

Serial: 96560

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99027-SCT

**RE: MISSISSIPPI RULES OF
APPELLATE PROCEDURE**

ORDER


FILED
JUN 20 2002
OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

This matter has come before the Court en banc on its own motion for consideration a proposal for the amendment to Rule 11(c) of the Mississippi Rules of Appellate Procedure. Having considered the matter, the Court finds that the amendment of M.R.A.P. 11(c) as set forth in Exhibit "A" to this order will promote the fair and efficient administration of justice.

IT IS THEREFORE ORDERED that Rule 11(c) of the Mississippi Rules of Appellate Procedure and the Comment thereto is 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 17th day of June, 2002.


WILLIAM L. WALLER, JR., JUSTICE.
FOR THE COURT

GRAVES, J., NOT PARTICIPATING

EXHIBIT "A" TO ORDER

RULE 11. COMPLETION AND TRANSMISSION OF THE RECORD

....

(c) **Duty of Reporter to Prepare and File Transcript.** Upon the appellant's compliance with subparagraph (b)(1) and service of the designation required by Rule 10(b)(1), the reporter shall commence preparation of the transcript. ~~The reporter shall acknowledge at the foot of the certificate of compliance the fact that the reporter has received it and the date on which the reporter expects to have the transcript completed and shall serve a copy of the certificate of compliance, so endorsed, on all parties and the clerks of both the trial court and of the Supreme Court.~~ The reporter's transcript shall conform to the Guidelines for Court Reporters adopted by the Supreme Court, attached as Appendix III to these rules and incorporated herein by reference, and shall contain a title page setting out the style, number, and counsel appearances; a table of contents; and a certificate of completion. It shall not contain any exhibits. The transcript table of contents shall, however, indicate for each exhibit whether or not it was admitted into evidence.

If the transcript cannot be completed within 60 days of service of the designation, one 30 day extension may be granted by the trial court by order served on all parties and the clerk of the Supreme Court. Any subsequent extension shall be sought from the clerk of the Supreme Court. Any such request may be made orally or in writing and shall specify in detail:

- (1) the amount of work that has been accomplished on the transcript,
- (2) all outstanding transcripts due to this and other courts, including the due dates of filing, and
- (3) verification that the request has been brought to the attention of, and approved by, the trial judge who tried the case.

The action of the clerk of the Supreme Court shall be entered and the court reporter shall confirm the action in writing within seven (7) days to the clerk with a copy to the trial judge and to the parties. When an extension is granted on oral request, the confirmation shall include the information required to be specified in the request. In the event of the failure of the reporter to file the transcript within the time allowed, the clerk of the Supreme Court shall notify the trial judge and take such other steps as may be directed by the Supreme Court.

Upon completion of the transcript the reporter shall certify the transcript as an accurate account of the proceedings and file the original and one copy of the transcript with the clerk of the trial court. The reporter shall simultaneously certify and serve notice of the

filing on the parties and on the clerk of the Supreme Court. Additionally, the reporter shall prepare an electronic disk of the transcript filed and shall file the electronic disk with the trial court clerk for inclusion in the appellate record. All electronic disks shall be in electronic language capable of transference to other systems, i.e., ASCII, Word Perfect, Ami-PRO, Word, etc. All electronic disks shall be labeled to include the following information:

- (1) style of the case;
- (2) number of disks, i.e., 1 of 2, 2 of 2, etc.; and
- (3) the language format.

After such filing and service of notice, the trial court clerk may disburse actual fees earned to the court reporter from estimated fees deposited pursuant to Rule 11(b).

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[Adopted to govern matters filed on or after January 1, 1995; amended effective May 23, 2002; amended effective June 27, 2002.]

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Comment

Rule 11(b) provides the appellant shall estimate costs based on estimates received from the clerk(s) and court reporter(s) if available within 7 days after filing the notice of appeal. If either the clerk (s) or court reporters(s) do not provide estimates, Rule 11(b)(1) provides for alternative methods. Even though Rule 3(a) no longer makes prepayment of costs an absolute criterion for perfecting an appeal, the Supreme Court can respond under Rule 2(a)(2) to such failure with an appropriate sanction, including dismissal. Appellants who claim exemption from payment or prepayment of costs, see, e.g., Rule 6 (in forma pauperis appeals); Miss.Code Ann. § 11-53-13 (1972); *City of Mound Bayou v. Roy Collins Const. Co.*, 457 So.2d 337 (Miss.1984) (exemption for state, county, city, town or village), should estimate the cost of preparation of the record but claim the exemption in the certificate of compliance required by Rule 11(b)(1). If the exemption is denied, the appellant should then prepay as required by the rule. Form 3 in the Appendix of Forms is a form for the certificate required by this rule.

~~Rule 11(c) requires court reporters to notify the clerk of the Supreme Court when the reporter receives a designation, and gives to the Supreme Court the authority to rule on certain requests for extension. The Court may empower its clerk to rule on such requests~~

and to grant extensions up to a specified time, e.g., 30 days. The rule prescribes the content of the reporter's request. The rule also provides that the transcript is to conform to the Guidelines for Court Reporters and exhibits are not to be physically incorporated in the transcript, thereby ensuring that all transcripts will be uniform and eliminating the awkward folding and separation of documentary exhibits by page.

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[Comment amended May 23, 2002; amended effective June 27, 2002.]