

Alabama Rules of Civil Procedure

III. PLEADINGS AND MOTIONS

Rule 8.

General rules of pleading.

(a) *Claims for relief.* A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

(b) *Defenses; form of denials.* A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state, and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the party shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, the pleader may do so by general denial subject to the obligations set forth in Rule 11.

(c) *Affirmative defenses.* In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) *Effect of failure to deny.* Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted

when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) *Pleading to be concise and direct; consistency.*

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or on equitable grounds, or on both. All statements shall be made subject to the obligations set forth in Rule 11.

(f) *Construction of pleadings.* All pleadings shall be so construed as to do substantial justice.

(dc) *District court rule.* Rule 8 applies in the district courts.

[Amended eff. 10-1-95.]

Committee Comments on 1973 Adoption

This differs from the Federal rule by eliminating the requirement of Federal Rule 8(a)(1) and 8(b), of an averment showing jurisdiction. Such an averment is not necessary in Alabama because in Alabama the rules are to apply to courts with full general jurisdiction. This rule is identical to Rule 8 of some other states, e.g., Minnesota, Nevada. Note, however, that the requirement of an allegation of residency in divorce proceedings remains unchanged. Under Rule 8(a)(1) such an allegation would be essential to a showing of entitlement to relief.

Under this rule the prime purpose of pleadings is to give notice. Such common law concepts as stating the facts each party believes to exist and narrowing the issues that must be litigated are completely abandoned. The distinctions between “ultimate facts” and “evidence” or conclusions of law are no

longer important since the proposed new rules do not prohibit the pleading of facts or legal conclusions as long as fair notice is given to the parties. 5 Wright & Miller, *Federal Practice and Procedure, Civil*, §§ 1202, 1218 (1969); 2A Moore's *Federal Practice*, ¶¶ 8.12, 8.13 (2d ed. 1968); *First National Bank of Henning v. Olson*, 74 N.W.2d 123 (Minn.1955). These rules abolish the doctrine of "theory of the pleading." See Rules 8(a), 8(e), 15(b) and 54(c). "A simple statement in sequence of the events which have transpired, coupled with a direct claim by way of demand for judgment of what the plaintiff expects and hopes to recover, is a measure of clarity and safety; and even the demand for judgment loses its restrictive nature when the parties are at issue, for particular legal theories of counsel yield to the court's duty to grant the relief to which the prevailing party is entitled, whether demanded or not." *Gins v. Mauser Plumbing Supply Co.*, 148 F.2d 974 (2d Cir.1945) per Clark.

Although Rule 8(a) eliminates many technical requirements of pleading, it is clear that it envisages the statement of circumstances, occurrences, and events in support of the claim presented. This is indicated by a central theme running through the rules and can be readily seen by reading certain rules together. See, inter alia, Rules 8(c)-(e), 9(b)-(l), 10(b), 12(b), 6, 12(h), 15(c), 20 and 54(b). This is also evident from the Appendix of Official Forms which also illustrate the ease with which Rule 8(a) pleading requirements may be satisfied. Rule 12(e), which provides for a motion for a more definite statement also shows that the complaint must disclose information with sufficient definiteness. The intent and effect of the rules is to permit the claim to be stated in general terms. The rules are designed to discourage battles over mere form of statement which often delay trial on the merits or prevent a party from having a trial because of mistakes in statement.

Rule 8 is expressly intended to repudiate the long standing doctrine in Alabama of construing the pleadings strictly against the pleader, when ruling on demurrer. See *Alabama Baptist Hospital Board v. Carter*, 226 Ala. 109, 145 So. 443 (1933); *Richards v. Richards*, 98 Ala. 599, 12 So. 817 (1892); *Childress v. Miller*, 4 Ala. 447 (1842). According to Rule 8(f), the goal of the proposed rule is to construe the pleadings so as to do substantial justice. "In appraising the sufficiency of the complaint we follow ... the accepted rule that a complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957); *Dennis v. Village of Tonka Bay*, 151 F.2d 411 (2d Cir.1944); 5 Wright and Miller, *Federal Practice and Procedure*, §§ 1220, 1286 (1969).

The rule in Alabama that alternative statements are tested by the weaker alternative in determining the sufficiency of the complaint—e.g., *Miller v. Mutual Grocery Co.*, 214 Ala. 62, 106 So. 396 (1925), is exactly repudiated by Rule

8(e)(2). And the rule pertaining to an insufficient general allegation—e.g., *City Ice Delivery v. Goode*, 228 Ala. 648, 154 So. 775 (1934); *Weston v. National Manufacturers and Stores Corp.*, 253 Ala. 503, 45 So.2d 459 (1950), has no application under these new rules. This concept is merely construing the complaint strictly against the pleader and is in derogation of Rule 8(f) which provides that the pleadings are to be construed liberally in favor of the pleader.

Rules 8, 9 and 10 contain the only requirements which must be met in drawing a pleading. Matter not mentioned in those rules but heretofore required in Alabama, as, for example, the statement of the residence of the parties—*Liddell v. Carson*, 122 Ala. 518, 26 So. 133 (1898)—will no longer be necessary except as may be an essential element of the claim for relief. For example, such an allegation is essential in divorce proceedings.

The affirmative defenses listed in Rule 8(c) are only a partial list of defenses which should be set forth affirmatively and the rule provides that any “matter constituting an avoidance or affirmative defense” must be pleaded. Other courts using Federal Rule type pleading have given great weight to common law precedents dealing with the confession and avoidance practice. See, 5 Wright & Miller, *Federal Practice and Procedure*, § 1271 (1969).

Normally there will only be two pleadings, a complaint and an answer. Rule 8(b) is intended to inform a pleader how to challenge and place in issue some or all of the allegations in the preceding pleading. Whether answering or replying a responding pleader is to admit or deny the averment upon which the adverse party relies. Rule 8(d) provides that averments in a pleading to which no responsive pleading is required or permitted may be taken as denied as under former Equity Rule 25. Such averments may also be taken as avoided. Thus, where the only pleadings are the complaint and the answer, the plaintiff may introduce evidence confessing and avoiding an affirmative defense in the answer without further pleading and without having to amend his complaint. Under this rule, “plain notice” of the nature of the defense being raised by the defendant is all that is required at the pleading stage. The facts pertinent to their various claims and defenses may be developed by discovery and pretrial procedures.

The general denial is not abolished under Rule 8(b), but it should be used only where the pleader in good faith intends to controvert all the allegations of the preceding pleading.

**Committee Comments to October 1, 1995,
Amendment to Rule 8**

The amendment is technical. No substantive change is intended.