

Serial: 212467

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99027-SCT

IN RE: MISSISSIPPI RULES OF APPELLATE PROCEDURE

FILED

MAY 15 2017

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

EN BANC ORDER

On December 15, 2016, by unanimous order of the Court, the Mississippi Rules of Criminal Procedure were adopted. The Court's *en banc* order provided that this new body of rules take effect July 1, 2017, and adjudicated that the Mississippi Rules of Criminal Procedure “. . . shall govern the procedure in all criminal proceedings in the Circuit, County, Justice and Municipal Courts of this State.”

Inasmuch as said Mississippi Rules of Criminal Procedure have the effect of altering, duplicating, supplementing and/or replacing certain of the existing provisions of Mississippi's Rules of Appellate Procedure, the Court finds and adjudicates that said Rules of Appellate Procedure should be, and they hereby are, amended in accordance with Exhibit A, which by reference is incorporated in and made a part of this order. Such amendments shall take effect on July 1, 2017.

The Clerk of this Court shall spread this order and the amended rules attached hereto on the minutes of the Court, and the Clerk shall provide a certified copy thereof to West Publishing Company for publication in a forthcoming edition of the Southern Reporter, Mississippi Cases, which is the official publication of the decisions of this Court, and in the next edition of the Mississippi Rules of Court.

SO ORDERED, this the 15th day of May, 2017.


JAMES W. KITCHENS, JUSTICE
FOR THE COURT

ALL JUSTICES AGREE.

EXHIBIT A

MISSISSIPPI RULES OF APPELLATE PROCEDURE

RULE 1. SCOPE OF RULES

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Comment

These rules are not to be construed to extend or limit jurisdiction of the Supreme Court, except that Rule 5 is intended to expand the occasions upon which the Court may exercise its power to hear interlocutory appeals. See *Southern Farm Bureau Cas. Ins. v. Holland*, 469 So. 2d 55, 62-64 (Miss. 1985), (Anderson, J., concurring). The jurisdictional statute permits interlocutory appeals "in cases particularly provided for by law." Miss. Code Ann. § 9-3-9 (Supp. 1994). These rules are "law." See *Newell v. State*, 308 So. 2d 71 (Miss. 1975).

Rules which provide for the making of a motion in the trial court include Rules 4(g), extension of time to appeal; 6, determination of *in forma pauperis* status; 8(b), stay on appeal to be first sought in trial court; and 10(e) correction of record on appeal. Trial court practice is governed by the Mississippi Rules of Civil Procedure, Mississippi Rules of Evidence, Mississippi Rules of Criminal Procedure, applicable uniform rules, and local rules where adopted pursuant to M.R.C.P. 83 or MRCrP 1.9. The term "trial court" in these rules includes a circuit or chancery court sitting as an appellate court. Rule 46(b) concerning the admission of foreign attorneys governs admission in trial courts, in administrative agencies, and in the appellate courts.

The Mississippi Rules of Appellate Procedure, effective January 1, 1995, are based on the Mississippi Supreme Court Rules and were adopted to include procedure in the Court of Appeals of the State of Mississippi pursuant to Miss. Code Ann. §9-4-1 *et seq.* (Supp. 1994).

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RULE 4. APPEAL AS OF RIGHT - WHEN TAKEN

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(e) Post-trial Motions in Criminal Cases. If a defendant makes a timely motion ~~under the Uniform Rules of Circuit and County Court Practice~~ (1) for judgment of acquittal notwithstanding the verdict of the jury, or (2) for a new trial under ~~Rule 10.05~~ MRCrP 25.1, the time for appeal for all parties shall run from the entry of the order denying such motion. Notwithstanding anything in this rule to the contrary, in criminal cases the 30 day period shall

run from the date of the denial of any motion contemplated by this subparagraph, or from the date of imposition of sentence, whichever occurs later. A notice of appeal filed after the court announces a decision, sentence, or order but before it disposes of any of the above motions, is ineffective until the date of the entry of the order disposing of the last such motion outstanding, or until the date of the entry of the judgment of conviction, whichever is later. Notwithstanding the provisions of Appellate Rule 3(c), a valid notice of appeal is effective to appeal from an order disposing of any of the above motions.

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**RULE 6. COUNSEL ON APPEAL IN CRIMINAL CASES
AND PROCEEDINGS *IN FORMA PAUPERIS*
IN CRIMINAL CASES**

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Comment

Rule 6(a) and (b) provide for appeals *in forma pauperis* in criminal appeals. The rule reflects the salient features of Fed. R. App. P. 24 and Ala. R. App. P. 24. *See* Form 4 for a suggested affidavit to accompany a motion for application to proceed *in forma pauperis*. Rule 6(b) provides that appointed counsel in a criminal case may not be relieved of the responsibility for an appeal absent leave of Court. *Allison v. State*, 436 So. 2d 792 (Miss. 1983).

An accused entitled to counsel at trial is also entitled to counsel in an appeal as of right to the Supreme Court. *Evitts v. Lucey*, 469 U.S. 387, 105 S. Ct. 830, 83 L. Ed. 2d 821 (1985); *Neal v. State*, 422 So. 2d 747, 748 (Miss. 1982). Under federal law, a defendant is entitled to counsel if a sentence of imprisonment is imposed. *Scott v. Illinois*, 440 U.S. 367, 99 S. Ct. 1158, 59 L. Ed. 2d 383 (1979). *See also* Miss. Const. of 1890, art. 3, § 26.

The county prepays costs when an indigent criminal defendant appeals *in forma pauperis*. Miss. Code Ann. § 99-35-105 (Rev. 2000). The Clerk of the Supreme Court charges no fees or costs when a defendant incarcerated at the Mississippi State Penitentiary appeals on pauper's oath. Miss. Code Ann. § 25-7-3 (Rev. 2006).

Rule 6(b) provides for the appointment of the Indigent Appeals Division of the Office of the State Public Defender in accordance with Section 99-40-1 of the Mississippi Code. An indigent appellant shall be represented by the Indigent Appeals Division of the Office of the State Public Defender absent good cause shown.

Rule 6(c) is regarding the waiver of counsel on appeal in criminal cases. The subsection applies regardless of appellant's ability to pay for counsel. The waiver of counsel must be knowingly and intelligently made. The hearing in the trial court mirrors the hearing provided for in ~~Rule 8.05 of the Uniform Rules of Circuit and County Court~~ MRCrP 7.1(c). If appellant's motion to dismiss counsel is denied, appellant may file a pro se supplemental brief pursuant to Rule 28(b).

[Amended effective August 2, 2012.]

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RULE 9. RELEASE IN CRIMINAL CASES

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Comment

Rule 9(a) is substantially patterned after Fed. R. App. P. 9(a). Subdivision (b) continues Mississippi practice for release after judgment of conviction provided in ~~Unif. Crim. R. Cir. Ct. Prac. 7.02~~ MRCrP 8.3, Miss. Code Ann. §§ 99-35-105, -107, -109 (1994), Miss. Code Ann. § 99-35-115 (1994), Miss. Code Ann. § 99-35-117 (1994). Both 9(a) and (b) require the party seeking release to provide the appellate court with certain information relevant to release. *See* former 5th Cir. R. 9.1, 9.2. Normally these facts will be part of the record in the trial court. Both petitions under 9(a) and motions under 9(b) will be handled by the appropriate appellate court as motions under Rule 27.

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RULE 27. MOTIONS

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(f) Motions Proposing Adoption, Repeal, or Amendment of Rules of Court and Rules Governing the Practice of Law. All applications concerning the adoption, repeal, or amendment of the Mississippi Rules of Civil Procedure, Rules of Evidence, Rules of Appellate Procedure, Rules of Criminal Procedure, Uniform Civil Circuit and County Court Rules, Uniform Chancery Court Rules, Uniform Rules of Procedure for Justice Court, Code of Judicial Conduct, Rules of the Commission on Judicial Performance, Rules and Regulations for Mandatory Continuing Judicial Education, Rules of Professional Conduct, Rules of Discipline for the Mississippi Bar, Rules and Regulations for Mandatory Continuing Legal Education, Rules Governing Admission to the Mississippi Bar, and all other rules affecting the practice of law and the administration of the courts in Mississippi shall be filed in the Supreme Court. Such motions shall comply with all other requirements of the Mississippi Rules of Appellate Procedure; specifically, four (4) copies shall be filed with the original, but the Supreme Court may require that additional copies be furnished. Such motions should include the text of the proposed new rule or of the rule to be amended with deletions indicated by strikeouts and additions shown underlined. The motions shall also be accompanied by a copy of the motion and of the proposed rule or rule amendment in an electronically formatted medium (such as USB Flash Drive or CD-ROM). No notice or response to such motion shall be required, except as may be required by the Court, but the Court may in its discretion submit any rules motion to the Supreme Court Rules Advisory Committee, or any other source, for review and comment. Upon receipt of requests or petitions for adoption or amendment of rules the Court may publish the proposal or request

on the Supreme Court's Internet site, and invite comment thereon. No action shall be taken by the Supreme Court on such proposal or request for a period of thirty(30) days following the commencement of such publication, and all comments received shall be considered; however, the Court may dispense with such publication and comment in the event that the Court deems the urgency of the proposal or request prohibitive to the delay needed for publication and comment.