

Serial: 99637

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99027-SCT

RE: MISSISSIPPI RULES OF APPELLATE PROCEDURE

ORDER

This matter has come before the Court, en banc, on the Court's own motion. Having determined that the fair and efficient administration of justice will be promoted by establishing procedures for consideration and review of motions for recusal of justices and judges of the appellate courts, the Court now adopts Rule 48C of the Mississippi Rules of Appellate Procedure.

IT IS THEREFORE ORDERED that the Mississippi Rules of Appellate Procedure are amended by the adoption of Rule 48C as set forth in Exhibit "A" hereto.

IT IS FURTHER ORDERED that the Clerk of the 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 *Southern Reporter (Mississippi Edition)* and in the *Mississippi Rules of Court*.

SO ORDERED, this the 17th day of October, 2002.

/s/ William L. Waller, Jr.

WILLIAM L. WALLER, JR., JUSTICE,

FOR THE COURT

McRAE, P.J., AND DIAZ, J., NOT PARTICIPATING

EXHIBIT "A" TO ORDER

MISSISSIPPI RULES OF APPELLATE PROCEDURE

RULE 48C. DISQUALIFICATION OF JUSTICES OR JUDGES OF THE APPELLATE COURTS

(a) Disqualification of Justices and Judges of the Supreme Court or Court of Appeals.

(i) Any party may move for the recusal of a justice of the Supreme Court or a judge of the Court of Appeals if it appears that the justice or judge's impartiality might be questioned by a reasonable person knowing all the circumstances, or for other grounds provided in the Code of Judicial Conduct or otherwise as provided by law. A motion seeking recusal shall be filed with an affidavit of the party or, if the party is represented, by the party's attorney setting forth the factual basis underlying the asserted grounds for recusal and declaring that the motion is filed in good faith and that the affiant truly believes the facts underlying the grounds stated to be true.

(ii) Any such motion for recusal shall be filed no later than 30 days following the notification by the clerk of the court that a case has been assigned to either appellate court, or, in the case of a motion or petition which is not filed within a proceeding initiated by a notice of appeal or where the facts upon which the motion is based could not reasonably have been known to the filing party within such time, it shall be filed within 30 days after the filing party could reasonably discover the facts underlying the grounds asserted.

(iii) Motions for recusal shall be decided in the first instance by the justice or judge who is the subject of the motion. The remainder of the court on which such justice or judge serves shall, prior to the order being entered, be informed of a decision of a justice to deny recusal, and such decision shall be subject to review by the entire court upon motion for reconsideration filed within 14 days following the issuance of an order denying recusal.

Comment

Although Rule 27(h) generally provides that motions, other than those addressed by the Clerk of the Courts under Rule 27(b), are only subject to reconsideration on the court's own motion, special provision is made in this rule for reconsideration of motions for recusal of appellate court justices and judges.

(b) Supreme Court Review of Orders of the Court of Appeals Addressing recusal of Judges. No decision concerning the recusal of a judge of the Court of Appeals shall be subject to review by the Supreme Court unless, upon timely motion, the Court of Appeals has denied reconsideration of the motion. A party may, within 14 days following the denial of reconsideration by the Court of Appeals, file a motion with the Supreme Court seeking further review, and the Supreme Court, en banc, shall promptly consider such recusal. Such motion for further review by the Supreme Court shall be accompanied by a copy of the order entered by the judge who is the subject of the motion for recusal, the order denying reconsideration, and the motions for recusal and reconsideration by the Court of Appeals.

[Adopted effective October 17, 2002.]