Answer Presenting Defenses Under Rule 12(b).**

Form 24. Motion to Bring In Third-Party Defendant.

Form 25. Third-Party Complaint.

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

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

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

APPENDIX B. AFFECTED STATUES [Deleted in its entirety].

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

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

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

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

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

~~Form 34. Pre-trial Order.~~

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

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

~~Form 37. Docket of Entry of Default.~~

~~Form 38. Default Judgment Entered by Court.~~

~~Appendix B. Statutes Affected.~~

~~Appendix~~ C. TIME TABLE FOR PROCEEDINGS UNDER THE ~~Time Table for Proceedings.~~

MISSISSIPPI RULES OF CIVIL PROCEDURE [Deleted in its entirety].

MISSISSIPPI RULES OF CIVIL PROCEDURE

Adopted Effective 1/1/82~~January 1, 1982~~

ORDER ADOPTING THE MISSISSIPPI RULES OF CIVIL PROCEDURE

SUPREME COURT OF MISSISSIPPI

Pursuant to the inherent authority vested in this Court by the Constitution of the State of Mississippi, as discussed in *Cecil Newell, Jr. v. State of Mississippi*, 308 So. 2d 71 (Miss. 1975), to promote justice, uniformity, and the efficiency of courts, the rules attached hereto are adopted and promulgated as Rules of Practice and Procedure in all Chancery, Circuit, and County Courts of this State in all civil actions filed on and after January 1, 1982, any and all statutes and court rules previously adopted to the contrary notwithstanding, and in the event of a conflict between these rules and any statute or court rule previously adopted these rules shall control.

The Clerk of this Court is authorized and directed to spread this order and the rules attached hereto at large on the minutes of the Court, and the Clerk is further authorized and directed to forward a certified copy thereof to West Publishing Company for publication in a forthcoming edition of Southern Reporter, Mississippi Cases, the official publication of decisions of this Court.

ORDERED, this the 26th day of May, 1981.

Neville Patterson,~~ Chief Justice~~
Chief Justice
FOR THE COURT

ORDER REPEALING COMMENTS TO THE MISSISSIPPI RULES OF CIVIL PROCEDURE

SUPREME COURT OF MISSISSIPPI

This matter is before the en banc Court on the Motion for the Amendment of Comments to the Mississippi Rules of Civil Procedure filed by the Supreme Court Rules Advisory Committee. As created by order of this Court originally dated November 9, 1983, the Committee is composed of members who represent the bench, bar, and the law schools of this state. In keeping with its responsibilities and for the purpose of assisting the bench and bar, the Committee has promulgated the notes that follow the Court's rules. These notes, while not official comments of the Supreme Court, are the product of extensive research and review and have been vetted by the members of the Committee as well as other trial judges and practicing members of the bar. The Court expresses its sincere appreciation for the Committee's commitment, diligence, and hard work. Having carefully considered the motion and its attachments, the en banc Court finds that the motion should be granted to the extent provided in this order.

IT IS, THEREFORE, ORDERED that the current Comments to the Mississippi Rules of Civil Procedure are repealed effective July 1, 2014.

IT IS FURTHER ORDERED that the Advisory Committee Notes to the Mississippi Rules of Civil Procedure as contained in Exhibit "A" are approved for publication with the Mississippi Rules of Civil Procedure effective July 1, 2014.

IT IS FURTHER ORDERED that the Clerk of this Court shall spread this order upon the minutes of the Court and shall forthwith forward a true certified copy hereof to West Publishing Company for publication as soon as practical in the advance sheets of *Southern Reporter, Third Series (Mississippi Edition)* and in the next edition of *Mississippi Rules of Court.*

SO ORDERED, this the 9th day of June, 2014.

William L. Waller, Jr., ~~Chief Justice~~
Chief Justice
FOR THE COURT

SECTION 1

~~CHAPTER I~~. SCOPE OF RULES~~;~~ – ONE FORM OF ACTION ~~RULE 1. SCOPE OF RULES~~

Rule 1. Scope; purpose.

(a) Scope. Unless Rule 81 states otherwise, these rules apply to all civil actions and proceedings ~~These rules govern procedure~~ in Mississippi~~the~~ circuit ~~courts~~, chancery ~~courts~~, and county courts.

(b) Purpose. The court and all parties must construe ~~in all suits of a civil nature, whether cognizable as cases at law or in equity, subject to certain limitations enumerated in Rule 81; however, even those enumerated proceedings are still subject to these rules where no statute applicable to the proceedings provides otherwise or sets forth procedures inconsistent with~~ these rules~~. These rules shall be construed~~ to secure a~~the~~ just, speedy, and inexpensive determination of every action.

Advisory Committee Notes

These rules apply~~are~~ to a ~~be applied as liberally to~~ civil action as broadly~~actions~~ as is judicially feasible regardless if the action is one ~~, whether in actions~~ at law or in equity. But ~~However, nothing in~~ the rules should not be interpreted as abridging or modifying ~~the~~ traditional jurisdictional separations ~~of jurisdiction~~ between Mississippi~~the~~ law ~~courts~~ and equity courts ~~in Mississippi~~.

One of the most important provisions of ~~The salient provision of Rule 1 is the statement that "These rules shall be construed to secure the just, speedy, and inexpensive determination of every action." There probably is no provision in~~ these rules, the ~~more important than this~~ mandate in Rule 1(b); it reflects the spirt of the rules' conception and writing; the same spirit ~~in which the rules were conceived and written and in which they~~ should guide their interpretation.

Procedural rules should~~be interpreted. The primary purpose of procedural rules is to~~ promote the ends of justice. These rules seek to do so~~; these rules reflect the view that this goal can best be accomplished~~ by establishing~~the establishment of~~ a single form of action. The resulting ~~, known as a~~ "civil action" unites ~~," thereby uniting the~~ procedures in law and equity~~, through a simplified procedure that~~ minimizes technicalities, simplifies rules, and places considerable discretion in the trial judge for construing them consistent with the purpose stated~~rules~~ in Rule 1(b). ~~a manner that will secure their objectives.~~

RuleRULE 2. One ONE FORM OF ACTION

There shall be one form of action.

One form of action exists: the to be known as "civil action."

Advisory Committee Notes

Rule 2 does not affect the various remedies that previously have been available in the courts of Mississippi courts. Abolishing. The abolition of the forms of action furnishes a single, uniform procedure and allowsby which a litigant tomay present a claim in an orderly manner into a court empowered to give whatever relief is appropriate and just relief;; the substantive and remedial principles applicablethat applied prior to the advent of these rules remain unchanged.are not changed. What was an action at law remainsbefore these rules is still a civil action founded on legal principles; and what was a bill in equity remainsbefore these rules is still a civil action founded onupon equitable principles.

SECTION 2. COMMENCING AN

~~CHAPTER II. COMMENCEMENT OF~~ ACTION~~;~~ SERVING~~: SERVICE OF~~ PROCESS~~;~~ PLEADINGS, MOTIONS, AND ORDERS

Rule~~RULE~~ 3. Commencing an action.~~COMMENCEMENT OF ACTION~~

~~(a)~~ **Filing a complaint; costs.** Filing a complaint with the court commences a ~~of~~ **Complaint.** ~~A~~ civil action. When ~~is commenced by~~ filing a complaint, ~~with~~ the plaintiff must make a ~~court. A~~ costs deposit ~~shall be made with the filing of the complaint, such deposit to be~~ in an~~the~~ amount local rule decides. A required ~~by the applicable Uniform Rule governing the court in which the complaint is filed.~~

(a) ~~The~~ amount becomes~~of the required costs deposit shall become~~ effective when a court issues a local rule rule,~~immediately upon promulgation of the applicable Uniform Court Rule~~ and ~~its approval by~~ the Mississippi Supreme Court approves it.

(b) **Motion for security~~Security~~ for costs.** If the court orders costs,~~**Costs.** The plaintiff may be required on motion of~~ the clerk or a~~any~~ party may file a motion requiring~~to~~ the plaintiff~~action~~ to give security within 60~~sixty~~ days.

(1) ~~after an order of the court for all costs accrued or to accrue in the action.~~ The ~~person making such~~ motion must include an ~~shall state by~~ affidavit stating:

(A) Whether~~that~~ the plaintiff is a state resident;

(B) For a nonresident plaintiff, that the movant believes the plaintiff lacks sufficient in-~~of the~~ state property to satisfy a cost award;

(C) For a resident plaintiff, that the movant believes and has ~~not, as affiant believes, sufficient property in this state out of which costs can be made if adjudged against him; or if the plaintiff be a resident of the state, that he has~~ good reason for believing the ~~to believe and does believe, that such~~ plaintiff cannot satisfy a cost award;

(D) If the movant is ~~be made to pay the costs of the action if adjudged against him. When the affidavit is made by~~ a defendant, ~~it shall state~~ that the defendant~~affiant has, as he~~ believes in~~,~~ a meritorious defense and that the affidavit is not filed~~made~~ for delay; and

(E) If the movant is not a defendant, that~~when~~ the affidavit is not filed at the request of~~made by one not~~ a party defendant.

(2) ~~it shall state that it is not made at the instance of a party defendant.~~ If the plaintiff fails to give the security, the court should dismiss ~~be not given,~~ the suit ~~shall be dismissed~~ and issue execution ~~issued~~ for ~~the costs that have~~ accrued costs.

~~(b)~~(3) For~~; however, the court may, for~~ good cause shown, the court may extend the 60 days~~time~~ for giving ~~such~~ security.

(c) Proceeding in forma pauperis.~~In Forma Pauperis.~~ A party may proceed in forma pauperis according to Miss. Code Ann. §§~~in accordance with sections~~ 11-53-17 and 11-53-19. On the clerk's ~~of the Mississippi Code Annotated. The court may, however, on the~~ motion, a party's ~~of any party, on the~~ motion, or its own, ~~of the clerk of~~ the court may~~, or on its own initiative,~~ examine ~~the affiant as to the~~ facts and circumstances of the affiant's~~his~~ pauperism.

(d) Accounting for costs~~Costs~~. Within 60~~sixty~~ days of ~~the conclusion of an action, whether by~~ dismissal or ~~by~~ final judgment, the clerk must~~shall~~ prepare an itemized costs statement ~~of costs incurred in the action~~ and ~~shall~~ submit it ~~the statement~~ to the parties. The clerk's statement will include ~~or, if represented, to their attorneys. If~~ a refund of the costs deposit or a bill for ~~is due, the clerk shall include payment with the statement; if~~ additional costs ~~are due, a bill for same shall accompany the statement~~.

[Amended effective September 1, 1987; amended effective June 24, 1992; amended effective September 25, 2014].]

~~Advisory Committee Historical Note~~

Advisory Committee Historical Note

Effective 6/~~June~~ 24/92~~, 1992~~, Rule 3(a) was amended to provide that before they are effective, the amounts of required costs deposits must be promulgated by Uniform Court Rule and approved by the Mississippi Supreme Court. 598-602 So. 2d XXI (West Miss. Cas. 1992).

Effective 9/~~September~~ 1/87~~, 1987~~, Rule 3(e) was amended by providing that the amount required as a deposit for filing suit will~~shall~~ be the amount required by the Uniform Rule governing the court where~~in which~~ the action is filed. 508-511 So. 2d XXV (West Miss. Cas. 1988).

Advisory Committee Notes

Rule 3(a) establishes a precise date for commencing ~~fixing the commencement of~~ a civil action. Filing a complaint is the ~~The~~ first step in a civil action. ~~is the filing of the complaint with the clerk or judge.~~ Service of process ~~upon the defendant~~ is not essential to commence ~~commencement of~~ the action. But~~, but~~ Rule 4(h) requires ~~does require service of~~ the summons and complaint to be served within 90~~120~~ days ~~after the filing of the complaint~~.

The ~~Ascertaining the precise~~ date of commencement is important for~~in~~ determining: (1) whether an action is premature; (2) ~~has been brought prematurely; whether it is barred by~~ a statute of limitations bars an action; and (3) whether a court should retain an action if multiple ones~~which of two or more courts in which actions~~ involving the same parties and issues have been instituted. ~~should retain the case for disposition, absent special considerations.~~

~~The provisions in~~ Rule 3 seeks~~pertaining to costs are intended~~ to make ~~uniform~~ the assessment~~assessing~~, accounting ~~for~~, and funding of costs a uniform procedure. ~~.~~

Rule 3(c) allows indigents to sue without depositing security for costs. But~~; however,~~ the court~~indigent affiant~~ may examine the~~be examined as to~~ affiant's financial condition and dismiss the action~~court may,~~ if the allegation of indigency is false.

~~, dismiss the action.~~

Rule

RULE 4. SUMMONS

Summons.

(a) : Issuance.

(a)(1) When a Upon filing of the complaint is filed, the clerk mustshall forthwith issue a summons on the plaintiff's written request and:.

(1) At the written election of the plaintiff or the plaintiff's attorney, the clerk shall:

(A) Deliver the summons to the plaintiff or plaintiff's attorney for service under Rule 4subparagraphs (c)(1), 4) or (c)(3), 4) or (c)(4),) or 4(c)(5);) of this rule.

(B) Deliver the summons to the sheriff of the county wherein which the defendant resides or is found for service under Rule 4subparagraph (c)(2); or) of this rule.

Effect

(C) Make service by publication under Rule 4subparagraph (c)(4).) of this rule.

(2) The person to whom the summons is delivered must promptly serveshall be responsible for prompt service of the summons and a copy of the complaint.

(2)**(A)** On the plaintiff'sUpon request, a of the plaintiff, separate or additional summons or copy of one addressed to multiple defendants must be issued for each defendant to be servedshall issue against any defendants.

(b) Same: Form.

(1) Content. AThe summons must:

(A) Beshall be dated and signed by the clerk;
(B) Bear, be under the court's seal;
(C) Name of the court, contain the name of the court;
(D) Name and the names of the parties;
(E) Be, be directed to the defendant;
(F) State, state the name and address of the plaintiff's attorney or an unrepresented plaintiff;
(G) State, if any, otherwise the plaintiff's address, and the time inwithin which these rules require the defendant must appear and defend; and

(H) Notify the defendant a failure to ~~to~~ appear and defend will result in a~~, and shall notify him that in case of his failure to do so judgment by~~ default judgment ~~will be rendered~~ against the defendant~~him~~ for the relief demanded in the complaint.

(2) Multiple parties. Unless service is by publication, if ~~Where~~ there are multiple plaintiffs or ~~multiple~~ defendants~~, or both~~, the summons~~, except where service is made by publication,~~ may contain~~,~~ in place~~lieu~~ of the names of all parties:

(A) The~~, the~~ name of the first party on each side; and
(B) The ~~the~~ name and address of the party to be served.

(3) Forms 1 and 2.

(A) Process server. A summons~~Summons~~ served by a process server must~~shall~~ substantially conform to Form 1 in the Appendix.
~~**(b)**~~**(B) Sheriff.** A summons~~1A. Summons~~ served by the sheriff must~~shall~~ substantially conform to Form 2 in the Appendix~~1AA~~.

(c) Service.~~:~~

(1) ~~*By*~~ **Process server.** Unless Rule 4(c)(~~*Server*. A summons and complaint shall, except as provided in subparagraphs (~~2) or (c)(4) states otherwise, ~~and (4) of this subdivision, be served by any person who is not~~ a nonparty age~~party and is not less than~~ 18 or older may serve~~years of age. When~~ a summons and complaint. If completed~~ are served~~ by a process server, a sum~~an amount~~ not exceeding the statutory amount payable~~that statutorily allowed~~ to the sheriff for service ~~of process~~ may be taxed as recoverable costs in the action.

(2) ~~*By*~~ **Sheriff.** On a party's~~A summons and complaint shall, at the~~ written request, ~~of a party seeking service or such party's attorney, be served by~~ the sheriff of the county where~~in which~~ the defendant resides or is found must serve a summons and complaint under Rule 4(d).~~, in any manner prescribed by subdivision (d) of this rule.~~ The sheriff must:

(A) Mark ~~shall mark on all summons~~ the date ~~of the receipt by him, and within thirty days of the date of such receipt of~~ the summons was received; and

~~(2)~~**(B)** Return the summons~~sheriff shall return the same~~ to the clerk who~~of the court from which it was~~ issued it within 30 days.

(3) ~~*By*~~ **Mail.**

(A) **First-class mail and acknowledgment service; requirements.** A summons and complaint may be served under Rule 4(d)(1) or (d)(4)~~upon a defendant of any class referred to in paragraph (1) or (4) of subdivision (d) of this rule~~ by mailing ~~a copy of~~ the person~~summons and of the complaint (by~~ first ~~-~~class ~~mail~~, postage prepaid:

(i) A copy of the summons and complaint;

(ii) Two~~) to the person to be served, together with two~~ copies of a notice and acknowledgment ~~conforming~~ substantially conforming to Form 3 of the Appendix;~~1 B~~ and

~~(A)~~**(iii)** A self-addressed ~~a~~ return envelope, postage prepaid~~, addressed to the sender~~.

(B) **Service if**~~If~~ **no acknowledgment** ~~of service under this subdivision of this rule is~~ **received**. If ~~by~~ the sender does not receive an acknowledgement of service within 20 days ~~after the date of mailing~~, service ~~of such summons and complaint~~ may be made in a~~any other~~ manner ~~permitted by~~ this rule allows.

(C) **Costs for failing to complete and return acknowledgment.** Unless good cause is shown for not completing and returning the notice and acknowledgment of receipt within 20 days, the court must~~doing so, the court shall~~ order the person to pay~~payment of the~~ costs for~~of~~ personal service. ~~by the person served if such person does not complete and return within 20 days after mailing the notice and acknowledgment of receipt of summons.~~

(D) **Oath; affirmation.** The notice and acknowledgment of receipt of summons and complaint must~~shall~~ be executed under oath or affirmation.

(4) ~~*By*~~ **Publication.**

(A) When publication service is authorized; requirements. In a chancery or other ~~If the defendant in any~~ proceeding where a statute authorizes process by publication, when the complaint, petition, or account is filed or when the~~in a chancery court, or in any~~ proceeding otherwise commences, the clerk promptly must prepare and publish a summons substantially conforming to Form 4 of the Appendix to the defendant to appear and defend the suit if:

(i) According to a~~in any other court where process by publication is authorized by statute, be shown by~~ sworn complaint or ~~sworn~~ petition~~,~~ or ~~by~~ a filed affidavit, the defendant is not a Mississippi resident;

(ii) According to a sworn complaint or petition or a filed affidavit stating the defendant's post-office address, the defendant cannot be found in Mississippi after ~~to be a nonresident of this state or not to be found therein on~~ diligent inquiry;

(iii) According to a sworn complaint or petition or a filed affidavit, the plaintiff or petitioner does not know the defendant's post-~~and the post~~ office address after diligent inquiry; or

~~(A)~~**(iv)** According to another person's filed affidavit ~~of such defendant be stated in the complaint, petition, or affidavit, or if it be stated in such sworn complaint or petition that the post office address of the defendant is not known to the plaintiff or petitioner after diligent inquiry, or if the affidavit be made by another~~ for the plaintiff or petitioner, the affiant does not know—and believes the plaintiff or petitioner does not know— the defendant's~~that such~~ post-office address ~~is unknown to the affiant~~ after diligent inquiry. ~~and he believes it is unknown to the plaintiff or petitioner after diligent inquiry by the plaintiff or~~

~~petitioner, the clerk, upon filing the complaint or petition, account or other commencement of a proceeding, shall promptly prepare and publish a summons to the defendant to appear and defend the suit. The summons shall be substantially in the form set forth in Form 1-C.~~

~~(i)~~

~~The~~

(B) Duration; where. The summons must be published weekly for~~publication of said summons shall be made once in each week during~~ three successive weeks in a public newspaper in~~of~~ the county where~~in which~~ the complaint,~~ or~~ petition, account, cause, or other proceeding is pending.

(i) No ~~if there be such a~~ **newspaper.** If ~~, and where there is~~ no county newspaper exists, ~~in the county~~ the notice must~~shall~~ be posted at the courthouse door of the county where the complaint, petition, account, cause, or other proceeding is pending. And the notice must be published as stated in Rule 4(c)(4)(B)~~and published as above provided~~ in a public newspaper in an adjoining county or at the seat of state government.

(ii) Filing proof. When completed, proof ~~of the state. Upon completion~~ of publication must~~, proof of the prescribed publication shall~~ be filed in the action or other proceeding.

(iii) Time to appear and defend~~papers in the cause~~**.** The defendant has 30~~shall have thirty (30)~~ days from the date of first publication ~~in which~~ to appear and defend.

~~(B)~~**(iv) Street address.** Where a defendant's~~the~~ post-office address ~~of a defendant~~ is given, a~~the~~ street address must~~, if any, shall~~ also be included~~stated~~ unless the Rule 4(c)(4)(A) complaint, petition, or affidavit states it is unknown~~above mentioned, avers that~~ after diligent search and inquiry ~~said street address cannot be ascertained~~.

(C) Clerk's~~It shall be the~~ **duty.** The ~~of the~~ clerk has a duty to hand the summons to the plaintiff or petitioner to be published.

(i) At the plaintiff's~~,~~ or petitioner's~~, at his~~ request~~,~~ and ~~at his~~ expense, the clerk may deliver the summons to~~to hand it to the publisher of~~ the proper newspaper's publisher~~newspaper~~ for publication.

~~(C)~~**(ii)** Where the absent defendant's post-office address ~~of the absent defendant~~ is stated, ~~it shall be the duty of~~ the clerk has a duty to ~~send by~~ mail a copy of the summons and complaint ~~(~~first class ~~mail~~, postage prepaid,~~)~~ to the ~~address of the~~ defendant~~, at his post~~

~~office, a copy of the summons and complaint~~ and to record~~note~~ the fact of issuance~~issuing the same~~ and mailing ~~the copy,~~ on the general docket. The clerk's notation will~~, and this shall~~ be ~~the~~ evidence ~~of~~ the summons was~~having been~~ mailed to the defendant.

(D) Unknown heir; ~~When~~ **unknown party** ~~heirs are made parties~~ **defendant.**

(i) Unknown heir. In a ~~in any proceeding in the~~ chancery proceeding with an unknown heir as a party defendant where the plaintiff files an affidavit stating the heir's name is~~court, upon affidavit that the names of such heirs are~~ unknown, service~~the plaintiff~~ may be by~~have~~ publication. The ~~of summons for them and such~~ proceedings will be~~shall be thereupon in all respects~~ as ~~are~~ authorized in the case of a nonresident defendant.

(ii) Unknown party defendant. When a party~~the parties~~ in interest is~~are~~ unknown, and the plaintiff files an affidavit stating~~of~~ that fact, the unknown party may become a party defendant through service by publication.

~~(D)~~**(E) Additional Rule 4(d)(2) requirements if serving certain individuals.** Service on another person under Rule 4(d)(2) must also occur if summons ~~be filed, they may be made parties~~ by publication is on:~~to them as unknown parties in interest.~~

(i) An~~Where summons by publication is upon any~~ unmarried infant;

(ii) A~~,~~ mentally incompetent person; or~~, or other person who by reason~~

~~(E)~~**(iii)** An individual incapable of managing his or her own estate because of advanced age, physical incapacity, or mental weakness ~~is incapable of managing his own estate, summons shall also be had upon such other person as shall be required to receive a copy of the summons under paragraph (2) of subdivision (d) of this~~ rule.

(5) *Service by* Certified mail service*Mail* on out-of-state person.

(A) Certified mail service*Person Outside State*. In addition to service by a~~any other~~ method according to~~provided by~~ this rule, a summons may be served on an out-of-state ~~a~~ person ~~outside this state~~ by sending a copy of the summons and ~~of the~~ complaint ~~to the person to be served~~ by certified mail, return receipt requested.

(B) Requirement if natural person. Where the defendant is a natural person, the envelope containing the summons and complaint must~~shall~~ be marked "restricted delivery."

~~(5)~~**(C) When complete.** Service by this method will~~shall~~ be ~~deemed~~ complete on~~as of~~ the ~~date of~~ delivery date~~as~~ evidenced by the return receipt or ~~by the~~ returned envelope marked "refused~~Refused~~."

(d) *Summons and Complaint:* Person to be served*Be Served*. The summons must be served with a copy of the~~and~~ complaint~~. shall be served together.~~ Service by sheriff or process server must~~shall~~ be made according to Rule 4(d)(1) through (d)(8).~~as follows:~~

(1) Individual. Other~~Upon an individual other~~ than an unmarried infant or ~~a~~ mentally incompetent person, an individual may be served:

(A) Personal service. By~~by~~ delivering a copy of the summons and ~~of the~~ complaint to the individual~~him~~ personally or to an agent authorized by appointment or ~~by~~ law to receive service ~~of process~~; or

Residence service. If

(B) ~~if~~ service under Rule 4(d)(~~subparagraph (~~1)(A) ~~of this subdivision~~ cannot be made with reasonable diligence, by leaving a copy of the summons and complaint at the defendant's usual place of abode with the defendant's spouse or other family member age 16 or older and willing to receive service~~some other person of the defendant's family above the age of sixteen years who is willing to receive service, and by thereafter mailing a copy of the summons and complaint (by first class mail, postage prepaid) to the person to be served at the place where a copy of the summons and of the complaint were left. Service of a summons in this manner is deemed complete on the 10th day after such mailing~~.

(i) Mailing requirement. And the plaintiff must mail a copy of the summons and complaint first class, postage prepaid, to the defendant at the place where a copy of the summons and complaint was left.

(ii) When complete. Service in this manner is complete on the 10th day after mailing.

(2) Unmarried minor; mentally incompetent.

(A) Unmarried minor. An ~~(A) upon an~~ unmarried minor may be served ~~infant~~ by delivering a copy of the summons and complaint to:

(i) The~~ any one of the following: the infant's~~ mother;
(ii) The~~,~~ father;
(iii) The~~,~~ legal guardian ~~(~~of ~~either~~ the minor~~person~~ or minor's~~the~~ estate; ~~),~~
(iv) The person who cares for the minor; or

(v) The~~ the~~ person ~~having care of such infant or~~ with whom the minor~~he~~ lives;~~,~~ and
~~(2)~~**(vi)** Also to the minor if ~~the infant be 12 years of~~ age 12 or older~~, by delivering a copy of the summons and complaint to both the infant and the appropriate person as designated above~~.

(B) Mentally incompetent (not judicially confined); incapable of managing estate. A~~upon a~~ mentally incompetent person ~~who is~~ not judicially confined to an institution for the mentally ill or disabled~~mentally deficient~~ or a~~upon any other~~ person incapable of managing the person's own estate because~~who by reason~~ of advanced age, physical incapacity, or mental weakness may be served~~is incapable of managing his own estate~~ by delivering a copy of the summons and complaint to the~~such~~ person and to:

(i) The~~by delivering copies to his~~ guardian of the person or person's estate; or
(ii) The conservator ~~(~~of ~~either~~ the person or person's estate; and
~~(B) If the the estate) or conservator (of either the person or the estate) but if such~~ person has

(iii) no guardian or conservator, the individual ~~then by delivering copies to him and copies to a person~~ with whom the person~~he~~ lives or the individual~~to a person~~ who cares for the person~~him~~.

(C) Mentally incompetent (judicially confined). A ~~upon a~~ mentally incompetent person ~~who is~~ judicially confined to~~in~~ an institution for the mentally ill or disabled may be served~~mentally retarded~~ by delivering a copy of the summons and complaint to the confined~~incompetent~~ person and if one, to the person's~~by delivering copies to said incompetent's~~ guardian or guardian ~~(~~of ~~either~~ the person's ~~person or the~~ estate.

(i) When service is not required.~~) if any he has.~~ If the institution's superintendent ~~of said institution~~ or similar official or person certifies on the summons or an accompanying~~shall certify by~~ certificate ~~endorsed on or attached to the summons~~ that the person ~~said incompetent~~ is mentally incapable of responding to process, service of the summons and complaint will~~on such incompetent shall~~ not be required.

~~(C)~~**(ii) Appointing** ~~Where said confined incompetent has neither~~ **guardian ad litem if guardian or conservator does not exist.** If the person does not have a guardian or~~nor~~ conservator, the court must~~shall~~ appoint a guardian ad litem ~~for said incompetent~~ to whom copies will~~shall~~ be delivered.

(D) Person other than minor or mentally incompetent person who~~where service of a summons~~ **is a plaintiff or has adverse interest.**

(i) Considered not to exist. If Rule 4(d)(2)~~required under (~~A), (B~~), or)~~ ~~and~~ (C) requires service on~~of this subparagraph to be made upon~~ a person other than the minor~~infant~~, incompetent, or incapable defendant, and if the other~~such~~ person is a plaintiff in the action or has an interest in it~~therein~~ adverse to the~~that of said~~ defendant, then the other~~such~~ person must~~shall~~ be considered~~deemed~~ not to exist for purposes~~the purpose of service and the requirement~~ of service.

~~(D)~~**(ii) Fails to satisfy Rule 4(d)(2)(**~~ in (~~**A), (B), and (C).** And serving the other person fails to satisfy Rule 4(d)(2)(A), (B), or (C).~~) and~~

(E) Appointing guardian ad litem if person other minor or mentally incompetent person does not exist.

When appointed. If Rule 4(d)(2)(A) or (B) requires~~(C) of this subparagraph shall not be met by~~ service on a~~upon such~~ person who does not.~~.~~

(i) ~~(E) if none of the persons required to be served in (A) and (B) above~~ exist other than the minor~~infant~~, incompetent, or incapable defendant, ~~then~~ the court may~~shall~~ appoint ~~a guardian ad litem~~ for the~~an infant~~ defendant ~~under the age of 12 years and may appoint~~ a guardian ad litem ~~for such other defendant~~ to whom a copy of the summons and complaint will~~shall~~ be delivered and must do so for a minor under age 12. ~~. Delivery of a copy of the summons and complaint to such guardian ad litem shall not dispense with delivery of copies to the infant, incompetent or incapable defendant where specifically required in (A), and (B) of this subparagraph.~~

(ii) Additional service. Serving the guardian ad litem with a copy of the summons and complaint does not satisfy a requirement in Rule 4(d)(2)(A), (B), and (C) to also deliver a copy to the minor, incompetent, or incapable defendant.

Confined to

(3) ~~Upon an individual confined to a~~ **penal institution; exception for unmarried minor or mentally incompetent.**

~~(3)~~**(A) Individual confined to penal institution.** An individual confined to a Mississippi ~~of this~~ state or local penal institution may be served ~~of a subdivision of this state~~ by delivering a copy of the summons and complaint to the person. ~~individual, except that when the individual to be served is an unmarried infant or mentally incompetent person the provisions of subparagraph (d)(2) of this rule shall be followed.~~

(B) Exception for unmarried minor or mentally incompetent. But if the person is an unmarried minor or mentally incompetent, Rule 4(d)(2) applies.

Corporation, partnership,

(4) ~~Upon a domestic or foreign corporation or upon a partnership~~ **or other unincorporated association**. A domestic or foreign corporation, partnership, or other unincorporated association ~~which is~~ subject to suit under a common name may be served~~,~~ by delivering a copy of the summons and ~~of~~ the complaint to an officer, ~~a~~ managing agent,~~or~~ general agent, or ~~to any~~ other agent authorized by appointment or ~~by~~ law to receive ~~service of~~ process.

(5) ~~Upon the~~ **State of Mississippi or state department, officer, or institution.** The following may be served~~any one of its departments, officers or institutions,~~ by delivering a copy of the summons and complaint to the Attorney General of the State of Mississippi:~~.~~

(A) The State of Mississippi; and

(B) A department, officer, or institution of the State of Mississippi.

(6) **County.** A~~Upon a~~ county may be served by delivering a copy of the summons and complaint to the president or clerk of the board of supervisors.

(7) **Municipal corporation.** A~~Upon a~~ municipal corporation may be served by delivering a copy of the summons and complaint to the mayor or municipal clerk ~~of said municipal corporation~~.

(8) Other governmental entity. A ~~Upon any~~ governmental entity not otherwise mentioned in this rule may be served~~above,~~ by delivering a copy of the summons and complaint:

(i) To ~~to~~ the person, officer, group, or body responsible for the entity's administration;

(ii) The ~~of that entity or by serving the~~ appropriate legal officer~~, if any,~~ representing the entity; or

~~(8)~~**(iii)** A~~. Service upon any~~ person who is a member of the "group" or "body" responsible for the entity's administration ~~of the entity shall be sufficient~~.

(e) Waiver.

(1) Who may waive process; effect of waiver.

(A) Who may waive process. Other than ~~Any party defendant who is not~~ an unmarried minor or mentally incompetent person, a party defendant may waive service of process, enter an appearance, or both~~may,~~ without filing a~~any~~ pleading.

(B) Effect of waiver. The effect is ~~therein, waive the service of process or enter his or her appearance, either or both, in any action, with~~ the same ~~effect~~ as if the defendant was~~he or she had been duly~~ served with process~~,~~ in the manner required by law on the same~~day of the~~ date.

(2) Requirements. The ~~thereof. Such~~ waiver of service or entry of appearance must~~shall~~ be:

(A) Written;
(B) Dated;
(C) Signed by the defendant; ~~in writing dated~~ and ~~signed~~
(D) Sworn or acknowledged by the defendant or if not~~and duly~~ sworn ~~to~~ or acknowledged, ~~by him or her, or his or her signature thereto be~~ proven by two ~~(2)~~ subscribing witnesses before an~~some~~ officer authorized to administer oaths.

(3) By~~Any~~ **guardian,** ~~or~~ **conservator,** ~~may likewise waive process on himself and/or his ward, and any~~ **executor, administrator, or trustee; requirements.**

(A) By guardian or conservator. A guardian or conservator may waive process on the guardian, conservator, and ward.

(B) By executor, administrator, or trustee. An executor, administrator, or trustee may ~~may likewise~~ waive process on the executor, administrator, or trustee in a~~himself in his~~ fiduciary capacity.

(C) Requirements. In addition to Rule 4(e)(2) requirements, the~~However, such written~~ waiver of service or entry of appearance must:

(i) Be ~~be~~ executed after the day ~~on which~~ the action was commenced;
(ii) Filed; and
~~(e)~~(iii) Recorded ~~and be filed among the papers in the cause and noted~~ on the general docket.

(f) Return.

(1) Who. The person serving the process promptly must file proof of service with the court.

(2) Form. Unless service is by the sheriff, a person must~~shall~~ make proof of service ~~thereof to the court promptly. If service is made~~ by ~~a person other than a sheriff, such person shall make~~ affidavit.

(3) Service ~~thereof. If service is made~~ **under Rule 4**~~paragraph~~ **(c)(3).** If service is by mail under Rule 4(c)(3), the sender must make a ~~) of this rule,~~ return by ~~shall be made by the sender's~~ filing ~~with~~ the required~~court the~~ acknowledgment.

(4) Service under Rule 4(c)(5). ~~received pursuant to such subdivision.~~ If service is made on an out-of-state person under Rule 4~~paragraph~~ (c)(5)~~,) of this rule,~~ the sender must make a return by~~shall be made by the sender's~~ filing ~~with the court~~ the return receipt or the returned envelope marked "refused."

~~(f)~~(5) Failing to make proof of service. Failing~~Refused." Failure~~ to make proof of service does not affect the validity of the service.

~~(g)~~ **Amendment.** Unless it clearly ~~At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly~~

(g) appears that material prejudice would result to ~~the~~ substantial rights of the party against whom ~~the~~ process is issued, the court may allow process or proof of service to be amended:~~.~~

(1) At any time;
(2) In its discretion; and
(3) On terms it deems just.

(h) ~~**Summons:**~~ **Time limit.**~~**Limit for Service.**~~ If a ~~service of the summons and complaint is not made upon a~~ defendant is not served within 90~~120~~ days after the ~~filing of the~~ complaint is filed, and if the party ~~on whose behalf such service was~~ required to serve the defendant cannot show good cause why ~~such~~ service was not made within that period, the court—on its own with notice to that party or on a motion—must dismiss the action~~action shall be dismissed~~ as to that defendant without prejudice ~~upon the court's own initiative with notice to such party or upon motion~~.

[Amended effective 5/~~May~~ 1/82; 3/~~, 1982; March~~ 1/85; 2/~~, 1985; February~~ 1/90; 7/~~, 1990; July~~ 1/98; 1/3/02]~~., 1998; January~~

Advisory Committee Historical Note

~~3, 2002.]~~

~~Advisory Committee Historical Note~~

Effective 1/3/02~~January 3, 2002~~, Rule 4(e) was amended to delete a prohibition against waiver of service of process by one convicted of a felony. 802-04~~804~~ So. 2d XVII (West Miss. Cases 2002).

Effective 7/~~July~~ 1/98~~, 1998~~, Rule 4(f) was amended to state that the person serving process must~~shall~~ promptly make proof of service ~~thereof~~ to the court.

Effective 2/~~February~~ 1/90~~, 1990~~, Rule 4(c)(4)(B) was amended by striking the word "calendar" following the word and figure "thirty (30)"; Rule 4(c)(4) was amended by adding subsection (E); Rule 4(c)(5) was amended by changing the title to reflect service by certified mail; Rule 4(d)(2)(A) was amended by substituting the word "person" for "individual" in reference to the one having care of the infant. 553-56~~556~~ So. 2d XXXIII (West Miss. Cas. 1990).

Effective 3/~~March~~ 1/85~~, 1985~~, a new Rule 4 was adopted. 459-62~~462~~ So. 2d XVIII (West Miss. Cas. 1985).

Effective 5/~~May~~ 1/82~~, 1982~~, Rule 4 was amended. 410-16~~416~~ So. 2d XXI (West Miss. Cas. 1982).

Advisory Committee Notes

Unless summons is by publication, after~~After~~ a complaint is filed, the clerk must~~is required to~~ issue a separate summons for each defendant~~. except in the case of summons by publication.~~ The summons must contain the information required by Rule 4(b). Under Rule 4(b),~~), which requires~~ the summons must~~to~~ notify the defendant that~~, among other things,~~ a failure to appear will result in a default judgment. The~~ by default. Although the~~

~~"judgment by default will be rendered" language may be an overstatement, the~~ strong language intends~~is intended~~ to encourage a defendant~~defendants~~ to appear to protect the defendant's~~their~~ interests. Forms 1, 2, 3~~1A, 1AA, 1B~~, and 4 provide~~1C are provided as~~ suggested forms for the various summonses.

The summons and a copy of the complaint must then be served on each defendant. This rule provides for personal service, residence service, first-class-~~-~~mail and acknowledgement service, certified-~~-~~mail service, and publication service.

~~Personal service is authorized by~~ Rule 4(d)(1)(A) authorizes personal service and requires ~~delivery of~~ a copy of the complaint and ~~the~~ summons to be delivered to the person to be served.

~~Residence service is authorized by~~ Rule 4(d)(1)(B) authorizes residence service and requires ~~that~~ a copy of the complaint and the summons to be left at the defendant's usual place of abode with the defendant's spouse or other family member ~~who is above the~~ age 16 or older~~of sixteen~~ and ~~who is~~ willing to accept service. In addition, residence~~Residence~~ service ~~further~~ requires ~~that~~ a copy of the summons and complaint to be ~~thereafter~~ mailed to the defendant at the location where the complaint and summons were left.

Personal service and residence service may be made by a process server or the sheriff in the county where the defendant resides or can be found. A party using a process server may pay the~~such~~ person an~~any amount that is~~ agreed amount. Only the~~upon but only that~~ amount statutorily allowed as payment to the sheriff under Section 25-7-19 of the Mississippi Code of 1972 Annotated ~~section 25-7-19 (Supp. 2013)~~ may be taxed as recoverable costs in the action. Summonses served by process servers should substantially conform~~be in substantial conformity~~ with Form 1. Summonses~~1A and summonses~~ served by sheriffs should substantially conform~~be in substantial conformity~~ with Form 2. ~~1AA.~~

Rule 4(c)(3) authorizes first~~First~~-class mail and acknowledgement service. ~~is authorized by Rule 4(c)(3).~~ The plaintiff must mail the defendant: (1) a copy of the summons and complaint; (2)~~,~~ two copies of a notice and acknowledgement conforming substantially to Form 3;~~1B,~~ and (3) a prepaid-postage ~~paid~~ envelope addressed to the sender. The~~Upon receipt, the~~ defendant may execute the acknowledgement of service under oath or by affirmation. If the defendant fails to execute and return the acknowledgement of service in a timely fashion, the defendant may be ordered to pay ~~the~~ costs incurred by the plaintiff in serving the defendant by another method. This provision intends~~is intended~~ to encourage a defendant to acknowledge service by first-class mail in order to avoid having to pay ~~the~~ costs that would otherwise be incurred by the plaintiff in serving that defendant. Executing~~Execution~~ and returning~~return of~~ the acknowledgement of service does not waive~~operate as a waiver of~~ objections to jurisdiction or venue. All jurisdictional and venue objections are preserved whether Form 3~~1B~~ is completed and returned from inside or outside

the state. Although Miss. ~~M.~~R. Civ. ~~C.~~P. 4(c)(3) is modeled after Fed. R. Civ. P. 4(d), defendants who execute and return the acknowledgement of service under Miss. ~~M.~~R.~~C.~~ Civ. P. 4(c)(3)~~—~~ are acknowledging actual service, but defendants who execute and return the waiver under Fed. R. Civ. P. 4(d) are waiving service.

acknowledging actual service, whereas defendants who execute and return the waiver under Fed. R. Civ. P. 4(d) are waiving service.

Publication service is authorized by Rule 4(c)(4) authorizes publication service and is limited to defendants in chancery court proceedings and other proceedings where a service by publication is authorized by statute authorizes service by publication. Service by publication is further limited to defendants who are nonresidents or who cannot be found within the state after diligent inquiry. The requirements for service by publication are detailed in the rule and must be strictly followed; otherwise service is ineffective. *See Caldwell v. Caldwell*, 533 So. 2d 413 (Miss. 1988).

Certified mail service is authorized by Rule 4(c)(5) authorizes service by certified mail and is limited to out-of-state persons outside the state. The plaintiff must send a copy of the summons and complaint to the person to be served by certified mail, return receipt requested. Afterwards, the plaintiff [and must thereafter mail by first-class mail, postage prepaid, a copy of the summons and complaint to the person to be served at the same address. The proof Proof of service Service must indicate the date on which the summons and complaint were mailed by first-class mail and must also include as an attachment the signed return receipt or the return envelope marked "refused." Service on upon a foreign corporation, partnership, or unincorporated association is effective even if the certified mail is delivered to and signed for or refused by a person other than the addressee, if the person accepting delivery and signing or refusing delivery is an officer or employee of the defendant and who is authorized to receive certified mail or who regularly receives it. certified mail. *See Flagstar Bank, FSB v. Danos*, 46 So. 3d 298 (Miss. 2010) (finding service by certified mail on upon a foreign corporation effective where the plaintiff addressed to the certified mail to the foreign corporation's registered agent for service of process, and the certified mail was delivered to the proper address, and signed for by the mail clerk rather than the registered agent). Service of process is not effective under Rule 4(c)(5) if the mailing is returned marked "*unclaimed*, /*refused*," "unclaimed" or "*undeliverable as addressed*." *See Bloodgood v. Leatherwood*, 25 So. 3d 1047 (Miss. 2010).

Rule 4(d) identifies the person to be served with process when the defendant is: (1i) a mentally competent married infant or a mentally competent adult; (2ii) an unmarried infant; (3)

(iii) a mentally incompetent person who is not judicially confined to an institution for the mentally ill or mentally deficient; (4iv) a mentally incompetent person who is judicially confined to an institution for the mentally ill or mentally deficient; (5v) an individual confined to a state/local penal institution; (6 of this state or a subdivision of this state; (vi) a domestic or foreign corporation, partnership, or unincorporated association subject to a suit under a common name; (7vii) the State of Mississippi or one of its

departments, officers, or institutions; (8viii) a county; (9ix) a municipal corporation; or (10)x) any other governmental entity.

Rule 4(e) provides for waiver of service of the summons and complaint. A waiver must be executed after the day on which the action was commenced and ~~thus~~ may be executed without a summons having been issued.

Rule 4(f) provides that the person serving the process mustshall promptly file a return of service with the court. For first-class mail and acknowledgement service, proof of service mustis to be made by filing a copy of the executed acknowledgement of service. For certified-- mail service, proof of service mustis to be made by filing the return receipt or the envelope marked "refused." RequiringRefused." The purpose of the requirement for prompt filing of the proof of service enablesis to enable the defendant to verify the date of service by examining the proof of service in the court records.

Under Rule 4(h),) provides that if a service is not made upon a defendant is not served within 90120 days after the filing of the complaint is filed, the claims against that defendant will be dismissed without prejudice absent good cause for failingthe failure to timely serve the defendant. If service cannot be made within the 90120-day period, it is clearly advisable to move the court within the original time period for an extension. of time in which to serve the defendant. If the motion for extension of time is filed within the 90120-day time period, the time period may be extended for "cause" under shown" pursuant to Rule 6(a)(5b)(1). If a motion for extension of time is filed outside of the original 90120-day time period, the movant must show "good cause" for the failure. to timely serve the defendant pursuant to Rule 4(h). *See Johnson v. Thomas*, 982 So. 2d 405 (Miss. 2008) (former 120-day time period).

Rule 5. Serving and filing pleadings and other papers.

(a) When required.

).

~~RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS~~

(1) Service on parties. Unless ~~**: When Required.** Except as otherwise provided in~~ these rules provide otherwise, all parties must be served with:

(A) An~~, every~~ order stating it must~~required by its terms to~~ be served;

(B) A~~, every~~ pleading filed after~~subsequent to~~ the original complaint unless the court orders otherwise ~~orders~~ because there are~~of~~ numerous defendants;

(C) A ~~, every paper relating to~~ discovery paper required to be served upon a party unless the court orders otherwise;

(D) A ~~orders, every~~ written motion except~~other than~~ one that~~which~~ may be heard ex parte~~;~~ and

(E) A~~every~~ written notice, appearance, demand, offer of judgment, designation of record on appeal, or ~~and~~ similar paper.

(2) Defaulted party. Service is not required ~~shall be served upon each of the parties. No service need be made~~ on a party~~parties~~ in default for failing~~failure~~ to appear. But a pleading ~~except that pleadings~~ asserting new or additional claims for relief against the defaulting party must~~them shall~~ be served according to ~~upon them in the manner provided in~~ Rule 4.

~~**(a)**~~**(3) Seizing property.** If seizing property begins ~~for service of summons. In~~ an action, and ~~begun by seizure of property, in which~~ no person is or needs to~~need~~ be ~~or is~~ named as a defendant, ~~any~~ service required ~~to be made~~ prior to ~~the~~ filing ~~of~~ an answer, claim, or appearance must~~shall~~ be made on~~upon~~ the person who had~~having~~ custody or possession of the property when it was seized~~at the time of its seizure~~.

(b) Manner.

(1) Attorney of record. Unless the court orders~~**(1) Service: How Made.** Whenever under these rules~~ service on a party, service must~~is required or permitted to~~ be made on a party's attorney.

(A) How. Service must be made on~~upon a party who is represented by~~ an attorney~~/ of record in the proceedings, the service shall be made upon such attorney unless service upon the~~ party ~~himself is ordered~~ by:

(i) Delivering ~~the court. Service upon the attorney or upon a party shall be made by delivering~~ a copy;

(ii) By electronically ~~to him; or by~~ transmitting it;

(iii) By ~~to him by electronic means; or by~~ mailing it to the~~him at his~~ last known address;

(iv) If~~, or if~~ no address is known, by leaving it with the ~~clerk of the~~ court clerk;~~,~~ or

(v) If no address is known, by electronically transmitting it to the court clerk.

(B) Defining delivery. Delivering ~~by electronic means. Delivery of~~ a copy ~~within this rule~~ means:

(i) Handing ~~handing~~ it to the attorney/ ~~or to the~~ party;

(ii) Leaving ~~or leaving~~ it at the attorney's/party's~~his~~ office with a~~his~~ clerk or other person in charge;

(iii) Leaving it at the attorney's/party's office ~~thereof; or, if there is no one in charge, leaving it~~ in a conspicuous place if no one is in charge~~therein~~; or

(iv) If~~, if~~ the office is closed or the attorney/party does not have one~~person to be served has no office~~, leaving it at the attorney's or party's~~his~~ dwelling house or usual place of abode with a~~some~~ person of suitable age and discretion ~~then~~ residing at it.

(C) Defining electronically transmitting. Electronically transmitting means sending by fax or email. Electronic transmission by fax must be to the attorney's fax number listed in the Mississippi Bar's Lawyer Directory. Electronic transmission by email must be to the attorney's email address listed in the Mississippi Bar's Lawyer Directory.

(i) ~~therein.~~ Service by fax~~electronic means~~ is complete when the sender obtains a proof of fax from the recipient's machine showing the transmission was successfully received.

(ii) Service by email is complete when sent. But if the email is electronically returned to the sender shortly after transmission because the email address was incorrect, an attachment exceeded a size limit, or other reason, then service by email is not complete.

(iii) If the sender does not obtain a proof of fax showing the transmission was successfully received or if an email is electronically returned shortly after sending~~electronic equipment being used by the attorney or party being served acknowledges receipt of the material. If the equipment used by the attorney or party being served does not automatically acknowledge the transmission~~, service is not complete until the sending party obtains an acknowledgment from the recipient.

~~(b)~~**(D) When complete.** Service by mail is complete upon mailing.

(2) ~~**(2)**~~ **Electronic court system**~~**Court System Service: How Made**~~**.** Where a court has~~, by local rule,~~ adopted the Mississippi Electronic Court system~~System~~, service allowed or~~which is~~ required ~~or permitted~~ under these rules must conform~~shall be made in conformity~~ with the Administrative Procedures for Mississippi Electronic Courts~~Court System procedures~~.

(c) ~~Service:~~ Numerous defendants.

~~(c)~~(1) If~~**Defendants.** In any action in which~~ there are an unusually large number~~numbers~~ of defendants, on a~~the court, upon~~ motion or ~~of~~ its own, the court ~~initiative,~~ may order: ~~that service~~

That

(A) ~~of~~ the defendants' pleadings ~~of the defendants~~ and replies to them do not ~~thereto~~ need to~~not~~ be served~~made as~~ between the defendants~~;, and that any cross-claim, counter-claim~~

(B) That a crossclaim, counterclaim, or matter constituting an avoidance or affirmative defense in the defendants' pleadings will be considered~~contained therein shall be deemed~~ to be denied or avoided by all other parties; and ~~that the~~

(C) That filing the~~of any such~~ pleading and serving~~service upon~~ the plaintiff constitutes due notice ~~of it~~ to all~~the~~ parties.

(2) A copy of the~~every such~~ order must~~shall~~ be served on~~upon the~~ parties in a~~such~~ manner and form ~~as~~ the court directs.

(d) Filing.

(1) When. Before~~All papers after the complaint required to be served upon a party shall be filed with the court either before~~ service or within a reasonable time afterwards, a paper after the complaint that requires service on a party must be filed with the court.

(2) Discovery papers. Unless the court orders otherwise~~thereafter but, unless ordered by the court~~, discovery papers do not need to~~not~~ be filed until used in a~~with respect to any~~ proceeding.

~~(d)~~**(3) Proof of service.** Proof a~~of any~~ paper was served must~~shall~~ be by a signed~~upon~~ certificate of service~~the person executing same~~.

(e) Defining~~(1) Filing With the Court Defined.~~ ~~The~~ **filing** ~~of pleadings and other papers~~ **with the court; electronically** ~~as required by these rules shall be made by~~ **filing.**

~~(e)~~**(1) Filing** ~~them~~ **with** ~~the clerk of the~~ **court.** Under these rules, pleadings and other~~, except that the judge may permit the~~ papers must~~to~~ be filed with the court clerk. But the court may allow papers to be filed with the judge; if so the judge must~~him, in which event he shall~~ note ~~thereon~~ the filing date on the papers and ~~forthwith~~ transmit them to the ~~office of the~~ clerk.

Electronically filing with the court. By local rule conforming with the Administrative Procedures for Mississippi Electronic Courts, a

(2) ~~**(2) Electronic Filing with Court Defined.** A~~ court may~~, by local rule,~~ allow pleadings and other papers to be filed, signed, or verified by electronic means ~~in conformity with the Mississippi Electronic Court System procedures~~. Pleadings and other papers filed electronically in compliance with the procedures are written papers for purposes of these rules.

[Amended effective 3/~~March~~ 1/89~~, 1989~~; Amended effective 1/~~January~~ 8/09~~, 2009~~, for the purpose of establishing a pilot program for Mississippi Electronic Court System.]

Advisory Committee Historical Note

Effective 3/~~March~~ 1/89~~, 1989~~, Rule 5(b) and Rule 5(e) were amended by authorizing the service and filing of pleadings and documents by electronic means. 536-38~~538~~ So. 2d XXI (West Miss. Cas. 1989).

Advisory Committee Notes

Rule 5 promotes (1) expeditious~~provides an expedient method of exchanging~~ written and electronic communications between parties and (2)~~an~~ efficient ~~system of~~ filing ~~papers~~ with the clerk. The~~This~~ rule presupposes ~~that~~ the court ~~has~~ already has personal~~gained~~ jurisdiction ~~over the parties~~. A ~~"~~pleading filed after~~subsequent to~~ the original complaint asserting~~," which asserts~~ a claim for relief against a person over whom the court has not ~~at the time~~ acquired jurisdiction at the time~~,~~ must be served ~~upon such person~~

~~along~~ with a ~~copy of a~~ summons.

An ex parte motion does not need ~~in the same manner as the copy of the summons and complaint is required~~ to be served ~~upon the original defendants.~~

~~A motion which may be heard ex parte is not required to be served,~~ but should be filed. *See*~~;~~ ~~see~~ *also* Miss. R. Civ. P. ~~Rule~~ 81(b). The list~~enumeration~~ of papers in Rule 5(a)(1) ~~)~~ ~~which are required to be served~~ is not exhaustive. A motions with an affidavit must~~;~~ also be served under Rules 6(d) and~~included are affidavits in support of or in opposition to a motion, Rule 6(d), and a motion for substitution of parties, Rule~~ 25.

Rule 5(b)(C) addresses transmission by fax or email. The rule presupposes attorneys maintain up-to-date fax numbers and email addresses in the Mississippi Bar's Lawyer Directory.

Under Rule 5(b)(C)(i), service by fax is complete when the sender receives a proof of fax. The proof of fax must show the transmission was successful, including the date it was sent, the number of pages transmitted, the recipient's fax number, and other usual confirmatory information. In contrast, under Rule 5(b)(C)(ii), service by email is complete when sent. But if the email is returned shortly afterwards, service is incomplete.

If the sender fails to obtain a proof of fax or the sender's email is "bounced" back, service is incomplete unless the recipient acknowledges otherwise under Rule 5(b)(C)(iii). These provisions intend to update the rule and align it with modern practice, including service by email.

The Mississippi Electronic Court (MEC) system is an optional ~~An~~ electronic case management ~~system~~ and electronic filing system for ~~, known as the Mississippi Electronic Court System (MEC) is optional for the~~ chancery, circuit, and county courts. But ~~; however, the~~ procedures in the Administrative Procedures for Mississippi Electronic Courts ~~of the MEC~~ must be followed if~~where~~ a court has adopted and implemented the MEC by local rule. To~~Therefore, to~~ the extent the Administrative Procedures for Mississippi Electronic Courts addresses serving and filing~~MEC procedures address service and filing of~~ pleadings and other papers, the procedures should be followed to satisfy Rule 5(be) and ~~Rule~~ 5(d~~b~~). For purposes of Rule 5(d), the Administrative Procedures for Mississippi Electronic Courts provides ~~e), the MEC procedures provide~~ reasonable exceptions to requiring ~~the requirement of~~ electronic filing. *See* State of Mississippi Judiciary Administrative Office of Courts, Administrative Procedures for Mississippi Electronic Courts: Electronic Means for Filing, Signing, Verification, and Service of Pleadings and Papers, https://courts.ms.gov/mec/mec.html~~See, Mississippi Supreme Court Website~~.

Service ~~Although service~~ must be made within specified~~the~~ times. But ~~prescribed,~~ filing may occur after service ~~is permitted to be made~~ within a reasonable time. Examples where filing occurs ~~thereafter. Instances requiring the pleading to be filed~~ before service~~it is served~~ include a ~~Rule 3 (~~complaint~~)~~ and ~~any~~ other pleadings~~pleading~~ stating a claim for relief served ~~which is necessary to serve~~ with a summons. Under~~Pursuant to~~ Rule 5(c),~~) (numerous defendants) the~~ filing ~~of~~ a pleading and serving ~~, coupled with service on~~ the plaintiff constitutes~~, is~~ notice to the parties. Rule 65(b)(C)(ii) requires temporary restraining orders to be filed ~~forthwith~~ in the clerk's office.

To obtain immediate court action, under Rule 5(d)(1)~~e),~~ a party may file papers with the judge~~, if the latter permits,~~ and obtain an~~such~~ order if allowed.~~as the judge deems proper.~~ Rule 5(d)(1e) should be read in conjunction with Rules 77(a~~) (courts always open~~), 77(b~~) (trials and hearings; orders in chambers~~), and 77(c).

Rule 5(b) does not apply to serving a summons; Rules 4 and 81(d) completely cover that subject.

Rule 6. Time.

(a) Computing. The following applies when computing time in these rules, local rules, court orders, and statutes silent on how to do so:

(1) Days or longer. For days or longer time periods:

(A) Exclude the first day;
(B) Count all days, including intermediate Saturdays, Sundays, and legal holidays; and
(C) Include the last day.

(i) If the last day occurs on a Saturday, Sunday, or legal holiday, continue counting until the next day that is not one.
(ii) If the last day occurs on a day the courthouse or ~~) (~~clerk's office is closed, continue counting until the next day it opens.~~and orders by clerk).~~

(2) Hours. For hours:

(A) Begin counting on the event that triggers the time period; and
(B) Count all hours, including intermediate Saturdays, Sundays, and legal holidays.

(i) If the last hour occurs on a Saturday, Sunday, or legal holiday, continue to the same time on the next day that is not one.

(3) "Last day." Unless a statute, local rule, or court order states otherwise:

(A) For electronic filing, the last day ends at midnight in the court's time zone.
(B) For filing by other means, the last day ends when the clerk's office is scheduled to close.

(4) "Legal holiday." A legal holiday means the day defined as one by statute or governor.

(b) Extensions.

When an act may or must be done ~~Rule 5(b) has no application to service of summons; that subject is completely covered by Rule 4 and Rule 81(d).~~

~~RULE 6. TIME~~

~~**(a) Computation.** In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day 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, as defined by statute, or any other day when 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 the clerk's office is closed. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. In the event any legal holiday falls on a Sunday, the next following day shall be a legal holiday.~~

(1) ~~**Enlargement.** When by these rules or by notice given thereunder or by order of court an act is required or allowed to be done at or~~ within a specified time, the court for cause shown may:

(A) Extend it ~~at any time in its discretion (1)~~ with or without a motion or notice ~~order the period enlarged~~ if acting or requested to do so~~request therefore is made~~ before the original time ~~expiration of the period originally prescribed or as extended by a previous order,~~ or an extension expires.

(B) Extend it on a~~(2) upon~~ motion if the original time expired and if the movant failed~~made after the expiration of the specified period permit the act to be done where failure~~ to act because~~was the result~~ of excusable neglect.

~~**(b)**~~**(C)** The court~~; but it~~ may not extend the time for acting~~taking any action~~ under Rules 50(b), 52(b), 59(b), 59(d), 59(e), 60(b), and 60(c) unless one of those rules states otherwise~~except to the extent and under the conditions therein stated~~.

(c) ~~Unaffected by~~ Expiration of court term. The~~**Term.** The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the~~ continued existence or expiration of a court ~~term of court. The existence or expiration of a~~ term does not affect or limit a court's~~of court in no way affects the~~ power to act ~~of a court to do any act or take any proceeding in a civil action~~ consistent with these rules.

(d) Time for motion, hearing notice, and affidavit; exceptions.

(1) Time for motion and hearing notice; exceptions.

(A) ~~**Motions.**~~ A written motion and notice of hearing must be served at least 14 days before the hearing except when:

(i) The motion ~~, other than one which~~ may be heard ex parte;

(ii) These rules set ~~, and notice of the hearing thereof shall be served not later than five days before the time fixed for the hearing, unless~~ a different time; or

(iii) A ~~period is fixed by these rules or by order of the~~ court~~. Such an~~ order sets a different time.

(B) For good~~may for~~ cause shown, a party may move ~~be made on~~ ex parte for~~application. When~~ a court order setting a different time.

(2) Time for ~~motion is supported by~~ **affidavit; exceptions.**

(A) A motion supporting an~~, the~~ affidavit must~~shall~~ be served with the motion.

(B) Unless~~; and, except as otherwise provided in~~ Rule 59(c) states otherwise, an~~),~~ opposing affidavit must~~affidavits may~~ be served no~~not~~ later than seven days~~one day~~ before the hearing.

~~**(d)**~~**(i)** The~~, unless the~~ court may allow an opposing affidavit~~permits them~~ to be served at some other time.

~~**(e) Additional Time After**~~ **Service by mail: additional time.** When~~**Mail.** Whenever~~ a party may~~has the right~~ or must~~is required to do some~~ act ~~or take some proceedings~~ within a specified time after service~~prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him~~ by mail, three

(e) days areshall be added afterto the prescribed period would otherwise expire. The additional time. This subdivision does not apply to respondingresponses to service of a summons under Rule 4.

[Amended effective 3/March 1/89, 1989; amended effective 6/June 24/92, 1992; amended effective 7/1/08.]
July 1, 2008.]

Advisory Committee Historical Note

Effective 6/June 24/92, 1992, Rule 6(a) was amended to provide that the legal holidays which cause a period of time to be enlarged are those defined by statute. 598-02602 So. 2d XXII-XXIII (West Miss. Cas. 1992).

Effective 3/March 1/89, 1989, Rule 6(a) was amended to abrogate the inclusion of time periods established by local court rules. 536-38538 So. 2d XXI (West Miss. Cas. 1989).

Advisory Committee Notes

Clerks'It is not uncommon for clerks' offices and courthouses to be closed occasionally close during what are normal working periods., whether by local custom or for a special purpose, such as attendance at a funeral. Rule 6(a) obviates was drafted to obviate any harsh result that may otherwise harsh resultsensue when an attorney, faced with an important filing deadline unexpectedly ,discovers that the courthouse or the clerk's office is unexpectedly closed.

Rule 6(b) gives the court wide discretion to enlarge the various time periods both before and after the actual termination of the allotted time terminates. But a , certain enumerated cases being excepted. A court cannot extend the time for: (1) for filing of a motion for judgment notwithstanding the verdict underpursuant to Rule 50(b); (2)ii) for filing a motion to amend the court's findings underpursuant to Rule 52(b); (3)iii) for filing a motion for new trial underpursuant to Rule 59(b); (4)iv) for filing a motion to alter or amend the judgment underpursuant to Rule 60(b); (5)vi) for filing a motion to reconsider a court order transferring a case to another one under court pursuant to Rule 60(c); or (6)vii) for entering a sua sponte order requiring a new trial underpursuant to Rule 59(d).

Extending the time period requires a party to show Importantly, such enlargement is to be made only for cause for doing soshown. If a motionthe application for additional time is filedmade before the period expires, the request may be made ex parte; if it is filedmade after the expiration of the period expires, notice of the motion must be given to other parties, and the only cause for which extra time can be allowed is "excusable neglect."

Rule 6(c) does not abolish court terms; it merely provides greater flexibility to ~~the~~ courts in performing a~~attending the~~ myriad of functions~~ they must perform~~, many of which previously occurred~~were heretofore~~

~~possible~~ only during term time. The rule is also consistent with other~~the~~ provisions specifying a~~elsewhere herein that prescribe a specific~~ number of days for taking certain actions rather than linking time expirations to ~~the~~ opening day, ~~or~~ final day, or ~~any~~ other day of a court term. ~~E of court; e~~*E.g.*, Rule 6(d) (motions and notices of hearings ~~thereon~~ to be served not less than 14~~five~~ days before ~~time fixed for~~ hearing~~);), and~~ Rule 12(a) (defendant to answer within 30~~thirty~~ days~~).~~

~~after service of summons and complaint).~~

SECTION 3

~~CHAPTER III~~. PLEADINGS~~; AND~~ MOTIONS; OTHER PAPERS

Rule ~~RULE~~ 7. Allowed pleadings; motion and other papers: form.~~PLEADINGS ALLOWED; FORM OF MOTIONS~~

(a) Allowed pleadings.

(1) Only these pleadings are allowed:

(A) A complaint;

(B) An answer to ~~**Pleadings.** There shall be~~ a complaint;

(C) A ~~and an answer; a~~ reply to a counterclaim specifically designated as a counterclaim;

(D) An ~~counter-claim denominated as such; an~~ answer to a crossclaim;

(E) A ~~cross-claim, if the answer contains a cross-claim; a~~ third-party complaint;

(F) An answer to~~, if a person who is not an original party is summoned under the provisions of Rule 14; and a third-party answer, if~~ a third-party complaint; and

~~**(a)**~~**(G)** If ordered by the court, ~~is served. No other pleading shall be allowed, except that the court may order~~ a reply to an answer or ~~a~~ third-party answer.

~~**(b) Motions and Other Papers.**~~

~~**(i)**~~

(2) ~~An~~ No other pleading will be allowed.

(b) Motion. A request for a~~application to the~~ court ~~for an~~ order must~~shall~~ be by a filed motion.

(1) Form. Unless filed ~~which, unless made~~ during a hearing or trial, a motion must:

(A) Be filed~~shall be made~~ in writing;

~~(1)~~**(B)** State~~, shall state~~ with particularity the grounds for seeking an order; and~~therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.~~

(C) State the requested relief.

Rules governing

(2) ~~The rules applicable to~~ captions, signing, and~~or~~ other matters of form in~~of~~ pleadings apply to ~~all~~ motions and other papers ~~provided for by these rules~~.

(c) ~~**Size of**~~ **Paper size.** Pleadings~~. All pleadings~~, motions, and other papers, including depositions, must~~shall~~ be ~~made~~ on 8 1/2" by 11" paper. Deposition formatting must~~The format for all depositions shall~~ comply with the Guidelines for Court Reporters according to~~as provided in~~ Mississippi ~~Supreme Court~~ Rule of Appellate Procedure 11(c).~~.~~

(d) **Demurrer, plea abolished.** A demurrer, plea, and exception~~**Demurrers, Pleas, etc., Abolished.** Demurrers, pleas, and exceptions~~ for insufficiency of a pleading will~~shall~~ not be used.

Advisory Committee Historical Note

Effective 11/~~November~~ 19/92~~, 1992~~, Rule 7(c) was redesignated Rule 7(d), and a new Rule 7(c)~~),~~ requiring letter~~-~~-size paper for all pleadings, motions, and other papers was adopted. 606-07~~ 607~~ So. 2d XIX-XX (West Miss. Cas. 1993).

Rule 8. General pleading rules.

~~RULE 8. GENERAL RULES OF PLEADING~~

(a) Claims for relief~~Relief~~. A pleading stating~~which sets forth~~ a claim for relief must~~, whether an original claim, counter-claim, cross-claim, or third-party claim, shall~~ contain:

(1) A~~a~~ short and plain statement of the claim showing that the pleader is entitled to relief;~~,~~ and~~,~~

(2) A~~a~~ demand for judgment for the requested relief.

~~(2)~~**(A)** ~~to which he deems himself entitled.~~ Relief in the alternative or ~~of several~~ different types of relief may be demanded.

(b) Defenses; admissions; denials.

(1) Requirements. In responding to a pleading, a~~: Form of Denials. A~~ party must:

(A) State~~shall state~~ in short and plain terms ~~his~~ defenses to each ~~claim~~ asserted claim; and

(B) Admit~~ shall admit~~ or deny the allegations asserted against~~averments upon which~~ the party.

(2) Denials: responding to substance. A denial must fairly respond to the substance of an allegation.

(3) Denials: general; specific. Subject to Rule 11 obligations, a~~adverse~~ party may in good faith deny jurisdictional grounds and all other allegations by general denial.

(A) Otherwise, a party must either:

(i) Specifically deny designated allegations; or

(ii) Generally deny all allegations except those specifically admitted.

(4) Partial denials. A party intending in good faith to deny only part of an allegation must admit the part that~~relies. If he~~ is true and deny the rest.

~~(b)~~**(5) Lacking sufficient knowledge or information.** A party lacking~~without~~ knowledge or information sufficient to form a belief about~~as to~~ the truth of an allegation must state ~~averment, he shall~~ so. The statement~~ state and this~~ has the effect of a denial.~~ Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an~~

~~averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials or designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all of its averments, he may do so by general denial subject to the obligations set forth in Rule 11.~~

(c) Affirmative defenses.

(1) Requirements. In responding to a pleading, a party must affirmatively state ~~**Affirmative Defenses.** In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting~~ an avoidance or affirmative defense, including:

(A) Accord and satisfaction;
(B) Arbitration and award;
(C) Assumption of risk;
(D) Contributory negligence;
(E) Discharge in bankruptcy;
(F) Duress;
(G) Estoppel;
(H) Failure of consideration
(I) Fraud;
(J) Illegality
(K) Injury by fellow servant;
(L) Laches;
(M) License;
(N) Payment;
(O) Release;
(P) Res judicata;
(Q) Statute of frauds;
(R) Statute of limitations; and
(S) Waiver.

~~**(c)**~~**(2) Mistake.** If justice so requires, when~~. When~~ a party~~ has~~ mistakenly designates~~designated~~ a defense as a counterclaim~~counter-claim~~ or a counterclaim~~counter-claim~~ as a defense, the court must~~on terms, if justice so requires, shall~~ treat the pleading as properly designated and may impose terms for doing so~~if there had been proper designation~~.

(d) ~~**Effect of**~~ **Failure to deny.** When~~**Deny.** Averments in~~ a ~~pleading to which a~~ responsive pleading is required, an allegation other than one relating~~those as~~ to the amount of damages is~~, are~~ admitted if~~when~~ not denied. If ~~in the responsive pleading. Averments in a pleading to which~~ no responsive pleading is required, the allegation is ~~or permitted shall be taken as~~ denied or avoided.

(e) Pleading requirements~~to Be Concise and Direct: Consistency~~.

(1) Generally. Each allegation must~~averment of a pleading shall~~ be simple, concise, and direct. No technical form~~forms~~ of a pleading or motion is~~motions are~~ required.

(2) Consistency; number.

(A) A party may state~~set forth~~ two or more claims~~statements of a claim~~ or defenses~~defense~~ alternatively or hypothetically~~, either~~ in a single~~one~~ count or defense or separately. If one of ~~in separate counts or defenses. When two or more statements are made in~~ the statements is ~~alternative and one of them if made independently would be~~ sufficient, so is the pleading.

~~(2)~~**(B)** There is no limit on the number of ~~is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many~~ separate claims or defenses a party may state. Separate claims or defenses do not have~~as he has, regardless of consistency. All statements shall be made subject~~ to be consistent. But~~the~~ obligations stated~~set forth~~ in Rule 11 apply to all statements. ~~.~~

(f) Construction. A pleading must ~~**of Pleadings.** All pleadings shall~~ be ~~so~~ construed so as to do substantial justice.

(g) Not read or submitted. Except as admitted into evidence, pleadings must not be considered by the jury.

~~**(g) Disclosing infancy or legal disability.** A**Pleadings Shall Not Be Read or Submitted.** Pleadings shall not be carried by the jury into the jury room when they retire to consider their verdict, except insofar as a pleading or portion thereof has been admitted in evidence.~~

(h) ~~**Disclosure of Minority or Legal Disability.** Every~~ pleading or motion ~~made by or~~ on behalf of a person under legal disability must state so ~~shall set forth such fact~~ unless ~~the fact of legal disability has been~~ disclosed in a previous~~prior~~ pleading or motion in the ~~same~~ action. ~~or proceeding.~~

Advisory Committee Notes

Rule 8 allows claims and defenses to be stated in general terms so that the client's rights ~~of the client~~ are not lost due to counsel's~~by~~ poor drafting skills. All cases must satisfy Rule 8(a) notice-pleading standards. The purpose of Rule 8 is to put parties on notice of the claims against them. *E.g.*, *BB Buggies, Inc. v. Leon*, 150 So. 3d 90, 101 (Miss. 1994).

~~counsel.~~ Under Rule 8(a), "it is only necessary that the pleadings provide sufficient notice to the defendant of the claims and grounds upon which relief is sought." *See DynaSteel Corp. v. Aztec Industries, Inc.*, 611 So. 2d 977 (Miss. 1992). No "magic words" are required, and the pleadings must only provide sufficient notice of the claims and basis for relief. *BB Buggies, Inc.*, 150 So. 3d at 101 (quoting *Estate of Stevens v. Wetzel*, 762 So. 2d 293, 295 (Miss. 2000)).

But Rule 8 "does not eliminate the necessity of stating circumstances, occurrences, and events which support the proffered claim." *PACCAR Fin. Corp. v. Howard*, 615 So. 2d 583, 589 (~~A plaintiff must set forth~~Miss. 1993). A plaintiff must state direct or inferential fact allegations concerning all elements of a claim. *See Penn. Nat'l Gaming, Inc. v. Ratliff*, 954 So. 2d 427, 432 (Miss. 2005). ~~Motions or pleadings seeking modification of child custody must include an allegation that a material change has occurred which adversely affects the child or children. It is not sufficient to allege that an adverse change will occur if the modification is not granted. *See, e.g., McMurry v. Sadler*, 846 So. 2d. 240, 244 (Miss. Ct. App. 2002). In cases involving the joinder of multiple plaintiffs, the complaint must contain the allegations identifying by name the defendant or defendants against whom each plaintiff asserts a claim, the alleged harm caused by specific defendants as to each plaintiff, and the location at which and time period during which the harm was caused. *See 3M Co. v. Glass*, 917 So. 2d 90, 92 (Miss. 2005);~~Conclusory allegations or legal conclusions masquerading as factual conclusions are insufficient. *See Cook v. Wallot*, 172 So. 3d 788, 801 (Miss. Ct. App. 2013) (quoting *Penn Nat'l Gaming, Inc.*, 954 So. 2d at 431).

To modify child custody, a motion or pleading must allege adverse effects due to a material change. The motion or pleading is insufficient if it alleges that an adverse change will occur unless the modification is granted.

See, e.g., McMurry v. Sadler, 846 So. 2d. 240, 244 (Miss. Ct. App. 2002).

In cases involving joinder of multiple plaintiffs, the complaint must identify: (1) the name of the defendant or defendants against whom each plaintiff asserts a claim; (2) the alleged harm caused by specific defendants as to each plaintiff; (3) the location at which the harm was caused; and (4) the time period when the harm was caused. *See 3M Co. v. Glass*, 917 So. 2d 90, 92 (Miss. 2005); *Harold's Auto Parts, Inc. v. Mangialardi*, 889 So. 2d 493, 495 (Miss. 2004). Failure to provide this "core information" is a violation of Rules 8 and 11. Plaintiffs in thesesuch cases must also plead sufficient facts to support joinder. *Glass*, 917 So. 2d at 93; *Mangialardi*, 889 So. 2d at 495.

Under Rule 8(c), requiring a defendant to)'s requirement that defendants plead affirmative defenses when answering is intended to give fair notice of such defenses to plaintiffs so that they may respond to the plaintiff for responding to them.such defenses. Just as Rule 8(a) requires only that the plaintiff give the defendant notice of a claimthe claims, Rule 8(c) requires only that the defendant give the plaintiff notice of athe defense. "A defendant's failure to timely and reasonably raise and pursue the enforcement of any affirmative defense or other affirmative matter or right which would serve to terminate or stay the litigation, coupled with active participation in the litigation process, will ordinarily serve as a waiver." *Kimball Glassco Residential Ctr., Inc. v. Shanks*, 64 So. 3d 941, 945 (Miss. 2011) (citing *MS Credit Ctr., Inc. v. Horton*, 926 So. 2d 167, 180 (Miss. 2006)).

The list of affirmative defenses in Rule 8(c) is not intended to be exhaustive. A defense is an affirmative defense if the defendant bears the burden of proof. *See Natchez Elec. & Supply Co., Inc. v. Johnson*, 968 So. 2d 358, 361 (Miss. 2007). "A matter is an 'avoidance or affirmative defense' only if it assumes the plaintiff proves everything [alleged]he alleges and asserts, even so, the defendant wins. Conversely, if, in order to succeed in the litigation, the defendant depends upon the plaintiff failing to prove all or part of his claim, the matter is not an avoidance or an affirmative defense. A defendant does not plead affirmatively when [he merely denying]denies what the plaintiff has alleged." *Hertz Commercial Leasing Div. v. Morrison*, 567 So. 2d 832, 835 (Miss. 1990).

The listExamples of some affirmative defenses or matters of avoidance that are not enumerated in Rule 8(c) is not intended to be exhaustive. *See, e.g., Loggers, LLC. v. 1 Up Techs., LLC*, 50 So. 3d 992, 993 (Miss. 2011) (but which have been recognized by the Supreme Court include: the failure of a foreign LLClimited liability corporation transacting business in the state to register to do business as a prerequisite to maintaining an action under Miss. Code Ann. §in state court as required by Mississippi Code Annotated section 79-29-1007(1)); *Price*) (Supp. 2011) (*see Loggers, L.L.C.* v. *Clark*, 21*1 Up Technologies, L.L.C.*, 50 So. 3d 509, 524992, 993 (Miss. 2009) (2011)); immunity under the Mississippi State Tort Claims Act); *Meadows* (*see Price* v. *Blake*, 36*Clark*, 21 So. 3d 1225, 1232-33509, 524 (Miss. 2010) (no2009)); failure to comply with the requirement of a certificate of expert consultation in medical malpractice cases under Miss.as required by Mississippi

Code Ann. §Annotated section 11-1-58); *Stuart* (Supp. 2011) (*see Meadows*

v. Univ. of Miss. Blake, 36*Med. Ctr.*, 21 So. 3d 544, 549-501225, 1232-33 (Miss. 2009) (noncompliance2010)); plaintiff's non-compliance with the 90-day notice requirement under Miss.contained in Mississippi Code Ann. §Annotated section 11-46-11(1) (Supp. 2011) (*see Stuart v. University of Miss. Med. Ctr.*, 21)); *Ms.* So. 3d 544, 549-50 (Miss. 2009)); the assertion of the right to arbitrate (*see Ms. Credit Ctr., Inc. v Horton*, 926 So. 2d 167, 179 (Miss. 2006) (right to arbitrate); *Eckmann v.* 2006)); *Moore*, 876 So. 2d 975, 989 (Miss. 2004) (apportionment of fault under Miss.pursuant to Mississippi Code Ann. §Annotated section 85-5-7 (Supp. 2011) (*see Eckmann v. Moore*, 876 So. 2d 975, 989 (Miss.);2004)); argument that a

contractual acceleration clause is an un-enforceable penalty (*see* *Hertz Comm'l Leasing Div.*

v. Morrison, 567 So. 2d 832, 834 (Miss. 1990) (contractual acceleration clause as unenforceable penalty); *Bailey v.*)); the failure of a *Georgia Cotton Goods Co.*, 543 So. 2d 180, 182-83 (Miss. 1989) (failure of foreign corporation transacting business in this state to obtain a certificate of authority as prerequisite to maintaining an action under Miss.in this state as required by Mississippi Code Ann. §Annotated section 79-4-15.2 (Supp. 2011) (*see Bailey v. Georgia Cotton Goods Co.*, 543 So. 2d 180, 182-83 (Miss. 415.02); *O'Briant v.* 1989)); election of remedies (*see O'Briant v. Hull*, 208 So. 2d 784, 785 (Miss. 1968) (election of remedies); *Charlot v.*)); adverse possession as a defense to neighboring landowner's actions (*see Charlot v. Henry*, 45 So. 3d 1237, 1243-44 (Miss. Ct. App. 2010) (adverse possession);)); the defense of condonation in a divorce case (*see Ashburn v. Ashburn*, 970 So. 2d 204, 212-13 (Miss. Ct. App. 2007) (condonation).)).

The court may deny aA party may be denied leave to amend anits answer to include an affirmative defense if that affirmative defense has been waived. *See Hutzel v. City of Jackson*, 33 So. 3d 1116, 1122 (Miss. 2010).

Rule 9. Pleading special matters.

RULE 9. PLEADING SPECIAL MATTERS

(a) Capacity. The capacity in which one sues or is sued must be stated in the party's initial pleading.

(b) Fraud; mistake; condition of mind. In alleging all averments of fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

(c) Conditions precedent. In pleading a condition precedent, it is sufficient to allege generally that all conditions precedent have occurred or been performed. A party must deny the performance or occurrence of a condition precedent with particularity.

(d) Official document or act; ordinance; special statute.

(1) Official Document or Act. In pleading an official document or act, it is sufficient to aver that the document was legally issued or the act was legally done.

(2) An allegation identifying an ordinance or statute by title, approval date, or otherwise is sufficient to plead a municipal or county ordinance; or a special, local, or private statute; or any right derived from them.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and place. Alleging time and place is material for purposes of testing a pleading's sufficiency.

(g) Special damage. An item of special damage must be specifically stated.

(h) Fictitious parties. If~~Parties. When~~ a party states~~is ignorant of the name of an opposing party and so alleges~~ in a~~his~~ pleading that an opponent's name is unknown, the opposing party may be designated by any name. Process,~~, and when his true name is discovered the process and all~~ pleadings and proceedings in the action may be amended by substituting the true name and giving proper notice to the opposing party once it is known.

(i) Unknown parties in interest. An~~Parties in Interest. In an action where~~ unknown proper party~~parties are~~ interested in the subject matter of an~~the~~ action~~, they~~ may be designated as an unknown party~~parties~~ in interest.

Advisory Committee Notes

To ~~A party desiring to~~ raise an issue as to a party's~~the~~ legal existence, capacity, or authority, the other ~~of a~~ party must assert it~~such~~ in the answer. If lack of capacity appears affirmatively on the face of the complaint, the defense may be raised by ~~a~~ motion under~~pursuant to~~ Rule 12(b)(6) or ~~Rule~~ 12(c).

"Circumstances" in Rule 9(b) refers to matters like: (1)~~such as~~ the time, place, and contents of ~~the~~ false representations; (2)~~, in addition to~~ the identity of the person who made them; and (3) what the person obtained as a result.

Under Rule 9(g), ~~) requires a detailed pleading of~~ special damages are alleged in detail. But~~and only a~~ general ~~pleading of general~~ damages are alleged generally.~~.~~ General damages are ~~damages that are~~ typically caused by~~,~~ and flow naturally from alleged~~, the~~ injuries~~alleged~~. Special damages are ~~damages that are~~ unusual or atypical for the type of claim asserted. Special damages must~~are required to~~ be plead~~pled~~ with specificity so as to give the defendant notice of the nature of the alleged damages. Examples of special~~Special~~ damages include~~, but are not limited to,~~ consequential damages, damages for lost business profit, and punitive damages. *See Puckett Mach.~~Machinery~~ Co. v. Edwards*, 641 So. 2d 29, 37-38 (Miss. 1994) (consequential damages must be plead with specificity); *Lynn v. Soterra, Inc.*, 802 So. 2d 162, 169 (Miss. Ct. App. 2001) (~~damages for~~ lost business profits~~profit~~ caused by ~~defendant's~~ blocking ~~of a~~ road are likely special damages). Failing~~If claimant fails~~ to plead special damages with specificity could result in the reversal of a damages~~, an~~ award ~~for such damages may be reversed~~. The requirement that special damages must be stated with specificity will be waived if special damages are tried by ~~the~~ express or implied consent of the parties under~~pursuant to~~ Rule 15(b).

Rule

~~RULE~~ 10. Pleadings form.~~FORM OF PLEADINGS~~

(a) Caption; party names. A~~**Names of Parties.** Every~~ pleading must~~shall~~ contain a caption stating~~setting forth the name of~~ the court name, ~~, the title of the~~ action title,~~, the~~ file number, and Rule 7(a) designation.

(1) ~~as in Rule 7(a).~~ In the complaint, ~~the title of~~ the action title must~~shall~~ include the names of all ~~the~~ parties.

~~(a)~~(2) In~~, but in~~ other pleadings, it is sufficient to state the name of the first party on each side with an appropriate indication of all others~~other parties~~.

(b) Paragraphs; separate statement.

(1) ~~**Separate Statement.**~~ The first paragraph of a claim for relief must~~shall~~ contain the names ~~and, if known, the addresses~~ of all ~~the~~ parties and their addresses if known.

(2) ~~.~~ All allegations~~averments~~ of a claim or defense must~~shall~~ be asserted~~made~~ in numbered paragraphs.

(A) The~~, the~~ contents of each numbered paragraph must~~of which shall~~ be limited as far as practicable to a statement of a single set of circumstances.

(B) The~~; and the~~ paragraph may be referred to by number in subsequent~~all succeeding~~ pleadings.

~~(b)~~(3) Each claim founded on~~upon~~ a separate transaction or occurrence and each defense other than a denial must~~denials shall~~ be stated in a separate count or defense when doing so~~whenever a separation~~ facilitates presenting~~the clear presentation of~~ the matters clearly~~set forth~~.

(c) Adoption by reference; exhibits. A statement~~**Reference; Exhibits.** Statements~~ in a pleading may be adopted by reference in ~~a different part of~~ the same pleading~~, or in~~ another pleading, or a~~in any~~ motion. A copy of a~~any~~ written instrument attached as~~which is~~ an exhibit to a pleading is ~~a~~ part of the pleading~~thereof~~ for all purposes.

(d) Copy must be attached.~~Must Be Attached.~~ When a~~any~~ claim or defense is founded on an account or other written instrument, a copy ~~thereof~~ should be attached to the pleading or filed with it~~the pleading~~ unless the pleading alleges sufficient justification for its omission. ~~is stated in the pleading.~~

[Amended effective 4/~~April~~ 13/00~~, 2000~~.]

Advisory Committee Historical Note

Effective 4/~~April~~ 13/00~~, 2000~~, Rule 10(d) was amended to suggest~~,~~ rather than require ~~that~~ documents on which a claim or defense is based to be attached to a pleading. 753-745 So. 2d XVII ~~-~~(West Miss. Cas. 2000.)

Advisory Committee Notes

Failure to comply with Rule 10(b)~~the~~ requirements ~~of Rule 10(b)~~ is not a basis~~ground~~ for dismissing~~dismissal of~~ the complaint or striking the answer. But on ~~Instead, the court, upon~~ a motion or ~~on~~ its own, the court may order a party to amend the pleading ~~so as~~ to comply with ~~the provisions of~~ Rule 10(b). *See*, *e.g*

~~*e.g.*~~ *., 3M Co. v. Glass*, 917 So. 2d 90, 92-94 (Miss. 2005); *Harold's Auto Parts, Inc. v. Mangialardi*, 889 So. 2d 493, 494-95 (Miss. 2004).

Rule 11. Signing pleadings, motions, and other papers.

~~RULE 11. SIGNING OF PLEADINGS AND MOTIONS~~

(a) Signature required.

(1) A ~~**Required.** Every~~ pleading~~, or~~ motion, or other paper must ~~of a party represented by an attorney shall~~ be signed by at least one attorney of record in the~~that~~ attorney's ~~individual~~ name. An unrepresented party must personally~~, whose address shall be stated. A party who is not represented by an attorney shall~~ sign that party's name. The pleading~~, or~~ motion, or other paper must ~~and~~ state the signer's~~party's~~ address, email address, and telephone number.

(2) Unless a~~. Except when otherwise specifically provided by~~ rule or statute specifically states otherwise, a pleading does not ~~, pleadings~~ need to~~not~~ be verified or accompanied by an affidavit. The rule in equity that sworn allegations in~~the averments of~~ an answer ~~under oath~~ must be overcome by ~~the~~ testimony from~~of~~ two witnesses or ~~of~~ one witness and~~sustained by~~ corroborating circumstances is abolished.

(3) The signature of an attorney constitutes a certificate:

~~that~~

(A) That the attorney has read the pleading~~, or~~ motion, or other paper;

(B) That~~; that~~ to the best of the attorney's knowledge, information, and belief there is good grounds~~ground~~ to support it; and ~~that~~

(C) That it is not interposed for delay.

~~**(a)**~~**(4)** Except on a verified motion for admission pro hac vice, the~~The~~ signature of an attorney ~~who is~~ not regularly admitted to practice in Mississippi also certifies~~, except on a verified application for admission pro hac vice, shall further constitute a certificate by the attorney~~ that the foreign attorney has been admitted in the case according to Miss. R. App. P. 46(b) ~~in accordance with the~~ requirements and limitations ~~of Rule 46(b) of the Mississippi Rules of Appellate Procedure~~.

(b) Sanctions. An unsigned~~If a~~ pleading, motion, or other paper ~~motion is not signed~~ or one~~is~~ signed with intent to defeat the purpose of this rule~~, it~~ may be stricken as ~~sham and~~ false~~,~~ and a sham. The~~the~~ action may proceed as though the pleading, motion, or other paper~~motion~~ had not been served.

(1) For willful~~wilful~~ violation of this rule, an attorney may be subjected to appropriate disciplinary action.

(2) Similar action may be taken if scandalous or indecent matter is inserted.

~~(b)~~(3) If ~~If any party files a motion or pleading which, in the opinion of~~ the court decides that a party's pleading, motion, or other paper~~,~~ is frivolous or intended to harass~~is filed for the purpose of harassment~~ or delay, the court may order the~~such a~~ party, the party's~~or his~~ attorney, or both~~,~~ to pay to the opposing party or parties ~~the~~ reasonable expenses, including reasonable attorney's fees, incurred by them~~such other parties~~ and ~~by~~ their attorneys~~, including reasonable attorneys' fees~~.

[Amended effective 3/~~March~~ 13/91~~, 1991~~; amended effective 1/~~January~~ 16/03].~~, 2003]~~

~~Advisory Committee Historical Note~~
Advisory Committee Historical Note

Effective 1/~~January~~ 16/03~~, 2003~~, Rule 11(a) was amended to provide that the signature of a foreign attorney certifies compliance with Miss. R. App. P.~~MRAP~~ 46(b) and to make other editorial changes. ____ ____ So. 2d ____ ____ (West Miss. Cases 2003).

Effective 3/~~March~~ 13/91~~, 1991~~, Rule 11(b) was amended to provide for sanctions against a party, his attorney, or both. 574-76~~576~~ So. 2d XXI (West Miss. Cas. 1991).

Advisory Committee Notes

Good faith and professional responsibility are the corebases of Rule 11. For example, Rule 8(b)), for instance, authorizes the use of a general denial "subject to the obligations set forth in Rule 11—in other words, counsel should do so," meaning only when counsel can in good faith he or she can fairly deny all allegationsthe averments in the adverse pleading should he do so.

Verification will be the exception and not the rule to pleading in Mississippi. No pleading or petition requires verification or an accompanyingneed be verified or accompanied by affidavit unless there is a specific rule or statutory provision states otherwise.to that effect in a rule or statute. *See*, *e.g.*, Miss. M.R. Civ. C.P. 27(a) and 65.

The final sentence of Rule 11(b) intendsis intended to ensure that the trial court has sufficient power to deal forcefully and effectively with parties or attorneys who may misuse the liberal, notice-pleadings system effectuated by these rules. ItThe Rule authorizes a court to award a party reasonable attorney'sattorneys' fees and expenses when an adverse party "files a motion or pleading which, in the opinion of the court, is frivolous pleading, motion, or other paper or one intended to harassis filed for the purpose of harassment or delay. Therefore." Thus, Rule 11 provides two alternative grounds for imposingthe imposition of sanctions: (1) the filing of a frivolous motion or pleading, motion, or other paper and (2)the filing of a pleading, motion, or other paper to harasspleading for the purpose of harassment or delay. *See Nationwide Mut. Ins. Co. v. Evans*, 553 So. 2d 1117, 1120 (Miss. 1989).

BadAlthough a finding of bad faith is necessary forto sustain the imposition of sanctions based on purposeful harassment or delay. But, a finding of bad faith is not for necessary to sustain the imposition of sanctions based onupon frivolous pleadings, or motions, or other papers. A pleading, or motion, or other paper is frivolous "only when, objectively speaking, the pleader or movant has no hope of success." *See In re Spencer*, 985 So. 2d 330, 339 (Miss. 2008). A pleading, motion, or other paper is "frivolous" if its "insufficiency. . . ...is so manifest upon a bare inspection of the pleadings, that the court or judge is able to determine its character without argument or research." *In re Estate of Smith*, 69 So. 3d 1, 6 (Miss. 2011). A defensive pleading is not frivolous unless "conceding it to be true does not, taken as a whole, contain any defense to any part of complainant's cause of action and its insufficiency as a defense is so glaring that the Court can determine it upon a bare inspection without argument." *Id. In re Estate of Smith*, 69 So. 3d at 6.

Sanctions against a party are improper in cases: (1) where the party relied strictly on counsel's advice of counsel and could not be expected to know whether the complaint was supported by law; (2), where the party relied on counsel's advice of counsel in filing the pleading and played no significant role in prosecutingprosecution of the action; or (3) where

the party was unaware and lacked responsibility for ~~any~~ bad-~~-~~faith harassment or delay. *See Stevens v. Lake*, 615 So. 2d 1177, 1184 (Miss. 1993).

The Litigation Accountability Act also authorizes a court to impose sanctions onupon attorneys and/or parties who assert a"any claim or defense that is without substantial justification, or to…was interposed for delay or harass.harassment." Miss. Code Ann. § 11-55-5 (Supp. 2011). "Without substantial justification" is defined as aany claim that is "frivolous, groundless in fact or in law, or vexatious, as determined by the court." Miss. Code Ann. §*Id.* § 11-55-3(a) (Supp. 2011). "Frivolous" as used in the Act means the same thing as "frivolous" as used in Rule 11: a claim or defense made "without hope of success."." *See In re Spencer*, 985 So. 2d at330, 338.

~~(Miss. 2008).~~

Rule 12. Defenses and objections: when and how; Rule 12 motions; consolidating and waiving defenses; hearing.

~~RULE 12. DEFENSES AND OBJECTIONS -- WHEN AND HOW PRESENTED -- BY PLEADING OR MOTION -- MOTION FOR JUDGMENT ON THE PLEADINGS~~

(a) When presented.

(1) Serving a responsive pleading.

(A) Answer to complaint. ~~**Presented.**~~ A defendant must~~shall~~ serve an~~his~~ answer within 30~~thirty~~ days after being served with the ~~service of the~~ summons and complaint or as ~~upon him or within such time as is directed pursuant to~~ Rule 4 states otherwise regarding waiver.

(B) Answer to crossclaim. ~~.~~ A party must serve an answer to a crossclaim within 30 days after being served with a pleading stating one.

(C) Reply to counterclaim. A ~~a cross-claim against him shall serve an answer thereto within thirty days after the service upon him. The~~ plaintiff must~~shall~~ serve a~~his~~ reply to a counterclaim~~counter-claim in the answer~~ within 30~~thirty~~ days after being served with an~~service of the~~ answer stating one or an order requiring~~, if~~ a reply ~~is ordered by the court, within thirty days after service of the order,~~ unless the court orders~~order~~ otherwise.

(2) Effect ~~directs. The service~~ **of** ~~a~~ **motion.**

~~(a)~~**(A)** Unless the court orders a different time, serving a motion ~~permitted~~ under this rule alters the~~these~~ periods in Rule 12(a)(1)~~of time~~ as follows~~, unless a different time is fixed by order of the court~~:

~~(1)~~**(i)** If~~if~~ the court denies the motion or postpones its disposition until ~~the~~ trial ~~on the merits~~, the responsive pleading must~~shall~~ be served within 10~~ten~~ days after notice of the court's action.~~;~~

If

~~(2)~~**(ii)** ~~if~~ the court grants a motion for a more definite statement, the responsive pleading must~~shall~~ be served within 10~~ten~~ days after ~~the~~ service of the more definite statement.

(B) The court may extend these times only~~stated under this subparagraph may be extended,~~ once ~~only,~~ for a period not to exceed 10~~ten~~ days on counsel's~~, upon the~~ written, filed stipulation ~~of counsel filed in the records of the action~~.

(b) How presentedPresented. Every defense, in law or fact, to a claim for relief in a pleading mustany pleading, whether a claim, counter-claim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required. But a party , except that the following defenses may assert defenses in Rule 12(b)(1) through (b)(6) by motion. If no responsive pleading is required, a party may assert at trial a defense to that claim. No defense or objection is waived by joining one or more other defenses or objections in a responsive pleading or motion.at the option of the pleader be made by motion:

(1) Lack of jurisdiction over the subject- matter jurisdiction; ,

(2) Lack of personal jurisdiction; over the person,

(3) Improper venue; ,

Insufficient

(4) Insufficiency of process; ,

Insufficient

(5) Insufficiency of service of process; ,

(6) Failure to state a claim upon which relief can be granted; and,

(7) Failure to join a party under Rule 19.

~~No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56; however, if on such a motion matters outside the pleadings are not presented, and if the motion is granted, leave to amend shall be granted in accordance with Rule 15(a).~~

(c) Motion for judgment~~Judgment~~ on the pleadings~~Pleadings~~. After the pleadings are closed but early enough~~within such time as~~ not to delay ~~the~~ trial, a~~any~~ party may move for a judgment on the pleadings.

(d) Matters outside~~If, on a motion for judgment on the~~ pleadings. On a Rule 12(b)(6) or 12(c) motion, if ~~,~~ matters outside the pleadings are presented to the court and not excluded, the motion must be treated as one for Rule 56 summary judgment. All parties must be given reasonable opportunity to present all pertinent material.

~~(c)~~**(1)** When~~and not excluded by~~ the court grants a Rule 12 (b)(6) or 12(c) ~~, the~~ motion, leave to amend must ~~shall~~ be granted according~~treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent~~ to Rule 15~~(such a motion by Rule 56; however, if on such~~ a) if ~~motion~~ matters outside the pleadings are not presented.~~, and if the motion is granted, leave to amend shall be granted in accordance with Rule 15(a).~~

~~**(d) Preliminary Hearings.** The defenses specifically enumerated (1) through (7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment on the pleadings (subdivision (c) of this rule), shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.~~

(e) Motion for more definite statement.~~More Definite Statement.~~ If a pleading to which a responsive pleading is allowed~~permitted~~ is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party~~he~~ may move for a more definite statement before filing a~~interposing his~~ responsive pleading. The motion must~~shall~~ point out the pleading defects ~~complained of~~ and the ~~details~~ desired details. ~~.~~

~~If the motion is granted and the order of the court is not obeyed within ten days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.~~

~~**(f)** If a court order granting the **Motion to Strike.** Upon~~ motion is not obeyed ~~made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party~~ within 10~~thirty~~ days after notice~~the service~~ of the order or as otherwise stated in it~~pleading upon him or upon the court's own initiative at any~~

(1) ~~time~~, the court may strike the deficient pleading or issue an order it deems just .

(f) Motion to strike. The court may strike~~order stricken~~ from a~~any~~ pleading an~~any~~ insufficient defense or a~~any~~ redundant, immaterial, impertinent, or scandalous matter:~~.~~

(1) On a party's motion before responding to a pleading;
(2) If no responsive pleading is required, on a party's motion within 30 days after the pleading is served; or
(3) On its own at any time.

(g) Consolidating defenses in motion. A~~**Consolidation of Defenses in Motion.** A party who makes a~~ motion under this rule may join ~~with it any~~ other ~~motions herein provided for and then~~ available Rule 12 motions.~~to him.~~ If the~~a party makes a~~ motion ~~under this rule but~~ omits an available Rule 12~~therefrom any~~ defense or objection, a party cannot raise the omitted ~~then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the~~ defense or objection in another motion unless Rule 12(h) states otherwise~~so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated~~.

(h) Waiving and preserving certain defenses.

~~**(h)** **Lack of personal~~**Waiver or Preservation of Certain Defenses.**~~

(1) ~~A defense of lack of~~ jurisdiction~~ over the person~~, improper venue, insufficient~~insufficiency of~~ process, or insufficient~~insufficiency of~~ service of process is waived:

(A) If~~ (A) if~~ omitted from a motion in ~~the~~ circumstances described in Rule 12~~subdivision~~ (g)~~;),~~ or
~~(1)~~**(B)** If not raised~~ (B) if it is neither made~~ by ~~a~~ motion under this rule~~, nor included~~ in a responsive pleading, or in an amendment under~~thereof permitted by~~ Rule 15~~-~~(a)~~ to be made~~ as a matter of course.

(2) Failure~~A defense of failure~~ to state a claim upon which relief can be granted, ~~a defense of~~ failure to join an~~a party~~ indispensable party under Rule 19, and ~~an objection of~~ failure to state a legal defense to a claim may be raised:

~~(2)~~**(A)** In a~~made in any~~ pleading allowed~~permitted~~ or ordered under Rule 7(a~~);~~ ~~), or by motion for judgment on the pleadings, or at the trial on the merits.~~
(B) By a motion for judgment on the pleadings; or
(C) At trial.

Whenever

(3) ~~Whenever it appears by suggestion that the parties or otherwise that~~ the court lacks ~~jurisdiction of the~~ subject matter jurisdiction, it must~~, the court shall~~ dismiss the action or transfer it~~the action~~ to the ~~court of~~ proper court.

(i) Preliminary hearing. Unless the court defers them until trial, the following must be heard and decided before then:

(1) Defenses in Rule 12(b)(1) through (7) asserted in a pleading or motion; and

~~(3)~~**(2)** A motion for judgment on the pleadings~~jurisdiction~~.

Advisory Committee Notes

A~~The~~ motion for a more definite statement requires merely that: —a more definite statement —and not evidentiary details. As~~The motion will lie only when a responsive pleading is required, and is~~ one remedy for a vague or ambiguous pleading, a party—only when a responsive pleading is required—may move for a more definite statement .~~.~~ A defendant may also file a Rule 12(b)(6) motion to challenge ~~as a means of challenging~~ a vague or ambiguous pleading.

~~Ordinarily,~~ Rule 12(f) ordinarily requires~~will require~~ only ~~the~~ objectionable portions~~portion~~ of ~~the~~ pleadings to be stricken rather than~~, and not~~ the entire pleading. Since the issue for the court is whether an allegation is prejudicial to the adverse party, a motion challenging ~~Motions going to~~ redundant or immaterial allegations~~,~~ or allegations as to~~of~~ which ~~there is doubt as to~~ relevancy is doubtful~~,~~ should be denied. When a motion ~~, the issue to be decided being whether the allegation is prejudicial to the adverse party. Motions~~ to strike an insufficient ~~a~~ defense is granted, the court ~~for insufficiency~~ should also order ~~, if granted, be granted with~~ leave to amend.

Under

Rule 12(g),) provides that a party making a pre-answer motion pursuant to Rule 12 motion may join with it such motion any other available Rule 12 pre-answer Rule 12 motions. If a party makes a Rule 12 pre-answer Rule 12 motion and omits an available Rule 12 defense or objection, the party may only raise thesuch omitted defense or objection only as allowed by Rule 12(h)(2) allows.). Rule 12(h)(2) allows a party to raise the defense of failure to state a claim, and/or the defense of failure to join ana party indispensable party under Rule 19, or both (1) by asserting such defenses in the answer; (2), by raising such defenses in a motion for judgment on the pleadings;, or (3) by raising such defenses at the trial. on the merits. Rule 12(g) encourages a party to consolidate all available Rule 12 motions so as to avoid successive motions.

Rule 12(h)(1) states that certain specified defenses which are available to a party when makingthe party makes a pre-answer motion, but which are omitted from the pre-answer motion, are waived, including. The specified defenses include: (1) lack of personal jurisdiction; (2) improper venue; (3) insufficient (3) insufficiency of process; and (4) insufficient insufficiency of service of process. In addition, under Rule 12(h)(1),) further provides that if a party answers rather than filesfiling a pre-answer motion, the party must raise any of these specified defenses in the answer or an amended answer made as a matter of course accordingpursuant to Rule 15(a) to avoid waiver. of such defenses.

Under Rule 12(h)(3), lack) a question of subject matter jurisdiction may be presented at any time, either by motion or answer. ItFurther, it may also be asserted as a motion for relief from a final judgment under Rule 60(b)(4) or may be presented for the first time on appeal. DirectingThe provision directing a court withoutlacking subject matter jurisdiction to transfer the action to the propera court that doeshaving jurisdiction preserves the traditional Mississippi practice of transferring actions between the circuit and chancery courts. *See*, as provided by Miss. Const. art. 6, §§§157 (all causes that may be brought in the circuit court mustwhereof the chancery court has jurisdiction shall be transferred to the chancery court if it has exclusive jurisdiction); *see also id.* §) and 162 (all causes that may be brought in chancery court must be transferred to whereof the circuit court if it has exclusive jurisdiction). But shall be transferred to the circuit court), but not reversing becausefor a courtcourt's improperly exercisedexercising its jurisdiction. *See*, Miss. Const. art. 6, §147 (prohibiting reversals because action brought in wrong court).

Rule

~~RULE~~ 13. Counterclaim; crossclaim.~~COUNTER-CLAIM AND CROSS-CLAIM~~

(a) Compulsory counterclaim.

(1) ~~Counter-claims.~~ A pleading must~~shall~~ state as a counterclaim a ~~counter-~~claim ~~any claim which at the time of serving the pleading~~ the pleader has against an~~any~~ opposing party at the time of service if:

(A) It~~if it~~ arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and

~~(a)~~(B) Does~~does~~ not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction. ~~But the pleader need not state the claim if:~~

(2) But the pleader does not need to assert the claim if:

~~(1)~~**(A)** At~~at~~ the time the action was commenced the claim was the subject of another pending action; ~~or~~

The

~~(2)~~**(B)** ~~the~~ opposing party sued on~~brought suit upon his claim by~~ attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not asserting a counterclaim~~stating any counter-claim~~ under this rule~~Rule 13~~; or

An insurer is defending

~~(3)~~**(C)** the opposing party's claim ~~is one which an insurer is defending~~.

(3) In the event a~~an otherwise~~ compulsory counterclaim ~~counter-claim~~ is not asserted in reliance on an~~upon any~~ exception ~~stated~~ in Rule 13(a),~~paragraph (a), re-litigation of the claim may nevertheless be barred by~~ the doctrines of res judicata or collateral estoppel by judgment may subsequently bar~~in~~ the claim if~~event certain~~ issues are decided~~determined~~ adversely to the party ~~electing~~ not asserting it~~to assert the claim~~.

(b) Permissive counterclaim.~~Counter-Claims.~~ A pleading may state as a counterclaim a~~counter-claim any~~ claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Counterclaim exceeding opposing ~~Counter-Claim Exceeding Opposing Claim.~~ ~~A counter-~~**claim.** A counterclaim may or may not diminish or defeat the opposing party's recovery. It may claim greater or different relief compared to relief requested in ~~sought by~~ the opposing party's pleading~~party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party~~.

(d) Counterclaim against ~~Counter-Claim Against the~~ State of Mississippi. These rules must~~shall~~ not be construed to enlarge beyond ~~the~~ limits fixed by law the right to assert a counterclaim~~counter-claims~~ or to claim a credit~~credits~~ against:

(1) The ~~the~~ State of Mississippi;
(2) A~~, a~~ political subdivision;
(3) An~~, or an~~ officer in a~~his~~ representative capacity; or
~~**(d)**~~**(4)** An agent of the State of Mississippi or a political subdivision~~either~~.

(e) Counterclaim maturing~~Counter-Claim Maturing~~ or acquired after pleading.~~Acquired After Pleading.~~ A claim ~~which either~~ matured or ~~was~~ acquired ~~by the pleader~~ after serving a~~his~~ pleading may~~,~~ with the court's permission ~~of the court,~~ be presented as a counterclaim~~counter-claim~~ by supplemental pleading.

(f) Omitted counterclaim. The court may allow a pleader to assert a counterclaim by amendment on just terms when the ~~**Counter-Claim.** When a~~ pleader fails to assert a counterclaim:

(1) Through~~set up a counter-claim through~~ oversight, inadvertence, or excusable neglect;~~,~~ or

~~**(f)(2)**~~When~~when~~ justice requires~~, he may by leave of court set up the counter-claim by amendment on such terms as the court deems just~~.

(g) Crossclaim against co-party.

(1) A ~~**Cross-Claim Against Co-Party.** A~~ pleading may state as a crossclaim a~~cross-claim any~~ claim by one party against a co-party arising out of the transaction or occurrence:

~~that~~

(A) That is the subject matter ~~either~~ of the original action or of a counterclaim in it~~counter-claim therein~~ or ~~relating~~

(B) That relates to ~~any~~ property which~~that~~ is the subject matter of the original action.

~~**(g)(2)**~~ The crossclaim~~Such cross-claim~~ may include a claim that the party against whom it is asserted is or may be liable to the crossclaimant~~cross-claimant~~ for all or part of the claim asserted in the action against the crossclaimant~~cross-claimant~~.

(h) Claim exceeding court's jurisdiction. When a counterclaim ~~**Claims Exceeding Court's Jurisdiction.** Upon the filing in the county court by any party of a counter-claim~~ or cross-claim exceeding~~which exceeds the~~ jurisdictional limits is filed in county~~of that~~ court, on a~~and upon the~~ motion by~~of~~ all parties ~~filed~~ within 20 days~~twenty days after the filing of such counter-claim or cross-claim~~, the county court must~~shall~~ transfer the action to the circuit or chancery court with jurisdiction where~~wherein~~ the county court is located~~situated and which would otherwise have jurisdiction~~.

(i) Joining additional parties.~~Joinder of Additional Parties.~~ Persons other than ~~those made~~ parties to the original action may be made parties to a counterclaim or crossclaim according to~~counter-claim or cross-claim in accordance with the provisions of~~ Rules 19 and 20.

(j) Separate trial or judgment.~~Trials; Separate Judgment.~~ If the court orders separate trials under ~~as provided in~~ Rule 42(b), judgment on a counterclaim~~counter-claim~~ or crossclaim~~cross-claim~~ may be rendered according to~~in accordance with the terms of~~ Rule 54(b) when the court has jurisdiction ~~so~~ to do so~~,~~ even if the ~~claims of the~~ opposing parties' claims ~~parties~~ have been dismissed or otherwise decided~~disposed of~~.

(k) Appeals.~~Appealed Actions.~~ When an action ~~is commenced~~ in ~~the~~ justice court or in another~~any other~~ court ~~which is~~ not subject to these rules is appealed ~~and from which an appeal~~ for a trial de novo ~~lies~~ to one that is~~a court~~ subject to them, the following applies:

(1) A Rule 13(a)~~these rules, any counter-claim made~~ compulsory counterclaim must~~by subdivision (a) of this rule shall~~ be stated as an amendment to the pleading within 30~~thirty~~ days after the~~such~~ appeal has been perfected or otherwise within additional~~such further~~ time as the court may allow.

(2) Other counterclaims and crossclaims must be allowed as in other cases.

~~(k)~~(3) The lower court's~~; and other counter-claims and cross-claims shall be permitted as in an original jurisdiction action. When a counter-claim or cross-claim is asserted by a defendant in such an appealed case, the defendant shall not be limited in amount to the~~ jurisdiction does not limit the amount of a defendant's counterclaim or crossclaim, and the defendant may ~~of the lower court but shall be permitted to~~ claim and recover the full amount ~~of its claim~~ irrespective of the lower court's jurisdiction~~ of the lower court~~.

Advisory Committee Notes

~~The purpose of~~ Rule 13 grants~~is to grant~~ the court broad discretion to allow claims to be joined ~~in order~~ to expedite ~~the~~ resolution of all ~~the~~ controversies between the parties in one suit and to eliminate ~~the~~ inordinate expense occasioned by circuity of action and multiple litigation.

Subject to ~~the~~ exceptions stated in Rule 13(a), a counterclaim is ~~counterclaims are~~ compulsory if arising~~they arise~~ out of the same transaction or occurrence that is the subject matter of the opposing party's claim. A compulsory counterclaim is~~Compulsory counterclaims are~~ so closely related to ~~the~~ claims already raised~~,~~ that it~~they~~ can be adjudicated in the same action without creating confusion and should be ~~adjudicated in the same action so as~~ to avoid unnecessary expense and duplicative litigation. Rule 13 generally requires a compulsory counterclaim~~counterclaims~~ to be asserted in ~~the~~ pending litigation to avoid waiver.

All other counterclaims are permissive and may be asserted by the defending party. If trying the permissive counterclaim in the same case as the original claim ~~is tried~~ will create confusion, prejudice, unnecessary delay, or increased costs, the court has the discretion to order a separate trial on~~that~~ the counterclaim under~~be tried separately pursuant to~~ Rule 42(b).

Under~~Pursuant to~~ Rule 13(g), a party may assert a crossclaim~~cross-claim~~ against a co-party if the crossclaim~~cross- claim~~ arises out of the same transaction or occurrence (1) that is the subject matter of the complaint; (2) that is ~~or~~ a counterclaim to ~~thereto or relates to any property that is~~ the subject matter of the complaint; or (3) that relates to property which is the subject matter of the complaint. A crossclaim~~. Cross-claims~~ may be a derivative claim asserting ~~claims that assert~~ that the party against whom the crossclaim~~cross-claim~~ is asserted is or may be liable to the crossclaimant~~cross-claimant~~ for all or part of the claim against the crossclaimant. A crossclaim is~~cross-claimant. Pursuant to Rule 13, cross-claims are~~ permissive rather than compulsory.

A party asserting a counterclaim or crossclaim~~cross-claim~~ may join additional parties as defendants to the counterclaim or crossclaim under ~~cross-claim pursuant to~~ Rules 19 and 20.

Rule

~~RULE~~ 14. ~~THIRD-PARTY PRACTICE~~

~~When Defendant May Bring in~~ Third~~-~~party practice.

(a) By the defendant.

(1) When. A ~~**Party.** After commencement of the action and upon being so authorized by the court in which the action is pending on motion and for good cause shown, a~~ defending party may serve~~cause~~ a summons and complaint on ~~to be served upon~~ a nonparty~~person not a party to the action~~ who is or may be liable to the defending party~~him~~ for all or part of the plaintiff's claim against the defendant party:

(A) After the action is commenced;~~him. The~~
(B) On authorization by the court where the action is pending;
(C) On a motion; and
(D) For good cause shown.

(2) Defenses; counterclaim; crossclaim.

(A) Defenses. The third-party defendant (e.g., the person served with the summons and third-party complaint) must assert ~~, hereinafter called the third-party defendant, shall make his~~ defenses to the third-party plaintiff's claim according to ~~as provided in~~ Rule 12.

~~(a)~~**(B) Counterclaim; crossclaim.** The third-party defendant must assert a counterclaim ~~and his counter-claims~~ against the third-party plaintiff and a crossclaim~~cross-claims~~ against other third-party defendants according to~~as provided in~~ Rule 13.

(3) Defenses; counterclaim: scope.

(A) Scope of defenses.~~13.~~ The third-party defendant may assert against the plaintiff ~~any~~ defenses ~~which~~ the third-party plaintiff has to the plaintiff's claim.

(B) Scope of counterclaim. The third-party defendant may also assert a~~any~~ claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. ~~The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff and the third-party defendant thereupon shall assert his defenses as provided in Rule 12 and his counter-claims and cross-~~

~~claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant.~~

(4) Crossclaim: scope; response.

(A) Scope of crossclaim. The plaintiff may assert against the third-party defendant~~**When Plaintiff May Bring in Third Party.** When~~ a ~~counter~~ claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.

(B) Response to crossclaim. If so, the third-party defendant must assert defenses, counterclaims, and crossclaims according to Rules 12 and 13.

(5) Motion to strike, sever, or for separate trial. A party may move to strike the third-party claim, for severance, or for separate trial.

(6) By a third-party defendant. A third-party defendant may proceed under this rule against a nonparty who is or may be liable to the third-party defendant for all or part of the plaintiff's claim against the third-party defendant.

(b) By the plaintiff. When a counterclaim is asserted against a plaintiff, the plaintiff~~he~~ may bring in~~cause~~ a third party ~~to be brought in~~ under circumstances entitling~~which under this rule would entitle~~ a defendant to do so under this rule.

(c) ~~[~~**Admiralty and maritime claims.**~~Maritime Claims]~~ **[Omitted].**

[Former Rule 14 deleted effective 5/~~May~~ 1/82~~, 1982~~; new Rule 14 adopted effective 7/~~July~~ 1/86.] ~~, 1986.]~~

Advisory Committee Historical Note

~~Advisory Committee Historical Note~~

Effective 7/~~July~~ 1/86~~, 1986~~, a new Rule 14 was adopted. 486-90~~490~~ So. 2d XVII (West Miss. Cas. 1986).

Effective 5/~~May~~ 1/82~~, 1982~~, Rule 14 was abrogated. 410-16~~416~~ So. 2d XXI (West Miss. Cas. 1982).

1982).

Advisory Committee Notes

It is essential that a~~the~~ third-party defendant's liability for a third-party plaintiff's claim be ~~for some form of~~ derivative or secondary~~. liability of the third-party defendant to the third-party plaintiff.~~ Impleader is unavailable ~~not available~~ for asserting~~the assertion of~~ an independent action by the defendant against a third party~~,~~ even if the claim arose out of the same transaction or occurrence as the main one. But once~~claim. Once~~ a third-party claim is properly asserted, ~~however,~~ the third-party plaintiff may assert ~~whatever~~ additional claims ~~the third-party plaintiff has~~ against the third-party defendant under Rule 18(a).

The requirement of~~that the third-party claim be for~~ derivative or secondary liability may be met ~~by~~, for example, by alleging~~an allegation of~~ a right of ~~indemnity (~~contractual or other indemnity,~~otherwise),~~ contribution, subrogation, or warranty. But the rule~~The rules~~ does not~~, however~~ create derivative or secondary~~any such~~ rights. It merely provides a procedure for expediting~~expedited~~ consideration of derivative or secondary~~these~~ rights ~~where they are~~ available under substantive law.

An insured party has a derivative claim for indemnity against the insured party's liability insurer; the insured party ~~, and~~ may implead the party's liability insurer~~,~~ if ~~the insured is being~~ sued for damages allegedly covered by the liability policy and if the insurer disclaims~~is disclaiming~~ coverage under~~pursuant to~~ the liability policy.

A defendant ~~who is~~ subject to joint and several liability for a plaintiff's damages may have a claim against joint tortfeasors for contribution. The fact that ~~Generally,~~ in Mississippi~~,~~ liability for damages imposed in civil cases based on~~upon~~ "fault" is generally several only rather than~~and not~~ joint and several obviates~~, thereby obviating~~ the need or basis for contribution claims. But under Miss.~~Mississippi~~ Code Ann. §~~Annotated section~~ 85-5-7(4), "[~~however, provides that '[~~j]oint and several liability shall be imposed on all who consciously and deliberately pursue a common plan or design to commit a tortuous act, or ~~who~~ actively take part in it." The statute also states~~further provides~~ that "[a]ny person held jointly and severally liable under this~~[such]~~ section shall have a right of contribution from . . .~~his~~ fellow defendants acting in concert." As a result,~~Thus, Mississippi law grants~~ a defendant ~~who has been~~ held jointly and severally liable for acting in concert has a right of contribution against co~~co- defendants who were~~ also acting in concert.

A first-party insurer against loss~~,~~ sued by its policyholder for the~~such~~ loss~~,~~ has a derivative claim for subrogation against the person who allegedly caused it; the insurer~~, and~~ may implead the person ~~who allegedly caused the loss,~~ where a right of subrogation would arise if~~from~~ the insurer paid~~insurer's payment of~~ the insured plaintiff's claim.

Because the rule ~~expressly~~ allows third-party claims against one who "may" be liable," it is not objectionable~~an objection~~ to implead that the third party's liability is contingent on the original plaintiff's recovery against the defendant or ~~/~~third-party plaintiff.

Unlike the analogous federal rule, Rule

~~M.R.C.P.~~ 14 ~~differs from Fed. R.~~ ~~Civ.~~ of the Mississippi Rules of Civil Procedure ~~P. 14 in that M.R.C.P. 14~~ requires a defending party to obtain the court's authorization ~~from the court~~ based on~~upon~~ a showing of good cause before serving~~such defending party may serve~~ a summons and third-party complaint on~~upon~~ a nonparty. Under Rule 14 of the Federal Rules of Civil Procedure~~Pursuant to Fed. R. Civ. P. 14~~, a defending party must obtain leave of court only if ~~it is~~ filing a third-~~-~~party complaint more than 14 days after serving the~~its~~ original answer.

Rule 15. Amended and supplemental pleadings.

~~RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS~~

(a) Amendments.

(1) As a matter of course. A party may amend a pleading as a matter of course:

(A) Before ~~at any time before~~ a responsive pleading is served;~~,~~ or
(B) Within 30 days of service ~~,~~ if:

(i) No ~~a pleading is one to which no~~ responsive pleading is allowed;~~permitted~~ and
(ii) The~~the~~ action has not been set for ~~placed upon the~~ trial.

(2) When Rule 12 motion granted. When a Rule 12(b)(6) ~~calendar, the party may so amend it at any time within thirty days after it is served. On sustaining a~~ motion to dismiss for failure to state a claim upon which relief can be granted~~, pursuant to Rule 12(b)(6),~~ or a Rule 12(c) motion for judgment on the pleadings is granted, as long as matters outside the pleadings are not presented at the motion hearing.~~,~~ ~~pursuant to Rule 12(c),~~ leave to amend must~~shall~~ be granted when justice so requires on~~upon~~ conditions and within a time period ~~time as determined by the court, provided matters outside the pleadings are not presented at the hearing on~~ the court decides.

(3) When otherwise.~~motion.~~ Otherwise, a party may amend a pleading only by leave of court or on the adverse party's~~upon~~ written consent of the adverse party; leave must~~shall~~ be freely given when justice ~~so~~ requires it.

(4) Response to amended pleading. Unless the court orders otherwise, a party must~~.~~ ~~A party shall~~ plead in response to an amended pleading within the longer of:

(A) The time remaining for responding~~response~~ to the original pleading; or
~~**(a)**~~**(B)** 10~~within ten~~ days after ~~service of~~ the amended pleading is served~~, whichever period may be longer, unless the court otherwise orders~~.

(b) Amendment to conform~~Conform~~ to the evidence. Issues~~Evidence.~~ ~~When issues~~ not raised by the pleadings ~~are~~ tried by express~~expressed~~ or implied consent of the parties must~~, they shall~~ be treated in all respects as if they had been raised in the pleadings.

(1) When. Amending~~Such amendment of~~ the pleadings as may be necessary to ~~cause them to~~ conform to the evidence and to raise these issues may be requested in a party's~~made upon~~ motion, including ~~of any party at any time, even~~ after judgment.

But failing~~; but failure so~~ to do so~~amend~~ does not affect the result of the trial of these issues.

(2) Trial objection. At trial, if~~If~~ evidence is objected to as outside~~at the trial on the ground that it is not within the~~ issues asserted in~~made by~~ the pleadings, the court may allow the pleadings to be amended. The court must ~~and shall~~ do so freely if presenting~~when the presentation of~~ the merits of the action will be subserved ~~thereby~~ and if the objecting party fails to show admitting the~~satisfy the court that the admission of such~~ evidence would prejudice ~~the~~ maintaining ~~of~~ the action or defense on~~upon~~ the merits.

(A) Continuance. The court may grant a continuance to enable the objecting party to meet the~~such~~ evidence.

~~(b)~~(3) Amendment when justice so requires. A~~The~~ court should liberally grant~~is to be liberal in granting~~ permission to amend when justice so requires.

(c) Relation back.

(1) Same conduct, transaction, or occurrence. When**~~Back of Amendments.~~** ~~Whenever~~ the claim or defense ~~asserted~~ in an~~the~~ amended pleading arose out of the conduct, transaction, or occurrence stated~~set forth~~ or attempted to be stated~~set forth~~ in the original pleading, the amendment relates back to the date of the original pleading.

~~(c)~~(2) Amending party. An amendment changing the party against whom a claim is asserted relates back if it arose out of the conduct, transaction, or occurrence stated or attempted to be stated in the original pleading~~the foregoing provision is satisfied~~ and if~~,~~ within the period stated in~~provided by~~ Rule 4(h) for serving~~service of~~ the summons and complaint~~,~~ the party to be brought in by amendment:

~~(1)~~**(A)** Has~~has~~ received ~~such~~ notice of the institution of the action to the extent~~that~~ the party will not be prejudiced in maintaining the party's defense on the merits~~;~~, and

Knew

~~(2)~~**(B)** ~~knew~~ or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party. ~~An amendment pursuant to Rule 9(h) is not an amendment changing the party against whom a claim is asserted and such amendment relates back to the date of the original pleading.~~

(3) Rule 9(h) amendment. A Rule 9(h) amendment is not an amendment changing the party against whom a claim is asserted and relates back to the date of the original pleading.

(d) Supplemental pleading. On a~~**Pleadings.** Upon~~ motion~~, of a party the court may, upon~~ reasonable notice, and justupon such terms~~, as are just, permit~~ the court may allow a party to serve a supplemental pleading statingsetting forth transactions, occurrences, or events thatwhich have happened since the date of the original pleading.

(1) ~~sought to be supplemented.~~ Permission may be granted even though the original pleading is defective in statingits statement of a claim for relief or a defense.

~~**(d)**~~**(2)** If the court requires ~~deems it advisable that~~ the adverse party to plead in response to the supplemental pleading, it mustshall so order the party to do so and specify~~, specifying~~ the time for pleadingtherefor.

[Amended effective 7/~~July~~ 1/98~~, 1998~~; amended effective 4/~~April~~ 17/03~~, 2003~~ to allow amendments on dismissal under Rule 12(b)(6) or judgment on the pleadings under Rule 12(c) where the court decidesdetermines that justice so requires.]

Advisory Committee Historical Note

Effective 7/~~July~~ 1/98~~, 1998~~, Rule 15(c) was amended to state that the relation back period includes the time allowedpermitted for service of process under Rule 4(h).

Advisory Committee Notes

Unlike the analogous federal rule, Mississippi Rule of Civil Procedure 15(a) places no limit on the number of amendments as ~~varies from Federal Rule 15(~~a matter of course;~~) in that~~ the federal rule allowspermits a party to amend the pleading only once as a matter of course. ~~The Mississippi rule places no limit on the number of such amendments.~~

Rule

~~RULE~~ 16. Pretrial procedure.~~PRE-TRIAL PROCEDURE~~

(a) Pretrial conference.

(1) When. On its own or a party's motion,~~In any action~~ the court may order the parties' attorneys to appear at least 20 days before trial for one or more pretrial conferences. And must do so on a ~~its own motion or on the~~ motion by ~~of any party, and shall on the motion of~~ all parties.

(2) Purpose; court action. At a pretrial conference, the court and ~~, direct the attorneys for the~~ parties may ~~to appear before it at least twenty days before the case is set for trial for a conference to~~ consider the following subject matter, and the court may take appropriate action regarding it: ~~determine:~~

~~(a)~~**(A)** The possibility of settling~~settlement of~~ the action;

Simplifying

~~(b)~~**(B)** ~~the simplification of~~ the issues;

Amending

~~(c)~~**(C)** ~~the necessity or desirability of amendments to~~ the pleadings if desirable or necessary;

Itemizing

~~(d)~~**(D)** ~~itemizations of~~ expenses and special damages;

Limiting

~~(e)~~**(E)** ~~the limitation of~~ the number of expert witnesses;

Exchanging

~~(f)~~**(F)** ~~the exchange of~~ reports by~~of~~ expert witnesses expected to testify at trial~~be called by each party~~;

Exchanging

~~(g)~~**(G)** ~~the exchange of~~ medical reports, medical ~~and hospital~~ records, billing records, and similar documents ~~but only~~ to the extent doing so~~that such exchange~~ does not waive~~abridge~~ the physician-patient privilege;

(H) Referring matters to a master;

Imposing Rule 37

~~(h) the advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;~~

~~(i)~~**(I)** ~~the imposition of~~ sanctions ~~as authorized by Rule 37~~;

Obtaining

~~(j)~~**(J)** ~~the possibility of obtaining~~ admissions ~~of fact~~ and stipulations about facts,~~of~~ documents, and other exhibits to~~which will~~ avoid unnecessary proof;

Proposing

~~(k)~~**(K)** ~~in~~ jury ~~cases, proposed~~ instructions or~~, and in non-jury cases, proposed~~ findings of fact and conclusions of law subject to subsequent amendments or supplements~~, all of which may be subsequently amended or supplemented~~ as justice may require; and

Other

~~(l)~~**(L)** ~~such other~~ matters that~~as~~ may aid in disposing~~the disposition~~ of the action.

(b) Pretrial order.

(1) After a pretrial conference, the~~The~~ court may issue~~enter~~ an order regarding all~~reciting the~~ action taken at it, including:

(A) Amendments~~the conference, the amendments allowed~~ to the pleadings;

(B) Agreements ~~, and the agreements~~ made by the parties as to ~~any~~ other matters considered at the pretrial conference;

(C) Limiting~~, and limiting~~ issues for trial to those not disposed of by admissions or agreements of counsel; and

(D) Other similar subject matter.

(2) The ~~such~~ order controls~~when entered shall control~~ the action's~~subsequent~~ course ~~of the action,~~ unless ~~modified at~~ the court modifies it~~trial~~ to prevent manifest injustice.

[Amended effective 3/~~March~~ 1/89; 4/~~, 1989; April~~ 13/00~~, 2000~~.]

Advisory Committee Historical Note

Effective 4/~~April~~ 13/00~~, 2000~~, Rule 16 was amended to allow the conference to be held on~~pursuant to~~ the court's motion. ~~-~~753-54~~754~~ So. 2d. XVII ~~-~~(West Miss. Cas.. 2000.)

Effective 3/~~March~~ 1/89~~, 1989~~, Rule 16 was amended to abrogate provisions for a pretrial calendar. ~~-~~536-38~~538~~ So. 2d XXI (West Miss. Cas. 1989).

Rule

~~RULE~~ 16A. Recusal motion. ~~MOTIONS FOR RECUSAL OF JUDGES~~

A motion~~Motions~~ seeking a judge's~~the~~ recusal must~~of judges shall~~ be timely filed with the court. Procedures~~trial judge and shall be governed by procedures set forth~~ in the Uniform Rules of Circuit and County Court Practice or~~and~~ the Uniform ~~Rules of~~ Chancery Court Rules control a motion for recusal~~Practice~~.

[Adopted, ~~April~~ 4/4/02~~, 2002~~.]

Advisory Committee Historical Note [Rule 16A]

Effective ~~April~~ 4/4/02~~, 2002~~, Rule 16A and the Advisory Committee Historical Note~~Comment~~ were adopted. ~~-~~813-15~~815~~ So.

2d LXXXI (West Miss. Cases 2002).

SECTION 4

~~CHAPTER IV~~. PARTIES

Rule 17. Plaintiff and defendant; capacity.

~~RULE 17. PARTIES PLAINTIFF AND DEFENDANT; CAPACITY~~

(a) Real party~~Party~~ in interest.

(1) Who may sue. An~~Interest. Every~~ action must~~shall~~ be prosecuted in the name of the real party in interest. The following may sue in a representative capacity without joining the party for whose benefit the action is brought:

(A) An executor;
(B) An~~,~~ administrator;
(C) A~~,~~ guardian;
(D) A~~,~~ bailee;
(E) A~~,~~ trustee;
(F) A~~, a~~ party with whom or in whose name a contract has been made for the benefit of another;~~,~~ or
(G) A~~a~~ party authorized by statute.

~~(a)~~(2) Not basis for dismissal. The court may not dismiss an~~ may sue in his representative capacity without joining with him the party for whose benefit the action is brought. No~~ action ~~shall be dismissed~~ on groundsthe ~~ground that~~ it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for the real party in interest's ratification~~, of commencement of the action by, or~~ joinder, or substitution. The~~ of, the~~ real party in interest's~~interest; and such~~ ratification, joinder, or substitution has~~shall have~~ the same effect as if the action had been commenced in the name of the real party in interest.

(b) Subrogation case~~Cases~~. In a subrogation case~~cases~~, regardless of whether subrogation has occurred by operation of law, assignment, loan receipt, or otherwise, the action must be brought in the subrogee's name if the subrogor no longer has a pecuniary interest in the claim~~ the action shall be brought in the name of the subrogee. If the subrogor still has a pecuniary interest in the claim, the action shall be brought in the names of the subrogor and the subrogee.~~

(1) If the subrogor still has a pecuniary interest in the claim, the action must be brought in the subrogor's and subrogee's names.

(c) Infant; legal disability. When a party~~**Infants or Persons Under Legal Disability.** Whenever a party to an action~~ is an infant or is under legal disability and has a representative duly appointed under ~~the laws of the State of~~ Mississippi law or the laws of a foreign state or country, the representative may sue or defend on behalf of that~~such~~ party.

(1) Guardian ad litem. An unrepresented~~A~~ party defendant who is an infant or ~~is~~ under legal disability ~~and is not so represented~~ may be represented by a guardian ad litem appointed by the court when ~~the court considers such appointment~~ necessary for protecting that defendant's~~the protection of the~~ interest ~~of such defendant~~. The guardian ad litem must:

(A) Be a~~shall be a resident of the State of~~ Mississippi resident;
(B) File~~, shall file his~~ consent and oath with the clerk;~~,~~ and
(C) Give~~shall give such~~ bond as the court may require.

(2) The court may issue~~make any~~ other orders ~~it deems~~ proper for protecting~~the protection of~~ the defendant.

(3) When ~~the interest of~~ an unborn or unconceived person's interest ~~person~~ is before the court, the court may appoint a guardian ad litem for that person's~~such~~ interest.

~~**(c)**~~**(4)** If an infant or incompetent person does not have a duly appointed representative, the person~~he~~ may sue by a~~his~~ next friend.

(d) When guardian ad litem required; selection. When~~**Guardian Ad Litem; How Chosen.** Whenever~~ a guardian ad litem is required~~shall be necessary~~, the court where~~in which~~ the action is pending:

(1) Must ~~shall~~ appoint an attorney to serve in that capacity;
(2) Order payment of~~. In all cases in which a guardian ad litem is required, the court must ascertain~~ a reasonable fee or compensation to the~~be allowed and paid to such~~ guardian ad litem for ~~his service~~ rendered services; and
~~**(d)**~~**(3)** Require the guardian ad litem's fee or compensation~~in such cause,~~ to be taxed as ~~a~~ part of costs~~the cost~~ in the~~such~~ action.

(e) Public officer~~Officers~~. When a public officer sues or is sued in an~~his~~ official capacity, the person~~he~~ may be described as a party by ~~his~~ official title rather than by name. But~~;~~ ~~but~~ the court may require the officer's~~his~~ name to be added.

Rule

~~RULE~~ 18. ~~JOINDER OF CLAIMS AND REMEDIES~~

Joinder: claims; remedies.

(a) **Joinder of claims~~Claims~~.** A party asserting a claim, counterclaim, crossclaim ~~to relief as an original claim, counter-claim, cross-claim~~, or third-party claim~~,~~ may join~~,~~ either as independent or ~~as~~ alternate claims~~,~~ as many claims as the party~~he~~ has against an opposing party.

(b) **Joinder of remedies.** Prior to these rules, if~~**Remedies.** Whenever~~ a claim was~~is one heretofore~~ cognizable only after another one was~~claim has been~~ prosecuted to ~~a~~ conclusion, the two claims may be joined in a single action. But~~; but~~ the court must~~shall~~ grant relief in that action only according to~~in accordance with~~ the parties'~~relative~~ substantive rights ~~of the parties~~.

Advisory Committee Notes

Rule 18(a) eliminates ~~any~~ restrictions on claims that may be joined in actions in ~~the courts of~~ Mississippi courts. Rule 18(a) allows~~permits~~ legal claims,~~and~~ equitable claims, or a~~any~~ combination of them to be joined in one action; a party may also assert alternative claims for relief, and consistency among the claims is unnecessary. As a result~~not being necessary; consequently~~, an election of remedies or theories will not be required at the pleading stage ~~of litigation~~.

Since Rule 18(a) deals only with the scope of joinder at the pleading stage and not with questions of trial convenience, jurisdiction, or venue, a party should be allowed~~permitted~~ to join all claims against an opponent as a matter of right. The rule proceeds on the theory ~~that~~ no inconvenience can result from ~~the~~ joinder of ~~any~~ two or more matters in the pleadings and~~, but~~ only from trying two or more matters together~~,~~ if at all.

Rule 19. Required joinder of parties.

~~RULE 19. JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION~~

(a) Persons to be joined~~Be Joined~~ if feasible~~Feasible~~. A person ~~who is~~ subject to the court's jurisdiction must~~of the court shall~~ be joined as a party in the action if:

(1) In the person's~~in his~~ absence complete relief cannot be accorded among those already parties~~;~~, or

The person

(2) ~~he~~ claims an interest relating to the subject of the action and is so situated that disposing~~the disposition~~ of it~~the action~~ in the person's~~his~~ absence may:

(A) As ~~(i) as~~ a practical matter impair or impede the person's~~his~~ ability to protect that interest; or

~~(2)~~**(B)** Subject an existing party to ~~(ii) leave any of the persons already parties subject to a~~ substantial risk of incurring double, multiple, or otherwise inconsistent obligations because~~by reason~~ of the person's~~his~~ claimed interest.

(3) If the person~~he~~ has not been ~~so~~ joined as required, the court must~~shall~~ order that the person~~he~~ be made a party. A person who~~If he~~ should join as a plaintiff but refuses to do so~~, he~~ may be made a defendant or if~~, in a~~ proper ~~case~~, an involuntary plaintiff.

(b) When joinder is not feasible.~~Determination by Court Whenever Joinder Not Feasible.~~ If a person ~~as described~~ in Rule 19~~subdivision~~ (a)~~hereof~~ cannot be joined~~made a party~~, the court must decide~~shall determine~~ whether in equity and good conscience the action should proceed among existing~~the~~ parties ~~before it~~ or ~~should~~ be dismissed because~~,~~ the absent person is~~being thus regarded as~~ indispensable. The factors for the court to consider~~be considered by the court~~ include:

(1) To~~First, to~~ what extent a judgment rendered in the person's absence might be prejudicial to that person~~him~~ or those already parties;

(2) The~~second, the~~ extent to which~~, by~~ protective provisions in the judgment, ~~by the~~ shaping of relief, or other measures can lessen or avoid~~,~~ the prejudice;

(3) Whether ~~can be lessened or avoided; third, whether~~ a judgment rendered in the person's absence will be adequate; and

~~(b)~~**(4)** Whether~~fourth, whether~~ the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading nonjoinder. To the extent known to the pleader, a~~Reasons for Nonjoinder. A~~ pleading asserting a claim for relief must~~shall~~ state the names~~, if known to the pleader,~~

of ~~any~~ persons ~~as described~~ in Rule 19~~subdivision~~ (a~~)(1) through (2~~) who are not joined~~,~~ and the reasons why ~~they are not joined~~.

Advisory Committee Notes

Compulsory joinder is an exception to the general practice of giving the plaintiff the right to decide who will~~shall~~ be parties to a lawsuit~~law suit~~; although a court must acknowledge~~take cognizance of~~ this traditional prerogative in exercising ~~its~~ discretion under Rule 19, plaintiff's choice will ~~have to~~ be compromised when significant countervailing considerations make ~~the~~ joinder of particular absentees desirable.

There are at least four main questions to be considered under Rule 19: (1)~~first,~~ the plaintiff's interest in having a forum; (2)~~second,~~ the defendant's interest in avoiding~~wish to avoid~~ multiple litigation, inconsistent relief, or sole responsibility for ~~a~~ liability shared with another; (3)~~third, the interest of~~ an outsider's~~outsider whom it would have been desirable to join; fourth, the~~ interest in joinder;~~of the courts~~ and (4) the court's~~the public in complete, consistent,~~ and public's interest in completely, consistently, and efficiently settling~~efficient settlement of~~ controversies. This list is by no means exhaustive or exclusive; pragmatism controls.

There is no precise formula for determining whether a particular nonparty must be joined under Rule 19(b). The decision has to be made in terms of ~~the~~ general policies of avoiding multiple litigation, providing ~~the~~ parties with complete and effective relief in a single action, and protecting ~~the~~ absent persons from ~~the~~ possible prejudicial effect due to~~of~~ deciding the cases~~case~~ without them. Whether~~Account also must be taken of whether~~ other alternatives are available to the litigants must also be considered.~~.~~ By its very nature Rule 19(b) requires~~calls for~~ determinations ~~that are~~ heavily influenced by ~~the~~ facts and circumstances of individual cases.

Rule

~~RULE~~ 20. ~~PERMISSIVE JOINDER OF PARTIES~~

Permissive joinder of parties.

(a) Persons who may be joined.

(1) Plaintiffs. Persons ~~**Joinder.** All persons~~ may join in one action as plaintiffs if:

(A) They~~they~~ assert a~~any~~ right to relief jointly, severally, or alternatively with ~~in the alternative in~~ respect to~~of~~ or arising out of the same transaction, occurrence, or series of transactions or occurrences;~~,~~ and

(B) A~~if any~~ question of law or fact common to all of them~~these persons~~ will arise in the action.

(2) Defendants. Persons~~All persons~~ may join~~be joined~~ in one action as defendants if:

(A) A right to relief ~~there~~ is asserted against them jointly, severally, or alternatively with~~in the alternative, any right to relief in~~ respect to~~of~~ or arising out of the same transaction, occurrence, or series of transactions or occurrences;~~,~~ and

(B) A~~if any~~ question of law or fact common to all defendants will arise in the action.

~~**(a)**~~**(3)** Neither a ~~A~~ plaintiff nor a~~or~~ defendant needs to~~need not~~ be interested in obtaining or defending against all ~~the relief~~ demanded relief. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief~~,~~ and against one or more defendants according to their respective liabilities.

(b) Separate trials~~Trials~~. The court may ~~make such orders as will~~ prevent a party from being embarrassed, delayed, or subjected~~put~~ to expense if no claim is asserted against or by the ~~inclusion of a~~ party. The court may also ~~against whom the party asserts no claim and who asserts no claim against the party, and may~~ order separate trials or otherwise ~~make other orders to~~ prevent delay or prejudice.

[Amended 2/~~February~~ 20/04~~, 2004~~ to make rule gender neutral.]

Advisory Committee Notes

~~**Advisory Committee Notes**~~

Rule 20(a) allowspermits joinder in a single action of all persons asserting or defending against a joint, several, or alternative right to relief if (1) that right arises out of the same transaction or occurrence or series of transactions or occurrences and (2) presents a common question of law or fact. The phrase "transaction or occurrence" requires the existence ofthat there be a distinct litigable event linking the parties. Rule 20(a) simply establishes a procedure under which several parties' demands arising out of the same litigable event may be tried together and avoids, thereby avoiding the court and parties' unnecessary loss of time and money due to the court and the parties that the duplicate presentation of the evidence relating to facts common to more than one demand for relief would entail.

Joinder of parties under Rule 20(a) is not unlimited as is joinder of claims under Rule 18(a). Rule 20(a) imposes two specific prerequisitesrequisites to the joinder of parties: (1) a right to relief must be asserted by or against each plaintiff or defendant relating to or arising out of the same transaction, occurrence, or the same series of transactions or occurrences; and (2) some question of law or fact common to all the parties will arise in the action. Both of these requirements must be satisfied under Rule 20(a). *See Am. Bankers, Inc. of Florida v. Alexander*, 818 So. 2d 1073, 1078 (Miss. 2001).

Both of these requirements must be satisfied in order to sustain party joinder under Rule 20(a). *See American Bankers, Inc. of Florida v. Alexander*, 818 So. 2d 1073, 1078 (Miss.

~~2001).~~

But~~However,~~ even if the transaction requirement cannot be satisfied, the~~there always is a~~ possibility always exists that~~,~~ under ~~the~~ proper circumstances, separate actions can be instituted and then consolidated for trial under Rule 42(a) if there is a question of law or fact common to all ~~the~~ parties. *See Stoner v. Colvin*, 2110~~236 Miss. 736, 748, 110~~ So. 2d 920, 924 (1959) (courts of general jurisdiction have inherent power to consolidate actions when called for by the circumstances). If Rule 20~~the~~ criteria ~~of Rule 20~~ are otherwise met, the court should consider whether different injuries, different damages, different defensive postures, and other individualized factors will be so dissimilar as to make managing Rule 20 ~~management of cases~~ consolidated cases ~~under Rule 20~~ impractical. *See Illinois Cent. R.R. Co. v. Travis*, 808 So. 2d 928, 934 (Miss. 2002) (citing *Demboski v. CSX Transp., Inc.*, 157 F.R.D. 28 (S.D. Miss. 1994)).

~~28 (S.D. Miss. 1994) cited with approval in *Illinois Cen. R.R. Co. v. Travis*, 808 So. 2d 928, 934 (Miss. 2002).~~

In order to allow the court to promptly decide~~make a prompt determination of~~ whether joinder is proper, the factual basis for joinder should be fully disclosed as early as practicable, and motions questioning joinder should be filed~~,~~ where possible~~,~~ sufficiently early to avoid delaying~~delays in~~ the proceedings.

Rule 21. Misjoinder and nonjoinder of parties.

~~RULE 21. MISJOINDER AND NONJOINDER OF PARTIES~~

Misjoinder of parties is not a basis~~ground~~ for dismissing~~dismissal of~~ an action. Parties may be dropped or added by court order ~~of the court~~ on a party's motion ~~of any party~~ or the court on~~of~~ its own ~~initiative~~ at any stage of the action and on ~~such~~ terms that~~as~~ are just. A~~Any~~ claim against a party may be severed and proceeded with separately.

~~Advisory Committee Notes~~

Advisory Committee Notes

Rule 21 applies, for example, when: (1) the joined parties do not meet ~~the requisites of~~ Rule 20 requirements; (2) no relief has been demanded from one or more of the parties joined as defendants; (3) no claim for relief is stated against one or more of the defendants; or (4) one of several plaintiffs does not seek ~~any~~ relief against the defendant and is without a~~any~~ real interest in the controversy.

Rules 17 and 19 should be used as reference points for what is meant by nonjoinder in Rule 21. ~~Thus,~~ Rule 21 simply describes the procedural consequences of failing to join a party as required in Rules 17 and 19.

Rule

~~RULE~~ 22. Interpleader.~~INTERPLEADER~~

(a) Plaintiff or defendant.

(1) Plaintiff. When~~**Defendant.** Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that~~ the plaintiff is or may be exposed to double or multiple liability, a person with a claim against the plaintiff may be joined as a defendant and required to interplead.

(A) Joinder~~. It~~ is proper even though:

(i) The~~not ground for objection to the joinder that the~~ claims of the several claimants or the titles on which their claims depend lack~~do not have~~ a common origin~~, or are not identical but~~ are adverse to and independent of one another rather than identical;~~,~~ or

(ii) The~~that the~~ plaintiff denies liability~~avers that he is not liable~~ in whole or in part to one~~any~~ or more~~all of the~~ claimants.

(2) Defendant. A defendant exposed to similar liability may seek~~obtain such~~ interpleader by way of crossclaim or counterclaim.

~~(a)~~(3) Relation to Rule 20. This~~cross-claim or counter-claim. The provisions of this~~ rule supplements~~supplement~~ and does~~do~~ not ~~in any way~~ limit ~~the~~ joinder of parties ~~permitted~~ in Rule 20.

(b) Release from liability; deposit or delivery.

(1) A**~~From Liability; Deposit or Delivery.~~** ~~Any~~ party seeking interpleader under Rule 22~~, as provided in subdivision~~ (a):

(A) May~~) of this rule, may~~ deposit the claimed amount with the court;
(B) Deliver ~~the amount~~ claimed property~~, or deliver~~ to the court; or
(C) Deliver claimed property as the court otherwise orders.

~~(b)~~(2) The ~~directed by the court, the property claimed, and the~~ court may discharge the ~~thereupon order such~~ party ~~discharged~~ from liability as to those~~such~~ claims, and the action continues~~shall continue as~~ between ~~the~~ claimants of the~~such~~ money or property.

Advisory Committee Notes

The protection afforded by interpleader takes several forms. Most significantly, it prevents a stakeholder from being obligated to decidedetermine at the stakeholder'shis peril which claimant has the better claim. Whenand, when the stakeholder himself has no interest in the fund, interpleader forces the claimants to contest what essentially is a controversy between them without embroiling the stakeholder in the litigation over the merits of the respective claims. Even if the stakeholder wholly or partly denies liability as, either in whole or in part to one or more of the claimants, interpleader still protects the stakeholderhim from the vexation of multiple suits and the possibility of multiple liability that could result from adverse determinations in different courts. As a resultThus, interpleader can be employed to reach an early and effective determination of disputed questions withwith a consequent saving the parties fromof trouble and expense. Like for the parties. As is true of the other liberal joinder provisions in these rules, interpleader also benefits the judicial system by condensing numerous potential individual actions into a single comprehensive unit while saving, with a resulting savings in court time and energy.

Interpleader also can be used to protect the claimants by bringing them together in one action and by reaching an equitable division of a limited fund. This situation frequently arises when the insurer of an alleged tortfeasor is faced with claims aggregating more than its liability under the policy. IfWere an insurance company were required to wait untilawait reduction of claims were reduced to judgment, the first claimant to obtain asuch judgment or to negotiate a settlement might appropriate all or a disproportionate share of the fund before other claimants established their claims. The resulting difficulties a race to judgment poses for the insurer and unfairness to some claimants are among principal evils the interpleader device intends to remedy. his fellow claimants were able

~~to establish their claim. The difficulties such a race to judgment poses for the insurer, and the unfairness which may result to some claimants, are among the principal evils the interpleader device is intended to remedy.~~

An additional advantage of interpleader to the claimant is that it normally involves a deposit of ~~the~~ disputed funds or property in court. The deposit eliminates~~, thereby eliminating~~ much of the delay and expense ~~that~~ often associated with enforcing ~~attends the enforcement of~~ a money judgment.

The primary test for determining the propriety of interpleading ~~the~~ adverse claimants and discharging the stakeholder is whether the stakeholder legitimately fears multiple vexations directed against a single fund.

Interpleader ordinarily ~~Ordinarily, interpleader~~ is conducted in two "stages." First~~In the first~~, the court hears evidence to decide~~determine~~ whether the plaintiff is entitled to interplead the defendants. Second, the court decides ~~In the second stage, a determination is made on the merits of the~~ adverse claims on the merits and~~,~~ if appropriate, ~~on the rights of~~ an interested stakeholder's rights~~stakeholder~~.

After the stakeholder has paid the disputed funds into court~~,~~ or given bond ~~therefor~~, and once the claimants have had notice and an opportunity to be heard, the court decides~~determines~~ whether the stakeholder is entitled to interpleader relief. If so, the court will ~~enter an~~ order ~~requiring~~ the claimants to interplead and~~,~~ if ~~the stakeholder is~~ disinterested, discharge~~discharging~~ the stakeholder from the proceeding and ~~from further~~ liability regarding~~with regard to~~ the interpleader fund. The court may also permanently enjoin the claimants from subsequently~~further~~ harassing the stakeholder with the claims or judicial proceedings.

But an~~There is, however, no~~ inflexible rule that the proceeding must be divided into two stages does not exist. The entire action may be disposed of at one time in cases where, for example, the stakeholder has not moved to be discharged or has remained in the action by reason of an interest ~~therein. There may even be a third stage,~~ in it. In the event that deciding the second one does not resolve another~~stage determination leaves unresolved some further~~ dispute~~, either~~ between the stakeholder and ~~the~~ prevailing claimant or among ~~the~~ prevailing claimants, there may even be a third stage. ~~.~~

Trial during stages later than the first is also appropriate for counterclaims raised by the claimants like~~, such as~~ those alleging an independent liability~~,~~ and for crossclaims~~cross-claims~~ between claimants which are ~~held~~ appropriate for resolving~~resolution~~ in the course of ~~the~~ interpleader proceedings.

Rule

~~RULE~~ **23. Class actions. [Omitted].**~~CLASS ACTIONS [OMITTED]~~

Rule 23.1. Shareholder derivative actions. [Omitted].

Rule 23.2. Actions relating to unincorporated associations. [Omitted].

Rule

~~RULE 23.1 DERIVATIVE ACTIONS BY SHAREHOLDERS [OMITTED]~~

~~RULE 23.2 ACTIONS RELATING TO UNINCORPORATED ASSOCIATIONS [OMITTED]~~

~~RULE~~ 24. Intervention.~~INTERVENTION~~

(a) Intervention of right.

~~(a)~~(1) When. On a~~Right.~~ ~~Upon~~ timely motion~~application~~, anyone must~~shall~~ be allowed~~permitted~~ to intervene in an action:

~~(1)~~**(A)** When~~when~~ a statute confers an unconditional right to intervene; or

When

~~(2)~~**(B)** ~~when~~ the movant~~applicant~~ claims an interest relating to the property or transaction which is the subject of the action, and ~~he is so situated that the disposition of the action may~~ as a practical matter, disposing of the action may impair or impede the~~his~~ ability to protect that interest~~,~~ unless ~~the applicant's interest is adequately represented by~~ existing parties adequately represent it.

(b) Permissive intervention.

~~(b)~~(1) When. On a~~Intervention.~~ ~~Upon~~ timely motion,~~application~~ anyone may be allowed~~permitted~~ to intervene in an action:

~~(1)~~**(A)** When~~when~~ a statute confers a conditional right to intervene; or

When a common question of law or fact exists between a movant's

~~(2)~~**(B)** ~~when an applicant's~~ claim or defense and the main action ~~have a question of law or fact in common~~.

(2) Government officer or agency: when; factors to consider.

(A) When. An officer or agency may intervene in the ~~a party to an~~ action on a timely motion when a party's~~relies for ground of~~ claim or defense relies:

(i) On a~~upon any~~ statute or executive order administered by a federal or state governmental officer or agency~~;~~, or ~~upon any~~

(ii) On a regulation, order, requirement, or agreement issued or made under~~pursuant to~~ the statute or executive order.

(B) Factors to consider. ~~, the officer or agency upon timely application may be permitted to intervene in the action.~~ In exercising ~~its~~ discretion, the court must~~shall~~ consider whether the intervention will unduly delay or prejudice adjudicating ~~the adjudication of the rights of~~ the original parties' rights~~parties~~.

(c) Procedure.

(1) Motion; service. A person seeking~~desiring~~ to intervene must~~shall~~ serve a motion to intervene on~~upon~~ the parties under~~as provided in~~ Rule 5.

~~(c)~~ **Form.** The motion must~~shall~~ state the grounds for it~~therefor~~ and ~~shall~~ be

(2) accompanied by a pleading statingsetting forth the claim or defense for which intervention is sought.

(3) Statutory right. The same procedure mustshall be followed when a statute gives a right to intervene is based on a statute.

(d) Intervention by state. A party asserting a statute is unconstitutional must notify the Mississippi Attorney General within enough time to afford an opportunity to intervene and argue that question in an action:

the State. In any action (1) to

(1) To restrain or enjoin the enforcement, operation, or execution of aany statute of the State of Mississippi statute by restraining or enjoining the action of a stateany officer; of the State or any political subdivision; or thereof, or the action of any agency, board, or commission acting under state law where, in which a claim is asserted that the statute is unconstitutionalunder which the action sought to be restrained or enjoined is asserted; or

(d)(2) For Rule 57 to be taken is unconstitutional, or (2) for declaratory relief that includes declaring or adjudicatingbrought pursuant to Rule 57 in which a declaration or adjudication of the unconstitutionality of aany statute of the State of Mississippi is among the relief requested, the party asserting the unconstitutionality of the statute shall notify the Attorney General of the State of Mississippi statutewithin such time as to afford him an opportunity to intervene and argue the question of constitutionality.

Advisory Committee Notes

Rule 24 requires the court to balance the interests of the would-be intervenor against the burdens such intervention might pose on existingthose already parties or on the judicial system's economic and efficient disposition of the case. If one of the criteria for intervention as a matter of right is met and if the would-be intervenor files a timely motion,application for intervention must, intervention shall be allowed. *See Dare v. Stoke*, 62 So. 3d 958, 959 (Miss. 2011). A trial court has discretion when ruling on a timely motion for permissive interventionto permissively intervene and "may permissively grant or deny a motion to intervene, provided there is a common question of law or fact and the motion was timely filed." *See Madison HMA, Inc. v. St. Dominic-Jackson Mem'l Hosp.*, 35 So. 3d 1209, 1215 (Miss. 2010).

A motionApplications to intervene as of right or for permissive intervention under pursuant to Rule 24(a) andor to permissively intervene pursuant to Rule 24(b) must be timely. Rather than includingThe rule does not set out any specific time limits in the rule. Instead, trial courts shouldare to weigh the following four factors when decidingdetermining timeliness: ("(1) the length of time during which the would-be intervenor actually knew or

should have known of an~~his~~ interest in the case before petitioning~~he petitioned~~ for leave to intervene; (2) the extent of ~~the~~ prejudice ~~that the~~ existing parties to the litigation may suffer as a result of the would-be intervenor's failure to apply for intervention as soon as an interest in the case was~~he~~ actually known~~knew~~ or reasonably should have been known ~~of his interest in the case~~; (3) the extent of ~~the~~ prejudice ~~that~~ the would-be intervenor may suffer if ~~his~~ petition for leave to intervene is denied; and (4) the existence of unusual circumstances mitigating ~~either~~ for or against deciding~~a determination that~~ the motion~~application~~ is timely.~~."~~ *See Hood ex rel. State Tobacco Litig. v. State~~Litigation~~*, 958 So. 2d 790, 806 (Miss. 2007). A trial court has discretion to decide ~~The determination of~~ whether a motion~~an application~~ to intervene is timely ~~is committed to the discretion of the trial court~~ and will not be overturned on appeal absent an abuse of discretion.

Rule

RULE 25. Substituting parties.SUBSTITUTION OF PARTIES

(a) Death.

(1) Substitution if not If a party dies and the claim is not thereby **extinguished.** If a party's death does not extinguish a claim, on a motion to do so, the court mustshall, upon motion, order substitution of the proper parties.

(A) The motion for substitution may be filedmade by aany party or by the deceased party's successors or representatives. The motion and a of the deceased party and, together with the notice of hearing must, shall be served on nonparties and the parties according to Rules 4 and 5.

(1)**(B)** The action mustas provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of summons. The action shall be dismissed without prejudice as to the deceased party if the motion for substitution is not filedmade within 90ninety days after the death is suggested inupon the record by servingservice of a statement of the fact of the death as stated in Rule 25(a)(1)(A).herein provided for the service of the motion.

(2) Continuation. After a party's death, ifIn 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 or the surviving plaintiff or only against remaining partiesthe surviving defendants, the action does not abate. The death mustshall be suggested inupon the record, and the action mustshall proceed in favor of or against the surviving parties.

(b) Legal disabilityDisability. If a party comes under a legal disability, on a motion served as stated in Rule 25(a)(1)(A), the court upon motion served as provided in subdivision (a) of this rule may allow the action to be continued by or against the party'shis representative.

(c) TransferringTransfer of Interest. In case of any transfer of **interest**. If an interest is transferred, the action may be continued by or against the original party, unless on a motion served as stated in Rule 25(a)(1)(A) the the court upon motion directs the transfereeperson to whom the interest is transferred to be substituted in the action or joined in the action. 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 of public officer.Separation From Office. When a public officer is a party to an action in anhis official capacity and during its pendency dies, resigns, or otherwise ceases to hold the office while the action is pending, the action does not abate, and the officer'shis successor is automatically substituted as

a party. Following~~Proceedings following~~ the substitution, proceedings must ~~shall~~ be in the party's name ~~of the party~~, but a ~~any~~ misnomer not affecting the parties' substantial rights must ~~of the parties shall~~ be disregarded. The court may ~~An~~ order ~~of~~ substitution ~~may be entered~~ at any time; failing to do so does ~~, but the omission to enter such an order shall~~ not affect ~~the~~ substitution.

Advisory Committee Notes

The suggestion of death does not have to identify the decedent's successor ~~successors~~ or representative ~~representatives~~ to be substituted as the real party in interest. *See Clark v. Knesal*, 113 So. 3d

531, 536 (Miss. 2013). Although the rule requires ~~that service of~~ the suggestion of death to~~upon non-parties~~ be served on a nonparty according to ~~accomplished in accordance with~~ Rule 4, it~~the rule~~ does not indicate which nonparty~~non-parties~~ must be served with the suggestion of death ~~so as~~ to trigger the 90~~ninety~~-day time period. An interested nonparty must be served if the nonparty's ~~Interested non-parties whose~~ rights may be cut off by the 90~~ninety~~-day limit.~~limits must be served.~~ *See Hurst v. SW Miss. Legal Servs.*, 610 So. 2d 374, 386 (1992) (defendant's failure to serve ~~the~~ named executrix of ~~the~~ deceased plaintiff's estate with ~~the~~ suggestion of death rendered it~~the suggestion of death~~ ineffective even though ~~the~~ executrix may have had actual notice of ~~the~~ suggestion of death); *Knesal*, 113 So. 3d at 537 (defendant–counterplaintiff~~/counter-plaintiff who was~~ properly served with ~~the~~ suggestion of death could not argue ~~that the~~ failure to serve ~~the~~ plaintiff–counterdefendant's nonparty~~/counter-defendant's non-party~~ successors rendered ~~the~~ suggestion invalid because: (1)~~i) the~~ failure to serve ~~the plaintiff/counter-defendant's non-party successors~~ did not affect ~~the defendant/counter-plaintiff's~~ opportunity to file ~~a~~ motion to substitute; and (2~~ii~~) service on~~upon the~~ decedent's successor ~~was~~ impossible because ~~there was~~ no existing estate or personal representative to serve~~upon whom the suggestion of death could have been served~~). The rule contains no restriction on who may file and serve the suggestion of death; the decedent's lawyer may file and serve it. *Knesal*, 113 So. 3d~~*Id.*~~ at 538.

As~~The~~ general Rule 6(b) provisions ~~of Rule 6(b)~~ apply to motions to substitute~~;~~ ~~accordingly~~, the court may extend the period for substitution if timely requested. Likewise~~Similarly~~, the court may allow substitution ~~to be made~~ after expiration of the 90~~ninety~~-day period on a showing that failing~~the failure~~ to act earlier resulted from ~~was the result of~~ excusable neglect. *See id.*~~*Knesal*, 113 So. 3d~~ at 539.

If the named plaintiff was deceased when it ~~at the time the original complaint~~ was filed, ~~then~~ the original complaint is null and void, and the real party in interest cannot be substituted as the proper plaintiff because no~~a~~ valid action was ever~~never~~ commenced.

SECTION 5.

~~CHAPTER V. DEPOSITIONS AND~~ DISCOVERY

~~RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY~~

~~Discovery~~ Rule 26. General provisions governing discovery.

(a) Methods. Unless the court orders otherwise under Rule 26(c) or (d), the frequency of discovery methods is unlimited. Parties may obtain discovery by one or more of the following methods:

(1) Deposition by ~~depositions upon~~ oral examination;
(2) Deposition by ~~or~~ written questions;
(3) Written ~~written~~ interrogatories;
(4) Production~~production~~ of documents or things;
(5) Permission ~~or permission~~ to enter onto~~upon~~ land or other property~~,~~ for inspection and other purposes; and
~~**(a)**~~**(6)** Requests~~requests~~ for admission. ~~Unless the court orders otherwise under subdivisions (c) or (d) of this rule, the frequency of use of these methods is not limited.~~

(b) Scope~~. of Discovery.~~ Unless ~~otherwise limited by order of~~ the court orders otherwise according to~~in accordance with~~ these rules, the scope of discovery is as follows:

(1) In General.

(A) A party~~Parties~~ may obtain discovery regarding a nonprivileged~~any~~ matter:

(i) Relevant to a party's claim or defense; and
(ii) Proportional to the needs of the case.

(B) Whether a nonprivileged matter ~~, not privileged, which~~ is proportional to the needs of the case depends on:

(i) The importance of ~~relevant to~~ the issues at stake in~~raised by~~ the action;
(ii) The amount in controversy;
(iii) The parties' relative access to relevant information;
(iv) The parties' resources;
(v) The importance of the discovery in resolving the issues; and
(vi) Whether the burden or expense of the proposed discovery outweighs its likely benefit.

(C) ~~claims or defenses of any party.~~ The discovery may include:

(i) The ~~the~~ existence, description, nature, custody, condition, and location of ~~any~~ books, documents, electronic data, ~~or~~ magnetic data, or other tangible things;

(ii) The ~~and the~~ identity and location of persons ~~(i)~~ having knowledge of a ~~any~~ discoverable matter; and

~~(1)~~**(iii)** The identity and location of persons ~~or (ii)~~ who may be called as witnesses at ~~the~~ trial. ~~It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.~~

(D) Information within this scope of discovery does not need to be admissible in evidence to be discoverable.

(2) Insurance agreement ~~*Agreements*~~**.** A party may obtain discovery of an ~~party may obtain discovery of the existence and contents of any~~ insurance agreement under which ~~any person carrying on~~ an insurance business may be liable to satisfy all or part ~~or all~~ of a possible judgment ~~which may be entered~~ in the action or to indemnify or reimburse for payments made to satisfy the judgment. The information ~~Information concerning the insurance agreement~~ is not by reason of disclosure admissible in evidence at trial. For purposes of Rule 26(b)(2), ~~this paragraph,~~ an application for insurance is ~~shall~~ not ~~be treated as~~ part of an insurance agreement.

(3) Trial preparation: materials.

(A) Documents; tangible things. A party ordinarily may not discover ~~*Preparation: Materials.* Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of~~ documents and tangible things ~~otherwise discoverable under subdivision (b)(1) of this rule and~~ prepared in anticipation of litigation or for trial by or for another party or ~~by or for that other~~ party's representative (including that party's attorney, consultant, surety, indemnitor, insurer, or agent). But subject to Rule 26(b)(4), those materials may be discovered if:

(i) Otherwise discoverable under Rule 26(b)(1); and

(ii) The party shows ~~only upon a showing that the party seeking discovery has~~ substantial need of the materials to prepare ~~in the preparation of~~ that party's case and ~~that the party~~ is unable without undue hardship to obtain their ~~the~~ substantial equivalent ~~of the materials~~ by other means.

~~In ordering~~

~~*(3)*~~ **Protection against disclosure.** If a court orders discovery of those~~such~~ materials on~~when~~ the required showing, it must~~ has been made, the court shall~~ protect against disclosing~~disclosure of the~~ mental

(B) impressions, conclusions, opinions, or legal theories of a party's ~~an~~ attorney or other representative ~~of a party~~ concerning the litigation.

(C) Previous statement. A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. A nonparty may ~~Upon~~ request and~~, a person not a party may~~ obtain without the required showing a statement concerning the action or its subject matter previously made by that nonparty~~person~~. If the request is refused, the person may move for a court order, and~~.~~ Rule 37(a)(4) applies to an~~the~~ award of expenses~~. incurred in relation to the motion.~~ For purposes of Rule 26(b)(3)(C), ~~this paragraph,~~ a statement previously made is: ~~(A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.~~

(i) A written statement signed or otherwise adopted or approved by the person making it; or

(ii) A contemporaneous stenographic, mechanical, electrical, or other recording or a transcription of one that recites substantially verbatim the person's oral statement.

(4) Trial preparations: experts. A party may obtain discovery ~~*Preparations: Experts.* Discovery~~ of facts known and opinions held by experts~~,~~ otherwise discoverable under Rule 26 ~~subsection~~ (b)(1) ~~of this rule~~ and acquired or developed in anticipation of litigation or for trial~~, may be obtained~~ only as follows:

(A) ~~(i)~~ A party may require another one to provide the following information through interrogatories; otherwise, a party must file a motion, and subject to scope restrictions and other rules—including Rule 26(b)(4)(C) concerning appropriate fees and expenses—the court may order additional discovery as it may deem appropriate:

(i) Each person ~~require any other party to identify each person whom~~ the other party expects to call as an expert witness at trial;

(ii) The~~, to state the~~ subject matter on which the expert is expected to testify;

(iii) The~~, and to state the~~ substance of the facts and opinions to which the expert is expected to testify; and

~~(A)~~**(iv)** A~~a~~ summary of the grounds for each opinion.

Experts employed only for trial preparation. A party ordinary may not ~~(ii)~~

~~Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subsection (b)(4)(C) of this rule, concerning fees and expenses, as the court may deem appropriate.~~

(B) ~~A party may~~ discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial. But a party may do so only:

~~(B)~~**(i)** On ~~upon~~ a showing of exceptional circumstances under which it is impracticable for the party ~~seeking discovery~~ to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result:

(i) The~~, (i) the~~ court must~~shall~~ require ~~that~~ the party seeking discovery to pay the expert a reasonable fee for time spent in responding to discovery under Rule 26~~subsections~~ (b)(4)(A~~)(ii~~) and (b)(4)(B);

~~(C)~~**(ii)** The ~~) of this rule, and (ii) with respect to discovery obtained under subsection (b)(4)(A)(ii) of this rule, the~~ court may require the party seeking discovery~~, and with respect~~ to pay the other party a fair portion of the fees and expenses reasonably incurred in obtaining facts and opinions from the expert under Rule 26(b)(4)(A); and~~discovery obtained under subsection (b)(4)(B) of this rule,~~

The

(iii) ~~the~~ court must~~shall~~ require~~,~~ the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred ~~by the latter party~~ in obtaining facts and opinions from the expert under Rule 26(b)(4)(B). ~~.~~

(5) Electronic data~~*Data*~~. To obtain discovery of data or information that exists in electronic or magnetic form, the requesting party must specifically request its production and specify the form in which it should be produced. ~~production of electronic or magnetic data and specify the form in which the requesting party wants it produced. The responding party must produce the electronic or magnetic data that is responsive to the request and is reasonably available to the responding party in its ordinary course of business. If the responding party cannot through reasonable efforts retrieve the data or information requested or produce it in the form requested, the responding party must state an objection complying with these rules. If the court orders the responding party to comply with the request, the court may also order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.~~

(A) The responding party must produce:

(i) All electronic or magnetic data;
(ii) That is responsive to the request; and
(iii) That is reasonably available to the responding party in its ordinary course of business.

(B) If the responding party cannot reasonably retrieve the requested data or information or produce it in the requested form, the responding party must state so in an objection complying with these rules.

(i) If the court requires the responding party to comply, it may also order the requesting party to pay reasonable expenses for extraordinary steps required to retrieve and produce the information.

(c) Discovery conference. The court may hold a ~~**Conference.** At any time after the commencement of the action, the court may hold a conference on the subject of discovery, and shall do so if requested by any party. The request for~~ discovery conference at any time and must do so if a party requests one.

~~**(c)**~~**(1) Content; objection.** A party's request must~~shall~~ certify ~~that~~ counsel has conferred~~,~~ or made reasonable efforts to do so~~effort to confer, with opposing counsel~~ concerning ~~the~~ matters stated~~set forth~~ in the request~~,~~ and must~~shall~~ include:

~~1.~~**(A)** A~~a~~ statement of the issues to be tried;

A discovery

~~2.~~**(B)** ~~a~~ plan and schedule ~~of discovery~~;

Discovery

~~3.~~**(C)** limitations ~~to be placed on discovery, if any~~; and

Other

~~4.~~**(D)** ~~other~~ proposed discovery orders ~~with respect to discovery~~.

An objection~~Any objections~~ or addition~~additions~~ to the requested items must~~contained in the request shall~~ be served and filed within 10~~no later than ten~~ days after ~~service of~~ the request is served.

(2) Discovery order. Following the discovery conference, the court must issue~~shall enter~~ an order:

(A) Stating ~~fixing~~ the issues to be tried;

(B) Establishing~~; establishing~~ a discovery plan and schedule;

(C) Containing ~~of~~ discovery~~; setting~~ limitations ~~upon discovery, if any~~; and

(D) Deciding~~determining such~~ other similar matters, including allocating~~the allocation of~~ expenses, as ~~are~~ necessary for ~~the~~ proper case management of discovery ~~in the case~~.

(3) Rule 16 pretrial conference. Subject to a party's~~the~~ right to move~~of a party who properly moves~~ for a ~~discovery conference to~~ prompt discovery conference under Rule 26(c)(1), ~~convening of~~ the ~~conference, the~~ court may combine the discovery conference with a Rule 16 pretrial conference ~~authorized by Rule 16~~.

Sanctions. Unless

(4) ~~The court may impose sanctions for the failure of a party or counsel without~~ good cause exists, if a party or attorney fails to cooperate~~have cooperated~~ in ~~the~~ framing ~~of~~ an appropriate discovery plan by agreement, the court may impose sanctions. ~~. Upon~~

(5) Amendment. The court may alter or amend a Rule 26(c) order on a showing of good cause~~, any order entered pursuant to this subdivision may be altered or amended~~.

(d) Protective order. A~~**Orders.** Upon motion by a~~ party or ~~by the~~ person from whom discovery is sought may move~~, and~~ for a protective order. The motion should be filed with~~good cause shown,~~ the court where~~in which~~ the action is pending~~,~~ or with~~in the case of a deposition~~ the court that issued a deposition subpoena.

~~**(d)**~~**(1)** For good cause show, the court ~~therefor,~~ may issue an~~make any~~ order ~~which~~ justice requires to protect the~~a~~ party or person from annoyance, embarrassment, oppression, ~~or~~ undue burden, or undue expense, including one or more of the following:

~~(1)~~**(A)** Forbidding~~that~~ the discovery ~~not be had~~;

Specifying

~~(2)~~**(B)** ~~that the~~ discovery ~~may be had only on specified~~ terms and conditions, including ~~a designation of the~~ time and~~or~~ place;

Prescribing a

~~(3)~~**(C)** ~~that the~~ discovery ~~may be had only by a~~ method ~~of discovery~~ other than the one~~that~~ selected by the requesting party ~~seeking discovery~~;

Prohibiting inquiry into

~~(4)~~**(D)** ~~that~~ certain matters ~~not be inquired into,~~ or limiting~~that~~ the discovery scope ~~of the discovery be limited~~ to certain matters;

(E) Designating the persons who may be present while conducting the discovery;

Sealing

~~(5) that discovery be conducted with no one present except persons designated by the court;~~

~~(6)~~**(F)** ~~that~~ a deposition ~~after being sealed~~ to be opened only by court order ~~of the court~~;

Precluding disclosure of

~~(7)~~**(G)** ~~that~~ a trade secret or other confidential research, development, or commercial information or specifying the manner in which it is to ~~not~~ be disclosed ~~or be disclosed only in a designated way~~;

Requiring

~~(8)~~**(H)** ~~that the parties simultaneously file~~ specified documents or information to be filed simultaneously ~~enclosed~~ in sealed envelopes to be opened as ~~directed by~~ the court directs; and~~;~~

An

~~(9)~~**(I)** ~~the court may make any other~~ order ~~which~~ justice requires to protect the party or witness from annoyance, embarrassment, oppression, ~~or~~ undue burden, or undue expense, including that the requesting party pay~~provision for payment of~~ expenses for a~~attendant upon such~~ deposition or other discovery ~~device by the party seeking same~~.

(2) If it partly or wholly denies the motion ~~for a protective order is denied in whole or in part~~, the court ~~, may,~~ on justsuch terms and conditions ~~may as are just,~~ order that theany party or person provide or allow thepermit discovery. Rule 37(a)(4) applies to the award of expenses.
~~incurred in relation to the~~

Discovery sequence and timing. Unless the court orders otherwise on a motion~~.~~

(e) ~~**Sequence and Timing of Discovery.** Unless the court upon motion,~~ for the convenience of parties and witnesses and ~~in~~ the interests of justice, discovery ~~orders otherwise,~~ methods ~~of discovery~~ may be used in any sequence, and the fact ~~that~~ a party takes a~~is conducting discovery, whether by~~ deposition or conducts other discovery does~~otherwise, shall~~ not operate to delay another~~any other~~ party's discovery.

(f) **Supplementing responses.** ~~**Supplementation of Responses.**~~ A party who has responded to a discovery request ~~for discovery~~ with a response that was complete when served does not have a~~made is under no~~ duty to supplement it with~~the response to include~~ information subsequently~~thereafter~~ acquired~~,~~ except ~~as follows~~:

(1) A party has~~is under~~ a duty ~~seasonably~~ to supplement a~~that party's~~ response in a timely manner with respect to a~~any~~ question directly addressed to:

(A) Identifying ~~(A) the identity~~ and locating~~location of~~ persons:

(i) Having ~~(i) having~~ knowledge of discoverable matters;~~,~~ or
~~(1)~~**(ii)** Who~~(ii) who~~ may be called as witnesses at ~~the~~ trial;~~,~~ and

(B) Identifying:
~~(B) the identity of each person expected to be called as an~~
(i) Each expert witness expected to testify at trial;
(ii) The~~, the~~ subject matter on which the person is expected to testify;~~,~~ and
(iii) The~~the~~ substance of the testimony.

(2) A party has~~is under~~ a duty ~~seasonably~~ to amend a prior response in a timely manner if failing to do so would be a knowing concealment and:

(A) The party learns~~if that party obtains information upon the basis of which (A) the party knows that~~ the response was incorrect when served;~~made,~~ or
~~(2)~~**(B)** The~~(B) the~~ party learns~~knows that~~ the response~~, though correct when made,~~ is no longer true ~~and the circumstances are such that a failure to amend the response is in substance a knowing concealment~~.

(3) A party has a duty to supplement a response if ~~responses may be~~ imposed:

(A) By court ~~by~~ order;

(B) By ~~of~~ the parties' ~~court,~~ agreement; ~~of the parties,~~ or

~~(3)~~**(C)** By ~~at any time prior to trial through~~ new requests to supplement ~~for supplementation of~~ prior responses prior to trial.

[Amended effective 3/1/89; 3/~~March 1, 1989; March~~ 13/91; 4/~~, 1991; April~~ 13/00~~, 2000~~. Amended effective 5/~~May~~ 29/03~~, 2003~~ to add Rule 26(5) addressing discovery of electronic data.]

Advisory Committee Historical Note

Effective 4/~~April~~ 13/00~~, 2000~~, Rule 26(c) was amended to allow the court on its own motion to convene a discovery conference.~~,~~ 753-54~~754~~ So. 2d XVII (West Miss. Cas. 2000).

Effective 3/~~March~~ 13/91~~, 1991~~, Rule 26(b)(1)(ii) was amended to delete witnesses' ~~the~~ oral testimony ~~of witnesses~~ from the list~~listing~~ of matter that ~~might be discovered by~~ a party might discover.~~.~~ Rule 26(d) was amended to state~~provide~~ that ~~in the case of depositions protective orders might be made by~~ the court issuing~~that issued~~ a deposition subpoena could enter a protective order.~~therefor.~~ 574-76~~576~~ So. 2d XXIII (West Miss. Cas. 1991).

Effective 3/~~March~~ 1/89~~, 1989~~, Rule 26(b)(1) and Rule 26(f)(1) were amended to include identifying ~~provide for the identification of (~~and supplementing ~~supplementation of the~~ prior identifications~~identification~~ of~~)~~ those~~, in addition to experts,~~ who may be called as witnesses at ~~the~~ trial in addition to experts.~~.~~ 536-38~~538~~ So. 2d XXIV (West Miss. Cas. 1989).

Rule 27. Depositions to perpetuate testimony.

~~RULE 27. DEPOSITIONS BEFORE ACTION OR PENDING APPEAL~~

(a) Before action~~Action~~.

(1) **Petition.** A person seeking~~who desires~~ to perpetuate ~~his own~~ testimony about a~~or that of another person regarding any~~ matter ~~that may be~~ cognizable in a Mississippi ~~any~~ court ~~of this state~~ may file a verified petition in ~~the~~ circuit or chancery court in the county where an ~~of the residence of any~~ expected adverse party resides. The petition must ask for an order authorizing the petitioner to depose persons named in it to perpetuate their testimony, be titled~~shall be entitled~~ in the petitioner's name~~, of the petitioner~~ and ~~shall~~ show:

(A) The ~~(1) that the~~ petitioner expects to be a party to an action cognizable in a Mississippi court ~~of this state~~ but cannot at the time~~is presently unable to~~ bring the action~~it~~ or cause it to be brought;

(B) The~~, (2) the~~ subject matter of the expected action and the petitioner's~~his~~ interest in it;

(C) The ~~therein, (3) the~~ facts the person wants~~which he desires~~ to establish by the proposed testimony and the~~his~~ reasons ~~for desiring~~ to perpetuate it;

(D) The~~, (4) the~~ names of persons expected to be adverse parties or a description of them ~~the persons he expects will be adverse parties~~ and their addresses if~~so far as~~ known;

(E) The ~~, and (5) the~~ names and addresses of each deponent;~~the persons to be examined~~ and

~~(1)~~**(F)** The ~~the~~ substance of ~~the~~ testimony the petitioner~~which he~~ expects to elicit from each deponent~~, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony~~.

(2) **Notice~~; service and Service~~.** The petitioner must~~shall thereafter~~ serve ~~a notice upon~~ each person named in the petition as an expected adverse party with a copy of the petition and notice ~~,~~ stating the hearing ~~that the petitioner will apply to the court, at a~~ time and place.

(A) ~~named therein, for the order described in the petition.~~ At least 20~~twenty~~ days before the hearing date~~, of hearing~~ the notice must~~shall~~ be served according to Rule 4.

(B) If an~~in the same manner for service of summons; but if such service cannot with due diligence be made upon any~~ expected adverse party named in the

petition cannot be served after due diligence, the court may ~~make such~~ order ~~as is just for~~ service by publication or otherwise.

~~(2)~~(C) For ~~, and shall appoint, for~~ persons not served under Rule 4,~~in~~ the court must appoint~~manner provided by law,~~ an attorney to~~who shall~~ represent them and ~~, and, in case they are not otherwise represented, shall~~ cross-examine the deponent if a person is not otherwise represented. ~~.~~

(3) Order; examination.

(A) ~~**and Examination.**~~ If ~~the court is~~ satisfied ~~that the~~ perpetuation of the testimony may prevent a failure or delay of justice, the court must:

(i) Designate~~it shall make an order designating~~ or describe~~describing the persons whose depositions may be taken and specifying~~ the deponent;

(ii) Specify~~subject matter of~~ the examination subject matter; and

(iii) State whether a deposition will~~the depositions shall~~ be taken by~~upon~~ oral examination or written interrogatories.

(B) A deposition ~~The depositions~~ may then be taken according to ~~in accordance with~~ these rules~~,~~; and the court may issue a ~~make orders of the character provided for by~~ Rule 34 order.

~~(3)~~(C) ~~.~~ For the purpose of applying these rules to a deposition~~depositions~~ for perpetuating testimony, each reference ~~therein~~ to the court where~~in which~~ the action is pending refers~~shall be deemed to refer~~ to the court where~~in which~~ the petition seeking the testimony~~for such deposition~~ was filed.

(4) ~~**Use of**~~ **Deposition use.** A~~. If a~~ deposition to perpetuate testimony ~~is taken under these rules, it~~ may be used in a subsequent circuit, chancery, or county ~~any~~ action involving the same subject matter according to ~~subsequently brought in a circuit, chancery or county court in accordance with~~ Rule 32(a).

(b) **Pending** ~~**Appeal.** If an~~ **appeal**. If ~~has been taken from~~ a judgment is appealed~~of a court,~~ or before the ~~taking of an appeal if the~~ time to do so expires~~therefor has not expired~~, the court that~~in which the judgment was~~ rendered it may allow witness~~the taking of the~~ depositions ~~of witnesses~~ to perpetuate their testimony in additional~~for use in the event of further~~ proceedings. The ~~in the court. In such case the~~ party wanting~~who desires~~ to perpetuate the testimony may move~~make a motion in the court~~ for leave to take the deposition.

(1) Rule 27(a)(2) ~~depositions, upon the same~~ notice and service requirements apply ~~thereof~~ as if the action were pending in the court.

(2) The motion must~~shall~~ show:

(A) The~~ (1) the~~ names and addresses of each deponent;

(B) The ~~persons to be examined and the~~ substance of ~~the~~ testimony the petitioner~~which he~~ expects to elicit from each deponent; and

(C) The~~; (2) the~~ reasons for perpetuating their testimony.

~~If the court finds that the~~

~~**(b)**~~**(3)** On finding perpetuation of the testimony is proper to avoid a failure or delay of justice, the court may allow the deposition to be taken and issue a Rule 34 ~~it may make an~~ order. The deposition ~~allowing the depositions to be taken and may make orders of the character provided for by Rule 34, and thereupon the depositions~~ may be taken and used in the same manner and under the same conditions as ~~are prescribed in~~ these rules prescribe for depositions taken in ~~actions~~ pending actions~~in the court~~.

(c) **Perpetuation by action~~Action~~.** This rule does not limit the power of a court to entertain an action to perpetuate testimony.

Rule 28. Persons before whom depositions may be taken.

~~RULE 28. PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN~~

(a) Within the United States. Within the United States~~, or within~~ a territory, or an insular possession subject to ~~the dominion of the~~ United States jurisdiction, a deposition must~~, depositions shall~~ be initiated by an oath or affirmation administered to the deponent by:

(1) An~~an~~ officer authorized to administer oaths by federal law or the law in~~laws of~~ the examination~~United States or of the~~ place~~; where the examination is held,~~ or

~~**(a)**~~**(2)** A~~by a~~ person ~~specially appointed by~~ the court where~~in which~~ the action is pending appoints to administer oaths and to take testimony. ~~.~~

(b) ~~In Foreign Countries.~~ In a foreign country.

(1) In a foreign country, a deposition~~, depositions~~ may be taken:

(A) On~~(1) on~~ notice before a person authorized to administer oaths by federal law or the law of the examination~~in the~~ place;

(B) Before a person ~~in which the examination is held, either by the law thereof or by the law of the United States, or (2) before a person~~ commissioned by the court~~, and a person so commissioned shall have the power by virtue of his commission~~ to administer a~~any~~ necessary oath and to take testimony~~;~~ or

(C) According~~(3) pursuant~~ to a letter rogatory.

(2) On a motion, notice, and just and appropriate terms, a~~A~~ commission or ~~a~~ letter rogatory must~~shall~~ be issued.

(A) Showing ~~on application and notice and on terms~~ that ~~are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the~~ taking ~~of~~ the deposition in another~~any other~~ manner would be~~is~~ impracticable or inconvenient is not required to have~~; and both~~ a commission or letter rogatory issued.

(B) Both~~and~~ a commission and letter rogatory may be issued in proper cases.

(C) A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title.

~~**(b)**~~**(D)** A letter rogatory may be addressed to "To the Appropriate Authority in (~~here~~ name of~~the~~ country)."~~).~~ Evidence obtained in response to a letter rogatory does not need to~~not~~ be excluded merely because~~for the reason that~~ it is not a verbatim transcript, because ~~or that~~ the testimony was not taken under oath, or because of a~~for any~~ similar departure from ~~the~~ requirements for depositions taken within the United States under these rules.

(c) Disqualification. A ~~**for Interest.** No~~ deposition must not~~shall~~ be taken before a person who is:

(1) A party's ~~a~~ relative, ~~or~~ employee, ~~or~~ attorney, or counsel;

(2) A ~~of any of the parties, or is a~~ relative or employee of a party's~~such~~ attorney or counsel;~~,~~ or

~~**(c)**~~**(3)** Financially~~is financially~~ interested in the action.

Rule 29. Stipulations about discovery procedure.

~~RULE 29. STIPULATIONS REGARDING DISCOVERY PROCEDURE~~

Unless the court orders otherwise, the parties may stipulate in writing:

(a) That a deposition~~by written stipulation (1) provide that depositions may be~~ taken before a~~any~~ person, at any time or place, on~~upon~~ any notice, and in any manner, ~~and when so taken~~ may be used like other depositions;~~,~~ and
~~(2) modify the~~

(b) To modifying procedures in~~provided by~~ these rules for other discovery methods ~~of discovery,~~ except that ~~stipulations~~ extending ~~the~~ time for Rule~~provided in Rules~~ 33, 34, and 36 discovery~~for~~ responses requires court~~to discovery may be made only with the~~ approval.

~~ of the court.~~
Rule

~~RULE~~ 30. ~~DEPOSITIONS UPON ORAL EXAMINATION~~

~~When~~ Depositions ~~May Be Taken. After commencement of the action, any party may take the testimony of any person, including a party,~~ by ~~deposition upon~~ oral examination.

(a) When a deposition may be taken.

(1) Without leave. A party may depose a party or person by oral examination without leave of court.

(2) With leave. Leave of court~~,~~ granted with or without notice~~,~~ must be obtained only:

(A) If ~~if~~ the plaintiff seeks to take a deposition prior to 30~~the expiration of thirty~~ days after a~~service of the summons upon any~~ defendant is served with the summons unless:

(i) A~~, except that leave is not required (1) if a~~ defendant has served a deposition notice other~~of taking deposition or otherwise sought~~ discovery~~:,~~ or

(ii) Special~~(2) if special~~ notice is given under Rule 30~~subsection~~ (b)(2).

~~(a)~~(B) ~~) of this rule. The attendance of witnesses may be compelled by subpoena.~~ The deposition of a person confined in prison may be taken only by leave of court on ~~such~~ terms it orders~~as the court prescribes~~.

(3) Subpoena. Witness attendance may be compelled by subpoena.

(b) General and special notice requirements; nonstenographic recording; production of documents and things; deposition of organization.

(1) Notice.

~~**(b) Notice of Examination: General Requirements; Special Notice; Non-Stenographic Recording; Production of Documents and Things; Deposition of Organization.**~~

(A) A party wanting~~desiring~~ to depose a~~take the deposition of any~~ person by~~upon~~ oral examination must~~shall~~ give reasonable written ~~notice in writing to every other party to the action. The~~ notice to all parties stating:

(i) The ~~shall state the~~ time and place of~~for taking~~ the deposition~~;~~

(ii) The ~~and the~~ name and address of each deponent~~person to be examined,~~ if known~~;~~~~,~~ and

(iii) If~~, if~~ the name is unknown~~not known~~, a general description sufficient to identify the deponent~~him~~ or the particular class or group to which the person~~he~~ belongs.

(B) If the deponent is served with a document~~If a~~ subpoena~~, duces tecum is to be served on the person to be examined, the designation of~~ the materials designated~~to be produced as set forth~~ in the subpoena to be produced must~~shall~~ be attached to the notice or included in it.

(C) ~~the notice.~~ A notice may provide for deposition ~~the taking of testimony~~ by telephone.

~~(1)~~**(D)** If necessary~~, however,~~ to ensure the~~assure a~~ full right to~~of~~ examination, on a party's motion ~~of any deponent~~, the court where~~in which~~ the action is pending may~~, on motion of any party,~~ require ~~that~~ the deposition to be taken in the deponent's presence ~~of the deponent~~.

(2) Special notice.

(A) The~~Leave of court is not required for the taking of a deposition by~~ plaintiff does not have to seek leave of court if the notice:

(i) States ~~(A) states~~ that the deponent~~person to be examined~~ is about to go out of ~~the~~ state and will be unavailable ~~for examination~~ unless deposed within~~his deposition is taken before expiration of~~ the 30~~thirty~~-day period~~;~~~~,~~ and

(ii) States~~(B) sets forth~~ facts supporting~~to support~~ the statement.

~~(2)~~**(B)** The plaintiff's attorney must~~shall~~ sign the notice, and the~~his~~ signature constitutes ~~a~~ certification that the statement and supporting facts are true~~by him that~~ to the best of the attorney's~~his~~ knowledge, information, and belief ~~the statement and supporting facts are true~~.

(C) On~~If~~ a showing~~party shows~~ that Rule 30(b)(2) special notice ~~when he~~ was served but that after exercising~~with notice under this subsection (b)(2) he was unable through the exercise of~~ diligence, a party was unable to obtain counsel for representation~~to represent him~~ at the ~~taking of the~~ deposition, the deposition may not be used against that party~~him~~.

(3) For~~The court may for~~ cause shown, the court may enlarge or shorten the time for taking the deposition.

Nonstenographic recording.

(4) The ~~notice of~~ deposition notice required under Rule 30~~(1) of this subsection~~ (b)(1) may state~~provide that the~~ testimony will be recorded by nonstenographic~~other than stenographic~~ means.

(A) A deposition~~, in which event the~~ notice stating testimony will be recorded by nonstenographic means must~~shall~~ designate the manner in which~~of recording and preserving~~ the deposition will be recorded and preserved.

(B) ~~.~~ A court may require ~~that the deposition be taken by~~ stenographic means if necessary to ensure accuracy.

(i) A party's ~~assure that the recording be accurate. A~~ motion to require stenographic means must~~by a party for such an order shall~~ be addressed to the court where~~in which~~ the action in pending.

~~(4)~~**(ii)** A~~; a~~ motion by a witness to require stenographic means~~for such an order~~ may be addressed to the court in the jurisdiction~~district~~ where the deposition is taken.

Production of documents and things. Notice

(5) ~~The notice~~ to a party deponent may be accompanied by a ~~request made in compliance with~~ Rule 34 request for~~ the~~ production of documents and tangible things at the ~~taking of the~~ deposition. ~~The procedure of~~ Rule 34 applies~~shall apply~~ to the request.

(6) Deposition of organization. In a deposition~~A party may in his~~ notice or~~and in a~~ subpoena, a party may name as the deponent a governmental agency or a public or private corporation, ~~or a~~ partnership, or association.

(A) The notice or subpoena must~~governmental agency and~~ describe with reasonable particularity the matters on which examination is requested.

(B) The named ~~In that event, the~~ organization must~~so named shall~~ designate one or more officers, directors, ~~or~~ managing agents, or other persons who consent to testify on its behalf.

(i) For~~, and may set forth, for~~ each ~~person~~ designated person, the organization may state~~,~~ the matters on which the person~~he~~ will testify.

(ii) A subpoena must~~shall~~ advise a nonparty~~non-party~~ organization of its duty to designate one or more officers, directors, managing agents, or other ~~make such a designation. The~~ persons who consent to testify on its behalf.

(iii) The~~so~~ designated persons must~~shall~~ testify as to matters known or reasonably available to the organization.

~~(6)~~**~~(C)~~** Rule 30~~This subsection~~ (b)(6) does not preclude taking a deposition by another~~any other~~ procedure authorized in these rules.

(7) For purposes of ~~this Rule, and~~ Rules 30, 28(a), 37(a)(1), 37(b)(1), and 45(b), a deposition must~~shall~~ be considered~~deemed~~ to occur~~be taken~~ in the county where the deponent is physically present to answer questions propounded to him.

~~(c) Examination and Cross-Examination; Record of Examination; Objections.~~
Examination and cross-examination; examination record; objections.

(1) Examination; cross-examination. Witness examination and cross-examination ~~of witnesses~~ may proceed as allowed~~permitted~~ at ~~the~~ trial.

(2) Examination record. Witness ~~The~~ testimony must~~of the witness shall~~ be ~~recorded either~~ stenographically recorded or as stated Rule 30~~provided in subsection~~ (b)(4)~~.)~~ ~~of this rule.~~ If requested by a party, ~~one of the parties, the~~ testimony must~~shall~~ be transcribed on~~upon the~~ payment of ~~the~~ reasonable charges.

(3) Objections.

(A) Objections ~~therefor. All objections made~~ at the time of ~~the~~ examination to the following must be noted on the record:

(i) Qualifications~~qualifications~~ of the person taking the deposition;
(ii) The~~, or to the~~ manner in which~~of taking~~ it is taken;
(iii) Evidence ~~, or to the evidence~~ presented at it;
(iv) A party's~~, or to the~~ conduct; ~~of any party,~~ and
(v) Other objections~~any other objection~~ to the proceedings must~~, shall~~ be noted on~~upon~~ the record.

(B) But the examination still proceeds, and evidence~~transcription or recording. Evidence~~ objected to must~~shall~~ be taken subject to the objections.

~~(c)~~**(4) Participation by written question.** Instead~~In lieu~~ of participating in the oral examination, a party~~parties~~ may serve written questions on the party taking the deposition. The party taking the deposition must ~~, who shall~~ propound them to the witness and see~~*See*~~ that the answers ~~thereto~~ are recorded verbatim.

(d) Motion to terminate~~Terminate~~ or limit examination.

(1) During**Limit Examination.** ~~At any time during the taking of~~ the deposition, ~~on motion of~~ a party or ~~of the~~ deponent may move to terminate or limit the examination.

~~(d)~~ On~~and upon~~ a showing ~~that~~ the

(A) examination is ~~being~~ conducted in bad faith or in an unreasonable~~such~~ manner ~~as unreasonably~~ to annoy, embarrass, or oppress the deponent~~/~~ ~~or~~ party, the court where~~in which~~ the action is pending may order the officer conducting the examination to cease doing so.

(B) The court~~forthwith from taking the deposition or~~ may also limit the deposition scope and manner under ~~of the taking of the deposition as provided in~~ Rule 26(d).

(C) If the order ~~made~~ terminates the examination, it may~~shall~~ be resumed ~~thereafter~~ only on an~~upon the~~ order by~~of~~ the court where~~in which~~ the action is pending.

(2) If demanded by~~Upon demand of~~ the objecting party or deponent, the ~~taking of the~~ deposition must~~shall~~ be suspended for the time necessary to move~~make a motion~~ for an order. Rule 37(a)(4) applies to the award of expenses ~~incurred in relation to the motion~~.

(e) Submission to witness; changes; signing.~~Witness; Changes; Signing.~~ When ~~the~~ testimony ~~is~~ taken by stenographic means or nonstenographic~~, or is recorded by other than stenographic~~ means under Rule 30~~as provided in subsection~~ (b)(4) ~~of this rule, and if the transcription or recording thereof~~ is to be used at a~~any~~ proceeding in the action, the~~such~~ transcription or recording must~~shall~~ be submitted to the witness for examination~~,~~ unless otherwise ~~such examination is~~ waived by the witness and ~~by~~ the parties.

(1) Changes~~Any changes~~ in form or substance ~~which~~ the witness wants~~desires~~ to make must~~shall~~ be entered on~~upon~~ the transcription or ~~stated~~ in a writing accompanying~~to accompany~~ the recording~~, together~~ with a statement of the witness' reasons ~~given by the witness~~ for making them.

(2) The ~~Notice of such changes and reasons shall promptly be served upon all parties by the~~ party taking the deposition must promptly serve all parties with notice of the changes and reasons for them.

(3) ~~.~~ The transcription or recording must~~shall~~ then be affirmed in writing as correct by the witness~~,~~ unless the parties stipulate to waiving~~by stipulation waive the~~ affirmation.

(4) If the witness does~~transcription or recording is~~ not affirm that the transcription or recording is~~affirmed as~~ correct ~~by the witness~~ within 30~~thirty~~ days of ~~its~~ submission ~~to him~~, the reasons for the refusal must~~shall~~ be stated under penalty of perjury on the transcription or in an accompanying~~a~~ writing ~~to accompany the recording~~ by the party wanting~~desiring~~ to use ~~such~~ transcription or recording.

~~(e)~~**(5)** The transcription or recording may then be used ~~fully~~ as though affirmed in writing by the witness~~,~~ unless on a motion to suppress under Rule 32(d)(4)~~,~~) the court holds that the reasons ~~given~~ for refusing affirmation~~the refusal to affirm~~ require ~~rejection of~~ the deposition to be partly~~in whole~~ or wholly rejected~~in part~~.

(f) Certification; exhibits; copies; notice of filing~~Exhibits; Copies; Notice of Filing~~.

(1) Certification. When a deposition is stenographically taken, the stenographer must~~stenographic reporter shall~~ certify~~,~~ under penalty of perjury~~,~~ on the transcript that the witness was sworn in the stenographer's~~his~~ presence and that the transcript is a true record of the witness' testimony.

(A) ~~given by the witness.~~ When a deposition is recorded by nonstenographic~~other than stenographic~~ means under Rule~~as provided in subsection~~ 30(b)(4) and~~of this Rule, and thereafter~~ transcribed, the transcriber must~~person transcribing it shall~~ certify~~,~~ under penalty of perjury~~,~~ on the transcript:

(i) The person ~~that he~~ heard that the witness was sworn on the recording; and

(ii) The~~that the~~ transcript is a correct writing of the recording.

~~(1)~~**(B)** A deposition ~~so~~ certified according to this rule must~~shall~~ be considered prima facie evidence of the witness' testimony ~~of the witness~~.

Exhibits. On a party's request, documents

(2) ~~Documents~~ and things produced for inspection during witness~~the~~ examination must~~of the witness, shall, upon the request of a party,~~ be marked for identification and annexed to the deposition. A party may inspect and copy them.

(A) When~~, and may be inspected and copied by any party. Whenever~~ the person producing materials wants~~desires~~ to retain the originals, the person~~he~~ may substitute copies for~~of~~ the originals~~,~~ or afford each party an opportunity to copy them.

(i) ~~make copies thereof.~~ In the event the ~~original materials are retained by the person producing them, they shall be marked for identification and the~~ person producing them retains original materials, they must be marked for identification, and the person must~~shall~~ afford each party the subsequent opportunity to compare a~~any~~ copy with the original.

(ii) The party must~~He shall~~ also ~~be required to~~ retain the original materials for subsequent use in a~~any~~ proceeding in the same action.

~~(2)~~**(iii)** A~~Any~~ party may move for an order that the originals~~original~~ be annexed to and returned with the deposition to the court until~~, pending~~ final disposition of the case.

(3) Copies. On~~Upon~~ payment of reasonable charges~~ therefor~~, the stenographer~~stenographic reporter,~~ or party taking~~in~~ the ~~case of a~~ deposition under Rule~~taken pursuant to subsection~~ 30(b)(4) must~~of this rule, the party taking the deposition shall~~ furnish a copy of the deposition to a~~any~~ party or ~~to the~~ deponent.

(4) Notice~~If all or part~~ **of filing.** If the deposition is partly or wholly filed with the court, the party doing so must~~making the filing shall~~ give prompt notice ~~thereof~~ to all other parties.

(g) Failure to attend~~Attend~~ **or to serve subpoena; expenses.** ~~Serve Subpoena; Expenses.~~

(1) A party failing~~If the party giving the notice of the taking of a deposition fails~~ to attend and proceed with a deposition the party noticed may be ordered~~therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice~~ to pay ~~to such other party the~~ reasonable expenses ~~incurred by him and his attorney in attending~~, including reasonable attorney's fees, to another party if that party/party's attorney attends the deposition in person according to the notice. ~~.~~

(2) If a witness does not attend~~the party giving the notice of the taking of~~ a deposition noticed by a party because the party failed~~of a witness fails~~ to serve a subpoena on the witness, the party who noticed~~upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he~~

~~expects~~ the deposition may be ordered~~of that witness to be taken, the court may order the party giving the notice~~ to pay ~~to such other party the~~ reasonable expenses ~~incurred by him and his attorney in attending~~, including reasonable attorney's fees, to another party if that party/party's attorney attends the deposition with the expectation the witness will be deposed. ~~.~~

(h) Expenses generally not treated~~Generally Not Treated~~ as court costs~~Court Costs~~. No part of deposition~~the~~ expenses ~~of taking depositions,~~ other than ~~the~~ serving ~~of~~ subpoenas must~~, shall~~ be awarded~~adjudged~~, assessed, or taxed as court costs.

[Amended effective 3/~~March~~ 1/89; 7/~~, 1989; July~~ 1/97~~, 1997~~.]

Advisory Committee Historical Note

Effective 7/~~July~~ 1/97~~, 1997~~, Rule 30(b)(7) was amended to correct the reference to Rule 45.

~~45.~~ 689-92~~692~~ So. 2d XLIX (West Miss. Cas. 1997).

Effective 3/~~March~~ 1/89~~, 1989~~, Rule 30 was amended to abrogate the requirement that the party taking a deposition out of state pay certain expenses of the other party. ~~incident thereto.~~ 536-38~~538~~ So. 2d XXV (West Miss. Cas. 1989).

[Amended effective 7/~~July~~ 1/97.]

~~, 1997.]~~

Rule 31. Depositions by written questions.

~~RULE 31. DEPOSITIONS UPON WRITTEN QUESTIONS~~

(a) Serving questions; notice. A~~Questions; Notice. After commencement of the action, any~~ party may depose a ~~take the testimony of any~~ person or ~~, including a~~ party~~,~~ by ~~deposition upon~~ written questions. Witness~~The~~ attendance ~~of witnesses~~ may be compelled by ~~the use of~~ subpoena according to~~as provided by~~ law. The deposition of a person confined in prison may be taken only by leave of court on ~~such~~ terms it~~as the court~~ prescribes.

(1) A party wanting~~desiring~~ to take a deposition by~~upon~~ written questions must~~shall~~ serve all parties ~~them upon every other party~~ with the questions and a notice stating:

(A) The ~~(1) the~~ name and address of the deponent~~person who is to answer them,~~ if known;

(B) If~~, and if~~ the name is unknown~~not known~~, a general description sufficient to identify the deponent~~him~~ or the particular class or group to which the person~~he~~ belongs;~~,~~ and

(C) The address and ~~(2) the~~ name or descriptive title ~~and address~~ of the officer before whom the deposition will~~is to~~ be taken.

(2) The~~A~~ deposition ~~upon written questions may be taken~~ of a public or private corporation~~, or a~~ partnership~~, or~~ association, or governmental agency may be taken by written questions according to ~~in accordance with~~ Rule 30(b)(6).

(3) Within 30~~thirty~~ days after the notice and written questions are served, a party may serve cross-~~-~~questions on~~upon~~ all ~~other~~ parties.

(4) Within 10~~ten~~ days after being served with cross-~~-~~questions, a party may serve redirect questions on~~upon~~ all ~~other~~ parties.

(5) Within 10~~ten~~ days after being served with redirect questions, a party may serve re-cross~~recross~~ questions on~~upon~~ all ~~other~~ parties.

(6) For~~The court may for~~ cause shown, the court may ~~-~~enlarge or shorten the time.

(b) Officer to take responses~~Take Responses~~ and prepare record.

(1) The deposing party must deliver a~~Prepare Record. A~~ copy of the notice and ~~copies of all questions~~ served questions ~~shall be delivered by the party taking the~~

~~deposition~~ to the officer designated in the notice. ~~, who shall proceed promptly, in the manner provided by~~

~~(b)~~(2) As stated in Rule 30(c), (e), and (f), the designated officer must promptly proceed to take the witness' testimony ~~of the witness~~ in response to the questions and to prepare, certify, and file or mail the deposition with~~, attaching, thereto~~ the copy of the notice and ~~the~~ questions received by the officer.

~~him.~~

Rule 32. Deposition use in court proceedings.

Deposition use. If a party was present or represented at a deposition or had reasonable notice of one, all or part of the deposition may be used against that party to the extent

~~RULE 32. USE OF DEPOSITIONS IN COURT PROCEEDINGS~~

(a) ~~**Use of Depositions.** At the trial or upon the hearing of a motion of an interlocutory proceeding, any part or all of a deposition, so far as~~ admissible under the rules of evidence applied as though the witness were then present and testifying according to the following~~, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions~~:

(1) A party may use a~~Any~~ deposition for ~~may be used by any party for the purpose of~~ contradicting or impeaching the deponent's testimony ~~of deponent~~ as a witness~~,~~ or ~~for any~~ other purpose allowed~~permitted~~ by the Mississippi Rules of Evidence.

(2) An adverse party may use the following for any purpose:

(A) A party's~~The~~ deposition~~; of a party~~ or

(B) Anyone's~~of anyone who at the time of taking the~~ deposition if when taken, the person:

~~(2)~~**(i)** Was~~was~~ an officer, director, ~~or~~ managing agent, or ~~a~~ person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party who is a governmental agency or a public or private corporation, partnership, or association ~~or governmental agency which is a party, may be used by an adverse party for any purpose~~.

(3) A party may use the~~The~~ deposition of a party or nonparty witness ~~, whether or not a party, may be used by any party~~ for any purpose if the court finds:

(A) That ~~(A) that~~ the witness is dead;

(B) That~~or (B) that~~ the witness is at a ~~greater~~ distance greater than 100~~one hundred~~ miles from the ~~place of~~ trial or hearing location;

(C) That the witness ~~, or~~ is out of the state~~,~~ unless it appears ~~that the absence of the witness was procured by~~ the party offering the deposition procured the witness' absence;

(D) That~~; or (C) that~~ the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment;

(E) That~~or (D) that~~ the party offering the deposition has been unable to procure the witness' attendance ~~of the witness~~ by subpoena;

(F) That~~or (E) that~~ the witness is a medical doctor; or

~~(3)~~**(G)** On a motion with~~(F) upon application and~~ notice, that the deposition should be used due to ~~such~~ exceptional circumstances ~~exist as to make it~~

~~desirable~~, in the interest of justice, and with due regard to the importance of presenting witness~~the~~ testimony ~~of witnesses~~ orally in open court~~, to allow the deposition to be so used~~.

(4) If a party offers only part of a deposition ~~is offered~~ in evidence ~~by a party~~, an adverse party may require the party~~him~~ to introduce another~~any other~~ part which ~~ought~~ in fairness ought to be considered with the ~~part~~ introduced part. A~~, and any~~ party may also introduce ~~any~~ other parts.

(5) Substitution of parties does not affect the right to use depositions previously taken.

(6) When~~; and, when~~ an action in a~~any~~ court has been dismissed, and another action involving the same subject matter is subsequently~~afterward~~ brought between the same parties, ~~or~~ their representatives, or their successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter one as if originally taken for it. ~~therefor. A deposition previously taken may also be used as permitted by the Mississippi Rules of Evidence.~~

(7) A deposition previously taken may also be used as the Mississippi Rules of Evidence allow.

Objection

(b) ~~Objections~~ to admissibility~~Admissibility~~. Subject to ~~the provisions of~~ Rule 28(b) and 32~~subsection~~ (d)(3~~), a party~~ ~~of this rule, objection~~ may object~~be made~~ at ~~a~~the trial or hearing to receiving~~receive~~ in evidence ~~a~~any deposition or part of one~~thereof~~ for ~~a~~any reason requiring ~~which would require the exclusion of the~~ evidence to be excluded if the witness were then present and testifying.

[Amended effective 10/~~October~~ 21/99~~, 1999~~.]

(c) [Abrogated].

(d) Effect of deposition error ~~Errors~~ and irregularity~~Irregularities in Depositions~~.

(1) ~~As to~~ **Notice.** All errors and irregularities in noticing~~the notice for taking~~ a deposition are waived unless written objection is promptly served on~~upon~~ the party noticing a deposition~~giving the notice~~.

(2) ~~As to Disqualification of~~ **Officer disqualification.** Objections~~. Objection~~ to taking a deposition because of disqualification of the officer before whom it is to be taken are~~is~~ waived unless asserted:

(A) Before~~made before the taking of~~ the deposition begins; or

~~(2)~~**(B)** If afterwards, as soon ~~thereafter~~ as the disqualification becomes known or could be discovered with reasonable diligence.

(3) ~~As to~~ **Taking of deposition**~~Deposition~~.

(A) An objection~~Objections~~ to the competency of a witness or to the competency, relevancy, or materiality of testimony is~~are~~ not waived by failing~~failure~~ to make it~~them~~ before or during the ~~taking of the~~ deposition~~,~~ unless the grounds for~~ground of~~ the objection ~~is one which~~ might have been obviated or removed if presented at that time.

(B) The following errors~~Errors~~ and irregularities ~~occurring~~ at ~~the~~ oral examination are waived unless objection is timely asserted at the deposition:

(i) The ~~in the~~ manner in which~~of taking~~ the deposition is taken;
(ii) The~~, in the~~ form of ~~the~~ questions or answers;
(iii) The~~, in the~~ oath or affirmation;
(iv) The parties'~~, or in the~~ conduct;~~ of the parties,~~ and

~~(B)~~**(v)** Errors~~errors~~ of a~~any~~ kind which might be obviated, removed, or cured if promptly presented~~, are waived unless seasonable objection thereof is made at the taking of the deposition~~.

(C) An objection~~Objections~~ to the form of written questions submitted under Rule 31 is~~are~~ waived unless served in writing on~~upon~~ the party propounding them within the time allowed for serving ~~the~~ succeeding cross or other questions and within five days after service of the last ~~questions~~ authorized questions.

~~(4)~~ **Deposition completion**~~As to Completion~~ **and return.**~~Return of Deposition.~~ Errors and irregularities in the manner in which the testimony is transcribed or in which the deposition is prepared, signed, certified,

(4) sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or ~~some~~ part of it~~thereof~~ is filed~~made~~ with reasonable promptness after the~~such~~ defect is~~,~~ or with due diligence might have been~~,~~ ascertained.

[Amended effective 1/~~January~~ 10/86; 3/1/89~~, 1986; March 1, 1989~~.]

Advisory Committee Historical Note

Effective 3/~~March~~ 1/89~~, 1989~~, Rule 32 was amended by providing that the deposition of a medical doctor may be used by a~~any~~ party for any purpose. 536-38~~538~~ So. 2d XXV (West Miss. Cas. 1989).

Effective 1/~~January~~ 10/86~~, 1986~~, Rule 32 was amended by deleting references to the Mississippi Rules of Evidence; and Rule 32(c) [Effect of Taking or Using Depositions] was abrogated. ~~-~~478-81~~481~~ So. 2d XXIII (West Miss. Cas. 1986).

Advisory Committee Notes

Miss. ~~M.~~R. Evid~~E~~. 801(d)(1)(A) defines a prior inconsistent statement given under oath as nonhearsay and~~non-hearsay. M.R.E. 801(d)(1)(A)~~ applies when a witness testifies at trial in a manner~~ that is~~ inconsistent with a previous sworn statement. The previous sworn statement, which may have been made during a deposition, is nonhearsay~~non-hearsay,~~ and ~~is~~ admissible unless barred by another~~at trial, assuming no other~~ evidentiary rule~~ bars its introduction~~. *See Craft v. State*, 656 So. 2d 1156, 1164 (Miss. 1995).

Miss. ~~M.~~R. Evid~~E~~. 804(b)(1) allows an unavailable witness'~~permits the introduction of~~ deposition testimony to be introduced. The ~~by a witness who is unavailable at trial. Though the~~ deposition could~~of the unavailable witness need not~~ have been taken in the same proceeding where~~as that in which~~ it is offered or a different one. But~~,~~ the party against whom the deposition ~~testimony~~ is ~~being~~ offered~~,~~ must have had an opportunity and similar motive to develop the testimony. *See Naylor v. State*, 759 So. 2d 406, 410-11 (Miss. 2000).

If a deposition is offered into evidence at trial, the offering party's attorney is responsible for providing the court with a written transcript~~. of the deposition.~~ In addition, if deposition~~an~~ audio or video ~~recording of the deposition~~ is played for the jury ~~at trial~~, the offering party must ~~also~~ provide the court with a true and correct copy of the~~such~~ audio or video recording. If the entire deposition is not admitted into evidence, both parties'~~the~~ attorneys ~~for both parties~~ should ensure ~~that~~ the court reporter receives~~is given~~ an accurate record indicating the specific deposition portions ~~of the deposition that are~~ introduced into evidence. The ~~at trial. Such~~ record should refer to the page and line numbers of the written deposition transcript.

The ~~of the deposition. In addition, the~~ attorneys also should ensure the court reporter complies with the Guidelines for Court Reporters in the Mississippi Rules of Appellate Procedure. *See* Miss. R. App. P. app. 3 (regarding manner in which trial transcripts must be prepared and filed). ~~for both~~

~~parties should ensure that the court reporter complies with M.R.A.P. Appendix III, governing the manner in which trial transcripts are to be prepared and filed.~~

Rule 32(a) is inconsistent~~not consistent~~ with Miss. ~~M.~~R. Evid~~E~~. 804(a) because Rule 32(a) authorizes the use of certain witness depositions at trial for any purpose even though not all ~~such~~ witnesses are defined as "unavailable" according ~~witnesses" pursuant~~ to Rule~~M.R.E.~~ 804(a). Under Miss. ~~Pursuant to M.~~R. Evid~~E~~. 804(b), a witness' former testimony ~~of a witness~~ is not excluded as hearsay if the witness is unavailable. Under Miss. ~~M.~~R. Evid~~E~~. 1103, a ~~provides that any~~ court rule ~~that is~~ inconsistent with the Mississippi Rules of Evidence is repealed. In general~~Generally~~, deposition testimony may be excluded if the witness is not "unavailable" under Miss. ~~pursuant to M.~~R. Evid~~E~~. 804(a). *See, e.g.., Parmenter v. J & B Enters.,~~Enterprises,~~ Inc.*, 99 So. 3d 207, 219 (Miss~~Ms~~. Ct. App. 2012) (affirming~~court affirmed trial court's~~ exclusion of clinical psychologist's deposition testimony ~~by the plaintiff's clinical psychologist~~ because plaintiff failed to demonstrate ~~the~~ witness was unavailable as required by Miss. ~~M.~~R. Evid~~E~~. 804(b)(1)).

Rule

~~RULE~~ 33. Interrogatories to parties.~~INTERROGATORIES TO PARTIES~~

(a) Procedure. As ~~**Availability; Procedures for Use.** Any party may serve as~~ a matter of right~~, a upon any other~~ party may serve up to 30 written interrogatories on another party. The ~~not to exceed thirty in number to be answered by the~~ party to whom interrogatories are directed must answer them. If that ~~served or, if the~~ party ~~served~~ is a governmental agency or public or private corporation~~, or a~~ partnership, or association~~, an or governmental agency, by any~~ officer or agent must answer the interrogatories and provide~~, who shall furnish such~~ information ~~as is~~ available to the party.

(1) Each interrogatory must~~shall~~ consist of a single question.

(2) Interrogatories may, without leave of court, be served:

(A) On~~upon~~ the plaintiff after ~~commencement of~~ the action is commenced; and

(B) On the defendant when ~~upon any other party with or after service of~~ the summons and complaint are served or afterwards.

~~**(a)**~~**(3)** Serving more than 30 interrogatories requires leave~~upon that party. Leave~~ of court~~,~~ to be granted on~~upon~~ a showing of necessity~~, shall be required to serve in excess of thirty interrogatories~~.

(b) Answers~~; objections; time.~~ ~~and Objections~~

(1) Answers. To the extent not objected to, each~~Each~~ interrogatory must~~shall~~ be answered separately~~; and~~ fully; in writing; and under oath.

(2) Signed. Interrogatory answers must be signed by~~, unless it is objected to, in which event~~ the person making them. Objections to interrogatories must be signed by the attorney making them.

~~(1)~~**(3) Objections.** If a~~objecting~~ party objects to an interrogatory, the party must~~shall~~ state all~~the~~ reasons for an~~the~~ objection and ~~shall~~ answer to the extent the interrogatory is not objectionable.

~~(2) The answers are to be signed by the person making them, and the objections signed by the attorney making them.~~

~~(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within thirty days after the service of the interrogatories, except that a defendant may serve answers or objections within forty-five days after service~~

~~of the summons and complaint upon that defendant. The court may allow a shorter or longer time.~~

(A) All grounds for an objection must~~to an interrogatory shall~~ be stated with specificity.

~~(4)~~**(B)** A basis ~~Any ground~~ not stated in a timely objection is waived unless the court excuses the ~~party's~~ failure ~~to object is excused by the court~~ for good cause shown.

~~(5) The party submitting the~~ If ~~interrogatories may move for an order under Rule 37~~

~~(a) with respect to any objection to or other failure to answer an interrogatory.~~

~~**(c) Scope; Use at Trial.** Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the rules of evidence.~~

~~An interrogatory~~ otherwise proper, an interrogatory is not necessarily objectionable merely because an answering it ~~answer to the interrogatory~~ involves an opinion; a ~~or~~ contention that relates to fact; or the

(C) application of law to fact. But~~, but~~ the court may order that a party does~~such an interrogatory need~~ not have to answer it~~be answered~~ until after designated discovery has been completed~~, or until~~ a pretrial~~pre-trial~~ conference, or other later time.

(4) Time. The responding party must serve answers and objections within 30 days of the date the interrogatories were served. But a defendant may serve them within 45 days after the summons and complaint are served on that defendant.

(5) Sanctions. A party may move for a Rule 37(a) order based on~~**Option to Produce Business Records.** Where the answer to~~ an objection~~interrogatorymay be derived~~ or other failure to answer an interrogatory.

(c) Scope; use at trial.

(1) Scope. An interrogatory may relate to a matter that can be inquired into under Rule 26(b).~~ascertained from~~

(2) Use. An interrogatory answer may be used to the extent allowed by the Mississippi Rules of Evidence.

(d) Option to produce business records. If Rule 33(d)(1) and (d)(2) apply, then a~~ of the~~ party may answer an~~upon whom the~~ interrogatory as stated in Rule 33(d)(3) and (d)(4).

(1) If an interrogatory answer may be derived or ascertained from the following:

(A) The responding party's ~~has been served or from an examination, audit, or inspection of such~~ business records (including electronically stored information);

(B) Examining, auditing, or inspecting them; or

(C) A~~, or from a~~ compilation, abstract, or summary based on them;

(2) And if~~thereon, and~~ the burden of deriving or ascertaining the answer is substantially the same for either~~the~~ party;

(3) Then~~ serving~~ the responding~~interrogatory as for the~~ party may~~served, it is a sufficient~~ answer by:

(A) Specifying~~to such interrogatory to specify~~ the records from which the answer may be derived or ascertained; and

(B) Affording~~ to afford to~~ the other party ~~serving the interrogatory~~ reasonable opportunity to:

(i) Examine ~~examine~~, audit, or inspect the~~such~~ records; and

(ii) Make~~to make~~ copies, compilations, abstracts, or summaries.

~~**(d)**~~**(4)** The responding party must also specify the records from which the answer may be derived or ascertained with ~~The specification provided shall include~~ sufficient detail to allow~~permit~~ the other~~interrogating~~ party to identify readily the individual documents from which the answer may be ascertained.

[Amended effective 4/~~April~~ 13/00~~, 2000~~.]

Advisory Committee Historical Note

Effective 4/~~April~~ 13/00~~, 2000~~, Rule 33 was amended to require parties to produce all non-objectionable~~nonobjectionable~~ information and to clearly state the ground for objection to each interrogatory. ~~753-~~54~~754~~ So. 2d XVII (West Miss. Cas. 2000).

Advisory Committee Notes

The 30~~thirty~~ interrogatories allowed~~permitted~~ as a matter of right are ~~to be~~ computed by counting each distinct question as one of the 30~~thirty,~~ even if labeled a subpart~~sub-part~~, subsection, threshold question, or similar designation. Greater lenience for construing several questions as one interrogatory may be appropriate regarding ~~the like. In areas well suited to non-abusive exploration by interrogatory, such as~~ inquiries about witness~~into the~~ names or~~and~~ locations~~, of witnesses, or~~ the existence, location, and custodians of documents or physical evidence; and similar areas capable of being explored with non-abusive interrogatories~~, greater leniency may be appropriate in construing several questions as one interrogatory~~.

Rule 33(b)(4) requires that ~~the~~ grounds for an~~any~~ objection be stated with specificity. "'General objections' applicable to each and every interrogatory . . . ~~. .~~are clearly outside the bounds of this rule." *See Ford Motor Co. v. Tennin*, 960 So. 2d 379 (Miss. 2007). If an interrogatory is only partially objectionable, the responding party must~~shall~~ clearly indicate the extent to which the interrogatory is objectionable and the basis for the partial objection. The responding party must also fully respond to the extent the interrogatory is not objectionable. For~~If, for~~ example, if an ~~–~~interrogatory ~~–~~seeking ~~–~~information ~~–~~about ~~–~~30 facilities ~~–~~is objectionable while an interrogatory seeking information about 10 facilities is not, the interrogatory should be answered with respect to the 10 facilities; the grounds for objecting to providing information about the remaining facilities should be stated with specificity.

~~deemed~~

Rule 34. Producing documents and things; entering land for inspecting and other purposes.

~~objectionable, but an interrogatory seeking information about 10 facilities would not have been objectionable, the interrogatory should be answered with respect to the 10 facilities, and the grounds for the objection to providing the information with respect to the remaining facilities should be stated specifically.~~

~~RULE 34. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES~~

~~**Scope.** Any~~

(a) Scope. A party may serve on another~~any other~~ party a request within the scope of Rule 26(b):

(1) To~~(1) to~~ produce and allow~~permit~~ the requesting party or the party's representative~~making the request, or someone acting on his behalf,~~ to inspect and copy~~, any~~ designated documents or electronically stored information in any medium and from which the respondent can obtain information directly or translate it into a reasonably useable form if necessary, (~~including writings, drawings, graphs, charts, photographs, phonorecords, data~~phono-records~~, and ~~other~~ data compilations;

(2) To ~~from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably useable form), or to~~ inspect~~,~~ ~~and~~ copy, test, or sample designated~~any~~ tangible things in the responding party's ~~which constitute or contain matters within the scope of Rule 26(b) and which are in the~~ possession, custody, or control ~~of the party upon whom the request is served~~; or

~~**(a)**~~**(3)** To allow~~(2) to permit~~ entry onto~~upon~~ designated land or other property in the responding party's possession or control for inspecting, ~~of the party upon whom the request is served for the purpose of inspection and~~ measuring, surveying, photographing, testing, or sampling the property or a~~any~~ designated object or operation on it.~~thereon, within the scope of Rule 26 (b).~~

(b) Procedure.

(1) Time. Without~~The request may, without~~ leave of court, the request may be served on~~upon~~ the plaintiff after ~~commencement of~~ the action is commenced and on another party when serving that~~upon any other~~ party with ~~or after service of~~ the summons and complaint or afterwards.

(2) Content.~~upon that party.~~ The request:

(A) Must state ~~shall set forth the items to be inspected~~ either by individual item or ~~by~~ category what is to be inspected;

(B) Must~~, and~~ describe each item and category with reasonable particularity;

~~**(b)**~~**(C)** Must~~. The request shall~~ specify a reasonable time, place, and manner for inspecting and~~of making the inspection and performing the~~ related acts; and~~.~~

(D) May specify the form or forms in which electronically stored information is to be produced.

(3) Response.

Time.

(A) The responding party mustupon whom the request is served shall serve a written answerresponse within 30thirty days after the service of the date the request was served. But, except that a defendant may serve a written answerresponse within 45forty-five days after service of the summons and complaint are served onupon that defendant.

(i) The court may allow a shorter or longer time.

(B) Responding The response shall state, with respect **to each item**. For each item or category, the response must state that inspection and related activities will be allowedpermitted as requested or state an objection and, unless the request is objected to, in which event the reasons for it with specificity.

(i) The responding partyobjection shall be stated. If objection is made to part of an item or category, the part shall be specified. The response may state that copies of documents or electronically stored information will be produced instead of allowing inspection.

(ii) Under Rule 34(2)(b)(2)(B)(i), the production must be completed no later than the time specified in the request or another reasonable time specified in the response.

Producing documents,an objection to a requested form for producing **electronically stored information.** The responding party mustIf the responding party objects to a requested form - or if no form was specified in the request - the responding party must state the form or forms it intends to use. Pursuant to Rule 26(b)(5), a responding party may also object to production of electronically stored information that is not reasonably accessible because of undue burden or cost. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. The request may specify the form or forms in which electronically stored information is to be produced.

(C) ~~When producing documents, the producing party shall~~ produce documents~~them~~ as ~~they are~~ kept in the usual course of business or ~~shall~~ organize and label them to correspond with ~~the~~ categories in the request.

(i) ~~that call for their production.~~ If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. ~~A party need not produce the same electronically stored information in more than one form.~~

(ii) A party does not need to produce the same electronically stored information in more than one form.

(4) Objection.

(A) An objection must state whether responsive materials are being withheld on the basis of that objection.

(B) A partial objection must specify the objectionable part of the request and allow the remainder to be inspected.

(C) A party may object to the requested form of producing electronically stored information.

(i) If the responding party objects to the requested form or the request did not specify one, the responding party must state what form or forms the party intends to be use.

(D) A responding party may also object under Rule 26(b)(5) to producing electronically stored information that is not reasonably accessible because of undue burden or cost.

~~**Persons Not Parties.**~~

(E) The party submitting the request may move for a Rule 37(a) order regarding:

(i) An objection;
(ii) Failure to respond to the request;
(iii) Failure to respond to part of one; or
(iv) Failure to allow inspection as requested.

(c) Nonparty. This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter onto~~upon~~ land.

[Amended effective 7/~~July~~ 1/13~~, 2013,~~ to address production of electronically stored~~electronicallystored~~ information.]

Advisory Committee Historical Note

Effective 7/~~July~~ 1/13, Miss. R. Civ. P.~~, 2013, MRCP~~ 34 was amended to specifically authorize a party to request another~~any other~~ party to produce electronically stored information. The amendment established the procedure for requesting production of electronically stored information and the procedure for objecting to that type of~~such a~~ request.

Rule 35. Physical and mental examination.

~~RULE 35. PHYSICAL AND MENTAL EXAMINATION OF PERSONS~~

~~(a)~~ **Order**. If a party's ~~for Examination.~~

(a) ~~When the~~ mental or physical condition (including ~~the~~ blood group) ~~of a party or of a person in the custody or under the legal control of a party~~ is in controversy, the court where~~in which~~ the action is pending may order the party to submit to ~~a~~ physical or mental examination by a suitably licensed or certified examiner. The court has the same authority to order a party ~~or~~ to produce for examination a~~the~~ person over whom~~in~~ the party has~~party's~~ custody or legal control.

(1) The court~~order~~ may issue the order ~~be made~~ only on:

(A) A motion for good cause shown; and

(B) Notice~~upon notice~~ to the person to be examined and to all parties specifying:

(i) The~~and shall specify the~~ time, place, manner, conditions, and scope of the examination; and

(ii) The ~~the~~ person or persons who will perform ~~by whom~~ it.

(2) ~~is to be made.~~ A party or person may not be required to travel an unreasonable distance for an examination.

(3) The ~~party~~ requesting party must~~the examination shall~~ pay the examiner and ~~shall~~ advance all necessary expenses to be incurred by the party or person ~~in~~ complying with the order.

(b) Examiner's report.

~~(b) Report of Examiner.~~

(1) If requested by the party against whom the court issue a~~an order is made under~~ Rule 35(a) order or the person examined, the party who moved for~~causing~~ the examination must~~to be made shall~~ deliver ~~to the requesting party~~ a copy of the examiner's detailed written report stating:

(A) The~~of the examiner setting out the~~ examiner's findings;

(B) All test~~, including~~ results ~~of all tests made~~, diagnoses, and conclusions; and

(C) All~~, together with like~~ reports of ~~all~~ earlier examinations of the same condition.

(2) After delivering the reports and on request,~~delivery~~ the party who moved for~~causing~~ the examination is~~shall be~~ entitled ~~upon request~~ to receive from the party against whom the order was issued~~is made a~~ like reports~~report~~ of all prior~~any examination, previously~~ or subsequent examinations~~thereafter made,~~ of the same condition. But a party with custody or legal control ~~unless, in the case~~ of the ~~a report of examination of a~~ person examined is not required to do so on a showing~~a party, the party shows~~ that the party is unable to obtain the reports.

~~(1)~~**(3)** On a ~~it. The court on~~ motion, the court may require a party to deliver~~make an order against~~ a ~~party requiring delivery of a~~ report on just~~such~~ terms. If ~~as are just, and if~~ an examiner fails or refuses to do so, ~~make a report~~ the court may exclude the examiner's testimony if offered at trial.

~~(2)~~**(4)** By requesting and obtaining a report of the court-ordered examination ~~so ordered~~ or by deposing~~taking the deposition of~~ the examiner, the ~~party~~ examined party waives ~~any~~ privilege ~~the party may have~~ in that action and others~~or any other~~ involving the same controversy as to~~, regarding~~ the testimony of every other person who has examined ~~or may thereafter examine~~ the party or subsequently may do so regarding~~in respect of~~ the same mental or physical condition.

~~(3)~~ Rule 35(b)~~This subdivision~~ applies to examinations made by the parties' agreement ~~of the parties,~~ unless their

~~the~~ agreement expressly states~~provides~~ otherwise. But it~~This subdivision~~ does not preclude discovery of an examiner's~~a~~ report or deposing the ~~of an~~ examiner according to ~~or the taking of a deposition of the examiner in accordance with~~

(5) the provisions of another ~~any other~~ rule.

(c) Limited applicability to ~~Applicability to Actions Under~~ Title 93 of the Mississippi Code of 1972 Annotated. This rule does not apply to actions under Miss. ~~Title 93 of the Mississippi~~ Code Ann. §§ 93-1-1 to 93-29-23. But the chancery court has ~~of 1972, except in the~~ discretion to decide ~~of~~ the rule does apply. ~~Chancery Judge.~~

[Adopted effective 1/~~January~~ 16/03~~, 2003~~.]

Advisory Committee Historical Note

Effective 1/~~January~~ 16/03~~, 2003~~, Rule 35 was adopted to allow a court to order a physical or mental examination of a person for good cause on motion. __ So. 2d __ (West Miss. Cases).

Rule

~~RULE~~ 36. Requests~~REQUESTS FOR ADMISSION~~

~~Request~~ for ~~Admission. A party may serve upon any other party a written request for the~~ admission.

(a) Scope; procedure.

(1) Scope. For~~, for~~ purposes of the pending action only, a party may serve another one with a written request to admit ~~of~~ the truth of a matter~~any matters~~ within the scope of Rule 26(b) relating to:

(A) Statements~~set forth in the request that relate to statements~~ or opinions of fact; or

(B) Statements or opinions on ~~of~~ the application of law to fact, including the genuineness of ~~any~~ documents described in the request.

(2) Procedure.

~~(a)~~(A) Time. ~~Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying.~~ The request may, without leave of court, be served on~~upon~~ the plaintiff after ~~commencement of~~ the action is commenced and on another party when serving that ~~and upon any other~~ party with ~~or after service of~~ the summons and complaint or afterwards. ~~upon that party.~~

(B) Form; copy of documents.

(i) Each matter must~~of which an admission is requested shall~~ be separately stated.

(ii) A request to admit the genuineness of a document must be accompanied by a copy of the document unless produced or otherwise made available for inspection and copying.

(3) Response.

(A) Effect of not responding; time.~~set forth.~~ The matter is admitted unless, within 30~~thirty~~ days after ~~service of~~ the request is served~~,~~ or within a~~such~~ shorter or longer time as the court may allow, the party to whom the request is directed serves ~~upon~~ the ~~party~~ requesting party with ~~the admission~~ a written answer or objection addressed to the matter and~~,~~ signed by the party or party's~~by his~~ attorney.

(i) But~~, but, unless the court shortens the time,~~ a defendant may ~~shall not be required to~~ serve answers or objections within 45~~before the expiration of forty-five~~ days after ~~service of~~ the summons and complaint are served on that defendant unless the court shortens the time.

(4) Answer. If a matter is not admitted, the ~~upon him. If objection is made, the reasons therefor shall be stated. The~~ answer must~~shall~~ specifically deny it~~the matter~~ or state~~set forth~~ in detail ~~the reasons~~ why the answering party cannot truthfully admit or deny it.

(A) Responding to~~the matter. A denial shall fairly meet the~~ **substance of the request.** A denial must fairly respond to the substance of the requested admission.

(B) Qualification; partial denial; specificity. When~~, and when~~ good faith requires ~~that~~ a party to qualify an~~his~~ answer or partially deny a~~only a part of the~~ matter, the party must ~~of which an admission is requested, he shall~~ specify the admitted part ~~so much of it as is true~~ and qualify or deny the remainder.

(C) Lack of information or knowledge. An answering party may assert~~not give~~ lack of information or knowledge as a reason for failing~~failure~~ to admit or deny a request only if the party~~unless he~~ states:

(i) That the party ~~that he~~ has made reasonable inquiry; and

(ii) That~~that the~~ information known or readily obtainable by the party~~him~~ is insufficient to enable the~~him to admit or deny. A~~ party to do so.

(5) Objection. If a party objects to a request, the reasons for doing so must be stated.

(A) Trial issue. If the responding party~~who~~ considers ~~that~~ a matter in a~~of which an admission has been~~ requested admission to present~~presents~~ a genuine issue for trial, the party may not object solely~~,~~ on that basis.

(i) Subject~~ground alone, object to the request; he may, subject~~ to Rule 37(c), the party may deny the matter or state~~set forth~~ reasons why it~~he~~ cannot be admitted~~admit~~ or denied~~deny it~~.

(6) Motion for sufficiency.

(A) The requesting party ~~who has requested the admissions~~ may move to decide~~determine~~ the sufficiency of an answer~~the answers~~ or objection.

(B) ~~objections.~~ Unless the court decides~~determines~~ that an objection is justified, it must~~shall~~ order the responding party to serve~~that~~ an answer.

(C) ~~be served.~~ If the court decides~~determines that~~ an answer does not comply with Rule 36~~the~~ requirements ~~of this section~~, it may:

(i) Order ~~order either~~ that the matter is admitted;

(ii) Require ~~or that~~ an amended answer to be served; or

(iii) Defer its final decision until a pretrial~~. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial~~ conference or ~~at a~~ designated time before~~prior to~~ trial.

(D) ~~-~~Rule 37(a)(4) applies to an~~the~~ award of expenses ~~incurred in relation to the motion~~.

~~**(b)**~~**(7) Effect of admission; withdrawing; amending.** A~~**Admission.** Any~~ matter admitted under this rule is conclusively established unless on a motion, the court allows~~on motion permits withdrawal or amendment of~~ the admission to be withdrawn or amended. ~~.~~

A party's admission

(A) ~~Subject to the provisions governing amendment of a pre-trial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party~~ under this rule is for the purpose of the pending action only. It ~~and~~ is not an admission ~~by him~~ for another~~any other~~ purpose and~~nor~~ may not~~it~~ be used against that party~~him~~ in another~~any other~~ proceeding.

(B) Withdrawal; amendment. The court may allow an admission to be withdrawn or amended:

(i) Subject to Rule 16(e) provisions governing amendment of a final pretrial order;

(ii) When presenting an action's merits will be subserved; and

(iii) The party who obtained the admission fails to satisfy the court withdrawal or amendment will prejudice the party in maintaining that party's action or defense on the merits.

Advisory Committee Notes

The purpose of Rule 36 is to identify and establish undisputed facts ~~that are not in dispute~~. *DeBlanc v. Stancil*, 814 So. 2d 796, 802 (Miss. 2002). "[T]he requests must be reasonable and must be unambiguous. A request is ambiguous if the request is subject to more than one reasonable interpretation. The purpose of requests for admissions is to narrow and define issues for trial." ~~*See*~~ *Haley v. Harbin*, 933 So. 2d 261, 262-63 (Miss. 2005). "Requests for admissions 'should not be of . . .~~such~~ great number and broad scope as to cover all the issues [even] of a complex case, and [o]bviously . . . ~~.~~should not be sought in an attempt to harass an opposing party.'" *Id.*~~*See Haley*, 933 So. 2d~~ at 263.

Rule 36 will be enforced according to its terms; a matter~~matters~~ admitted or deemed admitted on~~upon~~ the responding party's failure to timely answer is~~respond are~~ conclusively established unless the court exercises~~, within its~~ discretion to grant~~, grants~~ a motion to amend or withdraw the admission. "Any admission that is not amended or withdrawn cannot be rebutted by contrary testimony or ignored by the court even if the party against whom it is directed offers more credible evidence." *DeBlanc*, 814 So. 2d at 801 (citing 7 James Wm~~W~~. Moore~~,~~ et al., *Moore's Federal Practice* ¶ 36.03[2], at 36 (3d ed. 2001)). But~~However,~~ in a~~the~~ matter involving~~of~~ child custody, the trial court may allow an admitted issue to be withdrawn~~,~~ as justice requires~~, allow the withdrawal of the issue admitted~~. *Gilcrease v. Gilcrease*, 918 So. 2d 854 (Miss. Ct. App. 2005).

The rule sets out a two-pronged test that trial courts may use when determining whether to grant a motion to withdraw or amend an admission. Courts may consider whether "presentation of the merits . . . ...will be subserved [by amendment or withdrawal] and whether the party who obtained the admission has satisfied the court that withdrawal or amendment would prejudice him or her . . . . [A] trial court 'may,' but is not required to, consider the two-pronged test in denying a motion to withdraw or amend." *See Young v. Smith*, 67 So. 3d 732, 740 (Miss. 2011).

Because~~Generally,~~ a party generally lacks~~has no~~ knowledge of~~concerning~~ the authenticity or admissibility of an opponent's~~the opposing party's~~ medical records. a party does not have an ~~and, therefore, has no~~ obligation to admit the authenticity or admissibility of an opposing party's medical records ~~such documents~~ absent: (1) proper authentication according to Miss. ~~of such records~~

~~in accordance with M.~~R. Evid~~E~~. 901 or 902; and (2) proper demonstration they ~~that such records~~ are records of regularly conducted activity under Miss. ~~pursuant to M.~~R. Evid~~E~~. 803(6). *See Rhoda v. Weathers*, 87 So. 3d 1036 (Miss. 2012).

Rule 37. Failing to cooperate in discovery: sanctions.

~~RULE 37. FAILURE TO MAKE OR COOPERATE IN DISCOVERY: SANCTIONS~~

(a) Motion for order compelling discovery. On~~**Order Compelling Discovery.** A party, upon~~ reasonable notice to other parties and all ~~persons~~ affected persons, a party~~thereby,~~ may move~~apply~~ for an order compelling discovery according to this rule.~~as follows:~~

(1) Appropriate court. A motion~~**Court.** An application~~ for an order compelling discovery may be filed with~~made to~~ the court where~~in which~~ the action is pending.

(2) Specific motions.

(A) A party seeking discovery may move for an order compelling an answer, designation, production, or inspection if:

(i) A~~**Motion.** If a~~ deponent fails to answer a question ~~propounded or submitted~~ under Rules 30 or 31;

(ii) A~~, or a~~ corporation or other entity fails to make a designation under Rules 30(b)(6) or 31(a);

(iii) A~~), or a~~ party fails to answer an interrogatory ~~submitted~~ under Rule 33;~~,~~ or

(iv) A~~ if a~~ party fails~~, in response~~ to produce documents~~a request for inspection submitted under Rule 34~~, fails to respond that inspection will be allowed, or fails to allow inspection~~permitted~~ as requested under Rule 34.

~~**(2)**~~**(B)** ~~or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request.~~ When taking a deposition by~~on~~ oral examination, the proponent of the question may complete or adjourn the examination before moving~~he applies~~ for an order.

(C) If the court partly or wholly denies the motion~~ in whole or in part~~, it may issue a Rule 26(d)~~make such~~ protective order~~. as it would have been empowered to make on a motion made pursuant to Rule 26(d).~~

(3) Evasive or incomplete answer.~~Incomplete Answer.~~ For purposes of Rule 37(a),~~this section,~~ an evasive or incomplete answer must~~is to~~ be treated as a failure to answer.

(4) Award of expenses.

(A) **~~Expenses of Motion.~~** If the motion is granted, ~~the court shall,~~ after an opportunity to be heard, the court must~~for hearing,~~ require the party or deponent whose conduct necessitated the motion~~;~~ ~~or~~ the party or attorney who advised the~~advising such~~ conduct; or both ~~of them~~ to pay to the moving party ~~the~~ reasonable expenses ~~incurred in obtaining the order~~, including attorney's fees, incurred to obtain the order unless the court finds:

(i) That ~~that the~~ opposition to the motion was substantially justified; or

~~(4)~~**(ii)** That ~~that~~ other circumstances make an expense award ~~of expenses~~ unjust.

(B) If the motion is denied, ~~the court shall,~~ after an opportunity to be heard, the court must~~for hearing,~~ require the moving party~~;~~ ~~of~~ the moving party's attorney advising the motion; or both ~~of them~~ to pay to the opposing party or deponent ~~who opposed the motion the~~ reasonable expenses ~~incurred in opposing the motion~~, including attorney's fees, incurred to oppose the motion unless the court finds:

(i) That ~~that the making of~~ the motion was substantially justified; or

(ii) That~~that~~ other circumstances make an ~~award of~~ expense award unjust.

(C) If the motion is partly granted ~~in part~~ and denied ~~in part~~, the court may apportion ~~the~~ reasonable expenses incurred in obtaining and opposing~~relation to~~ the motion among the parties and persons in a just manner.

(b) Failing~~Failure~~ to comply with order~~Comply With Order~~.

(1) ~~Sanctions by~~ **Court sanctions.** If a deponent refuses~~fails~~ to be sworn or to answer a question after the court has ~~being~~ directed otherwise~~to do so by the court~~, the failure may be considered ~~a~~ contempt of court.

~~(2)~~ **Sanctions by court where action is pending.**~~Court in Which Action Is Pending.~~ If a party or a party's~~an~~ officer, director, ~~or~~ managing agent~~, of a party~~ or other~~a~~ person designated to testify under Rules 30(b)(6) or 31(a) ~~to testify in behalf of a party~~ fails to obey an order to provide or allow~~permit~~ discovery, including a Rule 37(a) ~~an order made under subsection (a) of this rule, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:~~

(2) ~~an~~ order, the court where the action is pending may issue additional just orders, including:

(A) Establishing ~~that the~~ matters pertaining to ~~regarding which~~ the order ~~was made~~ or ~~any~~ other designated facts for~~shall be taken to be established for the~~ purposes of the action according to the requesting party's~~in accordance with the~~ claim ~~of the party obtaining the order~~;

Refusing

(B) ~~an order refusing~~ to allow the disobedient party to support or oppose designated claims or defenses~~,~~ or prohibiting the disobedient party ~~him~~ from introducing designated matters in evidence;

Partly or wholly

(C) ~~an order~~ striking ~~out~~ pleadings;

(D) Staying ~~or parts thereof, or staying further~~ proceedings until the order is obeyed;

(E) Partly~~,~~ or wholly dismissing the action or proceeding;

~~(C)~~**(F)** Rendering a default ~~or any part thereof, or rendering a~~ judgment ~~by default~~ against the disobedient party; or

Instead of an order stated in Rule 37(b)(2)(A) through (F)

~~(D)~~**(G)** ~~in lieu of any of the foregoing orders~~ or in addition to one~~thereto~~, an order treating ~~as a contempt of court~~ the failure to obey as contempt of court~~any orders~~.

(3) Instead of an order stated in Rule 37(b)(2) ~~In lieu of any of the foregoing orders~~ or in addition to one~~, thereto~~, the court must~~shall~~ require the disobedient party~~; failing to obey the order or~~ the attorney advising the party;~~him~~ or both to pay ~~the~~ reasonable expenses, including attorney's fees, caused by the failure~~,~~ unless the court finds:

(A) That~~ that~~ the failure was substantially justified; or

(B) That~~that~~ other circumstances make an expense award unjust.

(c) Failing to admit;~~of~~ **expenses.** ~~unjust.~~

~~**(c) Expenses on Failure to Admit.**~~ If a party fails to admit the genuineness of a~~any~~ document or the truth of a~~any~~ matter as requested under Rule 36, and if the ~~party~~ requesting party subsequently~~the admissions thereafter~~ proves the document's genuineness ~~of the document~~ or the matter's truth, that party ~~of the matter, he~~ may move~~apply to~~ the court for an order requiring the ~~-~~other party to pay ~~him~~ the party reasonable

(1) expenses ~~incurred in making that proof~~, including ~~reasonable~~ attorney's fees, incurred in doing so.

(2) ~~.~~ The court must issue~~shall make~~ the order unless it finds that:

(A) The ~~(1) the~~ request was ~~held~~ objectionable under Rule 36(a);
(B) The requested~~), or (2) the~~ admission ~~sought~~ was not of ~~no~~ substantial importance;
(C) The~~, or (3) the~~ party failing to admit had reasonable grounds~~ground~~ to believe the party~~that he~~ might prevail on the matter;~~,~~ or
(D) Other~~(4) there was other~~ good reason for failing~~the failure~~ to admit existed.

(d) Failing~~Failure of Party~~ to attend deposition; serve interrogatory answer;~~Attend at Own Deposition~~ or respond~~Serve Answers~~ to inspection request.

(1) ~~**Interrogatories or Respond to Request for Inspection.**~~ If a party or a party's~~an~~ officer, director, ~~or~~ managing agent~~, of a party~~ or other~~a~~ person designated under Rules 30(b)(6) or 31(a) to testify ~~on behalf of a party~~ fails the following, on a motion, the court where the action is pending may issue a just order regarding the failure, including an order under Rule 37(b)(2)(A) through (G):

(A) To~~(1) to~~ appear before the officer who is to take the party's~~his~~ deposition~~,~~ after being served with ~~a~~ proper notice;
(B) To~~, or (2) to~~ serve answers or objections to Rule 33 interrogatories ~~submitted under Rule 33,~~ after the other party properly served the~~proper service of~~ interrogatories;~~,~~ or
(C) To ~~(3) to~~ serve a written response to a Rule 34 request for inspection after the other party properly served the request.

(2) Instead of an~~request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subsections (A), (B), and (C) of subsection (b)(2) of this rule. In lieu of any~~ order or in addition to it~~thereto~~, the court must~~shall~~ require the disobedient party~~; failing to act or~~ the attorney advising the party;~~him~~ or both to pay ~~the~~ reasonable expenses, including attorney's fees, caused by the failure~~,~~ unless the court finds:

(A) That ~~that~~ the failure was substantially justified; or
~~(d)~~(B) That~~that~~ other circumstances make an expense award ~~of expenses~~ unjust.

A~~The~~ failure to act under Rule 37(d)~~described in this subsection~~ may not be excused on the basis~~ground that~~ the requested discovery~~ sought~~ is objectionable unless the disobedient party ~~failing to act~~ has applied for a ~~protective order under Rule 26(d).~~

(3) ~~Additional Sanctions.~~ ~~In addition to the application of those sanctions, specified in~~ Rule 26(d) protective order.

(e) Additional sanctions. In addition to sanctions under Rules 26(d) and Rule 37~~and other provisions of this rule~~, the court may impose on a~~upon any~~ party/party's attorney just~~ or counsel such~~ sanctions~~ as may be just~~, including ~~the payment of~~ reasonable expenses and attorney's~~attorneys'~~ fees, if:

(1) A~~ any~~ party/party's attorney~~ or counsel (i)~~ fails ~~without good cause~~ to cooperate in~~ the~~ framing ~~of~~ an appropriate discovery plan by agreement under Rule 26(c) without good cause;~~),~~ or

~~(e)~~(2) Otherwise~~ (ii) otherwise~~ abuses the discovery process in seeking, making, or resisting discovery.

SECTION 6

~~CHAPTER VI~~. TRIALS

Rule ~~RULE~~ 38. ~~JURY TRIAL~~ ~~OF RIGHT~~

Right to a jury trial.

(a) **Right preserved.** ~~**Preserved.**~~ The right of trial by jury as declared by the Mississippi Constitution or a~~any statute of the State of~~ Mississippi statute must~~shall~~ be preserved to the parties inviolate.

(b) Waiver.

(1) A party ~~**of Jury Trial.** Parties to an action~~ may waive the right~~their rights~~ to a jury trial by:

(A) Filing ~~filing with the court~~ a specific, written stipulation that the right has been waived with the court; and

(B) Requesting~~requesting~~ that the action be tried by the court.

~~**(b)**~~**(2)** The court may exercise~~, in~~ its discretion to~~,~~ require a jury trial even though a party has filed a waiver~~that the action be tried by a jury notwithstanding the~~ stipulation.

~~ of waiver.~~

Rule

~~RULE~~ 39. ~~TRIAL BY JURY OR BY THE COURT [OMITTED]~~

~~RULE 40. ASSIGNMENT OF CASES FOR TRIAL~~

~~(a) **Methods.**~~ Trial by jury~~Courts shall provide for placing of actions upon the trial calendar~~

~~(1) without request of the parties;~~ or by

~~(2) upon request of a party and notice to the other parties; or,~~

~~(3)~~ ~~**in such other manner as**~~ **the court. [Omitted].**

~~deems expedient.~~

Rule 40. Assigning
~~Prior to the calling of a~~ **case for trial**.

;

(a) Methods.

(1) A court must place an action on the trial calendar:

(A) Without the parties' request;
(B) On a party's request with notice to other parties; or
(C) In a manner the court considers expedient.

(2) Prior to calling a case for trial and subject to the court's sound discretion, the parties must ~~shall~~ be afforded ample opportunity to complete~~, in the sound discretion of the court, for completion of~~ discovery.

(b) Notice.

(1) The court must~~shall~~ provide ~~by~~ written direction to the clerk when a trial docket will be set.
~~The clerk shall at~~
(2) At least five ~~(5)~~ days before~~prior to~~ the date on which the trial docket will be set, the clerk must notify all attorneys and unrepresented parties with~~without attorneys having~~ cases on~~upon~~ the trial calendar of the time, place, and date the~~when said~~ docket will~~shall~~ be set.

(3) All cases must~~shall~~ be set on the trial docket at least ~~twenty (~~20~~)~~ days before the ~~date set for~~ trial date unless the parties agree on a shorter period or a smaller one~~is agreed upon by all parties or~~ is available under Rule 55.

(4) When an action is set for trial, the clerk must prepare a ~~The~~ trial docket identifying the:

(A) Case to be tried;
(B) Trial date;
(C) Attorneys~~shall be prepared by the clerk at the time actions are set for trial and shall state the case to be tried, the date of trial, the attorneys of record~~ in the case;
(D) Trial location; and
(E) Attorneys and unrepresented parties ~~, and the place of trial. Additionally, said trial docket shall reflect such attorneys of record and parties representing~~

~~themselves as were~~ present in person~~personally~~ or by a designee when the trial docket was set.

(5) Within ~~The clerk shall within~~ three ~~(3)~~ days after a case has been placed on the trial docket, the clerk must notify a party~~all parties~~ who was~~were~~ not present ~~personally or by their attorney of record~~ at the docket setting in person or by an attorney of the~~as to their~~ trial setting.

(A) Notice must~~shall~~ be by personal delivery or mail~~by mailing of a notice~~ within the~~said~~ three~~ (3)~~ day period.

(6) Rule 40 does not apply to matters:

(A) In~~Matters in~~ which a defendant is summoned to appear and defend at a certain time and place under~~certain pursuant to~~ Rule 81; or

~~**(b)**~~**(B)** In~~in~~ which a date, time, and place for trial have been previously set~~shall not be governed by this rule~~.

(c) Trial by agreement~~Agreement~~. Parties, including those ~~who are~~ in a fiduciary or other representative ~~or fiduciary~~ capacity, may waive a~~any~~ waiting period imposed by these rules or a statute and agree to a time and place for trial.

[Amended effective 7/~~July~~ 1/86; 9/~~, 1986; September~~ 1/87; 3/~~, 1987; March~~ 1~~, 1989.~~]

Advisory Committee Historical Note

Effective March 1, 1989, Rule 40(a) was amended by abrogating reference to local rules. 536-538 So. 2d XXX (West Miss. Cas. 1989).

Effective September 1, 1987, Rule 40 was amended by adding subsection (c) providing for the scheduling of trials by agreement of the parties. 508-511 So. 2d XXVIII (West Miss. Cas. 1987).

Effective July 1, 1986, Rule 40(b) was amended by substantially rewriting it to shorten the time period provided for giving interested attorneys and parties notice of the setting of the trial docket; to provide for at least twenty days between the time of the setting of a case on the docket and the time of the trial; to provide for certain information to be recorded on the docket; and for other purposes. 486-490 So. 2d XXI (West Miss. Cas. 1986).

Advisory Committee Notes

The twenty-day waiting period is inapplicable to hearings conducted by the court in connection with default judgments under Rule 55.

RULE 41. DISMISSAL OF ACTIONS

(a) Voluntary Dismissal Effect Thereof.

(1) By Plaintiff By Stipulation. Subject to the provisions of Rule 66, or of any statute of the State of Mississippi, and upon the payment of all costs, an action may be dismissed by the plaintiff without order of court:

(i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs; or

(ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action.

Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice.

(2) **By** Order of Court. Except as provided in paragraph (a)(1) of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counter-claim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action may be dismissed but the counter-claim shall remain pending for adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b)(1) Involuntary Dismissal: Effect Thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court may then render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court may make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any other

dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

(c) Dismissal of Counter-claim, Cross-Claim or Third-Party Claim. The provisions of this rule apply to the dismissal of any counter-claim, cross-claim, or third-party

claim. A voluntary dismissal by the claimant alone pursuant to paragraph (a)(1) of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

(d) Dismissal on Clerk's Motion.

(1) **Notice.** In all civil actions wherein there has been no action of record during the preceding twelve months, the clerk of the court shall mail notice to the attorneys of record that such case will be dismissed by the court for want of prosecution unless within thirty days following said mailing, action of record is taken or an application in writing is made to the court and good cause shown why it should be continued as a pending case. If action of record is not taken or good cause is not shown, the court shall dismiss each such case without prejudice. The cost of filing such order of dismissal with the clerk shall not be assessed against either party.

(2) Mailing Notice. The notice shall be mailed in every eligible case not later than thirty days before June 15 and December 15 of each year, and all such cases shall be presented to the court by the clerk for action therein on or before June 30 and December 31 of each year. These deadlines shall not be interpreted as a prohibition against mailing of notice and dismissal thereon as cases may become eligible for dismissal under this rule. This rule is not a limitation upon any other power that the court may have to dismiss any action upon motion or otherwise.

(e) Cost of Previously Dismissed Action. If a plaintiff whose action has once been dismissed in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

Advisory Committee Notes

After the court clerk has given notice pursuant to Rule 41(d), a party seeking to avoid dismissal for lack of prosecution must either take some "action of record" or apply in writing to the court and demonstrate good cause for continuing the case. Rule 41(d) does not define what constitutes "an action of record." *See Ill. Central R.R. Co. v. Moore*, 99 So. 2d 723, 726 (Miss. 2008). Pleadings, discovery requests, and deposition notices are "actions of record." *Id.* at 728. An *ex parte* letter to the court clerk simply requesting that the case remain

~~on the court's active docket is not an application in writing that demonstrates good cause. *Id.* at 729–730. Rather than writing a letter to the clerk, a party should file a written motion with the court that complies with Rule 7(b)(1) and that demonstrates good cause, and should serve~~

such motion in accordance with M.R.C.P. 5. *Id.* at 727-730. *But see Cucos, Inc. v. McDaniel*, 938 So. 2d 238, 247 (Miss. 2006) (finding that the trial court did not abuse its discretion in considering the plaintiff's attorney's letter to the clerk requesting that the case remain on the court's active docket as sufficient to prevent dismissal where:…(i) the court held a hearing and the plaintiff's lawyer also represented he was trying to schedule conferences so that defense counsel could talk to plaintiff's expert witnesses in an effort to facilitate settlement; (ii) local practice was to treat such letters as sufficient; and (iii) the plaintiff was not served with a proper copy of the order of dismissal). Generally, compliance with local practice that is inconsistent with the Mississippi Rules of Civil Procedure will not, standing alone, be sufficient to prevent dismissal. *See Ill. Central R.R. Co. v. Moore*, 994 So. 2d 723, 728 (Miss. 2008).

RULE 42. CONSOLIDATION: SEPARATE 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 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 costs or delay.

(b)(1) Separate Trial. 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, cross-claim, counter-claim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counter-claims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by Section 31 of the Mississippi Constitution of 1890.

(c) Counties Within a Single Circuit or Chancery Court District. When civil actions involving common questions of fact or law are pending in different counties of a single Circuit or Chancery Court district, such actions may be consolidated for coordinated or consolidated pretrial proceedings and, if the actions do not involve trials by jury, may be consolidated for all purposes. All judges presiding over the cases to be consolidated must agree to the consolidation and to the judge who will preside over the cases for the purposes stated herein. For the purposes of this rule, "pretrial proceedings" means all matters presented to the judge prior to trial except dispositive motions.

[Amended February 20, 2004 to correct scrivener's error; amended effective September 25, 2014.]

RULE 43. TAKING OF TESTIMONY

(a) Form and Admissibility. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules or the Mississippi Rules of Evidence.

(b)(a) [Abrogated].

(c)(a) [Abrogated].

(d) Affirmation in Lieu of Oath. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(e) Evidence on Motions. When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

(f) Interpreters. The court may appoint an interpreter of its own selection and may fix his reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct and may be taxed ultimately as costs, in the discretion of the court. However, in the event and to the extent that such interpreters are required to be provided under the provisions of the Americans with Disabilities Act, 42 U.S. C. § 12131, *et seq.* or under rules or regulations promulgated pursuant thereto, such compensation and other costs of compliance shall be paid by the county in which the court sits, and shall not be taxed as costs.

[Amended /89effective January 10, 1986; amended June 5, 1997.]

Advisory Committee Historical Note

Effective 3/July 1, 1998, Rule 43(f) was amended in regard to compliance with the Americans with Disabilities Act, 42 U.S.C. § 12131, et seq.

Effective /89, Rule 40(January 10, 1986, Rule 43(a) was amended by abrogating reference to local rules. 536-38 So. 2d XXX (West Miss. Cas. 1989).

Effective 9/1/87, Rule 40 was amended by adding subsection (c) on scheduling trials by agreement of the parties. 508-11 So. 2d XXVIII (West Miss. Cas. 1987).

Effective 7/1/86, Rule 40(b) was amended by substantially rewriting it: (1) to shorten the time period for giving interested attorneys and parties notice of the setting of the trial docket; (2) to provide for at least 20 days between the time of setting a case on the docket and the trial date; (3) to require certain information to be recorded on the docket; and (4) for other purposes. 486-90 So. 2d XXI (West Miss. Cas. 1986).

Advisory Committee Notes

The 20-day waiting period does not apply to court hearings in connection with Rule 55 default judgments.

Rule 41. Dismissing an action.

(a) Voluntary dismissal.

(1) By plaintiff or stipulation.

(A) Subject to Rule 66 or a Mississippi statute, after paying all costs, the plaintiff may dismiss an action without a court order by filing:

(i) A notice of dismissal before the adverse party serves an answer or motion for summary judgment; or

(ii) A stipulation of dismissal signed by all parties who have appeared in the action.

(B) Unless the notice of dismissal or stipulation states otherwise, dismissal is without prejudice.

(2) By court order. Except as stated in Rule 41(a)(1), the plaintiff may not dismiss an action without a court order on terms and conditions the court considers proper.

(A) A counterclaim asserted before the plaintiff serves a Rule 41(a)(2) motion will remain pending if the action is dismissed.

(B) Unless the court order states otherwise, dismissal is without prejudice.

(b) Involuntary dismissal.

(1) A defendant may move to dismiss the action or a claim if the plaintiff fails to:

(A) Prosecute the action;

(B) Comply with these rules; or

(C) Obey a court order.

(2) In a nonjury action tried by the court:

(A) The defendant may move for dismissal:

(i) After the plaintiff has completed presenting evidence;

(ii) Without waiving the defendant's right to offer evidence if the court denies the motion; and

(iii) On the basis the plaintiff has failed to show a right to relief under the facts and the law.

(B) The court may enter a judgment against the plaintiff or defer a final decision until all evidence has been presented.

(i) If the court renders a judgment on the merits against the plaintiff, the court may make Rule 52(a) findings.

(C) A Rule 41(b) dismissal and all other dismissals operate as an adjudication upon the merits unless:

(i) A court order states otherwise;
(ii) Rule 41(b) states otherwise;
(iii) Dismissal is for lack of jurisdiction;
(iv) Dismissal is for improper venue; or
(v) Dismissal is for failure to join a party under Rule 19.

(c) Dismissing a counterclaim, crossclaim, or third-party claim. This rule applies to the dismissal of a counterclaim, crossclaim, or third-party claim.

(1) A claimant's Rule 41(a)(1)(A)(i) voluntary dismissal must be filed before a responsive pleading is served; or
(2) If there is no responsive pleading, before evidence is introduced at a hearing or trial.

(d) Dismissal on clerk's motion.

(1) Notice. In a civil action where no action has occurred on the record in the preceding 12 months, the court clerk must mail notice to the attorneys that the court will dismiss the case for failing to prosecute it unless:

(A) An action is ~~testimony may be~~ taken on the record within 30 days from the mailing date; or
(B) A motion showing good cause for not dismissing the case is filed with the court.

(2) ~~other~~ **Effect.** Except as stated in Rule 41(d)(1), the court must dismiss the case without prejudice. But the cost of filing a dismissal order with the clerk must not be assessed against either party.

(3) Notice deadline.

(A) In every eligible case, the clerk must mail the Rule 41(d)(1) notice annually no later than 30 days before June 15 and December 15.

(B) The clerk must present all eligible cases annually on or before June 30 and December 31 to the court for action.

(C) Rule 41(d)(1) through (d)(2) does not:

(i) Prohibit the clerk from otherwise mailing notice and dismissing an eligible case under Rule 41(d); or

(ii) Limit the court's power to dismiss an action on a motion or otherwise.

(e) Costs of previously dismissed action. If a plaintiff dismisses an action in a court and files another one based on or including the same claim and against the prior defendant, the court:

(1) May order the plaintiff to pay the costs of the previously dismissed action as it decides to be proper; and

(2) May stay the proceedings until the plaintiff has complied with the order.

Advisory Committee Notes

After the court clerk serves Rule 41(d) notice, a party seeking to avoid dismissal for lack of prosecution must either take some action on the record or file a motion with the court demonstrating good cause for continuing the case. Rule 41(d) does not define what constitutes an action on the record. *See Ill. Cent. R.R. Co. v. Moore*, 99 So. 2d 723, 726 (Miss. 2008) (discussing former "application in writing" and "act of record").

Pleadings, discovery requests, and deposition notices are actions on the record. *See id.* at 728. But simply requesting that the case remain on the court's active docket in an ex parte letter to the court clerk is not a written motion demonstrating good cause. *See id.* at 729-30. Rather than writing a letter to the clerk, a party should file a written motion with the court: (1) that complies with Rule 7(b)(1); (2) that demonstrates good cause; and (3) that is served according to Miss. R. Civ. P. 5. *Id.* at 727-30. *But see Cucos, Inc. v. McDaniel*, 938 So. 2d 238, 247 (Miss. 2006) (finding trial court did not abuse discretion in considering plaintiff's attorney's letter to clerk requesting that case remain on court's active docket as sufficient to prevent dismissal where (1) court held hearing and plaintiff's lawyer represented he was trying to schedule conferences so defense counsel could talk to plaintiff's expert witnesses in effort to facilitate settlement; (2) local practice was to treat the letter as sufficient; and (3) plaintiff was not served with proper copy of dismissal order). In general, complying with local practice inconsistent with the Mississippi Rules of Civil Procedure without more will be insufficient to prevent dismissal. *See Ill. Cent. R.R. Co.*, 994 So. 2d at 728.

Rule 42. Consolidation; separate trials.

(a) Consolidation. If pending actions involve a common question of law or fact, the court may:

(1) Order a joint hearing or trial of one or more matters at issue in the actions;
(2) Consolidate the action; or
(3) Issue another order concerning the proceedings to avoid unnecessary costs or delay.

(b) Separate trial.

(1) For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of:

(A) A claim, crossclaim, counterclaim, or third-party claim;
(B) A separate issue; or
(C) A number of claims, crossclaims, counterclaims, third-party claims, or issues.

(2) When ordering a separate trial, the court must always preserve the right to a jury trial as stated in Miss. Const. art. 4, § 31.

(c) Counties in single circuit or chancery court district. If actions involving a common question of law or fact are pending in different counties of the same circuit or chancery court district, all matters presented to the judge prior to trial except dispositive motions may be consolidated or coordinated.

(1) If the actions do not involve jury trials, they may be consolidated for all purposes.
(2) All judges must agree to consolidation and on the judge who will preside over the cases for purposes of Rule 42(c).

[Amended 2/20/04 to correct scrivener's error; amended effective 9/25/14.]

Rule 43. Taking testimony.

(a) Form; admissibility. In a trial, witness testimony must be taken orally in open court except as otherwise stated in these rules or ~~, as provided by~~ the Mississippi Rules of Evidence.

(b) [Abrogated].

(c) [Abrogated].

(d) Affirmation instead of an oath. A solemn affirmation may be accepted instead of an oath required by these rules.

(e) Evidence on a motion. If a motion is based on a non-record fact, the court may hear the matter on affidavits or partly or wholly on oral testimony or depositions.

(f) Interpreter. The court may appoint an interpreter of its choosing; fix reasonable compensation paid out of funds according to law or one or more parties as it directs; and exercise discretion to tax the compensation as costs.

(1) But if an interpreter is required by the Americans with Disabilities Act of 1990, Pub. L. No. 101–336, 104 Stat. 328 (1990), including related provisions, rules, and regulations, compensation and other compliance costs must be paid by the county where the court is located and not taxed as costs.

[Amended effective 1/10/86; amended 6/5/97.]~~,~~

Advisory Committee Historical Note

Effective 7/1/98, Rule 43(f) was amended regarding compliance with the Americans with Disabilities Act of 1990 § 201, 42 U.S.C. § 12131 (1990) and related provisions.

Effective 1/10/86, Rule 43(a) was amended to provide that testimony may be taken other than in open court under the Mississippi Rules of Evidence and to delete references to the admissibility of evidence; Rule 43(b) [Mode and Order of Interrogation]~~],~~ and Rule 43(c) [Record of Excluded Evidence] were abrogated. 478-481 So. 2d XXVII (West Miss. Cas. 1986).

Advisory Committee Notes

The admission of telephonic testimony instead~~in lieu~~ of ~~a~~ personal appearance in open court by the witness is within the trial court's sound discretion~~. of the trial court.~~ *See Byrd v. Nix*, 548 So. 2d 1317 (Miss. 1989) (interpreting Miss. ~~M.~~R. Civ. ~~C.~~P. 43(a) and Miss. ~~M.~~R. Evid~~E~~. 611(a)).

Rule

~~RULE~~ 44. Proving an official record.~~PROOF OF DOCUMENTS~~

(a) Authentication.

(1) Domestic.

(A) The following evidences an~~A~~n official record or entry in it when admissible and kept within the United States, a~~ or any~~ state, district, commonwealth, territory, or territory subject to the United States' administrative or judicial jurisdiction:

(i) An official ~~insular possession thereof, or within the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands, or an entry therein, when admissible for any purpose, may be evidenced by an official~~ publication of the record;~~thereof~~ or

(ii) A~~ by a~~ copy attested by ~~a person purporting to be~~ the officer or officer's deputy with ~~having the~~ legal custody of the record.

(B) ~~, or his deputy.~~ If the official record is kept outside ~~the State of~~ Mississippi, the copy must~~shall~~ be accompanied by a certificate under oath of the officer or officer's deputy stating:

(i) The~~such~~ person ~~that he~~ is the legal custodian of ~~such record and that~~ the record; and

~~(1)~~**(ii)** The record is kept according~~pursuant~~ to state law.

(2) Foreign.

(A) The following evidences a~~A~~ foreign official record~~,~~ or ~~an~~ entry in it~~therein,~~ when admissible:

(i) An ~~for any purpose, may be evidenced by an~~ official publication of the record;~~thereof,~~ or

(ii) A~~a~~ copy ~~thereof,~~ attested by a person authorized to do so~~make the attestation,~~ and accompanied by a final certification.

(B) A Rule 44(a)(2)(A)(ii) final certification must certify the ~~as to the~~ genuineness:

(i) Of ~~of~~ the signature and official position ~~(i)~~ of the attesting person; or

(ii) Of a~~(ii) of any~~ foreign official whose certificate of genuineness ~~of signature and official position~~ relates to the attestation or is in a chain

of certificates of genuineness ~~of signature and official position~~ relating to the attestation.

(C) A Rule 44(a)(2)(A)(ii)~~A~~ final certification may be made by:

(i) An~~ a secretary of an~~ embassy or legation secretary;
(ii) A~~,~~ consul general, consul, vice consul, or consular agent of the United States;~~,~~ or
(iii) A~~a~~ diplomatic or consular official of the foreign country assigned or accredited to the United States.

~~(2)~~**(D)** If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may for good cause:~~, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification.~~

(i) Admit an attested copy without final certification; or
(ii) Allow an attested summary with or without final certification to evidence the foreign official record.

(b) Lack of a record. If authenticated under Rule 44(a)(1) for a domestic record or under Rule 44(a)(2) for a foreign record, a ~~**Record.** A~~ written statement that a~~after~~ diligent search of designated records revealed no record or entry of a specified tenor is ~~found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of this rule in the case of a domestic record, or complying with the requirements of subdivision (a)(2) of this rule for a summary in the case of a foreign record, is~~ admissible as evidence ~~that~~ the records do not contain one~~no such record or entry~~.

(c) Other~~(c) This rule does not prevent the~~ **proof.** A party may prove an~~ of~~ official record, an~~records or of~~ entry, or lack of entry ~~therein~~ by another~~any other~~ method authorized by law.

~~Advisory Committee Notes~~

~~Even though a document has been authenticated as required by this rule, it may still be excluded from evidence if, for example, it is irrelevant, or is hearsay, or is otherwise~~

objectionable. For additional evidentiary rules concerning authentication, see M.R.E. 901–903.

The methods of authentication authorized by Rule 44 are additional and supplementary; they are not exclusive of other methods made available by Mississippi law. A party desiring to introduce an official record in evidence has the option of proceeding under Rule 44 or under any other applicable provision of law.

Rule 44(a)(1) deals with two types of official documents; those kept within the state and those kept without the state. A copy of the document need only be attested in the former case, certified under oath in the latter.

~~RULE 44.1 DETERMINATION OF FOREIGN LAW [OMITTED]~~

Advisory Committee Notes

A document authenticated under this rule may still be excluded from evidence if irrelevant, hearsay, or otherwise objectionable. For additional evidentiary rules concerning authentication, see Miss. R. Evid. 901–903.

Rule 44 methods of authentication are additional and supplementary; they are not exclusive of other methods under Mississippi law. A party wanting to introduce an official record in evidence has the option of proceeding under Rule 44 or other applicable provision of law.

Rule 44(a)(1) deals with two types of official documents: (1) those kept in the state; and (2) those kept out of it. A copy of the document must be attested to only as to (1) and certified under oath as to (2).

Rule 44.1. Determination of foreign law. [Omitted].

Advisory Committee Notes

Under Miss. Code Ann.~~Annotated~~ §13-1-149, ~~(1972) provides that~~ courts must~~shall~~ take judicial notice of ~~all~~ foreign law.

Rule

~~RULE~~ 45. Subpoena.~~SUBPOENA~~

(a) Form; issuance~~Issuance~~.

(1) Requirements. Every subpoena must:

(A) Be~~shall be~~ issued by the clerk under ~~the~~ seal of the court;
(B) State ~~, shall state~~ the name of the court and the title of the action;~~,~~ and
(C) Command ~~shall command~~ each person to whom it is directed to do the following at a specified time and place:

(i) Attend and testify;
(ii) Produce~~attend and give testimony, or to produce and permit inspection and copying of~~ designated books, documents, electronically stored information, or tangible things in the person's possession, custody, or control and allow them to be inspected and copied; or
(iii) Allow the ~~of that person, or to permit inspection of~~ premises to be inspected.

(2) Combining or separating command to produce or allow inspection; specifying form of electronically stored information.

(A) A command to produce or allow inspection may be joined with one to appear at a trial, hearing, or deposition. Or it may be issued separately.
(B) A subpoena may specify the form or forms for producing electronically stored information~~, at a time and place therein specified.~~.

~~(1)~~**(3) Issued by clerk.** The clerk must~~shall~~ issue a ~~subpoena~~ signed, ~~and~~ sealed, but otherwise ~~in~~ blank subpoena~~,~~ to a ~~party~~ requesting party. That party must~~it, who shall~~ fill it in before service. ~~A command to produce or to permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately. A subpoena may specify the form or forms in which electronically stored information is to be produced.~~

(4) Issuing court. The court where the action is pending must issue a subpoena:

~~(2)~~**(A)** To appear ~~Subpoenas for attendance~~ at a trial, ~~or~~ hearing, or ~~for attendance at a~~ deposition; or ~~, and for production or inspection shall issue from the court in which the action is pending.~~
(B) A subpoena to produce or allow inspection.
(C) Foreign litigation.

For

(i) ~~In the case of~~ discovery ~~to be taken~~ in foreign litigation, ~~the subpoena shall be issued by a clerk of~~ a court clerk for the county where~~in which~~ the discovery is to be taken must issue a subpoena.

(ii) ~~.~~ The foreign subpoena must~~shall~~ be submitted to the ~~clerk of~~ court clerk in the county where~~in which~~ discovery is sought to be conducted in this state.

~~(3)~~ When a party submits a foreign subpoena to a ~~clerk of~~ court clerk in this state, the clerk must~~, in accordance with that court's procedure, shall~~ promptly issue a subpoena for serving~~service upon~~ the person stated~~to which the foreign subpoena is directed.~~

(iii) ~~The subpoena under subsection (3) must incorporate the terms used~~ in the foreign subpoena according to that court's procedure.

(5) A subpoena issued by a court clerk under Rule 45(a)(4)(A) must be issued and served in compliance with Mississippi Rules. In addition, the Rule 45(a)(4)(A)(iii) subpoena must:

(A) Incorporate the terms in the foreign subpoena; and

(B) Contain~~and it must contain~~ or be accompanied by the names, addresses, and telephone numbers of all counsel and unrepresented parties~~of record~~ in the proceeding to which the subpoena relates ~~and any party not represented by counsel~~.

(6) A motion ~~A subpoena issued by a clerk of court under subsection (3) must otherwise be issued and served in compliance with the rules of this state. An application to the court~~ for a protective order or to enforce, quash, or modify a subpoena issued by a ~~clerk of~~ court clerk under Rule 45(a)(4)(A~~subsection (3~~) must comply with Mississippi~~the~~ rules ~~of this state~~ and be submitted to the issuing court in the county where~~in which~~ discovery is to be conducted.

(b) ~~Place of~~ Examination place.

(1) Resident. A Mississippi resident ~~of the State of Mississippi~~ may be required to attend a deposition~~, production~~ or to produce or allow inspection only:

(A) In ~~in~~ the county where the person~~wherein he~~ resides;

(B) In the county where the person ~~or~~ is employed or transacts ~~his~~ business in person;~~,~~ or

(C) At another ~~at such other~~ convenient place stated in a court~~as is fixed by an~~ order.

~~**(b)**~~ **Nonresident.** A nonresident of Mississippi who is~~the court. A non-resident of this state~~ subpoenaed within it~~this state~~ may be

(2) required to attend only:

(A) In ~~in~~ the county where the person ~~wherein he~~ is served;~~,~~ or

(B) At another ~~at such other~~ convenient place stated in a ~~as is fixed by an order of the~~ court order.

(c) Service.

(1) Who. A subpoena may be served by:

(A) A ~~a~~ sheriff;

(B) Sheriff's ~~, or by his~~ deputy;~~,~~ or

(C) Other nonparty age 18 or older.

(2) Personal service. A witness must be personally served with a subpoena.

(3) Proof of service. The ~~by any other~~ person who served the subpoena may endorse a return. The ~~is not a party and is not less than 18 years of age, and his return~~ endorsed return is ~~thereon shall be~~ prima facie proof of service. Or~~, or~~ the person served may acknowledge service in writing on the subpoena.

(A) Proof ~~Service~~ of service must ~~the subpoena shall~~ be filed with ~~executed upon the witness personally. Except when excused by~~ the court clerk where the subpoena was issued a statement:

(i) Certified by the person who served the subpoena;

(ii) Stating the date and manner of service;

(iii) The county where it was served;

(iv) The name of the person who was served; and

(v) The name, address, and telephone number of the person who served it.

(4) Attendance fee. Unless the court decides otherwise on ~~upon~~ a showing of indigence, the party causing the subpoena to issue must pay a nonparty ~~shall tender to a non-party~~ witness ~~at the time of service~~ the fee for one day's attendance plus mileage as allowed by law at the time the subpoena is served.

~~(1)~~**(A)** But when~~. When~~ the subpoena is issued on behalf of ~~the State of~~ Mississippi or a state ~~an~~ officer or agency ~~thereof~~, fees and mileage do not need ~~not~~ be paid ~~tendered~~ in advance.

~~(2) Proof of service shall be made by filing with the clerk of the court from which the subpoena was issued a statement, certified by the person who made the service, setting forth the date and manner of service, the county in which it was served, the names of the persons served, and the name, address and telephone number of the person making the service.~~

(d) ~~Protection~~ Protecting a person subject to a subpoena.

~~(d) When required. of Persons Subject to Subpoenas.~~

~~(1) In General.~~

(1) On a timely motion, the issuing court must~~from which a subpoena was issued shall~~ quash or modify a~~the~~ subpoena if it:

(A) Fails ~~(i) fails~~ to allow reasonable time for compliance;
(B) Requires~~(ii) requires disclosure of~~ privileged or other protected matter to be disclosed when waiver or another~~and no~~ exception does not apply;
(C) Designates~~or waiver applies, (iii) designates~~ an improper place for examination;~~,~~ or
~~(A)~~**(D)** Subjects~~(iv) subjects~~ a person to undue burden or expense.

(2) When allowed. The court may order appearance or production only upon specified conditions if a subpoena:

(A) Requires~~If a subpoena (i) requires disclosure of~~ a trade secret or other confidential research, development, or commercial information to be disclosed;~~,~~ or
(B) Requires~~(ii) requires disclosure of~~ an unretained expert's opinion or information:

(i) Not ~~not~~ describing specific events or occurrences in dispute; and
~~(B)~~**(ii)** Resulting~~resulting~~ from the expert's study made not at a party's~~the~~ request ~~of any party, the court may order appearance or production only upon specified~~conditions.

~~(2)~~**(3) Subpoena**~~Subpoenas~~ **for production**~~Production~~ **or inspection**~~Inspection~~**.**

(A) No appearance required. Unless also commanded to appear for a deposition, hearing, or trial, a~~A~~ person commanded to produce and allow~~permit~~ inspection and copying of designated books, papers, documents, electronically stored information, or tangible things or to allow inspection of premises does need not need to appear in person at the place of production or inspection. ~~, or to permit~~

Time for compliance. Unless

(i) ~~inspection of premises need not appear in person at the place of production or inspection unless commanded by the subpoena to appear for deposition, hearing or trial. Unless for good cause shown~~ the court shortens the time for good cause, a subpoena for production or inspection must~~shall~~ allow at least 10~~not less than ten~~ days for complying with it.

(ii) Notice. ~~the person upon whom it is served to comply with the subpoena.~~ A copy of the subpoena must~~all such subpoenas shall~~ be served immediately on~~upon~~ each party according to ~~in accordance with~~ Rule 5.

(iii) Protective order. A subpoena commanding production or inspection is~~will be~~ subject to ~~the provisions of~~ Rule 26(d).

(B) Objection. Within 10~~The person to whom the subpoena is directed may, within ten~~ days after a subpoena is served~~the service thereof~~ or on or before the time specified in the subpoena for compliance~~,~~ if shorter~~such time is less~~ than 10~~ten~~ days after service, a person may serve ~~upon~~ the party or attorney designated in~~serving~~ the subpoena a written objection to inspecting~~inspection~~ or copying part~~of any~~ or all of the designated materials~~,~~ or to inspecting~~inspection of~~ the premises.

(i) If a person objects~~objection is made~~, the party serving the subpoena must~~shall~~ not be entitled to inspect and copy the material unless~~except pursuant to an order of~~ the issuing court orders otherwise.

~~(B)~~**(ii)** Once a person objects,~~from which~~ the ~~subpoena was issued. The~~ party serving the subpoena may~~, if objection has been made,~~ move ~~at any time upon notice to the person served for an order~~ to compel the production or inspection on notice to the person.

(C) Avoiding unreasonableness and expense. On a prompt~~The court, upon~~ motion on~~made promptly and in any event at~~ or before the time specified in the subpoena for compliance, the court ~~therewith,~~ may:

(i) Quash ~~(I) quash~~ or modify the subpoena if it is unreasonable or oppressive~~;~~, or

~~(C)~~**(ii)** Condition ~~(ii) condition the~~ denial of the motion on~~upon~~ the party serving~~advance by the person in whose behalf~~ the subpoena advancing~~is issued of~~ the reasonable cost of producing the books, papers, documents, or tangible things.

(e) Duties in responding~~Responding~~ to a subpoena~~Subpoena~~.

(1) Producing documents or electronically stored information.

~~(1)~~ **Documents.** ~~or Electronically Stored Information.~~

~~(A) Documents.~~

(A) A person responding to a subpoena to produce documents must:

(i) Produce~~shall produce~~ them as ~~they are~~ kept in the usual course of business; or

(ii) Organize~~shall organize~~ and label them to correspond with ~~the~~ categories in the demand.

~~(B) Form for Producing~~ **Electronically stored information in unspecified form.** ~~Stored Information Not Specified.~~

(B) If a subpoena does not specify a form for producing electronically stored information, the ~~person~~ responding person must produce electronically stored information:

(i) In the~~it in a~~ form or forms in which it is ordinarily maintained; or

(ii) In~~in~~ a reasonably usable form or forms.

~~(C)~~ **Electronically stored information**~~Stored Information Produced~~ **in multiple forms.** ~~Only One Form.~~

(C) The ~~person~~ responding person does not need to~~not~~ produce the same electronically stored information in more than one form.

~~(D) Inaccessible~~ **Electronically stored information inaccessible.** ~~Stored Information.~~

(D) The ~~person~~ responding person does not need to~~not~~ provide discovery of electronically stored~~discoveryof electronicallystored~~ information from sources ~~that~~ the person identifies as not reasonably accessible because of undue burden or cost.

(i) On a motion to compel discovery, motion for a protective order, or motion to quash, the ~~person~~ responding person must show ~~that~~ the information is not reasonably accessible because of undue burden or cost.

(ii) If that showing is made, the court may still~~nonetheless~~ order discovery from the~~such~~ sources: (1) if the requesting party shows good cause and (2)~~,~~ considering Rule 26(b)(6)~~the~~ limitations. ~~of Rule 26(b)(5).~~ The court may also specify conditions for the discovery, including those listed in Rule 26(b)(5).

~~(2)~~**(3) Claiming privilege~~Privilege~~ or protection. ~~Protection.~~**

~~(A)~~ **Information withheld. ~~Withheld.~~**

(A) When information subject to a subpoena is withheld on a claim that it is privileged or protected~~subject to protection~~ as trial~~-~~preparation material~~materials~~, the claim must~~shall~~ be:

(i) Expressly made~~; expressly~~ and

(ii) Supported~~shall be supported~~ by a description of the nature of the documents, communications, or things not produced ~~that is~~ sufficient to enable the demanding party to contest the claim.

~~(B)~~ **Information produced. ~~Produced.~~**

(B) If information produced in response to a subpoena is subject to a claim that it is privileged~~of privilege~~ or protected~~of protection~~ as trial-preparation material, the producing person ~~making the claim~~ may notify the receiving~~any~~ party ~~that received the information~~ of the claim and ~~the~~ basis for it. Once~~After being~~ notified, the receiving party may promptly present the information to the court under seal for deciding whether it is privileged or protected. The producing person must preserve the information until the claim is resolved. In addition, once the producing person notifies the receiving party of the claim, the receiving party must:

(i) Promptly~~a party must promptly~~ return, sequester, or destroy the specified information and ~~any~~ copies;

(ii) Not~~ it has; must not~~ use or disclose the information until the claim is resolved; and

(iii) Take~~must take~~ reasonable steps to retrieve the information if the party disclosed it before being notified. ~~; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.~~

(f) Sanctions.

(1) Rule 26(f) applies on a ~~On~~ motion by~~of~~ a party or ~~of the~~ person served with~~upon whom~~ a subpoena to produce~~for the production of~~ books, papers, documents,

electronically stored information, or tangible things ~~is served and upon a showing~~ that shows the subpoena power is ~~being~~ exercised:

(A) In ~~in~~ bad faith; or

~~(f)~~**(B)** In an unreasonable ~~in such~~ manner ~~as unreasonably~~ to annoy, embarrass, or oppress the party or ~~the~~ person. ~~upon~~

On a motion as stated in Rule 26(f)(1),

(2) ~~whom the subpoena is served,~~ the court where~~in which~~ the action is pending:

(A) Must quash ~~shall order that~~ the subpoena;

(B) May issue additional ~~be quashed and may enter such further~~ orders if required by~~as~~ justice ~~may require~~ to curb an abuse~~abuses~~ of power~~the powers~~ granted under this rule; and

(C) May~~. To this end, the court may~~ impose an appropriate sanction**.**

(g) Contempt. The court that issued a subpoena may deem the~~Failure by any~~ person served with it to be in contempt if the person fails to obey the subpoena without adequate excuse ~~to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued~~.

[Amended effective 3/~~March~~ 13/91; 7/1/97; 7/1/98~~, 1991; July 1, 1997; July 1, 1998~~; amended effective 7/~~July~~ 1/09~~, 2009~~ to provide a procedure for foreign subpoenas. This provision takes~~shall take~~ effect and is enforced~~be in force~~ from and after 7/1/09; it~~July 1, 2009, and~~ applies to requests for discovery in cases pending on 7/~~July~~ 1/09~~, 2009~~; amended effective 7/~~July~~ 1/13~~, 2013~~ to authorize a subpoena for electronically stored information]

Advisory Committee Historical Note

Effective 3/~~March~~ 13/91~~, 1991~~, Rule 45(c) was amended to require the party causing a subpoena to issue to tender to a nonparty~~non-party~~ witness the fee for one day's attendance plus mileage allowed by law. Rule 45(e) was amended by deleting the provision for tendering the fee for one day's attendance plus the mileage allowed by law to certain witnesses when subpoenaed. Rule 45(d) was amended to require the clerk for the county where the deposition is taken to issue the subpoena ~~provide that~~ when a deposition is to be taken in~~on~~ foreign litigation. ~~the subpoena shall be issued by the clerk for the county in which the deposition is to be taken.~~ 574-76~~576~~ So. 2d XXIV-XXV (West Miss. Cas. 1991).

Effective 7/~~July~~ 1/97~~, 1997~~ a new Rule 45 was adopted.

Effective 7/~~July~~ 1/13~~, 2013~~, Rule 45 was amended to specifically authorize a subpoena to command the person to whom it is directed to produce and allow~~permit~~ inspection and copying of electronically stored information. The same amendment also established a procedure to be used when privileged or trial-preparation material is inadvertently disclosed.

Advisory Committee Notes

A "foreign subpoena" means a subpoena issued under authority of a court of record in~~of~~ a foreign jurisdiction. "Foreign jurisdiction" means a state other than Mississippi. A litigant~~this state. Litigants~~ in a foreign jurisdiction who wants~~desire~~ to obtain a subpoena to:

(1) depose a Mississippi resident; (2), to obtain records within Mississippi;, or (3)to inspect premises within Mississippi should follow the procedure in the Uniform Interstate Depositions and Discovery Act. *See* Miss. established in Mississippi Code Ann. §§Annotated section 11-59-1 to -15et. seq. *See also* Miss. the exclusion in M.R. App. A.P. 46(b)(11)(i) (request to have subpoena issued under this rule exception to requirements for admission of foreign attorney pro hac vice). Admission of Foreign Attorneys Pro Hac Vice.

Rule 45(c)(1) regarding paying a nonparty ~~advance payment to non-parties of~~ statutory witness fees and mileage in advance is complementary to Miss.~~Mississippi~~ Code Ann.~~Annotated~~ §§25-7-47 to ~~through 25-7~~-59.~~ (1972).~~

Rule 45(d)(2) is intended to ensure ~~that~~ there is~~be~~ no confusion as to whether a nonparty with~~person not a party in~~ control, custody, or possession of discoverable evidence may be compelled to produce it~~such evidence~~ without being sworn as a witness and deposed. The force of a subpoena for production of documentary evidence generally reaches all documents under the control of the person ordered to produce it except as to~~, saving~~ questions of privilege or unreasonableness.

Rule

~~RULE~~ 46. Exception unnecessary. ~~EXCEPTIONS UNNECESSARY~~

(a) An exception ~~at any stage or step of the case or matter~~ is unnecessary to lay a foundation for review when:

(1) A~~whenever a~~ matter has been called to the court's attention ~~of the court~~ by objection, motion, or otherwise; and

(2) The~~the~~ court has ruled on it.

(b) But failing to object does not prejudice ~~thereon. However, if~~ a party who did not have an~~has no~~ opportunity to object to a ruling or order at the time it is made.

~~, the absence of an objection does not thereafter prejudice him.~~
Rule

~~RULE~~ 47. ~~JURORS~~

~~Examination of~~ **Jurors.**

(a) Examining jurors.

(1) The qualifications of a ~~Any~~ person called as a juror for ~~the~~ trial must~~of any cause shall~~ be examined under oath or on~~upon~~ affirmation.

(2) ~~as to his qualifications.~~ The court may examine a prospective juror or allow the parties or attorneys to do so.

~~**(a)**~~**(3)** If the court examines a prospective juror, it must allow~~permit~~ the parties or ~~their attorneys to conduct the examination of the prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties of their~~ attorneys to supplement the examination with additional~~by further~~ inquiry.

(b) Jury selection and service. ~~**Selection of**~~ Jurors must~~**; Jury Service.** Jurors shall~~ be drawn and selected for jury service according to statutory law~~as provided by statute~~.

(c) Challenges. A party may challenge a juror for cause.

(1) 12-person jury. In an action~~In actions~~ tried before a 12-person jury, each side may exercise four peremptory challenges.

(2) 6-person jury. In an action~~In actions~~ tried before a 6-person jury, each side may exercise two peremptory challenges.

~~**(c)**~~**(3) Multiple parties.** Where multiple parties compose~~Where~~ one or both sides ~~are composed of muliple parties~~, the court may allow challenges to be exercised separately or jointly. The court~~, and~~ may also allow additional challenges. But~~; provided, however,~~ in all actions, the number of challenges allowed for each side must~~shall~~ be identical. ~~Parties may challenge any juror for cause.~~

(d) Alternate Jurors. A~~The~~ trial judge may exercise the~~, in his~~ discretion to~~,~~ direct that one or two jurors in addition to the regular panel be called and empaneled to sit as alternate jurors.

(1) In ~~Alternate jurors, in~~ the order ~~in which they are~~ called, an alternate juror must~~shall~~ replace a juror who becomes unable or disqualified to perform duties~~jurors who,~~ prior to the time the jury retires to consider its verdict.

(2) An alternate juror must~~, become unable or disqualified to perform their duties. Alternate jurors shall~~ be drawn in the same manner as a regular juror and:

(A) Have~~, shall have~~ the same qualifications~~;~~
(B) Be~~, shall be~~ subject to the same examination and challenges for cause~~;~~
(C) Take~~, shall take~~ the same oath~~;~~ and
(D) Have~~shall have~~ the same functions, powers, facilities, and privileges~~.~~

(3) ~~as the regular jurors.~~ Each party must~~shall~~ be allowed one peremptory challenge to alternate jurors in addition to those in Rule 47~~provided by subdivision~~ (c~~).~~

(A) ~~) of this rule.~~ The additional peremptory challenges ~~provided for herein~~ may be used only against an alternate juror~~.~~
~~**(d)**~~**(B)** Other Rule 47(c) ~~only, and other~~ peremptory challenges~~, provided by subdivision (c) of this rule,~~ may not be used against an alternate juror.

[Amended effective 6/~~June~~ 24/92~~, 1992~~.]

Advisory Committee Historical Note

Effective 6/~~June~~ 24/92~~, 1992~~, Rule 47 was amended to state~~provide~~ that the court may allocate peremptory challenges to a side~~,~~ rather than ~~to~~ a party~~,~~ and that~~,~~ in the case of multiple parties on a side, the court may allow peremptory challenges~~them~~ to be exercised jointly or separately~~,~~ and also~~may~~ allow additional peremptory challenges. ~~–~~598-602 So. 2d XXIII (West Miss. Cas. 1992).

Advisory Committee Notes

Under Rule 47(c),~~) provides that~~ each side may exercise peremptory challenges to prospective jurors. Under the liberal provisions of these rules for joinder of claims and parties, problems may arise where there are multiple parties comprising a side. If so~~In such cases~~, it is implicit that the court may apportion the challenges among the parties comprising that side when they cannot agree on the apportionment themselves.

For additional guidelines concerning the method by which peremptory challenges must~~shall~~ be exercised, see the Uniform Rules of Circuit and County Court Practice.

Rule

~~RULE~~ 48. Juries; verdicts. ~~JURIES AND JURY VERDICTS~~

(a) Circuit and chancery court. A jury~~**Chancery Courts.** Jurors~~ in circuit and chancery ~~court~~ actions must~~shall~~ consist of 12~~twelve~~ persons~~,~~ plus alternates according to ~~as provided by~~ Rule 47(d). A verdict or finding by~~of~~ nine or more of the jurors must~~shall~~ be taken as the jury's verdict or finding~~ of the jury~~.

(b) County court. A jury in an action~~**Court.** Juries~~ in county court must~~actions shall~~ consist of six persons~~,~~ plus alternates according to ~~as provided by~~ Rule 47(d). A verdict or finding by~~of~~ five or more of the jurors must~~shall~~ be taken as the jury's verdict or finding.

~~of the jury.~~

Rule 49. Verdict: general; special.

~~RULE 49. GENERAL VERDICTS AND SPECIAL VERDICTS~~

(a) General verdict. Jury~~Verdicts. Except as otherwise provided in this rule, jury~~ determination must~~shall~~ be by general verdict unless this rule states otherwise.~~.~~ The remaining provisions of this rule should not be applied in simple cases where the general verdict will serve the ends of justice.

(b) Special verdict. ~~Verdict. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.~~

(1) ~~**General Verdict Accompanied by Answers to Interrogatories.**~~ The court may require a jury to return only a special verdict~~,~~ in the form of a special written finding on each issue of fact. In that event, the court may:

(A) Submit written questions susceptible of categorical or other brief answer to the jury;

(B) Submit written forms of several special findings which might properly be made on the pleadings and evidence; or

(C) Use another method of submitting the issues and requiring written findings on them as it deems most appropriate.

(2) The court must explain and instruct concerning the matter submitted under Rule 49(b)(1) as necessary to enable the jury to make findings on each issue.

(A) When doing so, if the court omits an issue of fact raised by the pleadings or evidence, a party waives the right to a jury trial of the omitted issue unless the party demands that it be submitted to the jury before the jury retires.

(i) If a party fails to do so, the court may make a finding as to the omitted issue; or

(ii) If the court does not make a finding, the court must be deemed to have done so according to the judgment on the special verdict.

(c) General verdict accompanied by answers to interrogatories.

(1) The court may exercise ~~its~~ discretion to~~, may~~ submit to the jury:

(A) Written interrogatories on one or more fact issues necessary to be decided for a verdict; and

(B) Accompanying ~~, together with~~ instructions for a general verdict.

(2) The court must explain or instruct as~~, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be~~ necessary to enable the jury both to make answers and to render a general verdict.

(3) When the general verdict and the answers are harmonious, the appropriate judgment on~~upon~~ the verdict and answers must~~shall~~ be entered.

(4) When the answers are consistent with each other yet~~but~~ one or more is inconsistent with the general verdict:

(A) A~~,~~ judgment may be entered consistent with the answers~~,~~ notwithstanding the general verdict;

(B) The~~, or the~~ court may return the jury for further consideration of its answers and verdict; or

(C) The court may order a new trial.

(5) When the answers are inconsistent with each other, and when one or more is likewise inconsistent with the general verdict, ~~judgment shall not be entered, but~~ the court must not enter a judgment and instead:

(A) Return~~shall return~~ the jury for further consideration of its answers and verdict; or

~~**(c)**~~**(B)** Order~~shall order~~ a new trial.

(d) Court to provide attorneys with questions. Procedures in Rule 49(b) or 49~~**Provide Attorneys With Questions.** In no event shall the procedures of subdivisions (b) or~~ (c) must not~~of this rule~~ be utilized unless the court~~, within a reasonable time before final arguments are made to the jury,~~ provides all parties'~~the~~ attorneys with~~for all parties~~ a copy of the written questions to be submitted to the jury within a reasonable time before final arguments to the jury.~~.~~

[Amended effective 3/~~March~~ 1/89~~, 1989~~.]

Advisory Committee Historical Note

Effective 3/~~March~~ 1/89~~, 1989~~, Rule 49 was amended to provide for a general verdict accompanied~~General Verdict Accompanied~~ by answers~~Answers~~ to interrogatories~~Interrogatories~~ in jury trials. 536-38~~538~~ So. 2d XXVI-XXVII (West Miss. Cas. 1989).

Advisory Committee Notes

Rule 49 authorizes three types of verdicts: (1) ~~—~~a general verdict; (2)~~,~~ a special verdict;~~,~~ and (3) a general verdict accompanied by answers to interrogatories. Trial judges have broad discretion to use special verdicts or general verdicts accompanied by answers to interrogatories. *W.J. Runyon & Son, Inc. v. Davis*, 605 So. 2d 38, 49 (Miss. 1992).

A general verdict is a single determination that disposes of the entire case; in contrast~~,~~ ~~whereas~~ a special verdict requires the jury to decide specific factual issues. Special verdicts are appropriate in complicated cases where their use might assist in focusing the jury's attention on ~~the~~ specific, relevant fact~~factual~~ issues or in other cases where~~in which~~ jury bias or prejudice might arise. *Thompson v. Dung Thi Hoang Nguyen*, 86 So. 3d 232, 240 (Miss. 2012). If the special verdict submitted to the jury omits a fact issue raised by the pleadings or evidence, the parties will be deemed to have waived their right to jury trial on that~~such~~ issue unless one~~jury trial on such issue~~ is demanded before the case is submitted to the jury. In the absence of ~~such~~ a demand, the trial court may make the requisite factual findings.

A court may also submit a general verdict with written interrogatories about specific fact~~factual~~ issues to the jury. If the general verdict and interrogatory answers are consistent, the court must~~shall~~ enter a judgment reflecting the verdict and answers. If the interrogatory answers are internally consistent yet~~but~~ one or more answers is inconsistent with the general verdict, the court may: (1) enter judgment based on~~upon~~ the answers despite their inconsistency with the general verdict; (2)~~,~~ instruct the jury to further consider its verdict and answers;~~,~~ or (3) order a new trial. When one of the interrogatory answers is inconsistent with another answer and also inconsistent with the general verdict, the court must: (1)~~shall~~ instruct the jury to further consider its verdict and answers; or (2) order a new trial.

A special verdict or general verdict with interrogatories directing the jury to separate economic and noneconomic~~non-economic~~ damages is necessary if a defendant is going to seek application of statutory caps on noneconomic~~non-economic~~ damages. *See, e.g.*, *Intown Lessee Assocs., LLC v. Howard*, 67 So. 3d 711, 723-24 (Miss. 2011). Likewise~~Similarly~~, a special verdict or a general verdict with interrogatories may be useful in a case where~~in which~~ the law authorizes ~~allocation of~~ fault to be allocated among ~~the~~ parties decided~~determined~~ to be at fault. A special verdict or a general verdict with answers to interrogatories may also be useful in cases involving novel or uncertain law. If

the trial court is reversed on appeal, the special verdict or interrogatory answers may make retrial unnecessary if they contain sufficient factual findings on the relevant issues.

Rule 50. Motions: directed verdict; judgment notwithstanding the verdict.

~~RULE 50. MOTIONS FOR A DIRECTED VERDICT AND FOR JUDGMENT NOTWITHSTANDING THE VERDICT~~

(a) Motion for directed verdict; when; effect.

(1) ~~Directed Verdict:~~ When. ~~Made; Effect.~~ A party may move~~who moves~~ for a directed verdict at the close of the evidence offered by an opponent.

(2) Specificity. A motion for a directed verdict must state the specific grounds for it.

(3) Effect.

(A) If a party's motion for a directed verdict is denied, the party may offer evidence ~~in the event that the motion is not granted~~ without having reserved the right to do so and to the same extent as if the motion had not been filed.

(B) Denying a~~made. A~~ motion for a directed verdict ~~which is not granted~~ is not a waiver of a~~trial by~~ jury trial even though all parties ~~to the action have~~ moved for directed verdicts.

~~(a)~~**(4) Jury assent not required.** A court order~~A motion for a directed verdict shall state the specific grounds therefor. The order of the court~~ granting a motion for a directed verdict is effective without the jury's~~any~~ assent ~~of the jury~~.

(b) Motion for judgment notwithstanding the verdict; procedure.

(1) Setting aside verdict and judgment. A ~~**Judgment Notwithstanding the Verdict.**~~ ~~Not later than ten days after entry of judgment in accordance with a verdict, a~~ party may file a motion to have the verdict and a~~any~~ judgment entered on it~~thereon~~ set aside not later than 10 days after the judgment is entered.

(2) No~~; or if a~~ verdict ~~was not~~ returned. If no verdict was returned, a party may file a motion for judgment~~, a party,~~ within 10~~ten~~ days after the jury has been discharged.

~~(b)~~**(A)** ~~, may file a motion for judgment.~~ If no verdict was returned, the court may direct the entry of judgment or ~~may~~ order a new trial.

~~(c)~~ **Conditional ruling when** ~~**Rulings on Grant of Motion.**~~

~~(1)~~**(c)** ~~If the~~ **motion is granted.** ~~for judgment notwithstanding the verdict provided for in subdivision~~

(1) When granted. If a Rule 50(b) motion for judgment notwithstanding the verdict ~~of this rule~~ is granted, the court must~~shall~~ also rule on a~~the~~ motion for a new trial~~, if any,~~ by:

(A) Determining ~~determining~~ whether it should be granted if the judgment is subsequently~~thereafter~~ vacated or reversed~~;~~ and

(B) Specifying~~shall specify~~ the grounds for granting or denying the motion for a~~the~~ new trial.

(2) No effect on finality of judgment. A court ~~If the motion for a new trial is thus conditionally granted, the~~ order conditionally granting a motion for a new trial as stated in Rule 50(c)(1)~~thereon~~ does not affect the finality of the judgment.

(3) Conditionally granting a motion for new trial when judgment is reversed. If~~In case~~ the motion for a new trial has been conditionally granted yet~~and~~ the judgment is reversed on appeal, the new trial must~~shall~~ proceed unless the appellate court ~~has~~ otherwise orders.

(4) Effect of conditionally denying a motion for new trial on subsequent proceedings if judgment reversed. If the motion for ~~ordered. In case the motion for~~ a new trial has been conditionally denied, the appellee ~~on appeal~~ may assert error on~~in~~ that basis in an appeal.

(A) Subsequent proceedings~~denial; and~~ **if judgment reversed.** If the judgment is reversed on appeal, subsequent proceedings must~~shall~~ be according to the appellate court's~~in accordance with the~~ order ~~of the appellate court~~.

~~(2)~~**(5) Motion for a new trial if verdict set aside.** The ~~The~~ party whose verdict has been set aside on a motion for a judgment notwithstanding the verdict may file a ~~motion for a new trial pursuant to~~ Rule 59 motion for a new trial not later than 10~~ten~~ days after a~~entry of the~~ judgment notwithstanding the verdict is entered.

Denying motion.~~(d) Denial of Motion.~~ If the motion for judgment notwithstanding the verdict is denied, on appeal the prevailing party ~~who prevailed on the motion may,~~ as appellee may~~,~~ assert grounds for~~entitling him to~~ a new trial if~~on the event~~ the appellate court concludes ~~that~~ the trial court erred in denying the motion for judgment notwithstanding the verdict. ~~–~~If the appellate court reverses ~~–~~the

(d) judgment, ~~nothing in~~ this rule does not preclude~~precludes~~ it from determining that the appellee is entitled to a new trial or from directing the trial court to decide~~determine~~ whether a new trial must~~shall~~ be granted.

[Amended effective 7/~~July~~ 1/94; 7/~~, 1994; July~~ 1/97~~, 1997~~.]

Advisory Committee Historical Note

~~**Advisory Committee Historical Note**~~

Effective 7/~~July~~ 1/97~~, 1997~~, Rule 50(b) was amended to clarify that Rule 50(b) motions must be filed not later than 10~~ten~~ days after entry of judgment. 689-92~~692~~ So. 2d XLIX (West Miss. Cas. 1997).

Effective 7/~~July~~ 1/94~~, 1994~~, Rule 50(b) was amended so that a motion for directed verdict is not a prerequisite to file a motion for judgment notwithstanding the verdict. 632-35~~635~~ So. 2d XXX-XXXI (West Miss. Cas.~~Cases~~ 1994).

[Adopted 8/~~August~~ 21/96~~, 1996~~; amended effective 7/~~July~~ 1/97~~, 1997~~.]

Advisory Committee Notes

Rule 50 applies only in cases tried to a jury with power to return a binding verdict. Rule 50(a) enables the court to decide~~determine~~ whether there is a~~any~~ question of fact to be submitted to the jury and whether a~~any~~ verdict other than the one directed would be erroneous as a matter of law; it is intended to be~~conceived as~~ a device to save ~~the~~ time and trouble involved in a lengthy jury determination.

Rule 50(b) differs from its federal rule counterpart in that a motion for a directed verdict is no longer a prerequisite to file a motion for a judgment notwithstanding the verdict. *New Hampshire Ins. Co. v. Sid Smith &* *Assocs.*~~*Associates,*~~ *Inc.*, 610 So. 2d 340 (Miss. 1992).

A Rule 50(b) motion for judgment notwithstanding the verdict ~~made pursuant to M.R.C.P. 50(b)~~ must be filed within 10 days after entry of the judgment. The trial court has no authority or discretion to extend the 10-day time period. Miss. ~~M.~~R. Civ. ~~C.~~P. 6(b). A motion for a judgment notwithstanding the verdict is not appropriate for cases tried by a judge sitting without a jury. *See* Miss. ~~M.~~R. Civ. ~~C.~~P. 59(e).

Rule

~~RULE~~ 51. Jury instructions. ~~INSTRUCTIONS TO JURY~~

(a) Procedural instructions~~Instructions~~. At the beginning~~commencement~~ of a trial and during it~~the course of a trial~~, the court may orally:

(1) Give ~~give~~ the jury cautionary and other instructions of law relating to trial procedure and jury~~, the~~ duty and function; ~~of the jury,~~ and

~~(a)~~**(2)** Acquaint ~~may acquaint~~ the jury generally with the nature of the case.

(b) Substantive instructions~~Instructions~~. Each party ~~to an action~~ may submit six instructions on the substantive law of the case. But~~However,~~ the court may allow~~permit the submission of~~ additional instructions as justice requires. The court may also instruct the jury on~~of~~ its own. ~~initiative.~~

(c) When ~~Submitted.~~ ~~Instructions proposed by parties shall be~~ submitted.

(1) Pretrial hearing. A party must submit proposed instructions to the court at the ~~pre-trial hearing as provided by~~ Rule 16 pretrial hearing.

~~(1)~~**(2) No pretrial hearing.** If no pretrial~~. In the event a pre-trial~~ hearing is ~~not~~ conducted, proposed instructions must~~shall~~ be delivered to the court and counsel for all parties no~~not~~ later than 24~~twenty-four~~ hours prior to the time the action is scheduled to be tried.

(d) Identification. Instructions will not be identified with a party except as stated in this rule.

(1) Court. The court's substantive instructions must~~shall~~ be numbered and prefixed with the letter *C*.

(2) Plaintiff. Plaintiff's instructions must~~shall~~ be numbered and prefixed with the letter *P*.

(3) Defendant. Defendant's instructions must~~shall~~ be numbered and prefixed with the letter *D*.

(4) Multiparty actions.

(A) In multi-party actions:

(i) Numbers must~~, Roman numerals shall~~ be used to identify ~~the proposed~~ instructions proposed by parties~~of~~ similarly aligned;

(ii) Placed~~ parties; the Roman numerals shall be placed~~ after the alphabetical designation of *P* or *D*;~~, as the case may be,~~ and

~~(2)~~**(iii)** Conforms~~shall conform~~ to the sequential listing of parties ~~plaintiff or defendant as~~ stated in the complaint.

~~Instructions shall not otherwise be identified with a party.~~

(e) ~~(3)~~ **Objections**.

(1) A~~No~~ party may not claim~~assign as~~ error as to~~the~~ granting or ~~the~~ denying ~~of~~ an instruction unless the party~~he~~ objects ~~thereto at any time~~ before the instruction is ~~instructions are~~ presented to the jury.

(2) Opportunity must~~; opportunity shall~~ be given to object~~make the objection~~ out of the jury's hearing.

(3) ~~of the jury.~~ All objections:

(A) Must ~~shall~~ be stated in~~into~~ the record;

(B) Distinctly ~~and shall~~ state ~~distinctly~~ the matter objected to;~~to which objection is made~~ and

(C) The~~the~~ grounds for objecting~~therefor~~.

~~(c)~~**(f)** ~~**Instructions to be**~~ **Written instructions**. All instructions must be written unless~~.~~ ~~Except as allowed by~~ Rule 51(a) states otherwise~~), all instructions shall be in writing~~.

(g) **When read; availability.** Instructions must be:

(1) Read~~; **Available to Counsel and Jurors.** Instructions shall be read by the court~~ to the jury at the close of all ~~the~~ evidence and prior to oral argument;

(2) Available~~they shall be available~~ to counsel to~~for~~ use during argument; and

~~(d)~~**(3)** Carried~~. Instructions shall be carried~~ by the jury into the jury room when retiring~~it retires~~ to consider its verdict.

Advisory Committee Notes

It is the trial court's responsibility to properly instruct the jury. "[W]here under the evidence a party is entitled to have the jury instructed regarding a particular issue and where the party requests an instruction which for whatever reason is inadequate in form or content, the trial judge has the responsibility either to reform and correct the proffered instruction . . .~~himself~~ or to advise counsel on the record of the perceived deficiencies . . .~~therein~~ and to afford counsel a reasonable opportunity to prepare a new corrected instruction." *Mississippi Valley Silica Co., Inc. v. Eastman*, 92 So. 3d 666, 669 (Miss. 2012) (quoting *Byrd v. McGill*, 478 So. 2d 302, 303 (Miss. 1985)). *See also* UCCCR~~Rule~~ 3.07 (~~of the Uniform Circuit and County Court Rules for~~ additional provisions governing jury instructions). For example instructions, see the "~~. See also~~ Mississippi Plain Language Model Jury Instructions – Civil ~~of~~ 2012" ~~which were~~ prepared by a commission appointed by the Mississippi Supreme Court. Although not formally adopted or approved by the Mississippi Supreme Court ~~of Mississippi~~, the instructions ~~"Plain Language Model Jury Instructions"~~ have been placed on its ~~the Supreme Court~~ website as an aid to trial judges and attorneys.

Rule

~~RULE~~ 52. Findings by the court.~~FINDINGS BY THE COURT~~

(a) ~~Effect.~~ Procedure; effect.

(1) In a nonjury action~~all actions~~ tried on~~upon~~ the facts, the court may:

(A) May ~~without a jury the court may, and shall upon the request of any party to the suit or when required by these rules,~~ find the facts specially;
(B) State ~~and state separately~~ its conclusions of law separately;~~thereon~~ and
(C) Must do so on a party's request or when these rules require it.

~~**(a)** **Effect.** A~~ judgment must~~shall~~ be entered ~~accordingly.~~

(2) ~~**Amendment.**~~ according to the court's ~~Upon motion of a party filed not later than ten days after entry of judgment or entry of~~ findings and conclusions of law.

(b) Amendment.

(1) When. The~~, or upon its own initiative during the same period, the~~ court may amend its findings~~, or~~ make additional findings, and ~~may~~ amend the judgment on its own or a party's motion filed not later than 10 days after the previous is entered.
(2) Motion for new trial; challenging evidence sufficiency.

~~**(b)**~~**(A)** ~~accordingly.~~ The motion may accompany a Rule 59 motion for a new trial~~. pursuant to Rule~~
(B) ~~59.~~ When the court issues findings of fact ~~are made~~ in a nonjury action~~actions~~ tried by the court ~~without a jury~~, the question of the sufficiency of the evidence to support the findings may ~~thereafter~~ be raised subsequently regardless of whether a party objected to the findings ~~party raising the question has made~~ in court or ~~an objection to such findings or has~~ filed a motion to amend them~~, or a~~ motion for judgment, or ~~a~~ motion for a new trial.

[Amended effective, 7/~~July~~ 1/97~~, 1997~~.]

~~**Advisory Committee Historical Note**~~

Advisory Committee Historical Note

Effective 7/~~July~~ 1/97~~, 1997~~, Rule 52(b) was amended to clarify that a motion to amend the trial court's findings must be filed not later than 10~~that ten~~ days after entry of judgment. 689 So. 2d XLIX (West Miss. Cas. 1997).

[Adopted effective 7/~~July~~ 1/97~~, 1997~~.]

Advisory Committee Notes

Rule 52(a) requires a trial court~~,~~ in ~~cases tried without~~ a nonjury action~~jury,~~ to make specific findings of fact and conclusions of law when ~~such findings and conclusions are~~ requested by a party or when ~~such findings and conclusions are~~ required by the Mississippi Rules of Civil Procedure. In the absence of a party's request ~~for such findings and conclusions~~ or a rule requiring them~~such findings and conclusions~~, the trial court "may" make ~~such~~ findings and conclusions. *See Gulf Coast Research Lab.~~Laboratory~~ v. Amaraneni*, 722 So. 2d 530, 534-35 (Miss. 1998). The principal purpose of the rule is to provide the appellate court with a record regarding what the trial court did, ~~—~~the facts it found, and the law it applied partly~~, in part~~ so ~~that~~ the appellate court can refrain from deciding issues of fact and others~~issues that were not decided by~~ the trial court did not decide.~~.~~ *Tricon Metals & Servs.,~~Services,~~ Inc. v. Topp*, 516 So. 2d 236, 239 (Miss. 1987). "In cases of any significant complexity the word 'may' in Rule 52(a) should be construed to read 'generally should.' In other words, in cases of any complexity, tried upon the facts without

a jury, the [c]ourt~~Court~~ generally should find the facts specially and state its conclusions of law . . . ~~thereon~~." *Id.* In contested complex cases, a trial court's "failure to make findings of ultimate fact and conclusions of law will generally be regarded as an abuse of discretion." *Id.* "[F]indings of fact by the chancellor, together with the legal conclusions drawn from those findings, are required [in cases involving the division of marital assets]." *Ferguson v. Ferguson*, 639 So. 2d 921, 929 (Miss. 1994).

General findings of fact and conclusions of law may technically comply with Rule 52's requirements despite a party's request for specific findings of fact and conclusions of law. *See Lowery v. Lowery*, 657 So. 2d 817, 819 (Miss. 1995) (citing *Century 21 Deep South Prop. v. Corson*, 612 So. 2d 359, 367 (Miss. 1992)). If a trial court fails to make even general findings of fact and conclusions of law when specific findings of fact and conclusions of law are requested by a party, remand to the trial court may be necessary unless the evidence is so overwhelming so as to make findings unnecessary. *See Lowery ~~v. Lowery~~*, 657 So. 2d at~~817,~~ 819. ~~(Miss. 1995).~~

A trial court has discretion to adopt a party's proposed findings of fact and conclusions of law. *Rice Researchers, Inc. v. Hiter*, 512 So. 2d 1259, 1266 (Miss. 1987). A trial court's factual findings, even in cases where the trial court adopts verbatim a party's proposed findings of fact, will be reviewed for abuse of discretion. *Bluewater Logistics, LLC v. Williford*, 55 So. 3d 148, 157 (Miss. 2011). *See also* Uniform Chancery Court Rule 4 (regarding findings by the court).

Rule

~~See also the Uniform Chancery Court Rules regarding findings by the court.~~

RULE 53. MASTERS, REFEREES, AND COMMISSIONERS

(1) Appointment Masters, referees, and commissioners.

(a) Definition; appointment; compensation.

(1) Definition. Compensation. The court may appoint one or more persons in each county to be masters of the court, and the court in which any action is pending may appoint a special master therein. As used in these rules, the word "master Master" includes a referee, an auditor, an examiner, a commissioner, and a special commissioner.

(2) Appointment.

(A) The court may appoint one or more persons in each county to be masters of the court.

(B) The court where an action is pending may appoint a special master in it.

(a)(3) Compensation. A master must master shall receive a reasonable compensation for services rendered, as fixed by law or as allowed by the court. Reasonable compensation must be and taxed as in the costs and collected in the same manner as the fees of the clerk fees.

(b) Qualification; exceptions.

(1) Qualification. A **Qualifications.** The master must shall be an attorney at law and, authorized to practice law before all courts of the State of Mississippi courts.

(2) Exceptions.

(A) In . However, in extraordinary circumstances where a the finding to be issued made is of a complex, technical, non-legal nature, a person not other than an attorney who possesses possessing the requisite qualifications of one a person skilled in the field, area, or subject of the inquiry may be appointed as a master.

(b)(B) A person not an attorney; additionally, persons other than attorneys may be appointed as a special commissioner commissioners to conduct judicially-ordered sales and partitions of real or personal property.

(c) Reference: When Made. With the parties' written consent of the parties, the court may refer an any issue of fact or law to a master. Otherwise, a court must issue an order of reference shall be made only on upon a showing that some exceptional condition requires it.

(d) Powers.

(1) Order appointing master. An ~~The~~ order of reference to a~~the~~ master may:

(A) Specify ~~specify~~ or limit the master's ~~his~~ powers;

(B) Fix ~~and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix~~ the time and place for beginning and closing the hearing and ~~for the~~ filing ~~of~~ the master's report; and

(C) Direct the master:

(i) To report only on particular issues;

(ii) To do or perform particular acts; or

(iii) To receive evidence and report only on it.

(2) Required powers.

(A) Regulating proceedings. ~~.~~ Subject to ~~the~~ specifications and limitations stated in the reference order, a~~the~~ master has and must~~shall~~ exercise the power:

(i) To ~~to~~ regulate all proceedings in every hearing before the person;~~him~~ and

(ii) To ~~to do all acts and~~ take all actions and measures necessary or proper for efficiently performing~~the efficient performance of his~~ duties according to the reference order.

(B) Examination; reporting; execution. A master must~~under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. He shall~~ have the power to:

(i) Administer ~~administer~~ oaths;

(ii) Examine ~~, to take the examination of~~ witnesses in cases pending in a~~any~~ court;

(iii) Examine~~, to examine~~ and report on~~upon~~ all ~~matters~~ referred matters;~~to him,~~ and

~~(d)~~**(iv)** To~~to~~ execute all decrees when directed to do so~~him to be executed~~.

(C) Witnesses. In addition, a master must~~Masters shall~~ have the power to direct a subpoena to be issued~~the issuance of subpoenas~~ for a witness~~witnesses to~~

~~attend before them~~ to appear and testify in a~~any~~ matter referred to the master~~them~~ or ~~generally~~ in the pending action.

(i) ~~cause.~~ If a~~any~~ witness fails~~shall fail~~ to appear, the master must~~shall~~ proceed by process to compel the witness to attend and give evidence.

(3) Other powers. A master may require evidence to be produced before the person regarding matters embraced in the reference order, including all applicable books, papers, vouchers, documents, and writings.

(e) Proceedings.

(1) Certified copy. The ~~When a reference is made, the~~ clerk must~~shall forthwith~~ furnish a~~the~~ master with a certified copy of the ~~order of~~ reference order. The certified copy must~~, which shall~~ constitute sufficient certification of the master's~~his~~ authority. ~~Upon receipt thereof, unless the order of~~

(2) First meeting. When the master receives the reference order, unless otherwise stated in it~~provides~~, the master must~~shall forthwith~~ set a time and place for the first meeting of the parties or ~~their~~ attorneys.

(A) Time. The first meeting must ~~which is to~~ be held ~~in any event~~ within 10~~ten~~ days ~~following the date~~ of the ~~order of~~ reference order.~~and shall~~

(B) Notice. The master must notify the parties or ~~their~~ attorneys~~. It is the duty~~ of the time and place for the first meeting.

(3) Master's duty;~~master to proceed with all~~ **reasonable diligence.** The master has a duty to proceed with reasonable diligence.

(A) On ~~Either party, on~~ notice to the master and parties, a party ~~and master,~~ may move~~apply to~~ the court for an order requiring the master to speed the proceedings and to make a~~his~~ report.

~~**(e)**~~**(4) Failure to appear.** If a party fails to appear at the ~~time and place~~ appointed time and place, the master may proceed ex parte or exercise~~, in his~~ discretion to~~, may~~ adjourn the proceedings until a subsequent date with~~to a future day, giving~~ notice of it~~same~~ to the absent party.

(f) Statements of account~~Account~~. The court may order~~direct~~ an accounting. When~~account to be taken in any cause in vacation or in term, and when~~ the master doubts~~shall doubt as to~~ the principles on~~upon~~ which an accounting is~~the account shall be~~ taken or ~~as to~~ the propriety of admitting an~~any~~ item of debit or credit claimed by a~~either~~ party, the master~~he~~ may state those points in writing ~~the points on which he shall doubt~~ and submit them~~same for decision~~ to the court ~~in vacation or in term~~.

(g) Report.

(1) Contents; filing.

(A) Contents.

(i) A ~~*and Filing.* The~~ master must~~shall~~ prepare a report on~~upon the~~ matters submitted ~~to him~~ by the ~~order of~~ reference order.

(ii) If~~and, if~~ required to make findings of fact and conclusions of law, the master must state~~he shall set~~ them ~~forth~~ in the report.

(B) Filing. The master must~~He shall~~ file the report with the ~~clerk of the~~ court clerk.

(i) Unless the reference order states ~~and, unless~~ otherwise, the master must ~~directed by the order of reference, shall~~ file ~~with it~~ a transcript of the proceeding and ~~of the evidence in~~ the original evidence exhibits.

~~(1)~~**(ii)** The clerk must~~shall forthwith~~ mail notice the report has been filed to all parties ~~notice of the filing~~.

(2) Acceptance; objections. ~~*and Objections.*~~ The court must~~shall~~ accept the master's findings of fact unless manifestly wrong.

(A) Within 10~~ten~~ days of~~after~~ being served with notice ~~of the filing of~~ the report has been filed, a~~any~~ party may serve written objections to it on~~thereto upon~~ the other parties.

(B) A motion~~Application~~ to the court for action on~~upon~~ the report and ~~upon~~ objections to it must~~thereto shall~~ be according to~~by motion and upon notice as provided by~~ Rule 6(d).

(C) After a~~The court after~~ hearing, the court may:

(i) Adopt ~~adopt~~ the report;

(ii) Modify it;

(iii) Partly or wholly~~modify it or may~~ reject it;

(iv) Receive additional ~~in whole or in any part or may receive further~~ evidence; or

~~(2)~~**(v)** Recommit~~may recommit~~ it with instructions.

(3) Stipulating~~*Stipulation as*~~ **to findings**~~*Findings*~~**.** The effect of a master's report is the same regardless of whether the parties have consented to the reference. But~~;~~ ~~however,~~ when the parties stipulate that a master's finding of fact must~~shall~~ be final, only a question~~questions~~ of law arising out of~~upon~~ the report must subsequently~~shall thereafter~~ be considered.

(4) Draft report~~Report~~. Before filing a~~his~~ report, a master may submit a draft ~~thereof~~ to counsel for all parties for the purpose of receiving their suggestions.

(5) Bond; when required.

(A) ~~When Required.~~ The court may require a special commissioner appointed to conduct a sale of ~~any~~ property to give bond:

(i) Under ~~in such~~ penalty and with sufficient sureties ~~to be approved~~ as the court approves and directs;

(ii) Payable to ~~may direct, payable to the State of~~ Mississippi;~~,~~ and

(iii) Conditioned on the special commissioner paying~~conditioned to pay~~ according to law all money which may come into the person's~~his~~ hands as ~~such~~ special commissioner.

(B) The bond must~~shall~~ be filed with the court.

~~(h)~~(C) ~~-~~For a~~any~~ breach of a bond~~its~~ condition, ~~execution may be issued on order of~~ the court may order execution for the sum due. But~~However, when the clerk of~~ the court clerk or ~~the~~ sheriff is appointed to make a sale and the order does not provide for a bond, the official bond of the clerk or the sheriff must~~shall~~ be held as security ~~in the premises~~.

[Amended effective 3/~~March~~ 1/89; 4/~~, 1989; April~~ 13/00~~, 2000~~.]

Advisory Committee Historical Note

Effective 4/~~April~~ 13/00~~, 2000~~, Rule 53(c) was amended to give the court discretion to appoint a master on the written consent of the parties without a showing of an exceptional condition. ~~-~~753-54~~754~~ So. 2d. XVII (West Miss. Cas. 2000).

Effective 3/~~March~~ 1/89~~, 1989~~, Rule 53 was amended to correct a typographical error. 536-38~~-538~~ So. 2d XXVII (West Miss. Cas. 1989).

SECTION 7

~~CHAPTER VII~~. JUDGMENT

Rule ~~RULE~~ 54. ~~JUDGMENTS;~~

~~COSTS~~

~~Definitions. “~~Judgment~~; costs.~~

(a) Definition. As ~~” as~~ used in these rules, a “judgment” includes a final decree and an~~any~~ order from which an appeal lies.

(b) Judgment on multiple claims; involving multiple parties.

(1) ~~Upon Multiple Claims or Involving Multiple Parties.~~ When an action presents more than one claim for relief ~~is presented in an action,~~ whether as a claim, counterclaim, crossclaim~~counter-claim, cross-claim~~, or third-party claim, ~~,~~ or when multiple parties are involved, the court may direct ~~the~~ entry of a final judgment as to one or more but fewer than all ~~of the~~ claims or parties only on~~upon~~ an expressed:

(A) Determination ~~determination that~~ there is no just reason for delay; and
(B) Direction~~upon an expressed direction~~ for ~~the~~ entry of the judgment.

(2) In the absence of the expressed~~such~~ determination and direction, regardless of how it is designated, an~~any~~ order or other form of decision adjudicating~~, however designated which adjudicates~~ fewer than all ~~of the~~ claims or ~~the~~ rights and liabilities of fewer than all ~~the~~ parties:

(A) Does ~~shall~~ not terminate the action as to a claim~~any of the claims~~ or party;~~parties~~ and
~~(b)~~(B) The~~the~~ order or other form of decision is subject to revision ~~at any time~~ before ~~the~~ entry of a judgment adjudicating all ~~the~~ claims and ~~the~~ rights and liabilities of all ~~the~~ parties.

(c) Demand for judgment.

(1) Default judgment.~~Judgment.~~ A default judgment must~~by default shall~~ not be different ~~in kind~~ from or exceed the~~in~~ amount of that requested~~prayed for~~ in the demand for judgment.
~~(c)~~(2) Judgment other than ~~Except as to a party against whom a judgment is entered by~~ default. A~~, every~~ final judgment other than one by default must~~shall~~ grant ~~the~~

relief to ~~which~~ the party in whose favor it is rendered as~~is~~ entitled by the proof and ~~which is~~ within the court's jurisdiction ~~of the court~~ to award~~grant,~~ even if ~~the party has~~ not demanded ~~such relief~~ in the party's~~his~~ pleadings. But a~~; however,~~ final judgment must~~shall~~ not be entered for a monetary amount greater than that demanded in the pleadings or amended pleadings.

(d) Costs.

(1) Automatic; exceptions. Unless ~~Except when express provision therefor is made in~~ a statute expressly states otherwise or the court directs differently, costs must~~shall~~ be awarded automatically~~allowed as of course~~ to the prevailing party ~~unless the court otherwise directs, and this provision is applicable~~ in all civil actions, including those where ~~cases in which~~ the State of Mississippi~~Misslssippi~~ is a party plaintiff.

(2) Security. If ~~in civil actions as in cases of individual suitors. In all cases where~~ costs are awarded~~adjudged~~ against a~~any~~ party who has given security for costs, the court may order execution ~~may be ordered to issue~~ against the~~such~~ security.

(3) When taxed. Costs may be taxed by the clerk on one day's notice.

~~**(d)**~~**(A) Review.** The court may review the clerk's action on a motion~~ On motions~~ served within five days from when~~of~~ the clerk's~~receipt of~~ notice of ~~such~~ taxation is received. ~~, the action of the clerk may be reviewed by the court.~~

Advisory Committee Notes

Although it ~~is~~ not specifically described in the rule itself, ~~there are~~ several different stages ~~that~~ lead to the creation of a judgment that is final and appealable. It is important to

differentiate the various steps ~~that are~~ part of this process.

The first distinction is between the adjudication, either by a decision of the court or a verdict of the jury, and the judgment that is entered on it~~thereon~~. The terms "decision" and "judgment" are not synonymous under these rules. The decision is~~consists of~~ the court's opinion comprised~~which consists~~ of findings of fact and conclusions of law; the rendition of judgment is the pronouncement of that decision and the act giving~~that gives~~ it legal effect.

A second distinction ~~that should be noted~~ is between the judgment itself and the "filing~~,~~" or the "entry~~,~~" of the judgment. A judgment is the final determination of an action and ~~thus~~ has the effect of terminating the litigation; it is "the act of the court." "Filing" simply refers to the delivery of the judgment to the clerk for entry and preservation. The "entry" of the judgment is the ministerial notation of the judgment by the ~~clerk of the~~ court clerk according~~pursuant~~ to Rules 58 and 79(a); however, it is crucial to the effectiveness of the judgment and for measuring the time periods for appealing~~appeal~~ and ~~the~~ filing ~~of~~ various motions.

Rule 54(b) is designed to facilitate the entry of a final judgment on~~upon~~ one or more but fewer than all the claims or as to one or more but fewer than all the parties in an action involving multiple claims or multiple parties~~, so as~~ to enable the non-prevailing party to perfect an appeal as of right of a final judgment. Absent a Rule 54(b) certification, an ~~under Rule 54(b), any~~ order in a multiple-party or multiple-claim action that does not dispose of the entire action is interlocutory~~,~~ even it if appears to adjudicate a separable portion of the controversy. Given that separate, piecemeal appeals of interlocutory orders entered in a single action would usually be inefficient, parties may not appeal interlocutory orders as of right. A~~Instead, a~~ party may instead: (1) request the trial court to certify ~~such~~ an interlocutory order as a final judgment according~~pursuant~~ to Rule 54(b) in order to take ~~), so that~~ an appeal of right under Miss. ~~may be taken pursuant to M.~~R. App. ~~A.~~P. 4~~;~~ or (2)~~, alternatively, a party may~~ petition the Mississippi Supreme Court for permission to appeal an interlocutory order under Miss. ~~pursuant to M.~~R. App. ~~A.~~P. 5.

If a party attempts to perfect an appeal as of right according~~pursuant~~ to Miss. ~~M.~~R. App. ~~A.~~P. 4 as to~~of~~ an order that does not dispose of all ~~the~~ claims between the parties, the~~such~~ appeal will be dismissed for lack of jurisdiction unless the order appealed from has been ~~properly~~ certified properly as a final judgment under~~pursuant to~~ Rule 54(b). *See, e.g.*, *Williams v. Delta Reg'l Med. Ctr.*, 740 So. 2d 284 (Miss. 1999).

Rule 54(b) gives a trial court discretion to certify an interlocutory order as a final judgment if the court decides~~determines~~ that "there is no just reason for delay" of the appeal. Rule 54(b) certification should be reserved for cases where delaying~~in which delay of~~ the appeal might prejudice a party. *See Cox v. Howard, Weil, Laboussie, Friedrichs, Inc.*, 512 So. 2d 897, 900 (Miss. 1987). Courts should grant Rule 54(b) certification "cautiously in the

interest of sound judicial administration in order to preserve the established judicial policy against piecemeal appeals." *See Indiana Lumbermen's Mut. Ins. Co. v. Curtis Mathes, Mfg. Co.*, 456 So. 2d 750, 752-53 (Miss. 1984).

If the trial court chooses to certify an interlocutory order as a Rule 54(b) final judgment, ~~pursuant to Rule 54(b),~~ it must do so in a definite, unmistakable manner. If the reasons for the Rule 54(b) certification are not clear from the record, the trial court should state~~set forth~~ its findings and reasons for certification. *See Cox*, 512 So. 2d at 900-01.

Rule 54(c) must be read in conjunction with Rule 8 requiring~~, which requires that~~ every pleading asserting a claim to include a demand for the relief to which the pleader believes the party is~~himself~~ entitled. As a result~~Thus~~, Rule 54(c) applies to a~~any~~ demand for relief, whether filed~~made~~ by defendant or plaintiff or presented by way of an original claim, counterclaim, crossclaim~~counter-claim, cross-claim~~, or third-party claim. A default judgment may not extend to matters outside the issues raised by the pleadings or beyond the scope of the relief demanded; a default judgment awarding~~in a default case that awards~~ relief that ~~either~~ is more than or different in kind from what is ~~that requested~~ originally requested is null and void, and a defendant may attack it collaterally in another proceeding.

Three related concepts should be distinguished in considering Rule 54(d): (1)~~These are~~ costs; (2)~~,~~ fees;~~,~~ and (3) expenses. "Costs" are ~~refer to those~~ charges ~~that~~ one party has incurred and is allowed~~permitted~~ to have an~~reimbursed by his~~ opponent reimburse as part of the judgment in the action. Although "costs" has an everyday meaning synonymous with "expenses,"~~,~~ taxable costs under Rule 54(d) are~~is~~ more limited and represent~~represents those~~ official expenses like~~, such as~~ court fees~~,~~ that a court will assess against a litigant. Costs almost always amount to less than a successful litigant's total expenses in connection with a lawsuit,~~law suit~~ and their recovery is nearly always awarded to the successful party.
~~"~~

Fees" are ~~those~~ amounts paid to the court or one of its officers for particular charges ~~that~~ generally ~~are~~ delineated by statute. Fees~~Most~~ commonly ~~these~~ include ~~such~~ items like~~as~~ filing fees, clerk or sheriff ~~clerk's and sheriff's~~ charges, and witness~~witnesses'~~ fees. In most instances, a ~~an award of~~ costs award will include reimbursement for ~~the~~ fees paid by the party in whose favor the cost award is issued. ~~made.~~

"Expenses" include all ~~the~~ expenditures actually incurred~~made~~ by a litigant in connection with the action. Both fees and costs are expenses but by no means constitute all of them. Absent a special statute or rule~~,~~ or an exceptional exercise of judicial discretion, ~~such~~ items like~~as~~ attorney's fees, travel expenditures, and investigatory expenses will not qualify either as statutory fees or reimbursable costs. These expenses must be borne by the litigants.

Rule

~~RULE~~ 55. Default.~~DEFAULT~~

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as stated in~~provided by~~ these rules, the clerk must enter the party's default when ~~and~~ that fact becomes apparent~~is made to appear~~ by affidavit or otherwise~~, the clerk shall enter his default~~.

(b) Judgment. In all cases, a ~~the~~ party entitled to a default judgment must move~~by default shall apply to~~ the court for one.

(1) ~~therefor.~~ If the party against whom a~~judgment by~~ default judgment is sought has appeared in the action, the party ~~he (~~or party's~~if appearing by~~ representative must~~, his representative) shall~~ be served with written notice of the motion~~application~~ for judgment at least three days prior to the hearing on it.

(A) But~~of such application; however, judgment by default may be entered by~~ the court may enter a default judgment on the day the case is set for trial without ~~such~~ three days' notice.

(B) The court may conduct a jury or nonjury hearing in its discretion or ~~If in~~ order references it deems necessary and proper if enabling~~to enable~~ the court to enter judgment or to carry it into effect requires:

(i) An accounting;

(ii) Determining~~it is necessary to take an account or to determine~~ the amount of damages;

(iii) Establishing~~ or to establish~~ the truth of an allegation~~any averment~~ by evidence; or

~~(b)~~(iv) Investigating another~~to make an investigation of any other~~ matter~~, the court may conduct such hearing with or without a jury, in the court's discretion, or order such references as it deems necessary and proper.~~

(c) Setting aside default. On a showing of~~**Aside Default.** For~~ good cause ~~shown~~, the court may set aside an entry of default. And ~~and,~~ if a default judgment ~~by default~~ has been entered, the court may likewise set it aside according to ~~in accordance with~~ Rule 60(b).

(d) Plaintiff, counterclaimant~~Plaintiffs, Counter-Claimants~~, and crossclaimant~~Cross-Claimants~~. The provisions of this rule apply whether the party entitled to a default~~the~~ judgment ~~by default~~ is a plaintiff, ~~a~~ third-party plaintiff, crossclaimant, or counterclaimant.~~or a party who has pleaded a cross-claim or counter-claim.~~ In all cases a judgment by default is subject to the limitation in~~of~~ Rule 54(c).

(e) Proof required despite default~~Required Despite Default~~ in certain cases.~~Certain Cases.~~ No judgment by default must~~shall~~ be entered against a person under a legal disability or a party to a suit for divorce or annulment of marriage unless the claimant establishes a~~his~~ claim or right~~rights~~ to relief by evidence. But a divorce for~~, provided, however, that divorces on ground of~~ irreconcilable differences may be granted pro confesso according to~~as provided by~~ statute.

Advisory Committee Notes

Because the ~~Before a default judgment can be entered, the~~ court must have jurisdiction over the party against whom the judgment is sought before a default judgment can be entered, the ~~; which also means that the~~ party must have been effectively served with process.

Entry of default for failure to plead or otherwise defend is not limited to situations involving a failure to answer a complaint~~,~~ but applies to a pleading~~any of the pleadings~~ listed in Miss. R. Civ. P. 7(a).
~~M.R.C.P. 7(a).~~

The words "otherwise defend" refer to a Rule 12(b)(6) motion. *See* Miss. ~~M.~~R. Civ. ~~C.~~P. Rule 12(b). The defending party's mere appearance ~~by the defending party~~ will not keep the party from being in default for failure to plead or otherwise defend. But~~, but~~ if the party appears and indicates a desire to contest the action, the court can exercise its discretion and refuse to enter a default judgment. This approach is in line with the general policy that whenever there is doubt whether a default judgment should be entered, the court ought to allow the case to be tried on the merits.

Rule 55(a) does not represent the only source of authority in these rules for the entry of a default that may lead to judgment. For example, Rule 37(b)(2)(C) and Rule 37(d) both provide for the use of a default judgment as a sanction for violation of the discovery rules.

When the prerequisites of Rule 55(a) are satisfied, ~~an entry of default shall be made by~~ the clerk must enter a default without court~~any~~ action~~. being taken by the court.~~ The clerk's function, however, is not perfunctory. Before a default~~the clerk~~ can be entered,~~enter a default~~ the clerk must examine filed~~the~~ affidavits ~~filed~~ and be satisfied that the requirements of Rule 55(a) are met. *See* Miss. ~~M.~~R. Civ. ~~C.~~P. app~~App~~. A, Forms 36~~, 37, and~~ 38. These elements of default must be shown by affidavit or other competent proof.

The traditional requirement that "one had to file documents in or actually physically appear before a court" in order to make a Rule 55(b) appearance has been relaxed. If a party has filed~~made~~ "an indicia of defense or denial of the allegations of the complaint," the~~such~~ party is entitled to written notice of a motion~~the application~~ for default judgment at least three days prior to the motion hearing~~ on such application~~. *Wheat v. Eakin*, 491 So. 2d 523, 525 (Miss. 1986). "[I]nformal contacts between parties may constitute an appearance." *Holmes v. Holmes*, 628 So. 2d 1361, 1364 (Miss. 1993). The Mississippi Supreme Court has found an appearance when "the defendants either 1) served or sent a document to the plaintiff indicating in writing the defendant's intent to defend, 2) filed a document with the court indicating in writing the defendant's intent to defend, or 3) had counsel communicate to opposing counsel the defendant's intent to defend." *Amer.~~American~~ States Ins. Co. v. Rogillio*, 10 So. 3d 463, 467 (Miss. 2009).

A defendant who has filed an answer to the complaint but who has failed to file a timely answer to an amended complaint has entered an appearance for Rule 55(b) purposes. *See Chassaniol v. Bank of Kilmichael*, 626 So. 2d 127, 130-31 (Miss. 1993). A defendant whose attorney has written the plaintiff's attorney in a divorce case and informed him that the defendant desired to settle the case if possible but intended to defend if no settlement could be reached has entered an appearance for Rule 55(b) purposes. *See Holmes v.*

Holmes,

628 So. 2d 1361, 1364 (Miss. 1993). A defendant who has served a motion to set aside the entry of default has entered an appearance for Rule 55(b) purposes. *See King v. Sigrest*, 641 So. 2d 1158, 1162 (Miss. 1994). A defendant~~,~~ cannot, however, enter a Rule 55(b) appearance before the case has been commenced. *See Kumar v. Loper*, 80 So. 3d 808, 814 (Miss. 2012). The defendant bears the burden of proving that an appearance has been filed~~made~~. *See Dynasteel Corp. v. Aztec Indus., Inc.*, 611 So. 2d 977, 982 (Miss. 1992).

Although an appearance by a defending party does not immunize defendant from being in default for failure to plead or otherwise defend, it does entitle defendant to at least three days written notice of the motion~~application to the court~~ for ~~the~~ entry of a default judgment ~~based on his default~~. This enables a defendant in default to appear at a subsequent hearing on the question of damages and contest the amount to be assessed against that part~~him~~. Damages must be fixed before an entry of default judgment, and there is no estoppel by judgment until the judgment by default has been entered.

When a judgment by default is entered, it is treated as a conclusive and final adjudication of the issues necessary to justify the relief awarded and is given the same effect as a judgment rendered after a trial on the merits. A ~~judgment entered pursuant to~~ Rule 55(b) judgment may be reviewed on appeal to the same extent as another~~any other~~ judgment; however, an order denying a motion for a default judgment is interlocutory and not appealable. Miss. ~~M.~~R. Civ. ~~C.~~P. 54(a).

After entry of default by the clerk, defendant has no further standing to contest the actual factual allegations of the plaintiff's claim for relief. If a defendant wants~~wishes~~ an opportunity to challenge plaintiff's right to recover, a defendant's only recourse is to show good cause for setting aside the default under Rule 55(c)~~,~~) and if~~, failing~~ that fails, to contest the amount of recovery.

After entry of default by the clerk, the court must conduct an evidentiary hearing on the record to decide~~determine~~ damages in cases where~~in which~~ the plaintiff seeks unliquidated damages. *Capitol One Servcs.,~~Services,~~ Inc. v. Rawls*, 904 So. 2d 1010, 1018 (Miss. 2004). "[L]iquidated damages are set or determined by contract, while unliquidated damages are established by a verdict or award and cannot be determined by a fixed formula." *Id.* (quoting *Moeller v. Amer.~~American~~ Guar. & Liab. Ins. Co.*, 812 So. 2d 953, 959-60 (Miss. 2002)). Under Miss. R. Civ. P. ~~Pursuant to M.R.C.P.~~ 54(c), a default judgment must~~shall~~ only order the type of relief sought in the demand for judgment (i.e., money damages~~moneydamages~~, equitable relief, etc.), and must~~shall~~ not order money damages~~moneydamages~~ in an amount that exceeds the amount sought in the demand for judgment.

If a default has been entered~~,~~ but a default judgment has not ~~yet been entered~~, the defending party may move to set aside the entry of default for~~"[f]or~~ good cause under Miss.

~~shown" pursuant to M.~~R. Civ. ~~C.~~P. 55(c). If a default judgment has been entered, the defendant may move

to set aside the default judgment under Miss. ~~pursuant to M.~~R. Civ. ~~C.~~P. 60(b). The standard for setting aside an entry of default under Miss. ~~pursuant to M.~~R. Civ. ~~C.~~P. 55(c) is more liberal than the standard for doing so under Miss. ~~setting aside a default judgment pursuant to M.~~R. Civ. ~~C.~~P. 60(b). *See King v. Sigrest*, 641 So. 2d 1158, 1162 (Miss. 1994).

Rule

~~RULE~~ 56. Summary judgment. ~~SUMMARY JUDGMENT~~

(a) For claimant. After 30**~~Claimant.~~** ~~A party seeking to recover upon a claim, counterclaim, or cross-claim, or to obtain a declaratory judgment may, at any time after the expiration of thirty~~ days from when an ~~the commencement of the~~ action is commenced or after the adverse party serves~~service of~~ a motion for summary judgment, a party seeking a declaratory judgment or to recover on a claim, counterclaim, or crossclaim may ~~by the adverse party,~~ move with or without supporting affidavits for a summary judgment or a partial summary judgment in that party's~~in his~~ favor. ~~upon all or any part thereof.~~

(b) For defending party.~~Defending Party.~~ A party against whom a claim, counterclaim~~counter-claim~~, or crossclaim~~cross-claim~~ is asserted or a declaratory judgment is sought may~~, at any time,~~ move with or without supporting affidavits for a summary judgment or partial summary judgment in that party's~~his~~ favor ~~as to all or any part thereof~~.

(c) Motion; proceedings.

(1) Notice. ~~and Proceedings Thereon.~~ The motion must~~shall~~ be served at least 21~~ten~~ days before the ~~time fixed for the~~ hearing date.

(2) Opposing affidavits. ~~.~~ The adverse party must ~~prior to the day of the hearing may~~ serve opposing affidavits with its response to the motion and in any event, not later than 10 days before the hearing.

(3) Summary~~.~~ ~~The~~ judgment; partial summary judgment.

(A) Summary judgment or partial summary judgment must ~~sought shall~~ be rendered ~~forthwith~~ if ~~the~~ pleadings, depositions, interrogatory answers, ~~to interrogatories and~~ admissions, and ~~on file, together with the~~ affidavits in the record~~, if any,~~ show that ~~there is~~ no genuine issue as to a~~any~~ material fact exists and that the moving party is entitled to a judgment as a matter of law.

~~(c)~~(B) Although a genuine issue as to the amount of damages exists,~~A~~ summary judgment~~, interlocutory in character,~~ may be rendered on the issue of liability alone and is interlocutory in character~~, although there is a genuine issue as to the amount of damages~~.

(d) Case not fully adjudicated~~Not Fully Adjudicated~~ on motion.

(1) ~~Motion.~~ If on a motion under this rule a trial is necessary because judgment is not rendered on the whole case or for all requested~~the~~ relief ~~asked and a trial is necessary~~, the court must~~at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall~~ if practicable at the

motion hearing ascertain what material facts exist without substantial controversy and what material facts are actually disputed~~and~~ in good faith by examining pleadings and evidence before it and interrogating counsel.

~~**(d)**~~**(A)** Afterwards, the court must issue~~controverted. It shall thereupon make~~ an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not disputed~~in controversy~~, and ordering additional~~directing such further~~ proceedings ~~in the action~~ as are just. ~~Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.~~

(B) The trial must be conducted according to the order, including that facts specified in it be deemed established.

(e) Affidavit form; additional testimony; defense required.
A supporting or

(1) ~~**Form of Affidavits; Further Testimony; Defense Required.** Supporting and~~ opposing affidavit must:

(A) Must~~affidavits shall~~ be based~~made~~ on personal knowledge;
(B) State~~, shall set forth such~~ facts as would be admissible in evidence;~~,~~ and
(C) Affirmatively ~~shall~~ show ~~affirmatively that~~ the affiant is competent to testify to the matter stated in it.

(2) ~~therein.~~ Sworn or certified copies of ~~all~~ papers or parts of papers~~thereof~~ referred to in an affidavit must~~shall~~ be attached to the affidavit~~thereto~~ or served with it.

(3) ~~therewith.~~ The court may allow an affidavit~~permit affidavits~~ to be supplemented or opposed by depositions, interrogatory answers ~~to interrogatories~~, or other~~further~~ affidavits.

~~**(e)**~~ When a motion for summary judgment is filed~~made~~ and supported as stated ~~provided~~

(4) in this rule, an adverse party may not rest on~~upon the~~ mere allegations or denials in that party's~~of his~~ pleadings.

(A) By affidavit or ~~, but his response, by affidavits or as~~ otherwise under~~provided in~~ this rule, the party's response must state~~set forth~~ specific facts showing ~~that there is~~ a genuine issue for trial exists.

(B) ~~.~~ If the party's response fails to do~~he does not~~ so ~~respond~~, summary judgment~~,~~ if appropriate must~~, shall~~ be entered against that party~~him~~.

(f) Affidavit unavailable. If it appears~~When Affidavits Are Unavailable. Should it appear~~ from the nonmovant's affidavits ~~of a party opposing the motion~~ that ~~he cannot~~ for reasons stated the nonmovant cannot present by affidavit facts essential to justify ~~his~~ opposition to the motion, the court may:

(1) Deny ~~refuse~~ the motion;~~application for judgment~~ or

(2) Order~~may order~~ a continuance to allow the nonmovant to obtain~~permit~~ affidavits, take ~~to be obtained or~~ depositions, ~~to be taken~~ or conduct other discovery; ~~to be had~~ or

~~**(f)**~~**(3)** Issue an ~~may make such~~ order as is just.

(g) Affidavit~~Affidavits Made~~ in bad faith. If~~Bad Faith. Should~~ it appears~~appear~~ to the court's satisfaction an affidavit is~~of the court at any time that any of the affidavits~~ presented under~~pursuant to~~ this rule ~~are presented~~ in bad faith or solely for the purpose of delay, the court must~~shall forthwith~~ order the offending party ~~employing them~~ to pay to the other party's ~~party the amount of the~~ reasonable expenses incurred because~~which the filing of~~ the affidavit was filed~~affidavits caused him to incur~~, including reasonable attorney's fees. The court may also decide an~~, and any~~ offending party or attorney is~~may be adjudged~~ guilty of contempt.

(h) Costs, attorney's fees if summary judgment denied. ~~to Prevailing Party When Summary Judgment Denied.~~ If summary judgment is denied, the court must~~shall~~ award to the prevailing party ~~the~~ reasonable expenses incurred in attending the motion hearing. The court may award attorney's fees ~~of the motion and may,~~ if it finds that the motion is without reasonable cause~~, award attorneys' fees~~.

Advisory Committee Notes

~~Advisory Committee Notes~~

It is important to distinguish among: (1)~~between~~ a Rule 56 motion for summary judgment; (2)~~,~~ a Rule 12(b)(6) motion to dismiss for failure to state a claim;~~,~~ and (3) a Rule 12(c) motion for judgment on the pleadings.

When ruling on a Rule 56 motion for summary judgment, the trial court may "pierce the pleadings" and consider extrinsic evidence like~~, such as~~ affidavits, depositions, interrogatory answers~~ to interrogatories~~, and admissions.

But when~~When~~ ruling on a Rule 12(b)(6) motion to dismiss for failure to state a claim, the trial court may not "pierce the pleadings" and must~~shall~~ only consider the allegations contained in the pleading asserting the claim. Likewise~~Similarly~~, when ruling on a Rule 12(c) motion on the pleadings, the trial court must~~shall~~ only consider the allegations within the pleadings.

If matters outside the pleadings are presented ~~to~~ and considered on ~~by the trial court in connection with~~ a Rule 12(b)(6) or (b)(c) motion ~~for judgment on the pleadings or a motion to dismiss for failure to state a claim~~, the trial court must treat the motion as one for summary judgment and give all parties a reasonable opportunity to respond accordingly. *See* Miss. ~~M.~~R. Civ. ~~C.~~P. 12(b) and (c); *Huff-Cook, Inc. v. Dale*, 913 So. 2d 988, 992 (Miss. 2005). If the ~~trial~~ court converts a Rule 12 motion into a Rule 56 motion, it~~the trial court~~ must give ~~the~~ parties notice of the conversion~~motion's changed status~~ and at least 10 days~~ten days' notice~~ of its intent to conduct a summary

judgment hearing on a ~~date~~ certain date. *See Dale*, 913 So. 2d at 988. A trial court's failure to give proper notice constitutes reversible error. *See Palmer v. Biloxi Reg'l Med. Ctr., Inc.*, 649 So. 2d 179, 183 (Miss. 1994).

A trial court does not need to~~not~~ make findings of fact when ruling on a motion for summary judgment because "a Rule 56 summary judgment hearing is not a nonjury~~an~~ action ~~'tried upon the facts without a jury'~~ so as to trigger Rule 52 applicability." *See Harmon v. Regions Bank*, 961 So. 2d 693, 700 (Miss. 2007). *See also* Uniform Rules of Circuit and County Court Practice. A movant~~Movant~~ must do more than simply state a meritorious defense.

Under

~~Pursuant to~~ Rule 78, oral hearing on a motion for summary judgment is not necessary where dis

pensed~~such hearing is dispensed~~ with by court order or rule.

Rule

~~RULE~~ 57. Declaratory judgment. ~~DECLARATORY JUDGMENTS~~

(a) Procedure. Courts of record within their respective jurisdictions may declare rights, status, and other legal relations regardless of whether otherfurther relief is or could be claimed. The court may refuse to render or orderenter a declaratory judgment where doing sosuch judgment, if entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

(1) The procedure for obtaining a declaratory judgment must be according to these rules. shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in actions where it is appropriate.

(2) The right to a jury trial may be demanded under circumstances and in the manner stated in Rules 38 and 39.

(3) The existence of another adequate remedy does not preclude a judgment for declaratory relief in an action where it is appropriate.

(4) The court may order a speedy hearing of an action for declaratory judgment and may advance it on the calendar. The judgment in an action fora declaratory relief action may be either affirmative or negative in form and effect.

(b) When available. Available.

A

(1) Any person interested under a deed, will, written contract, or other writingwritings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may:

(1)**(A)** Have a have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise decided; and , and obtain a declaration of rights, status or other legal relations thereunder.

(B) Obtain a declaration of rights, status, or other legal relations under it.

(2) A contract may be construed either before or after it is breached. Ifthere has been a breach thereof. Where an insurer has denied or indicated that it may deny that a contract covers a party's claim against an insured or indicated it may do so, that party may seek a declaratory judgment construing the contract to cover the claim.

(3) AAny person interested as or through an executor, administrator, trustee guardian, or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust in the administration of a trust, a decedent'sor of the estate, of a decedent, an infant, insolvent, or person under a legal disability, may have a declaration of rights or legal relations in respect thereto:

(3) to:

(A) Ascertain a ~~ascertain any~~ class of creditors, devisees, legatees, heirs, next of kin, or others;

Direct the executor, administrator, or trustee~~or,~~

(B) ~~to direct the executors, administrators, or trustees,~~ to do or abstain from doing a~~any~~ particular act in a~~their~~ fiduciary capacity; or~~,~~

Decide a

(C) ~~to determine any~~ question arising in the administration of the estate or trust, including a question~~questions~~ of construction of wills and other writings.

(4) The enumeration in Rule 57(b) do~~subdivisions (1), (2) and (3) of this rule does~~ not limit or restrict the exercise of the general powers stated in Rule 57~~paragraph~~ (a) in a~~any~~ proceeding where declaratory relief is sought, and ~~in which~~ a judgment will terminate the controversy or remove an uncertainty.

[Amended effective 7/~~July~~ 27/00~~, 2000~~.]

~~**Advisory Committee Notes**~~

Advisory Committee Notes

A plaintiff may ask for a declaratory judgment either as sole relief or in addition ~~or auxiliary~~ to other relief; likewise~~, and~~ a defendant may ~~similarly~~ counterclaim for one. As a result,~~therefor. Thus~~ the court is not limited only to remedial relief for acts already committed or losses already incurred; it may either substitute or add preventive and declaratory relief. It may be sought on~~upon either~~ legal or equitable claims, and the right to a jury trial is fully preserved as in civil actions generally.

Absent extraordinary circumstances, the failure to order separate trials in order to avoid putting the issue of insurance before a~~the~~ jury deciding~~which tries~~ liability and damages ~~as~~ between the insured and the injured party will be deemed an abuse of discretion.

Rule

~~RULE~~ 58. Entering~~ENTRY OF JUDGMENT~~

~~Every~~ judgment.

A judgment must~~ shall~~ be stated~~set forth~~ on a separate document titled ~~which bears the title of~~ "Judgment." But in the absence of prejudice to a party~~However~~, a judgment~~ which~~ fully adjudicating~~adjudicates~~ the claim as to all parties and ~~which has been~~ entered as stated~~provided~~ in Miss. ~~M.~~R. Civ. ~~C.~~P. 79(a) must ~~shall, in the absence of prejudice to a party,~~ have the force and finality of a judgment even if ~~it is~~ not properly titled. A judgment must~~shall~~ be effective only when entered as stated~~provided~~ in Miss. ~~M.~~R. Civ. ~~C.~~P. 79(a).

[Amended effective 7/~~July~~ 1/01~~, 2001~~; amended effective 5/~~May~~ 27/04~~, 2004~~ to address finality of improperly titled judgment.]

Advisory Committee Historical Note

Effective 7/~~July~~ 1/94~~, 1994~~, a new Rule 58 was adopted. 632-35~~635~~ So. 2d XXXII-XXXIII
(West Miss. Cases 1994).

[Adopted 8/~~August~~ 21/96~~, 1996~~.]

Advisory Committee Notes

The "entry" of the judgment is the ministerial notation of the judgment by the clerk of the court under~~pursuant to~~ Rules 38 and 79(a); however, it is crucial to the effectiveness of the judgment and for measuring time periods to~~for~~ appeal and to file~~the filing of~~ various motions.

Rule 59. New trial; amending a judgment.

~~RULE 59. NEW TRIALS; AMENDMENT OF JUDGMENTS~~

(a) Grounds.

(1) A new trial may be granted to a party~~all or any of the parties and~~ on all or part of the issues:

(A) In a ~~(1) in an action in which there has been a trial by~~ jury action~~,~~ for a reason a ~~any of the reasons for which~~ new trial previously has~~trials have heretofore~~ been granted in an action~~actions~~ at law in ~~the courts of~~ Mississippi courts; and

~~**(a)**~~**(B)** In a nonjury ~~(2) in an~~ action ~~tried without a jury,~~ for a reason a rehearing previously has~~any of the reasons for which rehearings have heretofore~~ been granted in a suit~~suits~~ in equity in ~~the courts of~~ Mississippi courts.

(2) On a motion for a new trial in a nonjury~~an~~ action ~~without a jury~~, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law, ~~or~~ make new findings and conclusions, and order~~direct~~ the entry of a new judgment.

(b) Time for motion~~Motion~~. A motion for a new trial must~~shall~~ be filed not later than 10~~ten~~ days after the entry of judgment.

(c) Affidavit; time.~~Time for Serving Affidavits.~~ When a motion for new trial is based on an affidavit, it must~~upon affidavits they shall~~ be filed with the motion. The opposing party has 10~~ten~~ days after service to file opposing affidavits. The 10-day~~, which~~ period may be extended for up to 20~~twenty~~ days either by the court for good cause ~~shown~~ or ~~by~~ the parties' written stipulation. The court may allow~~permit~~ reply affidavits.

(d) By the court.

(1) ~~**On Initiative of Court.**~~ Not later than 10~~ten~~ days after entry of judgment, the court may ~~on its own initiative~~ order a new trial for a~~any~~ reason for which it might have granted a new trial on a party's motion.

~~**(d)**~~**(2)** ~~of a party.~~ After giving the parties notice and an opportunity to be heard on the matter, the court may grant a timely motion for a new trial for a reason not stated in the motion. ~~In either case, the court shall specify in the order the grounds therefor.~~

(3) In either case, the court must specify in the order the grounds for it.

(e) Motion to alter~~Alter~~ or amend~~Amend~~ a judgment; time.~~Judgment.~~ A motion to alter or amend the judgment must~~shall~~ be filed not later than 10~~ten~~ days after entry of the judgment.

[Amended effective 7/~~July~~ 1/97~~, 1997~~.]

Advisory Committee Historical Note

Effective 7/~~July~~ 1/97~~, 1997~~, Rule 59(b), (c) and (e) were amended to clarify that motions for a new trial and accompanying affidavits~~,~~ and that motions to alter or amend a judgment~~,~~ must be filed not later than 10~~that ten~~ days after entry of judgment. 689 So. 2d XLIX (West Miss. Cases).

Advisory Committee Notes

In a jury trialtrials, the trial court may grant a new trial based on: (1)upon a prejudicial error by the court in admittingthe admission or excludingexclusion of evidence; (2), an error in the jury instructions; (3), prejudicial comments by the judge or attorneys; (4), a finding that the verdict is against the great weight of the evidence; (5), a finding that the jury's verdict is the result of passion, prejudice, or bias;, or (6)any grounds onupon which new trials were granted in actions at law prior to the adoption of these rules. A trial court's ruling on a motion for new trial is reviewed for abuse of discretion.

Although "[i]t is clearly better practice to include all potential assignments of error in a motion for new trial, . . . ,. . .when the assignment of error is based on an issue which has been decided by the trial court and duly recorded in the court reporter's transcript, such as the omission or exclusion of evidence, [the appellate court] may consider it regardless of whether it was raised in the motion for new trial." *See Kiddy v. Lipscomb*, 628 So. 2d 1355, 1359 (Miss. 1993).

The rule does not authorize a motion for reconsideration after entry of judgment. If a motion is mislabeled as a motion for reconsideration and was filed within 10ten days after the entry of judgment, the trial court should treat thesuch motion as a post-trial motion to alter or amend the judgment under Miss. pursuant to M.R. Civ. C.P. 59(e). *Boyles v. Schlumberger Tech. Corp.*, 792 So. 2d 262, 265 (Miss. 2001). A party moving to alter or amend the judgment "must show:

(i) an intervening change in controlling law, (ii) availability of new evidence not previously available, or (iii) need to correct a clear error of law to prevent manifest injustice." *See Brooks v. Robertson*, 882 So. 2d 229, 233 (Miss. 2004). A motion to alter or amend the judgment is within the trial court's discretion. When a motion is mislabeled as a motion for reconsideration, does not state that it was brought underpursuant to Rule 59, and was filed more than 10ten days after the entry of the final judgment in the case, the trial court should treat thesuch motion as one for relief from a judgment underpursuant to Rule 60(b). *See Carlisle v. Allen*, 40 So. 3d 1252, 1260 (Miss. 2010).

A motion for new trial or a motion to alter or amend the judgment under Miss. R. Civ. made pursuant to

M.R.C.P. 59 must be filed within 10 days after entry of the judgment. The trial court has no authority or discretion to extend the 10-day time period. Miss. M.R. Civ. C.P. 6(b). A timely Rule 59 motion for a new trial or to alter or amend the judgment tolls the time for filingin which to file a notice of appeal; the 30thirty-day time period for filingin which to file a notice of appeal runs from the entry of the order disposing of the post-trial motion. Miss. M.R. App. A.P. 4(c). If not filed within 10ten days after entry of the judgment, a Rule 59 motion for a new trial, to alter or amend the judgment, or for reconsideration does not toll the time period for filingin which to file a notice of appeal. Miss. M.R. App. A.P. 4(d); *but see*

Wilburn v. Wilburn, 991 So. 2d 1185, 1190-191 (Miss. 2008) (court~~Court~~ refused to address ~~the~~ timeliness of appellant's notice of appeal even though appellant filed a motion to reconsider more than 10 days after entry of judgment and did not file a notice of appeal within 30 days after entry of judgment and noted that the appellee did not object to the untimely motion to reconsider.)

~~filed a motion to reconsider more than ten days after entry of judgment and did not file a notice of appeal within thirty days after the entry of judgment, noting that the appellee did not object to the untimely motion to reconsider.)~~

A Rule 60(b) motion for relief from a final judgment ~~pursuant to M.R.C.P. 60(b)~~ is different from a Rule 59(e) motion to alter or amend the judgment ~~pursuant to M.R.C.P. 59(e)~~ in that a change in the law after entry of final judgment is not an "extraordinary or compelling circumstance" warranting relief under Miss. ~~pursuant to M.~~R. Civ. ~~C.~~P. 60(b). *See Regan v. S. Cent. Reg'l Med. Ctr.*, 47 So. 3d 651, 655 (Miss. 2010). Relief under~~pursuant to~~ Rule 60(b)(6) is reserved for cases involving "exceptional and compelling circumstances" in light of the desire to achieve finality in litigation. *See id.*

Rule 60. Relief from judgment or order.

~~RULE 60. RELIEF FROM JUDGMENT OR ORDER~~

(a) Clerical mistake. On its own or a party's motion, the court may correct a clerical mistake or error~~Mistakes. Clerical mistakes in judgments, orders, or other parts of the record and errors therein~~ arising from oversight or omission in a judgment, order, or other part of the record ~~may be corrected by the court at any time on its own initiative or on the motion of any party and~~ after ~~such~~ notice~~,~~ if ordered and ~~any, as the court orders up~~ until the court clerk transmits~~time~~ the record ~~is transmitted by the clerk of the trial court~~ to the appellate court, and the action remains pending in the appellate court. Otherwise, a mistake or error~~therein. Thereafter, such mistakes~~ may be ~~so~~ corrected only on~~with leave of~~ the appellate court's order~~court~~.

(b) Mistake, other basis for relief; time for ~~Mistakes; Inadvertence; Newly Discovered Evidence; Fraud, etc.~~ On motion.

~~(b)~~(1) On a motion and just~~upon such~~ terms ~~as are just~~, the court may relieve a party or party's~~his~~ legal representative from a final judgment, order, or proceeding for the following reasons:

~~(1)~~**(A)** An adverse party's fraud, misrepresentation, or other misconduct ~~of an adverse party~~;

Accident

~~(2)~~**(B)** ~~accident~~ or mistake;

Newly

~~(3)~~**(C)** ~~newly~~ discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

The

~~(4)~~**(D)** ~~the~~ judgment is void;

The

(E) ~~the~~ judgment has been satisfied, released, or discharged;

(F) A~~, or a~~ prior judgment on~~upon~~ which the judgment~~it~~ is based has been reversed or otherwise vacated;

~~(5)~~**(G)** It~~, or it~~ is no longer equitable that the judgment should have prospective application; or

Another

~~(6)~~**(H)** ~~any other~~ reason justifying relief from the judgment.

(2) Time. The motion must~~shall~~ be filed~~made~~ within a reasonable time. For~~, and for~~ reasons in Rule 60(b)(~~(~~1)(A), (B)~~, (~~2) and (C), the motion must be filed~~3)~~ not more than six months after the judgment, order, or proceeding was entered or taken.

(3) Finality. A Rule 60 motion ~~under this subdivision~~ does not affect the finality of a judgment or suspend its operation.

(4) Leave from appellate court. Leave to make the motion does not need to~~not~~ be obtained from the appellate court unless the record has been transmitted ~~to the appellate court~~ and the action remains pending in it.

(5) Independent action.~~therein.~~ This rule does not limit a court's~~the~~ power ~~of a court~~ to entertain an independent action to relieve a party from a judgment, order, or proceeding~~,~~ or to set aside a judgment for fraud upon the court.

(6) Writs abolished. Writs of coram nobis, coram vobis, audita querela, ~~and~~ bills of review, and bills in the nature of a bill of review~~,~~ are abolished. The procedure for obtaining ~~any~~ relief from a judgment must~~shall~~ be by motion as prescribed in these rules or ~~by~~ an independent action and not otherwise.

(c) Reconsideration of transfer order. An order transferring a case to another court will become effective ~~ten (~~10~~)~~ days following the ~~date of~~ entry date. A~~of the order. Any~~ motion for reconsideration of the transfer order must be filed prior to the expiration of the 10-day period, and no extensions may be granted. ~~for which no extensions may be granted. If a motion for reconsideration is filed, all proceedings will be stayed until such time as the motion is ruled upon; however, if the transferor court fails to rule on the motion for reconsideration within thirty (30) days of the date of filing, the motion shall be deemed denied.~~

(1) If a motion for reconsideration is filed, all proceedings will be stayed until the motion is decided. But if the court fails to rule on the motion for reconsideration within 30 days of filing, the motion must be deemed denied.

[Amended effective 7/~~July~~ 1/08~~, 2008~~, to provide for reconsideration of transfer orders entered on or after that date.]

Advisory Committee Notes

The trial court may grant relief from a judgment or order to correct clerical errors under~~pursuant to~~ Rule 60(a)~~),~~ or for other reasons enumerated in Rule 60(b). The trial court may correct a clerical error~~errors~~ at any time. But~~, but~~ if the case is on appeal and the trial court clerk has transmitted the record to the appellate court, the trial court must obtain leave from the appellate court before correcting a~~any~~ clerical mistake. A motion~~mistakes. Motions~~ for relief from a judgment or order based on~~upon~~ one of the reasons enumerated in Rule 60(b) must be filed~~made~~ within a reasonable time, and in some cases, not more than six months after the judgment or order was entered.

Rule 60(a) only authorizes the trial court to correct clerical errors; it does not authorize ~~any~~ changes to the judgment that are substantive and change the effect or intent of the original judgment. *See Whitney Nat'l Bank v. Smith*, 613 So. 2d 312, 316 (Miss. 1993).

When ruling on~~upon~~ a Rule 60(b) motion, the trial court should balance the litigant's interest in a resolution on the merits of the motion with the desire to achieve finality in litigation. *See Stringfellow v. Stringfellow*, 451 So. 2d 219, 221 (Miss. 1984). Rule 60(b) motions that attempt to merely relitigate the case should be denied. *Id*.

A party moving for ~~relief pursuant to~~ Rule 60(b)(1)~~(A) relief)~~ based upon fraud, misrepresentation or other misconduct of an adverse party must do so within six months after entry of the judgment and ~~must~~ prove the fraud, misrepresentation, or other misconduct by clear and convincing evidence. *See id.~~Stringfellow, 451 So. 2d~~* at 221. Relief from a final judgment based on~~upon~~ fraud upon the court may be sought under~~pursuant to~~ Rule 60(b)(5~~6~~). *See In re Estate of Pearson*, 25 So. 3d 392, 395 (Miss. Ct. App. 2009).

> "[R]elief based on 'fraud upon the court' is reserved for only the most egregious misconduct, and requires a showing of 'an unconscionable plan or scheme which is designed to improperly influence the court

in its decision.'" *Id.* (citing *Wilson v. Johns-Manville Sales Corp.*, 873 F.2d 869, 872 (5th Cir. 1989)).

A party moving for ~~relief pursuant to~~ Rule 60(b)(1)(B) relief~~2)~~ based on an~~upon~~ accident or mistake must do so within six months after entry of the judgment. A Rule 60(b)(1)(B~~2~~) motion will only be granted on~~upon~~ a showing of exceptional circumstances. Generally, "neither ignorance nor carelessness on the part of an attorney will provide grounds for relief." *See Stringfellow*, 451 So. 2d at 221.

A party may move to set aside a default judgment under~~pursuant to~~ Rule 60(b)(1)(B~~2~~). When ruling on the~~such a~~ motion, the trial court may consider: (1) whether the default was caused by excusable neglect or a bona fide technical error; (2) whether the claimant will suffer prejudice if the default judgment is set aside; and (3) whether the defaulting party has a colorable defense to the merits. *See State Highway Comm'n of Miss. v. Hyman*, 592 So. 2d 952, 955 (Miss. 1991). A movant~~Movant~~ must show the specific facts of the meritorious defenses by affidavit or other sworn form of evidence. *Amer.~~American~~ Cable Corp. v. Trilogy Commc'ns~~Communiations~~, Inc.*, 754 So. 2d 545 (Miss. 2000).

A party moving for ~~relief pursuant to~~ Rule 60(b)(1)(C) relief~~3)~~ based on~~upon~~ newly discovered evidence must do so within six months after entry of the judgment. To justify relief, the evidence: (1~~i~~) must have been in existence at the time of trial; (2~~ii~~) could not have been discovered by due diligence prior to the expiration of the 10~~ten~~-day period for filing~~in which~~ a Rule 59 motion for new trial~~; (3 could have been filed; (iii~~) must be material and not cumulative; and (4~~iv~~) must be of a~~such~~ character that will~~as to~~ probably produce a different result in the event of a new trial or ~~be of such character as to~~ require a different ruling on summary judgment. *See January v. Barnes*, 621 So. 2d 915, 920 (Miss. 1992).

A party may move to set aside a void judgment under~~pursuant to~~ Rule 60(b)(1)(D~~4~~) more than six months after entry of the judgment if the delay in moving for relief was reasonable. *See Ladner v. Logan*, 857 So. 2d 764, 770 (Miss. 2003). A judgment is void if the trial court lacked jurisdiction over the subject matter or the parties or acted in a manner inconsistent with due process of law. *See Bryant, Inc. v. Walters*, 493 So. 2d 933, 938 (Miss. 1986).

A party may move to set aside the judgment under~~pursuant to~~ Rule 60(b)(1)(E), (F), or (G~~5~~) if the judgment has been satisfied, released or discharged or a prior judgment upon which it is based has been reversed or otherwise vacated. Rule 60(b)(1)(E), (F), or (G~~5~~), however, "does not authorize relief from a judgment on the ground that the law applied by the court in making its adjudication has been subsequently overruled or declared erroneous in another and unrelated proceeding." *See Regan v. S. Cent. Reg'l Med. Ctr.*, 47 So. 3d 651, 655 (Miss. 2010) (former Rule 60(b)(5)).~~)~~

A party may move to set aside the judgment underpursuant to Rule 60(b)(1)(H6) if there are "extraordinary and compelling" circumstances justifying relief. When ruling on a Rule 60(b)(1)(H6) motion, the trial court may consider the following factors: "(1) [t]hat final judgments should not lightly be disturbed; (2) that the Rule 60(b) motion is not to be used as a substitute for appeal; (3) that the rule should be liberally construed in order to achieve substantial justice; (4) whether the motion was filedmade within a reasonable time; (5) [omitted factor relevant only to default judgments]; (6) whether if the judgment was rendered after a trial on the merits-the movant had a fair opportunity to present [a]his claim or defense; (7) whether there are intervening equities that would make it inequitable to grant relief; and (8) any other factors relevant to the justice of the judgment under attack." *See Carpenter v. Berry*, 58 So. 3d 1158, 1162 (Miss. 2011).

The trial court has discretion to grant or deny a Rule 60(b) motion, unless the judgment is void—, in which case the court is required to set it aside the judgment. *See Sartain v. White*, 588 So. 2d 204, 211 (Miss. 1991).

Motions for relief under this rule are filed in the original action, rather than as an independent action.

Rule 60 motions for relief from a judgment filed no later than 10ten days after entry of judgment toll the time period for filingin which an appeal. Miss. may be taken. M.R. App. A.P. 4(d). Rule 60 motions filed more than 10ten days after entry of judgment do not toll the time period for filingin which an appeal. may be taken. A Rule 60(b) motion for relief from a judgment does not automatically stay execution onupon the judgment. The trial court has discretion to stay execution onupon the judgment while a Rule 60(b) motion is pending. Miss. M.R. Civ. C.P. 62(b).

Rule

~~RULE~~ 61. Harmless~~HARMLESSS ERROR~~

~~No~~ **error.**

(a) Not a basis for ~~in either the admission or the exclusion of evidence and no~~ **error; exception.**

(1) Unless refusing to do so appears inconsistent with substantial justice, none of the following ~~in any ruling or order or in anything done or omitted by the court or by any of the parties~~ is a basis~~ground~~ for granting a new trial; ~~or for~~ setting aside a verdict; or ~~for~~ vacating, modifying, or otherwise disturbing a judgment or order:

(A) An error in admitting or excluding evidence;

(B) An error in a ruling or order; or

(C) Anything done or omitted by the court or a party.

(2) At~~, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at~~ every stage, ~~of~~ the court~~proceeding~~ must disregard an~~any~~ error or defect in the proceeding which does not affect a party's~~the~~ substantial rights ~~of the parties~~.

Rule 62. Staying proceeding to enforce a judgment.

RULE 62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

(a) Automatic stay; exceptions. Except as stated in this rule, a judgment, and no enforcement proceedings may be taken until 10 days after it is entered or a motion for a new trial is disposed of—whichever is later.

(1) Injunction; receivership.

(A) But unless the court orders otherwise, an interlocutory or final judgment in an action for an injunction or receivership must not be stayed after it is entered, even if an appeal is taken.

(B) Rule 62(c) governs suspending, modifying, restoring, or granting an injunction if an appeal is taken.

(b) Stay on motion. In its discretion and on proper conditions for the adverse party's security, a party as are proper, the court may stay the execution of a judgment or enforcement proceedings pending the disposition of the following:

(1) A Rule 59 motion to alter or amend a judgment;
(2) A Rule 60(b) motion for relief from a judgment or order;
(3) A Rule 50(b) motion to set aside a verdict; or
(4) A Rule 52(b) motion to amend the findings or make additional findings.

(c) Injunction pending appeal. On When an interlocutory or final judgment has been rendered granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction while the pendency of an appeal from such judgment is appealed upon such terms as to bond or otherwise as it considers proper terms to secure the security of the rights of the adverse party's rights. The court's power to issue such an order is not terminated by appealing the taking of the appeal.

(d) Stay on appeal. Unless Rule 62(a) states otherwise, when an appeal is taken, the appellant may obtain a stay if , when and when as authorized by

statute or otherwise~~, may obtain a stay subject to the exceptions contained in subdivision (a) of this rule~~.

(e) [Omitted].

(f) Stay in favor~~Favor of the State~~ of Mississippi or a state agency. A court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal ~~**Agency Thereof.** When an appeal is taken~~ by the State of Mississippi, its officers, ~~or an officer~~ or its agencies~~agency thereof~~ or on an appeal directed by a~~direction of any~~ department of state~~the~~ government ~~of same and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required of the appellant~~.

(g) ~~Power of~~ Appellate court's power not limited. Rule 62 does~~**Court Not Limited.** The provisions in this rule do~~ not limit the~~any~~ power of an appellate court, ~~or of a~~ judge, or justice ~~thereof~~ to:

(1) Stay ~~stay~~ proceedings while~~during the pendency of~~ an appeal is pending;

~~**(g)**~~**(2)** Suspend~~or to suspend~~, modify, restore, or grant an injunction while an appeal is pending; or~~during the~~

Issue an

(3) ~~pendency of an appeal or to make any order~~ appropriate order to preserve the status quo or the effectiveness of the judgment ~~subsequently~~ to be entered.

(h) Stay involving multiple claims or parties. A**~~Stay of Judgment Upon Multiple Claims or as to Multiple Parties.~~** ~~When a court has ordered a final judgment under the conditions stated in Rule 54(b), the~~ court may stay enforcement of a Rule 54(b) final~~that~~ judgment until it enters~~the entering of~~ a subsequent judgment or judgments and may prescribe ~~such~~ conditions ~~as are~~ necessary to secure the benefit of the stayed judgment~~thereof~~ to the party in whose favor it was~~the judgment is~~ entered.

[Amended effective July 1, 1997.]

Advisory Committee Historical Note

Effective 7/~~July~~ 1/97~~, 1997~~, Rule 62(a) was amended to clarify that the stay of enforcement of a judgment expires 10~~ten~~ days after the later of the entry of the judgment or the disposition of a motion for a new trial.~~, and~~ Rule 62(b) was amended to state that a court may stay the execution of or ~~any~~ proceedings to enforce a judgment pending the disposition of a Rule 50(b) motion to set aside a verdict.~~ made pursuant to Rule 50(b).~~ 689-92~~692~~ So. 2d XLIX (West Miss. Cas. 1997).

Advisory Committee Notes

~~Subdivision (e) of the~~ Federal Rule of Civil Procedure 60(e) ~~Rules~~ applies to stays in favor of the United States and~~; it~~ is omitted from the Mississippi Rules of Civil Procedure.

Rule

~~RULE~~ 63. Judge's inability to proceed. ~~DISABILITY OF A JUDGE~~

(a) During trial~~Trial~~. If ~~for any reason~~ the presiding judge ~~before whom an action has been commenced~~ is unable to proceed with ~~the~~ trial, another judge regularly sitting in or assigned under law to the court where~~in which~~ the action is pending may proceed with and finish the trial after~~upon~~ certifying in the record familiarity~~that he has familiarized himself~~ with the trial record. But ~~of the trial; but~~ if unable to certify adequate familiarity~~such other judge is satisfied that he cannot adequately familiarize himself~~ with the record, the other judge ~~he~~ may exercise~~in his~~ discretion to grant a new trial.

(b) After verdict~~Verdict~~ or findings~~Findings~~. If ~~for any reason~~ the presiding judge ~~before whom an action has been tried~~ is unable to perform court~~the~~ duties ~~to be performed by the court~~ after a verdict ~~is returned,~~ or ~~after the~~ hearing ~~of~~ a nonjury action, then another~~any other~~ judge regularly sitting in or assigned under law to the trial court ~~in which the action was tried~~ may perform those duties. But~~; but~~ if unable to~~such other judge is satisfied that he cannot~~ perform those duties, the other judge ~~he~~ may exercise~~in his~~ discretion grant a new trial.

SECTION 8

~~CHAPTER VIII~~. PROVISIONAL AND FINAL REMEDIES~~;~~ ~~AND~~ SPECIAL PROCEEDINGS

Rule

~~RULE~~ 64. Seizing a ~~SEIZURE OF PERSON OR PROPERTY~~

~~**At the commencement of and during the course of an action, all remedies providing for the seizure of** **person or property.**~~

After commencing an action and during it, every remedy for seizing a person or property to satisfy a potential ~~for the purpose of securing satisfaction of the~~ judgment is ~~ultimately to be entered in the action are~~ available according to ~~under the circumstances and in the manner provided by~~ law, including ~~. These remedies include~~ attachment, replevin, claim and delivery, sequestration, and other corresponding or equivalent relief ~~remedies, however designated and~~ regardless of the designation and whether ~~the remedy is~~ ancillary or ~~to an action or must be~~ obtained by an independent action.

[Amended effective 9/~~September~~ 1/87~~, 1987~~.]

Advisory Committee Historical Note

Effective 9/~~September~~ 1/87~~, 1987~~, Rule 64 was amended by deleting "garnishment" as one of the included ~~a~~ prejudgment remedies.~~remedy included in the provisions of the Rule.~~ 508-115~~11~~ So. 2d XXIX (West Miss. Cas. 1987).

Rule

~~RULE~~ 65. Injunctions.~~INJUNCTIONS~~

(a) Preliminary injunction~~Injunction~~.

~~(1)~~ **Notice**. A ~~No~~ preliminary injunction must not~~shall~~ be issued without notice to the adverse party.

Consolidating hearing with trial on merits.

(2) ~~Consolidation of Hearing With Trial on Merits.~~ Before or after a ~~the commencement of the~~ hearing on a motion~~application~~ for ~~a~~ preliminary injunction, the court may advance~~order~~ the trial ~~of the action~~ on the merits ~~to be advanced~~ and consolidate it~~consolidated~~ with the hearing~~. of the application.~~ Even when ~~this~~ consolidation is not ordered, if admissible at trial,~~any~~ evidence received on a motion ~~upon an application~~ for ~~a~~ preliminary injunction ~~which would be admissible upon the trial on the merits~~ becomes part of the trial record ~~on the trial~~ and does not need to~~not~~ be repeated at~~upon a~~ trial. Rule 65~~This subdivision~~ (a)(2) must~~shall~~ be ~~so~~ construed and applied ~~as~~ to preserve a party's right~~save~~ to a ~~the parties any rights they may have to trial by~~ jury trial.

(b) Temporary restraining order; notice; hearing; duration.

(1) Without notice.~~Restraining Order; Notice; Hearing; Duration.~~ A temporary restraining order may be granted~~,~~ without notice to the adverse party or ~~his~~ attorney if:

(A) It ~~(1) it~~ clearly appears from specific facts shown by affidavit or ~~by the~~ verified complaint that immediate and irreparable injury, loss, or damage will result to the movant~~applicant~~ before the adverse party or ~~his~~ attorney can be heard in opposition;~~,~~ and

(B) The movant's ~~(2) the applicant's~~ attorney certifies to the court in writing:

(i) Efforts ~~the efforts, if any, which have been made~~ to give ~~the~~ notice; and

(ii) Reasons~~reasons~~ supporting the movant's~~his~~ claim that notice should not be required.

(C) Every temporary restraining order granted without notice must:

(i) State~~shall be endorsed with~~ the date and time it is issued;

(ii) Be~~hour of issuance; shall be~~ filed ~~forthwith~~ in the clerk's office and entered in the~~of~~ record;

(iii) Define~~shall define~~ the injury;

(iv) State ~~and state~~ why the injury~~it~~ is irreparable;

(v) State ~~and~~ why the order was granted without notice; and

(vi) Expire after entered~~shall expire~~ by its terms within a~~such~~ time the court specifies~~after entry,~~ not to exceed 10~~ten~~ days.

(D) Exceptions to 10-day limit. The 10-day limit in Rule 65(b)(1)(C)(vi) does not apply in ~~, as the court fixes (except in~~ domestic relations cases. It also does not apply if in the temporary restraining order the court states reasons for extending the 10~~, when the ten~~-day limitation and:

(i) Within~~shall not apply), unless within~~ the specified time ~~so fixed the order~~ for good cause shown, the court extends the temporary restraining order ~~is extended~~ for a like period; or

~~**(b)**~~**(ii)** The~~unless the~~ party against whom the order is directed consents to extending~~that~~ it ~~may be extended~~ for a longer period. ~~The reasons for the extension shall be stated in the order.~~

(2) Hearing. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction must~~shall~~ be set ~~down~~ for hearing at the earliest possible time and take precedence over all matters except older ones~~matters~~ of the same character.

(A) At~~When~~ the ~~motion comes on for~~ hearing, the party who obtained the temporary restraining order must~~shall~~ proceed with the motion~~application~~ for a preliminary injunction or otherwise~~and, if he does not do so~~, the court must~~shall~~ dissolve the temporary restraining order.

(3) On notice of two days~~days' notice~~ to a~~the~~ party who obtained a~~the~~ temporary restraining order ~~without notice~~ or less if the court orders a~~on such~~ shorter period~~notice to that party as the court may prescribe~~, the adverse party may appear and move to dissolve~~its dissolution~~ or modify the temporary restraining order. If so,~~modification and in that event~~ the court must~~shall~~ proceed to hear and decide the~~determine such~~ motion as expeditiously as the ends of justice require.

(c) Security. No restraining order or preliminary injunction must~~shall~~ issue unless~~except upon~~ the movant gives~~giving of~~ security ~~by the applicant,~~ in a~~such~~ sum ~~as~~ the court deems proper~~,~~ for paying~~the payment of such~~ costs, damages, and reasonable attorney's fees by a~~as may be incurred or suffered by any~~ party who is found to have been wrongfully enjoined or restrained.

(1) But the following are not ~~; provided, however, no such security shall be~~ required to give security:

(A) The~~of the~~ State of Mississippi; or
(B) A state~~of an~~ officer or agency.

(2) In addition, a court has ~~thereof, and provided further, in the~~ discretion ~~of the court, security may not be required~~ in domestic relations actions to waive security.

~~**(c)**~~**(3)** ~~. The provisions of~~ Rule 65.1 apples~~apply~~ to a surety on~~upon~~ a bond or undertaking under this rule.

~~**(d) Form and Scope of**~~ **Injunction or** ~~**Restraining Order.**~~

(d) ~~Every order granting a~~ **restraining order: form; scope.**

(1) Restraining order. ~~shall~~

(A) Form. An order that grants a restraining order must describe in reasonable detail~~, and~~ not merely refer~~by reference~~ to the complaint or other document~~,~~ the act or acts ~~sought~~ to be restrained.

(B) Scope. A restraining order binds~~; it is binding~~ only ~~upon~~ the following:

(i) A party~~parties~~ to the action;
(ii) A party's officer, agent, servant, employee~~, their officers, agents, servants, employees~~, and attorney;~~attorneys,~~ and

~~(1)~~**(iii)** A person who acts~~upon those persons~~ in ~~active~~ concert or participates~~participation~~ with them and who receives~~receive~~ actual notice of the order by personal service or otherwise.

(2) Injunction.

~~Every~~

(A) Form. An order that grants~~granting~~ an injunction must:

(i) State~~shall set forth~~ the reasons for issuing it;

(ii) Be~~its issuance; shall be~~ specific in terms; and

(iii) Describe~~shall describe~~ in reasonable detail ~~and~~ not merely refer~~by reference~~ to the complaint or other document the act or acts ~~sought~~ to be restrained.

(B) Scope. An injunction binds~~; and is binding~~ only ~~upon~~ the following:

(i) A party~~parties~~ to the action;

(ii) A party's officer, agent, servant, employee, and attorney; and

~~(2)~~**(iii)** A person who acts in~~, their officers, agents, servants, employees, and attorneys, and upon those persons in active~~ concert or participates~~participation~~ with them and who receives~~receive~~ actual notice of the order by personal service or otherwise.

(e) Jurisdiction unaffected. This rule does not change injunctive~~**Unaffected.** Injunctive~~ powers previously~~heretofore~~ vested in ~~the~~ circuit and chancery courts ~~remain unchanged by this rule~~.

Advisory Committee Notes

Rule 65 authorizes a party~~parties~~ to seek temporary restraining orders (TROs) and preliminary injunctions in civil cases seeking~~in which~~ permanent injunctive ~~relief~~ or other relief. ~~is being sought.~~ A party may move for a TRO, preliminary injunction, or both~~,~~ and in appropriate circumstances, obtain relief~~a TRO and/or a preliminary injunction~~ before the merits of the case are resolved.

In general

~~Generally~~, the purpose of a TRO is to provide temporary and short~~-~~term relief until additional~~further~~ action can be taken in the case.

To obtain a TRO without notice to the adverse party, the party seeking relief must show (1)~~,~~ by affidavit or verified complaint (2)~~,~~ that the party~~it~~ will suffer immediate and irreparable injury before the adverse party can be heard in opposition. In addition, that party's~~the~~ attorney ~~for the party seeking the TRO~~ must certify to the court in writing (1) the efforts made to give the adverse party notice and (2) the reasons why ~~the~~ notice to the adverse party should not be required.

A~~If a~~ TRO ~~is~~ granted without notice~~, it~~ must contain ~~the~~ information required by Rule 65(b)(1). In addition,~~) and~~ it must expire by its own terms~~,~~ not more than 10 days after entered~~its entry,~~ except in domestic relations cases. The~~Before its expiration, a TRO may be extended by the~~ court may extend a TRO for a like period (1) before it expires (2) if the restrained party consents or (3)~~the court extends the TRO~~ for good cause shown.

The purpose of a preliminary injunction is to provide injunctive relief until the merits of the case are resolved. Preliminary injunctions cannot be granted without notice.

A party who moves~~moving~~ for preliminary injunctive relief according~~pursuant~~ to Rule 65(a) must demonstrate that "(i) there exists a substantial likelihood that the [movant] will prevail on the merits; (ii) the injunction is necessary to prevent irreparable harm; (iii) the threatened injury to the [movant] outweighs the harm an injunction might do to the [opposing party]; and (iv) granting a preliminary injunction is consistent with the public interest." *See Littleton v. McAdams*, 60 So. 3d 169, 171 (Miss. 2011). A motion~~Motions~~ for preliminary injunction falls~~injunctions are~~ within the trial court's discretion. *See City of Durant v. Humphreys County Mem'l Hosp.*, 587 So. 2d 244, 250 (Miss. 1991).

Rule 65~~-~~(c) requires a ~~that proper security be given by the~~ movant who seeks~~obtaining~~ a TRO or preliminary injunction to give~~so that~~ proper security to pay~~payment for~~ costs, damages, and reasonable attorneys' fees ~~may be made~~ to the restrained party in the event it is decided~~determined~~ that ~~such~~ party was wrongfully enjoined or restrained. Security~~Such security~~ is not required from the State of Mississippi and may be waived in domestic relations cases. Section 11-13-37 of the Mississippi Code of 1972 Annotated codifies~~§11-13-37 provides~~ an independent statutory basis to award~~for awarding~~ damages and attorneys' fees if ~~upon dissolution of~~ an injunction is dissolved.

County courts have some authority to issue injunctive relief. *See* Miss.~~Mississippi~~ Code Ann. § ~~Annotated §~~9-9-21 (~~provides that~~ county court must "~~courts "shall~~ have jurisdiction concurrent with the circuit and chancery courts in all matters of law and equity" where~~wherein~~ the amount ~~of value of the things~~ in controversy does~~shall~~ not exceed $200K exclusive of interest and costs); *see also id.* § ~~exceeds…the sum of …$200,000.00." Mississippi Code Annotated §~~99-9-23 (~~provides that~~ county judge must "~~courts "shall~~ have

the power to order the issuance~~issuances~~ of writs of certiorari, supersedeas, attachments, and other remedial writs in all cases" pending in~~,~~ or within county court's ~~the~~ jurisdiction). *But cf. id.* (~~ of, [the county court]." Section 9-9-23, however, further provides that~~ county judge must "~~courts "shall~~ not have original power to issue writs of injunction, or other remedial writs in~~of~~ equity or in law" unless ~~except in those cases hereinabove specified as being~~

within ~~[~~the county court's~~]~~ jurisdiction as stated in the same provision).

~~.”~~ The statutes authorize a~~have been interpreted as authorizing~~ county court~~courts~~ to issue an injunction~~injunctions~~ in cases falling within the concurrent jurisdiction of ~~the~~ chancery and county court. *See, e.g.*, *Lee v. Coahoma Opportunities, Inc.*, 485 So. 2d 293, 294 (Miss. 1986) (citing ~~Miss. Code Ann. §~~*id.* § 9-9-21(1) (stating “)) (“A claim for specific performance of a contract of employment plus attendant injunctive relief is well within the jurisdiction of the county court on its equity side”); *Swan v. Hill*, 855 So. 2d 459, 462-63 (Miss. Ct. App. 2003) (holding that the county court had jurisdiction to issue injunctive relief in ~~a~~ case involving property rights).

65.1 Security: proceeding against surety.

When

~~65.1 SECURITY: PROCEEDINGS AGAINST SURETIES~~

~~Whenever~~ these rules require or allow a party to give ~~permit the giving of~~ security ~~by a party~~, and security is given in ~~the~~ form of a bond, ~~or~~ stipulation, or other undertaking with one or more sureties, each surety submits ~~himself~~ to the court's jurisdiction ~~of the court~~ and irrevocably appoints the court clerk ~~of the court~~ as an~~his~~ agent on~~upon~~ whom ~~any~~ papers affecting ~~the~~ liability on the bond or undertaking may be served. The surety's~~His~~ liability may be enforced on motion without the necessity of an independent action. The motion and ~~such~~ notice of it~~the motion~~ as the court orders~~prescribes~~ may be served on the court clerk ~~of the court~~, who must~~shall forthwith~~ mail copies to the surety~~sureties~~ if the~~their~~ addresses is~~are~~ known.

Rule

~~RULE~~ 66. Receiver.~~RECEIVERS~~

An action where~~wherein~~ a receiver has been appointed must~~shall~~ not be dismissed unless~~except by order of~~ the court orders otherwise. In all other respects, these rules govern an ~~the~~ action seeking to appoint~~in which the appointment of~~ a receiver or one~~is sought or which is brought~~ by or against a receiver.

~~is governed by these rules.~~
Rule

~~RULE~~ 67. Deposit in court. ~~DEPOSIT IN COURT~~

In an~~any~~ action partly or wholly seeking a money ~~in which any part of the relief sought is~~ judgment ~~for a sum of money~~ or something else that can be delivered, on~~the disposition of any other thing capable of delivery, a party, upon~~ notice to all parties~~every other party,~~ and by leave of court, a party may deposit ~~with the court~~ all or ~~any~~ part of the~~such~~ sum or thing with the court.

The judge may order ~~Where~~ money ~~is~~ paid into court as a~~to abide the~~ result of a~~any~~ legal proceeding to be~~, the judge may order it~~ deposited at interest in a federally insured bank or savings and loan association authorized to receive public funds~~,~~ to the credit of the court in the action or proceeding where~~in which~~ the money was paid. The ~~money so~~ deposited money plus ~~any~~ interest must~~shall~~ be paid only on~~upon the check of the clerk of~~ the court clerk's check that is attached to a~~, annexed with its~~ certified court order for ~~the~~ payment~~,~~ and that is made payable to ~~in favor of~~ the person stated in~~to whom~~ the order.

~~directs the payment to be made.~~

Rule

~~RULE~~ 68. Offer of judgment. ~~OFFER OF JUDGMENT~~

(a) Time.

(A) Offer. At least 15~~any time more than fifteen~~ days before ~~the~~ trial ~~begins~~, a party defending against a claim may serve an~~upon the~~ adverse party with an offer to allow judgment on ~~to be taken against him for the money or property or to the effect~~ specified terms~~in his offer,~~ with ~~costs then~~ accrued costs.

(B) Acceptance. Within 10~~. If within ten~~ days after ~~the~~ service~~, of the offer~~ the adverse party may serve~~serves~~ written notice that the offer is accepted.

(b) Effect.

(1) Accepted. If the offer is accepted, either party may then file the offer~~, and~~ notice of acceptance, and ~~together with~~ proof of service. The ~~thereof and thereupon the~~ court must then~~shall~~ enter judgment.

(2) Not accepted. If the~~An~~ offer is not accepted, it must ~~shall~~ be deemed withdrawn. ~~and evidence thereof~~

(A) Evidence of the offer or its withdrawal is not admissible except in a proceeding to decide~~determine~~ costs.

(B) If the adverse party obtains a judgment that~~finally obtained by the offeree~~ is not more favorable than the offer, the adverse party ~~offeree~~ must pay costs~~the cost~~ incurred after the ~~making of the~~ offer was filed.

(C) ~~.~~ The fact that an offer is filed~~made~~ but not accepted does not preclude a subsequent offer.

(3) Effect of a liable party's offer. When a verdict, order, or judgment decides ~~the liability of~~ one party is liable to another ~~has been determined by verdict, order or judgment~~, but the amount or extent of ~~the~~ liability remains undecided until additional~~to be determined by further~~ proceedings, the ~~party adjudged~~ liable party may make an offer of judgment.

(A) The liable party's offer must~~, which shall~~ have the same effect as an offer filed~~made~~ before trial if ~~it is~~ served within a reasonable time at least 10~~, not less than ten~~ days~~,~~ prior to the ~~commencement of~~ hearing to decide~~determine~~ the amount or extent of liability.

Rule

~~RULE~~ 69. Execution.~~EXECUTION~~

(a) Enforcing a judgment. Statutory procedures govern the following:

(1) ~~**Enforcement of Judgment.**~~ Process to enforce a money judgment;

(2) ~~judgment for the payment of money shall be by such procedures as are provided by statute.~~ The procedure on execution~~,~~ in a proceeding~~proceedings~~ supplementary to and in aid of a judgment;~~,~~ and

~~**(a)**~~**(3)** The procedure on execution in a proceeding~~proceedings~~ on and in aid of execution~~, shall be as provided by statute~~.

(b) Examination by judgment creditor.~~Judgment Creditor.~~ To aid in satisfying ~~the satisfaction of~~ a judgment of at least $100, a~~more than one hundred dollars, the~~ judgment creditor may examine the judgment debtor or another~~any other~~ person~~—~~,~~ including the debtor's or person's books, papers, or documents~~—~~on a nonprivileged ~~of same, upon any~~ matter ~~not privileged~~ relating to the debtor's property.

(1) The judgment creditor may examine the judgment debtor or other person: ~~in open court as provided by statute or may utilize the discovery procedures stated in Rules 26 through 37 hereof.~~

(A) In open court according to statute; or

(B) Utilize the discovery procedures stated in Rules 26 through 37.

Rule 70. Judgment for specific act; vesting title.

~~RULE 70. JUDGMENT FOR SPECIFIC ACTS; VESTING TITLE~~

(a) Specific acts~~Acts~~. If a judgment orders~~directs~~ a party to convey ~~execute a conveyance of~~ land~~, or~~ to deliver a deed~~deeds~~ or other document~~,documents~~ or to perform another~~any other~~ specific act, and the party fails to comply within the ~~time~~ specified time, the court may order~~direct~~ the act to be done by some other person it appoints.

(1) The court may order ~~at the cost of~~ the disobedient party to pay costs of doing~~by some other person appointed by the court and the act when~~ so.

~~**(a)**~~**(2)** The completed act ~~done~~ has the same~~like~~ effect as if ~~done by~~ the disobedient party had done it.

(b) Divesting title.~~Divestment of Title.~~ If real or personal property is in ~~within the State of~~ Mississippi, instead~~the court in lieu~~ of ordering~~directing~~ a conveyance, the court ~~thereof~~ may enter a judgment divesting a party's~~the~~ title ~~of any party~~ and vesting it in others.

~~**(b)**~~**(1)** The~~; such~~ judgment has the effect of a legally~~conveyance~~ executed conveyance~~in due form of law~~.

(c) Delivering possession.~~Delivery of Possession.~~ When an~~any~~ order or judgment is for delivering~~the delivery of~~ possession, a certified copy of the judgment or order is~~shall be~~ sufficient authority for the sheriff of the county where~~in which~~ the property is located to seize ~~same~~ and deliver it to the party entitled to its possession.

~~**Contempt.** The court may also in~~

(d) Contempt. In proper cases, the court may also find ~~adjudge~~ the party in contempt.

Advisory Committee Notes

Rule 70 applies only after a judgment is entered; Rules 6 and 65 apply to prejudgment ~~provide for~~ remedies~~. prior to judgment.~~ Rule 70 applies only if a judgment order~~directs~~ a party to convey ~~execute a conveyance of~~ land~~, or to~~ deliver a deed~~deeds~~ or other document, or~~documents~~ to perform ~~only~~ other specific acts, and the party fails~~has failed~~ to comply within the time specified in the judgment.

Rule 71. Process for and against nonparty.

Other

~~RULE 71. PROCESS IN BEHALF OF AND AGAINST PERSONS NOT PARTIES~~

~~When an order is made in favor of a person who is not a party to the action, other~~ than a party's creditor in~~of a party to~~ a divorce proceeding, when the court issues an order in favor of a nonparty, the nonparty~~he~~ may enforce ~~obedience to~~ the order by the same process as ~~if he were~~ a party. When~~; and when obedience to~~ an order may be lawfully enforced against a nonparty, the nonparty~~person who is not a party, he~~ is liable to the same process for enforcing obedience ~~to the order~~ as ~~if he were~~ a party.

Advisory Committee Notes

A court order may be enforced by a nonparty~~non-party~~ if the nonparty~~non-party~~ shares an identity of interest with the prevailing party. For example, ~~an assignee of a prevailing party~~ in a case concerning title to property, a prevailing party's assignee is entitled to enforce a judgment in the same manner as the party~~–~~ assignor. Likewise~~Similarly~~, a judgment may be against a party's~~person who is the~~ successor in interest to a party, but the court must first obtain personal jurisdiction on the successor in interest. *See, e.g.*, *Mansour v. Charmax Ind., Inc.*, 680 So. 2d 852, 855 (Miss. 1996) (holding that service of process is requirement to personal jurisdiction before Rule 71 can be applied); *Libutti v. U.S.*, 178 F.3d 114, 124-25 (2d Cir. 1999) (holding that the court must have personal jurisdiction over the nonparty~~non-party~~ against whom the judgment is enforced).

Rule

~~RULE~~ 71A. Eminent domain. [Reserved].~~EMINENT DOMAIN [RESERVED]~~

SECTION 9

~~CHAPTER IX~~. APPEALS

Rules ~~RULES~~ 72 to~~TO~~ 76. [Omitted].~~OMITTED]~~

SECTION 10

~~CHAPTER X~~. COURTS AND CLERKS

Rule ~~RULE~~ 77. Conducting business; clerk's authority; notice of order or judgment.~~COURTS AND CLERKS~~

(a) Court ~~Always Open.~~ ~~The courts shall be deemed~~ **always open**. A court must always be considered open for ~~the~~ purposes of filing ~~a~~any pleading or other ~~proper~~ paper~~;~~, ~~of~~ issuing and returning process~~;~~, and ~~of~~ making and directing all interlocutory motions, orders, and rules.

(b) Place for ~~Trials and Hearings; Orders in Chambers.~~ ~~All~~ **trials and other proceedings.**

(1) Trial. Unless a statute provides otherwise, a trial on ~~upon~~ the merits must~~shall~~ be conducted in open court.

(2) Other~~, except as otherwise provided by statute. All other~~ acts and~~or~~ proceedings. Within the judicial district, outside of it, or at another place in Mississippi, ~~may be done or conducted by~~ a judge may act and conduct proceedings other than trial in chambers.

(A) The court ~~, without the attendance of the~~ clerk or other official does not have to be present.

~~(b)~~(B) But a ~~court officials and at any place within the state either within or without the district; but no~~ hearing ~~shall be conducted~~ outside the district must not be conducted without the consent of all ~~parties~~ affected parties~~thereby~~.

(c) Clerk's ~~Office and Orders by Clerk.~~ ~~The clerk's~~ **office hours; orders.**

(1) Clerk's office hours. During business hours, the clerk's office must be open each day except Saturday, Sunday, and a legal holiday, and ~~with~~ the clerk or ~~a~~ deputy clerk must be present.

(2) Clerk's orders.

(A) The court clerk may:

(i) Issue~~in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays. All motions and applications to the clerk for issuing~~ process;

(ii) Issue~~, for issuing~~ process to enforce and execute a judgment;

(iii) Enter a default; and

(iv) Act on another matter that does ~~judgments, for entering defaults, and for other proceedings which do~~ not require the court's action.

(B) But the court may suspend, alter, or rescind the clerk's action for cause shown.

(d) Notice of order~~allowance~~ **or judgment.**

(1) Immediately after entering an order or judgment,~~order of the court are grantable of course by~~ the clerk must:

(A) Serve notice of it according to Rule 5 on each party not in default for failing to appear; and

(B) Record service on the docket.

(2) A party may also serve notice that an order~~; but his action may be suspended or altered~~ or judgment has been entered according to Rule 5.

~~**(c)**~~ Unless the ~~rescinded by~~Mississippi Rules of Appellate Procedure state otherwise, the ~~court upon cause shown.~~

~~**(A)**~~

~~**(d)**~~**(3)** ~~**Notice**~~clerk's ~~**of Orders or Judgments.** Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry in the manner provided for in Rule 5 upon each party who is not in default for~~ failure to ~~appear, and shall make a note in the docket of the service. Any party may in addition~~ serve notice an order or judgment has been entered~~a notice of such entry in the manner provided in Rule 5 for the service of papers. Lack of notice of the entry by the clerk~~ does not affect the time to appeal, ~~nor~~ relieve a party's~~, nor authorize the court to relieve, a party for~~ failure to appeal within the ~~time~~ allowed time, or authorize the court to do so. ~~, except as permitted by the Mississippi Rules of Appellate Procedure.~~

[Amended effective 7/~~July~~ 1/97~~, 1997~~.]

Advisory Committee Historical Note

Effective 7/~~July~~ 1/97~~, 1997~~, Rule 77(d) was amended to allow ~~for service of notices of the entry of orders and judgments by~~ parties to serve notice that an order or judgment has been entered.~~.~~ 689-92~~692~~ So. 2d LXII (West Miss. Cas. 1997.)

Effective 2/~~February~~ 1/90~~, 1990~~, Rule 77 was amended by adding Rule 77~~subsection~~ (d), which requires~~requiring the clerk of~~ the court clerk to give notice an order or judgment has been entered to~~of the entry of orders and judgments to the~~ interested parties. ~~-~~553-56~~556~~ So. 2d XLII (West Miss. Cas. 1990).

Advisory Committee Notes

Under Rule 77(a)~~,) provides that~~ the court must~~courts shall~~ be deemed always open for the purpose of filing papers~~; and~~ issuing and returning process; and making motions and orders. This does not mean that the clerk's office ~~of the clerk~~ must be physically open at all hours or that paper ~~the filing of papers~~ can be filed~~effected~~ by leaving them in a closed or vacant office. Under Rule 5(e)(1)~~,)~~ papers may be filed out of business hours by delivering them to the clerk or ~~to the~~ judge if he or she allows~~permits~~. *See* Miss. Const. art. 3, § 24 (all courts "shall be open"~~).).~~

Rule 77(b) requires a trial on~~that the "all trials upon~~ the merits to~~"~~ be conducted in "open court;~~";~~ all other acts or proceedings may be done or conducted by a judge "in chambers everywhere in the state regardless if~~," without the necessity of the attendance of~~ the clerk or other court official attends. But~~and at any place within the state. However,~~ no hearing, other than one heard ex parte, will~~shall~~ be conducted outside the district without the consent of all ~~parties~~ affected parties~~thereby~~. *See Corporate Mgmt., Inc. v. Greene Rural Health Ctr. Bd. of Trustees*, 47 So. 3d 142, 146 (Miss. 2010).

Rule 77(d) requires ~~that~~ the clerk to provide a copy~~copies~~ of all orders and judgments~~, immediately upon their entry,~~ to all parties who are not in default for failure to appear immediately when entered.
Under Miss.
~~M.~~R. App. ~~A.~~P. 4(h~~),) provides that~~ a party who did not receive notice of ~~entry of~~ a judgment or order from the clerk or a~~any~~ party within 21 days of its entry may move the trial court to reopen the time for appeal.

Rule 77(d) gives a prevailing party who wants to ensure that the time for appeal is not reopened under Miss. ~~pursuant to M.~~R. App. ~~A.~~P. 4(h~~)),~~ the opportunity to serve notice a ~~of entry of the~~ judgment or order has been entered on ~~upon~~ opposing parties according to~~in the manner provided in~~ Rule 5. Although a prevailing party~~parties~~ may take the initiative to assure that an adversary receives~~their adversaries receive~~ effective notice, the clerk retains the duty to give notice a judgment or order has been entered.

~~of entry of judgments and orders.~~
Rule

~~RULE~~ 78. Motion practice. ~~MOTION PRACTICE~~

(a) Regular schedule.

(1) Each court must~~shall~~ establish procedures for conducting~~the prompt dispatch of~~ business promptly, including for hearing and deciding a motion that requires~~, at which motions requiring~~ notice.

(2) But regardless of~~ and hearing may be heard and disposed of; but the judge at any~~ time or place, the judge—without ~~and on such~~ notice or on notice the court~~, if any, as he~~ considers reasonable—may issue an order~~make orders~~ for advancing, conducting~~the advancement, conduct~~, and hearing an action~~of actions~~.

(b) Submitting on briefs. To expedite ~~its~~ business, the court ~~may make provision~~ by rule or order may allow a submitted motion to be decided~~for the submission and determination of motions~~ without an oral hearing on~~upon~~ brief written statements of ~~reasons in~~ support and opposition.

[Amended effective 3/~~March~~ 1/89~~, 1989~~; amended effective 4/~~April~~ 17/03~~, 2003~~ to allow a court~~the courts,~~ by rule to decide a motion~~provide for determination of motions~~ seeking final judgment without oral argument.]

Advisory Committee Historical Note

Effective 3/~~March~~ 1/89~~, 1989~~, Rule 78 was amended by changing its title to "MOTION PRACTICE" and by abrogating provisions for local rules. 536-38~~538~~ So. 2d XXXI (West Miss. Cas. 1989).

Advisory Committee Notes

Rule 78 does not alter a~~any~~ local rule~~rules~~ governing motion practice. But~~; however,~~ the local rule must be considered in light of Rule 83.

Rule 79. Clerk records.

~~RULE 79. BOOKS AND RECORDS KEPT BY THE CLERK AND ENTRIES THEREIN~~

(a) General docket.

(1) Form; style~~Docket~~. The clerk must~~shall~~ keep a book known as the "general docket" in the~~of such~~ form and style ~~as is~~ required by law.

(2) Civil action. The clerk must ~~and shall~~ enter ~~therein~~ each civil action on the docket.

(3) File number. ~~to which these rules are made applicable.~~ The file number of an action must be recorded on each docket ~~action shall be noted on each~~ page where~~of the docket whereon~~ an entry is made.

(4) Entry requirements.

(A) Type. The following must be recorded in the~~of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be noted in this~~ general docket on the page assigned to the action and ~~shall be~~ marked with the~~its~~ file number:

(i) Papers filed with the clerk;~~. These entries shall~~
(ii) Issued process and returns;
(iii) Appearances;
(iv) Orders;
(v) Verdicts; and
(vi) Judgments.

(B) Content. An entry must be brief but includes~~shall show~~ the nature of each ~~paper~~ filed paper or issued writ, ~~issued and~~ the substance of each order or judgment, ~~of the court~~ and ~~of~~ the returns showing execution of process.

(C) Order; judgment.

(i) The docket must show the date~~entry of~~ an order or judgment is entered.
~~(a)~~**(ii)** If~~shall show the date the entry is made. In the event~~ a formal order is entered, the clerk must~~shall~~ insert the order in the ~~file of the~~ case.

(b) Minute book~~Book~~. The clerk must~~shall~~ keep a correct copy of every judgment or order~~. This record shall be~~ known as the "Minute Book."

(c) Index; calendar. Under the court's direction, the clerk:

(1) Must keep a suitable index**Indexes; Calendars.** Suitable indexes of the general docket; and

(c)(2) Prepare a calendar shall be kept by the clerk under the direction of the court. There shall be prepared, under the direction of the court, calendars of all actions ready for trial.

(d) Other books and records; photocopy.

(1) Other booksBooks and recordsRecords. The clerk mustshall also keep such other books and records as may be required by statute or these rules.

(d)(2) Photocopy. The documents required to be kept under this rule may be recorded by means of an exact-copy photocopy process.

(e) Removing the File in a Case. The file of a **case file.** The case file mustshall not be removed from the clerk's office of the clerk except on the clerk's or court'sby permission of the court or the clerk.

Advisory Committee Historical Note [Rule 79]

Effective 4/April 1/02, 2002, the Comment to Rule 79(a) was amended to underscore that docket entries must accurately reflect the actual date of entry. 813-15815 So. 2d LXXXVIII (West Miss. Cas.Cases 2002).

Advisory Committee Notes

Rule 79(a) specifies that athe docket entry mustentries reflect the date on which it isentries are made in the general docket. Since several important time periods and deadlines are calculated from the date of the entry of a judgment and order, these entries must accurately reflect the actual date of the entries rather than another date like when the judge signs it. *See, e.g.*, Miss. R. Civ. P. 58 (mandating that judgment is effective only when entered under Rule 79(a)); *see also* Miss. R. Civ. P. 59 (requiring motion to alter or amend judgment be filed within 10 days after entry of judgment).judgments and orders, these entries must accurately reflect the actual

Rule 80. Stenographic report or transcript as evidence. [Omitted].

~~date of the entries rather than another date, such as the date on which a judgment or order is signed by the judge. See, for example, Rule 58 mandating that a judgment is effective only when entered as provided in Rule 79(a), and Rule 59 which requires that motions to alter or amend judgments be filed within ten days after the entry of judgment.~~

~~RULE 80. STENOGRAPHIC REPORT OR TRANSCRIPT AS EVIDENCE [OMITTED)]~~

Advisory Committee Notes

Mississippi has statutory provisions for the appointment, oath, nature and term of office, bond, removal from office, and duties and responsibilities of court reporters. *See* Miss. Code Ann. §§ 9-13-1 to -63; *id.* §§ 9-13-101 to -123;~~*et seq.* (1972)~~ and Miss. ~~M.~~R. App. ~~A.~~P. app. 3.

~~Appendix III.~~
Rule

~~RULE~~ 81. Rule applicability. ~~APPLICABILITY OF RULES~~

(a) ~~Applicability in~~ General applicability.

~~(a)~~**(1)** ~~.~~ These rules apply to all civil proceedings. But they ~~but~~ are subject to limited applicability in the following actions ~~which are~~ generally governed by statutory procedures:~~.~~

~~(1)~~**(A)** A proceeding~~proceedings~~ pertaining to ~~the~~ writ of habeas corpus;

A proceeding

~~(2)~~**(B)** ~~proceedings~~ pertaining to ~~the~~ disciplining ~~of~~ an attorney;

A proceeding under

~~(3)~~**(C)** ~~proceedings pursuant to~~ the Youth Court Law, Miss. Code Ann. §§ 43-21-101 to -127 ~~and the Family Court Law~~;

A proceeding

~~(4)~~**(D)** ~~proceedings~~ pertaining to an election contest~~contests~~;

A proceeding

~~(5)~~**(E)** ~~proceedings~~ pertaining to bond validation~~validations~~;

A proceeding

~~(6)~~**(F)** ~~proceedings~~ pertaining to ~~the~~ adjudication, commitment, and release of narcotics and alcohol addicts and persons in need of mental treatment;

An

~~(7)~~**(G)** eminent ~~-~~ domain proceeding~~proceedings~~;

~~(8)~~**(H)** Title 91 of the Mississippi Code of 1972 Annotated;

~~(9)~~**(I)** Title 93 of the Mississippi Code of 1972 Annotated;

Creating

~~(10)~~**(J)** ~~creation~~ and maintaining a ~~maintenance of~~ drainage and water management district~~districts~~;

(K) Creating and changing a municipal boundary;

A proceeding

~~(11) creation of and change in boundaries of municipalities;~~

(L) ~~(12) proceedings~~ brought under the following:

(i) Miss. Code Ann. §~~sections~~ 9-5-103;

Miss. ~~,~~Code Ann. § 11-1-23, ~~11-1~~-29, ~~11-1~~-31, ~~11-1~~-33,

(ii) ~~11-1~~-35, ~~11-1~~-43, ~~11-1~~-45, ~~11-1~~-47, ~~11-1~~-49;

(iii) Miss. Code Ann. §~~,~~ 11-5-151 to ~~through 11-5~~-167;~~,~~ and

(iv) Miss. Code Ann. §~~-~~ 11-17-33.~~,~~

~~Mississippi Code of 1972.~~

~~**(1) —**~~

~~**Statutory**~~

(2) To ~~procedures specifically provided for each of the above proceedings shall remain in effect and shall control to~~ the extent they may ~~be in~~ conflict with these rules, statutory procedures specifically for a proceeding stated above in Rule 81(a)(1) must remain in effect and control. But~~;~~ otherwise these rules apply.

(b) Summary proceeding. ~~Proceedings.~~ In an ex ~~-~~parte matter ~~matters~~ where ~~no~~ notice is not required, a proceeding must ~~proceedings shall~~ be as summary as ~~the~~ pertinent statutes contemplate.

Publishing summons

(c) **~~Publication of Summons~~ or notice.** When~~Notice.~~ ~~Whenever~~ a statute requires a summons or notice to be published~~by publication~~, service according~~in accordance~~ with ~~the~~ methods ~~provided~~ in Rule 4 will ~~shall be taken to~~ satisfy statutory~~the~~ requirements ~~of such statute~~.

~~(d)~~ Procedure in certain actions~~Certain Actions~~ and matters~~Matters~~. The special procedural rules in Rule 81(d) must~~of procedure set forth in this paragraph shall~~ apply to the actions and matters stated~~enumerated~~ in Rule 81(d)(1) ~~subparagraphs~~

~~(1)~~**(d)** and (d)(2) ~~hereof and shall~~ control to the extent they ~~may be in~~ conflict with another rules ~~any other~~ provision ~~of these rules~~.

(1) 30 days. The following actions and matters must~~shall~~ be triable 30 days after the first publication where process is by publication or otherwise 30 days after completing ~~completion of~~ service of process in a~~any~~ manner other than by publication:

(A) Adoption;
(B) Correcting a~~ or 30 days after the first publication where process is by publication, to wit: adoption; correction of~~ birth certificate;
(C) Altering a ~~alteration of~~ name;
(D) Terminating~~termination of~~ parental rights;
(E) Paternity;
(F) Legitimation;
(G) Uniform~~paternity; legitimation; uniform~~ reciprocal enforcement of support;
(H) Determining~~determination of~~ heirship;
(I) Partition;
(J) Probating a ~~partition; probate of~~ will in solemn form;
(K) Caveat~~caveat~~ against probating a~~probate of will;~~ will;
(L) Will contest;
(M) Will~~will~~ construction;
(N) A child--custody action;
(O) A~~actions;~~ child--support action~~actions~~; and
~~(1)~~**(P)** Establishing~~establishment of~~ grandparents' visitation.

(2) 30 or 7 days. The following actions and matters must~~shall~~ be triable 30 days after the first publication where process is by publication or 7 days after completing~~7 days after completion of~~ service of process in a~~any~~ manner other than by publication:

(A) Removing~~ or 30 days after the first publication where process is by publication, to wit: removal of~~ disabilities of minority;

(B) Temporary~~temporary~~ relief in a matter for divorce, separate maintenance, child custody, or child support;

~~(2)~~**(C)** Modifying or enforcing a~~ matters; modification or enforcement of~~ custody, support, or alimony judgment; ~~and alimony judgments; contempt; and estate matters and wards' business in which notice is required but the time for notice is not prescribed by statute or by subparagraph (1) above.~~ Contempt;

(D) ~~Complaints~~ and

(E) An estate matter or minor's business requiring notice where the time period is not stated in a statute or Rule 81(d)(1).

(3) **Not confessed.** A complaint or petition~~petitions~~ filed in an action or matter stated in Rule 81(d)(1) or (d)(~~the actions and matters enumerated in subparagraphs (1) and (~~2) must~~above shall~~ not be taken as confessed.

(4) Answer.

~~(4)~~ **Not required.** An ~~No~~ answer must not~~shall~~ be required in an~~any~~ action or matter stated~~enumerated~~ in Rule 81(d)(1) or (d)(~~subparagraphs~~

(A) ~~and (~~2).

(B) **Optional.** But a~~) above but any~~ defendant or respondent may file an answer or other pleading.

(C) **Court order.** Or ~~or~~ the court may require an answer if ~~it deems it~~ necessary to ~~properly~~ develop the issues properly.

~~(1)~~**(i)** **Failure to answer.**~~.~~ A party who fails to file a court-ordered~~an~~ answer must~~after being required so to do shall~~ not be allowed~~permitted~~ to present evidence on that party's~~his~~ behalf.

(5) Summons; time and place; continuance

(A) **Summons.** On~~Upon the~~ filing an~~of any~~ action or matter Rule 81(d)(~~listed in subparagraphs (~~1) or~~and~~ (2), a~~) above,~~ summons must~~shall~~ issue that commands~~commanding~~ the defendant or respondent to appear and defend at a time ~~and place, either~~ in term time or vacation and a place~~,~~ at which it must~~the same shall~~ be heard.

(B) **Time and place.** The~~Said~~ time and place must~~shall~~ be set by special order, general order, or ~~rule of the~~ court rule.

(C) **Continuance.**

~~(5)~~ **(i) No additional summons.** If the~~such~~ action or matter is not heard on the ~~day set for~~ hearing date, it may by court order signed on that day be continued to a later day ~~for hearing~~ without additional summons on the defendant or respondent. ~~The court~~

Clerk's authority. By

(ii) ~~may by~~ order or rule, the court may ~~-~~authorize its clerk to set the action~~such actions~~ or matter~~matters~~ for original hearing and to continue it ~~the same for hearing~~ on a later date.

(6) Rule 5(b) notice must~~shall~~ be sufficient as to a~~any~~ temporary hearing in a pending action for divorce, separate maintenance, custody, or support if~~action provided~~ the defendant has been summoned to answer the original complaint.

(e) Proceedings modified. Forms~~Modified. The forms~~ of relief formerly obtained~~obtainable~~ under the following must be obtained by a motion or action:

(1) Writ~~writs~~ of fieri facias;
(2) Scire~~, scire~~ facias;
(3) Mandamus;
(4) Error~~, mandamus, error~~ coram nobis;
(5) Error~~, error~~ coram vobis;
(6) Sequestration;
(7) Prohibition;
(8) Quo~~, sequestration, prohibition, quo~~ warranto;
~~**(e)**~~**(9)** Writ~~, writs~~ in the nature of quo warranto; and ~~, and all other writs, shall be obtained by motions or actions seeking such relief.~~
(10) All other writs.

Statutory terminology.

(f) ~~**Terminology of Statutes.**~~ In applying these rules to an~~any proceedings to which they are~~ applicable proceeding, statutory ~~, the~~ terminology that~~of any statute which~~ also applies must~~shall,~~ if inconsistent with these rules~~,~~ be interpreted~~taken~~ to mean an~~the~~ analogous device or procedure proper under these rules. For example:~~; thus (and these examples are intended in no way to limit the applicability of this general statement):~~

(1) *Bill of complaint*, *bill in equity*, *bill*, or *declaration* means~~shall mean~~ a *complaint*~~as specified~~ in these rules;

(2) *Plea in abatement* means~~shall mean~~ *motion*;

(3) *Demurrer* means~~shall be understood to mean~~ *motion to strike* ~~as set out~~ in Rule 12(f);
(4) ~~-~~*Plea* means~~shall mean~~ *motion* or *answer* as~~, whichever is~~ appropriate under these rules;
(5) ~~-~~*Plea of set-off* or *set-off* means~~shall be understood to mean~~ a permissible counterclaim;

(6) ~~counter-claim; *Plea of recoupment*~~ or *recoupment* refers~~shall refer~~ to a compulsory counterclaim~~counter-claim~~;

(7) *Crossbill* refers to a counterclaim or crossclaim as~~*Cross-bill* shall be understood to refer to a counter-claim, or a cross-claim, whichever is~~ appropriate under these rules;

(8) *Revivor*, *revive*, or r*evived* in~~, used with~~ reference to an action refers~~actions, shall refer~~ to ~~the~~ substitution ~~procedure stated~~ in Rule 25;

(9) *Decree pro confesso* means a~~shall be understood to mean entry of~~ default judgment~~as provided~~ in Rule 55; and

~~55;~~

(10) *Decree* means~~shall mean~~ a judgment~~,~~ as defined in Rule 54.~~;~~

(g) No specific procedure.~~Procedure Not Specifically Prescribed.~~ When no procedure is specifically stated~~prescribed~~, the court must~~shall~~ proceed in a~~any~~ lawful manner not inconsistent with the Mississippi Constitution~~; of the State of Mississippi,~~ these rules~~;~~ or an~~any~~ applicable statute.

[Amended effective 6/~~June~~ 24/92; 4/~~, 1992; April~~ 13/00~~, 2000~~.]

Advisory Committee Historical Note

Effective 4/~~April~~ 13/00~~, 2000~~, Rule 81(d)(5) was amended to make a continuance effective~~effectual~~ on a signed rather than ~~an~~ entered order. ~~-~~753-54754~~-~~ So. 2d XVII) (West Miss. Cas. 2000.)

Effective 6/~~June~~ 24/92~~, 1992~~, Rule 81(h) was deleted. 598-02~~602~~ So. 2d XXIII-XXIV (West Miss. Cas. 1992).

Effective ~~January~~ 1/1/86~~, 1986~~, Rule 81(a) was amended by adding subsections (10)~~–()–~~(12); Rule 81(b) was amended by deleting examples and~~ by deleting~~ a provision that no answers are required in ex parte matters; Rule 81(d) was rewritten to provide for proceedings in a number of specified actions and to abrogate its treatment of domestic relations matters. 470~~,~~ 473 So. 2d XVI-XVIII (West Miss. Cas. 1986).

Advisory Committee Notes

~~**Advisory Committee Notes**~~

Rule 81 complements~~compliments~~ Rule 1 by specifying which civil actions are ~~governed only~~ partially~~,~~ or not governed~~at all,~~ by the Mississippi Rules~~provisions~~ of Civil Procedure~~the M.R.C.P~~.

Rule 81(a) lists 12 categories of civil actions which are not governed entirely by the Mississippi Rules of Civil Procedure ~~M.R.C.P~~. In each one~~, of those actions~~ there are statutory provisions detailing certain procedures to be utilized. *See generally* Miss. Code Ann. §§ 11-43-1, *et seq.*~~.,~~ (habeas corpus); 73-3-301, *et seq.*~~.,~~ (disciplining ~~of~~ attorneys); 43-21-1, *et seq.*~~.,~~ (youth court proceeding~~proceedings~~); 23-15-911 *et seq.* (election contest~~contests~~); 31-13-1, *et seq.*~~.,~~ (bond validation); 41-21-61, *et seq.* (person~~., (persons~~ with mental illness or ~~an~~ intellectual disability); 41-30-1, *et seq.*~~.,~~ (adjudication, commitment, and release of alcohol and drug addicts); 11-27-1, *et seq.*~~.,~~ (eminent domain); 91-1-1, *et seq.*~~.,~~ (trusts and estates); 93-1-1, *et seq.*~~.,~~ (domestic relations); 51-29-1, *et seq.*~~.,~~ and 51-31-1, *et seq.* (creating~~., (creation~~ and

maintainingmaintenance of drainage and water management districtdistricts); 21-1-1, *et seq*. (creating., (creation of and changing municipal change in boundaries of municipalities); and those proceedings identified in category (L12) by code titletheir Code Title as follows: 9-5-103 (bonds of receivers, assignees, executors may be reduced or cancelled, if excessive or for sufficient cause); 11-1-23 (court or judge may require new security); 11-1-29 (proceedings on death of surety on bonds, etc.); 11-1-31

~~11-1-31~~ (death of parties on bonds having force of judgment where—citation in anticipation of judgment); 11-1-35 (death of parties on bonds having force of judgment when citation issued and returnable); 11-1-43 to ~~through 11-1~~-49 (seizure of perishable commodities by legal process); 11-5-151 to ~~through 11-5~~-167 (receivers in chancery); and 11-17-33 (receivers appointed for nonresident or unknown owners of mineral interests).

But~~However,~~ in an~~any~~ instance in the 12~~twelve listed~~ categories where~~in which the~~ controlling statutes are silent as to ~~a~~ procedure, the Mississippi Rules of Civil Procedure~~M.R.C.P.~~ govern.

As to ex parte matters, Rule 81(b) intends~~is intended~~ to preserve among other things~~, inter alia,~~ the summary manner in which many of the following matters are handled: testamentary, ~~of~~ administration, minors' or ~~in minors'~~wards' business;~~,~~ and ~~in~~ cases of idiocy, lunacy, and persons of unsound mind ~~are handled~~. *See* Miss. Code Ann. § 11-5-49 (1972).

Rule 81(c) pertains to an action~~actions~~ or matter~~matters~~ where a statute requires ~~that~~ summons or notice ~~be made~~ by publication. In those instances, Rule 4 publication satisfies~~as provided by Rule 4 shall satisfy~~ the statutory requirements. ~~of such statute(s).~~

Rule 81(d) recognizes that ~~there are~~ certain actions and matters require~~whose nature requires~~ special procedural rules, including: (1) a matter where ~~of procedure. Basically these are matters of which~~ the State of Mississippi has an interest in the outcome; (2) a matter whose nature ~~or which because of their mature~~ should not subject a defendant or ~~/~~respondent who fails to answer to a default judgment; and (3) a matter ~~for failure to answer. Furthermore, they are matters~~ that should not be interpreted~~taken~~ as confessed even in the absence of a defendant's or respondent's ~~the~~ appearance. ~~of the defendant/respondent.~~ Most of the ~~matters~~ enumerated matters are peculiar to chancery court. Rule 81(d) divides them~~the actions therein detailed~~ into two categories. ~~This division is~~ based on~~upon~~ the recognition that ~~some matters,~~ because of ~~either~~ their simplicity or need for speedy resolution, some matters should be triable after ~~a~~ short notice to the defendant or ~~/~~respondent. Yet~~; while others,~~ because of their complexity, others should afford the defendant or ~~/~~respondent more time for trial preparation.

Under Rule 81(d)(3)~~,) provides that~~ the pleading initiating the action should be commenced by complaint or petition only and ~~shall~~ not ~~be taken as~~ confessed. Initiating a Rule 81(d) action~~actions~~ by "motion" is not intended.

Rule 81(d)(5) recognizes that since no answer is required of a defendant or ~~/~~respondent, then the issued summons must~~issued shall~~ inform the defendant or respondent~~him~~ of the time and place ~~where he is~~ to appear and defend. If the matter is not heard on the date originally set for ~~the~~ hearing, the court may sign an order on that day continuing the matter to a later date. In addition, the~~The~~ rule also allows a court to~~provides that the Court may~~ adopt a rule or issue an order authorizing its clerk~~Clerk~~ to set an action~~actions~~ or matter~~matters~~ for an

original hearing~~hearings~~ and to continue the ~~same for~~ hearing for~~on~~ a later date. A local rule~~(Local rules~~ should be filed with the Mississippi Supreme Court as ~~required by~~ Rule 83 requires.~~).~~

According to

Rule 81(d)(6),) provides that as to aany temporary hearing in a pending action for divorce, separate maintenance, child custody, or child support, Rule 5(b) notice willin the manner prescribed by Rule 5(b) shall be sufficient if, provided the defendant or /respondent has already been summoned to answer.

SECTION 11

~~CHAPTER XI~~. GENERAL PROVISIONS

Rule ~~RULE~~ 82. ~~JURISDICTION AND VENUE~~

Jurisdiction; venue.

(a) **Jurisdiction unaffected.** ~~**Unaffected.**~~ These rules must~~shall~~ not be construed to extend or limit the jurisdiction of a~~the courts of~~ Mississippi court.

(b) **Venue.** Unless ~~**of Actions.** Except as provided by~~ this rule states otherwise, applicable statutes control~~,~~ venue of an action~~all actions shall be as provided by statute~~.

(c) Venue; multiple claims or parties.

(1) ~~**Where.** If **Claim or Parties Joined.** Where~~ several claims or parties have been properly joined, the suit may be brought in a~~any~~ county where~~in which any~~ one of the claims ~~could~~ properly could have been brought.

~~**(c)**~~**(2) Joinder.** When~~Whenever~~ an action has been commenced in a proper county, additional claims and parties may be joined under ~~, pursuant to~~ Rules 13, 14, 22 and 24~~,~~ as ancillary ~~thereto,~~ without regard to whether that county would be a proper venue for an independent action on the~~such~~ claims or against the~~such~~ parties.

(d) Improper venue.

(1) Transfer rather than dismiss. ~~**Venue.**~~ When an action is filed ~~laying venue~~ in the wrong county, instead of dismissing the action~~, shall not be dismissed, but~~ the court~~,~~ on timely motion must~~, shall~~ transfer ~~the action to the court in which~~ it to the court where it ~~might~~ properly might have been filed.

(2) Case proceeds. The ~~and the~~ case must~~shall~~ proceed as though originally filed in the court where it is transferred.

(3) Transfer expense. ~~therein.~~ The expenses of transferring the case must~~transfer shall~~ be taxed to~~borne by~~ the plaintiff.

~~**(d)**~~**(4) More than one court.** If the action properly might have been filed in more than one court, the~~The~~ plaintiff must~~shall~~ have the right to select the court to which the action will~~shall~~ be transferred ~~in the event the action might properly have been filed in more than one court~~.

(e) **Forum nonconveniens.** If an action is ~~**Non-conveniens.** With respect to actions~~ filed in an appropriate venue, and no ~~where venue is not otherwise designated or limited by~~

statute designates or limits venue, then~~, the court may,~~ for the parties' and witnesses' convenience ~~of the parties and witnesses~~ or in the interest of justice, the court may transfer an~~any~~ action or a~~any~~ claim ~~in any civil action~~ to a~~any~~ court where~~in which~~ the action properly might have been ~~properly~~ filed, and the case must~~shall~~ proceed as though originally filed in that court~~therein~~.

[Amended effective 2/~~February~~20/04~~, 2004~~, to add Section 82(e) allowing transfer for forum nonconveniens~~non conveniens~~ for cases filed after the effective date.]

~~**Advisory Committee Notes**~~

Advisory Committee Notes

Under Rule 82(c),) ~~provides that~~ if venue is proper for one plaintiff's claim, and if the~~such~~ plaintiff has been properly joined with other plaintiffs, venue is proper for all plaintiffs' claims. Section 11-11-3(2) of the Mississippi Code of 1972 Annotated, ~~§11-11-3(2),~~ however, states~~provides~~ that "[i]n any civil action where more than one (1) plaintiff is joined, each plaintiff shall independently establish proper venue; it is not sufficient that venue is proper for another plaintiff joined in the civil action." Under Rule 82(b), unless the rule states otherwise, venue in all actions must be according to statute. Therefore, a conflict exists between the rule and the statute.~~any other plaintiff joined in the civil~~

Under

action." Rule 82(b) states that "[e]xcept as provided by this rule, venue in all actions shall be as provided by statute." Thus, there is a conflict between the rule, and the statute in that the rule states that venue is proper in cases involving multiple plaintiffs who are properly joined if venue is proper for a single plaintiff's claim; yet under, whereas the statute, provides that in a casecases involving multiple plaintiffs, venue must be proper for each plaintiff's claim. NoThere is no conflict exists in cases involving multiple defendants. "*See Penn Nat'l Gaming, Inc. v. Ratliff*, 954 So. 2d 427, 432 (Miss. 2007) (venue properly established against one defendant generally is proper against all defendants." *See Penn Nat'l Gaming, Inc. v. Ratliff*, 954 So. 2d 427, 432 (Miss.).2007). In cases involving a medical-malpractice defendant and another defendant, however, venue established by Section 11-11-3 of the Mississippi Code of 1972 Annotated §11-11-3 is only appropriate in the county where the alleged malpractice occurred. *See Adams v. Baptist Mem'l Hosp.-Memorial Hospital-DeSoto, Inc.*, 965 So. 2d 652, 57657-58 (Miss. 2007).

Rule 82(e) authorizes a motion to transfer venue to another Mississippi court having proper venue within the state based onupon forum nonconveniens.non-conveniens. In addition, Section 11-11-3 of the Mississippi Code Annotated of 1972 §11-11-3 authorizes transfer to another Mississippi forum within Mississippi that is more convenient and further authorizes dismissal of the case in Mississippi if a more convenient forum is available in another state. A trial court ruling on a motion to dismiss filed undermade pursuant to the statute must decidedetermine whether, given "the interest of justice" and "the convenience of the parties and witnesses," "a claim or action would be more properly heard in a forum outside this state or in a different county of proper venue within this state." Miss.Mississippi Code. Ann. § Annotated §11-11-3(4)(a). The trial court may consider the factors statedset forth in Section 11-11-3(4)(a) of the Mississippi Code Annotated of 1972.

~~§11-11-3(4)(a).~~
Rule

~~RULE~~ 83. Local court rules. ~~LOCAL COURT RULES~~

(a) Permissibility.

(1) Judicial conference. ~~When Permissible.~~ The conference of circuit, chancery, and county court judges may issue~~hereafter make~~ uniform rules and amendments ~~thereto~~ concerning practice in their respective courts not inconsistent with these rules.

(2) Judicial majority. Likewise, a~~any~~ court by action of a majority of the judges ~~thereof~~ may issue~~hereafter make~~ local rules and amendments ~~thereto~~ concerning practice in their respective courts not inconsistent with these rules.

~~(a)~~**(A) No majority.** In the event there is no majority, the senior judge must~~shall~~ have an additional vote.

(b) Procedure for approving.

(1) Requirements~~Approval~~. All ~~such~~ local rules and uniform rules adopted before being effective must be filed in the Mississippi Supreme Court ~~of Mississippi~~ for approval. The following must be filed with~~Such motions shall also include~~ a ~~copy of the~~ motion for approval~~and of the proposed rules~~ in an electronically formatted medium (e.g.,~~such as~~ USB flash drive~~Flash Drive~~ or CD-ROM):

(A) A copy~~). Upon receipt~~ of the motion; and

(B) The~~such~~ proposed rules.

~~(b)~~**(2) Receipt.** After a proposed rule is received before it is approved, the Mississippi ~~and prior to any approval of the same, the~~ Supreme Court may submit it~~them~~ to the Mississippi Supreme Court Advisory Committee on Rules for advice as to whether the proposed rule is~~any such rules are~~ consistent or in conflict with these rules or ~~any~~ other rules ~~adopted by~~ the Mississippi Supreme Court has adopted.

(c) Publication. All local and uniform rules ~~hereinafter~~ approved by the Mississippi Supreme Court must~~shall~~ be submitted for publication in the Southern Reporter (Mississippi cases).

~~(c)~~ [Amended effective 3/~~March~~ 1/89; 11/~~, 1989; November~~ 29/89; 2/~~, 1989; February~~ 1/90; 3/~~, 1990; March~~ 13/91; 12/~~, 1991; December~~ 16/91~~, 1991~~; amended 3/~~March~~ 10/94~~, 1994~~, effective retroactively from and after 1/1/93~~January 1, 1993~~; amended 10/~~October~~ 13/95~~, 1995~~, effective from and after 4/~~April~~ 14/94~~, 1994~~; amended effective 7/~~July~~ 1/10~~, 2010~~.]

Advisory Committee Historical Note

Rule 83 was amended 3/~~March~~ 10/94~~, 1994~~, effective retroactively from and after 1/1/93~~January 1, 1993~~, by deleting the word "hereinafter" in Rule 83(b) following the words, "uniform rules"; by deleting Rule 83(c) in its entirety; and by renumbering 83(d) as 83(c). 632-35~~635~~ So. 2d XXIII-XXIV (West Miss. Cases 1994).

[Adopted 8/~~August~~ 21/96~~, 1996~~.]

Advisory Committee Notes

Practitioners may access local rules that have been approved by the Mississippi Supreme Court on its~~the Court's~~ website.

Rule

~~RULE~~ 84. Forms 1, 2, 3, and 4.~~FORMS~~

Under Rule 4(b)(3)(A), a summons served by a process server must substantially conform to Form 1. Under Rule 4(b)(3)(B), a summons served by the sheriff must substantially conform to Form 2. Under Rule 4(c)(3)(A)(ii), a notice and acknowledgment must substantially conform to Form 3. And under Rule 4(c)(4)(A), a summons by publication must substantially conform to Form 4. The Appendix contains Forms 1, 2, 3, and 4.

Advisory Committee Notes

Former Rule 84 referred to "forms contained in the Appendix of Forms [that]~~The forms contained in the Appendix of Forms~~ are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate." Prior to December 2015 amendments, Federal Rule of Civil Procedure 84 referred to "forms in the Appendix [that] suffice under these rules and illustrate the simplicity and brevity that these rules contemplate." The amended Federal Rule of Civil Procedure 84 abrogated the Appendix of Forms. The Committee Note recognized the following: (1) that the purpose for providing illustrations—although useful when the rules were adopted—had been fulfilled; (2) that many alternative sources for forms existed; and (3) that the forms were no longer necessary.

Unlike its federal counterpart, Rule 84 of the

~~RULE 85. TITLE~~

~~These rules shall be known as the~~ Mississippi Rules of Civil Procedure does not abrogate all forms. Rule 84 does not abrogate forms mentioned in Rule 4: Form 1 (formerly Form 1A); Form 2 (formerly Form 1AA); Form 3 (formerly Form 1-B); and Form 4 (formerly Form 1-C). These forms, however, have been updated. In contrast, December 2015 amendments to the Federal Rules of Civil Procedure moved similar forms to the end of Federal Rule of Civil Procedure 4.

Yet like its federal counterpart, Mississippi Rule of Civil Procedure 84 recognizes that the purpose of providing illustrations has been fulfilled. In addition, Rule 84 recognizes that alternative sources for the forms exist and that they are no longer necessary.

Rule 85. Title; citation.

These rules are known as the "Mississippi Rules of Civil Procedure" and may be cited as: Miss. R. Civ. P. or M.R.C.P (.; e.g., Miss. R. Civ. P. 85 or M.R.C.P. 85).

APPENDIX: ~~A.~~ FORMS 1, 2, 3 AND 4

[See Rules 4 and ~~Rule~~ 84 for more information about Forms 1, 2, 3, and 4. These]

~~INTRODUCTORY STATEMENT~~

~~1.~~ ~~The following~~ forms are illustrations ~~intended for illustration~~ only. ~~They are limited in number. No attempt is made to furnish a manual of forms.~~

~~2. Except where otherwise indicated, each pleading, motion, and other paper should have a caption similar to that of the summons, with the designation of the particular paper substituted for the word "Summons." In the caption of the summons and in the caption of the complaint all parties must be named but in other pleadings and papers it is sufficient to state the name of the first party on each side, with an appropriate indication of other parties. *See* M.R.C.P. 4(b), 7(b)(2), and 10(a).~~

~~3. Each pleading, motion, and other paper is to be signed by at least one attorney of record in his individual name (M.R.C.P. 11). The attorney's name is to be followed by his address as indicated in Form 2. In forms following Form 2 the signature and address are not indicated.~~

~~4. If a party is not represented by an attorney, the signature and address of the party are required in place of those of the attorney (M.R.C.P. 11).~~

~~FORM 1A. SUMMONS~~

~~(~~

Form 1. Process server (front).~~Server)~~

IN THE *(Insert court)* ~~—~~COURT OF *(Insert county)* ~~———~~COUNTY, MISSISSIPPI

A.B., Plaintiff(s)

~~v. Civil Action, File No.~~

v.

Civil Action ~~CD~~ No. *(Insert case number)*

C.D., Defendant(s)

~~SUMMONS~~

~~THE STATE OF MISSISSIPPI~~
~~TO: (*Insert the name and address of the person to be served*)~~

~~NOTICE TO DEFENDANT(S)~~

~~THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT~~

SUMMONS

THE STATE OF MISSISSIPPI
TO: (*Insert the name and address of the person to be served*)

NOTICE TO DEFENDANT(S)

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT, AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS.

You are required to mail or hand deliver a copy of a written response to the Complaint to *(Insert attorney's name),* ~~—~~, the attorney for the Plaintiff(s), whose post office address is *(Insert post office address)* and ~~—and~~ whose street address is *(Insert street address).* ~~.~~ Your response must be mailed or delivered within ~~(~~30~~)~~ days from the date of delivery of this

summons and complaint or a judgment by default will be entered against you for the money or other things demanded in the complaint.

You must also file your~~the~~ original ~~of your~~ response with the Clerk of this Court within a reasonable time afterward.

Issued under my hand and court~~the~~ seal, the *(Insert date)* of *(Insert year)*. ~~of said Court, this ___ day of _, 19 .~~

(Insert clerk's signature)

Clerk of *(Insert county)* ___County, Mississippi

(Affix seal)

~~(Seal)~~

~~[This form shall appear on the reverse side of~~ **Form 1. ~~1A. Summons (~~Process server (back).~~Server)]~~**

PROOF OF SERVICE~~—~~ SUMMONS

~~(Process Server)~~

[*Use separate proof of service for each person served*]

(Insert name

~~Name~~ *of person*~~Person~~ *or entity served)* ~~Entity Served~~

I, *(Insert*~~the undersigned~~ *process server's name)*, the process server identified below~~server~~, served the summons and complaint on *(Insert name of*~~upon the~~ *person or entity served)*~~named above~~ in the following manner ~~set forth below~~ (process server must check proper space and provide all requested~~additional~~ information ~~that is requested and pertinent to the mode of service used~~):

[]

~~—~~ FIRST CLASS MAIL AND ACKNOWLEDGEMENT SERVICE. By mailing~~—~~ ~~(by~~ first class mail, postage prepaid and~~),~~ on the date stated in the attached Notice~~—, copies~~ to *(Insert name)*~~the person served, together with~~ copies of the: (1) ~~form of~~ notice; (2) ~~and~~ acknowledgement; and (3) self-addressed return envelope, postage prepaid~~, addressed to the sender~~ (*Attach completed acknowledgement of receipt from*~~pursuant to M.R.C.P. Form~~ 3~~1B~~*).*

[]

~~—~~ PERSONAL SERVICE. On the *(Insert date)* of *(Insert year),* I personally delivered copies to *(Insert name)*~~_____ on the ___ day of ___, 19 ,~~ where I found that~~said~~ person(s) in *(Insert county)* ~~____~~County of the State of *(Insert state).*~~.~~

[]

~~—~~ RESIDENCE SERVICE. After exercising reasonable diligence I was unable to deliver copies to *(Insert name)*~~said person~~ within *(Insert ~~_____~~county)* County of the State of *(Insert ~~, (~~state)*. I served the summons and complaint on the *(Insert date)*~~___ day~~ of *(Insert year),*~~, 19 ,~~ at the usual place of abode of *(Insert name)*~~said person~~ by leaving a true copy of the summons and complaint with *(Insert name),* ~~___~~who is the *(Insert*~~(here insert~~ *wife, husband, son, daughter, or other person*~~as the case may be~~*),* a family member of *(Insert name)*~~the family of the person served~~ above ~~the~~ age 16~~of sixteen years~~ and willing to receive

the summons and complaint. And afterwards, and thereafter on the *(Insert date)* day of *(Insert year),* _____, 19 , I mailed (by first class mail, postage prepaid) copies to *(Insert name)* the person served at his/ or her usual place of abode where the copies were left.

[]

— CERTIFIED MAIL SERVICE. By mailing to an address outside Mississippi (by first class mail, postage prepaid, requiring a return receipt) copies to *(Insert name)*.the person served. (*Attach signed return receipt or the return envelope marked "Refused."*)

At the time of service I was at least 18 years of age and not a party to this action.

Fee for service: $ *(Insert amount of fee)*

Process server must list below: [*Please print or type*]

_____
(Insert name)

_____
(Insert social security number)

_____
(Insert address)

_____
(Insert telephone number)

~~Name~~ _____
~~Social Security No.~~ _____
~~Address~~ _____

_____
~~Telephone No.~~ _____

State of *(Insert state).*
~~)~~ County of *(Insert county).* _____~~)~~
(Insert name) personally

~~Personally~~ appeared before me, a notary public ~~the undersigned authority~~ in the above jurisdiction and whose signature follows, ~~for the state~~ and after ~~county aforesaid, the within named who~~ being ~~first by me~~ duly sworn, states on oath that the matters and facts ~~set forth~~ in the previous ~~foregoing~~ "Proof of Service Summons" are true and correct as ~~therein~~ stated in it.

_____
(Insert process server's signature)

_____
~~Process Server (Signature)~~

Sworn to and subscribed before me ~~this~~ the *(Insert date)* ~~day~~ of *(Insert year),* ~~19~~ .

_____
(Insert process notary public's signature)

(Affix seal)

My commission expires: *(Insert date)*

~~Notary Public~~

~~(Seal) My Commission Expires:~~

[Adopted effective 3/~~March~~ 1/85~~, 1985~~; amended effective 5/~~May~~ 2/85~~, 1985~~; amended 3/~~March~~ 17/95.]~~,~~

1995.]

~~**FORM 1AA. SUMMONS**~~

~~(~~

Form 2. Sheriff (front).~~)~~

IN THE *(Insert court)* ~~—~~COURT OF *(Insert county)* ~~_____~~COUNTY, MISSISSIPPI

A.B., Plaintiff(s) ~~— C.D.,~~
~~Defendant(s)~~

v. _____

Civil Action~~, File~~ No. *(Insert case number)* ~~___~~

_____
_____
_____

C.D., Defendant(s)

SUMMONS

THE STATE OF MISSISSIPPI
TO: (*Insert the name and address of the person to be served*)

NOTICE TO DEFENDANT(S)

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT

~~**SUMMONS**~~

~~THE STATE OF MISSISSIPPI~~
~~TO: (*Insert the name and address of the person to be served*)~~

~~**NOTICE TO DEFENDANT(S)**~~

~~THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT~~, AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS.

You are required to mail or hand ~~-~~deliver a copy of a written response to the Complaint to *(Insert attorney's name),*~~,~~ the attorney for the Plaintiff(s), whose post office address is *(Insert post office address)*~~,~~ and whose street address is *(Insert street address).*~~___~~. Your response must be mailed or delivered within ~~(~~30~~)~~ days from the date of delivery of this summons and complaint or a judgment by default will be entered against you for the money or other things demanded in the complaint.

You must also file yourthe original of your response with the Clerk of this Court within a reasonable time afterward.

Issued under my hand and courtthe seal, the *(Insert date)* of *(Insert year)*. of said Court, this___day of_, 19___.

(Insert clerk's signature)

Clerk of *(Insert county)* ___County, Mississippi

(Affix seal)

(Seal)

~~[This form shall appear on the reverse side of~~ **Form** 2. ~~1AA: Summons (~~**Sheriff** (back)~~.)]~~

RECEIVED the *(Insert date)* of *(Insert year)*. ~~THISDAY OF~~____, ~~19 .~~

(Insert sheriff's signature)
Sheriff of *(Insert county)* County, Mississippi
~~BY~~_____
~~SHERIFF~~

SHERIFF'S RETURN

State of *(Insert state)*.
~~Mississippi)~~ County of *(Insert county)*. _____~~)~~

[]~~(~~) I personally delivered copies of the summons and complaint on the *(Insert date)* _____ ~~day~~ of *(Insert year)*, _____ ~~, 19 ,~~ to: *(Insert name)*.~~.~~

[]

~~(~~) After exercising reasonable diligence I was unable to deliver copies of the summons and complaint to *(Insert name)* _____ within *(Insert county)* ___ County, Mississippi. ~~I~~ served the summons and complaint on the *(Insert date)* ~~day~~ of *(Insert year)*, ~~, 19 ,~~ at the usual place of abode of *(Insert name)* ~~said~~ __ ___~~,~~ by leaving a true copy of the summons and complaint with *(Insert name)*~~,~~, who is the *(Insert* ~~here insert~~ *wife, husband, son, daughter, or other person* ~~so as the case may be~~*)*, a family member of *(Insert name)* ~~the family of the person served~~ above ~~the~~ age 16 ~~of sixteen years~~ and willing to receive the summons and complaint. And afterwards~~, and thereafter~~ on the *(Insert date)* ~~day~~ of *(Insert year)*, ~~, 19 ,~~ I mailed (~~by~~ first class ~~mail~~, postage prepaid) copies to *(Insert name)* ~~the person served~~ at his/~~ or~~ her usual place of abode where the copies were left.

[]

~~(~~) I was unable to serve the summons and complaint.

This *(Insert date)* ~~the~~ ___ ~~day~~ of *(Insert year)*. ___ ~~, 19 .~~

Sheriff of *(Insert county)*, Mississippi. ~~County, Mississippi~~

(Insert deputy sheriff's signature)

~~By:~~ ___, Deputy Sheriff

[Note: All summons issued to the sheriff must be returned within 30~~thirty~~ days from the day the summons was received by the sheriff under~~pursuant to the requirements of~~ Mississippi Rule of Civil Procedure 4(c)(2)].

[Adopted effective 3/~~March~~ 1/85~~, 1985~~; amended effective 2/~~February~~ 1/90.]

~~, 1990.]~~

Form 3. Notice and acknowledgment for service by mail (front).

~~FORM 1B. NOTICE AND ACKNOWLEDGMENT FOR SERVICE BY MAIL~~

IN THE *(Insert court)* COURT OF *(Insert county)* COUNTY, MISSISSIPPI

~~*A.B., Plaintiff(s)*~~

A.B., Plaintiff(s)

_____

~~(include appropriate designation of other plaintiffs)~~

v. _____ Civil Action~~,~~

~~File~~ No. *(Insert case number)* ___

~~*C.D., Defendant(s)*~~

C.~~(include appropriate designation of other defendants)~~

D., Defendant(s)

NOTICE

TO:~~-~~ (*Insert the name and address of the person to be served*)

The enclosed summons and complaint are served according~~pursuant~~ to Rule 4(c)(3) of the Mississippi Rules of Civil Procedure.

You must sign and date the acknowledgment at the bottom of this page. If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and ~~you are~~ authorized to receive process, you must indicate that authority under your signature ~~your authority~~.

If you do not complete and return the form to the sender within 20 days of the date of mailing shown below, you (or the party on whose behalf you are being served) may be required to pay ~~any~~ expenses incurred in serving a summons and complaint.

If you do complete and return this form, you (or the party on whose behalf you are being served) must respond to the complaint within 30 days of the date of your signature. If you fail to do so, judgment by default will be entered~~taken~~ against you for the relief demanded in the complaint.

I declare that this Notice and Acknowledgement of Receipt of Summons and Complaint was mailed on _____(*Insert date)* of *(Insert year).*

(Insert signature)

~~Signature~~

Form 3. Notice and acknowledgment for service by mail (back).

THIS ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT MUST BE COMPLETED

I acknowledge that I have received a copy of the summons and ~~of the~~ complaint in the above ~~captioned~~ matter in the State of *(Insert state).* ___.

_____

(Insert signature)

(Insert relationship

~~Signature~~

~~(Relationship~~ *to entity/authority* ~~Entity/Authority~~ *to receive service* ~~Receive Service~~ *of process* ~~Process~~*)*

(Insert date of signature)

~~Date of Signature~~

State of *(Insert state).*
~~)~~ County of *(Insert county).* _____~~)~~

(Insert name) personally ~~Personally~~ appeared before me, a notary public ~~the undersigned authority~~ in ~~and for the State and County aforesaid,~~ the above jurisdiction and whose signature follows ~~named~~ ___, who solemnly and truly declared and affirmed before me that the matters and facts ~~set forth~~ in the previous "Acknowledgment ~~foregoing Acknowledgement~~ of Receipt of Summons and Complaint" are true and correct as ~~therein~~ stated in it. ~~.~~

_____

(Insert process server's signature)

Affirmed to and subscribed before me the *(Insert date)* ~~this~~ _____ ~~day~~ of *(Insert year),* ~~, 19 .~~

(Insert process notary public's signature)

(Affix seal)

My commission expires: *(Insert date)*

~~Notary Public~~
~~My Commission Expires~~

~~(Seal)~~

[Adopted effective 3/~~March~~ 1/85~~, 1985~~; amended effective 5/~~May~~ 2/85~~, 1985~~; amended 3/~~March~~ 17/95.]

Form 4. Summons by publication.

~~1995.]~~

~~FORM 1C. SUMMONS BY PUBLICATION~~

IN THE *(Insert court)* COURT OF *(Insert county)* COUNTY, MISSISSIPPI

~~*A.B., Plaintiff(s)*~~

A.B., Plaintiff(s)

_____

_____ ~~(It is sufficient here to state the name of the first plaintiff with an appropriate designation of other plaintiffs.)~~

v. _____ Civil Action~~,~~

~~File~~ No. *(Insert case number)* ___

C.D., Defendant(s)

~~CD., Defendant(s)~~

~~(It is sufficient here to state the name of the first defendant with an appropriate designation of other defendants.)~~

SUMMONS

THE STATE OF MISSISSIPPI
TO: (*Insert the name and address of the person~~(s)~~ to be served*)

You have been made a Defendant in the suit filed in this Court by *(Insert name of all Plaintiffs)*, Plaintiff(s), seeking *(Insert a brief description of the relief being sought)*. Defendants other than you in this action are *(insert names of all defendants other than the person or persons who are the subject of this summons)*.

You are required to mail or hand deliver a copy of a written response to the Complaint ~~filed against you in this action~~ to *(Insert attorney's name)*, the attorney~~,~~ ~~Attorney~~ for the Plaintiff(s), whose post office address is *(Insert post office address)* ___ and whose street address is *(Insert street address)*. ___~~.~~

YOUR RESPONSE MUST BE MAILED OR DELIVERED NOT LATER THAN 30~~THIRTY~~ DAYS AFTER *(INSERT DATE)*~~THE ____ DAY~~ OF *(INSERT YEAR)*,~~, 19___,~~ WHICH IS THE DATE OF THE FIRST PUBLICATION OF THIS SUMMONS. IF YOUR RESPONSE IS NOT ~~SO~~ MAILED OR DELIVERED AS STATED, A JUDGMENT BY

DEFAULT WILL BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER RELIEF DEMANDED IN THE COMPLAINT.

You must also file yourthe original responseof your Response with the Clerk of this Court within a reasonable time afterward.

Issued under my hand and courtthe seal, the *(Insert date)* of *(Insert year).* of said Court, this day of_____, 19 .

(Insert clerk's signature)

Clerk of *(Insert county)* County,
Mississippi

(Affix seal)

~~(Seal)~~

[Adopted effective March 1, 1985; amended effective May 2, 1985.]

FORM 1D. RULE 81 SUMMONS

(Sheriff or Process Server)

IN THE____COURT OF _____ COUNTY, MISSISSIPPI

A. B., Plaintiff(s)

v. Civil Action, File No._____

C. D., Defendant(s)

SUMMONS

THE STATE OF MISSISSIPPI
TO: (Insert the name

NOTICE TO DEFENDANT(S)

THE COMPLAINT OR PETITION WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS.

You are summoned to appear and defend against said complaint or petition at ___O'clock ___.M. on the ___day of ___19__, in the courtroom of the _____ ___ County Courthouse at_____, Mississippi, and in case of your failure to appear and defend a judgment will be entered against you for the money or other things demanded in the complaint or petition.

You are not required to file an answer or other pleading but you may do so if you **(A)** desire.

Issued under my hand and the seal of said Court, this___day of_____, 19__.

_____

~~(Seal)~~ ~~Clerk of _____ County, Mississippi~~

~~(Note: All summons issued to the sheriff must be returned prior to the time the defendant is summoned to appear.)~~

~~[Adopted effective January 10, 1986.]~~

FORM 1DD. RULE 81 SUMMONS

(Summons by Publication)

IN THE COURT OF __ COUNTY, MISSISSIPPI

A.B., Plaintiff(s)
(It is sufficient here to state the name of the first plaintiff with an appropriate designation of other plaintiffs.)

v. Civil Action, File No. ____

C.D., Defendant(s)
(It is sufficient here to state the name of the first defendant with an appropriate designation of other defendants.)

SUMMONS

THE STATE OF MISSISSIPPI
TO: (Insert name of the person(s) to be served.)

You have been made a Defendant in the suit filed in this Court by _____, (Insert name of all Plaintiffs) Plaintiff(s) seeking _____ (Insert a brief description of the relief being sought). Defendants other than you in this action are _____ (Insert names of all defendants other than the person or persons who are the subject of this summons)

You are summoned to appear and defend against the complaint or petition filed against you in this action at ____ o'clock _. M. on the ____ day of _____, 19__, in the courtroom of the _____ County Courthouse at _____, Mississippi, and in case of your failure to appear and defend, a judgment will be entered against you for the money or other things demanded in the complaint or petition.

You are not required to file an answer or other pleading but you may do so if you desire.

(i) ___

~~Issued under my hand and the seal of said Court, this____ day of_____, 19__.~~

_____

~~Clerk of County, Mississippi~~

~~(Seal)~~

FORM 1E. WAIVER OF PROCESS

IN THE ___ COURT OF _____ COUNTY, MISSISSIPPI

A.B. Plaintiff

v. Civil Action, File No. _____

C.D. Defendant

WAIVER OF PROCESS

The undersigned ___ (name ___), whose post office address is _____ and whose street address is _____, does hereby waive the service of summons and ___ (designate any pleading on which service is being waived) upon myself in this cause.

In executing this document I certify that I am not an unmarried minor and am not mentally incompetent.

(In addition the person executing the waiver may add any or all of the following to the document:)

[Furthermore, by the filing of this document, I enter my appearance in this cause]

just as if I had been served more than 30 days prior to this date]

[and agree that this action may be heard and disposed of without further notice to me]

[and join in this action and in the prayer for relief]

This the ___ day of _____, 20___.

_____

Name

STATE OF _____)
COUNTY OF _____)

Personally appeared before me, the undersigned authority for the jurisdiction aforesaid, the within named _____ who acknowledged that he signed and delivered

the above and foregoing instrument on the day and year therein mentioned.

Given under my hand this the ___ day of _____, 20__.

Notary Public

My Commission Expires:

[In lieu of the above acknowledgment the following oath may be used:]

STATE OF_____)
COUNTY OF_____)

Personally appeared before me the undersigned authority in and for the jurisdiction aforesaid the within named_____who, being first by me duly sworn, states on oath that the matters and facts set forth in the foregoing instrument are true and correct as therein stated.

Name

(A)

Sworn to and subscribed before me this the ___ day of____, 20__.

Notary Public

My Commission Expires:

[Adopted effective February 1, 1990; amended effective July 1, 2009 to delete convicted felony exception.]

FORM 2. COMPLAINT ON A PROMISSORY NOTE

1. Defendant on or about _____, 19__, executed and delivered to Plaintiff a promissory note [in the following words and figures: (here set out the note verbatim)];[a copy of which is hereto annexed as Exhibit A]; [whereby defendant promised to pay to plaintiff or order on _____, 19__, the sum of ____ dollars with interest thereon at the rate of ___ percent per annum] [and agreed to pay a reasonable attorney's fee for collection].

2. Defendant owes to plaintiff [the amount of said note] [$_____ that is due on said note] and interest.

Wherefore plaintiff demands judgment against defendant for the sum of ____ dollars, interest, attorney's fee, and costs.

_____
Attorney for Plaintiff

_____

_____
Address

FORM 3. COMPLAINT ON COVENANT OR AGREEMENT

(A)—

1. On or about the ___ day of _____, 19__, plaintiff and defendant entered into agreement by which defendant promised [here set out agreement in general terms].

2. Defendant breached the agreement by [here set out breaches in general terms].

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars, interest and costs.

FORM 4. COMPLAINT FOR SPECIFIC PERFORMANCE

1. This is an action for specific performance of a contract to convey real property in _____ County, Mississippi.

(A)

2. On _____, 19 , plaintiff and defendant entered into a written contract, a copy being attached and marked Exhibit A.

3. Plaintiff timely tendered the purchase price to defendant and requested a conveyance of the real property described in the contract but defendant refused to accept the tender or to make the conveyance.

4. Plaintiff offers to pay the purchase price.

Wherefore plaintiff demands judgment that defendant be required to perform specifically the contract and for damages.

FORM 5. COMPLAINT ON AN OPEN ACCOUNT

1. Defendant owes plaintiff _____ dollars due by open account.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars, interest and costs.

FORM 6. COMPLAINT ON ACCOUNT STATED

1. Defendant owes plaintiff _____ dollars on an account stated between the plaintiff and defendant on the day of _____, 19 .

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars, interest and costs.

~~FORM 7. COMPLAINT FOR GOODS SOLD AND DELIVERED~~

~~1. Defendant owes plaintiff_____dollars for goods sold and delivered by plaintiff to defendant between the___day of_____and the____day of_____, 19__.~~

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars, interest and costs.

FORM 8. COMPLAINT FOR WORK AND LABOR DONE

1. Defendant owes plaintiff _____ dollars for work and labor done for the defendant by the plaintiff on the ___ day of _____, at defendant's request.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars, interest and costs.

FORM 9. COMPLAINT FOR MONEY LENT

1. Defendant owes plaintiff ___ dollars for money lent by plaintiff to defendant on or about the ___ day of _____, 19__.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars, interest and costs.

FORM 10. COMPLAINT FOR MONEY PAID BY MISTAKE

1. Defendant owes plaintiff _____ dollars for money paid by plaintiff to defendant by mistake on or about the ___ day of _____. 19__, under the following circumstances:

[here briefly state the circumstances].

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars, interest and costs.

FORM 11. COMPLAINT FOR MONEY HAD AND RECEIVED

1. Defendant owes plaintiff _____ dollars for money had and received from one ___

___ on or about the ___ day of _____, 19__, to be paid by defendant to plaintiff.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars, interest and costs.

FORM 12. COMPLAINT FOR MONEY PAID BY PLAINTIFF FOR DEFENDANT

1. Defendant owes plaintiff _____ dollars because of money paid by the plaintiff for the defendant on or about the ___ day of _____, 19__, at defendant's request.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars, interest and costs.

FORM 13. COMPLAINT ON A POLICY OF LIFE INSURANCE

1. On or about the ___ day of _____, 19__, defendant issued a policy whereby the defendant insured the life of _____ who died on the ___ day of _____, 19__, of which the defendant has had notice.

(1)

2. As a result, the amount of the policy is now due and the plaintiff is the beneficiary of the proceeds of the policy.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars, interest and costs.

FORM 14. COMPLAINT ON A POLICY OF FIRE INSURANCE

1. On or about the ___ day of _____. 19__, defendant insured plaintiffs dwelling house (or other property, as the case may be) against loss or injury by fire and other perils in a policy of insurance, for the term of _____ years.

2. The house (or other property) was wholly destroyed (or was damaged) by fire on the ___ day of _____, 19__, of which the defendant has had notice.

~~Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars, interest and costs.~~

FORM 15. COMPLAINT FOR NEGLIGENCE OR WANTONNESS

1. On or about the __ day of _____. 19__, upon a public highway [state the name of the street] in [City]; _____ County, Mississippi, the defendant negligently [or wantonly] caused or allowed a motor vehicle to collide with a motor vehicle occupied by the plaintiff.

2. As a proximate consequence of the defendant's said negligence [or wantonness], the plaintiff was caused to suffer the following injuries and damages: [enumerate injuries and damages].

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars and costs.

FORM 16. COMPLAINT FOR ASSAULT AND BATTERY

1. On or about the ___ day of _____, 19__, the defendant committed an assault and battery on the plaintiff.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars and costs.

FORM 17. COMPLAINT FOR FALSE IMPRISONMENT

1. On or about the ___ day of _____, 19__, the defendant unlawfully arrested and imprisoned the plaintiff (or caused the plaintiff to be arrested and imprisoned as the case may be) on a charge of larceny (or as the case may be) for __ days.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars and costs.

FORM 18. COMPLAINT FOR MALICIOUS PROSECUTION

(i)

1. On or about the ___ day of _____, 19__, defendant, maliciously, and without probable cause therefor, caused the plaintiff to be arrested under a warrant issued by _____, a justice court judge, on a charge of (as the case may be).

2. Before the commencement of this action, this charge was judicially investigated, the prosecution ended, and the plaintiff discharged.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars and costs.

FORM 19. COMPLAINT FOR FRAUD

1. On or about the ___ day of _____, 19__, defendant and plaintiff were negotiating concerning the purchase by plaintiff from defendant of the following described property:

[describe property].

2. At that time defendant represented to plaintiff that [here set out representations with particularity].

3. The representations made by defendant were false [and defendant knew that they were false] [and defendant, without knowledge of the true facts, recklessly misrepresented them] [and were made with the intention that plaintiff should rely upon them].

4. Plaintiff believed the representations and in reliance upon them purchased the property.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars and costs.

FORM 20. COMPLAINT ON A WARRANTY

1. On or about the ___ day of _____, 19__, defendant sold a (as the case may be) to the plaintiff on which the defendant gave warranty as shown by Exhibit A which is attached hereto [or insert the substance of the warranty].

2. In fact [here state the breach in general terms].

FORM 21. COMPLAINT FOR CONVERSION

1. On or about the ___ day of _____, 19__, defendant converted to his own use [here describe in general terms the property allegedly converted] of the _____ Company of the value of ___ dollars, the property of plaintiff.

Wherefore plaintiff demands judgment against defendant in the sum of ____ dollars, interest and costs.

FORM 22. MOTION TO DISMISS PURSUANT TO RULE 12(b)

The defendant moves that the Court proceed as follows:

1. To dismiss the complaint for lack of subject matter jurisdiction in that it is [an action seeking the reformation of a written instrument (or as the case may be)] and plaintiff has a full and adequate remedy [at law] [in equity].

2. To dismiss the complaint for lack of jurisdiction over the person in that [the defendant is a corporation organized under the laws of the State of _____ and was not and is not subject to service of process within the State of Mississippi (or as the case may be)].

3. To dismiss the action on the ground of improper venue in that defendant is a domestic corporation domiciled in _____ County, which is not the county in which [this action is brought] [the cause of action occurred or accrued].

4. To dismiss the complaint because of insufficiency of process in that the summons served on the defendant [was not signed by the clerk] [does not contain the names and addresses of the parties] [is directed to a person other than the defendant named in the complaint [did not have attached a copy of the complaint] (or as the case may be).

5. To dismiss the action because of insufficiency of service of process in that the summons served on defendant [was sent by ordinary mail rather than by certified mail]

~~[was served by a process server who is not sheriff of the county in which it was served nor a person eighteen years or older] [was served on a member of defendant's family who is less than sixteen years of age] [was served on _____, who is neither an officer nor the registered agent of the defendant corporation] (or as the case may be).~~

6. To dismiss the complaint for failure to state a claim upon which relief can be granted.

7. To dismiss the complaint for failure to join_____, a [person] [corporation] necessary for just adjudication because [he] [it] is this defendant's [co-tenant, lessee, royalty holder, assignee (or as the case may be)] whose rights are involved in this action.

NOTICE OF MOTION

TO:

_____
Attorney for Plaintiff

_____

_____
Address

Please take notice that the undersigned will bring the above motion on for hearing before this court at the_____County Courthouse in the City of_____, Mississippi, on the ___day of_____, 19__, at____o'clock a. m./p. m. that day or as soon thereafter as counsel can be heard.

_____
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of this Motion to Dismiss and Notice of same on J.K, Counsel of Record for the Plaintiff, A.B., by placing a copy of same in the United States mail, postage prepaid, addressed to his regular business mailing address.

This the___day of_____, 19__.

~~Attorney for Defendant~~

~~Address~~

FORM 23. ANSWER PRESENTING DEFENSES UNDER RULE 12 (b)

(1)

First Defense

[Improper Venue]

The action is brought in the wrong county because the defendant is a domestic corporation domiciled in _____ County, which is not the county in which this action is brought or in which the cause of action occurred or accrued.

Second Defense

[Admission and Denial]

Defendant admits the allegations contained in paragraphs 1 and 4 of the complaint; alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the complaint; and denies each and every other allegation contained in the complaint.

Third Defense

[Statute of Limitations]

The right of action set forth in the complaint did not accrue within _____ years next before the commencement of this action.

Counter-claim

Here set forth any claim as a counter-claim in the manner in which a claim is pleaded in a complaint.

Cross-Claim against Defendant M. N.

Here set forth the claim constituting a cross-claim against defendant M. N. in the

~~manner in which a claim is pleaded in a complaint.~~

FORM 24. MOTION TO BRING IN THIRD-PARTY DEFENDANT

Defendant moves for leave, as third-party plaintiff, to cause to be served upon E. F. a summons and third-party complaint, copies of which are attached as Exhibit A.

FORM 25. THIRD-PARTY COMPLAINT

1. Plaintiff, A. B., has filed against defendant, C. D., a complaint, a copy of which is attached as Exhibit A.

2. If the defendant, C. D., is liable to the plaintiff on the occasion complained of in the complaint, it is liable because [here state the grounds upon which C. D., is entitled to recover from E. F., all or part of what A. B. may recover from C. D. The statement should be framed as in an original complaint.]

Wherefore, C. D. demands judgment against third-party defendant E. F. for all sums that may be adjudged against defendant C. D. in favor of plaintiff, A. B.

FORM 26. MOTION TO INTERVENE AS A DEFENDANT UNDER RULE 24

[Based upon the Complaint, Form 15]

IN THE CIRCUIT COURT OF ____ COUNTY, MISSISSIPPI

A.B., Plaintiff

v. Civil Action, File No. _____

C.D., Defendant

E.F., Applicant for Intervention

MOTION TO INTERVENE AS A DEFENDANT

E. F. moves to intervene as a defendant in this action to assert the defenses set forth in his proposed answer, a copy of which is attached hereto, on the ground that he is the owner of the automobile alleged in the Complaint to have collided with the vehicle occupied by the plaintiff and as such as a defense to plaintiffs claim presenting both questions of law and of fact which are common to the main action.

_____

Attorney for E. F.

Applicant for Intervention

_____

_____

Address

NOTICE OF MOTION

[Contents the same as in Form 22]

IN THE CIRCUIT COURT OF _____ COUNTY, MISSISSIPPI

A.B., Plaintiff C.D., Defendant

v.

Civil Action,
File No.

E.F., Intervener

INTERVENER'S ANSWER

First Defense

Intervener denies the allegations stated in paragraphs 1 and 2 of the Complaint in so far as they assert negligence on the part of the defendant.

Second Defense

Intervener asserts that at the time of the collision stated in the Complaint the plaintiff was operating his vehicle under the influence of alcohol and in a wantonly negligent manner.

Third Defense

Intervener asserts that at the time of the collision stated in the Complaint defendant was operating intervener's vehicle without intervener's authority, permission, or license.

FORM 27. MOTION TO DROP DEFENDANT OR FOR SEVERANCE OF CLAIMS

Defendant,_____, moves the court for an order dropping him as a party defendant herein or in the alternative for an order severing the claim asserted against him by plaintiff herein from the claim asserted against defendant,_____, on the grounds that:

1. The alleged claim asserted against defendant,_____, does not arise from the same transaction, occurrence, or series of transactions or occurrences, as the claim asserted against defendant,_____; nor do the two alleged claims involve questions of law or fact common to both defendants.

2. The moving defendant will be put to undue expense and embarrassment if he is required to proceed with his defense without a severance of the issues.

3. The trial of action will be embarrassing and the jury confused by a joint trial of the claims asserted against the two defendants herein, all to the prejudice of the moving defendant.

FORM 28. MOTION BY DEFENDANT FOR SEVERANCE OF CLAIMS OF SEVERAL PLAINTIFFS

Defendant moves the court for an order severing the claims asserted by the respective plaintiffs herein against the defendant, on the grounds that:

1. The alleged claim or claims of each plaintiff differ in material and essential elements and respects from the alleged claim or claims of each of the other plaintiffs.

2. The alleged claims of the plaintiffs do not arise out of the same transaction, occurrence, or series of transactions or occurrences, and do not involve questions of law or fact common to all the plaintiffs.

~~3. The joining in one action and one complaint of the alleged claims of the plaintiffs is prejudicial to the defendant and injures his substantial rights and will embarrass and delay the trial.~~

FORM 29. MOTION BY PLAINTIFF TO ADD DEFENDANT

Plaintiff moves the court for an order making _____ a party defendant herein and directing the issuance and service of process on him, and for grounds therefor shows:

1. This is an action for [state briefly the nature of the claim for relief].

2. [State facts showing that the proposed additional defendant is an indispensable, necessary or proper party defendant].

3. The said _____ is a citizen and resident of _____, is subject to the jurisdiction of this court as to both service of process and venue and can be made a party defendant herein without depriving the court of jurisdiction.

FORM 30. MOTION BY DEFENDANT TO BRING IN ADDITIONAL DEFENDANT

Defendant moves the court for an order making _____ a party defendant herein; directing that process be issued and served upon defendant _____; and requiring plaintiff to serve and file an amended complaint, and for grounds therefor shows:

1. This is an action for [state briefly the nature of the claim for relief].

2. [State facts showing that a person needed for just adjudication has not been joined as a defendant].

3. The said _____ is a citizen and a resident of _____, is subject to the jurisdiction of this court as to both service of process and venue, and can be made a party defendant herein without depriving the court of jurisdiction.

~~FORM 31. MOTION BY DEFENDANT TO ADD ADDITIONAL PLAINTIFF~~

~~Defendant moves the court for an order directing that _____ be made a party plaintiff herein, or in the alternative, if _____ refuses to join as a plaintiff, he be made a defendant as provided by Rule 19(a), and for grounds therefor shows:~~

~~1. This is an action for [state briefly the nature of the claim for relief].~~

2. [State facts showing that a person needed for just adjudication has not been joined as a plaintiff].

3. The said_____is a citizen and resident of_____; he is subject to the jurisdiction of this court as to service of process and venue; and he can be made a party plaintiff (or, as the case may be, a party defendant) herein without depriving the court of jurisdiction.

FORM 32. ANSWER TO COMPLAINT SET FORTH IN FORM 11 WITH COUNTER-CLAIM FOR INTERPLEADER

Defense

Defendant admits the allegations stated in paragraph 1 of the complaint and denies the allegations stated in paragraph 2 to the extent set forth in the counter-claim herein.

Counter-claim for Interpleader

1. Defendant received the sum of_____dollars as a deposit from E. F.

2. Plaintiff has demanded the payment of such deposit to him by virtue of an assignment of same which he claims to have received from E. F.

3. E. F. has notified the defendant that he claims such deposit, that the purported assignment is not valid, and that he holds the defendant responsible for the deposit.

Wherefore defendant demands:

(1) That the court order E. F. to be made a party defendant to respond to the complaint and to this counter-claim.

(A)—

(2) That the court order the plaintiff or E. F. to interplead their respective claims.

(A) =

(3) That the court adjudge whether the plaintiff or E. F. is entitled to the sum of money.

(4) That the court discharge defendant from all liability in the action except to the person it shall adjudge entitled to the sum of money.

(5) That the court award to the defendant its costs and attorney's fees.

FORM 33. PLAINTIFF'S MOTION FOR SUBSTITUTION – DECEASED PARTY DEFENDANT

Plaintiff shows to the court that_____, the above-named defendant, died intestate (or testate) on or about the____day of_____, 19__; that letters of administration upon the estate of the said were issued on the___day of_____, 19__, 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__): and this is an action for [state briefly nature of action] and the claim of plaintiff was not extinguished by the death of defendant.

Wherefore plaintiff moves the court for an order substituting_____, administrator (or, as the case may be, executor) of the estate of_____, deceased, as party defendant herein.

FORM 34. PRE-TRIAL ORDER

1. Counsel.

Appearing for the plaintiff: _____

Appearing for the defendant: _____

2. Nature of the case. [Count 1 of] the complaint alleges a cause of action based upon [negligence, breach of warranty, breach of oral contract, etc.].

3. Positions of the parties.

a. Plaintiff contends: [concise statement of factual and legal contentions].

b. Defendant contends: [concise statement of factual and legal contentions].

4. Stipulations and admissions.

5. Discovery. Discovery proceeding6 have been completed except as follows: [specify additional discovery proceedings required].

6. Additional Orders: [as required by the particular case].

Ordered that the above allowances and agreements are binding on all parties in the above-styled cause unless this order be hereafter modified by the Court for good cause and to prevent manifest injustice.

Done this___day of_____, 19__.

_____
Judge

FORM 35. MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT, OR IN THE ALTERNATIVE, FOR NEW TRIAL

Defendant [Plaintiff] moves the Court to set aside the verdict and judgment entered in the above-styled action on_____, 19__, and to enter judgment in favor of the Defendant [Plaintiff] in accordance with the motion for directed verdict, or, in the alternative, Defendant [Plaintiff] moves the court to set aside the verdict and grant Defendant [Plaintiff] a new trial on the following grounds, to-wit:

1.
2. [Herein state grounds]
3.

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 Plaintiff~~

State of Mississippi)
County of_____)

_____, being duly sworn, deposed and says:

(A)

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 plaintiffs complaint, on the___day of_____, 19__.

(A)

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.

(i)

4. That

the defendant has failed to answer or otherwise defend as to plaintiffs 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 plaintiffs complaint.

_____
Attorney for Plaintiff

Sworn to and subscribed before me this the___day of_____, 19__.

_____
Notary Public

FORM 37. DOCKET OF ENTRY OF DEFAULT

Default entered against defendant_____this___day of_____, 19__.

~~**FORM 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__.~~

_____

~~Judge~~

APPENDIX B. AFFECTED STATUTES [Deleted in its entirety].~~~~AFFECTED~~

~~**[DELETED IN ITS ENTIRETY.]**~~

[Effective 6/~~June~~ 24/92].~~, 1992.]~~

APPENDIX C. TIME TABLE FOR PROCEEDINGS UNDER THE MISSISSIPPI RULES OF CIVIL PROCEDURE [Deleted in its entirety].

~~[DELETED IN ITS ENTIRETY.]~~

[Effective 6/~~June~~ 24/92].~~, 1992.]~~