

CHAPTER 55
RULES OF PLEADING

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§ 55.10. Form of Indictment or Information; Procedure for Criminal Forfeiture.

(a) The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged and shall be signed by the prosecuting attorney. It need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that he committed it by one or more specified means.

(b) The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. Error in the citation or its omission shall not be ground for dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to his prejudice.

(c) When an offense charged may result in a criminal forfeiture, the indictment or information shall allege the extent of the interest or property subject to forfeiture.

NOTE: Chapter 55 refers throughout to the "indictment or information;" however, § 15.10 makes clear that where a complaint serves as the accusatory pleading it is subject to all these same rules of pleading.

Section 55.10 is substantively the same as Subdivisions (c) and (d) of former Rule 7 and former § 582(c). See also Fed. R. Crim. P. 7(c); Cal. Pen. Code §§ 950-952. See generally 8 Moore, Federal Practice ¶7.04 (1974); B. Witkin, California Criminal Procedure Proceedings Before Trial §§ 184-200 (1963, Supp. 1973).

§ 55.15. Surplusage.

The court on motion of the defendant may strike any surplusage from the indictment or information.

NOTE: Section 55.15 is identical to former Rule 7(e) and former § 682(d). See also Fed. R. Crim. P. 7(d). See generally 8 Moore, Federal Practice ¶7.05[1] (1974).

§ 55.20. Amending Indictment or Information.

The court may permit an indictment or information to be amended upon the application of the prosecuting attorney at any time before verdict or finding if no additional [or] different offense is charged and if substantial rights of the defendant are not prejudiced.

COURT DECISIONS: SUPER.CT. 1982 The court is convinced that there is a typographical error in this Section reading “no additional different offense” and that the correct reading should be, and will be interpreted by the court to be “no additional or different offense.” *People v. Cruz*, Cr. #94F-80.

SUPER.CT. 1982 “The modern trend seems to be away from the strict standards imposed on indictments and common law.” The subject matter of this motion is an information and the amendment requested by the people would not work a prejudice to the defendant. *People v. Cruz*, Cr. #94F-80.

Section 55.20 is sufficiently broad to permit the people to amend the information to include the word “intentionally” within an indictment for the offense of kidnapping. *People v. Atalig*, Cr. #97F-81.

D.C.GUAM: APP.DIV. 1983 Amendments to the indictments should have been allowed, which amendment alleged and overt act occurring in 1978, because such amendment would not charge “an additional or different offense” and the substantial rights of the defendant were not prejudiced. The amendment would not affect the nature of the crime charged, nor the defendants' defense to these charges. The fact that the defendant may require discovery is a poor reason not to allow an amendment which would cure a supposed defect in the indictment. *People v. Manibusan*, D.C. Cr. #81-0053A.

NOTE: Section 55.20 is substantively similar to former Rule 7(f) and former § 682(e) but also allows amendment of an indictment. See also Fed. R. Crim. P. 7(e). See generally 8 Moore, Federal Practice 7.05 (1974); B. Witkin, California Criminal Procedure Proceedings Before Trial §§ 210-214 (1963, Supp. 1973).

§ 55.25. Information or Indictment; When Original is Lost.

If the information or indictment in any criminal action has heretofore been lost or destroyed, or shall hereafter be lost or destroyed, the court shall upon the application of the prosecuting attorney or of the defendant, order a copy of such pleading to be filed and substituted for the original, and when filed and substituted, as provided in this Section, the copy shall have the

same force and effect as if it were the original pleading.

NOTE: Section 55.25 continues the substance of former § 810. See also Cal. Pen. Code § 973.

§ 55.30. “Bill of Particulars” Provided For; Conditions.

Whether or not an indictment or information complies with § 55.10, if it fails to specify the particulars of the offense sufficiently to enable the defendant to prepare his defense, the court may, on motion of the defendant, require the prosecuting attorney to furnish the defendant with a clarification of the pleading containing such particulars as may be necessary for the preparation of the defense.

COURT DECISIONS: SUPERIOR COURT, 1978. The purpose of the bill of particulars is to inform the defendant as to the crime for which he must stand trial, not to compel disclosure of how much the government can or cannot prove, nor to foreclose the government from using proof that may develop as trial approaches. *People v. Mesa, et al.*, Sup. Ct. Cr. ##324F-77, 296F-77 and 327F-77 (Order, 01/24/78; Abbate, P.J.)

NOTE: Section 55.30 is comparable to former Rule 7(g) and former § 682(f). See also Fed. R. Crim. P. 7(f). See generally 8 Moore, Federal Practice ¶7.06 (1974). The transcript of the grand jury proceedings or of the preliminary examination normally provides the defendant with all the information he needs in felony cases. In misdemeanor cases, discovery usually gives the same information. However, there may be cases where it is desirable to pinpoint the issues and this Section will permit such a result.

§ 55.35. Charging Multiple Offenses.

(a) Two (2) or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged are of the same or similar character or are based on the same act or transaction or on two (2) or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) Two (2) or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged on each count.

NOTE: Section 55.35 is substantively the same as former § 954, former Rule 8 and Rule 8 of the Federal Rules of Criminal Procedure. See generally 8 Moore, Federal Practice ¶¶8.01-8.07 (1974). See also Cal. Pen. Code § 954 commented on in B. Witkin, California Criminal Procedure Proceedings Before Trial §§ 206-209 (1963,

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Supp. 1973). For relief from joinder, see § 65.35 (former Rule 14). For “compulsory” joinder for trial, see § 65.30.

§ 55.40. Prior Convictions to be Charged.

(a) A prior conviction may be alleged when the existence of such conviction changes the punishment which can be imposed upon the defendant. Such conviction may be alleged by charging: “That the defendant, before the commission of the offense charged was convicted of the crime of [name of offense and statutory reference], a [felony, misdemeanor or petty misdemeanor] in the [name of court] on or about [date of conviction].”

(b) When, prior to trial, it is discovered that an indictment or information does not allege all of the prior convictions permitted pursuant to Subsection (a), the prosecuting attorney, upon application to and order of the court, may amend the pleading to include such charge. The defendant shall promptly be re-arraigned on such indictment or information as amended and be required to plead thereto.

NOTE: Section 55.40 replaces former §§ 969 and 969a. In contrast to former § 969, § 55.40 makes clear that the prosecuting attorney has the initial discretion to choose whether or not prior convictions should be charged. Where such convictions are charged, their relevance and importance for sentencing are then matters for the court to decide. See 9 GCA §§ 80.38, 80.40, (criteria for extended terms). Section 55.40 has also been revised in conformity with California Penal Code § 969a to include a reference to indictments.
