Alabama Rules of Civil Procedure

VII. JUDGMENT

Rule 61.

Harmless error.

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

(dc) *District court rule.* Rule 61 is not applicable in the district courts except when an appeal is permitted pursuant to Sec. 4-111(d) of the Judicial Article Implementation Act, Act No. 1205, Regular Session 1975.

[Amended eff. 10-15-95.]

Committee Comments on 1973 Adoption

The theory of these rules generally is that procedure is a practical means to an end, the requirements of which should be no more exacting than efficiency requires. See Sunderlund, *The Problem of Appellate Review*, 5 Tex.L.Rev. 126, 146-8 (1927). This rule, which requires courts to ignore procedural errors save where they have affected the substantial rights of the parties, should be read in connection with Rules 1 and 8(f), calling for liberal construction of the rules and of pleadings thereunder, as well as such rules as 4(h), 13(f), 15, 21, 32, 59, and 60, by which amendments of the pleadings, process or service, correction of mistakes, granting of new trials, etc., is all contingent upon whether or not the error was substantial. See 7 Moore's *Federal Practice*, §§ 61.02-61.12 (2d ed. 1971); 3 Barron & Holtzoff, *Federal Practice and Procedure* §§ 1351-1357 (1958).

In order for the mandate of this rule to be workable, it must be considered applicable to appellate review of actions in the courts covered by these rules, as well as to the trial of the actions themselves. The cases have so held. *Illinois Terminal R. Co. v. Friedman*, 208 F.2d 675, 680 (8th Cir.1953), rehearing denied

210 F.2d 229; 7 Moore's *Federal Practice* § 61.11 (2d ed. 1971); 3 Barron & Holtzoff, *Federal Practice and Procedure* § 1357 (1958). The problem should be largely academic in Alabama, for Rule 45 of the Revised Rules of Practice in the Supreme Court, though differently worded, seems to state the same policy as does Rule 61 of these rules.

This Committee rejects certain Federal cases liberally applying the Harmless Error doctrine in their conclusion that judicial commentary on the evidence was error without injury. The likelihood of such cases arising in Alabama should be much less frequent than in Federal practice because these rules, unlike the Federal Rules, contain an express prohibition against judicial commentary on the evidence. See Rule 51.