

**APPEALABILITY, PERFECTING AN APPEAL  
AND SUPPLYING THE RECORD**

**David G. Wirtes, Jr., Esquire  
Cunningham, Bounds, Yancey, Crowder & Brown  
P. O. Box 66705  
Mobile, AL 36660**



## TABLE OF CONTENTS

I. APPEALABILITY . . . . .	1
A. When is an Order Appealable? . . . . .	1
1. <u>Rule 54(b), Ala. R. Civ. P.</u> . . . . .	3
2. <u>Appeal as of Right from Non-Final Orders</u> . . . . .	6
B. Standing - Who May Appeal? . . . . .	8
C. Jurisdictional Nature of Timeliness . . . . .	9
D. Time Period for Appeal . . . . .	9
E. Cross Appeal . . . . .	10
F. What Starts the Running of the Deadlines for Appeal? . . . . .	12
F. Tolling the Time for Appeal . . . . .	17
1. <u>Disposition of post-judgment motions</u> . . . . .	21
2. <u>Untimely disposition of post-judgment             motions</u> . . . . .	22
3. <u>Effect of notice of appeal filed before             disposition of post-judgment motions</u> . . . . .	23
II. PERFECTING AN APPEAL . . . . .	25
A. Notice of Appeal . . . . .	25
1. <u>Essential contents</u> . . . . .	25
2. <u>Where and how to file</u> . . . . .	28
B. Supporting documents . . . . .	29
1. <u>Docketing statement</u> . . . . .	30
2. <u>Deflection of Appellate Cases</u> . . . . .	31

3.	<u>Stay of Execution</u> . . . . .	32
4.	<u>Appellate forms</u> . . . . .	34
III.	THE RECORD ON APPEAL . . . . .	35
A.	Supplying The Record . . . . .	35
B.	The Record Must Include Any Ruling to be Reviewed . . . . .	36
C.	The Record Must Support the Grounds and Arguments on Appeal . . . . .	36
D.	Rules and Mechanics for Including What Each Party Needs in the Record on Appeal . . . . .	38
1.	<u>Designation of the record on appeal</u> . . . . .	38
2.	<u>Transcript purchase order</u> . . . . .	38
3.	<u>Unavailability of transcript</u> . . . . .	39
4.	<u>Preparation of the record</u> . . . . .	40
E.	Rules and Mechanics for Supplementing the Record . . . . .	42
1.	<u>Second copy of the record on appeal</u> . . . . .	44
F.	Matters outside the record on appeal. . . . .	44
G.	Other pertinent information . . . . .	45

**APPEALABILITY, PERFECTING AN APPEAL  
AND SUPPLYING THE RECORD**

**I. APPEALABILITY**

**A. When is an Order Appealable?**

With limited exceptions, an appeal can be taken only from the entry of a final judgment. Ala. Code 1975, § 12-22-2; Bean v. Craig, 557 So. 2d 1249, 1253 (Ala. 1990). A final judgment is "one that conclusively determines the issues before the court and ascertains and declares the rights of the parties involved." 557 So. 2d at 1253. Stated otherwise, a final judgment is "a terminative decision by a court of competent jurisdiction which demonstrates there has been a complete adjudication of all matters in controversy between the litigants within the cognizance of that court. That is, it must be conclusive and certain in itself." Ford Motor Co. v Tunnell, 641 So. 2d 1238, 1240 (Ala. 1994) (quoting Jewell v. Jackson & Whitsitt Cotton Co., 331 So. 2d 623, 625 (Ala. 1976)).

A discussion of all aspects of finality is beyond the scope of this paper, but the issue is often complex and unclear. Whether an order is a "complete adjudication of all matters in controversy" is sometimes very difficult to

determine. See, e.g., Poston v. Gaddis, 372 So. 2d 1099, 1101 (Ala. 1979) (entertaining an appeal from an adverse decision on plaintiff's claim though the record reflected neither a decision on defendant's counterclaim, nor a 54(b) certification, stating that because the counterclaim had not been addressed either at trial or in the judgment, the trial court must have rejected it sub silentio). Moreover, under certain circumstances more than one order in a case may be deemed final and appealable. See, e.g., Jetton v. Jetton, 502 So. 2d 756, 759 (Ala. 1987) ("intervenors could have appealed either from the judgment ... ordering the sale of the land, or from the judgment ... confirming the sale").

The determination of whether a judgment is final does not depend upon the title of judgment, but rather, on whether it sufficiently ascertains and declares the rights of the parties. BE&K, Inv. v. Weaver, 743 So. 2d 476, 479 (Ala. Civ. App. 1999). "An order that disposes of all pending issues as to all parties, so that by the general rules of procedure it is final and appealable, will not be made nonfinal by the trial court's calling it nonfinal." Smith v. Fruehauf Corp., 580 So. 2d 570, 572 (Ala. 1991). Similarly, stating that an order is "final" does not render the judgment final and

appealable if it does not dispose of all issues as to all parties unless the requirements of Rule 54(b) are met.

1. Rule 54(b), Ala. R. Civ. P.

"If a case involves multiple claims or multiple parties, an order is generally not final unless it disposes of all claims as to all parties." Grantham v. Vanderzyl, 802 So. 2d 1077, 1080 (Ala. 2001). Under certain circumstances, Rule 54(b) allows a trial court to render final, and therefore appealable, a judgment that does not adjudicate all of the claims against all of the parties. Branch v. SouthTrust Bank of Dothan, N.A., 514 So. 2d 1373, 1374 (Ala. 1987). Rule 54(b) provides:

When more than one claim for relief is presented in an action ... or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for entry of judgment.

Ala. R. Civ. P. 54(b) (emphasis added).

Piecemeal appeals are generally disfavored. Brown v. Whitaker Contracting Corp., 681 So. 2d 226, 229 (Ala. Civ. App. 1996), overruled on other grounds, Schneider Nat'l Carriers, Inc. v. Tinney, 776 So. 2d 753 (Ala. 2000). Thus, the Alabama Supreme Court has cautioned that certifications

under Rule 54(b) "should not be entered routinely or as a courtesy or accommodation to counsel." Ex parte James, 836 So. 2d 813, 878 (Ala. 2002). Rather, such certification "should be entered only in exceptional cases." Baker v. Bennett, 644 So. 2d 901, 903 (Ala. 1994). The Court interprets Rule 54(b) narrowly to allow for certification of an order only if the order "fully adjudicat[es] at least one claim or fully dispos[es] of all claims as they relate to at least one party." Goodnite v. D.C. Thrasher, 790 So. 2d 251, 252 (Ala. 2001).

If an order adjudicates less than an entire claim, it cannot effectively be certified as final under Rule 54(b). See, e.g., Grantham v. Benderzyl, 802 So. 2d 1077, 1080 (Ala. 2001) (54(b) certification was ineffective to the extent that the trial court's order on partial summary judgment held that damages for loss of income and fear of contracting a communicable disease could not be recovered); Haynes v. Alfa Fin. Corp., 730 So. 2d 178, 181 (Ala. 1999) (partial summary judgment precluding claim for punitive damages did not dispose of a complete claim and therefore could not effectively be certified as final under Rule 54(b)). Even if an order adjudicates an entire claim, it may not be properly subject to



certification if the claim adjudicated is closely related to other claims or issues in the case. See, e.g., Clarke-Mobile Counties Gas Dist. v. Prior Energy Corp., 834 So. 2d 88 (Ala. 2002) (where defendant's contract counterclaim and plaintiff's fraud claim arose out of the same operative facts and were closely intertwined, partial summary judgment entered in favor of defendant on its contract counterclaim should not have been certified as final); H.P.H Props, Inc. v. Cahaba Lumber & Millwork, Inc., 811 So. 2d 554 (Ala. Civ. App. 2001) (certification of summary judgment on plaintiff's claims is inappropriate where later resolution of defendant's counterclaims could affect the amount of damages awarded on plaintiff's claims).

Ideally, a certification under Rule 54(b) should specifically state that the court has determined that there is no just reason for delay and should expressly direct the entry of final judgment pursuant to Rule 54(b). However, even if the order does not do so, "if it is clear and obvious from the language used by the trial court in its order that the [trial] court intended to enter a final order pursuant to Rule 54(b), then [the appellate court] will treat the order as a final

judgment." Schneider Nat'l Carriers, Inc. v. Tinney, 776 So. 2d 753, 755 (Ala. 2000).

Rule 54(b) certification not only allows for immediate appeal; it requires it. See Wilbern v. Larry Savage Chevrolet, Inc., 477 So. 2d 384 (Ala. 1985) (appeal from order dismissing defendant and containing 54(b) certification came too late where propriety of dismissal was raised upon appeal at the conclusion of the entire case). The time for filing an appeal begins to run when the Rule 54(b) order is entered. C.L.D. v. D.D., 575 So. 2d 1140, 1142 (Ala. Civ. App. 1991) ("The time for filing an appeal ... will begin to run when the Rule 54(b) order is entered."). Consequently, if the trial court improperly certifies an order as final, you should appeal the order and test the propriety of the certification. If you do not do so, you may lose your right to appeal.

## 2. Appeal as of Right from Non-Final Orders

In some instances, non-final orders are appealable as a matter of right and the entry of such an order starts the time

period for filing an appeal.<sup>1</sup> For example, the following interlocutory orders are immediately appealable:

Orders "granting, continuing, modifying, refusing, or dissolving an injunction, or refusing to dissolve or to modify an injunction." Rule 4(a)(1)(A), Ala. R. App. P.

An order granting or denying a motion to compel arbitration. Rule 4(d), Ala. R. App. P.

An order that denies a petition to intervene as of right. Mutual Assur., Inc. v. Chancey, 781 So. 2d 172, 174 (Ala. 2000).

An order denying class certification. Ala. Code 1975, § 6-5-642; Ex parte Roberson, 749 So. 2d 441, 447 (Ala. 1999)

An order granting or denying a motion for new trial.<sup>2</sup> Ala. Code 1975, 12-22-10.

An interlocutory order appointing or refusing to appoint a receiver. Rule 4(a)(1)(B), Ala. R. App. P.

Any interlocutory order determining the right to public office. Rule 4(a)(1)(B), Ala. R. App. P.

---

<sup>1</sup> Interlocutory orders that are not immediately appealable may be immediately reviewable by way of petition for writ of mandamus or permissive appeal under Rule 5, Ala. R. App. P. See generally Susan S. Wagner, Appeal Early and Often? Appellate Review of Non-Final Orders in Alabama, 65 Ala. Law 254 (July, 2004).

<sup>2</sup> Where the trial court grants a party's alternative motion for new trial, an order denying that party's primary motion for judgment as a matter of law is appealable. John Crane-Houdaille, Inc. v. Lucas, 534 So. 2d 1070, 1075 (Ala. 1988).

## B. Standing - Who May Appeal?

Generally, only a party to the judgment below has standing to appeal a judgment.

'Unless a person is a party to a judgment, he cannot appeal from that judgment. That fundamental principle is one of the oldest in Alabama jurisprudence.' Daughtry v. Mobile County Sheriff's Dep't, 536 So. 2d 953, 954 (Ala. 1988). 'One must have been a party to the judgment below in order to have standing to appeal any issue arising out of that judgment.' Mars Hill Baptist Church of Anniston v. Mars Hill Missionary Baptist Church, 761 So. 2d 975, 980 (Ala. 1999).

Boschert Merrifield Consultants, Inc. v. Masonite Corp., [Ms. 1031061, Sept. 24, 2004] \_\_\_ So. 2d \_\_\_ (Ala. 2004) Thus, even a party to a suit ordinarily does not have standing to appeal a judgment entered against another party. But see Voyager Life Ins. Co. v. Whitson, 703 So. 2d 944, 947 (Ala. 1997) (determining that a third party defendant was a "party aggrieved" by a judgment entered against the first party defendant and therefore had standing to appeal that judgment); Thompson Properties v. Birmingham Hide & Tallow, Inc., 839 So. 2d 629, 634 (Ala. 2002) (where the trial court certified a default judgment against one defendant as final under Rule 54(b), and "no party appealed the default judgment," the co-defendant was bound by the default judgment declaring that a

non-party corporation was the alter ego of the first defendant).

### C. Jurisdictional Nature of Timeliness

Timely filing of a notice of appeal is the act that confers jurisdiction on the appellate court. Ex parte Barrows, [Ms. 1030359, May 7, 2004] \_\_\_ So. 2d \_\_\_ (Ala. 2004). If the notice of appeal is not timely filed, the appeal must be dismissed. See Brooks v. State, [Ms. 1020344, Jan. 16, 2004] \_\_\_ So. 2d \_\_\_ (Ala. 2004); Rule 2(a)(1), Ala. R. App. P. ("An appeal shall be dismissed if the notice of appeal was not timely filed to invoke the jurisdiction of the appellate court."). The appellate court has no discretion to consider an untimely appeal, no matter how meritorious it may be, because the court lacks jurisdiction over the appeal. See Hayden v. Harris, 437 So. 2d 1283 (Ala. 1983) (time limit for filing notice of appeal is jurisdictional; it cannot be waived, nor is it subject to extension of time by agreement of the parties or order of the appellate court).

### D. Time Period for Appeal

In most cases, the appellant has forty-two (42) days from the entry of judgment in which to appeal. Rule 4(a)(1), Ala.

R. App. P. However, appeal must be perfected within 14 days in the following cases:

Appeals from interlocutory orders granting, continuing, modifying, refusing or dissolving an injunction, or refusing to dissolve or modify an injunction;

Appeals from interlocutory orders appointing or refusing to appoint a receiver;

Appeals from interlocutory orders determining the right to public office;

Appeals from judgments in actions for the validation of public obligations; and

Appeals from final orders or judgments issued by a juvenile court.

Ala. R. App. P. 4(a)(1)(A)-(E). In addition, in some circumstances, a different time period for the taking of an appeal may be provided by statute. See, e.g., Ala. Code 1975, § 37-1-140 (providing 30-day time period for the taking of an appeal in a public service commission rate case); Ala. Code 1975, § 6-6-15 (providing that notice of appeal from an arbitrators award must be filed within 10 days after receipt of notice of the award).

#### **E. Cross Appeal**

If a timely notice of appeal is filed by any party, any other party may file a notice of appeal within 14 days of that notice or within the original appeal time, whichever is later.

Rule 4(a)(2), Ala. R. App. P. Cross appeal is necessary for the appellee to raise any issues different from those raised by the appellant. See, e.g., Hitt v. State of Alabama Personnel Bd., 873 So. 2d 1080, 1088 (Ala. 2003) ("Failure of a party to take a cross-appeal as to an adverse aspect of the judgment appealed, but not included as an issue on appeal by the appellant, will, under circumstances such as those presented here, foreclose appellate consideration of the aspect of the judgment as to which no appeal was taken."); Blake v. American Family Care, Inc., 599 So. 2d 5, 7 (Ala. 1992) ("[T]he failure to appeal or cross-appeal the denial of relief on any other claims related to other alleged breaches operates as a bar to relitigation of those issues. In cases where an appeal is taken with respect to a particular issue or issues, there cannot be a retrial of other issues previously tried and determined but not appealed from."); McMillan, Ltd. v. Warrior Drilling and Engineering Co., Inc., 512 So. 2d 14, 24 (Ala. 1986) ("In the absence of taking an appeal, an appellee may not cross-assign as error any rulings of the trial court adverse to appellee; thus, defendant's failure to cross appeal from summary judgment entered against it on certain affirmative defenses precluded the court from

considering whether the trial court's entry of summary judgment in defendant's favor on plaintiff's claim, though improper on the basis entered, was proper based on the affirmative defenses"); Goldberg & Assocs., P.C. v. Donohoe, 777 So. 2d 144, 146 (Ala. Civ. App. 2000) ("Donohoe argues in her brief on appeal that the trial court erred in allowing Goldberg & Associates to intervene.... Donohoe did not cross-appeal to raise this issue on appeal.... Therefore, this court may not consider that issue.").

Like the timely filing of a notice of appeal, the timely filing of a notice of cross appeal is jurisdictional. Ex parte P&H Const. Co., Inc., 723 So. 2d 45, 48 (Ala. 1998) ("[W]e ... hold that a timely filing of a notice of a cross-appeal to protect one's rights is a mandatory jurisdictional act and not a rule of practice."). If the appellee's cross appeal is not timely, the court is without jurisdiction to consider any issues raised by the appellee.

#### **F. What Starts the Running of the Deadlines for Appeal?**

The entry of judgment starts the running of the deadlines for appeal.<sup>3</sup> Rule 4(a)(1), Ala. R. App. P. Entry of judgment

---

<sup>4</sup> The date of entry of judgment also is the date post-judgment interest begins accruing and the date that begins the running of the time period for filing post-judgment motions.



means the "[n]otation of a judgment or order on separately maintained bench notes or in the civil docket or the filing of a separate judgment or order." Rule 58(c), Ala. R. Civ. P. Judgment is not always entered on the day a jury verdict is returned. The court may render judgment by separate order or by announcing the judgment from the bench, but the date that begins the running of the time for an appeal is the date the judgment is entered. See Smith v. Jackson, 770 So. 2d 1068, 1071-1072 (Ala. 2000) (Rule 58(c) "preserves the distinction between rendition and entry of judgment when the trial judge renders judgment 'by executing a separate written document,' Rule 58(a), Ala. R. Civ. P."); Lyman v. Lyman, 753 So. 2d 1159, 1160 (Ala. Civ. App. 1999).

The clerk is required to immediately serve notice of the entry of an order by mail "upon each party who is not in default for failure to appear, and who was not present in person or by that party's attorney or not otherwise notified, when such order or judgment was rendered, and make a note on the docket of the mailing." Rule 77(d), Ala. R. Civ. P.; see also Turner v. Barnes, 687 So. 2d 197 (Ala. 1997) ("Nothing in Rule 77 indicates that this language is aspirational, or that other means of giving notice to the parties may be

substituted." ). However, except as discussed in the next section, a failure by the clerk to notify such parties "does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed." Rule 77(d).

#### **G. Extension of Time to Appeal**

The time for appeal may be extended only in one narrow circumstance. Rule 77(d), Ala. R. Civ. P., permits the trial court to extend the time for taking an appeal (or a cross-appeal) upon a showing of excusable neglect for failure of a party to learn of the entry of the judgment (or the filing of a notice of appeal).

"Excusable neglect" is not presumed; it must be established before a party is entitled to an extension of time under Rule 77(d). Wal-Mart Stores, Inc. v. Edwards, 735 So. 2d 1221, 1222 (Ala. Civ. App. 1998) (failure of the clerks office to notify appellant of the entry of an order, in clear neglect of its duties under Rule 77(d), does not relieve the appellant of the burden of establishing "excusable neglect"). Moreover, when a party makes "no discernible effort to keep abreast of the case status" and nothing can be shown beyond a party's "simple reliance upon the clerk's office" for notice, Rule

77(d) prohibits the granting of an extension of time to file notice of appeal. Bacon v. Winn Dixie Montgomery, Inc., 730 So. 2d 600 (Ala. 1998); see also H.F. v. State Dep't of Human Res., 843 So. 2d 186, 189-90 (Ala. 2001) (counsel's exclusive reliance on receiving notice from the clerk's office of ruling on his post-judgment motion was insufficient to establish excusable negligent and the trial court was authorized to extend the time to file notice of appeal). Generally, excusable neglect is found to exist only when a party has made a diligent effort to check the status of his case. See, e.g., Turner v. Barnes, 687 So. 2d 197 (Ala. 1997) (trial court properly extended the time for appeal where the party's attorney had acted with due diligence in his attempt to follow the status of the case by telephoning the clerk's office).

The time to appeal may be extended no more than thirty days from the expiration of the original deadline. See Lindstrom v. Jones, 603 So. 2d 960, 961 (Ala. 1992); Corretti v. Pete Wilson Roofing Co., 507 So. 2d 408, 409 (Ala. 1986). Consequently, if a party fails to learn of the entry of the judgment or order for more than 72 days (42 day appeal period, plus 30 day maximum extension), the trial court is without authority to grant him any relief. Id. But see Sparks v.

Alabama Power Co., 679 So. 2d 678, 681 (Ala. 1996) (Court held that an appeal was timely filed even though it was filed 89 days after the entry of the order denying appellant's post-judgment motion, where no notice of the order was mailed to either party's counsel, no entry was made on the computer case record system, and when appellant made inquiry to clerk's office, that office indicated that as of the 90th day there had been no ruling on the motion for new trial. The Court held that "where there is a material discrepancy between the information contained on the formal case action summary sheet in a case and the information contained in the circuit clerk's computerized docket, a litigant should not be penalized by relying in good faith on the information contained in either 'document'" and that an appeal was timely where it would have been timely filed had the information provided by the clerk's office been accurate - that is, had the post-judgment motions been denied by operation of law on the 90<sup>th</sup> day pursuant to Rule 59.1).

Rule 77(d) does not permit the trial court to extend the time for appeal for any reason other than failure to learn of entry of the judgment or order. Greystone Close v. Fidelity & Guaranty Ins. Co., 664 So. 2d 900 (Ala. 1995) (appeal dismissed

because "litigant's miscalculation of time for filing notice of appeal, no matter how innocent or understandable, is not the kind of neglect excused under 77(d) and the trial court was without the power to grant ... an extension of time to ... appeal").

#### **H. Premature filing of notice of appeal**

The Rules of Appellate Procedure address how appellate courts must treat notices of appeal filed before the entry of a judgment but after announcement of the court's decision. Rule 4(a)(4), Ala. R. App. P., provides:

(4) A notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order shall be treated as filed after the entry and on the day thereof.

See Springhill Nursing Homes, Inc. v. McCurdy, [Ms. 1022026, 1030006, Sept. 24, 2004] \_\_\_ So. 2d \_\_\_, \_\_\_ fn.1 (Ala. 2004) ("Springhill and Steiner's appeal is properly before us by operation of Rule 4(a)(4), Ala. R. App. P.,....").

#### **F. Tolling the Time for Appeal**

The time period for filing a notice of appeal is tolled in limited circumstances. The time period for appeal is tolled only if a party timely files a post-judgment motion pursuant to Rule 50 (judgment as a matter of law), Rule 52 (to amend findings of fact in non-jury case), Rule 55 (to set

aside a default), or Rule 59 (new trial or to alter or amend the judgment). In these circumstance, the appeal time is suspended and begins to run anew from the date of disposition of the last post-judgment motion, subject to the limitations of Rule 59.1. See Rule 4(a)(3), Ala. R. App. P. A pre-mature motion for judgment as a matter of law or motion for new trial, filed before the court has entered a judgment, is treated as if filed "after the entry of the judgment and on the day thereof" and therefore tolls the time for appeal. New Addition Club, Inc. v. Vaughn, [Ms. 1022075, July 16, 2004] \_\_\_ So. 2d \_\_\_ (Ala. 2004).

Filing of a Rule 60 motion does not toll the time for appeal from the judgment. See Rule 4(a)(3), Ala. R. App. P; see also Alabama Farm Bureau Mut. Cas. Ins. Co. v. Boswell, 430 So. 2d 426, 428 (Ala. 1983) ("[A] motion under Rule 60 [Ala. R. Civ. P.], is an attack on the judgment and does not affect the finality of the judgment or toll the time for appeal."); Pierson v. Pierson, 347 So. 2d 985 (Ala. 1977). But see Lockhart v. Phoenix City Investment Co., 488 So. 2d 1353, 1354 (Ala. 1986) (motion that was mis-described in the trial court as a 60(b) motion but that was made within 30 days of the judgment was treated on appeal as a Rule 59(e) motion

to alter, amend or vacate the judgment); Ex parte Colonial Live & Accident Insurance Co. 410 So. 2d 73, 73 (Ala. Civ. App. 1982) (rejecting respondent's argument that "application for rehearing" filed in the trial court was a Rule 60 motion for relief from judgment, noting "post-trial motions filed within 30 days of the judgment have generally been held to be ARCP rule 59 motions subject to the time limitations of Rule 59.1").

The time for appeal is not tolled by the filing successive post-judgment motions. See Buchanan v. Young, 534 So. 2d 263, 264-65 (Ala. 1988) (motion to reconsider an order disposing of a post-trial motion does not suspend the time for filing a notice of appeal); Ex parte Keith, 771 So. 2d 1018, 1022 (Ala. 1998) ("After a trial court has denied a post-judgment motion pursuant to Rule 60(b), that court does not have jurisdiction to entertain a successive post-judgment motion to 'reconsider' or otherwise review its order denying the Rule 60(b) motion, and such a successive post-judgment motion does not suspend the running of the time for filing a notice of appeal from the denial of the 60(b) motion); Humphries v. Humphries, 726 So. 2d 698 (Ala. Civ. App. 1998) (time for appeal ran from ruling denying husband's post-

judgment motion to alter, amend or modify divorce judgment and was not tolled by husband's motion to vacate the ruling on his post-judgment motion or by the trial court's order purporting to grant that motion to vacate). However, if a post-judgment motion is granted, resulting in an amended judgment or order, a subsequent post-judgment motion will toll the time to appeal from that amended judgment or order. Ex parte Mutual Savings Life Ins. Co., 765 So. 2d 649 (Ala. 1998) (order granting plaintiff's motion for new trial was a new "judgment", so the "motion for reconsideration" filed by defendant within thirty days after the order granting the new trial was a Rule 59(e) motion which tolled the time for appeal).

Timely filing of a post-judgment motion by any party tolls the appeal time for all parties. See Wellcraft Marine, a Div. of Genmar Industries, Inc. v. Zarzour, 577 So. 2d 414 (Ala. 1990) (The filing of a post-judgment motion tolls the running of the time for taking an appeal as to all parties, not just the party who filed the motion.)

Untimely post-judgment motions do not toll the time for appeal. See City of Talladega v. McRae, 375 So. 2d 429, 430 (Ala. 1979) ("Untimely filing of [a post-trial] motion does not suspend the running of the time allowed for filing notice



of appeal."); Marsh v. Marsh, 852 So. 2d 161, 163 (Ala. Civ. App. 2002) ("Although a timely postjudgment motion will toll the 42-day time period for filing a notice of appeal, an untimely filed post-judgment motion will not do so.").

1. Disposition of post-judgment motions

Under Rule 59.1, Ala. R. Civ. P., a trial court has ninety days from the date post-judgment motions are filed to rule on the motions. If the ninety days expires and the trial court has failed to rule, the motions are deemed denied by operation of law and the time for appeal begins to run. Board of Water & Sewer Comm'rs v. Alabama Power Co., 363 So. 2d 304 (Ala. 1978) (post-judgment motion was denied by operation of law 90 days after the filing of the motion; the 42-day time period for appeal began to run on the day following denial of the motion by operation of law).

The ninety day period may be extended with the express consent of all the parties. Crowder v. Zoning Bd. Of Adjustment, 409 So. 2d 837, 838 (Ala. Civ. App. 1981). However, the consent must appear in the record, and it must be entered in the record before the expiration of the original 90-day period. See Ex parte Babyak, [Ms. 1021749 (Jan. 30, 2004)] \_\_ So. 2d \_\_ (Ala. 2004) (where there was no evidence on

the record that the parties had agreed unanimously to extend the time for ruling on husband's post-judgment motion, the trial court lacked jurisdiction to rule after the 90 days expired). The 90-day period also may be extended by the appellate court to which an appeal of the judgment would lie but only if the motion is filed before the 90 days expires. See Crowder v. Zoning Bd. of Adjustment, 409 So. 2d 837 (Ala. Civ. App. 1981).

Rule 59.1 applies only to post-judgment motions under Rules 50 (renewed judgment as a matter of law), 52 (to amend findings of fact in non-jury case), 55 (to set aside a default), or 59 (new trial or to alter or amend the judgment). It does not apply to Rule 60 motions, nor does it apply to Rule 50 motions for judgment in accordance with a motion for judgment as a matter of law when no verdict is returned (i.e., when there is a mistrial).

## 2. Untimely disposition of post-judgment motions

If timely post-judgment motions are filed and they are deemed denied by operation of Rule 59.1, the trial court loses jurisdiction to rule on the post-judgment motions. Ex parte Caterpillar, Inc., 708 So. 2d 142, 143 (Ala. 1997) ("If a trial court does not rule on a post-judgment motion within 90

days, it loses jurisdiction to rule on the motion."). The appeal time begins to run from the date the post-judgment motions are deemed denied by Rule 59.1, and if the trial court later enters an order purporting to dispose of the motions, that order is a nullity and does not affect the time for appeal. See Byrd v. Petelinski, 757 So. 2d 400, 402 (Ala. 2000) ("[Appellant] had 42 days from the date of the denial of his motions by operation of law ... to file his notice of appeal."); Wood v. Benedictine Soc'y of Ala., Inc., 530 So. 2d 801 (Ala. 1988) (42 day appeal time began to run on date the post-judgment motion was denied by operation of Rule 59.1 rather than from court's subsequent order purporting to rule on the motion); see also Landers v. Landers, 812 So. 2d 1212 (Ala. Civ. App. 2001) (post-judgment motions filed by ex-spouses were denied by operation of law 90 days after respective filing dates although the trial court rendered orders on motions within 90-day period, those orders were not entered until after the 90-day period expired).

3. Effect of notice of appeal filed before disposition of post-judgment motions

Rule 4(a)(5), Ala. R. App. P., addresses how appellate courts must treat notices of appeal filed after the entry of

a judgment, but while post-judgment motions are pending. It provides:

A notice of appeal filed after the entry of the judgment but before the disposition of all post-judgment motions filed pursuant to Rules 50, 52, 55 and 59, Alabama Rules of Civil Procedure, shall be held in abeyance until all post-judgment motions filed pursuant to Rules 50, 52, 55, and 59 are ruled upon; such a notice of appeal shall become effective upon the date of disposition of the last of all such motions.

The "abeyance" procedure may result in an appeal from a judgment that has been altered substantially by subsequent ruling on a post-judgment motion. See Committee Comments to the Amendment adding Rule 4(a)(4) and (b). In such a case, the appellee may move to dismiss the appeal. Id. The appellant can respond and state whether appellate review is still sought on some aspect of the case. Id. The appellant can amend the notice of appeal within 42 days after the disposition of the last motion. Id. The appellant should notify the appellate court clerk when the appellant discovers that the notice of appeal is being held in abeyance or has been held in abeyance under Rule 4(a)(5). Id.

## II. PERFECTING AN APPEAL

### A. Notice of Appeal

#### 1. Essential contents

The notice of appeal must specify the party or parties taking the appeal, must specify the judgment or order appealed from and must name the court to which the appeal is taken. See Rule 3(c), Ala. R. App. P. The designation of the judgment or order appealed from generally does not limit the scope of appellate review. See Rule 3(c); Ex parte R.B.Z., 725 So. 2d 257, 259 (Ala. 1997) ("the designation of the judgment does not limit the scope of appellate review"). But see, Woodward v. Roberson, 789 So. 2d 853 (Ala. 2001) (The Court would not treat an appellant's notice of appeal from an order granting injunctive relief as a petition for writ of mandamus challenging the denial of his motion to recuse the trial judge--review of a motion to recuse would only be appropriate by way of a petition for the writ of mandamus or an appeal from a final judgment--though docketing statement accompanying the notice of appeal referred to trial judge's failure to recuse as being an issue appellant intended to raise on appeal because the notice of appeal clearly indicated that the appeal was only from an order granting a preliminary

injunction, and did not purport to be from an order denying the motion to recuse.).

The Supreme Court has stated:

The Alabama Rules of Appellate Procedure were not 'designed to catch the unwary on technicalities.' Edmondson v. Blakely, 341 So. 2d [481] at 484 [Ala. 1976]. Accordingly, absent a showing that the alleged defect in a notice of appeal prejudiced the adverse party, an appeal will not be dismissed on the basis of that defect.

Ex parte Barrows, [Ms. 1030359, May 7, 2004] \_\_\_ So. 2d \_\_\_, \_\_\_ (Ala. 2004) citing Dunning v. New England Life Ins. Co., [Ms. 1011927, Nov. 21, 2003] (Ala. 2003). Consequently, designation of the wrong appellate court is treated as a clerical mistake and may be corrected accordingly. See Rule 3; McGhee v. Martin, [Ms. 2020622, Feb. 27, 2004] \_\_\_ So. 2d \_\_\_, \_\_\_ (Ala. Civ. App. 2004) ("To determine whether an appellant has complied with [Rule 3(c)], we must decide 'whether the intention to appeal from a specific judgment may be reasonably inferred from the text of the notice [of appeal].' Edmondson, 341 So. 2d at 483."); Wyatt v. Apollo Trucking, Inc., 508 So. 2d 278, 280 (Ala. Civ. App. 1987). Further, the court, within its discretion and considering any prejudice to the adverse party, may treat the incorrect naming of the appealing party as a clerical mistake and allow the

real party to be substituted, even if the motion to substitute is filed outside the 42-day appeal period. See Ex parte Singleton, 475 So. 2d 186 (Ala. 1985).

Although Rule 3(c) only requires that the party taking the appeal be designated in the notice, the court has indicated that when an appellant wishes to appeal as to multiple parties, the notice must include the names of each appellee. Veteto v. Swanson Services Corp., [Ms. 1021278, Dec. 30, 2003] \_\_\_ So. 2d \_\_\_, \_\_\_ (Ala. 2003) ("It is settled law that notice of appeal from a judgment in favor of two or more parties must specifically name each party whose judgment the appellant wishes to overturn." Sperau v. Ford Motor Co., 674 So. 2d 24, 40 (Ala. 1995), judgment vacated, Ford Motor Co. v. Sperau, 517 U.S. 1217, 116 S.Ct. 1843, 134 L.Ed.2d 945 (1996)."); Edmondson v. Blakey, 341 So. 2d 481, 484 (Ala. 1976) ("While we might not be willing to go so far as to require the designation of each appellee in the notice of appeal, we do think that fairness requires that some indication appear that an appeal has been taken to reverse a judgment rendered in favor of a prevailing party."). But see Ayers v. Duo-Fast Corp., 779 So. 2d 210 (Ala. 2000) (The Court held that an employer was appellee in employee's appeal

although employee's notice named only manufacturer because the case action summary sheet reflected that trial court clerk served copy of notice of appeal on employer's counsel and records reflected that employer considered itself an appellee).

2. Where and how to file

The notice of appeal is filed with the trial court. Rule 3(a)(1). It must be received and filed by the clerk of the trial court within the time for appeal in order to properly perfect the appeal. See Lyman v. Lyman, 753 So. 2d 1159, 1160 (Ala. Civ. App. 1999) (Filing of the statutory notice of appeal with the circuit court is necessary to perfect the appeal and is therefore jurisdictional.) The provisions of the appellate rules concerning service by mail apply only to papers filed in the appellate court and do NOT apply to the notice of appeal which is filed in the trial court.<sup>4</sup> Thus, depositing a notice of appeal in the mail is insufficient to constitute filing with the court and does not comply with the requirements of the rules. See Rule 25(a), Ala. R. App. P.; Alabama Medicaid Agency v. Peoples, 557 So.

---

<sup>4</sup> The date of entry of judgment also is the date post-judgment interest begins accruing and the date that begins the running of the time period for filing post-judgment motions.



2d 1281 (Ala. Civ. App. 1990) (service by certified mail applies only to filings in an appellate court; appellant's mailing of notice of appeal to circuit court by certified mail was not timely filing).

Facsimile transmission of a notice of appeal also does not meet the requirements of filing a notice of appeal with the circuit court. See Ex parte Tuck, 622 So. 2d 929 (Ala. 1993). However, a timely filed copy of an original notice of appeal is acceptable and sufficient to invoke the jurisdiction of appellate court under Rule 3, Ala. R. App. P., even if the notice of appeal was transmitted by facsimile machine to an individual who then filed the faxed copy with the circuit court clerk. See Dunning v. New England Life Ins. Co., [Ms. 1011927, Nov. 21, 2003] \_\_\_ So. 2d \_\_\_ (Ala. 2003) ("We hold that a timely filed copy of an original notice of appeal is acceptable under the Alabama Rules of Appellate Procedure.").

**B. Supporting documents**

Security for costs on appeal (Rule 7, Ala. R. App. P.), an appellate docketing statement (Rule 3(e), Ala. R. App. P.), and the \$100 docketing fee (Rule 12(a) and 35A(a)(1), Ala. R. App. P.) should be filed with the notice of appeal.

A sufficient number of copies must be filed to allow the clerk of the trial court to serve the clerk of the appellate court, the court reporter, and counsel of record for each party (or the parties themselves, if pro se). See Rule 3(a)(1), Ala. R. App. P. Although the trial court clerk must serve a copy of the notice of appeal on all parties, Rule 3(d)(1), requires that the appellant serve copies of the notice of appeal on all adverse parties, which prevents the 14-day cross-appeal period from running before other parties learn of the filing of the notice of appeal. The appellant must file and serve a written designation of the clerk's record within seven (7) days of filing the notice of appeal. Ala. R. App. P. 10(b)(1). In addition, if a transcript of the proceedings is to be included in the record on appeal, the appellant must pay the estimated cost of the transcript to the court reporter and complete a transcript purchase order within seven (7) days of filing the notice of appeal. Ala. R. App. P. 10(b)(2).

1. Docketing statement

Rule 3(e), Ala. R. App. P., requires an appellant, or his attorney if he is represented by counsel, to complete, sign and file a docketing statement at the time the notice

of appeal is filed. Rule 3(e) outlines the procedure that the clerk must follow if a docketing statement is not filed with a notice of appeal:

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.

Ala. R. App. P. 3(e). If the appellant fails to file a docketing statement, the appellate court may stay the proceedings until the docketing statement is filed or, after proper notice, dismiss the appeal. Id. The court also may treat the failure to comply as contempt of court. Id.

## 2. Deflection of Appellate Cases

Ala. Code § 12-2-7(6) permits the Supreme Court to transfer or "deflect" certain cases within its jurisdiction to the Court of Civil Appeals. See Ex parte R.B.Z., 725 So. 2d 257, 260 (Ala. 1997) ("The only way the Court of Civil Appeals may take jurisdiction over a matter not expressly

assigned to that court by § 12-3-10 is by a transfer pursuant to § 12-2-7(6), a transfer commonly called 'deflection.'"). The Supreme Court cannot transfer cases presenting a substantial question of federal or state constitutional law, cases involving a novel legal question, utility rate cases, bond validation cases or Alabama State Bar disciplinary proceedings. § 12-2-7(6), Ala. Code 1975. Cases that the Supreme Court can transfer include (1) cases involving an amount in controversy of \$50,000 or less, regardless of the basis of the claim appealed; (2) cases where the dispositive legal issue turns on post-judgment enforcement procedures, including garnishments and executions; (3) cases where the dispositive legal issue turns on commercial contract law; and (4) cases where the dispositive legal issue turns on real property law. If a case falls within one of the categories to be considered for transfer and the appellant or appellee believes it should not be transferred, those reasons should be fully set forth on the Docketing Statement. See Form ARAP-24, section XII.

### 3. Stay of Execution and Supersedeas Bonds

How do you protect your client during the pendency of post-trial motions or appeal? Rule 62, Ala. R. Civ. P.,

provides an automatic stay of execution for thirty days after the entry of judgment in most circumstances. See Rule 62(a), Ala. R. Civ. P. (the automatic stay does not apply in some circumstances, such as actions for injunctions and in receivership actions). However, if a party is concerned that the judgment may become uncollectible or the status quo may be altered in some other respect during the 30 days, he may seek relief from the trial court. See Committee Comments on the 1973 Adoption ("A court has inherent power to make whatever order it deems necessary to preserve the status quo and ensure the effectiveness of the eventual judgment.") Rule 62(a) allows execution to issue and proceedings to be commenced to enforce the judgment during the 30-day period "by order of the court for good cause shown." See Ala. Code § 6-9-22 ("execution may be issued by leave of the court before the time prescribed in the Alabama Rules of Civil Procedure for issuing of executions, the plaintiff, his agent or attorney showing sufficient cause therefor by affidavit"); Ala. Code § 6-9-23 ("on affidavit being made and filed that the defendant is about fraudulently to dispose of or remove his property and that the plaintiff will probably lose his

debt, the clerk or register must issue execution against the property of the defendant").

The automatic stay expires after thirty days, but Rule 62(b) allows the trial court in its discretion to stay execution during the pendency of the post-judgment motions "on such conditions for the security of the adverse party as are proper." If you are concerned about the collectability of the judgment, you should ask the court to require that a bond be posted or some other security be provided as a condition of granting a stay.

Once the post-judgment motions are overruled, a supersedeas bond in the amount of 125% of the judgment (150% if the judgment is \$10,000 or less) is required in order to stay execution while the case is on appeal. Rule 62(d), Ala. R. Civ. P. ; Rule 8(a)(1), Ala. R. App. P. Approval of the bond by the clerk of the trial court results in a stay of the judgment. Rule 62(d).

#### 4. Appellate forms

A printed Notice of Appeal form (Form ARAP 1) may be obtained from the Circuit Court clerk's office or from the Administrative Office of Courts. A typed or even handwritten notice of appeal can be utilized, but the pre-printed

form simplifies the process because it incorporates the notice of appeal, security for costs, designation of the record and supersedeas bond. The Appellate Docketing Statement (Form ARAP 24 or 25) and the Transcript Purchase Order (Form ARAP 1A) also may be obtained from the Circuit Court clerk's office or the Administrative Office of Courts.

#### 5. Cross-Appeal

If an appellee cross-appeals, he is required to file the same documents as in any other appeal and the docketing fee also must be paid; if the appellee fails to so comply, the cross-appeal is subject to dismissal. H.C. Schmieding Produce Co., Inc. v. Cagle, 529 So. 2d 243, 249 (Ala. 1988); Rule 2(a)(2)(D), Ala. R. App. P.

### III. THE RECORD ON APPEAL

#### A. Supplying The Record

It is the appellant's responsibility to see that the record is prepared and filed in a timely manner, and the appeal may be dismissed if the appellant does not do so. See Rule 12(c), Ala. R. App. P. ("Dismissal for failure of appellant to cause timely completion of record"). It is also the appellant's obligation to assure that the record on appeal includes everything that is necessary for the

appellate court to conduct its review. Cooper & Co., Inc. v. Lester, 832 So. 2d 628, 632 (Ala. 2000) ("The duty is on the appellants to include in the record on appeal those materials necessary for valid review."); Matter of Coleman, 469 So. 2d 638, 639 (Ala. Civ. App. 1985) ("The appellant bears the burden of ensuring that the record contains sufficient evidence to warrant a reversal.").

**B. The Record Must Include Any Ruling to be Reviewed**

Adverse rulings to be reviewed must be made on the record - that is, in the court file via a written ruling on the pleading, by separate order or by notation on the docket sheet, or orally in the presence of the court reporter - and those adverse rulings must be included in the record on appeal. An adverse ruling, no matter how prejudicial, will not support appellate relief if the ruling is not made on the record. See Chesser v. Mid-South Electrics, Inc., 652 So. 2d 240, 242 (Ala. 1994) ("However, if the adverse ruling complained of does not appear in the record, the appeal from the alleged adverse ruling must be dismissed.").

**C. The Record Must Support the Grounds and Arguments on Appeal**

An appellate court "is limited to a review of the record alone, that is, it can consider only the evidence that was



before the trial court when it made its ruling. King v. Garrett, 613 So. 2d 1283 (Ala. 1993); Moody v. Hinton, 603 So. 2d 912 (Ala. 1992)." Cowen v. M.S. Enters., Inc., 642 So. 2d 453, 454-55 (Ala. 1994). The party seeking to place the trial court in error must establish in the record on appeal an adequate predicate for the appellate court's review. Cooper & Co. v. Lester, 832 So. 2d 628 (Ala. 2000); Alfa Mut. Gen. Ins. Co. v. Oglesby, 711 So. 2d 938 (Ala. 1997).

The law is settled that it is the appellant's duty to ensure that the appellate court has a record from which it can conduct a review. Cooper & Co., supra; Oglesby, supra; and Gotlieb v. Collat, 567 So. 2d 1302 (Ala. 1990). Further, in the absence of evidence in the record, this Court will not assume error on the part of the trial court. Browning v. Carpenter, 596 So. 2d 906 (Ala. 1992); Smith v. Smith, 596 So. 2d 1 (Ala. 1992); Totten v. Lighting & Supply, Inc., 507 So. 2d 502 (Ala. 1987). Not only will this Court refuse to place the trial court in error for denying a motion for a new trial on a ground that is unsupported by evidence, Bush v. Stanton, 273 Ala. 615, 143 So. 2d 621 (1962); Meeks v. State, 697 So. 2d 60 (Ala. Crim. App. 1996), it will also decline to take the extraordinary step of ordering a remand to elicit evidence that could have been sought in a hearing on a motion for a new trial.

Zaden v. Elkus, [Ms. 1012149 Sept. 12, 2003] \_\_\_ So. 2d \_\_\_, \_\_\_ (Ala. 2003). Moreover, where the record is not complete, the appellate court will presume that the trial court had

evidence before it sufficient to support its judgment.  
Browning v. Carpenter, 596 So. 2d 906 (Ala. 1992).

**D. Rules and Mechanics for Including What Each Party Needs in the Record on Appeal**

1. Designation of the record on appeal

Within seven days of filing the notice of appeal, the appellant must file with the clerk of the trial court and serve on the appellee a written designation of the portions of the clerk's record that should be included in the record on appeal. Rule 10(b)(1), Ala. R. App. P. If the appeal is from a summary judgment, the appellant must designate any depositions which are to be included in the record. If less than all of the record is designated, the appellant must also serve a statement of the issues he intends to present on appeal. Rule 10(b)(1). The appellee then has seven days from service of the designation to file and serve a designation of any additional portions of the record he deems necessary. Rule 10(b)(1).

2. Transcript purchase order

A transcript purchase order also must be completed and distributed and the estimated cost of the transcript paid to the court reporter within seven days of filing the notice of appeal. See Rule 10(b)(2), Ala. R. App. P. Again, if you

order a transcript of less than all of the proceedings, a statement of the issues to be raised on appeal also must be served on the appellee. On the day the transcript purchase order is received, the court reporter must complete the portion of the order form certifying receipt of the estimated cost. Id. The appellee has seven days from service of the transcript purchase order to designate any additional portions of the proceedings that he deems necessary and to pay the reporter the estimated costs of those portions. Id.

**Note:** At any time, the appellee may apply to the trial court for an order requiring that the appellant reimburse the appellee for any or all of the payment made to the court reporter. See Rule 10(b)(2).

### 3. Unavailability of transcript

If the testimony presented to the trial court was not transcribed, an effort must be made to supply a statement of the evidence pursuant to Rule 10, Ala. R. App. P., or there is nothing for the Court to review on appeal. See Lee v. Lee, 547 So. 2d 1188, 1189 (Ala. Civ. App. 1989) ("Our review cannot extend to the merits of this case because the appellant failed to provide a sufficient record for review.")

Rule 10 provides two mechanisms for creating a record of the evidence presented. Subdivision (d) permits the appellant to prepare a statement of the evidence from the best available means, including the attorney's recollection. The statement must be served on the appellee within seven days after the filing of the notice of appeal. The appellee has seven days to serve objections or propose amendments, after which time the statement and objections or amendments must be submitted to the trial court for approval. The statement must then be filed and included by the clerk of the trial court in the record on appeal. Subdivision (e) differs from subdivision (d) in that the parties agree on the statement prior to approval by the trial court.

#### 4. Preparation of the record

The rules allow the trial court clerk 28 days to assemble the clerk's record. See Rule 11(a)(1), Ala. R. App. P. The clerk's record includes the docket entries, pleadings and exhibits to the extent designated by the parties. See Rule 10(b)(1), Ala. R. App. P. The clerk must file a certificate of completion of the clerk's record within 28 days of the filing of the notice of appeal, unless the time period is extended by order of the trial court. See Rule

11(c), Ala. R. App. P. The trial court may grant only two 7-day extensions for completion of the clerk's record. See Rule 11(c). Further extensions must be sought in the appellate court. Id.

Any portions of the transcript that have been ordered by the parties must be completed and filed by the court reporter within 56 days of the filing of the notice of appeal. See Rule 11(a)(2), Ala. R. App. P. The trial court may grant up to four 7-day extensions for completion of the transcript. See Rule 11(c). Further extensions must be sought from the appellate court. Id.

The clerk has 7 days after the transcript is filed to compile the record on appeal, consisting of the clerk's record and the reporter's transcript (if a transcript was ordered). See Rule 11(a)(3), Ala. R. App. P. The clerk's filing in the appellate court of a Certificate of Completion of Record on Appeal begins the briefing schedule.

**Note:** Pursuant to Rule 11(a)(3) the clerk of the trial court must make the record available to the parties for preparation of their briefs. Further, if one of the parties orders a copy of the record and pays the photocopying fee,

the clerk must supply a photocopy of the record to that party.

**E. Rules and Mechanics for Supplementing the Record**

Rule 11(a)(3), Ala. R. App. P., requires that the clerk make the record available to the parties for preparation of their briefs. The record should be retrieved from the clerk's office in a timely manner after receiving the certificate of completion, and counsel should review the record as soon as possible after receiving it. If something is left out, the parties may stipulate what action should be taken to correct or supplement the record. The motion to supplement or correct the record must be filed within a reasonable time. See Committee Comments to Amendment to Rule 10(f). The record may be supplemented to include only those matters that originally were designated by the parties. See Rule 10(f), Ala. R. App. P. ("If admitted or offered evidence that is material to any issue on appeal is omitted from the record after being designation for inclusion as required in Rule 10(b) ... the appellant or appellee may file with the trial court a motion to supplement or correct the record on appeal...."). If a motion is filed to supplement the record with portions of the transcript, a copy of the original

transcript purchase order must be attached to demonstrate that those portions were designated to be included in the record. See Rule 10(f). If not ruled upon by the trial court within 14 days, a motion to supplement is deemed denied. Id. Within seven days of the denial of a motion to supplement (or the date it is deemed denied), the dissatisfied party may seek relief in the appellate court. Id.

The running of the time for filing briefs is not tolled during the pendency of a motion to supplement or during the time period a supplemental record is being prepared, unless the appellate court so orders on motion of a party or on its own initiative. See Rule 10(f)(1), Ala. R. App. P.

Exhibits that cannot be copied may be sent to the appellate court in a separate container or they simply may be referred to in the record (i.e., Plaintiff's Exhibit 2 was incapable of being copied). See Rule 11(a)(1). If oversized exhibits were offered into evidence and you need the court to see those exhibits, you should consider filing a motion to substitute a regular sized copy of the exhibit to be included in the record. That motion should be filed with the trial court before the clerk's record is completed. You may

also file a motion with the appellate court to have the original exhibit transmitted to the court, if necessary. See Rule 13, Ala. R. App. P.

1. Second copy of the record on appeal

Within fourteen days of the filing of the certificate of completion of the record on appeal, a copy of the entire record must be filed with the clerk of the appellate court. See Rule 11(a)(4). The appellant is responsible for ordering and paying for the second copy of the record and is responsible for seeing that it is filed with the appellate court. Id. However, the appellant should always check with the clerk of the trial court about the second copy. In some circuits, the clerk automatically will make the second copy and send it to the appellate court. In other circuits, the appellant must arrange for the copy to be made and see that it is delivered to the clerk of the appellate court.

**F. Matters outside the record on appeal.**

Appellate courts will not consider matters that are not included in the record on appeal. The Supreme Court has explained:

[W]e are not permitted to consider matters 'dehors the record.' Cooper v. Adams, 295 Ala. 58, 61, 322 So. 2d 706, 708 (1975). This rule may be restated as follows: '(1) Argument in brief reciting matters



not disclosed by the record cannot be considered on appeal. (2) The record cannot be impeached on appeal by statements in brief, by affidavits, or by other evidence not appearing in the record.' Id.

Etherton v. City of Homewood, 700 So. 2d 1374, 1378 (Ala. 1997).

**G. Other pertinent information**

Failure to timely file any of the required items other than the notice of appeal is not a jurisdictional defect. Pursuant to Rule 2(a)(2)(D), Ala. R. App. P., an appeal may be dismissed if an appellant fails to substantially comply with the Alabama Rules of Appellate Procedure. See Rosen v. Montgomery Surgical Center, 825 So. 2d 735, 740-741 (Ala. 2001) (The Court dismissed the appeal as to one of the appellees, a medical practice, because the appellant failed to comply with rules of appellate procedure: the medical practice was not served with the notice of appeal; the notice of appeal did not mention the judgment of dismissal in favor of the medical practice; the list of counsel attached to the notice did not include the medical practice's counsel; and appellant did not state in her docketing statement any issue on appeal concerning the medical practice.) See also Holt v. State, 361 So. 2d 348 (Ala. 1978). Failure to file a

docketing statement also may be treated as contempt of court.

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

APPEALABILITY, PERFECTING AN APPEAL AND SUPPLYING THE RECORD

## **Appendix**



State of Alabama Unified Judicial System Form ARAP-1 (front)	<b>NOTICE OF APPEAL TO THE</b> (Check appropriate block) <input type="checkbox"/> SUPREME COURT OF ALABAMA <input type="checkbox"/> COURT OF CIVIL APPEALS OF ALABAMA	Civil Action Number: _____
--	---	----------------------------

IN THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY, ALABAMA

APPELLANT

v. APPELLEE

TRIAL JUDGE

DATE OF JUDGMENT: \_\_\_\_\_ DATE OF POST-JUDGMENT ORDER: \_\_\_\_\_

NOTICE IS HEREBY GIVEN THAT \_\_\_\_\_ appeal(s) to the above-named court from the  Final Judgment  Order \_\_\_\_\_ entered in this cause. (describing it)

**CHECK THE PROPER DESCRIPTION OF THE APPEALED CASE UNDER THE APPROPRIATE COURT:**

- SUPREME COURT**
- 1  Summary Judgment, amount claimed more than \$50,000
  - 2  Judgment Amount exceeds ~~\$50,000~~
  - 3  Amount Sought in trial court more than \$50,000 judgment for defendant
  - 4  Equitable Relief, except for domestic relations
  - 5  Other: \_\_\_\_\_

- COURT OF CIVIL APPEALS**
- 1  Summary Judgment, amount claimed \$50,000 or less
  - 2  Judgment Amount \$50,000 or less
  - 3  Amount Sought \$50,000 or less, judgment for defendant
  - 4  Workmen's Compensation
  - 5  Domestic Relations
  - 6  Other: \_\_\_\_\_

APPELLANT FILES WITH THIS NOTICE OF APPEAL:

- 1  Security for costs of appeal
- 2  A supersedeas bond in the amount of \$ \_\_\_\_\_
- 3  Deposited cash security in the amount of \$ \_\_\_\_\_

4  Is exempted by law from giving security for costs of appeal by virtue of \_\_\_\_\_

Filed \_\_\_\_\_ (Date) Address \_\_\_\_\_ Telephone Number \_\_\_\_\_

CERTIFIED AS A TRUE COPY

Circuit Clerk \_\_\_\_\_ Appellant or Attorney for Appellant \_\_\_\_\_

**SECURITY FOR COSTS**

We hereby acknowledge ourselves security for costs of appeal. For the payment of all costs secured by this undertaking, we hereby waive our right of exemption as to personal property under the Constitution and laws of the State of Alabama.

Executed with our seals this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

Filed and approved: \_\_\_\_\_ (Date) Appellant-principal \_\_\_\_\_ (L.S.)

\_\_\_\_\_ Surety \_\_\_\_\_ (L.S.)

\_\_\_\_\_ Surety \_\_\_\_\_ (L.S.)

Circuit Clerk \_\_\_\_\_ Surety \_\_\_\_\_

(Amended November 9, 1976; October 1, 1983)

**SUPERSEDEAS BOND**

We, the undersigned principal and sureties, hereby acknowledge ourselves bound unto \_\_\_\_\_ in the sum of \_\_\_\_\_ Dollars, for the payment of which we bind ourselves, and each other, our heirs, executors, (if for amount of bond see Rule 6(a)) and administrators, jointly and severally, and as part of this undertaking we hereby waive our rights of exemption as to personal property under the Constitution and laws of the State of Alabama.

WHEREAS, the above-named appellee(s) recovered a judgment against appellant(s) for the sum of \_\_\_\_\_ Dollars (and the further acts or duty \_\_\_\_\_) and (describing judgment in addition to or other than for money only) \_\_\_\_\_ Dollars, the costs in that behalf expended.

NOW, therefore, the condition of the foregoing obligation is such that, if the appellant shall prosecute this appeal to effect, and satisfy such judgment, penalties, and costs, including costs of appeal as may be rendered in this case, then the said obligation to be null and void, otherwise to remain in full force and effect.

Executed with our seals this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

Filed and approved: \_\_\_\_\_ (Date) Appellant-Principal \_\_\_\_\_ (L.S.)

\_\_\_\_\_  
Surety \_\_\_\_\_ (L.S.)

Circuit Clerk \_\_\_\_\_ Surety \_\_\_\_\_ (L.S.)

**EXECUTION OF JUDGMENT STAYED:**

Bond fixed at: \$ \_\_\_\_\_  
(Not required for money judgment only.) Circuit Judge \_\_\_\_\_

**DESIGNATION OF RECORD ON APPEAL**

DESIGNATION OF CLERK'S RECORD: Appellant requests the clerk to include the following checked materials in the clerk's record:

- 1  Complaint
- 2  Answer
- 3  Counterclaim
- 4  Cross-Claim
- 5  Third-party Complaint
- 6  Third-party Answer
- 7  Motion to dismiss
- 8  Pretrial order

- 9  Entire record (less those items set forth in Rule 10(a))
- 10  Motion for summary judgment
- 11  Opposition to motion for summary judgment
- 12  Final (Judgment) (Order)
- 13  Motion for New Trial
- 14  Ruling on Motion
- 15  Others: \_\_\_\_\_
- 16  Exhibit Number: \_\_\_\_\_

**TRANSCRIPT STATUS**

- Transcript will not be ordered. [See Rule 10(b), ARAP.]
- Transcript will be ordered. [See Rules 10(b)(2) and 11(a)(2), ARAP, Form 1A or 1B.] Court reporter(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTE: If more than one court reporter was involved in this case, you must file a Transcript Purchase Order Form in compliance with Rules 10(b) and 11(c), Form 1A or 1B of the ARAP, for each court reporter.

(Amended October 1, 1991.)

**CERTIFICATE OF FILING**

I certify that I have this date filed with the clerk of the trial court the original and \_\_\_\_\_ copies of the foregoing notice of appeal (along with \$100 docket fee), and such other instruments as have been completed and included herein. A true copy of each of these items will be served by the clerk of the trial court on each of the following:

- 1) Clerk of the appellate court (the \$100 docket fee shall be transmitted with this filing).
- 2) Court reporter.
- 3) Counsel for appellee, or appellee if no counsel.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
Attorney for Appellant

(Amended October 1, 1991.)

# DOCKETING STATEMENT

## Appeal to the Supreme Court of Alabama

*NOTE: Complete Civil Case Cover Sheet must be attached.*

Supreme Court Case Number  
(To be filed in by Supreme Court)

Form ARAP-24 (front) Rev. 1/97

<b>COUNTY</b>	<b>CIVIL ACTION NUMBER</b>	<b>TRIAL JUDGE</b>
---------------	----------------------------	--------------------

**I. PARTY/PARTIES FILING**  
**APPEAL (Appellant):** \_\_\_\_\_  
**APPELLANT'S ATTORNEY:** \_\_\_\_\_  
Telephone Number \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

**II. PARTY/PARTIES APPEALED**  
**AGAINST (Appellee):** \_\_\_\_\_  
**APPELLEE'S ATTORNEY:** \_\_\_\_\_  
Telephone Number \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

**III. APPELLANT IS THE TRIAL COURT:**  Plaintiff  Defendant  Other

**IV. IS THIS A CROSS-APPEAL?**  Yes  No

**IV. RELIEF AWARDED/REQUESTED:** Please check the appropriate block(s):

A. \_\_\_\_\_ Monetary damages were either sought or awarded as set out below:

1. Compensatory damages were: (a)  awarded in the amount of \$ \_\_\_\_\_;  
 (b)  not awarded, but sought in the amount of \$ \_\_\_\_\_;  
 (c)  sought, but not awarded - the amount sought was not specified in the complaint.

2. Punitive damages were: (a)  awarded in the amount of \$ \_\_\_\_\_;  
 (b)  not awarded, but sought in the amount of \$ \_\_\_\_\_;  
 (c)  sought, but not awarded - the amount sought was not specified in the complaint.

3. A general award of damages (not differentiating between compensatory and punitive) was: (a)  made in the amount of \$ \_\_\_\_\_;  
 (b)  not made, but sought in the amount of \$ \_\_\_\_\_;  
 (c)  sought, but not made - the amount sought was not specified in the complaint.

4. Other monetary damages (Type: \_\_\_\_\_) were: (a)  awarded in the amount of \$ \_\_\_\_\_;  
 (b)  not awarded, but sought in the amount of \$ \_\_\_\_\_;  
 (c)  sought, but not awarded - the amount sought was not specified in the complaint.

5. Was there a remittitur or additur at issue in the trial court?  Yes  No  
*(If yes, please provide the details in the "FACTS" section on the back of this form.)*

B. \_\_\_\_\_ Equitable and/or declaratory relief was sought in the trial court.  
 C. \_\_\_\_\_ Other *(Please provide the details of the issue(s) before the Court in the "ISSUES" section on the back of this form.)*

**V. TYPE OF JUDGMENT OR ORDER APPEALED.** (Please check one):

A <input type="checkbox"/> Judgment based on a Jury Verdict	D <input type="checkbox"/> Order granting a New Trial	G <input type="checkbox"/> Dismissal
B <input type="checkbox"/> Judgment based on a Non-Jury Decision	E <input type="checkbox"/> Judgment as a Matter of Law	H <input type="checkbox"/> Default Judgment
C <input type="checkbox"/> Judgment Notwithstanding the Verdict (JNOV)	F <input type="checkbox"/> Summary Judgment	I <input type="checkbox"/> Other

**VI. IF THE CASE WENT TO TRIAL, HOW MANY DAYS DID THE TRIAL TAKE?** \_\_\_\_\_

**VII. FINALITY OF JUDGMENT:** Date of entry of judgment or order appealed from: \_\_\_\_\_  
 Month \_\_\_\_\_ Day \_\_\_\_\_ Year \_\_\_\_\_

1. Is the judgment or order appealed from in compliance with Rule 58, A.R.Civ. P.?  Yes  No

2. Does the order appealed from constitute a disposition of all claims as to all parties?  Yes  No

3. If not, did the trial court enter an order intended to make the order final pursuant to Rule 54(b)?  Yes  No

4. If the trial court intended to make the order appealed from final pursuant to Rule 54(b), did the court in the Rule 54(b) order expressly determine that there was no just reason for delay and expressly direct that final judgment be entered?  Yes  No

5. If the answer to question 2 is "NO," and the trial court did not make the order final by full compliance with Rule 54(b), Please explain the basis for seeking appellate review and cite the authority for this appeal

**VIII. POST-JUDGMENT MOTIONS:** List all post-judgment motions by date of filing, type, and date of disposition (whether by trial court order or by the provisions of Rule 59.1, A.R.Civ.P):

DATE OF FILING			TYPE OF POST-JUDGMENT MOTION	DATE OF DISPOSITION		
Month	Day	Year		Month	Day	Year

DC. CONSTITUTIONAL ISSUES: 1. Are the provisions of Rule 44, A.R.App.P, applicable to this appeal? 2. If so, have the provisions been complied with? Yes No

X. NATURE OF CASE ON APPEAL: In the left column of boxes preceding the categories listed below, check the box (check only one) that best describes or categorizes the basis or theory of the primary issue on appeal. In the right column of boxes, check any secondary theories that are applicable to the suit.

- TORTS: 01-09 (Bad Faith, Fraud, Legal Malpractice, etc.) 10-29 (Real Property, Wrongful Death, Conversion, etc.) CONTRACTS: 30 (Commercial) 31-39 (Personal, Pension, Insurance, Employment, etc.) OTHER: 40-43 (Real Property, Civil Rights, Wills/Trusts/Estates) 44-51 (Declaratory Judgment, Injunction, Extraordinary Writ, etc.) 52-99 (Other)

XI. APPELLATE REVIEW: Please take notice that your case may be initially reviewed by the Court of Civil Appeals. Pursuant to § 12-2-7, Code of Alabama 1975, the Supreme Court has the authority to transfer any civil case within its jurisdiction to the Court of Civil Appeals, except cases presenting a substantial question of federal or state constitutional law; cases involving a novel legal question, the resolution of which will have significant statewide impact; utility rate cases appealed pursuant to § 37-1-140, Code of Alabama 1975; bond validation cases appealed pursuant to § 6-6-75A, Code of Alabama 1975; or Alabama State Bar disciplinary proceedings.

If you believe this case should not be transferred to the Court of Civil Appeals, please state with specificity the reason(s) why it should not be transferred, referring to pertinent sections of § 12-2-7. Reasons should be supported in the ISSUES and FACTS sections of this docketing statement.

XII. ISSUES: Briefly summarize the issue(s) on appeal.

XIII. FACTS: Without argument, briefly summarize the facts to inform the court of the nature of the case.



State of Alabama Unified Judicial System  Form ARAP-25 (front)	8/91	<h2 style="margin:0;">DOCKETING STATEMENT</h2> <h3 style="margin:0;">Appeal to the Court of Civil Appeals</h3>	<b>Appellate Case Number</b> (To be filled in by appellate court)
---	------	--	--

<b>COUNTY</b>	<b>CIVIL ACTION NUMBER</b>	<b>TRIAL JUDGE</b>
---------------	----------------------------	--------------------

**PARTY FILING APPEAL (Appellant):**

**v. PARTY APPEALED AGAINST (Appellee):**

<b>APPELLANT'S ATTORNEY:</b>	Telephone Number
------------------------------	------------------

Address	City	State	ZIP Code
---------	------	-------	----------

<b>APPELLEE'S ATTORNEY:</b>	Telephone Number
-----------------------------	------------------

Address	City	State	ZIP Code
---------	------	-------	----------

**TYPE OF APPEAL:**       Appeal                       Cross-Appeal

**JURISDICTION (TYPE OF CASE):** Please check the proper description of the appealed case:

<input type="checkbox"/> A Summary Judgment, amount claimed equal or less than \$10,000 <input type="checkbox"/> B Judgment Amount equal to or less than \$10,000 <input type="checkbox"/> C Amount sought in trial court \$10,000 or less, judgment for defendant <input type="checkbox"/> D Domestic Relations	<input type="checkbox"/> E Workmen's Compensation <input type="checkbox"/> F Administrative Agency <input type="checkbox"/> G Juvenile <input type="checkbox"/> H Other _____
---	--

**JURISDICTION (FINALITY):** Date of entry of judgment or order appealed from: \_\_\_\_\_

\_\_\_\_\_  
 Month                      Day                      Year

1. Is the order or judgment appealed from in compliance with Rule 58, A.R.Civ. P.?                       Yes  No
2. Is the order or judgment appealed from a final judgment (i.e., does it dispose of the case as to all claims by all parties)?                       Yes  No
3. If the judgment was not final, did the trial court direct the entry of a judgment pursuant to Rule 54(b), A.R.Civ.P.?                       Yes  No
4. If judgment was entered pursuant to Rule 54(b), A.R.Civ.P., did the trial court expressly determine that there was no just reason for delay and expressly direct that judgment be entered?                       Yes  No
5. If there is no final judgment or if there has not been full compliance with Rule 54(b), A.R.Civ.P., please explain the basis for seeking appellate review and cite the authority for this appeal:

**POST-JUDGMENT MOTIONS:** List all post-judgment motions by date of filing, type, and date of disposition (whether by trial court order or by the provisions of Rule 59.1, A.R.Civ.P):

DATE OF FILING			TYPE OF POST-JUDGMENT MOTION	DATE OF DISPOSITION		
Month	Day	Year		Month	Day	Year

**CONSTITUTIONAL ISSUES:** 1. Are the provisions of Rule 44, A.R.App.P, applicable to this appeal?  Yes  No  
 2. If so, have the provisions been complied with?  Yes  No

**NATURE OF CASE ON APPEAL:** In the left column of boxes preceding the categories listed below, check the box (check only one) that best describes or categorizes the basis or theory of the primary issue on appeal. In the right column of boxes, check any secondary theories that are applicable to the suit. These topics need be checked only if the issues on appeal vary from the information supplied in the same columns on the civil case "cover sheet" filed in the trial court.

**TORTS - Personal Injury**  
 A   Bad Faith  
 B   Fraud  
 C   Legal Malpractice  
 D   Med. Malpractice  
 E   Other Malpractice  
 F   Products/AEMLD  
 G   Gen. Negligence  
 H   Vehicular Negligence  
 I   Other \_\_\_\_\_

**TORTS - Property Damage**  
 J   Personality  
 K   Realty  
**CONTRACTS**  
 L   Commercial  
 M   Personal  
 N   Pension  
 O   Insurance  
 P   Employment  
 Q   Other \_\_\_\_\_

R   **REAL PROPERTY**  
 S   **CIV RTS: Prisoner**  
 T   **CIV RTS: Other**  
 U   Other \_\_\_\_\_  
**EQUITY/Non-Damages Action**  
 V   Domestic Relations  
 W   Declar. Judgment  
 X   Injunc. Commercial  
 Y   Injunc. Employment

Z   Injunc. Other  
 1   Extraord. Writ  
 2   Other \_\_\_\_\_  
**STATUTES/RULES**  
 3   Admin. Agency  
 4   Term. Parental Rts.  
 5   Workmen's Comp.  
 6   Wrongful Death  
 7   Other: \_\_\_\_\_

**IF THE CASE WENT TO TRIAL, HOW MANY DAYS DID THE TRIAL TAKE?**

**BRIEFLY SUMMARIZE THE ISSUE(S) ON APPEAL. THIS INFORMATION IS FOR CASE PROCESSING AND STATISTICAL PURPOSES ONLY.**

**WITHOUT ARGUMENT, BRIEFLY SUMMARIZE THE FACTS TO INFORM THE COURT OF THE NATURE OF THE CASE. THIS INFORMATION IS FOR CASE PROCESSING AND STATISTICAL PURPOSES ONLY.**

**SETTLEMENT CONFERENCE:** The Court may require that this appeal be subject to a moderated settlement conference. Do you think the case on appeal would be appropriate for such a conference?  Yes  No

Explain: \_\_\_\_\_

**FILING DATE OF NOTICE OF APPEAL:** \_\_\_\_\_

Date

Signature of Attorney/Party Filing this Form

**TRANSCRIPT PURCHASE ORDER  
OF APPELLANT - CIVIL**  
(See Rules 10(b) and 11(a) of the Alabama Rules of Appellate Procedure)

Appellate Case Number  
*(to be filled in by appellate court)*

<b>APPELLANT</b>			
<b>v. APPELLEE</b>			
Civil Action Number		Trial Judge	
Court Reporter		County	Date of Notice of Appeal

**PART I. TO BE COMPLETED AND FILED WITH THE COURT REPORTER BY APPELLANT WITHIN 7 DAYS OF THE FILING OF THE NOTICE OF APPEAL.**

A. Request is hereby made to the reporter for a transcript of the following proceedings (give particulars):  
 NOTE: Exhibits are included in the clerk's record and need not be specified - see Rule 10(b)(1), A.R.App.P.

<input type="checkbox"/> Entire Transcript	<input type="checkbox"/> Oral Charges to the Jury
<input type="checkbox"/> Testimony of Plaintiff	<input type="checkbox"/> Objection to Oral Charge
<input type="checkbox"/> Testimony of Defendant	<input type="checkbox"/> Objection to Refused Requested Written Charge(s), Numbers _____
<input type="checkbox"/> Testimony of Witness _____	<input type="checkbox"/> Others: _____
<input type="checkbox"/> Testimony of Witness _____	

NOTE: Unless the entire transcript is ordered, appellant must attach a statement of the issues to Pages 4 and 5.

B. I CERTIFY that I HAVE paid the Court Reporter the estimated cost of transcribing that part of the proceedings I have deemed necessary to be included in the record.

Date \_\_\_\_\_ Signature \_\_\_\_\_ Telephone Number \_\_\_\_\_

NOTE: Upon Completion of PART I, Appellant should distribute pages as follows:

* Pages 1, 2 and 3 - Court Reporter	Page 4 - Trial Court	Page 5 - Appellee	Page 6 - Retained by Appellant
-------------------------------------	----------------------	-------------------	--------------------------------

**PART II. TO BE COMPLETED BY COURT REPORTER ON SAME DATE TRANSCRIPT PURCHASE ORDER IS RECEIVED.**

A.

Date Transcript Purchase Order Received	Estimated Completion Date
Estimated Number of Pages	Estimated Cost

B. I CERTIFY THAT  I HAVE  I HAVE NOT (check one) been paid the estimated cost of the transcript.

Date \_\_\_\_\_ Signature \_\_\_\_\_ Telephone Number \_\_\_\_\_

NOTE: Upon Completion of PART II, Court Reporter should distribute pages as follows:

* Pages 1 and 2 - Retained by the Court Reporter	Page 3 - Transmitted to the Appropriate Appellate Court on Same Date Transcript Purchase Order is Received.
--	---

**PART III. CERTIFICATE OF COMPLETION OF REPORTER'S TRANSCRIPT.**

NOTE: This is to be completed by court reporter on date of filing of transcript in trial court. On the day of completion, this certificate must be forwarded to the appropriate appellate court (Page 2) and copies thereof shall be served on the clerk of the trial court and each of the parties.

I CERTIFY that I have this date completed and filed with the clerk of the trial court the original of a true and correct transcript of the evidence and matters designated by the parties. All pages are numbered serially in the upper right corner of the pages, prefaced by an index, and ending with the following number: \_\_\_\_\_

I CERTIFY that photocopies of this certificate are this date being served on the clerk of the trial court and each of the parties, along with a copy of the index (with copies of the transcript as ordered).

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ Court Reporter \_\_\_\_\_

NOTE: Upon Completion of PART III, Court Reporter should distribute pages as follows:

* Page 1 - Retained by the Court Reporter	Page 2 - Transmitted to the Appropriate Appellate Court
---	---

