

## **Alabama Rules of Appellate Procedure**

### **Rule 35.**

#### **Costs.**

(a) *Against whom taxed.* Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant, unless otherwise agreed by the parties or ordered by the court; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed or reversed in part, or is vacated, costs shall be taxed only as ordered by the court.

(b) *Costs for and against the State of Alabama.* In cases involving the State of Alabama or an agency or officer thereof, if an award of costs against the State of Alabama is authorized by law, costs shall be awarded in accordance with the provisions of subdivision (a); otherwise, costs shall not be awarded for or against the State of Alabama.

(c) *Costs of copies of records.* The costs of producing the necessary copies of the clerk's record and the reporter's transcript shall be taxable in the trial court. A party who desires those costs to be taxed shall state the costs in an itemized and verified bill of costs, which the party shall file with the clerk of the trial court, with proof of service, within 14 days (2 weeks) after the issuance of the certificate of judgment pursuant to Rule 41.

[Amended 8-27-91, eff. 10-1-91; Amended 11-19-96, eff. 1-1-97; Amended eff. 8-1-2000.]

#### **Committee Comments**

Rule 35 does not change the fundamental proposition that costs are taxed in one of two ways: (1) in the event of a clear-cut decision, costs are taxed against the loser; (2) in the event of any other type of decision, costs are taxed as ordered by the court. Subdivision (c) is in accord with former Alabama practice of taxing the costs of preparing the original record and transcript of testimony in the trial court. Under this rule, costs of producing the appendix are taxable as costs in the appellate court and would appear as part of the certificate of judgment. The purpose of the 14-day rule is to permit the clerk to include costs in his certificate of judgment which issues on the eighteenth day in accordance with Rule 41. As noted under Rule 41, the purpose of the issuance of the certificate on the eighteenth day following the rendering of the decision is to allow for the expiration of the 14 days permitted for application for rehearing.

The rule provides for the taxing of the costs of preparing the appendix which corresponds to the former practice of taxing the cost of the transcript, but does not provide for taxing the costs of briefs. Some state systems and the federal system permit the taxing of the cost of preparing and printing briefs, but this has not been included. It is thought that briefs will typically be produced under these rules by photocopy or mimeograph, and not by commercial printing, and that these ordinary costs of briefs should be borne by each party.

The term “mandate” has been eliminated to conform with Alabama practice.

Alabama presently has few statutes permitting the taxing of costs against the State, but since the State is a party in very little civil litigation of a private nature, this is not a major item. The advisory committee felt that it would require an act of the Legislature to permit costs to be taxed against the State in ordinary civil or criminal litigation as is done with 28 U.S.C. § 2412. On taxing costs against the State, see e.g., Code of Ala., § 18-1-31; *State v. Jefferson County Bd. of Education*, 282 Ala. 303, 211 So.2d 146. Also, costs may not be taxed in favor of the State except as provided by statute.

**Court Comment to Amendment  
Effective October 1, 1991**

This amendment omitted references to the appendix system, in the record.

**Court Comment to Amendment to Rule 35(c)  
Effective January 1, 1997**

The amendment to Rule 35(c) removes gender specific pronouns.

**Court Comment to Amendment to Rule 35  
Effective September 1, 2000**

The amendment makes it clear that the bill of costs is to be filed with the clerk of the trial court and changes the date for filing that bill of costs to within 14 days after the issuance of the certificate of judgment rather than after the issuance of an opinion or a ruling on an application for rehearing.

The amendment also deletes subsection (d), which required the clerk to prepare an itemized statement of costs taxed in the appellate court and to insert that statement into the certificate of judgment.

**Note from the reporter of decisions:** The order amending Rule 35, effective September 1, 2000, is published in that volume of *Alabama Reporter* that contains Alabama cases from 753 So.2d.