

Alabama Rules of Civil Procedure

I. SCOPE OF RULES—ONE FORM OF ACTION

Rule 2.

One form of action.

There shall be one form of action to be known as “civil action.”

(dc) *District court rule.* Rule 2 applies in the district courts, subject to the limitations upon equitable jurisdiction as set forth in § 12-12-30, Code of Alabama 1975.

[Amended effective 10-1-95.]

Committee Comments on 1973 Adoption

This rule follows in substance the usual introductory statements to code practices which provide for a single action and mode of procedure, with abolition of forms of action and procedural distinctions, and with merger of law and equity. See, e.g., N.Y.Laws 1848, ch. 379, § 62.

This rule does not affect the various remedies which have heretofore been available. Instead the merger of law and equity and the abolition of the forms of action supply one uniform procedure by which a litigant may present his claim in an orderly manner to a court empowered to give him whatever relief is appropriate and just; it remains for the court to decide, in accordance with unchanged principles of substantive law, what form of relief meets this test on the particular facts proved. The court is not limited in choosing a remedy by the demand for relief in the complaint, except where the defendant is in default. Rule 54(c).

The one procedural difference among actions which remains under these rules is the right to jury trial. That right is expressly preserved by Rule 38(a), and cases which would have been tried to a jury under the former procedure will still be tried to a jury if there is a timely demand for this mode of trial. In every other respect, actions are to be governed by a single procedure, regardless of whether

they would historically have been “legal” or “equitable” and regardless of the form of action that might heretofore have been employed. Clark, *Code Pleading*, 78-127 (2d ed. 1947). For a thorough analysis of this area, see Donaldson and Walls, *Merger of Law and Equity in Alabama-Some Considerations*, 33 Ala.Law. 134 (1972).

The statutes of limitation, Code of Ala., § 6-2-1 et seq., are phrased in terms of the kind of wrong sought to be remedied and the kind of relief demanded, rather than in terms of the writ used. Thus they will be applicable to actions under these rules in accordance with the claim as proved, rather than the language of the complaint or the form of action which might have been employed prior to the rules. The statement in *Louisville & N.R. Co. v. Lacey*, 17 Ala.App. 146, 82 So. 636 (1919), that a particular provision of the statutes of limitation “was not designed to destroy the distinction between trespass and action on the case” should have no continuing vitality; these rules are expressly designed to destroy such distinctions but do not affect the result of existing interpretations of the statutes of limitations.

The mandate of this rule is emphasized also by Rules 8(e)(2) and 18(a), which allow joinder of legal and equitable claims, and Rule 52(a), which prescribes one standard for review in actions tried to the court, whether they be actions historically “equitable” or actions in which a jury was waived.

Although these rules refer throughout to the “clerk,” this term is used as referring also to the register in chancery. Rule 81(d). For administrative purposes only, suits are to be filed with the register or with the clerk as would have been proper prior to adoption of these rules. But adequate provision is made for transfer of the file from one office to the other, where it was filed in the wrong office, and the transfer of the file, or the particular office in which the action is filed, is in no way to affect the proceedings in the action, which is to continue in the same manner regardless of the office which keeps the file. See Rule 79(f).

Committee Comments to October 1, 1995, Amendment to Rule 2(dc)

Rule 2(dc) was amended to reflect the codification of the Judicial Implementation Act.

District Court Committee Comments

The Code of Alabama provides at §12-12-30 that the district court shall not exercise equitable jurisdiction except to the extent necessary for the assertion of defenses or compulsory counterclaims. Consequently, the provision for one form of action stated in Rule 2(dc) must be read in context of that limitation.