

Alabama Rules for Using Videotape Equipment to Record Court Proceedings

Rule 3.

The official record of court proceedings.

(A) *Videotape recordings.* The official record of court proceedings subject to these rules shall be made on two (2) sets of videotapes, which shall be recorded simultaneously and which shall be filed with the clerk of the trial court at the conclusion of the trial or other proceeding. The set of videotapes identified by the letter "A" as set out in subparagraph (1) below shall be used as the record on appeal. The set of videotapes identified by the letter "B" as set out in subparagraph (1) below shall be used to prepare any duplicate copies of videotapes that may be requested or required. The set of videotapes identified by the letter "B" shall be retained by the clerk at all times and shall not be released to the parties.

(1) METHOD OF IDENTIFICATION. For identification purposes, the clerk shall, on one line on each of the videotapes in the two sets of videotapes making up the official record of the proceeding, indicate the following: the judicial circuit number, unless it involves a district court proceeding, in which event the county name shall be used; the last two digits of the current year; the letters "VCR"; the letter "A" on one of the two sets of videotapes and the letter "B" on the second set of videotapes; the file number of the case to which the proceeding relates; and the number of the individual videotape being identified (for example: 10-90-VCR-A, CV-90-123, 1). On a second line, the clerk shall indicate the name of the case to which the proceeding relates (for example: Smith v. Jones). On a third line, the clerk shall indicate the date on which the videotaped proceeding was recorded (for example: 11/27/90).

(2) COSTS FOR THE PREPARATION OF THE ORIGINAL RECORD AND THE DUPLICATE COPIES REQUIRED IN CRIMINAL CASES. All rules of procedure and statutes regarding fees and costs for preparation of a record on appeal shall remain applicable in a case in which the official record of a proceeding is recorded on videotape. In addition to those fees and costs, the appellant shall pay to the clerk of the trial court, within 7 days of the date of the notice of appeal, \$100.00 for each videotape in set "A" of the videotapes constituting the official record. If the appeal is from a criminal case, the clerk shall arrange for the recording of three duplicate sets of videotapes and shall collect from the appellant an additional fee of \$50.00 for each duplicate videotape. In criminal cases, the fees prescribed above shall be waived if the appellant has been found to be indigent and is entitled to a record without cost. If additional duplicate videotapes are requested in any case, the clerk, before making the duplicates, shall collect \$50.00 for each duplicate videotape requested. When collected by the clerk, the fees prescribed above shall be paid into the State's general fund.

(B) *Trial log.* The trial judge or the judge's designee shall keep a trial log, which shall have listed thereon the videotape references to exhibits offered as evidence; all phases of the case that have been videotaped; the name of each witness whose testimony appears on the videotape; all significant events that have been videotaped; and, for each entry listed, a corresponding reference (by time) to the point on the videotape at which each entry listed appears and, in the case of testimony, the point at which each witness's testimony begins and ends. (See the form styled "Trial Log" appearing in the appendix to these rules.) The trial judge or the judge's designee shall file a copy of the trial log or logs with the clerk at the time the videotapes constituting the official record are filed therewith. If the case is appealed, the trial log or logs shall be included in the clerk's portion of the record on appeal.

(C) *Exhibits.* At the time an exhibit is offered into evidence, a photograph or photographs or a letter-size photocopy of the exhibit shall be submitted for inclusion in the official record in lieu of the exhibit itself. Before the trial or other proceeding, counsel for each party (and each party not represented by counsel) shall obtain from the clerk tabs or labels for marking and identifying each photograph or photocopy of the exhibits proposed to be offered in evidence or otherwise tendered to any witness during trial. The exhibit itself shall likewise be marked with the same identification appearing on the photograph(s) or photocopy thereof. (See the form styled "Sample Tabs or Labels for Marking Exhibits" appearing in the appendix to these rules.)

Upon marking the exhibits and the photographs and photocopies thereof, counsel shall also prepare a list of the exhibits, in sequence, with a descriptive notation sufficient to identify each separately numbered exhibit, and shall furnish copies of the list to opposing counsel and the court at the commencement of the trial or other proceeding. During the proceeding, the trial judge or the judge's designee shall enter on the exhibit list each exhibit that is offered and admitted into evidence, noting the date and time. The party introducing the exhibit shall be responsible for its safekeeping throughout the proceeding and during any appellate proceedings. (See the form styled "Exhibit List" appearing in the appendix to these rules.)

At the conclusion of the proceeding, the judge or the judge's designee shall assemble in proper order all of the photographs and photocopies of exhibits in a flat file or other suitable container and file them and the exhibit lists with the clerk. If the case is appealed, the photographs and photocopies of exhibits and the exhibit list shall be included in the clerk's portion of the record on appeal. The photographs shall be placed on pages in the clerk's record by suitable attachment or adhesive method. The pages in the clerk's record containing the photographs and the photocopies of exhibits shall be numbered consecutively in the upper right corner.

The clerk shall not be required to include the exhibit itself as part of the record on appeal, unless ordered by the appellate court to do so. If the appellate court orders the exhibit, the party retaining custody thereof shall, upon notice, deliver the exhibit forthwith to the clerk of the trial court for certification and transmittal to the appellate court.

If a case is not appealed, then a party who submitted photographs and/or photocopies of exhibits may reclaim them from the clerk of the trial court on or after the 14th day after the time for appeal has expired, unless a party to the case has previously filed with the clerk a written objection to the removal of such items from the custody of the clerk. An objecting party shall state precisely the reasons for the objection and shall serve a copy of the objection on each party. The court may overrule an objection on motion of any party or on motion of the clerk.

If the photographs and photocopies of exhibits are not reclaimed from the clerk of the trial court within 28 days after the time for appeal has expired, then the clerk may dispose of them in any manner authorized for the destruction or disposition of court records, unless a written objection has been filed as provided above. If an objection is overruled, as provided above, parties shall be allowed 14 days from the date of the overruling in which to reclaim their photographs and photocopies of exhibits from the clerk before the clerk shall take any action to dispose of them.

(D) *Depositions.* In a court in which videotape equipment is being used to record the proceedings, the official record of a deposition admitted into evidence may be, in the trial judge's discretion, either the transcript of the deposition or a videotape of the deposition read or played at trial. The party who notices a deposition shall retain the original transcript of the deposition and shall be responsible for its safekeeping in the event it is requested by the trial court or ordered by the appellate court on appeal. If the appellate court orders the original transcript of the deposition, the party retaining custody thereof shall, upon notice, deliver the transcript forthwith to the clerk of the trial court for certification and transmittal to the appellate court. If a written deposition is not read in open court or a videotaped deposition is not played in open court, either may be admitted into evidence and shall become part of the record that is indexed and transmitted to the appellate court.