

IN THE SUPREME COURT OF ALABAMA  
April 16, 2010

ORDER

IT IS ORDERED that Rule 5(d), Alabama Rules of Civil Procedure, be amended to read in accordance with Appendix A attached to this order;

IT IS FURTHER ORDERED that committee comments to that amendment are adopted to read in accordance with Appendix B attached to this order;

IT IS FURTHER ORDERED that this amendment shall be effective immediately;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 5:

"Note from the reporter of decisions: The order amending Rule 5(d), Alabama Rules of Civil Procedure, effective April 16, 2010, is published in that volume of Alabama Reporter that contains Alabama cases from \_\_\_ So. 3d."

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

## APPENDIX A

Rule 5(d), Alabama Rules of Civil Procedure.

(d) Filing; certificate of service. All papers after the complaint required to be served upon a party, together with a certificate of service, shall be filed with the court either before service or within a reasonable time thereafter, except that discovery material shall not be filed other than upon order of the court, for use at trial, or in connection with motions. For purposes of this rule, "discovery material" shall include depositions upon oral examination or written questions, notices of deposition, interrogatories, requests for production of documents, requests for admission, and answers, responses, and objections thereto. The person responsible for service of the discovery material shall retain the original and become custodian.

A certificate of service shall list 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.

All discovery material may be served electronically using the court's electronic filing system. Such service will generate an entry in the case-action summary documenting the fact of service, the date of service, and the nature of the document or documents served, but the discovery will not be filed, entered, or retained in electronic form in the court file.

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.

APPENDIX B

Committee Comments to Amendment to  
Rule 5(d) Effective April 16, 2010.

Before this amendment, Rule 5(d) included a model standing order under which the parties could serve and retain discovery material and not file it. Virtually all circuits adopted the model standing order. This amendment embraces the current practice by specifying that discovery material may be served electronically but is not kept in the court file. In the absence of a protective order, a party retains the discretion to allow or to deny a nonparty access to discovery material. Whether discovery material is a matter of public record is an issue for the courts and is beyond the scope of this amended rule.