



IN THE SUPREME COURT OF ALABAMA

July 15, 2024

ORDER

IT IS ORDERED that Rule 106, Alabama Rules of Evidence, be amended to read in accordance with Appendix A to this order;

IT IS FURTHER ORDERED that the Advisory Committee's Notes to Amendment to Rule 106 Effective July 15, 2024, be adopted to read in accordance with Appendix B to this order;

IT IS FURTHER ORDERED that the amendment of Rule 106 and the adoption of the Advisory Committee's Notes thereto are effective immediately; and

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 106:

"Note from the reporter of decisions: The order amending Rule 106, Alabama Rules of Evidence, and adopting the Advisory Committee's Notes thereto, effective July 15, 2024, is published in that volume of *Alabama Reporter* that contains Alabama cases from __ So. 3d."

Parker, C.J., and Shaw, Wise, Bryan, Sellers, Mendheim, Stewart, Mitchell, and Cook, JJ., concur.

Witness my hand and seal this 15th day of July, 2024.

Megan B. Rhodeseck

**Clerk of Court,
Supreme Court of Alabama**

**FILED
July 15, 2024**

**Clerk of Court
Supreme Court of Alabama**



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APPENDIX A

Rule 106. REMAINDER OF STATEMENTS

If a party introduces part of any statement, an adverse party may require the introduction at that time of any other part of the statement that in fairness ought to be considered at the same time. The adverse party may do so over a hearsay objection.



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APPENDIX B

Advisory Committee's Notes to Amendment to Rule 106 Effective July 15, 2024

Rule 106 has been amended to follow two amendments to the corresponding federal rule that became effective December 1, 2023. First, the newly added final sentence to Rule 106 clarifies that if the existing fairness standard requires completion, the completing statement is admissible over a hearsay objection. This amendment is consistent with traditional Alabama law. See, e.g., 1 Charles W. Gamble et al., *McElroy's Alabama Evidence* § 14.03(3) (7th ed. 2020); Charles W. Gamble et al., *Gamble's Alabama Rules of Evidence* § 106(a) (3d ed. 2014) ("One party may not introduce a portion of a conversation and then object to the opponent's offer of the remainder as violative of the hearsay rule."). As aptly noted by the drafters of the corresponding federal amendment,

"the rule of completeness, grounded in fairness, cannot fulfill its function if the party that creates a misimpression about the meaning of a proffered statement can then object on hearsay grounds and exclude a statement that would correct the misimpression. ... A party that presents a distortion can fairly be said to have forfeited its right to object on hearsay grounds to a statement that would be necessary to correct the misimpression."

Advisory Committee Notes to 2023 Amendments to Rule 106, Fed. R. Evid.

Second, while Rule 106 was previously limited to writings and recorded statements, it "has been amended to cover all statements, including oral statements that have not been recorded." *Id.* Applying the completeness doctrine to unrecorded oral statements is not new to Alabama law, because such statements have been covered by Alabama's common-law completeness doctrine before and after adoption of the Alabama Rules of Evidence. 1 Gamble et al., *McElroy's Alabama Evidence* §§ 14.03(1) and (2). One change created by this amendment is



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that the timeliness provision of Rule 106 now applies to unrecorded oral statements. If a party introduces part of any statement, whether recorded or not, the adverse party may require introduction of the remainder of the statement at the same time as the admitted portion if the trial judge determines in his or her discretion that they should be considered together. Of course, the adverse party may instead choose to prove the remainder of the statement later in the trial, such as on cross-examination or during the adverse party's case-in-chief.

As observed by the drafters of the amendment to the corresponding federal rule,

"[a] party seeking completion with an unrecorded statement would of course need to provide admissible evidence that the statement was made. Otherwise, there would be no showing that the original statement is misleading, and the request for completion should be denied. In some cases, the court may find that the difficulty in proving the completing statement substantially outweighs its probative value -- in which case exclusion is possible under Rule 403[, Fed. R. Evid.]"

Advisory Committee Notes to 2023 Amendments to Rule 106, Fed. R. Evid. In addition,

"[t]he amendment does not give a green light of admissibility to all excised portions of statements. It does not change the basic rule, which applies only to the narrow circumstances in which a party has created a misimpression about the statement, and the adverse party proffers a statement that in fact corrects the misimpression. The mere fact that a statement is probative and contradicts a statement offered by the opponent is not enough to justify completion under Rule 106. So, for example, the mere fact that a defendant denies guilt before later admitting it does not, without more, mandate the admission of his previous denial. *See United States v. Williams*, 930 F.3d 44 (2d Cir. 2019)."



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Id.

Finally, some stylistic changes were made to Rule 106 to make it more consistent with stylistic changes to the corresponding federal rule that became effective December 1, 2011. Most notably, the rule's original language, "contemporaneously with it," has been replaced with "at the same time." Alabama continues to reject the portion of the corresponding federal rule that would allow the adverse party to secure admission of an entirely separate statement.