

## Alabama Rules of Criminal Procedure

### **Rule 9. Presence of defendant, witnesses, and spectators; televising, photographing, or radio broadcasting of judicial proceedings.**

#### *Rule 9.2. Effect of defendant's disruptive behavior.*

(a) **DISRUPTIVE CONDUCT.** If a defendant engages in disruptive or disorderly conduct so that the trial or other proceeding cannot be carried on in an orderly manner, the court, after having warned the defendant of the consequences of such conduct, may, if such conduct continues, order the defendant to be bound and gagged, or otherwise restrained or removed from the trial or proceeding. If the defendant continues such disruptive or disorderly conduct after warning, he shall be deemed to have forfeited the right to be present at that trial or proceeding.

(b) **REACQUISITION OF THE RIGHT TO BE PRESENT.** The court shall grant any defendant so removed or restrained reasonable opportunities to return to the trial or proceeding upon the defendant's personal assurance of good behavior. Any subsequent disruptive or disorderly conduct on the part of the defendant may result in the defendant's restraint or removal without additional warning.

(c) **CONTINUING DUTY OF COURT.** The court shall employ reasonable means to enable a defendant removed from a trial or proceeding under this rule to hear, observe, or be informed of, the further course of the trial or proceeding and to consult with counsel at reasonable intervals.

### **Committee Comments as Amended Effective December 1, 1997**

Rule 9.2 provides a procedure for dealing with disruptive and disorderly defendants. It is based upon *Illinois v. Allen*, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970), and ABA, Standards for Criminal Justice, *Special Functions of the Trial Judge*, 6-3.8 (2d ed. 1986).

The rule states a preference for removing the defendant from the courtroom rather than binding and gagging the defendant and permitting the defendant to remain. However, there may be an instance in which binding and gagging is the only method available to the court for dealing with a disruptive defendant, such as where the defendant is charged with a capital offense and sentence is being imposed or where the defendant is representing himself or herself. Rule 9.1(b)(2). In the latter situation, ABA, Standards for Criminal Justice, *supra*, at 6-3.9, suggest that after appropriate warnings, the court should revoke permission to defend pro se, appoint counsel, and remove the defendant

rather than bind and gag the defendant, because a bound and gagged defendant could in no event adequately represent himself or herself.

Section (c) directs the court to use reasonable means to permit the defendant to hear and observe the proceedings. The language is intended to encourage use of any practical audiovisual devices in communicating the progress of the trial to the defendant. The rule directs the court to employ means that will let the defendant hear and observe, not participate. The cost of a simple intercom system would not be prohibitive; however, no court is required to use impractical and expensive technology.

The court's contempt power under Rule 33 is also applicable to situations contemplated by Rule 9.2.

It is understood that a defendant, by disruptive conduct, may forfeit the right to be present, even in circumstances where the right could not be waived under Rule 9.1(b)(2)(i). In such circumstances, the court would be on safer ground to appoint advisory counsel even if the defendant had refused to accept appointed counsel.