

Serial: 104807

IN THE SUPREME COURT OF MISSISSIPPI

FILED

MAY 29 2003

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

*IN RE: THE MISSISSIPPI RULES OF
CIVIL PROCEDURE*

No. 89-R-99001-SCT

*IN RE: THE MISSISSIPPI RULES OF
EVIDENCE*

No. 89-R-99002-SCT

*IN RE: THE MISSISSIPPI RULES OF
APPELLATE PROCEDURE*

No. 89-R-99027-SCT

ORDER


This matter has come before the Court en banc on petitions filed by the Supreme Court Advisory Committee on Rules seeking approval and adoption of amendments to the Advisory Committee Historical Notes for the Mississippi Rules of Civil Procedure, the Mississippi Rules of Evidence and the Mississippi Rules of Appellate Procedure. Having considered the petitions and studied the proposed amendments, the Court finds that the amendments, with further amendments as set forth in Exhibits "A," "B," and "C" hereto, should be adopted.

IT IS THEREFORE ORDERED that the Advisory Committee Historical Notes for the Mississippi Rules of Civil Procedure, the Mississippi Rules of Evidence and the Mississippi Rules of Appellate Procedure, as modified, are approved and adopted, as set out in Exhibits "A," "B," and "C" 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.

A handwritten signature in black ink, appearing to read "William L. Waller, Jr.", written over a horizontal line.

WILLIAM L. WALLER, JR., JUSTICE
FOR THE COURT

McRAE, P.J. DISSENTS.

EXHIBIT "A"

MISSISSIPPI RULES OF CIVIL PROCEDURE

Addition to Historical Notes

[Note: Additions and deletions are indicated by underscoring and strike-out. The full text of the Historical Notes are not set forth herein; however, the absence of text does not indicate that the omitted material is to be deleted.]

Advisory Committee Historical Note [Rule 4]

Effective January 3, 2002, Rule 4(e) was amended to delete a prohibition against waiver of service of process by one convicted of a felony. 802-804 So.2d XVII (West Miss.Cases 2002).

Advisory Committee Historical Note [Rule 10]

Effective April 13, 2000, Rule 10(d) was amended to suggest, rather than require that documents on which a claim or defense is based be attached to a pleading. 753-745 So. 2d XVII (West Miss. Cases 2000.)

Advisory Committee Historical Note [Rule 11]

Effective January 16, 2003, Rule 11(a) was amended to provide that the signature of a foreign attorney certifies compliance with MRAP 46(b) and to make other editorial changes. So.2d (West Miss.Cases 2003).

[Committee Note: This order is too new to have a permanent West citation.]

Advisory Committee Historical Note [Rule 16]

Effective April 4, 2002, Rule 16A and the Comment were adopted. 813-815 So.2d LXXXI (West Miss.Cases 2002).

Advisory Committee Historical Note [Rule 16A]

Effective April 4, 2002, Rule 16A and the Comment were adopted. 813-815 So.2d LXXXI (West Miss.Cases 2002).

Advisory Committee Historical Note [Rule 26]

Effective April 13, 2000, Rule 26(c) was amended to allow the court on its own motion to convene a discovery conference, 753-754 So. 2d XVII (West Miss.Cas. 2000).

Advisory Committee Historical Note [Rule 30]

Effective July 1, 1997, Rule 30(b)(7) was amended to correct the reference to Rule 45. 689-692 So. 2d XLIX (West Miss. Cases 1997).

Advisory Committee Historical Note [Rule 32]

Effective January 10, 1986, Rule 32 was amended by ~~deleting~~ adding references to the Mississippi Rules of Evidence; and Rule 32(c) [Effect of Taking or Using Depositions] was abrogated. 478-481 So. 2d XXIII (West Miss. Cas. 1986).

Advisory Committee Historical Note [Rule 33]

Effective April 13, 2000, Rule 33 was amended to require parties to produce all nonobjectionable information and to clearly state the ground for objection to each interrogatory. 753-754 So. 2d XVII (West Miss.Cas. 2000).

Advisory Committee Historical Note [Rule 35]

Effective January 16, 2003, Rule 35 was adopted. ____ So.2d ____ (West Miss.Cases 2003).

[Committee Note: This order is too new to have a permanent West citation.]

Advisory Committee Historical Note [Rule 50]

Effective July 1, 1997, Rule 50(b) was amended to clarify that Rule 50(b) motions must be filed not later than ten days after entry of judgment. 689-692 So. 2d XLIX (West Miss. Cases 1997).

Advisory Committee Historical Note [Rule 52]

Effective July 1, 1997, Rule 52(b) was amended to clarify that a motion to amend the trial court's findings must be filed not later that ten days after entry of judgment. 689 So. 2d XLIX (West Miss. Cases 1997).

Advisory Committee Historical Note [Rule 53]

Effective April 13, 2000, Rule 53(c) was amended to give the court discretion to appoint a master on the written consent of the parties without a showing of an exceptional condition. 753-754 So. 2d. XVII (West Miss.Cas. 2000).

Advisory Committee Historical Note [Rule 59]

Effective July 1, 1997, Rule 59(b), (c) and (e) were amended to clarify that motions for a new trial and accompanying affidavits, and motions to alter or amend a judgment, must be filed not later that ten days after entry of judgment. 689 So. 2d XLIX (West Miss. Cases).

Advisory Committee Historical Note [Rule 62]

Effective July 1, 1997, Rule 62(a) was amended to clarify that the stay of enforcement of a judgment expires ten days after the later of the entry of the judgment or the disposition

of a motion for a new trial, and Rule 62(b) was amended to state that a court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion to set aside a verdict made pursuant to Rule 50(b). 689-692 So. 2d XLIX (West Miss. Cases 1997).

Advisory Committee Historical Note [Rule 77]

Effective July 1, 1997, Rule 77(d) was amended to allow for service of notices of the entry of orders and judgments by parties. 689-692 So. 2d LXII (West Miss. Cases 1997.)

Advisory Committee Historical Note [Rule 79]

Effective April 1, 2002, the Comment to Rule 79(a) was amended to underscore that docket entries must accurately reflect the actual date of entry. 813-815 So.2d LXXXVIII (West Miss.Cases 2002).

Advisory Committee Historical Note [Rule 81]

Effective April 13, 2000, Rule 81(d)(5) was amended to make a continuance effectual on a signed rather than an entered order. 753-754 So. 2d XVII (West Miss.Cas. 2000.)

EXHIBIT "B"

MISSISSIPPI RULES OF EVIDENCE

Addition to Historical Notes

[Note: Additions and deletions are indicated by underscoring and strike-out. The full text of the Historical Notes are not set forth herein; however, the absence of text does not indicate that the omitted material is to be deleted.]

Rule 412

Advisory Committee Historical Note

Effective March 20, 1995, the Comment to Rule 412 was amended to note the repeal of a statute. 648-651 So.2d XXVI (West Miss.Cas. 1995).

Rule 501

Advisory Committee Historical Note

Effective March 20, 1995, the Comment to Rule 501 was amended to delete the second paragraph. 648-651 So.2d XXVI (West Miss.Cas.1995).

Rule 504

[Amended effective May 1, 1997; May 2, 2002; April 3, 2003.]

Advisory Committee Historical Note

Effective April 3, 2003, Rule 504 was amended to effect technical changes. _____ So.2d _____ (West Miss.Cas.2003).

Effective May 2, 2002, Rule 504(d) and its Comment were amended to remove the privilege in civil actions between the spouses. 813-815 So.2d XXI (West Miss. Cases2002).

Rule 504(d) was amended in *Fisher v. State*, 690 So. 2d 268, 272 (Miss. 1996) to substitute "any minor child" for "a child of either" and to effect technical changes. The amendment applied prospectively upon publication (May 1, 1997, advance sheet) in West's *Southern Reporter*.

~~[Rule 504(d) amended in *Fisher v. State*, 690 So. 2d 268, 272 (Miss. 1996) to "apply prospectively upon publication in West's *Southern Reporter*" (published in *Southern Reporter* 2d advance sheet issue of May 1, 1997); amended April 18, 2002.]~~

Comment

~~[Comment Amended March 20, 1995; amended May 2, 2002.]~~

Rule 601

Advisory Committee Historical Note

Effective October 23, 1997, former Rule 601(b), which precluded testimony from convicted perjurers, was abandoned in *Fuselier v. State*, 702 So.2d 388. Effective July 1, 1998, the Comment was amended to reflect this decision. 706-708 So.2d XLI (West Miss.Cas.1998).

Effective March 20, 1995, the Comment to Rule 601 was amended to delete the reference to a repealed statute. 648-651 So.2d 651 So.2d XXVI (West Miss.Cas.1995).

Effective January 31, 1990, Rule 601 and its Comment were was amended to reflect the decision in *Hudspeth v. State Highway Com'n of Mississippi*, 534 So.2d 210 (Miss.1990). ~~The rule was amended by the decision in *Fuselier v. State*, 702 So.2d 388; decided Oct. 1997.~~

Rule 603

Advisory Committee Historical Note

Effective March 20, 1995, the Comment to Rule 603 was amended to delete the reference to a repealed statute. 648-651 So.2d 651 So.2d XXVI (West Miss. Cases1995).

Rule 604

Advisory Committee Historical Note

Effective March 20, 1995, the Comment to Rule 604 was amended to delete the reference to repealed statutes. 648-651 So.2d 651 So.2d XXVI (West Miss.Cas.1995).

Rule 609

[Amended effective ~~March 1, 1989~~; Amended May 2, 2002]

Advisory Committee Historical Note

Effective May 2, 2002, Rule 609(a) and its Comment were amended to provide that scrutiny for admitting convictions to impeach non-party witnesses differs from that of party witnesses. 813-815 So.2d XXIII-XXVII (West Miss.Cas.2002).

Effective March 1, 1989, the Comment to Rule 609(a) was amended to include reference to *Peterson v. State*, 518 So.2d 632 (Miss.1987). 536-538 So.2d XXXII (West Miss.Cas.1989)

Comment

[Comment amended effective March 1, 1989; ~~amended~~ May 2, 2002.]

Rule 615

Advisory Committee Historical Note

Effective January 31, 1990, the Comment was amended to include reference to a case. 553-560 So.2d XXVII (West Miss.Cas. 1990).

Rule 616

Advisory Committee Historical Note

Effective March 1, 1989, the Court adopted ~~amended~~ Rule 616. 536-538 So.2d XXXII (West Miss.Cas. 1989).

Rule 706

Advisory Committee Historical Note

Effective March 20, 1995, the Comment to Rule 706 was amended to note the repeal of a statute. 648-651 So.2d 651 So.2d XXVI (West Miss.Cas.1995).

Effective January 31, 1990, Rule 706 and its comment were ~~was~~ amended to reflect the decision in *Hudspeth v. State Highway Com'n of Mississippi*, 534 So.2d 210 (Miss.1988) amending Rule 706, November 16, 1988, effective retroactive to January 1, 1986. 553-556 So.2d XXVII (West Miss.Cas.1990).

Rule 801

Advisory Committee Historical Note

Effective March 1, 1989, the Comment was amended to delete the statement about Rule 801(d)(1)(C) and to include an additional comment about 801(d)(2). 536-538 So.2d XXXII (West Miss.Cas.1989)

RULE 803

Advisory Committee Historical Note

Effective July 1, 1997, Rule 803(6) and its Comment were ~~was~~ amended to allow predicate evidence for admission of these records to be presented by affidavit in appropriate cases. 689-692 So.2d LXVIII (West Miss.Cas. 1997).

Effective March 20, 1995, the Comment to Rules 803(10) and (11) were amended to note the repeal of statutes. 648-651 So.2d 651 So.2d XXVI (West Miss.Cas.1995).

Rule 804

Advisory Committee Historical Note

Effective March 20, 1995, the Comment to Rules 804(a) and (b)(1) were amended to note the repeal of a statute. 648-651 So.2d 651 So.2d XXVI (West Miss.Cas.1995).

Effective March 27, 1991, Rule 804(a) and its Comment were was amended to add a sixth definition of unavailability applicable only to child declarants, Rule 804(a)(6). 574-576 So.2d XXVIII (West Miss.Cas.1991).

Effective March 1, 1989, the Comment regarding Rule 804(a)(5) was amended to include a statement that this rule does not affect the admissibility of depositions under a civil rule. 536-538 So.2d XXXII (West Miss.Cas.1989).

Rule 901

Advisory Committee Historical Note

Effective July 1, 1998, the Comment regarding Rule 901(b)(6) was amended to delete the reference to and holding of a case. 706-708 So.2d XI.III (West Miss.Cas.1998).

RULE 902

Advisory Committee Historical Note

Effective July 1, 1997, Rule 902 and its Comment were was amended to add subsection (11) to allow predicates for records of regularly conducted activities to be proven by affidavit. 689-692 So.2d LXVIII (West Miss. Cases 1997).

Effective March 20, 1995, the Comment to Rules 902(3), (8) and (9) were amended to note the repeal of statutes and to delete reference to a U.C.C. section. 648-651 So.2d 651 So.2d XXVI (West Miss.Cas.1995).

Effective January 31, 1990, Rule 902(3) was amended to make a technical change. 553-556 So.2d XXVII (West Miss.Cas.1990).

Rule 1001

Advisory Committee Historical Note

Effective July 1, 1997, Rule 1001(3) and its Comment ~~were~~ was amended to correct an ~~what~~ was apparently a printing or typographical error by replacing the word “sign” with the correct word, “sight”. 689-692 So.2d LXVIII (West Miss. Cases 1997).

EXHIBIT "C"

MISSISSIPPI RULES OF APPELLATE PROCEDURE

Addition to Historical Notes

[Note: Additions and deletions are indicated by underscoring and strike-out. The full text of the Historical Notes are not set forth herein; however, the absence of text does not indicate that the omitted material is to be deleted.]

Advisory Committee Historical Note [Rule 2]

Effective January 1, 1999, Rule 2(a)(2) was amended to provide that motions for additional time will not be entertained after notice of deficiency has issued. 717-722 So.2d XXVII (West Miss.Cases 1998).

Effective January 1, 1999, Rule 2(b) was amended to effect a technical change. 717-722 So.2d XXVII (West Miss.Cases 1998).

Advisory Committee Historical Note [Rule 4]

Effective April 29, 1998, Rules 4(d) and (e) were amended to provide that a notice of appeal filed before disposition of specified post trial motions becomes effective on disposition thereof and is effective to appeal said disposition. In addition, the list of specified motions was enlarged to include M.R.C.P. 60 motions filed within 10 days. 706-708 So.2d XLIV (West Miss.Cases 1998).

Advisory Committee Historical Note [Rule 8]

Effective April 24, 2001, Rule 8 was amended to add (b)(2)-(5). 783-785 So.2d XIX (West Miss.Cases 2001).

Advisory Committee Historical Note [Rule 10]

Effective June 24, 1999, Rule 10(b)(5) was amended to effect editorial changes. 735 So.2d XIX (West Miss.Cases 1999).

Effective January 1, 1999, Rule 10(b)(5) was amended to require counsel to make certifications regarding the record and to extend the examination period to 14 days. 717-722 So.2d XXVII (West Miss.Cases 1998).

Advisory Committee Historical Note [Rule 11]

Effective June 27, 2002, Rule 11(c) and the Comment were amended to delete requirements that the reporter prepare and serve an acknowledgment of receipt of the certificate of compliance. 819-821 So.2d XV (West Miss.Cases 2002).

Effective May 23, 2002, Rule 11(b)(1) and the Comment were amended to provide alternative methods for estimating costs. 813-815 So.2d XXVIII (West Miss.Cases 2002).

Advisory Committee Historical Note [Rule 15]

Effective October 17, 2002, Rule 15 and the Comment were entirely rewritten. 827-829 So.2d XVII (West Miss.Cases 2002).

Advisory Committee Historical Note [Rule 16]

Effective October 15, 1998, Rule 16(d) was amended to provide that the clerk will designate those cases retained by the Supreme Court and those assigned to the Court of Appeals. 717-722 So.2d XXVII (West Miss.Cases 1998).

Advisory Committee Historical Note [Rule 17]

Effective January 3, 2002, a new Rule 17(k) was adopted. 803-804 So.2d XIX (West Miss.Cases 2002).

Effective June 24, 1999, Rule 17(b) was amended to effect editorial changes. 735 So.2d XIX (West Miss.Cases 1999).

Effective January 1, 1999, Rule 17(b) was amended to provide that untimely certiorari petitions may be summarily dismissed by a single justice and to provide that motions to extend the time to file a certiorari petition must be made within the original 14 days. 717-722 So.2d XXVII (West Miss.Cases 1998).

Effective January 1, 1999, Rule 17(e) was amended to effect a technical change. So.2d 717-722 XXVII (West Miss.Cases 1998).

Advisory Committee Historical Note [Rule 20]

Effective June 27, 2002, Rule 20(f) was amended to provide that briefing in addition to the initial brief will be on the directive of the Supreme Court. 819-822 So.2d XVIII (West Miss.Cases 2002).

Advisory Committee Historical Note [Rule 21]

Effective January 1, 1999, Rule 21(d) was amended to effect technical changes. 717-722 So.2d XXVII (West Miss.Cases 1998).

Advisory Committee Historical Note [Rule 22]

Effective July 27, 2000, new Rules 22(b) and (c) were adopted with a related reference in 22(a) and a third paragraph added to the Comment. 761-763 So.2d XVII (West Miss.Cases 2000).

Effective June 24, 1999, Rule 22(a) was revised regarding deficient applications and Rules 22(c) and (d) were adopted. 735 So.2d XXIII (West Miss.Cases 1999).

Effective January 1, 1999, Rule 22(a) was amended to provide thirty days after notice from the clerk to remedy failure to comply substantially with statutory requirements. 717-722 So.2d XXVII (West Miss.Cases 1998).

Advisory Committee Historical Note [Rule 25]

Effective June 27, 2002, Rule 25(b) was amended to delete a reference to the District Attorney “who prosecuted the case.” 822-823 So.2d XVII (West Miss.Cases 2002).

Advisory Committee Historical Note [Rule 27]

Effective June 27, 2002, Rule 27(b) was amended to delete motions “to stay issuance of mandate pursuant to Rule 41” from the list of motions on which the clerk may rule. 819-821 So.2d XX (West Miss.Cases 2002).

Effective November 2, 2000, a new Rule 27(g) was adopted. 770-772 So.2d XVII (West Miss.Cases 2000).

Effective August 26, 1999, Rule 27(f) and the Comment were amended to provide

for publication of proposals on the Supreme Court's Internet site and an attendant comment period. 736-737 So.2d XXI (West Miss.Cases 1999).

Effective June 24, 1999, Rules 27(b) and (g) were amended to effect editorial changes. 735 So.2d XIX (West Miss.Cases 1999).

Effective January 1, 1999, Rule 27(b) was amended to provide that the clerk may rule on motions to withdraw as counsel in non-capital cases, to voluntarily dismiss appeals, to obtain additional pages, to supplement the record, to appear *pro hac vice*, and to suspend the briefing schedule. 717-722 So.2d XXVII (West Miss.Cases 1998).

Effective January 1, 1999, Rule 27(g) was adopted and corresponding changes were made to Rule 27(c) and the Comment. 717-722 So.2d XXVII (West Miss.Cases 1998).

Advisory Committee Historical Note [Rule 28]

Effective December 11, 1997, Rule 28(e) and the Comment were amended to provide a vendor and media neutral citation standard in the public domain. 702-705 So.2d XLI (West Miss.Cases 1997).

~~Effective December 11, 1997, Rule 28 was amended to delete various requirements regarding the form of citations. 702-705 So. 2d XLI-XLIII (West. Miss. Cases 1997):~~

Advisory Committee Historical Note [Rule 29]

Effective June 27, 2002, Rule 29(c) was amended to provide that a party has 7 days to file a response in opposition to a motion to file an *amicus curiae* brief. 822-823 So.2d XIX (West Miss.Cases 2002).

Advisory Committee Historical Note [Rule 30]

Effective June 27, 2002, Rule 30(a) was amended to provide that the record excerpts shall include a copy of the trial court docket instead of a list of documents in the record and the transcript index. 819-821 So.2d XXII (West Miss.Cases 2002).

Advisory Committee Historical Note [Rule 35-A]

Effective November 1, 1998, Rule 35-A and the Comment were extensively amended to provide for publication of all written opinions, for issuance of *per curiam* affirmances, and to make related changes. 717-722 So.2d XXVII (West Miss.Cases 1998).

Advisory Committee Historical Note [Rule 35-B]

Effective March 7, 2002, Rule 35-B(b) and the Comment were amended regarding finality of opinions of the Court of Appeals and a related technical change. So.2d _____ (West Miss.Cases 2002).

[Committee Note: This order apparently was not published by West.]

Effective November 1, 1998, Rule 35-B and the Comment were extensively amended to provide for publication of all written opinions, for issuance of *per curiam* affirmances, and to make related changes. 717-722 So.2d XXVII (West Miss.Cases 1998).

Advisory Committee Historical Note [Rule 40]

Effective April 4, 2002, Rule 40(b) was amended to increase the number of copies required to be filed. 813-815 So.2d XXXVII (West Miss.Cases 2002).

Effective April 13, 2000, Rule 40(a) and the Comment were amended to allow a second motion for rehearing after a first motion for rehearing has been granted. 753-754 So. 2d XXX (West Miss.Cases 2000).

Effective January 1, 1999, Rule 40(b) was amended to require filing of 10 copies in cases decided by the Court of Appeals and to make an editorial change. 717-722 So.2d XXVII (West Miss.Cases 1998).

Advisory Committee Historical Note [Rule 45]

Effective January 3, 2002, Rule 45(d) was amended regarding removal of closed files from the Clerk's office. 803-804 So.2d XXI (West Miss.Cases 2002).

Advisory Committee Historical Note [Rule 46]

Effective June 24, 1999, Rule 46(b)(5) was amended to effect editorial changes. 735 So.2d XIX (West Miss.Cases 1999).

Effective January 1, 1999, new Rule 46(b)(5) was adopted and existing subsections renumbered. 717-722 So.2d XXVII (West Miss.Cases 1998).

Advisory Committee Historical Note [Rule 48A]

Effective March 29, 2001, Rule 48-A was adopted. 777-782 So.2d XVII (West Miss.Cases 2001).

Advisory Committee Historical Note [Rule 48B]

Effective April 4, 2002, Rule 48-B was adopted. 813-855 So.2d LXXXIII (West Miss.Cases 2002).

Advisory Committee Historical Note [Rule 48C]

Effective October 17, 2002, Rule 48-C and the Comment were adopted. 827-829 So.2d XX (West Miss.Cases 2002).