

Alabama Rules of Criminal Procedure

Rule 21. Instructions to Jury; Objection.

Rule 21.3. Objections.

No party may assign as error the court's giving or failing to give a written instruction, or the giving of an erroneous, misleading, incomplete, or otherwise improper oral charge, unless the party objects thereto before the jury retires to consider its verdict, stating the matter to which he or she objects and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury.

[Former Rule 21.2 renumbered as new Rule 21.3 and amended effective August 1, 1997.]

Committee Comments

Rule 21 is taken almost verbatim from Rule 51, A.R.Civ.P. It supersedes those portions of Ala.Code 1975, §12-16-13, which required that given written requested charges be taken by the jury with them on retirement for deliberations and that the judge identify the party requesting each given charge.

By adopting the policy of the civil rule, Rule 21, in allowing an opportunity for objection "out of the hearing of the jury," changes the prior criminal practice which required that an oral objection to an oral charge be made in the presence of the jury. See *Pinkard v. State*, 405 So.2d 411 (Ala.Crim.App.1981), and *Hand v. State*, 385 So.2d 652 (Ala.Crim.App.1980).

Further, this rule, by requiring that any objections to the court's giving or refusing to give a particular charge be stated "before the jury retires to consider its verdict," clearly allows no "automatic exception." See the case of *Allen v. State*, 414 So.2d 989 (Ala.Crim.App.1981), *aff'd sub nom. Ex parte Allen*, 414 So.2d 993 (Ala.1982).

This rule is not intended to affect Ala.Code 1975, § 12-16-11, providing that the judge may state to the jury the evidence when it is disputed, but that he "shall not charge upon the effect of the testimony, unless required to do so by one of the parties."

Under this rule, the ordinary procedure should be that the jury will not take with it a copy of the charges against the defendant; nevertheless, the rule recognizes that in a complex case, having a copy may help the jury to understand and determine the issues. The rule, therefore, allows the judge the

discretion to give the jury a copy of the charges when he feels it would be helpful to do so.