

## **Alabama Rules for Expedited Civil Actions**

### **Rule C.**

#### **Defendant May Seek Assignment to or Removal from the Expedited Track of Counterclaims, Cross-Claims, and Third-Party Claims and Objections Thereto.**

(1) ASSIGNMENT OF CLAIMS TO THE EXPEDITED TRACK MAY BE SOUGHT IN THE ORIGINAL ACTION. Any party that files a cross-claim, counterclaim, or third-party claim may elect assignment of such claim to the expedited track, but only if all other claims pending in the action are on the expedited track. A party seeking the application of these Rules to such a claim shall make the same declaration and statement regarding limitation of damages as to the claim asserted that the plaintiff is required to make under Rule B. Any party may object to the assignment of such claim to the expedited track, in which circumstance the entire action will be removed from the expedited track.

(2) ASSIGNMENT OF CLAIMS TO THE EXPEDITED TRACK MAY BE SOUGHT BY AMENDMENT. If the original cross-claim, counterclaim, or third-party claim did not seek assignment to the expedited track, such assignment may be subsequently sought by amendment, subject to the provisions of Rule 15, Ala. R. Civ. P., only if all other claims pending are on the expedited track and upon a showing of good cause. Any party may object to such amendment or to the assignment of the claim to the expedited track, in which circumstance the claim will not be placed to the expedited track.

(3) REMOVAL OF THE CLAIM FROM THE EXPEDITED TRACK MAY BE SOUGHT. A defendant whose claim has been assigned to the expedited track may seek leave to amend the pleadings to have the claim removed from the expedited track. Such amendment shall be subject to Rule 15, Ala. R. Civ. P., and a showing that the claim asserted is reasonably worth more than \$50,000 and the evidence supporting the value of the claim could not have been reasonably anticipated when the defendant sought assignment of the claim to the expedited track. The plaintiff may object to such an amendment or to removal of the claim from the expedited track.

(4) DEFENDANT FILES CLAIM IN EXCESS OF LIMITATION; CLAIMS ASSERTED BY PLAINTIFF RELIEVED OF LIMITATION. If a defendant files a cross-claim, counterclaim, or third-party claim in which the amount sought exceeds \$50,000, that claim and all claims then pending on the expedited track shall be removed from the track, and the party asserting those claims is relieved of the \$50,000 limitation.

[Effective 1-1-2017.]

### **Comments**

(1) *Defendant Seeks Assignment to Expedited Track in Original Claim.* Rule C(1) provides the corollary to Rule B(1) for counterclaims, cross-claims, and third-party

claims. If such a claim is asserted, the claimant may seek assignment to the expedited track by making the same declaration required of the plaintiff under Rule B(1). However, such a claim may not proceed on the expedited track unless all other claims then pending are assigned to the expedited track. To provide otherwise would allow the action to proceed partly on the expedited track and partly on the traditional track, which would not allow discovery to be conducted in a timely and coordinated manner. Moreover, as can the defendants under Rule B(1), any party may object to the assignment of the claim to the expedited track.

The circuit court also may use the procedures of severance and separate trials under Rules 21 and 42, Ala. R. Civ. P. If, for example, a permissive counterclaim comes to light, but it would require taking the action off the expedited track, that permissive counterclaim might be severed, and the original claim could remain on the expedited track as appropriate. These matters are left to the sound discretion of the circuit court.

(2) *Defendant Seeks Assignment to Expedited Track by Amendment.* Rule C(2) provides to defendants a mirror image of what Rule B(2) provides for the plaintiff. That is, the expedited track is as available to a defendant asserting a counterclaim, cross-claim, or third-party claim by amendment as it is to the plaintiff by amendment. Moreover, the provisions of Rule C(2) regarding objections to such an amendment are also a mirror image of Rule B(2).

(3) *Defendant Seeks Removal of Claims from Expedited Track.* Rule C(3) provides to defendants who wish to have their claims removed from the expedited track and parties who may oppose such an amendment a mirror image of the rights and obligations provided in the event that the plaintiff seeks to have an action removed from the expedited track.

(4) *Defendant Files Claim in Excess of \$50,000 and Plaintiff's Claims are on Expedited Track.* If the plaintiff's claims are pending on the expedited track when the defendant files a counterclaim, cross-claim, or third-party claim in excess of \$50,000, then these Rules do not apply to the entire action and the plaintiff is relieved of the \$50,000 limitation as the action proceeds on the traditional track.

**Note from the reporter of decisions:** The order adopting the Alabama Rules for Expedited Civil Actions effective January 1, 2017, including Justice Murdock's and Justice Shaw's special writings dissenting to that order, is published in that volume of *Alabama Reporter* that contains Alabama cases from 200 So. 3d.