

IN THE SUPREME COURT OF ALABAMA

October 24, 2008

ORDER

IT IS ORDERED that Rule 3(b), Rule 4, Rule 5, Rule 6(e), Rule 11, Rule 55(a), Rule 58, Rule 59.1, Rule 77(d), and Rule 79, Alabama Rules of Civil Procedure, be amended to read in accordance with Appendices A, C, E, G, I, K, M, O, Q, and S, respectively;

IT IS FURTHER ORDERED that the Committee Comments to Amendment to Rule 3(b) Effective October 24, 2008; Committee Comments to Amendments to Rule 4 Effective October 24, 2008; Committee Comments to Amendments to Rule 5 Effective October 24, 2008; Committee Comments to Amendments to Rule 6 Effective October 24, 2008; Committee Comments to Amendment to Rule 11 Effective October 24, 2008; Committee Comments to Amendment to Rule 55(a) Effective October 24, 2008; Committee Comments to Amendments to Rule 58 Effective October 24, 2008; Committee Comments to Amendment to Rule 59.1 Effective October 24, 2008; Committee Comments to Amendments to Rule 77(d) Effective October 24, 2008; and the Committee Comments to Addition of Rule 79(e) Effective October 24, 2008, be adopted to read in accordance with Appendices B, D, F, H, J, L, N, P, R, and T, respectively;

IT IS FURTHER ORDERED that these amendments and the adoption of the comments to the amended rules are effective immediately.

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 3, Rule 4, Rule 5, Rule 6, Rule 11, Rule 55, Rule 58, Rule 59.1, Rule 77, and Rule 79:

"Note from the reporter of decisions: The order amending effective October 24, 2008, Rule 3, Rule 4, Rule 5, Rule 6, Rule 11, Rule 55, Rule 58, Rule 59.1, Rule 77, and Rule 79, and adopting effective October 24, 2008, the Committee Comments to Amendment to Rule 3(b) Effective October 24, 2008; Committee Comments to Amendments to Rule 4 Effective October 24, 2008; Committee Comments to Amendments to Rule 5 Effective October 24, 2008; Committee Comments to Amendments to Rule 6 Effective October 24, 2008; Committee Comments to Amendment to Rule 11 Effective October 24, 2008; Committee Comments to Amendment to Rule 55(a) Effective October 24, 2008; Committee Comments to Amendments to Rule 58 Effective October 24, 2008; Committee Comments to Amendment to Rule 59.1 Effective October 24, 2008; Committee Comments to Amendments to Rule 77(d) Effective October 24, 2008; and the Committee Comments to Addition of Rule 79(e) Effective October 24, 2008, is published in that volume of Alabama Reporter that contains Alabama cases from \_\_\_\_ So. 2d."

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



## APPENDIX A

### Rule 3(b), Alabama Rules of Civil Procedure.

(b) Filing the Informational "Cover Sheet" in the Circuit Court. Except in domestic relations cases, each original complaint at the time it is filed with the circuit court shall be accompanied by an informational "cover sheet." See Form 93. However, the failure to accompany the complaint with the cover sheet shall not affect the validity of the commencement of the action. The plaintiff, or if the plaintiff is represented by counsel, then the plaintiff's attorney, shall complete and sign the "general information" portion of the cover sheet before it is filed with the court. If the complaint is submitted to the clerk of the circuit court without a properly completed cover sheet, the clerk shall accept the complaint and inform the person filing it of the requirements of this rule, and the plaintiff, or, if the plaintiff is represented by counsel, then the plaintiff's attorney, shall promptly file a properly completed cover sheet. For the failure to comply with the requirements of this rule, the court in which the action is pending may make such orders as are just, including an order staying the proceedings until the cover sheet is filed or, after proper notice, an order dismissing the action; and, in lieu of any other orders, or in addition to any orders, the court may treat the failure to comply with the requirements of this rule as contempt of court.

APPENDIX B

Committee Comments to Amendment to  
Rule 3(b) Effective October 24, 2008

This is a technical amendment intended to encompass both paper and electronic filings. No substantive change is intended.

## APPENDIX C

### RULE 4. PROCESS: GENERAL AND MISCELLANEOUS PROVISIONS

(a) Summons or Other Process.

(1) Issuance. Upon the filing of the complaint, or other document required to be served in the manner of an original complaint, the clerk shall forthwith issue the required summons or other process for service upon each defendant. Upon request of the plaintiff separate or additional summons shall issue at any time against any defendant.

(2) Form. The summons, or other process or each of them in cases involving multiple defendants, shall be signed by the clerk, contain the name of the court and the name of the first party on each side with an appropriate indication of other parties in cases involving multiple parties, be directed to the defendant or each defendant in cases involving multiple defendants, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify the defendant that, in case of the defendant's failure to do so, judgment by default will be rendered against the defendant for the relief demanded in the complaint.

(3) Copy of Complaint or Other Document. A copy of the complaint, showing the case number assigned to the action, or other document to be served shall accompany each summons or other process. The plaintiff shall furnish the clerk with sufficient copies of the complaint or other document to be served. Copies are not required if the complaint or other document is filed electronically.

(4) Plaintiff and Defendant Defined. For the purpose of issuance and service of summons or other process, "plaintiff" shall include any party seeking the issuance of service of summons, and "defendant" shall include any party upon whom service of summons or other process is sought.

(5) Instructions and Form. The plaintiff shall furnish the clerk with instructions for service of the complaint or other document and, when requested by the clerk, the plaintiff shall also furnish sufficient properly completed copies of the summons or other process. When the plaintiff has requested the clerk to issue service by certified mail, the plaintiff, at the request of the clerk, shall also furnish properly completed postal forms necessary for such service.

(b) Time Limit for Service. If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative, after at least fourteen (14) days' notice to the plaintiff, may dismiss the action without prejudice as to the defendant upon whom service was not made or direct that service be effected within a specified time; provided, however, that if the plaintiff shows good cause for the failure to serve the defendant, the court shall extend the time for service for an appropriate period. This subdivision does not apply to fictitious-party practice pursuant to Rule 9(h) or to service in a foreign country.

(c) Upon Whom Process Served. Service of process, except service by publication as provided in Rule 4.3, shall be made as follows:

(1) Individual. Upon an individual, other than a minor or an incompetent person, by serving the individual or by leaving a copy of the summons and the complaint at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and the complaint to an agent authorized by appointment or by law to receive service of process;

(2) Minor. Upon a minor by serving any one of the following: the father, the mother, the guardian, the individual having care of the minor or with whom the minor lives, or the spouse, if the minor is married, and, if the minor is over the age of twelve (12) years, by also serving the minor personally;

(3) Incompetent Not Confined. Upon an incompetent person not confined by serving the incompetent and that person's guardian but, if no guardian has been appointed, by serving the incompetent and a person with whom the incompetent lives or a person who cares for the incompetent;

(4) Incompetent Confined. Upon an incompetent person not having a guardian and confined in any institution for the mentally ill or mentally deficient, by serving the superintendent of the institution or similar official or person having the responsibility for custody of the incompetent person;

(5) Incarcerated Person. Upon an individual incarcerated in any penal institution or detention facility within this state, by serving the individual, except that when the individual to be served is a minor, by serving any one of the following: the father, the mother, the guardian, the individual having care of the minor, or the spouse, if the minor is married, and, if the minor is over the age of twelve (12) years, by also serving the minor personally;

(6) Corporations and Other Entities. Upon a domestic or foreign corporation or upon a partnership, limited partnership, limited liability partnership, limited liability company, or unincorporated organization or association, by serving an officer, a partner (other than a limited partner), a managing or general agent, or any agent authorized by appointment or by law to receive service of process.

(7) State. Upon this state or any one of its departments, agencies, offices, or institutions, by serving the officer responsible for the administration of the department, agency, office, or institution, and by serving the attorney general of this state;

(8) Local Governments and Other Governmental Entities. Upon a county, municipal corporation, or any other governmental entity not previously mentioned, or an agency thereof, by serving the chief executive officer or the clerk, or other person designated by appointment or by statute to receive service of process, or upon the attorney general of the state if such service is accompanied by an affidavit of a party or the party's attorney that all such persons described herein are unknown or cannot be located.

(d) Amendment. The court, within its discretion and upon such terms as are just, may at any time allow or approve the amendment of any process or proof of service thereof, unless the amendment would cause material prejudice to the substantial rights of the party against whom the process was issued.

(e) Service Refused. If service of process is refused, and the certified mail receipt or the return of the person serving process states that service of process has been refused, the clerk shall send by ordinary mail a copy of the summons or other process and complaint or other document to be served to the defendant at the address set forth in the complaint or other document to be served. Service shall be deemed complete when the fact of mailing is entered of record.

(f) Multiple Defendants; Incomplete Service; Dismissal of Fictitious Defendants. When there are multiple defendants and the summons (or other document to be served) and the complaint have been served on one or more, but not all, of the defendants, the plaintiff may proceed to judgment as to the defendant or defendants on whom process has been served and, if the judgment as to the defendant or defendants who have been served is final in all other respects, it shall be a final judgment. After the entry of judgment, if the plaintiff is able to obtain service on a defendant or defendants not previously served (except, however, defendants designated as fictitious parties as allowed by Rule 9(h), who shall be deemed to have been dismissed voluntarily when the case was announced ready for trial against other defendants sued by their true names), the court shall hear and determine the matter as to such defendant or defendants in the same manner as if such defendant or defendants had originally been brought into court, but such defendant or defendants shall be allowed the benefit of any payment or satisfaction that may have been made on the judgment previously entered in the action.

(g) Effect of Availability of Alternative or Dual Modes of Service of Process. There shall be no objection to the service of process or notice to litigants, that two or more modes of service of notice are provided by law or under these rules, but service of notice perfected in any one manner or mode that is provided for by law or under these rules shall be deemed sufficient, notwithstanding that other modes or manner of service and notice are provided by law or under these rules.

(h) Acceptance or Waiver of Service. A defendant may accept or waive service of process.

(i) Methods of Service. Service under this rule shall include the following:

(1) Delivery by a Process Server.

(A) By Sheriff or Constable. When process issued from any court subject to the provisions of these rules is to be delivered personally within this state, the clerk of the court shall deliver or mail the process and sufficient copies of the process and complaint, or other documents to be served, to the sheriff or constable of the county in which the party to be served resides or may be found.

(B) By Designated Person. As an alternative to delivery by the sheriff, or when process is to be delivered personally outside this state, process issuing from any court governed by these rules may be served by any person not less than eighteen (18) years of age, who is not a party.

(C) How Served and Returned. The person serving process shall locate the person to be served and shall deliver a copy of the process and accompanying documents to the person to be served. When the copy of the process has been delivered, the person serving process shall endorse that fact on the process and return it to the clerk, who shall make the appropriate entry on the docket sheet relating to the action. The return shall clearly indicate the name, address, and telephone number of the person serving process. The return of the person serving process in the manner described herein shall be prima facie evidence that process has been served.

(D) Failure of Service. When the person serving process is unable to serve a copy of the process within thirty (30) days, the person serving process shall endorse that fact and the reason therefor on the process and return the process and copies to the clerk, who shall make the appropriate entry on the docket sheet of the action. In the event of failure of service, the clerk shall forthwith notify, by mail, the attorney of record or, if there is no attorney of record, the party at whose instance process was issued. The clerk shall enter the fact of notification on the docket sheet of the action. Failure to make service within the thirty-(30-)day period and failure to make proof of service do not affect the validity of service.

(2) Service by Certified Mail.

(A) When Proper. When the plaintiff files a written request with the clerk for service by certified mail, service of process shall be made by that method. Alternatively, the attorney or party filing the process and complaint may initiate service by certified mail as provided in this rule.

(B) How Served. (i) In the event of service by certified mail by the clerk, the clerk shall place a copy of the process and complaint or other document to be served in an envelope and shall address the envelope to the person to be served with instructions to forward. In the case of an entity within the scope of one of the subdivisions of Rule 4(c), the addressee shall be a person described in the appropriate subdivision. The clerk shall affix adequate postage and place the sealed envelope in the United States mail as certified mail with instructions to forward, return receipt requested, with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered. The case number of the case in which the pleading has been filed shall be included on the return receipt. The clerk shall forthwith enter the fact of mailing on the docket sheet of the action and make a similar entry when the return receipt is received.

(ii) Alternatively, the attorney or party filing the process and complaint or other document to be served may obtain a copy of the filed pleading from the clerk or, if the pleading was filed electronically, use the copy returned electronically by the clerk. The attorney or party shall then place that copy of the process and complaint or other document to be served in an envelope and address the envelope to the person to be served with instructions to forward. In the case of an entity within the scope of one of the subdivisions of Rule 4(c), the addressee shall be a person described in the appropriate subdivision. The

attorney or party shall affix adequate postage and place the sealed envelope in the United States mail as certified mail with instructions to forward, return receipt requested, with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered. The return receipt shall be addressed to the clerk of the court issuing the process and shall identify the case number of the case in which the pleading has been filed. Upon mailing, the attorney or party shall immediately file with the court an "Affidavit of Certified Mailing of Process and Complaint." That affidavit shall verify that a filed copy of the process and complaint or other document to be served has been mailed by certified mail in accordance with this rule.

(C) When Effective. Service by certified mail shall be deemed complete and the time for answering shall run from the date of delivery to the named addressee or the addressee's agent as evidenced by signature on the return receipt. Within the meaning of this subdivision, "agent" means a person or entity specifically authorized by the addressee to receive the addressee's mail and to deliver that mail to the addressee. Such agent's authority shall be conclusively established when the addressee acknowledges actual receipt of the summons and complaint or the court determines that the evidence proves the addressee did actually receive the summons and complaint in time to avoid a default. An action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action within time to avoid a default. In the case of an entity included in one of the provisions of Rule 4(c), "defendant," within the meaning of this subdivision, shall be such a person described in the applicable subdivision of 4(c).

(D) Failure of Delivery. If the receipt shows failure of delivery to the addressee or the addressee's agent, the clerk shall follow the notification procedure set forth in subdivision (i)(1)(D) of this rule. Failure to make service within the thirty-(30-)day period and failure to make proof of service do not affect the validity of service.

(dc) District Court Rule. Rule 4 applies in the district courts.

## APPENDIX D

### Committee Comments to Amendments to Rule 4 Effective October 24, 2008

Rule 4(a). Although Rule 4(a)(1) "Issuance" was not amended at this time, it is the intent of these amendments that issuance by the clerk includes electronically generated documents. Similarly, the reference in Rule 4(a)(2) to the clerk's signature now includes an electronic signature. See Rule 30(G) of the Alabama Rules of Judicial Administration. The insertion in Rule 4(a)(3) of "accompany" in place of "attached" is a technical amendment intended to encompass both paper and electronic filing. This section has also been amended to eliminate the requirement for additional service copies when electronic filing is used. The change to Rule 4(a)(5) is required by the amendment to Rule 4(i)(2) that creates an alternative procedure for certified mail service.

Rule 4(i). Rule 4(i)(2) is amended to continue the present method of certified mail service by written request to the clerk and to add a new alternative method by which the plaintiff may initiate certified mail service with notice to the clerk. The procedure to be followed is set out in Rule 4(i)(2)(B)(ii), a new paragraph added by this amendment. This change makes it clear that if a plaintiff elects to use certified mail service it is the plaintiff's option to use either of the alternative methods now provided. Whatever method of certified mail service is used, the return receipt must include the case number and must be addressed to the clerk of the court in which the action is pending.

## APPENDIX E

### RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(a) Service: When required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

(b) Same: How made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or the party or by mailing it to the attorney or the party at the attorney's or party's last known address, or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

If the attorney for the party to be served or the party to be served is a registered user of the electronic-filing system as provided for by order or rules of the Supreme Court of Alabama, service may be made by electronic transmittal in accordance therewith. Service by electronic means in compliance with those orders and rules shall be complete on transmission of the electronic document.

(c) Same: Numerous defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing; Certificate of service. All papers after the complaint required to be served upon a party, together with a certificate of service listing the names and addresses, including the e-mail addresses of registered electronic-filing-system users, if known, of all attorneys or pro se parties upon whom the paper has been served, shall be filed with the court either before service or within a reasonable time thereafter, but the court may on motion of a party or on its own initiative provide by written order that depositions upon oral examination and interrogatories, requests for documents, requests for admission, and answers and responses thereto not be filed unless on order of the court for use in the proceeding. However, all discovery and responses thereto may be filed electronically. With regard to discovery not filed electronically, if the court determines that these discovery papers need not be filed with the court, the following implementing order shall be entered by the court:

"Unless the court directs otherwise:

"A. Interrogatories, requests for production, requests for admission, and responses thereto, and notices of deposition shall be served in accordance with Rule 5(b) of the Alabama Rules of Civil Procedure, but shall not be filed with the Clerk except upon order of the Court or for use at trial or in connection with motions. The person responsible for service of the discovery material shall retain the original and become custodian.

"B. No deposition shall be filed with the Clerk unless the Court directs otherwise, or unless offered in support of or in opposition to a motion. Counsel who notices a deposition shall be the custodian of the deposition and shall maintain the original for filing if the Court so directs.

"C. If the discovery materials are germane to any motion or response, only the relevant material shall be filed with the motion or response.

"D. Whenever any discovery material (request, response, notice) is served, counsel shall contemporaneously deliver to the Clerk either a notice identifying the date of service and the nature of the material served, or the first and last page of the document served, including the certificate of service. These notices shall be maintained by the Clerk with the civil action file, but will not be docketed.

"E. During the pendency of any case, the custodian of any discovery material shall provide to counsel for all other parties reasonable access to the material and an opportunity to duplicate the material at the expense of the copying party, and any other person may, with leave of court, obtain a copy of any discovery material from the custodian upon the payment of the expense of the copy."

(e) Filing With the Court Defined. The filing of papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge, in which event, the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. A pleading, motion, order, or other document filed by electronic means in accordance with an order or rules of the Supreme Court of Alabama constitutes filing with the court for the purpose

of applying these rules. The clerk shall not refuse to accept for filing any document presented for that purpose solely because it is not presented in proper form as required by these rules.

(dc) District Court Rule. Rule 5 applies in the district court.

## APPENDIX F

### Committee Comments to Amendments to Rule 5 Effective October 24, 2008

The additions to Rule 5(b) and Rule 5(e) recognize that electronic filing is now an optional means of filing and service in every county in Alabama. Electronic filing must be accomplished within the electronic-filing system established by order and rules of the Supreme Court of Alabama, not merely e-mail communication. The Rule 5(d) addition regarding inclusion of e-mail addresses in certificates of service is to be read in the context of filings within the electronic-filing system. In that same section language has been added to provide for electronic filing of discovery and responses thereto, both of which are excluded from the existing provisions regarding the filing of paper copies.

APPENDIX G

Rule 6(e), Alabama Rules of Civil Procedure.

(e) Additional Time After Service by Mail or Electronic Filing. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail or electronic filing, three (3) days shall be added to the prescribed period.

APPENDIX H

Committee Comments to Amendments to  
Rule 6 Effective October 24, 2008

All the provisions of this rule, including Rule 6(e), are applicable to electronic filing. This is in accord with the corresponding Federal Rule of Civil Procedure.

APPENDIX I

RULE 11. SIGNING OF PLEADING, MOTIONS,  
OR OTHER PAPERS

Every pleading, motion, or other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the pleading, motion, or other paper, and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings, motions, or other papers need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney constitutes a certificate by the attorney that the attorney has read the pleading, motion, or other paper; that to the best of the attorney's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. As provided in Rule 30(G) of the Alabama Rules of Judicial Administration, an electronic signature is a "signature" under these Rules. If a pleading, motion, or other paper is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the pleading, motion, or other paper had not been served. For a willful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

(dc) District Court Rule. Rule 11 applies in the district courts.

APPENDIX I

Committee Comments to Amendment to  
Rule 11 Effective October 24, 2008

The amendment is to make clear that all pleadings, motions, or other papers, including those signed and filed electronically, are subject to the provisions of Rule 11. The other change is technical.

APPENDIX K

Rule 55(a), Alabama Rules of Civil Procedure.

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these Rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default. The clerk's entry of default may be made electronically.

APPENDIX L

Committee Comments to Amendment to  
Rule 55(a) Effective October 24, 2008

This amendment makes provision for the clerk's entry of default to be made electronically. If the application for entry of default and application for default judgment are submitted to the judge electronically, entry of default and the default judgment may be entered by the judge.

## APPENDIX M

### RULE 58. RENDITION AND ENTRY OF ORDERS AND JUDGMENTS

(a) Rendition of Orders and Judgments. A judge may render an order or a judgment: (1) by executing a separate written document, (2) by including the order or judgment in a judicial opinion, (3) by endorsing upon a motion the words "granted," "denied," "moot," or words of similar import, and dating and signing or initialing it, (4) by making or causing to be made a notation in the court records, or (5) by executing and transmitting an electronic document to the electronic-filing system.

(b) Sufficiency of Order or Judgment. An order or a judgment need not be phrased in formal language nor bear particular words of adjudication. A written order or a judgment will be sufficient if it is signed or initialed by the judge, or by the clerk in the case of a judgment entered pursuant to Rule 55(b)(1), and indicates an intention to adjudicate, considering the whole record, and if it indicates the substance of the adjudication.

(c) Entry of Order or Judgment. Upon rendition of an order or a judgment as provided in subdivision (a)(1-4) of this rule, the clerk shall forthwith enter such order or judgment in the court record. An order or a judgment shall be deemed "entered" within the meaning of these Rules and the Rules of Appellate Procedure as of the actual date of the input of the order or judgment into the State Judicial Information System. An order or a judgment rendered electronically by the judge under subdivision (a)(5) of this rule shall be deemed "entered" within the meaning of these Rules and the Rules of Appellate Procedure as of the date the order or judgment is electronically transmitted by the judge to the electronic-filing system. The entry of the judgment or order shall not be delayed for the taxing of costs. Interest upon a judgment runs from the date the court renders the judgment.

(dc) District Court Rule. Rule 58 applies in the district courts.

APPENDIX N

Committee Comments to Amendments to  
Rule 58 Effective October 24, 2008

Since the last amendments to Rule 58 effective September 19, 2006, the electronic-filing system has continued to evolve, and many orders are now prepared electronically by judges. The amendment to Rule 58(a) recognizes this as an additional method for rendition of orders by the judge. As provided in Rule 30(G) of the Alabama Rules of Judicial Administration, an electronic signature is a "signature" under these Rules.

The amendment to Rule 58(c) makes it clear that if the judge creates the order in the form of an electronic document and transmits that electronic document to the electronic-filing system, that transmission constitutes both rendition and entry of the order by the judge. For purposes of these Rules and the Rules of Appellate Procedure, the order is "entered" on the date the judge transmits it to the electronic-filing system.

APPENDIX O

RULE 59.1. DISPOSITION OF MOTION FOR NEW TRIAL AND  
OTHER POST-TRIAL MOTIONS

No postjudgment motion filed pursuant to Rules 50, 52, 55, or 59 shall remain pending in the trial court for more than ninety (90) days, unless with the express consent of all the parties, which consent shall appear of record, or unless extended by the appellate court to which an appeal of the judgment would lie, and such time may be further extended for good cause shown. A failure by the trial court to render an order disposing of any pending postjudgment motion within the time permitted hereunder, or any extension thereof, shall constitute a denial of such motion as of the date of the expiration of the period.

(dc) District Court Rule. Rule 59.1 applies in the district courts, except that the time period of ninety (90) days is reduced to fourteen (14) days unless within that time an order extends the period, for good cause shown, for not more than an additional fourteen (14) days.

## APPENDIX P

### Committee Comments to Amendment to Rule 59.1 Effective October 24, 2008

In Ex parte Chamblee, 899 So. 2d 244, 248 (Ala. 2004), the Court "reaffirm[ed] that for purposes of Rule 59.1 a trial judge 'disposes of a pending postjudgment motion only by properly entering a ruling either denying or granting the motion." In 2006 the Committee proposed, and the Supreme Court adopted, an amendment to Rule 58(c) providing that electronic input into the State Judicial Information System constitutes "entry." The Committee noted that the elimination of handwritten entries of judgments prevents judges from personally making such entries on the docket sheet or the case-action summary and to that extent "reinstates the distinction between the substantive, judicial act of rendering a judgment and the procedural, ministerial act of entering a judgment." Committee Comments to Amendment to Rule 58 Effective September 19, 2006. This distinction also applies to Rule 59.1 if a judge renders an order granting a postjudgment motion before the 90th day but the clerk does not electronically enter the order until after the 90th day. Thus, the Committee, at the request of the Court, has proposed this amendment to Rule 59.1 to cause the timely rendering of an order to be effective to prevent the automatic denial by expiration of time, but retaining the requirement that the order must still be entered for other purposes of these Rules, such as the running of the time for an appeal pursuant to Rule 4, Ala. R. App. P. The Committee notes that with the rapid progression of electronic filing, many judges personally enter orders and judgments in the electronic system. This practice constitutes simultaneous rendition and entry and thereby avoids the problem that this amendment addresses.

The 14-day period of pendency in the district court for postjudgment motions filed under Rules 50, 52, 55 or 59 under the previous Rule 59.1 made it difficult to schedule and notice evidentiary hearings in some cases. The amendment to the (dc) provision allows the court to extend this time by order showing good cause. Such extension by the court cannot exceed an additional 14 days. At the end of that period the motion is denied by operation of the rule if an order disposing of the motion has not been rendered by the judge. This amendment does not affect extensions of pendency by agreement of the parties as provided in the rule, nor is it intended to supersede any provision of the Alabama Rules of Juvenile Procedure.

APPENDIX Q

Rule 77(d), Alabama Rules of Civil Procedure.

(d) Notice of Orders or Judgments. Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by mail or by electronic transmittal in the manner provided for in Rule 5 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 or electronic transmittal. Such mailing or electronic transmittal is sufficient notice for all purposes for which notice of the entry of an order is required by these Rules, but any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers. Lack of notice of the entry by the clerk 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, except that upon a showing of excusable neglect based on a failure of the party to learn of the entry of the judgment or order the circuit court in any action may extend the time for appeal not exceeding thirty (30) days from the expiration of the original time now provided for appeals in civil actions. The circuit court may also extend the time for cross-appeal, pursuant to Rule 4(a)(2), Alabama Rules of Appellate Procedure, not exceeding thirty (30) days from the expiration of the original time now provided for cross-appeals, upon a showing of excusable neglect based on a failure of a party to learn of the filing of a notice of appeal by another party.

APPENDIX R

Committee Comments to Amendments to  
Rule 77(d) Effective October 24, 2008

The intent of the amendments to Rule 77(d) is to include the use of the electronic-filing system as an additional means of notice available to the clerk.

## APPENDIX S

### RULE 79. BOOKS AND RECORDS KEPT BY THE CLERK AND ENTRIES THEREIN

(a) Civil docket. The clerk shall keep a book known as the "civil docket" of such form and style as the books now kept and known as the consolidated docket and fee books, and shall enter therein each civil action to which these Rules are made applicable. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, bench notes, verdicts, and judgments shall be noted in this civil docket on the folio assigned to the action and shall be marked with its file number. These entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made. When in an action trial by jury has been properly demanded or ordered, the clerk shall enter the word "jury" on the folio assigned to that action. In the event a formal order is entered, the clerk shall insert the order in the file of the case.

(b) Final judgments or appealable orders; minute book. The clerk shall keep a minute entry or correct copy of every final judgment or appealable order, or order affecting title to or lien upon real or personal property, or any other order that the court may direct to be kept. This record may be maintained either as a separate minute book or on microfilm.

(c) Indices; calendars. Suitable indices of the civil docket and of every civil judgment and order referred to in subdivision (b) of this rule shall be kept by the clerk under the direction of the court. There shall be prepared, under the direction of the court, calendars of all actions ready for trial, which shall distinguish "jury actions" from "court actions."

(d) Other books and records. The clerk shall also keep such other books and records as may be required by the Supreme Court of Alabama. The documents required to be kept under this rule may be recorded by means of a photograph or photostat machine.

(e) Records required to be kept by the clerk under this rule may be maintained electronically in accordance with the orders and rules of the Supreme Court of Alabama.

(f) Removing the file in a case. The file of a case shall not be removed from the office of the clerk except by permission of the court or the clerk.

(g) Transfer of files. For administrative purposes only, and unless the court orders otherwise, the complaint or other initial pleading shall be filed in the office of the register or of the clerk in accordance with the practice prior to the adoption of these Rules. Subsequent pleadings, motions, judgments, or other papers shall be filed in the office in which the initial pleading was filed, unless and until the file in that case is transferred; thereafter pleadings, motions, judgments or other papers shall be filed in the office to which the file was transferred. If the judge at any time, in considering the pleadings or other papers, finds that the file is being kept in an office not proper under prior practice, or otherwise determining the file should be transferred, the judge may so inform the clerk or the register who shall immediately note on the sheet or folio assigned to that case in the civil docket: "transferred to the office of (the clerk) (the

register)," with the date, and shall immediately turn over the file to the proper office. The official receiving the file shall change the file number to one appropriate for the official's office, first noting the original file number on the sheet or folio assigned to that case in the civil docket in the official's office, with the notation: "transferred from the office of (the register) (the clerk)" and the date thereof. Entries in the docket or records already made by one office need not be duplicated in the other on receiving the file. The transfer of the file shall in no way affect the proceedings in the case, which shall continue before the same judge in the same manner as if the file had not been transferred. Fees or costs accrued prior to the transfer shall be included in the bill of costs of the official receiving the file and collected in the same manner as fees or costs accruing after the transfer. The register and clerk shall each account to the other, periodically, for any fees or costs collected that would have belonged to the office of the other under prior practice.

(dc) District Court Rule. Rule 79 applies in the district courts except that the requirement of the keeping of final judgments or appealable orders in a minute book in Rule 79(b) is deleted.

APPENDIX T

Committee Comments to Addition of  
Rule 79(e) Effective October 24, 2008

This amendment recognizes that the State Judicial Information System has become a repository for many records previously maintained locally by the clerk.