

Serial: 92398

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99027-SCT

RE: MISSISSIPPI RULES OF APPELLATE PROCEDURE

**ORDER**

This matter has come before the Court en banc on Petition of Betty W. Sephton, Clerk of the Supreme Court, wherein she seeks amendment of Rule 45(d) of the Mississippi Rules of Appellate Procedure, regarding Custody of Records and Papers and fees regarding the removal of closed files from the office of the Clerk. Having considered the petition, the court finds that the proposal will promote the fair and efficient administration of justice and that the proposed amendment should be granted.

IT IS THEREFORE ORDERED that Rule 45(d) of the Mississippi Rules of Appellate Procedure is hereby amended as set forth in Exhibit "A" hereto.

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

SO ORDERED, this the 2nd day of January, 2002.

/s/ William L. Waller, Jr.

WILLIAM L. WALLER, JR., JUSTICE,

FOR THE COURT

**EXHIBIT "A"**

**MISSISSIPPI RULES OF APPELLATE PROCEDURE**

**RULE 45 DUTIES OF THE CLERK**

....

**(d) Custody of Records and Papers.** The clerk shall have custody of the records and papers of the Supreme Court and of the Court of Appeals. The clerk shall not permit any original record or paper to be taken from the clerk's custody during the pendency of the appeal except by or on behalf of a party. After the completion of the time for briefing prescribed by Rule 31 and before decision, no party will be permitted

to withdraw the record except upon motion accompanied by an affidavit stating that the trial court record retained under Rule 11(e) is not available. ~~After an appeal has been decided, a mandate has been issued, a~~ any member of the bar in good standing ~~or a circuit, chancery, or county court judge~~ may withdraw from the clerk's office any record after ~~posting with the clerk a cost deposit of fifty dollars (\$50.00)~~ paying in advance a fee of \$15.00. Incarcerated pro se litigants may withdraw from the clerk's office the appellate record in their cause after paying in advance a fee of \$15.00. A reasonable mailing and handling fee of \$10.00 will be assessed in the event the record requires mailing to the requesting party. Records containing more than 10 volumes will be assessed actual mailing cost. No record shall be held out of the clerk's office more than 90 days. ~~Upon return of the record in compliance with this rule, \$40.00 of the deposit shall be refunded, or \$35.00 if the court stores the record outside its building. If the record is held out past the 90 day period, a record delinquency fee will be assessed in the amount of \$50.00.~~ The clerk shall maintain a separate accounting dealing solely with records and documents which have been withdrawn from the clerk's files in accordance with this rule. The clerk shall advise the Supreme Court in writing on the first Monday of each month of any records, briefs, or papers which have not been returned in compliance with this rule. ~~The Supreme Court may forfeit the deposit of any party failing to return a record either within the prescribed time limit or at any time upon request by the Court.~~ The Supreme Court may also take such other action with respect to records as the circumstances warrant, and may require any party failing to return a record to pay the full cost of reproducing the record from other sources. A copy of this rule shall be attached to any records or documents removed from the clerk's office indicating the estimated cost for reproduction. This rule does not apply to those cases which the Supreme Court has delivered to the Mississippi Department of Archives and History pursuant to Section 9-3 -25 of the Mississippi Code of 1972, for which cases the Mississippi Department of Archives and History is solely responsible.

[Adopted to govern matters on or after January 1, 1995; amended January 3, 2002.]