

Alabama Rules of Criminal Procedure

Rule 13. Charges: Indictment, Information, and Complaint.

Rule 13.3. Joinder and consolidation for trial.

(a) OFFENSES. Two or more offenses may be joined in an indictment, information, or complaint, if they:

(1) Are of the same or similar character; or

(2) Are based on the same conduct or are otherwise connected in their commission; or

(3) Are alleged to have been part of a common scheme or plan.

Two or more offenses shall not be joined in the same count. Felonies and misdemeanors may be joined in separate counts of the same indictment or information.

(b) DEFENDANTS. Two or more defendants may be charged in the same indictment, information, or complaint:

(1) If they are alleged to have participated in the same act or transaction;
or

(2) When the several offenses are part of a common conspiracy, scheme, or plan; or

(3) When the several offenses are otherwise so closely connected that it would be difficult to separate proof of one from proof of the other.

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

(c) CONSOLIDATION. If offenses or defendants are charged in separate indictments, informations, or complaints, the court on its own initiative or on motion of either party may order that the charges be tried together or that the defendants be joined for the purposes of trial if the offenses or the defendants, as the case may be, could have been joined in a single indictment, information, or complaint. Proceedings thereafter shall be the same as if the prosecution initially were under a single indictment, information, or complaint. However, the court shall not order that the offenses or the defendants, as the case may be, be tried together without providing the defendant or defendants and the prosecutor an opportunity to be heard.

(d) TRIAL. Offenses and defendants joined in the same indictment, information, or complaint shall be jointly tried unless severed as provided in Rule 13.4. The fact that offenses are jointly tried shall not affect the court's power to sentence the defendant separately for each offense of which the defendant is convicted; nor shall it affect the court's power to provide that sentences shall run concurrently or consecutively, just as if the defendant had been tried separately for each offense.

Committee Comments

Rule 13.3(a) is based on Rule 8(a), Fed.R.Crim.P., and ABA, Standards for Criminal Justice, *Joinder and Severance* 13-2.1 (2d ed. 1986). The first sentence allows for joinder of offenses in separate counts of the same indictment.

Because Rule 13.3(a) states the three (3) bases for joinder of offenses in the alternative, it makes clear that offenses joined need not stem from the same transaction.

The second sentence of Rule 13.3(a) prohibits joinder of offenses in the same count of an indictment. This rule supersedes Ala.Code 1975, § 15-8-52, which states, "When offenses are of the same character and subject to the same punishment, the defendant may be charged in an indictment with the commission of either in the same count in the alternative." There is no apparent necessity for alternative pleading in the same count where such pleading can be done as effectively in separate counts, and it avoids the complicated technical problems involved in requiring the state to elect the offense for which it desires to try the defendant. This rule is not intended to change Ala.Code 1975, § 15-8-50, providing for allegations in the alternative in the same count where the offense may be committed by different means or with different intents.

The last sentence of Rule 13.3(a) allows misdemeanors and felonies to be joined in the same indictment. This rule changes prior case law. In *Brandies v. State*, 44 Ala.App. 648, 649, 219 So.2d 404, 405 (1968), cert. denied, 283 Ala. 712, 219 So.2d 409 (1969), the court stated, "It is axiomatic under our cases that felonies and misdemeanors are not to be joined in the same indictment, let alone in the same count." When the other requirements of the rule are met, there is no reason to require the state to go to the expense and effort of trying the defendant on different indictments. Moreover, even if charged in separate indictments, they could be consolidated for trial under section (c).

Comments to the ABA Standards for Criminal Justice, *supra*, emphasize that the standard provides the outer limits of permissible joinder of offenses. It does not follow that a joint trial on all the charges is always desirable. The prosecutor should have leeway not to join offenses, and the defendant should have a right to severance under appropriate circumstances.

Rule 13.3(b) is based on Rule 8(b), Fed.R.Crim.P., and ABA, Standards for Criminal Justice, *Joinder and Severance*, 13-2.2 (2d ed. 1986). The second sentence of the rule is taken from Rule 8(b), Fed.R.Crim.P.

Section 13.3(c) allows consolidation of offenses where joinder would have been proper in the initial instance, taking into consideration the factors which would require severance under Rule 13.4.

Section (d) states the obvious result of joinder and should be read in conjunction with Rule 13.4.

Additional jurors required for the trial of two or more defendants are provided pursuant to Rule 18.4(f)(2).