

## **Alabama Rules of Appellate Procedure**

### **Rule 35A.**

#### **Docket fees.**

(a) *Docket fees in noncriminal cases.* In a noncriminal case a docket fee shall be paid to the clerk of the appropriate appellate court, unless otherwise provided. Docket fees shall be as follows:

(1) For an appeal in a civil case, the docket fee shall be \$200.00, to be paid when the notice of appeal is filed. If the notice of appeal is filed electronically, the party responsible for payment of the docket fee shall remit the docket fee directly to the clerk of the appropriate appellate court within seven days of the electronic filing of the notice of appeal. The payment shall be accompanied by a means of identifying the appeal to which the payment is applicable. The timeliness of the payment of the docket fee shall be governed by Rule 25(a)(3). For a proceeding for review by certiorari of a decision or judgment of a trial court in a case where review by appeal is not provided for or of a decision of a board or agency where review by petition in the appropriate appellate court is provided by law, the docket fee shall be \$150.00, to be paid when the petition for review is filed. Provided, however, for an appeal taken following permission given pursuant to Rule 5, the docket fee shall be \$150.00.

(2) For a petition for a writ of mandamus or prohibition or other extraordinary writ, as provided for in Rule 21, the docket fee shall be \$150.00, to be paid when the petition is filed.

(3) For a petition for a writ of certiorari to the Court of Civil Appeals, as provided for in Rule 39, the docket fee shall be \$150.00, to be paid when the petition is filed.

(4) For a petition for permission to appeal, filed pursuant to Rule 5, the docket fee shall be \$150.00, to be paid when the petition is filed. If permission to appeal is granted, an additional \$50.00 docket fee shall be paid within fourteen (14) days of the order granting permission to appeal. See paragraph (1) above and Rule 5(c).

Appeals may be docketed without payment of the docket fee if a motion for leave to proceed in forma pauperis has been granted pursuant to the provisions of Rule 24(a).

In regard to proceedings other than appeals, if a party desires to proceed in forma pauperis but no provision has been made for that party to so proceed, the party shall file with the appellate court a motion for leave to proceed in forma

pauperis. That motion shall correspond to the motion prescribed in Form 15 and shall be accompanied by an affidavit corresponding to that prescribed in Form 15 (and that affidavit shall include answers to the questions set out in Form 15).

The docket fees herein prescribed shall be in lieu of all other court costs in the particular proceeding before the appellate court, unless the court orders otherwise, and may be taxed as costs, as provided by Rule 35.

(b) *Docket fees in criminal cases.* Unless an appellant proceeded before the trial court in forma pauperis and that status has not since been revoked, or unless the appellant is granted permission to proceed on appeal in forma pauperis either by the trial court or by the Court of Criminal Appeals, the appellant shall pay a \$200.00 docket fee to prosecute his or her appeal in the Court of Criminal Appeals; provided, however, that that fee shall be waived in any appeal in which the State is the appellant. The docket fee prescribed herein shall be in lieu of all other fees and costs prescribed by law for appeals to the Court of Criminal Appeals and, unless the notice of appeal is filed electronically, shall be paid to the clerk of the trial court at the time the appellant files his or her notice of appeal. The clerk of the trial court shall then remit the docket fee to the clerk of the Court of Criminal Appeals as provided in Rule 3(d)(2). If the notice of appeal is filed electronically, the party responsible for payment of the docket fee shall remit the fee directly to the clerk of the Court of Criminal Appeals within seven days of the electronic filing of the notice of appeal. The payment shall be accompanied by a means of identifying the appeal to which the payment is applicable. The timeliness of the payment of the docket fee shall be governed by Rule 25(a)(3). After the docket fee has been paid, in whole or in part, the Court of Criminal Appeals shall not be required to refund any portion thereof because the appellant, on whose behalf it was paid, is subsequently granted in forma pauperis status or because the appellant's appeal is subsequently dismissed without a decision on the merits.

Upon receipt of the trial court clerk's transmittal of an appellant's notice of appeal, the clerk of the Court of Criminal Appeals shall docket the appeal regardless of whether the transmittal is accompanied by the docket fee prescribed herein. After docketing an appeal in a case in which it appears that the docket fee is due, in whole or in part, or in a case in which the docket fee, in whole or in part, has not been paid within seven days following the electronic filing of the notice of appeal, the clerk of the Court of Criminal Appeals shall issue a deficiency notice advising the appellant that the appeal will be dismissed with prejudice unless the appellant has, within the time prescribed in said deficiency notice, either paid the docket fee in full or sought leave to proceed on appeal in forma pauperis as authorized in Rule 24(a). If, within 14 days of the date of issuance of the deficiency notice, the appellant has not paid the docket fee in full or sought leave to proceed on appeal in forma pauperis or otherwise shown that the docket fee is inapplicable, the appeal shall be dismissed with prejudice and may not thereafter be reinstated except on motion for good cause shown made within 14 days from the date of the certificate of dismissal.

[Adopted 10-2-78, eff. 12-1-78; Amended 9-13-83; Amended 8-20-84, eff. 10-1-84; Amended 8-30-94, eff. 1-1-95; Amended 1-8-2004, eff. 3-1-2004; Amended 8-28, 2009, eff. 10-1-2009; Adopted 7-1-2019, eff. 10-1-2019.]

### **Comment**

The amendment of September 13, 1983, increased the docket fee in section (1) from \$50.00 to conform with Act 83-744, § 18(b).

### **Court Comment to Amendment of October 1, 1984**

The amendment of October 1, 1984, increased the amount of the docket fees in sections (2) and (3 )— for petitions for mandamus, prohibition, or other extraordinary writs, and for petitions for certiorari to the court of civil appeals — from \$25.00 to \$50.00. That amendment also added section (4) to require a \$50.00 docket fee for the filing of a petition for permission to appeal; to correspond with this new fee, the proviso was added to section (1). The effect is to require, in the case of a Rule 5 petition for permission to appeal, that half the regular docket fee be paid upon the filing of the petition, and that the other half be paid if the petition is granted.

### **Committee Comment Added Effective March 12, 1990**

Rule 35A applies to all parties unless otherwise provided by these rules or by law.

### **Court Comment to Amendments to Rule 35A(a)(1) and (b) Effective October 1, 2019**

Rule 35A(a)(1) and (b) have been amended to require the appellant to pay the docket fee to the clerk of the appropriate appellate court within seven days of the electronic filing of the notice of appeal. The timeliness of the payment of the docket fee is governed by the same rules applicable to the filing of other documents with the appellate courts. This amendment is consistent with the amendments to Rule 3(a), (d), and (e) and Rule 12(a).

**Note from the reporter of decisions:** The order amending Rule 35A(b), effective March 1, 2004, is published in that volume of *Alabama Reporter* that contains Alabama cases from 862 So.2d.

**Note from the reporter of decisions:** The order amending Rule 35A, Alabama Rules of Appellate Procedure, effective October 1, 2009, is published in that volume of *Alabama Reporter* that contains Alabama cases from 13 So. 3d.

**Note from the reporter of decisions:** The order amending Rule 3(a), Rule 3(d), Rule 3(e), Rule 12(a), Rule 35A(a)(1), and Rule 35A(b), effective October 1, 2019, and adopting the Court Comments to those amendments is published in that volume of *Alabama Reporter* that contains Alabama cases from \_\_So. 3d.