

## Alabama Rules of Appellate Procedure

### Rule 41.

#### **Issuance of certificate of judgment; stay of certificate of judgment.**

(a) *Date of issuance.* The certificate of judgment of the court shall issue 18 days after the entry of judgment unless the time is shortened or enlarged by order.

(1) In the courts of appeals, the timely filing of an application for rehearing will stay the issuance of the certificate of judgment until disposition of the application unless otherwise ordered by the court. If the application is denied, the certificate of judgment shall issue 18 days after entry of the order denying the application unless the time is shortened or enlarged by order.

(2) In the Supreme Court, the timely filing of an application for rehearing will stay the issuance of the certificate of judgment until disposition of the application unless otherwise ordered by the court. If the application is denied by the Supreme Court, the certificate of judgment shall issue immediately unless in response to the first application the court substantially modified the original decision of the court, in which case, the certificate of judgment shall issue 18 days after entry of the order denying the application unless a second application is filed or the time is shortened or enlarged by order.

(b) *Stay of certificate of judgment pending petitions for certiorari to courts of appeals.* The timely filing of a petition for certiorari in the Supreme Court shall stay the issuance of the certificate of judgment by the courts of appeals, which stay shall continue until the final disposition by the Supreme Court. Upon the filing of a copy of an order of the Supreme Court denying the petition for certiorari, the certificate of judgment of the courts of appeals shall issue immediately. If the time for the issuance of the certificate of judgment shall have been shortened pursuant to subdivision (a) hereof, the courts of appeals shall grant such relief, upon motion, as may be appropriate.

[Amended eff. 3-1-2007.]

#### **Committee Comments**

This rule provides for the issuance of the certificate of judgment on the day following the expiration of time for filing an application for rehearing under Rule 40.

However, the rule makes specific provision for relief to be granted to parties when the time for issuing the certificate has been shortened or enlarged.

This provision would have primary application when such matters as injunctions, receiverships and child custodies are involved, and envisions the use of bonds or other matters thought appropriate by the court to preserve the rights of the parties while a rehearing by the court is held or while a party applies for certiorari by the Supreme Court of a decision of a court of appeals. That provision is contained in the last sentence of subdivision (b).

**Committee Comments to Amendment to Rule 41**  
**Effective March 1, 2007**  
**(As Amended November 16, 2007)**

The amendment to subdivision (a) of this rule takes into consideration that there are times when an application for rehearing may be denied, but the original decision may have been reversed or substantially modified by the ruling of the Supreme Court on the application. This amendment provides that unless the original decision of the Supreme Court has been reversed or substantially modified, the certificate of judgment shall issue immediately upon the denial of the application for rehearing. This amendment is in conformance with the language in Rule 40(a)(3), which provides that no second application for rehearing will be considered unless the court reversed or substantially modified the original decision of the court. The Committee did not amend the rule with regard to the courts of appeals because the 18-day time period before issuance of a certificate of judgment allows time for a petition for writ of certiorari, seeking review of a decision of the court of appeals, to be filed with the Supreme Court.

**Note from the reporter of decisions:** The order amending Rule 32(b) and Rule 41, effective March 1, 2007, is published in that volume of *Alabama Reporter* that contains Alabama cases from 949 So. 2d.

**Note from the reporter of decisions:** The order amending Rule 32(b)(3) and Rule 37, Alabama Rules of Appellate Procedure, amending the committee comments to the March 1, 2007, amendment to Rule 41, Alabama Rules of Appellate Procedure, and adopting the Court Comment to Amendment to Rule 37 Effective November 16, 2007, all effective November 16, 2007, is published in that volume of *Alabama Reporter* that contains Alabama cases from 972 So. 2d.