

## Alabama Rules of Appellate Procedure

### Rule 25.

#### Filing and service.

(a) *Filing.*

- (1) FILING WITH THE CLERK. A document required or permitted to be filed in an appellate court shall be filed with the clerk.
- (2) ELECTRONIC FILING. Documents filed electronically shall be filed consistent with Rule 57, Interim Electronic Filing and Service Rule, originally adopted effective October 3, 2007, and incorporated as Rule 57 of these rules on October 1, 2010.
- (3) FILING: METHOD.
  - (A) General. Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the document is received by the clerk within the time fixed for filing, except that a document is timely if, on or before the last day of filing, it is:
    - (i) mailed to the clerk using certified, registered, or express mail of the United States Postal Service, in such case the document shall be deemed filed on the day of mailing; or
    - (ii) dispatched to a third-party commercial carrier for delivery within three calendar days before the date the document is due to be filed. When a document is to be delivered to the clerk by a third-party carrier, the document must be received by the carrier from the sending party on or before the last day the document may be timely filed with the clerk, and the document must be received by the carrier with instructions for delivery within three calendar days. The date the third-party commercial carrier receives the document for delivery to the clerk shall be deemed the date of filing with the clerk, provided the third-party

commercial carrier produces documentation upon delivery to the clerk showing the date the carrier received the document. The documentation shall be by a document showing the actual date of receipt, and the date of receipt must be affixed or printed on the document by the third-party commercial carrier.

- (B) Inmate filing. A document filed by an inmate confined in an institution is timely if deposited in the internal mail system of the institution on or before the last day for filing pursuant to Rule 4(c) of these rules. If an institution has a system designed for "legal" mail to be processed by the United States Post Office, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a notarized statement that sets forth the date the filing was deposited in the institution's mail system.

(b) *Service of All Papers Required.* Copies of all documents filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by a party or person acting for him on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel.

(c) *Manner of Service.*

- (1) Service may be any of the following:
- (A) personal, including delivery to a responsible person at the office of counsel;
  - (B) by mail;
  - (C) by third-party commercial carrier for delivery within three calendar days; or
  - (D) by electronic means.
- (2) When reasonable, considering such factors as immediacy of the relief sought, distance, and cost, service on a party must

be by a manner at least as expeditious as the manner used to file the document with the court.

- (3) Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means is complete on transmission, unless the party making the service is notified that the document was not received by the party served.

(d) *Proof of service.* Documents presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Proof of service may appear on or be affixed to the documents filed. The clerk may permit documents to be filed without acknowledgment or proof of service but shall require such acknowledgment or proof to be filed promptly thereafter.

[Amended 4-7-86, eff 4-15-86; Amended 9-29-2010, eff 10-1-2010; Amended 9-20-2016, eff. 1-1-2017.]

### **Committee Comments**

Rule 25 defines filing and service. The provision for filing, (a), deviates from FRAP Rule 25 by allowing records to be deemed filed where either certified or registered mail is used. Use of certified or registered mail is directed so that the day of posting will appear.

### **Committee Comments to Amendment to Rule 25 Effective October 1, 2010**

Rule 25 has been amended to allow documents to be filed with the court by way of a third-party commercial carrier. The amended rule tracks Rule 25, Federal Rules of Appellate Procedure, which provides that such delivery method will be timely if the document is filed with the clerk's office within three calendar days of the party's delivery of the document to the third-party commercial carrier.

Rule 25 has been amended to include a subdivision on inmate filings, which can also be found in Rule 4(c) of these rules.

### **Committee Comments to Rule 25 Effective January 1, 2017**

Rule 25(a)(3)(A)(i) provides that the filing of any document with the appellate courts may be accomplished if the document is "mailed to the clerk using certified, registered, or express mail of the United States Postal Service"

and that in such cases the document shall be deemed filed on the day of mailing. "Express mail" should be understood to mean the most expeditious method used by the Postal Service, whatever term the Postal Service uses for such mail.

**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 2(c) and Rule 3(c) and adopting Rule 28A and Rule 28B, Ala. R. App. P., and the committee comments, including the comments to Rule 25, effective January 1, 2017, is published in that volume of *Alabama Reporter* that contains Alabama cases from \_\_\_\_ So. 3d.