

Alabama Rules for Expedited Civil Actions

Introduction.

The Alabama Rules for Expedited Civil Actions were drafted at the request of the Alabama Legislature that the Alabama Supreme Court adopt procedures "to promote the prompt, efficient, and cost-effective resolution of civil actions" in certain civil cases. Act No. 2012-492, Ala. Acts 2012, codified at Ala. Code 1975, § 6-1-3. Pursuant to this request, and by the power bestowed upon the Supreme Court of Alabama by Article VI, § 150, Alabama Constitution of 1901, a task committee and the Supreme Court Standing Committee on the Alabama Rules of Civil Procedure drafted proposed rules, which were submitted to the bench and bar for comment in the January 2014 volume of The Alabama Lawyer. The Alabama Supreme Court, after further consideration and revision, has adopted these Rules to establish a voluntary, efficient, and just procedure to expedite civil actions to which these Rules apply.

Rule A. Scope of Rules.

These Rules shall be known and cited as the "Alabama Rules for Expedited Civil Actions" and are intended to create a voluntary process to promote the just and efficient determination of the cases to which they apply. These Rules apply to civil actions in the circuit court where the damages are limited to \$50,000 and the parties agree to the assignment of the action to an expedited track, pursuant to Rule B or C, except actions involving: (1) domestic relations or family law, (2) real-property law, (3) tax law, (4) workers' compensation claims, and (5) claims as to which no money damages are sought. The circuit court shall enter a scheduling order in every civil action assigned to the expedited track, which shall incorporate the deadlines in the Expedited Scheduling and Discovery Order (Form 1, attached to these Rules), except as may be modified by the circuit court for good cause.

Comments

These Rules apply to civil actions in which the claim asserted is limited to \$50,000, inclusive of interest, costs, and attorney fees. Such actions, with the consent of all parties, are to be handled on an expedited track intended to resolve the claim in an efficient and expedited, but just,

manner. The types of cases specifically excluded from the expedited track are listed in Rule A.

Rule B. Assignment to or Removal of the Action from the Expedited Track and Objections Thereto.

(1) Assignment of the Action to the Expedited Track May Be Sought in the Original Complaint. A plaintiff seeking to proceed under these Rules shall conspicuously state on the face of the complaint a declaration that the plaintiff elects assignment of the action to the expedited track pursuant to these Rules and limits the recovery of any damages claimed to an aggregate of \$50,000, inclusive of interest, costs, and attorney fees, whether provided by contract or statute. Any defendant objecting to assignment of the action to the expedited track shall indicate such objection in the answer, in which circumstance the action will not be placed on the expedited track.

(2) Assignment of the Action to the Expedited Track May Be Sought by Amendment. If the original complaint did not indicate that the plaintiff was seeking assignment of the action to the expedited track, the plaintiff may subsequently, by amendment of the complaint, seek assignment of the action to the expedited track. Such amendment shall be subject to Rule 15, Ala. R. Civ. P., and a showing of good cause. Any party may object to such amendment or to the assignment of the action to the expedited track, in which circumstance the action will not be placed on the expedited track.

(3) Removal of the Action from the Expedited Track May Be Sought by Amendment. A plaintiff whose action has been assigned to the expedited track may seek leave to amend the complaint to have the action removed from the expedited track. Such amendment shall be subject to Rule 15, Ala. R. Civ. P., and a showing that the claims asserted are reasonably worth more than \$50,000 and the evidence supporting the value of the claims could not have been reasonably anticipated when the plaintiff sought assignment of the action to the expedited track. A defendant may object to such amendment or removal of the action from the expedited track.

Comments

(1) Plaintiff Seeks Assignment to Expedited Track in Original Complaint. A plaintiff seeking to proceed on the expedited track must declare on the face of the complaint that recovery of damages shall be limited to \$50,000. Moreover, to trigger the application of these Rules, the ad damnum clause of the complaint must limit damages to \$50,000 or less. The staff of the circuit court clerk's office must be able to easily determine that the plaintiff seeks to proceed on the expedited track. The plaintiff shall include some conspicuous statement in the caption or style of the complaint, such as: "NOTE: The plaintiff limits the demand and recovery of damages to \$50,000 or less and seeks application of the Alabama Rules for Expedited Civil Actions." A defendant may object to the assignment of the action to the expedited track by indicating such in the answer, in which circumstance the action will not be assigned to the track or, if it has already been assigned, it will be removed.

(2) Plaintiff Seeks Assignment to the Expedited Track by Amendment. If the plaintiff does not initially elect to proceed on the expedited track, the plaintiff may later seek to amend the complaint by adding a declaration limiting the claims to \$50,000. The requirement of giving special notice to the parties and the clerk's office by a conspicuous statement in the caption or style, as set forth in the Comment to Rule B(1), is equally applicable to an amendment to the complaint. Any party, by motion, may object to placing the action on the expedited track. The option to seek assignment of the action to the expedited track by amendment was thought to be necessary to accommodate those claims asserted as to which the claimant initially proceeded on the traditional discovery/trial track and, for good cause, subsequently seeks to have the action proceed on the expedited track. However, it is also recognized that there will come a point in the life of any action when it serves little purpose to remove it from the traditional track and place it on the expedited track.

(3) Plaintiff Seeks Removal of the Action from the Expedited Track. The plaintiff, having chosen to proceed on the expedited track, may not have the action removed from that track without a showing that (i) the claim asserted is reasonably worth more than \$50,000 and (ii) the evidence supporting the value of the claim could not reasonably have been anticipated when the plaintiff opted in. This provision

is to discourage a wholesale change in the discovery and trial schedule after an action has been pending on the expedited track. This reflects a policy that is intended to discourage opt-outs after the parties have agreed to the expedited track.

Rule C. Defendant May Seek Assignment to or Removal from the Expedited Track of Counterclaims, Cross-Claims, and Third-Party Claims and Objections Thereto.

(1) Assignment of Claims to the Expedited Track May Be Sought in the Original Action. Any party that files a cross-claim, counterclaim, or third-party claim may elect assignment of such claim to the expedited track, but only if all other claims pending in the action are on the expedited track. A party seeking the application of these Rules to such a claim shall make the same declaration and statement regarding limitation of damages as to the claim asserted that the plaintiff is required to make under Rule B. Any party may object to the assignment of such claim to the expedited track, in which circumstance the entire action will be removed from the expedited track.

(2) Assignment of Claims to the Expedited Track May Be Sought by Amendment. If the original cross-claim, counterclaim, or third-party claim did not seek assignment to the expedited track, such assignment may be subsequently sought by amendment, subject to the provisions of Rule 15, Ala. R. Civ. P., only if all other claims pending are on the expedited track and upon a showing of good cause. Any party may object to such amendment or to the assignment of the claim to the expedited track, in which circumstance the claim will not be placed to the expedited track.

(3) Removal of the Claim from the Expedited Track May Be Sought. A defendant whose claim has been assigned to the expedited track may seek leave to amend the pleadings to have the claim removed from the expedited track. Such amendment shall be subject to Rule 15, Ala. R. Civ. P., and a showing that the claim asserted is reasonably worth more than \$50,000 and the evidence supporting the value of the claim could not have been reasonably anticipated when the defendant sought assignment of the claim to the expedited track. The plaintiff may object to such an amendment or to removal of the claim from the expedited track.

(4) Defendant Files Claim in Excess of Limitation; Claims Asserted by Plaintiff Relieved of Limitation. If a defendant files a cross-claim, counterclaim, or third-party claim in which the amount sought exceeds \$50,000, that claim and all claims then pending on the expedited track shall be removed from the track, and the party asserting those claims is relieved of the \$50,000 limitation.

Comments

(1) Defendant Seeks Assignment to Expedited Track in Original Claim. Rule C(1) provides the corollary to Rule B(1) for counterclaims, cross-claims, and third-party claims. If such a claim is asserted, the claimant may seek assignment to the expedited track by making the same declaration required of the plaintiff under Rule B(1). However, such a claim may not proceed on the expedited track unless all other claims then pending are assigned to the expedited track. To provide otherwise would allow the action to proceed partly on the expedited track and partly on the traditional track, which would not allow discovery to be conducted in a timely and coordinated manner. Moreover, as can the defendants under Rule B(1), any party may object to the assignment of the claim to the expedited track.

The circuit court also may use the procedures of severance and separate trials under Rules 21 and 42, Ala. R. Civ. P. If, for example, a permissive counterclaim comes to light, but it would require taking the action off the expedited track, that permissive counterclaim might be severed, and the original claim could remain on the expedited track as appropriate. These matters are left to the sound discretion of the circuit court.

(2) Defendant Seeks Assignment to Expedited Track by Amendment. Rule C(2) provides to defendants a mirror image of what Rule B(2) provides for the plaintiff. That is, the expedited track is as available to a defendant asserting a counterclaim, cross-claim, or third-party claim by amendment as it is to the plaintiff by amendment. Moreover, the provisions of Rule C(2) regarding objections to such an amendment are also a mirror image of Rule B(2).

(3) Defendant Seeks Removal of Claims from Expedited Track. Rule C(3) provides to defendants who wish to have their claims removed from the expedited track and parties who may

oppose such an amendment a mirror image of the rights and obligations provided in the event that the plaintiff seeks to have an action removed from the expedited track.

(4) Defendant Files Claim in Excess of \$50,000 and Plaintiff's Claims are on Expedited Track. If the plaintiff's claims are pending on the expedited track when the defendant files a counterclaim, cross-claim, or third-party claim in excess of \$50,000, then these Rules do not apply to the entire action and the plaintiff is relieved of the \$50,000 limitation as the action proceeds on the traditional track.

Rule D. Discovery.

Under the Expedited Scheduling and Discovery Order (Form 1), all discovery shall be commenced so as to be completed within 120 days following the filing of the defendant's answer to the complaint. If there are multiple defendants, the 120 days shall begin to run upon the filing of the last timely answer.

A party shall not propound more than 50 written discovery requests (inclusive of all interrogatories, requests for production, and requests for admissions) to any other party without leave of court. Upon motion, and for good cause shown, the court may increase the number of written discovery requests that a party may serve upon another party. For purposes of this limitation, (1) any subpart or separable question (whether or not separately numbered, lettered, or paragraphed) shall be considered a separate discovery request, and (2) the word "party" includes all parties represented by the same lawyer or law firm. There is no limitation to the number of subpoenas a party may issue to nonparties for the production or inspection of designated books, documents, electronically stored information, or tangible things under Rule 45, Ala. R. Civ. P.

Each party shall be allowed to take the deposition of one fact witness in addition to the depositions of the parties to the litigation. For purposes of this limitation, the word "party" includes all parties represented by the same lawyer or law firm. Upon motion, and for good cause shown, the circuit court may increase the number of fact-witness depositions a party may take. This limitation shall not apply to expert witnesses, including retained experts and treating physicians.

Comments

Discovery, absent leave of court, is to be completed within 120 days from the filing of the last answer. Written discovery is limited to a total of 50 requests, which include interrogatories, requests for production, and requests for admissions. No limitation is placed on the number of nonparty subpoenas that may be served. Depositions may be taken of all parties and one nonparty fact witness. Depositions of experts is dealt with in Rule E. The circuit court may grant leave, upon good cause shown, to conduct additional discovery, and the showing necessary is similar to the good-cause showing required under Rule 33, Ala. R. Civ. P. The discovery limitations contemplate only claims by a plaintiff without any claims asserted by a defendant. If counterclaims, cross-claims, or third-party claims are filed, the circuit court should consider those claims in setting the discovery schedule.

Rule E. Experts.

Under the Expedited Scheduling and Discovery Order (Form 1), the plaintiff shall provide information on experts pursuant to Rule 26, Ala. R. Civ. P., at least 60 days before the conclusion of discovery. The defendant shall provide Rule 26 expert information at least 30 days before the conclusion of discovery.

Expert testimony, including testimony by treating physicians, shall be admissible at trial through live testimony or deposition, unless another means is agreed upon in writing by the parties.

Comments

Rule 26, Ala. R. Civ. P., information on experts is to be provided by all parties sufficiently in advance of the close of discovery to allow depositions of experts to be taken if necessary and allowed. A major change is that expert testimony may be presented by means other than live testimony or deposition if the parties agree in writing.

Rule F. Dispositive Motions.

Under the Expedited Scheduling and Discovery Order (Form 1), all dispositive motions shall be filed no later than 14 days after the close of discovery.

Comments

The principal dispositive motions contemplated by this rule are motions for a summary judgment and Rule 12(b), Ala. R. Civ. P., motions to dismiss.

Rule G. Trial.

When practical, the trial should be scheduled within 90 days following the completion of discovery. The court shall place a reasonable limit on voir dire. The plaintiffs, collectively, and the defendants, collectively, may have up to five hours each for opening statement, the presentation of evidence, and closing argument, which may be expanded by the circuit court for good cause shown.

Notwithstanding the Alabama Rules of Evidence, documents and other exhibits, such as photographs, shall be deemed authentic without predicate unless the opposing party objects to the authenticity in writing no later than 14 days before the trial setting and the circuit court determines there is a genuine question as to authenticity.

If the case is being tried by a jury, the parties have the right to a jury panel of 12 jurors, with the requirement of a unanimous verdict. The parties, however, are encouraged to stipulate to a jury of less than 12 in accordance with Rule 48, Ala. R. Civ. P. No plaintiff shall recover a judgment in excess of \$50,000, including interest, costs, and attorney fees. The jury shall not be informed of the \$50,000 limitation.

Comments

The mechanism or method for allocating time is left to the circuit court's discretion. The parties are encouraged to stipulate to as many factual and evidentiary matters as possible, as well as to streamline the trial process by limiting the number of live witnesses. One intent of this rule is to provide a procedural mechanism designed to accommodate

agreement to the authenticity of exhibits so that a party can offer into evidence such items as photographs, medical records, computer printouts, and other documents without deposing or calling as a trial witness the custodian or maker of the record. The parties are expected to agree to these sorts of matters unless the objecting party demonstrates that there is some genuine issue regarding the authenticity of the document or item of evidence. Moreover, if in addition to the original claim filed, the trial involves a counterclaim, cross-claim, or third-party claim, the circuit court should give due consideration to allowing further discovery and more trial time. In light of the potential cost savings and conservation of court resources, the parties are also encouraged to stipulate to a jury of less than 12 jurors.

Rule H. Applicability of the Alabama Rules of Civil Procedure and the Alabama Rules of Evidence.

The Alabama Rules of Civil Procedure and the Alabama Rules of Evidence shall apply to all matters not specifically addressed in these Rules.

Comments

If a point of procedural law is addressed by these Rules, then these Rules apply. If these Rules are silent on the point in question, then the Alabama Rules of Civil Procedure shall control.

It is recognized that the admission into evidence of affidavits, reports, or letters of experts, as provided in Rule E, would normally be improper as hearsay. However, the provisions in Rule E are essential to the proper functioning of the expedited system. Moreover, Rule 1101(a), Ala. R. Evid., allows variation from those rules where "other rules of the Supreme Court of Alabama" so provide. These Rules are such "other rules." The same applies to the authenticity of exhibits as provided in Rule G of these Rules.

Rule I. Effective Date.

These Rules shall be effective to actions filed on or after January 1, 2017.

Comments

These Rules become effective on January 1, 2017. Additionally, the Supreme Court has indicated that it will, in 18 months after the effective date, evaluate the impact and efficacy of these Rules.

Form 1

IN THE CIRCUIT COURT OF _____ COUNTY, ALABAMA

[NAME],)
)
Plaintiff(s))
)
v.) CIVIL ACTION NO.
) CV _____
[NAME],)
)
Defendant(s).)

EXPEDITED SCHEDULING AND DISCOVERY ORDER

This case has been assigned to the expedited trial track; thus any recovery by the plaintiff or plaintiffs shall be limited to \$50,000, inclusive of interest, costs, and attorney fees, as long as this case remains on the expedited track. The following deadlines and discovery requirements shall apply in this case unless good cause is shown by a party for amendment to these requirements:

1. All discovery shall be commenced so as to be completed within 120 days following the filing of defendant's answer to the complaint. If there are multiple defendants, the 120 days shall begin to run upon the filing of the last timely answer.

2. Each defendant shall indicate in the answer to the complaint whether the defendant opts out of the expedited trial track.

3. A party may propound no more than 50 written discovery requests (inclusive of all interrogatories, requests for production, and requests for admissions) to any other party without leave of court. For purposes of this limitation, (1) any subpart or separable question (whether or not separately numbered, lettered, or paragraphed) shall be considered a separate discovery request, and (2) the word "party" includes all parties represented by the same lawyer or law firm. There is no limitation to the number of subpoenas a party may issue to nonparties for the production or inspection of designated books, documents, electronically stored information, or tangible things under Rule 45 of the Alabama Rules of Civil Procedure.

4. Each party shall be allowed to depose one fact witness, in addition to the parties to this litigation. For purposes of this limitation, the word "party" includes all parties represented by the same lawyer or law firm. This limitation shall not apply to expert witnesses, including retained experts and treating physicians.

5. Plaintiff(s) shall provide information on expert witnesses required by Rule 26 of the Alabama Rules of Civil Procedure at least 60 days before the conclusion of discovery. Defendant(s) shall also provide information on expert

witnesses required by Rule 26 at least 30 days before the conclusion of discovery. Expert testimony, including testimony by treating physicians, may be admissible at trial through live testimony, deposition, or other means agreed upon in writing by the parties; however, if a party plans to offer expert opinions through an affidavit, report, or letter, the party shall provide a copy of the expert writing and any curriculum vitae of the expert that party plans to offer on or before the respective expert-disclosure deadline. A party may offer evidence regarding the reasonableness and necessity of claimed expenses for medical care, treatment, and services at trial through the admission of an affidavit, report, or letter of the expert witness, provided that a copy of the writing is produced in accordance with these deadlines for expert testimony. If requested, experts shall be made available for deposition, although any reasonable fees and expenses for the time spent by an expert witness in preparing for the deposition and in attending the actual deposition shall be borne by the party requesting the deposition.

6. All dispositive motions shall be filed no later than 14 days after the close of discovery. Other motions, including motions in limine, shall be filed no later than seven calendar days before the trial setting.

7. No later than 30 days before the trial setting, the parties shall exchange (a) a list (including names and addresses) of all witnesses they intend to call at trial, (b) the names and addresses of those witnesses whose testimony the party expects to present by deposition, (c) the names and addresses of any expert witnesses whose testimony or opinions the party plans to present through an affidavit, report, or letter, and (d) a list of all exhibits they intend to offer into evidence at trial. At trial, the parties may use excerpts from depositions, including video depositions, regardless of where the deponent lives or whether the deponent is available to testify. Objections to any exhibits, witnesses, or deposition testimony shall be filed and served no later than 14 days before the trial setting.

8. The parties will make available for inspection and copying, at a designated location within Alabama no later than 30 days before the trial setting, all photographs, bills, statements, or other exhibits they intend to introduce into evidence, whether in possession of counsel, client, or witness, and those photographs, bills, statements, or other exhibits will be deemed authentic without predicate unless the opposing party objects in writing to the court no later than 14 days before the trial setting and the court determines that

there exists a genuine question as to authenticity. Objections, including objections to authenticity, should be made only if there is a genuine issue.

9. This case is scheduled for trial on _____, 20__, at ____ a.m./p.m. The court will place a reasonable limit on voir dire and allow each party up to five hours for opening statement, the presentation of evidence, and closing argument, which may be altered by the court for good cause shown. For purposes of this limitation, the word "party" includes all parties represented by the same lawyer or law firm. The amount of time allotted for each party includes the time the party spends on cross-examination. The parties are encouraged to stipulate to as many factual and evidentiary matters as possible and are encouraged to streamline the trial process by limiting the number of live witnesses.

10. If this case is tried by a jury, any verdict must be unanimous, and the parties have the right to a jury panel of 12 competent jurors, in accordance with Rule 47 of the Alabama Rules of Civil Procedure. The parties, however, are encouraged to stipulate to a jury of less than 12 jurors, in accordance with Rule 48 of the Alabama Rules of Civil Procedure, and the court suggests that the parties stipulate to a jury of 6 regular jurors selected from a list containing the names of at

least 12 competent jurors. The court may also direct that alternate jurors be called and empaneled, and, if alternate jurors are called, the parties shall be entitled to strike from a list containing the names of 3 competent jurors for each alternate juror required, in addition to at least 12 competent jurors required for a panel of 6 regular jurors, unless the parties agree otherwise.

DONE AND ORDERED, this _____ day of _____, 20__.

Circuit Court Judge