

Alabama Rules of Appellate Procedure

Rule 28.

Briefs.

(a) *Brief of the appellant/petitioner.* The brief of the appellant or the petitioner, if a petition for a writ of certiorari is granted and the writ issues, shall comply with the form requirements of Rule 32. In addition, the brief of the appellant or the petitioner shall contain under appropriate headings and in the order here indicated:

- (1) STATEMENT REGARDING ORAL ARGUMENT. A short statement indicating whether oral argument is desired, and, if it is, the reasons oral argument should be heard as required by Rule 34(a). If oral argument is requested, the cover of the brief shall state "Oral Argument Requested";
- (2) TABLE OF CONTENTS. A table of contents, with references to the pages of the brief where each section required by this rule to be included in the brief begins (including specific page references to each heading or subheading of each issue argued);
- (3) STATEMENT OF JURISDICTION; INAPPLICABILITY TO BRIEFS IN CRIMINAL CASES. A statement of jurisdiction, including (i) the basis for the jurisdiction of the court to which the appeal is taken (with citations to the applicable statutory provisions and stating relevant facts establishing jurisdiction), and (ii) the filing dates establishing the timeliness of the appeal. This subparagraph does not apply to briefs in criminal cases or briefs in cases on certiorari review;
- (4) TABLE OF AUTHORITIES. A table of authorities, including cases (arranged alphabetically), statutes, and other authorities with reference to the pages of the brief where those cases, statutes, and other authorities are cited;
- (5) STATEMENT OF THE CASE; REQUIREMENTS FOR CIVIL CASES; SPECIAL REQUIREMENT FOR BRIEFS ON APPEAL TO THE COURT OF CRIMINAL APPEALS. A statement of the case, indicating briefly the nature of the case, the course of proceedings, and the disposition in the court below, with appropriate references to the record (see subdivision (g)). In civil cases, a statement of the case should also identify the adverse ruling or rulings from which the appeal is taken and asserted as error on appeal, with a reference to the pages of the record on appeal at which the adverse ruling or rulings can be found. A brief on appeal to the Court of Criminal Appeals should contain a list of each and every ruling

by the trial court adverse to the defendant on whose behalf the appeal is taken and asserted by that defendant as error on appeal. That list need refer only to the pages of the record on appeal where the adverse rulings are reflected (see Form 23) and shall be included as an appendix to the brief;

- (6) STATEMENT OF THE ISSUES. A statement of the issues presented for review;
- (7) STATEMENT OF THE FACTS. A full statement of the facts relevant to the issues presented for review, with appropriate references to the record (see subdivision (g)), except that no statement of the facts need be included in a brief in a case in which a writ of certiorari has issued and briefing has been ordered. Facts must be stated accurately and completely;
- (8) STATEMENT OF THE STANDARD OF REVIEW. A concise statement of the standard of review applicable to each issue;
- (9) SUMMARY OF THE ARGUMENT. A summary of the argument, suitably paragraphed, which should be a clear, accurate, and succinct condensation of the argument actually made in the body of the brief. It should not merely repeat the headings under which the argument is arranged. It should seldom exceed two pages and never exceed five pages;
- (10) ARGUMENT. An argument containing the contentions of the appellant/petitioner with respect to the issues presented, and the reasons therefor, with citations to the cases, statutes, other authorities, and parts of the record relied on. Citations of authority shall comply with the rules of citation in the latest edition of either *The Bluebook: A Uniform System of Citation* or *ALWD [Association of Legal Writing Directors] Citation Manual: A Professional System of Citation* or shall otherwise comply with the style and form used in opinions of the Supreme Court of Alabama. Citations shall reference the specific page number(s) that relate to the proposition for which the case is cited;
- (11) CONCLUSION. A short conclusion stating the precise relief sought; and
- (12) CERTIFICATE OF SERVICE. A certificate of service listing the names and addresses of all attorneys or pro se parties upon whom the brief has been served as required by Rule 31(b).

(b) *Brief of the appellee/respondent.* The brief of the appellee, or the respondent if a petition for a writ of certiorari is granted and the writ issues, shall

conform to the requirements of subdivision (a)(1)-(12), except that a statement of the jurisdiction, the case, the issues, the facts, or the standard of review need not be included unless the appellee/respondent is dissatisfied with those statements as made by the appellant/petitioner.

(c) *Reply brief.* The appellant/petitioner may file a brief in reply to the brief of the appellee/respondent, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal. A reply brief must contain a table of contents, a table of authorities, a summary of the argument, an argument, and a certificate of service. No further briefs may be filed except with leave of court.

(d) *Cover of briefs.* Except for filings by parties acting pro se, the cover of the appellant's brief must be blue; the appellee's, red; an intervenor's or amicus curiae's, green; and any reply brief, gray. If a petition for a writ of certiorari is granted and the writ issues, the cover of the brief of the petitioner shall be blue; the respondent's, red; and the petitioner's reply brief, if any, gray. Where no color is specified the cover shall be white. The front cover of a brief must contain:

- (1) the appellate court docket number assigned to the case (if available), centered at the top;
- (2) the name of the appellate court;
- (3) the style of the case in the appellate court (see Rule 12(a));
- (4) the nature of the proceeding (e.g., appeal, petition for a writ of certiorari) and the name of the court, agency, or board that decided the case below;
- (5) the title of the brief (e.g., "Brief of the Appellant") identifying the party or parties on whose behalf the brief is filed;
- (6) the name, office address, telephone number, facsimile number, and e-mail address, if any, of counsel representing the party for whom the brief is filed. If the party is not represented by counsel, the brief shall include the name, address, telephone number, facsimile number, and e-mail address, if any, of the party filing the brief;
- (7) the phrase "Oral Argument Requested," if oral argument is requested;
- (8) an indication whether the brief should not be made available to the public on an online electronic database based upon the provisions of Rule 52 or Rule 56 of these rules. If the brief contains content that falls within the provisions of Rule 52 or Rule 56(b), a reference to "Rule 52" or "Rule 56," whichever is applicable, shall be indicated in capitalized

bold lettering, not less than one inch in height, at the top center of the cover of the brief.

(e) *Binding for briefs.* Briefs must be bound on the left in a manner that is secure, that does not obscure any of the text, and that permits the brief to lie reasonably flat when open.

(f) *References in briefs to parties.* Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" or "petitioner" and "appellee" or "respondent." It promotes clarity to use the designations used in the trial court or in other proceedings under review, or the actual names of parties, or descriptive terms such as "the employee," "the injured person," "the taxpayer," etc.

(g) *References in briefs to the record.* References in the briefs to the record on appeal shall be to the appropriate page numbers of the record on appeal. If reference is made to a page of the clerk's record, the reference shall be preceded by the letter "C." If a reference is made to a page in the reporter's transcript, then the reference shall be preceded by the letter "R." If reference is made to evidence, it shall be made to the pages of the clerk's record or reporter's transcript at which the evidence was identified, offered, and received or rejected.

(h) *Reproduction of statutes, rules, regulations, etc.* If determination of the issues presented requires the study of statutes, rules, regulations, etc., or relevant parts thereof, they shall be reproduced in the brief or in an addendum at the end, or they may be supplied to the court in pamphlet form.

(i) *Briefs in cases involving cross-appeals.* The brief of the appellee shall also contain the issues and argument involved in his or her cross-appeal as well as the answer to the brief of the appellant. The appellant may answer the issues raised in appellee's cross-appeal as well as reply to appellee's answers in the appellant's reply brief.

(j) *Length of briefs.*

(1) NONCAPITAL CASES – PAGE LIMITATION; METHOD OF NUMBERING PAGES. A principal brief may not exceed 70 pages, and a reply brief may not exceed 35 pages. The page limitation applies to all portions of the brief beginning with the statement of the case, including headings, footnotes, and quotations, but excepting the certificate of service and any appendices and exhibits. Pages in the brief preceding the statement of the case must be numbered in lower case Roman numerals, and pages in the brief beginning with the statement of the case must be numbered in Arabic numerals.

- (2) CAPITAL CASES – PAGE LIMITATION. A principal brief may not exceed 80 pages, and a reply brief may not exceed 40 pages. In all other respects, the provisions of subparagraph (j)(1) of this rule shall apply.
- (3) PERMISSION TO EXCEED PAGE LIMITATION. Permission to exceed the page limitation will not be routinely granted. A motion to file a document that exceeds the applicable page limitation shall show good cause therefor, specifying extraordinary circumstances that warrant a suspension of the rules. Any motion seeking an enlargement of the page limitation for a brief shall be presented at least seven days before the date on which the brief is due.
- (4) CROSS-APPEALS – PAGE LIMITATION. Briefs in cross-appeals shall not exceed the page limitations of subsection (j)(1) and (2) unless permission to exceed the page limitation is granted pursuant to subsection (j)(3) of this rule.
- (5) IN SUPPORT OF, OR IN OPPOSITION TO, APPLICATION FOR REHEARING. A brief in support of, or in opposition to, an application for rehearing shall not exceed 15 pages.

(k) *Briefs in cases involving multiple appellants/petitioners or appellees/respondents.* In cases involving more than one appellant/petitioner or appellee/respondent, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant/petitioner or appellee/respondent may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

[Amended 10-14-76, eff.1-16-77; Amended 11-9-76, eff. 1-16-77; Amended 4-7-86. eff. 4-15-86; Amended 8-27-91, eff. 10-1-91; Amended 11-17-93, eff. 2-1-94; Amended eff 5-8-2001; Amended 11-20-2001, eff. 6-1-2002; Amended 1-12-2005, eff. 6-1-2005; Amended eff. 10-31-2005; Amended 3-1-2010, eff. 6-1-2010; Amended 5-7-2015, eff 8-1-2015.]

Committee Comments

Rule 28 works a change in the form of briefs as the same has existed before under Alabama practice. Inasmuch as assignments of error are unnecessary, all of the machinery and paraphernalia for arguing briefs according to assignments of error is also abolished. See Rule 20. Briefs will be oriented toward the issues presented in a case and argued accordingly.

Subdivision (e) envisions that the record on appeal shall be numbered consecutively, centered at the bottom of the page, as provided by Rules 10 and 11.

The page limitations on briefs are provided in the expectation that most briefs will be typed and then reproduced by photocopying rather than by commercial printing. The rule is not intended to force parties into commercial printing, since such printing system is often prohibitively expensive.

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

Rule 28(e) was amended to aid in distinguishing between page references in briefs, because “CR” and “RT” references are now removed pursuant to the amended Rule 10(b). All references to the appendix system have been omitted. Rule 28(g) was modified to limit argument length in the rehearing brief to that of the reply brief.

**Committee Comments to Amendment to Rule 28(c)
Effective February 1, 1994**

This amendment added the second sentence (beginning “A reply brief need contain only ...”) in order to make it clear what a reply brief must contain.

**Court Comment to Amendment to Rule 28(g)
Effective May 8, 2001**

This amendment deletes the reference to page-length requirements for rehearing briefs. The requirements for those briefs are addressed in Rule 40.

**Court Comment to Amendment to Rule 28
Effective June 1, 2002**

This amendment to Rule 28 changes the format for briefs submitted to Alabama appellate courts. In addition to the items required to be included in the brief before this amendment, Rule 28 requires a statement regarding oral argument (Rule 28(a)(1)); a statement of jurisdiction, except for briefs in criminal cases (Rule 28(a)(3)); a statement of the standard of review for each issue (Rule 28(a)(8)); a summary of the argument (Rule 28(a)(9)); and a certificate of service (Rule 28(a)(12)). A conclusory statement of the standard of review is sufficient, reserving any argument as to the standard of review for the argument portion of the brief. For example, in an appeal where the issue invokes an exercise of a trial court’s discretion, the appellant shall state that the standard of review is whether the trial court abused its discretion. On appeals involving the trial court’s formulation of the law or applying a rule of law or involving a question of the sufficiency of the evidence or the factual findings, the appellant shall describe the governing standard of review (e.g., de novo, clearly erroneous findings of fact, etc.). The amendment also provides that citations to authority shall comply with the latest edition of either *The Bluebook: A Uniform System of Citation* or the

ALWD [Association of Legal Writing Directors] Citation Manual: A Professional System of Citation or the style and form used in opinions of the Supreme Court of Alabama. Reply briefs must now include a table of contents, a table of authorities, a summary of the argument, an argument, and a certificate of service (Rule 28(c)). The provisions of former Rule 28(g), dealing with the length of briefs, have been moved to Rule 32(a)(6).

**Committee Comments to Amendment To Rule 28
Effective June 1, 2005**

Subsection (a)(7) has been amended to make known that if the Supreme Court grants certiorari review and issues a writ of certiorari, the petitioner need not include a statement of facts in the petitioner's brief because a statement of facts was attached as an exhibit to the petition.

Subdivision (h) has been added to indicate in Rule 28 the color of the cover of the briefs to be filed with the appellate court. See also Rule 32(a)(2).

**Committee Comments to Amendment to Rule 28(a)(5)
Effective August 1, 2015**

Rule 28(a)(5) has been amended to require that the appellant's brief in civil cases cite all adverse rulings from which the appeal is taken and include references to the record on appeal where those adverse rulings can be found.

Note from the reporter of decisions: The order [amending] Rule 28(g), effective May 8, 2001, is published in that volume of *Alabama Reporter* that contains Alabama cases from 785 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 10(b), Rule 10(c), Rule 28, Rule 32(a), and Rule 32(b), and adopting Rule 39(c)(3) and the Court Comment to Rule 10(b) and Rule 10(c), effective October 31, 2005, is published in that volume of *Alabama Reporter* that contains Alabama cases from 914 So.2d.

Note from the reporter of decisions: The order amending, effective June 1, 2010, Rule 28(d)(8), Rule 32(a), and Rule 52, Alabama Rules of Appellate Procedure, and adopting Rule 56 and the Court Comment to Rule 56, Alabama Rules of Appellate Procedure, is published in that volume of *Alabama Reporter* that contains Alabama cases from ____ So. 3d.