



ARKANSAS JUDICIARY

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## Rule 22.3. Severance Of Defendants.

(a) When a defendant moves for a severance because an out-of-court statement of a codefendant makes reference to him but is not admissible against him, the court shall determine whether the prosecution intends to offer the statement in evidence at the trial. If so, the court shall not use a joint trial with dual juries but shall instead require the prosecuting attorney to elect one (1) of the following courses:

(i) a joint trial at which the statement is not admitted into evidence against any defendant;

(ii) a joint trial at which the statement is admitted into evidence only after all references to the moving defendant have been deleted, provided that, as deleted, the statement will not prejudice the moving defendant; or

(iii) severance of the moving defendant.

(b) The court, on application of the prosecuting attorney, or on application of the defendant other than under subsection (a), shall grant a severance of defendants:

(i) if before trial it is deemed necessary to protect a defendant's right to a speedy trial, or it is deemed appropriate to promote a fair determination of the guilt or innocence of one (1) or more defendants; or

(ii) if before trial the court determines that one (1) or more of the defendants will not receive a fair trial because of potentially prejudicial publicity against another defendant; or

(iii) if during trial, upon consent of the defendant to be severed, it is deemed necessary to achieve a fair determination of the guilt or innocence of one (1) or more defendants.

(c) When such information would assist the court in ruling on a motion for severance of defendants, the court may order the prosecuting attorney to disclose any statements made by the defendant which he intends to introduce in evidence at the trial.

Reporter's Note, 2005 Amendment: In *Woolbright v. State*, 357 Ark. 62, 160 S.W.3d 315 (2004), the Supreme Court barred the use of dual juries until development of a rule that specifically addresses the practical considerations necessary to safeguard the rights of defendants. The 2005 amendments modified subsection (a) to incorporate this holding.

### **Associated Court Rules:**

Rules of Criminal Procedure

### **Group Title:**

Article VI. Pretrial procedures: Joinder and Severance

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