

Serial: 95962

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99027-SCT

**FILED**

MAY 23 2002

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

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

**ORDER**

This matter has come before the Court en banc on petition of the Supreme Court Advisory Committee on Rules proposing an amendment to Rule 11(b) of the Mississippi Rules of Appellate Procedure and the Comment thereto. Having considered the petition, the Court finds that the proposed amendments will promote the fair and efficient administration of justice and that the petition should be granted.

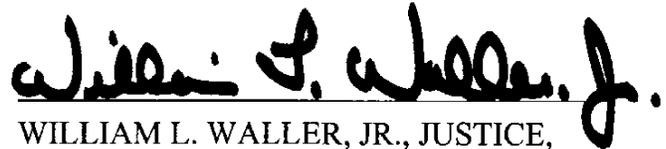
IT IS THEREFORE ORDERED that the petition of the Supreme Court Advisory Committee on Rules is granted, and M.R.A.P. 11(b) and its Comment are amended as set forth in Exhibit "A" hereto.

IT IS FURTHER ORDERED that the Forms 1 through 5 in the Appendix I to the Mississippi Rules of Appellate Procedure are hereby amended as set forth in Exhibit "B" hereto.

IT IS FURTHER ORDERED that the Clerk of this Court shall spread this order on the minutes of this Court and that it be submitted to West Publishing Company for

publication in the *Southern Reporter (Mississippi Edition)* and in the *Mississippi Rules of Court*.

SO ORDERED, this the 22<sup>nd</sup> day of May, 2002.

A handwritten signature in black ink, appearing to read "William L. Waller, Jr.", written in a cursive style.

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

PITTMAN, C.J., NOT PARTICIPATING

**EXHIBIT "A" TO ORDER**

**MISSISSIPPI RULES OF APPELLATE PROCEDURE**

**RULE 11. COMPLETION AND TRANSMISSION OF THE RECORD**

\* \* \* \* \*

**(b) Estimation and Payment of Fees.**

(1) *Record Preparation Estimate and Deposit.* Within seven (7) days after filing the notice of appeal, the appellant shall estimate the cost of preparation of the record on appeal, including, but not limited to, the cost of the preparation of the transcript, and shall deposit that sum with the clerk of the court whose judgment or order has been appealed. The appellant shall simultaneously file with the clerk of the trial court a certificate setting forth the fact of compliance with this subparagraph and shall serve a copy of the certificate upon all other parties, upon the court reporter, and upon the Supreme Court Clerk. The estimate shall be calculated pursuant to estimates from the clerk(s) and court reporter(s). If the appellant is unable to obtain an estimate from a clerk within the seven (7) days, the appellant shall calculate the estimate at the statutory rate per page for the approximate number of pages of clerk's papers. If the appellant is unable to obtain an estimate from a court reporter within the seven (7) days, the appellant shall calculate the estimate at the rate of \$300.00 per day of proceedings to be transcribed.

\* \* \* \* \*

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

\* \* \* \* \*

**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. carries forward, with slight modification, the provisions of the former rules of the Supreme Court as to estimating and prepaying costs. 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.

\* \* \* \* \*

[Comment amended May 23, 2002.]

**EXHIBIT "B" TO ORDER**

**MISSISSIPPI RULES OF APPELLATE PROCEDURE**

**APPENDIX I. FORMS**

**FORM 1**

IN THE \_\_\_ COURT OF THE \_\_\_ JUDICIAL  
DISTRICT OF \_\_\_ COUNTY, MISSISSIPPI

\_\_\_\_\_  
\_\_\_\_\_

PLAINTIFF  
NO. \_\_\_\_\_  
DEFENDANT

NOTICE OF APPEAL

By this notice, \_\_\_\_\_ appeals to the Supreme Court of Mississippi against \_\_\_\_\_  
[name(s) of appellee(s)] from the final judgment entered in this case on \_\_\_\_\_, 20 ~~19~~,  
and the denial of the Motion for Judgment Notwithstanding the Verdict or, in the Alternative,  
for New Trial, by order entered on \_\_\_\_\_, 20 ~~19~~.

Respectfully submitted,  
[Appellant]  
s/ \_\_\_\_\_  
Attorney for Appellant  
[Address]

CERTIFICATE OF SERVICE

I, \_\_\_\_\_, attorney for appellant, \_\_\_\_\_, certify that I have  
this day filed this Notice of Appeal with the clerk of this Court together with the docket fee  
to be received by the clerk on behalf of the Supreme Court of Mississippi, and have served a  
copy of this Notice of Appeal by United States mail with postage prepaid on the following  
persons at these addresses:

[Attorney for Appellee with Address]  
[Court Reporter with Address]

This the \_\_\_ day of \_\_\_\_\_, 20 ~~19~~.

s/ \_\_\_\_\_  
Attorney for Appellant

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

**FORM 2**

IN THE \_\_\_\_\_ COURT OF THE \_\_\_\_ JUDICIAL  
DISTRICT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

\_\_\_\_\_  
VS.  
\_\_\_\_\_

PLAINTIFF

NO. \_\_\_\_\_  
DEFENDANT

DESIGNATION OF THE RECORD

\_\_\_\_\_, appellant, by counsel, pursuant to M.R.A.P. 10(b)(1), designates the following parts of the record as being necessary to be included on appeal:

All clerk's papers, trial transcripts and exhibits filed, taken or offered in this case.

[or]

1. The Complaint.
2. The Answer and Defenses.
3. Plaintiff's Motion to Compel Discovery, and the Court's Order entered on \_\_\_\_\_, 20\_\_\_\_, 19\_\_\_\_, overruling that motion.
4. A transcript of the trial of this case on \_\_\_\_\_, 20\_\_\_\_, 19\_\_\_\_; including voir dire and all in chambers conferences, and all exhibits offered and marked for identification or admitted into evidence.
5. All jury instructions filed or granted.
6. The judgment entered on \_\_\_\_\_, 20\_\_\_\_, 19\_\_\_\_.
7. The Motion for Judgment Notwithstanding the Verdict, or, in the Alternative for New Trial, and the Court's Order filed \_\_\_\_\_, 20\_\_\_\_, 19\_\_\_\_, overruling the motion.\*

THIS the \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, 19\_\_\_\_.

Respectfully submitted,

[Appellant]

s/ \_\_\_\_\_  
Attorney for Appellant  
[Address]

\* In a criminal case, the sentencing order should be included.

CERTIFICATE OF SERVICE

I, \_\_\_\_\_, attorney for appellant \_\_\_\_\_, certify that I have this day served a copy of this Designation of the Record by United States mail with postage prepaid on the following persons at these addresses:

[Attorney for Appellee w/Address]

[Court Reporter w/Address]

This the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ 19\_\_.

s/ \_\_\_\_\_  
Attorney for Appellant

COURT REPORTER'S ACKNOWLEDGMENT

I, \_\_\_\_\_, [one of the] court reporter[s] in this case, acknowledge receipt of this Designation of the Record and the appellant's Certificate of Compliance with Rule 11(b)(1), and I expect to complete the transcript in this case on or before \_\_\_\_\_, 20\_\_ 19\_\_.

I certify that I have this day served a copy of this Designation of the Record and Court Reporter's Acknowledgment on counsel for appellant and all other parties as

listed above, and on both the clerk of this Court and the clerk of the Supreme Court of Mississippi.

This the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ 19\_\_.

\_\_\_\_\_  
Court Reporter  
[Address]

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

FORM 3

IN THE \_\_\_\_\_ COURT OF THE \_\_\_\_\_ JUDICIAL  
DISTRICT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

PLAINTIFF

\_\_\_\_\_  
VS.  
\_\_\_\_\_

NO. \_\_\_\_\_  
DEFENDANT

**CERTIFICATE OF COMPLIANCE WITH RULE 11(b)(1)**

I, \_\_\_\_\_, attorney for appellant \_\_\_\_\_, pursuant to M.R.A.P. 11(b)(1),  
certify that ~~the cost of preparing the designated record on appeal as estimated by the court  
reporter and the clerk of this Court~~ I have complied with M.R.A.P. 11(b) and that the  
estimated cost of preparing the designated record on appeal is \$ \_\_\_\_\_, and I have on or  
before this day deposited that sum with the clerk of this Court.

This the \_\_\_ day of \_\_\_\_\_, 20 19.

Respectfully submitted,

[APPELLANT]

s/ \_\_\_\_\_

Attorney for Appellant

[Address]

**CERTIFICATE OF SERVICE**

I, \_\_\_\_\_, attorney for appellant \_\_\_\_\_, certify that I  
have this day served a copy of this Certificate of Compliance with Rule 11(b)(1) by United  
States mail with postage prepaid on the following persons at these addresses:

[Attorney for appellee with address]

[Court reporter with address]

This the \_\_\_ day of \_\_\_\_\_, 20 19.

\_\_\_\_\_  
Attorney for Appellant

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

**FORM 4**

IN THE CIRCUIT COURT OF THE \_\_\_\_\_ JUDICIAL DISTRICT  
OF \_\_\_\_\_ COUNTY, MISSISSIPPI\*

STATE OF MISSISSIPPI  
VS.

NO. \_\_\_\_\_

\_\_\_\_\_

**AFFIDAVIT TO ACCOMPANY MOTION FOR LEAVE TO  
APPEAL IN FORMA PAUPERIS**

I, \_\_\_\_\_, being first duly sworn, depose and say that I am the \_\_\_\_\_  
\_\_\_\_\_ in this case; that, in support of my motion to proceed on appeal without  
being required to prepay fees and costs, I state that because of my poverty I am unable to pay  
the fees and costs of this proceeding and that I believe I am entitled to redress.

I further swear that the responses which I have made to the question and instructions  
below relating to my ability to pay the fees and costs of prosecuting the appeal are true.

1. Are you presently employed? \_\_\_\_\_
  - a. If the answer is yes, state the amount of your salary and wages per month and  
give the name and address of your employer.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- b. If the answer is no, state the date of your last employment and the amount of the  
salary and wages per month which you received.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Have you received within the past twelve months any income from a business,  
profession or other form of self-employment, or in the form of rental payments,  
interest, dividends, or other source? \_\_\_\_\_

- a. If the answer is yes, describe each source of income and state the amount  
received from each during the past twelve months. \_\_\_\_\_

3. Do you own any cash or checking or savings account? \_\_\_\_\_

a. If the answer is yes, state the total value of the items owned.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

\_\_\_\_\_  
\_\_\_\_\_

a. If the answer is yes, describe the property and state its approximate value.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. List the persons who are dependent upon you for support and state your relationship to those persons.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I understand that a false statement or answer to any question or instruction in this affidavit will subject me to penalties for perjury.

\_\_\_\_\_  
Signature of Applicant

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

SUBSCRIBED AND SWORN TO before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ 19\_\_.

\_\_\_\_\_  
Notary Public

MY COMMISSION EXPIRES \_\_\_\_\_

\* An affidavit filed in the Supreme Court accompanying an application under M.R.A.P. 22 for post-conviction collateral relief after an appeal has been affirmed or dismissed should be captioned "In the Supreme Court of Mississippi."

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

FORM 5

IN THE \_\_\_\_\_ COURT OF THE \_\_\_\_\_ JUDICIAL  
DISTRICT OF \_\_\_\_\_ COUNTY, MISSISSIPPI

\_\_\_\_\_  
VS.  
\_\_\_\_\_

PLAINTIFF  
NO. \_\_\_\_\_  
DEFENDANT

APPEAL BOND TO SUPREME COURT OF MISSISSIPPI  
WITH SUPERSEDEAS

STATE OF MISSISSIPPI  
COUNTY OF \_\_\_\_\_

BECAUSE IN THIS CAUSE pending in the \_\_\_\_\_ Court of the \_\_\_\_\_ Judicial District of \_\_\_\_\_ County, Mississippi, a final judgment was entered in favor of \_\_\_\_\_, plaintiff, against \_\_\_\_\_, [one of the] defendant[s], on \_\_\_\_\_, 20 19\_\_, and defendant's post-trial motions were denied, the defendant, \_\_\_\_\_, desires to prosecute an appeal to the Supreme Court of Mississippi with supersedeas pursuant to Mississippi Rule of Civil Procedure 62 and M.R.A.P. Rule 8.

KNOW ALL BY THIS BOND, that we, \_\_\_\_\_, as principal, and \_\_\_\_\_, a guaranty or surety company authorized to do business in the State of Mississippi, are held and firmly bound unto plaintiff \_\_\_\_\_, or [his/her/its] administrators, executors, successors or assigns, in the penal sum of \$\_\_\_\_\_ for which payment to be made, we bind ourselves, our successors and assigns, jointly and severally.

THE CONDITION OF THE FOREGOING OBLIGATION is that, if the defendant, \_\_\_\_\_, shall prosecute this appeal with effect in the Supreme Court of Mississippi and shall satisfy the judgment complained of in full, together with costs, interest, penalties, and damages, if for any reason the appeal is dismissed or if the judgment is affirmed, or shall satisfy in full such modification of the judgment and such costs, interest and damages as the Supreme Court of Mississippi or the Court of Appeals may adjudge against the defendant, then this obligation will be void; otherwise, it will remain in full force and effect.

[Principal]

BY: s/ \_\_\_\_\_

[Principal or Attorney]

[Guaranty or Surety Company]

BY: s/ \_\_\_\_\_  
Agent and Attorney-in-Fact  
[Guaranty or Surety Company]  
[Address]\*

THIS SUPERSEDEAS BOND AND SURETY ARE APPROVED and the judgment complained of is stayed pending appeal on this the \_\_\_ day of \_\_\_\_\_, 20\_\_ 19\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Clerk,  
\_\_\_\_\_ County, Mississippi

\* The address should be an address to which the clerk of the trial court can send notice of a motion to enforce liability. See M.R.A.P. 8(d).

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