

Alabama Rules of Criminal Procedure

Rule 26. Judgment; presentence report; sentence hearing; sentence.

Rule 26.10. Duty of the court after notice of appeal.

After the court has informed the defendant of defendant's right to appeal as provided by Rule 26.9(b)(4), and where timely notice of appeal is given by the defendant and upon a finding of indigency by the court, the court shall enter an order appointing counsel to represent the defendant on appeal if the defendant so desires, and shall order that a certified copy of the record and reporter's transcript be provided without cost, if the appeal is from a judgment and sentence of the circuit court.

Committee Comments

An indigent defendant has a constitutional right, through the equal protection clause of the United States Constitution's Fourteenth Amendment, to have appointed counsel on an appeal of right. *Douglas v. California*, 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed.2d 811 (1963).

ABA, Standards for Criminal Justice, *Criminal Appeals* 21-2.2(a) (2d ed. 1986), provides that

"Counsel, whether retained or appointed to represent a defendant during trial court proceedings, should continue to represent a sentenced defendant until a decision has been made whether to appeal and, if an appeal is instituted, to serve the defendant at least until new counsel is substituted, unless the appellate court permits counsel to withdraw at an earlier time."

The Alabama committee, which compared the ABA Standards for Criminal Justice with Alabama law, rules and legal practice, recommended the adoption of this standard. Report of the Alabama Comparative Committee to the Department of Court Management of the State of Alabama at p. 343.

Rule 6.2 provides for withdrawal of appointed counsel upon certain conditions and the appointment of new counsel. Rule 26.10 provides that the court will enter an order appointing counsel to represent the defendant on appeal, if he is indigent and desires counsel.

Rule 26.10 also provides that if the defendant is unable to pay for a copy of the record on appeal and the reporter's transcript, the court will order that they be provided without cost to the defendant. *Griffin v. Illinois*, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891 (1956), held that the due process and equal protection

clauses of the Fourteenth Amendment require that all indigent defendants be furnished a transcript on appeal, at least where allegations that manifest error occurred at the trial are not denied:

“It is true that a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all.... But that is not to say that a State that does grant appellate review can do so in a way that discriminates against some convicted defendants on account of their poverty.”