

Alabama Rules of Appellate Procedure

Rule 28A.

Supplemental Briefs on Return to Remand.

(a) *Supplemental Briefs.* Unless the court provides otherwise, when an appellate court remands a matter with instructions for the trial court to make findings and to make a return to the court, upon return to remand the parties may file supplemental briefs. Any supplemental briefs shall be limited to the proceedings on remand and shall address only the issues raised in those proceedings. Unless the court otherwise provides, all supplemental briefs shall conform to the form requirements of Rules 28(d) and 32. The covers of the briefs shall be appropriately titled to reflect the supplemental status of the case. The covers of the supplemental briefs shall remain the color of the party's initial brief. The parties are strongly encouraged to incorporate by reference all appropriate portions of any previously filed briefs.

(b) *Briefing Schedule.* Unless a different schedule is set by the court, a party who has indicated that he or she wishes to file a supplemental brief shall serve and file the brief within 28 days (4 weeks) after the date shown on the copy of the certificate of completion of the record on return to remand. Any opposing party shall serve and file a responsive supplemental brief within 21 days (3 weeks) after the filing of the original party's supplemental brief. A supplemental reply brief may be filed within 14 days (2 weeks) after the filing of the responsive supplemental brief. One extension may be granted up to 7 days (1 week) upon a motion being filed by a party seeking the extension. Said motion must be filed before the time allotted for the filing of the supplemental brief has expired.

(c) *Length of Briefs.* In a civil or noncapital case, a supplemental brief and the responsive supplemental brief may not exceed 10,000 words (50 pages for a supplemental brief filed pro se), and a supplemental reply brief may not exceed 5,000 words (25 pages for a supplemental reply brief filed pro se). In a capital case, a supplemental brief and the responsive supplemental brief may not exceed 12,000 words (60 pages for a supplemental brief filed pro se), and a supplemental reply brief may not exceed 6,000 words (30 pages for a supplemental reply brief filed pro se). In all other respects, the provisions of Rule 28(j)(1) shall apply.

(d) *Supplemental Briefing Not Required.* Unless otherwise directed by the court, the parties are not required to file supplemental briefs on return to remand if they believe that all issues presented by the remand proceedings are adequately covered by their original briefs.

[Adopted 9-20-2016, eff. 1-1-2017; Amended 7-24-2020, eff. 10-1-2020.]

Committee Comments to Rule 28A
Effective January 1, 2017

Rule 28A provides a mechanism for the parties to file supplemental briefs when the case has been remanded to the trial court with instructions for the trial court to make findings and to make a return to the appellate court. In an appropriate case, the appellate court may direct that the parties not be permitted to file supplemental briefs.

Supplemental briefing is not required in all cases when there has been a remand to the trial court. Unless otherwise directed by the court, the parties need not file supplemental briefs on return to remand if the issues presented by the remand proceedings are adequately covered by the original briefs. It is recommended that, if no supplemental brief (or responsive brief) is to be filed, the party who would be filing the brief notify the appellate court in writing of that fact as soon as possible.

Committee Comment to Amendment to Rule 28A(c)
Effective October 1, 2020

Rule 28A(c) has been amended to provide a word limit for most supplemental briefs consistent with the amendment to Rule 32, but to retain page limits for supplemental briefs filed pro se.

Note from the reporter of decisions: The order amending Rule 2(c) and Rule 3(c) and adopting Rule 28A and Rule 28B, Ala. R. App. P., and the committee comments, including the comments to Rule 25, effective January 1, 2017, is published in that volume of *Alabama Reporter* that contains Alabama cases from 199 So. 3d.

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 ___ So. 3d.