

subsequent filing of a direct information in the district court charging the defendant with the same offense.

III. INDICTMENT AND INFORMATION

Rule 6. The Grand Jury.

(a) The Chief Judge of the District Court in each county or a judge designated by him may order a Grand Jury summoned where authorized by law or required by the public interest.

(b) The Grand Jury shall hear witnesses as may be determined by the Grand Jury and may find an indictment on the sworn testimony of one witness only, except in cases of perjury, when at least two witnesses to the same fact shall be necessary. An indictment may also be found upon the information of two of their own body.

(c) The foreman of the Grand Jury may swear or affirm all witnesses who may come before the Grand Jury.

Rule 7. The Indictment and The Information.

(a) The Indictment.

(1) An indictment shall be a written statement presented in open court by a Grand Jury to the district court which charges the commission of any crime by an alleged offender.

(2) Requisites of the indictment. Every indictment or accusation of the Grand Jury shall be deemed technically sufficient and correct which states the offense in the terms and language of the statute defining it or so plainly that the nature of the offense may be plainly understood. It also should contain therein:

- (i) That it is presented by a Grand Jury;
- (ii) That the defendant is named, or described as a person whose name is unknown to the Grand Jury;
- (iii) That the offense was committed within the jurisdiction of the court, or is triable therein;
- (iv) That it is signed by the foreman of the Grand Jury, and the prosecuting attorney, his assistant, or deputy.

(b) The Information.

(1) An information shall be a written statement, signed by a district attorney and filed in the court having jurisdiction over the offense charged, alleging that a person committed the criminal offense described therein.

(2) Requisites of the Information. The information shall be deemed technically sufficient and correct if it can be understood therefrom:

- (i) That it is presented by the person authorized by law to prosecute the offense;
- (ii) That the defendant is named therein, or described as a person whose name is unknown to the informant;
- (iii) That the offense was committed within the jurisdiction of the court, or is triable therein;
- (iv) That the offense charged is set forth with

such degree of certainty that the court may pronounce judgment upon a conviction.

(3) Information after Preliminary Hearing or Waiver. An information may be filed, without consent of the trial court having jurisdiction, for any offense against anyone who has either:

(i) Failed to file a motion requesting a preliminary hearing in the county pursuant to Rule 5; or

(ii) Had a preliminary hearing and has been bound over by the county court to appear in the court having trial jurisdiction.

(4) When a defendant has been bound over to the trial court pursuant to Rule 5(a)(4)(iii), the felony complaint when transferred to the trial court shall be deemed to be an information if it contains the requirements of an information.

(5) Affidavits. In all cases in which the defendant has not had or waived a preliminary hearing, there shall be filed with the information the affidavit of some credible person who is competent to testify verifying the information upon the personal knowledge of the affiant that the offense was committed.

(c) Direct Information. The prosecuting attorney, with the consent of the court having trial jurisdiction, may file a direct information if:

(1) No complaint was filed against the accused person in the county court pursuant to Rule 5; or

(2) A preliminary hearing was held in the county

court and the accused person was discharged; or

(3) The complaint upon which the preliminary hearing was held and the other records in the case have not been delivered to the clerk of the proper trial court.

(d) Names of Witnesses. At the time of filing either the indictment or the information, the prosecuting attorney shall file with the court a written list of names and addresses of the witnesses then known to him whom he intends to call during the trial.

(e) Amendment of Information. The court may permit an information to be amended as to form or substance at any time prior to trial; the court may permit it to be amended as to form at any time before the verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

(f) Surplusage. The court, on motion of the defendant or the prosecuting attorney, may strike surplusage from the information or indictment.

(g) Bill of Particulars. The court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made only within ten days after arraignment as may be prescribed by rule or order. A bill of particulars may be amended at any time subject to such conditions as justice requires.

(h) Preliminary Hearing.

(1) In cases in which a direct information was filed

pursuant to Rule 7(c), either the defendant or the prosecuting attorney may file a written motion requesting a preliminary hearing to determine whether probable cause exists to believe that the offense charged in the information has been committed by the defendant. The motion may be filed even though a preliminary hearing in the county court has been held on the same charge pursuant to Rule 5(a)(4) if the information is filed despite a finding of no probable cause. The motion shall be filed prior to plea and shall be presented together with any motions filed pursuant to Rule 12(b). The trial court may permit a motion requesting a preliminary hearing to be filed after a plea only upon a showing of good and sufficient cause. No motion requesting a preliminary hearing may be filed in a case which is to be tried upon indictment.

(2) Upon the filing of such a motion, the district judge shall set the hearing which shall be held within thirty days of the day of the setting, unless good cause for continuing the hearing beyond that period be shown to the court. The clerk of the court shall prepare and give notice of the hearing, or any continuance thereof, to all parties and their counsel.

(3) The defendant shall not be called upon to plead at the preliminary hearing, although he may cross-examine witnesses against him and may introduce evidence in his own behalf. The prosecuting officer shall have the burden

of establishing probable cause. The presiding judge at the preliminary hearing may temper the rules of evidence in the exercise of sound judicial discretion.

(4) If, from the evidence, it appears to the district judge that no probable cause exists to believe that the offense charged has been committed by the defendant, the judge shall discharge the defendant and dismiss the information; otherwise he shall set the case for arraignment or trial.

(5) If a motion for preliminary hearing has not been filed within the time limitations of subsection (h.) (1) of this Rule, such a motion shall not thereafter be heard by the court, nor shall the court entertain successive motions for preliminary hearing. The order denying a dismissal of the information after a preliminary hearing shall be final and not subject to review on appeal. The granting of such a motion shall not be a bar to further prosecution of the accused person for the same offense if new or additional evidence is found by the prosecution.

Rule 8. Joinder of Offenses and of Defendants.

(a) Joinder of Offenses. If several offenses are known to the prosecuting attorney at the time of commencing the prosecution and were committed within his judicial district, all such offenses upon which the prosecuting attorney elects to proceed must be prosecuted by separate counts in a single prosecution if they are based on the same act or series of acts arising from the same criminal episode.