

Alabama Rules of Appellate Procedure

Rule 1.

Scope of rules.

These rules govern appeals to the Supreme Court, the Court of Civil Appeals, and the Court of Criminal Appeals, and proceedings on petitions for writs or other relief which these courts or judges thereof are empowered to grant. All cases appealable to the Court of Criminal Appeals shall be governed by those rules contained herein which are applicable to appeals to that court; and, pre-trial appeals by the state in criminal cases shall be governed also by the rule of criminal procedure providing for such appeals. These rules shall not be construed to extend or limit the jurisdiction of these appellate courts as established by constitution or law. They shall be construed so as to assure the just, speedy, and inexpensive determination of every appellate proceeding on its merits.

[Amended 2-6-84, eff. 4-1-84: Committee Comment adopted 6-15-2018.]

Committee Comments

These rules govern appeals in all civil and criminal cases and all other proceedings taken to or before an appellate court, including extraordinary writs and the like. In accordance with the mandate of § 6.11 of the Judicial Article (Art. 6, § 150, Constitution, Code of Ala., as amended) granting constitutional power to the Supreme Court to make rules, these rules are not intended to limit or extend substantive or jurisdictional rights set by the Constitution or by statute. Unlike the Alabama Rules of Civil Procedure (ARCP), these rules do apply in criminal cases. Where possible, application has been made of the existing Federal Rules of Appellate Procedure (FRAP), and where a rule is noted to be based upon such FRAP Rule, the construction given to that rule in the Federal Courts has been used and would be expected to constitute authority for the construction of these rules. The rules of a number of other states have also been consulted as noted, as well as existing Alabama Rules and Statutes.

As is the case with the ARCP, it is the policy of these rules to disregard technicality and form in order that a just, speedy and inexpensive determination of every appellate proceeding on its merits may be obtained. The second sentence of the rule is intended to eliminate the distinction between criminal and quasi-criminal cases, e.g., conviction of violation of a city ordinance, *Tharpe v. City of Birmingham*, 23 Ala.App. 23, 119 So. 594, cert. denied 219 Ala. 704, 121 So. 918 (1929); revocation of probation, *Sparks v. State*, 270 Ala. 488, 119 So.2d 600 (1960); and, contempt proceedings in civil cases, *Musgrove v. United States Pipe and Foundry Co.*, 290 Ala. 156, 274 So.2d 640 (1972).

Court Comment to Amendment Effective April 1, 1984

The amendment of April 1, 1984, added the reference in the second sentence to pre-trial appeals by the state in criminal cases. This amendment was necessary because some of the appellate procedure applicable to such appeals is set out more completely in Temporary Rule 17, A.R.Crim.P. (effective April 1, 1984), than in these appellate rules.

Committee Comments to Rule 1 Effective June 15, 2018

In 1971, the Alabama Legislature authorized the Alabama Supreme Court to promulgate "a new system of rules to govern procedure in appeals to the Supreme Court of Alabama, to the Court of Civil Appeals of Alabama, and to the Court of Criminal Appeals of Alabama." Act No. 964, Ala. Acts 1971. The purpose was to "simplify[]" existing appellate procedure and to assure "the speedy determination of litigation in the Supreme Court of Alabama and in said courts of appeals on its merits." *Id.* A committee was formed to draft the new rules. See J.H. Alsbrooks & J.H. Ritch, *Comment, The Alabama Appellate Process-Part II*, 6 Curnb. L. Rev. 63, 63 (1975).

In 1973, the people of Alabama ratified Amendment No. 328 to the Alabama Constitution of 1901, creating a unified judicial system. Section 6.11 of Amendment No. 328 (now codified as § 150 of the Alabama Constitution of 1901) vests in the Supreme Court express authority to promulgate rules of practice and procedure. Section 150 limits the Supreme Court's rulemaking power by providing that the Court's rules "shall not abridge, enlarge, or modify the substantive right of any party nor affect the jurisdiction of circuit or district courts or venue of actions therein" or impinge upon the right to trial by jury. The Court's rulemaking power is not exclusive. Section 150 provides that the legislature may change a rule of practice or procedure by a general act of statewide application. See *Schoenvogel ex rel. Schoenvogel v. Venator Grp. Retail, Inc.*, 895 So. 2d 225, 235, 258 (Ala. 2004) (discussing the rulemaking power generally and concluding that, when a legislative statute of procedure conflicts with a judicial rule of procedure, the rule or statute last in time promulgated will prevail).

The Supreme Court adopted the modern version of the Alabama Rules of Appellate Procedure on June 17, 1975. See J. H. Alsbrooks & J. H. Ritch, *supra* at 63 note. The rules became effective on December 1, 1975. See Rule 49(1), Ala. R. App. P.

Alabama's rules were modeled after the Federal Rules of Appellate Procedure, which became effective in 1968. See Richard H. Gill, *The Proposed Alabama Appellate Rules: An Overview*, 26 Ala. L. Rev. 639, 641-42 (1974); 16A Charles Alan Wright et al., *Federal Practice and Procedure* § 3945, p. 1 (2008).

"The choice of the Federal Appellate Rules as a model was a natural one for two reasons: first, the federal rules represent the most extensively studied and carefully reviewed body of appellate rules available; secondly, the Alabama Rules of Civil Procedure are modeled on their federal counterparts, making a meshing of the trial and appellate rules both simple and appropriate. Virtually all state courts undertaking new appellate rules have relied on the Federal Rules of Appellate Procedure to some extent. A third reason for beginning with the Federal Appellate Rules was a pragmatic one: The committee felt that it would be rendering a service to the bar of the state to have, as far as possible, a single set of rules for the practitioner to learn and use." Richard H. Gill, *supra* at 642 (footnotes omitted). Thus, federal cases construing federal appellate rules are considered persuasive authority for cases in which similar Alabama appellate rules are being construed. See *Ex parte P&H Constr. Co.*, 723 So. 2d 45, 47 (Ala. 1998).

Note from the reporter of decisions: The order amending Rule 11(c) and adopting the Committee Comments thereto and the Committee Comments to Rule 1 effective June 15, 2018, is published in that volume of *Alabama Reporter* that contains Alabama cases from ____ So. 3d.