

Alabama Rules of Civil Procedure

XI. GENERAL PROVISIONS

Rule 82.

Jurisdiction and venue.

(a) *Jurisdiction unaffected.* These rules shall not be construed to extend or limit the jurisdiction of the courts of Alabama.

(b) *Venue of actions.* Venue of actions shall not be affected by these rules except as the statute for venue for actions against individuals at law (§ 6-3-2(a)) and the statute for venue for actions against individuals in equity (§ 6-3-2(b)) are inconsistent. Such inconsistencies are resolved as follows:

(1) AGAINST RESIDENT INDIVIDUALS. Actions against an individual or individuals having a permanent residence in this state:

(A) Must be brought in the county where the defendant or any material defendant resides at the commencement of the action, except that if the action is a personal action other than an action on a contract, it may be brought either in the county where the act or omission complained of occurred, or in the county of the permanent residence of the defendant or one of them;

(B) Must, if the subject matter of the action is real estate, whether or not exclusively, or if it is for recovery or the possession thereof or trespass thereto, be brought in the county where the real estate or a material portion thereof is situated.

(2) AGAINST NONRESIDENT INDIVIDUALS. Actions against nonresident individuals may be brought in any county of the state where such nonresident is found, or in the county where the subject of the action or portion of the same was when the claim for relief arose or the act on which the action is founded occurred or was to be performed.

(3) GENERAL PROVISIONS. An action may be brought in any county other than as provided in this subdivision when a statute so provides.

(c) *Venue where claim or parties joined.* Where several claims or parties have been joined, the suit may be brought in any county in which any one of the claims could properly have been brought. Whenever an action has been commenced in a proper county, additional claims and parties may be joined, pursuant to Rules 13, 14, 22, and 24, as ancillary thereto, without regard to whether that county would be a proper venue for an independent action on such claims or against such parties.

(d) *Improper venue.*

(1) AS OF THE COMMENCEMENT OF THE ACTION. When an action is commenced laying venue in the wrong county, the court, on timely motion of any defendant, shall transfer the action to the court in which the action might have been properly filed and the case shall proceed as though originally filed therein.

(2) AFTER COMMENCEMENT OF THE ACTION.

(A) Voluntary Dismissal. When a defendant whose presence made venue proper as to the entire action at the time of the commencement of the action is subsequently dismissed on notice or motion of the plaintiff, the court, on motion of less than all remaining defendants, in its discretion, may, and on motion of all remaining defendants, shall transfer the action to a court in which the action might have been properly filed had it been initially brought against the remaining defendants alone; provided, however, in the event that a pro tanto settlement between the plaintiff and a defendant is the basis for the dismissal of that defendant, the action shall not be transferred unless the court, in its discretion, has determined that the primary purpose of the pro tanto settlement was an attempt to defeat the right to transfer that would have otherwise existed had there been a dismissal of that defendant without such settlement.

(B) Involuntary Dismissal. When a defendant whose presence made venue proper as to the entire action at the time of the commencement of the action is subsequently dismissed on motion of that defendant, and such dismissal has been made a final judgment as to that defendant pursuant to Rule 54(b), the court, on motion of less than all remaining defendants, may, in its discretion, and, on motion of all remaining defendants, shall transfer the action to a court in which the action might have been properly filed had it been initially brought against the remaining defendants alone, provided that any such motion is served prior to commencement of trial and after said order of dismissal has become final by appeal or expiration of time for appeal.

(C) Timeliness of Motion.

(i) Voluntary dismissal. A motion to transfer after voluntary dismissal of a party shall be served as soon as practicable if the action has been set for trial within less than thirty (30) days of the dismissal or if the trial of the action has commenced; and, in all other instances, within thirty (30) days after the plaintiff serves a notice of the voluntary dismissal on all other parties and files a copy of the notice with the clerk.

(ii) Involuntary dismissal. A motion to transfer after involuntary dismissal of a party shall be served, in all events, prior to the commencement of trial, and as soon as practicable if the action has been set for trial within less than thirty (30) days of the finality by appeal or expiration of the time for appeal of the order of dismissal; and, in all other instances, within thirty (30) days after the plaintiff serves on all other parties a notice of the finality of the order of dismissal and files a copy of the notice with the clerk.

(iii) Waiver. A defense of improper venue under this rule is waived if a motion to transfer is not served within the time limits of subsections (d)(2)(c)(i)-(ii) of this rule.

(3) PROCEDURE ON TRANSFER. In the event the venue of the action is or has become improper and venue is appropriate in more than one other court, a defendant sued alone or multiple defendants, by unanimous agreement, shall have the right to select such other court to which the action shall be transferred and, where there are multiple defendants who are unable to agree upon a transferee court, the court may transfer the action to any such other court. Transfer of the action and notice thereof shall be in accord with § 6-3-22, Code of Alabama 1975. Alternatively, the clerk may electronically transfer the case file, including the docket sheet, together with all orders, pleadings, motions, or other papers in the action through the State Judicial System's e-filing system. The clerk of the court to which the action has been transferred shall provide notice of the transfer to all parties of record as provided in the Alabama Rules of Civil Procedure.

(4) FICTITIOUS PARTIES. No defendant still designated as a fictitious party pursuant to Rule 9(h) 75 days after the filing of a motion to transfer shall be considered for the purpose of deciding the correct venue of the action.

(dc) *District court rule.* Rule 82 applies in the district courts, except that 1) it is limited by § 4-107 of the Judicial Article Implementation Act (Act 1205, 1975 Ala.Acts; § 12-12-36, Code of Alabama 1975) and 2) the reference in (c) to Rule 14 is omitted so that (c) will be unavailable in third-party actions in the district court.

[Amended 1-4-82, eff. 3-1-82; Amended 5-16-83, eff. 7-1-83; Amended 1-6-87, eff. 9-1-87; Amended eff. 10-1-95; Amended 12-6-2012, eff. 1-1-2013.]

Committee Comments on 1973 Adoption

Subdivision (a). These rules are not intended to alter in any way the jurisdiction of Alabama courts. The subdivision sets out a rule of construction to ensure that they will not be held to have made any change in jurisdictional requirements.

Subdivision (b). It is not possible to preserve unchanged existing Alabama law as to venue. The general venue statute dealing with actions at law, Code 1940, Tit. 7, § 54, differs from the venue statute covering suits in equity, Code 1940, Tit. 7, § 294. [See now, Code of Ala., § 6-3-2, which combined and modified former Tit. 7, §§ 54 and 294.] Since law and equity are merged by these rules, it is necessary to provide one rule as to venue which will resolve such differences. This subdivision is intended to have that effect. The two statutes have been reconciled, and the more liberal provision as to venue in any particular situation has been incorporated into this rule. Of course, this Rule 82(b) applies only to individuals, not corporations or other entities unless multiple claims against parties are involved. See Rule 82(c).

Subdivision (b)(1). The provision of clause (A), allowing suit in the county where a defendant resides, is common to both the law and equity venue statutes. The “material defendant” language has been incorporated from the equity statute to prevent a plaintiff from joining a nominal defendant for the express purpose of shifting the venue of the action. A “material defendant” has been defined as meaning “one against whom some relief is sought.” *Wilson v. Wilson*, 246 Ala. 346, 20 So.2d 452 (1945).

Clause (A), allowing actions, other than those on a contract, to be brought in the county where the claim arose, adopts the broader law provision rather than the restrictive equity provision. The law provision seems preferable because in tort cases the county where the claim arose will frequently be most convenient for witnesses, for a view by the jurors, etc. There is less necessity for allowing an alternate venue in contract actions, and the general policy of Alabama legislation

has been to make a defendant subject to suit only in the county where he resides, except where there is a good reason why he should be sued elsewhere. *Ashurst v. Gibson*, 57 Ala. 584 (1877).

Clause (B) incorporates provisions of both venue statutes as they apply to specific actions involving land.

Subdivision (b)(2). This states the rule heretofore followed in actions at law, that a suit against a nonresident may be brought in any county where he is found and served with process, or where he enters an appearance. *Steen v. Swadley*, 126 Ala. 616, 28 So. 620 (1900); *Jefferson County Savings Bank v. Carland*, 195 Ala. 279, 71 So. 126 (1916); *Conner v. Willet*, 265 Ala. 319, 91 So.2d 225 (1956). This subdivision has no application to suits against foreign corporations, as to which venue will continue to be governed by Code 1940, Tit. 7, § 60.

Subdivision (b)(3). This subdivision preserves existing venue statutes, other than the general law and equity venue statutes, Code 1940, Tit. 7, §§ 54, 294, [see Code of Ala., § 6-3-2], and permits suit in any county, other than as provided in Rule 82(b), where a statute so provides.

Subdivision (c). These rules provide for a more liberal joinder of claims and of parties than has hitherto been possible in Alabama. These joinder provisions will be greatly restricted if venue must be proper as to every claim and every party which is joined, and authorization of liberalized joinder having been contemplated by the enabling act, such restriction is not considered to have been intended by the legislature. The correct principle seems to be that once venue is properly laid, other claims and parties may be joined as ancillary to the original action regardless of venue requirements. *Lesnik v. Public Industrials Corp.*, 144 F.2d 968 (2d Cir.1914); *Lone Star Package Car Co. v. Baltimore & O.R. Co.*, 212 F.2d 147 (5th Cir.1954); *Lacewell v. Griffin*, 214 Ark. 909, 219 S.W.2d 227 (1949); 3 Moore's *Federal Practice*, § 14.28(2) (2d ed.1948); 1 Barron & Holtzoff, *Federal Practice and Procedure*, § 424 (1950); Wright's *Minnesota Rules* 24 (1956 Cum.Supp.). But cf. Tex.R.C.P. 38; *Union Bus Lines v. Byrd*, 178 S.W.2d 544 (Tex.Civ.App.1943), certified questions answered 142 Tex. 257, 177 S.W.2d 774. Since the ancillary concept is somewhat "amorphous", subdivision (c) has been added to clarify its application to venue requirements.

It should be noted that subdivision (c) cannot be applied in a suit against a foreign corporation so as to violate the constitution. Const.1901, § 232, providing that a foreign corporation may be sued in any county in which it does business, has been held to be mandatory and restrictive, and not merely permissive. *May*

v. Strickland, 235 Ala. 482, 180 So. 93 (1938). And this has been interpreted to mean that where a foreign corporation and another defendant are sued together, suit in a county where the foreign corporation does not do business is improper, even though the county was a proper venue as to the other defendant. *Alabama Warehousing Company v. Hyatt*, 26 Ala.App. 117, 154 So. 313 (1934). Rule 82(c) cannot alter this holding. But in a similar situation, the rule will permit suit to be brought in a county where the foreign corporation does business even though that county would not have been a proper venue as to other parties which are not foreign corporations. Severance and transfer may be necessary with respect to the addition of a foreign corporation as a party pursuant to the second sentence.

Subdivision (d). Dismissal of an action because venue is improper, when there is some other county in the state where venue would be proper, is a wasteful procedure, resulting only in delay and expense. This subdivision provides that the court where the action was brought must transfer the action to the proper county. The subdivision is based on Tit. 7, § 64(1) which calls for similar action upon successful attack on venue.

It should be noted that subdivision (d) has nothing to do with the doctrine of forum non conveniens. Rule 82(d) applies only where the original venue was not proper.

Committee Comments to the Amendment Effective March 1, 1982

The revision of Rule 82(d) arises from dissatisfaction with the rules' failure to treat the problem of transfer of venue except in the context of defective venue as of the commencement of the action. The Committee has concluded that it lacks any authority to make a recommendation which would lead to a change in the venue laws as they relate to the proper forum in which to commence an action. The Committee further has substantial reservations about its involvement in a proposal to create a transfer of venue simply for convenience of parties and witnesses. However, the Committee did see a legitimate avenue of needed reform in connection with provision for transfers of venue in a context where venue was appropriate at the time of the commencement of the action, but subsequent developments have caused the party whose presence made venue appropriate to be dismissed from the proceeding. It is within that narrow area that the revision to Rule 82 functions.

The rule is drawn so as to permit transfer in the event the plaintiff entered into a voluntary dismissal of the defendant or defendants whose presence made venue proper in the court in which the action was filed. Such transfer could occur

at any time, even during trial, except when the dismissal is a part of a bona fide pro tanto settlement.

The revision also contemplates the transfer of the action when there has been an involuntary dismissal of the defendant whose presence made venue appropriate as of the commencement of the action. However, such transfer cannot occur unless the order of dismissal has become final either by appeal or the expiration of the time for the taking of an appeal. Consequently, the granting of a motion for directed verdict during trial would not give rise to the basis for a transfer under Rule 82(d)(2)(B).

The revision treats the procedure for selection of the forum to which an action should be transferred. The transferee forum should be one in which the venue is appropriate. If the defendants are unable to agree unanimously on an appropriate transferee forum, then the court, in its discretion, may make a designation of the transferee court in which venue is appropriate. Note that it is not necessary in a transfer after a dismissal of the defendant whose presence made venue appropriate as of the commencement of the action, for all defendants to join in the motion. The court may, in its discretion, transfer the action even over the objection of some of the defendants.

So as to eliminate any potential for abuse by reason of undue delay in seeking a transfer which becomes available under Rule 82(d)(2), certain time limits in which action must be taken are prescribed by Rule 82(d)(2)(c). Where the basis for transfer arises from a voluntary dismissal by the plaintiff, Rule 82(d)(2)(A), a thirty-day time limit applies unless the trial of the case is less than thirty days away or the trial of a case has in fact commenced and, in those contexts, the motion must be made as soon as practicable. Where the basis for transfer becomes available upon an involuntary dismissal, Rule 82(d)(2)(B), a thirty-day time limit applies from the date that the right to transfer becomes available unless the trial of the case is less than thirty days away and, in that context, the motion must be made as soon as practicable. Rule 82(d)(2)(B) requires that such motion must be served prior to the commencement of trial and, consequently, a motion to transfer which is served after that point cannot, by the express terms of the foregoing provision of Rule 82(d)(2)(B), be treated as having been filed "as soon as practicable." Thus, should the requisite time for finality of an involuntary dismissal fall subsequent to the date upon which the case is set for trial, a motion to transfer would be unavailable.

**Committee Comments to Rule 82(d)(2)(c) as Amended
Effective September 1, 1987**

Prior to this amendment, the time requirements contained in these subsections were triggered by the order of dismissal. Experience proved that such orders in some circuits were not forwarded to all parties in the action. Consequently, the committee determined that this amendment was in order so that all parties might receive timely notice of the dismissal of a defendant and so that the time for seeking a change of venue might be triggered by the filing of such a formal notice. This is a procedure similar to the procedure employed under Rule 25 dealing with substitution following the death of a party. Under the amended rule, a motion for transfer may also be filed following the dismissal of a defendant even though a notice of dismissal has not yet been filed by the plaintiff.

**Committee Comments to Rule 82(d)(4) added by amendment
Effective September 1, 1987**

In *Ex parte Smith*, 423 So.2d 844 (Ala.1982), the Supreme Court held that Rules 9 and 82, as then written, did not preclude consideration of fictitious parties in determining the propriety of venue under certain circumstances. Specifically, Smith held that the amendment of a complaint to substitute a real party for a fictitious party related back to the time of the commencement of the action and thus cured a venue defect that existed with reference to the real parties as of the time of the commencement of the action. The addition of subparagraph (4) to Rule 82(d) serves to permit the continued consideration of fictitious parties in determining the propriety of venue for up to 75 days after the filing of a motion to transfer. This amendment eliminates consideration of fictitious defendants in determining the correctness of venue after the expiration of 75 days from the filing of a motion to transfer. Thus, the actual party must be substituted for a fictitious party within 75 days from the filing of a motion to transfer in order for the fictitious party to affect the venue of the action.

**Committee Comments to October 1, 1995,
Amendment to Rule 82**

The amendment replaced the citation to the Code of Alabama 1940 (Recomp. 1958) with a citation to the corresponding section of the Code of Alabama 1975.

**Committee Comments to Amendment to
Rule 82(d)(3) Effective January 1, 2013**

The amendment to Rule 82(d)(3) provides for electronically transferring case files in accord with current practice.

**District Court Committee Comments
(Effective July 1, 1983)**

The initial version of Rule 14(dc) eliminated third-party practice from district courts on the premise that the concept of pendent venue provided for in Rule 82(c) should not be available in actions limited to a value of \$5,000. The July 1, 1983, revision of Rule 14(dc) to allow third-party practice meets a criticism of the earlier version of that rule, which had withheld the availability of third-party practice in district courts even where venue was otherwise proper as to the third-party defendant. With the July 1, 1983, revision of Rule 14(dc) and the companion revision of Rule 82(dc), third-party practice is proper in the district court when venue as to the third-party claim exists independently of venue as to the main action.

Note from the reporter of decisions: The order amending, effective January 1, 2013, Rule 1(a), Rule 45(b)(1), and Rule 82(d)(3), and adopting effective January 1, 2013, Rule 58(d) and the Committee Comments to the Amendment to Rule 1(a) Effective January 1, 2013, the Committee Comments to the Amendment to Rule 45(b)(1) Effective January 1, 2013, the Committee Comments to the Adoption of Rule 58(d) Effective January 1, 2013, and the Committee Comments to the Amendment to Rule 82(d)(3) Effective January 1, 2013, are published in that volume of *Alabama Reporter* that contains Alabama cases from ___ So. 3d.