STATE OF MINNESOTA

IN SUPREME COURT

IN RE PROPOSED RULES OF
CRIMINAL PROCEDURE

45517

IT IS HEREBY ORDERED That the final hearing be had before this court in the Courtroom of the Minnesota Supreme Court, State Capitol, on Friday, January 31, 1975, at 9:30 o'clock A. M., before adoption of the Rules of Criminal Procedure, to be effective July 1, 1975. At that time, the court will hear proponents or opponents of the Proposed Rules of Criminal Procedure, heretofore distributed.

IT IS FURTHER ORDERED That all citizens, including members of bench and bar, desiring to be heard shall file briefs or petitions setting forth their position and shall notify the Clerk of the Supreme Court, in writing, on or before January 20, 1975, of their desire to be heard on the proposed rules.

Dated November 19, 1974

BY THE COURT

Robert J. Sheran

Chief Justice

15 January 1975

Clerk of Supreme Court
230 State Capitol
St. Paul, Minn. 55155

Dear Sir:

In response to your notice of November 19, 1974, I am forwarding to you the enclosed list of my recommended changes to the Minnesota Proposed Rules of Criminal Procedure. Also, I am hereby petitioning to be heard at the January 31st hearing on the Proposed Rules.

I apologize for the fact that the material I am furnishing to you is handwritten rather than typed.

James H. Tumulty
Attorney at Law
(Admitted to Minn. Bar in October, 1970)

2515 Thomas Avenue So.
Minneapolis, Minn. 55405
Office phone: 348-7943
Residence phone: 374-5019

Mr. Tumulty:

Your request to be heard has been granted. Since about 8 others have, at this point, made similar requests, if you could compact your argument into about15 minutes, it would be helpful.

John McCarthy
John McCarthy, Clerk

1. RULE: 3.01

CHANGE: Delete the period after the phrase, "a summons shall be issued in lieu of a warrant" and substitute therefor the phrase, "unless the defendant has failed to appear in response to a citation issued for the offense."

2. RULE: 3.01

CHANGE: Delete the phrase, "unless it reasonably appears that" and substitute therefor the phrase, "unless it reasonably appears to the prosecuting attorney that".

3. RULE: 3.02, Subd. 3

CHANGE: Add the following sentence: "The summons and complaint may be combined in one form."

4. RULE: 3.03, Subd. 3

CHANGE: Delete the phrase, "when exigent circumstances exist".

5. RULE: 4.01.

CHANGE: Substitute the following for the text of Rule 4.01: "A defendant arrested under a warrant issued upon a complaint shall be taken before a court, judge or judicial officer as directed in the warrant."

6. RULE: 4.02, Subd. 5(1).

CHANGE: Delete the phrase, "within the 36-hour limit" and substitute therefor the phrase, "within this period".

7. RULE: 4.02, Subd. 5(3).

CHANGE: Delete the phrase, "This brief statement shall be the complaint" and substitute therefor the phrase, "This brief statement shall be the 'tab charge'".

8. RULE: 4.02, Subd. 5(3)

CHANGE: Delete the sentence beginning, "However, if the judge orders,..." and substitute therefor the following sentence: "However, if the prosecuting attorney receives notice that the court has ordered the preparation of a complaint, or that the person charged or his attorney has requested a complaint, such complaint shall be made and filed."

9. RULE: 4.02, Subd. 5(3).

CHANGE: Delete the word "valid" from every place it appears in paragraph (3).

10. RULE: 4.02, Subd. 5(3).

CHANGE: Delete the sentence beginning, "A complaint is valid when..."

11. RULE: 4.02, Subd. 5(3)

CHANGE: Delete the sentence beginning, "If no valid complaint ..." and substitute therefor the following sentence: "If no complaint has been made and filed within 14 days after the demand therefor, the tab charge shall be dismissed and the defendant shall be released from custody."

12. RULE: 5.01

CHANGE: Delete the phrase, "or demand a complaint prior to entering a plea".

13. RULE: 5.02, Subd. 2

CHANGE: Delete the phrase, "does not waive his future right to counsel" and substitute therefor the phrase, "does not thereby waive his future right to counsel".

14. RULE: 5.02, Subd. 2

CHANGE: Delete the sentence beginning, "Provided that ...".

15. RULE: 5.04, Subd. 1

CHANGE: Delete the sentence beginning, "If no complaint has been issued...".

16. RULE: 5.04, Subd. 4.

CHANGE: Delete the phrase, "shall be made at the first court appearance after the notice has been given by the prosecution" and substitute therefor the phrase, "shall be made before the date set for trial".

17. RULE: 6.01, Subd. 1(1)(a).

CHANGE: Delete the phrase, "shall issue citations" and substitute therefor the phrase, "may issue citations".

18. RULE: 6.01, Subd. 1(1)(a).

CHANGE: Delete the phrase, "report to the court" and substitute therefor the phrase, "report to the prosecuting attorney".

19. RULE: 6.01, Subd. 1(1)(a).

CHANGE: Delete the following phrase, "if the accused signs the citation" and substitute therefor the phrase, "if the accused provides satisfactory proof of his identity and residential address and signs the citation".

20. RULE: 6.01, Subd. 1(1)(b).

CHANGE: Delete the phrase, "shall issue a citation" and substitute therefor the phrase, "may issue a citation".

21. RULE: 6.01, Subd. 1(1)(b).

CHANGE: Delete the phrase, "report to the court" and substitute therefor the phrase, "report to the prosecuting attorney".

22. RULE: 6.01, Subd. 1(1)(b).

CHANGE: Delete the phrase, "if the accused signs the citation" and substitute therefor the phrase, "if the accused provides satisfactory proof of his identity and

residential address and signs the citation".

23. RULE: 6.01, Subd. 5.

CHANGE: Substitute the following for the text of subdivision 5: "The issuance of a citation does not affect a law enforcement officer's authority to take the ~~accused~~ cite person to an appropriate medical facility if the accused appears mentally or physically unable to care for himself."

24. RULE: 6.03, Subd. 1.

CHANGE: Delete the phrase, "shall be issued" and substitute therefor the phrase, "may be issued".

25. RULE: 6.03, Subd. 1

CHANGE: Delete the phrase, "violated the conditions of his release" and substitute therefor the phrase, "violated the conditions of his release or that a complaint has been filed or indictment returned charging the defendant with the commission of a crime while released pending adjudication of a prior charge".

26. RULE: 7.03.

CHANGE: Delete the sentence beginning, "In misdemeanor cases . . . ".

27. RULE: 15.04, Subd. 1.

CHANGE: Delete the sentence beginning, "He shall engage in . . ." and substitute therefor the following sentence: "If the defendant is represented by counsel, the prosecuting attorney shall engage in plea discussions and reach a plea agreement with the defendant only through defense counsel."

28. RULE: 15.07.

CHANGE: Delete the following sentence: "Upon motion of the defendant the court may accept a plea of guilty to a lesser included offense or to an offense of lesser degree."

[illegible]

[illegible]

29. RULE: 17.06, Subd. 4(3).

CHANGE: Delete the sentence beginning, "If the prosecution..." and substitute therefor the following sentence: "If the prosecution does not make the motion within the seven-day period or if the ~~new~~ indictment or complaint is not amended or if a new indictment or complaint is not filed within the time specified by the order, the charge shall be dismissed and the defendant shall be released from custody."

30. RULE: 23.02

CHANGE: Delete Rule 23.02.

31. RULE: 23.05, Subd 1.

CHANGE: Delete the phrase, "and which also involves moral turpitude".

[redacted]

[redacted]

32. RULE: 28.06, Subd. 2

CHANGE: Delete Subdivision 2.

33. RULE: 28.07, Subd. 1.

CHANGE: Substitute the following for the text of Subdivision 1: "The record on appeal to the district court and the scope of review by the district court shall be the same as provided by Rule 29.02, subdivisions 10 and 12 governing appeals from the district court to the Supreme Court."

JAMES H. TUMULTY
2515 THOMAS AVE. SO.
MINNEAPOLIS, MINN

No. 45517

STATE OF MINNESOTA

IN SUPREME COURT

IN RE: MINNESOTA PROPOSED RULES OF CRIMINAL PROCEDURE

HEARING SET FOR JANUARY 31, 1975

PETITION

BY

CITY OF EXCELSIOR
CITY OF GREENWOOD
CITY OF SHOREWOOD
CITY OF TONKA BAY

KELLY AND LARSON

By Glenn Froberg
Attorneys for Petitioners
351 Second Street
Excelsior, Minnesota 55331
474-5977

PETITION

We, the undersigned are the attorneys for the cities of Excelsior, Greenwood, Shorewood and Tonka Bay. It is our belief that the Minnesota Proposed Rules of Criminal Procedure, as presently written would add undue hardship in the prosecution of misdemeanor offenses by our cities.

We recognize the effort and research put into the drafting of the proposed rules and acknowledge their intent and purpose of providing for the speedy determination of criminal procedures. However, we do not feel that the means provided for the improvement of criminal prosecutions are necessarily consistent with the improvement of misdemeanor prosecutions. We believe that the rules for misdemeanor prosecutions as merged into the rules for criminal prosecution will be an undue burden to our cities. As one example, proposed Rule 4 or Subd. 5 (3), which requires a formal complaint to be filed within 36 hours after demand, is an impractical hardship for the following reasons:

1. The outlying Municipal Courts which hear our misdemeanor cases are not equipped to process demands for complaints and remote city prosecutors are not always in a position to respond to their requests within the time limits alloted by the rules.

2. Attempts to comply with the time requirements could result in hasty, ill prepared, and sometimes unwarranted pursuance of misdemeanor cases which might have been summarily resolved had more time been available in the initial preparation.

3. The additional costs to the city resulting from the increased time devoted by the prosecutor to formal complaints and motions would not result in an offsetting benefit or convenience to the defendant.

It is our further belief that the overriding sense of expediency prescribed by the proposed rules does not apply to misdemeanor violations in the same manner as it may apply to criminal prosecutions for the following reasons:

1. The defendant in a misdemeanor case, even if arrested, is generally not confined at the time of arrest. Hence, there is not the same concern of incarceration without due process as in criminal matters.

2. Court appearances in misdemeanor cases are often tailored to fit the mutual convenience of the defendant and the prosecution, and arbitrary time limitations would increase the costs to both parties.

3. Misdemeanor cases often reach final disposition at initial or early court appearances, when both sides have had time to properly investigate the circumstances before the appearance.

We, therefore, respectfully request that the rules for Misdemeanor Procedure be set apart from the proposed rules for Criminal Procedure, and a separate hearing be scheduled by the Court for proposed rules on Misdemeanor Procedure.

KELLY AND LARSON

By _____
Glenn Froberg
Attorneys for the Cities of
Excelsior, Greenwood, Shorewood
and Tonka Bay

OFFICE OF THE CITY ATTORNEY

WILLIAM DINAN • CITY ATTORNEY

DULUTH

January 16, 1975

Supreme Court of Minnesota
Capitol Building
St. Paul, MN

Re: Rules of Criminal Procedure

Dear Sir:

Enclosed please find a petition for changes in the proposed criminal rules. I desire to be heard on these rules in writing only.

Yours truly,

C. Douglas Norberg

C. DOUGLAS NORBERG
Assistant City Attorney

CDN/jag

Encls.

ROOM 400 CITY HALL • DULUTH 55802 • 218/727-4522

PETITION OF OBJECTIONS TO PROPOSED RULES OF CRIMINAL PROCEDURE

Rule 7.03 and 21

Allowance of discovery in misdemeanor matters will hopelessly overload already burdened prosecutorial staffs. In addition, discovery is an excellent vehicle to delay and procrastinate, a constant problem in misdemeanor criminal prosecution. While these rules do provide that discovery can only be conducted in misdemeanor cases under court order, in practice the court will only be a rubber stamp in order to protect the record. The result of these rules will either be to greatly increase the prosecutorial staff at taxpayers' expense or decrease the effectiveness of criminal prosecution, probably both.

Rule 10.02

The last sentence of this rule doesn't make any sense. One moment the rule is talking about the time when a motion attacking the jurisdiction of the court must be made. Then, in the last sentence, the motion is noticed, heard and determined but nothing is said about when the motion is to be determined. It is obvious that when a motion is made it will eventually have to be heard and determined and the placing of that language right after a seven-day notice could be construed to mean that the motion must be completely disposed of within seven days.

Page 73, Question 14c

This question is not quite accurate. If a defendant testified differently at trial than at Rasmussen, his testimony at Rasmussen might be used to impeach his testimony at trial. Cf. Harris v. New York.

Rule 16

This rule is an excellent rule but is not sufficiently broad enough. It is possible for a person to commit two crimes in one act and yet not invoke MSA 609.035. Examples of this phenomenon are: Possession of a Controlled Substance, Heroin and a Small Amount of Marijuana, Felony Theft and Resisting Arrest

or Unauthorized Use of a Motor Vehicle and Driving after Revocation. In all of the above cases, two prosecutorial offices would have to prosecute separately even though the conduct was one general act. This rule should not mention MSA 609.035, but order the felony prosecutor to prosecute all cases involved with the same behavioral incident.

Rule 23.04, 26.01(b)

The prosecution should be allowed to reduce a misdemeanor to a petty misdemeanor without the consent of the defense. In many cases defense attorneys will be reluctant to reduce the charge to a petty misdemeanor if it means giving up a jury trial. The better view would be to allow the prosecutor to charge the crime out initially as either a misdemeanor or petty misdemeanor at his discretion. Since municipalities will be able to charge everything out as ordinance violations not punishable by incarceration (petty misdemeanors) or, in the alternative, as state statute violations (misdemeanors), prosecutors will have the discretion of charging petty misdemeanors or misdemeanors anyway. Since prosecutors will have that power anyway, why not put that power directly into the rules, saving municipalities from having to amend their codes and giving county prosecutors the same power as city prosecutors.

Furthermore, there are some crimes, notably DWI, which should always be misdemeanors and not reducable.

Rule 26

The prosecution should have the right to demand a jury trial as it does under the federal rules. Trial judges often have certain crimes as pet peeves and are very reluctant to find anyone guilty of those crimes. Such a rule not only jeopardizes certain types of crimes before certain judges, but also encourages a most vicious type of judge shopping.

NATIONAL LAWYERS GUILD

TWIN CITIES CHAPTER

P. O. BOX 7193
POWDERHORN STATION
MINNNEAPOLIS, MINNESOTA 55407

January 17, 1975

Mr. John McCarthy, Clerk
Minnesota Supreme Court
St. Paul Minnesota

Dear Mr. McCarthy:

This is to inform you that the National Lawyers Guild wishes to present testimony before the Supreme Court, January 31, 1975 on the Proposed New Rules of Criminal Procedure. We do not as yet know who will be representing us but we will let you know as soon as our plans become final.

Please send any correspondence regarding the time and permitted length of our appearance to the following address:

National Lawyers Guild
2955 Bloomington Avenue S.
Minneapolis , Minnesota 55407

Yours truly,

Maury S. Landsman

Mr. Landsman:

Send your representative over. The hearing is at 9:30 a. m. on 1-31-75. No limits have been established for time presentation. However, about 8 others have indicated they will appear. Under these circumstances, don't you think that 15 minutes would be about right and 20 minutes would be pushing the outer bounds of propriety? They have a hearing on Continuing Legal Education at 2:00 P. M., and somewhere along the line they will have to eat lunch.

John McCarthy, 296-2581

THE ASSOCIATION OF MINNESOTA COUNTIES

RALPH T. KEYES
EXECUTIVE DIRECTOR

55 SHERBURNE, SUITE 203
ST. PAUL, MINNESOTA 55103
(AREA CODE 612) 222-5821

January 20, 1975

Mr. John C. McCarthy
Clerk of Court
Minnesota Supreme Court
State Capitol
St. Paul, Minnesota 55155

RE: Hearing - Proposed Rules of Criminal Procedure.

Dear Mr. McCarthy:

Please be advised that the Association of Minnesota Counties wishes to appear and testify at the hearing on the above captioned proposed rules of criminal procedure to be held at the State Capitol on January 31, 1975 at 9:30 a.m.

Yours very truly,

John E. Chapuran
Staff Attorney

JEC/smg

January 21, 1975

Mr. Chapuran:

We have indicated on our records that you will appear at the above hearing. So far, about a dozen people have indicated that they intend to make oral presentations.

John McCarthy, Clerk

45517

STATE OF MINNESOTA

IN SUPREME COURT

IN RE: MINNESOTA PROPOSED RULES OF CRIMINAL PROCEDURE

BRIEF OF MINNESOTA PUBLIC DEFENDERS ASSOCIATION IN OPPOSITION TO ADOPTION OF THE RULES

Minnesota Public Defenders Association
1001 Degree of Honor Building
Saint Paul, Minnesota 55101

45517

STATE OF MINNESOTA

IN SUPREME COURT

IN RE: MINNESOTA PROPOSED RULES OF CRIMINAL PROCEDURE

BRIEF OF MINNESOTA PUBLIC DEFENDERS ASSOCIATION IN OPPOSITION TO ADOPTION OF THE RULES

This brief is presented to convey to the Court the strong opposition of the Minnesota Public Defenders Association to final adoption and effectuation of the Minnesota Proposed Rules of Criminal Procedure, and to describe the most serious objections to the Proposed Rules which underlie this position.

The Association

The Minnesota Public Defenders Association is an organization of public defenders and private defense lawyers defending criminal cases in all parts of the State of Minnesota, which has taken a natural and active interest in the Minnesota Proposed Rules of Criminal Procedure. A committee to study the Rules was formed, reviewed the Proposed Rules, and reported to the membership of the Association, which in turn passed a

resolution providing for the filing of a brief and the delivery of the Association's position orally to the Court at the hearing scheduled for January 31, 1975, by order of the Chief Justice.

It is significant, we believe, and we emphasize, that while the Association does not necessarily speak for every public defender and private defense lawyer in this State, in opposing the Proposed Rules it does convey the view of the public defenders of all the most populous jurisdictions: Hennepin County, Ramsey County and St. Louis County, as well as many other public defenders and defense lawyers. Therefore the views here expressed are those of the men and women who are responsible for defense of the vast majority of all criminal cases in Minnesota.

Moreover, members of the Association have conferred with representatives of various prosecuting authorities throughout the State, both at the City and County levels, as well as with judges and other Court personnel, and have found a widespread identical concern with the inevitable unworkability of the mechanical and practical features of the Proposed Rules. Thus, while the Association finds fault with certain Proposed Rules because they violate Constitutional and other rights of the accused, our opposition is by no means limited to these, is not, in other words, an effort to overcome what is perceived as an altogether unwarranted and often unconstitutional shift of advantage to the prosecution. On the contrary, even were these defects remedied, the Proposed Rules would remain unacceptable because of objections in which defenders and prosecutors concur.

The Evolution of the Proposed Rules

The Constitution originally vested power to regulate pleading and practice exclusively in the Legislative branch.[1] When this provision was deleted by amendment, the power was not transferred to the Judiciary,[2] but legislation from time to time has purported to delegate this power to the Supreme Court.[3] The Constitutionality of this delegation has not so far as appears been tested under Article III, which provides:

> The powers of government shall be divided into three distinct departments - legislative, executive, and judicial; and no person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others, except in the instances expressly provided in this constitution.

Nevertheless in 1971 the legislature enacted Minn. Stat. §480.059, purporting to delegate regulation of pleading and practice in criminal cases to the Supreme Court. This act contained these notable restrictions:

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(1) Constitution of 1857, Art. 6, §14.

(2) See Article VI, 1956, 1974.

(3) E.g. Minn. Stat. §§480.051-480.058 (1947) regarding regulation of pleading and practice in civil actions.

> Subd. 1 . . . . Such rules shall not abridge, enlarge, or modify the substantive rights of any person.
> Subd. 7. Nothing herein contained shall be deemed to grant the supreme court power to amend or modify any statute.

The Court thereafter appointed the Advisory Committee envisioned by §480.059 Subd. 2. Its membership was distinguished, but it is appropriate to note that the Committee contained no public defender practicing at the Municipal, County or District Court trial level, no defense lawyer (public or private) from St. Paul or Ramsey County, Duluth or St. Louis County, Rochester or Olmstead County; no prosecutor from any of these cities or counties; no judge, Municipal or District, from Ramsey or Olmstead Counties; indeed, while fully half of the Committee was from Minneapolis, the other major population centers of this State had no prosecutor or defense lawyer, public or private, upon the Committee at all; the only defense lawyers were from Minneapolis, and none of them a trial-level public defender. It was no doubt this lack of truly representative members from throughout the State, rather than any shortcomings of the actual members individually or collectively, which resulted in the Proposed Rules' fatal failure to accommodate the practical realities of day-to-day practice, particularly in the volume of which only public defenders and metropolitan prosecutors have experience.

Be that as it may, (the Committee, of course, did not select itself, and we do not fault them for their nonrepresentativeness), the Committee undertook its task with a diligence reflected in

the one hundred ninety-six pages of their product. As the very number itself suggests, the Committee vastly exceeded the authority available to it under §480.059; their work would both affect numerous substantive rights and result in the modificiation, amendment or repeal of virtually all Minnesota Statutes governing criminal procedure. In at least one instance the Committee flew directly in the face of the clear language of the Constitution: former section 23.116, providing for eleven-twelfths verdicts in gross misdemeanor cases obviously violated Article I Sec. 4, a compromise admittedly insisted upon by prosecutors on the Committee as a prerequisite to their approval of the entire Proposed Rules.(4)

Thus it became essential to apply to the Legislature for retrospective sanction for the Committee's ultra vires action. The Legislature complied, enacting Chapter 390 (Laws 1974), amending §480.059 Subd. 6 and Subd. 7, delegating to the Court the authority (previously explicitly withheld) to modify, amend or repeal statutes, with certain exceptions.

The unconstitutional provision for gross misdemeanor verdicts, however, did not escape the legislature, which specifically prohibited it in Subd. 7(i). The Legislature also extended the earliest lawful date the Rules might become effective to July 1, 1975. Ch. 390, Section 2, supposedly to

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(4) See remarks of Committee member Graven at the hearing in February, 1974.

allow further study and consideration in view of the considerable opposition being expressed. See amended Subd. 6.

Such then is the history of the Proposed Rules, which, in a form far beyond the modest mandate of the 1971 statute, appeared virtually as a fait accompli and are now on the verge of final approval.

We express the same misgivings as did Mr. Justice Douglas in another context when he said, dissenting from adoption of the federal rules of evidence by the United States Supreme Court:

> [T]his Court does not write the Rules, nor supervise their writing, nor appraise them on their merits, weighing the pros and cons. The Court concededly is a mere conduit. Those who write the Rules are members of a Committee named by the Judicial Conference. The members are eminent; but they are the sole judges of the merits of the proposed Rules, our approval being merely perfunctory. In other words, we are merely the conduit to Congress. Yet the public assumes that out imprimatur is on the Rules, as of course it is.
>
> We are so far removed from the trial arena that we have no special insight, no meaningful oversight to contribute. The Rules of Evidence--if there are to be some--should be channeled through the Judicial Conference whose members are much more qualified than we to appraise their merits when applied in actual practice. 34 L.Ed.2d at lxvi.

We can only express the hope that this Court will not give its "merely perfunctory" approval to the Proposed Rules, give its imprimatur without weighing the pros and cons, without hearing and evaluating the opposing views which represent a very widespread and deeply felt belief that the Proposed Rules simply

will not work, will not accomplish their expressed purpose, but on the contrary will make procedure not simple but extraordinarily complicated, will not eliminate but will incalculably increase expense and delay, will not promote but will substantially diminish fairness in the administration of criminal justice.

The Illusion of Simplified and Expeditious Procedure

There are today no appreciable delays in the processing of felony matters in Minnesota courts.

The Proposed Rules are therefore designed in large part to solve a non-existent problem. Ironically, their effect if adopted will be to create the problem they were ostensibly created to remedy.

The arraignment, pleading, motion, discovery and hearing provisions of Rules 5, 7, 8, 9, 10, 11, 13, and 14 purport to expedite, consolidate and simplify procedure; they will in fact do the opposite.

In Minnesota today a typical felony case follows this course: the accused is arrested, appears promptly in municipal or county court, demands (or frequently waives) a preliminary hearing, and posts bail;[5] the preliminary hearing is ordinarily fifteen to forty-five days later, by which time both prosecution and defense have had ample but not excessive time to prepare their respective cases; if he is bound over, he appears in a day or two for arraignment, enters a plea, and goes to trial within approximately thirty days; pre-trial hearings if any are ordinarily held on the day set for trial. Thus a case may readily be disposed of within about sixty days if the accused or the state wishes.

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(5) Incarcerated defendants can always obtain accelerated hearings and dispositions if they so desire.

The time between initial appearance and preliminary hearing and the hearing itself are invaluable to both prosecution and defense for investigating, researching, preparing and evaluating the case; yet this is the only time period and hearing eliminated by the Proposed Rules.

Under the Proposed Rules, all of the often difficult, sensitive and time consuming work that now occurs in this period, plus the new burdensome discovery procedures, would be compacted into the fourteen days (and much of it the first seven) after initial appearance, when it manifestly cannot be adequately done, and then a sixty day hiatus is provided, (Rule 11.10), when it is useful to neither defense nor prosecution.

Rule 10 requires pre-trial motions to be filed 3 days before the Omnibus Hearing, and provides for waiver of defenses, objections, issues and requests not raised if "then available". Since a defense lawyer (unless he has nothing else to do) will simply be unable to evaluate all the issues that quickly, he will have no choice but to file every conceivable motion in every case to protect his client and his record. (Defendants with busy or inexperienced counsel will suffer accordingly.) Since sufficient time to prepare motions and memoranda is not provided, the Omnibus Hearing will inevitably involve a proliferation of issues prematurely brought and with even conscientious and experienced counsel ill-prepared to assist the court in defining, much less resolving, the issues. Waivers of preliminary, "Rasmussen," and "Spreigl" hearings, now common, will disappear lest counsel waive

issues and defenses he has had insufficient time to seek, find, evaluate and prepare.

In these circumstances our considered estimate is that Omnibus Hearings, which will be scarcely if ever waived, will ordinarily occupy a full day, frequently longer, including long hours in chambers discussing issues and preserving records; this to improve a system which now disposes of preliminary hearings in one-half to one hour, when they are not waived as they very frequently are, and "Rasmussen" hearings in an hour or two on the day set for trial.

Nor is this all. It is manifest that issues and defenses technically "available" earlier will frequently be discovered between Omnibus Hearing and trial, even during trial; this will result in further hearings, first not on the merits but on the very right to a late hearing, then on the merits; pre-trial appeals and pre-verdict applications for extraordinary relief in the Supreme Court are inevitable where the issues are dispositive or significant. This, of course, will cause further delay, defeating the goal of expedition.

Since defenses are seldom fully known within two weeks of arrest, frequently not until during trial, diligent counsel will be forced to assert <u>all possible</u> defenses at the early stages, which will be of no assistance to the prosecution or court, but will be necessary to protect the accused.

The discovery provisions of Rule 9.01 and 9.02, placing Constitutionally questionable burdens (to phrase it charitably)

upon the accused and relieving the prosecution of Constitutional responsibilities, will without any doubt result in acrimonious pre-trial disputes, pre-trial appeals and extraordinary writs, and in some cases in incarceration for convicted defendants pending the undoing of the Rules in higher courts.

Minnesota needs rules of discovery. This Court regrettably has rejected the opportunity to make them in numerous cases, and the legislature has not done so.[6] The questions

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(6) See e.g. State v. Mastrian, 285 Minn. 51, 171 N.W.2d 695, 703 (1969):

> It is true that in a growing number of jurisdictions there has been movement toward open, free, and total pretrial discovery in criminal cases similar to that provided for in civil cases by the Rules of Civil Procedure. To adopt unqualified discovery, as urged by defendant, and to base a reversal thereon would be unjustified. Such a substantial change in our long-established procedures should, we believe, be accomplished only by statute or by rules of court after a long and detailed consideration of the many policy considerations involved. See, generally, Louisell, Criminal Discovery: Dilemma Real or Apparent?, 49 Calif.L.Rev. 56.

The Proposed Rules go well beyond what the Appellant asked in Mastrian, of course, since they require massive disclosure by the accused, thus collide with the Fifth Amendment, and therefore all the more require "long and detailed consideration of the many policy considerations involved".

are of surpassing importance and the answers provided by the Proposed Rules are altogether unacceptable for both Constitutional and practical reasons. The discovery issues in and of themselves deserve plenary exploration either in the Legislature or under the Court's auspices, and the problems are quite soluble independent of the Proposed Rules, which create a great many more problems than they solve.

To cite only two specific examples: Rule 9.01 Subd. 1(6), which requires disclosure to the accused of exculpatory information clearly can be interpreted by prosecutors to fall far short of the Constitutional requirements of Brady v. Maryland, 373 U.S. 83 (1963), and its progeny and will be the source of frequent contention.

Proposed Rule 9.02 Subds. 1(1), (2), (3) contains the stuff of numerous Fifth Amendment violations, (and violation of marital, attorney-client, medical and other privileges). Suppose, for example, an accused has a potentially self-incriminating document which he may wish to use at trial depending upon the progress of the state's case, the credibility of the state's witnesses and so on; must he disclose it under Proposed Rule 9.02 Subd. 1(1) or forfeit the right to use it? Would the former violate the privilege against self-incrimination? The latter, due process? What does "intends to introduce in evidence" mean? Can counsel entertain a possibility or foresee a probability short of "intention" and thus avoid the Proposed Rule? This Court will be asked to decide such questions quickly and frequently,

often no doubt in the midst of trials. Counsel in turn will be forced to subterfuge, to self-enforced ignorance of evidence, to non-written forms of investigation, and to other devices as he attempts the impossible task of finding the line between the Proposed Rule, the Fifth Amendment, and the Canons of Ethics.

This is neither necessary, nor desirable, nor, indeed, tolerable.

These fears are not merely conjectural, alarmist. We invite each member of the Court to reflect upon Rule 9.02 Subd. 1(1) and ruminate upon what the defense lawyer must do under it, upon where (except to this Court) defense counsel can go for guidance, upon the plight of the trial judge in enforcing the rule if counsel declines to produce materials he believes in good faith are Constitutionally protected.

Surely the discovery rules embody "substantive" and not merely "procedural" innovations, in violation of the enabling legislation.

In passing it is worth noting that if the discovery provisions do not work efficiently the entire scheme of the Proposed Rules is frustrated since pre-trial arguments, pre-trial writs, contempt citations, and trial disputes over offered but non-disclosed evidence will vastly outweigh any benefits of expedition envisioned by fuller discovery under the Proposed Rules as they stand.

It is clearly significant that effectuation of amendments to the Federal Rules of Criminal Procedure, approved by the

United States Supreme Court on April 22, 1974, (40 L.Ed. at i et seq.), and embodying some of the questionable discovery provisions (enlarging Federal Rules of Criminal Procedure, Rule 16), has been delayed by Congress to allow further consideration. See 93rd Cong., P.L. 93-361, 88 Stat. 397 and H.R. 15461. Surely the guidance of Congress's debates and reports upon the serious issues raised could benefit final decision upon similar provisions in Minnesota.

These, in broad terms, are the more serious defects we see, and the unavoidable consequences of the pre-trial Proposed Rules. They are worse than self-defeating, for they invite Constitutional confrontations and delay, which they should be designed to avoid.

The Enormous Increased Costs of Procedures Under the Proposed Rules

Another poignant irony is that the Proposed Rules purport to eliminate expense.

It should be clear from what we have said above that a new and time-consuming complexity will be introduced into criminal procedure if the Proposed Rules should go into force, (the only alternative being the waiver of Constitutional and other rights of the accused). This in itself will, of course, increase the expense of criminal defense.

More generally, however, the discovery and Omnibus Hearing provisions of the Proposed Rules simply cannot be complied with by the present staffs of the public defenders offices in Minnesota. The Association estimates that an increase of at least 50% in their lawyers, investigators and office personnel and equipment will be essential if the proposed procedures are to be followed in the time periods provided. Since prosecutors face largely the same burdens, (precipitated investigation, preparation and duplication of materials, legal research and so on before the Omnibus Hearing), the need for increased County Attorney's staffs is equally predictable. Judicial and clerical personnel will also be insufficient since substantial increases in courtroom hours and filed documents will be required.

The lack of representation on the Committee of trial-level public defenders is most apparent in these areas, for public defenders are virtually unanimous in agreeing that the volume of cases they handle cannot conceivably be treated under

the proposed system without substantially increased appropriations and manpower. Specifically, the Hennepin, Ramsey and St. Louis County public defenders, whose offices process a far greater number of criminal cases than any other in the state (and none of whom were represented on the Committee), assert that this is the case.

This is not a case of not wishing to comply with the Proposed Rules, or of not approving the projected procedures, or of believing that some alternative system would be preferable. It is a case of actual, physical impossibility. And if the public defenders in these three counties alone are not served by and cannot comply with the Proposed Rules it is difficult to imagine what countervailing benefits could justify their adoption -- because of the sheer bulk, the proportion of all criminal cases these offices are responsible for.

A more precisely identifiable aspect of costs is this: Under the present system defense counsel hire private investigators in perhaps 5-10% of all cases, ordinarily after a preliminary hearing when there has been sufficient time to discuss the case with the accused, prosecutor, and witnesses and determine if further investigation is necessary. Under the Proposed Rules immediate investigation of virtually every case will be mandatory, at a great and unfortunate cost, and assuming sufficient competent investigators can be found. Duplication of effort between police and defense investigators will be considerable, as it now is not.

Only two alternatives are possible if the Proposed Rules become law without a simultaneous and substantial increase in staff: either the time limitations of the Rules must be ignored or waived under the guise of "good cause," or defendants represented by public defenders will not be properly represented because their lawyers will be forced to waive hearings, motions, issues and defenses and to foreshorten investigation and trial preparation in order to comply with the Rules.

The Disservice to Just and Fair Administration of Criminal Justice

Speed and economy are poor enough reasons for emasculating Constitutional and other rights of the accused, even if improved speed and economy could demonstrably be obtained. As we have said, Minnesota already has the ability to process criminal cases rapidly and efficiently, and does so on a daily basis. And since the Proposed Rules will not improve but undermine these qualities, the corresponding incursions upon the rights of the accused are all the more unfortunate.

Prosecutors will now be forced to investigate cases cursorily and charge them prematurely and will, of course, charge the most serious offense the undigested evidence will bear, whereas reflection and negotiation (as under the present system) might frequently result in less serious but fairer accusation.

The accused will often be denied his right to counsel of his choice; if the preferred lawyer is away or occupied during the week or two after arrest he will have been unavailable for the crucial pre-trial proceedings. This is unfair not only to the accused but to the private lawyers who will perforce lose clients through the arbitrary rush of the Rules.

Defense counsel (private, and more emphatically public defenders) will be under such unnecessary pressure in the early stages of a case as to be unable to prepare properly, as we have already noted. This will serve neither the accused nor justice.

Countless trials will be delayed by pre-trial appeals and extraordinary writs, at least where conscientious prosecutors

and defense lawyers attempt to obtain favorable resolution of the myriad of issues raised by the Proposed Rules, issues often pitting the explicit command of a Proposed Rule against a Constitutional rule of enormous complexity and fundamental importance -- as in the Fifth Amendment problems of Proposed Rule 9, problems never before posed in Minnesota because of the lack of any true discovery rules, and few of which have been resolved in any Court since no jurisdiction, State or federal, has heretofore attempted to violate the sanctuary of the defendant's file, work product and privilege to this degree.

In short, the irrational pursuit of an unneeded speed, simplicity, efficiency and economy has in these Proposed Rules not only failed to make a closer approach to those goals, but poses most serious threats to the fairness and justice which are or ought to be the cynosure of the effort.

Some Miscellaneous Reflections and Objections

It reflects on the whole of the Proposed Rules, of course, that by the Committee's own admission the Rules would not have come to be at all without the astonishing and unconstitutional compromise of the earlier gross misdemeanor non-unanimous verdict provision, which the legislature has already undone. That provision was symptomatic of the inappropriate spirit of compromise which pervades the entire proposal.

Constitutional rights, justice, fairness are not susceptible to compromise, to adjustment here and there, to bargaining, to a concession here for a concession there. Who is to say a little more Fourth Amendment will compensate for a little less Fifth, a little speedier trial for a little less choice of counsel, a little more exculpatory material from the prosecutor for a little more incriminating material from the defense?

What can be said of Proposed Rule 26, Subd. 11 (h,i), changing order of final argument, except that it vividly exemplifies at its very worst a spirit of compromise between prosecution and defense. It changes a salutary rule of longstanding, unique to Minnesota, and for no apparent reason[7] except 1) to conform,

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(7) The Advisory Committee's Comment to this Proposed Rule offers no analysis or rationale for the radical change, but merely paraphrases the Proposed Rule and notes that it represents a change. This is the case with most of the Comments which for the most part offer no guidance to the Committee's thinking or assistance in perceiving and understanding the radical changes embodied in the Proposed Rules.

partly at least, to practice in other jurisdictions, and 2) to give a new advantage to the prosecution. The resulting Proposed Rule is practically ludicrous in its indecision, (as is, incidentally, Proposed Rule 11.01, which fails even to designate in which Court the Omnibus Hearing shall be held), and will, of course, breed disputes as to what is "improper" argument in virtually every jury trial. And a purpose of the Rules, we had thought, was "simplicity in procedure".

This Proposed Rule may not affect Constitutional rights, but it is colored by the same spirit of compromise which has in fact compromised Constitutional rights elsewhere in the Rules.

And what are we to make of such provisions as Proposed Rule 4.02 Subd. 5(1), (3), which require a prompt appearance, within 36 hours, "exclusive of Sundays and legal holidays"? Is a man's liberty to depend upon the calendar, the length of his unlawful detention upon the day of the week he is arrested? These provisions for extended detention over weekends and holidays are inexcusable, explainable only by a concern for convenience of lawyers and judges; these provisions are decadent in their concern for comfort, and make a mockery of the Rules's expressed purposes of providing speedy determinations, simplicity, fairness and eliminating unjustifiable delay.

Summary

What the Proposed Rules actually do is this: they compress into the first seven to fourteen days after arrest all of the important investigation, research and other preparation which now occurs during the first fourteen to forty-five days, but they do not diminish the total time required to bring a case to trial. Quite the reverse; trials will be delayed far beyond schedules possible under the present system. The Proposed Rules, that is, require dispatch where it is neither necessary, desirable nor (in many cases) possible, between arrest and Omnibus Hearing, with no resulting benefits, but allow and encourage delay where it is neither useful nor wanted, between Omnibus Hearing and trial when cases will merely become stale.

We respectfully ask each member of the Court to place himself in the position of a prosecuting attorney or a public defender, each of whom handles on the average approximately one hundred fifty felony cases a year, often more than one every two days. This volume of cases is now processed in Minnesota with an expedition and efficiency which most of the rest of the nation envies, and which virtually never results in undue delay to the accused, incarcerated or free, and yet allows adequate time properly distributed for preparation of cases. The Proposed Rules redistribute the time, for no apparent reason except to create an appearance of speed in the early stages, much in the spirit of the military which has proverbially operated upon the "hurry up and wait" principle.

The Proposed Rules fail to recognize that lawyers have more than a single case to handle, that trials occasionally extend, that illnesses and vacations may coincide with the first ten days after the arrest of a given accused.

CONCLUSION

The remarks contained in this brief, negative though they may be, are presented with respect and with deference to the distinguished Advisory Committee. It is hoped the Court will find our concerns persuasive, provocative of some consideration, not merely crotchety or obstructionist. It is not satisfying to find ourselves opposed so adamantly to the Proposed Rules as a whole; they have much to commend them in their particulars. But this Association is so convinced that the central provisions, concerning especially pre-trial practice, are so deficient and dangerous that it would be fruitless to offer suggestions for particular changes. This Association, however, stands ready to offer its efforts, study and recommendations upon the specifics of all the Proposed Rules if an opportunity for further and full consideration is vouchsafed.

For the moment, we trust that our critique will be received in the spirit in which it is offered: the inadequate but sincere expression of profound concern on the part of a group of lawyers who are above all criminal defense lawyers, who have devoted themselves to criminal defense, and who in fact defend a very large proportion, certainly a majority, of the criminal cases arising in this State each year.

This Association has, we trust, if not the collective widsom, at least the cumulative experience and a sufficient enough stake in the outcome, to lend our position an authority deserving of attention. We are confident that if the Court will examine

the Proposed Rules vis a vis the present practice, and attend not only to our complaints but those of prosecutors and judges as well, the absolute necessity of further consideration will emerge with force.

We urge at the very least that the Proposed Rules be submitted to further study by a more representative group, that the Rules finally drafted be submitted for approval or rejection by referendum of the entire criminal bar, and that a test period be provided so that the workability of the Rules may be tested in one or more selected jurisdictions before they are imposed irrevocably upon the entire State.

Since our present system works very well indeed, no damage will result from postponement. Conversely, however, if the Proposed Rules are prematurely foisted upon the bench and bar it will be much more difficult to undo the damage done.

Respectfully submitted,

Minnesota Public Defenders Association
1001 Degree of Honor Building
Saint Paul, Minnesota 55101

Note: Each Petition Contains Different Signatures

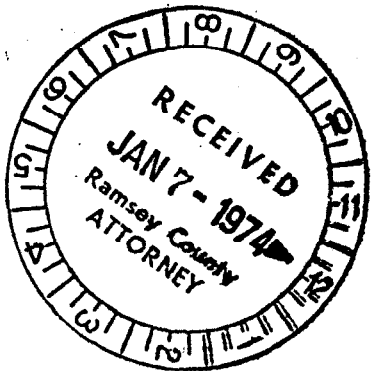
TO: THE JUDGES, PROSECUTING ATTORNEYS, PUBLIC DEFENDERS AND PRIVATE ATTORNEYS OF THE MINNESOTA BAR:

As you are no doubt aware the Minnesota Proposed Rules of Criminal Procedure are pending for final approval before the Minnesota Supreme Court, which will hold a hearing on January 31, 1975 and before the Legislature which must still adopt final enabling legislation. Many of us who have studied the Rules believe that they will result in substantial burdens of expense and delay without corresponding benefits. We have therefore prepared the attached petition which states briefly the areas of our greatest concern.

If you are in agreement with our position on the matter, that is, that while Minnesota criminal procedure may well need substantial reform and codification the present proposed Rules do not accomplish this in a desirable way, would you please sign the petition, print your name legibly and include the city where you practice and any official position you may hold. These petitions will be presented to the Supreme Court and the Legislature in our effort to prevent enactment of the Rules as they presently stand.

Please circulate the petition among your colleagues and when the signature lines are filled or no further signatures can be obtained return it to Mr. Paul Lindholm, Assistant Ramsey County Attorney, Ramsey County Courthouse, St. Paul, Minnesota 55102 before January 15, 1975.

Paul E. Lindholm



PETITION

We, the undersigned judges, prosecuting attorneys, public defenders and private attorneys, acknowledge the scholarship and industry represented by the Minnesota Proposed Rules of Criminal Procedure. We are, however, of the considered belief that enactment of these Rules in their present form will not serve their salutary expressed purposes of providing for "the just, speedy determination of criminal proceedings" and of securing "simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delays." We believe, on the contrary, that the Rules will in practice work counter to these purposes in the following respects, and we therefore express our opposition to their enactment:

I. The cost of implementation. Because of unnecessary new burdens in the early stages of a prosecution, increased costs will be enormous; increases of as much as 50% and perhaps more in the staffs of prosecuting attorneys and public defenders if those offices are to comply with the Rules, with corresponding increases in judicial, clerical, investigative and court-reporting personnel, and substantial additional expenditures for equipment, space and personnel. In rural districts with large geographical areas and limited numbers of judges serious logistical dislocations seem inevitable. Increased burdens will necessarily cause private defense counsel to increase their fees, thus displacing a further percentage of cases upon public defenders. Moreover, many private practitioners not deeply committed to the practice of criminal law might well abandon it altogether rather than meet these unusual constraints. Clients unable to reach a given attorney immediately will be denied counsel of their choice, and the attorney deprived of a client, all because of the unnecessary, and we feel unreasonable, speed required in the handling of cases.

II. Delay. The Rules will not in reality reduce but considerably increase the time required to process a criminal case and result in delay rather than expedition, by congesting the courts with undigested, procedurally immature cases which are supposedly ripe for Omnibus Hearing or trial. The prescribed motion practice will make unavoidable a substantially increased volume of written work. The pre-trial appeal provisions will create intolerable delay in innumerable cases. The discovery provisions cannot conscientiously be complied with in the allotted time and will thus be either violated or require additional delay. Under the present system, even in our largest metropolitan areas, there are no appreciable delays in criminal cases.

III. Court Merger. Passage of one of the court-merger or court-unification proposals currently under study will render several central provisions immediately obsolete and require substantial additional rule-making efforts, with an accompanying hiatus of procedure without rules until those efforts are completed.

IV. Justice and Fairness. These desiderata will not be served. Prosecutors will be forced by the Rules, particularly the time requirements, to charge cases prematurely and to submit them willy-nilly to the courts and defense counsel. Defense attorneys are not given adequate opportunity to investigate, research or prepare cases for hearing or trial, or therefore properly to advise and represent their clients. Judges will be deprived of much of the discretion by the exercise of which they are now able to accommodate the letter and spirit of extant procedures to the realities and equities of individual cases.

The present system, we repeat, works well and to the extent it needs revision this can be accomplished without the disruption of the Proposed Rules.

We therefore respectfully urge that enactment of these Rules be deferred until they may be properly evaluated in light of the foregoing objections, and the more specific defects which underlie these objections.

Name (Please print)	City	Position or Office
PATRICK D MOREN	ROSEAU	ROSEAU COUNTY ATTORNEY
Chester A. Yon	"	ASS'T " " "

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Name (Please print)	City	Position or Office
John W. Kanniainen	St. Paul	Asst. County Atty Ramsey County
Margaret M. Marrinan	St. Paul	Asst County Atty - Ramsey Cnty
Gary A. Davis	St. Paul	Asst. Ramsey County Atty.
Richard H. Hoffman	Edina	Asst Ramsey Co. Attorney
Samuel Crecelius	St. Paul	Asst C. Atty
Leonard T. Street	St. Paul	Asst Ramsey Co. Atty
H. A. Gregg	St. Paul	Asst Ramsey Co Atty
Richard R. O'Reskie	St. Paul	asst. Ramsey Co. Atty
Steven C. DeCoster	St. Paul	Asst. County Co Atty
Christos B. Sater	St Paul	asst Ramsey Co Atty

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Name (Please print)	City	Position or Office
David McKenna	Fairmont	Ass't County Attorney
Elton A Kyder	Fairmont	Co. atty
D. Gerald WILHELM	FAIRMONT	Ass't County Attorney
[signature]	"	ATTORNEY

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Name (Please print)	City	Position or Office
James A. Beuning	Mahnomen	County Attorney
Andrew J. Wambach Sr.	"	Asst. Co. Attorney

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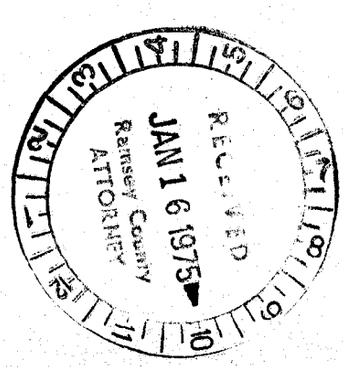
Name (Please print)	City	Position or Office
James H. Johnson James H. Johnson	Benson, Mn.	Swift County Attorney
R.A. Bodger R.A. BODGER	Benson, MN	Swift County Judge
Ray E. Holmquist RAY E. HOLMQUIST	Benson, MN	City Attorney
Roy W. Holmquist ROY W. HOLMQUIST	Benson, MN	Attorney
Harold C. Lucking HAROLD C. LUCKING	Benson, Mn.	Attorney



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Name (Please print)	City	Position or Office
John W Plattner	WALKER	County Atty
Michael Haas	Walker	CASS COUNTY Asst Cass Co. Attny.
Herlen E. Smith	Walker	City Attorney-Walker

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Name (Please print)	City	Position or Office
Wallace Jackson	Madison Minnesota	County Attorney Lac qui Parle County, Minn.
Norman Dahl	Louisburg	County Commissioner
James M. Flaa	Boyd	County Commissioner
Palmer Stinager	Boyd	Co. Commissioner
Lunder Johnson	Marietta	Co Comm
Alfred J. Glorz	Bellingham	Co. Comm.
A.W. Swenson	Madison Minn.	City Attorney

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Name (Please print)	City	Position or Office
John A. Winters	Crookston	Polk County Attorney
Wayne H. Swanson	Crookston	Polk County - Asst. County Attorney -

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Name (Please print)	City	Position or Office
C. David Nelson	Glenwood,	Pope County Atty
Norrell G. Gallagher	Glenwood	Glenwood City Attorney
Richard D. Snowden	Glenwood	Assistant City Attorney
G. A. Hatfield	St Paul	District Court Administrator

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Name (Please print)	City	Position or Office
Roger S. Van Heel	St. Cloud	Stearns County Attorney
Patrick W. Kelly	St. Cloud	Assistant Stearns County Attorney
Robt. J. Calhoun	ST. Cloud	" " " "
Duane J. Kunesh	St. Cloud	" " " "

WILLIAM B. RANDALL, COUNTY ATTORNEY • RAMSEY COUNTY, STATE OF MINNESOTA
Ramsey County Court House • Saint Paul, Minnesota 55102

THOMAS M. QUAYLE
CIVIL DEPT.

EDWARD E. CLEARY
HOSPITAL, WELFARE & DOMESTIC RELATIONS DEPT.

PAUL E. LINDHOLM
CRIMINAL DEPT.

January 20, 1975

John McCarthy, Clerk
Minnesota Supreme Court
State Capitol
St. Paul, Minnesota 55155

Re: Hearing on Proposed
Rules of Criminal
Procedure, 1-31-75

Dear John:

We would very much appreciate and do request that at the hearing on the Proposed Rules of Criminal Procedure, a brief opportunity to be heard in opposition to the proposals be extended to one member of our office and to one member of the Ramsey County Board.

Thank you.

Very truly yours,

DANIEL HOLLIHAN
Assistant Ramsey County Attorney

DH:w

January 21, 1975

Dear Dan:

I am sure they will welcome your comments and those of a member of the board. The tally of those who intend to appear and make oral presentation is now up to a dozen.

John McCarthy, Clerk

THE AD HOC COMMITTEE FOR FURTHER
CONSIDERATION OF THE PROPOSED RULES
OF CRIMINAL PROCEDURE

We, the undersigned members of the District, Municipal and County benches, the prosecution bar, the public and private defense bar and the offices of Clerks of Court, having examined the proposed Rules of Criminal Procedure, are unanimously agreed that enactment of the Rules in their present form is not in the best interest of fair, workable and expeditious procedure in the Courts of Minnesota. While we find much to commend in individual provisions, and while we are not united in all of the particulars of our objections, we are convinced that the Rules as promulgated do not improve the present system, but, to the contrary, will result in an unnecessarily complicated, confusing and time-consuming process which will intolerably tax the facilities of the County, District and Supreme Courts and their clerks, as well as the prosecution and defense bars, and will disserve the interests both of society and of the accused, without commensurate benefits to either.

Accordingly we respectfully urge that any further step toward enactment of the Rules be postponed until public discussions may be organized and held by the bar associations of each Judicial District and the reports of such discussions submitted to the Advisory Committee, the Supreme Court, and the legislature.

_____ John A. Cochrane

_____ Richard L. Gernes

_____ James D. Roban

_____ Steven D. Winer

_____ James R. Brennaka

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James J. Troen — Asst Henn. Co. Public Defender
David P. Murnin — Asst Henn Co. Public Defender.
David C. Roston — Ass't Henn Co. P. Defender
Allan Hegard — Asst. Henn Co. Public Defender
John D. Tierney — Asst. Henn Co. Public Defender

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Bradley S. Henson — Asst. Henn. Co. Public Defender

Earl L. Johnson — asst Hen Co Public Defender

Paul L. Gibbs — asst Henn County Public Defender

David Fenlon — Asst. Henn. County Public Def.

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William R. Kennedy — Chief Public Defender, Hennepin County
Allan L. Billey — Asst Public Defender, Henn. Co.
John H. Bi[illegible] — Asst Public Defender, Henn Co.
Robert T. Dolan — Asst Public Defender, Henn Co
[signature] — Asst Public Defender, Henn Co.

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CONSIDERATION OF THE PROPOSED RULES
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Douglas W. Thomas

Michael F. Fetsch
Neighborhood Justice Centers, Inc.

Peter J. Thompson

MINNESOTA COUNTY ATTORNEYS ASSOCIATION

January 20, 1975

Mr. John McCarthy
Clerk of the Supreme Court
State Capitol
St. Paul, Minnesota 55155

In re: Proposed Rules of
Criminal Procedure 44 5517

Dear Mr. McCarthy:

Petition is respectfully made to the Court for permission for Robert W. Johnson, president of the County Attorneys Association, to present the position of the Association at the hearing Friday, January 31, 1975 at 9:30 o'clock a.m. on adoption of the Proposed Rules of Criminal Procedure.

A resolution adopted by the Association January 16, 1975 opposing adoption of the proposed rules is attached.

Respectfully submitted,

Robert W. Johnson
President

RWJ:gh
Enc.

January 21, 1975

Mr. Johnson:

Your request to make an oral presentation is granted. Since about a dozen others have been granted permission to appear, if you can telescope your remarks into about 15, or not more than 20 minutes, it might be helpful.

John McCarthy, Clerk

RESOLUTION OPPOSING ADOPTION OF PROPOSED
RULES OF CRIMINAL PROCEDURE

IT IS HEREBY RESOLVED that the following Resolution be submitted to the Minnesota Supreme Court.

The Minnesota County Attorneys Association opposes the adoption of the proposed Rules of Criminal Procedure effective July 1, 1975. This Association is not opposed to change nor opposed to rules. A committee of this Association was formed in 1971 for the purpose of studying changes in criminal procedure in Minnesota. Two of our members worked on the drafting committee.

The proposed rules have been discussed, analyzed and reviewed at virtually every meeting of the Association and every board of directors' meeting since the drafting committee commenced its work in 1971. As the final drafts were published, each rule was argued pro and con by members of this Association. Discussions were had by our members with other disciplines operating in the criminal justice system including the district courts, county courts, prosecutors, defense counsels and police officers.

We are unaware of any segment of the criminal justice system that has taken a formal position favoring the adoption of the proposed rules. There appears to be much confusion and misunderstanding about the new rules. It would be a most unique experience for the State of Minnesota to

adopt a new system of procedural rules which do not carry the affirmative support of any ssegment of the Bar Association or any discipline within the criminal justice system.

We recognize the inherent power of the Supreme Court to adopt rules of procedure. We feel, however, it would be a serious mistake to force these rules on the public at this time. There has been no representation by the police officers of this state on the drafting committee yet the rules very materially affect their day to day operations. There has been no cost analysis regarding the financial impact on local units of government which must bear the expense of implementing these rules.

If the proposed rules do in fact provide for a just, speedy determination of criminal proceedings and do in fact secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay, then they will in due time gain the support of the bar, the criminal justice system and the general public. To force their adoption at this time would only do an injustice to the rules as well as to those who must accept them.

As an Association we have offered in the past and do now again offer to participate in any reasonable pilot project to test the rules in practice and to seek acceptance of them by the public.

If tested by time and usage by willing participants, these rules may well become what the drafters intended. If

forced on a suspicious and an unreceptive public, the courts, the bar and the criminal justice system may well be the loser.

However, in the event the court decides to adopt rules, the county attorneys oppose Proposed Rules 4.02 Subd. 5, 5.03 and 8.04c on the grounds that these rules are unworkable and not economically feasible.

It is requested that rules which respectively restrict time for filing of complaint and appearance in county court to 36 hours following arrest without a warrant, to seven days for first appearance in district court and seven days after first appearance for omnibus hearing, be amended to allow reasonable time for said procedures.

MINNEAPOLIS POLICE DEPARTMENT
JOHN R. JENSEN
CHIEF OF POLICE
ROOM 119, CITY HALL 348-2853
MINNEAPOLIS, MINNESOTA 55415

minneapolis
city of lakes

January 20, 1975

Mr. John McCarthy, Clerk
Supreme Court of Minnesota
Saint Paul, Minnesota

Dear Mr. McCarthy:

Re: Hearings on Proposed Rules of Criminal Procedure

Per the Order of the Court dated November 19, 1974, you are hereby notified that it is my desire to be heard on the proposed rules at the hearings to be held on January 31, 1975, at 9:30 o'clock a.m.

Enclosed is my Petition to the Supreme Court which sets forth my position.

May I point out that my appearance will be in both my capacity as the Chief of Police of Minneapolis, and also as the appointed representative of the Hennepin County Chiefs of Police Association.

Very truly yours,

John R. Jensen

John R. Jensen
Chief of Police

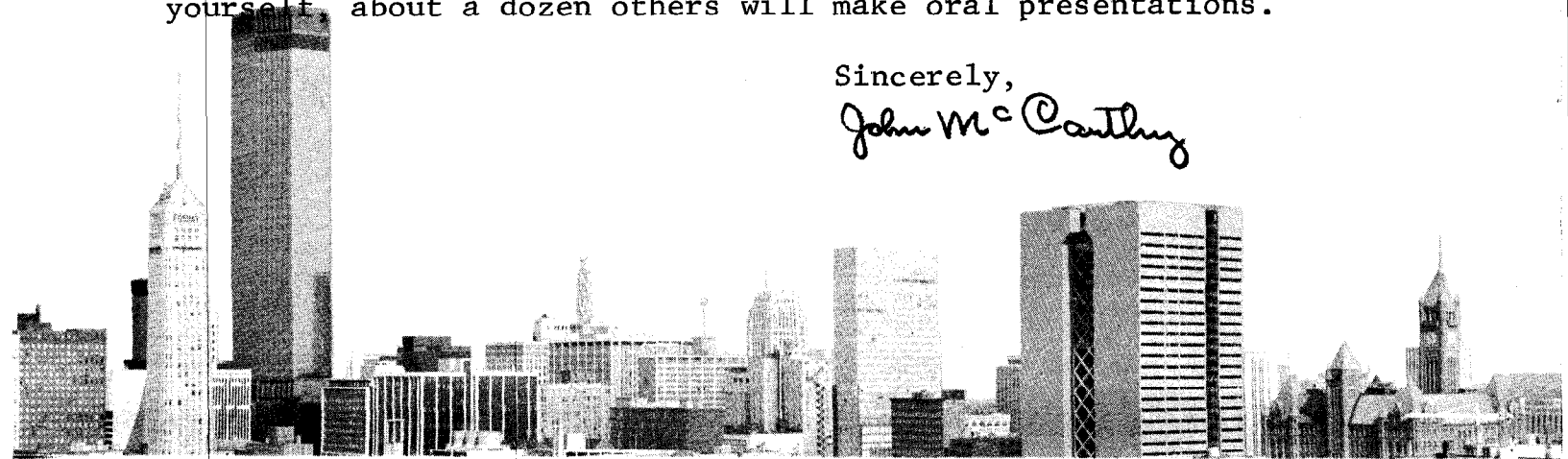
JRJ/bjr
Enclosure

Mr. Jensen:

The hearing starts at 9:30 a. m. on 1-31-75 in the Supreme Court Chambers, 2nd floor, State Capitol. In addition to yourself, about a dozen others will make oral presentations.

Sincerely,

John McCarthy



STATE OF MINNESOTA

IN SUPREME COURT

IN RE PROPOSED RULES OF CRIMINAL PROCEDURE, 45517.

PETITION

I.

Now comes John R. Jensen, Chief of Police, Minneapolis, and prays that this Honorable Court defer implementation of the Proposed Rules of Criminal Procedure until such time as several areas of said Rules can be clarified. It is suggested that following such clarification, there be a period of at least 90 days in which the police department may train their officers so that they have a clearer understanding of these Rules within which they, as an integral part of the criminal justice system, must function.

Prior to deliniating specifically the several areas in which I am confused, let me point out the dual role in which I appear before this Court. As Chief of Police of our state's largest city, I feel a responsibility to assure that my personnel are as fully informed as possible of the new Rules and their effect. In addition, the relief prayed for herein is made on behalf of the Hennepin County Chiefs of Police Association, of which I am a member. This association has requested that I appear before you on their behalf. The Association represents the law enforcement administrators of the various municipalities within Hennepin County, as well as the County itself. This means that my appearance and prayer for relief is on behalf of both the most populous city and county in Minnesota. Because of the expanded capacity in which this petition is presented, therefore, it is requested that this Court not only consider our problem and confusion, but also that of other law enforcement agencies within the state, as there should be uniform application of these Rules state-wide.

As an aside, I would respectfully submit that had the Advisory Committee--which has concededly worked long and hard on drafting the Proposed Rules--had the benefit of what I will call "police input" to their rule-making role, some of our present confusion may have been obviated. My earlier allusion to the police as an integral part of the criminal justice system was not made without some forethought; the role of law enforcement does not end with the prevention and detection of crime and the apprehension of violators. On the contrary, our role extends throughout a criminal proceeding if only to aid in assuring a "just" determination by virtue of our obligation under the contemporary view of the police role, to see that both sides of a criminal case have the benefit of all the information which diligent police inquiry may reveal.

II.

For the purpose of brevity and simplicity, I will direct myself to the Rules in the order as proposed. Brevity should not be likened unto hasty and presumptious criticism; our confusion is a result of an in-depth, though necessarily hurried, consideration of the Rules.

Rule 1. One of our primary concerns is that some of the Rules, as proposed, would frustrate not only the police function, but also the stated purpose that they are intended to provide for a "speedy" as well as a "just" determination of criminal proceedings. Our comments that follow will bear out our concern.

Rule 2. There appears to be a very basic discrepancy between the provisions of Rule 2.02 and Rule 15.07. Under the former, the comments as well as the text indicate an over-seeing by the prosecuting attorney of the issuance of a complaint. The latter, however, by allowing a court to accept a plea to a lesser offense without "interference"

by a prosecuting attorney, vests the judiciary with powers traditionally reserved to the executive. In view of this conflict, we would ask the Court to consider a modification of Rule 15.07 so that it would comport to the stated principle of Rule 2.02. And although I had promised brevity in my discussion of the Rules, still I would be remiss if I did not point out that if this dilemma is allowed to persist, it could well have the effect of "higher charging" by the police. That is, such could be the result of an officer's frustration upon seeing this "breakdown" in what they have come to feel is--and has been--the prosecutor's role in the charging process.

Rule 3. In chapter 390, Session Laws of 1974, there is a provision that the Advisory Committee cannot change certain statutory provisions, inter alia, those relating to arrest. In the comments to Rule 3, however, there is a conceded change in the statutory provisions regarding the time within which the defendant must be shown the warrant following his arrest upon warrant. The new Rule seems to say that when he is brought before the Court following his arrest is soon enough; MSA 629.32, though, requires that the warrant "shall be shown to him as soon as possible and practicable". In Hennepin County, the warrant, under the statute, is available for showing to the defendant when he is brought into the jail following his arrest, i.e., at an early time. The Rule would delay that showing until up to 36 hours, when the defendant is brought before a court. We would ask the Court to clarify whether the Rule--which contravenes the statute--is to be followed, or whether we should continue our present practice of showing the warrant when the defendant is brought in. The latter, of course, fulfills not only the statutory requirement, but seems also to be more "fundamentally fair" to the defendant, especially when the warrant must be accompanied by a copy of the complaint, which

affords the earliest opportunity for a defendant to learn the precise nature of the charge being made against him.

Rule 4. This Rule, at the outset, provides for the release of an already arrested person. Could the Court clarify how an individual can be, to coin a term, "un-arrested"? By its very statutory definition, an arrest is the taking into custody of a person so that he may be held to answer for a public offense. By this rule, then, the Court is either confusing "arrest" (from which there should not be, on due process grounds, any interference until the appearance of a disinterested magistrate, or at least a prosecuting attorney) with a "temporary detention", from which, I'll readily concede, there may well be a release by the officer in the exercise of his own discretion. I would respectfully request this Court to either clarify the Rule, or change the language so that what is meant is said, and what is said is meant.

Going on with Rule 4, I feel that as written it will frustrate one of the stated purposes of of the Rules, viz., to provide for a "speedy" determination of criminal proceedings. In the case of a felony or gross misdemeanor there must be a prompt written complaint, which simply ignores the practicalities of police investigation. (It is, I feel, actually impossible for either the Advisory Committee or this Court to appreciate this without the "police input" to which I have previously alluded.) The "charge or release" philosophy, then, will result in not a speedy determination, but rather a delayed one, for if a complaint is not prepared relatively promptly, then the case has to--in effect--begin "again" by the later issuance of a complaint, plus warrant. This, now, speaks from the standpoint of justice viewed objectively; my personal concern is the possibly

unnecessary taking of officers' time to come in and make complaints. And even conceding the value, for the moment, of such a hurried complaint, how can we reconcile the providing to the defendant the specifics of the charge with the later Rules which provide him with virtually unlimited discovery? A defendant has thus by these rules both the opportunity to have and to eat his cake--at the expense of what I will refer to as "my" manpower.

Rule 6. Again, we have a rule ignoring the everyday application of police operations; which, incidentally, I'll again say is the result of a failure not to have had "police input" in the rule-making process from the outset. Consider, if you will, the case of the lying suspect; that is, the person who, under this rule, must be given a citation, yet who gives a false name to the arresting officer. In the case of a non-driving ordinary booking offense, an individual will be at least photographed and fingerprinted in the course of the usual booking procedure. This can provide a start in an identification procedure if it later proves necessary. Under this Rule, that investigative tool is lost to law enforcement with what I'll risk predicting will result in a number--albeit very small--of offenders avoiding any entanglement with the criminal justice process.

May I, at this point, in reviewing Rule 6, make the comment that the Advisory Committee apparently overlooked two recent United States Supreme Court decisions (Gustafson and Robinson) when they put in the sentence (6.01, Subd. 4) that, "The issuance of a citation does not affect a law enforcment officer's authority to conduct an otherwise lawful search." Rather than confusing further the law of search and seizure, and rather than flying in the face of both U.S. and this Court's decisions regarding custodial and non-custodial

incidental-to-arrest searches and pat-down frisks, I would suggest that this Court simply strike this sentence from the Rules.

I cannot help but mention that the bar to allowing a night-cap for any petty offense,is, to say the least, unfortunate. Night-capping should be allowed routinely for a warrant which is the result of an ignored summons which was signed by the violator. His failure to appear has demonstrated his want of good faith. It is particularly irksome for an officer who has run a warrant check on a suspect to find that there are numerous non-night-capped warrants outstanding on the detained person. So even our present frustrations will be increased by the implementation of this rule as proposed. That is to say, the very reason for whichaa suspect "should" be taken into custody is abrogated by the Rules providing that he cannot be. We shall benefit greatly by an explanation of the rationale for this Rule.

Lastly, might I conclude with a recommendation that Subd. 5 of this Rule be stricken as surplusage, in view of the emergency provisions of the Hospitalization and Committment Act (Chapter 253 A, MS).

Rule 7. Again, I will pray this Court for a granting of relief from the proposed effective date of these Rules so that there might be some meaningful input from the law enforcement segment of our criminal justice system. For example, has the Advisory Committee or this Court had--or asked for--a feeling of the law enforcement community as to the providing to a defendant or his attorney of the so-called "police investigatory reports"? If they had or would, may I submit that an off-hand answer might be that such disclosure would--or could--reveal police investigative techniques. And if the investigator does

selfish concern for my manpower needs, is that this rule would, at first blush, appear to be a delaying tactic subject to abuse; however, I will leave discussion on that level to our colleagues in the criminal justice system who represent the prosecution area.

Rule 12. I would at this time reiterate my comments made relative to Rule 11, above.

Rule 20, I would raise only a question, relative to the dismissal of a misdemeanor charge upon a finding of defendant's incompetancy, whether this might prove to be susceptible to abuse; that is, I would suggest that if there be a finding of incompetency in a misdemeanor case it be mandatory for a trail court to refer the defendant to the proper court for civil commitment proceedings, and not merely permissive as the rule is now written.

Rule 21. Because of the recent increase in civil suits against police officers not only throughout the nation, but in my own jurisdiction as well, I would offer only a hope that this rule not be permitted to be utilized as a discovery device by counsel in a criminal case who would like really to preserve the testimony of an officer--at a time when he is not a defendant--until the time when he becomes a defendant in a civil suit for alleged misconduct arising out of the incident upon which the criminal trial is based. To prevent this possibility, I would respectfully recommend that 21.06, Subd. 1 (b) be made more restrictive by striking the words "or other reasonable means"; this for the reason that although it might be "reasonable" to attempt by phone calls or letters to an officer at his duty station to procure his attendance, it may well be impossible by the very nature of our profession to make such contact because of fast-changing hours and days of duty, and frequently confused or interrupted vacation schedules.

Rule 23. In 23.04, we would ask the court to strike the last four words of that section, viz., "if the defendant consents". That is, the charging function, traditionally and effectively having been handled by the police and the prosecution over the years, is now being subjected to a defendant's "consent". In the alternative, if the Court is convinced that the consent of the defendant is desirable, and would aid in the "just" and "speedy" determination of a criminal proceeding, we would ask the Court and the Committee to simply explain "how"?

At the misdemeanor level, the existence of a category of "non-crimes" punishable only by fine does not disturb me. However, the fact remains that nowhere in the Rules is there any provision indicating how the trial court's order to pay a fine can be enforced--at least in matters not involving traffic violations. There is no penalty stated for failure to obey the order of the court in this type case, and nothing breeds more disrespect for the law than a system which allows the law to be ignored.

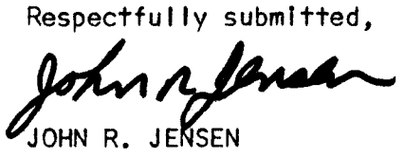
To conclude my comments on this Rule, I would inquire of the Court, in reference to 23.06, which states that, "A petty misdemeanor shall not be considered a crime", whether it is to be considered a "public offense" as the later is used in Section 629.30, M.S., discussing the definition of, and authority to, arrest.

III.

In conclusion, I would apologize for the lack of an opportunity to have addressed the Advisory Committee earlier on the feelings of law enforcement personnel regarding the Proposed Rules. Unfortunately, it is only at this late date that

we have become adequately aware of, and conversant with, the rules to make any comment of merit. I would urge this Court to consider the impact upon the law enforcement responsibilities of myself and all other enforcement personnel in their review of the matters presented to the Court at today's hearings. Without such review, the good intentions of this Court and its Advisory Committee might well become weakened. In the dual role in which I am here today, may I conclude by respectfully requesting that the Court not overlook the importance of what I have termed "police input" into the rule-making process; in the alternative, may I urge that our comments be considered so that we may better fulfill our part of the criminal justice process by having this Court clarify for us those areas in which we are confused. To do less for us would only impair our ability and our efforts to do more for you, and the communities and citizens which we mutually serve.

Respectfully submitted,



JOHN R. JENSEN
Chief of Police
Minneapolis, Minnesota
348-2853

Dated: January 20, 1975

SCHROEPPEL & LILJA
ATTORNEYS AT LAW
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DOUGLAS SCHROEPPEL
THOMAS P. LILJA

PHONE (612) 682-2682

January 21, 1975

Minnesota Supreme Court
State Capitol Building
St. Paul, Minnesota 55101

In The Matter of The Adoption
of Proposed Rules of Criminal
Procedure 45517

I am by this letter requesting that the Court allow additional time for the study of the application of the Proposed Rules of Criminal Procedure on misdemeanor practice. I fully support the Petition as filed with the Court by the Hennepin County Municipal Prosecutors Association, of which I am a member.

I very much appreciate your consideration of our request.

Very truly yours,

Thomas P. Lilja
Attorney at Law

TPL:kp

STATE OF MINNESOTA

IN SUPREME COURT

* *

In the Matter of the Adoption of
Proposed Rules of Criminal Procedure

PETITION

* *

TO THE JUDGES OF THE SUPREME COURT:

I.

CORRICK & WOOD, CHARTERED, Attorneys for the City of New Hope, respectfully petition this Court as follows:

That this Court, in the exercise of its discretion, extend the time for filing of Petitions or Briefs to January 25, 1975 relative to discussion of the Proposed Rules of Criminal Procedure, and that any hearing held thereon, be adjourned, if necessary, to consider whether or not it is feasible and possible to commingle rules applicable to both felonies and misdemeanors.

II.

Up until the drafting of the Proposed Rules of Criminal Procedure, the Municipal Courts of Hennepin, Ramsey and St. Louis Counties have operated under their own set of rules, both for civil matters as well as criminal matters. The petitioner is unaware of any fundamental deficiencies, under this system, either as to the denial of procedural safeguards, nor as to the difficulties of administration. The petitioner further reiterates the statement contained in the Petition submitted by the Hennepin County Municipal Prosecutors Association relative to its understanding that separate rules would be proposed to handle criminal and traffic matters in the Municipal and County Courts. After three separate readings of the Rules, it is clear that as applied to misdemeanor violations, the purpose and construction provided for in 1.02 of the Rules, does not result in the elimination of unjustifiable expense for municipalities that must abide by them as drafted.

III.

It is readily apparent that the commingling of felony and misdemeanor offenses under one set of rules, was done at the expense of many procedures that heretofore have been very workable to both prosecutors and defendants in Municipal Courts. For example, Rule 4.02, Subd. 5(3), Complaint or Tab Charge; Misdemeanors, requires that, if requested by the defendant or his attorney, a complaint shall be made and filed within 36 hours after the demand therefor, exclusive of Sundays and legal holidays. The note and commentary indicate that a longer delay would encourage defendants who are in jail to waive their right to a complaint in order to speed up disposition of the charges. It is questioned by the petitioner how frequently this rule would apply to misdemeanors where it is extremely rare for anyone to remain in custody for 36 consecutive hours. It is obvious that in most, if not all, misdemeanor cases, the defendant is released immediately, or a matter of hours after arrest, as soon as bail is posted, if required, at the police station. The adoption of this 36 hour limitation will certainly result in drastic changes by personnel of the Hennepin County Municipal Court system. It takes approximately five to seven days now, before a suburban prosecuting attorney even hears about a demand by a defendant for a formal complaint.

Many rules, for example, Rule 7, Notice by Prosecuting Attorney of Evidence and Identification Procedures, covers both felonies and misdemeanors without any segregation whatsoever, a situation which could easily lead either side to overlook the fact that it does cover both sets of offenses. This is in contrast to other rules which indicate rather clearly that they apply only to one category of offenses or the other.

IV.

There are other instances where the substance of the rule appears to guarantee greatly increased costs to the municipalities, with relatively little in the way of increased benefits to the defendants, such as Rule 21 covering depositions. Where there is likely to be a great increase in the amount of tax

dollars spent for prosecution, and little likelihood of any increased benefits for either the defendant or the public, the petitioner urges this Court to immediately consider the segregation of rules applicable to misdemeanor violations, which in great number, are purely traffic matters.

CORRICK & WOOD, CHARTERED

By: _____

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DAVID W. JOHNSON

TELEPHONE
612/339-1601

January 23, 1975

Supreme Court of the State of Minnesota
State Capitol
St. Paul, Minnesota 55101

RE: Adoption of Proposed Rules of Criminal Procedure

Gentlemen:

This firm is City Attorney and municipal prosecutor for the Cities of Long Lake and Spring Park and a member of the Hennepin County Municipal Prosecutors Association. We associate ourselves with the reservations concerning adoption of the proposed rules of criminal procedure set forth by the Association in its Petition of January 17, 1975.

We are particularly concerned by the application of the proposed rules to misdemeanor and traffic practice, which, in our view, would result in sharply increased administrative and prosecution costs to municipalities and increased case congestion in municipal and county courts.

Without minimizing the necessity of procedural safeguards at all judicial levels, we respectfully submit that the Court without further study should not adopt rules designed primarily with felony practice in mind which we fear will impede rather than advance the efficient administration of justice in municipal and county courts. We urge that the Court consider adoption of separate rules applicable to misdemeanor and petty misdemeanor matters in municipal and county court.

Very truly yours,

Jerome Truhn

JDT/kn

STATE OF MINNESOTA

IN SUPREME COURT

IN RE PROPOSED RULES OF CRIMINAL PROCEDURE

45517

PETITION SETTING FORTH POSITION REGARDING PROPOSED RULES OF CRIMINAL PROCEDURE

Our office is the prosecuting attorney for four municipalities in Dakota County--Rosemount, Inver Grove Heights, Lakeville and Burnsville. We have reviewed the proposed rules of criminal procedure as they apply to misdemeanor cases and find a number of rules objectionable. We have listed below some of the specific provisions which we find most objectionable.

Rule 4.02 subd. 3, providing for notice to the prosecuting attorney after an arrest, should be changed so that it does not apply to traffic offenses, petty misdemeanors or misdemeanors when the defendant is not taken into custody.

Rule 4.02 subd. 5(3) should be amended to provide that a complaint need not be provided in traffic offenses or petty misdemeanors and need only be provided in misdemeanors if ordered by the Court, rather than by request of the defendant or his counsel. If the Court orders a complaint, the time in which to provide the complaint should be such period as the Court may specify. The proposed 36 hours is totally unrealistic, especially when the prosecutors are part-time for most municipalities and the police departments are small and not equipped to produce reports and get them to the prosecutor within a couple hours as it would need to in order to comply with the 36-hour requirement. Furthermore, the delay in the Court notifying the prosecutor, the prosecutor notifying the police that he needs a report and the police delivering such a report before a complaint could be prepared would in almost all cases use up more than the proposed 36 hours.

Rule 6.01 should be changed so that out-of-state residents who have committed a traffic offense can be required to post bond as a condition of release.

Rule 6.02 should be changed to add the following to the list of conditions which the Court would have the power to impose in connection with a release: "Impose any other condition deemed reasonably necessary to prevent bodily harm to the accused or another or prevent further criminal conduct."

Rule 7.03, providing for discovery in misdemeanor cases, should be changed to require the defendant to make the same disclosures as are provided for in Rule 9.02.

Rule 12.05 should be changed to add the following language: "or such other time as the Court permits."

Rule 17.04 subd. 3 should be changed to provide that a dismissal would not be a bar to prosecution with a new complaint or if the change is not in this manner it should at least be changed so that the time period in which a new complaint can be issued is 60 days, the same as the time period for a new indictment.

Rule 23.02 should be changed so that it applies only to ordinance or charter violations.

Respectfully submitted,

GRANNIS & GRANNIS

BY: Vance B. Grannis, Jr.

VANCE B. GRANNIS, JR.
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