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FILED

OCT 15 2015

**OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS**

The Supreme Court of The State of Mississippi
Att'n: Rules Committee on Civil Practice and Procedure
P. O. Box 249
Jackson, MS 39205

Re: Proposed Revision of The Mississippi Rules of Civil Procedure : **Delete Rule 4(h)**

We recommend deletion of Rule 4(h).

Rule 4(h) has no appropriate place in the Mississippi litigation system. It was brought into our system when the federal style rules were adopted. In the federal system, that rule serves as a de facto stale case rule since there is no actual stale case rule.

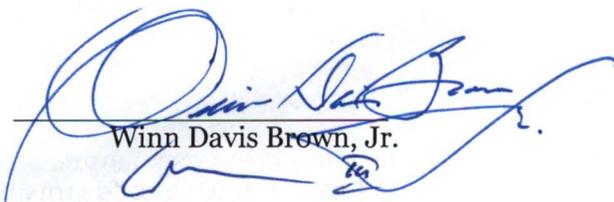
In Mississippi Rule 41(d) is an actual stale case rule providing for dismissal on Clerk's motion if there is no action of record in a case for one year. Mississippi's Rule 41(d) is efficient and effective.

However, Rule 4(h) creates only busy work for attorneys, clerks, and judges, and litigation over service of process instead of the merits of the actual claims and defenses of the parties. In addition in with regard to "the procedural quagmire" (**Crawford v. Morris Transp., Inc.**, 990 So.2d 162, 174 (Miss.2008), quoted with approval in **Marshall v. Kansas City Southern Railways Co.**, 7 So.3d 210, 215-216 (Miss. 2009) regarding dismissal of cases in Mississippi, Rule 4(h) poses the very real risk that claims may defeated by lack of prompt service of process, rather than consideration of the merits of the claims. *Rule 4(h) also encourages parties defendant to seek to avoid being served with process.*

Disregarding the inefficiency and "busy work" aspects of Rule 4(h), its practical effect in clearing cases from the docket is similar to that of Rule 41(d); generally, it is routine to be able to obtain at least two extensions to serve process with appropriate motions, which as a practical matter results in cases where service of process is difficult to remain on the docket for at least 360 days (i.e., the initial 120 day service period, plus 240 days beyond that for a total of at least 360 days. It would be far better to merely rely on Rule 41(d) to dispose of the case on clerk's motion after one year. (Ironically, all the Rule 4(h) motions and orders keep cases from being "stale" and, therefore, Rule 4(h) works to counter the efficient operation of Rule 41(d).

Rule 4(h) serves only to increase the burden of litigation and should be deleted from the Mississippi Rules of Civil Procedure.

Respectfully,



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