

RULE 3.152 | SEVERANCE OF OFFENSES AND DEFENDANTS**(a) Severance of Offenses.**

(1) In case 2 or more offenses are improperly charged in a single indictment or information, the defendant shall have a right to a severance of the charges on timely motion.

(2) In case 2 or more charges of related offenses are joined in a single indictment or information, the court nevertheless shall grant a severance of charges on motion of the state or of a defendant:

(A) before trial on a showing that the severance is appropriate to promote a fair determination of the defendant's guilt or innocence of each offense; or

(B) during trial, only with defendant's consent, on a showing that the severance is necessary to achieve a fair determination of the defendant's guilt or innocence of each offense.

(b) Severance of Defendants.

(1) On motion of the state or a defendant, the court shall order a severance of defendants and separate trials:

(A) before trial, on a showing that the order is necessary to protect a defendant's right to a speedy trial, or is appropriate to promote a fair determination of the guilt or innocence of 1 or more defendants; or

(B) during trial, only with defendant's consent and on a showing that the order is necessary to achieve a fair determination of the guilt or innocence of 1 or more defendants.

(2) If a defendant moves for a severance of defendants on the ground that an oral or written statement of a codefendant makes reference to him or her but is not admissible against him or her, the court shall determine whether the state will offer evidence of the statement at the trial. If the state intends to offer the statement in evidence, the court shall order the state to submit its evidence of the statement for consideration by the



court and counsel for defendants and if the court determines that the statement is not admissible against the moving defendant, it shall require the state to elect 1 of the following courses:

(A) a joint trial at which evidence of the statement will not be admitted;

(B) a joint trial at which evidence of the statement will be admitted after all references to the moving defendant have been deleted, provided the court determines that admission of the evidence with deletions will not prejudice the moving defendant; or

(C) severance of the moving defendant.

(3) In cases in which, at the close of the state's case or at the close of all of the evidence, the evidence is not sufficient to support a finding that allegations on which the joinder of a defendant is based have been proved, the court shall, on motion of that defendant, grant a severance unless the court finds that severance is unnecessary to achieve a fair determination of that defendant's guilt or innocence.

Committee Notes

1968 Adoption. This subdivision rewords and adds to federal rule 14. It covers subject matter of section 918.02, Florida Statutes.

1972 Amendment. (a)(1) Severance on timely motion by defendant is mandatory if multiple offenses are improperly joined.

(a)(2) Provides for severance of offenses before trial on showing that severance will promote a fair determination of guilt or innocence substantially as provided by former rule 3.190(j)(2) and, unlike any Florida rule, distinguishes motion during trial.

(b)(1) Based on ABA Standard 2.3(b). Expands rule 3.190(j) to include defendant's right to speedy trial as ground for severance and, unlike any Florida rule, distinguishes between motion before and motion during trial.

(b)(2) Based on ABA Standard 2.3, subparagraphs (a) and (c). Requires court to determine whether the statement will be offered as distinguished from asking the state its intention. Requires production of evidence of the statement in the event it will be offered so that the court and counsel can intelligently deal with the problem. Florida has no similar rule.



(b)(3) Substantially the same as ABA Standard, except that the proposed rule requires severance unless the court affirmatively finds that severance is unnecessary. Florida has no similar rule.

