Alabama Rules of Civil Procedure

VI. TRIALS

Rule 46.

Exceptions unnecessary.

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.

(dc) *District court rule.* Rule 46 does not apply in the district courts unless a party has provided for a transcript of the proceeding and review by an appellate court is appropriate.

[Amended eff. 10-1-95.]

Committee Comments on 1973 Adoption

This rule is identical with Federal Rule 46. See Wright & Miller, *Federal Practice and Procedure, Civil*, § 2471 et seq. (1971). Hence, if the court takes action contrary to that requested by a party or overrules his objection, the senseless ritual of noting an exception is unnecessary. For example, defendants requested a directed verdict which was denied. There was no requirement for notation of an exception in order to challenge the denial of the motion for directed verdict on appeal. *Mitzner v. Baylies*, 424 F.2d 814 (D.C.Cir.1970).

However, doing away with exceptions does not eliminate the necessity for making known to the court the action that a party seeks from the court or the objection to the action of the court and the grounds therefor. Objections have the obvious purpose of apprising the court of the claimed error in order that it might be avoided. A party cannot sit silently as error is committed, speculating upon the verdict being in his favor, and then put the trial judge in error except in case of plainly prejudicial error. *Ford v. United Gas Corp.*, 254 F.2d 817 (5th Cir.1958), cert. denied 358 U.S. 824, 79 S.Ct. 40, 3 L.Ed.2d 64 (1958).

Of course, Rule 46 applies to rulings on evidence, the formulation of issues for trial, the arguments of counsel, submission of the case to the jury and other matters throughout the trial, including Rule 51 instructions to the jury.

The requirement of an objection applies to questioning of a witness by the court. *Bacon v. Kansas City Southern Ry.,* 373 F.2d 515 (5th Cir.1967). However, such objection should be sufficient if postponed until the next available opportunity when the jury is not present. See proposed Federal Rules of Evidence, Rule 614(c), 51 F.R.D. 401.

This rule is quite similar to Tit. 7, § 818(1), Code of Ala., with the sole difference being the omission of the last clause of the Rule from the Alabama statute. No civil cases construing this clause have been found.

Note that the rule requires a statement of grounds of objection. Failure to state grounds makes the objection insufficient unless the ground is so manifest that the trial court and counsel cannot fail to understand it. McCormick, *Evidence*, 1972, § 52. Accord, *Travis v. Hubbard*, 267 Ala. 670, 104 So.2d 712 (1958), applying the quite similar provisions of Tit. 7, § 818(1). Counsel ought not to rely with great confidence upon the stock "incompetent, irrelevant and immaterial" ground. *Complete Auto Transit, Inc. v. Wayne Broyles Engineering Corp.*, 351 F.2d 478, 483 (5th Cir.1965).

This rule supersedes a variety of Alabama statutes to the extent they heretofore applied to actions now covered by these rules.

Committee Comments to October 1, 1995,
Amendment to Rule 46

The amendment is technical. No substantive change is intended.