

Serial: 117552

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 the Court's own motion. The Court finds that certain amendments to Rules 27(b) and 41(c) of the Mississippi Rules of Appellate Procedure will promote the fair and efficient administration of justice.

IT IS THEREFORE ORDERED that Rules 27(b) and 41(c) of the Mississippi Rules of Appellate Procedure are amended as set forth in Exhibit "A" and "B" hereto.

IT IS FURTHER ORDERED that the Clerk of this Court shall spread this Order upon the minutes of the Court and shall forward a true certified copy hereof to West Publishing Company for publication in the next edition of the *Mississippi Rules of Court* and in the *Southern Reporter, Second Series, (Mississippi Edition)*.

SO ORDERED, this the 24th day of September, 2004.

/s/ Jess H. Dickinson

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JESS H. DICKINSON, JUSTICE  
FOR THE COURT

DIAZ, J., NOT PARTICIPATING.

## **EXHIBIT “A” TO ORDER**

### **MISSISSIPPI RULES OF APPELLATE PROCEDURE**

#### **RULE 27. MOTIONS**

**(a) Content of Motions; Response.** Unless another form is elsewhere prescribed by these rules, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits, or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order within seven (7) days after service of the motion, but motions authorized by Rules 8, 9, and 41 may be acted upon after reasonable notice, and the court may shorten or extend the time for responding to any motion.

**(b) Determination of Motions for Procedural Relief.** Notwithstanding the provisions of Rule 27(a) as to motions generally, motions for procedural relief may be acted upon at any time without awaiting a response. When unopposed, motions for specified types of procedural orders may be disposed of by the clerk of the Supreme Court. The clerk may rule on motions:

- (1) for enlargement of time permitted by these rules for periods not to exceed a total of 60 days,
- (2) to make corrections in briefs or pleadings filed at the request of counsel filing the brief or pleading,
- (3) to withdraw as counsel and/or substitute appearance of counsel, except in appeals from the imposition of a sentence of death,
- (4) to voluntarily dismiss appeals where sought by the appellant or the cross-appellant, unless the case has been submitted to the Court for decision,
- (5) to increase the page limit up to 75, or up to 125 in appeals from the imposition of a sentence of death,
- (6) to supplement the record where documents which were included in the designation of, yet omitted from, the record are certified according to Rule 11 and attached to the motion,
- (7) to appear pro hac vice, ~~and~~

(8) to suspend record preparation or briefing, and

(9) such other motions as the Court may from time to time direct.

Any party adversely affected by such action may by motion to the appropriate appellate court request reconsideration, vacation or modification of such action by the clerk.

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[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 September 30, 2004 to recognize that the Court may from time to time allow the clerk to rule on specified motions.]

#### **Advisory Committee Historical Note**

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#### **Comment**

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## EXHIBIT “B” TO ORDER

### MISSISSIPPI RULES OF APPELLATE PROCEDURE

#### RULE 41. ISSUANCE OF MANDATES; STAY OF MANDATE

**(a) Date of Issuance: Supreme Court.** The mandate of the Supreme Court shall issue 21 days after the entry of judgment unless the time is shortened or enlarged by order. The mandate shall consist of both a certified copy of the judgment of the Supreme Court with any direction as to costs, and a copy of the Court's written opinion, if any. The timely filing of a motion for rehearing will stay the mandate until disposition of the motion, unless otherwise ordered by the Court. If the motion is denied, the mandate will issue seven (7) days after entry of the order denying the motion unless the time is shortened or enlarged by order.

**(b) Date of Issuance: Court of Appeals.** Unless otherwise ordered, the mandate of the Court of Appeals shall issue 21 days after the latest of: the entry of judgment; the disposition of a timely motion for rehearing; or the denial or dismissal of a petition for *certiorari* review in the Supreme Court. If the Mississippi Supreme Court grants *certiorari* review, the mandate shall issue in accordance with Rule 41(a).

**(c) Stay of Mandate Pending Application for *Certiorari*.** A stay of the mandate pending application to the United States Supreme Court for a writ of *certiorari* may be granted upon motion, reasonable notice of which shall be given to all parties. The stay shall not exceed 30 90 days unless the period is extended for cause shown. If during the period of the stay there is filed with the clerk of Supreme Court a notice from the clerk of the United States Supreme Court that the party who has obtained the stay has filed a petition for the writ in that Court, the stay shall continue until final disposition by that Court. Upon the filing of a copy of an order of the United States Supreme Court denying the petition for writ of *certiorari*, the mandate shall issue immediately. A bond or other security may be required as a condition to the grant or continuance of a stay of the mandate.

**(d) Stay of Mandate and Release in Criminal Cases.** Stay of the mandate in criminal cases shall be governed by Rule 41(c), but, in addition, the petitioner must set forth good cause for the stay and clearly demonstrate that a substantial federal question previously presented on appeal is to be presented to the United States Supreme Court. In order to obtain release, the petitioner must also post a fully executed and approved appearance bond in a penal sum equal to double the amount of the bond upon which the petitioner was released from custody after conviction.

**(e) Motion to Amend or Correct Mandate; Time For Filing.** Any motion to amend or correct the mandate may be filed within fourteen (14) days after the court has issued the mandate or any addition to the mandate.

[Amended February 10, 1995; amended June 21, 1996; amended effective September 30, 2004 to allow the stay of a mandate under Rule 41(c) for 90 days.]

### Advisory Committee Historical Note

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#### Comment

Rule 41 is based upon Fed.R.App.P. 41. Under Rule 41(a) and (b) the appropriate appellate court issues a formal mandate which includes a certified copy of the judgment with any direction as to costs and a copy of the written opinion, if any. The mandate must correctly and adequately reflect the decision and judgment of the Court. *Deposit Guaranty National Bank v. E.Q. Smith Plumbing & Heating, Inc.*, 396 So. 2d 6 (Miss. 1981).

Subsection (c) is based upon Fed.R.App.P. 41(b).

Under subsection (d), a motion for a stay of the issuance of the mandate in a criminal case will not be granted unless the petition sets forth good cause for the stay and clearly demonstrates that a substantial question previously presented on appeal is to be presented to the United States Supreme Court. A motion for a stay of the issuance of the mandate in such a criminal appeal shall not be granted simply upon request. A party is no longer required to file a copy of the party's *certiorari* petition prior to obtaining release. However, the motion for stay must demonstrate that a substantial federal question exists, and the party must obtain a notice that the *certiorari* petition has been filed in order to obtain an extension of the stay and release beyond 30 (90) days.