

Alabama Rules of Appellate Procedure

Rule 27.

Motions.

(a) *Content of motions; response; reply.* An application for an order or other relief shall be made by filing a motion for such order or relief with certificate of service on all other parties, unless another form is elsewhere prescribed by these rules. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion, other than one for a procedural order (for which see subdivision (b)), within 7 days (1 week) after service of the motion; but the court may shorten or extend the time for responding to any motion. Any reply to a response must be filed within 7 days (1 week) after service of the response; but the court may shorten or extend the time for replying to any response. A reply must not present matters that do not relate to the response.

(b) *Determination of motions for procedural orders.* Notwithstanding the provisions of the preceding paragraph as to motions generally, motions for procedural orders, including any motion for an enlargement of time prescribed by these rules or by order of the court for doing any act or to permit any act to be done after the expiration of such time, may be acted upon at any time, without awaiting a response thereto. Any party adversely affected by such action may request reconsideration, vacation or modification of such action.

(c) *Oral argument not permitted.* Except in unusual cases by special order of the court, no oral argument shall be heard on any motion.

(d) *Form and length of motions, memoranda in support of or in opposition thereto.* A motion, any memorandum in support of or in opposition to the motion, and any reply to a memorandum in opposition to the motion shall comply with the provisions of Rule 32(b)(5) governing form; a motion shall not exceed 2,000 words (10 pages for a motion filed pro se), any memorandum in support of or in opposition thereto shall not exceed 3,000 words (15 pages for a memorandum filed pro se), and any reply to a memorandum in opposition to the motion shall not exceed 1,000 words (5 pages for a reply filed pro se), as also provided in Rule 32(b)(5). Only the original motion, memorandum in support of or in opposition thereto, or reply, regardless of whether it is filed in the traditional paper format or e-filed pursuant to Rule 57, is required. However, an appellate court may direct that additional hard copies be furnished.

(e) *Motion Requesting Emergency or Expedited Relief.* In addition to the other requirements of this rule, in non-death-penalty matters, if the movant requests emergency or expedited relief from an appellate court, the motion shall in the following order:

- (1) include on the title page in all capital letters "EMERGENCY FOR WHICH EXPEDITED RELIEF IS REQUESTED";
- (2) include on the first page of text the date by which an appellate ruling is desired and explain what the emergency is (i.e., the extraordinary reasons why a ruling is needed by that date);
- (3) explain how, procedurally, the emergency arose;
- (4) state that the movant has discussed with the appellate court's clerk's office the timing and nature of the motion at least one day before the filing of the motion or explain why such communication was not possible;
- (5) state that the movant has consulted with opposing counsel, or the opposing pro se party, or explain why such consultation was not practicable;
- (6) state that opposing counsel, or the opposing pro se party, will be served with the motion as expeditiously as possible after the filing and by what means (e.g., electronically, hand delivery); and
- (7) attach an appendix including copies of all parts of the record that are essential to understanding the matters set forth in the motion, such as the order or orders of which the movant seeks review, all court filings (by any party) directly connected to the order or orders, and any transcripts of proceedings that resulted in the order or orders. The appendix shall contain an index listing separately each document in the appendix, and each document listed shall be separated by a numbered cover sheet and an appropriate tab to identify and assist in locating the document.

Upon receipt of a properly filed emergency motion, the clerk of the appellate court may attempt to contact counsel for the nonmovant, or the nonmoving pro se party, to ascertain whether a response will be filed before the date by which the movant desires a ruling, which may be less than the 7 days (1 week) provided in this rule for filing a response in nonemergency matters. The appellate court will decide in its discretion whether the motion warrants expedited treatment, as well as whether a response from the nonmovant is necessary before the court rules on the motion.

[Amended 11-20-2001, eff. 6-1-2002; Amended 7-24-2020, eff. 10-1-2020; Amended 7-9-2021, eff. 8-1-2021; Amended 10-20-2023, eff. 1-1-2024.]

Committee Comments

This rule provides the method whereby all papers not otherwise specified in the rules are to be filed with the court. It envisions a simple typewritten motion, in sufficient copies for all judges of the court to which the motion is directed, and proof of service on all parties. Certain motions are permitted to be acted upon by the court without awaiting a response from opposing parties, and these are enumerated in subdivision (b). However, all such motions are subject to review at the request of a party for reconsideration, vacation or modification.

Subdivision (c) generally disallows oral argument on motions. To have oral argument on a motion, a party is required to seek an order from the court.

The form of motions is set out in Rule 32(b).

Committee Comment to Amendment to Rule 27(d) Effective October 1, 2020

Rule 27(d) has been amended to provide a word limit for most motions and memoranda consistent with the amendment to Rule 32, but to retain page limits for motions and memoranda filed pro se.

Committee Comments to Adoption of Rule 27(e) Effective August 1, 2021

Rule 27(e) has been added to aid a party in obtaining expedited relief from an appellate court for an emergency (i.e., extraordinary circumstances in which waiting for the normal timing of the appellate process will be inadequate for some reason). Section (e) does not apply to death-penalty matters. Extraordinary circumstances warranting expedited relief may include, for example, that a matter will become moot, that irreparable harm will be suffered, or that adequate relief will be unavailable if a matter is not ruled on expeditiously by the appellate court. By contrast, an example of a matter not usually warranting expedited relief would be a trial court's denial of a motion to dismiss on jurisdictional or immunity grounds and the losing party's having to litigate the matter while a mandamus petition challenging the denial of the motion to dismiss is pending. Further, a request for expedited relief that originates in whole or in part out of the movant's own unwarranted delay in filing for relief until a short amount of time remains for

consideration of the request will be viewed as arising from a self-created emergency and will be highly disfavored.

When the need for an expedited ruling occurs after an appellate court has acquired jurisdiction, the movant may file a motion that contains the information required by section (e). Unless an emergency motion is filed in an existing appeal or in connection with a petition for extraordinary relief under Rule 21, Ala. R. App. P., that is currently pending before the appellate court, the movant should be aware that the appellate court will lack jurisdiction over the motion unless it accompanies a new filing that would serve to confer jurisdiction on the appellate court, such as a petition for extraordinary relief. Creating an accelerated timetable for both the filing of any response in opposition to an emergency motion and the disposition of the motion falls within the authority afforded appellate courts to suspend the Rules of Appellate Procedure under certain circumstances, as noted in Rule 2(b), Ala. R. App. P., and, therefore, the filing of the response to, and the disposition of, the motion may occur in a period less than the seven days ordinarily permitted for responding to nonemergency motions under this rule.

Lastly, the movant should also provide the appellate court with all applicable filing fees, if any, and/or required paper copies of the emergency motion at the time of filing. The movant should check with the reviewing appellate court before filing the emergency motion to ascertain exactly what will be needed. It is the duty of the movant to provide the reviewing appellate court with everything necessary to facilitate an expeditious resolution of any motion for emergency or expedited relief.

Committee Comments to Amendments to Rule 27(a) and Rule (27(d) Effective January 1, 2023

The rule has been amended to clarify that a party filing a motion may file a reply to a response in opposition to the motion. Any reply shall not exceed 1,000 words (5 pages for a reply filed pro se).

Note from the reporter of decisions: The order amending Rule 5, Rule 21(d), Rule 27(d), Rule 28, Rule 32, Rule 39(d), Rule 39(f), Rule 39(h), and Rule 40(g), effective June 1, 2002, is published in that volume of *Alabama Reporter* that contains Alabama cases from 798 So.2d.

Note from the reporter of decisions: The order amending Rule 5(e), Rule 21(d), Rule 27(d), Rule 28(a), Rule 28(j), Rule 28A(c), Rule 28B, Rule 32, Rule 39(d), Rule 40(f), and Rule 40(g), effective October 1, 2020, and adopting Committee Comments to those amendments is published in that volume of *Alabama Reporter* that contains Alabama cases from 296 So. 3d.

Note from the reporter of decisions: The order adopting Rule 21(g) and Rule 27(e), Alabama Rules of Appellate Procedure, and adopting the Committee Comments thereto, effective August 1, 2021, 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 27(a), Rule 27(d), and Rule 32 (b)(5), Alabama Rules of Appellate Procedure, and adopting the Committee Comments thereto, effective January 1, 2023, 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 5(e), Rule 21(d), Rule 27(d), Rule 31(b), Rule 39(e), and Rule 57, Alabama Rules of Appellate Procedure, and adopting the Court Comment to the amendment of Rule 57, effective January 1, 2024, is published in that volume of *Alabama Reporter* that contains Alabama cases from ___ So. 3d.