

Serial: **94882**

**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 its own motion for consideration of amendment of Rule 40(b) of the Mississippi Rules of Appellate Procedure. Having considered the proposal, the Court finds that the amendment of M.R.A.P. 40(b) as set forth in Exhibit "A" hereto will promote the fair and efficient administration of justice.

IT IS THEREFORE ORDERED that Rule 40(b) of the Mississippi Rules of Appellate Procedure be and the same 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 1st day of April, 2002.

/s/ William L. Waller, Jr.

WILLIAM L. WALLER, JR., JUSTICE,

FOR THE COURT

**EXHIBIT "A" TO ORDER**

**MISSISSIPPI RULES OF APPELLATE PROCEDURE**

**RULE 40. MOTION FOR REHEARING**

**(a) Time for Filing; Content; Answer; Action by Court if Granted.** A motion for rehearing may be filed within 14 days after a decision is handed down on the merits of a case by the Supreme Court or the Court of Appeals. The motion shall state with particularity the points of law or fact which, in the opinion of the movant, the court has overlooked or misapprehended and shall contain such argument in support of the motion as movant desires to present. The motion for rehearing should be used to call attention to specific errors of law or fact which the opinion is thought to contain; the motion for rehearing is not intended to afford an opportunity for a mere repetition of the argument already considered by the court. Oral argument in support of the motion will not be permitted.

A motion for rehearing in the Court of Appeals shall be heard by the panel which rendered the judgment in the matter unless the Court of Appeals shall vote to consider the matter *en banc*.

Within seven days after the filing of a motion for rehearing, any other party may, but need not, file and serve a written response in opposition to the motion. Failure to file a response within this time period waives the right to respond but does not confess the arguments made in the motion. If a motion for rehearing is granted, the appropriate court may make a final disposition of the cause without reargument or may restore it to the calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances in a particular case.

After a motion for rehearing has been denied, no further motion for rehearing shall be filed by any party. After a motion for rehearing has been granted, a party has the option of filing a second motion for rehearing within 14 days after the judgment on rehearing.

**(b) Form of Motion; Length.** The motion shall be in a form prescribed by Rule 32 and in cases decided by the Supreme Court an original and ten (10) ~~nine (9)~~ 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) ~~ten (10)~~ 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.

**(c) Disrespectful Language Stricken.** Any motion for rehearing containing language showing disrespect or contempt for either appellate court will be stricken, and the appropriate court will take such further action as it may deem proper.

[Adopted to govern matters filed on or after January 1, 1995; amended June 21, 1996; amended July 15, 1996; amended effective October 15, 1998; amended effective January 1, 1999; amended effective April 13, 2000; amended April 4, 2002.]

#### **Advisory Committee Historical Note**

Effective April 13, 2000, Rule 40(a) and the Comment were amended to allow a second motion for rehearing after a first motion for rehearing has been granted. So. 2d (West Miss.Cases 2000).

Effective June 21, 1996, Rule 40 and the Comment were amended to redesignate rehearing "petitions" as "motions." In addition, the Comment was further amended to provide that "Motions for rehearing are limited to cases on the merits and motions which have been decided by panels of the Court or by the court sitting *en banc*. Motions for rehearing are not entertained upon motions decided by a single justice." 673-678 So.2d XLI-XLII and LXXXVIII (West Miss. Cases 1996).

Effective January 1, 1995, Miss.R.App.P. 40 replaced Miss.Sup.Ct.R. 40, embracing proceedings in the Court of Appeals. Subsection (a) was further amended to provide that any response to a petition for rehearing must be filed within 7, not 14, days of the filing of the petition. 644-647 So.2d LXXIX-LXXX (West Miss.Cases 1994).

#### **Comment**

Rule 40 is modeled on Fed.R.App.P. 40 and the former rules of the Supreme Court. Following federal practice, the rule provides that the motion is to be written in the form of a brief, and no separate brief is required. The rule also provides an automatic time period in which to respond to a motion for rehearing if desired; however, the appropriate court may call for additional response on specific issues. A motion for rehearing should be distinguished from a motion for clarification or correction of opinion. Such a motion, filed in the manner and form prescribed by Rule 27, does not seek to alter the judgment of the court, and will not stay the mandate. Motions for rehearing are limited to cases on the merits and to motions as expressly allowed under Rule 27(g).

[Amended June 21, 1996 ; amended effective April 13, 2000.]