

Alabama Rules of Criminal Procedure

Rule 2. Commencement and prosecution of criminal proceedings.

Rule 2.2. Prosecution of criminal proceedings.

(a) FELONIES. All felony charges and misdemeanor or ordinance violations which are lesser included offenses within a felony charge or which arise from the same incident as a felony charge shall be prosecuted in circuit court, except that the district court shall have concurrent jurisdiction to receive guilty pleas and to impose sentences in felony cases not punishable by sentence of death, including related and lesser included misdemeanor charges, and may hold preliminary hearings with respect to felony charges.

(b) MISDEMEANORS AND ORDINANCE VIOLATIONS. All misdemeanor offenses (including an indictment charging a traffic infraction) shall be prosecuted originally in district court or, where adopted as municipal ordinance violations, municipal court, except:

(1) Misdemeanors for which an indictment has been returned by a grand jury.

(2) Misdemeanors that are lesser included offenses within a felony charge as to which concurrent jurisdiction as described in Rule 2.2(a) has not been exercised.

(c) TRANSFER OF CASES. Cases filed in a court that does not have original trial jurisdiction of the offense charged shall be transferred to the appropriate court as provided in Ala.Code 1975, § 12-11-9.

(d) TRIAL DE NOVO. Criminal proceedings prosecuted in the district or the municipal court, from conviction of which the defendant has appealed for trial de novo in the circuit court, shall be prosecuted in the circuit court on the original charging instrument, which shall include the Uniform Traffic Ticket and Complaint (UTTC) in traffic cases.

(e) PROCEEDING ON INFORMATION.

At arraignment on an information following receipt of a defendant's written notice of his or her desire to plead guilty as charged or as a youthful offender upon the granting of youthful-offender status, the court shall proceed as provided in Rule 14.4. If the court does not accept the defendant's guilty plea or denies the defendant's application for youthful-offender status, the court shall proceed as provided by law.

[Amended eff. 8-1-97; Amended eff. 8-1-2002.]

**Committee Comments as Amended to Conform to Rule as Amended
Effective August 1, 1997**

Section (a) is derived from Ala.Code 1975, § 12-11-30, vesting exclusive original jurisdiction of prosecution for felony offenses and lesser included or incidental misdemeanor offenses and ordinance violations in the circuit court. The applicable statute upon which Rule 2.2(b) is based is Ala.Code 1975, § 12-12-32, which provides:

“(a) MISDEMEANORS. The district court shall have exclusive original trial jurisdiction over prosecutions of all offenses defined by law or ordinance as misdemeanors, except:

“(1) Prosecutions by municipalities having municipal courts,

“(2) Any such prosecution which also involves a felony offense which is within the exclusive jurisdiction of the circuit court, except as the district court is empowered to hold preliminary hearings with respect to felonies and to receive guilty pleas as provided in subsection (b) of this section, and

“(3) Any misdemeanor for which an indictment has been returned by a grand jury [(except indictments charging traffic infractions) *Wright v. State*, 494 So.2d 177 (Ala.Crim.App.1986)].

“(b) FELONIES.

“(1) The district court may exercise original jurisdiction concurrent with the circuit court to receive pleas of guilty in prosecutions of offenses defined by law as felonies not punishable by sentence of death.

“(2) The district court shall have jurisdiction to hold preliminary hearings in prosecutions for felonies as provided for in Title 15 of this Code.”

In addition, *Wright v. State*, 494 So.2d 177 (Ala.Crim.App.1986), holds that the district court has exclusive original jurisdiction of any misdemeanor traffic infraction, even where an indictment has been returned.

Section (c) provides that cases filed in an inappropriate court may be transferred to the correct court in accordance with the statutory provisions of § 12-11-9, governing the transfer of cases misfiled for lack of jurisdiction in either the circuit court or the district court.

Section (d) eliminates the procedural requirement of § 12-22-113 mandating that the prosecuting attorney file a new complaint in circuit court on appeal de novo from a district or municipal court. As noted by the Supreme Court in *Ex parte Young*, 611 So.2d 414 (Ala.1992), the filing of a new complaint by the prosecutor in cases appealed de novo to the circuit court is not a matter of jurisdiction, but rather a notice requirement, which is fulfilled by the original complaint, which is filed with the circuit court when an appeal is taken. *Id.* at 415. See also *Moye v. City of Foley*, 632 So.2d 1012 (Ala.Crim.App.1993). Although the court limited its holding to appeals of convictions pursuant to a valid uniform traffic ticket and complaint, the committee sees no reason for maintaining this anachronistic and superfluous requirement of filing a new complaint and not authorizing the prosecution to proceed on the original complaint in nontraffic as well as traffic cases appealed for trial de novo in circuit court.

Section (e) provides a procedure for utilizing the exception to the rule precluding use of informations permitted by Amendment No. 37 to the Alabama Constitution of 1901. The advisory committee would have preferred less restrictive use of informations, but any change here addresses itself to changes in the Alabama Constitution. The rule reflects the common law preference for proceeding by indictment and distrust of the use of informations. This rule follows present practice statutorily authorized by § 15-15-20 et seq.

Subsections (e)(2), (3), (4), (5), and (6) reiterate provisions now codified at §§ 15-15-21, 15-15-22, 15-15-23, 15-15-26, and 15-15-25, respectively, without change. Section 15-15-26, which denied the defendant a right of appeal, is superseded by Rule 2.2(e)(5), which grants the defendant a right of appeal.

Note from the reporter of decisions: The order amending Rule 2.2(e), effective August 1, 2002, is published in that volume of *Alabama Reporter* that contains Alabama cases from 810 So.2d.