

Alabama Rules of Appellate Procedure

Rule 11.

Completion and transmission of the record.

(a) *Mechanics of completion and transmission of record — Civil.*

- (1) CLERK'S RECORD. The clerk's record shall be assembled, numbered, and completed and a certificate of completion filed with the appellate court by the clerk of the trial court within 28 days (4 weeks) of the filing of the notice of appeal, unless the time is shortened or extended by an order entered pursuant to subdivision (c) of this rule. The clerk's record shall contain an index of papers, documents, written charges, exhibits, etc., included in the clerk's record, an index of those documents and exhibits to be filed in the appellate court in a separate container, and also an index of any documents and exhibits omitted from the clerk's record with a full description of each item. See Form 4 for certificate of completion.

When photocopying original papers, in preparation of the clerk's record, the trial clerk shall cover any page numbers that appear on the original papers. The clerk shall then arrange the papers designated in the order of filing and number each page serially, placing the numbers in the upper right corner of the respective pages.

The clerk shall make available to the parties the original papers, documents, written charges, exhibits, etc., or supply, if ordered, photocopies of the clerk's record to the parties. See (a)(3).

When the clerk of the trial court files the certificate of completion in the appellate court, he shall also serve on each party and the court reporter a copy of the certificate, naming the appellate court in which it is filed, and indicating thereon the last page number of the clerk's record. He shall also serve on each party a copy of the indices required to be included in the clerk's record.

The filing of the clerk's certificate of completion is effectuated when the certificate is received in the office of the clerk of the appellate court, except that it shall be deemed filed on the day of mailing if certified or registered mail is utilized in the transmittal.

If more than one appeal is taken, each appellant shall comply with the provisions of Rule 10(a) and (b) and this subdivision, and a single clerk's record shall be completed and the certificate of completion filed

with the appellate court within 28 days (4 weeks) from the filing of the first notice of appeal.

- (2) REPORTER'S TRANSCRIPT. The court reporter shall prepare and file the designated reporter's transcript with the clerk of the trial court within 56 days (8 weeks) from the date of the notice of appeal, unless the time is shortened or extended by an order entered pursuant to subdivision (c) of this rule. The first item of the reporter's transcript shall consist of the written designations of each of the parties, and the first page of such item shall bear page number "1." Each page of the transcript shall be numbered serially, and the page number shall be placed in the upper right corner. The next item shall be the reporter's index, followed by the transcript of the proceedings as designated. The final item shall be a copy of the completed page 3 of Form 1A, Transcript Purchase Order of Appellant—Civil, or a copy of the completed page 2 of Form 1B, Transcript Purchase Order of Appellee—Civil, whichever is appropriate. Copies of the final item shall be sent by the reporter to each party involved in the appeal. See Form 1A, Transcript Purchase Order of Appellant—Civil, and Form 1B, Transcript Purchase Order of Appellee—Civil.

If more than one appeal is taken, each appellant shall comply with the provisions of Rule 10(a) and (b) and this subdivision, and a single reporter's transcript shall be completed and filed in the trial court within 56 days (8 weeks) from the filing of the first notice of appeal.

- (3) Record on Appeal. The clerk shall assemble the record on appeal, consisting of the clerk's record and the reporter's transcript, within 7 days (1 week) from the date the reporter's transcript is filed in the trial clerk's office, or, in the event there is no reporter's transcript, within 28 days (4 weeks) of the filing of the notice of appeal, unless the time is shortened or extended by an order entered pursuant to subdivision (c) of this rule. Within the time fixed above, the clerk shall file a certificate of completion of the record on appeal with the clerk of the appellate court and shall simultaneously serve copies of the certificate of completion on each party to the appeal. The certificate of completion shall state that the record on appeal is assembled and shall state the date the certificate was forwarded to the clerk of the appellate court. See Form 6 for certificate of completion.

The record on appeal shall be bound at the left side and separated into volumes not to exceed 200 pages each. All clasps and staples used to bind the record on appeal shall be covered by tape so as to prevent any injury to those handling the record, and any other fastener that may cause injury shall likewise be covered with tape.

The clerk shall make the record on appeal available to the parties for preparation of briefs. If a party so orders, the clerk of the trial court shall supply photocopies of the record on appeal upon payment of the cost of photocopying to the clerk.

The clerk of the trial court shall file the record on appeal with the clerk of the appellate court within 14 days (2 weeks) after the filing of appellee's brief in the appellate court or its due date therein, or at such earlier time as the parties may agree or the appellate court may order. See Form 10.

The filing of the certificate of completion of the record on appeal is effectuated when the certificate is received in the office of the clerk of the appellate court, except that it shall be deemed filed on the day of mailing if certified or registered mail is utilized in the transmittal.

(b) *Mechanics of completion and transmission of record — Criminal.* The court reporter shall prepare an original and three photocopies of the reporter's transcript as provided in Rule 10(c) and shall file them with the clerk of the trial court within 56 days (8 weeks) from the date of the notice of appeal, unless the time is shortened or extended by an order entered pursuant to subdivision (c) of this rule. If authorized in writing by the clerk of the Court of Criminal Appeals, the court reporter may deliver three carbon copies instead of three photocopies in a particular case. The court reporter shall serve upon the attorney for the appellant, the attorney general, the district attorney, and the clerk of the appellate court, a notice that the transcript of proceedings has been filed with the clerk of the trial court. See Form 13. The clerk of the trial court shall assemble the record on appeal as provided in Rule 10(c).

In addition, the clerk of the trial court shall also prepare three certified copies of the record on appeal and shall transmit one of those certified copies to the attorney general, and another certified copy to the defendant or the defendant's attorney, and shall retain the other certified copy in his or her office. See Form 14.

The clerk of the trial court shall file the record on appeal with the clerk of the appellate court within 7 days (1 week) from the date of the filing of the reporter's transcript in the clerk's office or, in the event there is no reporter's transcript, within 28 days (4 weeks) of the filing of the notice of appeal, unless the time is shortened or extended by an order entered pursuant to subdivision (c) of this rule. The clerk of the trial court shall also file with the record on appeal a certificate of completion of the record on appeal, and shall simultaneously serve copies of the certificate of completion on the defendant, or the defendant's attorney, and the attorney general of Alabama. The certificate of completion shall state that the record on appeal has been forwarded to the clerk of the appellate

court and shall state the date the certificate was forwarded to the clerk of the appellate court.

The filing of the record on appeal in the office of the clerk of the appellate court is effectuated when the record is received in the office of the clerk of the appellate court, except that it shall be deemed filed on the date of mailing if certified or registered mail is utilized in the transmittal. The clerk of the appellate court shall notify the defendant, or the defendant's attorney, and the attorney general of the date that the record on appeal was filed in the appellate court.

The clerk of the trial court shall include in the record on appeal, and in each certified copy thereof, an index to the entire record, including an index to the documents, papers, charges, and exhibits therein contained and an index to documents and exhibits incapable of being legibly or otherwise photocopied.

(c) *Extension of time for completion of record; reduction in time.* The trial court for cause shown may extend the time for completing and filing the clerk's record and the reporter's transcript in a civil case, and the reporter's transcript of proceedings and the record on appeal in a criminal case; provided that a motion for extension shall have been made within the time originally prescribed or within the period of an extension previously granted. The trial court may grant a 7-day (1-week) extension of time to complete the reporter's transcript of proceedings in either a civil or criminal case. For good cause shown, the trial court may grant up to three (3) additional 7-day (1-week) extensions, but no more than a total of four (4) such extensions shall be granted by the trial court and in no event shall an extension be granted to a date later than 84 days (12 weeks) from the filing of the notice of appeal. The trial court may grant a 7-day (1-week) extension of time to complete the clerk's record in a civil case. For good cause shown, the trial court may grant one additional 7-day (1-week) extension, but no more than a total of two (2) such extensions shall be granted by the trial court and in no event shall an extension be granted to a date later than 42 days (6 weeks) from the filing of the notice of appeal.

If the trial court is without authority to grant a further extension or has denied a request therefor, the appellate court may, on motion for good cause shown, grant a 7-day (1-week) extension for filing the clerk's record, the reporter's transcript, or the record on appeal in either a civil or criminal case; provided that a motion for extension shall have been received in the clerk's office of the appellate court within the time originally prescribed or within an extension previously granted. For good cause shown, the appellate court may grant additional 7-day (1-week) extensions; provided that a motion for extension shall have been received in the clerk's office of the appellate court within the time originally prescribed or within an extension previously granted.

The clerk of the trial court shall notify the parties to the appeal of any extension of time for completion of the record.

(d) *Record for preliminary hearing in the appellate court.* If prior to the time the record in a civil or a criminal case is transmitted to the appellate court, a party desires to make in the appellate court a motion for dismissal, for stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, for any intermediate order, or to bring to the attention of the court any other matter, the clerk of the trial court, at the request of any party, shall transmit to the appellate court certified photocopies of such parts of the original record as any party shall designate.

(e) *Custody of exhibits.* The court reporter shall file all exhibits, including photographs, with the clerk of the trial court within 14 days (2 weeks) of the notice of appeal in both civil and criminal cases, assembled in a flat file. All exhibits incapable of being assembled in a flat file shall be delivered to the clerk's office in a suitable separate container. An index of the exhibits, including those that are delivered to the clerk of the trial court in a separate container, shall be included in the flat file. The index shall also indicate those exhibits that were offered and not admitted, as well as the exhibits that were admitted.

[Amended 10-14-76, eff. 1-16-77; Amended 8-1-86, eff. 10-6-86; Amended eff. 9-11-89; Amended 3-6-90, eff. 6-1-90; Amended 3-20-90, eff. 6-1-90; Amended 8-27-91, eff. 10-1-91; Amended 11-19-96, eff. 1-1-97; Amended 9-29-2010, eff 10-1-2010, Amended 5-7-2015, eff 8-1-2015.]

Comment

See Rule 40, Rules of Judicial Administration, for a description of the transcript and fees allowed to court reporters and clerks.

Committee Comments

Subdivision (a) of this rule sets forth the mechanics of assembling the record on appeal in civil appeals. The clerk's record is to be completed and a certificate of completion transmitted within 28 days from the notice of appeal. Where designation has occurred, an index of omitted matter is included in the clerk's record. The parties may order photocopies of the record on appeal or use the original for preparing briefs and compiling the appendix. See Rules 28 and 30. This provision deviates from FRAP by providing that the trial court clerk shall retain originals of the clerk's record.

Subdivision (c) treats extensions of time in civil appeals. Under its provisions, the trial court may grant the clerk and the court reporter extensions of time under two situations: where an extension is sought within the time originally prescribed and where an extension is sought to be extended provided such further extension is sought within the extension previously granted. In no event can the trial court grant an extension of time to the clerk for completing the clerk's

record past 42 days from the filing of the notice of appeal, nor the court reporter for completing the reporter's transcript past 84 days from the filing of the notice of appeal, nor to the clerk for completing the record on appeal past 91 days from the filing of the notice of appeal. In the event either of these two dates has elapsed, further extension of time must be sought in the appellate court to which the appeal is taken.

Subdivision (b) governs the mechanics of completing and transmitting the record on appeal in criminal appeals. It envisions one volume composed of both the clerk's record and the reporter's transcript. The court reporter has 56 days from the filing of the notice of appeal to prepare and file the transcript of the proceedings with the clerk of the trial court. Then, the clerk of the trial court has an additional 7 days to prepare and file the record on appeal with the clerk of the appropriate appellate court. The clerk must file the record on appeal within 63 days from the filing of the notice of appeal. Both the court reporter and clerk can seek extensions of time, as treated below.

Due to the peculiarities of the appellate process in criminal matters, the clerk is under the duty to make three certified photocopies of record sent to the Court of Criminal Appeals. One such photocopy goes to the Attorney General, another to the defendant or his attorney, if represented, and the clerk retains the remaining photocopy.

Subdivision (c) treats extensions of time in criminal appeals. Under its provisions, the trial court may grant the clerk and the court reporter extensions of time under two situations: where an extension is sought within the time originally prescribed and where an extension is sought to be extended provided such further extension is sought within the extension previously granted. In no event can the trial court grant the clerk an extension of time for completing the clerk's record on appeal past 42 days from the filing of the notice of appeal, nor to the court reporter for completing the reporter's transcript past 84 days from the filing of the notice of appeal. In the event either of these two dates has elapsed, further extension of time must be sought in the appellate court to which the appeal is taken.

Various provisions within this rule specifically allow the concept that filing is deemed complete upon mailing when either certified or registered mail is used. In so providing, these provisions are in keeping with the general rules for filing stated in Rule 25.

Subdivision (e) specifically requires the court reporter to file all exhibits in an appealed case with the clerk of the trial court within 14 days of the notice of the appeal. The envisioned procedure requires use of flat files, rather than files known as "shucks."

**Committee Comments to Amendments
Effective October 6, 1986**

These amendments changed the size of paper used by the clerk and reporter from legal-size to letter-size.

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

Rule 11 is modified to state that page numbers are to be placed in the upper right corner, consistent with other rules. The word “he” has been removed, and replaced with “the clerk.” The amended Rule 11(a)(2) further clarified the numbering changes and required the use of a transcript purchase order form.

This amendment to Rule 11(a)(3) omitted references to the appendix system.

The addition of subdivision (4) clarified the filing procedure of the second copy of the record, because the appendix system is no longer in use.

The amendment to Rule 11(b) directs the clerk of the trial court to Rule 10(c), governing the record on appeal, and the rule no longer instructs the clerk of the Court of Criminal Appeals to cover fasteners on the record on appeal when the Supreme Court requires a copy.

Rule 11(c) was amended to implement the 7-day increment extension policy, as suggested by a committee of circuit judges.

**Court Comment to Amendments to Rules 11(a)(3) and 11(b)
Effective January 1, 1997**

The amendments to Rules 11(a)(3) and 11(b) remove gender specific pronouns.

**Committee Comments to Amendment to Rule 11(a)
Effective October 1, 2010**

Subdivision (a) has been amended to delete the requirement that the appellee give notice of the filing of the appellee's brief to the clerk of the trial court. Subparagraph (a)(4), requiring the filing of a second copy of the record on appeal, has been deleted. Because records on appeal are now filed electronically

(see Rule 57(j), Interim Electronic Filing and Service Rule), there is no longer a need to file a second copy of the record with the appellate court.

**Committee Comments to Amendment to Rule 11(c)
Effective August 1, 2015**

The amendment to Rule 11(c) directs the clerk of the trial court to provide the parties to the appeal with notice of any extension of time for completion of the record.

Note from the reporter of decisions: The order amending, effective October 1, 2010, Rule 11(a)(3), Rule 25, Rule 26(a), Rule 31, and Rule 32(a)(7), rescinding Rule 11(a)(4), and adopting Rule 57, the Committee Comments to Amendment to Rule 11(a) Effective October 1, 2010, the Committee Comments to Amendment to Rule 25 Effective October 1, 2010, the Committee Comments to Amendment to Rule 26(a) Effective October 1, 2010, the Committee Comments to Amendment to Rule 31 Effective October 1, 2010, the Committee Comments to Amendment to Rule 32(a)(7) Effective October 1, 2010, and the Committee Comments to Adoption of Rule 57 Effective October 1, 2010, is published in that volume of *Alabama Reporter* that contains Alabama cases from 44 So. 3d.

Note from the reporter of decisions: The order amending Rule 3(d)(1), Rule 11(c), Rule 39(d)(4), and Rule 57(j)(1), effective August 1, 2015, and adopting the Committee Comments to the amendments to Rule 3(d)(1), Rule 11(c), and Rule 39(d)(4) is published in that volume of *Alabama Reporter* that contains Alabama cases from ___ So. 3d.