

Alabama Rules of Civil Procedure

II. Commencement of action; service of process, pleadings, motions, and orders.

Rule 6.

Time.

(a) *Computation.* In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the court inaccessible, in which event the period runs until the end of the next day that is not one of the aforementioned days. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule and in Rule 77(c) "legal holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or as prescribed in § 1-3-8, Code of Alabama 1975.

(b) *Enlargement.* When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b), 52(b), 59(b), (d), and (e), and 60(b), except to the extent and under the conditions stated in them.

(c) [Omitted].

(d) *For motions—affidavits.* A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than

five (5) days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), opposing affidavits may be served not later than one (1) day before the hearing, unless the court permits them to be served at some other time.

(e) *Additional time after service by mail or electronic filing.* Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail or electronic filing, three (3) days shall be added to the prescribed period.

(dc) *District court rule.* Rule 6 applies in the district courts with the following exception. The portion of Rule 6(a) regarding the computation of time when the period prescribed or allowed is less than eleven (11) days does not apply to any time periods prescribed or allowed by statute or these rules in unlawful-detainer or eviction actions.

[Amended eff. 10-1-95; Amended eff.8-1-2004; Amended eff. 10-24-2008; Amended eff, 11-28-2012.]

Committee Comments on 1973 Adoption

This rule is virtually identical to Federal Rule 6. The net effect is the inclusion of all holidays whether state or federal within the definition of a legal holiday.

Under § 1-1-4, Code of Alabama, Saturdays are not treated as holidays. This Rule will include Saturdays and hence § 1-1-4, Code of Alabama, will not be applicable in that respect.

This rule also excludes intermediate Saturdays, Sundays and holidays from the computation of time when the time allowed is less than seven days. In an emergency, this provision could be appropriately adjusted under Rule 6(d) or Rule 65(b).

Section 1-3-8, Code of Alabama, lists state holidays and provides for holidays by gubernatorial declaration.

Confusion can arise when a federal holiday is not observed by the state. See *Underwood v. Brantley*, 280 Ala. 215, 191 So.2d 870 (1966), wherein the transcript of the evidence was due on National Memorial Day and filed one day thereafter. The evidence was stricken because, Memorial Day not being a legal holiday in Alabama, the extra day afforded when the last day falls on a legal holiday was not available. By including all holidays, state or federal, a possible trap for the unwary is eliminated.

Rule 6(a) on computation of time is expressly applicable to time periods fixed, among other things, "by any applicable statute." Rule 6(b), on enlargement of time, does not mention time periods fixed by statute. Thus statutory time periods are not subject to enlargement under Rule 6(b).

Rule 6(b) gives the court a very broad discretion to enlarge time periods, but such enlargement is to be only for cause shown. If the application for extra time is made before the period has expired, the request for an extension may be made ex parte. If, however, the application for extra time comes after the period has run, notice of the motion must be given to the other parties, and the only cause for which extra time can be allowed is "excusable neglect." As to the meaning of "excusable neglect," see 4 Wright & Miller, *Federal Practice and Procedure, Civil*, § 1165 (1969). By express provision of Rule 6(b), there can be no enlargement of the time for motions for judgment notwithstanding the verdict, Rule 50(b), motions for amended findings, Rule 52(b), motions for a new trial, Rule 59(b) and (d), motions to alter or amend the judgment, Rule 59(e), or motions to set aside the judgment, Rule 60(b), except to the extent that the rules authorizing these procedures provide for enlargement of the time.

Federal Rule 6(c) has been rescinded. When terms of court for United States District Courts were abolished (Tit. 28, § 138, United States Code), the provisions of Federal Rule 6(c) relating to expiration of terms were rescinded. Alabama courts have no "terms" in this context, § 12-11-4, Code of Alabama, and it is appropriate to omit Rule 6(c).

Subdivisions (c), (d) and (e) of Rule 6 are identical with the corresponding federal rule.

Committee Comments to October 1, 1995, Amendment to Rule 6

Subdivision (a) was amended to conform the rule to the comparable federal rule. Additional time is available when weather or other conditions make the courthouse inaccessible. The short periods during which days not a part of

the work week are excluded is now eleven (11) days instead of seven (7) days. The birthday of Martin Luther King, Jr., and Columbus Day are added to the list of expressly referenced holidays and the reference to local rules in this subdivision was deleted. Other technical amendments were made; no substantive change is intended by those amendments.

**Committee Comments to Amendment to Rule 6(a)
Effective August 1, 2004**

The amendment updates the list of expressly referenced holidays to substitute "Presidents' Day" for "Washington's Birthday."

**Committee Comments to Amendments to Rule 6
Effective October 24, 2008**

All the provisions of this rule, including Rule 6(e), are applicable to electronic filing. This is in accord with the corresponding Federal Rule of Civil Procedure.

**Committee Comments to Amendment to Rule 6(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.

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 in 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. The amendment makes the rule consistent with the amendment to § 35-9A-141(3) of the Uniform Residential Landlord and Tenant Act effective June 14, 2011, defining "day" to mean "calendar day, notwithstanding Rule 6 of the Alabama Rules of Civil Procedure." See Act No. 2011-700.

Note from the reporter of decisions: The order amending Rules 4, 4.1, 4.2, 4.3, 4.4, 6(a), 7(b)(2), 17(a), 22(c), and 26(b), Alabama Rules of Civil Procedure, effective August 1, 2004, is published in that volume of *Alabama Reporter* that contains Alabama cases from 867 So.2d.

Note from the reporter of decisions: The order amending effective October 24, 2008, Rule 3, Rule 4, Rule 5, Rule 6, Rule 11, Rule 55, Rule 58, Rule 59.1, Rule 77, and Rule 79, and adopting effective October 24, 2008, the Committee Comments to Amendment to Rule 3(b) Effective October 24, 2008; Committee Comments to Amendments to Rule 4 Effective October 24, 2008; Committee Comments to Amendments to Rule 5 Effective October 24, 2008; Committee Comments to Amendments to Rule 6 Effective October 24, 2008; Committee Comments to Amendment to Rule 11 Effective October 24, 2008; Committee Comments to Amendment to Rule 55(a) Effective October 24, 2008; Committee Comments to Amendments to Rule 58 Effective October 24, 2008; Committee Comments to Amendment to Rule 59.1 Effective October 24, 2008; Committee Comments to Amendments to Rule 77(d) Effective October 24, 2008; and the Committee Comments to Addition of Rule 79(e) Effective October 24, 2008, is published in that volume of *Alabama Reporter* that contains Alabama cases from 994 So. 2d.

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.