



STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

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**MEMORANDUM:**

**TO: All Deputy and Assistant Attorneys General**

**FROM: Steve Marshall, Attorney General  
Edmund LaCour, Solicitor General**

**Re: Solicitor General Guidelines**

The purpose of this memo is to inform all Deputy AGs and Assistant AGs about the expectations Attorney General Marshall has set for the Solicitor General in his administration. This memo also gives these attorneys guidance about: (1) their obligations to inform the SG about certain cases; (2) their obligations to make the SG part of the State's team in some of those cases; and (3) requirements for formatting and content of appellate briefs.

The AG is responsible for all positions Deputy and Assistant AGs take in court. In light of that responsibility, the AG has assigned the following duties to the SG:

- Making the AG aware of all positions the State takes in state supreme courts, federal courts of appeals, and the U.S. Supreme Court;
- Ensuring that the positions Deputy and Assistant AGs take are uniform and consistent with the AG's view of the law;
- Helping the AG supervise cases on appeal to which the State and its officers are parties;
- Providing any assistance Deputy and Assistant AGs may need with appellate filings and arguments; and
- Appearing in, and representing, the AG's views in certain cases.

Therefore, under Attorney General Marshall, all Deputy AGs and Assistant AGs—including outside counsel and counsel for state departments and agencies—are to adhere to the following procedures:

1. **Trial courts:** The SG will not be involved in most cases in the trial courts. (One exception is cases in which a direct appeal lies to the U.S. Supreme Court. In those cases, the SG should appear as counsel, along with the trial team, in the district court.) In all cases pending at the trial-court level, attorneys should feel free to seek guidance and assistance from SG staff on research, briefing, and

editing. And attorneys are strongly encouraged to notify the SG whenever they believe that a case may present an important issue that the appellate courts will ultimately need to resolve. Such issues include, for example, issues of first impression or issues that have divided federal courts of appeals or state supreme courts.

2. **State intermediate courts of appeals:**

- a. **Case initiation.** Division chiefs will set procedures for case initiation in these courts. Attorneys do not need to notify the SG when appeals are filed by the State or against the State in these courts.
- b. **Briefing/oral argument.** Division chiefs will also set procedures for briefing and oral argument in these cases. Nevertheless, if a case *presents issues that are likely to go to the state Supreme Court, such as matters of first impression or cases in which either the State or other parties are seeking a change in the law*, attorneys should inform the SG as soon as possible. For any case in these courts, attorneys are encouraged to seek help from SG staff on research, briefing, and prepping for oral argument.
- c. **Applications for rehearing.** The SG will generally not review rehearing applications, or oppositions to rehearing applications, filed in these courts. Nevertheless, all attorneys should inform the SG that the State has sought rehearing. This requirement is designed to inform the AG and SG about issues on which the AG may eventually need to seek cert review from the Alabama Supreme Court.

3. **State Supreme Court and federal courts of appeals:**

- a. **Case initiation.** No attorney is to initiate a matter in a state Supreme Court or federal court of appeals—whether by notice of appeal, cert, stay application, mandamus, or some other extraordinary writ—without first receiving approval from the SG. The SG, in consultation with the attorney handling the case and the appropriate division chief, will determine whether the State will initiate the case or otherwise seek appellate relief. If the attorney anticipates that a decision from a lower court may require emergency relief from a state Supreme Court or federal appellate court, the attorney should inform the SG as soon as possible. When a cert petition is to be filed, the SG, division chief, and attorneys on the case will work out arrangements for review of drafts, with the understanding that the deadlines for filing cert petitions are always tight (and particularly tight in pretrial criminal appeals). In cases in which attorneys represent the appellee, attorneys are to email a copy of the docketing statement and notice of appeal to SG staff as soon as those documents are received. In cases in which the other side has filed a cert or mandamus petition, attorneys generally need not let the SG know that those petitions have been filed, but should inform the SG if the petitions raise serious issues.
- b. **Briefing.** The SG will, in conjunction with division chiefs and the other attorneys on the case, determine how to staff cases in these courts. In every case, the SG or a deputy SG will appear as counsel, and thus should be e-served with the other side’s briefs. In some cases, the SG staff will be actively involved in framing the argument and writing the State’s briefs—but there will be a strong presumption that the attorneys who handled the case below will remain actively involved. In other cases, the SG staff will only review close-to-final drafts of the briefs. In the latter circumstance, unless other arrangements are made, attorneys should email SG staff drafts of principal briefs 7 days before they are to be filed, and drafts of reply briefs 3 days before they are to be filed. In no event may a brief be filed before SG staff has authorized the filing.
- c. **Oral argument.** If oral argument is granted, the SG, in conjunction with the division chief and

other attorneys on the case, will determine who will argue the case. When SG staff has not played an active role in framing the argument and writing the brief, it will be more likely that an attorney who was primarily responsible for the briefing will argue the case. But in some such cases, SG staff (or the AG himself) will argue the case.

- d. **Rehearing applications.** The SG will, along with the division chief and other attorneys on the case, determine how to handle rehearing issues. *No rehearing application may be filed without SG approval.*

#### 4. **U.S. Supreme Court:**

- a. **Case initiation.** The SG will generally be counsel of record in any case filed in the U.S. Supreme Court. Any lawyer who believes it is appropriate to petition for certiorari (or take a direct appeal) to the Court is to notify and consult with the SG; and no appeal or cert petition is to be filed except at the SG's direction. If the State or one of its agencies or officers is the respondent to a cert petition, attorneys may at their discretion file waivers of the right to file a brief in opposition—but should inform the SG when the petition raises a serious claim. No brief in opposition is to be filed with the Court without the SG's approval. Drafts of BIOs should be sent to SG staff 7 days in advance of the due date.
- b. **Briefing/oral argument.** The AG and SG will, in conjunction with the attorneys on the case and the division chief, determine how to handle the merits and post-merits phases. The SG will generally be in charge of these matters, but there will be a strong presumption that attorneys who worked on the matter below will remain actively involved in the case.

5. **Amicus briefs.** Please forward all amicus requests, in any court, to SG staff.

6. **Agency counsel and outside counsel.** This policy applies to all Deputy and Assistant AGs, including those who represent state agencies and departments, and outside counsel appointed as Deputy AGs.

7. **Contacting the SG.** Please send all documents for the SG's review to the SG (Edmund LaCour), Principal Deputy SG (Barrett Bowdre), and paralegal (Rene Whyard) at the following email addresses: [edmund.lacour@AlabamaAG.gov](mailto:edmund.lacour@AlabamaAG.gov), [barrett.bowdre@AlabamaAG.gov](mailto:barrett.bowdre@AlabamaAG.gov), and [rene.whyard@AlabamaAG.gov](mailto:rene.whyard@AlabamaAG.gov).

#### 8. **Reviewing, Finalizing, and Filing Briefs.**

- a. When you send a draft brief to the SG for review, please also send an electronic copy of the lower court decision being appealed and, if applicable, the opening brief submitted by the opposing side. In your email, please also note the due date for the State's brief.
- b. Before sending any brief to the SG for review, please review the rules of the court to which the brief will be submitted and the SG style guide included with these guidelines to confirm the draft brief complies with both. The SG has templates for briefs available for attorneys to use. Email [rene.whyard@AlabamaAG.gov](mailto:rene.whyard@AlabamaAG.gov) to obtain a template if needed.
- c. The division or agency handling the appeal is responsible for finalizing, filing, and serving the brief in accordance with court rules. Because the SG's review may lead to changes in the brief, it will generally be more efficient to create a table of contents and table of authorities for the brief after the SG's review.

# Solicitor General's Style Guide

January 2024

## 1.1. Local rules

Most importantly, review and abide by the rules of the court to which the brief will be submitted. Become particularly familiar with Federal Rules of Appellate Procedure 27 (Motions), 28 (Briefs), 32 (Form of Briefs), and the corresponding Eleventh Circuit rules. Likewise, pay special attention to Alabama Rules of Appellate Procedure 21 (Writs of mandamus), 27 (Motions), 28 (Briefs), 32 (Form and length of briefs), and 39 (Petitions for writ of certiorari).

## COVER AND FRONT MATTER

### 2.1. Period after <et al.>

Punctuate <et al.> with a period after <al> (but not after <et>).

### 2.2. Signature blocks

The signature block must include the Attorney General and Solicitor General.

### 2.3. No pincites or parentheticals in the table of authorities

Remove all pincites in sources in the table of authorities. Also omit from the table all case parentheticals, such as <(per curiam)>.

### 2.4. Properly alphabetize sources in the Table of Authorities

Alphabetize cases according to the unabbreviated first name and “other authorities” by the author’s last name, not the first word describing the source.

### 2.5. Statement of the Case

Generally describe the facts and proceedings relevant to deciding the appeal in the order they happened. Thus, underlying facts that gave rise to the litigation should generally be discussed before the legal proceedings that followed. Avoid including details that have no bearing on the issues presented.

The Alabama Rules of Appellate Procedure require an additional “Statement of the Facts.” If appropriate, insert the following sentence there: “The relevant facts are recounted above in the Statement of the Case.”

### 2.6. Standard of Review

Do not waste valuable words on these well-trodden rules. Rarely should a standard of review exceed one paragraph.

## **BODY OF THE BRIEF**

### **3.1. Headings generally**

Keep them concise, crisp, and clear.

### **3.2. Capitalization of headings**

Every Word In A Main Heading (I., II., III.) Should Be Capitalized.

Capitalize All Words in Subheadings (A., B., C.) Except Short Prepositions, Articles, and Coordinating Conjunctions.

Use normal sentence capitalization in sub-subheadings (1., 2., 3.).

### **3.3. Orphan headings**

Use the “Keep with next” formatting option to avoid orphan headings (a heading that is left all alone at the bottom of a page). (In Microsoft Word, select: <Paragraph>, <Line and Page Breaks>, <Keep with next>)

### **3.4. Justify headings, paragraphs, and footnotes**

This presents a more ordered text and is required by the Alabama Rules of Appellate Procedure. Note that Microsoft Word often automatically formats footnotes with different font style, size, and alignment than body text, so be sure to doublecheck footnote formatting.

### **3.5. Control widows and orphans**

Use Widow/Orphan control (<Paragraph>, <Line and Page Breaks>, <Widow/Orphan control>) and/or hard spaces (Ctrl + Shift + Spacebar) to avoid widows (a single line of text appearing at the top of a page) and orphans (a single word sitting at the bottom of a paragraph of text).

### **3.6. Avoid big white gaps between sections**

Do not include extra lines between sections. You can identify blank lines for deletion with <Show ¶> turned on (Ctrl + \*).

### **3.7. Minimize the use of footnotes**

Never hide important arguments in a footnote. And legal citations should generally be in the body of the brief, not in the footnotes.

### **3.8 Use block quotations sparingly**

Remember that the temptation for the reader to skip over block quotations is often too strong to overcome. If used, they should be indented .5” on both sides, single-spaced, and justified. A citation following a block quote should not be indented.

### **3.9. Do not use superscripted ordinals**

Avoid superscript in all situations. For example, use <11th Cir.>, not <11<sup>th</sup> Cir.>.

### **3.10. Use only one space after a period or colon**

### **3.11. Generally use hyphenation**

Hyphenation (<Layout>, <Hyphenation>, <Automatic>) makes justified text more readable by reducing white space between words. But remove hyphenation (<Paragraph>, <Line and Page Breaks>, <Don't Hyphenate>) from headers.

### **3.12. Generally use hyphens rather than en-dashes to connect numbers**

*e.g.*, <538-39>, not <538–39>.

### **3.13. No spaces before and after em-dashes**

Use em-dashes <—> as appropriate between phrases.

### **3.14. Use “smart” quotation marks**

Use “smart quotes,” not "straight quotes," except when designating feet or inches. Follow the same rule for apostrophes. "Straight quotes" are often introduced by pasting text from Westlaw. This can be fixed in the final draft with a find-and-replace of each mark with itself (Word will then auto-correct them to smart quotes). When pasting from Westlaw, also remember to use Paste Special (Ctrl + Alt + V) with “Unformatted” pasting to avoid introducing web codes.

### **3.15. Hard spaces after § and ¶ symbols**

Avoid lines that end with a <§> or <¶> by using a hard space (Ctrl + Shift + Spacebar) between the symbol and the number. Also use hard spaces after other abbreviated reference marks (such as <Ex. A, Fig. 23>), and after trademark and copyright symbols.

### **3.16. Capitalization of <State>**

Capitalize <State> as a proper noun, but use lowercase <state> when it modifies another word (*e.g.*, <state action>).

### **3.17. Hyphenate phrasal adjectives**

Generally hyphenate phrasal adjectives (such as <third-party rule>) but don't hyphenate phrasal adjectives that begin with <-ly> adverbs unless the phrase exceeds three words (<duly enacted law>, not <duly-enacted law>).

### **3.18. Ellipses**

Use <Ctrl + Alt + . > to insert an ellipsis. (<...>, not <. . .> or <...>).

### **3.19. Avoid ALL CAPS.**

TEXT IN ALL CAPS is the written equivalent of shouting and is to be avoided.

### **3.20. Use parties' names**

Consider calling parties by their real names (<Smith> or <Jones>) rather than their procedural labels (<Plaintiff> or <Appellant>).

### **3.21. Use English**

Avoid phrases such as: ab initio, arguendo, instanter, inter alia, sui generis, vel non.

### **3.22. Do not italicize commonly understood Latin phrases**

Commonly understood phrases such as <de novo>, <habeas corpus>, <stare decisis> and <res judicata> should not be italicized. Less common foreign phrases should be italicized, but they should also be avoided if possible. Use your judgment in deciding whether to italicize <i.e.>, <e.g.>, <et al.>, and <et seq.>. However you choose to italicize, be consistent throughout the brief.

### **3.23. Be careful where you place “only”**

Place <only> immediately before whatever it modifies.

### **3.24 Avoid conclusory or hyperbolic modifiers**

Avoid modifiers such as <clearly>, <obviously>, and <plain>. If it really is one of those things, you shouldn't have to say so.

### **3.25. Avoid legalese unless the court uses or requires it**

Avoid <Prayer> in federal court. Also avoid: <Comes now>, <premises considered>, <under-signed counsel>, <case at bar>, <hereby>, <said> as an adjective, <the same>, <aforementioned>, <further affiant sayeth naught>, etc. Avoid <such> as an adjective; consider replacing it with <this>, <these>, <that>, or <those>.

### **3.26. When typing a number, either spell it out or type the number, but don't type both**

Generally avoid the redundancy of both spelling out a number and including the numeral beside it, e.g., <The statute of limitations ran eight (8) days before Smith filed suit.>

## **END MATTER**

### **4.1. Use a comma at the end of <Respectfully submitted,>**

Use a comma, rather than a period, after <Respectfully submitted>. Do not capitalize <submitted>.

### **4.2. Keep the concluding signature block and the Conclusion together**

Generally, neither the concluding signature block nor <Respectfully submitted,> should begin on a new page. If there is room, they should appear on the same page as the Conclusion. Use “Keep With Next” to prevent their separation.

### **4.3. Electronic signatures**

Leave the name following the <s/> unitalicized, *i.e.* <s/ John Smith>.