



# IN THE SUPREME COURT OF ALABAMA

April 4, 2023

## ORDER

IT IS ORDERED that Rule 39(d)(5), Rule 40(e), Rule 53, and Rule 54, Alabama Rules of Appellate Procedure, be amended to read in accordance with Appendices A, B, C, and D, respectively, to this order;

IT IS FURTHER ORDERED that the amendment of Rule 39(d)(5), Rule 40(e), Rule 53, and Rule 54 are effective October 1, 2023; and

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 39, Rule 40, Rule 53, and Rule 54:

**"Note from the reporter of decisions:** The order amending Rule 39(d)(5), Rule 40(e), Rule 53, and Rule 54, Alabama Rules of Appellate Procedure, effective October 1, 2023, is published in that volume of *Alabama Reporter* that contains Alabama cases from \_\_ So. 3d."

**Parker, C.J., and Shaw, Wise, Bryan, Sellers, Mendheim, Stewart, Mitchell, and Cook, JJ., concur.**

**Witness my hand and seal this 4th day of April, 2023.**

*Megan B. Rhodeseuk*

**Clerk of Court,  
Supreme Court of Alabama**

**FILED**  
**April 4, 2023**  
**Clerk of Court**  
**Supreme Court of Alabama**



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## APPENDIX A

### **Rule 39(d)(5), Ala. R. App. P.**

(5) If a party is not satisfied with the facts stated in the opinion or the unpublished memorandum of the court of appeals, a copy of a concise statement of the facts may be either included in the petition or attached to the petition. If a party is not satisfied with the facts stated in the main opinion or the unpublished memorandum of the court of appeals, but the party is satisfied with the facts as stated in a dissent or a special writing by a judge or judges of the court of appeals, the party shall indicate those facts with which the party is in agreement and indicate in which part of the dissent or special writing the facts are found.

(A) Statement of facts where an application for rehearing has been filed with the court of appeals after an opinion or an unpublished memorandum containing a statement of facts was issued.

(i) If a court of appeals has issued an opinion or an unpublished memorandum containing a statement of facts and the party applying for rehearing is not satisfied with that statement, the party applying for rehearing in that court may include in the application an additional or corrected statement of facts or the applicant's own statement of facts. If an applicant is not satisfied with the facts stated in the main opinion or the unpublished memorandum of the court



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of appeals, but the applicant is satisfied with the facts as stated in a dissent or a special writing by a judge or judges of the court of appeals, the applicant shall indicate those facts with which the applicant is in agreement and indicate in which part of the dissent or special writing the facts are found. If the court of appeals does not include the applicant's statement of facts in a subsequent opinion or memorandum, in order for the Supreme Court to consider those facts in addition to the facts as stated in the court of appeals' opinion or unpublished memorandum, the proposed statement of additional or corrected facts or the applicant's own statement of facts presented to the court of appeals in the application for rehearing must be copied verbatim and attached to or included in the petition for the writ of certiorari, with references to the pertinent portions of the clerk's record and the reporter's transcript.

(ii) If the petitioner proposes his or her own statement of facts, the petitioner must include a verification that this statement of facts is a verbatim copy of the statement presented to the court of appeals in the application for rehearing.



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(iii) If the petitioner does not present with the petition an additional or corrected statement of facts or the petitioner's own statement of facts, or indicate which part of the dissent or special writing the petitioner agrees with, it will be presumed that the petitioner is satisfied with the facts as stated in the court of appeals' main opinion or unpublished memorandum.

(B) Statement of facts where an application for rehearing has been filed with the court of appeals after an opinion or an unpublished memorandum that does not state the facts was issued.

(i) If a court of appeals has issued an opinion or an unpublished memorandum that does not contain a statement of facts, the applicant shall include in the application for rehearing the applicant's statement of facts. If the court of appeals does not include the applicant's statement of facts in a subsequent opinion or memorandum, a verbatim copy of the applicant's statement of facts as presented to the court of appeals must be either included in or presented as an attachment to the petition for the writ of certiorari, with references to the pertinent portions of the clerk's record and the reporter's transcript.



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(ii) The petitioner must verify that the statement of facts is a verbatim copy of the statement presented to the court of appeals in the application for rehearing.

(C) Statement of facts where no application for rehearing has been filed with the Court of Civil Appeals.

(i) If the petition for a writ of certiorari seeks review of a decision of the Court of Civil Appeals and the petitioner has not filed an application for rehearing with the Court of Civil Appeals, and if the Court of Civil Appeals issued an opinion or an unpublished memorandum that does not contain a statement of facts, the petitioner shall present to the Supreme Court, either in the petition or as an attachment to the petition for the writ of certiorari, the petitioner's statement of facts, with references to the pertinent portions of the clerk's record and the reporter's transcript. If the Court of Civil Appeals issued an opinion or an unpublished memorandum containing a statement of facts and the party petitioning for the writ of certiorari is not satisfied with that statement of facts, the petitioner may present to the Supreme Court, either in the petition or as an attachment to the petition for the writ



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of certiorari, a proposed additional or corrected statement of facts or the petitioner's own statement of facts, with references to the pertinent portions of the clerk's record and the reporter's transcript. If a petitioner is not satisfied with the facts stated in the main opinion or the unpublished memorandum of the Court of Civil Appeals, but the petitioner is satisfied with the facts as stated in a dissent or a special writing by a judge or judges of the Court of Civil Appeals, the petitioner shall indicate those facts with which the petitioner is in agreement and indicate in which part of the dissent or special writing the facts are found.

(ii) If the petitioner does not present with the petition an additional or corrected statement of facts or the petitioner's own statement of facts or indicate which part of the dissent or special writing the petitioner agrees with, it will be presumed that the petitioner is satisfied with the facts as stated in the Court of Civil Appeals' main opinion or unpublished memorandum; and



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## APPENDIX B

### **Rule 40(e), Ala. R. App. P.**

**(e) Statement of Facts to Be Contained in Application for Rehearing.** If a court of appeals has issued an opinion or an unpublished memorandum containing a statement of facts and a party applying for rehearing is not satisfied with that court's statement of the facts, the party applying for rehearing may present in the application for rehearing a proposed additional or corrected statement of facts or the applicant's own statement of facts. If the applicant is not satisfied with the facts stated in the main opinion or the unpublished memorandum of the court of appeals, but the applicant is satisfied with the facts as stated in a dissent or a special writing by a judge or judges of the court of appeals, the applicant shall indicate those facts with which the applicant is in agreement and indicate in which part of the dissent or special writing the facts are found. If the applicant does not present in the application an additional or corrected statement of facts or the applicant's own statement of facts, it will be presumed that the applicant is satisfied with the facts as stated in the court of appeals' main opinion or unpublished memorandum. If a court of appeals has issued an opinion or an unpublished memorandum that does not contain a statement of facts, the applicant shall include a statement of facts in the application for rehearing. See Rule 39(d)(5).



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## APPENDIX C

### **Rule 53. OPINIONS AND "NO OPINION" CASES OF THE SUPREME COURT**

**(a) Affirmance Without Opinion.** The Supreme Court may affirm a judgment or order of a trial court without an opinion if the court determines:

(1) That an opinion in the case would serve no significant precedential purpose; and

(2) That one of the following circumstances exists:

(A) The judgment or order appealed from is based on findings of fact that are not clearly, plainly, or palpably erroneous;

(B) The evidence adequately supports the jury verdict on which the judgment or order is based;

(C) In a nonjury case in which the judge has made no specific findings of fact, the evidence would support those findings that would have been necessary to support the judgment or order;

(D) The order of an administrative agency is sufficiently supported by the evidence in the record;

(E) The appeal is from a summary judgment, a judgment on the pleadings, or a





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judgment as a matter of law, and that judgment is supported by the record; or

(F) The court, after a review of the record and the contentions of the parties, concludes that the judgment or order was entered without an error of law.

**(b) Designation of Category.** When the Supreme Court affirms a judgment without an opinion, it shall in its order of affirmance designate the case as a "No Opinion" case and in its order of affirmance it shall also cite section (a)(1) of this rule and that subpart of section (a)(2) relied upon by the court in its decision to write no opinion.

**(c) Publication of Decisions.** The reporter of decisions shall publish all opinions of the Supreme Court in the official reports of Alabama decisions, but the text of an order of affirmance in a "No Opinion" case shall not be published in the official reports. The "No Opinion" cases shall be collected in a periodic "Table of Decisions Without Published Opinions," which shall be published in the official reports and which shall indicate the action taken in all "No Opinion" cases. However, if in a "No Opinion" case a Justice writes a special opinion, either concurring with or dissenting from the action of the court, the reporter of decisions shall publish that special opinion, along with a statement indicating the action to which the special opinion is addressed.

**(d) "No-Opinion" Affirmance Not Precedent.** An order of affirmance issued by the Supreme Court by which a judgment or order is affirmed without an opinion, pursuant to section (a), shall have no precedential value and shall not be cited in arguments or briefs and shall not be used by any court within this state, except for the purpose of establishing the application of the doctrine of law of the case, res judicata, collateral estoppel, double jeopardy, or procedural bar.



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**(e) Time of Publication.** An opinion of the Supreme Court shall not be published while an application for rehearing is pending. However, the delay in publication caused by this provision shall not affect the precedential value of an opinion.



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## APPENDIX D

### **Rule 54. OPINIONS AND "NO OPINION" CASES OF THE COURT OF CIVIL APPEALS AND THE COURT OF CRIMINAL APPEALS**

**(a) Affirmance Without Opinion.** The Court of Civil Appeals and the Court of Criminal Appeals may affirm a judgment or order of a trial court without an opinion if the court determines that an opinion in the case would serve no significant precedential purpose.

**(b) Memorandum Required.** In each case in which the court affirms the judgment or order appealed from without writing an opinion, the court shall designate the case as a "No Opinion" case, but the court shall write a memorandum addressing the appellant's contentions and giving a reason for rejecting them.

**(c) Publication of Decisions.** The reporter of decisions shall publish all opinions of the Court of Civil Appeals and the Court of Criminal Appeals in the official reports of Alabama decisions. The text of memorandums issued in "No Opinion" cases shall not be published in the official reports, but the reporter shall publish in those reports a periodic "Table of Decisions Without Published Opinions" for each court, which shall indicate the action taken in all "No Opinion" cases. However, if in a "No Opinion" case a Judge writes a special opinion, either concurring with or dissenting from the action of the court, the reporter of decisions shall publish that special opinion, along with a statement indicating the action to which the special opinion is addressed.

**(d) "No-Opinion" Affirmance Not Precedent.** An order of affirmance or a memorandum issued by the Court of Civil Appeals or the Court of Criminal Appeals by which a judgment or an order is affirmed without an opinion, pursuant to section (a) in a case designated as a "No-Opinion" case, shall have no precedential value and shall not be cited in arguments or briefs and shall not be used by any court within this state,



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except for the purpose of establishing the application of the doctrine of law of the case, res judicata, collateral estoppel, double jeopardy, or procedural bar.

**(e) Time of Publication.** An opinion of the Court of Civil Appeals or the Court of Criminal Appeals shall not be published while an application for rehearing is pending or while a petition for certiorari review is pending in the Supreme Court. However, the delay in publication caused by this provision shall not affect the precedential value of an opinion.