

Alabama Rules of Appellate Procedure

Rule 38.

Damages for frivolous appeal.

In civil cases, if the appellate court shall determine on motion or ex mero motu that an appeal is frivolous, it may award just damages and single or double costs to the appellee.

Committee Comments

Rule 38 is broader than former Supreme Court Rule 17 which applied only where the appeal was brought for delay. It covers all situations where the appeal is brought either for delay or for any frivolous reason, or where oral argument is demanded frivolously or for delay alone. The term “frivolous appeals” is intended to be broader than the title to the counterpart FRAP Rule 38 which speaks of “damages for delay”, and encompasses delay as well as any other frivolous appeal which may justify the imposition of the sanctions permitted by the rule. *Sayre v. Dickerson*, 275 Ala. 371, 155 So.2d 327, and other cases like it will not be followed.

Since the appellant will have borne the costs of preparing the original record and the appendix, the imposition of double costs could be significant. Of course, certain costs are payable to the appellate court, but these are typically minor in total amount.