

IN THE SUPREME COURT OF ALABAMA  
April 1, 2010

ORDER

IT IS ORDERED that Rule 5, Rule 9, and Rule 16, Rules of Procedure for the Alabama Court of the Judiciary, are amended to read in accordance with Appendices A, B, and C, respectively, attached to this order.

IT IS FURTHER ORDERED that the amendments are effective May 1, 2010.

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 5, Rule 9, and Rule 16, Rules of Procedure for the Alabama Court of the Judiciary:

"Note from the reporter of decisions: The order amending Rule 5, Rule 9, and Rule 16, Rules of Procedure for the Alabama Court of the Judiciary, effective May 1, 2010, as well as Justice Lyons's writing concurring specially in that order, which Chief Justice Cobb joined, is published in that volume of the Alabama Reporter that contains Alabama cases from \_\_\_\_ So. 3d."

Woodall, Stuart, Smith, Bolin, Parker, Murdock, and Shaw, JJ., concur.

Cobb, C.J., and Lyons, J., concur specially. (Justice Lyons's special writing, which Chief Justice Cobb joins, is attached to this order.)

LYONS, Justice (concurring specially).

I concur in all aspects of the revisions to the Rules of Procedure for the Alabama Court of the Judiciary. Nevertheless, I cannot condone allowing that portion of Rule 16, setting forth the requirement of action by greater than a majority, to remain in effect.

This Court's rule-making power for the Court of the Judiciary is restricted to "rules governing procedures." See Art. VI, § 157(c), of the Alabama Constitution of 1901. Section 157(a), Ala. Const. 1901, provides: "The court shall have authority, after notice and public hearing (1) to remove from office, suspend without pay, or censure a judge, or apply such other sanction as may be prescribed by law, for violation of a Canon of Judicial Ethics, misconduct in office, failure to perform his or her duties, or (2) to suspend with or without pay, or to retire a judge who is physically or mentally unable to perform his or her duties." (Emphasis added.) If the framers of the Constitution intended to bar "the court" from acting with a simple majority they could have easily so stated. Such interpretation of the Constitution is consistent with the rule applicable to the construction of statutes since the Code of 1852. See § 1-1-2, Ala. Code 1975 ("All words giving a joint authority to three or more persons

or officers give such authority to a majority of such persons or officers, unless it is otherwise declared.").

While I am inclined to the view that Rule 16 expresses sound public policy, my zeal for seeing such policy effectuated does not justify disregard of the Constitution. To do so allows substance, not procedure, to be regulated by rule-making.

Cobb, C.J., concurs.

## APPENDIX A

### Rule 5. Filing Responsive Pleadings.

The judge may file responsive pleadings as provided in the Alabama Rules of Civil Procedure, including a general denial of all the averments in the complaint. Any such pleadings shall be filed in the office of the secretary in Montgomery by the judge not more than 30 days following the service of the notice and the copy of the complaint upon him or her. For good cause shown, the Court may extend the time for filing such pleadings. All such responsive pleadings filed by the judge shall be in plain and concise language designed to fairly respond to the charges brought against him or her. The failure of the judge to file a responsive pleading may be considered as an admission of the factual allegations that form the basis of the charge or charges.

APPENDIX B

Rule 9. Nature of Hearings.

All hearings on the complaint shall be public before all qualified members of the Court; provided, however, that the judge charged may agree to be tried by fewer than all qualified members but no fewer than a quorum. The chief shall have the authority to decide all procedural and evidentiary questions.

## APPENDIX C

Rule 16. Decisions, Orders, etc., of the Court.

The Court may, after notice and a public hearing, consider any proposed resolution of the charge or charges submitted by joint motion of the parties. Neither the fact of the filing nor any fact alleged therein or related thereto may be considered by the Court in its final adjudication if the proposal is rejected. Any proposed resolution should be submitted to the Court at least 10 days prior to the hearing.

Within 10 days following submission of the matter, the Court shall enter an appropriate order, exercising the authority vested in it by § 157, Ala. Const. 1901 (Off. Recomp.) (§ 6.18 of Amendment No. 328), or shall dismiss the complaint. With respect to all matters other than removal from office, the Court shall convict only with the concurrence of no fewer than six of its nine members. With respect to removal from office, the Court shall convict only with the concurrence of all members sitting. A failure to convict within 10 days after the conclusion of the hearing shall constitute an acquittal. The decision of the Court shall be final, subject to appeal rights contained in § 157, Ala. Const. 1901 (Off. Recomp.).