

Serial: 104782

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99027-SCT

***RE: MISSISSIPPI RULES OF
APPELLATE PROCEDURE***

ORDER

This matter is before the Court en banc on its own motion for consideration of Rule 27(h) of the Mississippi Rules of Appellate Procedure. Having considered the matter, the Court finds that the amendment of Rule 27(h) and its Comment as set forth in Exhibit “A” hereto will promote the fair and efficient administration of justice.

IT IS THEREFORE ORDERED that Rule 27(h) of the Mississippi Rules of Appellate Procedure and its Comment are amended as set forth in Exhibit “A” hereto.

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, Second Series (Mississippi Edition) and in the next edition of *Mississippi Rules of Court*.

SO ORDERED, this the 29th day of May, 2003.

/s/ William L. Waller, Jr. _____
WILLIAM L. WALLER, JR., JUSTICE
FOR THE COURT

McRAE, P.J. AND EASLEY, J. DISSENT.

DIAZ, J., NOT PARTICIPATING.

EXHIBIT “A” TO ORDER

MISSISSIPPI RULES OF APPELLATE PROCEDURE

RULE 27. MOTIONS

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(h) Reconsideration on Motions. Rehearing on Motions Prohibited.

Motions for reconsideration, vacation or modification of rulings of the Supreme Court and the Court of Appeals on motions are generally not allowed. However motions for reconsideration of rulings on motions and petitions may be filed within 14 days after a decision is handed down on the motion to be reconsidered as to: Except as provided in Rule 2 and Rule 27(b); decisions of the Supreme Court and the Court of Appeals on motions or petitions shall be subject to rehearing, reconsideration, vacation or modification only on the Court’s own motion.

(1) non-voluntary dismissal of pending appeals under rule 2(a);

(2) procedural dispositions by the Clerk of the Court under Rule 27(b);

(3) petitions for interlocutory appeal under Rule 5;

(4) motions for stay and supersedeas under Rule 8;

(5) petitions for writ of mandamus, prohibition or extraordinary writs under Rule 21;

(6) motions to amend, correct or clarify orders, opinions, and mandates;

(7) motions for recusal of justices or judges or review of ruling of trial judges on recusal under M.R.A.P. 48B or 48C; and

(8) in extraordinary cases, by suspension of the rules for good cause shown under Rule 2(c).

[Adopted to govern matters filed on or after January 1, 1995; amended October 15, 1998, effective from and after January 1, 1999; amended July 1, 1999; amended effective August, 1999; amended effective November 2, 2000; amended effective May 29, 2003 to provide

for reconsideration of certain specific types of motions and petitions, if filed within 14 days following the ruling for which reconsideration is sought.]

[Amended effective May 29, 2003.]

Advisory Committee Historical Notes

[No changes in the Advisory Committee Historical Notes are made by this order.]

Comment

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Examples of the power conferred on a single justice by Rule 27(c) ~~this subdivision~~ are: to determine any matter which, if unopposed, may be decided by the clerk under subdivision (b); to grant enlargements of time for any period beyond the ~~30~~ 60 days granted by the clerk, except that the time period for filing a notice of appeal may not be extended, *see* Rules 2(c), 26(b); to permit an appeal *in forma pauperis* and to appoint counsel under Rule 6; to consider release in criminal cases under Rule 9; to expedite or to consolidate appeals under Rule 23; to permit the filing of further reply or supplemental briefs under Rule 28(c) or briefs of extraordinary length under Rule 28(g); to grant leave to file an *amicus* brief under Rule 29; to postpone oral argument under Rule 34(a) or grant additional time for oral argument under Rule 34(b); or to substitute parties under Rule 43.

Under Rule 27(c), a ~~A~~ single justice may not act upon requests for permission to appeal under Rule 5, or for mandamus or other extraordinary writs under Rule 21, other than for stays or injunctions pending appeal, authority to grant which is "expressly conferred by these rules" on a single justice under certain circumstances under Rule 8. ~~Likewise, motions for rehearing cannot be considered by a single justice~~

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Rule 27(h) motions ~~Motions~~ for reconsideration of the court's ruling on motions or petitions are to be distinguished from Rule 40 motions for rehearing on opinions. Motions for clarification and correction of opinions and mandates which address issues other than specific errors of law or fact which would be determinative of the decision announced in the opinion should

also be filed in accordance with the procedures set out in Rule 27, not those of Rule 40.

Rule 27(h) motions for reconsideration of the court's rulings on motions are governed by and subject to the procedures set out in Rule 27. Generally, motions are decided by orders of the appellate courts.

Motions for rehearing are filed under Rule 40 and are appropriate only where an opinion has issued which the movant believes to contain specific errors of law or fact.

~~Rehearing on or reconsideration of decisions on motions or petitions is allowed only as to procedural motions granted or denied in the first instance by the clerk of the Supreme Court, or, in extraordinary circumstances, where the court suspends the rules under the provisions of Rule 2(c) or determines to reconsider or rehear on the court's own motion.~~ Reconsideration of the court's ruling on a motion or petition is allowed only as to motions and petitions specified in Rule 27(h).

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[Comment amended June 21, 1996; October 15, 1998; effective January 1, 1999; August 26, 1999; amended effective May 29, 2003.]