

Alabama Rules of Appellate Procedure

Rule 34.

Oral argument.

(a) *In general.* Oral argument will be allowed when it is determined by the court, or the panel to which the case is assigned, from examination of the briefs and record that oral argument is desirable. Oral argument will not be allowed if the court, or the panel to which the case is assigned, unanimously agrees that:

(1) The appeal is frivolous; or

(2) The dispositive issue or set of issues has been recently authoritatively decided; or

(3) The facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

Any party to an appeal who desires oral argument shall place the words "ORAL ARGUMENT REQUESTED" conspicuously on the front cover of that party's brief. Any party so requesting oral argument shall file a short statement in that party's brief as required by Rule 28(a)(1) indicating why oral argument should be heard.

(b) *Time allowed for argument.* Each side shall be allowed 30 minutes for argument, unless otherwise ordered by the court. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(c) *Order and content of argument.* The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case. Counsel will not be permitted to read at length from briefs, records or authorities.

(d) *Nonappearance of parties.* If the appellee fails to appear to present argument, the court may hear argument on behalf of the appellant, if present. If the appellant fails to appear, the court may hear argument on behalf of the appellee. If neither party appears, the case will be decided on the briefs unless the court shall otherwise order. If the party or the party's attorney who requested the oral argument fails to appear to present argument, the court may assess a penalty against that party in the amount of the reasonable cost for appearance incurred by the party or the attorney for the party who does appear for argument. In its discretion, the court may include a reasonable attorney's fee as a part of such costs.

(e) *Use of physical exhibits at argument; removal.* If physical exhibits or documents introduced in evidence on the trial of the case are not made part of the record but are to be used at the argument, counsel shall arrange with the clerk to have them placed in the courtroom before the court convenes on the date of the argument. After the argument, counsel shall immediately give the exhibits or documents to the appellate court clerk unless the court otherwise directs. Visual aids and exhibits used only at argument shall be removed from the courtroom by counsel immediately following argument and taken to the appellate court clerk's office, unless the court otherwise directs. If visual aids and exhibits are not reclaimed by counsel within a reasonable time after copies of the appellate opinion are sent to the parties by the clerk, they shall be destroyed or otherwise disposed of as the clerk shall think best. Physical exhibits or documents used at trial but not made part of the record shall be sent back to the trial court after an opinion has been rendered, along with any other exhibits or documents which are required to be returned.

[Amended 3-5-81, eff. 10-2-81; amended 11-19-96, eff. 1-1-97; Amended 1-12-2005, eff. 6-1-2005.]

Committee Comments

Rule 34 does not work a substantial change from former Alabama practice on oral argument. It does, however, provide for application by a party for additional time if 30 minutes is felt to be inadequate. Such a grant is by the court, although the rule provides that such an extension is to be liberally granted if cause is shown.

Subdivision (d) provides that a party who appears for oral argument may be heard even if his opponent does not appear. The rule further provides sanctions for failure of a party to appear when he has been the one requesting oral argument.

Court Comment to Amendments to Rules 34(a) and 34(d) Effective January 1, 1997

The amendments to Rules 34(a) and 34(d) remove gender specific pronouns.

Committee Comments to Amendment to Rule 34(a) Effective June 1, 2005

Subdivision (a) has been amended to conform with Rule 28(a)(1). Further, because parties do not have a right to oral argument, subdivision (a) has been amended to reflect that oral argument is discretionary with the 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.