

IN THE SUPREME COURT OF ALABAMA  
December 10, 2008

ORDER

IT IS ORDERED that Rule 71B and Rule 71C, Alabama Rules of Civil Procedure, be adopted to read in accordance with Appendices A and C, respectively;

IT IS FURTHER ORDERED that the Committee Comments to Rule 71B Effective February 1, 2009, be adopted to read in accordance with Appendix B;

IT IS FURTHER ORDERED that these rules and the comments are effective February 1, 2009;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 71C:

"Note from the reporter of decisions: The order adopting, effective February 1, 2009, Rule 71B, Rule 71C, and the Committee Comments to Rule 71B Effective February 1, 2009, is published in that volume of Alabama Reporter that contains Alabama cases from \_\_\_ So. 2d."

Cobb, C.J., and See, Lyons, Woodall, Stuart, Smith, Bolin, Parker, and Murdock, JJ., concur.

## APPENDIX A

### RULE 71B. APPEALS FROM ARBITRATION AWARDS.

(a) Who may appeal. Any party to an arbitration may file a notice of appeal from the award entered as a result of the arbitration.

(b) When filed. The notice of appeal shall be filed within thirty (30) days after service of notice of the arbitration award. Failure to file within thirty (30) days shall constitute a waiver of the right to review.

(c) Where filed. The notice of appeal shall be filed with the clerk of the circuit court where the action underlying the arbitration is pending or if no action is pending in the circuit court, then in the office of the clerk of the circuit court of the county where the award is made.

(d) What filed. With the notice of appeal, the appellant shall file a copy of the award, signed by the arbitrator, if there is only one, or by a majority of the arbitrators, along with the submission to the arbitrator or arbitrators and any supporting documents or record of the proceedings, if available. If no record is available, the appellant shall so state. If a record is to be prepared but is not completed within the time provided in paragraph (b) of this rule, the appellant shall so state in the notice of appeal and shall file the record within thirty (30) days after the filing of the notice of appeal, unless the court for good cause shown shall allow additional time.

(e) How served. If the arbitration arose out of a pending action, service shall be made as provided in Rule 5. If there is no action pending, service shall be made as provided in Rules 4 through 4.4, and upon any counsel who appeared in the arbitration for the party being served.

(f) Procedure after filing. The clerk of the circuit court promptly shall enter the award as the final judgment of the court. Thereafter, as a condition precedent to further review by any appellate court, any party opposed to the award may file, in accordance with Rule 59, a motion to set aside or vacate the judgment based upon one or more of the grounds

specified in Ala. Code 1975, § 6-6-14, or other applicable law. The court shall not grant any such motion until a reasonable time after all parties are served pursuant to paragraph (e) of this rule. The disposition of any such motion is subject to civil and appellate rules applicable to orders and judgments in civil actions.

(g) Appellate review. An appeal may be taken from the grant or denial of any Rule 59 motion challenging the award by filing a notice of appeal to the appropriate appellate court pursuant to Rule 4, Alabama Rules of Appellate Procedure.

(dc) District court rule. Rule 71B applies to appeals from arbitration awards arising from actions initially filed in the district court. As provided above, the appeal is to the circuit court.

## APPENDIX B

### Committee Comments to Rule 71B Effective February 1, 2009

In his concurring opinion in Birmingham News Co. v. Horn, 901 So. 2d 27, 74 (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] \_\_\_\_ So. 2d \_\_\_\_ (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 resulting rule 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 this 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 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 must be filed in the appropriate circuit court within 30 days of the receipt of the award, rather than within 42 days as indicated in some of the caselaw relating to an appeal of an arbitration award.

## APPENDIX C

### RULE 71C. ENFORCEMENT OF ARBITRATION AWARDS.

(a) Who may enforce. Any party to an arbitration may seek enforcement of the award entered as a result of the arbitration.

(b) When filed. If no appeal has been filed pursuant to Rule 71B within thirty (30) days of service of the notice of the award, thereby resulting in a waiver of the right to review, the party seeking enforcement of the award may at any time thereafter seek enforcement of the award in the appropriate circuit court as set forth in paragraph (c) of this rule.

(c) Where filed. The motion for entry of judgment shall be filed with the clerk of the circuit court where the action underlying the arbitration is pending or if no action is pending in the circuit court, then in the office of the clerk of the circuit court of the county where the award is made.

(d) What filed. A party seeking enforcement of an award shall file a motion for entry of judgment, and shall attach to the motion a copy of the award, signed by the arbitrator, if there is only one, or by a majority of the arbitrators.

(e) How served. If the arbitration arose out of a pending action, service shall be made as provided in Rule 5. If there is no action pending, service shall be made as provided in Rules 4 through 4.4, and upon any counsel who appeared in the arbitration for the party being served.

(f) Procedure after filing. The clerk promptly shall enter the award as the final judgment of the court. After service pursuant to paragraph (e) of this rule, the prevailing party may seek execution on the judgment as in any other case.

(dc) District court rule. Rule 71C applies to arbitration awards arising from actions initially filed in the district court. As provided above, any enforcement is in the circuit court.