



IN THE SUPREME COURT OF ALABAMA

March 7, 2024

ORDER

IT IS ORDERED that Rule 10, Rule 11, Rule 21(a)(1)(F), and Rule 44, Alabama Rules of Appellate Procedure, be amended to read in accordance with Appendices A, C, E, and F, respectively, to this order;

IT IS FURTHER ORDERED that the Committee Comments to the amendments of Rule 10, Rule 11, and Rule 44 be adopted to read in accordance with Appendices B, D, and G, respectively, to this order;

IT IS FURTHER ORDERED that the amendments of Rule 10, Rule 11, Rule 21(a)(1)(F), and Rule 44 and the adoption of the Committee Comments to the amendments of Rule 10, Rule 11, and Rule 44 are effective immediately; and

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 10, Rule 11, Rule 21, and Rule 44:

"Note from the reporter of decisions: The order amending Rule 10, Rule 11, Rule 21(a)(1)(F), and Rule 44, Alabama Rules of Appellate Procedure, and adopting the Committee Comments to the amendments of Rule 10, Rule 11, and Rule 44, effective March 7, 2024, 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 7th day of March, 2024.

Megan B. Rhodeseck

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

**FILED
March 7, 2024
Clerk of Court
Supreme Court of Alabama**



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APPENDIX A

Rule 10. THE RECORD ON APPEAL

(a) Omitted Parts of Record. The record on appeal, in both civil and criminal appeals, shall not contain the following, unless some particular question is raised with respect thereto and decided in the trial court and unless specifically designated by a party:

(1) subpoenas or summons for any witness or the order therefor, nor for any defendant where there is an appearance for such defendant;

(2) motion and order of continuance;

(3) commission to examine a witness or certificate of a commissioner to a deposition or affidavit made to obtain such commission;

(4) pretrial discovery material that is not made a part of the trial court's proceedings;

(5) in criminal cases, the organization of the grand jury that found the indictment, nor the venire for any grand or petit jury, nor the organization of regular juries for the week or term at which the case was tried, nor the order of the court for service of the copy of the venire or the indictment upon the defendant or the sheriff's return to said order, unless some question thereto was raised before the trial court; provided, however, that nothing in this subsection shall be construed to excuse the court reporter from taking down such parts of the proceedings;

(6) juror questionnaires filed with the trial court, which shall be treated as provided in Rule 18.2(b), Alabama Rules of Criminal Procedure; and



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(7) electronic transmittals.

(b) Composition of the Record on Appeal—Civil. The "record on appeal" in a civil case shall be composed of two parts, one known as the clerk's record and the other known as the reporter's transcript. The parties have the right, under (1) below, to a designated clerk's record, assembled pursuant to Rule 11(a)(1). The parties have the right, under (2) below, to a designated transcript of the evidence, assembled pursuant to Rule 11(a)(2). The clerk shall combine both parts, clerk's record and reporter's transcript, into a single record on appeal for transmittal to the appropriate appellate court, pursuant to Rule 11(a)(3).

In the event that there is no reporter's transcript or the appellant decides not to order a transcript, then the appellant shall so indicate by checking the appropriate space on Form 1, Notice of Appeal to the (Supreme) Court (of Civil Appeals) of Alabama, or so indicate on whatever notice of appeal form is used.

The record on appeal shall be on letter-size pages (8½ inches by 11 inches), composed of a copy of the clerk's record and the original of the reporter's transcript and separated into volumes not to exceed 200 pages each, with the pages of each of the two parts numbered consecutively on each page, pursuant to Rule 11(a)(3). If an e-record is prepared, it shall be saved in PDF format with a resolution of 200 DPI or higher. If a paper record is prepared, each volume shall be bound at the left side, and all clasps and staples used to bind the record on appeal shall be covered by tape so as to prevent any injury to those handling the record, and any other fastener that may cause injury shall likewise be covered with tape.

(1) *Clerk's Record.* The clerk's record shall consist of such copies as the parties may designate of the original documents, written charges, papers, including but not limited to docket entries, minute entries, and exhibits (see Rule 11(e)) on file in the trial court clerk's office, plus the indices prepared in accordance with Rule 11(a)(1), and a copy of the written designations of the clerk's record.



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The clerk's record shall be on letter-size pages, with pages numbered consecutively, a page number being on each page.

A party shall have the right to designate any parts or all of such papers, written charges, documents, exhibits, etc., by a written designation filed with the clerk of the trial court. However, if all of such records are designated, there shall, nevertheless, be omitted therefrom those items listed in (a), unless such item or items are specifically described in the written designation.

The appellant shall, within 7 days (1 week) after filing the notice of appeal, order and file with the clerk of the trial court and serve on the appellee a written designation, which shall contain either a description of the parts of the clerk's records that the appellant intends to present on appeal or a designation of all of such records. If less than all of the proceedings are designated, in addition thereto the appellant shall serve on the appellee a statement of the issues the appellant intends to present on appeal. If the appellee deems other parts of the papers, written charges, documents, exhibits, etc., to be necessary, the appellee shall, within 7 days (1 week) after service of the designation of the appellant, file with the clerk of the trial court and serve on the appellant a designation of additional parts to be included or a recital that all of such records are to be included. If the appellant refuses to order such parts or the entire clerk's file, the appellee may either order the parts or apply to the trial court for an order requiring the appellant to do so. At the time of ordering, a party shall make satisfactory arrangements with the clerk for the payment of costs of copying the clerk's record.

Designated original photographs which were offered or admitted as exhibits shall be placed on pages in the clerk's record by a suitable attachment or cohesive method. Designated documents incapable of being legibly or otherwise



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copied or scanned, including those of unusual weight or bulk, and physical exhibits shall be made a part of the clerk's record by reference but placed in a suitable separate container for transmittal to the appellate court.

(2) *Reporter's Transcript.* The reporter's transcript shall consist of the typewritten original of the transcript of the proceedings containing such parts of the proceedings as are designated, plus a copy of the transcript purchase order, and an index.

The reporter's transcript shall be on letter-size pages, with pages numbered consecutively, a page number being on each page.

The parties may designate parts or all of the proceedings as they deem necessary for inclusion in the reporter's transcript. If the appellant urges on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the reporter's transcript all evidence relevant to such finding or conclusion.

The appellant shall, within 7 days (1 week) after filing the notice of appeal, pay the court reporter the estimated cost of the reporter's transcript and complete and file Part I of Form 1A, Transcript Purchase Order of Appellant–Civil, and distribute copies of the form as indicated on the form. If less than all the proceedings are designated, the appellant shall attach a statement of the issues the appellant intends to present on appeal to page 5 of Form 1A, Transcript Purchase Order of Appellant–Civil, and distribute the copies as indicated on the form. On the date the transcript purchase order is received by the court reporter, the court reporter shall complete Part II of the form and distribute the copies of the form as indicated on the form. On the date the transcript is filed in the trial court, the court reporter shall complete Part



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III of Form 1A, Transcript Purchase Order of Appellant–Civil, and distribute the copies of the form as indicated on the form.

Once the court reporter has certified on Part II of Form 1A, Transcript Purchase Order of Appellant–Civil, that the court reporter has been paid the estimated cost of the reporter's transcript, the court reporter shall complete the transcript, within the time designated by these rules.

If the appellee deems that other parts of the proceedings should be included or that the entire proceeding should appear in the reporter's transcript, the appellee shall, within 7 days (1 week) after receipt of the transcript purchase order, pay the court reporter the estimated cost of transcribing that part of the proceedings the appellee has deemed necessary to be included in the record, and complete and file Part I of Form 1B, Transcript Purchase Order of Appellee–Civil, and distribute copies of the form as indicated on the form. On the date the transcript purchase order is received by the court reporter from the appellee, the court reporter shall complete Part II of the form and distribute copies of the form as indicated on the form. If the appellant did not order any part of the transcript, then on the date the transcript is filed in the trial court, the court reporter shall complete Part III of Form 1B, Transcript Purchase Order of Appellee–Civil, and distribute the copies of the form as indicated on the form.

Once the court reporter has certified on Part II of Form 1B, Transcript Purchase Order of Appellee–Civil, that the court reporter has been paid the estimated cost of transcribing that part of the proceedings the appellee has deemed necessary to be included in the record, the court reporter shall complete that part of the transcript within the time designated by these rules.

At any time, the appellee may apply to the trial court for an order requiring the appellant to reimburse the appellee for



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any or all of the payment for the transcript order made to the court reporter by the appellee.

(c) Composition of the Record on Appeal—Criminal. The "record on appeal" in a criminal case shall be composed of two parts, one known as the clerk's record and the other known as the reporter's transcript. The record on appeal shall be on letter-size pages (8½ inches x 11 inches), separated into volumes not to exceed 200 pages each. The clerk's portion of the record on appeal shall appear first, with the pages numbered consecutively on each page, beginning with the number one. The reporter's transcript of the proceedings shall follow the clerk's record and shall be numbered consecutively on each page, beginning with the number one.

If an e-record is prepared, it shall be saved in PDF format with a resolution of 200 DPI or higher. If a paper record is prepared, each volume shall be bound at the left side, and all clasps and staples used to bind the record on appeal shall be covered by tape so as to prevent any injury to those handling the record, and any other fastener that may cause injury shall likewise be covered with tape.

(1) *Clerk's Record.* The clerk's portion of the record, with the exception of those items listed in subdivision (a) of this rule (unless those items listed in subdivisions (a)(1) through (5) are specifically designated in writing by the parties at the time written notice of appeal is filed, or if notice of appeal is given orally, within 7 days (1 week) after oral notice of appeal is given) shall include copies of the case action summary sheet(s), papers, documents, written charges, and exhibits, etc., in the case unless such papers, documents, and exhibits, etc., are incapable of being legibly copied or scanned. The originals of papers, documents, and exhibits that are incapable of being legibly copied or scanned, including those of unusual weight and bulk, shall be made a part of the record on appeal by reference, and shall be retained in the office of the clerk of the trial court. No original papers, documents, or exhibits, and no juror questionnaires shall be included in the



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clerk's record unless ordered by the Court of Criminal Appeals, in which event any originals filed in that court shall be returned to the clerk of the trial court upon final disposition of the appeal. The original reporter's transcript of the proceedings and the clerk's record, plus indexes of those documents and exhibits that are included and those that are made a part of the record on appeal by reference only, shall be combined as provided in this rule to make the record on appeal. The clerk's record shall also include a certification that all documents and exhibits that are made a part of the record on appeal by reference only are available upon order of the appellate court. If original papers, documents, and exhibits, etc., are ordered by the appellate court, they shall be attached to pages in the clerk's supplemental record by suitable attachment or cohesive method unless the originals are incapable of being suitably attached, in which event they shall be properly identified and placed in a suitable separate container for transmittal to the appellate court.

(2) *Reporter's Transcript.* The reporter's transcript shall contain the typewritten original transcript of all proceedings in the case specifically designated on Form 1C, Reporter's Transcript Order–Criminal; provided, however, that those items listed in subdivision (a) of this rule shall not be designated for inclusion in the reporter's transcript unless some question regarding those items was raised before the trial court. An index of the exhibits and testimony of the witnesses, plus a copy of the reporter's transcript order, shall be included at the beginning of the reporter's transcript.

Unless a stipulation of facts is available or the parties stipulate that only questions of law are involved and the trial court certifies the questions, Form 1C, Reporter's Transcript Order–Criminal, shall be completed by the appellant and shall be filed with the clerk of the trial court at the time the written notice of appeal is filed. If notice of appeal is given orally, the Reporter's Transcript Order–Criminal shall be



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filed within 7 days (1 week) after the oral notice of appeal is given. On the same date the transcript order is filed with the clerk of the trial court, the appellant shall mail or electronically transmit copies of the form to the clerk of the Court of Criminal Appeals, the district attorney, the attorney general, and each court reporter who reported proceedings designated for inclusion in the reporter's transcript. Unless the defendant has previously been adjudged indigent in the matter appealed or is permitted to proceed on appeal as an indigent, the appellant shall certify on the transcript order that satisfactory financial arrangements have been made with each court reporter responsible for preparing a portion of the reporter's transcript.

The appellant will not be permitted to raise any issue on appeal relating to any proceedings in the case that are not specifically designated in the transcript order unless those proceedings were not required by law or rule to be designated; provided, however, that a designation of the "trial proceedings" on the reporter's transcript order shall be deemed to include the judgment and sentence proceedings in the case. All other proceedings that are requested must be separately requested on the reporter's transcript order.

The reporter's transcript order may, without leave of the Court of Criminal Appeals, be (1) amended to include additional proceedings or (2) filed after the time provided in this rule has expired, provided that the form is accompanied by a certification that the appellant has consulted the court reporter(s) affected and has been assured that preparation of a transcript of the designated proceeding(s) can and will be completed and filed with the clerk of the trial court within the time provided in these rules or within any extension in effect at the time the form is filed. A copy of the certification shall be served by the appellant on all persons entitled to service of a copy of the reporter's transcript order.



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If the certification referred to herein cannot be made, leave to amend the reporter's transcript order or to file the reporter's transcript order late may be granted by the Court of Criminal Appeals for good cause shown upon motion by the appellant; provided, however, that permission shall not be granted unless the appellant certifies in the motion that the appellant has consulted the court reporter(s) affected and has been assured that the proceedings requested can be completed and filed within a specified number of days from the granting of the motion.

On the date the reporter's transcript order is received, any court reporter who has not received satisfactory financial arrangements for preparation of his or her portion of the reporter's transcript shall complete Form 1D, Notice of Insufficient Financial Arrangements (Criminal), and shall file the original with the clerk of the Court of Criminal Appeals and serve copies on the appellant and the attorney general; provided, however, that Form 1D shall not be filed in an appeal from any proceeding in which the appellant proceeded at trial as an indigent or has been granted permission to proceed on appeal in forma pauperis as provided in Rule 24, because financial arrangements with the court reporter are not required in these instances. The Notice of Insufficient Financial Arrangements (Criminal) shall state the date the original was forwarded to the clerk of the Court of Criminal Appeals. Within 14 days (2 weeks) after the notice is forwarded to the clerk of the Court of Criminal Appeals, the appellant shall file an affidavit with the clerk of the Court of Criminal Appeals stating that the court reporter(s) has/have been paid for preparing the transcript or an affidavit of the court reporter stating that adequate financial arrangements have been made. If one of the required affidavits is not filed with the clerk of the Court of Criminal Appeals within the required time, then the appeal shall be dismissed and will not be reinstated absent good cause shown.



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In all cases in which the appellant proceeded in the trial court as an indigent and in all cases in which the court reporter has not filed a Notice of Insufficient Financial Arrangements (Criminal) after receipt of the reporter's transcript order, the court reporter shall complete his or her portion of the reporter's transcript within the time designated by these rules or within any extension that has been granted. The fact that an appellant is not granted permission to proceed as an indigent until after the appeal is filed does not affect the time prescribed in these rules for completion of the reporter's transcript.

(d) Statement of the Evidence or Proceedings When No Report Was Made or When a Transcript Is Unavailable. If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. If the appellant prepares such a statement, the appellant shall serve it on the appellee within 28 days (4 weeks) after filing the notice of appeal; the appellee, within 14 days (2 weeks) after service, may serve on the appellant objections or proposed amendments to the statement. If the appellee serves no objection or proposed amendments, then, within 21 days (3 weeks) after the statement was served on the appellee, the appellant shall file the statement with the trial court for approval. If the appellee serves on the appellant any objections or proposed amendments, then, within 7 days (1 week) after service, the appellant shall file the statement and any objections or proposed amendments with the trial court for settlement and approval. Within 21 days (3 weeks) after the filing, the trial court shall rule, settling any questions regarding the objections and proposed amendments, and issuing an approved statement of the evidence or proceedings. The statement, either as approved by the court or as issued by the court after its ruling, shall be filed with the clerk of the trial court, who shall include it in the record on appeal.

(e) Agreed Statement as the Record on Appeal. In lieu of the record on appeal as defined in subdivision (a) of this rule, the parties may



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prepare and sign a statement of the case showing how the issues presented by the appeal arose and how they were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the court may consider necessary to present fully the issues raised by the appeal, shall be approved by the trial court and shall then be certified to the appellate court to which the appeal is taken as the record on appeal, and it shall be transmitted thereto by the clerk of the trial court within the time provided by Rule 11.

(f) Supplementing or Correcting the Record—Civil. If admitted or offered evidence that is material to any issue on appeal is omitted from the record after being designated for inclusion as required in Rule 10(b), or if any question arises as to whether the record correctly reflects what occurred in the trial court and the parties cannot stipulate what action should be taken to supplement or correct the record, the appellant or the appellee may file with the trial court a motion to supplement or correct the record on appeal; provided that, if a party is seeking to have included in the record a transcript of proceedings that was omitted from the reporter's transcript, the party must file with the motion copies of the transcript purchase order as proof that the omitted portions were originally requested as required by Rule 10(b). Any party filing a motion with the trial court pursuant to this rule shall file a copy of the motion with the clerk of the appellate court and shall serve a copy on the appropriate court reporter, if the reporter's transcript is to be supplemented or corrected, and on all other parties. Within 14 days (2 weeks) after the filing of a motion pursuant to this rule or after the parties have stipulated as to what action should be taken, the trial court shall enter such orders as are necessary to ensure that the record is complete and that it conforms to the truth. Failure by the trial court to rule on any motion filed in accordance with this rule within that 14-day (2-week) period shall constitute a denial of the motion as of the date of the expiration of the period.

Any dissatisfied party may, within 7 days (1 week) after the entry of an order on a motion to supplement or correct the record, or, if no order



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is entered, within 7 days (1 week) of the expiration of the 14-day (2-week) period provided in this rule for entry of an order by the trial court, seek appropriate relief in the appellate court.

The appellate court may, on the motion of a party or on its own initiative, order that a supplemental or corrected record be certified and transmitted to the appellate court if necessary to correct an omission or misstatement; provided that, if the party is seeking to have included a transcript of proceedings that was omitted from the reporter's transcript, the party must file with the motion copies of the transcript purchase order as proof that the omitted portions were originally requested as required by Rule 10(b).

Every order of the trial court or appellate court directing that the record on appeal be supplemented or corrected shall be filed with the clerk of the court entering the order, who shall forthwith serve a copy of the order on each party, on the clerk of the other court involved, and, if the order requires that the reporter's transcript of the proceedings be supplemented or corrected, on the appropriate court reporter.

(1) *Briefs.* Where relief is sought pursuant to this rule, the running of the time for filing briefs is not suspended. A party may, however, move the appellate court to suspend the time for filing briefs. Such a motion must clearly indicate each and every document and/or transcript that has been omitted from the record on appeal and its relevance to the appeal.

(2) *Supplemental Records.* The provisions of these rules relating to the assembling and filing of the original record on appeal shall apply to any supplemental or corrected records required to be prepared under this rule, except that the court reporter's supplemental or corrected transcript shall be filed with the clerk of the trial court within 7 days (1 week) from the date the order relating thereto is filed with the clerk of the trial court, and the clerk of the trial court shall file the supplemental or corrected record on appeal with the appellate court within 7 days (1 week) from receipt of the reporter's



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transcript, or if there is no reporter's transcript, within 7 days (1 week) from the filing in the trial court of the order of the trial court or appellate court directing that the record on appeal be supplemented or corrected. The trial court may grant to either the clerk of the trial court or the court reporter an extension of time of 7 days (1 week) to complete either the clerk's supplemental or corrected record or the reporter's supplemental or corrected transcript, but in no event to a date later than 21 days (3 weeks) from the filing in the trial court of the order directing that the record on appeal be supplemented or corrected.

(g) Supplementing or Correcting the Record—Criminal. If admitted or offered evidence that is material to any issue on appeal is omitted from the record, or if any question arises as to whether the record correctly reflects what occurred in the trial court and the parties cannot stipulate as to what action should be taken to supplement or correct the record, the appellant may, within 14 days (2 weeks) after the date shown on the copy of the certificate of completion of the record on appeal, file a motion with the clerk of the trial court to supplement or correct the record on appeal; provided that, if the appellant is seeking to have included a transcript of proceedings that was omitted from the reporter's transcript, the appellant must file with the motion copies of the reporter's transcript order as proof that the omitted portions were originally requested as required by Rule 10(c). The appellee may file a motion to supplement or correct the record on appeal within 14 days (2 weeks) after the filing of the appellant's brief. Any party filing a motion with the trial court pursuant to this rule shall serve a copy of the motion on the clerk of the appellate court and on all other parties, which copy shall state thereon the date on which the motion was filed with the clerk of the trial court. If the reporter's transcript is to be corrected or supplemented, the party filing the motion shall also serve a copy of the motion on the appropriate court reporter(s). If the appellant is seeking to have the reporter's transcript supplemented, the copy of the motion served on the clerk of the appellate court shall be accompanied by a copy of the reporter's transcript order. Within 14 days (2 weeks) after the filing of a motion pursuant to this rule or of a stipulation by the parties, the trial court



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shall enter such orders as are necessary to ensure that the record is complete and that it conforms to the truth.

All orders of the trial court disposing of motions under this rule shall be filed with the clerk of the trial court within 14 days (2 weeks) from the filing of such motions, and the clerk of the trial court shall forthwith serve a copy thereof on each party, on the clerk of the appellate court in which the appeal is pending, and on each court reporter who is affected by the order. Failure by the trial court to rule on a motion, except a motion to supplement the reporter's transcript, filed in accordance with this rule within the time period permitted hereunder, shall constitute a denial of the motion as of the date of the expiration of the 14-day (2-week) period. If any properly filed motion to supplement the reporter's transcript is not denied by the trial court within the 14 days (2 weeks) permitted for disposition hereunder, such motion shall be deemed granted as of the date of the expiration of the period.

Any dissatisfied party may, within 7 days (1 week) after entry of an order denying a motion under this rule, or, if no order is entered within 7 days (1 week) of the expiration of the 14-day (2-week) period provided in this rule for entry of an order by the trial court, seek appropriate relief in the appellate court.

The appellate court may, on motion of a party or on its own initiative, order that a supplemental or corrected record be certified and transmitted to the appellate court if necessary to correct an omission or misstatement; provided that, if the appellant is seeking to have included a transcript of proceedings that was omitted from the reporter's transcript, the appellant must file with his or her motion in the appellate court copies of the reporter's transcript order as proof that the omitted portions were originally requested as required by Rule 10(c).

(1) *Briefs.* The running of the time for filing briefs pursuant to Rule 31 shall be suspended upon the filing of a motion with the clerk of the trial court pursuant to this rule, until the date the motion is denied. If the motion is granted, the running of the time for filing briefs shall be suspended



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until the record on appeal is corrected or supplemented and filed in accordance with subsection (2) of this subdivision. Where relief is sought from the action of the trial court, the appellate court, on motion of a party, may suspend the running of the time for filing briefs until a time certain to be determined by the appellate court if the court concludes that such action is necessary and justified because of an incomplete or incorrect record on appeal, but in the absence of an order of the appellate court suspending the running of the time, the running of the time is not suspended.

(2) *Supplemental Records.* The provisions of these rules relating to the assembly and filing of the original record on appeal shall apply to any supplemental or corrected records required to be prepared under this rule, except that the court reporter's supplemental transcript shall be filed with the clerk of the trial court within 21 days (3 weeks) from the filing of the motion to supplement unless the motion is denied by the trial court within the 14-day (2-week) period from the filing of the motion. The court reporter's corrected transcript shall be filed with the clerk of the trial court within 7 days (1 week) from the date the order relating thereto is filed with the clerk of the trial court, and the clerk of the trial court shall file the amended or corrected record on appeal with the appellate court within 7 days (1 week) from receipt of the reporter's transcript, or, if there is no reporter's transcript, within 21 days (3 weeks) from the filing in the trial court of the order of the trial court or the appellate court directing that the record on appeal be supplemented or corrected.

The trial court may grant to either the clerk of the trial court or the court reporter an extension of time of 7 days (1 week) to complete either the clerk's supplemental or corrected record or the reporter's supplemental or corrected transcript, respectively, but in no event to a date later than 35 days (5 weeks) from the filing of the motion to supplement or correct the record.



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APPENDIX B

Committee Comments to Amendment of Rule 10 Effective March 7, 2024

Rule 10 has been updated to reflect that most appellate records are now compiled and filed electronically.



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APPENDIX C

Rule 11. COMPLETION AND TRANSMISSION OF THE RECORD

(a) Mechanics of Completion and Transmission of Record— Civil.

(1) *Clerk's Record.* The clerk's record shall be assembled, numbered, and completed and a certificate of completion filed with the appellate court by the clerk of the trial court within 28 days (4 weeks) of the filing of the notice of appeal, unless the time is shortened or extended by an order entered pursuant to subdivision (c) of this rule. The clerk's record shall contain an index of papers, documents, written charges, exhibits, etc., included in the clerk's record, an index of those documents and exhibits to be filed in the appellate court in a separate container, and also an index of any documents and exhibits omitted from the clerk's record with a full description of each item. See Form 4 for certificate of completion.

When copying original papers, in preparation of the clerk's record, the trial clerk shall cover any page numbers that appear on the original papers. The clerk shall then arrange the papers designated in the order of filing and number each page consecutively, placing the numbers in the upper right corner of the respective pages.

The clerk shall make available to the parties the original papers, documents, written charges, exhibits, etc., or supply, if ordered, copies of the clerk's record to the parties. See (a)(3).

When the clerk of the trial court files the certificate of completion in the appellate court, the clerk shall also serve on each party and the court reporter a copy of the certificate, naming the appellate court in which it is filed, and indicating thereon the last page number of the clerk's record. The clerk



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shall also serve on each party a copy of the indices required to be included in the clerk's record.

The filing of the clerk's certificate of completion is effectuated when the electronic record is successfully uploaded onto the online system pursuant to Rule 57 or, when filed in paper format, the certificate is received in the office of the clerk of the appellate court, except that it shall be deemed filed on the day of mailing if certified, registered, or express mail is utilized in the transmittal or if it is dispatched to a third-party commercial carrier for delivery within three calendar days.

If more than one appeal is taken, each appellant shall comply with the provisions of Rule 10(a) and (b) and this subdivision, and a single clerk's record shall be completed and the certificate of completion filed with the appellate court within 28 days (4 weeks) from the filing of the first notice of appeal.

(2) *Reporter's Transcript.* The court reporter shall prepare and file the designated reporter's transcript with the clerk of the trial court within 56 days (8 weeks) from the date of the notice of appeal, unless the time is shortened or extended by an order entered pursuant to subdivision (c) of this rule. The first item of the reporter's transcript shall consist of the written designations of each of the parties, and the first page of such item shall bear page number "1." Each page of the transcript shall be numbered consecutively, and the page number shall be placed in the upper right corner. The next item shall be the reporter's index, followed by the transcript of the proceedings as designated. The final item shall be a copy of the completed page 3 of Form 1A, Transcript Purchase Order of Appellant–Civil, or a copy of the completed page 2 of Form 1B, Transcript Purchase Order of Appellee–Civil, whichever is appropriate. Copies of the final item shall be sent by the reporter to each party involved in the appeal



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and the clerk of the appellate court on the day the transcript is filed with the clerk of the trial court. See Form 1A, Transcript Purchase Order of Appellant–Civil, and Form 1B, Transcript Purchase Order of Appellee–Civil.

If more than one appeal is taken, each appellant shall comply with the provisions of Rule 10(a) and (b) and this subdivision, and a single reporter's transcript shall be completed and filed in the trial court within 56 days (8 weeks) from the filing of the first notice of appeal.

(3) *Record on Appeal.* The clerk shall assemble the record on appeal, consisting of the clerk's record and the reporter's transcript, within 7 days (1 week) from the date the reporter's transcript is filed in the trial clerk's office, or, in the event there is no reporter's transcript, within 28 days (4 weeks) of the filing of the notice of appeal, unless the time is shortened or extended by an order entered pursuant to subdivision (c) of this rule. Within the time fixed above, the clerk shall file a certificate of completion of the record on appeal with the clerk of the appellate court and shall simultaneously serve copies of the certificate of completion on each party to the appeal. The certificate of completion shall state that the record on appeal is assembled and shall state the date the certificate was forwarded to the clerk of the appellate court. See Form 6 for certificate of completion.

The record on appeal shall be separated into volumes not to exceed 200 pages each. If an e-record is prepared, it shall be saved in PDF format with a resolution of 200 DPI or higher. If a paper record is prepared, each volume shall be bound at the left side, and all clasps and staples used to bind the record on appeal shall be covered by tape so as to prevent any injury to those handling the record, and any other fastener that may cause injury shall likewise be covered with tape.



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The clerk shall make the record on appeal available to the parties for preparation of briefs. If a party so requests, the clerk of the trial court shall supply copies of the record on appeal upon payment of the cost of copying to the clerk.

The clerk of the trial court shall file the record on appeal with the clerk of the appellate court within 14 days (2 weeks) after the filing of appellee's brief in the appellate court or its due date therein, or at such earlier time as the parties may agree or the appellate court may order. See Form 10.

The filing of the certificate of completion of the record on appeal is effectuated when the certificate is received in the office of the clerk of the appellate court, except that it shall be deemed filed on the day of mailing if certified, registered, or express mail is utilized in the transmittal or if it is dispatched to a third-party commercial carrier for delivery within three calendar days.

(b) Mechanics of Completion and Transmission of Record—Criminal. The court reporter shall prepare the reporter's transcript as provided in Rule 10(c) and shall file it in electronic format with the clerk of the trial court within 56 days (8 weeks) from the date of the notice of appeal, unless the time is shortened or extended by an order entered pursuant to subdivision (c) of this rule. In addition to the electronic transcript, a paper copy shall also be provided to the clerk of the trial court. The court reporter shall serve upon the attorney for the appellant, the attorney general, the district attorney, and the clerk of the appellate court a notice that the transcript of proceedings has been filed with the clerk of the trial court. See Form 13. The clerk of the trial court shall assemble the record on appeal as provided in Rule 10(c).

In addition, the clerk of the trial court shall also transmit a certified copy of the record on appeal to the attorney general, and to the defendant or the defendant's attorney, and shall retain the other certified copy in the clerk's office. See Form 14. In addition to any electronic copy, the



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clerk of the trial court shall also mail a paper copy of the record on appeal to the defendant or the defendant's attorney.

The clerk of the trial court shall file the record on appeal with the clerk of the appellate court within 7 days (1 week) from the date of the filing of the reporter's transcript in the clerk's office or, in the event there is no reporter's transcript, within 28 days (4 weeks) of the filing of the notice of appeal, unless the time is shortened or extended by an order entered pursuant to subdivision (c) of this rule. The clerk of the trial court shall also file with the record on appeal a certificate of completion of the record on appeal, and shall simultaneously serve copies of the certificate of completion on the defendant, or the defendant's attorney, and the attorney general of Alabama. The certificate of completion shall state that the record on appeal has been forwarded to the clerk of the appellate court and shall state the date the certificate was forwarded to the clerk of the appellate court.

The filing of the record on appeal in the office of the clerk of the appellate court is effectuated when the record is received in the office of the clerk of the appellate court, except that it shall be deemed filed on the date of mailing if certified or registered mail is utilized in the transmittal. The clerk of the appellate court shall notify the defendant, or the defendant's attorney, and the attorney general of the date that the record on appeal was filed in the appellate court.

The clerk of the trial court shall include in the record on appeal, and in each certified copy thereof, an index to the entire record, including an index to the documents, papers, charges, and exhibits therein contained and an index to documents and exhibits incapable of being legibly or otherwise copied.

(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



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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.

(d) Record for Preliminary Hearing in the Appellate Court.

If prior to the time the record in a civil or a criminal case is transmitted to the appellate court, a party desires to make in the appellate court a motion for dismissal, for stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, for any intermediate order, or to bring to the attention of the court any other matter, the clerk of the



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trial court, at the request of any party, shall transmit to the appellate court certified copies of such parts of the original record as any party shall designate.

(e) Custody of Exhibits. The court reporter shall file all exhibits, including photographs, with the clerk of the trial court within 14 days (2 weeks) of the notice of appeal in both civil and criminal cases, assembled in a flat file. All exhibits incapable of being assembled in a flat file shall be delivered to the clerk's office in a suitable separate container. An index of the exhibits, including those that are delivered to the clerk of the trial court in a separate container, shall be included in the flat file. The index shall also indicate those exhibits that were offered and not admitted, as well as the exhibits that were admitted.



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APPENDIX D

Committee Comments to Amendment of Rule 11 Effective March 7, 2024

Rule 11 has been updated to reflect that most appellate records are now compiled and filed electronically.



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APPENDIX E

Rule 21(a)(1)(F), Ala. R. App. P.

(F) Appendix. An appendix including copies of all parts of the record that are essential to understanding the matters set forth in the petition, such as the order or orders of which the petitioner seeks review, all court filings (by any party) directly connected to the order or orders, and any transcripts of proceedings that resulted in the order or orders. The appellate court may, in its discretion, direct any deficiency in documents included in the appendix to be corrected or the petition dismissed. The appendix shall contain an index listing separately each document in the appendix. The appendix shall be separated from the petition by a divider or tab, and each document within the appendix shall be separated by a divider and appropriate tab to identify and assist in locating the documents.



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APPENDIX F

Rule 44. CONSTITUTIONAL QUESTIONS

(a) Service Generally. If the validity of any statute, executive or administrative order, municipal ordinance, franchise or written directive of any governmental officer, agent, or body is raised in the appellate court, and the State, municipal corporation, or other governmental body which enacted or promulgated such questioned order is not a party to the proceeding, then:

(1) within seven days after the party raising such question receives the appellate court's notice of docketing, the party shall serve upon the attorney general, the city attorney, or the chief legal officer of the governmental body whose order is challenged a copy of the docketing statement or another statement sufficient to identify the case number of the appeal, the statute or order challenged, and any ground for the challenge; and

(2) when the party files any brief in the appeal, the party shall serve a copy of its brief on the governmental body's chief legal officer.

(b) Service on the Attorney General. Service required by this rule on the attorney general shall be by email to an electronic address designated by the attorney general for this purpose.

(c) Certificate of Service. Any brief covered by this rule shall include a certificate of service showing that it was served on the relevant governmental body's chief legal officer in compliance with this rule.

(d) Right to be Heard.

(1) The State, municipal corporation, or other governmental body shall be entitled to file a brief. Unless otherwise provided by the court, the brief shall be filed within



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the time allowed the party whose position the brief will support, or, if in support of neither party, within the time allowed for filing the petitioner's or appellant's brief.

(2) If the court schedules oral argument, the governmental body may move to participate in oral argument. Such requests shall be freely granted, but will not cause a party to lose equal time in oral argument.

(e) Notice. Except by special order of the court, in the absence of such notice and certificate of service, the appellate court will not rule until the notice contemplated by this rule has been given to the appropriate governmental body and the said governmental body or chief legal officer has been given such opportunity to respond as shall be set by the court.



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APPENDIX G

Committee Comments to Amendment of Rule 44 Effective March 7, 2024

The amendment to Rule 44(a) requires additional, earlier notice to State and local governments about appeals that challenge the validity of their statutes, ordinances, etc. The party challenging the governmental body's law can satisfy this obligation by providing a copy of the docketing statement if it is sufficient to identify the nature of the party's challenge. If the docketing statement does not identify the nature of the party's challenge -- for example, the appellant's docketing statement does not identify the challenge that the appellee is raising -- the party raising the challenge should provide the governmental body some other written statement that provides sufficient notice.

The addition of subsection (b) ensures a consistent form of service on the attorney general when the State has not yet appeared in a proceeding.

Subsection (c) carries forward the certificate-of-service requirement that had previously appeared in subsection (b).

Because Rule 44(a)(1) ensures that an affected governmental body will receive notice of an appeal earlier in the appellate process, subsection (d)(1) provides that the governmental body's brief will be due within the time allowed the party whose position the brief will support, or, if in support of neither party, within the time allowed for filing the petitioner's or appellant's brief. This change ensures that any party to the appeal will have the opportunity to respond to the governmental body's brief during the ordinary briefing schedule, either in an appellee's brief or appellant's reply brief.

Subsection (d)(2) requires a governmental body to move for leave to participate in oral argument. The previous version of the rule provided that the governmental body was "entitled to be heard orally," but the rule did not address other information about that right, including how oral-



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argument time should be allotted. By requiring a governmental body to move for leave to participate in oral argument, while providing that such requests shall be freely granted, this amendment will encourage parties and the governmental body to confer regarding how oral-argument time should be allotted before a governmental body seeks leave to participate in oral argument.

Subsection (e) carries forward the notice requirement that had previously appeared in subsection (d).