

## Alabama Rules of Criminal Procedure

### Rule 19. Trial.

*Rule 19.3. Separation, sequestration, and admonitions to jurors.*

(a) SEPARATION AND SEQUESTRATION OF JURORS IN FELONY TRIALS.

(1) In the prosecution of any felony case, the trial court, in its discretion, may permit the jury hearing the case to separate during the pendency of the trial. Such a separation of the jury shall create a prima facie presumption that the accused was not prejudiced by reason of the separation.

(2) The court may, at any time, on its own initiative or on motion of any party, require that the jury be sequestered under the charge of a proper officer whenever the jurors leave the jury box, or the court may allow the jury to separate. A motion to separate or sequester shall not be made within the hearing of the jury, and the jury shall not be informed which party, if any, requested the separation or sequestration.

(b) ADMONITIONS TO JURORS. In all cases, the court shall admonish the jurors that they are not:

(1) To discuss among themselves any subject connected with the trial until the case is submitted to them for deliberation;

(2) To converse with anyone else on any subject connected with the trial, until they are discharged as jurors in the case;

(3) To knowingly expose themselves to outside comments or to news accounts of the proceedings, until they are discharged as jurors in the case; or

(4) To form or express any opinion on the case until it is submitted to them for deliberation.

If the jurors are permitted to separate, they may also be admonished not to view the place where the offense was allegedly committed.

[Amended eff. 12-1-97.]

### Committee Comments

Under Rule 19.3, the question whether the jury will be sequestered is left to the discretion of the trial judge. Under prior Alabama case law, in felony cases, after the trial had begun and before the verdict was reached, a separation of the

jury was reversible error unless the state could show that the defendant was not prejudiced by the separation. See, e.g., *Palmore v. State*, 283 Ala. 501, 218 So.2d 830 (1969) (but see Ala.Code 1975, § 12-16-9, referred to below, allowing the defendant to consent to separation). The rule changes case law and is in accordance with that portion of ABA, Standards for Criminal Justice, *Fair Trial and Free Press* 8-3.6(b) (2d ed. 1986), providing as follows:

“Either party may move for sequestration of the jury at the beginning of the trial or at any time during the course of the trial, and, in appropriate circumstances the court may order sequestration on its own motion. Whenever sequestration is ordered, the court, in advising the jury of the decision, shall not disclose which party requested it.”

ABA, Standard § 8-3.6 also suggests that the jurors who will not be sequestered be warned of their obligation not to discuss the case with anyone or to allow themselves to be influenced by anyone outside the conduct of the trial. These suggestions incorporate present Alabama practice.

This rule, however, does not adopt the entire policy of Standard 8-3.6(b). That standard contains the following provision:

“Sequestration of the jury shall be ordered only if it is determined that the case is of such notoriety or the issues are of such a nature that, in the absence of sequestration, there is a substantial likelihood that highly prejudicial matters will come to the attention of the jurors.”

While Standard 8-3.6(b) would require the trial judge, before sequestering the jury, to find a “likelihood” of prejudice, it is apparent that under this rule no such determination is required. To sequester or to allow separation is within the discretion of the trial judge.

Title 30, § 97(1), Code 1940, required consent of the accused, his counsel, and the prosecuting attorney in a felony case before the trial court could permit the jury trying the case to separate during the pendency of the trial. That section also provided that such consent could not be given or denied in the presence of the jury. That section was applicable only to counties which had a population of 140,000 or more. However, Ala.Code 1975, § 12-16-9, made those provisions applicable to the entire state. Section 12-16-9 was amended by Act No. 82-566, Alabama Acts, 1982, to adopt the provisions of Rule 19.3(a) through (c). The present rule has been amended only slightly, and it effectively follows § 12-16-9 as it now exists.

Under prior state law, the burden was on the state to prove that no injury resulted from the separation. *Chappelle v. State*, 267 Ala. 37, 99 So.2d 431 (1957); *Carroll v. State*, 5 Ala.App. 80, 224 So.2d 917 (1968), cert. denied, 284

Ala. 728, 224 So.2d 920 (1969). This burden was changed by Ala.Code 1975, § 12-16-9 (and its predecessor, Title 30, § 97(1), Code 1940, which applied only to certain counties); the statute provides, "A separation so permitted [by both parties] shall not create a presumption of prejudice to that accused, but on the contrary it shall be prima facie presumed that the accused was not prejudiced by reason of the separation of the jury." Rule 19.3 goes further and provides that a separation in a capital case with the required consents or a court-approved separation in a noncapital felony case shall create a prima facie presumption that the accused was not prejudiced by reason of the separation.

Prejudicial comments made by a court or law enforcement officer to the jury can be reversible error. *Parker v. Gladden*, 385 U.S. 363, 87 S.Ct. 468, 17 L.Ed.2d 420 (1966); *Yelton v. State*, 50 Ala.App. 168, 277 So.2d 912 (1973), cert. denied, 291 Ala. 804, 277 So.2d 916. This principle is recognized by Rule 19.3.

Exposure of jurors to prejudicial information not admitted as evidence is reversible error. *Marshall v. United States*, 360 U.S. 310 (1959).

**Committee Comments to Amendment  
Effective December 1, 1997**

This amendment to Rule 19.3 ensures that the rule conforms to § 12-16-9, Ala.Code 1975, as amended by Act No. 95-190, 1995 Ala.Acts, which was effective June 15, 1995.