

## **Alabama Rules of Civil Procedure**

### **IV. PARTIES**

#### **Rule 23.1.**

##### **Derivative actions by shareholders.**

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which the plaintiff complains or that the plaintiff's share or membership thereafter devolved on the plaintiff by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for the plaintiff's failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

(dc) *District court rule.* Rule 23.1 does not apply in the district courts.

[Amended eff. 10-1-95.]

##### **Committee Comments on 1973 Adoption**

Rule 23.1 recognizes distinctive aspects of actions by shareholders or members of unincorporated associations. Adequacy of representation can be the subject of examination as is provided in the Rule.

Note that the Rule requires an effort or excuse for making no effort, to obtain redress from the shareholders, if necessary. Alabama drew its earlier corporation statute from New York. The management of the corporation under these statutes was committed to the directors. Under such provision, it has been held that the authority of the stockholders as a body in corporate management is exhausted upon election of the directors. *Continental Securities Co. v. Belmont*, 206 N.Y. 7, 99 N.E. 138 (1912). In this context a demand would be fruitless but see *American Life Ins. Co. v. Powell*, 262 Ala. 560, 80 So.2d 487 (1955) wherein such a demand was a prerequisite to a derivative action. Since then, § 10-2-50

Code of Ala., now applies and its provisions do not conflict with the predecessor statute, Tit. 10, § 22, Code 1940. In *Kinsaul v. Florala Telephone Co.*, 285 Ala. 16, 228 So.2d 777 (1969), *Powell*, supra, was cited for the requirement of seeking redress within the corporate body or alleging excuse for failure to do so. In *Kinsaul*, the plaintiffs were stockholders and directors and had made no allegation as to demand upon the board of directors or the stockholders.

**Committee Comments to October 1, 1995,  
Amendment to Rule 23.1**

The amendment is technical. No substantive change is intended.

**District Court Committee Comments**

The jurisdictional limitations applicable to the district court make it unsuitable for treatment of derivative actions by shareholders.