

Alabama Rules of Civil Procedure

XI. GENERAL PROVISIONS

Rule 81.

Applicability in general.

(a) *Proceedings controlled by statute.* In the following proceedings, these rules shall be applicable to the extent that the practice in such matters is not provided by statute:

- (1) Abatement of nuisances.
- (2) Administration of trust for payment of security of debts.
- (3) Claim and contest of exemptions.
- (4) Condemnation under § 2-2-31 Code of Alabama 1975.
- (5) Contest of probate of will.
- (6) Contested elections.
- (7) Corrections of errors in the Probate Court.
- (8) Delayed birth certificate.
- (9) Determination of paternity of illegitimates.
- (10) Disposition of property of educational corporations.
- (11) Dissolution, liquidation, or consolidation of corporations.
- (12) Forfeiture of contraband property.
- (13) Habeas corpus.
- (14) Impeachment.
- (15) Injunctions by or in the name of the state, or by or against a state agency, agent thereof, or a state official.
- (16) Injunctions by or against a municipality or against its officers, agents or employees.

(17) Insolvent banks.

(18) Liquidation of the assets of a public warehouse.

(19) Mandamus, prohibition, certiorari and other remedial writs of a supervisory nature.

(20) Negligence action against a municipality.

(21) Proceedings in rem to establish title to land.

(22) Protection of estates of intemperates or inebriates.

(23) Quo warranto or actions in the nature thereof.

(24) Redemption of real estate.

(25) Relieving disabilities of non-age.

(26) Removal of property of a minor or a trust estate to this state or to another state.

(27) Substitution of a lost or destroyed record or instrument.

(28) Summary motion proceedings under Title 6, Chapter 6, Article 16, Code of Alabama 1975.

(29) Vacating and annulling maps, plats, streets, alleys and roads.

(30) Validation of obligations.

(31) Workers' compensation.

(32) All other actions or proceedings removed, appealed, taken by certiorari or otherwise brought into the courts enumerated in Rule 1. The applicability of these rules as provided in this subdivision (a) shall not affect the scope of review or hearing.

(b) *Applicability to tribunals other than courts.* These rules are not applicable to any proceeding in which the adjudication of the controversy is by any selected individual or individuals, by any official or officials, or by an administrative agency or official body of any kind, other than the courts

enumerated in Rule 1. Any statute applicable to such a proceeding, in effect at the date of approval or enactment otherwise into law of these rules, and adopting circuit court procedures therefor, in whole or in part, shall be understood to refer to these rules.

(c) *Scire facias abolished.* The writ of scire facias is abolished. Relief heretofore available by scire facias may be obtained by appropriate action or appropriate motion under the practice prescribed in these rules.

(d) *Office of register preserved.* Nothing in these rules shall be construed as abrogating the office of the register; whenever “clerk” is referred to in these rules, the term shall include the register. “Court” and “judge” as used in these rules and the language of Rule 77(c) shall not be construed to prevent the register from performing any judicial or quasi-judicial function authorized outside these rules.

(e) *Modernization of terminology.* Any device or procedure referred to in any decision, statute, or rule, shall be taken and understood to mean the device or procedure proper under these rules; thus, and these examples are intended in no way to limit the applicability of this general statement:

“Bill of complaint,” “bill,” or “bill in equity” shall mean a complaint as specified in these rules;

“Plea in abatement” shall be understood to mean “motion”;

“Demurrer” shall be understood to mean “motion to dismiss for failure to state a claim” or “motion to strike an insufficient defense” as set out in Rule 12;

“Plea” shall mean “motion” or “answer” whichever is appropriate under these rules;

“Plea of set-off” or “set-off” shall be understood to mean a permissive counterclaim;

“Plea of recoupment” or “recoupment” shall refer to a compulsory counterclaim;

“Cross-bill” shall be understood to refer to a counterclaim, a cross-claim, or a third-party complaint, whichever is appropriate under these rules;

“Revivor,” “revive,” or “revived,” used with reference to actions, shall refer to the substitution procedure set out in Rule 25;

“Decree pro confesso” shall be understood to mean entry of default as provided in Rule 55;

“Decree” shall mean a judgment, as defined in Rule 54;

“Scire facias” or “writ of scire facias” shall be understood to mean a motion or action under these rules, as provided in subdivision (c) of this Rule;

“Rendition,” or “render” or “rendered” with reference to a judgment, order, or decree shall be understood to mean “entry” of the judgment or order as provided in Rule 58(c); so that all applicable statutes outside of these rules, attaching legal consequence to the “rendition” of a judgment, order, or decree, may be harmonized with Rule 58(c).

References in these rules to title and section of “Code of Ala.” or “Code of Alabama 1975” primarily refer to title and section of the Code of Alabama 1975 as last amended when these rules were revised in 1995. References in “Committee Comments on 1973 Adoption” to title and section of Code of Ala. or Code of Alabama primarily refer to title and section of the Code of Alabama 1940 (Recomp. 1958) as last amended when these rules were adopted.

(dc) *District court rule.* Rule 81 applies in the district courts except that reference to all proceedings other than actions based on negligence against municipalities, actions seeking substitution of lost or destroyed records or instruments, summary motion proceedings, or proceedings relieving disabilities of non-age are deleted.

[Amended eff. 10-1-95.]

Committee Comments on 1973 Adoption

While Rule 1 deals in general terms with the applicability of these rules to certain courts, this Rule treats the applicability of these rules in certain specialized proceedings. Because court structures in Alabama differ from those in the Federal system, this Rule contains little of the language of Federal Rule 81. Subsequent notes indicate the rare instances in which the language is taken from Federal Rule 81.

Rule 81(a) contains a catalog of proceedings which, in varying degrees, contain within themselves a certain procedural provision. Rule 81(a) does not purport to make these proceedings exempt from the operation of the rules, but rather, this provision alerts the practitioner to the fact that statutory requirements within these proceedings which may be inconsistent with these rules should be consulted as these statutory requirements govern. Unless specific statutory provision requires otherwise, portions of these rules not inconsistent or rendered impracticable by the terms of the statutes, are available. The rationale for the inclusion of these proceedings for special treatment is based upon (1) the statutory procedures for such a proceeding embodied some policy justifying retention, but conflicting in some respect with these rules, or (2) the proceeding was statutory in nature and, as such, it was doubtful whether it would be considered a suit of a civil nature cognizable at law or in equity under Rule 1, to which these rules would apply at all, unless listed here. A number of proceedings which might be termed special proceedings were not listed because the statutory procedures to be retained conflicted in no way with these rules and because there was no doubt that the proceeding was the suit of a civil nature under Rule 1, to which the rules would apply in their entirety. For example, detinue, ejectment, divorce.

The proceedings enumerated in Rule 81(a) are not routine or common in most law suits so that the retention of existing statutory procedures in those areas where inconsistent with the rules should not interfere in any serious way with uniformity and application of the rules in the circuit court or court of full, like, civil jurisdiction.

Subdivision 81(a)(32) makes the rules applicable to any civil action, administrative proceeding, or statutory proceeding of any sort from and after its entrance into the circuit court, except to the extent that procedures are specified by statute. The language is designed to accommodate the rules to the existing statutory procedures for review by the circuit court of such varied proceedings as a hearing before the bureau of loans, Code of Ala., § 5-2-82, the dairy commission, Code of Ala., § 2-13-63, a city governing body, Code of Ala., § 11-48-36 et seq., the public service commission, Code of Ala., § 37-4-63, the probate court, Code of Ala., § 43-1-78 et seq., etc. In these, and any other proceeding wherever it originates, relevant statutory procedures are to be followed, with these rules applicable otherwise, from and after the time when the proceeding enters the circuit court. The method by which the proceeding gets into the circuit court is immaterial, whether by certiorari, appeal, removal, or by commencing a direct action in such court to secure the review. The application of these rules to the extent provided by this subdivision will not affect in any way the scope of the review or hearing in the circuit court which will remain as heretofore. This is spelled out specifically in the last sentence of this subdivision.

Statutory references have been compiled by the Reporter and are set out below:

- (1) Abatement of nuisances. Code of Ala., §§ 6-5-140 through 6-5-154.
- (2) Administration of trust for payment of security of debts. Code of Ala., §§ 19-3-20 through 19-3-41.
- (3) Claim and contest of exemptions. Code of Ala., §§ 6-10-20 through 6-10-43.
- (4) Condemnation under Code of Ala., § 2-2-31.
- (5) Contest of probate of will, Code of Ala., §§ 43-1-70 through 43-1-74.
- (6) Contested elections, Code of Ala., §§ 17-15-1 through 17-15-63.
- (7) Correction of errors in the Probate Court. Code of Ala., §§ 12-11-60 and 12-11-61.
- (8) Delayed birth certificate. Code of Ala., § 22-9-35.
- (9) Determination of paternity of illegitimates. Code of Ala., §§ 26-12-1 through 26-12-9.
- (10) Disposition of property of educational corporations. Code of Ala., §10-4-82.
- (11) Dissolution, liquidation or consolidation of corporations. Code of Ala., §§ 10-2-180 through 10-2-212.
- (12) Forfeiture of contraband property. Code of Ala., § 28-4-282.
- (13) Habeas corpus. Code of Ala., §§ 15-21-1 through 15-21-34.
- (14) Impeachment. Code of Ala., §§ 36-11-1 through 36-11-25.
- (15) Injunctions by or in the name of the state, or by or against a state agency, agent thereof, or a state official. Code of Ala., §§ 6-5-1 et seq.
- (16) Injunctions by or against a municipality or against its officers, agents or employees. Code of Ala., § 6-6-502.
- (17) Insolvent banks. Code of Ala., §§ 5-10-20 through 5-10-56.

14. (18) Liquidation of the assets of a public warehouse. Code of Ala., § 8-15-

(19) Mandamus, prohibition, certiorari and other remedial writs of a supervisory nature. Code of Ala., §§ 6-6-640 through 6-6-642.

(20) Negligence action against a municipality. Code of Ala., §§ 11-47-190 and 11-47-191.

(21) Proceedings in rem to establish title to land. Code of Ala., §§ 6-6-560 through 6-6-573.

(22) Protection of estates of intemperates or inebriates. Code of Ala., §§ 6-6-520 through 6-6-526.

(23) Quo warranto or actions in the nature thereof. Code of Ala., §§ 6-6-590 through 6-6-604.

(24) Redemption of real estate. Code of Ala., §§ 6-5-230 through 6-5-246.

(25) Relieving disabilities of non-age. Code of Ala., §§ 26-13-1 through 26-13-8.

(26) Removal of property of a minor or a trust estate to this state or to another state. Code of Ala., §§ 19-3-190 through 19-3-192 and 26-8-40 through 26-8-52.

(27) Substitution of a lost or destroyed record or instrument. Code of Ala., §§ 12-20-26 through 12-20-32 and 12-20-50.

(28) Summary motion proceedings under Code of Ala., §§ 6-6-69, 6-6-254, 6-6-660 through 6-6-663, 6-6-680 through 6-6-684, 6-6-700, 6-6-720 through 6-6-723, 6-6-740, 6-9-121, 8-3-42 and 12-19-50.

(29) Vacating and annulling maps, plats, streets, alleys and roads. Code of Ala., §§ 35-2-50 through 35-2-62.

(30) Validation of obligations. Code of Ala., §§ 6-6-750 through 6-6-757.

(31) Workmen's compensation. Code of Ala., §§ 25-5-1 et seq.

Subdivision (c) is taken from Federal Rule 81(b). It differs from that rule in that it abolishes only the writ of scire facias; the federal rule abolishes both scire

facias and mandamus. Since the common law technicalities in the use of the writ of mandamus generally are eliminated by our statutes, Code of Ala., §§ 6-6-640 through 6-6-642, this procedure is omitted from this subdivision and is recognized as still in effect by subdivision (a)(19) of this rule. This subdivision substitutes an appropriate motion or action under these rules for the writ of scire facias, and abolishes that writ because of the unnecessary technicalities surrounding its use, e.g., *Waddill v. John*, 48 Ala. 232 (1872), and because it becomes obsolete as a device to revive an action due to Rule 25, which employs a simple motion for substitution for the purpose.

Subdivision (d) preserves the office of the register, separate and distinct from that of the clerk, as under present practice. Since Rule 2 abolishes the procedural distinctions between law and equity, Rule 79(f) sets up the administrative machinery to reconcile these two propositions. This subdivision also makes it clear that the register will continue to exercise traditional quasi-judicial functions wherever authorized to do so by statute or common law. Some of these traditional duties formerly appeared in codified form in the Equity Rules. Preservation of these traditional quasi-judicial functions of the Register under this subdivision have permitted all of the old Equity Rules to be superseded. Where the term “clerk” is used throughout these rules, that term includes the register, as provided in this subdivision.

Subdivision (e) modernizes terminology. This method has been chosen in order to eliminate the necessity for rewriting numerous statutes when the statute or rule is not changed in its substance at all, but contains some term or terms which are inappropriate under the Rules.

Committee Comments to October 1, 1995, Amendment to Rule 81

The amendment is technical. No substantive change is intended.

District Court Committee Comments

Section 12-12-30(2), Code of Ala., specifically preserves the categories of actions enumerated in Rule 81(dc) for district court jurisdiction.