

Alabama Rules of Criminal Procedure

Rule 23. Verdict

Rule 23.1. Form and time of returning verdict; sealed verdict.

(a) FORM OF VERDICT. The verdict of the jury shall be unanimous, shall be in writing, signed by the foreman, and shall be returned in open court.

(b) TIME OF RETURNING VERDICT. The court may accept a return of the verdict in open court at any time, including Sundays and holidays.

(c) SEALED VERDICT. With the consent of all parties, the court may instruct the jurors that, if they agree upon a verdict during a temporary adjournment of the court, the foreman may sign the verdict, seal it in an envelope, and deliver it to the court, after which the jury may separate until the court reconvenes. When the jurors have reassembled in open court, the envelope shall be opened by the court and the verdict returned. When the court authorizes a sealed verdict, it shall admonish the jurors not to make any disclosure concerning it, nor to speak with other persons concerning the case until the verdict has been returned and the jury discharged.

Committee Comments

Rule 23.1(a) provides that the jury's verdict must be unanimous. Alabama case law clearly states that this is a fundamental requisite of a jury. *Baader v. State*, 201 Ala. 76, 77 So. 370 (1917); *Dixon v. State*, 27 Ala.App. 64, 167 So. 340 (1936).

Section (a) requires that the verdict shall be in writing, signed by the foreman, and returned to the judge in open court. The language is derived from Rule 31(a), Fed.R.Crim.P. In Alabama, case law states that it is not essential to a verdict that the verdict be in writing. The courts have held that the jury may announce the verdict to the court ore tenus or upon paper. *Edwards v. State*, 205 Ala. 160, 87 So. 179 (1920); *State v. Underwood*, 2 Ala. 744 (1841); *Pate v. State*, 19 Ala.App. 548, 98 So. 819 (1924). In *Hayes v. State*, 44 Ala.App. 499, 214 So.2d 708 (1968), the court of appeals made its position clear that written verdicts were preferable to oral ones. In *Hayes*, the jury returned both an oral verdict and two written verdicts, one of which was inconsistent with the oral verdict. The attorney general asked that the oral verdict be held to be a proper verdict, it being sufficient alone to sustain the conviction, and the inconsistent written verdict mere surplusage. The court stated that a verdict may be rendered ore tenus, but to accept the attorney general's reasoning would be to give oral verdicts precedence over written ones. The court said:

“The court frowns upon unwritten verdicts. There is no reason in this day of literacy for a verdict not to be in writing, and ... written verdicts are to be encouraged for the sake of accuracy and to avoid delays incident to corrections.....

“To give a verdict ore tenus precedence over a written one would be ... diametrically opposed to the preference of written verdicts over unwritten verdicts....

“Although a verdict may be written or oral, where there is both a written and oral verdict, it is necessary that each be in accord with the other. If any inconsistency or ambiguity exists in the verdict, it must be corrected prior to the dismissal of the jury and failure to do so ... will result in a reversal of the case upon trial.”

44 Ala.App. at 502, 214 So.2d 708.

The courts in Alabama have also held that it is not essential that the written verdict of the jury be signed by a member of the jury as foreman. *Hayes v. State*, 21 Ala.App. 615, 110 So. 696 (1926); *Pate v. State*, 19 Ala.App. 548, 98 So. 819 (1924); *Pippin v. State*, 19 Ala.App. 384, 97 So. 615 (1923). The Advisory Committee believed the better practice requires signing by the foreman for purposes of identification.

Section (c) provides for use of the sealed verdict for the convenience of the court, the attorneys, and the jurors. The court may instruct the jurors that they may return a sealed verdict during any temporary adjournment. There appears to be neither an Alabama statute nor Alabama case law which deals with sealed verdicts. The language of section (c) is derived from Rule 535(a), Unif.R.Crim.P.

The Federal Rules of Criminal Procedure do not deal with sealed verdicts. In the note to Rule 31, the Advisory Committee states: “[Rule 31(a)] does not embody any regulation of sealed verdicts, it being contemplated that this matter would be governed by local practice in the various district courts.”