SCOTT COLOM

Scott Colom is a native of Columbus, MS and a 2001 graduate of Columbus High school. He received a Bachelor of Arts in English and History from Millsaps College in 2005. After college, Scott spent a summer teaching in Guyana, South America with World Teach, a non-profit, non-governmental organization run out of Harvard University.

Scott is also a 2009 graduate of the University of Wisconsin Law School, where he graduated cum laude. While in law school, Scott interned with the chief prosecutor for the International Criminal Tribunal for Rwanda in Arusha, Tanzania, and was a summer honors intern with the Civil Rights Division of the United States Department of Justice. He was also a member of the UW's Mock Trial and Moot Court team.

After law school, Scott was one of 28 young legal professionals nationwide to be awarded a prestigious Legal Fellowship to work with the Mississippi Center for Justice.

At the end of his fellowship, Scott joined the Colom Law Firm and was appointed interim Justice Court Judge for Lowndes County. He was later appointed municipal court judge in Aberdeen and municipal prosecutor in Columbus. In 2015, he was elected District Attorney for Judicial District 16 in MS.

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EDUCATION
J.D., Mississippi College School of Law, 1980
Jackson, Mississippi.

B.S., University of Alabama, 1977
Graduated with a B.S. in psychology and literature.

MARRIED
Married to Tara Rose Coxwell. Four children, Cole, Grant, Beckett and Gabriella

Jurisdictions: Admitted to Practice;
All State and Federal courts in Mississippi, West Virginia and
The District of Columbia and Arkansas.
U.S. District Court, Southern District of Texas
Fifth Circuit Court of Appeals
Pro-Hac Vice in Tennessee, Texas, and Illinois.

Professional Memberships and Affiliations
Criminal Defense Organizations:

- National Association of Criminal Defense Lawyers (NACDL). Lifetime member.
- Georgia Association of Criminal Defense Lawyers (GACDL)
- Texas Association of Criminal Defense Lawyers (TACDL)
- Louisiana Association of Criminal Defense Lawyers (LACDL)
- Alabama Criminal Defense Lawyers Association
- Tennessee & Arkansas Criminal Defense Lawyers Association.
- Past President and Founding Member of the Mississippi Attorneys for Constitutional Justice, a state affiliate of NACDL
- Member of the California Criminal Defense Lawyers Association

Civil Legal Organizations:

- Mississippi Hispanic Association, past attorney
- Past President of the Mississippi Trial Lawyers Association, now the Mississippi Association for Justice. Also served as Voir Dire Editor

- Chairman of JAMPAC organization, a political action group dedicated to protecting the civil justice system and the right to trial by jury
- Received the Trial Lawyer of the Year from MAJ in 2007. Previous recipient of the Stone Pony Award
- Member of the American Association for Justice, the American Trial Lawyers Association, and the Southern Trial Lawyers Association
- Member of the Million Dollar Forum
- Member of Public Justice and the Center for Justice and Democracy
- Received the Life Time Achievement Award the Miss. Association of Justice.

EXPERIENCE:

- Coxwell & Associates, PLLC, Jackson, Mississippi
- Mr. Coxwell is a veteran numerous felony and misdemeanor cases. Representative cases can be found on **www.coxwelllaw.com** . He has been involved in approximately 25 capital murder cases ranging from trials, post-conviction and Federal Habeas.
- Donates time/money to *Southern Poverty Law Center, Canopy, Youth Villages* and other similar groups.
- Involved in local community and charity events.
- In addition to criminal defense, the attorneys at Coxwell & Associations handle civil rights and personal injury claims involving serious or catastrophic injury.

JAMES WARREN KITCHENS

A lifelong resident of Crystal Springs, Copiah County, Mississippi, Jim Kitchens is a proud graduate of Crystal Springs Consolidated School (1961), the University of Southern Mississippi (1964), and the University of Mississippi School of Law (1967).

He was elected district attorney for Copiah, Lincoln, Pike, and Walthall Counties in 1971, 1975, and 1979. During and after his tenure as an elected district attorney he served as *pro tempore* district attorney in numerous other Mississippi counties.

In private law practice he was an active litigator in both civil and criminal cases in Mississippi and other U. S. venues. He is licensed to practice in his home state of Mississippi and in the District of Columbia.

In 2008 he was elected to an eight-year term on the Mississippi Supreme Court and was reelected in 2016. Justice Kitchens served on the Court's Criminal Rules Committee throughout that committee's development of the Mississippi Rules of Criminal Procedure and at present he is the committee's chair. Since January of 2017 he has made numerous presentations to lawyers and judges about Mississippi's new rules of criminal procedure.

Justice Kitchens and his wife, Mary, have been married forty-nine years and their five adult children and twelve grandchildren all reside in Crystal Springs. Three of the Kitchens children are practicing attorneys.

July 2017

HIGHLIGHTS OF SELECTED MISSISSIPPI RULES OF CRIMINAL PROCEDURE

by

COLOM, COXWELL, & KITCHENS[1]

The new Mississippi Rules of Criminal Procedure have been in effect since July 1, 2017. They replace the criminal procedure portions of the Uniform Rules of Circuit and County Court and the Uniform Rules of Procedure for Justice Court.

Although the Supreme Court's Criminal Rules Committee, and the Court as a whole, endeavored to retain familiar practices and nomenclature as much as possible, a significant number of new or modified procedures are present.

There are thirty-four rules. Today's discussion will be focused on slightly more than a third of them. They were selected by your presenters because they include changes to prior practice.

[1]District Attorney Scott W. Colom, Lawyer Merrida P. Coxwell, Jr., and Supreme Court Justice James W. Kitchens at the Mississippi Bar's 2017 Summer School for Lawyers. This paper was prepared by Justice Kitchens, with significant input from Messrs. Colom and Coxwell.

Rule 3. Arrest Warrant or Summons Upon Commencement of Criminal Proceedings. This rule applies to misdemeanors and felonies. Upon a finding of probable cause a judge shall cause to be issued an arrest warrant (no change here), or, in some cases, a summons (big change!). MRCrP 3.1.

Unless otherwise prohibited by law, a judge may issue a summons if:

(A) the defendant is not in custody;

(B) the offense charged is bailable as a matter of right; and

(C) there is no reasonable cause to believe the defendant won't obey the summons. MRCrP 3.1(6).

The rule also provides that, if a summoned defendant fails to appear, the judge shall issue an arrest warrant. MRCrP 3.1(6)(2)(A).

Rule 3 also specifies that the use of tickets, citations, or affidavits for misdemeanor traffic violations is unchanged. MRCrP 3.1(c).

Obviously, the big change here is the authorization of summonses—similar to civil summonses—as an alternative means of getting accused persons into court.

Rule 5. Arrest and Initial Appearance. This rule covers arrests with and without warrants. Nothing new about this.

The familiar requirement for an initial appearance before a judge within 48 hours is retained. But there's **a new wrinkle,** found in MRCrP 5.1(b)(3) *(this is for warrantless arrests):* "If the person arrested is not taken before a judge as so required then, unless the offense for which the person was arrested is not a bailable offense, the person shall be released upon execution of an appearance bond in the amount of the minimum bail specified in Rule 8, and shall be directed to appear at a specified time and place."

There is a similar provision for persons arrested pursuant to warrants, found in MRCrP 5.1(c)(2)(A): "If the person arrested has not been taken before a judge as required herein, unless the charge upon which the person was arrested is not a bailable offense, such person shall be released upon execution of an appearance bond in the amount of the minimum bail specified in Rule 8, and shall be notified in writing to appear at a specified time and place. . . ."

Rule 5.2 specifies what is to occur at the initial appearance.

In the case of a felony, MRCrP 5.2(b) makes clear that the judge must

inform the accused of his/her right to a preliminary hearing and the procedure by which that right may be exercised. If the accused requests a preliminary hearing, the judge must schedule it in accordance with MRCrP 6.1, which is addressed below.

If a defendant is released from custody before his/her initial appearance has occurred—presumably, within 48 hours of arrest—that defendant is not entitled to an initial appearance. MRCrP 5.2(c).

Rule 6. Preliminary Hearing.

Now, here's the big change with regard to preliminary hearings. Rule 6.03(5) of the Uniform Circuit and County Court Rules provided, in part: ". . .the defendant has the right to demand a preliminary hearing *while the defendant remains in custody."* (Emphasis added.)

The italicized language does not appear in the new rules. With the advent of the Mississippi Rules of Criminal Procedure, Mississippi has returned to its prior practice of allowing a person charged with a felony in the lower courts (Justice, Municipal, or County) to have a preliminary hearing upon demand, regardless of whether the accused has been released on bail or recognizance.

So, in general, one who has been charged with a felony is entitled to a preliminary hearing upon request.[2] However, a defendant who has been indicted is not entitled to such a hearing. MRCrP 6.1(a)(1).

A preliminary hearing shall be held within fourteen days of its being demanded, unless: the charging affidavit has been dismissed; the hearing, though demanded, thereafter has been waived; the hearing has been postponed; or a grand jury indictment has occurred on the same charge.

[2]The words *request* and *demand* are used interchangeably in Rule 6.

MRCrP 6.1(a)(2).

If the hearing does not occur within fourteen days, and in the absence of a postponement by the court, the defendant shall be released on recognizance. MRCrP 6.1(c)(1).

However, if the defendant is charged with a non-bailable offense and his hearing has not occurred within fourteen days, the circuit judge shall be notified and the circuit judge "shall thereupon order the hearing be set for a specified time." MRCrP 6.1(c)(2).

All parties (State and defendant) have the right to cross-examine witnesses at the preliminary hearing. MRCrP 6.2(a).

All parties can subpoena witnesses to the preliminary hearing. MRCrP 6.2(6).

Hearsay evidence is admissible. MRCrP 6.2(c).

Suppression motions are not allowed at preliminary hearings. MRCrP 6.2(d).

As a general proposition, the charging affidavit may be amended to conform to the evidence. MRCrP 6.2(e).

If the court finds at the preliminary hearing that there is not probable cause to believe a felony has been committed or that the defendant committed a felony, the defendant shall be discharged from custody.

However, this does not preclude the State from presenting the same case to the grand jury. MRCrP 6.2(g).

Rule 7. Counsel.

The rule affirms that all defendants in all criminal proceedings, from minor to major, are entitled to be represented by legal counsel. MRCrP 7.1(a)

MRCrP 7.1(b) addresses the right of indigent defendants to court-appointed counsel in "any criminal proceeding which may result in punishment by loss of liberty, in any other criminal proceeding in which the court concludes that the interests of justice so require, or as required by law."

MRCrP 7.1(b) also provides that the determination of the right to appointed counsel, and the appointment itself, must be made no later than at the indigent defendant's first appearance before a judge.

Rule 7 contains extensive provisions covering most aspects of the right to counsel in criminal cases, including, *inter alia,* waiver of counsel, withdrawal of waiver, courts' establishment of procedures for appointment of lawyers for indigent persons, appointment and qualifications of attorneys for indigent persons in death penalty cases, entries of appearance, the duty of continuing representation, withdrawal of counsel, compensation of appointed attorneys, "reasonable and necessary" expenses of appointed counsel, and appointment of appellate counsel.

Rule 8. Release.

Rule 8 provides the means by which persons accused of bailable offenses can get out of jail. These provisions, in some respects, are broader and give more specific guidance than was known under previous Mississippi practice, and include recommended ranges of bail amounts for most kinds of offenses.

The old release on one's "own recognizance" is called "personal recognizance" in Rule 8.1(a).

Rule 8.1(b) provides for release on "an unsecured appearance bond," which is an undertaking to pay a specified sum of money to the court clerk if the released person fails to comply with the bond's conditions. This sort of release mechanism is familiar to federal practitioners.

The "secured appearance bond" provided in Rule 8.1(c) simply means that the accused, or someone acting on the accused's behalf, puts up an amount of money equal to the amount of bail specified by the judge; if the judge says the bail is $5,000, the accused posts $5,000 with the clerk. MRCrP 8.1(c).

The "cash deposit bond" described in 8.1(d) mimics the provisions of Rule 6.02 of the old Uniform Circuit and County Court Rules; it allows the release of an eligible person by his depositing a percentage of the amount

of the bond with the clerk. The rule provides a form for this type of bond.

Rule 8.1(e) allows the deposit of "cash, certified funds, or a surety's undertaking deposited with the clerk to secure an appearance bond."

Rule 8.1(f) is entitled *Surety* and address what is commonly known as "a property bond." Sureties, in general, can't be attorneys, judicial officials, or persons authorized to accept bail (such as sheriffs). There are some exceptions listed, which allow such persons to act as sureties for "immediate family" members.

Professional bail bond persons and entities are briefly described in Rule 8.1(h). They are required, pursuant to Rule 8.1(i), to comply with all statutes and regulations. (They are regulated by the State Insurance Commissioner, though this is not specifically referenced in the Rules.)

The Rules' preference for the relatively simple, uncomplicated, and inexpensive release of eligible persons is evidenced by language in Rule 8.2(a): "Any defendant charged with an offense bailable as a matter of right ***shall 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 shall 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." (Emphasis added.)

The rule goes on to list the factors courts shall consider in setting or withholding bail. These are familiar to Mississippi jurists and criminal practitioners and are derived largely from ***Lee v. Lawson,*** 375 So. 2d 1019, 1024 (Miss. 1979). The comment notes that the list is non-exhaustive, leaving courts free to consider other relevant factors that may exist.

MRCrP 8.2(c) provides ***something new*****: SECURED OR UNSECURED APPEARANCE BOND GUIDELINES,** a list of recommended ranges for bail amounts descending from the most serious crimes down to violations of municipal ordinances. While courts are not bound by these suggestions, the rules do provide them as "a general guide for circuit, county, justice, and municipal courts. . . ."

Rule 8 also addresses release after conviction and sentencing (MRCrP 8.3), and, in MRCrP 8.5(c), something that is **brand new:**

> **Review by Circuit Court.** No later than seven (7) days before the commencement of each term of circuit court in which criminal cases are adjudicated, the official(s) having custody of felony defendants being held for trial, grand jury action, or extradition within the county (or within the county's judicial districts in which the court term is to be held) shall provide the

> presiding judge, the district attorney, and the clerk of the circuit court the names of all defendants in their custody, the charge(s) upon which they are being held, and the date they were most recently taken into custody. The senior circuit judge, or such other judge as the senior circuit judge designates, shall review the conditions of release for every felony defendant who is eligible for bail and has been in jail for more than ninety (90) days.

Rule 8.6 addresses courts' review of bail conditions and the revocation of bail.

The surrender of a defendant by his/her surety, a practice which has been permitted historically, is continued pursuant to Rule 8.7(c).

Forfeiture of bail, in cases of defendants' nonappearance at times and places required, continues to be governed by statute and the applicable code sections are cited in Rule 8.7(d).

When a defendant has been acquitted, or convicted and sentenced, and the court finds that there is no further need for an appearance bond, ". . . the court shall cancel the appearance bond and order the return of any security deposited with the clerk." MRCrP 8.7(e).[3]

[3] *See also* MRCrP 14.6(d), which provides: "When a prosecution is dismissed, the defendant shall be released from custody, unless the defendant is in custody on some other charge, and any bail shall be released and held for naught and/or sureties discharged, or money deposited in lieu thereof shall be refunded."

Rule 9. Trial Setting.

Here's something **new.**

Rule 9(a) provides that the trial court shall enter an order setting a date for trial **within sixty days after arraignment or waiver of arraignment.** This, coupled with MRCrP 15.1[4], brings to an end the practice in some circuit courts of not arraigning a defendant until the very day of his/her trial, thus avoiding violation of the 270-day Rule.

Rule 9(b) perpetuates the longstanding principle that, insofar as is practicable, the trials of criminal cases shall have priority over the trials of civil cases.

Continuance orders must be written and they must state with specificity the reasons for the continuance. MRCrP 9(c).

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[4]Rule 15.1(a) provides: "Before arraignment, a copy of the indictment shall be served on the defendant. *Arraignment, unless waived by the defendant, shall be held within thirty (30) days after the defendant is served with the indictment.* When arraignment cannot be held within the time specified because the defendant is in custody elsewhere, it shall be held as soon as possible." (Emphasis added.)

Rule 12. Mental Examinations.

Most of Rule 12 covers territory that is familiar to experienced Mississippi judges and practitioners. There are, however, a couple of **new things** that should be mentioned.

MRCrP 12.4 addresses the handling of expert reports, once completed. First, they are to be submitted to the court clerk within ten working days of completion of the mental health examination.

Original reports are filed with the clerk, under seal. The clerk copies and distributes a report thus filed to the trial judge and to the defense lawyer—NOT to the prosecutor.

Defense counsel then may redact any statements of the defendant, or summaries thereof, concerning the offense charged, which are contained in the mental health expert's report. A copy of the redacted report must be returned to the clerk within five working days of its receipt and then made available to the State, in its redacted form. Any dispute regarding the extent of redaction shall be resolved by the trial judge. MRCrP 12.4(a).

"If the defendant raises the affirmative defense of insanity, the State shall be furnished unredacted copies of the reports. . . ." MRCrP 12.4(b).

Perhaps the most significant **change** in Rule 12 is this: "Under Rule

12.5(a), upon the court's own motion or the motion of any party, a competency hearing shall be conducted. But in the absence of such motion, a hearing is permissible, not mandatory. This represents a departure from practice under former Rule 9.06 of the Uniform Rules of Circuit and County Court." MRCrP 12.5 cmt.

In recent years, the Mississippi Supreme Court has dealt with numerous cases in which circuit judges have, upon motion, or in some instances, *sua sponte,* ordered mental competency and/or insanity examinations. The prevailing position of a majority of the Court has been that, once such an examination has been ordered, the trial court *must* conduct a competency hearing, regardless of the opinions reached by the mental health examiners and written in their report.

As indicated in the above-quoted Comment, such hearings now must occur only upon motion, either of the defendant, of the State, or of the Court.

Rule 14. Indictment.

Longstanding constitutional, statutory, common law, and rules provisions relating to grand jury indictments are incorporated in MRCrP 14. No surprises here!

But a **major innovation** is found in MRCrP 14.1(b), which is entitled **Enhanced Punishment for Subsequent Offenses.** In recent years, the Mississippi Supreme Court has dealt with numerous cases in which enhanced punishment allegations based on prior convictions have not been included in original indictments.[5] Such cases have involved attempts—often approved by trial courts—to add habitual offender allegations by indictment amendments at various points in the proceedings, even as late as *after* a guilty verdict.

Rule 14.1(b) provides the State two ways to plead enhanced punishment allegations in circuit court.

The **first** way is to specify such prior conviction(s) in the indictment [as it comes from the grand jury], identifying each prior conviction by the name of the crime, the name of the court in which such conviction occurred

[5]Enhanced punishment allegations most often are made pursuant to Mississippi Code Sections 99-19-81 ("the little bitch") and 99-19-83 ("the big bitch"). Numerous other Mississippi statutes authorize enhanced punishment in specified circumstances.

and the cause number(s), the date(s) of conviction, and, if relevant, the length of time the accused was incarcerated for each conviction. This is the traditional way of pleading enhanced punishment allegations at the felony level. It is articulated in MRCrP 14.1(b)(1).

The **second** and **new** alternative may be employed in instances in which the enhanced punishment/habitual offender allegations were omitted from the original indictment returned by the grand jury.

This secondary, or alternative, means is found in MRCrP 14.1(b)(2), and provides: ". . . after indictment, and at least thirty (30) days before trial or entry of a plea of guilty [the State shall] file with the court formal notice of such prior conviction(s). The notice shall be served upon the defendant or the defendant's attorney and shall contain the same information specified in subsection (1) of this rule. An untimely-filed formal notice is permitted only when the thirty (30) day requirement is expressly waived, in writing, by the defendant. Clerical mistakes in such formal notice may, with leave of the court, be amended prior to the pronouncement of sentence."

Rule 15. Arraignment and Pleas.

MRCrP 15.1(a), to the effect that arraignments must be held within thirty days after the defendant is served with the indictment, has been addressed in Footnote 4.

The remainder of Rule 15's treatment of arraignments conforms to existing practice.

MRCrP 15.4(a)(1) *encourages,* but does not *require,* plea bargaining.

MRCrP 15.4(a)(2)(C) contains **a significant, new provision**:

"If the court **rejects** the [plea] recommendation, the court must do the following on the record:

(i) inform the parties that the court rejects the plea agreement;

(ii) advise the defendant personally that the court is not required to follow the plea agreement and **give the defendant an opportunity to withdraw the [guilty] plea;** and,

(iii) advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated." (Emphasis added.)

Heretofore, the "opportunity" for the defendant's withdrawal of a guilty plea in these circumstances has been within the discretion of the trial

court. Now, when the court rejects a recommended disposition, the defendant has the right to withdraw his/her guilty plea and proceed to trial.

MRCrP 15.4(d) provides: "The fact that the defendant may have entered a plea of guilty to the offense charged may not be used against the defendant at trial if the plea has been withdrawn."

Rule 17. Disclosure and Discovery.

While the basic processes of existing criminal-case discovery remain intact, **several major innovations** appear in MRCrP 17. These include the limited use of trial depositions and limited discovery in justice courts and municipal courts.

MRCrP 17.1 defines the overall scope of Rule 17: "Rules 17.2 and 17.3 apply in felony cases and in trials of misdemeanor cases in circuit and county court. Rule 17.10 applies in municipal and justice court. The balance of Rule 17 applies in all courts." [Circuit courts, county courts, justice courts, and municipal courts.]

Consistent with prior practice, the defense must provide the State notice of the defenses of alibi and insanity. MRCrP 17.4.

MRCrP 17.5 contains detailed provisions respecting the circumstances under which trial depositions may be taken.

The defendant has a right to be present at the taking of the deposition unless: the defendant waives that right in writing, or the defendant is excluded because of his/her disruptive behavior. MRCrP 17.5(c)(1). The trial judge may preside over the taking of the deposition. MRCrP 17.5(e)(4). Parties may, by agreement, take and use a deposition; but, even then, the

court's consent is required. MRCrP 17.5(h).

MRCrP 17.6(c) precludes attorneys for both sides from advising persons who have relevant information or material, except the accused, to refrain from discussing the case with, or showing relevant material to, the opposing attorney(s), or otherwise impeding the opposing attorney(s') investigation of the case.

Brand new: MRCrP 17.10 governs **discovery in municipal and justice courts** and is available to the defendant from the prosecutor upon written request made prior to trial.[6] The prosecutor is entitled to reciprocal discovery from the defense.

Rule 17.10 provides a list of seven basic categories of information to which the parties are entitled. But unless the defendant makes a timely written request for discovery, neither side is entitled to discovery from the other; the defendant's duty to provide information and/or material to the prosecution is entirely reciprocal.

[6]The rule neither contemplates nor prohibits discovery prior to preliminary hearings in felony cases. It is, instead, tailored toward discovery in advance of misdemeanor trials.

Rule 20. Duties of Court Reporters.

MRCrP 20(a) spells out the duties of court reporters in all felony trials: to make a record of the *voir dire* and selection of the jury; to make a record of opening statements; to make a record of bench and in-chambers conferences; and to make a record of closing arguments. All of these functions of the court reporter are mandatory, regardless of whether they are ordered by the judge or requested by either party. The rule emphasizes that in death-penalty cases these duties may not be abrogated by the judge or waived by the defendant.

MRCrP 20(b)(1) provides that, in all other cases in circuit and county court, the court reporter shall make a record of the *voir dire* and selection of the jury, opening statements, bench and in-chambers conferences, and closing arguments, if so directed by the judge.

MRCrP 20(b)(2) establishes that, "In criminal proceedings in municipal and justice court, either party may engage the services of a court reporter to take down the proceedings, at the expense of the requesting party."[7]

[7] *See also* MRCrP 1.10: "Any attorney of record or *pro se* litigant in a court which does not provide an official court reporter may record or have recorded any court proceeding by audio-recording device or stenographically. Any expenses incident thereto shall be borne by the party or parties."

Rule 25. Post-Trial Motions.

This aspect of Mississippi criminal procedure is unchanged, except for **the addition** of MRCrP 25.3:

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.

Comment[8]

Rule 25.3 is new to Mississippi practice. The Rule promotes finality by providing that a motion for a new trial or a motion to vacate judgment shall not remain pending in the trial court for more than thirty (30) days. This Rule thereby addresses the problem of when a timely post-trial motion is filed but is not decided or even noticed for a hearing. Such a case is then essentially in limbo, as the pending post-trial motion indefinitely postpones the running of the period for filing a notice of appeal and indefinitely delays finality in the case. This deadline may be extended by written agreement of the parties or court order to a date certain within ninety (90) days. Multiple extensions of the deadline, which should be rare, are nonetheless permitted by Rule 25.3.

[8]This is the actual Comment provided by the Court.

Rule 32. Contempt.

MRCrP 32 addresses, in a rather comprehensive way, the several varieties of contempt of court that can occur in criminal cases in Mississippi's circuit, county, justice, and municipal courts. At the outset, MRCrP 32.1 establishes that Rule 32 applies both to civil and criminal contempt that may arise in a criminal action, then broadly defines the various kinds of contempt that can occur under the umbrellas of civil contempt and criminal contempt:

> **Indirect Contempt.** "Indirect contempt," also known as "constructive contempt," means any contempt other than a direct contempt.
>
> **Direct Contempt.** "Direct contempt" means contempt committed:
>
> (1) in the presence of the judge presiding in court; or
>
> (2) so near to the judge as to interrupt the court's proceedings.
>
> **Criminal Contempt.** "Criminal contempt" means either:
>
> (1) misconduct of a person that obstructs the administration of justice and that is committed either in the presence of the judge presiding in court or so near thereto as to interrupt its proceedings;
>
> (2) willful disobedience or resistance of any person to a court's lawful writ, subpoena, process, order, rule, or command, where the primary purpose of the finding of contempt is to punish the contemnor; or

> (3) any other willfully contumacious conduct which obstructs the administration of justice, or which lessens the dignity and authority of the court.
>
> **Civil Contempt.** "Civil Contempt" means willful, continuing failure or refusal of any person to comply with a court's lawful writ, subpoena, process, order, rule or command that by its nature is still capable of being complied therewith.

Sanctions are summarized in MRCrP 32.2. When a direct civil or criminal contempt has been committed in the judge's presence (the judge "has personally perceived the conduct constituting the contempt" and knows who did it) and it has interrupted the order of the court or interfered with the dignified conduct of the court, and the penalty does not exceed thirty days in jail or a $100.00 fine, the court shall allow the alleged contemnor to present exculpatory or mitigating evidence. MRCrP 32.2(a). The court shall issue a written order consistent with MRCrP 32.2(b). Sanctions may be deferred until the conclusion of the proceeding. MRCrP 32.2(a).

For **indirect criminal contempt,** see MRCrP 32.3. Indirect criminal contempt charges must be heard by another judge.

The above is intended to provide a mere flavor of the comprehensive and complex treatment of contempt found in Rule 32. This is a multi-faceted subject which is but partially discussed in this paper.

CONCLUSION

Thus ends today's discussion of selected portions of our state's new Mississippi Rules of Criminal Procedure, all of which now appear in Volume I of *Mississippi Rules of Court* and have been in full force and effect since July 1, 2017.

As with all Mississippi procedural rules, the Mississippi Supreme Court stands ready to receive and consider comments, criticisms, and suggestions for changes from the Bench, Bar, and the general public, which should be addressed to:

Criminal Rules Committee
Mississippi Supreme Court
Box 117
Jackson, Mississippi 39205-0117

All such communications will receive prompt and open-minded consideration.

Respectfully,

Justice James W. Kitchens
Chair, Criminal Rules Committee
July 2017

EXECUTIVE SUMMARY
of the
MISSISSIPPI RULES OF CRIMINAL PROCEDURE
by
THE MISSISSIPPI SUPREME COURT'S
RULES COMMITTEE ON CRIMINAL PRACTICE AND PROCEDURE

The following summary briefly identifies those of the Mississippi Rules of Criminal Procedure that create significant new procedures and/or alter current practice in Mississippi's criminal trial courts (circuit courts, county courts, justice courts, and municipal courts).

The Mississippi Rules of Criminal Procedure were unanimously adopted by the Mississippi Supreme Court on December 15, 2016, and took effect on July 1, 2017.

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

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

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

-the new Rules are cited as MRCrP (e.g., MRCrP 1)

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

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

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

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

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

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

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

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

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

-outlines factors for consideration by the judge setting bail

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

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

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

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

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

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

-**Rule 12 (Mental Examinations)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

-new procedure regarding discovery in justice/municipal courts

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

-new procedure

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

-slightly changes current practice regarding post-argument jury instructions

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

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

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

-expansion of partial verdicts to address cases involving multiple counts

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

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

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

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

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

-new to Mississippi practice

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

-new rule that replaces URCCC 11.01

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

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

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

-new rule that replaces URCCC 11.04

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

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

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

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

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

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

-**Rule 32 (Contempt)**

-provides a comprehensive procedure regarding contempt