

Alabama Rules of Criminal Procedure

Rule 33. Contempt.

Rule 33.5. Disqualification of judge.

If the alleged contumacious conduct involves gross disrespect or a personal attack upon the character of the judge, or if the judge's conduct is so integrated with the alleged contempt that the judge contributed to or was otherwise involved in it, unless the conduct constitutes a direct contempt and prompt punishment by summary procedure is imperative under Rule 33.2(b), the citation shall be referred to another judge who shall hold a hearing to determine whether the contemnor committed the contempt charged, and, if so, to impose punishment.

Committee Comments

Rule 33.5 provides for disqualification of the judge where the nature of the contempt is a personal attack upon the judge or the judge's conduct is integrated with the contumacious conduct. Rule 42(b), Fed.R.Crim.P., has a similar provision.

This rule is required by *Mayberry v. Pennsylvania*, 400 U.S. 455, 91 S.Ct. 499, 27 L.Ed.2d 532 (1971). In that case, a defendant representing himself in state court repeatedly engaged in disruptive conduct and made insulting and slanderous remarks to the judge. When the defendant was brought in for sentencing after a jury verdict of guilty on the criminal charges, the trial judge pronounced him guilty of eleven criminal contempts arising from his conduct during the trial and sentenced him to a total of eleven to twenty-two years imprisonment thereon. The United States Supreme Court held that the due process clause of the Fourteenth Amendment requires that a defendant in criminal contempt proceedings should be given a trial before a judge other than the one reviled by the contemnor.

Rule 33.5 requires that the new judge hold a hearing to determine the guilt of the contemnor as well as to impose punishment. Thus, whenever the trial judge must disqualify himself under this rule, any adjudication of guilty made by that judge is void and the matter must be redetermined.