

## **Alabama Rules of Criminal Procedure**

### **Rule 30. Appeals from municipal and district courts.**

#### *Rule 30.5. Prosecution and dismissal of the de novo appeal.*

(a) PROSECUTION OF APPEAL. When appeal is taken to the circuit court for a trial de novo, the trial shall be prosecuted as provided in Rule 2.2(d).

(b) DISMISSAL OF APPEAL. Where the appellant, without sufficient excuse, does not appear for trial de novo when called for trial, the court may dismiss the appeal, order the bond forfeited, and remand the case to the court appealed from for enforcement of the lower court's judgment. Upon the motion of the appellant, for good cause shown, the court may set the order of dismissal aside and reinstate the appeal on such terms as the circuit court may prescribe. Any such motion must be filed within thirty (30) days of the entry of the order of dismissal. Failure of the trial court to rule within thirty (30) days of the entry of the order of dismissal on the motion seeking reinstatement of the appeal shall constitute a denial of the motion as of the thirtieth day. The clerk of the circuit court shall send a copy of the order of dismissal of the appeal to the appropriate trial court clerk no later than thirty (30) days from the date on which the appeal is dismissed. The entry of a judgment of default on the appeal bond shall comply with the procedures set forth in § 15-13-81, and a forfeiture may be entered by the circuit court or the court from which the appeal is taken.

Upon the request of the appellant, the judge of the court to which an appeal has been taken may enter an order dismissing the appeal, provided the appellant tenders payment of the costs and fines imposed by the court appealed from at the time the request for dismissal is made; and provided, further, that the appellant submits himself or herself to the sheriff or, in appeals from municipal court, to the chief of police to begin serving any sentence of imprisonment previously ordered. A copy of the order of dismissal, along with the fines and costs assessed by the municipal or district court and collected by the circuit court clerk, shall be remitted to the appropriate court clerk no later than thirty (30) days from the date on which the appeal is dismissed.

[Amended eff. 8-1-2002.]

### **Committee Comments**

Alabama case law provides that on appeal by the defendant to the circuit court for trial de novo, it is required that the prosecutor make a brief, signed statement of the cause of complaint against the defendant, and the absence of such a complaint or waiver of such requirement by the defendant necessitates a reversal of conviction. See *Campbell v. State*, 42 Ala.App. 33, 151 So.2d 407

(1963); *Bonds v. State*, 28 Ala.App. 194, 180 So. 735 (1938); *Davis v. State*, 26 Ala.App. 63, 152 So. 612 (1934). See, also, Ala.Code 1975, § 12-22-113. While this places a burden on the prosecutor, it permits a screening device by which the prosecutor reviews appealed convictions and provides the court with a formal charging instrument prepared by the prosecuting attorney.

See *Cottonreeder v. State*, 392 So.2d 869 (Ala.Crim.App.), cert. denied, 392 So.2d 873 (Ala.1981), where, when the defendant-appellant did not demand that the circuit court not proceed on a district attorney's complaint and filed a demurrer to the original complaint sent up from the district court, the defendant was considered to have waived the filing of the complaint (following *Taylor v. City of Decatur*, 40 Ala.App. 571, 117 So.2d 786 (1959)).

If the defendant who has appealed from conviction fails without cause to pursue the appeal at trial, the remedy is dismissal of the appeal and automatic reinstatement of the judgment appealed from.

**Committee Comment to Amendment  
Effective August 1, 2002.**

The amendment provides that a motion to set aside an order of dismissal of a trial de novo for failure of the appellant to appear when the case is called for trial must be filed within 30 days of the entry of the order of dismissal. If the trial court does not rule on the motion within 30 days of the entry of the order of dismissal, the motion is deemed denied.

**Note from the reporter of decisions:** The order amending Rule 30.5, effective August 1, 2002, is published in that volume of *Alabama Reporter* that contains Alabama cases from 810 So.2d.