

Alabama Rules of Civil Procedure

I. SCOPE OF RULES—ONE FORM OF ACTION

Rule 1.

Scope of Rules.

(a) *Scope.* These rules govern procedure in the circuit courts and in courts of full, like jurisdiction, in the district courts as provided in subparagraph "(dc)" of each rule, in the small claims courts as provided in Rule N of the Alabama Small Claims Rules, in probate courts so far as the application is appropriate and except as otherwise provided by statute, and in all other courts where appeals lie directly to the Supreme Court or the Court of Civil Appeals, in all actions of a civil nature, including those in which the State of Alabama or a political subdivision thereof is a party, whether cognizable as cases at law or in equity before the adoption of these Rules of Civil Procedure, and in proceedings enumerated in Rule 81.

(b) *Effect.* These rules effect an integrated procedural system vital to the efficient functioning of the courts.

(c) *Construction.* These rules shall be construed and administered to secure the just, speedy and inexpensive determination of every action.

(dc) *District court rule.* Rule 1, consistent with the limitations appearing in Rule 1(a), applies in the district courts.

[Amended 6-17-75; Amended 11-23-76, eff. 1-16-77; Amended eff.10-1-95; Amended 12-6-2012, eff. 1-1-2013.]

Committee Comments on 1973 Adoption

These rules apply only in courts where appeals lie directly to the Supreme Court or Court of Civil Appeals. They have no application in criminal proceedings. Nor do they apply to certain special statutory proceedings enumerated in Rule 81 except to the extent that the rules are not inconsistent with the statutes.

These rules do govern procedure in the circuit courts on appeal to such courts from inferior courts and administrative agencies, except to the extent that a different procedure is required by statute. See Rule 81(a)(32).

It has been said that the policy of rules such as these is to disregard technicality and form in order that the civil rights of litigants may be asserted and tried on the merits. *Mitchell v. White Consolidated, Inc.*, 177 F.2d 500 (7th Cir.1949), cert. denied 339 U.S. 913, 70 S.Ct. 574, 94 L.Ed. 1339. The last sentence of this rule, read in conjunction with Rules 8(f) and 61, states a mandate of construction of the rules which is intended to implement that policy.

It has long been settled in this state that when the legislature adopts a federal statute or the statute of another state, it adopts also the construction which the courts of such jurisdiction have placed on the statute. *Ex parte Huguley Water System*, 282 Ala. 633, 213 So.2d 799 (1968); *Ex parte Thackston*, 275 Ala. 424, 155 So.2d 526 (1963); *Travis v. Hubbard*, 267 Ala. 670, 104 So.2d 712 (1958); *Wooten v. Roden*, 260 Ala. 606, 71 So.2d 802 (1954); *Ex parte Ashton*, 231 Ala. 497, 165 So. 773 (1936). These rules represent an adaptation to the Alabama practice of rules of civil procedure already adopted for the federal courts and by many states.

Amendment of June 17, 1975

By letter of December 22, 1972, the late Jack C. Gallalee of Mobile called the Court's attention to two situations wherein probate courts in Alabama had been vested with equity jurisdiction. See, specifically, App. §§ 706-712, Code of Alabama (Mobile County) and App. § 1049(230)-1049(235), Code of Alabama (Jefferson County). This amendment to Rule 1 specifically calls for the application of these rules to proceedings in a probate court exercising statutory equitable jurisdiction.

Committee Comments to October 1, 1995, Amendment to Rule 1(c)

The purpose of amending Rule 1(c) to add the words "and administered" is to recognize the affirmative duty of the court and attorneys, as officers of the court, to ensure that civil litigation is resolved not only fairly, but also without undue cost and delay.

**Committee Comments to the Amendment to
Rule 1(a) Effective January 1, 2013**

This amendment deletes the exception providing that the Rules of Civil Procedure govern procedure in all courts as specified "except probate courts not exercising statutory equitable jurisdiction." This exception, adopted when the Rules took effect in 1973, is outdated and outmoded. Since 1973, the legislature has adopted numerous statutes applying the Alabama Rules of Civil Procedure in probate courts. See, e.g., Ala. Code 1975, §§ 18-1A-70 (regarding procedure in eminent-domain proceedings, adopted in 1985); 26-2A-33 (regarding guardianship proceedings, adopted in 1987); and 26-10A-37 (regarding adoptions, adopted in 1990). Thus, by virtue of such statutes, the Rules of Civil Procedure frequently apply in probate courts except when other specific statutory procedures create exceptions. This amendment acknowledges and generalizes that fact.

Section 12-13-12, Ala. Code 1975, states: "The provisions of this code in reference to ... pleading and practice ... in the circuit court, so far as the same are appropriate, ... in the absence of express provision to the contrary, are applicable to the proceedings in the probate court." That Code provision has been in the Alabama Code since 1852. Until the adoption of the 1975 Code, it referred to pleading and practice provisions in the Code. However, after the adoption of the Rules of Civil Procedure in 1973, those Code pleading and practice provisions were not carried forward into the 1975 Code, but the provision now codified as § 12-13-12 was carried forward. This created ambiguity as to whether § 12-13-12 incorporated the Rules of Civil Procedure by reference. The Court of Civil Appeals held that it did. *In re Morrison*, 388 So. 2d 1014 (Ala. Civ. App. 1980); *McGallagher v. Estate of DeGeer*, 934 So. 2d 391, 399 (Ala. Civ. App. 2010); and other similar cases. However, both *In re Morrison* and *McGallagher*, like other cases from the Court of Civil Appeals decided after the 1975 amendment to Rule 1(a) making the rules applicable to probate courts possessing equitable jurisdiction, ignore the fact that the Rules were already applicable in those proceedings because those cases originated in Mobile County, a county where the probate court was vested with equitable jurisdiction. The references in those opinions to § 12-13-12 were therefore unnecessary but nevertheless furthered the ambiguity between § 12-13-12 and the general exception in Rule 1(a) of probate courts from the scope of the Rules. Deleting this exception removes this ambiguity and effectuates the legislative intent that the pleading and practice provisions for circuit courts will apply in probate courts as appropriate and except where purposeful statutory exceptions exist.

In short, as a general rule, the Rules of Civil Procedure apply in the probate court, when such application is appropriate and except when particular statutes provide otherwise. This amendment expressly preserves such statutory exceptions and is not intended to override them as allowed under Ala. Const. 1901, Art. VI, § 150 (Off. Recomp.), and Ala. Code 1975, § 12-1-1.

Contemporaneous with this amendment is an amendment to Rule 58, Ala. R. Civ. P. Probate courts are not at this time participants in the State Judicial Information System, so the provision in Rule 58(c) regarding the entry of judgments into the State Judicial Information System cannot apply in the probate court.

District Court Committee Comments

The subparagraph of each rule of the Alabama Rules of Civil Procedure which is preceded by the designation “(dc)” states the effect of the Alabama Rules of Civil Procedure in the District Court. The Advisory Committee on Civil Practice and Procedure in the District Court has made a conscious effort to avoid departure from the Alabama Rules of Civil Procedure except in those instances where the very structure of the district court system dictates some deviation. In the notes following each of the various rules, an explanation is given for any departure from the Alabama Rules of Civil Procedure. It is specifically noted that the Alabama Small Claims Court shall be governed by the Alabama Small Claims Court Rules. Rule N of the Alabama Small Claims Court Rules permits the applicability of the Alabama Rules of Civil Procedure, as modified for practice in the district courts, only to the extent that the Alabama Rules of Civil Procedure, as modified, are not inconsistent with any of the Alabama Small Claims Court Rules. To avoid confusion, the decision was made by the Advisory Committee to designate the Alabama Small Claims Court Rules alphabetically. While the need for uniformity afforded ample justification for the presentation of the District Court Rules as a part of the Alabama Rules of Civil Procedure, it was the thinking of the Advisory Committee that litigants in the Alabama Small Claims Court deserved access to a basic set of procedural rules which could be obtained without resort to the more complex Alabama Rules of Civil Procedure.

Note from the reporter of decisions: The order amending, effective January 1, 2013, Rule 1(a), Rule 45(b)(1), and Rule 82(d)(3), and adopting effective January 1, 2013, Rule 58(d) and the Committee Comments to the Amendment to Rule 1(a) Effective January 1, 2013, the Committee Comments to the Amendment to Rule 45(b)(1) Effective January 1, 2013, the Committee Comments to the Adoption of Rule 58(d) Effective January 1, 2013, and the Committee Comments to the Amendment to Rule 82(d)(3) Effective January 1, 2013, are published in that volume of *Alabama Reporter* that contains Alabama cases from ___ So. 3d.