

89-2-99001

FILED

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OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

IN RE: AMENDMENT OF M.R.C.P. 10

MOTION TO AMEND M.R.C.P. 10

Comes now the Supreme Court Advisory Committee on Rules, pursuant to M.R.A.P. 27(f), and moves the Mississippi Supreme Court to amend M.R.C.P. 10 as follows:

Rule 10. Form of the Pleadings

(a) Caption; Names of Parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(b) Paragraphs; Separate Statement. The first paragraph of a claim for relief shall contain the names and, if known, the addresses of all the parties. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and the paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

~~**(d) Copy Must Be Attached.** When any claim or defense is founded on an account or other written instrument, a copy thereof should be attached to or filed with the pleading unless sufficient justification for its omission is stated in the pleading.~~

[Amended effective April 13, 2000; amended effective _____.]

Advisory Committee Historical Note

Effective _____, Rule 10 was amended by deleting M.R.C.P. 10(d) [Copy Must Be Attached.] XX So. 3d XX (Miss. 20__).

Effective April 13, 2000, Rule 10(d) was amended to suggest, rather than require that documents on which a claim or defense is based be attached to a pleading. 753-745 So. 2d XVII (West Miss. Cas. 2000.)

MOTION#

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Advisory Committee Notes

Failure to comply with the requirements of Rule 10(b) is not ground for dismissal of the complaint or striking the answer. Instead, the court, upon a motion or on its own, may order a party to amend the pleading so as to comply with the provisions of Rule 10(b). See, e.g., 3M Co. v. Glass, 917 So. 2d 90, 92-94 (Miss. 2005); Harold's Auto Parts, Inc. v. Mangialardi, 889 So. 2d 493, 494-95 (Miss. 2004).

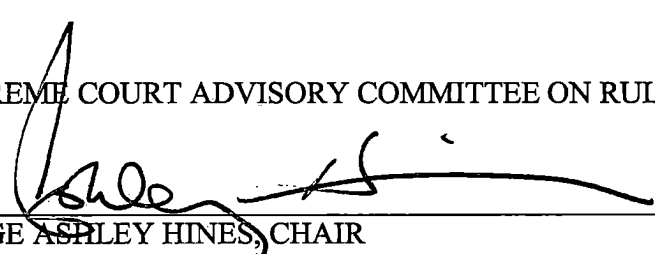
[Advisory Committee Note adopted effective July 1, 2014.]

The proposed amendment to Rule 10 would delete 10(d) [Copy Must Be Attached.] In 2000, M.R.C.P. 10(d) was amended to suggest, rather than require, that a copy of an account or written instrument giving rise to a claim or defense be attached to the pleading. The Committee believes that the rule as currently written is confusing because the heading states "Copy Must Be Attached" even though that is no longer a requirement. Given that 10(d) contains a suggestion rather than a requirement, the Committee believes it is appropriate to delete the subparagraph entirely. The motion to amend M.R.C.P. 10 was unanimously approved by the Committee on May 17, 2018.

The Supreme Court Advisory Committee on Rules therefore moves that the above proposed amendment to M.R.C.P. 10 be considered by the Mississippi Supreme Court.

SO MOVED, this the 7 day of February, 2020.

SUPREME COURT ADVISORY COMMITTEE ON RULES



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