

Alabama Rules of Criminal Procedure

Rule 10. Change of place of trial.

Rule 10.2. Waiver and renewal.

(a) **WAIVER.** A defendant loses the rights granted under Rule 10.1 by allowing a proceeding to commence or to continue without objection after becoming aware of grounds for change of place of trial.

(b) **RENEWAL.** When an action is remanded by an appellate court for a new trial on one or more offenses charged in the indictment, all rights to move for change of place of trial are deemed renewed, and no event connected with the first trial shall constitute a waiver of those rights.

Committee Comments

Rule 10.2 provides for an implied waiver where a defendant, after learning of grounds for a change in place of trial, allows a proceeding to commence or to continue without objection. There appear to be no Alabama cases regarding waiver of a defendant's right to request a change of venue. But see *Cook v. State*, 269 Ala. 646, 115 So.2d 101 (1959), which suggests that such a waiver can be found. In *Green v. State*, 73 Ala. 26 (1882), the Alabama Supreme Court recognized that one may waive and does waive his constitutional rights if he fails to assert or claim them at the appropriate time and place and according to the established course of procedure. Thus, it is clear that the right granted under Rule 10.2 may be waived as well, if knowingly and intelligently done.

In no event may a party let a proceeding continue in the hope of prevailing but, upon losing, assert a challenge to the proceeding.

Rule 10.2(b) is consistent with Alabama case law. In *Baker v. State*, 209 Ala. 142, 95 So. 467 (1923), the Alabama Supreme Court held that an application for change of venue may be made after conviction, upon new trial being granted, as early as practicable before the next trial.