

## Alabama Rules of Civil Procedure

### VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

#### Rule 68.

##### Offer of judgment.

At any time more than fifteen (15) days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the offer, with costs then accrued. If within ten (10) days after the service of the offer, the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time, not less than ten (10) days, prior to the commencement of hearings to determine the amount or extent of liability.

(dc) *District court rule.* Rule 68 applies in the district courts except that the time period of fifteen (15) days is reduced to fourteen (14) days and the time period of ten (10) days is reduced to seven (7) days.

[Amended eff. 10-1-95.]

#### Committee Comments on 1973 Adoption

The rule requires an offer of judgment to be made at least 15 days before the trial begins, and thus ensures that it must be either accepted or rejected at least 5 days before trial. Thus a party will not make final preparations for a trial which will never be held. The companion federal rule requires an offer of judgment to be made at least 10 days before the trial begins and that it must be accepted or rejected within 10 days. In all other respects, the rule is based on Federal Rule 68.

Alabama law has had no similar procedure whereby an offer of judgment may be made. Indeed, the device was new to the federal courts when the Federal Rules of Civil Procedure were adopted in 1938. But it was a familiar device in the practice of other states prior to that time. And the general principle, that a party may be denied costs where he sues vexatiously after refusing an offer of settlement, and recovers no more than he had been previously offered, has been held to be within the powers of an equity court regardless of the existence of a rule such as Rule 68. *Crutcher v. Joyce*, 146 F.2d 518 (10<sup>th</sup> Cir.1945).

As to procedure under the rule, see 7 Moore's *Federal Practice*, ¶¶ 68.03-68.06 (2d ed.1971); Udall, *May Offers of Judgment under Rule 68 be Revoked Before Acceptance*, 19 F.R.D. 401 (1956). "Before this trial begins" has been construed to mean before the trial date is set. *Cruz v. Pacific American Ins. Corp.*, 337 F.2d 746 (9<sup>th</sup> Cir.1964).

The last sentence provides for an offer of judgment after liability is determined but before ascertainment of damages. This is desirable in a complex declaratory proceeding on an instrument where threshold questions of validity and, therefore, liability, may exist. Also, upon the entry of a partial summary judgment declaring liability, such a provision could be useful.

**Committee Comments to October 1, 1995,  
Amendment to Rule 68**

The amendment is technical. No substantive change is intended.