

## **Alabama Rules of Criminal Procedure**

### **Rule 34. Form, content, and service of motions and requests.**

#### *Rule 34.3. Waiver of formal requirements.*

Upon request of a party, or on its own initiative, the court may waive a requirement specified in this rule, or overlook a formal defect in a motion or request.

### **Committee Comments**

There is no present Alabama statute that is similar to this rule, nor could the Advisory Committee find a similar provision in any other jurisdiction. Nonetheless, the rule seems to serve a useful purpose. It will allow persons without counsel to use motion practice and not be in danger of having motions thrown out of court due to technical defects. The rule also gives the court discretion in this area, consistent with the rest of Rule 34. The rule should only permit minor deviations and should not permit a party's substantive rights to be affected.

Although it is desirable to label motions and pleadings correctly, a penalty will not be imposed for mislabeling, where the body of the motion or pleading complies with the applicable procedural requirements, *Ernest v. First Federal Savings & Loan Ass'n*, 494 So.2d 80 (Ala.Civ.App.1986).