

## Alabama Rules of Civil Procedure

### VI. TRIALS

#### Rule 40.

##### Assignment of cases for trial.

(a) *Setting of cases.* The trial of actions shall be set by entry on a trial docket or by written order at least sixty (60) days before the date set for trial, subject to the following exceptions: (1) where, when the interests of justice require, the court continues the trial to a date that is less than sixty (60) days from a previously set trial date that was set in compliance with this rule; (2) where a shorter period of time is available under the provisions of Rule 55 (“Default”); (3) where a shorter period of time is available under the provisions of Rule 65 (“Injunctions”); (4) where a shorter period of time serves the ends of justice in domestic relations cases; (5) where a shorter period of time serves the ends of justice in a habeas corpus or other similar proceeding where the liberty interest of an individual is at issue; (6) where an action has been appealed to the circuit court for de novo review, in which event the time period between setting and trial date shall be at least thirty (30) days; and (7) where a shorter period of time is otherwise provided by law or these rules or agreed to by all of the parties.

(b) *Notice.* The clerk forthwith and, in no event more than three (3) days after a case has been placed on the trial docket, shall notify all out-of-county attorneys of record by personal service, or by mailing a letter or by mailing a copy of the docket of the court.

(dc) *District court rule.* Rule 40 applies in the district courts except that the reference to sixty (60) days at Rule 40(a) is reduced to fourteen (14) days, the exceptions (1), (3), (4), (5), and (6) in Rule 40(a) are inapplicable to district courts, and the provision for notice in Rule 40(b) is altered so as to require notice to all parties instead of notice to “all out-of-county attorneys of record.”

[Amended 6-12-90, eff. 8-1-90; Amended 6-18-90, eff. 8-1-90; Amended 7-10-90, eff. 8-1-90.]

#### Committee Comments on 1973 Adoption

The broad discretion given by the court in Rule 40, A.R.C.P., is not dissimilar to the latitude under the Rules of Practice in Circuit and Inferior Courts. Tit. 7, Appendix. For example, in *Knowles v. Blue*, 209 Ala. 27, 30, 95 So. 481 (1923), Judge Thomas held as follows:

“Statutes prescribing the order of trial of causes on the docket have been said to be merely directory. The rule in question, as codified, has the force and effect of a statute, is directory, and vests a large discretion in the trial court in the disposition of the causes in such order as to economically and speedily dispose of pending causes without injustice to parties litigant and their counsel.”

To the same effect see *Southern Ry. v. Smith*, 268 Ala. 235, 105 So.2d 705 (1958).

The rule carries forward the provisions of Tit. 7, § 249, Code of Ala., in its requirement that cases must be set at least 20 days before the date of trial. The rule clearly places the duty upon the clerk to give prompt notice of a setting to all out of county attorneys. This should not alter any present practices currently employed for the giving of notice to local attorneys.

### **District Court Committee Comments**

In the circuit courts Rule 40(b) imposes a duty upon the Clerk to notify “all out-of-county attorneys” of the trial docket. This rule was drawn so as to preserve practices currently in effect for the giving of notice to local attorneys. However, in District Court, Rule 40(dc) will require some notice to all attorneys or the parties of the setting of cases for trial. It is envisioned that, in the contested cases, the district court would notify each litigant by postcard or some other simple means of the setting of a case for trial.