

IN THE SUPREME COURT OF ALABAMA  
December 10, 2008

ORDER

IT IS ORDERED that Rule 4(a)(1), Alabama Rules of Appellate Procedure, be amended to read in accordance with Appendix A;

IT IS FURTHER ORDERED that Rule 4(e), Alabama Rules of Appellate Procedure, be adopted to read in accordance with Appendix B;

IT IS FURTHER ORDERED that the Committee Comments to Rule 4(e) Effective February 1, 2009, be adopted to read in accordance with Appendix C;

IT IS FURTHER ORDERED that the amendment of Rule 4(a)(1) and the adoption of Rule 4(e) and the committee comments to Rule 4(e) are effective February 1, 2009;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 4:

"Note from the reporter of decisions: The order amending, effective February 1, 2009, Rule 4(a)(1) and adopting Rule 4(e) and the Committee Comments to Rule 4(e) Effective February 1, 2009, 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 4. APPEAL AS OF RIGHT -- WHEN TAKEN.

#### (a) Appeals Generally.

(1) Except as otherwise provided herein, in all cases in which an appeal is permitted by law as of right to the supreme court or to a court of appeals, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 42 days (6 weeks) of the date of the entry of the judgment or order appealed from, or within the time allowed by an extension pursuant to Rule 77(d), Alabama Rules of Civil Procedure. In appeals from the following orders or judgments, the notice of appeal shall be filed within 14 days (2 weeks) of the date of the entry of the order or judgment appealed from: (A) any interlocutory order granting, continuing, modifying, refusing, or dissolving an injunction, or refusing to dissolve or to modify an injunction; (B) any interlocutory order appointing or refusing to appoint a receiver; (C) any interlocutory order determining the right to public office; (D) any judgment in an action for the validation of public obligations, including any action wherein a judgment is entered with respect to the validity of obligations of the State of Alabama or any agency or instrumentality thereof; and (E) any final order or judgment issued by a juvenile court. A pretrial appeal by the state shall be taken within the time allowed by the rule of criminal procedure providing for such an appeal. For an appeal from an order granting or denying a motion to compel arbitration, see Rule 4(d). For an appeal from an order granting or denying a Rule 59, Ala. R. Civ. P., motion to set aside or vacate the judgment entered pursuant to an arbitration award under Ala. Code 1975, § 6-6-15, see Rule 4(e). On an appeal from a judgment or order a party shall be entitled to a review of any judgment, order, or ruling of the trial court.

APPENDIX B

RULE 4(e), ALABAMA RULES OF APPELLATE PROCEDURE

(e) Appeals from Orders Granting or Denying Motions to Set Aside or Vacate Arbitration Awards. An order granting or denying a motion to set aside or vacate an arbitration award filed in accordance with Rule 59, Alabama Rules of Civil Procedure, is appealable as a matter of right pursuant to Rule 71B, Alabama Rules of Civil Procedure, and any appeal from such an order must be taken within 42 days (6 weeks) of the date of the entry of the order granting or denying such motion, or within the time allowed by an extension pursuant to Rule 77(d), Alabama Rules of Civil Procedure.

## APPENDIX C

### Committee Comments to Rule 4(e) Effective February 1, 2009

In his concurring opinion in Birmingham News Co. v. Horn, 901 So. 2d 27, 45 (Ala. 2004), Justice Lyons invited the Standing Advisory Committee on the Rules of Appellate Procedure "(a) to establish an easily understood triggering date for the time for taking an appeal from an arbitrator's award and, should the proposed revision conflict with [Ala. Code 1975,] § 6-6-15, to recommend the abrogation of § 6-6-15, and (b) to recognize the availability of an independent action in the circuit court from which an appeal would lie as in other cases." The Court provided further guidance in Horton Homes, Inc. v. Shaner, [Ms. 1061659, June 20, 2008] \_\_\_ So. 2d \_\_\_ (Ala. 2008). The Standing Advisory Committees on the Rules of Appellate Procedure and the Rules of Civil Procedure collaborated in response to those cases. The Standing Advisory Committee on the Rules of Civil Procedure proposed the adoption of Rules 71B and 71C, Alabama Rules of Civil Procedure. The Standing Advisory Committee on the Rules of Appellate Procedure proposed the adoption of subdivision (e) to this rule. Rule 71B clarifies the method for taking an appeal from an arbitration award and supersedes the procedure provided by Ala. Code 1975, § 6-6-15. Pursuant to that rule, the aggrieved party has no right to appellate review of an arbitration award unless that party has appealed to the circuit court from the arbitration award within 30 days of service of the notice of the award and has timely filed a Rule 59, Ala. R. Civ. P., motion to set aside or vacate the judgment on the arbitration award as described above. The rule provides that the notice of appeal from the arbitration award pursuant to Ala. Code 1975, § 6-6-15, must be filed in the appropriate circuit court within 30 days of the receipt of the award. If a party is dissatisfied with the circuit court's order granting or denying the Rule 59 motion to set aside or vacate the judgment, a notice of appeal seeking review by the appropriate appellate court must be filed within 42 days of the circuit court's ruling on the Rule 59 motion.