

IN THE SUPREME COURT OF ALABAMA
July 1, 2019

ORDER

IT IS ORDERED that Rule 3(a), Rule 3(d), Rule 3(e), Rule 12(a), Rule 35A(a)(1), and Rule 35A(b), Alabama Rules of Appellate Procedure, be amended to read in accordance with Appendices A, B, C, D, E, and F, respectively, to this order;

IT IS FURTHER ORDERED that the Court Comment to the amendments to Rule 3(a), (d), and (e), the Court Comment to the amendment to Rule 12(a), and the Court Comment to the amendments to Rule 35A(a)(1) and (b) be adopted to read in accordance with Appendices G, H, and I, respectively, to this order;

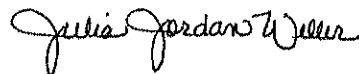
IT IS FURTHER ORDERED that the amendments to Rule 3(a), Rule 3(d), Rule 3(e), Rule 12(a), Rule 35A(a)(1), and Rule 35A(b) and the adoption of the Court Comments to the amendments to those rules be effective October 1, 2019;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to the follow the Rule 3, Rule 12, and Rule 35A:

"Note from the reporter of decisions: The order amending Rule 3(a), Rule 3(d), Rule 3(e), Rule 12(a), Rule 35A(a)(1), and Rule 35A(b), effective October 1, 2019, and adopting the Court Comments to those amendments is published in that volume of Alabama Reporter that contains Alabama cases from ___ So. 3d."

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

Witness my hand this 1st day of July, 2019.



FILED
July 1, 2019
4:24 pm
Clerk
Supreme Court of Alabama

Clerk, Supreme Court of Alabama

APPENDIX A

Rule 3(a), Ala. R. App. P.

(a) Filing the Notice of Appeal.

(1) In civil cases, an appeal permitted by law as of right shall be taken to an appellate court by filing a notice of appeal with the clerk of the trial court within the time allowed by Rule 4. The appellant shall cause a sufficient number of additional copies of the notice of appeal to be marked filed with the date of filing noted thereon and certified as a true copy by the clerk of the trial court for service on the persons and parties as provided by (d) (1) or d(3) of this rule. Appeals by permission from interlocutory orders shall be taken in the manner prescribed by Rule 5. The notice of appeal may be filed electronically with the trial court clerk through the trial court's electronic-filing system. If the notice of appeal is filed electronically, the appellant is not required to provide the additional copies required by this rule.

(2) In criminal cases, an appeal permitted by law as a matter of right to an appellate court shall be taken by filing a written notice of appeal with the clerk of the trial court within the time allowed by Rule 4, or by the defendant's giving an oral notice of appeal at the time of sentencing, which oral notice shall be noted of record; provided, that a pre-trial appeal by the State shall be taken by filing a written notice of appeal in the manner, and within the time, specified by the rule of criminal procedure providing for such appeals. The notice of appeal may be filed electronically with the trial court clerk through the trial court's electronic-filing system. On the date the notice of appeal is filed, the clerk of the trial court shall serve copies of the notice of appeal on the persons specified by (d) (2) or d(3) of this rule.

APPENDIX B

Rule 3(d), Ala. R. App. P.

(d) Service of the Notice of Appeal.

(1) In civil cases, the appellant shall serve a copy of the notice of appeal on each adverse party, but the copy need not contain the clerk's filing notations.

In civil cases, the clerk of the trial court shall, on the date the notice of appeal is filed, serve a true copy of the notice of appeal, or any amendment thereto, as required in (a)(1) above, personally or by mailing a copy thereof to each of the following: the clerk of the appropriate appellate court; the court reporter who reported the evidence; counsel of record for each party, or, if a party is not represented by counsel, to the party at the party's last known address. Service shall be sufficient notwithstanding the death of the party or the party's counsel. In civil cases, the copy of the notice of appeal to the clerk of the appellate court will be accompanied by payment of the docket fee as provided in Rule 35A(a)(1).

(2) In criminal cases, the clerk of the trial court shall serve the notice of appeal, whether oral or written, upon each of the following: the clerk of the appropriate appellate court; the court reporter who reported the evidence; the defendant; the defendant's appellate counsel; the district attorney of the circuit in which the trial court is situated; and the Attorney General. The copy of the notice of appeal to the clerk of the appellate court shall be accompanied by the docket fee as provided in Rule 35A(b) of these rules, if applicable, unless the appellant failed to pay the docket fee at the time the notice of appeal was filed.

(3) If the notice of appeal is filed electronically in a civil case or in a criminal case, the appropriate appellate court clerk may be served with the notice by electronic means. If the attorney for the party to be served or the party to be served is a registered user of the trial court's electronic-filing system or if the party has elected to receive notice by electronic means pursuant to Rule 4.I(C) of the Alabama Rules of Judicial Administration, service may be made by electronic transmittal in accordance with that system or rule. Service of the notice by electronic means shall be complete on transmission of the electronic document. The clerk of the trial court may serve the court reporter who reported the

evidence by electronic mail, by personal service, or by mail. If an attorney or a party is not a registered user of the trial court's electronic-filing system, then the clerk of the trial court shall provide notice of the filing of the notice of appeal pursuant to (d)(1) or (d)(2) of this Rule. If the notice of appeal is filed electronically, the party responsible for payment of the docket fee shall remit that fee directly to the clerk of the appropriate appellate court as provided in Rule 35A(a)(1) or Rule 35A(b). The clerk of the trial court is not required to certify as a true copy an electronically filed notice of appeal.

APPENDIX C

Rule 3(e), Ala. R. App. P.

(e) Filing the Docketing Statement. Each notice of appeal to an appellate court, at the time it is filed with the trial court, shall be accompanied by the appropriate 'Docketing Statement' (Form 24, 25, or 26). An electronically filed notice of appeal shall be accompanied by an electronically filed docketing statement. If the notice of appeal is given orally in a criminal case, the docketing statement shall be filed within 7 days (1 week) after the oral notice of appeal is given. However, the appellant's failure to file the docketing statement with the notice of appeal shall not affect the validity of the notice of appeal. The appellant, or if the appellant is represented by counsel, then the appellant's attorney, shall complete and sign the docketing statement before it is filed with the court. If the notice of appeal is tendered to the clerk of the trial court without a properly completed docketing statement, the clerk shall accept the notice of appeal and shall inform the person filing it of the requirements of this rule, and the appellant, or, if the appellant is represented by counsel, then the appellant's attorney, shall promptly file a properly completed docketing statement. The clerk of the trial court, when serving the notice of appeal as specified in this rule, shall attach thereto a copy of the docketing statement, if available. If, on the date the notice of appeal is served, the docketing statement is not available, it shall be served on those persons on whom the notice of appeal was served as soon as it becomes available. For the failure to comply with the requirements of this rule, the appellate court in which the appeal is pending may make such orders as are just, including an order staying the proceedings until the docketing statement is filed or, after proper notice, an order dismissing the appeal; and, in lieu of any orders or in addition to any orders, the court may treat the failure to comply with the requirements of this rule as contempt of court.

APPENDIX D

Rule 12(a), Ala. R. App. P.

(a) Docketing the Appeal and Docket Fee. The clerk of the trial court shall send to the clerk of the appellate court to which the appeal is taken a copy of the notice of appeal. Unless the notice of appeal is filed electronically, the appellant, in a civil case, shall accompany the copy of the notice of appeal with payment to the clerk of the appellate court to which the appeal is taken a docket fee in the amount prescribed by Rule 35A, which shall be in lieu of other appellate court costs, unless otherwise set by the court. If the notice of appeal is filed electronically, then the appellant shall send directly to the clerk of the appellate court to which the appeal is taken a docket fee in the amount prescribed by Rule 35A, which shall be in lieu of other appellate court costs, unless otherwise set by the court. Said payment must be received by the clerk of the appellate court within seven days of the electronic filing of the notice of appeal. The timeliness of the payment of the docket fee shall be governed by Rule 25(a)(3).

APPENDIX E

Rule 35A(a) (1), Ala. R. App. P.

(a) Docket Fees in Noncriminal Cases. In a noncriminal case a docket fee shall be paid to the clerk of the appropriate appellate court, unless otherwise provided. Docket fees shall be as follows:

(1) For an appeal in a civil case, the docket fee shall be \$200.00, to be paid when the notice of appeal is filed. If the notice of appeal is filed electronically, the party responsible for payment of the docket fee shall remit the docket fee directly to the clerk of the appropriate appellate court within seven days of the electronic filing of the notice of appeal. The payment shall be accompanied by a means of identifying the appeal to which the payment is applicable. The timeliness of the payment of the docket fee shall be governed by Rule 25(a) (3). For a proceeding for review by certiorari of a decision or judgment of a trial court in a case where review by appeal is not provided for or of a decision of a board or agency where review by petition in the appropriate appellate court is provided by law, the docket fee shall be \$150.00, to be paid when the petition for review is filed. Provided, however, for an appeal taken following permission given pursuant to Rule 5, the docket fee shall be \$150.00.

APPENDIX F

Rule 35A(b), Ala. R. App. P.

(b) Docket Fees in Criminal Cases. Unless an appellant proceeded before the trial court in forma pauperis and that status has not since been revoked, or unless the appellant is granted permission to proceed on appeal in forma pauperis either by the trial court or by the Court of Criminal Appeals, the appellant shall pay a \$200.00 docket fee to prosecute his or her appeal in the Court of Criminal Appeals; provided, however, that that fee shall be waived in any appeal in which the State is the appellant. The docket fee prescribed herein shall be in lieu of all other fees and costs prescribed by law for appeals to the Court of Criminal Appeals and, unless the notice of appeal is filed electronically, shall be paid to the clerk of the trial court at the time the appellant files his or her notice of appeal. The clerk of the trial court shall then remit the docket fee to the clerk of the Court of Criminal Appeals as provided in Rule 3(d)(2). If the notice of appeal is filed electronically, the party responsible for payment of the docket fee shall remit the fee directly to the clerk of the Court of Criminal Appeals within seven days of the electronic filing of the notice of appeal. The payment shall be accompanied by a means of identifying the appeal to which the payment is applicable. The timeliness of the payment of the docket fee shall be governed by Rule 25(a)(3). After the docket fee has been paid, in whole or in part, the Court of Criminal Appeals shall not be required to refund any portion thereof because the appellant, on whose behalf it was paid, is subsequently granted in forma pauperis status or because the appellant's appeal is subsequently dismissed without a decision on the merits.

Upon receipt of the trial court clerk's transmittal of an appellant's notice of appeal, the clerk of the Court of Criminal Appeals shall docket the appeal regardless of whether the transmittal is accompanied by the docket fee prescribed herein. After docketing an appeal in a case in which it appears that the docket fee is due, in whole or in part, or in a case in which the docket fee, in whole or in part, has not been paid within seven days following the electronic filing of the notice of appeal, the clerk of the Court of Criminal Appeals shall issue a deficiency notice advising the appellant that the appeal will be dismissed with prejudice unless the appellant has, within the time prescribed in said deficiency notice, either paid the docket fee in full or sought leave to proceed on appeal in forma pauperis as

authorized in Rule 24(a). If, within 14 days of the date of issuance of the deficiency notice, the appellant has not paid the docket fee in full or sought leave to proceed on appeal in forma pauperis or otherwise shown that the docket fee is inapplicable, the appeal shall be dismissed with prejudice and may not thereafter be reinstated except on motion for good cause shown made within 14 days from the date of the certificate of dismissal.

APPENDIX G

Court Comment to Amendments to Rule 3(a), (d), and (e) Effective October 1, 2019

Electronic filing of a notice of appeal is allowed in federal district courts. Under the Alabama Rules of Appellate Procedure before these amendments, however, an appellant was required to manually remit payment of the docket fee and file the notice of appeal with the clerk of the trial court.

These amendments bifurcate the payment of the docket fee and the filing of the notice of appeal. Such bifurcation is permissible because the timely filing of a notice of appeal is a jurisdictional act, while the payment of the docket fee is not. See Ex parte Alfa Ins. Corp., 263 So. 3d 689, 695 (Ala. 2018); and Wehle v. Bradley, 254 So. 3d 178, 186-87 (Ala. 2017) (citing H.C. Schmieding Produce Co. v. Cagle, 529 So. 2d 243, 249 (Ala. 1988), citing in turn Finch v. Finch, 468 So. 2d 151, 154 (Ala. 1985)). Accordingly, the amendment to Rule 3(a) allows an appellant to file the notice of appeal using the trial court's electronic-filing system within the time provided for filing a notice of appeal. Under corresponding amendments to Rule 12(a) and Rule 35A(a)(1) and (b), the appellant may then send the docket fee to the clerk of the appropriate appellate court within seven days of the electronic filing of the notice of appeal.

If the notice of appeal is filed electronically, under Rule 3(d)(3), the clerk of the trial court may serve the notice of appeal electronically on the appropriate appellate court, the parties registered in the trial court's electronic-filing system, and the court reporter. The amendment to Rule 3(e) requires an appellant who files the notice of appeal electronically to also file the docketing statement electronically simultaneously with the notice of appeal.

APPENDIX H

Court Comment to Amendment to Rule 12(a)
Effective October 1, 2019

Rule 12(a) has been amended to require the appellant to pay the docket fee to the clerk of the appropriate appellate court within seven days of the electronic filing of the notice of appeal. The timeliness of the payment of the docket fee is governed by the same rules applicable to the filing of other documents with the appellate courts. This amendment is consistent with the amendments to Rule 3(a), (d), and (e) and Rule 35A(a)(1) and (b). When sending the payment to the appellate court clerk, the appellant should identify the appeal to which the payment applies by enclosing a copy of the notice of appeal and docketing statement or by some other means.

APPENDIX I

Court Comment to Amendments to Rule 35A(a)(1) and (b)
Effective October 1, 2019

Rule 35A(a)(1) and (b) have been amended to require the appellant to pay the docket fee to the clerk of the appropriate appellate court within seven days of the electronic filing of the notice of appeal. The timeliness of the payment of the docket fee is governed by the same rules applicable to the filing of other documents with the appellate courts. This amendment is consistent with the amendments to Rule 3(a), (d), and (e) and Rule 12(a).