

Alabama Rules of Civil Procedure

VII. JUDGMENT

Rule 59.

New trials; amendment of judgments.

(a) *Grounds.* A new trial may be granted to all or any of the parties and (1) on all of the issues in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of Alabama; and (2) on all or part of the issues in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of Alabama. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) *Time for motion.* A motion for a new trial shall be filed not later than thirty (30) days after the entry of the judgment.

(c) *Time for serving affidavits.* When a motion for new trial is based upon affidavits, they shall be served with the motion. The opposing party has fifteen (15) days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding twenty (20) days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) *On initiative of court.* Not later than thirty (30) days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party, and in the order shall specify the grounds therefor.

(e) *Motion to alter, amend, or vacate a judgment.* A motion to alter, amend, or vacate the judgment shall be filed not later than thirty (30) days after entry of the judgment.

(f) *Remittitur.* The court may, on motion for new trial, require a remittitur as a condition to the overruling of the motion for new trial; and, the acceptance of such remittitur by the plaintiff shall not, on appeal by the defendant, prejudice the plaintiff's right to seek reinstatement of the verdict in its full amount.

(g) *Presentation of motions not required.* Presentation of any post-trial motion to a judge is not required in order to perfect its making, nor is it required that an order continuing any such motions to a date certain be entered. All such motions remain pending until ruled upon by the court (subject to the provisions of Rule 59.1), but shall not be ruled upon until the parties have had opportunity to be heard thereon.

(dc) *District court rule.* Rule 59 applies in the district courts except that (1) Rule 59(a)(1) dealing with new trials in jury actions is deleted; (2) all time periods of thirty (30) days are reduced to fourteen (14) days except in unlawful-detainer actions subject to appeal under §6-6-350, Ala. Code 1975, and actions for eviction as defined in §35-9A-141(5), Ala. Code 1975, in which actions the time periods are reduced to seven (7) calendar days; and (3) the provision for time in which to serve counter-affidavits of Rule 59(c) is deleted.

[Amended 2-9-82; Amended eff. 10-1-95; Amended 5-29-2009, eff. 7-1-2009; Amended 11-28-2012.]

Committee Comments on 1973 Adoption

This rule, which follows Federal Rule 59 very closely, provides for an amalgamation of the new trial practice heretofore had in actions at law, and the rehearing practice in equity. But Equity Rule 62 was intended to put the equity rehearing procedure on a basis resembling the new trial practice at law, *Scott v. Leigeber*, 245 Ala. 583, 18 So.2d 275 (1944), and thus the overall design and operation of Alabama new trial and rehearing practice already closely resembles that which this rule provides.

The time for moving for a new trial or to alter, amend, or vacate a judgment is here made 30 days, as has been customary in Alabama, rather than 10 days, as under the federal rule.

Subdivision (a) expressly provides that the grounds for a new trial under the rule shall be those which would have sufficed for a new trial or a rehearing under prior Alabama practice. Thus the rule makes no change in the grounds for a new trial, and prior Alabama decisions must be consulted to determine when a motion under this rule should be granted. In an action tried to a jury a new trial can be granted for any of the reasons listed in Code of Ala., Tit. 7, § 276, or for any of the common-law grounds not listed in that statute. *Birmingham Electric Co. v. Yoast*, 256 Ala. 673, 57 So.2d 103 (1951). The specific grounds for which a rehearing might have been granted in equity have heretofore been limited only by the sound discretion of the court, *Ex parte Upchurch*, 215 Ala. 610, 112 So.

202 (1927), and are evidenced only by the vast number of decisions pertaining thereto.

It is immaterial in determining the grounds for which a new trial can be granted under this rule whether the action is one which heretofore would have been “legal” or “equitable”. Instead it is the nature of the trial, whether to a jury or to the court, which determines whether the former law grounds or the former equity grounds are to be relied upon.

Under the Federal Rule, a new trial may be granted on part, rather than all, of the issues where such action is appropriate, whether or not the action was tried to a jury or without a jury. Although the early rule of the common law was to the contrary, *Parker v. Godin*, 2 Str. 813, 93 Eng.Rep. 866 (K.B.1729), the Federal Rule is that followed in England and in most American jurisdictions; it permits a partial new trial where justice demands such and where the issues are severable without confusion or injustice to any of the parties concerned. 39 Am.Jur., *New Trial* 45 (1942). And Alabama equity courts seem already to have the power to grant only a partial rehearing. See Equity Rule 62. This Rule does not permit a new trial on part of the issues in jury actions. This departure from the Federal Rule is intended to cover the situation where the plaintiff sues the defendant in an action where liability is, at best, weak, and the injuries are terrible. Plaintiff demands a jury and the jury compromises by giving the Plaintiff a small award. Plaintiff moves for a new trial and points to the pitifully small verdict in face of horrible injuries. The court could award a new trial, under the Federal Rule, on part of the issue-damages only. Under this rule, the trial court would not have the right to grant a new trial only on the issue of damages in a jury situation. Note that the Rule does not apply in a nonjury situation. Considering another hypothetical, suppose the Plaintiff sued the Defendant in a case involving aggravated liability and small damages. If the jury award is excessive and Defendant successfully obtains a new trial, the Plaintiff may wish to retry the liability issue as well as the damages issue.

Although this rule, and particularly subdivision (c), refer to the motion for new trial as being supported and opposed by affidavits, Rule 43 permits the court to hear oral testimony on the motion if it desires, as is done under present Alabama practice.

This rule abrogates the necessity of presenting post judgment motions to the judge and the entry of orders continuing such motions in order to keep them alive. It supersedes Title 13, Section 119, Code of Ala., and renders inapplicable the decisions pertaining thereto.

The final subdivision gives the plaintiff the right to urge reinstatement of the entire verdict on appeal by the defendant even though the plaintiff had previously accepted remittitur in an effort to prevent a new trial.

**Committee Comments to October 1, 1995,
Amendment to Rule 59**

The amendment is technical. No substantive change is intended.

**Committee Comments to the July 1, 2009,
Amendment to Rule 59(dc)**

All judgments entered by a district court in unlawful-detainer actions, residential and commercial, are subject to the 2006 amendment to § 6-6-350, Ala. Code 1975, which reduced the appeal time from 14 to 7 days for appeals of such judgments to the circuit court. Rule 59(dc) has been amended to require postjudgment motions in unlawful-detainer actions filed under this rule to be filed within the seven-day appeal period. If filed within that period such motions will be subject to the provisions of Rule 59.1(dc) regarding the disposition of posttrial motions. For unlawful-detainer actions subject to § 6-6-350, Ala. Code 1975, the amendment also reduces to seven days the time within which the court may, on its own initiative, order a new trial.

**Committee Comments to Amendment to Rule 59(dc)
Effective November 28, 2012**

Issues have been raised regarding the applicability in the district court of certain rules of procedure to possessory actions for eviction under the Alabama Uniform Residential Landlord and Tenant Act, Ala. Code 1975, §35-9A-101 et seq., as amended, and to possessory actions for unlawful detainer under Ala. Code 1975, § 6-6-310(2). This amendment addresses those issues.

First, language has been added to the (dc) provision of Rule 59 to make it clear that the exception therein applies to both eviction and unlawful-detainer actions. Second, with regard to computation of time in eviction and unlawful-detainer actions, the amendment makes it clear that the exclusion in Rule 6(a) of Saturdays, Sundays, and legal holidays for the computation of periods of less than 11 days has no application to the computation of any time periods in the district court in possessory actions for eviction or unlawful detainer and that "day" means "calendar day" in those computations.

District Court Committee Comments

The provision for treatment of new trial in jury cases is, of course, not relevant to district court practice and, accordingly, Rule 59(a)(1) has been

deleted. In view of the short time frame in which motions for new trials should be filed and, further, in view of the short time frame for the automatic denial of a post-trial motion which has not been resolved under Rule 59.1, the more cumbersome practice for affidavits and counter-affidavits of Rule 59(c) has been deleted. Parties opposing motions for new trial with counter-affidavits should promptly file same with the court.

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 November 28, 2012, Rule 6(dc), Rule 12(dc), Rule 52(dc), Rule 55(dc), Rule 59(dc), and Rule 62(dc), and adopting the Committee Comments to the Amendment to Rule 6(dc) Effective November 28, 2012, the Committee Comments to the Amendment to Rule 12(dc) Effective November 28, 2012, the Committee Comments to the Amendment to Rule 52(dc) Effective November 28, 2012, the Committee Comments to the Amendment to Rule 55(dc) Effective November 28, 2012, the Committee Comments to the Amendment to Rule 59(dc) Effective November 28, 2012, and the Committee Comments to the Amendment to Rule 62(dc) Effective November 28, 2012, is published in that volume of *Alabama Reporter* that contains Alabama cases from ___ So. 3d.