SUPREME COURT OF MISSISSIPPI

&

COURT OF APPEALS OF THE STATE OF MISSISSIPPI CLERKS OFFICE

CHANCERY COURT CLERKS STATEWIDE SEMINAR

JACKSON MARRIOTT

JACKSON, MISSISSIPPI

THURSDAY, FEBRUARY 12, 2015

8:30 A.M.

MURIEL B. ELLIS, CLERK

450 HIGH STREET
P.O. BOX 249
JACKSON, MISSISSIPPI 39205
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TABLE OF CONTENTS

CHECK LIST FOR NOTICE OF APPEAL

CHECK LIST FOR FILING CLERK'S PAPERS

DO'S & DON'TS

RULES PERTAINING TO NOTICE OF APPEALS AND CLERK'S PAPERS

M.R.A.P. 3

M.R.A.P. 4

M.R.A.P. 10

M.R.A.P. 11

M.R.A.P. 12

APPENDIX Form 1.

APPENDIX Form 2.

APPENDIX Form 3.

APPENDIX Form 4.

Check list for Service of the Notice of Appeal

The clerk of the trial court shall serve notice of the filing of a notice of appeal by mailing a copy of the notice to counsel of record for each party other than the appellant, or, if a party is not represented by counsel, to the last known address of that party, and to the court reporter; and the clerk shall transmit to the clerk of the Supreme Court forthwith a copy of the following:

- **Notice of Appeal**
- **$200.00 Docket fee**
- **Certified copy of the trial court docket as of the date of the filing of the notice of appeal**
- **Certified copy of the Judgement**
- **Court Reporter(s) Present?**
- **IFP Motion filed in the trial court**
  - **IFP Motion Pending? Yes / No**
  - **IFP Motion Ruling? Granted or Denied**
  - **If Ruled Upon, PLEASE provide trial court order or date ruled upon**
- **Certified copy of the judgment from which the appeal is being taken**
- **Certified copy of the Civil Case Filing Form in civil cases**
- **Certified Notice of Criminal Disposition Form in criminal cases.**
- **IF THE CRIMINAL APPELLANT IS OUT ON BOND, PLEASE PROVIDE A COPY OF THE APPEAL BOND.**

Clerk's Paper (Mandatory documents to be included)

- **Overall Table of Contents**
- **Certified copy of the Docket Entries prepared by the Clerk of the Trial Court**
  - **If Civil - start with the Complaint**
  - **If Criminal - starts with Indictment**
- **Legible photocopy of any papers filed with the clerk & designated by parties in chronological order**
- **All jury instructions shall be placed in the record:**
  - **Court instructions first / Instructions given to plaintiff second**
  - **Instructions refused plaintiff third / Instructions given to defendant fourth/**
  - **Instructions refused defendant fifth.**
- **Judgment or Amended Judgment / Order of Judgment Notwithstanding the Verdict (JNOV)**
- **Notice of appeal(s) / Cross-Notice of Appeal(s)**
- **Designation of Record / Amended Designation**
- **Itemized cost bill for the preparation of the record:**
  - **indicating costs for the trial court clerk**
  - **court reporter and the Supreme Court filing fee.**
- **Certified copy of the Clerk's Certificate**
- **Within 30 days of the filing of certificate of compliance, the clerk shall assemble the papers in the order of filing**
- **Number each page consecutively at the bottom**
- **The trial court clerk shall separate the clerk's papers into volumes of no more than 150 pages**
- **The clerk shall fasten the clerk's papers on the top and provide suitable covers for each volume.**
- **Each volume of clerk's papers shall be bound in a brown binder**
- **Outside of each binder, designate the page numbers of the pages contained in that volume.**

EXHIBITS

The Clerk shall include with the exhibits, a List of all exhibits designated by the parties (see attached sample)

- **including those Retained by the trial court clerk**
- **and those submitted by the Supreme Court**

Copy of exhibits designated by the parties shall be assembled in a

- **flat file envelope or a box**
- **Exhibits should come securely fastened**

If an exhibit is a photograph

- **original shall be included**
- **and a photocopy retained by the trial court clerk.**

Video and audio tapes shall be included and a duplicate shall be retained by the trial court clerk.

Documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted by the trial court clerk unless

- **the clerk is directed by a party**
- **or by the Clerk of the Supreme Court.**

A party must make advance arrangements with the clerks, for the transportation and receipt of exhibits of unusual bulk or weight.

DO'S AND DON'T

1. The original transcript is prepared by the court reporter pursuant to Rule 11(c). The clerk of the trial court shall NOT renumber the pages of the original transcript, nor make copies of the original transcript, nor handle the original transcript in any way other than to include the original transcript as part of the record to be transmitted to the Supreme Court.

RETENTION OF DUPLICATE RECORD

2. In cases where the circuit or chancery court has functioned as an appellate court for review of an on-the-record adjudication by an administrative agency or inferior tribunal and the circuit or chancery court clerk determines that a copy of the proceedings of such adjudication is retained in the administrative agency or inferior tribunal, the circuit or chancery court clerk need not copy the record of such proceedings, but must retain the original of the papers and documents attendant to the proceedings in that court while transmitting to the Supreme Court the original of the agency or inferior tribunal record (including transcript, papers, documents, and exhibits), along with a copy of the record of the circuit or chancery court proceedings.

COST

3. The Clerk shall make no charge for duplicate copies of items included in the record

4. Cases Treated as Confidential on Filing. Any case filed with the clerk of the Supreme Court and Court of Appeals which was previously closed to the public by action of the trial court or which by statute is subjected to restriction on access to the public in the trial court by statute, shall be closed to public a access in the appellate courts and shall be treated as a confidential case by the clerk of the appellate *courts.*

SEALED DOCUMENTS

5. Sealed documents. Where parties shall file documents physically under seal with the clerk of the appellate courts, such documents shall remain sealed until the appellate court by order removes the seal. The mere filing of documents with a request that they be sealed shall not constitute the filing of sealed documents. Such documents shall remain open until the appellate court on motion of a party or on its own motion orders that they be sealed.

APPEALS FROM TRIAL COURTS
RULE 3. APPEAL AS OF RIGHT - HOW TAKEN

(a) Filing the Notice of Appeal. In all cases, both civil and criminal, in which an appeal is permitted by law as of right to the Supreme Court, there shall be one procedure for perfecting such appeal. That procedure is prescribed in these rules. All statutes, other sets of rules, decisions or orders in conflict with these rules shall be of no further force or effect. An appeal permitted by law as of right from a trial court to the Supreme Court shall be taken by filing a notice of appeal with the clerk of the trial court within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the perfection of the appeal, but is ground only for such action as the Supreme Court deems appropriate, which may include dismissal of the appeal. Interlocutory appeals by permission shall be taken in the manner prescribed by Rule 5.

(b) Joint or Consolidated Appeals. If two or more persons are entitled to appeal from a judgment or order of a trial court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the Supreme Court (or of the Court of Appeals in cases assigned to the Court of Appeals) upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

(c) Content of the Notice of Appeal. The notice of appeal shall specify the party or parties taking the appeal and the party or parties against whom the appeal is taken, and shall designate as a whole or in part the judgment or order appealed from. An appeal shall not be dismissed for informality of form or title of the notice of appeal.

(d) Service of the Notice of Appeal. The clerk of the trial court shall serve notice of the filing of a notice of appeal by mailing a copy of the notice to counsel of record for each party other than the appellant, or, if a party is not represented by counsel, to the last known address of that party, and to the court reporter; and the clerk shall transmit to the clerk of the Supreme Court forthwith a copy of

the notice of appeal, together with the docket fee as provided in Rule 3(e), and, with cost to the appellant, a certified copy of the trial court docket as of the date of the filing of the notice of appeal, a certified copy of the opinion, if any, and a certified copy of the judgment from which the appeal is being taken and a certified copy of the Civil Case Filing Form in civil cases or the Notice of Criminal Disposition Form in criminal cases. When an appeal is taken by a defendant in a criminal case, the clerk shall also serve a copy of the notice of appeal upon the defendant, either by personal service or by mail addressed to the defendant. The clerk shall note on each copy served the date on which the notice of appeal was filed. Failure of the clerk to serve notice shall not affect the perfection of the appeal. Service shall be sufficient notwithstanding the death of a party or the party's counsel. The clerk shall note in the docket the names of the parties to whom the clerk mails copies with the date of mailing.

(e) Payment of Fees. Upon the filing of any separate or joint notice of appeal from the trial court, the appellant shall pay to the clerk of the trial court the docket fee to be received by the clerk of the trial court on behalf of the Supreme Court. [Adopted to govern matters filed on or after January 1, 1995; amended June 21, 1996.]

Advisory Committee Historical Note

Effective June 21, 1996, Rule 3(d) was amended to require the clerk of the trial court to transmit the Civil Case Filing Form or the Notice of Criminal Disposition Form to the clerk of the Supreme Court. 673-678 So.2d XXXVII (West Miss. Cases 1996).

Effective January 1, 1995, Miss.R.App.P. 3 replaced Miss.Sup.Ct.R. 3, embracing proceedings in the Court of Appeals. Rule 3(d) was further amended to require the clerk of the trial court to transmit additional documents to the clerk of the Supreme Court. 644-647
So.2d XXVI-XXVII (West Miss.Cases 1994).

Effective July 1, 1994, the Comment to Miss.Sup.Ct.R. 3 was amended to note that
the fee to be paid under Rule 3(e) is provided by statute. 632-635 So.2d V (West Miss.Cases 1994). [Adopted August 21, 1996; amended effective July 1, 1997; July 1, 1998.]

Comment

Rule 3 and Rule 4 combine to set forth the procedures and time frame for perfecting an appeal. The same procedures are to be used for appeals in civil and criminal cases. Rules 10 and 11 state how the content of the record on appeal is determined and how the record is completed and transmitted to the Court.

Subdivision 3(a) departs from prior practice and provides that the only absolutely necessary step in the process is the timely filing of the notice of appeal. Form 1 in the Appendix of Forms is a suggested form of a notice of appeal. If the notice of appeal is not filed within the time specified in Rule 4, either the Supreme Court or the Court of Appeals, on its own motion or on motion of a party, will dismiss it. Failure to take any step, other than the timely filing of a notice of appeal, is ground for such action as either appellate court deems appropriate, which may include dismissal of the appeal. Steps which must be taken within seven days after filing the notice of appeal include the designation of the record under Rule 10(b)(1) and deposit of cost estimate under Rule 11(b)(1).

The appellant is required by M.R.C.P. 5(a) to serve on all parties a copy of the notice of appeal as submitted to the trial court clerk. Rule 3(d) requires the clerk to transmit to all parties and to the Supreme Court clerk copies of the notice of appeal indicating the date on which the notice of appeal was filed. Ordinarily, the appellant should supply the trial court clerk with a sufficient number of copies of the notice of appeal to accomplish this. The clerk may alternatively prepare the copies at the appellant's expense. The failure of the appellant or the trial court clerk to serve copies of the notice does not affect the perfection of the appeal. The fee to be paid under Rule 3(e) is set by statute. *See* Miss. Code Ann. § 25-7-3(1994)

RULE 4. APPEAL AS OF RIGHT - WHEN TAKEN

(a) Appeal and Cross-Appeals in Civil and Criminal Cases. Except as provided in Rules 4(d) and 4(e), in a civil or criminal case in which an appeal or cross-appeal is permitted by law as of right from a trial court to the Supreme Court, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from. If a notice of appeal is mistakenly filed in the Supreme Court, the clerk of the Supreme Court shall note on it the date on which it was received and transmit it to the clerk of the trial court and it shall be deemed filed in the trial court on the date so noted.

(b) Notice Before Entry of Judgment. A notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order shall be treated as filed after such entry and on the day of the entry.

(c) Notice by Another Party. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this rule, whichever period last expires.

(d) Post-trial Motions in Civil Cases. If any party files a timely motion of a type specified immediately below the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding. This provision applies to a timely motion under the Mississippi Rules of Civil Procedure (1) for judgment under Rule 50(b); (2) under Rule 52(b) to amend or make additional findings of facts, whether or not granting the motion would alter the judgment; (3) under Rule 59 to alter or amend the judgment; (4) under Rule 59 for a new trial; or (5) for relief under Rule 60 if the motion is filed no later than 10 days after the entry of judgment. A notice of appeal filed after announcement or entry of the judgment but before disposition of any of the above motions is ineffective to appeal from the judgment or order, or part thereof, specified in the notice of appeal, until the entry of the order disposing of the last such motion outstanding. Notwithstanding the provisions of Appellate Rule 3(c), a valid notice of appeal is effective to appeal from an order disposing of any of the above motions.

(e) Post-trial Motions in Criminal Cases. If a defendant makes a timely motion under the Uniform Rules of Circuit and County Court Practice (1) for judgment of acquittal notwithstanding the verdict of the jury, or (2) for a new trial under Rule 10.05, the time for

appeal for all parties shall run from the entry of the order denying such motion. Notwithstanding anything in this rule to the contrary, in criminal cases the 30 day period shall run from the date of the denial of any motion contemplated by this subparagraph, or from the date of imposition of sentence, whichever occurs later. A notice of appeal filed after the court announces a decision sentence, or order but before it disposes of any of the above motions, is ineffective until the date of the entry of the order disposing of the last such motion outstanding, or until the date of the entry of the judgment of conviction, whichever is later. Notwithstanding the provisions of Appellate Rule 3(c), a valid notice of appeal is effective to appeal from an order disposing of any of the above motions.

(f) Parties Under Disability. In the case of parties under a disability of infancy or unsoundness of mind, the various periods of time for which provision is made in this rule and within which periods of time action must be taken shall not begin to run until the date on which the disability of any such party shall have been removed. However, in cases where the appellant infant or person of unsound mind was a plaintiff or complainant, and in cases where such a person was a party defendant and there had been appointed for him or her a guardian *ad litem*, appeals to the Supreme Court shall be taken in the manner prescribed in this rule within two years of the entry of the judgment or order which would cause to commence the running of the 30 day time period for all other appellants as provided in this rule.

(g) Extensions. The trial court may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time otherwise prescribed by this rule. Any such motion which is filed before expiration of the prescribed time may be granted for good cause and may be *ex parte* unless the court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to other parties, and the motion shall be granted only upon a showing of excusable neglect. No such extension shall exceed 30 days past such prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

(h) Reopening Time for Appeal. The trial court, if it finds (a) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry and (b) that no party would be prejudiced, may, upon motion filed within 180 days of entry of the judgment or order or within 7 days of receipt of such notice, whichever is earlier, reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal.

(i) Taxpayer Appeals. If the board of supervisors of any county, or the mayor and board of aldermen of any city, town or village, or any other board, commission or other officer of any county, or municipality, or district, sued in an official capacity, fails to file a notice of appeal under Rule 4(a) within 20 days after the date of entry of an adverse judgment or order, or within 7 days after filing of a notice by another party pursuant to Rule 4(c), any taxpayer of the county, municipality or district shall have the right at the taxpayer's own expense to employ private counsel to prosecute the appeal in compliance with these rules. If the governmental entity files a notice of appeal, the appeal shall not be dismissed if any such taxpayer objects and prosecutes the appeal at the taxpayer's own expense. [Amended effective July 1, 1997; July 1, 1998.]

Advisory Committee Historical Note

Effective April 29, 1998, Rules 4(d) and (e) were amended to provide that a notice of appeal filed before disposition of specified post trial motions becomes effective on disposition thereof and is effective to appeal said disposition. In addition, the list of specified motions was enlarged to include M.R.C.P. 60 motions filed within 10 days. 706-708 So.2d XLIV (West Miss.Cases 1998).

Effective July 1, 1997, a new Rule 4(h) was added to provide for reopening of time for appeal in the event that a notice of entry of judgment is not received. The former Rule 4(h) was redesignated 4(i). 689-692 So. 2d LXII (West Miss. Cases 1997).

Effective January 1, 1995, Miss.R.App.P. 4 replaced Miss.Sup.Ct.R. 4, embracing proceedings in the Court of Appeals. 644-647 So.2d XXVII-XXX (West Miss.Cases 1994).

Effective July 1, 1994, the Comment to Miss.Sup.Ct.R. 4 was amended to delete references to repealed statutes and material concerning the transition from statutory procedures to Rule practice. 632-635 So. 2d V (West Miss.Cases 1994).

Effective July 1, 1994, the Comment to Miss.Sup.Ct.R. 4 was amended to provide that the date of the entry of the judgment is the date the judgment is entered in the general docket of the clerk of court, and to delete an outdated case citation. 632-635 So.2d XLIV-XLV (West Miss.Cases 1994). [Adopted August 21, 1996; amended effective July 1, 1997; July 1, 1998.]

Comment

Rule 4 applies to appeals and cross-appeals in all civil and criminal cases. The date of entry of judgment is the date the judgment is entered in the general docket of the clerk of the court. M.R.C.P. 58.

The notice of appeal requirement applies to all forms of appeal, including cross-appeals. Rule 4(c) requires that a notice of appeal for a cross-appeal be filed within 14 days after the date on which the first notice of appeal was filed, unless a longer period is prescribed by another provision of Rule 4. Previously, Rule 4(d) specified certain post-trial motions that had to await disposition before a valid notice of appeal could be filed. Any notice of appeal filed before such disposition had no force or effect. Rule 4(e) had the same provisions for specified post-trial motions in criminal cases. Those provisions of Rules 4(d) and 4(e), however, created a trap for an unsuspecting litigant who filed a notice of appeal before a post trial motion, or while a post trial motion was pending. Because the Rules required a party to file a new notice of appeal after the motion's disposition, unless a new notice was filed the Supreme Court lacked jurisdiction to hear the appeal. *See In re Kimbrough*, 680 So.2d 799 (Miss.1996). Many litigants, especially *pro se* litigants, failed to file the second notice of appeal, and the Court expressed dissatisfaction with the rule. *See id.* (Banks, J., dissenting) and (McRae, J., dissenting).

Rules 4(d) and 4(e) now provide that a notice of appeal filed before the disposition of a specified post trial motion will become effective upon disposition of the motion. A notice filed before the filing of one of the specified motions or after the filing of a motion but before its disposition is, in effect, suspended until the motions disposition, whereupon the previously filed notice effectively places jurisdiction in the Supreme Court. Still, ordinarily, the filing of a notice of appeal should come after the disposition of these motions. An appeal should not be noticed and docketed in the Supreme Court while it is still possible that the appealing party may obtain relief in the trial court.

Because a notice of appeal will ripen into an effective appeal upon disposition of a post trial motion, in some instances there will be an appeal from a judgment that has been altered substantially because the motion was granted in whole or in part. Many such appeals will be dismissed for want of prosecution when the appellant fails to meet the briefing schedule. But, the appellee may also move to strike the appeal. When responding to such a motion, the appellant would have an opportunity to state that, even though some relief sought in a post trial motion was granted, the appellant still plans to pursue the appeal. Because the appellant's response would provide the appellee with sufficient notice of the appellant's intentions, an additional notice of appeal is unnecessary.

While Rule 4 is patterned after its Federal counterpart, Rule 4(d) departs from Federal practice by providing that a valid notice of appeal is effective to appeal from an order disposing of a post trial tolling motion. Under FED. R. APP. P. 4(a)(4), if a party wishes to appeal from the disposition of a post trial tolling motion, the party must amend the notice to so indicate. However, requiring amendment of the notice of appeal would create a new, albeit less severe, trap for unsuspecting litigants, without serving a substantial purpose.

Rule 4(d) is also amended to include, among motions that extend the time for filing a notice of appeal, a Rule 60 motion that is filed within 10 days after entry of judgment. This eliminates the difficulty of determining whether a post trial motion made within 10 days after entry of a judgment is a Rule 59 motion, which tolls the time for filing an appeal, or a Rule 60 motion, which historically has not tolled the time. *See Michael v. Michael,* 650 So.2d 469 (Miss. 1995).

Rule 4(f) continues to recognize an extension for parties under a legal disability. *See Parks v. Knight*, 491 So. 2d 217 (Miss. 1986).

Rule 4(g) is based on Fed. R. App. P. 4(a)(5). A motion filed before expiration of the 30 day period may be *ex parte* and may be granted for any "good cause." This standard is identical to that found in Rule 26. The extension may not go beyond 30 days after the time prescribed in Rule 4(a).

If the motion is not filed until the extension period has begun to run, the burden rests on the appellant to show the failure to file a timely notice was a result of "excusable neglect." Mere failure to learn of entry of the judgment is generally not a ground for showing excusable neglect. Counsel in a case taken under advisement has a duty to check the docket regularly. *But see City of Gulfport*

v. Saxon, 437 So. 2d 1215, 1217 (Miss. 1983) (when trial court sits as an appellate court, parties may reasonably expect notification from the court or clerk when a ruling is made). Filing a notice is a simple act, and a party must do all it could reasonably be expected to do to perfect the appeal in a timely fashion. Counsel's failure to read published rules of court and counsel's reliance on mistaken legal advice from a trial court clerk will not show excusable neglect. *Campbell v. Bowlin*, 724 F. 2d 484, 488 (5th Cir. 1984); *Reed v. Kroger Co.*, 478 F. 2d 1268 (T.E.C.A. 1973). Excusable neglect will not be shown by counsel's busy trial schedule. *Pinero Schroeder v. Fed. Nat'l Mtg. Ass'n*, 574 F. 2d 1117 (1st Cir. 1978).

On the other hand, a party misled by actions of the court can establish excusable neglect. *See Chipser v. Kohlmeyer & Co.*, 600 F. 2d 1061, 1063 (5th Cir. 1979); *In re Morrow*, 502 F. 2d 520, 522 (5th Cir. 1974) (dictum). Excusable neglect may be shown where a timely mailed notice was late because of unanticipated and uncontrollable delays in the mail. *Fallen v. United States*, 378 U.S. 139, 84 S. Ct. 1689, 12 L. Ed. 2d 760 (1964). See generally, 20 W. Moore, Federal Practice§ 304-13.

An excusable neglect motion must be filed within the 30 day extension period. The extension will be limited to that period, or to a period ending 10 days after the entry of an order granting the motion, whichever occurs later.

In criminal cases, the Court may suspend Rule 4 to permit out of time appeals. Post-conviction relief proceedings are governed by the rules controlling criminal appeals. See Miss. Code Ann. § 99-39-25(1)(1994); *Williams v. State*, 456 So. 2d 1042, 1043 (Miss.1984). No such suspension, however, is permitted in a civil case. *See* Rules 2(c); 26(b).

Rule 4(h) is patterned after FED. R. APP. P. 4(a)(6), which was added to the Federal Rules in 1991. Rule 4(h) provides a limited opportunity for relief, independent of and in addition to that available under Rule 4(g), in circumstances where the notice of entry of a judgment or order, required to be mailed by the clerk of the trial court pursuant to Rule 77(d) of the Mississippi Rules of Civil Procedure, is either not received by a party or is received so late as to impair the opportunity to file a timely notice of appeal. Rule 4(h) allows a trial court to reopen for a brief period the time for appeal upon a finding that notice of entry of a judgment or order was not received from the clerk or a party within 21 days of its entry and that no party would be prejudiced. While the party seeking

relief under Rule 4(h) bears the burden of persuading the trial court of lack of timely notice, a specific factual denial of receipt of notice rebuts and terminates the presumption that mailed notice was received. *See Nunley v. City of Los Angeles*, 52 F.3d 792, 798 (9th Cir. 1995). "Prejudice" means some adverse consequence other than the cost of having to oppose the appeal and encounter the risk of reversal, consequences that are present in every appeal. Prejudice might arise, for example, if the appellee had taken some action in reliance on the expiration of the normal time period for filing a notice of appeal.

While the trial court retains some discretion to refuse to reopen the time for appeal even when the requirements of Rule (4)(h) are met, the concept of excusable neglect embodied in Rule 4(g) simply has no place in the application of Rule 4(h). *See Avolio v. Suffolk,* 29 F.3d 50, 53 (2d Cir. 1994). "To hold otherwise would negate the addition of Rule 4[h], which provides an avenue of relief separate and apart from Rule 4[g]." *Nunley v. City of Los Angeles,* 52 F.3d 792, 797 (9th Cir. 1995). Thus, "where non-receipt has been proven and no other party would be prejudiced, the denial of relief cannot rest on [a lack of excusable neglect, such as] a party's failure to learn independently of the entry of judgment during the thirty-day period for filing notices of appeal." *Id.* at 798.

Reopening may be ordered only upon a motion filed within 180 days of the entry of a judgment or order or within 7 days of receipt of notice of such entry, whichever is earlier. This provision establishes an outer time limit of 180 days for a party who fails to receive timely notice of entry of a judgment or order to seek additional time to appeal and enables any winning party to shorten the 180-day period by sending (and establishing proof of receipt of) its own notice of entry of a judgment or order, as authorized by Miss. R. Civ. P. 77(d). Winning parties are encouraged to send their own notice in order to lessen the chance that a judge will accept a claim of non-receipt in the face of evidence that notices were sent by both the clerk and the winning party. Receipt of a winning party's notice will shorten only the time for reopening the time for appeal under this subdivision, leaving the normal time periods for appeal unaffected.

If the motion is granted, the trial court may reopen the time for filing a notice of appeal only for a period of 14 days from the date of entry of the order reopening the time for appeal.

The taxpayer who prosecutes an appeal under Rule 4(i) must comply with these rules and file a timely notice of appeal under 4(a), or 4(c), if applicable.

RULE 5. INTERLOCUTORY APPEAL BY PERMISSION

(a) Petition for Permission to Appeal. An appeal from an interlocutory order may be sought if a substantial basis exists for a difference of opinion on a question of law as to which appellate resolution may:

(1) Materially advance the termination of the litigation and avoid exceptional expense to the parties; or

(2) Protect a party from substantial and irreparable injury; or

(3) Resolve an issue of general importance in the administration of justice.

Appeal from such an order may be sought by filing a petition for permission to appeal with the clerk of the Supreme Court within 21 days after the entry of such order in the trial court with proof of service on the trial judge and all other parties to the action in the trial court.

(d) Grant of Permission; Prepayment of Costs; Filing of Record. If permission to appeal is granted by the Supreme Court, the appellant shall pay the docket fee as required by Rule 3(e) within 14 days after entry of the order granting permission to appeal, and the record on appeal shall be transmitted and filed and the appeal docketed in accordance with Rules 10, 11, and 13. The time fixed by those rules for transmitting the record and docketing the appeal shall run from the date of entry of the order granting permission to appeal. A notice of appeal need not be filed.

(e) Expedited Proceedings. The Court may in its discretion expedite the appeal and give it preference over ordinary civil cases. If the Court determines that the issues presented can be fairly decided on the petition, response and exhibits presented, the Court may decide those issues simultaneously with the granting of the petition, without awaiting preparation of a record or further briefing.

(f) Effect on Trial Court Proceedings. The petition for appeal shall not stay proceedings in the trial court unless the trial judge or the Supreme Court shall so order.

RULE 10. CONTENT OF THE RECORD ON APPEAL

(a) Content of the Record. The parties shall designate the content of the record pursuant to this rule, and the record shall consist of designated papers and exhibits filed in the trial court, the transcript of proceedings, if any, and in all cases a certified copy of the docket entries prepared by the clerk of the trial court.

(b) Determining the Content of the Record.

(1) *Designation of Record.* Within seven (7) days after filing the notice of appeal, the appellant shall file with the clerk of the trial court and serve both on the court reporter or reporters and on the appellee a written designation describing those parts of the record necessary for the appeal.

(2) *Inclusion of Relevant Evidence.* In cases where the defendant has received the death sentence, the entire record shall be designated. In any other case, if the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion.

(3) *Matters Excluded Absent Designation.* In any case other than a case where the defendant has received a death sentence, the record shall not include, unless specifically designated,

- **i. subpoenas or summonses for any witness or defendant when there is an appearance for such person:**
- **ii. papers relating to discovery, including depositions, interrogatories, requests for admission, and all related notices, motions or orders;**
- **iii. any motion and order of continuance or extension of time;**
- **iv. documents concerning the organization of the grand jury or any list from which grand or petit jurors are selected;**
- **v. pleadings subsequently replaced by amended pleadings;**
- **vi. jury *voir dire*.**

(4) *Statement of Issues.* Unless the entire record, except for those matters identified in (b)(3) of this Rule, is to be included, the appellant shall, within the seven (7) days time provided in (b)(1) of this Rule, file a statement of the issues the appellant intends to present on the appeal and shall serve on the appellee a copy of the designation and of the statement. Each issue in the statement shall be separately numbered. If the appellee deems inclusion of other parts of the proceedings to be necessary, the appellee shall, within 14 days after the service of the designation and the statement of the appellant, file with the clerk and serve on the appellant and the court reporter a designation of additional parts to be included. The clerk and reporter shall prepare the additional parts at the expense of the appellant unless the appellant obtains from the trial court an order requiring the appellee to pay the expense.

(5) *Attorney's Examination and Proposed Corrections.* For fourteen (14) days after service of the clerk's notice of completion under Rule 11(d)(2), the appellant shall have the use of the record for examination. On or before the expiration of that period, appellant shall return the record to the trial court clerk, and shall append to the record (i) a written statement of any proposed corrections to the record, (ii) a certificate that the appellant or the appellant's attorney has carefully examined the record and that with the proposed corrections, if any, it is correct and complete, and (iii) a certificate of service indicating that the record has been returned to the clerk. For fourteen (14) days after receipt of the certificate of service from appellant, appellee shall have the use of the record for examination. On or before the expiration of that period, appellee shall return the record to the trial court clerk, and shall append to the record (i) a written statement of any proposed corrections to the record, (ii) a certificate that the appellee or the appellee's attorney has carefully examined the record and that with the proposed corrections, if any, it is correct and complete, and (iii) a certificate of service, indicating that the record has been returned to the clerk. Corrections as to which all parties agree in writing shall be deemed made by stipulation. If the parties propose corrections to the record but do not agree on the corrections, the trial court clerk shall forthwith deliver the record with proposed corrections to the trial judge. The trial judge shall promptly determine which corrections, if any, are proper and enter an order under Rule 10(e).

Within five days, the trial court clerk shall serve all parties and their attorneys with a copy of the order. If a party does not agree with the court's order, that party shall, within five days of service of the order, request a hearing. Such a request shall be assigned priority status on the trial judge's docket, and after a hearing, the trial judge shall promptly enter an order directing the court reporter and/or the trial court clerk to make the appropriate correction(s), if any, and to finalize completion of the record for transmission to this Court. Once the order is entered, or if no hearing request is made, the record shall be returned to the court reporter and/or the trial court clerk who shall within seven days make corrections directed by the order. The trial court clerk shall verify that any approved changes have been made and that the required certifications are appended to the record before sending it to the Supreme Court.

(c) Statement of the Evidence When No Report, Recital, or Transcript Is Available. If no stenographic report or transcript of all or part of the evidence or proceedings is available, the appellant may prepare a statement of the evidence or proceedings from the best available means, including recollection. The statement should convey a fair, accurate, and complete account of what transpired with respect to those issues that are the bases of appeal. The statement, certified by the appellant or his counsel as an accurate account of the proceedings, shall be filed with the clerk of the trial court within 60 days after filing the notice of appeal. Upon filing the statement, the appellant shall simultaneously serve notice of the filing on the appellee, accompanied by a short and plain declaration of the issues the appellant intends to present on appeal. If the appellee objects to the statement as filed, the appellee shall file objections with the clerk of the trial court within 14 days after service of the notice of the filing of the statement. Any differences regarding the statement shall be settled as set forth in subdivision (e) of this Rule.

(d) Agreed Statement as the Record on Appeal. In lieu of a record on appeal designated pursuant to subdivisions (b) or (c) of this Rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the trial court and setting forth only so many of the facts averred and proved or

sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the issues raised by the appeal, shall be approved by the trial court and shall then be certified to the Supreme Court as the record on appeal.

(e) Correction or Modification of the Record. If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated in the record, the parties by stipulation, or the trial court, either before or after the record is transmitted to the Supreme Court or the Court of Appeals, or either appellate court on proper motion or of its own initiative, may order that the omission or misstatement be corrected, and, if necessary, that a supplemental record be filed. Such order shall state the date by which the correction or supplemental record must be filed and shall designate the party or parties who shall pay the cost thereof. Any document submitted to either appellate court for inclusion in the record must be certified by the clerk of the trial court. All other questions as to the form and content of the record shall be presented to the appropriate appellate court.

(f) Limit on Authority to Add to or Subtract From the Record. Nothing in this rule shall be construed as empowering the parties or any court to add to or subtract from the record except insofar as may be necessary to convey a fair, accurate, and complete account of what transpired in the trial court with respect to those issues that are the bases of appeal.

[Amended effective January 1, 1999; amended July 1, 1999; amended effective July 1, 2011 to revise the procedure for attorney's examination and proposed corrections.]

Comment
(This is portions of the Comments Only)

Rule 10 is based on Fed. R. App. P. 10, taking into account modifications suggested by the more recent Ala. R. App. P. 10 and Tenn. R. App. P. 24.

The purpose of the Rule is to permit and encourage parties to include in the record on appeal only those matters material to the issues on appeal. While subdivision (b) will govern most appeals, subdivisions (c) and (d) provide alternate methods of preparing the record, either when no transcript is available, or when the parties can agree on a "statement of the case" that will adequately present the issues on appeal.

Pursuant to subdivision (b)(3), a general designation will not be construed to include certain papers normally irrelevant to the issues on appeal. The rule thus encourages the omission of these nonessential matters. Because counsel customarily do not file trial court briefs with the clerk, briefs are not included in the (b)(3) list. **Briefs do not normally belong in a record on appeal, unless necessary to show that an issue was presented to the trial court.**

A designation of certain issues under subdivision (b)(4) does not preclude a party from stating other issues in its brief under Rule 28(a)(3). However, a party asserting other issues in its brief will bear responsibility for the cost of preparing any additional portions of the record subsequently designated by any other party in response to the statement of additional issues. As a result, accurate designation under (b)(4) is advisable.

Subdivision (f) clearly states that the flexible procedures of this rule are not intended to permit a party to augment the record with matters entered *ex parte*.

RULE 11. COMPLETION AND TRANSMISSION OF THE RECORD

(a) Duty of Appellant. After filing the notice of appeal the appellant or, in the event that more than one appeal is taken, each appellant shall comply with the provisions of Rule 10 and shall take any other action necessary to enable the clerk to assemble and transmit the record. A single record shall be transmitted.

(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.

(2) *Application to Increase Deposit.* If dissatisfied with the amount tendered, either the clerk of the trial court or the court reporter may apply for an increase to the trial court which, after reasonable advance notice and opportunity to be heard having been afforded all parties, and for good cause shown, may order the amount of the deposit increased. The party taking the appeal shall comply with any such order within 14 days of the date of entry. The deposit and any such order shall be provisional, subject to adjustment after the transcript has been completed and its actual cost ascertained.

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.

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).

(d) Duty of Trial Court Clerk to Prepare and Transmit Record.

(1) *Clerk's Preparation of Record.* Upon the appellant's compliance with subparagraph (b)(1) and service of the designation required by Rule 10(b)(1), the trial court clerk shall assemble the record as follows:

I. Clerk's Papers. A certified copy of the docket entries prepared by the clerk of the trial court shall be followed by a legible photocopy of any papers filed with the clerk and designated by the parties and a cost bill for the preparation of the record indicating costs for the trial court clerk and court reporter and the Supreme Court filing fee. Within 30 days, the clerk shall assemble the papers in the order of filing, number each page consecutively at the bottom, and transmit a list of the papers correspondingly numbered and identified with reasonable definiteness. All jury instructions shall be placed in the record with court instructions first, instructions given to plaintiff second, instructions refused plaintiff third, instructions given to defendant fourth, and instructions refused defendant fifth.

The trial court clerk shall separate the clerk's papers into volumes of no more than 150 pages for fastening. The clerk shall fasten the clerk's papers on the top and provide suitable covers for each volume. Each volume of clerk's papers shall be bound in a brown binder and the outside of each binder shall designate the page numbers of the pages contained in that volume.

ii. Transcript. The original transcript is prepare d by the court reporter pursuant to Rule 11(c). The clerk of the trial court shall not renumber the pages of the original transcript, nor make copies of the original transcript, nor handle the original transcript in any way other than to include in the table of contents of the Clerk's Papers the number of volumes contained in the original transcript and include the original transcript as part of the record to be transmitted to the Supreme Court. The court reporter is responsible for preparing, certifying, and binding the transcript and is responsible for furnishing the transcript fully ready for transmission to the Supreme Court.

iii. Exhibits. Within 30 days, a copy of exhibits designated by the parties shall be assembled in a flat file envelope or a box. If an exhibit is a photograph, the original shall be included and a photocopy retained by the trial court clerk. Video and audio tapes shall be included and a duplicate shall be retained by the trial court clerk. The clerk shall include with the exhibits forwarded to the Supreme Court a list of all exhibits designated by the parties, indicating thereon those retained by the trial court clerk and those submitted to the Supreme Court. Documents of unusual bulk or weight and physical exhibits other than documents, shall not be transmitted by the trial court clerk unless the clerk is directed to do so by a party or by the clerk of the Supreme Court. A party must make advance arrangements with the clerks for the transportation and receipt of exhibits of unusual bulk or weight. (2) *Transmission of Record.* When the clerk's papers and exhibits are assembled and the transcript is received, the clerk shall then execute a certificate of compliance with this Rule and serve notice of completion on the parties and on the clerk of the Supreme Court. At the end of the time prescribed by Rule 10(b)(5), the clerk shall immediately deliver the record to the Supreme Court.

(e) Retention of Duplicate Record in Trial Court for Use in Preparing Appellate Papers. The trial court shall retain, pending further order of the Supreme Court, its original docket entries, the original papers held with the clerk, a copy of the list of papers required by Rule 11(d)(1)(I), the original exhibits, other than photographs, a photocopy of photographic

exhibits, a copy of video and audio tape exhibits, a duplicate of the reporter's transcript, and table of contents. Attorneys preparing appellate papers may use these retained documents. In cases where the circuit or chancery court has functioned as an appellate court for review of an on-the-record adjudication by an administrative agency or inferior tribunal and the circuit or chancery court clerk determines that a copy of the proceedings of such adjudication is retained in the administrative agency or inferior tribunal, the circuit or chancery court clerk need not copy the record of such proceedings, but must retain the original of the papers and documents attendant to the proceedings in that court while transmitting to the Supreme Court the original of the agency or inferior tribunal record (including transcript, papers, documents, and exhibits), along with a copy of the record of the circuit or chancery court proceedings.

(f) Record for Preliminary Hearing in the Supreme Court. If, prior to the time the record is transmitted, a party desires to make in the Supreme Court a motion for dismissal, for release, for a stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, or for any intermediate order, the clerk of the trial court at the request of any party shall transmit to the Supreme Court copies of such parts of the original record as any party shall designate, or shall certify them for transmission by the party.

[Adopted to govern matters filed on or after January 1, 1995; amended effective May 23, 2002; amended effective June 27, 2002; amended March 23, 2006 to provide that the trial court clerk shall assemble the record at the same time as the court reporter prepares the transcript; amended effective July 1, 2009; amended effective July 1, 2011 to revise the time for preparation of the clerk's papers and exhibits.]

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) 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.

Rule 11(c) also requires the court reporter to prepare and file with the original transcript a copy of the transcript in an electronically formatted medium. This procedure provides the Supreme Court a copy of the transcript via electronic format for future reference by the Court, if required. The transcript table of contents required by Rule 11(c) should comply with Miss. Code Ann. § 9-13-25 (1972).

Rule 11(d) requires that the trial court clerk prepare the record on appeal. It eliminates the binding of records in book form and so avoids an unnecessary expense to the parties. Under Rule 11(d), the record as transmitted will consist of (1) the certified copy of docket entries, a photocopy of filed papers designated by the parties, and a cost bill; (2) the original transcript; and (3) an envelope or box containing a copy of designated exhibits accompanied by the list identifying which exhibits are retained by the clerk and which are submitted to the Supreme Court required by Rule 11(d)(1)(iii). The clerk may mark the certified copy of docket entries with the page numbers corresponding to each entry and so provide the list of documents required by Rule 11(d)(1)(I). Form 6 in the Appendix of Forms is a form for a list of clerk's papers.

The form can be used if the docket sheet is illegible or for any other reason a satisfactory list cannot be produced by adding record page numbers to the docket sheet. The rule does not follow the federal practice of appeals entirely on the original record, but retains the requirement of copying original papers and exhibits for use by the Supreme Court. This requirement reduces the bulk of documents to be reviewed by the Court and provides for a duplicate copy of essential records.

The requirement that the clerk duplicate exhibits may, in some cases, impose an Unnecessary expense on the parties. For this reason, Rule 11(d) provides that the clerk shall not duplicate documents of unusual bulk or weight and Rule 12 provides for the transmission of original items to the Supreme Court. The retention of designated records in the trial court would not preclude the parties from including parts of those records in their record excerpts submitted pursuant to Rule 30. Rules 11(d)(1)(iii) and 11(e) provide that the trial court clerk is to retain a photocopy of exhibits which are photographs and a copy of video and audio tapes, and is to send the original photographic exhibits and original audio or video tapes to the Supreme Court without a special request. Rules 11(e) and (f) follow Fed.R.App.P. 11(c) and (g). [Comment amended May 23, 2002; amended effective June 27, 2002; amended effective July 1, 2009.]

RULE 12. TRANSMISSION OF ORIGINAL ITEM FROM THE TRIAL COURT

Any party to an appeal or any justice of the Supreme Court or judge of the Court of Appeals may request that an original of any writing, document or exhibit in the record on appeal be delivered to the appropriate appellate court. The request shall be made to the clerk of the Supreme Court. Upon receipt of such request, the clerk of the Supreme Court shall request the original from the trial court clerk. The clerk of the trial court shall photocopy the original and forward the original to the clerk of the Supreme Court, retaining the photocopy in the clerk's office. Following disposition in the Supreme Court or the Court of Appeals, the clerk of the Supreme Court shall return the original to the clerk of the trial court.

Advisory Committee Historical Note

Effective January 1, 1995, Miss.R.App.P. 12 replaced Miss.Sup.Ct.R. 12, embracing proceedings in the Court of Appeals. 644-647 So.2d XLVI (West Miss.Cases 1994).

Comment

Rule 12 is based on Ala.R.App.P. 13 and former Mississippi practice. This Rule applies only to matters designated as a part of the record and is not a substitute for a motion to supplement the record pursuant to Rule 10(e).

IN THE _____ COURT OF THE _____ JUDICIAL DISTRICT OF
_____ COUNTY, MISSISSIPPI

_____

vs. NO._____

_____

APPLICATION FOR INCREASE IN DEPOSIT
AND NOTICE OF HEARING

Pursuant to the provisions of Rule 11(b)(2) of the Mississippi Rules of Appellate Procedure, the undersigned is dissatisfied with the amount tendered by appellant as the cost for preparation of the record on appeal, and states that the attached estimate is more accurate. The undersigned hereby applies for an order directing an increase in the amount to the total sum of $_____, and hereby notifies appellant that this application will be brought on for hearing on the _____ day of _____, 20___, at _____a.m., before the Honorable _____, _____ Judge.

RESPECTFULLY SUBMITTED

_____
_____CLERK OR COURT REPORTER

CERTIFICATE OF SERVICE

The undersigned does hereby certify that (s)he has caused to be delivered a true and correct copy of the above application to All Parties, and a copy to the Supreme Court Clerk on this _____ day of _____, 20____.

_____

IN THE _____ COURT OF THE _____ JUDICIAL DISTRICT OF

_____ COUNTY, MISSISSIPPI

_____

vs. NO._____

_____

ORDER

This matter is before the court on application for increase in the amount of deposit for cost of preparation of the record on appeal pursuant to the provisions of Rule 11(b)(2), Mississippi Rules of Appellate Procedure. The court finds that this application has been duly noticed, that appellant has had an opportunity to be heard and that good cause has been shown for the application. It is therefore, hereby,

Ordered, that appellant shall deposit the amount of $_____, within fourteen (14) days of the entry of this order, in compliance with Rule 11(b)(2), Mississippi Rules of Appellate Procedure.

Ordered this _____ day of _____, 20_____.

_____

_____ JUDGE

Madeline Doe
Clerk of Circuit and County Courts
Hinds County

XXXXXXXX
Post Office Box 000
Jackson, Mississippi 31111-0000
Telephone: (601) xxx-xxxx
Facsimile: (601) xxx-xxxx

(Street Address)
1010 Main Street
Jackson, Mississippi 33333-1111

e-mail:clerk@ccccccc.hinds.com

January 12, 2015

John Doe, ESQ.
Doe and Associates
P. O. Box 111
Jackson. MS 39111

Mary Joe, ESQ.
Joe and Associates
P. O. Box xxx
Flora, MS 39222

RE: Kane Doe v. Sybil Doe
Trial Court # 11111000000

Counsel:

Please be advised that the record of appeal relative to the above styled and numbered cause is now complete. In accordance with the Uniform Appeal Procedures of the Supreme Court of Mississippi, the counsel for the appellant shall have fourteen (14) days after the mailing of this notice to examine the clerk's office copy of the entire record for the purpose of examination and corrections. At the conclusion of the examination and correction of the record, the counsel for the appellant shall return the record to the trial court clerk, appending to the record, a written statement of any proposed corrections to the record.

The appellee's counsel shall be entitled to have the use of the record for fourteen (14) days from the date of the mailing or delivery of the same by the appellant, for the purpose of examination and correction therein, and at the end of fourteen (14) days the record shall be returned to the clerk. The appellee's attorney shall also append any written suggestion or proposed correction in the record.

With kind regards, I remain sincerely,

Madeline Doe, Clerk

By: _____, Deputy Clerk
Kim Doe

John Doe

v.

State of Mississippi

Trial Court # 000000000

Trial Exhibits List

Exhibit #	Description of Exhibits	Submitted/Retained
S-1	Photo	Orig Submitted
S-5	Jury Note	Copies Submitted
S-6	Controlled Substance	Retained
S-9	DVD	Orig Submitted
S-10	Pill Bottle	Retained

Sentencing Hearing Exhibit List

Exh A	Court Documents	Copies Submitted