



**FLORIDA RULES OF CRIMINAL PROCEDURE
SECTION III
[ALL-IN-ONE DOCUMENT]**

PRELIMINARY PROCEEDINGS

{AS OF: 1/1/2017}

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FLORIDA RULES OF CRIMINAL PROCEDURE

III PRELIMINARY PROCEEDINGS

RULES: 3.120 through 3.153



RULE 3.120 | COMMITTING JUDGE

Each state and county judge is a committing judge and may issue a summons to, or a warrant for the arrest of, a person against whom a complaint is made in writing and sworn to before a person authorized to administer oaths, when the complaint states facts that show that such person violated a criminal law of this state within the jurisdiction of the judge to whom the complaint is presented. The judge may take testimony under oath to determine if there is reasonable ground to believe the complaint is true. The judge may commit the offender to jail, may order the defendant to appear before the proper court to answer the charge in the complaint, or may discharge the defendant from custody or from any undertaking to appear. The judge may authorize the clerk to issue a summons.

Committee Notes

1968 Adoption. This is substantially the same as part of section 901.01, Florida Statutes. (The remaining part should be retained as a statute.) It differs from the statute by requiring the complaint to be in writing and by identifying the initiating instrument as a “complaint,” thus adopting the federal terminology which is more meaningful and modern. Some doubt was expressed as to whether the terms of the statute incorporated in the rule are within the rulemaking power of the Supreme Court.

1972 Amendment. Substantially same as former rule. Altered to incorporate the provision for testimony under oath formerly contained in rule 3.121(a), and authorize the execution of the affidavit before a notary or other person authorized to administer oaths.

RULE 3.121 | ARREST WARRANT

(a) Issuance. An arrest warrant, when issued, shall:

- (1) be in writing and in the name of the State of Florida;
- (2) set forth substantially the nature of the offense;
- (3) command that the person against whom the complaint was made be arrested and brought before a judge;
- (4) specify the name of the person to be arrested or, if the name is unknown to the judge, designate the person by any name or description by which the person can be identified with reasonable certainty, and include a photograph if reasonably available;
- (5) state the date when issued and the county where issued;
- (6) be signed by the judge with the title of the office; or, may be electronically signed by the judge if the arrest warrant bears the affiant's signature, or electronic signature, is supported by an oath or affirmation administered by the judge, or other person authorized by law to administer oaths, and, if submitted electronically, is submitted by reliable electronic means; and
- (7) for offenses where a right to bail exists, set the amount of bail or other conditions of release, and the return date.

(b) Amendment. No arrest warrant shall be dismissed nor shall any person in custody be discharged because of any defect as to form in the warrant; but the warrant may be amended by the judge to remedy such defect.

Committee Notes

1968 Adoption.

(a) This is substantially the same as section 901.02, Florida Statutes, except that the rule requires a written complaint. Also, the rule does not incorporate that seldom used part of the statute that permits the magistrate to issue an arrest warrant upon affidavits made before the prosecuting attorney.



(b) This is the same as section 901.03, Florida Statutes.

(c) This is the same as section 901.05, Florida Statutes, except for modernizing the language.

1972 Amendment. (a) of former rule has been deleted, as its substance is now contained in rules 3.120 and 3.130; (b) has been renumbered as (a); (c) has been renumbered as (b).



RULE 3.125 | NOTICE TO APPEAR

(a) Definition. Unless indicated otherwise, notice to appear means a written order issued by a law enforcement officer in lieu of physical arrest requiring a person accused of violating the law to appear in a designated court or governmental office at a specified date and time.

(b) By Arresting Officer. If a person is arrested for an offense declared to be a misdemeanor of the first or second degree or a violation, or is arrested for violation of a municipal or county ordinance triable in the county, and demand to be taken before a judge is not made, notice to appear may be issued by the arresting officer unless:

- (1) the accused fails or refuses to sufficiently identify himself or herself or supply the required information;
- (2) the accused refuses to sign the notice to appear;
- (3) the officer has reason to believe that the continued liberty of the accused constitutes an unreasonable risk of bodily injury to the accused or others;
- (4) the accused has no ties with the jurisdiction reasonably sufficient to assure the accused's appearance or there is substantial risk that the accused will refuse to respond to the notice;
- (5) the officer has any suspicion that the accused may be wanted in any jurisdiction; or
- (6) it appears that the accused previously has failed to respond to a notice or a summons or has violated the conditions of any pretrial release program.

(c) By Booking Officer. If the arresting officer does not issue notice to appear because of one of the exceptions listed in subdivision (b) and takes the accused to police headquarters, the booking officer may issue notice to appear if the officer determines that there is a likelihood that the accused will appear as directed, based on a reasonable investigation of the accused's:

- (1) residence and length of residence in the community;
- (2) family ties in the community;



- (3) employment record;
- (4) character and mental condition;
- (5) past record of convictions; or
- (6) past history of appearance at court proceedings.

(d) How and When Served. If notice to appear is issued, it shall be prepared in quadruplicate. The officer shall deliver 1 copy of the notice to appear to the arrested person and the person, to secure release, shall give a written promise to appear in court by signing the 3 remaining copies: 1 to be retained by the officer and 2 to be filed with the clerk of the court. These 2 copies shall be sworn to by the arresting officer before a notary public or a deputy clerk. If notice to appear is issued under subdivision (b), the notice shall be issued immediately upon arrest. If notice to appear is issued under subdivision (c), the notice shall be issued immediately on completion of the investigation. The arresting officer or other duly authorized official then shall release from custody the person arrested.

(e) Copy to the Clerk of the Court. With the sworn notice to appear, the arresting officer shall file with the clerk a list of witnesses and their addresses and a list of tangible evidence in the cause. One copy shall be retained by the officer and 2 copies shall be filed with the clerk of the court.

(f) Copy to State Attorney. The clerk shall deliver 1 copy of the notice to appear and schedule of witnesses and evidence filed therewith to the state attorney.

(g) Contents. If notice to appear is issued, it shall contain the:

- (1) name and address of the accused;
- (2) date of offense;
- (3) offense(s) charged – by statute and municipal ordinance if applicable;
- (4) counts of each offense;
- (5) time and place that the accused is to appear in court;



(6) name and address of the trial court having jurisdiction to try the offense(s) charged;

(7) name of the arresting officer;

(8) name(s) of any other person(s) charged at the same time; and

(9) signature of the accused.

(h) Failure to Appear. If a person signs a written notice to appear and fails to respond to the notice to appear, a warrant of arrest shall be issued under rule 3.121.

(i) Traffic Violations Excluded. Nothing contained herein shall prevent the operation of a traffic violations bureau, the issuance of citations for traffic violations, or any procedure under chapter 316, Florida Statutes.

(j) Rules and Regulations. Rules and regulations of procedure governing the exercise of authority to issue notices to appear shall be established by the chief judge of the circuit.

(k) Procedure by Court.

(1) When the accused appears before the court under the requirements of the notice to appear, the court shall advise the defendant as set forth in rule 3.130(b), and the provisions of that rule shall apply. The accused at such appearance may elect to waive the right to counsel and trial and enter a plea of guilty or nolo contendere by executing the waiver form contained on the notice to appear, and the court may enter judgment and sentence in the cause.

(2) In the event the defendant enters a plea of not guilty, the court may set the cause for jury or nonjury trial on the notice to appear under the provisions of rules 3.140 and 3.160. When the court sets a trial date by the court, the clerk shall, without further praecipe, issue witness subpoenas to the law enforcement officer who executed the notice to appear and to the witnesses whose names and addresses appear on the list filed by the officer, requiring their attendance at trial.

(l) Form of Notice to Appear and Schedule of Witnesses and Evidence. The notice to appear and schedule of witnesses and evidence shall be in substantially the following form:



IN THE COUNTY COURT, IN AND FOR _____ COUNTY, FLORIDA

NOTICE TO APPEAR

Agency Case # _____

STATE OF FLORIDA, COUNTY OF _____

In the name of _____ County, Florida: The undersigned certifies that he or she has just and reasonable grounds to believe, and does believe, that:

On(date)....., at _____ () a.m. () p.m.

_____	_____	_____	_____
Last Name	First	M.I.	Aliases

_____	_____
Street – City and State	Date and Place of Birth

_____	_____	_____	_____	_____	_____	_____
Phone	Race/Sex	Height	Weight	Hair	Eyes	Scars/Marks

_____	_____	_____
Occupation	Place of Employment	Employment Phone

_____	_____	_____
Complexion	Driver's License #	Yr./St. Social Security #

at (location) _____

in _____ County, Florida, committed the following offense(s):

(1) _____ (2) _____

in violation of section(s): _____ : () State Statute _____

_____ () Municipal Ord.

DID (Narrative): _____



_____ Name of Officer	_____ ID	_____ Agency
--------------------------	-------------	-----------------

☐ Mandatory appearance in court,

Location

on(date)....., at _____ () a.m. () p.m.

☐ You need not appear in court, but must comply with instructions on back.

CO-DEFENDANTS:

☐ Cited 1. ☐ Jailed

1.	_____	☐ Cited
	_____	☐ Jailed
	Name DOB Address	

2.	_____	☐ Cited
	_____	☐ Jailed
	Name DOB Address	

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact [identify applicable court personnel by name, address, and telephone number] at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

I AGREE TO APPEAR AT THE TIME AND PLACE DESIGNATED ABOVE TO ANSWER THE OFFENSE CHARGED OR TO PAY THE FINE SUBSCRIBED. I UNDERSTAND THAT SHOULD I WILLFULLY FAIL TO APPEAR BEFORE THE COURT AS REQUIRED



BY THIS NOTICE TO APPEAR, I MAY BE HELD IN CONTEMPT OF COURT AND A WARRANT FOR MY ARREST SHALL BE ISSUED.

Signature of Defendant

I swear the above and reverse and attached statements are true and correct to the best of my knowledge and belief.

Complainant

Agency or Department

Sworn to and subscribed before me on(date).....

Notary Public, State of Florida

[Editor's Note: Jurat should include identification information required by F.S. 117.05(13).]

WAIVER INFORMATION

If you desire to plead guilty or nolo contendere (no contest) and you need not appear in court as indicated on the face of this notice, you may present this notice at the county court named on the reverse of this page.

From(date)....., _____ to(date)....., _____
Hour Hour

and pay a fine of _____ dollars in cash, money order, or certified check.

The waiver below must be completed and attached. Read carefully.

Your failure to answer this summons in the manner subscribed will result in a warrant being issued on a separate and additional charge.



"In consideration of my not appearing in court, I the undersigned, do hereby enter my appearance on the affidavit for the offense charged on the other side of this notice and waive the reading of the affidavit in the above named cause and the right to be present at the trial of said action. I hereby enter my plea of Guilty [] or Nolo Contendere [], and waive my right to prosecute appeal or error proceedings.

"I understand the nature of the charge against me; I understand my right to have counsel and waive this right and the right to a continuance. I waive my right to trial before a judge or jury. I plead Guilty [] or Nolo Contendere [] to the charge, being fully aware that my signature to this plea will have the same effect as a judgment of this court."

Total Fine and Cost _____

Defendant Signature _____

Address _____



IN THE COUNTY COURT, IN AND FOR
_____ COUNTY, FLORIDA
SCHEDULE OF WITNESSES AND
EVIDENCE FOR NOTICE TO APPEAR

Agency Case #

Last Name

First

M.I.

Aliases

Address

.....(date of notice to appear)..... Offense(s): (1)

(2)

TANGIBLE EVIDENCE: (If none, write "None")

Item: _____

Obtained from (person and/or place): _____

first received by: given to: _____

WITNESSES: (If none, write "None")

#1 Name: _____
Res. Tel. No. _____ Address: _____
Bus. Tel. No. _____ Address: _____
Testimony _____

#2 Name: _____
Res. Tel. No. _____ Address: _____
Bus. Tel. No. _____ Address: _____
Testimony _____



#3 Name: _____
Res. Tel. No. _____ Address: _____
Bus. Tel. No. _____ Address: _____
Testimony _____

I certify that the foregoing is a complete list of witnesses and evidence known to me.

Investigating Officer

Agency

Committee Notes

1992 Amendment. The amendment deletes subdivision (k) and reletters subdivisions (l) and (m). The elimination of subdivision (k) will entitle individuals charged with criminal violations to the same discovery, without regard to the nature of the charging instrument. As amended, persons charged by way of a notice to appear can obtain the same discovery as persons charged by way of either an information or an indictment. In this regard the committee also has proposed amendments to rule 3.220(b)(1), (b)(2), (c)(1), and (h)(1) to change the reference from “indictment or information” to “charging document.”



RULE 3.130 | FIRST APPEARANCE

(a) Prompt First Appearance. Except when previously released in a lawful manner, every arrested person shall be taken before a judicial officer, either in person or by electronic audiovisual device in the discretion of the court, within 24 hours of arrest. In the case of a child in the custody of juvenile authorities, against whom an information or indictment has been filed, the child shall be taken for a first appearance hearing within 24 hours of the filing of the information or indictment. The chief judge of the circuit for each county within the circuit shall designate 1 or more judicial officers from the circuit court, or county court, to be available for the first appearance and proceedings. The state attorney or an assistant state attorney and public defender or an assistant public defender shall attend the first appearance proceeding either in person or by other electronic means. First appearance hearings shall be held with adequate notice to the public defender and state attorney. An official record of the proceedings shall be maintained. If the defendant has retained counsel or expresses a desire to and is financially able, the attendance of the public defender or assistant public defender is not required at the first appearance, and the judge shall follow the procedure outlined in subdivision (c)(2).

(b) Advice to Defendant. At the defendant's first appearance the judge shall immediately inform the defendant of the charge, including an alleged violation of probation or community control and provide the defendant with a copy of the complaint. The judge shall also adequately advise the defendant that:

- (1) the defendant is not required to say anything, and that anything the defendant says may be used against him or her;
- (2) if unrepresented, that the defendant has a right to counsel, and, if financially unable to afford counsel, that counsel will be appointed; and
- (3) the defendant has a right to communicate with counsel, family, or friends, and if necessary, will be provided reasonable means to do so.

(c) Counsel for Defendant.



(1) Appointed Counsel. If practicable, the judge should determine prior to the first appearance whether the defendant is financially able to afford counsel and whether the defendant desires representation. When the judge determines that the defendant is entitled to court-appointed counsel and desires counsel, the judge shall immediately appoint counsel. This determination must be made and, if required, counsel appointed no later than the time of the first appearance and before any other proceedings at the first appearance. If necessary, counsel may be appointed for the limited purpose of representing the defendant only at first appearance or at subsequent proceedings before the judge.

(2) Retained Counsel. When the defendant has employed counsel or is financially able and desires to employ counsel to represent him or her at first appearance, the judge shall allow the defendant a reasonable time to send for counsel and shall, if necessary, postpone the first appearance hearing for that purpose. The judge shall also, on request of the defendant, require an officer to communicate a message to such counsel as the defendant may name. The officer shall, with diligence and without cost to the defendant if the counsel is within the county, perform the duty. If the postponement will likely result in the continued incarceration of the defendant beyond a 24-hour period, at the request of the defendant the judge may appoint counsel to represent the defendant for the first appearance hearing.

(3) Opportunity to Confer. No further steps in the proceedings should be taken until the defendant and counsel have had an adequate opportunity to confer, unless the defendant has intelligently waived the right to be represented by counsel.

(4) Waiver of Counsel. The defendant may waive the right to counsel at first appearance. The waiver, containing an explanation of the right to counsel, shall be in writing and signed and dated by the defendant. This written waiver of counsel shall, in addition, contain a statement that it is limited to first appearance only and shall in no way be construed to be a waiver of counsel for subsequent proceedings.



(d) Pretrial Release. The judicial officer shall proceed to determine conditions of release pursuant to rule 3.131. For a defendant who has been arrested for violation of his or her probation or community control by committing a new violation of law, the judicial officer:

(1) May order the offender to be taken before the court that granted the probation or community control if the offender admits the violation;

(2) If the offender does not admit the violation at first appearance hearing, the judicial officer may commit and order the offender to be brought before the court that granted probation or community control, or may release the offender with or without bail to await further hearing, notwithstanding section 907.041, Florida Statutes, relating to pretrial detention and release. In determining whether to require or set the amount of bail, the judicial officer may consider whether the offender is more likely than not to receive a prison sanction for the violation.

Committee Notes

1972 Amendment. Same as prior rule except (b), which is new.



RULE 3.131 | PRETRIAL RELEASE

(a) Right to Pretrial Release. Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. As a condition of pretrial release, whether such release is by surety bail bond or recognizance bond or in some other form, the defendant shall refrain from any contact of any type with the victim, except through pretrial discovery pursuant to the Florida Rules of Criminal Procedure and shall comply with all conditions of pretrial release as ordered by the court. Upon motion by the defendant when bail is set, or upon later motion properly noticed pursuant to law, the court may modify the condition precluding victim contact if good cause is shown and the interests of justice so require. The victim shall be permitted to be heard at any proceeding in which such modification is considered, and the state attorney shall notify the victim of the provisions of this subsection and of the pendency of any such proceeding. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

(b) Hearing at First Appearance – Conditions of Release.

(1) Unless the state has filed a motion for pretrial detention pursuant to rule 3.132, the court shall conduct a hearing to determine pretrial release. For the purpose of this rule, bail is defined as any of the forms of release stated below. Except as otherwise provided by this rule, there is a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release. The judicial officer shall impose the first of the following conditions of release that will reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process; or, if no single condition gives that assurance, shall impose any combination of the following conditions:

(A) personal recognizance of the defendant;



(B) execution of an unsecured appearance bond in an amount specified by the judge;

(C) placement of restrictions on the travel, association, or place of abode of the defendant during the period of release;

(D) placement of the defendant in the custody of a designated person or organization agreeing to supervise the defendant;

(E) execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; provided, however, that any criminal defendant who is required to meet monetary bail or bail with any monetary component may satisfy the bail by providing an appearance bond; or

(F) any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

(2) The judge shall at the defendant's first appearance consider all available relevant factors to determine what form of release is necessary to assure the defendant's appearance. If a monetary bail is required, the judge shall determine the amount. Any judge setting or granting monetary bond shall set a separate and specific bail amount for each charge or offense. When bail is posted each charge or offense requires a separate bond.

(3) In determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court may consider the nature and circumstances of the offense charged and the penalty provided by law; the weight of the evidence against the defendant; the defendant's family ties, length of residence in the community, employment history, financial resources, need for substance abuse evaluation and/or treatment, and mental condition; the defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings; the nature and probability of danger that the defendant's release poses



to the community; the source of funds used to post bail; whether the defendant is already on release pending resolution of another criminal proceeding or is on probation, parole, or other release pending completion of sentence; and any other facts the court considers relevant.

(4) No person charged with a dangerous crime, as defined in section 907.041(4)(a), Florida Statutes, shall be released on nonmonetary conditions under the supervision of a pretrial release service, unless the service certifies to the court that it has investigated or otherwise verified the conditions set forth in section 907.041(3)(b), Florida Statutes.

(5) All information provided by a defendant in connection with any application for or attempt to secure bail, to any court, court personnel, or individual soliciting or recording such information for the purpose of evaluating eligibility for or securing bail for the defendant, under circumstances such that the defendant knew or should have known that the information was to be used in connection with an application for bail, shall be accurate, truthful, and complete, without omissions, to the best knowledge of the defendant. Failure to comply with the provisions of this subdivision may result in the revocation or modification of bail. However, no defendant shall be compelled to provide information regarding his or her criminal record.

(6) Information stated in, or offered in connection with, any order entered pursuant to this rule need not strictly conform to the rules of evidence.

(c) Consequences of Failure to Appear.

(1) Any defendant who willfully and knowingly fails to appear and breaches a bond as specified in section 903.26, Florida Statutes, and who voluntarily appears or surrenders shall not be eligible for a recognizance bond.

(2) Any defendant who willfully and knowingly fails to appear and breaches a bond as specified in section 903.26, Florida Statutes, and who is arrested at any time following forfeiture shall not be eligible for a



recognizance bond or any form of bond that does not require a monetary undertaking or commitment equal to or greater than \$2,000 or twice the value of the monetary commitment or undertaking of the original bond, whichever is greater.

(d) Subsequent Application for Setting or Modification of Bail.

(1) When a judicial officer not possessing trial jurisdiction orders a defendant held to answer before a court having jurisdiction to try the defendant, and bail has been denied or sought to be modified, application by motion may be made to the court having jurisdiction to try the defendant or, in the absence of the judge of the trial court, to the circuit court. The motion shall be determined promptly. No judge or a court of equal or inferior jurisdiction may modify or set a condition of release, unless the judge:

(A) imposed the conditions of bail or set the amount of bond required;

(B) is the chief judge of the circuit in which the defendant is to be tried;

(C) has been assigned to preside over the criminal trial of the defendant; or

(D) is the first appearance judge and was authorized by the judge initially setting or denying bail to modify or set conditions of release.

(2) Applications by the defendant for modification of bail on any felony charge must be heard by a court in person at a hearing, with the defendant present and with at least 3 hours' notice to the state attorney and county attorney, if bond forfeiture proceedings are handled by the county attorney. The state may apply for modification of bail by showing good cause and with at least 3 hours' notice to the attorney for the defendant.

(3) If any trial court fixes bail and refuses its reduction before trial, the defendant may institute habeas corpus proceedings seeking reduction of bail. If application is made to the supreme court or district



court of appeal, notice and a copy of such application shall be given to the attorney general and the state attorney. Such proceedings shall be determined promptly.

(e) Bail Before Conviction; Condition of Undertaking.

(1) If a person is admitted to bail for appearance for a preliminary hearing or on a charge that a judge is empowered to try, the condition of the undertaking shall be that the person will appear for the hearing or to answer the charge and will submit to the orders and process of the judge trying the same and will not depart without leave.

(2) If a person is admitted to bail after being held to answer by a judge or after an indictment or information on which the person is to be tried has been filed, the condition of the undertaking shall be that the person will appear to answer the charges before the court in which he or she may be prosecuted and submit to the orders and process of the court and will not depart without leave.

(f) Revocation of Bail. The court in its discretion for good cause, any time after a defendant who is at large on bail appears for trial, may commit the defendant to the custody of the proper official to abide by the judgment, sentence, and any further order of the court.

(g) Arrest and Commitment by Court. The court in which the cause is pending may direct the arrest and commitment of the defendant who is at large on bail when:

- (1) there has been a breach of the undertaking;
- (2) it appears that the defendant's sureties or any of them are dead or cannot be found or are insufficient or have ceased to be residents of the state; or
- (3) the court is satisfied that the bail should be increased or new or additional security required.

The order for the commitment of the defendant shall recite generally the facts on which it is based and shall direct that the defendant be arrested by any official authorized to make arrests and that the defendant be committed to the official in whose custody he or she would be if he or she had not been given bail, to be detained by such official until



legally discharged. The defendant shall be arrested pursuant to such order on a certified copy thereof, in any county, in the same manner as on a warrant of arrest. If the order provided for is made because of the failure of the defendant to appear for judgment, the defendant shall be committed. If the order is made for any other cause, the court may determine the conditions of release, if any.

(h) Bail after Recommitment. If the defendant applies to be admitted to bail after recommitment, the court that recommitted the defendant shall determine conditions of release, if any, subject to the limitations of (b) above.

(i) Qualifications of Surety after Order of Recommitment. If the defendant offers bail after recommitment, each surety shall possess the qualifications and sufficiency and the bail shall be furnished in all respects in the manner prescribed for admission to bail before recommitment.

(j) Issuance of Capias; Bail Specified. On the filing of either an indictment or information charging the commission of a crime, if the person named therein is not in custody or at large on bail for the offense charged, the judge shall issue or shall direct the clerk to issue, either immediately or when so directed by the prosecuting attorney, a capias for the arrest of the person. If the person named in the indictment or information is a child and the child has been served with a promise to appear under the Florida Rules of Juvenile Procedure, capias need not be issued. Upon the filing of the indictment or information, the judge shall endorse the amount of bail, if any, and may authorize the setting or modification of bail by the judge presiding over the defendant's first appearance hearing. This endorsement shall be made on the capias and signed by the judge.

(k) Summons on Misdemeanor Charge. When a complaint is filed charging the commission of a misdemeanor only and the judge deems that process should issue as a result, or when an indictment or information on which the defendant is to be tried charging the commission of a misdemeanor only, and the person named in it is not in custody or at large on bail for the offense charged, the judge shall direct the clerk to issue a summons instead of a capias unless the judge has reasonable ground to believe that the person will not appear in response to a summons, in which event an arrest warrant or a capias shall be issued with the amount of bail endorsed on it. The



summons shall state substantially the nature of the offense and shall command the person against whom the complaint was made to appear before the judge issuing the summons or the judge having jurisdiction of the offense at a time and place stated in it.

(1) Summons When Defendant Is Corporation. On the filing of an indictment or information or complaint charging a corporation with the commission of a crime, whether felony or misdemeanor, the judge shall direct the clerk to issue or shall issue a summons to secure its appearance to answer the charge. If, after being summoned, the corporation does not appear, a plea of not guilty shall be entered and trial and judgment shall follow without further process.

Committee Notes

1968 Adoption.

- (a) Same as section 903.01, Florida Statutes.
- (b) Same as section 903.04, Florida Statutes.
- (c) Same as section 903.02, Florida Statutes.
- (d) Same as section 903.12, Florida Statutes.
- (e) Substantially same as section 903.13, Florida Statutes.
- (f) Same as section 903.19, Florida Statutes.
- (g) Same as section 918.01, Florida Statutes.
- (h) Substantially same as section 903.23, Florida Statutes.
- (i) Same as section 903.24, Florida Statutes.
- (j) Same as section 903.25, Florida Statutes.
- (k) and (l) Formerly rule 3.150(c). These proposals contain the essentials of present sections 907.01, 907.02, and 901.09(3), Florida Statutes, a change of some of the terminology being warranted for purpose of clarity.
- (m) Formerly rule 3.150(c). This proposal contains all of the essentials of section 907.03, Florida Statutes, and that part of section 901.14, Florida Statutes, pertaining to postindictment or postinformation procedure. A charge by affidavit is provided. Although subdivision (g) is the same as section 918.01, Florida Statutes, its constitutionality was questioned by the subcommittee, constitutional right to bail and presumption of innocence.



1972 Amendment. Same as prior rule except (b), which is new. (k), (l), and (m) are taken from prior rule 3.150.

1977 Amendment. This proposal amends subdivision (b)(4) of the present rule [formerly rule 3.130(b)(4)] to expand the forms of pretrial release available to the judge. The options are the same as those available under the federal rules without the presumption in favor of release on personal recognizance or unsecured appearance.

This proposal leaves it to the sound discretion of the judge to determine the least onerous form of release which will still insure the defendant's appearance.

It also sets forth the specific factors the judge should take into account in making this determination.

1983 Amendment. Rule 3.131(d) is intended to replace former rule 3.130(f) and therefore contemplates all subsequent modifications of bail including all increases or reductions of monetary bail or any other changes sought by the state or by the defendant.

Court Comment

1977 Amendment. Subdivision (a) was repealed by Chapter 76-138, §2, Laws of Florida, insofar as it was inconsistent with the provision of that statute. Subdivision (a) has been amended so as to comply with the legislative act.



RULE 3.132 | PRETRIAL DETENTION

(a) Motion Filed at First Appearance. A person arrested for an offense for which detention may be ordered under section 907.041, Florida Statutes, shall be taken before a judicial officer for a first appearance within 24 hours of arrest. The state may file with the judicial officer at first appearance a motion seeking pretrial detention, signed by the state attorney or an assistant, setting forth with particularity the grounds and the essential facts on which pretrial detention is sought and certifying that the state attorney has received testimony under oath supporting the grounds and the essential facts alleged in the motion. If no such motion is filed, the judicial officer may inquire whether the state intends to file a motion for pretrial detention, and if so, grant the state no more than three days to file a motion under this subdivision. Upon a showing by the state of probable cause that the defendant committed the offense and exigent circumstances, the defendant shall be detained in custody pending the filing of the motion. If, after inquiry, the State indicates it does not intend to file a motion for pretrial detention, or fails to establish exigent circumstances for holding defendant in custody pending the filing of the motion, or files a motion that is facially insufficient, the judicial officer shall proceed to determine the conditions of release pursuant to the provisions of rule 3.131(b). If the motion for pretrial detention is facially sufficient, the judicial officer shall proceed to determine whether there is probable cause that the person committed the offense. If probable cause is found, the person may be detained in custody pending a final hearing on pretrial detention. If probable cause is established after first appearance pursuant to the provisions of rule 3.133 and the person has been released from custody, the person may be recommitted to custody pending a final hearing on pretrial detention.

(b) Motion Filed after First Appearance. A motion for pretrial detention may be filed at any time prior to trial. The motion shall be made to the court with trial jurisdiction. On receipt of a facially sufficient motion and a determination of probable cause, unless otherwise previously established, that an offense eligible for pretrial detention has been committed, the following shall occur:



(1) In the event of exigent circumstances, the court shall issue a warrant for the arrest of the named person, if the person has been released from custody. The person may be detained in custody pending a final hearing on pretrial detention.

(2) In the absence of exigent circumstances, the court shall order a hearing on the motion as provided in (c) below.

(c) Final Order.

(1) Hearing Required. A final order of pretrial detention shall be entered only after a hearing in the court of trial jurisdiction. The hearing shall be held within 5 days of the filing of the motion or the date of taking the person in custody pursuant to a motion for pretrial detention, whichever is later. The state attorney has the burden of showing beyond a reasonable doubt the need for pretrial detention pursuant to the criteria in section 907.041, Florida Statutes. The defendant may request a continuance. The state shall be entitled to 1 continuance for good cause. No continuance shall exceed 5 days unless there are extenuating circumstances. The defendant may be detained pending the hearing, but in no case shall the defendant be detained in excess of 10 days, unless the delay is sought by the defendant. The person sought to be detained is entitled to representation by counsel, to present witnesses and evidence, and to cross-examine witnesses. The court may admit relevant evidence and testimony under oath without complying with the rules of evidence, but evidence secured in violation of the United States Constitution or the Constitution of the State of Florida shall not be admissible. A final order of pretrial detention shall not be based exclusively on hearsay evidence. No testimony by the defendant shall be admissible to prove the guilt of the defendant at any other judicial proceeding, but may be admitted in an action for perjury based on the defendant's statements made at the pretrial detention hearing or for impeachment.

(2) Findings and Conclusions to Be Recorded. The court's pretrial detention order shall be based solely on evidence produced at the hearing and shall contain findings of fact and conclusions of law to support it.



The order shall be made either in writing or orally on the record. The court shall render its findings within 24 hours of the pretrial detention hearing.

(3) Dissolution of Order. The defendant shall be entitled to dissolution of the pretrial detention order whenever the court finds that a subsequent event has eliminated the basis for detention.

(4) Further Proceedings on Order. If any trial court enters a final order of pretrial detention, the defendant may obtain review by motion to the appropriate appellate court. If motion for review is taken to the supreme court or the district court of appeal, notice and a copy of the motion shall be served on the attorney general and the state attorney; if review is taken to the circuit court, service shall be on the state attorney.



RULE 3.133 | PRETRIAL PROBABLE CAUSE DETERMINATIONS AND ADVERSARY PRELIMINARY HEARINGS

(a) Nonadversary Probable Cause Determination.

(1) Defendant in Custody. In all cases in which the defendant is in custody, a nonadversary probable cause determination shall be held before a judge within 48 hours from the time of the defendant's arrest; provided, however, that this proceeding shall not be required when a probable cause determination has been previously made by a judge and an arrest warrant issued for the specific offense for which the defendant is charged. The judge after a showing of extraordinary circumstance may continue the proceeding for not more than 24 hours beyond the 48 hour period. The judge, after a showing that an extraordinary circumstance still exists, may continue the proceeding for not more than 24 additional hours following the expiration of the initial 24 hour continuance. This determination shall be made if the necessary proof is available at the time of the first appearance as required under rule 3.130, but the holding of this determination at that time shall not affect the fact that it is a nonadversary proceeding.

(2) Defendant on Pretrial Release. A defendant who has been released from custody before a probable cause determination is made and who is able to establish that the pretrial release conditions are a significant restraint on his or her liberty may file a written motion for a nonadversary probable cause determination setting forth with specificity the items of significant restraint that a finding of no probable cause would eliminate. The motion shall be filed within 21 days from the date of arrest, and notice shall be given to the state. A judge who finds significant restraints on the defendant's liberty shall make a probable cause determination within 7 days from the filing of the motion.

(3) Standard of Proof. Upon presentation of proof, the judge shall determine whether there is probable cause for detaining the arrested person pending further proceedings. The defendant need not be present. In determining probable cause to detain the defendant, the judge shall apply the standard for issuance of an arrest



warrant, and the finding may be based on sworn complaint, affidavit, deposition under oath, or, if necessary, on testimony under oath properly recorded.

(4) Action on Determination. If probable cause is found, the defendant shall be held to answer the charges. If probable cause is not found or the specified time periods are not complied with, the defendant shall be released from custody unless an information or indictment has been filed, in which event the defendant shall be released on recognizance subject to the condition that he or she appear at all court proceedings or shall be released under a summons to appear before the appropriate court at a time certain. Any release occasioned by a failure to comply with the specified time periods shall be by order of the judge on a written application filed by the defendant with notice sent to the state or by a judge without a written application but with notice to the state. The judge shall order the release of the defendant after it is determined that the defendant is entitled to release and after the state has a reasonable period of time, not to exceed 24 hours, in which to establish probable cause. A release required by this rule does not void further prosecution by information or indictment but does prohibit any restraint on liberty other than appearing for trial. A finding that probable cause does or does not exist shall be made in writing, signed by the judge, and filed, together with the evidence of such probable cause, with the clerk of the court having jurisdiction of the offense for which the defendant is charged.

(b) Adversary Preliminary Hearing.

(1) When Applicable. A defendant who is not charged in an information or indictment within 21 days from the date of arrest or service of the capias on him or her shall have a right to an adversary preliminary hearing on any felony charge then pending against the defendant. The subsequent filing of an information or indictment shall not eliminate a defendant's entitlement to this proceeding.

(2) Process. The judge shall issue such process as may be necessary to secure attendance of witnesses within the state for the state or the defendant.



(3) Witnesses. All witnesses shall be examined in the presence of the defendant and may be cross-examined. Either party may request that the witnesses be sequestered. At the conclusion of the testimony for the prosecution, the defendant who so elects shall be sworn and testify in his or her own behalf, and in such cases the defendant shall be warned in advance of testifying that anything he or she may say can be used against him or her at a subsequent trial. The defendant may be cross-examined in the same manner as other witnesses, and any witnesses offered by the defendant shall be sworn and examined.

(4) Record. At the request of either party, the entire preliminary hearing, including all testimony, shall be recorded verbatim stenographically or by mechanical means and at the request of either party shall be transcribed. If the record of the proceedings, or any part thereof, is transcribed at the request of the prosecuting attorney, a copy of this transcript shall be furnished free of cost to the defendant or the defendant's counsel.

(5) Action on Hearing. If from the evidence it appears to the judge that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the judge shall cause the defendant to be held to answer to the circuit court; otherwise, the judge shall release the defendant from custody unless an information or indictment has been filed, in which event the defendant shall be released on recognizance subject to the condition that he or she appear at all court proceedings or shall be released under a summons to appear before the appropriate court at a time certain. Such release does not, however, void further prosecution by information or indictment but does prohibit any restraint on liberty other than appearing for trial. A finding that probable cause does or does not exist shall be made in writing, signed by the judge, and, together with the evidence received in the cause, shall be filed with the clerk of the circuit court.

(c) Additional Nonadversary Probable Cause Determinations and Preliminary Hearings. If there has been a finding of no probable cause at a nonadversary determination or adversary

preliminary hearing, or if the specified time periods for holding a nonadversary probable cause determination have not been complied with, a judge may thereafter make a determination of probable cause at a nonadversary probable cause determination, in which event the defendant shall be retained in custody or returned to custody upon appropriate process issued by the judge. A defendant who has been retained in custody or returned to custody by such a determination shall be allowed an adversary preliminary hearing in all instances in which a felony offense is charged.

Committee Notes

1968 Adoption. (Notes are to former rule 1.122.)

(a) Substantially the same as section 902.01, Florida Statutes; the word “examination” is changed to “hearing” to conform to modern terminology.

(b) through (j) Substantially the same as sections 902.02 through 902.10, 902.13, and 902.14, Florida Statutes, except for exchange of “hearing” for “examination.”

(k) Parts of section 902.11, Florida Statutes, and all of section 902.12, Florida Statutes, were omitted because of conflict with case law: *Escobedo v. Illinois*, 378 U.S. 478, 84 S.Ct. 1758, 12 L.Ed.2d 977 (1964); *White v. Maryland*, 373 U.S. 59, 83 S.Ct. 1050, 10 L.Ed.2d 193 (1963).

(l) Taken from Federal Rule of Criminal Procedure 5(c). Previously Florida had no statute or rule defining what the magistrate should do at the conclusion of the preliminary hearing.

(m) Substantially the same as section 902.18, Florida Statutes, except “without delay” changed to “within 7 days.” Some specific time limit was felt necessary because of frequent delay by magistrates while defendants remain in jail.

1972 Amendment. The ABA Standards on Pre-Trial Release provide for a person arrested to be taken before a committing magistrate without unreasonable delay for immediate judicial consideration of the release decision. The committee determined that, since a determination of probable cause at this immediate hearing presents difficult logistical problems for the state and defense counsel, the question of probable cause should be decided at a later preliminary hearing. For this reason, subdivisions (c), (d), and (e) of the former rule have been deleted in favor of the hearing provision now contained in rule 3.130.

(a) A revised version of former rule 3.122(a).

(b) New. Establishes the time period in which the preliminary hearing must take place.

(c)(1) Substantially the same as former rule 3.122(b). Amended to provide for advice of counsel relative to waiver and for written waiver.



(c)(2) Amended to delete provisions relating to recording of proceedings as same are now contained in subdivision (h).

(d) Same as prior rule 3.122(g).

(e) Same as prior rule 3.122(h).

(f) Substantially the same as prior rule 3.122(i); language modernized by slight changes.

(g) Same as prior rule 3.122(j).

(h) New rule to provide for record of proceedings.

(i) Same as prior rule 3.122(l).

(j) Substantially the same as prior rule 3.122(m). Time period for transmission of papers is reduced. (2) provides for transmission of any transcript of proceedings.

1977 Amendment. The rule corrects several deficiencies in the prior rule:

(1) In the prior rule no specific mechanism was provided to effect the release which is allowed. This revision provides such a mechanism and coordinates the mechanism with the additional procedures created by subdivision (c).

(2) Once a determination of no probable cause was made and the defendant was released, no method was provided for reversing the process in those instances in which the determination is palpably in error or in instances in which it is later possible to establish probable cause.

(3) The prior rule allowed the unconditioned release of a defendant without the possibility of recapture simply because of a technical failure to abide by the rather arbitrary time limits established for the conduct of a nonadversary probable cause determination and regardless of the ability to establish probable cause. The new rule allows a determination or redetermination of probable cause to be made in instances in which to do so is sensible. The defendant is protected by the provision allowing an adversary preliminary hearing as a check against any possible abuse.

Court Comment

1975 Amendment. This is a complete rewrite of the preliminary hearing rule.



RULE 3.134 | TIME FOR FILING FORMAL CHARGES

The state shall file formal charges on defendants in custody by information, or indictment, or in the case of alleged misdemeanors by whatever documents constitute a formal charge, within 30 days from the date on which defendants are arrested or from the date of the service of capiases upon them. If the defendants remain uncharged, the court on the 30th day and with notice to the state shall:

(1) Order that the defendants automatically be released on their own recognizance on the 33rd day unless the state files formal charges by that date; or

(2) If good cause is shown by the state, order that the defendants automatically be released on their own recognizance on the 40th day unless the state files formal charges by that date.

In no event shall any defendants remain in custody beyond 40 days unless they have been formally charged with a crime.



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.



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.



RULE 3.151 | CONSOLIDATION OF RELATED OFFENSES

(a) Related Offenses. For purposes of these rules, 2 or more offenses are related offenses if they are triable in the same court and are based on the same act or transaction or on 2 or more connected acts or transactions.

(b) Consolidation of Indictments or Informations. Two or more indictments or informations charging related offenses shall be consolidated for trial on a timely motion by a defendant or by the state. The procedure thereafter shall be the same as if the prosecution were under a single indictment or information. Failure to timely move for consolidation constitutes a waiver of the right to consolidation.

(c) Dismissal of Related Offenses after Trial. When a defendant has been tried on a charge of 1 of 2 or more related offenses, the charge of every other related offense shall be dismissed on the defendant's motion unless a motion by the defendant for consolidation of the charges has been previously denied, or unless the defendant has waived the right to consolidation, or unless the prosecution has been unable, by due diligence, to obtain sufficient evidence to warrant charging the other offense or offenses.

(d) Plea. A defendant may plead guilty or nolo contendere to a charge of 1 offense on the condition that other charges of related offenses be dismissed or that no charges of other related offenses be instituted. Should the court find that the condition cannot be fulfilled, the plea shall be considered withdrawn.

Committee Notes

1968 Adoption. This rule is almost the same as federal rule 13, with provisions added for trial by affidavit.

1972 Amendment. (a) To same general effect as ABA Standard with changes to conform to rules 3.150(a) and 3.190(k).

(b) Limits motion for consolidation to defendant and provides that defendant waives his or her right to consolidation by failing to file a timely motion. Under standards relating to joinder of offenses and defendants, the prosecution may avoid the necessity for consolidation by charging offenses and defendants in a single indictment or information where consolidation is permissible. Omits provision of ABA Standard authorizing denial of consolidation if prosecuting attorney does not have "sufficient evidence to warrant trying" 1 of the "offenses" or if the court finds that the



ends of justice would be defeated by consolidation. The lack of “sufficient evidence to warrant” trial of 1 of several charges of “related offenses” would be quite rare. In the rare case in which there is such a lack of evidence, the appropriate remedy would be a motion for continuance of all pending charges of related offenses, showing that the lack of evidence could probably be cured by a reasonable delay. The committee does not favor separate trials of charges of related offenses over the defendant’s objection.

(c) Florida has no similar rule. Omits exception in ABA Standard in case “the prosecuting attorney did not have sufficient evidence to warrant trying (the) offense” or upon a finding that “the ends of justice would be defeated if the motion was granted.” See comment on (b). The rule is not intended to restrict defendant’s substantive rights.

(d) Florida has no similar rule. The first sentence of ABA Standard is considered by the committee to state a rule of substantive law and is omitted as unnecessary.

1977 Amendment. The changes from the prior rule are intended to provide equal treatment for both the state and the defendant.



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.



RULE 3.153 | TIMELINESS OF DEFENDANT'S MOTION; WAIVER

(a) Timeliness; Waiver. A defendant's motion for severance of multiple offenses or defendants charged in a single indictment or information shall be made before trial unless opportunity therefor did not exist or the defendant was not aware of the grounds for such a motion, but the court in its discretion may entertain such a motion at the trial. The right to file such a motion is waived if it is not timely made.

(b) Renewal of Motion. If a defendant's pretrial motion for severance is overruled, the defendant may renew the motion on the same grounds at or before the close of all the evidence at the trial.

Committee Notes

1972 Adoption. (a) Relates solely to defendant's motion for severance. Florida has no similar rule.

(b) Florida has no similar rule.



APPENDIX



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