

## **ALABAMA RULES OF JUVENILE PROCEDURE**

### **Rule 28.**

#### **Appeals.**

##### *(A) Direct Appeals to Appellate Courts.*

(1) Appeals from final orders or judgments of the juvenile court shall be to the appropriate appellate court, subject to the Alabama Rules of Appellate Procedure, after the right to a jury trial, if applicable, has been exercised or waived by all parties entitled thereto and one of the following conditions has been met:

(a) The parties have stipulated to an agreed statement of the record on appeal in accordance with the provisions of Rule 10(e) of the Alabama Rules of Appellate Procedure; or

(b) The parties stipulate that only questions of law are involved and the juvenile court certifies those questions; or

(c) An adequate record of the proceeding is available pursuant to one of the following circumstances:

(i) Proceeding Recorded by Electronic Means. Other than as addressed by (ii) below, if the proceeding has been recorded by electronic means, the juvenile court judge designates a person to transcribe the record of the proceeding and to prepare a reporter's transcript in accordance with the provisions of Rule 10(b)(2) of the Alabama Rules of Appellate Procedure, and the juvenile court judge certifies that the record of the proceeding is adequate.

(ii) Proceeding Recorded by a Court Reporter Present at the Proceeding. If a licensed court reporter or reporters are present at the proceeding to record the proceeding, the reporter or reporters, upon being designated by the juvenile court judge to do so, shall transcribe the record of the proceeding and prepare a reporter's transcript in accordance with the provisions of Rule 10(b)(2) of the Alabama Rules of Appellate Procedure.

(2) If the appeal provided in this subsection is taken from a final order or judgment in a case or proceeding arising out of the jurisdiction of the juvenile court over a child, as that term is defined in Ala. Code 1975, § 12-15-102(3), the appropriate appellate court for purposes of the appeal shall be (a) the Court of Criminal Appeals in proceedings in which a child is adjudicated delinquent,

proceedings to revoke probation or aftercare in delinquency cases, and proceedings in which a motion seeking an order to transfer a case of a child to the adult court for criminal prosecution is either granted or denied, and (b) the Court of Civil Appeals in any other case or proceeding.

(3) If the appeal provided in this subsection is taken from a final order or judgment in a case or proceeding arising out of the jurisdiction of the juvenile court over an adult pursuant to Ala. Code 1975, § 12-15-116, the appropriate appellate court for purposes of the appeal shall be the Court of Criminal Appeals.

(B) *Appeals to Circuit Court.* Appeals from final orders or judgments in all other cases, including those cases in which there is not an adequate record as provided in subsection (A) of this rule, shall be to the circuit court for trial de novo, and the case shall be heard by a different circuit court judge if heard by a circuit court judge in the first instance in the juvenile court. The subject of an appeal to the circuit court for trial de novo on delinquency cases or cases involving a child in need of supervision, as that term is defined in Ala. Code 1975, § 12-15-102(4), shall be on the same charge tried in juvenile court; however, no provision of this rule shall be construed to confer the right to a jury trial for a juvenile adjudication appealed to the circuit court. The same provisions of law or rule regarding confidentiality of records and proceedings in the juvenile court shall be applicable on appeal de novo to the circuit court.

(C) *Notice of Appeal.* Written notice of appeal shall be filed within 14 days of the date of the entry of order or judgment appealed from, whether the appeal is to an appellate court or to the circuit court for trial de novo.

(D) *Transfer of Appeal.* An appellate court or circuit court may transfer an appeal to another court if it determines that the appeal should be transferred to or should have been brought in that court.

(E) *Stay of Order.* Except as otherwise provided by these Rules or by statute, an appeal pursuant to this rule shall not stay enforcement of the order or judgment appealed from, but the court to which the appeal is taken may order otherwise, if suitable provision is made for the care and custody of the child. If the order or judgment appealed from grants the custody of a child to, or withholds it from, one or more of the parties to the appeal, the appeal shall be heard at the earliest time practicable.

(F) *Stay of Circuit Court Proceedings Pending Appeal of Transfer Order.* The filing of an appeal from an order transferring a case of a child to the adult court for criminal prosecution shall stay the trial on the alleged offense or offenses in the circuit court.

[Amended eff. 3-1-82; Amended eff. 11-15-85; Amended eff. 7-1-98; Amended eff. 8-1-2000; Amended eff. 1-5-2006; Amended eff. 9-18-2006; Amended eff. 6-22-2007;

Amended eff. 1-9-2009; Amended 7-14-2011, eff. 10-1-2011; Amended 5-1-2014, eff. 7-1-2014.]

**Comment to Amendment  
Effective November 15, 1985**

This rule is an attempt to reconcile the provisions of §§ 12-15-120 and 12-11-30(3), Code of Alabama 1975, which provide respectively, that appeals from the juvenile court shall lie to the circuit court for trial de novo and that the circuit courts shall exercise appellate jurisdiction over district court juvenile cases, with the provisions of § 12-12-72, supra, which provide that appeals shall lie directly from the district court to the appropriate appellate court in certain instances. Thus, subsection (A) of this rule provides for direct appeals in the same instances in which they are provided under § 12-12-72, supra, while subsection (B) of the rule retains and provides for the de novo appeal to the circuit court in any other case.

The direct appeal to the appropriate appellate court shall be taken whether a district or circuit judge sat as the judge of the juvenile court and should be viewed as the preferred route of all juvenile court appeals. Therefore, it is intended that a record which can be certified as adequate will be made as provided in Rule 20, Alabama Rules of Juvenile Procedure. Additionally, nothing in the language of subsection (A) should be construed as conferring the right to a jury trial upon any party in a juvenile court proceeding, including a child, who is not otherwise entitled to such right.

The second paragraph of subsection (A) further defines the phrase "appropriate appellate court" in regard to direct appeals taken from orders in cases arising out of the juvenile courts' jurisdiction over children. Direct appeals from all but two types of proceedings within this category shall lie to the court of civil appeals.

Appeals in juvenile cases must, of necessity, be given priority over other appeals pending before either the appellate courts or the circuit courts and the transfer provision of subsection (D) should be expeditiously followed by the courts in those cases to which they may properly be applied.

Rule 3, Alabama Rules of Appellate Procedure, requires the trial court clerk to notify the court reporter of the filing of a notice of appeal. As a practical matter, the appellant or clerk must notify the juvenile court judge, whose responsibility with respect to the record is enlarged by this rule and Rule 20, Alabama Rules of Juvenile Procedure. If an adequate record will not be available, the juvenile judge should provide written notification of the same to authorize the appellant or clerk to direct the appeal to the circuit court in accordance with subsection (B) of this rule.

**Comment to Amendment  
Effective August 1, 2000**

Rule 28(F) was intended to resolve the problem raised by the case of *Ex parte A.D.R.*, 690 So.2d 1208 (Ala.1996), in which a juvenile, transferred to circuit court for trial as an adult, alleged that his counsel in the transfer hearing had been ineffective. He made this claim after the time for filing an appeal from the transfer order had expired. The Supreme Court, in that case, allowed an out-of-time appeal from the transfer order. However, before the Supreme Court issued its opinion, A.D.R. had been tried on one count of capital murder, convicted, and sentenced to life imprisonment. On the date the Supreme Court issued its opinion, the appeal from that conviction was pending in the Court of Criminal Appeals. To avoid this problem, paragraph (F) was added, which stays all proceedings in the circuit court while the appeal of the transfer order is pending.

**Comment to Amendment to Rule 28  
Effective June 22, 2007**

Rule 28(C) was amended to clarify that a written notice of appeal must be filed within 14 days of the date of the entry of order or judgment appealed from to be consistent with the amendment of Rule 1(A), which added the last sentence to provide that "[f]or all matters in the juvenile court, the phrase 'entry of order or judgment' shall have the same meaning as prescribed in Rule 58(c) of the Alabama Rules of Civil Procedure."

**Comment to Amendment to Rule 28  
Effective January 9, 2009**

The Code sections referenced in subsections (A)(2) and (B) of this rule were updated to make the citations consistent with the Alabama Juvenile Justice Act of 2008.

**Comment to Amendment to Rule 28  
Effective October 1, 2011**

Subsection (A)(1)(a) was amended to add the words "if applicable" before "the right to a jury trial" because in some proceedings in the juvenile court there is no right to a jury trial.

Subsection (A)(2) was amended to add to those cases that may be appealed to the Alabama Court of Criminal Appeals proceedings to revoke probation or aftercare in delinquency cases.

Other changes to this rule were technical.

**Comment to Amendment to Rule 28**  
**Effective July 1, 2014**

Subsection (A) of Rule 28 was amended to eliminate the necessity of certifying the record as adequate in designated circumstances. Specifically, the juvenile court judge must certify that the record is adequate unless a licensed court reporter was present to record the proceeding, and the court reporter certifies the record as provided by the Alabama Rules of Appellate Procedure. Additionally, Rule 28 was amended to ensure that appeals of cases arising out of the jurisdiction of the juvenile court over adults are to the Court of Criminal Appeals.

Subsection (F) of Rule 28 was amended to clarify that only the trial on the alleged offense or offenses is stayed in the circuit court if an appeal is filed from an order transferring a case of a child to the adult court for criminal prosecution.

**Note from the reporter of decisions:** The order adopting Rule 28(F) and the comment, effective August 1, 2000, is published in that volume of *Alabama Reporter* that contains Alabama cases from 753 So.2d.

**Note from the reporter of decisions:** The order amending Rule 1(B), Rule 8, and Rule 28, effective January 5, 2006, is published in that volume of *Alabama Reporter* that contains Alabama cases from 917 So.2d.

**Note from the reporter of decisions:** The order amending Rule 8, Rule 25(D), and Rule 28, effective September 18, 2006, is published in that volume of **Alabama Reporter** that contains Alabama cases from 939 So.2d.

**Note from the reporter of decisions:** The order amending effective June 22, 2007, Rule 1, Rule 20, and Rule 28(C), and adopting effective June 22, 2007, Rule 13(E); the Comment to Rule 13(E) Adopted Effective June 22, 2007; the Comment to Amendment of Rule 1 Effective June 22, 2007; the Comment to Amendment of Rule 20 Effective June 22, 2007; and the Comment to Amendment of Rule 28(C) Effective June 22, 2007, is published in that volume of *Alabama Reporter* that contains Alabama cases from 957 So.2d.

**Note from the reporter of decisions:** The order amending effective January 9, 2009, Rule 1(A), Rule 8, Rule 13, Rule 20(A), Rule 24, Rule 28, and Rule 31, and adopting effective January 9, 2009, the Comment to Amendment to Rule 1(A) Effective January 9, 2009; the Comment to Amendment to Rule 8 Effective January 9, 2009; the Comment to Rescission of Rule 11 Effective January 9, 2009; the Comment to Amendment to Rule 13 Effective January 9, 2009; the Comment to Rescission of Rule 16 Effective January 9, 2009; the Comment to Amendment to Rule 20(A) Effective January 9, 2009; the Comment to Amendment to Rule 24 Effective January 9, 2009; the

Comment to Amendment to Rule 28 Effective January 9, 2009; the Comment to Amendment to Rule 31 Effective January 9, 2009; and the Comment to Rescission of Rule 32 Effective January 9, 2009, is published in that volume of *Alabama Reporter* that contains Alabama cases from 996 So. 2d.

**Note from the reporter of decisions:** The order amending effective October 1, 2011, Rule 1, Rule 2, Rule 3, Rule 5, Rule 6, Rule 8, Rule 9, Rule 12, Rule 13, Rule 14, Rule 15, Rule 15.1, Rule 17, Rule 18, Rule 20, Rule 23, Rule 24, Rule 25, Rule 26, Rule 28, and Rule 31 and adopting effective October 1, 2011, Rule 8.1 and the Comment to Amendment to Rule 1 Effective October 1, 2011; the Comment to Amendment to Rule 2 Effective October 1, 2011; the Comment to Amendment to Rule 3 Effective October 1, 2011; the Comment to Amendment to Rule 5 Effective October 1, 2011; the Comment to Amendment to Rule 6 Effective October 1, 2011; the Comment to Amendment to Rule 8 Effective October 1, 2011; the Comment to Adoption of Rule 8.1 Effective October 1, 2011; the Comment to Amendment to Rule 9 Effective October 1, 2011; the Comment to Amendment to Rule 12 Effective October 1, 2011; the Comment to Amendment to Rule 13 Effective October 1, 2011; the Comment to Amendment to Rule 14 Effective October 1, 2011; the Comment to Amendment to Rule 15 Effective October 1, 2011; the Comment to Amendment to Rule 15.1 Effective October 1, 2011; the Comment to Amendment to Rule 17 Effective October 1, 2011; the Comment to Amendment to Rule 18 Effective October 1, 2011; the Comment to Amendment to Rule 20 Effective October 1, 2011; the Comment to Amendment to Rule 23 Effective October 1, 2011; the Comment to Amendment to Rule 24 Effective October 1, 2011; the Comment to Amendment to Rule 25 Effective October 1, 2011; the Comment to Amendment to Rule 26 Effective October 1, 2011; the Comment to Amendment to Rule 28 Effective October 1, 2011; and the Comment to Amendment to Rule 31 Effective October 1, 2011, is published in that volume of *Alabama Reporter* that contains Alabama cases from \_\_\_ So. 3d.

**Note from the reporter of decisions:** The order amending Rule 1, Rule 2, Rule 3, Rule 5, Rule 5.1, Rule 6, Rule 8, Rule 8.1, Rule 12, Rule 13, Rule 14, Rule 15, Rule 18, Rule 20, Rule 24, Rule 26, Rule 28, and Rule 31 effective July 1, 2014, is published in that volume of *Alabama Reporter* that contains Alabama cases from \_\_\_ So. 3d.