

IN THE SUPREME COURT OF ALABAMA
November 20, 2001

ORDER

IT IS ORDERED that Rule 5, Rule 21(d), Rule 27(d), Rule 28, Rule 32, Rule 39(d), Rule 39(f), Rule 39(h), and Rule 40(g), Alabama Rules of Appellate Procedure, are amended to read in accordance with Appendices A, B, C, D, E, F, G, H, and I, respectively, to this order;

IT IS FURTHER ORDERED that the Court adopts the Court Comment to Rule 5 Effective June 1, 2002; the Court Comment to Amendment to Rule 28 Effective June 1, 2002; the Court Comment to Amendment to Rule 32 Effective June 1, 2002; the Court Comment to Amendment to Rule 39(d), (f), and (h) Effective June 1, 2002; and the Court Comment to Amendment to Rule 40(g) Effective June 1, 2002, to read in accordance with Appendices J, K, L, M, and N, respectively, to this order;

IT IS FURTHER ORDERED that these amendments and the adoption of the Court Comments are effective June 1, 2002; however, the Court encourages the Bar to strive to begin complying with the form changes proposed by these amendments as soon as practicable;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 5, Rule 21, Rule 27, Rule 28, Rule 32, Rule 39, and Rule 40:

"Note from the reporter of decisions: The order amending Rule 5, Rule 21(d), Rule 27(d), Rule 28, Rule 32, Rule 39(d), Rule 39(f), Rule 39(h), and Rule 40(g), effective June 1, 2002, is published in that volume of Alabama Reporter that contains Alabama cases from ____ So. 2d."

Moore, C.J., and Houston, See, Lyons, Brown, Johnstone, Harwood, Woodall, and Stuart, JJ., concur.

APPENDIX A

RULE 5. APPEAL BY PERMISSION

(a) Petition for Permission to Appeal. A party may request permission to appeal from an interlocutory order in civil actions under limited circumstances. Appeals of interlocutory orders are limited to those civil cases that are within the original appellate jurisdiction of the Supreme Court. A petition to appeal from an interlocutory order must contain a certification by the trial judge that, in the judge's opinion, the interlocutory order involves a controlling question of law as to which there is substantial ground for difference of opinion, that an immediate appeal from the order would materially advance the ultimate termination of the litigation, and that the appeal would avoid protracted and expensive litigation. The trial judge must include in the certification a statement of the controlling question of law.

(1) Presumptively Reasonable Time for Trial Judge's Certification for Permissive Review. The presumptively reasonable time for the trial judge to enter the certification required in subdivision (a) is within 28 days of the entry of the interlocutory order sought to be appealed. If a certification is made outside this presumptively reasonable time, the petition shall include a statement of circumstances constituting good cause for the Supreme Court to consider the petition, notwithstanding that the certification was entered beyond the presumptively reasonable time of 28 days.

(2) Time for Filing the Petition with the Supreme Court. The petition for permission to appeal shall be filed with the clerk of the Supreme Court within 14 days (2 weeks) after the entry of the certification by the trial judge under Rule 5(a). The petition shall include a certificate of service on all other parties to the action in the trial court.

(b) Content of Petition; Answer. The petition shall contain a statement of the facts necessary to an understanding of the controlling question of law determined by the order of the trial court, supported by reference to the materials accompanying the petition; a statement of the question itself, as stated by the trial court in its certification; and a statement of the reasons why a substantial basis exists for a difference of opinion on the question, why an immediate appeal would materially advance the termination of the litigation and why the appeal would avoid protracted and expensive litigation. The petition shall include or have annexed thereto (1) a copy of the order from which appeal is sought and of any findings of fact, conclusions of law, and opinion relating thereto and (2) a copy of the certification required by Rule 5(a). Within 14 days (2 weeks) after service of the petition, an adverse party may file an answer in opposition with the clerk of the Supreme Court, with proof of service on all other parties to the action in the trial court. The application and answer shall be submitted without oral argument unless otherwise ordered.

(c) Grant of Permission; Security for Costs; Filing of Record. If permission to appeal is granted by the Supreme Court, the appellant shall file security for costs as required by Rule 7 and the docket fee as required by Rule 12(a) within 14 days (2 weeks) after entry of the order granting permission to appeal, and the record on appeal shall be transmitted and filed and the appeal docketed in accordance with Rules 10, 11, and 12. The time fixed by those rules for transmitting the record and docketing the appeal shall run from the date of the entry of the order granting permission to appeal. A notice of appeal need not be filed.

(d) Effect on Trial Court Proceedings. The petition for an appeal hereunder shall not stay proceedings in the trial court unless the trial judge or the Supreme Court shall so order.

(e) Form and Length of Petition and Answer; Number of Copies. The petition and any answer to the petition shall comply with the provisions of Rule 32(b)(4) governing form and shall not exceed 20 pages, as also provided in Rule 32(b)(4). A sufficient number of copies shall be filed with the original with the clerk of the Supreme Court to provide each Justice of the Court with one copy, but the Court may direct that additional copies be furnished.

APPENDIX B

Rule 21(d), Alabama Rules of Appellate Procedure

(d) Form and Length of Petition and Answer; Number of Copies. The petition and any answer to the petition shall comply with the provisions of Rule 32(b)(3) governing form and shall not exceed 30 pages, as also provided in Rule 32(b)(3). A sufficient number of copies shall be filed with the original with the clerk of the appellate court to provide each Judge or Justice of the court with one copy, but the court may require that additional copies be furnished.

APPENDIX C

Rule 27(d), Alabama Rules of Appellate Procedure

(d) Form and Length of Motions and Memoranda in Support of or in Opposition thereto. A motion and any memorandum in support of or in opposition to the motion shall comply with the provisions of Rule 32(b)(5) governing form; a motion shall not exceed 10 pages and any memorandum in support of or in opposition thereto shall not exceed 15 pages, as also provided in Rule 32(b)(5). A sufficient number of copies shall be filed with the original with the clerk of the appellate court to provide each Judge or Justice of the court with one copy, but the court may require that additional copies be furnished.

APPENDIX D

RULE 28. BRIEFS

(a) Brief of the Appellant. The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(1) Statement regarding oral argument. A short statement indicating whether oral argument is desired, and, if it is, the reasons why oral argument should be heard as required by Rule 34(a). If oral argument is requested, the cover of the brief shall state "ORAL ARGUMENT REQUESTED";

(2) Table of contents. A table of contents, with references to the pages of the brief where each section required by this rule to be included in the brief begins (including specific page references to each heading or subheading of each issue argued);

(3) Statement of jurisdiction; inapplicability to briefs in criminal cases. A statement of jurisdiction, including (i) the basis for the jurisdiction of the court to which the appeal is taken (with citations to the applicable statutory provisions and stating relevant facts establishing jurisdiction), and (ii) the filing dates establishing the timeliness of the appeal. This subparagraph does not apply to briefs in criminal cases;

(4) Table of authorities. A table of authorities, including cases (arranged alphabetically), statutes, and other authorities with reference to the pages of the brief where those cases, statutes, and other authorities are cited;

(5) Statement of the case; special requirement for briefs on appeal to the Court of Criminal Appeals. A statement of the case, indicating briefly the nature of the case, the course of proceedings, and the disposition in the court below, with appropriate references to the record (see subdivision (e)). A brief on appeal to the Court of Criminal Appeals should also contain a list of each and every ruling by the trial court adverse to the defendant on whose behalf the appeal is taken and asserted by that defendant as error on appeal. That list need refer only to the pages of the record on appeal where the adverse rulings are reflected (see Form 23) and shall be included as an appendix to the brief;

(6) Statement of the issues. A statement of the issues presented for review;

(7) Statement of the facts. A full statement of facts relevant to the issues presented for review, with appropriate references to the record (see subdivision (e)). Facts must be stated accurately and completely;

(8) Statement of the standard of review. A concise statement of the standard of review applicable to each issue;

(9) Summary of the argument. A summary of the argument, suitably paragraphed, which should be a clear, accurate, and succinct condensation of the argument actually made in the body of the brief. It should not merely repeat the headings under which the argument is arranged. It should seldom exceed two pages and never exceed five pages;

(10) Argument. An argument containing the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the cases, statutes, other authorities, and parts of the record relied on. Citations of authority shall comply with the rules of citation in the latest edition of either The Bluebook: A Uniform System of Citation or ALWD [Association of Legal Writing Directors] Citation Manual: A Professional System of Citation or shall otherwise comply with the style and form used in opinions of the Supreme Court of Alabama. Citations shall reference the specific page number(s) that relate to the proposition for which the case is cited;

(11) Conclusion. A short conclusion stating the precise relief sought; and

(12) Certificate of service. A certificate of service listing the names and addresses of all attorneys or pro se parties upon whom the brief has been served as required by Rule 31(b).

(b) Brief of the Appellee. The brief of the appellee shall conform to the requirements of subdivision (a)(1)-(12), except that a statement of the jurisdiction, the case, the issues, the facts, or the standard of review need not be included unless the appellee is dissatisfied with those statements as made by the appellant.

(c) Reply Brief. The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal. A reply brief must contain a table of contents, a table of authorities, a summary of the argument, an argument, and a certificate of service. No further briefs may be filed except with leave of court.

(d) References in Briefs to Parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee." It promotes clarity to use the designations used in the trial court or in other proceedings under review, or the actual names of parties, or descriptive terms such as "the employee," "the injured person," "the taxpayer," etc.

(e) References in Briefs to the Record. References in the briefs to the record on appeal shall be to the appropriate page numbers of the record on appeal. If reference is

made to a page of the clerk's record, the reference shall be preceded by the letter "C." If a reference is made to a page in the reporter's transcript, then the reference shall be preceded by the letter "R." If reference is made to evidence, it shall be made to the pages of the clerk's record or reporter's transcript at which the evidence was identified, offered, and received or rejected.

(f) **Reproduction of Statutes, Rules, Regulations, etc.** If determination of the issues presented requires the study of statutes, rules, regulations, etc., or relevant parts thereof, they shall be reproduced in the brief or in an addendum at the end, or they may be supplied to the court in pamphlet form.

(g) **Length of Briefs.** See Rule 32(a)(6) for provisions regarding the length of briefs.

(h) **Briefs in Cases Involving Cross-Appeals.** The brief of the appellee shall also contain the issues and argument involved in his or her cross-appeal as well as the answer to the brief of the appellant. The appellant may answer the issues raised in appellee's cross-appeal as well as reply to appellee's answers in the appellant's reply brief.

(i) **Briefs in Cases Involving Multiple Appellants or Appellees.** In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

APPENDIX E

RULE 32. FORM AND LENGTH OF BRIEFS, PETITIONS, MOTIONS, AND OTHER PAPERS; NONCOMPLIANCE.

(a) Form and Length of Brief. In addition to the provisions of Rule 28, the following requirements shall apply:

(1) Reproduction.

(A) A brief may be produced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) Text must be produced with a clarity that equals or exceeds the output of a laser printer.

(C) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original; a glossy finish is acceptable if the original is glossy.

(2) Cover. Except for filings by parties acting pro se, the cover of the appellant's brief must be blue; the appellee's, red; an intervenor's or amicus curiae's, green; and any reply brief, gray. If a petition for a writ of certiorari is filed, the cover of the brief of the petitioner shall be blue and that of the respondent's initial reply brief, if any, red; if the petition is granted, the respondent's subsequent reply brief shall be red; and the petitioner's answering brief, if any, gray. Where no color is specified the cover should be white. The front cover of a brief must contain:

(A) the appellate court docket number assigned to the case, centered at the top;

(B) the name of the appellate court;

(C) the style of the case in the appellate court (see Rule 12(a));

(D) the nature of the proceeding (e.g., appeal, petition for certiorari) and the name of the court, agency, or board that decided the case below;

(E) the title of the brief (e.g., "Brief of the Appellant"), identifying the party or parties for whom the brief is filed;

(F) the name, office address, and telephone number of counsel, if any, representing the party for whom the brief is filed. If the party is not represented by counsel, the brief shall include the name, address, and telephone number of the party filing the brief; and

(G) the phrase "ORAL ARGUMENT REQUESTED," if oral argument is requested;

(3) Binding. The brief must be bound on the left in a manner that is secure, that does not obscure any of the text, and that permits the brief to lie reasonably flat when open.

(4) Paper size, line spacing, and margins. The brief must be on 8 ½ by 11 inch paper. The text must be double-spaced, except that quotations from cases or other legal authorities more than 2 but not more than 25 lines long may be indented and single-spaced. Headings, footnotes, and quotations from statutes, evidentiary materials, and other matters in the record may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(5) Font and type style. A brief must be set in Courier New 13 unless the attorney or unrepresented party certifies at the end of the brief that access to equipment capable of producing that font is not reasonably available and that the font style used or the handwriting constitutes the closest approximation of Courier New 13 under the circumstances. The type style must be plain, Roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined.

(6) Length.

(A) Noncapital cases -- page limitation; method of numbering pages. A principal brief may not exceed 70 pages and a reply brief may not exceed 35 pages. The page limitation applies to all portions of the brief beginning with the statement of the case, including headings, footnotes, and quotations, but excepting the certificate of service and any appendices and exhibits. Pages in the brief preceding the statement of the case must be numbered in lower case Roman numerals and pages in the brief beginning with the statement of the case must be numbered in Arabic numerals.

(B) Capital cases -- page limitation. A principal brief may not exceed 80 pages and a reply brief may not exceed 40 pages. In all other respects, the provisions of subparagraph (a)(6)(A) of this rule shall apply.

(C) Permission to exceed page limitation. Permission to exceed the page limitation will not be routinely granted. A motion to file a document that exceeds the

applicable page limitation shall show good cause therefor, specifying extraordinary circumstances that warrant a suspension of the rules. Any motion seeking an enlargement of the page limitation for a brief shall be presented at least seven days before the date on which the brief is due.

(b) Form and Length of Applications for Rehearing, Petitions, Motions, and Other Papers.

(1) Applications for rehearing. In addition to the provisions governing the form of an application for rehearing set out in Rule 40, an application for rehearing shall be produced in the form prescribed by subdivision (a). The application shall not exceed 15 pages and shall otherwise be subject to the requirements of subparagraph (a)(6) of this rule. The length of the brief in support of, and any brief in opposition to, the application shall be governed by Rule 40(g).

(2) Petitions for writ of certiorari. In addition to the provisions governing the form of a petition for a writ of certiorari set out in Rule 39, a petition for a writ of certiorari shall be produced in the form prescribed by subdivision (a). The petition shall not exceed 15 pages (except in capital cases, in which event the petition shall not exceed 20 pages) and shall otherwise be subject to the requirements of subparagraph (a)(6) of this rule.

(3) Petitions for extraordinary writs. In addition to the provisions governing the form for a petition for an extraordinary writ set out in Rule 21, a petition for an extraordinary writ shall be produced in the form prescribed by subdivision (a). The petition and an answer, if the court orders an answer, shall not exceed 30 pages and shall otherwise be subject to the requirements of subparagraph (a)(6) of this rule.

(4) Petitions for appeal by permission pursuant to Rule 5 and answers. In addition to the provisions governing form set out in Rule 5, petitions filed pursuant to Rule 5 for appeal by permission and any answers thereto shall be produced in the form prescribed by subdivision (a), shall not exceed 20 pages as provided in Rule 5(e), and shall otherwise be subject to the requirements of subparagraph (a)(6) of this rule.

(5) Motions and other papers and memoranda in support of, or in opposition to, motions. In addition to the provisions governing form set out in Rule 27, motions and other papers seeking relief shall be produced in the form prescribed by subdivision (a), shall not exceed 10 pages, and shall otherwise be subject to the requirements of subparagraph (a)(6) of this rule; any memorandum in support of, or in opposition thereto, shall be produced in the form prescribed by subdivision (a), shall not exceed 15 pages and shall otherwise be subject to the requirements of subparagraph (a)(6) of this rule.

(c) Noncompliance.

(1) Acceptance of nonconforming documents. The clerk of the appellate court may exercise discretion to permit the filing of documents in which the violation of those portions

of these rules governing format is exceedingly minor, if, in the judgment of the clerk, recomposition of the documents would be unwarranted. The requirements of this rule governing the format of documents shall be liberally construed to do substantial justice with respect to persons proceeding pro se.

(2) Conditional filing of documents. Except as otherwise provided in subparagraph (c)(1), unless each copy of the document, in the judgment of the clerk, conforms to those portions of these rules governing format, the clerk may deem the document to have been conditionally filed, subject to the requirement that the party file in the office of the clerk a complete set of replacement documents that comply with these rules within 14 days of the issuance of notice by the clerk that the documents have been conditionally filed. The clerk's notice shall specify the matters requiring correction and, unless the court orders otherwise, in no event shall any replacement document add any substantive material.

(3) Documents exceeding page limitations. Documents exceeding the page limitations that are filed without prior approval of the court are viewed with great disfavor and, with respect to such documents, the court may impose a penalty, not to exceed five pages, thereby reducing the otherwise applicable page limitation.

(4) Disposition of noncompliant documents. Noncompliant documents will be held in the clerk's office pending instructions from the party filing the document as to their disposition. If no instructions are received by the time for filing replacement documents, noncompliant documents will be discarded.

(5) Effect on time for filing by opposing party. Unless the court orders otherwise, the time for filing of the opposing party's response runs from the date of filing of replacement documents pursuant to subparagraph (c)(2).

APPENDIX F

Rule 39(d), Alabama Rules of Appellate Procedure

(d) Form and Length of Petition. The petition shall comply with the provisions of Rule 32(b)(2) governing form and shall not exceed 15 pages (except in capital cases, in which event the petition shall not exceed 20 pages), as also provided in Rule 32(b)(2). The petition shall contain:

(1) The style of the case, the name of the petitioner, the circuit court from which the cause is on appeal, and the name of the court of appeals to which the petition for certiorari is directed;

(2) The date of the decision sought to be reviewed and, if an application for rehearing was filed, the date of the order overruling the application for rehearing;

(3) A concise statement of the grounds, 39(a)(1)(A)-(E), supra, on which the petition is based — and in a death-penalty case a statement in accordance with 39(a)(2)(A) and (B) — provided that:

(A) When subparagraph (a)(1)(D) is the ground for the petition, the petitioner must quote that part of the opinion of the court of appeals and that part of the prior decision the petitioner alleges are in conflict; or

(B) Where it is not feasible to quote that part of the opinion of the court of appeals either because no wording in the opinion clearly shows the conflict or because no opinion was issued, the petition shall state specifically and with particularity how the decision conflicts with a prior decision;

(4) A copy of the opinion or the unpublished memorandum of the court of appeals, attached to the petition as an exhibit; and

(5) A statement of the facts, if a party is not satisfied with the facts stated in the opinion or the unpublished memorandum of the court of appeals, or if the court of appeals issued a "no-opinion" decision pursuant to Rule 53. The statement of facts shall not be incorporated or adopted by reference from any other document, including the party's brief in support of the petition.

(A) Statement of facts where application for rehearing was filed with court of appeals after an opinion or an unpublished memorandum was issued. If a court of appeals issues 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, in the application, present to the court of appeals an additional or corrected statement of facts or the applicant's own statement of facts. 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 in the statement of facts in the petition for the writ of certiorari, with references to the pertinent portions of the clerk's record and the reporter's transcript. The petition 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. If the petitioner does not present in the petition an additional or corrected statement of facts or the petitioner's own statement of facts, it will be presumed that the petitioner is satisfied

with the facts as stated in the court of appeals' opinion or unpublished memorandum.

(B) Statement of facts where an application for rehearing was filed with court of appeals in a "no-opinion" decision or an opinion that does not state the facts. If a court of appeals issues a "no-opinion" affirmance pursuant to Rule 53 or issues an opinion or 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 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. The petition must include a verification 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 was filed with the Court of Civil Appeals. 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 issues a "no-opinion" affirmance pursuant to Rule 53 or issues an opinion that does not contain a statement of facts, the petitioner shall include in 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 issues an opinion 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, in the petition for the writ of certiorari, present to the Supreme Court a proposed additional or corrected statement of facts or the applicant's own statement of facts, with references to the pertinent portions of the clerk's record and the reporter's transcript. If the petitioner does not present in the petition an additional or corrected statement of facts or the petitioner's own statement of facts, it will be presumed that the petitioner is satisfied with the facts as stated in the court of appeals' opinion.

APPENDIX G

Rule 39(f), Alabama Rules of Appellate Procedure

(f) Briefing on Petition for Writ of Certiorari.

(1) Petitioner's Brief. The petitioner's brief shall be in a form prescribed by Rule 32(a), and copies served and filed as prescribed by Rule 31 for the service and filing of briefs. The brief shall accompany the petition for the writ of certiorari or shall be attached thereto. The brief must contain all arguments in support of the petition that the petitioner intends to present, including those arguments the court will consider if certiorari review is granted.

(2) Respondent's Brief. Within 14 days (2 weeks) — or, in the case of a pretrial appeal by the state in a criminal case, within 7 days (1 week) — after the petition and brief are filed, the respondent may file an initial brief limited solely to the issue whether any of the grounds set forth in (a)(1)(A)-(E) — or, in a death-penalty case, (a)(2)(A) and (B) — authorizes the issuance of a writ. The respondent's initial brief shall be in a form prescribed in Rule 32(a).

(3) Subsequent Briefs. No additional briefs will be required of the petitioner, although the petitioner may file a reply brief in a form prescribed in Rule 32(a) within 14 days (2 weeks) after the respondent's brief is filed.

APPENDIX H

Rule 39(h), Alabama Rules of Appellate Procedure

(h) Briefing if Writ Issues.

(1) Respondent's Brief. If the writ should issue, the respondent may file, within 14 days (2 weeks) — or, in the case of a pretrial appeal by the state in a criminal case, within 7 days (1 week) — after the clerk has given notice that the writ has been issued, a subsequent reply brief addressed to the substantive issues presented for review on the petition for writ of certiorari. The respondent's subsequent reply brief shall be in a form prescribed in Rule 32(a).

(2) Petitioner's Brief. The petitioner may file a brief in response to the respondent's reply brief within 14 days (2 weeks) of the filing of the respondent's reply brief. The petitioner's brief in response to the respondent's reply brief shall be in a form prescribed in Rule 32(a). The petitioner shall not be permitted to file a brief in response to the respondent's reply brief in a pretrial appeal by the state in a criminal case.

APPENDIX I

Rule 40(g), Alabama Rules of Appellate Procedure

(g) Form of Application; Color of Brief; Length of Argument. The application for rehearing may be a separate document or it may be included at the beginning of the applicant's brief. The brief shall be in a form prescribed by Rule 32, except that because the statement of facts is included in the application for rehearing, a statement of facts will not be included in the brief. Copies of the brief shall be served and filed as prescribed by Rule 31 for the service and filing of briefs. The cover of the brief in support of the application for rehearing shall be white. Except by permission of the court pursuant to Rule 32(a)(6)(C), an application for rehearing and a brief in support of the application, or a brief in opposition to an application for rehearing, shall not exceed 15 pages and shall otherwise be governed by Rule 32(a)(6)(A).

APPENDIX J

Court Comment to Amendment to Rule 5 Effective June 1, 2002

The amendment to Rule 5(a) is intended to provide a limited window of opportunity for the filing of a petition pursuant to this section. In adopting the time limits set forth in Rule 5(a), the Supreme Court contemplated that, on occasion, orders containing the required certification may be issued subsequent to the trial court's substantive ruling on the legal issues that form the basis of the controlling question of law over which there is a substantial difference of opinion. The Court has noted, however, that in some instances the second prong of this process -- the issuance of the order by the trial court setting forth its findings and its certification that the matter is appropriate for interlocutory review -- is not done in a timely manner. For this reason, the Supreme Court has determined that a presumptively reasonable time limit between the issuance of the substantive order and the issuance of the certification order is desirable, and that 28 days is a reasonable time limit within which the trial court must certify the previously issued substantive ruling for permissive appeal. Rule 5 has been amended to include this presumptively reasonable time period in which the trial judge's certification must be made. While this time limit is not a jurisdictional requirement, if a certification is made outside the presumptively reasonable time, the rule now requires that the petition include a statement of circumstances constituting good cause for the Supreme Court to consider the petition, notwithstanding that it was certified beyond the presumptively reasonable time.

APPENDIX K

Court Comment to Amendment to Rule 28 Effective June 1, 2002

This amendment to Rule 28 changes the format for briefs submitted to Alabama appellate courts. In addition to the items required to be included in the brief before this amendment, Rule 28 requires a statement regarding oral argument (Rule 28(a)(1)); a statement of jurisdiction, except for briefs in criminal cases (Rule 28(a)(3)); a statement of the standard of review for each issue (Rule 28(a)(8)); a summary of the argument (Rule 28(a)(9)); and a certificate of service (Rule 28(a)(12)). A conclusory statement of the standard of review is sufficient, reserving any argument as to the standard of review for the argument portion of the brief. For example, in an appeal where the issue invokes an exercise of a trial court's discretion, the appellant shall state that the standard of review is whether the trial court abused its discretion. On appeals involving the trial court's formulation of the law or applying a rule of law or involving a question of the sufficiency of the evidence or the factual findings, the appellant shall describe the governing standard of review (e.g., de novo, clearly erroneous findings of fact, etc.). The amendment also provides that citations to authority shall comply with the latest edition of either The Bluebook: A Uniform System of Citation or the ALWD [Association of Legal Writing Directors'] Citation Manual: A Professional System of Citation or the style and form used in opinions of the Supreme Court of Alabama. Reply briefs must now include a table of contents, a table of authorities, a summary of the argument, an argument, and a certificate of service (Rule 28(c)). The provisions of former Rule 28(g), dealing with the length of briefs, have been moved to Rule 32(a)(6).

APPENDIX L

Court Comment to Amendment to Rule 32 Effective June 1, 2002

This amendment completely rewrites former Rule 32. It specifies the reproduction quality for a brief filed in the Alabama appellate courts, abandoning the distinction between briefs produced by commercial printing and those produced by "typewriter or other process." Briefs must now be on 8 ½ by 11 inch paper and the font must be Courier New 13, unless the party preparing the brief certifies that he or she does not have access to equipment capable of producing that font and that the font style used or the handwriting in the brief is the closest approximation of Courier New 13 available. That certification is to be included at the end of the brief.

This amendment changes the page limitation on briefs and imposes a page limitation on other documents submitted to the court. In other than capital cases, a principal brief may not exceed 70 pages and a reply brief may not exceed 35 pages. In a capital case, the principal brief may not exceed 80 pages and a reply brief may not exceed 40 pages. These limitations apply to all portions of the brief beginning with the statement of the case, but do not include the certificate of service or any appendices or exhibits. Lower case Roman numerals must be used for numbering pages preceding the statement of the case, while subsequent pages must use Arabic numerals. In other words, the first page of the statement of the case should be page "1" of the brief. A party seeking to exceed a page limitation may file a motion with the appellate court. That motion shall show good cause for the request and shall be presented at least seven days before the day on which the brief is due. "Presented" means physically in the clerk's office. Service of a copy of the motion on an opposing party should be at least coincident with its presentation to the clerk. Permission to exceed the page limitations of Rule 32 is reserved for the extraordinary case and will not be routinely granted.

The form prescribed for briefs in Rule 32 is applicable to applications for rehearing, petitions for the writ of certiorari, petitions for an extraordinary writ, petitions for appeal by permission pursuant to Rule 5 and answers thereto, and motions and other papers seeking relief and memoranda in support of, or in opposition to, such motions or other papers. The application for rehearing shall not exceed 15 pages; a petition for a writ of certiorari shall not exceed 15 pages, except in capital cases in which event it shall not exceed 20 pages; a petition of an extraordinary writ shall not exceed 30 pages; petitions for appeal by permission pursuant to Rule 5 and answers thereto shall not exceed 20 pages; motions shall not exceed 10 pages and memoranda in support of or in opposition to motions shall not exceed 15 pages; and other papers shall not exceed 10 pages. These page limitations

include all portions of the document, yet are subject to the court's authority to grant permission to exceed the page limitation pursuant to Rule 32(a)(6)(C).

The amendment allows the clerk of the appellate court to require a party to refile a noncompliant document in a form that complies with Rule 32. If a document is filed that exceeds the page limitation without the prior approval of the court, the court may, when it requires the party to refile the document, reduce the applicable page limit by as much as five pages.

The amendment allows for the clerk to deem a previously filed document that fails to comply with these rules as conditionally filed, subject to the requirement that the party file, within 14 days of the date the party is notified of the noncompliance, replacement documents that do comply with these rules.

APPENDIX M

Court Comment to Amendment to Rule 39(d), (f), and (h) Effective June 1, 2002

The revisions to Rule 39(d), (f), and (h), effective June 1, 2002, are necessitated by revisions to Rules 32. Rule 39(d), dealing with the form of the petition, is amended so as to cross-reference Rule 32(b)(2), imposing a limit of 15 pages on a petition (except in capital cases, where the limit is 20 pages). Rule 32(b)(2) also incorporates provisions governing form in Rule 32(a), thereby making applicable to petitions the standards prescribing paper size and font and type style. See Rules 32(a)(4) and (5). Subdivisions (f) and (h) of Rule 39, dealing with form of briefs, are also amended to cross-reference Rule 32(a). See Rule 32(a)(2), second sentence, for specific directions for colors of the covers of briefs in certiorari proceedings.

APPENDIX N

Court Comment to Amendment to Rule 40(g)
Effective June 1, 2002

This amendment to Rule 40(g) provides that the 15-page limitation for an application for a rehearing and a brief in support of the application includes the same items listed in Rule 32(a)(6)(A) and also provides that permission to exceed the page limitation must be sought as provided in Rule 32(a)(6)(C).