Alabama Rules of Civil Procedure

III. PLEADINGS AND MOTIONS

Rule 14.

Third-party practice.

(a) *When defendant may bring in third party*. At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than ten (10) days after serving the original answer. Otherwise the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Rule 12 and any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the plaintiff's failure to do so shall have the effect of the failure to state a claim in a pleading under Rule 13(a). The third-party defendant thereupon shall assert any defenses as provided in Rule 12 and any counter-claims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

(b) *When plaintiff may bring in third party*. When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

(c) [Omitted.]

(dc) *District court rule.* Rule 14 applies in the district courts to actions which are not on the small claims docket.

[Amended 5-16-83, eff. 7-1-83; Amended eff. 10-1-95.]

Committee Comments on 1973 Adoption

Third-party practice, or, as it usually is called, "Impleader," is the procedure by which a defendant in an action may bring in a new party to the action, who is or may be liable to him for all or part of the plaintiff's claim against him. The purpose of this practice, and of Rule 14 which authorizes it, is to avoid multiple suits. By permitting an entire controversy to be disposed of in one action the rule should save the time and cost of duplication of evidence, obtain consistent results from identical or similar evidence, and do away with the serious handicap to the defendant of a time difference between the judgment against him and the judgment in his favor against the party liable over to him. 3 Moore's *Federal Practice*, ¶ 14.04 (2d ed. 1968).

The adoption of Federal Rule 14 in 1938 was in some aspects a modern innovation in law and equity although well known in admiralty. Because of its many advantages, a liberal procedure as to impleader had developed prior to 1938 in England, in the federal admiralty courts, and in some American state jurisdictions. Alabama Equity Rule 26 might have permitted impleader, but it was construed as permitting a defendant to bring in a third-party only where the plaintiff had a claim against that third party. *Behan v. Friedman*, 216 Ala. 478, 113 So. 538 (1927); *Maryland Casualty Co. v. Holmes*, 230 Ala. 332, 160 So. 768 (1935). These decisions denied the kind of impleader which is permitted by Rule 14. Under the rule it is entirely irrelevant to the defendant's right to bring in a third party claimed to be liable over to him that the plaintiff has no claim against the third party. *Burris v. American Chicle Co.*, 29 F.Supp. 779 (E.D.N.Y.1939), aff'd 120 F.2d 218 (2d Cir.1941). See Comment, *Third Party Practice in Equity: Past, Present, Future*, 2 Cumberland-Sanford L.Rev. 421 (1971).

In 1965, the Alabama legislature enacted Tit. 7, § 259, Code of Ala., making impleader available in state practice. The statute operated within two areas. First, if a party had a claim against a co-party arising from the transaction made the basis of the original action, he could *cross-claim* directly against that party and bring in such additional parties as necessary for granting complete relief. This portion of the statute was based upon Rule 13(g), F.R.C.P., and a pre-1966 version of Rule 13(h), F.R.C.P. Secondly, the statute gives a remedy for indemnification claims against persons not parties characterized as a *third-party* claim. This portion of the Act was based upon Rule 14, F.R.C.P., as same stood prior to a 1963 amendment.

The Alabama third-party statute, in its brief life, required Supreme Court construction on several occasions. For reasons not apparent, the Alabama Act was silent on the discretion of the court to disallow impleader even when the claim was technically within the statutory definition of a third-party claim or cross-claim. The federal third-party claim counterpart both before and after a 1963 amendment has language which justifies the exercise of discretion in striking third-party claims. See 6 Wright & Miller, *Federal Practice and Procedure, Civil*, § 1443 (1971) and 3 Moore's Federal Practice, ¶ 14.05(2) (2d ed. 1968). In *Ex parte Huguley Water System*, 282 Ala. 633, 213 So.2d 799 (1968), the Supreme Court approved the trial court's striking of third-party claims and cross-claims. The court referred to "inherent powers to make reasonable rules for the conduct of the business of the court" as announced in *Brown v. McKnight*, 216 Ala. 660, 114 So. 40 (1927). Later, in *F.R. Hoar & Son, Inc. v. Florence*, 287 Ala. 158, 249 So.2d 817 (1971), the Court refused to permit severance of a third-party claim thus increasing the likelihood of dismissal under the *Huguley* doctrine. The federal counterpart contained no reference to severance until 1963 but the provisions of Rule 42 had, prior thereto, justified orders of severance. The Alabama Act was silent on the authority to sever. The court was impressed by this omission and considered authority for severance to be beyond the inherent power of the court and within the province of the legislature. In *Bush v. Godard*, 286 Ala. 370, 240 So.2d 122 (1970), the court rejected an effort to superimpose the Alabama Act's joinder of additional parties provision upon the pre-existing law permitting pleas of set-off and recoupment.

For the final chapter in the short but sour history, Judge Godbold reasoned in *Central of Georgia Ry. v. Riegel Textile Corp.*, 426 F.2d 935, 8 A.L.R.Fed. 701 (5th Cir.1970), that a third-party complaint filed under the Alabama Act could be removed to the federal court in a proper case provided that the state court judge had severed the third-party claim. Of course, the subsequent holding in *F.R. Hoar & Son, Inc. v. Florence*, supra, left no field of operation for the *Riegel* theory of removability in Alabama.

The net effect of Rule 14 as now written expressly carries forward the exercise of discretion permitted in *Huguley*. Should the third-party complaint be served within the ten-day period, the court's discretion may be invoked upon a motion to strike. Should the ten-day period expire, the party seeking leave to file a third-party complaint must do so by motion. *U.S.F. & G. v. Perkins*, 388 F.2d 771 (10th Cir.1968). The court's discretion could then be invoked in the ruling on the motion. If the claim is a proper third-party action and will not prejudice other parties to the litigation, there is no reason to deny an application under Rule 14(a). See 6 Wright & Miller, *Federal Practice and Procedure, Civil*, § 1443 (1971); 3 Moore's Federal Practice, ¶ 14.05(1) (2d ed. 1968).

Further, Rule 14, in terms, provides authority for severance in a proper case. Hence, *F.R. Hoar & Son, Inc. v. Florence*, supra, may be disregarded. The theory of *Central of Ga. Ry. v. Riegel Textile Corp.,* supra, will again have a field of operation. Finally, the availability of the joinder of additional parties on a counterclaim is expressly secured by Rule 13, rendering *Bush v. Godard*, supra, of historical value only.

As to the application of venue requirements to impleader of a third-party see Rule 82(c).

Rule 14 is entirely procedural in nature and will not affect substantive rights. It does not establish a right of reimbursement, indemnity nor contribution, but merely provides a procedure for the enforcement of such rights where they are given by the substantive law. For example, negligent joint tortfeasors do not have a right of contribution against each other in Alabama. *Gobble v. Bradford*, 226 Ala. 517, 147 So. 619 (1933). Thus if a plaintiff sues one of two negligent joint tortfeasors, the one sued cannot implead the other under Rule 14, for he has no substantive right against the other. *Brown v. Cranston*, 132 F.2d 631 (2d Cir.1942), cert. denied 319 U.S. 741 (1943), 63 S.Ct. 1028, 87 L.Ed. 1698; *Lunderberg v. Biermann*, 241 Minn. 349, 63 N.W.2d 355 (1954). The substantive law of Alabama was held to preclude a third-party action based upon contribution in *Combs v. Continental Cas. Co.*, 54 F.Supp. 507 (N.D.Ala.1944). But where there is a substantive right over, Rule 14 does permit acceleration of liability by allowing the original defendant to implead a third-party claimed to be liable over to him, although there may be no liability to the original defendant unless and until the original defendant is held liable to the original plaintiff. *Travelers Ins. Co. v. Busy Electric Co.*, 294 F.2d 139 (5th Cir.1961). *Jeub v. B/G Foods, Inc.,* 2 F.R.D. 238 (D.Minn.1942). 6 Wright & Miller, *Federal Practice and Procedure, Civil*, § 1451 (1971).

As to the procedure where a third-party is impleaded, see 6 Wright & Miller, *Federal Practice & Procedure, Civil,* § 1453 (1971).

As has been done in Vermont Rules of Civil Procedure, these Rules depart from the Federal Rule in that these Rules require the original plaintiff to assert related claims against the third-party defendant. If the plaintiff fails to assert related claims against the third-party defendant, his failure will estop him from raising said claims in a subsequent proceeding and will have the identical effect as would be the case in the event a defendant failed to raise a compulsory counterclaim. This provision is consistent with the general policy of these rules to avoid multiplicity of action. Although an order of severance would not generally be entered until such point in time as all the pleadings are settled, an order of severance wherein a third party claim was severed from the plaintiff's claim

against the original defendant, would not excuse the plaintiff from further pleading requirements elaborated in this Rule. The purpose of this rule is to require the assertion of claims in one action and the fact of a severance for trial purposes is not inconsistent with the object of this rule.

Committee Comments to October 1, 1995,
Amendment to Rule 14

The amendment is technical. No substantive change is intended.

District Court Committee Comments
(Amended effective July 1, 1983)

The initial version of Rule 14(dc) withheld third party practice from district courts on the premise that the application of the concept of pendent venue to third party actions in controversies with no more than $5,000 at stake would lead to substantial inconvenience or injustice to a third-party defendant as to whom venue would not otherwise have been appropriate in the district court.

The bench and bar soon saw the necessity for third-party practice in circumstances where venue would otherwise be appropriate as to a third-party defendant. The July 1, 1983, revision of Rule 14(dc) and the companion revision of Rule 82(dc) meet the criticism of the earlier version. With the revision of Rule 14(dc) and the companion revision of Rule 82(dc), third-party practice is proper in the district court when venue as to the third-party claim exists independently of venue as to the main action.