

## Alabama Rules of Appellate Procedure

### Rule 21.

#### **Writs of mandamus and prohibition directed to a judge or judges and other extraordinary writs.**

*(a) Mandamus or prohibition to a judge or judges; petition for writ; service and filing.*

(1) GENERAL. Application for a writ of mandamus or of prohibition directed to a judge or judges shall be made by filing a petition therefor with the clerk of the appellate court having jurisdiction thereof with certificate of service on the respondent judge or judges and on all parties to the action in the trial court. The petition shall contain, under appropriate headings and in the order here indicated:

(A) Table of authorities. A table of authorities, including cases (arranged alphabetically), statutes, and other authorities with references to the pages in the petition where those cases, statutes, and other authorities are cited;

(B) Statement of facts. A statement of the facts necessary to an understanding of the issues presented by the petition;

(C) Statement of issues. A statement of the issues presented and of the relief sought;

(D) Statement why writ should issue. A statement of the reasons why the writ should issue, with citations to the authorities and the statutes relied on; and

(E) Appendix. An appendix including copies of any order or opinion or parts of the record that would be essential to an understanding of the matters set forth in the petition. The appendix shall contain an index listing separately each document in the appendix. The appendix shall be separated from the petition by a divider or tab, and each document within the appendix shall be separated by a divider or appropriate tab to identify and assist in locating the documents.

(2) DOCKET FEE. Except in the court of criminal appeals, the petition shall be accompanied with payment of the docket fee as prescribed in Rule 35A to the clerk of the appellate court. Upon the filing of the petition, the clerk shall docket the petition and submit it to the court.

- (3) TIME FOR FILING. The petition shall be filed within a reasonable time. The presumptively reasonable time for filing a petition seeking review of an order of a trial court or of a lower appellate court shall be the same as the time for taking an appeal. If a petition is filed outside this presumptively reasonable time, it shall include a statement of circumstances constituting good cause for the appellate court to consider the petition, notwithstanding that it was filed beyond the presumptively reasonable time.

(b) *Denial; order directing answer.* If the court is of the opinion that the writ should not be granted, it shall deny the petition. Otherwise, it shall order that an answer to the petition be filed by the respondents within the time fixed by the order. The order shall be served by the clerk on the judge or judges named respondents and on all other parties to the action in the trial court. All parties below other than the petitioner shall also be deemed respondents for all purposes. Two or more respondents may answer jointly. If the judge or judges named respondents do not desire to appear in the proceeding, they may so advise the clerk and all parties by letter, but the petition shall not thereby be taken as admitted. The clerk shall advise the parties of the dates on which briefs are to be filed, if briefs are required, and of the date of oral argument. The proceeding shall be given preference over ordinary civil cases.

(c) *Other extraordinary writs.* Application for extraordinary writs other than those provided for in subdivisions (a) and (b) of this rule shall be made by petition filed with the clerk of the appellate court having jurisdiction thereof with proof of service on the parties named as respondents. Except in the court of criminal appeals, the petition shall be accompanied with payment of the docket fee as prescribed in Rule 35A. Proceedings on such application shall conform, so far as is practicable, to the procedure prescribed in subdivisions (a) and (b) of this rule.

(d) *Form and length of petition and answer; number of copies.* The petition and any answer to the petition shall comply with the provisions of Rule 32(b)(3) governing form and shall not exceed 30 pages, as also provided in Rule 32(b)(3). A sufficient number of copies shall be filed with the original with the clerk of the appellate court to provide each Judge or Justice of the court with one copy, but the court may require that additional copies be furnished.

(e) *Review in Supreme Court of decisions of Courts of Appeals.*

- (1) A decision of a court of appeals on an original petition for writ of mandamus or prohibition or other extraordinary writ (i.e., a decision on a petition filed in the court of appeals) may be reviewed de novo in the supreme court, and an application for rehearing in the court of appeals is not a prerequisite for such review. If an original petition for extraordinary relief has been denied by the court of appeals, review may be had by filing a similar petition in the supreme court (and, in

such a case, in the supreme court the petition shall seek a writ directed to the trial judge). If an original petition has been granted by the court of appeals, review may be had by filing in the supreme court a petition for writ of mandamus or prohibition or other extraordinary writ directed to the court of appeals, together with a copy of the proceedings in the court of appeals, including the order granting the writ.

- (2) Such review in the supreme court of a grant or denial must be commenced by filing the petition in the supreme court within fourteen (14) days of the grant or denial of the writ by the court of appeals. Procedures on such review shall conform to the provisions of subdivisions (a), (b), and (c) of this rule where those subdivisions are applicable.
- (3) Without regard to whether the court of appeals has issued an opinion, rehearing may be sought in the court of appeals, but if a rehearing is sought, then review in the supreme court shall be by petition for writ of certiorari pursuant to Rule 39; provided, however, that a party that has begun the Rule 39 process by filing an application for rehearing can withdraw that application and seek review by the supreme court under this rule instead of under Rule 39, if the withdrawal of the rehearing application is made within the fourteen (14) days allowed by subsection (e)(2) for seeking supreme court review and before the court of appeals has ruled on the application, and provided further, that a petition allowed by (e)(1) is filed in the supreme court within that time.
- (4) The term “extraordinary writ” within the meaning of this rule encompasses the situation where a party seeks emergency and immediate appellate review of an order that is otherwise interlocutory and not appealable. This rule does not apply to those cases where review in a court of appeals is normally had by way of an extraordinary writ. Such excluded cases include review by certiorari of decisions of certain administrative agencies, and review of decisions of the three-judge Jefferson County panel or decisions of the Jefferson County Personnel Board. A petition under Rule 32, Alabama Rules of Criminal Procedure, is not an “extraordinary writ” within the meaning of this rule.

[Amended 10-2-78, eff. 12-1-78; Amended 12-6-88 and 12-13-88, eff. 12-6-88; Amended 5-3-2000, eff. 9-1-2000; Amended 1-9-2001, eff. 9-1-2000; Amended 11-20-2001, eff. 6-1-2002; Amended 1-12-2005, eff. 6-1-2005; Amended 5-7-2015, eff. 8-1-2015.]

## Committee Comments

Rule 21, while changing the language of the former Alabama Rule 14, does not change the substance of procedure except in one aspect. If the judge who is named as respondent does not desire to appear in the proceeding, he may so advise the clerk of the appellate court and the parties. His failure to appear does not admit that the petition is to be granted. This provision simply recognizes the reality that mandamus proceedings are in most instances adversary proceedings between the parties to the litigation below, and that the judge is really a nominal party rather than an active party. There are, however, instances in which the judge would consider that he is directly affected and would wish to appear, and the rule permits this. Since the counsel for the opposing party ordinarily files the brief for the judge, this practice would be given a straightforward literal application rather than continuing in the guise of a proceeding in the judge's name. See Form 19 for petition.

The existing presumptions in favor of the correctness of the recitation of facts in the answer to a petition for writ of mandamus will continue in force, but can be controverted as under existing law. See, e.g., *Ex parte Helbling*, 278 Ala. 234, 177 So.2d 454; *Ex parte Waldrop*, 228 Ala. 38, 152 So. 44; *Ex parte State ex rel. Atlas Auto Finance Co.*, 251 Ala. 665, 38 So.2d 560; *Wilson v. Brown*, 241 Ala. 178, 1 So.2d 914; *Pillans v. Johnson*, 262 Ala. 689, 81 So.2d 365.

### **Committee Comments to Amendments to Rule 21(a) and 21(e)(4) Effective September 1, 2000**

A petition for a writ of mandamus should be filed without unreasonable delay. *Evans v. Insurance Co. of North America*, 349 So.2d 1099, 1101 (Ala.1977). The amendment to subsection (a) adds three sentences relating to the time allowed for filing a petition for the writ of mandamus or prohibition; its effect is to incorporate into the Rules of Appellate Procedure the requirement that a petition for a writ of mandamus or prohibition be filed within a reasonable time. This amendment also modifies the title of section (a) to reflect this addition.

Little precedent exists on the subject of the timeliness of these petitions, probably because the courts have published few decisions explaining the denial of a petition. A petition for a writ of mandamus based on a trial court's failure to rule on a matter does not have a benchmark date from which to begin measure a reasonable time. Thus, this amendment, setting the presumptively reasonable time within which to file a petition, will not affect the determination of what is a reasonable time for filing a petition based on the failure to rule. However, where the petition for the writ of mandamus challenges an action of the trial court, the amended rule adopts as the presumptively reasonable time the 42-day period for appealing from a final judgment in a civil case, unless the time for appeal is shorter, pursuant to a rule or a statute (see, e.g., Rule 4(a)(1)), in which case the shorter time becomes the presumptively reasonable time. See *Evans, supra*, at

1101 (respondent's motion to strike a petition for a writ of mandamus was denied where the petition was filed within 42 days, the time allowed for taking an appeal, and where there was no unreasonable delay on the part of the petitioner or prejudice or other circumstances showing unreasonableness). For examples of appeal times shorter than 42 days see Rule 4(a)(1)(A)-(E) of these Rules.

In a particular case, an appellate court may find a petition challenging a ruling of the trial court to be untimely even though it is filed within the time for taking an appeal, as, for example, when the petition is filed shortly before trial, yet several days or even weeks after the adverse ruling. Consequently, the better practice is to include in the petition a description of the circumstances constituting good cause for any delay, although the amended rule mandates such a showing only when the petition is filed beyond the time for taking an appeal from the ruling.

To determine whether the circumstances warrant the appellate court's accepting a petition filed beyond the presumptively reasonable time established in this rule, the court should weigh factors such as the prejudice to the petitioner of the court's not accepting the petition and the prejudice to the opposing party of the court's accepting it; the impact on the timely administration of justice in the trial court; and whether the appellate court has pending before it other proceedings relating to the same action, and as to which the jurisdiction of the appellate court is unchallenged.

This amendment also requires that the statement of the reason why the writ should issue include citations to the authorities and the statutes relied on.

The amendment to subsection (e)(4) replaces the reference to Rule 20, Temporary Alabama Rules of Criminal Procedure, with a reference to Rule 32, Alabama Rules of Criminal Procedure. The amendment also deletes the suggestion that contempt orders and workers' compensation cases can be reviewed by certiorari. Review of contempt orders is by appeal. See *Baker v. Heatherwood Homeowners Ass'n*, 587 So.2d 938 (Ala.1991). Effective July 1, 1994, Rule 33, Alabama Rules of Criminal Procedure, was amended to apply only to contempts arising out of criminal cases. Contempts arising out of civil cases are governed by Rule 70A, Alabama Rules of Civil Procedure. Also, pursuant to Act No. 92-537, § 26, Ala. Acts 1992 (codified at § 25-5-81(e), Ala. Code 1975), review of workers' compensation cases by the Court of Civil Appeals is by appeal, rather than by certiorari.

**Court Comment to Amendment to rule 21(a)**  
**Effective June 1, 2005**

Rule 21(a) has been amended to add a table of authorities to those items required to be included in a petition filed pursuant to this rule. The only other change to Rule 21(a) is in the organization of the rule.

**Committee Comments to Amendment to Rule 21(a)(1)(E)  
Effective August 1, 2015**

Rule 21(a)(1)(E) was modified to require a separate appendix filed with all petitions for a writ of mandamus or prohibition. The purpose of the appendix is to permit the parties to prepare and transmit copies of those portions of the record deemed necessary to an understanding of the issues presented. The Committee suggests that the documents in the appendix be separated into volumes of no more than 200 pages. The appendix should include an index to the documents contained in the appendix and should be divided to identify and assist in locating a specific document. The hard copy of any appendix and documents should be divided with tabs. In lieu of tabs, any appendix filed electronically should be demarcated by cover sheets that clearly identify the particular document that follows (e.g., "Exhibit \_\_\_\_" or "Tab \_\_\_\_").

**Note from the reporter of decisions:** The order amending Rule 21(a) and (e)(4), effective September 1, 2000, is published in that volume of *Alabama Reporter* that contains Alabama cases from 753 So.2d.

**Note from the reporter of decisions:** The order amending Rule 21(a), effective September 1, 2000, is published in that volume of *Alabama Reporter* that contains Alabama cases from 778 So.2d.

**Note from the reporter of decisions:** The order amending Rule 5, Rule 21(d), Rule 27(d), Rule 28, Rule 32, Rule 39(d), Rule 39(f), Rule 39(h), and Rule 40(g), effective June 1, 2002, is published in that volume of *Alabama Reporter* that contains Alabama cases from 798 So.2d.

**Note from the reporter of decisions:** The order amending Rule 21(a), Rule 28, Rule 31(b), Rule 32(a) and (b), Rule 34(a), Rule 39, and Rule 40(g), effective June 1, 2005, and adopting Rule 25A, effective June 1, 2005, is published in that volume of *Alabama Reporter* that contains Alabama cases from 890 So. 2d.

**Note from the reporter of decisions:** The order amending Rule 21(a)(1)(E), effective August 1, 2015, and adopting the Committee Comments to the amendment to Rule 21(a)(1)(E) Effective August 1, 2015, is published in that volume of *Alabama Reporter* that contains Alabama cases from \_\_\_\_ So. 3d.