

IN THE SUPREME COURT OF ALABAMA
September 17, 2010

ORDER

IT IS ORDERED that Rule 11(a)(3), Rule 25, Rule 26(a), Rule 31, and Rule 32(a)(7), Alabama Rules of Appellate Procedure, are amended to read in accordance with Appendices A, C, E, G, and I, respectively;

IT IS FURTHER ORDERED that Rule 11(a)(4), Alabama Rules of Appellate Procedure, is rescinded;

IT IS FURTHER ORDERED that Rule 57, the Interim Electronic Filing and Service Rule, Ala. R. App. P., is adopted to read in accordance with Appendix K;

IT IS FURTHER ORDERED that the Committee Comments to Amendment to Rule 11(a) Effective October 1, 2010, the Committee Comments to Amendment to Rule 25 Effective October 1, 2010, the Committee Comments to Amendment to Rule 26(a) Effective October 1, 2010, the Committee Comments to Amendment to Rule 31 Effective October 1, 2010, the Committee Comments to Amendment to Rule 32(a)(7) Effective October 1, 2010, and the Committee Comments to Adoption of Rule 57 Effective October 1, 2010, are adopted to read in accordance with Appendices B, D, F, H, J, and L, respectively;

IT IS FURTHER ORDERED that the amendment of Rule 11(a)(3), Rule 25, Rule 26(a), Rule 31, and Rule 32(a)(7), the rescission of Rule 11(a)(4), and the adoption of Rule 57 and the committee comments are effective October 1, 2010;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 11, Rule 25, Rule 26, Rule 31, Rule 32, and Rule 57:

"Note from the reporter of decisions: The order amending, effective October 1, 2010, Rule 11(a)(3), Rule 25, Rule 26(a), Rule 31, and Rule 32(a)(7), rescinding Rule 11(a)(4), and adopting Rule 57, the Committee Comments to Amendment to Rule 11(a) Effective October 1, 2010, the Committee Comments to

Amendment to Rule 25 Effective October 1, 2010, the Committee Comments to Amendment to Rule 26(a) Effective October 1, 2010, the Committee Comments to Amendment to Rule 31 Effective October 1, 2010, the Committee Comments to Amendment to Rule 32(a)(7) Effective October 1, 2010, and the Committee Comments to Adoption of Rule 57 Effective October 1, 2010, is published in that volume of Alabama Reporter that contains Alabama cases from ___ So. 3d."

Cobb, C.J., and Lyons, Woodall, Stuart, Smith, Bolin, Parker, Murdock, and Shaw, JJ., concur.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 17th day of September, 2010

Robert G. Esdale, Sr.

Clerk, Supreme Court of Alabama

APPENDIX A

Rule 11(a)(3), Alabama Rules of Appellate Procedure

(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 bound at the left side and separated into volumes not to exceed 200 pages each. 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.

The clerk shall make the record on appeal available to the parties for preparation of briefs. If a party so orders, the clerk of the trial court shall supply photocopies of the record on appeal upon payment of the cost of photocopying 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 or registered mail is utilized in the transmittal.

APPENDIX B

Committee Comments to Amendment to Rule 11(a) Effective October 1, 2010

Subdivision (a) has been amended to delete the requirement that the appellee give notice of the filing of the appellee's brief to the clerk of the trial court. Subparagraph (a)(4), requiring the filing of a second copy of the record on appeal, has been deleted. Because records on appeal are now filed electronically (see Rule 57(j), Interim Electronic Filing and Service Rule), there is no longer a need to file a second copy of the record with the appellate court.

APPENDIX C

RULE 25. FILING AND SERVICE.

(a) Filing.

(1) Filing with the Clerk. A document required or permitted to be filed in an appellate court shall be filed with the clerk.

(2) Electronic Filing. Documents filed electronically shall be filed consistent with Rule 57, Interim Electronic Filing and Service Rule, originally adopted effective October 3, 2007, and incorporated as Rule 57 of these rules on October 1, 2010.

(3) Filing: Method.

(A) General. Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the document is received by the clerk within the time fixed for filing, except that a document is timely if, on or before the last day of filing, it is:

(i) mailed to the clerk using certified, registered, or express mail of the United States Postal Service, in such case the document shall be deemed filed on the day of mailing; or

(ii) dispatched to a third-party commercial carrier for delivery within three calendar days before the date the document is due to be filed. When a document is to be delivered to the clerk by a third-party carrier, the document must be received by the carrier from the sending party on or before the last day the document may be timely filed with the clerk, and the document must be received by the carrier with instructions for delivery within three calendar days. The date the third-party commercial carrier receives the document for delivery to the clerk shall be deemed the date of filing with the clerk,

provided the third-party commercial carrier produces documentation upon delivery to the clerk showing the date the carrier received the document. The documentation shall be by a document showing the actual date of receipt, and the date of receipt must be affixed or printed on the document by the third-party commercial carrier.

(B) Inmate filing. A document filed by an inmate confined in an institution is timely if deposited in the internal mail system of the institution on or before the last day for filing pursuant to Rule 4(c) of these rules. If an institution has a system designed for "legal" mail to be processed by the United States Post Office, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a notarized statement that sets forth the date the filing was deposited in the institution's mail system.

(b) Service of All Papers Required. Copies of all documents filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by a party or person acting for him on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel.

(c) Manner of Service.

(1) Service may be any of the following:

(A) personal, including delivery to a responsible person at the office of counsel;

(B) by mail;

(C) by third-party commercial carrier for delivery within three calendar days; or

(D) by electronic means.

(2) When reasonable, considering such factors as immediacy of the relief sought, distance, and cost, service on a party must be by a manner at least as

expeditious as the manner used to file the document with the court.

(3) Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means is complete on transmission, unless the party making the service is notified that the document was not received by the party served.

(d) Proof of service. Documents presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Proof of service may appear on or be affixed to the documents filed. The clerk may permit documents to be filed without acknowledgment or proof of service but shall require such acknowledgment or proof to be filed promptly thereafter.

APPENDIX D

Committee Comments to Amendment to
Rule 25 Effective October 1, 2010

Rule 25 has been amended to allow documents to be filed with the court by way of a third-party commercial carrier. The amended rule tracks Rule 25, Federal Rules of Appellate Procedure, which provides that such delivery method will be timely if the document is filed with the clerk's office within three calendar days of the party's delivery of the document to the third-party commercial carrier.

Rule 25 has been amended to include a subdivision on inmate filings, which can also be found in Rule 4(c) of these rules.

APPENDIX E

Rule 26(a), Alabama Rules of Appellate Procedure

(a) Computation of time. In computing any period of time prescribed by these rules, by an order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period extends until the end of the next day that is not a Saturday, Sunday, or legal holiday or, when the act to be done is the filing of a document in an appellate court, a day on which weather or other conditions have made the office of the clerk of the court inaccessible, in which event the period runs until the end of the next day that is not one of the aforementioned days. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule "legal holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the governor of the state, by the chief justice, by the legislature, or by the President or the Congress of the United States.

APPENDIX F

Committee Comments to Amendment to
Rule 26(a) Effective October 1, 2010

Rule 26(a) has been amended to include language found in Rule 6(a), Alabama Rules of Civil Procedure, and provides guidelines for filing a document with the appellate court when the clerk's office is inaccessible as a result of weather conditions, natural catastrophes, or other occurrences.

APPENDIX G

RULE 31. FILING AND SERVICE OF BRIEFS

(a) Time for Serving and Filing Briefs. In civil cases, the appellant shall serve and file the appellant's brief within 28 days (4 weeks) after the date shown on the copy of the certificate of completion of the record on appeal, served on the appellant by the clerk of the trial court, as required by Rule 11(a)(3). The appellee shall serve and file the appellee's brief within 21 days (3 weeks) after the filing of the brief of the appellant in the appellate court. The appellant may serve and file a reply brief within 14 days (2 weeks) after the filing of the brief of the appellee in the appellate court.

If the appellee cross-appeals (see Rule 4(a)(2)), then the brief of the appellee/cross-appellant still shall be served and filed within 21 days (3 weeks) after the filing of the appellant's brief. Within 21 days (3 weeks) of the filing of the appellee/cross-appellant's brief, the appellant/cross-appellee may serve and file a brief responding to the cross-appeal and replying to that portion of the appellee's brief that had responded to the appeal. At the time of the filing and service of the appellant/cross-appellee's brief, the appellant/cross-appellee shall notify the clerk of the trial court that such a brief has been filed in the appellate court. Within 14 days (2 weeks) of the filing of such a brief by the appellant/cross-appellee, the appellee/cross-appellant may serve and file a reply brief, replying to that portion of the appellant/cross-appellee's brief that had been directed to the cross-appeal.

In criminal cases, the appellant shall serve and file a brief within 28 days (4 weeks) after the date shown on the copy of the certificate of completion of the record on appeal, served on the appellant by the clerk of the trial court, as required by Rule 11(b). The clerk of the appellate court shall notify the parties or their respective attorneys and the clerk of the trial court by mail of the date on which the record on appeal is filed. The appellee shall serve and file the appellee's brief within 21 days (3 weeks) after the filing of the brief of the appellant in the appellate court. The appellant may serve and file a reply brief within 14 days (2 weeks) after the filing of the brief of the appellee in the appellate court. When a party is represented by counsel, the

clerk may not accept a brief from that party.

(b) Number of Copies to be Filed and Served. Copies of the brief shall be filed with the clerk of the appropriate appellate court as follows:

Supreme Court: One original and nine (9) copies.

Court of Criminal Appeals: One original and four (4) copies.

Court of Civil Appeals: One original and five (5) copies.

The clerk of an appellate court may, in a particular case, direct that a greater or lesser number of briefs be filed. One copy of the brief shall be served on counsel for each party separately represented and, if a party does not have counsel, then one copy shall be served upon that party personally. The clerk may permit an indigent party to file a lesser number of copies.

(c) Consequence of Failure to File Briefs. If an appellant fails to file a brief within the time provided by this rule, or within the time as extended, an appellee may move for dismissal of the appeal. If an appellee fails to file a brief, the appellee will not be heard at oral argument except by permission of the court.

(d) Extension of Time for Filing Brief. One extension may be granted up to 7 days (1 week).

APPENDIX H

Committee Comments to Amendment to
Rule 31 Effective October 1, 2010

Subdivision (a) has been amended to delete the requirement that the appellee give the clerk of the trial court notice of the filing of the appellee's brief.

Subdivision (b) has been amended to require the filing of one original and nine copies of briefs with the Supreme Court.

APPENDIX I

Rule 32(a)(7), Alabama Rules of Appellate Procedure

(7) Font and type style. The font of all documents filed in the appellate court must be set in Courier New 13 unless the attorney or unrepresented party certifies at the end of the document filed 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. Adjusting the space between the lines and words of a document by "leading," "kerning," "tracking," or any other method in an effort to circumvent the page limitations established by these rules or by an order of the court is prohibited.

APPENDIX J

Committee Comments to Amendment to
Rule 32(a)(7) Effective October 1, 2010

Subdivision (a)(7) has been amended to preclude the use of "leading," "kerning," "tracking," or any other method of adjusting the space between the lines and words of a document in an effort to circumvent the page limitations established by these rules or by order of the court.

APPENDIX K

RULE 57. INTERIM ELECTRONIC FILING AND SERVICE RULE.

(a) Scope. Documents in proceedings before an appellate court may be filed, served, and preserved in an electronic format in lieu of the traditional paper format. Except for service of the record on appeal as provided in subsection (j)(3), the provisions for e-filing and e-service do not apply to parties who are proceeding pro se. These Rules of Appellate Procedure shall be fully applicable to e-filed documents to the extent these rules are not modified by this rule.

(b) General Provisions -- Definitions.

(1) "Appellate courts' e-filing system" ("ACES") means the system utilized by the appellate courts to accept and transmit electronic documents.

(2) "E-document" means any document, other than an e-record, that has been e-filed in accordance with this rule.

(3) "E-file" or "e-filing" means the electronic transmission of a document to the clerk of an appellate court for the purpose of filing the document.

(4) "E-record" means a record on appeal that has been prepared, assembled, and filed with the clerk of an appellate court in an electronic format as prescribed in this rule.

(5) "E-service" or "e-served" means the electronic transmission of documents in lieu of serving such documents in hard-copy form.

(6) "E-signature" is a signature that is either affixed to or deemed to be affixed to an e-document or an e-record as prescribed in section (f) of this rule.

(7) "Filer" means the registered user whose user ID and password were used to file an e-document in an appellate court.

(8) "Hard copy" is a paper copy of an electronic document.

(9) "Portable document format" or "PDF" means a computer file format developed by Adobe Systems for reproducing a

document in a manner that is independent of the application software, hardware, and operating system originally used to create the document.

(10) "Registered user" means an attorney who has properly registered with ACES as set forth in section (d) of this rule.

(c) Authorized Users. The following persons are authorized to use ACES to e-file documents and e-records in appellate court proceedings:

(1) attorneys licensed to practice law in Alabama;

(2) pro hac vice attorneys authorized to practice in an appellate court proceeding;

(3) circuit, district, and juvenile court judges;

(4) circuit, district, juvenile, and family court clerks;
and

(5) court reporters.

(d) Registration Requirements for Attorneys. All attorneys who opt to file e-documents in appellate court proceedings shall register with the appellate courts through ACES.

(1) Responsibility for Keeping ACES ID and Password Secure. No registered user shall authorize or permit anyone to use his or her ACES ID or password, except for the purpose of filing an e-document on behalf of the registered user, in which event the registered user shall be deemed to be the filer.

(2) Responsibility for Keeping Information Current. Registered users shall be responsible for maintaining the accuracy of the information contained on ACES, including changes in their firm name, mailing address, telephone number, fax number, and primary and secondary e-mail addresses.

(e) Format of E-Documents.

(1) Document Format. All e-documents shall be formatted in accordance with these rules governing the formatting of documents filed in appellate court proceedings, except as modified by this rule. Adjusting the space between the lines

and words of a document by "leading," "kerning," "tracking," or any other method in an effort to circumvent the page limitations established by these rules or by an order of the court, is prohibited.

(2) Document Resolution, Size, Etc. All e-documents shall be filed in a PDF format that has been saved with a resolution of 200 DPI (dots per inch) or higher. E-documents shall be saved as letter-size documents (8 ½ inches or 2550 pixels wide x 11 inches or 3300 pixels long) with black text on white background. E-documents shall not contain any embedded files, scripts, tracking tags, and/or any type of executable files. The filer shall also be responsible for removing any confidential information that may be embedded in the electronic document (metadata) before it is e-filed or e-served on an opposing party or a court official. All e-documents shall be created by directly converting the word-processor document into a PDF document, unless the original document either did not exist in an electronic format or the original electronic word-processor document is no longer available to the filing party, in which event a paper copy of the document can be scanned into a PDF format.

(3) Colored Covers and Binding on E-Documents and Hard Copies Thereof. The provisions of these rules prescribing the color of covers for specified documents and how certain paper documents are to be bound shall not apply to e-documents, but shall remain in effect for the hard copies of those documents as provided in subsection (h)(2) of this rule.

(4) Attachments. If a registered user desires to include appendices or exhibits with an e-document, the appendices or exhibits shall be appended to the e-document as attachments to the e-document and filed in a PDF format in the same manner prescribed herein for the principal document.

(A) Those attachments that cannot be e-filed in a PDF format as prescribed herein shall be forwarded to the appellate court and to all the parties in the case in paper form within 24 hours of the date the principal document is e-filed, unless the day following the filing date for the principal document is a Saturday, Sunday, or legal holiday, in which event the attachments shall be forwarded by no later than the end of the next day that is not a Saturday, Sunday, or legal holiday. Regular mail of the United States Postal Service is a sufficient means

for delivering paper copies of attachments that cannot be e-filed in a PDF format. Upon final disposition of the proceeding, the appellate court may dispose of all copies of paper attachments that were not e-filed with the principal document.

(B) A notice regarding the inability to e-file the attachments shall be appended to the end of the e-document and a copy of that notice shall also accompany all copies of the principal document that are served on the parties and any court officials in the case, whether the principal document is served electronically or in paper form. (See Form A entitled "Notice Regarding Attachments.")

(f) Electronic Signatures. An e-signature is created by typing "s/" followed by the name of the person who is signing an e-document.

(1) E-Signatures of Registered Users. In the event a document is e-filed by a registered user without an e-signature or with an e-signature that is different from the user ID and password used to file the e-document, the e-document shall be deemed to contain the e-signature of the registered user whose user ID and password were used to file the e-document. In addition to the e-signature, the filer shall include his or her e-mail address, mailing address, and telephone number under the e-signature.

(2) E-Signatures of Court Officials. Court officials are also authorized to use e-signatures on e-filed documents, including all certificates of completion that are to be included in e-records. Appellate court officials are authorized to use e-signatures on all documents that are e-served pursuant to this rule.

(3) Sufficiency of E-Signatures on Hard Copies of E-filed Documents. Unless otherwise ordered by an appellate court, the e-signature is sufficient on all hard copies of e-filed documents.

(4) Effect of E-Signatures. When an e-signature is affixed to a document or is deemed to be affixed to a document as provided in subsection (f)(1), that e-signature shall have the same effect pursuant to these rules as a handwritten signature of the person whose name appears or is deemed to appear thereon.

(5) Notice of Appearance. In the event a document is e-filed by an attorney who has not previously appeared in the proceeding in which said e-document is filed, the e-signature on the document shall operate as a notice of appearance by the filer for the party on whose behalf the e-document was filed.

(6) Provisions for Multiple Signatories. In the case of a signatory whose user ID and password will not be used to e-file a document, as in the case of a document requiring multiple signatures, the filer of the document shall list thereon the names of all signatories, which shall serve as the filer's attestation that each of the other signatories has concurred in the e-filing of the document. In addition to the names of all signatories, the filer shall list each signatory's e-mail address, mailing address, and telephone number.

(g) Production of a Paper Copy of an E-Filed Document. At any time during the pendency of an appellate court proceeding, the clerk of the appellate court in which said cause is pending may direct any signatory on an e-document to file and serve a hard copy of that document.

(h) E-Filing and E-Service of Electronic Documents.

(1) When an E-filed Document Is Deemed Filed. An e-filed document shall be deemed filed in compliance with these rules on the date and time the document, along with any e-filed attachments, has been successfully uploaded onto ACES. Central time shall be used to determine the filing date and time for purposes of this rule. A document is successfully uploaded on ACES when ACES has successfully received the entire document, including any e-filed attachments.

(2) Hard Copies of Documents to be Filed. In addition to the e-document, the filer must mail or deliver the following number of hard copies of the e-document and any attachments to the appropriate appellate court:

Supreme Court: ten (10) copies.

Court of Criminal Appeals: five (5) copies.

Court of Civil Appeals: six (6) copies.

All hard copies shall be mailed or delivered to the appropriate appellate court within 24 hours of the date the principal document is e-filed, unless the day following the filing date is a Saturday, Sunday, or legal holiday, in which event the hard copies shall be mailed or delivered by the end of the next day that is not a Saturday, Sunday, or legal holiday or, when the day following the filing date is a day on which weather conditions have made the office of the clerk of the court inaccessible, the end of the next day that is not one of the aforementioned days. The hard copies that are delivered to the appellate court shall be accompanied by a copy of the confirmation receipt provided pursuant to subsection (h)(3) of this rule. Regular mail of the United States Postal Service is a sufficient means for delivering hard copies of e-documents to the appellate courts as provided in this rule.

(3) Confirmation Receipt of E-Filing. Upon the successful transmission and upload of an e-filed document, ACES shall e-serve the filer a receipt confirming the date and time that the document was filed. The confirmation receipt shall serve as proof of the filing.

(4) Rejection of an E-Filed Document or E-Record. In the event an appellate court rejects an e-filed document or an e-record because it does not comply with this rule or another applicable rule of these rules, the appellate clerk shall serve the filer or, in the event the rejection involves an e-record, the trial court clerk and the other parties with notice of the rejection. The notice shall state the reason or reasons for the rejection. The filer or the clerk of the trial court shall have 14 days from service of notice of the rejection to file and serve a corrected document or e-record, unless a different time for the filing and service of a corrected document or e-record is ordered by the appellate court.

(5) E-Service by Counsel of Documents, Filings, Etc. E-service of documents, motions, and other filings, as permitted by this rule, shall be considered a valid and effective means of service on attorneys and court officials and shall have the same force and legal effect as service of a paper copy pursuant to these rules. Copies of all documents filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by a party or person acting for him on all other

parties to the appeal or review. Service on a party represented by counsel shall be made on counsel. E-service is effective upon the transmission of the document to any e-mail address used for legal or court business by the person being served; provided, however, that if the person attempting e-service is informed that the electronic transmission failed, the person attempting e-service shall take appropriate action to ensure that service of the e-document is completed, either electronically or otherwise. When an attorney e-serves opposing counsel of record or a court official, the certificate of service shall list the e-mail address used for such service.

(6) E-Service by Appellate Court Clerk's Office. Each appellate court clerk is authorized by this rule to e-serve all notices, orders, opinions, decisions, etc., that were heretofore served in paper form, and such service on attorneys and court officials shall be deemed effective and complete upon the transmission of either the document or a hyperlink to the document that is being e-served pursuant to this rule. When e-serving court officials, appellate clerks are authorized to use the e-mail addresses maintained by the Administrative Office of Courts to communicate electronically with trial court officials or such other means of electronic communication as may be agreed upon by the appellate clerks and the trial court officials as an acceptable alternative means to perfect e-service pursuant to this rule.

(i) Filing Fees and Costs Associated with E-Filing.

(1) Filing Fees and Costs. The same fees prescribed by order of the Supreme Court for filing paper documents shall apply to e-filed documents. Such fees may be paid by credit card at the time documents are e-filed. If the filing fee is paid by credit card at the time a document is e-filed, in addition to the filing fee, the filer shall also be required to pay the applicable credit-card-usage or convenience fee.

(2) Recovery of Fees and Costs. A prevailing party may recover credit-card usage or convenience fees associated with their use of ACES in the same manner as other costs on appeal are recoverable pursuant to Rule 35. Credit-card-usage or convenience fees incurred through use of ACES are expenses for which counsel appointed to represent indigent defendants pursuant to Rule 24(b) and § 15-12-22, Code of Alabama 1975, are entitled to be reimbursed.

(3) Waiver of Fees. Any counsel representing a filing party may make application for waiver of the cost or filing fee associated with filing an e-document in the same manner as prescribed for making application for waiver of the cost or filing fee associated with filing a paper copy of the same document.

(j) Assembly and Transmission of the E-Record. Unless otherwise ordered by an appellate court, in trial court locations equipped with the hardware and software necessary to produce e-records, the clerk of the trial court shall prepare and e-file an e-record in each case appealed to an appellate court. If the original record on appeal was e-filed, all corrections or supplements to said e-record shall also be e-filed, unless otherwise directed by the appellate court. The documents in the e-record shall be assembled in volumes of no more than 200 pages. All e-records shall be filed in a PDF format that has been saved with a resolution of 200 DPI or higher. All documents in the e-record shall be saved as letter-size documents (8 ½ inches or 2550 pixels wide x 11 inches or 3300 pixels long) with black text on white background.

(1) Clerk's Record. The clerk of the trial court shall assemble electronic copies of the original documents to be included in the clerk's record as prescribed in Rule 10(b)(1) and Rule (10)(c)(1). If the documents to be included in the clerk's record are not currently available to the clerk in an electronic format, the clerk shall scan the paper copies of such documents for inclusion in the clerk's record. In appeals in criminal cases, the clerk shall prepare one paper copy of the clerk's record in addition to the electronic copy. The pages of the clerk's record shall be numbered beginning with the first physical page of the record (typically the cover sheet) and shall continue throughout the clerk's record, including any blank pages, dividers, and cover pages.

(2) Reporter's Transcript. The reporter's transcript shall be prepared pursuant to the provisions of Rule (10)(b)(2) and Rule (10)(c)(2). Except as otherwise provided herein for appeals of criminal cases, the court reporter shall provide the clerk of the trial court with an electronic copy of the reporter's transcript in lieu of the paper copies prescribed in Rule 10. The reporter's transcript shall be filed with the clerk in a PDF format consistent with the size and resolution provisions specified above. At the time the

transcript is filed with the clerk of the trial court, the court reporter shall file a copy of his or her certificate of completion with the clerk of the appellate court in which the appeal is pending.

(A) Civil Cases. In appeals of civil cases, the court reporter shall prepare and file a single electronic copy of the designated reporter's transcript with the clerk of the trial court within the time allowed in Rule 11(a)(2).

(B) Criminal Cases. In appeals of criminal cases, the court reporter shall prepare and file a single electronic copy and one paper copy of the reporter's transcript with the clerk of the trial court within the time allowed in Rule 11(b)(2).

(3) Record on Appeal. The clerk of the trial court shall assemble the e-record 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) from the filing of the notice of appeal unless the time is shortened or extended by an order entered pursuant to Rule 11(c).

(A) Assembly. The e-record shall be assembled with the cover page first, followed by the clerk's record, the reporter's transcript and certificate of completion, the trial court clerk's "Certification of Completion and Transmittal" as provided for in Rule 11, and the trial clerk's index to the entire record. The clerk's index shall include an index to the documents, written charges, and indices that are contained in the e-record and an index to the documents and exhibits incapable of being legibly reproduced in an electronic format.

(B) Hard Copy of Record in Criminal Cases. In appeals of criminal cases, simultaneously with the preparation, filing, and service of an e-record, the clerk shall also prepare, certify, and transmit a hard copy of the e-record to the appellant's counsel unless the appellant is proceeding pro se, in which event the hard copy shall be transmitted to the appellant.

(C) E-Record Deemed Filed. Immediately upon completion of the Certificate of Completion and

Transmittal, the clerk of the trial court shall upload the e-record onto the trial court's online system. The e-record will be deemed filed with the appellate clerk upon the successful upload of the e-record onto the online system.

(4) Notification to Parties. Simultaneously with the upload and transmission of the e-record to the appellate clerk, the clerk of the trial court shall notify the parties or, if they are represented by counsel, their attorneys that the e-record has been certified complete and electronically transmitted to the appellate court and that a copy of the e-record is available online through the trial court's online system. Notification may be by e-mail if an e-mail address is available, otherwise notice shall be by paper.

(5) Exhibits. The customary provisions regarding exhibits will apply. If an exhibit cannot be legibly scanned, the exhibit will be handled in the same manner as exhibits that cannot be photocopied. (See Rule 11(e).) The clerk of the trial court shall retain custody of the original exhibits unless otherwise ordered by the appellate court, so as to allow the attorneys access to the exhibits while preparing their briefs.

(k) Difficulties Caused by Technology. If a party misses a filing deadline as the result of an inability to e-file a document because of a difficulty caused by technology occurring on the date for filing the document, the party must file the document within the time prescribed in this section, accompanied by a motion to accept the document as timely filed, before the appellate court will accept the document. The motion shall include a declaration stating the reason or reasons for missing the deadline and stating why the document should be accepted as timely filed. The document and motion shall be filed by no later than the first day on which the appellate court is open for business following the deadline date for filing the document. If the appellate court grants the motion to accept the document as timely filed, the document shall be deemed timely filed on the date the appellate court grants the motion, notwithstanding any statute or Supreme Court rule to the contrary. (See Form B entitled "Declaration of Technological Difficulties and Motion to Accept as Timely Filed.")

FORM A
[Identify Appellate Court]
[Appellate Court Case Number]

Appellant/Petitioner

vs

Appellee/Respondent

Notice Regarding Attachments

[Describe document, e.g., map,] that is intended as an attachment to _____, which was e-filed on _____, is of such size, content, or form that it could not be scanned and e-filed and is therefore being filed with clerk of the above appellate court in its original form.

I certify that a copy of this notice and the attachments will this date be served on counsel for each party to the case.

Dated this _____ day of _____, 20____.

s/[Name of Filing Party]

Address

City, State, Zip Code

Phone: (xxx) xxx-xxxx

Fax: (xxx) xxx-xxxx

E-mail: xxx@xxx.xxx

FORM B
[Identify Appellate Court]
[Appellate Court Case Number]

Appellant/Petitioner

vs

Appellee/Respondent

**DECLARATION OF TECHNOLOGICAL DIFFICULTIES
AND MOTION TO ACCEPT AS TIMELY FILED**

Please take notice that the undersigned registered user was unable to e-file the attached [title of document] in a timely manner because of technological difficulties. The deadline for filing the document was [filing-deadline date]. The reason(s) that I was unable to e-file the above-mentioned document in a timely manner and the good-faith efforts I made before the filing deadline both to file in a timely manner and to inform the Court and the other parties that I could not do so are set forth below.

[Statement of reasons and good-faith efforts to file and to inform (including dates and times)]

I hereby move that the Court accept the above document as being timely filed.

I certify that a copy of this declaration and the attached pleading will this date be served on counsel for each party to the case.

Dated this _____ day of _____, 20____.

s/[Name of Filing Party]

Address

City, State, Zip Code

Phone: (xxx) xxx-xxxx

Fax: (xxx) xxx-xxxx

E-mail: xxx@xxx.xxx

APPENDIX L

Committee Comments to Adoption of
Rule 57 Effective October 1, 2010

The Committee has adopted what was formerly a separate rule, the Interim Electronic Filing and Service Rule, as Rule 57.

The number of copies of documents to be supplied to the Supreme Court has been increased to 10.