

Alabama Rules of Criminal Procedure

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

Rule 13.1. Definitions.

(a) INDICTMENT. An indictment is a written statement charging the defendant or defendants named therein with the commission of an indictable offense, presented to the court by a grand jury, endorsed “A True Bill,” and signed by the foreman. The term “indictment” includes “presentment.”

(b) INFORMATION. An information is a written statement charging the defendant or defendants named therein with the commission of an indictable offense, made on oath, signed, and presented to the court by the district attorney, pursuant to Rule 2.2(e), without action by the grand jury.

(c) COMPLAINT. A complaint is a written statement made upon oath before a judge, magistrate, or official authorized by law to issue warrants of arrest, setting forth essential facts constituting an offense and alleging that the defendant committed the offense. (See Rule 2.3.)

Committee Comments

Ala.Code 1975, § 15-8-1, provides in pertinent part, “An indictment is an accusation in writing presented by the grand jury of the county, charging a person with an indictable offense.”

Ala.Code, § 12-16-204, requires that after twelve (12) grand jurors have concurred to find an indictment, the indictment must be endorsed “A True Bill” and be signed by the foreman. See Rule 12.8(a) and (b). The signature of the district attorney on an indictment is proper but not necessary. *Hughes v. State*, 213 Ala. 555, 105 So. 664 (1925), *Mayo v. State*, 36 Ala.App. 557, 60 So.2d 860 (1952).

See also M. Clinton McGee, *Alabama Criminal Practice* at 93 (University of Alabama Press, 1969), defining an information as “an accusation on oath of an official prosecuting officer filed in court and without action by the grand jury.”

Under Rule 13.1(b), the signature of the district attorney on an information is assurance that the proper authorities support the charges; that the district attorney, in his professional judgment, finds the charges warranted by the evidence brought before him; and, as with every signature of an attorney, that the charges are filed in good faith.

The use of an information is severely restricted in Alabama. Art. I, § 8, Alabama Constitution of 1901, provided that no person could be proceeded against criminally by information for any indictable offense, with certain exceptions. That section was later amended by Amendment No. 37, which provided:

“No person shall for any indictable offense be proceeded against criminally by information, except in cases arising in the militia and volunteer forces when in actual service, or when assembled under arms as a military organization, or by leave of the court, for misfeasance, misdemeanor, extortion, and oppression in office, otherwise than is provided in the Constitution; provided, that in cases of misdemeanor, the legislature may by law dispense with a grand jury and authorize such prosecutions and proceedings before justices of the peace or such other inferior courts as may be by law established. Provided further that in all felony cases, except those punishable by capital punishment, the legislature may by law dispense with a grand jury and authorize such prosecutions and proceedings in such manner as may be provided by law if the defendant, after having the advice of counsel of his choice or in the event he is unable to employ counsel, the advice of counsel which must be appointed by the court, makes known in open court to a judge of a court having jurisdiction of the offense that he desires to plead guilty, provided, however, the defendant cannot plead guilty within fifteen days after his arrest.”

The requirements of the amendment are codified in Ala.Code 1975, §§ 15-15-20 through 15-15-26; those sections require that an information be made on an oath of the district attorney.

The effect of Amendment 37 and §§ 15-15-20 through -26, is to limit the use of an information in Alabama to the situation where a defendant, before indictment, pleads guilty to a noncapital felony offense. There is one other use for an information—impeachment under Ala.Code 1975, § 36-11-1 et seq. The Alabama courts have held that the defendant in a felony case cannot waive the absence of an indictment, except under the terms of Amendment 37 and § 15-15-20, *Kennedy v. State*, 39 Ala.App. 676, 107 So.2d 913 (1958). In support of its holding, the Court said that “the constitutional requisition of indictments generally in all cases of felony is not one conferring a mere personal privilege upon an accused person, but is so imbued with the public concern for due and proper administration of the law that no individual may waive it.” 39 Ala.App. 676, 690, 107 So.2d 913, 926 (1958).

The use of an information in Alabama (except in impeachment proceedings) is set out in Rule 2.2(e).