

## Alabama Rules of Criminal Procedure

### Rule 13. Charges: Indictment, Information, and Complaint.

#### *Rule 13.4. Severance.*

(a) RELIEF FROM PREJUDICIAL JOINDER. If it appears that a defendant or the state is prejudiced by a joinder of offenses or of defendants in an indictment, information, or complaint or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants, or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance, the court may order the district attorney to deliver to the court for inspection, in camera, any statements or confessions made by the defendants that the state intends to introduce in evidence at the trial. However, without a finding of prejudice, the court may, with the agreement of all the parties, order a severance of defendants or an election of separate trials of counts or charges.

(b) TIMELINESS AND WAIVER. A defendant's motion to sever offenses or defendants must be made not more than seven (7) days after arraignment or filing of a written plea of not guilty prior to trial, or, in the event the court has ordered charges or defendants to be tried jointly, pursuant to Rule 13.3, then within seven (7) days of the court's order, in any event, prior to trial. If, after the expiration of these time periods, a ground not previously known arises, or becomes known, either before or during trial, and that ground could not have been discovered previously through the exercise of due diligence, the defendant may move for severance of all counts, but must do so at the earliest opportunity. The right to move for severance is waived if a proper motion is not timely made.

(c) JEOPARDY. No severance of offenses or defendants may be ordered after trial has commenced unless the defendant consents and a mistrial has properly been declared as to such offense or defendant. Severance of offenses during trial, upon motion of the defendant or with the defendant's consent, shall not bar a subsequent trial of that defendant on the offenses severed.

### Committee Comments

Rule 13.4(a) is from the ABA, Standards for Criminal Justice, *Joinder and Severance* 13-3.1 and 13-3.2 (2d ed. 1986).

Prior Alabama law provides for severance of defendants on demand. Ala.Code 1975, § 15-14-20, provides, "When two or more defendants are jointly indicted, they may be tried either jointly or separately, as either may elect." An early case, *Wilkins v. State*, 112 Ala. 55, 21 So. 56 (1895), held that if a separate trial is not demanded, it is in the sound discretion of the court to decide whether

the trial will be joint or several. The defendant does not have a right to demand that the trial be joint. Under Rule 13.4(a), the defendant is not automatically entitled to severance on demand.

Ala.Code 1975, § 15-17-2, provides, "When several persons are indicted and tried jointly, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they agree, on which a judgment must be entered accordingly, and the case as to the other defendants may be tried by another jury."

It is not necessary under these rules to renew a motion for severance at trial or after the time at which the suggested prejudice actually occurred in order to preserve a claim of error from denial of such motion.