

RULE 3.150 | JOINDER OF OFFENSES AND DEFENDANTS

(a) Joinder of Offenses. Two or more offenses that are triable in the same court may be charged in the same indictment or information in a separate count for each offense, when the offenses, whether felonies or misdemeanors, or both, are based on the same act or transaction or on 2 or more connected acts or transactions.

(b) Joinder of Defendants. Two or more defendants may be charged in the same indictment or information on which they are to be tried when:

- (1) each defendant is charged with accountability for each offense charged;
- (2) each defendant is charged with conspiracy and some of the defendants are also charged with 1 or more offenses alleged to have been committed in furtherance of the conspiracy; or
- (3) even if conspiracy is not charged and all defendants are not charged in each count, it is alleged that the several offenses charged were part of a common scheme or plan.

Such defendants may be charged in 1 or more counts together or separately, and all of the defendants need not be charged in each count.

(c) Joint Representation. When 2 or more defendants have been jointly charged under rule 3.150(b) or have been joined for trial and are represented by the same attorney or by attorneys who are associated in the practice of law, the court shall, as soon as practicable, inquire into such joint representation and shall personally advise each defendant of the right to effective assistance of counsel, including separate representation. The court shall take such measures as are necessary to protect each defendant's right to counsel.

Committee Notes

1968 Adoption. (Notes are to rule 1.140(d)(4) and (5).)

(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. While section 906.25, Florida Statutes, does not expressly contain this provision, there is little doubt that its broad language includes it.

1972 Amendment. Provisions of former rule 3.150 are transferred to and incorporated in rule 3.130, Pretrial Release.

(a) Substantially the same as former rule 3.140(d)(4) except that it omits proviso that the court have jurisdiction to try all offenses charged. The proviso seems redundant.

(b) Substantially the same as ABA Standard 1.2 of ABA Standards Relating to Joinder and Severance but omits sub-paragraph (c)(2) which would permit joinder of charges “so closely connected in respect to time, place, and occasion that it would be difficult to separate proof of one charge from proof of the others.” The ABA commentary on this standard concedes that in such cases the chances are considerable that defendants would have a right to severance. Difficulty of separating proof is a good reason for denying a right to join charges. The committee is of the opinion that defendants not connected in the commission of an act and not connected by conspiracy or by common scheme or plan should not, under any circumstances, be joined. The suggested rule omits the provision of former rule 3.140(d)(4) permitting joinder of 2 or more defendants in a single indictment or information, if they are alleged to have participated in the same series of acts or transactions constituting more than 1 offense. If all defendants participated in a series of connected acts or transactions constituting 2 or more offenses, the offenses can be joined under rule 3.150(a).

The last sentence of the suggested rule is the last sentence of former rule 3.140(d)(5).

2004 Amendment. This rule is intended to provide a uniform procedure for judges to follow when codefendants are represented by the same attorney, by the same law firm, or by attorneys who are associated in the practice of law. This provision is substantially derived from Rule 44, Fed. R. Crim. P. See also *Larzelere v. State*, 676 So. 2d 394 (Fla. 1996).

Court Commentary

2004 Amendment. Like Federal Rule of Criminal Procedure 44(c), new subdivision (c) does not specify the particular measures that the court must take to protect a defendant’s right to counsel. Because the measures that will best protect a defendant’s right to counsel can vary from case to case, this determination is left within the court’s discretion. One possible course of action is to advise the defendant of the possible conflict of interest that could arise from dual representation and to obtain a voluntary, knowing, and intelligent waiver of the right to obtain separate representation. See *Larzelere v. State*, 676 So. 2d 394 (Fla. 1996). Another option is to require separate representation. See Fed. R. Crim. P. 44(c) advisory committee notes 1979 amendment.

