

## **Alabama Rules of Criminal Procedure**

### **Rule 26. Judgment; presentence report; sentence hearing; sentence.**

#### *Rule 26.7. Presence of the defendant.*

The defendant has the right to be present at the sentence hearing and at sentencing. Failure of the defendant to appear at the hearing or for sentencing will not delay the pronouncement and entry of judgment and sentence if the defendant's right to be present has been waived, either in writing or by the defendant's nonappearance after notice of the time, date, and place of the sentence hearing or sentencing.

#### **Committee Comments**

Rule 26.7 requires the presence of the defendant at the sentence hearing and at sentencing, regardless of the nature of the sentence to be imposed. Defendant is entitled under Rule 9.1(a) to be present at the sentence hearing and at sentencing. This rule was included to reiterate the provisions of Rule 9.1(a) and also because of the essential warnings and information regarding appeal and required to be given after sentence is pronounced. See Rule 26.9.

Art. 1, § 6, Alabama Constitution of 1901, provides that "in all criminal prosecutions, the accused has a right to be heard by himself and counsel, or either ... and ... to be confronted by the witnesses against him...." Alabama courts have not interpreted this section to guarantee a defendant the constitutional right to be present at the sentencing.

This rule, when read together with Rule 9.1(b), provides that, if defendant has been notified of the date of the sentence hearing or sentencing, then the defendant is not permitted to extend the time of taking an appeal by non-appearance at the sentence hearing and the subsequent sentencing. This will be true regardless of whether the defendant is represented by counsel at the sentence hearing or sentencing. Thus, the time of filing a notice of appeal is to run from entry of judgment and sentence, whether or not the defendant is present at sentencing. A defendant, when absent at sentencing through no fault of his own, may be entitled to a delayed appeal under Rule 32.