

RULE 3.140 | INDICTMENTS; INFORMATION**(a) Methods of Prosecution.**

(1) Capital Crimes. An offense that may be punished by death shall be prosecuted by indictment.

(2) Other Crimes. The prosecution of all other criminal offenses shall be as follows:

In circuit courts and county courts, prosecution shall be solely by indictment or information, except that prosecution in county courts for violations of municipal ordinances and metropolitan county ordinances may be by affidavit or docket entries and prosecutions for misdemeanors, municipal ordinances, and county ordinances may be by notice to appear issued and served pursuant to rule 3.125. A grand jury may indict for any offense. When a grand jury returns an indictment for an offense not triable in the circuit court, the circuit judge shall either issue a summons returnable in the county court or shall bail the accused for trial in the county court, and the judge, or at the judge's direction, the clerk of the circuit court, shall certify the indictment and file it in the records of the county court.

(b) Nature of Indictment or Information. The indictment or information on which the defendant is to be tried shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged.

(c) Caption, Commencement, Date, and Personal Statistics.

(1) Caption. No formal caption is essential to the validity of an indictment or information on which the defendant is to be tried. Upon objection made as to its absence a caption shall be prefixed in substantially the following manner:

In the (name of court)

State of Florida versus (name of defendant) or, in the case of municipal ordinance cases in county court, City of ____/____ County versus (name of defendant).

Any defect, error, or omission in a caption may be amended as of course, at any stage of the proceeding, whether before or after a plea to the merits, by court order.



(2) Commencement. All indictments or informations on which the defendant is to be tried shall expressly state that the prosecution is brought in the name and by the authority of the State of Florida. Indictments shall state that the defendant is charged by the grand jury of the county. Informations shall state that the appropriate prosecuting attorney makes the charge.

(3) Date. Every indictment or information on which the defendant is to be tried shall bear the date (day, month, year) that it is filed in each court in which it is so filed.

(4) Personal Statistics. Every indictment or information shall include the defendant's race, gender, and date of birth when any of these facts are known. Failure to include these facts shall not invalidate an otherwise sufficient indictment or information.

(d) The Charge.

(1) Allegation of Facts; Citation of Law Violated. Each count of an indictment or information on which the defendant is to be tried shall allege the essential facts constituting the offense charged. In addition, each count shall recite the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated. Error in or omission of the citation shall not be ground for dismissing the count or for a reversal of a conviction based thereon if the error or omission did not mislead the defendant to the defendant's prejudice.

(2) Name of Accused. The name of the accused person shall be stated, if known, and if not known, the person may be described by any name or description by which the person can be identified with reasonable certainty. If the grand jury, prosecuting attorney, or affiant making the charge does not know either the name of the accused or any name or description by which the accused can be identified with reasonable certainty, the indictment or information, as the case may be, shall so allege and the accused may be charged by a fictitious name.

(3) Time and Place. Each count of an indictment or information on which the defendant is to be tried shall



contain allegations stating as definitely as possible the time and place of the commission of the offense charged in the act or transaction or on 2 or more acts or transactions connected together, provided the court in which the indictment or information is filed has jurisdiction to try all of the offenses charged.

(4) Allegation of Intent to Defraud. If an intent to defraud is required as an element of the offense to be charged, it shall be sufficient to allege an intent to defraud, without naming therein the particular person or body corporate intended to be defrauded.

(e) Incorporation by Reference. Allegations made in 1 count shall not be incorporated by reference in another count.

(f) Endorsement and Signature; Indictment. An indictment shall be signed by the foreperson or the acting foreperson of the grand jury returning it. The state attorney or acting state attorney or an assistant state attorney shall make and sign a statement on the indictment to the effect that he or she has advised the grand jury returning the indictment as authorized and required by law. No objection to the indictment on the ground that the statement has not been made shall be entertained after the defendant pleads to the merits.

(g) Signature, Oath, and Certification; Information. An information charging the commission of a felony shall be signed by the state attorney, or a designated assistant state attorney, under oath stating his or her good faith in instituting the prosecution and certifying that he or she has received testimony under oath from the material witness or witnesses for the offense. An information charging the commission of a misdemeanor shall be signed by the state attorney, or a designated assistant state attorney, under oath stating his or her good faith in instituting the prosecution. No objection to an information on the ground that it was not signed or verified, as herein provided, shall be entertained after the defendant pleads to the merits.

(h) Conclusion. An indictment or information on which the defendant is to be tried need contain no formal conclusion.

(i) Surplusage. An unnecessary allegation may be disregarded as surplusage and, on motion of the defendant, may be stricken from the pleading by the court.



(j) Amendment of Information. An information on which the defendant is to be tried that charges an offense may be amended on the motion of the prosecuting attorney or defendant at any time prior to trial because of formal defects.

(k) Form of Certain Allegations. Allegations concerning the following items may be alleged as indicated below:

(1) Description of Written Instruments. Instruments consisting wholly or in part of writing or figures, pictures, or designs may be described by any term by which they are usually known or may be identified, without setting forth a copy or facsimile thereof.

(2) Words; Pictures. Necessary averments relative to spoken or written words or pictures may be made by the general purport of such words or pictures without setting forth a copy or facsimile thereof.

(3) Judgments; Determinations; Proceedings. A judgment, determination, or proceeding of any court or official, civil or military, may be alleged generally in such a manner as to identify the judgment, determination, or proceeding, without alleging facts conferring jurisdiction on the court or official.

(4) Exceptions; Excuses; Provisos. Statutory exceptions, excuses, or provisos relative to offenses created or defined by statute need not be negated by allegation.

(5) Alternative or Disjunctive Allegations. For an offense that may be committed by doing 1 or more of several acts, or by 1 or more of several means, or with 1 or more of several intents or results, it is permissible to allege in the disjunctive or alternative such acts, means, intents, or results.

(6) Offenses Divided into Degrees. For an offense divided into degrees it is sufficient to charge the commission of the offense without specifying the degree.

(7) Felonies. It shall not be necessary to allege that the offense charged is a felony or was done feloniously.

(1) Custody of Indictment or Information. Unless the defendant named therein has been previously released on a citation, order to appear, personal recognizance, or bail, or has been summoned to appear, or unless otherwise ordered by



the court having jurisdiction, all indictments or informations and the records thereof shall be in the custody of the clerk of the court to which they are presented and shall not be inspected by any person other than the judge, clerk, attorney general, and prosecuting attorney until the defendant is in custody or until 1 year has elapsed between the return of an indictment or the filing of an information, after which time they shall be opened for public inspection.

(m) Defendant's Right to Copy of Indictment or Information.

Each person who has been indicted or informed against for an offense shall, on application to the clerk, be furnished a copy of the indictment or information and the endorsements thereon, at least 24 hours before being required to plead to the indictment or information if a copy has not been so furnished. A failure to furnish a copy shall not affect the validity of any subsequent proceeding against the defendant if he or she pleads to the indictment or information.

(n) Statement of Particulars. The court, on motion, shall order the prosecuting attorney to furnish a statement of particulars when the indictment or information on which the defendant is to be tried fails to inform the defendant of the particulars of the offense sufficiently to enable the defendant to prepare a defense. The statement of particulars shall specify as definitely as possible the place, date, and all other material facts of the crime charged that are specifically requested and are known to the prosecuting attorney, including the names of persons intended to be defrauded. Reasonable doubts concerning the construction of this rule shall be resolved in favor of the defendant.

(o) Defects and Variances. No indictment or information, or any count thereof, shall be dismissed or judgment arrested, or new trial granted on account of any defect in the form of the indictment or information or of misjoinder of offenses or for any cause whatsoever, unless the court shall be of the opinion that the indictment or information is so vague, indistinct, and indefinite as to mislead the accused and embarrass him or her in the preparation of a defense or expose the accused after conviction or acquittal to substantial danger of a new prosecution for the same offense.

Committee Notes

1968 Adoption. Introductory Statement: The contention may be made that the authority of the Supreme Court of Florida to govern practice and procedure in all courts by court rule does not include the power to vary in any way from present statutory law governing the work product of the grand jury, viz., the indictment. Such a contention must, of necessity, be based in part, at least, upon the assumption that the grand jury is not an integral part of the judicial system of Florida but is a distinct entity which serves that system. The Supreme Court of Florida, in *State v. Clemons*, 150 So.2d 231 (Fla. 1963), seems to have taken a position contrary to such an assumption.

Regardless of whether such a contention is valid, it seems beyond controversy that the essentials of the indictment, as in the case of an information, are so intimately associated with practice and procedure in the courts that the individual or group having the responsibility of determining its makeup and use is thus empowered to govern a substantial segment of such practice and procedure. The conclusion seems to be inescapable, therefore, that, since the constitution grants to the supreme court authority over this phase of the judicial scheme, the following material is appropriate for consideration as a part of the proposed rules:

(a)(1) Capital Crimes. This recommendation is consistent with present Florida law. See §10 DR, Fla. Const. (1885, as amended) (now Art. I, §15, Fla. Const. (1968 as amended)); §904.01, Fla. Stat. (1963). The terminology “which may be punished by death” is deemed preferable to the terminology “capital crime” of the constitution and “capital offenses” of the statute because of its definitive nature. The recommended terminology is utilized in Federal Rule of Criminal Procedure 7(a) and in the American Law Institute’s Code of Criminal Procedure, section 115. The terminology used in the 1963 Code of Criminal Procedure of Illinois is “when death is a possible punishment.” See §110 4.

Section 10, DR, Florida Constitution, provides: “No person shall be tried for a capital crime unless on presentment or indictment by a grand jury.” No provision is made in the recommendation for prosecution by presentment. This omission is consistent with the apparent legislative construction placed on this section. Section 904.01, Florida Statutes, provides “All capital offenses shall be tried by indictment by a grand jury.” Since presentments traditionally have not been used as trial accusatorial writs in Florida, there seems little reason, at this date, to question that the constitution authorizes the implementing authority, be it the legislature or the supreme court, to use one of the specified methods of prosecution to the exclusion of the other.

(a)(2) Other Crimes. In criminal courts of record and the Court of Record of Escambia County, the constitution of Florida requires that prosecutions be by information. (§§9(5) & 10, Art. V). In county judges’ courts having elective prosecuting attorneys, present statutory law permits prosecutions by indictment (§904.02) and affidavit (Ch. 937). The additional method of prosecution by information is provided as a step toward attaining uniformity with other courts in the prosecution of noncapital offenses, at least to the extent that a prosecutor desires to use an information. This addition involved consideration of whether a nonelected prosecutor serving in a county judge’s court, which often is the case, has the authority to use an information as an accusatorial writ. Since this question has not been definitely resolved under present law, caution

dictated the specification that the prosecuting attorney be elected as a prerequisite to the use of an information.

In all courts not hereinabove mentioned that have elective prosecuting attorneys, trial by indictment or information is consistent with present Florida constitutional law and most of the statutory law. (See §10, DR, Fla. Const., §§904.01 & 904.02, Fla. Stat.; cf. §932.56, where an affidavit may be used in cases appealed from a justice of the peace court and which is tried de novo in a circuit court.) In specially created courts having elective prosecutors and which are not otherwise provided for in foregoing provisions of this rule, it was felt that prosecution by indictment or information should be allowed, even though present statutory authority may limit prosecutions in such courts to the use of an information, e.g., the Court of Record of Alachua County.

In courts not having elective prosecutors, prosecution by information is not recommended because of the aforementioned doubt as to the authority of a nonelected prosecutor to use an information as an accusatorial writ. With reference to the present court structure of Florida this part of the proposal applies only to county judges' courts and justice of the peace courts. The only variation from present procedure contemplated by this part of the proposal is the use of an indictment as a basis for prosecution in a justice of the peace court.

Under this proposal a grand jury may indict for any criminal offense. This recommendation is based on the premise that a grand jury's power to indict should not be limited by virtue of levels in a state court structure. A grand jury should be considered as a guardian of the public peace against all criminal activity and should be in a position to act directly with reference thereto. While practicalities dictate that most non-capital felonies and misdemeanors will be tried by information or affidavit, if appropriate, even if an indictment is permissible as an alternative procedure, it is well to retain the grand jury's check on prosecutors in this area of otherwise practically unrestricted discretion.

The procedure proposed for the circuit judge to follow if a grand jury returns an indictment for an offense not triable in the circuit court applies, with appropriate variations, much of the procedure presently used when a grand jury returns an indictment triable in a criminal court of record. See §32.18, Fla. Stat.

(b) Nature of Indictment or Information. This provision appears in rule 7(c) of the Rules of Criminal Procedure for the United States District Court (hereafter referred to as the federal rules for purposes of brevity). It may be deemed appropriate for incorporation into the recommendations since it preserves to the defendant expressly the right to a formal written accusation and at the same time permits the simplification of the form of the accusation and the elimination of unnecessary phraseology.

(c) Caption, Commencement, and Date.

(1) Caption. Section 906.02, Florida Statutes, contains the essentials of this proposal. It is well settled at common law that the caption is no part of the indictment and that it may be amended. The caption may be considered as serving the purpose of convenience by making more readily

identifiable a particular accusatorial writ. The proposal makes it possible for this convenience to be served if either party wishes it, yet does not provide that the caption be a matter of substance. The essentials of this recommendation also appear in section 149 of the American Law Institute's Code of Criminal Procedure.

(2) Commencement. This proposal apparently is directly contrary to section 906.02(1), Florida Statutes, which treats the caption and the commencement in the same manner, i.e., that neither is necessary to the validity of the indictment or information but may be present as mere matters of convenience. This legislative assumption may not be a correct one and caution dictates that a meaningful commencement be included. Section 20, article V, of the Constitution of Florida provides that the style of all process shall be: "'The State of Florida' and all prosecutions shall be conducted in the name and by the authority of the State." As contemplated in the proposal, the commencement expressly states the sovereign authority by which the accusatorial writ is issued and the agent of that authority. Section 906.02(2), Florida Statutes, seems to contemplate that there will be included in the indictment an express provision concerning the agency of the state responsible for its presentation, viz., the grand jury, by stating, "It is unnecessary to allege that the grand jurors were empaneled, sworn or charged, or that they present the indictment upon their oaths or affirmations." The American Law Institute's commentary on the commencement (A.L.I. Code of Criminal Procedure, p. 529 et seq.) indicates that there is much confusion between what information should be in the commencement as distinguished from the caption.

(3) Date. Since in many cases the beginning of the prosecution is co-existent with the issuance of the indictment or information, the date the writ bears may be of great significance, particularly with reference to the tolling of a statute of limitations. If the date of a grand jury's vote of a true bill or a prosecutor's making oath to an information differs from the date of filing of the indictment or information with the appropriate clerk, it seems the date of filing is the preferable date for a writ to bear since until the filing transpires there is no absolute certainty that the prosecution actually will leave the province of the grand jury or prosecutor.

(d) The Charge.

(1) Allegation of Facts; Citation of Law Violated. This proposal is consistent with various sections of chapter 906, Florida Statutes, in that the charge is adequately alleged when based on the essentials of the offense; surplusage should be guarded against. The citation of the law allegedly violated contributes to defining the charge and conserves time in ascertaining the exact nature of the charge. The 1963 Illinois Criminal Code, section 111-3(a)(2), and Federal Rule of Criminal Procedure 7(c) contain similar provisions.

(2) Name of Accused. The provision concerning the method of stating the name of the accused is consistent with the very elaborate section 906.08, Florida Statutes, which seems unnecessarily long. It is deemed desirable that when a fictitious name is used the necessity therefor should be indicated by allegation.

(3) Time and Place. This provision is consistent with present Florida law. (See *Morgan v. State*, 51 Fla. 76, 40 So. 828 (1906), as to "time"; see *Rimes v. State*, 101 Fla. 1322, 133 So. 550



(1931), as to “place”.) The provision is patterned after section 111-3(4) of the 1963 Illinois Code of Criminal Procedure.

(4) Joinder of Offenses. The essence of this proposal is presently found in section 906.25, Florida Statutes, federal rule 8(a), and section 111-4(a) of the 1963 Illinois Code of Criminal Procedure.

(5) Joinder of Defendants. This proposal is taken from federal rule 8(b). Its substance also appears in section 111-4(b) of the Illinois Code of Criminal Procedure. Although section 906.25, Florida Statutes, does not expressly contain this provision, there is little doubt that its broad language includes it.

(6) Allegation of Intent to Defraud. The language of this proposal presently appears in section 906.18, Florida Statutes, except for the provision concerning affidavit. Its continuation seems advisable as an aid to drawing allegations in charging instruments, although such information if known to the prosecutor may be required to be given in a bill of particulars upon motion of the defendant. (See subdivision (n) of this rule.) At times such information may be unknown to the prosecutor. A part of the statute is purposely not included in the proposal. The excluded part states “and on the trial it shall be sufficient, and shall not be deemed a variance, if there appear to be an intent to defraud the United States or any state, county, city, town or parish, or any body corporate, or any public officer in his official capacity, or any copartnership or members thereof, or any particular person.” It seems that this part of the statute is stated in terms of the law of evidence rather than practice and procedure and should not be included in the rules, although apparently being a logical conclusion from the part included in the proposal.

(e) Incorporation by Reference. Although provision for incorporation by reference appears in federal rule 7(c), the prohibition of such incorporation is recommended with the thought that even though repetition may be minimized by incorporation, confusion, vagueness, and misunderstanding may be fostered by such procedure.

(f) Endorsement and Signature; Indictment. The requirement that the indictment be endorsed “A true bill” and be signed by the foreman or acting foreman of the grand jury presently appears in section 905.23, Florida Statutes. There apparently is no valid reason for changing this requirement since it serves the useful purpose of lending authenticity to the indictment as a legal product of the grand jury. The requirement of the foreman’s signature also appears in federal rule 6(c), 1963, Illinois CCP section 111-3(b), and A.L.I. Model Code of Criminal Procedure section 125.

The provision pertaining to the statement and signature of the prosecuting attorney varies from present Florida law and is offered in alternative form. Florida statutes presently provide that an indictment shall be signed by a state attorney (§§27.21 & 27.22). Federal rule 7(c) also provides for the signature of the attorney for the government.

No requirement presently is made in Florida necessitating an express explanatory statement preceding such signature. Presumably the justification for the signature appears in the Florida statutes that require the aforementioned officers to wait upon the grand jury as advisors, as

examiners of witnesses, and to draw indictments. (See §§905.16, 905.17, 905.19, 905.22, 27.02, 27.16, 27.21, & 27.22, Fla. Stat.)

Vagueness remains concerning the significance of the signature, however. Since the prosecuting attorney cannot be present while the grand jury is deliberating or voting (see section 905.17, Florida Statutes) and has no voice in the decision of whether an indictment is found (see section 905.26, Florida Statutes), a logical question arises concerning the necessity for the prosecuting attorney's signature on the indictment. The provision for the statement is made for the purpose of clarifying the reason for the signature.

(g) Signature, Oath, and Certification; Information. Section 10, DR, Florida Constitution, requires that informations be under oath of the prosecuting attorney of the court in which the information is filed. Article V, section 9(5), Florida Constitution, contains the same requirement concerning informations filed by the prosecuting attorney in a criminal court of record. This proposal also does not deviate from present Florida statutory law as found in section 906.04, Florida Statutes. This statute has received judicial approval. (See *Champlin v. State*, 122 So.2d 412 (Fla. 2d DCA 1960).) It should be noted here that the prosecutor's statement under oath is defined as to the purpose served by the signature.

(h) Conclusion. A similar provision currently appears in section 906.03, Florida Statutes, and should be included in the rules because of its tendency to minimize unnecessary statements in accusatorial writs. Provision is added for the affidavit as an accusatorial writ.

(i) Surplusage. The first part of the proposal, providing for the disregarding of unnecessary allegations as surplusage, is similar to section 906.24, Florida Statutes. The part concerned with striking such material is patterned after federal rule 7(d). The parts are properly complementary.

(j) Amendment of Information. This proposal contains no provision for an amendment of an indictment since, presumably, a grand jury may not amend an indictment which it has returned and which is pending, although it may return another indictment and the first indictment may be disposed of by a nolle prosequi. (See 17 Fla. Jur. Indictments and Informations, 9 (1958).) A federal indictment cannot be amended without reassembling the grand jury (see *Ex parte Bain*, 121 U.S. 1 (1887)); consequently the federal rules contain no provision for the amendment of an indictment. (It may be that the Supreme Court of Florida will feel inclined to include in the rules an express statement concerning amendments of an indictment. None is included here, however.)

The proposal is patterned after section 111-5 of the 1963 Illinois Code of Criminal Procedure, with one exception. The exception arises due to the fact that the Illinois Code provision applies to indictments as well as informations, the position in Illinois apparently being assumed that an indictment may be amended, at least with reference to specified items listed in the statute, as well as other formalities.

(k) Form of Certain Allegations. Several statutes in chapter 906, Florida Statutes, are concerned with the manner of making allegations in indictments and informations. Some of these sections are of such general application that it seems advisable to include their substance in the

rules; others are so restricted that it may be deemed appropriate to recommend other disposition of them.

The proposals made in (1) through (7) here are based on the substance of the designated Florida statutes:

Proposal (1): section 906.09.

Proposal (2): section 906.10.

Proposal (3): section 906.11.

Proposal (4): section 906.12.

Proposal (5): section 906.13.

Proposal (6): section 906.23.

Proposal (7): section 906.17.

(l) Custody and Inspection. The proposal is taken verbatim from section 906.27, Florida Statutes. The necessity for specific provision for the custody and inspection of accusatorial writs seems to be proper to include here.

(m) Defendant's Right to Copy of Indictment or Information. The procedure contained in this proposal is presently required under section 906.28, Florida Statutes, and seems to be unobjectionable.

(n) Statement of Particulars. The phrase, "bill of particulars," has been modernized by changing "bill" to "statement." Historically, a "bill" is a written statement. The first sentence of this proposal is taken from section 906.27, Florida Statutes, the only change being the narrowing of the scope of the judicial discretion now granted by the statute. The latter part of the proposal is recommended in order to clarify the requirements of the rule. Provision for the accusatorial affidavit has been added.

(o) Defects and Variances. This proposal presently appears in Florida law in the form of section 906.25, Florida Statutes. The statute has been the object of much judicial construction and it seems inadvisable to divide it into parts merely for convenience in placing these parts under more appropriate titles, such as "Pre-Trial Motions," "Motion for New Trial," etc.

The intimate relation the statute has with indictments and informations justifies its inclusion here. The useful purposes served by the court constructions dictate the use of the statutory language without change.

1972 Amendment. Substantially the same as prior rule. References to trial by affidavit have been deleted throughout this rule and all Florida Rules of Criminal Procedure because of the passage of the 1972 amendment to article V of the Florida Constitution.

(a)(2) Amended to refer only to circuit courts and county courts. Reference to trial of vehicular traffic offenses transferred to rule 3.010 and made applicable to all rules of criminal procedure.

Former rule (d)(4) and (d)(5) transferred to new rule 3.150. Former rule (d)(6) renumbered as (d)(4).

1973 Amendment. The purpose of the amendment is to provide the same method for prosecution of violations of metropolitan county ordinances as for violations of municipal ordinances.

