

2016 Fall Public Defender Conference
Mississippi Rules of Criminal Procedure
Justice Ann H. Lamar
October 28, 2016

The Mississippi Rules of Criminal Procedure were released for public comment on October 6th, for a thirty-day period. Comments are due by November 7th. These rules are the culmination of more than ten years of work. The rules quoted below are subject to change by the Court following the comment period.

The Mississippi Supreme Court welcomes your input and comments.

-Rule 1.1 (Scope)

-broad scope, and replaces the Uniform Rules of Circuit and County Court and the Uniform Rules of Procedure for Justice Court

Rule 1.1 Scope.

These are the Mississippi Rules of Criminal Procedure and shall govern the procedure in all criminal proceedings, from arrest through post-trial motions, in all trial courts within the State of Mississippi, except as otherwise provided in these Rules. They may be cited as M.R.Cr.P.; e.g., M.R.Cr.P. 1.

-Rule 3 (Arrest Warrant or Summons Upon Commencement)

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

Rule 3.1 Issuance of Arrest Warrant or Summons.

(a) Issuance. Upon a finding of probable cause made pursuant to Rule 2.2, or upon a finding that such a determination has previously been made, the judge shall immediately cause to be issued an arrest warrant or, where not prohibited by law, a summons. More than one (1) summons or warrant may issue on the same charging affidavit.

(b) Summons; Subsequent Issuance of Arrest Warrant.

(1) Summons. If the defendant is not in custody, if the offense charged is bailable as a matter of right, and if there is no reason to believe that the defendant will not obey the summons, a summons may be issued, where not prohibited by law, at the sole discretion of the issuing judge.

(2) *Subsequent Issuance of Arrest Warrant.* If a defendant who has been duly summoned fails to appear, or if after issuance of a summons there is reasonable cause to believe that the defendant will fail to appear, or if for any reason the summons cannot be served or delivered, an arrest warrant shall issue.

-Rule 8.2(a) (Right to Release)

-outlines factors for consideration by the judge setting bond

Rule 8.2 Right to Pretrial Release on Personal Recognizance or on Bond.

(a) Right to Release. Any defendant charged with an offense bailable as a matter of right may be released pending or during trial on the defendant's personal recognizance or on an appearance bond unless the court before which the charge is filed or pending determines that such a release will not reasonably assure the defendant's appearance as required, or that the defendant's being at large will pose a real and present danger to others or to the public at large. If such a determination is made, the court may impose the least onerous condition(s) contained in Rule 8.4 that will reasonably assure the defendant's appearance or that will eliminate or minimize the risk of harm to others or to the public at large. In making such a determination, the court may take into account the following:

- (1) the age, background and family ties, relationships and circumstances of the defendant;
- (2) the defendant's reputation, character, and health;
- (3) the defendant's prior criminal record, including prior releases on recognizance or on unsecured or secured appearance bonds, and other pending cases;
- (4) the identity of responsible members of the community who will vouch for the defendant's reliability;
- (5) violence or lack of violence in the alleged commission of the offense;

(6) the nature of the offense charged, the apparent probability of conviction, and the likely sentence, insofar as these factors are relevant to the risk of nonappearance;

(7) the type of weapon used (e.g., knife, pistol, shotgun, sawed-off shotgun, assault or automatic weapon, explosive device, etc.);

(8) threats made against victims or witnesses;

(9) the value of property taken during the alleged commission of the offense;

(10) whether the property allegedly taken was recovered or not, and damage or lack of damage to the property allegedly taken;

(11) residence of the defendant, including consideration of real property ownership, and length of residence in the defendant's domicile;

(12) in cases where the defendant is charged with a drug offense, evidence of selling or distribution activity that should indicate a substantial increase in the amount of bond;

(13) consideration of the defendant's employment status and history, the location of defendant's employment (e.g., whether employed in the county where the alleged offense occurred), and the defendant's financial condition;

(14) sentence enhancements, if any, included in the charging document; and

(15) any other fact or circumstance bearing on the risk of nonappearance or on the danger to others or to the public.

-Rule 8.2(c) (Bond Schedule)

-general guide for courts in setting bail that does not obviate a judge's discretion in the matter

-Rule 12 (Incompetency and Mental Examinations)

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

Rule 12.2 Examination of Defendant's Mental Condition.

(a) Competency to Stand Trial or Be Sentenced. If at any time before or after indictment, the court, on its own motion or the motion of any party, has reasonable grounds to believe that the defendant is mentally incompetent, the court shall order the defendant to submit to a mental examination.

(b) Insanity Defense. If the defendant has timely raised a defense of insanity pursuant to Rule 17.4(b), the court, on its own motion or the motion of any party, may order the defendant to submit to a mental examination to investigate the defendant's mental condition at the time of the offense.

(c) Intellectual Disability in Death Penalty Cases. If at any time the court, on its own motion or the motion of any party, has reasonable grounds to believe that the defendant's intellectual disability bars imposition of a sentence of death, the court may order the defendant tested and/or examined to determine whether the defendant is intellectually disabled.

(d) Contents of Motion; Order. The motion shall state the facts upon which the mental examination is sought. The mental examination shall be conducted by a competent psychiatrist and/or psychologist approved by the court.

(e) Medical and Criminal History Records. All available medical and criminal history records shall be provided to the examining mental health expert as and when ordered by the court. A certificate of compliance shall be filed with the court documenting that the records were submitted as ordered.

-Rule 12.5(a) (Hearing)

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

Rule 12.5 Hearing and Orders.

(a) Hearing. After submission of the reports, the court, upon its own motion or the motion of any party, shall promptly hold a hearing to determine the defendant's competency. The parties may introduce other evidence regarding the defendant's mental condition or, by stipulation (either written or stated on the record in open court), submit the matter on the experts' reports.

-Rule 17.5 (Depositions)

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

Rule 17.5 Depositions.

(a) When Taken.

(1) In General. A party may move that a prospective witness be deposed in order to preserve testimony for trial. The court may grant the motion because of exceptional circumstances and in the interest of justice. If the court orders the deposition to be taken, it may also require the deponent to produce at the deposition any designated material that is not privileged, including any book, paper, document, record, recording, or data.

(2) Detained Material Witness. A witness who is detained under Mississippi Code Section 99-15-7 may request to be deposed by filing a written motion and giving notice to the parties. The court may then order that the deposition be taken and may discharge the witness after the witness has signed under oath the deposition transcript.

-Rule 17.10 (Discovery in Municipal and Justice Courts)

-new procedure regarding discovery in justice/municipal courts

Rule 17.10 Discovery in Municipal and Justice Courts.

Upon written request, prior to trial or preliminary hearing, the prosecuting attorney will disclose unto each defendant or his attorney, the following (or so much thereof as may be applicable):

- (1) Names of all witnesses proposed to be offered by the prosecution upon trial or hearing. The prosecution has a duty to supplement any disclosure previously furnished as soon as determination is made to use witnesses not previously named;
- (2) Copy of any written statement of the defendant;
- (3) Copy of the criminal record of the defendant, if proposed for use as impeachment;
- (4) Copy of laboratory reports or reports of any tests made;
- (5) Any physical evidence, photographs, and/or electronic data to be offered in evidence;
- (6) Copy of any exculpatory material concerning the defendant;
and
- (7) Any affidavit used to obtain a search warrant in the subject case.

To any extent applicable, the prosecuting attorney is entitled to reciprocal discovery of items (1) - (7) enumerated above.

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

-new to Mississippi practice

Rule 25.3 Denial by Operation of Law.

A motion for a new trial or a motion to vacate judgment pending thirty (30) days after entry of judgment shall be deemed denied as of the thirtieth (30th) day. However, the parties may agree in writing, or the court may order, that the motion be continued past the thirtieth (30th) day to a date certain within ninety (90) days; any motion still pending after the date to which it is continued shall be deemed denied as of that date. The motion may be continued from time to time as provided in this Rule.

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

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

Rule 29.1 Notice of Appeal; Contents; Defects; Dismissal.

(c) Defects in the Notice of Appeal; Dismissal. Upon a failure of the defendant to comply with the requirements of this rule as to content of the written notice of appeal, the court, on its own motion or on motion of a party, shall direct the clerk of the court to give written notice to the party in default, apprising the party of the nature of the deficiency. If the party in default fails to correct the deficiency within fourteen (14) days after notification, the appeal shall be dismissed by the clerk of the court. The county or circuit court shall promptly notify the lower court of any such dismissal.

-Rule 32 (Contempt)

-provides a comprehensive procedure regarding contempt