

## Alabama Rules of Civil Procedure

### VII. JUDGMENT

#### 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, or (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), Rule 71B(f), or Rule 71C(f), 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.

(d) *Entry of order or judgment in probate court.* Upon rendition of an order or a judgment in the probate court as provided in subdivision (a)(1)-(4) of this rule, the judge or clerk of the probate court shall forthwith enter such order or judgment in the court record. 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 probate court renders the judgment.

(dc) *District court rule.* Rule 58 applies in the district courts.

[Amended 1-23-84, eff. 3-1-84; Amended 1-21-86, eff. 9-1-87; Amended eff. 10-1-95; Amended eff. 9-19-2006; Amended eff 10-24-2008; Amended 5-29-2009, eff. 7-1-2009; Amended 12-6-2012, eff 1-1-2013.]

### **Committee Comments on 1973 Adoption**

The rule contains the essential ideas of Federal Rule 58, that judgment is to be entered “forthwith” upon its rendition and that the judgment is to be short and simple rather than filled with elaborate recitals. See also Rule 54(a). But the rule departs substantially in form from the Federal Rule in order to clarify the procedure as to rendition of judgments, and to preserve traditional Alabama practice of “bench notes.” The Rule also permits judgments as a part of an opinion quite different from Federal Rule 58 which requires every judgment to be set forth on a separate document.

Both under prior Alabama practice and the federal rules, the terms “rendition” and “entry” signify two entirely distinct events in theory, though in practice the two events may take place within such a short space of time as to make it unnecessary to distinguish between them. “Rendition” is the judicial pronouncement of the judgment or decree, the utterance by the judge of his decision, while “entry” of the judgment is the ministerial act of the clerk in recording the judgment duly rendered by the judge.

It has been customary in Alabama for judgment to be rendered at law by a notation on the bench notes, while in equity a decree is rendered by the execution of a formal written document. Subdivision (a) permits judgment to be rendered by either of these methods, and the third and fourth options provided in that subdivision permit rendition by including the order or judgment, or a direction for its entry, in an opinion or memorandum.

The rules intend that judgment shall be rendered and entered simply and quickly. Thus while the court can delay rendition of judgment in order to prepare a separate written document, pursuant to Rule 58(a)(2), this course should not be followed where an immediate notation on the bench notes will serve as well.

The language of subdivision (b) is adapted from *In re Forstner Chain Corp.*, 177 F.2d 572, 576 (1<sup>st</sup> Cir.1949). It emphasizes the intention, stated in the above paragraph, to do away with unnecessary technicalities heretofore common in orders, judgments, and decrees. Such cases as *Johnson v. Bryars*, 264 Ala. 243, 86 So.2d 371 (1956), and *Mangham v. Mangham*, 263 Ala. 672, 83 So.2d 721 (1955), will no longer be authoritative under this rule.

Subdivision (c) requires the clerk to note a judgment or order in the Civil Docket forthwith upon its rendition. The notation of the judgment is not to be delayed unless the judgment or order itself contains a specific direction to delay entry or the case is subject to Rule 54(b). The clerk is required to notify all parties not otherwise notified immediately upon entry of a judgment or order. See Rule 77(d). A judgment is effective at the time of its notation in the civil docket or its notation on separately maintained bench notes or upon the filing of a separate judgment or order. The time limitation in which to attack the judgment runs from the occurrence of any of the events specified in the preceding sentence. See Rules 59, 60 and 62.

In many circuits, bench notes are kept on the consolidated docket book. In some circuits the large pages in the docket book are not taken from the clerk's office, necessitating maintenance of separate bench notes. Rule 58(c) sets forth the requirement of notation in the civil docket, if separately maintained. In those circuits where bench notes are made directly on the docket sheet, Rule 58(c) will have already been complied with.

The clerk is required to copy every final judgment into the minute book, Rule 79(b), but it is the notation of the judgment or order on the civil docket, rather than the later act, which is of legal significance. *United States v. Wissahickon Tool Works*, 200 F.2d 936 (2d Cir.1952); cf. *United States v. Roth*, 208 F.2d 467 (2d Cir.1953).

The notation of the judgment in the civil docket need not contain the full text of the judgment. All that is required is that it show the "substance" of the judgment or order, Rule 79(a).

**Committee Comments to Amendment to Rule 58(b)**  
**Effective March 1, 1984**

This amendment added the requirement that a judgment, order, or minute entry be signed or initialed by the judge. Under Rule 58(b) there have developed some problems in determining whether an order of the court is intended to serve as a judgment dispositive of the lawsuit or as an order of lesser proportions. See e.g., *Guilford v. Spartan Food Systems, Inc.*, 372 So.2d 7 (Ala.1979). This amendment requires the judge to add his signature or initials to the place in the record where the notation of the fact of the judgment appears. While this amendment does not alter the standard for evaluating the sufficiency of the phraseology, it does require, in the form of a signing or initialing, a direct judicial intervention in the process of making up the judgment, order, or minute entry.

This mandate of direct involvement by the court should result in a greater concern for the necessity for clarity in a judgment or order.

**Committee Comments to Amendment to Rule 58(b)  
Effective September 1, 1987**

Rule 55 permits entry of default judgments under certain circumstances by the clerk of the court. However, prior to this amendment, a judgment was deemed sufficient under the rules only if it was signed or initialed by a judge. This amendment is intended to render the provisions of Rule 58(b) consistent with the provisions of Rule 55 insofar as the latter permits entry of a default judgment by the clerk and to render such judgment sufficient when signed or initialed by the clerk.

**Committee Comments to October 1, 1995,  
Amendment to Rule 58**

The amendment is technical. No substantive change is intended.

**Committee Comments to Amendment to Rule 58  
Effective September 19, 2006**

Rule 58(c) is amended to provide for an unambiguous and universally available record of the entry of judgment. Upon occasion, the loose-leaf "docket sheets" or "case action summary sheets" have been misplaced after a judgment has been entered, or the circuit clerk failed to mail notice of the entry of judgment, such that the time for filing a notice of appeal began to run without the losing party's having effective notice of the entry of judgment or the deadline for filing a notice of appeal. See *Miller v. Amerada Hess Corp.*, 786 So.2d 1106 (Ala.2000); *Bacon v. Winn-Dixie Montgomery, Inc.*, 730 So.2d 600 (Ala.1998); *Etherton v. City of Homewood*, 700 So.2d 1374 (Ala.1997); *Turner v. Barnes*, 687 So.2d 197 (Ala.1997); and *Sparks v. Alabama Power Co.*, 679 So.2d 678 (Ala.1996). In *Allstate Insurance Co. v. Coastal Yacht Services, Inc.*, 823 So.2d 632, 636 (Ala.2001) (Johnstone, J., concurring specially), Justice Johnstone "recommend[ed] ... that the Committee on the Rules of Civil Procedure appointed by this Court study Rule 58(c), Ala.R.Civ.P., and initiate revisions that will eliminate the potential for injustice present in the current text of the rule as interpreted by the Court in this case." This revision is a result of that study. Efforts to create reliably effective notice by slightly modifying the paper entry of judgment have proved elusive, so the Committee recommends making the electronic entry in the existing State Judicial Information System ("SJIS") the official entry of judgment. The date of entry will be the actual date of input, with the expectation that this date ordinarily will accurately and automatically accompany the entry. The word "actual" is used to allow proof that the apparent date is not the actual date, if that is in fact the case, for example if an entry is

manually backdated. The Committee is informed that such manual backdating is not possible in the SJIS, but the rule is nevertheless written to protect against such an event. The electronic records input into the SJIS are available both in the clerks' offices and through remote access over the Internet. Thus, under the amended rule, an attorney or a party will have virtually instant access to the information that judgment has been entered.

With this change in the method of entry of judgment, a change in the date for the running of interest is in order. Under the practice existing prior to this amendment, a judge could cause the entry of judgment by handwriting the judgment on the docket sheet or case action summary or by filing a written judgment. However, this amendment removes those methods by which a judge could enter a judgment. In *Allstate Insurance Co., supra*, the Court noted that " ' "Rule 58 ... obliterate[s] any distinction between [the ministerial act of] entry and [the judicial act] of rendition of judgment and ... make[s] the operative event the act of the judge." ' " 823 So. 2d at 633 (quoting *Smith v. Jackson*, 770 So.2d 1068, 1071, quoting in turn 2 Champ Lyons, Jr., *Alabama Rules of Civil Procedure Annotated*, § 58.2, at 255 (3d ed. 1996) (emphasis and alterations added in *Smith*). This amendment to Rule 58(c) reinstates the distinction between the substantive, judicial act of rendering a judgment and the procedural, ministerial act of entering a judgment. Thus, the rule is also amended to include a new provision that interest on a judgment begins to run at the time of rendition of the judgment. The jurisdictional need for an unambiguous, universally available judgment-entry date for the sake of an appeal does not apply to the question of the commencement of the running of interest on the judgment, as to which the parties can determine the date of rendition, if necessary, after the judgment becomes final and either no appeal is taken or all appeals have been exhausted. The Committee notes that Rule 37, Ala.R.App.P., providing that interest runs "from the date the judgment was entered," requires a corresponding amendment. Finally, the Committee notes that § 6-9-21, Ala.Code 1975, provides for execution on a judgment only after entry of the judgment, so the running of interest from rendition will not allow execution before entry.

### **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.

**Committee Comments to the Adoption of  
Rule 58(d) Effective January 1, 2013**

This amendment is adopted contemporaneously with the amendment to Rule 1(a), pursuant to which the Rules of Civil Procedure are now presumed to apply in the probate court absent a statutory exception. Because the probate courts are not on the State Judicial Information System, the provisions of Rule 58(c) cannot apply in the probate court. For statutory provisions regarding probate-court records, see, e.g., Ala. Code 1975, §§ 12-13-40(5) (allowing a probate court to complete minute entries and judgments when they are incomplete because of a failure to make the entries when they should have been made and providing that such entries are valid and binding "as if they had been made at the proper time"), 12-13-41(2) (requiring the probate judge to keep minutes of official acts and proceedings and to record them within three months thereafter), and 12-13-41(4) (requiring a docket showing entries necessary to show the true condition of all proceedings pending in the court). Because these provisions are somewhat inconsistent, a procedural rule cannot create a uniform means of the entry of judgments in probate courts.

**Note from the reporter of decisions:** The order amending Rule 58, Alabama Rules of Civil Procedure, effective September 19, 2006, and adopting the committee comments to the amendment is published in that volume of *Alabama Reporter* that contains Alabama cases from 939 So.2d.

**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 994 So. 2d.

**Note from the reporter of decisions:** The order amending, effective July 1, 2009, Rule 52(dc), Rule 55(dc), Rule 58(b), and Rule 59(dc), and adopting effective July 1, 2009, the Committee Comments to the July 1, 2009, Amendment to Rule 52(dc), the Committee Comments to the July 1, 2009, Amendment to Rule 55(dc), and the Committee Comments to the July 1, 2009, Amendment to Rule 59(dc) is published in that volume of *Alabama Reporter* that contains Alabama cases from 7 So. 3d.

**Note from the reporter of decisions:** The order amending, effective January 1, 2013, Rule 1(a), Rule 45(b)(1), and Rule 82(d)(3), and adopting effective January 1, 2013, Rule 58(d) and the Committee Comments to the Amendment to Rule 1(a) Effective January 1, 2013, the Committee Comments to the Amendment to Rule 45(b)(1) Effective January 1, 2013, the Committee Comments to the Adoption of Rule 58(d) Effective January 1, 2013, and the Committee Comments to the Amendment to Rule 82(d)(3) Effective January 1, 2013, are published in that volume of *Alabama Reporter* that contains Alabama cases from \_\_\_ So. 3d.