

Serial: 198375

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99002-SCT

IN RE: MISSISSIPPI RULES OF EVIDENCE

ORDER

This matter is before the en banc Court on the Court's own motion. After due consideration, we find that amending Rule 105 of the Mississippi Rules of Evidence and striking the Comment to that Rule as set forth in Exhibit "A" will promote the fair and efficient administration of justice.

IT IS THEREFORE ORDERED that Rule 105 of the Mississippi Rules of Evidence is amended and the Comment to that Rule is struck in its entirety as set forth in Exhibit "A." The amendment to the Rule and the striking of the Comment shall be effective on July 1, 2015.

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

SO ORDERED, this the 14th day of May, 2015.

/s/ Jess H. Dickinson

JESS H. DICKINSON,
PRESIDING JUSTICE
FOR THE COURT

ALL JUSTICES AGREE.

EXHIBIT “A”

RULE 105. LIMITED ADMISSIBILITY

~~When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted~~ If the court admits evidence that is admissible against a party or for a purpose—but not against another party or for another purpose—the court, unless expressly waived or rebutted, upon request, shall restrict the evidence to its proper scope, and contemporaneously instruct the jury accordingly, and give a written instruction if requested.

Comment

This rule is a reflection of the existing practice of admitting evidence regarding one party or one purpose and excluding it as regarding another party or another purpose. A good example of the application of this rule occurs in a criminal case in which a confession of one defendant implicates a co-defendant. In such a case, if the entire confession were admitted into evidence, no amount of limiting instructions could cure the prejudice against the non-confessing co-defendant. *Bruton v. United States*, 389 U.S. 818, 88 S. Ct. 126, 19 L. Ed. 2d 70 (1968). A limiting instruction would be useless in such an instance. In other cases, however, where there is less at risk, a limiting instruction might very well be sufficient.

The rule requires that the party affected make a request to limit the evidence. If no request is made, and consequently the evidence is admitted, existing practice suggests that no error has been committed. *See Freed v. Killman*, 6 So. 2d 909, 192 Miss. 643 (1942).