

Alabama Rules of Civil Procedure

III. PLEADINGS AND MOTIONS

Rule 10.

Form of pleadings.

(a) *Caption; names of parties.* Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(b) *Paragraphs; separate statement.* All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) *Adoption by reference; exhibits.* Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

(dc) *District court rule.* Rule 10 applies in the district courts.

Committee Comments on 1973 Adoption

Rule 10(a) sanctions existing Alabama practice, save that, by reason of the merger of law and equity contemplated in Rule 2, it will no longer be necessary to designate the complaint as “at law” or “in equity.” However, such designation may facilitate filing with the appropriate court officer under Rule 79(f).

The requirement in Rule 10(b) that averments be made in numbered paragraphs is similar to the former requirement in equity. Equity Rules 11, 25. The further requirement that the contents of each averment be limited, as far as

practicable, to a statement of a single set of circumstances is new both to law and equity.

Rule 10(b) requires claims to be presented in separate counts only where two conditions are met: the claims must be founded upon a separate transaction or occurrence, and a separation must facilitate the clear presentation of the matters set forth. Thus the pleader cannot be required to use separate counts where his claims arise from a single transaction or occurrence. E.g., *Clark v. Springfield City Water Co.*, 14 F.R.D. 504 (W.D.Mo.1953), although the use of separate counts even in this situation may be desirable as leading to clarity. Even where the claims arise from separate transactions or occurrences, the test as to whether separate counts must be used is functional rather than conceptual. Separate counts are required if they facilitate the clear presentation of the matters set forth. Thus the technical doctrine of duplicity, by which a count has heretofore been held objectionable if it contains several claims regardless of clarity—e.g., *Richardson v. Vaughn*, 208 Ala. 442, 94 So. 514 (1922); *McDougal v. Alabama Great Southern R. Co.*, 210 Ala. 207, 97 So. 730 (1923)—will have no application.

Failure to comply with the requirements of Rule 10(b) is not grounds for dismissal of the complaint or striking of the answer, but may be ordered remedied by motion. *Schoenberg v. Decorative Cabinet Corp.*, 27 F.Supp. 802 (E.D.N.Y.1939); *Grauman v. City Company of New York*, 31 F.Supp. 172 (S.D.N.Y.1939). See Wright & Miller, *Federal Practice and Procedure, Civil* § 1322 (1969).