

IN THE SUPREME COURT OF ALABAMA
November 28, 2012

ORDER

IT IS ORDERED that Rule 18.4(g) and Rule 32.6, Alabama Rules of Criminal Procedure, be amended to read in accordance with Appendices A and C, respectively, and that Rule 32.7(e), Alabama Rules of Criminal Procedure, be adopted to read in accordance with Appendix D;

IT IS FURTHER ORDERED that the Committee Comments to the Amendment to Rule 18.4(g) Effective November 28, 2012, be adopted to read in accordance with Appendix B;

IT IS FURTHER ORDERED that the amendment of Rule 18.4(g) and Rule 32.6, the adoption of Rule 32.7(e), and the adoption of the Committee Comments to the Amendment to Rule 18.4(g) Effective November 28, 2012, are effective immediately;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 18.4, Rule 32.6, and Rule 32.7:

"Note from the reporter of decisions: The order amending, effective November 28, 2012, Rule 18.4(g) and Rule 32.6 and adopting, effective November 28, 2012, Rule 32.7(e) and the Committee Comments to Rule 18.4(g) Effective November 28, 2012, are published in that volume of Alabama Reporter that contains Alabama cases from ___ So. 3d."

Malone, C.J., and Woodall, Stuart, Bolin, Parker, Murdock, Shaw, Main, and Wise, JJ., concur.

APPENDIX A

Rule 18.4(g), Alabama Rules of Criminal Procedure

(g) Alternate Jurors.

(1) Number and qualifications. The court may in its discretion qualify such alternate jurors as it deems necessary, except that in capital cases the court shall qualify at least two (2) alternate jurors, as required by law. Alternate jurors shall be drawn from the venire in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the principal jurors, except that they shall not deliberate with the jury or vote upon the verdict unless designated to replace a principal juror.

(2) Retaining Alternate Jurors. The court may retain alternate jurors after the jury retires to deliberate. The court must ensure that a retained alternate does not discuss the case with anyone until that alternate replaces a juror or is discharged. If an alternate replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew.

(3) Strike List. If the court determines that more than two (2) alternate jurors should be selected in a capital case, or that one (1) or more alternate jurors should be selected in a noncapital case, then, unless the parties consent to the use of a lesser number, the minimum number of names required by subsection (f)(1) shall be increased by two (2) for each alternate juror to be selected; provided, however, that this increase in the number of names shall not apply for the first two (2) alternate jurors to be selected in a capital case.

(4) Procedure for selecting. When alternate jurors are being used, the parties shall strike from the list, according to the procedure provided in subsection (f)(1), until there remain twelve (12) names on the list. The last person or persons struck shall be the alternate or alternates, and if it becomes necessary for an alternate to replace a principal juror, then the last person struck shall be designated. The identity of alternate jurors shall not be divulged to the jurors until the jury retires for deliberation.

APPENDIX B

Committee Comments to the Amendment to
Rule 18.4(g) Effective November 28, 2012

Subsection (g) (2) represents a change in Alabama criminal trial practice and is modeled after Rule 24(c), Federal Rules of Criminal Procedure. When an alternate juror is temporarily excused but not discharged, the trial judge shall take appropriate steps to protect such juror from influence, interference, or publicity that might affect that juror's ability to remain impartial, and the trial judge may conduct brief voir dire to determine the alternate's impartiality before seating the alternate juror for any trial or deliberations. In addition, the trial judge shall instruct the alternate jurors who are retained as to their location while waiting as an alternate. Finally, if an alternate juror replaces a juror after deliberations have begun, the trial judge must instruct the jury to begin its deliberations anew in order to give the new juror the full benefit of the deliberative process.

APPENDIX C

RULE 32.6. COMMENCEMENT OF PROCEEDINGS.

(a) Form, Filing, and Service of Petition. A proceeding under this rule is commenced by filing a petition, verified by the petitioner or the petitioner's attorney, with the clerk of the court. A petition may be filed at any time after entry of judgment and sentence (subject to the provisions of Rule 32.2(c)). The petition should be filed by using or following the form accompanying this rule. If that form is not used or followed, the court shall return the petition to the petitioner to be amended to comply with the form. The petition shall be accompanied by two copies thereof. It shall also be accompanied by the filing fee prescribed by law or rule in civil cases in the circuit court unless the petitioner applies for and is given leave to prosecute the petition in forma pauperis. If the petitioner desires to prosecute the petition in forma pauperis, he or she shall file the "In Forma Pauperis Declaration" at the end of the form. In all such cases, the petition shall also be accompanied by a certificate of the warden or other appropriate officer of the institution in which the petitioner is confined, stating the amount of money or securities on deposit to the petitioner's credit in any account in the institution for the previous twelve (12) months, which certificate may be considered by the court in acting upon the petitioner's application for leave to proceed in forma pauperis. If the application to proceed in forma pauperis is granted, the filing fee shall initially be waived, but may be assessed as provided in Rule 32.7(e). Upon receipt of the petition and the filing fee, or an order granting leave to the petitioner to proceed in forma pauperis, the clerk shall file the petition and promptly send a copy to the district attorney (or, in the case of a petition filed in the municipal court, to the municipal prosecutor).

(b) Specificity. Each claim in the petition must contain a clear and specific statement of the grounds upon which relief is sought, including full disclosure of the factual basis of those grounds. A bare allegation that a constitutional right has been violated and mere conclusions of law shall not be sufficient to warrant any further proceedings.

(c) Notification of Appellate Court. If an appeal of the petitioner's conviction is pending, the clerk shall also

promptly send a copy of the petition to the appropriate appellate court, noting in the record the date and manner by which it is sent.

(d) Assignment of Judge. The proceeding shall be assigned to the sentencing judge where possible, but for good cause the proceeding may be assigned or transferred to another judge.

APPENDIX D

Rule 32.7(e), Alabama Rules of Criminal Procedure

(e) Assessment of Filing Fee. If, upon final disposition of the petition, the court finds that all the claims for relief are precluded for any of the reasons stated in Rule 32.2, are lacking in specificity as required by Rule 32.6(b), or fail to state a claim of law or fact that is meritorious, it may assess the filing fee, or any portion thereof, and order the correctional institution having custody of the petitioner to withhold 50% of all moneys the institution then has on deposit for the petitioner, or receives in the future for the petitioner, until the filing fee that has been assessed by the court has been collected and paid in full. The order shall also direct the institution to forward to the clerk of the court in which the petition was filed, at least once every three months until that portion of the filing fee assessed by the court is paid in full, any such moneys collected from the petitioner.