

## Alabama Rules of Appellate Procedure

### Rule 3.

#### Appeal as of right — How taken.

(a) *Filing the notice of appeal.*

- (1) In civil cases, an appeal permitted by law as of right shall be taken to an appellate court by filing a notice of appeal with the clerk of the trial court within the time allowed by Rule 4. The appellant shall cause a sufficient number of additional copies of the notice of appeal to be marked filed with the date of filing noted thereon and certified as a true copy by the clerk of the trial court for service on the persons and parties as provided by (d)(1) or d(3) of this rule. Appeals by permission from interlocutory orders shall be taken in the manner prescribed by Rule 5. The notice of appeal may be filed electronically with the trial court clerk through the trial court's electronic-filing system. If the notice of appeal is filed electronically, the appellant is not required to provide the additional copies required by this rule.
- (2) In criminal cases, an appeal permitted by law as a matter of right to an appellate court shall be taken by filing a written notice of appeal with the clerk of the trial court within the time allowed by Rule 4, or by the defendant's giving an oral notice of appeal at the time of sentencing, which oral notice shall be noted of record; provided, that a pre-trial appeal by the State shall be taken by filing a written notice of appeal in the manner, and within the time, specified by the rule of criminal procedure providing for such appeals. The notice of appeal may be filed electronically with the trial court clerk through the trial court's electronic-filing system. On the date the notice of appeal is filed, the clerk of the trial court shall serve copies of the notice of appeal on the persons specified by (d)(2) or d(3) of this rule.

(b) *Joint or consolidated appeals.* If two or more persons are entitled to appeal from a judgment or order and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the appellate court upon its own motion, or upon motion of a party, or by stipulation of the parties to the several appeals.

(c) *Form and content of notice of appeal.* The notice of appeal shall specify all parties taking the appeal and each adverse party against whom the appeal is taken; shall designate the judgment, order, or part thereof appealed from; and shall name the court to which the appeal is taken. Such designation of judgment or order

shall not, however, limit the scope of appellate review. An appellant may not use the terms "et al." or "etc." to designate multiple appellants or appellees in lieu of naming each appellant or appellee

If the notice of appeal names the wrong appellate court to which the appeal is taken, such designation shall be treated as a clerical mistake and corrected accordingly. The necessary clerical steps shall be taken to docket the appeal and to file the record and briefs in the appropriate appellate court.

(d) *Service of the Notice of Appeal.*

- (1) In civil cases, the appellant shall serve a copy of the notice of appeal on each adverse party, but the copy need not contain the clerk's filing notations.

In civil cases, the clerk of the trial court shall, on the date the notice of appeal is filed, serve a true copy of the notice of appeal, or any amendment thereto, as required in (a)(1) above, personally or by mailing a copy thereof to each of the following: the clerk of the appropriate appellate court; the court reporter who reported the evidence; counsel of record for each party, or, if a party is not represented by counsel, to the party at the party's last known address. Service shall be sufficient notwithstanding the death of the party or the party's counsel. In civil cases, the copy of the notice of appeal to the clerk of the appellate court will be accompanied by payment of the docket fee as provided in Rule 35A(a)(1).

- (2) In criminal cases, the clerk of the trial court shall serve the notice of appeal, whether oral or written, upon each of the following: the clerk of the appropriate appellate court; the court reporter who reported the evidence; the defendant; the defendant's appellate counsel; the district attorney of the circuit in which the trial court is situated; and the Attorney General. The copy of the notice of appeal to the clerk of the appellate court shall be accompanied by the docket fee as provided in Rule 35A(b) of these rules, if applicable, unless the appellant failed to pay the docket fee at the time the notice of appeal was filed.
- (3) If the notice of appeal is filed electronically in a civil case or in a criminal case, the appropriate appellate court clerk may be served with the notice by electronic means. If the attorney for the party to be served or the party to be served is a registered user of the trial court's electronic-filing system or if the party has elected to receive notice by electronic means pursuant to Rule 4.1(C) of the Alabama Rules of Judicial Administration, service may be made by electronic transmittal in accordance with that system or rule. Service of the

notice by electronic means shall be complete on transmission of the electronic document. The clerk of the trial court may serve the court reporter who reported the evidence by electronic mail, by personal service, or by mail. If an attorney or a party is not a registered user of the trial court's electronic-filing system, then the clerk of the trial court shall provide notice of the filing of the notice of appeal pursuant to (d)(1) or (d)(2) of this Rule. If the notice of appeal is filed electronically, the party responsible for payment of the docket fee shall remit that fee directly to the clerk of the appropriate appellate court as provided in Rule 35A(a)(1) or Rule 35A(b). The clerk of the trial court is not required to certify as a true copy an electronically filed notice of appeal.

(e) *Filing the docketing statement.* Each notice of appeal to an appellate court, at the time it is filed with the trial court, shall be accompanied by the appropriate 'Docketing Statement' (Form 24, 25, or 26). An electronically filed notice of appeal shall be accompanied by an electronically filed docketing statement. If the notice of appeal is given orally in a criminal case, the docketing statement shall be filed within 7 days (1 week) after the oral notice of appeal is given. However, the appellant's failure to file the docketing statement with the notice of appeal shall not affect the validity of the notice of appeal. The appellant, or if the appellant is represented by counsel, then the appellant's attorney, shall complete and sign the docketing statement before it is filed with the court. If the notice of appeal is tendered to the clerk of the trial court without a properly completed docketing statement, the clerk shall accept the notice of appeal and shall inform the person filing it of the requirements of this rule, and the appellant, or, if the appellant is represented by counsel, then the appellant's attorney, shall promptly file a properly completed docketing statement. The clerk of the trial court, when serving the notice of appeal as specified in this rule, shall attach thereto a copy of the docketing statement, if available. If, on the date the notice of appeal is served, the docketing statement is not available, it shall be served on those persons on whom the notice of appeal was served as soon as it becomes available. For the failure to comply with the requirements of this rule, the appellate court in which the appeal is pending may make such orders as are just, including an order staying the proceedings until the docketing statement is filed or, after proper notice, an order dismissing the appeal; and, in lieu of any orders or in addition to any orders, the court may treat the failure to comply with the requirements of this rule as contempt of court.

[Amended 10-14-76, eff. 1-16-77; Amended 10-2-78, eff. 12-2-78; Amended 2-6-84, eff. 4-1-84; Amended 8-27-91, eff. 10-1-91; Amended 11-17-93, eff. 2-1-94; Amended 11-19-96, eff. 1-1-97; Amended eff. 8-1-2000; Amended 5-7-2015, eff. 8-1-2015, Amended 9-20-2016, eff. 1-1-2017; Amended 7-1-2019, eff. 10-1-2019.]

### **Committee Comments**

Timely filing of the notice of appeal is a jurisdictional act. It is the only step in the appellate process which is jurisdictional. Rule 4(a) sets forth the relevant time periods for timely filing notice of appeal in civil appeals. Rule 4(b) sets forth the relevant time period for filing timely notice of appeal in criminal appeals.

Failure of an appellant to take any step other than the timely filing of a notice of appeal with the clerk of the trial court does not affect the validity of the appeal, but is ground only for such action as the appellate court deems appropriate, which may include dismissal of the appeal. Sanctions for such failures are set out in Rules 2 and 48.

Subdivision (c) provides that erroneous designation of the appellate court to which the appeal is taken is treated as merely a clerical mistake and may be corrected accordingly. Further, any steps necessary to effectuate the change in appellate courts shall be taken. This is in accordance with the existing Alabama practice under Code of Ala., § 12-1-4.

The intent of this rule is to provide a uniform and simplified method of taking an appeal, and it is contemplated that a single notice will be filed. The requirement of a citation on appeal required by Title 7, § 801, is eliminated and the holdings in cases such as *Mid-State Homes v. Roberts*, 288 Ala. 86, 257 So.2d 333, are superseded.

The form and content of a typical notice of appeal are set out in the Appendix of Forms to these rules in Forms 1 and 11, and Rule 50 specifically provides that the forms contained in the Appendix of Forms are sufficient.

In accordance with the existing practice under Title 7, § 804, even parties not joining in the appeal are given a copy of the notice of appeal. In criminal cases, the appellant and his counsel shall also be sent a copy of the notice so that they will know it has been received by the clerk and sent to the other parties.

Although notice of appeal is the only jurisdictional act to commence the appellate process, provision is made in Rules 7, 8 and 12 for supersedeas and cost bonds and docket fee, and a party shall be subject to sanctions for failure to comply, ultimately including dismissal of the appeal.

In civil appeals, filing and serving notice of appeal are governed by subdivisions (a) and (d). The interplay of (a) and (d) requires the appellant to file the notice of appeal with the clerk of the trial court. Also, the appellant is required to have the clerk mark a sufficient number of copies of the notice of appeal with the date of filing and certified as a true copy so that a copy can be sent to the clerk of the appellate court, the court reporter who reported the evidence, and counsel for each opposing party, or, each opposing party if not represented by counsel. Marking the copies with the filing date is because the date of filing the notice of

appeal triggers the time schedule in the appellate process. The clerk is required to serve each of these copies of the notice of appeal. This requirement is not a jurisdictional act; however, it is subject to Rule 2 sanctions.

Likewise, in criminal appeals, filing and serving notice of appeal is governed by subdivisions (a) and (d). The interplay of (a) and (d) requires the appellant to either give oral notice of appeal at time of sentencing or written notice within the time allowed by Rule 4(b). This alternative of giving either oral or written notice continues practice under Title 15, § 368. Then, the clerk has the responsibility for serving the notice of appeal, whether the notice of appeal is given orally in open court or in writing, on various parties named in (d)(2). See Form 12 for service by the trial court clerk of the notice of appeal. The Attorney General is added to this list due to the peculiar problem in criminal appeals wherein the appellate brief is handled by his office. Also, (d) requires that both the defendant and his attorney receive a copy of the notice of appeal.

It is contemplated that in cases which have not been consolidated at the trial level (when presumably the case would proceed as a single case thereafter), parties jointly interested in an appeal may file a joint notice of appeal or may consolidate their appeals after filing separate notices. They will then proceed as a single appellant as far as briefs, appendices, oral argument, etc., are concerned.

**Court Note to Amendment to Rule 3(a)(1),  
Effective January 17, 1977**

The words "or review by certiorari in a workmen's compensation case" have been added in the first sentence of subsection (a)(1) of Rule 3 and this subsection has been rewritten. The applicability of these rules to workmen's compensation cases, as to the time for taking the appeal and the procedure to be followed in perfecting the appeal, is not to be construed as changing or in any way superseding § 25-5-81 of the Code of Alabama providing for review by certiorari. However, all matters of procedure, including the giving of notice of appeal, the time within which such notice is to be given, the filing of an appeal or supersedeas bond, the preparation of the record on appeal, and the raising of the questions presented for review applicable to workmen's compensation cases, are governed by the Alabama Rules of Appellate Procedure; but the scope of appellate review shall remain as in cases on review by certiorari. See Alabama Digest, Workmen's Compensation, Key Nos. 1910, 1911, 1912, and 1935. Nor does this Rule change the requirement that the trial court file a statement of the law and facts as mandated by Title 26, Section 304, of the Code of Alabama. See *Leach Mfg. Co. v. Puckett*, 284 Ala. 209, 224 So.2d 242.

**Court Comment to Amendment to Rule 3(a)(2)  
Effective April 1, 1984**

Section (a)(2) was amended effective April 1, 1984, to incorporate references to pre-trial appeals by the state in criminal cases. Temporary Rule 17, A.R.Crim.P., allowing certain pre-trial appeals by the state in criminal cases, became effective that date, and that rule, in providing for a notice of appeal in such cases, provided a procedure very different from that set out in this Rule 3(a)(2). At the same time, this Rule 3(a)(2) was clarified to speak of the defendant's "giving," rather than "filing," an oral notice of appeal.

**Court Comment to Amendments  
Effective October 1, 1991**

The amendments to Rule 3(a)(2) and 3(d)(1) direct the clerk of the trial court to serve copies of the notice of appeal on the appropriate parties on the date of its filing. The adoption of Rule 3(e) introduces the docketing statement, which provides more detailed information to the appellate court concerning the appeal.

**Committee Comments to Amendment to Rule 3(d)(1)  
Effective February 1, 1994**

This amendment added the last sentence to paragraph (d)(1) (reading "In civil cases, the appellant shall serve ..."). Every other paper in a civil case is served on other parties, so this rule will not be a burden. The primary purpose of the notice provision is to prevent the 14-day cross-appeal period from running before other parties learn of the filing of a notice of appeal.

**Court Comment to Amendment to Rule 3(d)(1)  
Effective January 1, 1997**

The amendment to Rule 3(d)(1) removes gender specific pronouns.

**Committee Comment to Amendment to Rule 3(a)(1)  
Effective September 1, 2000**

This amendment deletes the reference to certiorari review of workers' compensation cases by the Court of Civil Appeals. Pursuant to Act No. 92-537, § 26, Ala. Acts 1992 (codified at § 25-5-81(e), Ala. Code 1975), review of workers' compensation cases is by appeal.

**Committee Comments to Amendment to Rule 3(d)(1)  
Effective August 1, 2015**

Rule 3(d)(1) was amended effective February 1, 1994, to add what was the last sentence of paragraph (d)(1), which read: "In civil cases, the appellant shall serve a copy of the notice of appeal on each adverse party, but the copy need not contain the clerk's filing notations." The purpose of this notice provision is to

prevent the 14-day cross-appeal period from running before the adverse party or parties learn of the filing of a notice of appeal. This amendment moves that sentence to the beginning of the subdivision and in a separate paragraph for greater emphasis.

**Committee Comments to Amendment to Rule 3(c)  
Effective January 1, 2017**

The amendment requires that the notice of appeal specify by name all appellants and all appellees who are parties to the appeal and is designed to eliminate any confusion as to the actual participants to the appeal and to ensure that a party's ability to file a cross-appeal is not impaired due to uncertainty or a lack of notice.

**Court Comment to Amendments to Rule 3(a), (d), and (e)  
Effective October 1, 2019**

Electronic filing of a notice of appeal is allowed in federal district courts. Under the Alabama Rules of Appellate Procedure before these amendments, however, an appellant was required to manually remit payment of the docket fee and file the notice of appeal with the clerk of the trial court.

These amendments bifurcate the payment of the docket fee and the filing of the notice of appeal. Such bifurcation is permissible because the timely filing of a notice of appeal is a jurisdictional act, while the payment of the docket fee is not. See *Ex parte Alfa Ins. Corp.*, 263 So. 3d 689, 695 (Ala. 2018); and *Wehle v. Bradley*, 254 So. 3d 178, 186-87 (Ala. 2017) (citing *H.C. Schmieding Produce Co. v. Cagle*, 529 So. 2d 243, 249 (Ala. 1988), citing in turn *Finch v. Finch*, 468 So. 2d 151, 154 (Ala. 1985)). Accordingly, the amendment to Rule 3(a) allows an appellant to file the notice of appeal using the trial court's electronic-filing system within the time provided for filing a notice of appeal. Under corresponding amendments to Rule 12(a) and Rule 35A(a)(1) and (b), the appellant may then send the docket fee to the clerk of the appropriate appellate court within seven days of the electronic filing of the notice of appeal.

If the notice of appeal is filed electronically, under Rule 3(d)(3), the clerk of the trial court may serve the notice of appeal electronically on the appropriate appellate court, the parties registered in the trial court's electronic-filing system, and the court reporter. The amendment to Rule 3(e) requires an appellant who files the notice of appeal electronically to also file the docketing statement electronically simultaneously with the notice of appeal.

**Note from the reporter of decisions:** The order amending Rule 3(a)(1), effective September 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 3(d)(2), effective March 1, 2004, is published in that volume of *Alabama Reporter* that contains Alabama cases from 862 So.2d.

**Note from the reporter of decisions:** The order amending Rule 3(d)(1), Rule 11(c), Rule 39(d)(4), and Rule 57(j)(1), effective August 1, 2015, and adopting the Committee Comments to the amendments to Rule 3(d)(1), Rule 11(c), and Rule 39(d)(4) is published in that volume of *Alabama Reporter* that contains Alabama cases from 160 So. 3d.

**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 3(a), Rule 3(d), Rule 3(e), Rule 12(a), Rule 35A(a)(1), and Rule 35A(b), effective October 1, 2019, and adopting the Court Comments to those amendments is published in that volume of *Alabama Reporter* that contains Alabama cases from \_\_\_ So. 3d.