

Serial: 220791

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99027-SCT

FILED

OCT 25 2018

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

***IN RE: MISSISSIPPI RULES OF
APPELLATE PROCEDURE***

ORDER

Now before the en banc Court is F. M. Turner III's letter motion proposing amendments to Rules 27, 28, 30, 31, 32, and 40 of the Mississippi Rules of Appellate Procedure.

Turner proposes amending Rules 27, 28, 30, 31, 32, and 40 to conform with electronic filing. After posting the proposal for comment, the Court's Rules Committee on Civil Practice and Procedure referred it to the Advisory Committee on Rules. The Advisory Committee's recommendations are now before us.

After due consideration, we find Rules 1, 25, 27, 28, 30, 31, 32, and 40 of the Mississippi Rules of Appellate Procedure, and certain comments to those rules, should be amended as set forth in the attached Exhibit A.

IT IS THEREFORE ORDERED that Rules 1, 25, 27, 28, 30, 31, 32, and 40 of the Mississippi Rules of Appellate Procedure, and certain comments to those rules, are amended as set forth in the attached Exhibit A. The amendments are effective upon entry of this order.

SO ORDERED, this the 17th day of October, 2018.



JOSIAH DENNIS COLEMAN, JUSTICE
FOR THE COURT

ALL JUSTICES AGREE.

EXHIBIT A

RULE 1. SCOPE OF RULES

These rules govern procedure in appeals to the Supreme Court of Mississippi and the Court of Appeals of the State of Mississippi, and proceedings on petitions for writs or other relief which the Supreme Court or the Court of Appeals or a justice of the Supreme Court or judge of the Court of Appeals is empowered to grant. When these rules provide for the making of a motion in the trial court, the procedure for making such motion shall be in accordance with the practice of the trial court.

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Comment

Electronic filing in most appellate matters became mandatory on January 1, 2014. Under Section 1.D. of the Appellate E-Filing Administrative Procedures, “all briefs, motions, responses, and compliance documents . . . must be filed electronically.” Section 4 exempts sealed and confidential cases, *pro se* litigants, and documents other than briefs, motions, responses and compliance documents, all of which must be filed conventionally.

RULE 25. FILING AND SERVICE

(a) Filing. Papers required or permitted to be filed shall be filed with the clerk of the Supreme Court and no motion, brief, motion for rehearing or other document, or any copy shall be sent by an attorney directly to any individual justice except as provided in Rule 8(c). ~~Filing may be accomplished by mail addressed to the clerk or by electronic means in conformity with procedures established by the Court~~

(1) *Electronic Filing.* Electronic filing is governed by the Appellate E-Filing Administrative Procedures.

(2) *Conventional Filing.* Conventional filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are received by the clerk within the time fixed for filing, except that briefs and record excerpts shall be deemed filed on the day of mailing by first class mail with postage prepaid, or any more expeditious form of delivery. For briefs and record excerpts to be deemed filed on the day of mailing, they must be accompanied by a certificate signed by the person who will actually mail the brief or record excerpt. The certificate shall specify the document filed, the number of copies filed,

and the date the paper will be deposited in the United States mail addressed to the clerk. Papers received by the clerk of the Supreme Court without a certificate of filing shall be deemed filed when received by that clerk.

(3) Conventional Filing by Facsimile Transmission of Unopposed Procedural and Emergency Motions. Conventional filing of unopposed procedural and emergency relief motions may be accomplished by facsimile (fax) transmission. A document longer than five pages shall not be filed without prior leave of the clerk.

Each facsimile transmission shall be accompanied by a facsimile cover page which states the date of the transmission, the name and telephone number of the person transmitting the document, the name and facsimile telephone number of the person to whom the document is being transmitted, the docket number and style of the case in which the document is to be filed, the style of the document being filed, and the number of pages being transmitted, excluding the cover page.

A facsimile fee shall be required for filing a document by facsimile transmission.

Only one copy of the document shall be transmitted; the clerk will provide any additional copies required by these rules or an order of the appropriate appellate court, and the cost of copying shall be assessed against the filing party. Papers filed by facsimile transmission shall be deemed filed when the official date and time stamp of the clerk is affixed to the transmission. The facsimile signature shall be deemed an original signature. The filing party shall retain possession of the original executed document for submission to the Court if there is a dispute over authenticity.

A paper may be filed by facsimile transmission only if it can be served on opposing counsel by facsimile transmission. Service of a paper by facsimile transmission is complete when the person transmitting the paper receives confirmation of receipt of the transmission by the facsimile machine of the person served.

The proof of service for a paper served by facsimile transmission shall state the facsimile telephone number of the person to whom the paper was transmitted. A copy of the transmission report to opposing counsel shall be attached to the transmitted document. The person transmitting the document shall further certify that the facsimile fee and any required filing fee have been mailed to the clerk contemporaneously with the facsimile transmission.

Failure to comply with the facsimile requirements of this rule may result in the imposition of sanctions; the document transmitted may be stricken or deemed not filed, or other appropriate action may be taken.

(4) Completion of Filing. Except as provided above, when these rules or an order of an appellate court requires multiple copies of a document to be filed, filing shall not be deemed complete until all required copies are filed. If a motion is filed with a single justice as permitted by Rule 8, the justice may permit the motion to be filed with that justice, in which event the justice shall note on the motion the date of filing and shall forward the motion to the clerk of the Supreme Court.

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Comment

Electronic filing in most appellate matters became mandatory on January 1, 2014. Under Section 1.D. of the Appellate E-Filing Administrative Procedures, “all briefs, motions, responses, and compliance documents . . . must be filed electronically.” Section 4 exempts sealed and confidential cases, pro se litigants, and documents other than briefs, motions, responses and compliance documents, all of which must be filed conventionally.

Rule 25 is substantially patterned after Fed.R.App.P. 25. It enlarges upon former practice to provide that for conventional filing service by mail is complete on mailing. Filing of briefs and record excerpts is deemed to take place on the day of mailing if they are sent by first class mail with postage prepaid or any more expeditious form of delivery. Other papers are deemed filed when filed with the clerk.

Unlike the federal rule, this rule does not permit papers to be filed with a single justice as a matter of course. It restricts such filings to requests for emergency stay relief under Rule 8(c).

RULE 27. MOTIONS

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(d) Form and Number of Conventionally Filed Papers; ~~Number of Copies.~~ When filed conventionally, ~~a~~All papers relating to motions shall be typewritten or printed and all exhibits and other attachments shall be securely bound. An original and four (4) copies shall be filed with the clerk of the Supreme Court. The Supreme Court or the Court of Appeals may require that additional copies be furnished.

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RULE 28. BRIEFS

(n) Filing of Conventional Briefs on Electronic Media. When filed conventionally, ~~a~~All parties filing a brief on the merits of any case with the Clerk of the Supreme Court shall file with that brief a copy thereof in an electronically formatted medium (such as USB Flash Drive or CD-ROM) , and the Clerk shall receive and file such with the papers of that case. All electronic media and electronic files stored thereon must be in an industrial standardized format with the electronic brief stored in the Adobe Portable Document Format (PDF). All electronic media shall be labeled to include the following information:

- (1) the style of the case, and,
- (2) the number of CD-ROMs, i.e., “1 of 2, 2 of 2, etc.”

RULE 30. RECORD EXCERPTS

(a) Mandatory Record Excerpts. Appeals shall be on the record as designated pursuant to Rule 10. Also, at the time of filing appellant’s brief, appellant shall file ~~four~~(4) copies of the following portions of the trial court record, to be indexed and ~~bound~~ together, but not in the brief:

- (1) a true copy of the trial court docket;
- (2) the judgment or interlocutory order appealed from;
- (3) all other orders or rulings sought to be reviewed; and
- (4) all supporting opinions, findings of fact or conclusions of law filed or delivered orally by the trial court.

When filed conventionally, appellant shall file four (4) bound copies of the record excerpts.

(b) Optional Record Excerpts. Appellant may add to the mandatory record excerpts brief extracts from the pleadings, instructions, transcript, or exhibits if they are essential to an understanding of the issues raised.

At the time the appellee’s brief is filed, the appellee may add other such extracts by filing ~~four~~(4) copies of the same with an index and separately ~~bound~~ in a like manner, and

labeled “Appellee’s Record Excerpts.” When filed conventionally, appellee shall file four (4) bound copies of Appellee’s Record Excerpts.

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RULE 31. FILING AND SERVICE OF BRIEFS

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(c) Number of Conventionally Filed Copies to Be Filed. When filed conventionally, ~~a~~An original and three (3) copies of all briefs shall be filed with the clerk. In cases in which the appellant has been sentenced to suffer the death penalty, the party shall file the original and nine (9) copies of all briefs. The Supreme Court or the Court of Appeals may require that additional copies be furnished.

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**RULE 32. FORM OF BRIEFS, RECORD EXCERPTS
AND OTHER PAPERS**

(a) Form of Briefs and Record Excerpts. Briefs and record excerpts may be produced by standard commercial printing or by any duplicating or copying process which produces a clear black image on white paper. The text in the body of briefs shall appear in at least 12 point type; the text of foot notes must appear in at least 11 point type.

When filed conventionally, ~~b~~Briefs and record excerpts shall be bound in volumes and shall be typed on one side of the page only and shall be in black non-copying ink on white paper without the name of any person or advertising matters on the paper. Pages of briefs shall not exceed 8 ½ by 11 inches with margins of 1 ½ inches on the left, 1 inch on the top, ¾ of an inch on the bottom, and ½ inch on the right, with double spacing between each line of text, excluding quotations and footnotes. All pages shall be numbered.

It is preferred that briefs and record excerpts be bound so as to permit them to lie flat when opened, and they must be so bound if the cover is plastic or any material not easily folded.

The cover of the brief of the appellant shall be blue; that of the appellee, red; that of an intervenor or *amicus curiae*, green; that of any reply brief, gray. In cross-appeals, the

reply brief of appellant shall be combined with the brief of cross-appellee, and the combined brief shall be red. The reply brief of cross-appellant shall be gray. The cover of the record excerpts shall be white. The front covers of the briefs and of record excerpts shall contain: (1) the caption, name of the court and the number of the case; (2) the style (title) of the case [see Rule 13(a)]; (3) the nature of the proceeding (e.g., Appeal; Interlocutory Appeal; Petition for Writ of Prohibition) and the name of the court or commission below; (4) the title of the document (e.g., Brief for Appellant, Record Excerpts); (5) the names, bar numbers, addresses and business telephone numbers of counsel representing the party on whose behalf the document is filed, and (6) a statement on the cover of a brief filed by each party that oral argument is or is not requested. See M.R.A.P. 34(b).

(b) Form of Other Papers. Motions for rehearing shall be produced in a manner prescribed by Rule 32(a) and Rule 28(m), and motions and other papers may be produced in like manner, ~~or~~ When filed conventionally, they may be typewritten upon opaque, unglazed paper, 8 ½ by 11 inches in size. Lines of typewritten text shall be double spaced except for quotations and footnotes. Consecutive sheets shall be attached at the top left corner.

A motion or other paper addressed to either the Court of Appeals or the Supreme Court shall contain a caption setting forth the name of the court, the style (title) of the case, the tracking or docket number, and a brief descriptive title indicating the purpose of the paper. Prior to notification by the clerk that the case has been assigned to the Court of Appeals, all pleadings shall be captioned in the name of the Supreme Court. A motion filed after notice of assignment to the Court of Appeals shall be captioned with the name of that court.

RULE 40. MOTION FOR REHEARING

(b) Form of Motion; Length. The motion shall be in a form prescribed by Rule 32, ~~and~~ When filed conventionally, in cases decided by the Supreme Court an original and ten (10) copies shall be filed with the clerk of the Supreme Court, and in cases decided by the Court of Appeals an original and eleven (11) copies shall be filed. The Supreme Court or the Court of Appeals may require that additional copies be furnished. The motion shall be served as prescribed by Rule 31 for the service and filing of briefs. Except by permission of the appropriate court a motion for rehearing shall not exceed twenty-five (25) pages. If responses are filed, they shall be filed with like numbers of copies and shall not exceed twenty-five (25) pages.