

Alabama Rules of Civil Procedure

IV. PARTIES

Rule 17.

Parties plaintiff and defendant; capacity.

(a) *Real party in interest.* Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) *Capacity to sue or be sued.* The capacity of a party, including one acting in a representative capacity, to sue or be sued shall be determined by the law of this state.

(c) *Minors or incompetent persons.* Whenever a minor has a representative, such as a general guardian or like fiduciary, the representative may sue in the name of the minor. Whenever an incompetent person has a representative such as a general guardian or a like fiduciary, the representative may sue or defend in the name of the incompetent person. If a minor or an incompetent person does not have a duly appointed representative, that person may sue by that person's next friend. The court shall appoint a guardian ad litem (1) for a minor defendant, or (2) for an incompetent person not otherwise represented in an action and may make any other orders it deems proper for the protection of the minor or incompetent person. When the interest of an infant unborn or unconceived is before the court, the court may appoint a guardian ad litem for such interest. Moreover, if a case occurs not provided for in these rules in which a minor is or should be made a party defendant, or if service attempted upon any minor is incomplete under these rules, the court may direct further process to bring the minor into court or appoint a guardian ad litem for the minor without service upon the minor or upon anyone for the minor.

(d) *Guardian ad litem; how chosen.* Whenever a guardian ad litem shall be necessary, the court in which the action is pending shall appoint to serve in that

capacity some person who is qualified to represent the minor or incompetent person in the capacity of an attorney or solicitor, and must not select or appoint any person who is related, either by blood or marriage within the fourth degree, to the plaintiff or the plaintiff's attorney, or to the judge or clerk of the court, or who is in any manner connected with such plaintiff or such plaintiff's attorney, or who has been suggested, nominated, or recommended by the plaintiff or the plaintiff's attorney or any person for the plaintiff. If the guardian ad litem is to be appointed for a minor fourteen (14) years of age or over, such minor may, within thirty (30) days after perfection of service upon the minor in such cause, have the minor's choice of a guardian ad litem to represent the minor in said cause certified by an officer authorized to take acknowledgments, but if such minor fails to nominate a guardian ad litem within the thirty- (30-) day period or before any hearing set in the action, whichever is earlier, the court shall appoint a guardian ad litem as before provided. In all cases in which a guardian ad litem is required, the court must ascertain a reasonable fee or compensation to be allowed and paid to such guardian ad litem for services rendered in such cause, to be taxed as a part of the costs in such action, and which is to be paid when collected as other costs in the action, to such guardian ad litem.

(dc) *District court rule.* Rule 17 applies in the district courts except that the thirty- (30-) day time period in Rule 17(d) is reduced to fourteen (14) days.

[Amended eff. 10-1-95; Amended eff. 8-1-2004.]

Committee Comments on 1973 Adoption

Subdivision (a). This subdivision omits the Federal Rule 17(a) which deals with statutes of the United States. This subdivision specifically provides that substitution of plaintiffs in order to bring the real party in interest before the court shall have the same effect had the action been commenced in the name of the real party in interest. This, in effect, makes the doctrine in relation back of amendments changing parties applicable to plaintiffs and is the companion to similar treatment for defendants found in Rule 15.

Subdivision (b). Since capacity to sue is governed by substantive law, subdivision (b) clearly states that proposition.

This subdivision has been modified from the Federal counterpart in order to conform with present Alabama practice. It is not possible in Alabama to speak in general terms about actions by and against infants in the same breath with actions by and against incompetents. This subdivision preserves the present

situation wherein the action against an incompetent who has a general guardian can be maintained against the general guardian while an action against an infant who has a general guardian will still require the appointment of a guardian ad litem. Nothing in this subdivision is to be construed to alter present practice wherein an action may be maintained against an infant in his name with a prayer in the Complaint for the appointment of a guardian ad litem.

Subdivision (d). This subdivision, setting out the mechanics for appointment of a guardian ad litem has no counterpart in the Federal Rules. But a number of states, in adapting these rules from state adoption, have thought it desirable to carry over into the rules their prior statutory provisions of the mechanics of appointment. A similar course has been followed here. The subdivision is based on the provisions as to appointment of a guardian ad litem now contained in Tit. 7, §§ 177-181, Code of Ala., which statutes will be superseded by the Rule.

Committee Comments to October 1, 1995, Amendment to Rule 17

The amendment changed the word “infant” in the rule to “minor.” All other changes are technical. No substantive change is intended.

Committee Comments to Amendment to Rule 17(a) Effective August 1, 2004

The second paragraph of Rule 17(a), which never existed in the corresponding Federal Rule, is deleted. Subrogation (e.g., when rights of subrogation arise, and the extent of those rights) is an issue of substantive, not procedural, law. Procedural issues relating to subrogation can appropriately be decided within the confines of Rules 19 and 17(a) (first paragraph), as they are in the federal courts.

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.