

Alabama Rules of Civil Procedure

III. PLEADINGS AND MOTIONS

Rule 7.

Pleadings allowed; form of motions.

(a) *Pleadings.* There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

(b) *Motions and other papers.*

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) All motions shall be signed in accordance with Rule 11.

(c) *Demurrers, pleas, etc., abolished.* Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

(dc) *District court rule.* Rule 7 applies in the district courts.

[Amended 5-16-83, eff. 7-1-83; Amended eff. 10-1-95; Amended eff. 8-1-2004.]

Committee Comments on 1973 Adoption

The rule is identical with Federal Rule 7.

In this rule and throughout these rules “bill of complaint” or “bill” as formerly used in equity, is called simply “complaint.” See Rule 81(e).

This rule and the other rules dealing with pleadings seem to introduce a very drastic change, but in fact they are not greatly different from the Federal Equity Rules of 1912. Nor will the practice be completely unfamiliar to Alabama attorneys, although many names have been changed, and the requirements as to particular pleadings have been drastically altered. Complaint, motion, answer and reply are already used in Alabama. The cross-claim and counterclaim are methods of presenting claims for affirmative relief in connection with the answer much like the cross-bill already used in equity. The reply to a counterclaim is simply the answer to a cross-bill under a new label. Even the major changes made by Rule 7 adopt procedures already existing under present practice. Thus the plea in abatement and the demurrer are replaced by the motion, which is a device already familiar in Alabama. Matter now presented by pleas to the merits of law or equity will be set out in an answer, much as is already common in equity. And while third-party practice is relatively new, the third-party complaint and the third-party answer are duplicates of the complaint and answer as between the original parties.

Although it is desirable to label pleadings correctly in accordance with Rule 7(a), there is no penalty for mislabeling. *Shell Petroleum Corp. v. Stueve*, 25 F.Supp. 879 (D.Minn.1938); *Howard v. United States*, 28 F.Supp. 985 (W.D.Wash.1939); *Equitable Life Assurance Society v. Kit*, 26 F.Supp. 880 (E.D.Pa.1939); *Missouri ex rel. De Vault v. Fidelity & Cas. Co. of N.Y.*, 107 F.2d 343 (8th Cir.1939); 5 Wright & Miller, *Federal Practice and Procedure*, § 1196 (1969). See also the final sentence of Rule 8(c). Note, however, that a reply is required only to a counterclaim “denominated as such.” Rule 7(a).

The limitation of the pleadings to a complaint and an answer, and, when there is a counterclaim denominated as such or the court so orders, a reply, is a drastic change from Alabama practice in actions at law, where pleadings continued until an issue was reached. It is similar to the limit of Equity Rule 27, save that amendment of the bill to present matter in rebuttal of new matter in the answer will no longer be either necessary or proper. Affirmative defenses in the answer are deemed denied or avoided, Rule 8(d), *Traylor v. Black, Sivals & Bryson, Inc.*, 189 F.2d 213 (8th Cir.1951), and a reply is required if the answer contains a counterclaim denominated as such.

As to when a reply should be ordered by the court, see 2A Moore’s *Federal Practice*, ¶ 7.03 (2d ed. 1968); 5 Wright & Miller, *Federal Practice and Procedure*, § 1185 (1969).

The motion procedure stated in Rule 7(b) is essentially the present motion practice in law and in equity in Alabama. See Creel, *Decrees Pro Confesso, Motions and Petitions*, 14 Ala.Law 6 (1953). An illustrative motion is set out in the Appendix of Forms.

Rule 7(c) makes a major change in the form of Alabama procedure by its abolition of demurrers and pleas. But the functions previously performed by demurrers and pleas in abatement will hereafter be served by the consolidated motion contemplated by Rule 12. See 5 Wright & Miller, *Federal Practice and Procedure*, § 1196 (1969).

**Committee Comments to October 1, 1995,
Amendment to Rule 7**

The amendment to subdivision (b) conforms the rule to the comparable federal rule. Motions are now clearly subject to the obligations of professionalism imposed by Rule 11.

**Committee Comments to Amendment to Rule 7(b)(2)
Effective August 1, 2004**

The amendment to Rule 7(b)(2) deletes the word “signing” from that Rule to make the Rule identical to the corresponding Federal Rule, and because the concept of signing is covered by Rule 7(b)(3).

District Court Committee Comments

[Comments omitted effective July 1, 1983.]

Note from the reporter of decisions: The order amending Rules 4, 4.1, 4.2, 4.3, 4.4, 6(a), 7(b)(2), 17(a), 22(c), and 26(b), Alabama Rules of Civil Procedure, effective August 1, 2004, is published in that volume of *Alabama Reporter* that contains Alabama cases from 867 So.2d.