

## **Alabama Rules of Appellate Procedure**

### **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.

(2) If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days (2 weeks) of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this rule, whichever period last expires.

(3) The filing of a post-judgment motion pursuant to Rules 50, 52, 55 or 59 of the Alabama Rules of Civil Procedure (ARCP) shall suspend the running of the time for filing a notice of appeal. In cases where post-judgment motions are filed, the full time fixed for filing a notice of appeal shall be computed from the date of the entry in the civil docket of an order granting or denying such motion. If such post-judgment motion is deemed denied under the provisions of Rule 59.1 of the Alabama Rules of Civil Procedure, then the time for filing a notice of appeal shall be computed from the date of denial of such motion by operation of law, as provided for in Rule 59.1. Any error or ground of reversal or modification of a judgment or order which was asserted in the trial court may be asserted on

appeal without regard to whether such error or ground has been raised by motion in the trial court under Rule 52(b) or Rule 59 of the ARCP.

(4) A notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order shall be treated as filed after the entry and on the day thereof.

(5) A notice of appeal filed after the entry of the judgment but before the disposition of all post-judgment motions filed pursuant to Rules 50, 52, 55, and 59, Alabama Rules of Civil Procedure, shall be held in abeyance until all post-judgment motions filed pursuant to Rules 50, 52, 55, and 59 are ruled upon; such a notice of appeal shall become effective upon the date of disposition of the last of all such motions.

*(b) Appeals in criminal cases.*

(1) CIRCUIT COURT. In a criminal case a notice of appeal by the defendant shall be filed with the clerk of the trial court within 42 days (6 weeks) after pronouncement of the sentence, provided that the notice of appeal may be oral, as provided in Rule 3(a)(2). A notice of appeal filed after the announcement of a decision or order, but before pronouncement of the sentence, shall be treated as having been filed after pronouncement of the sentence and on the day thereof. If a motion in arrest of judgment, motion for new trial, or motion for judgment of acquittal has been filed within 30 days from pronouncement of the sentence, an appeal may be taken within 42 days (6 weeks) after the denial or overruling of the motion. A motion in arrest of judgment, motion for new trial, or motion for judgment of acquittal filed before pronouncement of the sentence shall be treated as having been filed immediately after pronouncement of the sentence and on the day thereof. When notice of appeal is made or filed before the timely filing of a motion in arrest of judgment, motion for new trial, or motion for judgment of acquittal, or during the pendency of such a timely filed motion, the time for filing of the court reporter's transcript and the clerk's record shall be governed by Rule 11(b) and (c) as if the notice of appeal had been filed on the date of the overruling of such motion. When an appeal by the state as of right is authorized by statute or rule, the notice of appeal shall be filed in the trial court within 42 days (6 weeks) after the decision, order, or judgment appealed from; except that any pre-trial appeal by the state shall be taken within the time allowed by the rule of criminal procedure providing for such appeals. See Form 12.

(2) DISTRICT AND MUNICIPAL COURTS. Appeals from judgments of the district and municipal courts shall be as provided by law.

*(c) Appeals by inmates confined in institutions.* If an inmate confined in an institution and proceeding pro se files a notice of appeal in either a civil or a criminal case, the notice will be considered timely filed if it is deposited in the institution's internal mail system on or before the last day for filing. If an institution

has a system designed for “legal” mail to be processed by the United States Post Office, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a notarized statement that sets forth the date the filing was deposited in the institution’s mail system.

(d) *Appeals from orders granting or denying motions to compel arbitration.* An order granting or denying a motion to compel arbitration is appealable as a matter of right, and any appeal from such an order must be taken within 42 days (6 weeks) of the date of the entry of the order, or within the time allowed by an extension pursuant to Rule 77(d), Alabama Rules of Civil 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.

[Amended 9-2-75; Amended 10-14-76, eff. 1-16-77; Amended 6-8-78; Amended 2-13-79, eff.2-15-79; Amended 1-27-82, eff 3-1-82; Amended 1-23-84, eff. 3-1-84; Amended 2-6-84, eff. 4-1-84; Adopted 2-1-94; Amended 11-17-93, eff. 2-1-94; Amended eff. 9-1-2000; Amended eff. 10-1-2001; amended 12-10-2008, eff. 2-1-2009.]

### **Committee Comments**

A fundamental change wrought by Rule 4 is the shortening of the time for the taking of criminal and civil appeals from the present six month period to 42 days. This 42-day period is to be applied uniformly except in the enumerated instances contained in subdivision (a). It commences in accord with ARCP Rule 77.

The time allowed to the State for an appeal is the same as for private parties.

It is felt that the time period of 42 days is both reasonable in a general sense and particularly so in light of the fact that a party is required to do nothing to initiate the appellate process except file a simple notice.

The provision of subdivision (a)(3) in the last sentence permitting assertion in the appellate court of any matter raised or asserted in the trial court whether such matter was raised by motion for new trial under ARCP Rule 59 or for motion of amendment of findings of fact under ARCP Rule 52(b) is a departure from

existing Alabama practice. The rule does not, however, extend the right to raise for the first time on appeal new matter not presented to the trial court or upon which the trial court had no opportunity to pass.

The requirement retains the practice that matters raised on appeal must have been presented to the trial court at some stage. Thus matters which can only be raised by post-trial motion must be so asserted. The provision is intended to avoid the necessity of repeated assertions of the same point below. Once ruled on by the trial court in some form, the point is preserved for review on appeal.

The third sentence of subdivision (a) is intended to eliminate the confusion resulting from multiple “final” orders or decrees or judgments. In this connection, the holdings in such cases as *Federal Deposit Ins. Corp. v. Equitable Life Ins. Co.*, 289 Ala. 192, 266 So.2d 752; *Labovitz v. Gulf American Fire & Casualty Co.*, 47 Ala.App. 412, 255 So.2d 592; and *Moody v. Myers*, 265 Ala. 435, 91 So.2d 686, are superseded. However, this rule is not intended to affect final judgments in situations such as domestic relations cases which are final in the sense of concluding the litigation, yet subject to modification based on changed circumstances. Such a subsequent proceeding is, in reality, a new proceeding and cannot, on appeal of it, open up matters contained in the original proceedings years before.

Subdivision (b) deals with the notice of appeal in criminal cases and essentially retains existing practice under Title 15, § 368, except that the time for giving notice of appeal is shortened from 6 months to 42 days.

Because of the extremely large number of former statutes dealing with time periods for appeals, special attention should be given to the appendices of superseded and modified statutes accompanying these rules.

**Court Comment to Amendment to Rule 4(b)**  
**Effective March 1, 1982**

Statutory procedures for appeals from the district and municipal courts are found at § 12-12-70, et seq., and § 12-14-70, et seq., Code of Alabama 1975.

**Court Comment to Amendment to Rule 4(a)(3)**  
**Effective March 1, 1984**

Rule 4(a)(3) was amended effective March 1, 1984, to provide that the filing of a motion pursuant to Rule 55, A.R.Civ.P., to set aside a default judgment will have the effect of tolling the period for appeal. This amendment corresponds with amendments of the same date to Rules 55(c) and 59.1, A.R.Civ.P.

**Court Comment to Amendments to Rule 4(a) and (b)**

### **Effective April 1, 1984**

Temporary Rule 17, A.R.Crim.P., providing for certain pre-trial appeals by the state in criminal cases, became effective April 1, 1984. On that date, (a) and (b) were amended to include references to those pre-trial appeals and the rules of criminal procedure, in recognition of the fact that Temporary Rule 17, A.R.Crim.P., sets out the time and procedure for such appeals.

### **Committee Comment Added Effective May 14, 1990**

The practitioner should be aware that there may be statutes providing a different time period for the taking of an appeal. Specifically, for example, Code 1975, § 37-1-140, provides a 30-day time period for the taking of an appeal in a public service commission rate case.

### **Committee Comments to Amendment to Rule 4(a)(1) Effective February 1, 1994**

This amendment added the reference to Rule 77(d), A.R.Civ.P., to note that under that rule appeal time may be extended by the circuit court “upon a showing of excusable neglect based on a failure of [a] party to learn of the entry of the judgment or order.”

### **Committee Comments to Amendment Adding Rule 4(a)(4)and (5) Effective February 1, 1994**

Paragraphs (a)(4) and (5) are based upon the August 1991 proposed amendments to Rule 4(a), Federal Rules of Appellate Procedure. Paragraph (a)(4) alters the statement in *State Farm Mut. Auto. Ins. Co. v. Robbins*, 541 So.2d 477 (Ala.1989), indicating that a notice of appeal filed before the disposition of one’s own motions would work as a waiver of one’s post-judgment motions—and the possible loss of certain issues for appellate review.

Paragraph (a)(5) alters the procedure established by *Ex parte Andrews*, 520 So.2d 507 (Ala.1987); *Owens v. Coleman*, 520 So.2d 514 (Ala.1987); and *Herring v. Shirah*, 542 So.2d 271 (Ala.1989). Those cases held that the filing of a notice of appeal while an opponent’s post-judgment motion is pending is a nullity; that a notice of appeal filed within 30 days after the entry of the judgment is subject to ouster by an opponent’s post-judgment motion; and that one’s filing of a notice of appeal while one’s own post-judgment motion is pending works as a waiver and withdrawal of the motion.

The “abeyance” procedure created by this amendment will, in some instances, create an appeal from a judgment that has been altered substantially, or even set aside, by the ruling on the motion. In such a case, the appellee may

move to dismiss the appeal; in responding, the appellant can state whether appellate review is still sought on some aspect of the case. The appellant may, within 42 days after the disposition of the last motion, amend the notice of appeal, but such an amendment is not jurisdictional.

The appellant should notify the appellate court clerk when the appellant discovers that the notice of appeal is being held in abeyance, or has been held in abeyance, under Rule 4(a)(5). Whenever an appeal has been held in abeyance, the appellate court clerk may require the appellant to file a new docketing statement (see Rule 3(e)).

### **Committee Comments to Amendment to Rule 4(a)(1) and Adoption of Rule 4(c) Effective September 1, 2000**

This amendment to Rule 4(a)(1) adds appeals from final orders or judgments of a juvenile court to the list of those orders or judgments from which an appeal must be taken within 14 days. See Rule 28(C), Ala.R.Juv.P.

Rule 4(c) is patterned after Rule 4(c), Federal Rules of Appellate Procedure. This rule recognizes that a notice of appeal filed by an inmate confined in an institution and who is proceeding pro se is timely filed when the inmate documents the delivery of the notice of appeal to prison authorities for mailing. See *Houston v. Lack*, 487 U.S. 266 (1988), *Ex parte Williams*, 651 So.2d 569 (Ala.1992), and *Ex parte Jones* [Ms. 1962127, June 19, 1998] 773 So.2d 989 (Ala.1998).

### **Court Comment to Amendment to Rule 4(a)(1) and Adoption of Rule 4(d) Effective October 1, 2001**

Before the adoption of Rule 4(d), review of an order granting a motion to compel arbitration was by a petition for a writ of mandamus, while review of an order denying a motion to compel arbitration was by appeal. Rule 4(d) provides that review of either the grant or the denial of a motion to compel arbitration is by appeal. The amendment to Rule 4(a)(1) adds a sentence recognizing the adoption of Rule 4(d).

### **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] 999 So. 2d 462 (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.

**Note from the reporter of decisions:** The order amending Rule 4(a)(1) and adopting Rule 4(c), effective September 1, 2000, is published in that volume of *Alabama Reporter* that contains Alabama cases from 753 So.2d.

**Note from the reporter of decisions:** The order amending Rule 4(a)(1) and adopting Rule 4(d), effective October 1, 2001, is published in that volume of *Alabama Reporter* that contains Alabama cases from 785 So.2d.

**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 995 So. 2d.