

Alabama Rules of Appellate Procedure

Rule 31.

Filing and service of briefs.

(a) *Time for Serving and Filing Briefs.* In civil cases, the appellant shall serve and file the appellant's brief within 28 days (4 weeks) after the date shown on the copy of the certificate of completion of the record on appeal, served on the appellant by the clerk of the trial court, as required by Rule 11(a)(3). The appellee shall serve and file the appellee's brief within 21 days (3 weeks) after the filing of the brief of the appellant in the appellate court. The appellant may serve and file a reply brief within 14 days (2 weeks) after the filing of the brief of the appellee in the appellate court.

If the appellee cross-appeals (see Rule 4(a)(2)), then the brief of the appellee/cross-appellant still shall be served and filed within 21 days (3 weeks) after the filing of the appellant's brief. Within 21 days (3 weeks) of the filing of the appellee/cross-appellant's brief, the appellant/cross-appellee may serve and file a brief responding to the cross-appeal and replying to that portion of the appellee's brief that had responded to the appeal. At the time of the filing and service of the appellant/cross-appellee's brief, the appellant/cross-appellee shall notify the clerk of the trial court that such a brief has been filed in the appellate court. Within 14 days (2 weeks) of the filing of such a brief by the appellant/cross-appellee, the appellee/cross-appellant may serve and file a reply brief, replying to that portion of the appellant/cross-appellee's brief that had been directed to the cross-appeal.

In criminal cases, the appellant shall serve and file a brief within 28 days (4 weeks) after the date shown on the copy of the certificate of completion of the record on appeal, served on the appellant by the clerk of the trial court, as required by Rule 11(b). The clerk of the appellate court shall notify the parties or their respective attorneys and the clerk of the trial court by mail of the date on which the record on appeal is filed. The appellee shall serve and file the appellee's brief within 21 days (3 weeks) after the filing of the brief of the appellant in the appellate court. The appellant may serve and file a reply brief within 14 days (2 weeks) after the filing of the brief of the appellee in the appellate court. When a party is represented by counsel, the clerk may not accept a brief from that party.

(b) *Number of Copies to be Filed and Served.* Copies of the brief shall be filed with the clerk of the appropriate appellate court as follows:

Supreme Court: One original and nine (9) copies.

Court of Criminal Appeals: One original and four (4) copies.

Court of Civil Appeals: One original and five (5) copies.

The clerk of an appellate court may, in a particular case, direct that a greater or lesser number of briefs be filed. One copy of the brief shall be served on counsel for each party separately represented and, if a party does not have counsel, then one copy shall be served upon that party personally. The clerk may permit an indigent party to file a lesser number of copies.

(c) *Consequence of Failure to File Briefs.* If an appellant fails to file a brief within the time provided by this rule, or within the time as extended, an appellee may move for dismissal of the appeal. If an appellee fails to file a brief, the appellee will not be heard at oral argument except by permission of the court.

(d) *Extension of Time for Filing Brief.* One extension may be granted up to 7 days (1 week).

[Amended eff. 8-29-89; Amended 2-12-90, eff. 6-1-90; Amended 8-27-91, eff. 10-1-91; Amended 11-17-93, eff. 2-1-94; Amended 2-14-95, eff. 3-1-95; Amended 11-19-96, eff. 1-1-97; Amended 1-12-2005, eff. 6-1-2005; Amended 9-29-2010, eff. 10-1-2010.]

Committee Comments Amended Effective March 12, 1990

Subdivision (a) sets forth the time for filing various briefs. In both civil and criminal cases, the appellant has 28 days from the date shown on the trial clerk's certificate of completion of the record within which to file his brief. See Form 7 for certificate of service. The triggering date for the appellant's brief is the date shown on the clerk's certificate of completion which is sent to the clerk of the appellate court. The clerk of the trial court is required to send a copy of the certificate of completion to the parties, see Rule 11(a)(3) in civil cases and Rule 11(b) in criminal cases. The time within which appellant's brief is due and the triggering mechanism is a change from former practice. In connection with dismissal for failure of an appellant to file his brief timely in a criminal case, see the Comments to Rule 2. See Form 8 for certificate of service of appellee's brief.

Subdivision (b) is materially different from the Federal practice. No provision is made in the subdivision for an extra copy for the clerk inasmuch as the clerk may obtain necessary copies from the judges once the case is concluded.

When the clerk receives a brief prior to the certification of the record, the clerk will retain that brief until the record is received, at which time the clerk will notify the appellee that the brief and record have been filed. The appellee shall have twenty-one days from the date of notification in which to file and serve its brief.

Court Comment to Amendment to Rule 31(a)
Effective June 1, 1990

This amendment added the last sentence to the second paragraph of Rule 31(a).

Court Comment to Amendment
Effective October 1, 1991

This amendment replaced the word “service” with “filing” to further clarify the manner in which the due dates for appellate briefs are calculated.

Committee Comments to Amendment to Rule 31(a)
Effective February 1, 1994

The second paragraph (beginning “If the appellee cross appeals ...”) was added to clarify the usual briefing schedule in cases involving cross-appeals.

Court Comment to Amendment to Rule 31(b)
Effective March 1, 1995

This amendment increases the number of copies of the brief that must be filed with the clerk of the Court of Civil Appeals. The increase, from three (3) copies to six (6) copies, results from the increase in the number of judges on that court pursuant to § 12-3-1, Code of Alabama 1975, as amended by Act No. 93-346, Ala. Acts 1993.

Court Comment to Amendments to Rules 31(a) and 31(c)
Effective January 1, 1997

The amendments to Rules 31(a) and 31(c) remove gender specific pronouns.

Committee Comments to Amendment to Rule 31
Effective October 1, 2010

Subdivision (a) has been amended to delete the requirement that the appellee give the clerk of the trial court notice of the filing of the appellee's brief.

Subdivision (b) has been amended to require the filing of one original and nine copies of briefs with the Supreme Court.

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, 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 ___ So. 3d.