

IN THE SUPREME COURT OF ALABAMA
November 28, 2012

ORDER

IT IS ORDERED that Rule 6(dc), Rule 12(dc), Rule 52(dc), Rule 55(dc), Rule 59(dc), and Rule 62(dc), Alabama Rules of Civil Procedure, be amended to read in accordance with Appendices A, C, E, G, I, and K, respectively;

IT IS FURTHER ORDERED that the Committee Comments to Amendment to Rule 6(dc) Effective November 28, 2012, the Committee Comments to Amendment to Rule 12(dc) Effective November 28, 2012, the Committee Comments to Amendment to Rule 52(dc) Effective November 28, 2012, the Committee Comments to Amendment to Rule 55(dc) Effective November 28, 2012, the Committee Comments to Amendment to Rule 59(dc) Effective November 28, 2012, and the Committee Comments to Amendment to Rule 62(dc) Effective November 28, 2012, be adopted to read in accordance with Appendices B, D, F, H, J, and L, respectively;

IT IS FURTHER ORDERED that the amendment of these rules and the adoption of the comments are effective immediately;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 6, Rule 12, Rule 52, Rule 55, Rule 59, and Rule 62:

"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."

Malone, C.J., and Woodall, Stuart, Bolin, Parker, Murdock, Shaw, Main, and Wise, JJ., concur.

APPENDIX A

Rule 6(dc), Alabama Rules of Civil Procedure.

(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.

APPENDIX B

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.

APPENDIX C

Rule 12(dc), Alabama Rules of Civil Procedure.

(dc) District Court Rule. Rule 12 applies in the district courts, except that (1) all time periods of thirty (30) days are reduced to fourteen (14) days for all actions other than an action for unlawful detainer as defined in § 6-6-310(2), Ala. Code 1975, and an action for eviction as defined in § 35-9A-141(5), Ala. Code 1975, in which actions a defendant shall serve an answer within seven (7) calendar days after service of the summons and complaint, and (2) the provisions for the assertion of certain defenses by motion at the option of the pleader in Rule 12 are deleted.

APPENDIX D

Committee Comments to Amendment to Rule 12(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.

First, language has been added to the (dc) provision of Rule 12 to make it clear that the exception therein applies to both eviction and unlawful-detainer actions. Second, 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.

APPENDIX E

Rule 52(dc), Alabama Rules of Civil Procedure.

(dc) District Court Rule. Rule 52 applies in the district courts except that the time period of thirty (30) days in Rule 52(b) is reduced to fourteen (14) days in all cases except unlawful-detainer actions subject to appeal under § 6-6-350, Ala. Code 1975, and eviction actions subject to appeal under § 35-9A-461, Ala. Code 1975, in which actions the time period is reduced to seven (7) calendar days.

APPENDIX F

Committee Comments to Amendment to Rule 52(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.

First, language has been added to the (dc) provision of Rule 52 to make it clear that the exception therein applies to both eviction and unlawful-detainer actions. Second, 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 for 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.

APPENDIX G

Rule 55(dc), Alabama Rules of Civil Procedure.

(dc) District Court Rule. Rule 55 applies in the district courts, except that (1) the reference to a jury in Rule 55(b)(2) is deleted; (2) the time period of thirty (30) days in Rule 55(c) is reduced to fourteen (14) days in all cases except for unlawful-detainer actions subject to appeal under § 6-6-350, Ala. Code 1975, and actions for eviction as defined in § 35-9A-141(5), Ala. Code 1975, in which actions the thirty-(30-)day time period is reduced to seven (7) calendar days; (3) the provisions dealing with an action for divorce or annulment of marriage at Rule 55(e) are deleted; and (4) a party shall not be deemed in default if the party has served an appearance in the form of a motion to dismiss.

APPENDIX H

Committee Comments to Amendment to Rule 55(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.

First, language has been added to the (dc) provision of Rule 55 to make it clear that the exception therein applies to both eviction and unlawful-detainer actions. Second, 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 for 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.

APPENDIX I

Rule 59(dc), Alabama Rules of Civil Procedure.

(dc) District Court Rule. Rule 59 applies in the district courts except that (1) Rule 59(a)(1) dealing with new trials in jury actions is deleted; (2) all time periods of thirty (30) days are reduced to fourteen (14) days except in unlawful-detainer actions subject to appeal under § 6-6-350, Ala. Code 1975, and actions for eviction as defined in § 35-9A-141(5), Ala. Code 1975, in which actions the time periods are reduced to seven (7) calendar days; and (3) the provision for time in which to serve counter-affidavits of Rule 59(c) is deleted.

APPENDIX J

Committee Comments to Amendment to Rule 59(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.

First, language has been added to the (dc) provision of Rule 59 to make it clear that the exception therein applies to both eviction and unlawful-detainer actions. Second, 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 for 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.

APPENDIX K

Rule 62(dc), Alabama Rules of Civil Procedure.

(dc) District Court Rule. Rule 62 applies in the district courts except that (1) the references therein to injunctions and receivership actions are deleted, (2) the time period of thirty (30) days in Rule 62(a) is reduced to fourteen (14) days except in an eviction action as defined in § 35-9A-141(5), Ala. Code 1975, in which action the time period is reduced to seven (7) calendar days, (3) provisions of Rule 62(b) are modified so as to provide for an automatic stay of execution pending a ruling on any motion for a new trial or to alter or amend a judgment or for amendment to the findings or for additional findings, (4) Rule 62(c) does not apply in the district courts, and (5) the provision for a supersedeas bond in Rule 62(d) is deleted and Rule 62(d) is modified so as to require only a bond for costs or an affidavit of substantial hardship, approved by the court, in lieu of said bond.

APPENDIX L

Committee Comments to Amendment to Rule 62(dc)
Effective November 28, 2012

This amendment to the (dc) provision regarding Rule 62(a) is in accordance with a 2011 amendment to the Alabama Uniform Residential Landlord and Tenant Act, specifically Ala. Code 1975, § 35-9A-461(e), which states that in eviction actions, "[n]otwithstanding Rule 62 of the Alabama Rules of Civil Procedure, the automatic stay on the issuance of the writ of possession or restitution shall be for a period of seven days." This rule change applies only to eviction actions for residential property under the Alabama Uniform Residential Landlord and Tenant Act and is not applicable to possessory actions for unlawful detainer brought under Ala. Code 1975, § 6-6-310(2).