

Serial: 113812

**IN THE SUPREME COURT OF MISSISSIPPI
No. 89-R-99001-SCT**

***RE: THE MISSISSIPPI RULES OF
CIVIL PROCEDURE***

ORDER

This matter has come before the Court en banc on its own motion for consideration of the amendment of Rule 58 of the Mississippi Rules of Civil Procedure and the Comment thereto. Having considered the matter, the Court finds that the amendment of Rule 58 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 58 of the Mississippi Rules of Civil Procedure and the Comment thereto is 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 21st day of May, 2004.

/s/ George C. Carlson, Jr.

GEORGE C. CARLSON, JR., JUSTICE

DIAZ AND GRAVES, JJ., NOT PARTICIPATING.

EXHIBIT “A” TO ORDER

RULE 58. ENTRY OF JUDGMENT

Every judgment shall be set forth on a separate document which bears the title of “Judgment.” However, a judgment which fully adjudicates the claim as to all parties and which has been entered as provided in M.R.C.P. 79(a) shall, in the absence of prejudice to a party, have the force and finality of a judgment even if it is not properly titled. A judgment shall be effective only ~~when so set forth and~~ when entered as provided in M.R.C.P. 79(a).

[Amended effective July 1, 2001; amended effective May 27, 2004 to address finality of improperly titled judgment.]

Comment

The purpose of Rule 58 is simply to provide a precise post-trial date from which periods of time may be computed. Throughout these rules there are provisions for events which, when performed, commence the running of a time period within which a responsive event must be performed; e. g., a defendant must serve his answer within thirty days after service on him of the summons and complaint, and a plaintiff must serve his reply to a counter-claim within thirty days, Rule 12(a); answers to interrogatories to parties must be served within thirty days after service of same, Rule 33(a); and objections to a master's report must be served within ten days after notice of the report's having been filed, Rule 53(g)(1).

The times for taking post-trial action are computed from the date judgment is entered, as provided in Rule 58; hence, a motion for a new trial must be filed within ten days of entry of judgment, Rules 6(b), 59(b); a motion to alter or amend a judgment must be filed within ten days of entry of judgment, Rules 6(b), 59(e); a motion for a stay of execution must be filed within ten days of entry of judgment, Rule 62(a); and a motion for a directed verdict or for judgment, n. o. v. must be filed within ten days of entry of judgment, Rule 50(b).

Rule 58, as it now reads, requires that all final judgments must be entitled “Judgment.” However, failure to properly title a judgment which fully adjudicates all claims in a case as to all parties will not be deemed to prevent that judgment from being fully effective so long as it has been entered as required in M.R.C.P. 79(a). Where a notice of appeal in a civil case is not timely filed, if the failure to timely file was caused by an inappropriate or misleading title of judgment, such failure may, under proper circumstances,

constitute “excusable neglect” under M.R.A.P. 4(g). As now amended, the rule effectively overrules *Thompson v. City of Vicksburg*, 813 So. 2d 717 (Miss. 2002), *Mullen v. Green Tree Financial Corp.-Miss*, 730 So. 2d 9 (Miss. 1998), and *Roberts v. Gafe Auto Co.*, 653 So. 2d 250 (Miss. 1994) insofar as they hold that strict compliance with the titling requirement is mandatory and prevents finality, even in the absence of prejudice.

[Comment amended effective July 1, 1997; amended effective May 27, 2004.]