

Serial: **147188**

**IN THE SUPREME COURT OF MISSISSIPPI**

**No. 89-R-99001-SCT**

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

**ORDER**

This matter came before the Court, en banc, on the Court's own motion to amend Rule 60 of the Mississippi Rules of Civil Procedure. After due consideration, the Court finds that Rule 60 should be amended by the addition of sub-section (c) which provides for reconsideration of an order transferring a case to another court. The Court also finds that the Comment to Rule 59 should be amended to cross-reference Rule 60(c).

IT IS THEREFORE ORDERED that Rule 60 of the Rules of Civil Procedure is hereby amended by the addition of sub-section (c), as set forth in Exhibit "A" hereto.

IT IS ALSO ORDERED that the Comment to Rule 59 of the Mississippi Rules of Civil Procedure is amended to read as set forth in Exhibit "B" hereto.

IT IS FURTHER ORDERED that the Clerk of this Court shall spread this order upon the minutes of the Court and that a true certified copy be forwarded to West Publishing Company for publication in *Southern Reporter Second (Mississippi Edition)* and the *Mississippi Rules of Court*.

SO ORDERED, this the 22nd day of April, 2008.

/s/ William L. Waller, Jr.

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

AGREED: SMITH, C.J., WALLER AND DIAZ, P.JJ., CARLSON, DICKINSON,  
RANDOLPH AND LAMAR, JJ.

DISAGREED: EASLEY, J.

NOT PARTICIPATING: GRAVES, J.

Exhibit A

**MISSISSIPPI RULES OF CIVIL PROCEDURE**

**RULE 60. RELIEF FROM JUDGMENT OR ORDER**

....

**(c) Reconsideration of transfer order.** An order transferring a case to another court will become effective ten (10) days following the date of entry of the order. Any motion for reconsideration of the transfer order must be filed prior to the expiration of the 10-day period, for which no extensions may be granted. If a motion for reconsideration is filed, all proceedings will be stayed until such time as the motion is ruled upon; however, if the transferor court fails to rule on the motion for reconsideration within thirty (30) days of the date of filing, the motion shall be deemed denied.

....

[Amended effective July 1, 2008, to provide for reconsideration of transfer orders entered on or after that date.]

## Exhibit B

### RULE 59. NEW TRIALS; AMENDMENT OF JUDGMENTS

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#### Comment

Rule 59 authorizes the trial judge to set aside a jury verdict as to any or all parts of the issues tried and to grant a new trial as justice requires. This practice is not new to Mississippi, but the procedures set forth in this rule are. The grounds for granting new trials remain the same as under prior state practice; generally stated, however, the court has the power and duty to set aside a verdict and order a new trial whenever, in its sound judgment, such action is required. *See generally* 11 Miss. Digest, New Trial, Key numbers 13-108 (1972).

The motion must be filed within ten days after the entry of judgment. This is a departure from prior Mississippi practice, *National Cas. Co. v. Calhoun*, 219 Miss. 9, 67 So.2d 908 (1953) (new trial may be ordered any time prior to expiration of court term), and is authorized by MRCP 6(c). The ten-day period cannot be enlarged. MRCP 6(b)(2).

When the motion for new trial is based upon affidavits, they shall be filed and served with the motion; the opposing party then has a maximum of thirty days in which to serve counter-affidavits. MRCP 59(c).

Rule 59(d) allows the court on its own initiative to order a new trial, even though there was no motion for a new trial, for any reason for which the court might have granted a new trial on the motion of a party. *Sanders v. State*, 239 Miss. 874, 125 So.2d 923 (1961); *National Cas. Co. v. Calhoun, supra*. If the court exercises this power, it must specify in its order the grounds for the new trial.

If the court is acting entirely on its own initiative in ordering a new trial, it must make the order not later than ten days after the entry of judgment and may not make such an order after that period has expired.

A motion to alter or amend must be filed within ten days after the entry of judgment; the court is not permitted to extend this time period.

See Rule 60(c) for reconsideration of an order transferring a case to another court.

[Comment amended effective July 1, 1997; amended effective July 1, 2008.]