

Serial: 213136

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99027-SCT

*IN RE: MISSISSIPPI RULES OF
APPELLATE PROCEDURE*

FILED

JUN 29 2017

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

ORDER

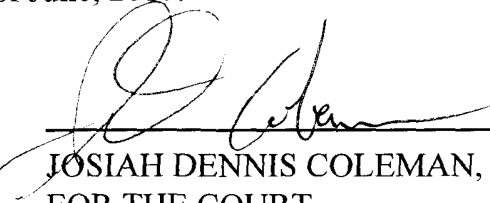
This matter is before the en banc Court on the Court's own motion.

After due consideration, we find that Rule 2 of the Mississippi Rules of Appellate Procedure should be amended to state that this Court and the Court of Appeals of the State of Mississippi can suspend the rules and extend the time for taking an appeal in post-conviction cases. We also find that the Comments to Rules 2 and 4 should be amended.

IT IS THEREFORE ORDERED that Rule 2 of the Mississippi Rules of Appellate Procedure, the Comment to Rule 2, and the Comment to Rule 4 are amended as set forth in the attached Exhibit A. The amendments are effective upon entry of this order.

IT IS FURTHER ORDERED that the Clerk of this Court must spread this order upon the minutes of the 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 the *Mississippi Rules of Court*.

SO ORDERED, this the 23rd day of June, 2017.



JOSIAH DENNIS COLEMAN, JUSTICE
FOR THE COURT

AGREE: WALLER, C.J., DICKINSON AND RANDOLPH, P.JJ., KITCHENS, KING,
COLEMAN, MAXWELL AND CHAMBERLIN, JJ.

BEAM, J., NOT PARTICIPATING.

EXHIBIT A

**RULE 2. PENALTIES FOR NONCOMPLIANCE WITH RULES;
SUSPENSION OF RULES**

. . .

(c) Suspension of Rules. In the interest of expediting decision, or for other good cause shown, the Supreme Court or the Court of Appeals may suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction; ~~provided, however, in civil cases the time for taking an appeal as provided in Rules 4 or 5 may not be extended.~~ The time for taking an appeal under Rules 4 or 5 may be extended in criminal and post-conviction cases, but not in civil cases.

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Comment

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Under Rule 2(a)(1), if an appeal is not taken within the time specified in Rules 4 or 5, either court, on its own motion or on motion of party, shall dismiss it. Rule 4(g) states when an extension of time may be granted by the trial court. Rule 2(c) provides for the suspension of Rule 2(a)(1) in criminal and post-conviction cases.

. . .

Rule 2(c) provides for suspension of the rules for reasons of expedition or good cause shown. It is important to note that in civil cases, under Rule 2(c), the Court may not extend the time for taking an appeal except as provided by Rule 4 (g) or (h). This is a departure from prior law. *See Clark v. City of Pascagoula*, 473 So.2d 477 (Miss.1985); *but see Roberts v. Grafe Auto Co., Inc.*, 653 So.2d 250, 250-251 (Miss. 1994) (The Court held that several verdict forms signed by the trial court were not "final judgments" triggering the 30-day time for appeal. The Court further stated that "[e]ven assuming arguendo that the forms could be construed to be final judgments, [appellant] was never notified of their existence, and her right to due process would protect her from losing her right to appeal since she was not aware of the jury verdict forms and was not notified of their existence.") Where a party has filed an otherwise timely notice of appeal which is ineffective under Rule 4(d) or 4(e), the Court may, however, suspend the operation of 4(d) or 4(e) to prevent manifest injustice. This is not an extension of the "time for taking" the appeal. Also, because procedures for criminal appeals apply to post-conviction relief proceedings, Miss. Code Ann. § 99-39-25(1);

~~Williams v. State, 456 So.2d 1042, 1043 (Miss.1984)~~, the Supreme Court may suspend the rules and extend the time for taking an appeal in those proceedings. Rules 2(c) and 4(g) thus supplant the procedure described in *Jones v. State*, 355 So.2d 89, 90 (Miss.1978).

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RULE 4. APPEAL AS OF RIGHT - WHEN TAKEN

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Comment

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In criminal cases, the Court may suspend Rule 4 to permit out of time appeals. Post-conviction relief proceedings are governed by the rules controlling criminal appeals. See Miss. Code Ann. § 99-39-25(1)(1994); ~~Williams v. State, 456 So. 2d 1042, 1043 (Miss. 1984)~~. No such suspension, however, is permitted in a civil case. See Rules 2(c); 26(b).

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