

Alabama Rules of Evidence

Article I. General Provisions

Rule 106.

Remainder of writings or recorded statements.

When a party introduces part of either a writing or recorded statement, an adverse party may require the introduction at that time of any other part of the writing or statement that ought in fairness to be considered contemporaneously with it.

Advisory Committee's Notes

This rule constitutes a specialized application of the common law completeness doctrine. See 7 J. Wigmore, *Wigmore on Evidence* § 2113 (Chadbourn rev. 1978). When one party introduces a portion of a writing or a recorded statement, it is deemed only fair that the adverse party be allowed to have admitted any other part of the writing or recorded statement that in fairness ought to be considered. Rule 106 constitutes a rejection of that portion of the corresponding federal rule that expands the historic doctrine of completeness to include the admission of any additional writing or recorded statement that ought in fairness to be considered contemporaneously with an already admitted writing or recorded statement. See *Fed.R.Evid.* 106.

The doctrine of completeness has traditionally been recognized in Alabama law. *Coleman v. Sparkman*, 370 So.2d 977 (Ala.1979); C. Gamble, *McElroy's Alabama Evidence* § 316.01 (4th ed. 1991). With regard to completeness of depositions, Rule 106 is virtually a restatement of Ala.R.Civ.P. 32(a)(4), which provides that if only part of a deposition is offered in evidence by a party, then an adverse party may require the party introducing it to introduce all of it that ought in fairness to be considered with the part introduced. Both this Rule 106 and Ala.R.Civ.P. 32(a)(4) vest in the trial judge considerable discretion to determine what "in fairness" ought to be considered with the part introduced. See *Hargress v. City of Montgomery*, 479 So.2d 1137 (Ala.1985).

Rule 106 applies only to writings and recorded statements or parts thereof. This rule is not intended to affect preexisting Alabama applications of the completeness doctrine that lie outside the confines of Rule 106. The rule, for example, has no impact upon instances when the completeness doctrine is applied to unrecorded conversations. A prominent example of such an application, having continuing existence after adoption of Rule 106, is the rule that if one party proves any part of an unrecorded oral conversation or oral statement, the other party has the right to prove the relevant remainder of it. *Abram v. State*, 574 So.2d 986 (Ala.Crim.App.1990); *Stockard v. State*, 391 So.2d 1049 (Ala.Crim.App.1979), rev'd, 391 So.2d 1060 (Ala.1980).

Another completeness principle lying outside of Rule 106 is that under which a party, whose admission has been admitted against him or her, may prove all that was said at the same time as the admission and on the same subject. *Bank of Loretto v. Bobo*, 37 Ala.App.

139, 67 So.2d 77, cert. denied, 259 Ala. 374, 67 So.2d 90 (1953); C. Gamble, McElroy's Alabama Evidence § 180.01(8) (4th ed. 1991).

In addition to specifying evidence that should be admitted as part of the doctrine of completeness, Rule 106 contains a provision regarding timeliness. The adverse party may require that the evidence needed to provide fairness be admitted at the time the initial evidence is admitted. Compare Ala.R.Civ.P. 32(a)(4). This allowance is afforded in the belief that delay in providing completeness evidence will render it less effective. This rule of contemporaneous admission in no way limits the right of the adverse party to go into the same matter on cross-examination of the witness or to offer evidence on the same matter as part of the adverse party's own case. See Fed.R.Evid. 106 advisory committee's note.