Alabama Rules of Civil Procedure

VI. TRIALS

Rule 51.

Instructions to jury: Objection.

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file and, in such event, shall serve on all opposing parties written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. The judge shall write “given” or “refused” as the case may be, on the request which thereby becomes a part of the record. Those requests marked “given” shall be read to the jury without reference as to which party filed the request. Neither the pleadings nor “given” written instructions shall go into the jury room. Every oral charge shall be taken down by the court reporter as it is delivered to the jury. The refusal of a requested, written instruction, although a correct statement of the law, shall not be cause for reversal on appeal if it appears that the same rule of law was substantially and fairly given to the jury in the court’s oral charge or in charges given at the request of the parties. No party may assign as error the giving or failing to give a written instruction, or the giving of an erroneous, misleading, incomplete, or otherwise improper oral charge unless that party objects thereto before the jury retires to consider its verdict, stating the matter objected to and the grounds of the objection. Submission of additional explanatory instructions shall not be required unless requested by the court. Additional instructions shall be submitted in writing, except that with respect to any additional instruction taken from Alabama Pattern Jury Instructions, it shall be sufficient to identify said instruction on the record by reference to the number and title of said pattern jury instruction. Opportunity shall be given to make the objection out of the hearing of the jury. In charging the jury, the court shall not express its opinion of the evidence.

(dc) *District court rule.* Rule 51 does not apply in the district courts.

[Amended 1-23-84, eff. 3-1-84; Amended eff. 10-1-95.]

Committee Comments on 1973 Adoption

This Rule is based upon Federal Rule 51 but it does differ in several particulars. Basically, the rule is different in that 1) the charges are to be marked “given or refused”, 2) the oral charge can serve to cure errors in refusing written instructions, 3) pleadings and charges are not to be taken to the jury room, 4) the

oral charge is to be reported, 5) broader grounds for objection to the oral charge are provided and 6) the court is not to comment on the evidence.

Former practice was regulated by Tit. 7, §§ 270-74, 818, Code of Ala. Under these statutes certain anomalous situations existed which are now eliminated. For example, Tit. 7, § 818 gave automatic exceptions to adverse rulings on requested written charges. This permitted a party to sit silently as an erroneous charge was given or a meritorious charge was refused after the court had sifted through numerous charges submitted by the parties. Should the court fail to cover the error in its oral charge, counsel could thereby preserve appellate relief in the event the jury verdict was unsatisfactory. Under this Rule, the party must, as a condition to the right to assert error on appeal, object and state grounds therefor before the jury retires. To facilitate the making of objections to requested written charges, the rule requires that they be served on all opposing parties. For proof of service under such circumstances, see the commentary to Rule 5(d). The rule also requires that opportunity be given for the making of such objection outside the presence of the jury.

Obviously, the automatic exception rule of Tit. 7, § 818 put the court at a great disadvantage. This has been offset by numerous cases imposing highly technical requirements upon the form of requested charges and affirming the trial court for refusing a charge not in compliance with these formalities. For example, see *Louisville & N.R.R. v. Clark*, 205 Ala. 152, 87 So. 676 (1920) (misspelled word); *Blair v. St. Margaret's Hospital*, 285 Ala. 636, 235 So.2d 668 (1970) (use of phrase "even though"). Since Rule 51 removes the disadvantage placed upon the trial court in the elimination of the automatic exception, the line of cases developing the countervailing technical requirements are no longer applicable. Hence, the spelling of the word "punitive" as "punyive" in *Louisville & N.R.R. v. Clark*, supra, would not be an error affecting the substantial rights of the parties and entitled to weight as grounds for affirmance of an erroneous ruling. Accord, *Celanese Corp. of America v. Vandalia Warehouse Corp.*, 424 F.2d 1176, 1181 (7th Cir.1970); 9 Wright & Miller, *Federal Practice and Procedure, Civil*, § 2552, n. 25, p. 631 (1971). Similarly, the once condemned practice of stripping charges on small pieces of paper should no longer afford a basis for appellate affirmance.

Under former practice, charges could be submitted at any time before the jury retires. Often, numerous requested charges would be tendered to the court immediately before or during oral argument to the jury, thus increasing the likelihood of the court overlooking a correct statement of the law or failing to detect an erroneous charge. Under this rule, charges must be submitted at the close of the evidence or at such earlier time as the court reasonably directs.

Logic suggests that oral argument to the jury is best presented when counsel have already been apprised of the court's ruling on the charges. Since the rule permits the court to require reasonable advance filing of requests, and, in all events, at the close of the evidence, it should not be difficult for the court to comply with the rule's requirement that counsel be informed of the court's action prior to argument. However, prejudice must flow from the inadvertent failure to inform. *Pruett v. Marshall*, 283 F.2d 436 (5th Cir.1960). Of course, the jury is not informed until after argument.

This rule prohibits identification of requested charges by reference to the party requesting same. If the purpose of reading the written charges to the jurors is to impress upon them that instructions prepared by the parties and given by the court are entitled to equal consideration with the court's oral charge and contain correct statements of the law as approved and adopted by the court, it is hard to justify designating certain charges as having been requested by one party or the other. Since it is the duty of the court to instruct the jury on the law, and not the duty of plaintiff or defendant's attorney, it would seem appropriate that the court make no comment as to which party requested the charge. In *Carlson v. Sanitary Farm Dairies*, 200 Minn. 177, 273 N.W. 665 (1937), Mr. Justice Loring of the Supreme Court of Minnesota stated:

> "Before passing to the considerations of this charge, we wish to express our disapproval of the action of some trial courts in announcing, as was done in this case, that any portion of the charge is given by request of either party. A requested charge should be given only when the trial court approves of and adopts as its own the law contained in the request, and it should preferably be incorporated in the appropriate part of the body of the charge so as not to destroy its symmetry."

If the requested charges submitted to the court by the parties are correct statements of the law, little justification exists for singling them out as being charges requested by plaintiff or defendant.

This rule does not preserve the former requirement that instructions be taken by the jurors to the jury room. If the written charges requested by the parties deal only with certain portions of the law, as indeed they would, they should not be submitted to the jury when the court's oral charge cannot likewise be submitted to the jury. If the court's oral charge is to be given as much weight and consideration by the jury as the written charges, only a part of the overall charge should not go to the jury. The rule also bars pleadings from the jury room.

Also eliminated is the technical requirement of signing by the judge. The rule speaks only of the requirement of marking “given” or “refused.”

The Federal Rule does not specifically reach objections to the court’s oral charge. This rule expands upon the Federal Rule by affording opportunity to object to an “erroneous, misleading, incomplete, or otherwise improper” oral charge. Grounds must be stated in other than general terms but the requirement of “distinctly” stating grounds as is required by the Federal Rule, has not been preserved. The word “distinctly” has been deleted not for the purpose of opening the door for general objections, but rather, to avert undue requirements of specificity under an unnecessarily technical appellate construction of the word “distinctly.”

Hence, at the conclusion of the oral charge, the court should permit opportunity for objections. Inquiry as to the existence of objections should not be made in the presence of the jury. See *Swift v. Southern Ry.*, 307 F.2d 315 (4th Cir.1962) where the making of the inquiry in the presence of the jury was considered not desirable.

If the court upon hearing an objection to the charge declines to supplement or modify its charge, the matter is preserved for appellate purposes. Should the court, after hearing the objection, request submission of additional instructions, counsel would have to comply with the court’s request in order to preserve the matter on appeal. Of course, handwritten additional instructions under such circumstances would be acceptable unless ample time was available during an ensuing recess for preparation with greater formality.

In Federal Court the judge is free to comment on the evidence in his charge. *Quercia v. United States*, 289 U.S. 466, 469-70, 53 S.Ct. 698, 77 L.Ed. 1321 (1933). The final sentence has been added to the rule in order to make certain that adoption of Rule 51 will not be thought to adopt federal practice in that regard, contrary to Alabama practice. The sentence is intended to be purely declaratory of existing law. Thus the judge may still recapitulate or sum up the evidence on both sides, *Andrews v. State*, 159 Ala. 14, 48 So. 858 (1909), and he may state the contentions and theories of the parties from the evidence and bring the tendencies of the evidence of each party to the issue to the attention of the jury. *St. Louis & S.F. Ry. v. Dennis*, 212 Ala. 590, 103 So. 894 (1925). But he may not give undue emphasis or single out any particular evidence, *Prince v. State*, 100 Ala. 144, 14 So. 409 (1894), nor may he give his impression of the testimony or its effect on his mind. *Hair v. Little*, 28 Ala. 236 (1856). See 1 Jones, *Alabama Jury Instructions*, §§ 546-547, 761-772 (1953).

Committee Comments to Amendment
Effective March 1, 1984

The amendment of March 1, 1984, added the sentence dealing with requested additional instructions taken from Alabama Pattern Jury Instructions. The rule had been interpreted in *City of Birmingham v. Wright*, 379 So.2d 1264 (Ala.1980), to require that additional requested instructions be in writing, even when they were specifically identified to the trial court as instructions included in Alabama Pattern Jury Instructions. This amendment solidifies the general requirement that requested additional instructions be submitted in writing, but it dispenses with that requirement when the requested instruction is from Alabama Pattern Jury Instructions and is specifically identified by number and title.

Committee Comments to October 1, 1995,
Amendment to Rule 51

The amendment is technical. No substantive change is intended.