

**LOCAL RULES
FOR
FIRST CIRCUIT COURT DISTRICT OF MISSISSIPPI**

[Renumbered and codified by order of the Supreme Court effective May 18, 2006.]

RULE 1. CASE ASSIGNMENT PROCEDURE

(a) All Civil Cases filed after December 31, 1989, in the Circuit Courts of this district shall be assigned at the time of filing by such method as to insure that such assignment shall be random; that no discernable pattern of assignment exists and that no person shall know to whom the case will be assigned until such time as it has been accomplished.

(b) Each Civil Case filed in this Court after December 31, 1989 shall bear a number as follows: The last two digits of the year in which the case is filed followed by the sequential number of the case for the county and year, followed in parenthesis by the first letter of the name of the Judge to whom the case is assigned. The suffix (G) designates Gardner; the suffix (PF) designates Funderburk; the suffix (A) designates Aycock. In addition, the first letter of the County name shall be added. Pontotoc County shall be (PO), Prentiss County shall be (PR).

(c) The Circuit Clerks of each of the Counties of this district shall immediately adapt a method of making assignments contemplated by this Order and have same approved by the Court prior to the effective date of this rule. In addition the Court Administrator's shall maintain a trial calendar so the Court, the Court Administrator and the Attorneys may schedule the trial of cases at times other than regularly scheduled term times.

RULE 2. TRIAL SETTINGS, DOCKET SETTINGS

(a) All Civil matters assigned to a Judge will be scheduled for trial by the Judge at such time, in term or otherwise, as shall insure the rapid disposition of the Court's business and in accord with the rules of discovery.

(b) All Criminal Cases shall be set by the Court on regularly scheduled docket setting on the suggested trial calendar prepared by the Office of the District Attorney. In the event the Court Administrator's Office is unable to resolve any conflicts concerning trial dates, the attorney for the Defendant will seek a continuance from the date scheduled by the trial docket prepared by the District Attorney.

(c) The matter of scheduling all cases for trial shall be under the direction and control of the Administrator, subject to approval of the Judges.

RULE 3. SCHEDULING ORDER

(a) Within thirty (30) days after issue is joined in a case, but no later than 120 days after the complaint is filed, counsel are required to present the Court a proposed Order setting forth deadlines for the joining of other parties and amending the pleadings; service of motions; and the completion of discovery. If more than six months discovery time is requested, the proposed Order should be accompanied by an explanation of the necessity for the protracted period. The proposed order shall provide that motions to add parties or amend the pleadings must be served no more than thirty (30) days after the date scheduled for completion of discovery. All counsel are required to make a realistic estimate of the time needed for discovery, but all requested periods of discovery shall remain under the supervision of the Court, and lengthened or shortened as the case dictates, and the Court shall enter a Scheduling Order accordingly. In the event counsel are unable to agree upon the terms of the scheduling order or fail to submit a proposed order to the Court within the time required by this paragraph, discovery shall be limited to the time provided in the Mississippi Rules of Civil Procedure. Extensions of deadlines will be granted by the Court only upon a showing of good cause.

(b) Within thirty (30) days after expiration of the time provided for discovery, Counsel are required to present an order to the Court setting a date for status conference or pretrial conference or providing that no pretrial conference is needed or required.

(c) If no pretrial conference is to be had the parties shall file with the Court an agreed pretrial order or note in the form previously provided by the Court. A copy of said form is appended to this rule.

(d) Following the pretrial conference or status conference, counsel shall submit to the Court an order setting the cause for trial and reflecting any ruling by the Court during such meeting.

RULE 4. MOTION PRACTICE

(a) **Applicability.** The provisions of this rule apply to all written motions filed in civil actions.

(b) **Filing; Proposed Orders.** The original of each motion, and all affidavits and other supporting documents shall be filed with the Clerk where the action is filed. The

moving party at the same time shall mail a copy thereof to the Judge presiding in the action at his home office mailing address.

A proposed Order shall accompany the court's copy of any motion which may be heard ex parte or is granted by consent.

(c) Responses. The original of any response to the motion, all opposing affidavits, and other supporting documents shall be filed with the Clerk where the action is filed and any response to the motion and all objections shall be filed and copies distributed as provided in Paragraph (B) of this rule.

(d) Memoranda; Documents Required With Motions to Dismiss or for Summary Judgment; Failure to Submit Required Documents. At the time the motion is served, other than motions or applications which may be heard ex parte or those involving necessary or urgent matters, counsel for movant shall mail to the Judge the original of a memorandum of authorities upon which he relies and pertinent portions of the pleadings filed in the case. Counsel for respondent shall submit the original memorandum of authorities in reply, and shall do so within (10) days after service of movant's memorandum. Counsel for movant desiring to submit a rebuttal memorandum may do so within (5) days after the service of the respondent's memorandum. Any requests for extension of time shall be made in writing to the Judge before whom the motion is noticed. Memoranda submitted in connection with any dispositive motion shall be accompanied by separate proposed findings and conclusions. Failure to timely submit the required motion documents may result in the denial of the motion and/or the imposition of appropriate sanctions.

(e) Length of Memoranda. Movant's original and rebuttal memoranda together shall not exceed a total of thirty-five (35) pages, and respondent's memorandum shall not exceed thirty-five (35) pages. Memoranda and other submissions required by Paragraph (D), except as therein provided, are not to be filed with the Clerk's office.

(f) Notice and Hearings. All Motions in which a hearing is requested shall be noticed for hearing "as soon as counsel can be heard" but no date certain shall be set by the moving party except as approved by the Court Administrator's Office.

All motions shall be decided by the Court without a hearing or oral argument unless otherwise ordered by the Court on its own motion, or, in its discretion, upon written motion made by either counsel.

The scheduling of an evidentiary hearing or oral argument, where allowed, shall be set at such time and place as may suit the convenience of Counsel and the Judge assigned to

the case. The Court may, in its discretion, hear oral argument by telephone conference.

(g) Urgent or Necessitous Matters. Where the motion relates to an urgent or necessitous matter, counsel for the movant shall, prior to the filing the motion, contact the Judge to whom the action has been assigned, and arrange a definite time and place for the hearing of the motion. In such cases, counsel for movant shall endorse upon the motion a separate certificate giving notice to the other parties of the time and place fixed by the Court for hearing of the motion. The Court, upon receipt of the motion, may in its own discretion direct counsel as to the submission of memoranda of authorities for the Court's consideration.

(h) Service. Movant and respondent shall serve copies of all motions, responses, and/or memoranda upon opposing counsel. When service is by mail, three (3) days shall be added to the periods prescribed in Paragraph (D) of this rule.

(i) Court Reporters. If the hearing of a motion, whether at a regular motion day, pretrial conference, or special setting, requires the presence of a court reporter, the party requesting a court reporter shall obtain prior approval from the Judge before the motion is set.

(j) Untimely Motions. Any motion served beyond the motion deadline imposed in the Scheduling Order entered pursuant to Rule 3, may be denied solely because the motion is served untimely.

(k) Sanctions-Frivolous Motions or Opposition. A patently frivolous motion or opposition to a motion on patently frivolous grounds may result in the imposition of appropriate sanctions, including the assessment of costs and attorney fees.

(l) Sanctions-Unreasonable Delays. Delays, or continuances, or waste of the Court's time occasioned by the failure of a party to follow the procedures outlined in this rule may result in the imposition of appropriate sanctions, including assessment of costs and attorney's fees. In this regard, counsel shall notify the appropriate Judge immediately if a submitted motion is resolved by the parties or the case in which the motion has been pending is settled.

(m) All pleadings shall, in addition to other requirements, clearly indicate the complete name, mailing address and phone number of counsel filing same.

RULE 5. PRETRIAL CONFERENCES AND PRETRIAL ORDERS

(a) Cases In which Conference to Be Held; Scheduling. A pretrial conference may

be held in all civil actions pursuant to a calendar periodically prepared by the Court Administrator's Office at the direction of the Court Administrator or the Judge and furnished by mail to counsel for all parties.

(b) Whenever possible, pretrial conferences shall be separately scheduled at a date, place and hour and for such period of time as the subject matter of the particular case may require, but in all events, pretrial conferences shall be scheduled in such manner as not to cause undue or inordinate inconvenience to counsel scheduled for pretrial conferences in other cases.

RULE 6. CONTINUANCES

No Continuance of any case may be agreed to by the parties after the cause has been scheduled for trial. Unless an order is entered by the Court prior to the date set for trial, the matter will proceed to trial as to all parties. This provision shall apply to civil and criminal matters.

RULE 7. CONFLICTS, RECUSAL

In the event a case is assigned to a Judge having a conflict as contemplated by the Canon (3) et seq. Code of Judicial Conduct which requires that he disqualify himself, then he shall advise the Clerk of the Court making the assignment of such conflict and return all materials connected with the matter.

Upon receipt of such notification the Clerk shall proceed to reassign the case to another of the judges, returning the disqualified Judges name to the pool so that he will draw another case to replace that one returned.

In the event all Judges of the District disqualify themselves the Senior Circuit Judge shall make proper application for appointment of a Judge from without the District.

RULE 8. NON-FILING OF DISCOVERY MATERIALS

(a) Interrogatories under Rule 33, M.R.C.P., and the answers thereto, Request for Production of Inspection under Rule 34, M.R.C.P., Request for Admissions under Rule 36, M.R.C.P., and responses thereto, and depositions under Rule 30 and 31, M.R.C.P., shall be served upon other counsel or parties as provided by the Rules, but *shall not* be filed with the Circuit Court Clerks. The party responsible for service of the discovery material shall retain the original and become the custodian.

(b) If relief is sought under the Mississippi Rules of Civil Procedure concerning any interrogatories, requests for production or inspection, request for admissions, answers to interrogatories, responses to request for admission or depositions, copies of the *portions* of the interrogatories, requests, answers, responses or depositions *in dispute* shall be filed with the appropriate Circuit Court Clerk and with the assigned Judge contemporaneously with any motion filed under said Rules.

(c) If interrogatories, requests, answers, responses or depositions are to be used at trial or are necessary to a pre-trial motion which might result in a final order on any issue, the portions to be used shall be considered an exhibit and filed with the Clerk at the outset of the trial or at the filing of the motion insofar as their use can be reasonably anticipated.

(d) When documentation of discovery not previously in the record is needed for appeal purpose, upon an application and order of the Court, or by stipulation of counsel, the necessary discovery papers shall be filed with the Clerk.

(e) The Clerks of this Court are authorized and directed to return forthwith any discovery materials submitted for filing which does not comply with the requirements set forth hereinabove. This order shall be spread on the minutes of this Court and a copy thereof made available to any attorney and/or party requesting same.

RULE 9 VIDEOTAPE DEPOSITIONS

The videotaping of a deposition in addition to the preparation of the usual written transcript shall be permitted as a matter of course provided the order or stipulation authorizing such deposition contains the following requirements:

(a) The time and place of the taping of the deposition shall be set by notice served in the same manner as for a regular deposition, except it shall state that a videotape deposition is being taken.

(b) The videotape operation technician shall certify as to the correctness and completeness of the videotape.

(c) At the beginning of the deposition the parties and counsel shall be shown in the visual portion of the deposition.

(d) During the deposition the witness shall be recorded in as near to courtroom atmosphere and standards as possible. There will not be any "zoom in" procedures to unduly emphasize any portion of the testimony, but "zoom in" will be allowed for exhibits and charts

to make them visible to the jury. The camera shall focus as much as possible on the witness. The attorneys may be shown on introduction, the beginning of examination and during objections.

(e) It shall not be necessary for a witness to view and/or approve the videotape of a deposition.

(f) Any party may purchase a duplicate original or edited tape from the video operator technician at any time.

RULE 10. APPOINTMENT OF COUNSEL FOR INDIGENT CRIMINAL DEFENDANTS

Pursuant to Rule 7.2(a)(1) of the Mississippi Rules of Criminal Procedure, the Court hereby establishes a procedure for the appointment of counsel for each indigent defendant entitled thereto:

- (a) **Order of Appointment.** When the Court¹ has determined that a person is indigent, counsel is appointed and an order shall be entered to that effect in MEC and/or the court file.
- (b) **Appointment of Public Defender.** In justice courts that have a public defender system, the justice court public defenders shall represent all persons entitled to appointed counsel whenever authorized by law and able to do so. In municipal courts that have a public defender system, the municipal court public defenders shall represent all persons entitled to appointed counsel whenever authorized by law and able to do so. In circuit courts that have a public defender system, the circuit court public defenders shall represent all persons entitled to appointed counsel whenever authorized by law and able to do so. If the public defenders cannot represent the defendant, a private attorney shall be appointed.
- (c) **Appointment of Private Attorneys.**
 - 1. Appointments of private attorneys shall be made on an impartial and equitable basis. The appointments shall be distributed among the attorneys on a rotation system. Cases shall be assigned to attorneys of

¹ The “Court” as used in this rule is the municipal court, the justice court, or the circuit court.

sufficient experience, skill, and competence to render effective assistance of counsel to defendants. Complex cases shall be assigned to attorneys with sufficient levels of experience and competence to provide effective representation. Less-experienced attorneys should be assigned cases which are within their capabilities, but should be given the opportunity to expand their experience under supervision.

2. The Court will maintain a court-appointed attorney list from which attorneys shall be appointed to represent indigent defendants. Attorneys may contact the Court Administrator and request that they be placed on, or removed from, the court-appointed list. The Court will make the court-appointed list of attorneys available upon request.
3. The Court will generally attempt to appoint attorneys from the court-appointed attorney list on a rotational basis, subject to the Court's discretion to make exceptions due to:
 - i. the nature and complexity of the case;
 - ii. an attorney's experience;
 - iii. the nature and disposition of the defendant;
 - iv. a language or communication consideration;
 - v. a conflict of interest;
 - vi. the availability of an attorney, taking into consideration an immediate need to address issues involved in the case;
 - vii. geographic considerations;² and
 - viii. other relevant factors that may be involved in a specific case.
4. If the Court, in its sole discretion, varies from the rotational basis, it may appoint any qualified attorney, whether or not the attorney is on the court-appointed list. However, a circuit court public defender shall not be appointed as defense counsel in the municipal or justice courts unless he or she is on the court-appointed list. If an attorney on the court-appointed list is appointed outside the rotational basis established,

² The Court may appoint an attorney who is in the closest geographic proximity to the Court before considering the appointment of another attorney in order to avoid the costs of travel time for attorneys and mileage expenses, for the convenience of the defendant in consulting with a local attorney, and for the convenience of the Court in scheduling cases.

that attorney's name shall be placed at the end of the rotation.

5. The Court will monitor attorney performance on a continuing basis to ensure the competency of attorneys on the list. An attorney may be removed from the appointment list at the discretion of the Court. If an attorney is under consideration for removal from the list, written notification will be given indicating the concerns with his or her performance which give rise to consideration for removal, and the attorney will be given the opportunity to respond—in writing or in person—before a final decision is made. An attorney who has been removed from the list may be considered for reinstatement after the deficiencies contained in the notice have been resolved.
- (d) **Compensation.** An attorney appointed to represent an indigent defendant is entitled to compensation for services rendered as provided by contract with the municipality or county or as provided by law.
- (e) **Expenses.** As used herein, the term “compensation for services” shall include any reasonable expenses necessarily incurred by appointed counsel in defense of an indigent client, including fees and expenses of experts or professional persons, provided that the incurring of such expenses has been approved in advance by the presiding judge, with such approval being within the sound discretion of the Court.
- (f) **Continuing Legal Education.** The public defenders and private attorneys appointed through the rotational system shall complete annual training or educational programs in the area of criminal defense accredited by the Mississippi Office of State Public Defender and the Mississippi Commission on Continuing Legal Education. Part-time defenders shall complete six (6) hours of such training and full-time defenders shall complete twelve (12) hours of such training.
- (g) **Continuity of Appointment.** Any attorney who is appointed to represent a person in municipal court or justice court on a felony charge shall continue representing that person until an indictment or information is filed in circuit court and new counsel is appointed by the circuit court.³

1. The municipal court or justice court shall conduct the initial

³ This rule does not limit a municipal court's or justice court's authority to enter an order substituting counsel prior to indictment.

appearances and preliminary hearings on the felony charge and hear motions for bond and motions to reduce bond (if municipal or justice court granted or denied bond) filed by the defendant or his/her attorney *prior to indictment or information*.

2. The attorney appointed to represent an indigent person in circuit court shall remain as counsel until withdrawal is granted and new counsel is substituted. *See* MRCrP 7.2(d).
- (h) Notice of Appointment.** Any attorney who is appointed to represent a person in municipal court or justice court on a felony charge shall notify the Circuit Court Administrator of that appointment within five (5) days of the date the defendant is bound over for consideration by the grand jury. Counsel shall notify the Circuit Court Administrator of the date of arrest, the charges, and bond status or conditions, if any.

[Rules 1-9 adopted by order entered December 27, 1989, and approved by the Supreme Court by order entered on February 14, 1990; Rule 10 adopted by order entered November 7, 2023, and approved by the Supreme Court by order entered December 6, 2023.]