

IN THE SUPREME COURT OF ALABAMA
June 15, 2018

ORDER

IT IS ORDERED that Rule 11(c), Alabama Rules of Appellate Procedure, be amended to read in accordance with Appendix A to this order and that the Committee Comments to the Amendment to Rule 11(c), Alabama Rules of Appellate Procedure, be adopted to read in accordance with Appendix B to this order;

IT IS FURTHER ORDERED that the Committee Comments to Rule 1, Alabama Rules of Appellate Procedure, be adopted to read in accordance with Appendix C to this order;

IT IS FURTHER ORDERED that the amendment of Rule 11(c) and the adoption of the Committee Comments to Rule 1 and to the amendment to Rule 11(c) are effective immediately;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 1 and Rule 11:

"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."

Stuart, C.J., and Bolin, Parker, Shaw, Main, Wise, Bryan, Sellers, and Mendheim, JJ., concur.

Witness my hand this 15th day of June, 2018.



Clerk, Supreme Court of Alabama

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| <p>FILED June 15, 2018 12:59 pm Clerk Supreme Court of Alabama</p> |
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APPENDIX A

Rule 11(c)

Alabama Rules of Appellate Procedure

(c) Extension of Time for Completion of Record; Reduction in Time. The trial court for cause shown may extend the time for completing and filing the clerk's record and the reporter's transcript in a civil case, and the reporter's transcript of proceedings and the record on appeal in a criminal case; provided that a motion for extension shall have been made within the time originally prescribed or within the period of an extension previously granted. The trial court may grant a 7-day (1-week) extension of time to complete the reporter's transcript of proceedings in either a civil or criminal case. For good cause shown, the trial court may grant up to three (3) additional 7-day (1-week) extensions, but no more than a total of four (4) such extensions shall be granted by the trial court and in no event shall an extension be granted to a date later than 84 days (12 weeks) from the filing of the notice of appeal. The trial court may grant a 7-day (1-week) extension of time to complete the clerk's record in a civil case. For good cause shown, the trial court may grant one additional 7-day (1-week) extension, but no more than a total of two (2) such extensions shall be granted by the trial court and in no event shall an extension be granted to a date later than 42 days (6 weeks) from the filing of the notice of appeal. The trial court may grant a 7-day (1-week) extension of time to complete the record on appeal in a criminal case.

If the trial court is without authority to grant a further extension or has denied a request therefor, the appellate court may, on motion for good cause shown, grant a 7-day (1-week) extension for filing the clerk's record, the reporter's transcript, or the record on appeal in either a civil or criminal case; provided that a motion for extension shall have been received in the clerk's office of the appellate court within the time originally prescribed or within an extension previously granted. For good cause shown, the appellate court may grant additional 7-day (1-week) extensions; provided that a motion for extension shall have been received in the clerk's office of the appellate court within the time originally prescribed or within an extension previously granted.

The clerk of the trial court shall notify the parties to the appeal of any extension of time for completion of the record.

APPENDIX B

Committee Comments to Amendment to Rule 11(c)
Effective June 15, 2018

The amendment adds the last sentence of the first paragraph of subdivision (c), which provides that the trial court may grant one 7-day (1-week) extension for the preparation of the record on appeal in a criminal case.

APPENDIX C

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 Cumb. 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).