

## Alabama Rules of Criminal Procedure

### Rule 15. Preparation for trial; pleadings and motions.

#### *Rule 15.4. Hearing on motion.*

(a) DETERMINATION OF MOTIONS. A motion raising defenses or objections made before trial pursuant to this rule shall be determined before trial, unless the court for good cause orders that it be deferred for determination at the trial on the merits.

(b) JURY TRIAL. Unless a jury trial of an issue of fact raised by the motion is waived, such issue shall be tried by a jury if a jury trial is constitutionally required.

(c) COURT TRIAL. All other issues of fact raised by the motion shall be determined by the court without a jury in such manner as the court may direct.

### Committee Comments

Rule 15.4 requires that the pre-trial motion be determined by the court before trial, unless deferred for good cause until the trial. When the motion raises an issue better determined during the trial, it would be proper to defer the motion. For example, the question of venue may be “[one of] fact so entwined with the merits ... that a decision should not be made before trial but postponed until trial.” *United States v. Callahan*, 300 F.Supp. 519, 522 (S.D.N.Y.1969). In *Callahan*, the defendants were charged with a conspiracy, and venue was allegedly based on the planning having been done in the county of trial. To prove venue, the planning of the crime would have to be shown. A ruling on the motion was properly deferred until the trial.

On the other hand, the motion may raise only questions of law which would properly be decided by the court. The purpose of this rule is to dispose of defenses which may be determinative of the case, but which do not require a trial on the merits. Such determinations will reduce the expense of trial and, in appropriate cases, will permit the state a right of appeal under Rule 15.7; thus trial judges should determine pre-trial motions in advance of trial in all possible instances.

This rule allows the judge to decide all issues of fact raised by the motion, which are not constitutionally required to be tried by a jury. Examples of such facts would be the waiver of constitutional rights, legality of searches, the presence of unauthorized persons in the grand jury room, and discrimination in the selection of the grand jurors. See *United States v. Smyth*, 104 F.Supp. 279 (N.D.Cal.1952), *Shafer v. State*, 214 Tenn. 416, 381 S.W.2d 254 (1964). See also *Pate v. Robinson*, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed.2d 815 (1966),

requiring a hearing on the question of competence to stand trial when that issue is raised by the evidence presented at trial.