

Alabama Rules of Civil Procedure

VI. TRIALS

RULE 44.1.

Determination of foreign law.

A party who intends to raise an issue concerning the law of another state or of any territory or dependency of the United States or of a foreign country shall give notice by pleadings or other reasonable written notice. The court, in determining such law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Alabama Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

(dc) *District court rule.* Rule 44.1 applies in the district courts.

[Amended eff. 10-1-95; Amended eff. 1-1-96.]

Committee Comments on 1973 Adoption

Foreign law is treated in §§12-21-64 and 12-21-65, Code of Ala. Generally, Alabama has required that foreign law be pleaded and proved as a fact but the ultimate questions raised on the pleading are for the court. See, *Smith v. Blinn*, 221 Ala. 24, 127 So. 155 (1930). This Rule treats such a question as a ruling on a question of law and does not restrict the Court to an examination of relevant source materials whether or not submitted by a party in its effort to ascertain foreign law. With increased accessibility of foreign legal materials, there does not seem to be justification for treating foreign law any differently from the domestic laws of the state of Alabama. Written or oral expert testimony accompanied by extracts from foreign legal materials probably will continue to be the basic mode of proving foreign law. See 9 Wright & Miller, *Federal Practice and Procedure, Civil*, § 2444, page 406 (1972). A litigant may also present any other information concerning foreign law that he believes will further his cause, including secondary sources such as texts and learned journals. The trial judge is not limited to an examination of the proffered materials in his effort to arrive at certain conclusions with respect to foreign law.

Committee Comments to October 1, 1995, Amendment to Rule 44.1

The amendment is technical. No substantive change is intended.

**Committee Comments to January 1, 1996,
Amendment to Rule 44.1**

The reference to “Rule 43” in the second sentence of the rule was changed to “the Alabama Rules of Evidence” for the reasons stated in the following committee comment to the 1972 amendment to F.R.Civ.P. 44.1:

“Since the purpose of the provision is to free the judge, in determining foreign law, from any restrictions imposed by evidence rules, a general reference to the Rules of Evidence is appropriate and is made.”