

## Alabama Rules of Criminal Procedure

### **Rule 9. Presence of defendant, witnesses, and spectators; televising, photographing, or radio broadcasting of judicial proceedings.**

#### *Rule 9.3. Exclusion of witnesses and spectators.*

(a) WITNESSES. Prior to or during any proceeding, the court, on its own motion or at the request of any party, may exclude witnesses from the courtroom and direct them not to communicate with each other, or with anyone other than the attorneys in the case, concerning any testimony until all witnesses have been released by the court.

(b) SPECTATORS. All proceedings shall be open to the public, unless otherwise provided by law. Individuals may be removed from the courtroom for engaging in disorderly, disruptive, or contemptuous conduct, or when their conduct or presence constitutes a threat or menace to the court, parties, attorneys, witnesses, jurors, officials, or members of the public.

### **Committee Comments**

Rule 9.3(a) provides for the sequestration of witnesses in any proceeding. The power to exclude and separate witnesses is entirely a matter of discretion with the trial court. *Teague v. State*, 245 Ala. 339, 16 So.2d 877 (1944); *Beddow v. State*, 39 Ala.App. 29, 96 So.2d 175 (1956), cert. denied, 266 Ala. 694, 96 So.2d 178 (1957), cert. denied, 355 U.S. 390, 78 S.Ct. 412, 2 L.Ed.2d 414 (1958). By invoking the rule, the court is not compelled to exclude all witnesses but may be selective as appropriate.

Rule 9.3(b) sets forth the right of a defendant to a public trial guaranteed by Article I, § 6, Alabama Constitution of 1901. All criminal proceedings after arrest, other than grand jury proceedings, should be public. *Jackson v. Mobley*, 157 Ala. 408, 47 So. 590 (1908). The last sentence allows the court to remove persons whose conduct is disruptive of the proceedings or who present a threat of physical danger to others present. It is taken from ABA, Standards for Criminal Justice, *Fair Trial and Free Press* 8-3.2 and -3.6 (2d ed. 1986). It is intended that Ala.Code 1975, § 12-21-202, permitting exclusion of certain members of the public where the evidence is vulgar or obscene, will not be applicable to criminal proceedings.