

## Alabama Rules of Civil Procedure

### VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

#### Rule 65.1.

##### **Security: Proceedings against sureties.**

Whenever these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

(dc) *District court rule.* Rule 65.1 applies in the district courts.

[Amended 10-1-95.]

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

This rule affords a remedy against a surety as an adjunct of the action in which the surety has provided the security. No independent action is required. The clerk becomes agent for service of those persons furnishing security.

Such undertakings have occurred as a condition for an order staying proceedings, granting injunctive relief, and incidental to attachments and garnishments.

An early Alabama statute, passed in 1826, provided a remedy against obligors through execution by the register upon a decree of dissolution without further hearing or order. However, this statute (Tit. 7, § 1049, Code of Ala.) is limited to cases in which judgments at law have been enjoined. *Dunn v. Bank of Mobile*, 2 Ala. 152 (1841). Otherwise, a separate action was contemplated. See, e.g., *U.S.F. & G. v. International Bhd.*, 41 Ala.App. 114, 125 So.2d 526 (1961), cert. denied 271 Ala. 701, 125 So.2d 530 (1961).

##### **Committee Comments to October 1, 1995, Amendment to Rule 65.1**

The amendment is technical. No substantive change is intended.