

Alabama Rules of Civil Procedure

IV. PARTIES

Rule 21.

Misjoinder and nonjoinder of parties.

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

(dc) *District court rule.* Rule 21 applies in the district courts.

Committee Comments on 1973 Adoption

The rule principally relates to parties, not claims. Note that it addresses itself to two separate problems—misjoinder and non-joinder. The statement in the first sentence of the rule as to the impropriety of dismissal is relevant only to a misjoinder of parties. Of course, final dismissal may be appropriate in a case of non-joinder where Rule 19(b) applies. Non-joinder can be raised by a Rule 12(b)(7) motion to dismiss. Whether final dismissal is appropriate will turn upon consideration of the factors enumerated in Rule 19. A Rule 21 motion is also available in the non-joinder context in order to seek addition of the non-joined person. However, a misjoinder defect cannot be raised by a motion to dismiss but should be raised by a motion under this Rule. See, generally, 7 Wright & Miller, *Federal Practice and Procedure*, § 1684, p. 329 (1972). The practice under this Rule with respect to misjoinder differs from prior practice. Formerly, a misjoinder, unless waived, was fatal to recovery. *Bell v. Allen*, 53 Ala. 125 (1875); *Patton v. Crow*, 26 Ala. 426 (1855); *Mosaic Templars of America v. Flanagan*, 22 Ala.App. 377, 115 So. 860 (1928).

Committee Comments Adopted February 13, 2004, to Rule 21

Rule 21 provides that: “Any claim against a party may be severed and proceeded with separately.” Confusion has sometimes arisen between a true severance and an order providing for separate trials pursuant to Rule 42(b). The distinction has at least the significance that a judgment on the first of two separate trials is not final, absent an order pursuant to Rule 54(b), Ala.R.Civ.P., while after a true severance a judgment on the first action to come to trial is final and appealable without reference to the proceedings in the severed action. *Key*

v. Robert M. Duke Ins. Agency, 340 So.2d 781, 783 (Ala.1976). In *Bryant v. Flagstar Enterprises, Inc.*, 717 So.2d 400 (Ala.Civ.App.1998), the Court of Civil Appeals dismissed an appeal from the first of two separate trials, holding that no final judgment had been entered. The Court relied upon *Key*, supra, and *Seybold v. Magnolia Land Co.*, 372 So.2d 865, 866 (Ala.1979). See 1 Champ Lyons, Jr., *Alabama Rules of Civil Procedure Annotated* §§ 21.5, 21.7, and 42.3 (3d ed. 1996).

To avoid ambiguity at the time of bifurcation and later uncertainty as to finality, a party seeking a severance or a separate trial should request that the court make clear whether a Rule 21 severance or a Rule 42(b) separate trial is intended. *Opinion of the Clerk*, 526 So.2d 584, 586 (Ala.1988), expressed the clerk's opinion that the plaintiff in the severed action should pay a filing fee "[w]here a 'true' severance under Rule 21 is ordered and the clerk docketed a separate case with a new civil action number." (See also § 12-19-70, Code of Alabama 1975, regarding the waiver of the filing fee based on a verified statement of substantial hardship.) Thus, the parties may remove any ambiguity by obtaining a new docket number and paying a separate filing fee, if a severance is intended and appropriate.

Note from the reporter of decisions: The order adopting the Committee Comments to Rules 5, 15, 21, 23, 24, and 42, Alabama Rules of Civil Procedure, effective February 13, 2004, is published in that volume of *Alabama Reporter* that contains Alabama cases from 865 So.2d.