STATE OF MINNESOTA

IN SUPREME COURT

C1-84-2137

ORDER FOR HEARING TO CONSIDER PROPOSED AMENDMENT TO THE RULES OF CRIMINAL PROCEDURE

IT IS HEREBY ORDERED that a hearing be had before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on September 10, 1992 at 2:00 p.m., to consider the recommendation of the Supreme Court Advisory Committee on Rules of Criminal Procedure to amend Rule 4.03 of the Minnesota Rules of Criminal Procedure. A copy of the proposed amendment is annexed to this order.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 245 Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155, on or before September 4, 1992 and

2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the aforesaid Clerk together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before September 4, 1992.

Dated: June 23, 1992

BY THE COURT:

A.M. Keith
Chief Justice

OFFICE OF THE CITY ATTORNEY
A-1700 HENNEPIN COUNTY GOVERNMENT CENTER
300 SOUTH SIXTH STREET
MINNEAPOLIS MINNESOTA 55487-0170

(612) 673-2010
CIVIL FAX (612) 673-3362
CRIMINAL FAX (612) 673-2189

ROBERT J. ALFTON
CITY ATTORNEY

FLOYD B. OLSON
DEPUTY, CIVIL DIVISION

MITCHELL L. ROTHMAN
DEPUTY, CRIMINAL DIVISION

FRANK J. CHIODI, JR.
MANAGER, ADMINISTRATION

CIVIL DIVISION
JEROME F. FITZGERALD
LARRY F. COOPERMAN
ALLEN B. HYATT
KENNETH R. FRANTZ
J. DAVID ABRAMSON
LES R. KARJALA
STEVEN R. FREDRICKSON
WILLIAM C. DUNNING
DAVID M. GROSS
SCOTT REEVES
JOSEPH M. LaBAT
MICHAEL T. NORTON
PETER W. GINDER
C. LYNNE FUNDINGSLAND
CHRISTINE M. CHALE
MATTHEW B. SELTZER
JAMES A. MOORE
EDWARD A. BACKSTROM, III
TIMOTHY S. SKARDA
COREY M. CONOVER
NIKKI M. NEWMAN

CRIMINAL DIVISION
LARRY L. WARREN
GARY J. HJORT
WILLIAM J. KORN
ROGER E. BATTREALL
JOHN R. MANNING
JAMES H. PETERSON
JAMES J. TUMULTY
E. ROBERT PULLMAN
KARL H. Van D'ELDEN
KAREN S. HERLAND
KRISTI M. LASSEGARD
PATRICIA A. CRUMLEY
CLAIR F. COLE
JUDITH L. COLE
TERESA L. FROEHLKE
JULIE G. ROSE
LAUFELE MURPHY, JR.
DANA BANWER
ELIZABETH K. STOFFERAHN
ALLISON K. BASKFIELD
GREGORY T. HALBERT

CLAIMS INVESTIGATION
JO L. HOOK

REAL ESTATE/COLLECTIONS ADMINISTRATION
JANIS A. BOLSTAD

WORKER'S COMPENSATION ADMINISTRATION
MARY JO WILSON
NANCY A. ROSS

TDD (612) 673-2157
AFFIRMATIVE ACTION EMPLOYER

minneapolis
city of lakes

September 2, 1992

Frederick Grittner
Clerk of the Appellate Courts
245 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Dear Mr. Grittner:

The Minneapolis City Attorney's Office wishes to make an oral presentation at the hearing on proposed Rule of Criminal Procedure 4.03 that the Supreme Court will hold on September 10. Enclosed are twelve (12) copies of this request and the material we will present at the hearing.

Sincerely,

ML Rothman

Mitchell Lewis Rothman
Deputy City Attorney
Criminal Division

Comments on Proposed Rule of Criminal Procedure 4.03

The comments below are presented on behalf of the Minneapolis Police Department and the Minneapolis City Attorney's Office.

* * *

Subdivision 2 of proposed Rule 4.03 requires that the police officer who presents the facts establishing probable cause do so under oath. When the officer's presentation is in writing, the proposed Rule provides that the oath may be administered by the clerk or deputy clerk of court or by a notary public.

The oath requirement would make a relatively straightforward process unnecessarily complex and expensive. Indeed, if the proposed Rule is adopted, the probable cause determination will resemble closely the application for a formal complaint under Rule of Criminal Procedure 2. Nothing in the language or logic of the U.S. Supreme Court's opinion in County of Riverside v. McLaughlin mandates such an approach.

To ensure that the police take their responsibilities under the proposed rule seriously, it should be sufficient for the officer to affirm that the submitted facts are true and correct to the best of the officer's belief. This is the current practice in Hennepin County. If the officer making a written submission were required to take an oath, a) the officer would have to appear before the judge or judicial officer making the probable cause determination, b) the clerk or deputy clerk of court would have to be available at night or on weekends to administer the oath, or c)

police departments would be required to have a notary public on duty during those periods.

None of these alternatives represent a wise use of scarce public and law enforcement resources. None are required by McLaughlin. And none are necessary, given the requirements of Rule 2 and the mandate in Rule 4.02, subd. 5, that a person arrested without a warrant appear before a judge or judicial officer within 36 hours of arrest.

The Minneapolis Police Department has estimated that it would cost $2500-3000 annually to have notaries available. While this is not a very substantial amount in relation to the Department's total budget, smaller police departments will find the proposed oath requirement much more burdensome. It is not unusual in smaller departments for just one officer to be on duty at a given time. This officer may also be responsible for writing and typing his or her own reports. It will be significantly more expensive, both absolutely and in relative terms, for these smaller police departments to satisfy the oath requirement now contained in proposed Rule 4.02. It goes without saying, of course, that for both large and small departments it would be prohibitively expensive -- or simply impossible from a personnel point of view -- to relieve officers temporarily of street patrol or investigative duties so that they could take the oath before a judge or judicial officer, or the clerk or deputy clerk of court.

The judges' Executive Committee in the Fourth Judicial District has recommended to the Court's Advisory Committee on the Rules of Criminal Procedure that subdivision 2 of the proposed Rule

require only that the officer seeking the probable cause determination affirm that the submitted facts are true and correct to the best of the officer's belief. The bench's position reflects the impact the proposed Rule will have on smaller police departments, as well as its experience over the past year with the procedure for making probable cause determinations that it established shortly after McLaughlin was decided in May 1991. This procedure allows the probable cause determination to be made expeditiously on the basis of the reports prepared by the arresting or investigating officer; a separate, sworn document need not be employed.

In conclusion, the Minneapolis Police Department and the Minneapolis City Attorney's Office respectfully request that proposed Rule of Criminal Procedure 4.03, subd. 2, not require that the facts establishing probable cause be submitted upon oath and that proposed Rule 4.03, subd. 2, instead require that the officer seeking a probable cause determination affirm that the submitted facts are true and correct to the best of the officer's belief.

Thank you very much for your consideration.

Office of
ANOKA COUNTY ATTORNEY

ROBERT M.A. JOHNSON

Courthouse, 325 East Main Street, Anoka, MN 55303
612-421-4760 Fax 612-422-7524

September 4, 1992

Frederick Grittner
Clerk of Appellate Courts
245 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

RE: **Request to Make Oral Presentation on Proposed Amendments to the Minnesota Rules of Criminal Procedure, Supreme Court File No. C1-84-2137**

As discussed with your office, I am enclosing 12 copies of Robert M. A. Johnson's request to make an oral presentation in the above matter. Only the original request was filed with 12 copies of the argument.

Sincerely,

Donna Adams

Donna Adams
Office Manager

Enc.

Office of
ANOKA COUNTY ATTORNEY

ROBERT M.A. JOHNSON

Courthouse, 325 East Main Street, Anoka, MN 55303
612-421-4760 Fax 612-422-7524

September 3, 1992

Frederick Grittner
Clerk of Appellate Courts
245 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

RE: **Request to Make Oral Presentation on Proposed Amendments to the Minnesota Rules of Criminal Procedure**

Honorable Justices of the Minnesota Supreme Court:

Pursuant to the Order for Hearing, #C1-84-2137, June 23, 1992, I respectfully request to make an oral presentation on the proposed creation of the new Minnesota Rule of Criminal Procedure 4.03.

I wish to appear on behalf of the Minnesota County Attorneys Association, as well as on behalf of the Anoka County Attorney's Office.

Respectfully,

Robert M. A. Johnson
Anoka County Attorney
Attorney License No. 51834

RMAJ:da
Enc.

STATE OF MINNESOTA
IN SUPREME COURT
C1-84-2137

Response by Minnesota County Attorneys Association to the Proposed Amendments to the Minnesota Rules of Criminal Procedure

The Minnesota County Attorneys Association (MCAA) respectfully requests that Rule 4.03, Subd. 3 be amended as follows:

> Subd. 3. Prosecuting Attorney. No request for determination of probable cause may proceed without the approval, in writing or orally on the record, of the prosecuting attorney authorized to prosecute the matter involved, or by affirmation of the applicant, affirmed on form 44, that the applicant has contacted the prosecuting attorney and the prosecuting attorney has approved the request, or unless the judge or judicial officer reviewing probable cause certifies in writing that the prosecuting attorney is unavailable and the determination of probable cause should not be delayed.

The MCAA concurs in the premise underlying Subd. 3 that the prosecution should, if possible, be involved in the judgment as to whether a person should be detained. In fact, Rule 4.02, Subd. 3, of the Rules of Criminal Procedure, provides for the participation of the prosecutor in the decision as to whether a person should be released. Such involvement can only work to the benefit of the criminal justice system.

We are asking, by way of the proposed amendment, that the rules provide flexibility for the participation of the prosecutor. The current language can be read to require that the prosecutor must sign the application or be present at the time the judge considers the application in order to participate in the process. Some judges may read "orally on the record" to permit telephone approval during their consideration of the application.

In most jurisdictions, it is not possible for the prosecutor to be physically present on weekends or holidays to execute the application or be in telephone contact with the judge when the application is being considered. During weekends or holidays, the common practice is for the police to call the

prosecutor, review the facts, and make a joint determination whether to apply for a detention order. In Anoka County, the applicant, as is suggested here, makes a statement under oath in the application regarding the approval of the prosecutor. Under this procedure, the prosecutor may participate in the judgment whether to detain without driving up to 60 miles or trying to discuss the matter over the telephone with a judge. In addition, there are problems inherent in requiring the judge to speak directly with the prosecutor:

1. There may be several prosecutors trying to communicate by phone with a judge making judgments on applications in a short time period.

2. The prosecutor may not be available at the time the judge reviews the application, but may have been available at other times.

Very little substance, if any, is lost if a county attorney is permitted to review and approve an application over the telephone with an applicant. The applicant would not lie on the application regarding approval by the prosecutor. The verbal authority to indicate approval is the equivalent of signing the application.

We ask that the Court make this change in the proposed rules. Such a change will improve the system of justice and result in appropriate detention.

Robert M. A. Johnson, Anoka County Attorney
President, Minnesota County Attorneys Association
325 E. Main Street, Anoka, MN 55303
Attorney License No. 51834

FORM 44

STATE OF MINNESOTA COUNTY OF _____ DISTRICT COURT

APPLICATION FOR JUDICIAL DETERMINATION OF PROBABLE CAUSE TO DETAIN

Name of Arrestee: _____
Date of Birth: _____ Present Location: _____
Arresting Agency: _____ CN #: _____
Date of Arrest: _____ Time of Arrest: _____
Offense(s): _____
_____

Facts constituting probable cause to believe a crime was committed and arrestee committed it:
_____
_____
_____
_____

_____ Yes _____ No Was a prior application for probable cause to detain this person submitted to the court? If so, explain: _____
_____

_____ **I have contacted the prosecuting attorney who approved this Application for Judicial Determination of Probable Cause to Detain.**

_____ I have attempted to contact the prosecuting attorney to approve this Application and have been unable to do so for the following reasons: _____
_____
_____

The Complainant, being duly sworn, swears the above facts are true and correct to the best of Complainant's knowledge and belief and constitute probable cause to believe that the above-named arrestee committed the offense(s) described herein.

Complainant's Signature: _____
Agency: _____ Time: _____

Subscribed and sworn to before me this _____ day of _____, 19___.

_____
Judge, Judicial Officer, Clerk or Notary Public

APPROVAL OF PROSECUTING ATTORNEY

_____, being duly authorized to prosecute the offense(s) specified in the attached Application, hereby approves this Application for Judicial Determination of Probable Cause to Detain.

Date and time: _____

_____
(Signature)
Name
Office

OFFICE OF DAKOTA COUNTY ATTORNEY
JAMES C. BACKSTROM
COUNTY ATTORNEY

Dakota County Judicial Center
1560 West Highway 55
Hastings, Minnesota 55033

Telephone
(612) 438-4438
Charles A. Diemer, Chief Deputy

September 2, 1992

FREDERICK GRITTNER
CLERK OF APPELLATE COURT
245 JUDICIAL CENTER
25 CONSTITUTION AVE
ST PAUL MN 55155

Re: Hearing to Consider Proposed Amendment to Rule 4.03 of the Minnesota Rules of Criminal Procedure
C1-84-2137

Dear Mr. Grittner:

Enclosed for filing is 12 copies of my written statements with regard to the above hearing.

Very truly yours,

James C. Backstrom

JAMES C. BACKSTROM
DAKOTA COUNTY ATTORNEY

JCB/sw

Encls.

OFFICE OF DAKOTA COUNTY ATTORNEY
JAMES C. BACKSTROM
COUNTY ATTORNEY

Dakota County Judicial Center
1560 West Highway 55
Hastings, Minnesota 55033

Telephone
(612) 438-4438
Charles A. Diemer, Chief Deputy

September 2, 1992

MINNESOTA SUPREME COURT
MINNESOTA JUDICIAL CENTER
25 CONSTITUTION AVE
ST PAUL MN 55155-6102

Re: Proposed Amendment to Rule 4 of the Minnesota Rules of Criminal Procedure

Dear Chief Justice and Members of the Minnesota Supreme Court:

I would like to express two concerns I have regarding the proposal to amend Rule 4 by adding Rule 4.03, Subd. 3 and 4 to the Minnesota Rules of Criminal Procedure. First, I do not believe that there is a need in all cases for the prosecuting authority to pre-approve a request by law enforcement to have a judge determine probable cause to hold a person more than 48 hours. During the last year, law enforcement officers in Dakota County have been submitting written or telephonic requests for probable cause determinations without prosecutorial approval in most cases. On occasion, law enforcement officers contact a prosecutor for advice if special problems arise. If the purpose for this proposal is a general concern about law enforcement officers abusing the power of arrest, such a concern is unfounded. Law enforcement officers in Minnesota receive extensive ongoing training regarding all aspects of criminal law and procedure. During the last year, we are not aware of any problems which occurred regarding law enforcement officers abusing the 48 hour rule.

The requirement for prosecutorial approval in all cases will be time consuming for law enforcement officers and more costly to taxpayers. Every increase in the time it takes for an officer to process an individual case increases the time the police officer is not on the street investigating other crimes or protecting the public safety. In addition, increased prosecution costs to both county and city government will result by this proposed rule. All city attorneys in Dakota County are on a contract basis and are essentially part-time. Additional hours of time by city attorneys for review of 48 hour requests will mean additional prosecution costs to the city. I anticipate higher costs for my office as well because of the need to establish after hours on-call availability of prosecutors to handle these 48 hour probable cause determinations. I realize that some prosecutors may wish to be involved in making the decision to continue to detain an

individual after their initial arrest. There is, however, no constitutional requirement that this occur, and it is my personal belief that prosecutorial review at this stage in most cases is unnecessary. Judges are fully capable of insuring the protection of an individual's constitutional rights in making an initial probable cause determination. Therefore, I request that the Rules of Criminal Procedure do not mandate prosecutorial approval of probable cause 48 hour holds but rather leave this to the discretion of the prosecutor, police officers or the court in cases where it may be necessary. Language which could accomplish this is as follows:

> Subd. 3. Prosecuting Attorney. ~~No request for determination of probable cause may proceed without the approval, in writing or orally on the record, of the prosecuting attorney authorized to prosecute the matter involved, unless the judge or judicial officer reviewing probable cause certifies in writing that the prosecuting attorney is unavailable and the determination of probable cause should not be delayed.~~ The prosecuting attorney authorized to prosecute the matter involved need not be contacted prior to submitting the determination of probable cause to the Court, unless otherwise required by the prosecuting attorney or if deemed necessary by the person requesting a probable cause determination or the Court. The person requesting a probable cause determination shall advise the reviewing judge or judicial officer of whether the prosecuting attorney has been contacted and, if so, what the prosecuting attorney's recommendation is concerning continued detention of the person arrested. A prosecuting attorney may notify the Court that prior approval of the prosecuting attorney is necessary on any request for determination of probable cause, in which event the Court may not make a finding of probable cause without such approval, either in writing, orally on the record or by affirmation of the person requesting a probable cause determination, unless the judge or judicial officer reviewing probable cause certifies in writing that the prosecuting attorney is unavailable and the determination of probable cause should not be delayed. If, in the discretion of the prosecuting attorney, a complaint complying with Rule 2 is obtained within the time limit provided by this rule, it shall not be necessary to obtain any further determination of probable cause under this rule to justify continued detention of the defendant.

A second area I am concerned with is the portion of proposed Rule 4.03, Subd. 4, concerning establishing bail at the time of initial probable cause determination. My concern is that bail or other conditions of release will be set by the court without the

court being fully apprised of all the relevant facts. Probable cause determinations typically will be used on weekends when corrections departments, bail evaluators, prosecutors, and defense attorneys may not be available to inform the court of all the relevant facts so that appropriate bail and/or conditions of release may be set. Bail would only be an issue on serious offenses because the suspect can bail out under the standard bail schedule in effect for minor offenses. Serious offenses require full participation by all the relevant participants in the criminal justice system as to what the appropriate amount of bail should be. In serious offenses, more time is needed for a competent, complete bail hearing. In these cases, the actual charge itself is a major factor in establishing what the appropriate amount of bail should be. It is not unconstitutional to hold someone without bail until their first appearance following formal charging at which time more information would be available to aid the Court in making this determination. Consequently, I believe this rule should be clarified to clearly indicate that the Court has the option to hold a person without bail until their first appearance after charging. Language which could accomplish this is as follows:

> Subd. 4. Determination. Upon the information presented, the Court shall determine whether there is probable cause to believe that an offense has been committed and that the person arrested committed the offense. If probable cause is found, the Court may set bail or other conditions of release, or hold the arrested person without bail until appearance pursuant to Rule 4.02, or release the arrested person without bail pursuant to Rule 6. If probable cause is not found, the arrested person shall be released immediately. The determination of the Court shall be in writing and shall indicate whether probable cause was found, and, if so, for what offense, whether oral testimony was received concerning probable cause, and the amount of any bail or other conditions of release which the Court may have set. A written notice of the Court's determination shall be provided to the arrested person forthwith.

Thank you for the opportunity to comment upon your proposed criminal rule changes.

Very truly yours,

James C. Backstrom

JAMES C. BACKSTROM
DAKOTA COUNTY ATTORNEY

JCB/sw
admin/cor:supreme

State of Minnesota
Fifth Judicial District

September 2, 1992

Mr. Frederick Grittner
Clerk of the Appellate Courts
245 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

IN RE: Statement of Fifth Judicial District Bench to the Minnesota Supreme Court regarding the proposed amendment to the Rules of Criminal Procedure, specifically Rule 4.03, Probable Cause Determination.

To the Honorable Court:

Following is the written statement of the Fifth District Bench regarding the proposed amendments to Criminal Rules by the addition of Rule 4.03 in response to County of Riverside v. McLaughlin, 111 S.Ct. 1661 (1991). This position was taken following a review of the notice and proposed rule as published in Finance and Commerce July 3, 1992 and upon vote by the members of the Fifth District Bench at a special meeting.

First, the proposed Rule 4.03, Subd. 1, talks about a probable cause determination without "unnecessary" delay. Minnesota Rules of Criminal Procedure 4.02, Subd. 5 (1), likewise speaks of without "unnecessary" delay. The McLaughlin case speaks of "unreasonable" delay. Consistency in terminology between Subd. 1 of proposed Rule 4.03 and the McLaughlin case may well be more important that consistency between Subd. 1 of the proposed rule and Rule 4.02, Subd. 5 (1). The comments to the new proposed rule actually quote from the McLaughlin case and define by example "unreasonable delay". Unreasonable delay may best serve the purpose by being defined in the body of Rule 4.03, Subd. 1, to show that delay for purposes of gathering additional evidence to justify the arrest or delay motivated by ill will against the arrested individual or delay for delay's sake will not protect the arresting agency from any claims.

The McLaughlin case does not provide for a mandatory release of the Defendant if the probable cause determination is not made within 48 hours. It, rather, shifts the burden to the government to demonstrate the existence of a bona fide emergency or other extraordinary circumstance. In that regard, it is suggested that Rule 34.02 of Minnesota Rules of Criminal Procedure be considered wherein any time period could be enlarged without absolute necessity of release.

The next area to be addressed is that of prosecutor approval. Under proposed Rule 4.03, Subd. 3, such requirement is set forth with the provision that the Court can determine that the prosecuting attorney is unavailable and that the matter should proceed without delay for determination of probable cause. The prosecutors in the Metropolitan area may well be on call during the likely weekend periods when a 48-hour probable cause determination is necessary. In the out-state areas, especially, it may be unclear who the prosecutor is. In addition, the issue as to what amount of searching a law enforcement officer must do to find the prosecutor is "unavailable" may arise. Because this rule and the McLaughlin case apply to all warrantless arrests, i.e., misdemeanor, gross misdemeanor and felony, there are a myriad of jurisdictions and small city prosecutors who may well be from some distance that are either not equipped or ill-equipped to have an active participation in this process without undue delay. The Fifth District currently furnishes faxes for the judges' homes. Perhaps the next step necessary would be to furnish faxes to the prosecutors' residences for compliance with the requirements. (It will be noted later that a one-page document with police reports attached be the sum and substance of the process, rather than four pages of forms, plus police reports, under the proposed rule.)

The recommendation of the Fifth District is that the requirement that the prosecutor approve be eliminated. It may be important to acknowledge that the involvement of the prosecutor would be discretionary, and the prosecutor could give directive to the law enforcement agencies in their jurisdiction as to when and if they wanted such involvement.

Next, Attachment "A", entitled Probable Cause Affidavit and Judicial Determination, is suggested as a substitute for the proposed Forms 44, 45 and 46. Under the Probable Cause Affidavit portion, if it is deemed necessary that an affirmative statement be made regarding any earlier application, same could be added as Paragraph No. 6 of the attached form to read as follows:

> "6. There was/was not a prior application for probable cause to detain this person submitted to the Court.
> If so, explain. _____
> _____."

In the Judicial Determination portion, if probable cause is found, the paragraph sets forth the authorizations that the detaining agency has, including the ability to release pursuant to Rule 6 of the Rules of Criminal Procedure. In that same paragraph, even though McLaughlin does not require same, if it is deemed appropriate to provide for notice to the arrestee of the Judicial Determination as provided in the last sentence of Subd. 4 of proposed Rule 4.03, the language could be added to the last sentence of that paragraph of the attached form to read as follows:

> "A copy of this Order shall be furnished to the Sheriff or detaining agency, the arresting agency, and the arrestee forthwith."

For purposes of a record of providing notice to the arrestee, the following language could be added on the bottom of Attachment "A":

> "Date and Time Notice Given: _____
> Name of Person Giving Notice: _____"

Although there was no copy of the first page of Form 45 published in the July 3, 1992 Finance and Commerce, it appears as though the second page of Form 45 was published along with Form 44 and 46. The proposed Form 46, entitled Notice of Judicial Determination of Probable Cause to Detain, in the preface as to the actions of the Judge, uses the words "... probable cause to detain you further pending your first court appearance...", and in the determination itself, Form 46 states, "pending your appearance in court...". That language appears to overlook the possibility that the probable cause determination may be combined with the first court appearance; and, further, overlooks that the detainee may be released under other provisions of the Criminal Rules of Procedure by the detaining agency, prosecutor, or a judge. Furthermore, the actual determination in Form 45, which is the Court's Order, uses the following language:

> "It is hereby ordered that said arrestee be detained subject to the requirements of the Minnesota Rules of Criminal Procedure and further Order of this Court."

The determinations made by the Court and the notice to the arrestee as to those determinations should be consistent, and that would certainly be accomplished by using the one-page format without multiple applications, orders and notices.

It is respectively requested that the above comments and input be considered by the Court in determining the language and content of the proposed Amendment by adding Rule 4.03 and the forms that will be promulgated thereby.

Respectfully submitted,

George Marshall

Fifth Judicial District Bench
by George A. Marshall
Chief Judge

Enc.
cc: Supreme Court - 12 copies

ATTACHMENT A

STATE OF MINNESOTA

COUNTY OF _____

IN DISTRICT COURT

FIFTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

vs.

_____,
Name of Arrestee Defendant.

PROBABLE CAUSE AFFIDAVIT
AND JUDICIAL DETERMINATION

CN# _____

PROBABLE CAUSE AFFIDAVIT

Under oath I state as follows:

1. I have reviewed all the files and records in this case.
2. The defendant was arrested without a warrant on _____ (DATE) at _____ (TIME).
3. I believe probable cause exists that the defendant committed the following offense(s):
   Offense(s) and Statute Numbers:

4. I believe the defendant committed the offense(s) because of the attached _____ pages of police reports.
5. I request that the court make a probable cause determination that the defendant may be continued in custody pending further proceedings.

Subscribed and sworn before me on:

Date: _____

_____
Affiant Title

_____
Judge/Notary Public

PROSECUTOR'S REVIEW - IF NEEDED

Reviewed and approved by: _____

Date: _____
Time: _____

JUDICIAL DETERMINATION OF PROBABLE CAUSE TO DETAIN

I have reviewed the probable cause statement set forth by the arresting officer.

[ ] I find probable cause to believe that a crime was committed and that the defendant committed the crime based on the attached police reports and direct that the defendant may be held in custody pending further proceedings in this matter, subject to the requirements of Minnesota Rules of Criminal Procedure. The arresting agency shall notify the office of the Court Administrator and/or the County Attorney the morning of the first day Court is in session to arrange a court appearance. A copy of this Order shall be furnished to the Sheriff and to the arresting agency.

[ ] I find no probable cause to have existed for this arrest and direct that the defendant be released from custody.

Date: _____

Time: _____

BY THE COURT:

_____
Judge of District Court

This proceeding was held: [ ] in person

[ ] by FAX [ ] by telephone

NOTE: If the proceeding was by telephone, this document must be either signed and returned by fax or presented for the Court's confirmatory signature within 2 regular business days.

Order confirmed in person on: _____ (Date) By _____ (Judge of District Court)

GEORGE MARSHALL
CHIEF JUDGE

FAX: (507) 532-3411
PHONE: (507) 537-6740

FIFTH JUDICIAL DISTRICT
LYON COUNTY COURTHOUSE
MARSHALL, MINNESOTA
56258

September 4, 1992

Hon. A. M. Keith
Chief Justice
Minnesota Supreme Court
25 Constitution Avenue
St. Paul, MN 55155

RE: Criminal Rule 4.03

Dear Sandy:

By separate cover, we are sending you a position of the Fifth Judicial District Court opposing the proposed Rule change as recommended by the Supreme Court Advisory Committee on the Rules of Criminal Procedure. I thought I could summarize the two major portions which we oppose.

First of all, we adopted a one-page Probable Cause Affidavit and Judicial Determination form in the Fifth Judicial District which we have been using successfully without any problem since the U.S. Supreme Court issued the order of County of Riverside v. McLaughlin. We do not want to replace our version by the three or four pages required by the proposed Rule.

Secondly, we do not wish the mandatory requirement involving the prosecutor in every requested detention. Misdemeanor prosecution within a municipality is handled by a city attorney. In almost every case, the defendant is arrested and appears in court the following Monday or Tuesday with or without an attorney and enters a plea of guilty. Most prosecutors are not involved in the prosecution unless a not guilty plea is entered or a demand is made for a formal complaint. Most small town attorneys are paid by their municipalities on an hourly rate. The proposed Rule is going to increase cost of prosecution greatly to the small municipality.

Let me give you an example from Lyon County. Garvin is a city with a population with about 400 people about 18 miles south of Marshall. Its part-time prosecutor is an attorney that lives on a farm in the Russell, Minnesota, area which is about the same distance west of Marshall. The attorney's law office is at Tyler in Lincoln County which is about 30 miles southwest of Marshall. This attorney should not be required to be on duty every weekend and have the travel involved between the different locations. As a rule, a person arrested in Garvin would be transported to the Lyon County Law Enforcement Center in Marshall so the offense would occur in Garvin, the defendant would be in Marshall, the attorney would be on a farm by Russell with his law office in Tyler. Nor do I feel that the requirement should then require that the review be made by a County Attorney who would be making binding decisions affecting the municipality which is represented by a different attorney.

In conclusion, the Fifth Judicial District promptly adopted a form and procedure, a copy of which is attached, and our system works very well. We just wish to be left alone.

With best wishes,

George Marshall
Judge of District Court

GM:jc
Enclosure
cc: Justice Gardebring
Frederick Grittner

ATTACHMENT A

STATE OF MINNESOTA

COUNTY OF _____

IN DISTRICT COURT

FIFTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

vs.

_____,
Name of Arrestee Defendant.

PROBABLE CAUSE AFFIDAVIT
AND JUDICIAL DETERMINATION

CN# _____

PROBABLE CAUSE AFFIDAVIT

Under oath I state as follows:

1. I have reviewed all the files and records in this case.
2. The defendant was arrested without a warrant on _____ (DATE) at _____ (TIME).
3. I believe probable cause exists that the defendant committed the following offense(s): Offense(s) and Statute Numbers:

4. I believe the defendant committed the offense(s) because of the attached _____ pages of police reports.
5. I request that the court make a probable cause determination that the defendant may be continued in custody pending further proceedings.

Subscribed and sworn before me on:

Date: _____

_____
Affiant Title

_____
Judge/Notary Public

PROSECUTOR'S REVIEW - IF NEEDED

Reviewed and approved by: _____ Date: _____ Time: _____

JUDICIAL DETERMINATION OF PROBABLE CAUSE TO DETAIN

I have reviewed the probable cause statement set forth by the arresting officer.

[ ] I find probable cause to believe that a crime was committed and that the defendant committed the crime based on the attached police reports and direct that the defendant may be held in custody pending further proceedings in this matter, subject to the requirements of Minnesota Rules of Criminal Procedure. The arresting agency shall notify the office of the Court Administrator and/or the County Attorney the morning of the first day Court is in session to arrange a court appearance. A copy of this Order shall be furnished to the Sheriff and to the arresting agency.

[ ] I find no probable cause to have existed for this arrest and direct that the defendant be released from custody.

Date: _____

Time: _____

BY THE COURT:

_____
Judge of District Court

This proceeding was held: [ ] in person

[ ] by FAX [ ] by telephone

NOTE: **If the proceeding was by telephone, this document must be either signed and returned by fax or presented for the Court's confirmatory signature within 2 regular business days.**

Order confirmed in person on: _____ (Date) **By** _____ (Judge of District Court)

MICHAEL O. FREEMAN
COUNTY ATTORNEY

(612) 348-5550
T.D.D. (612) 348-6015

OFFICE OF THE HENNEPIN COUNTY ATTORNEY
2000 GOVERNMENT CENTER
MINNEAPOLIS, MINNESOTA 55487

September 3, 1992

Minnesota Supreme Court
c/o Frederick Grittner
Clerk of the Appellate Courts
245 Judicial Center
25 Constitution Avenue South
St. Paul, Minnesota 55155

RE: Proposed Amendments to Rule 4.03

Dear Members of the Court:

Pursuant to Supreme Court Order No. C1-84-2137, I hereby request permission to appear and make comments regarding the proposed amendments to Rule 4.03 of the Rules of Criminal Procedure.

Respectfully submitted,

MICHAEL O. FREEMAN
Hennepin County Attorney

Dan Mabley

DANIEL H. MABLEY
Assistant County Attorney
Chief, Adult Prosecution Div.

DHM:al

MICHAEL O. FREEMAN
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September 3, 1992

Minnesota Supreme Court
c/o Frederick Grittner
Clerk of the Appellate Courts
245 Judicial Center
25 Constitution Avenue South
St. Paul, Minnesota 55155

RE: Proposed Amendments to Rule 4.03

Dear Members of the Court:

Pursuant to Supreme Court Order No. C1-84-2137, I wish to make the following written statement to the Minnesota Supreme Court regarding the recommendations of the Supreme Court Advisory Committee on the Rules of Criminal Procedure.

1. The Oath Requirement.

The requirement that peace officers sign under oath is unnecessary, expensive, and burdensome. Therefore, I recommend that the requirement for such a signature under oath be eliminated.

2. Bail Review.

Additionally, the portion of the rules that permit the judge to review and/or set bail is unnecessary and inadvisable at this stage of the proceedings. Since no formal charges have been issued and since there is very little information about the crime or the arrestee, the judge should not be encouraged to conduct a bail proceeding. The likelihood is that any decision emanating from this proceeding will be ill advised and will permit some offenders to be released who are either dangerous to the public or likely to flee.

Thank you for the opportunity to be heard.

Respectfully submitted,

MICHAEL O. FREEMAN
Hennepin County Attorney

Dan Mabley

DANIEL H. MABLEY
Assistant County Attorney
Chief, Adult Prosecution Div.

DHM:al

OFFICE OF WASHINGTON COUNTY ATTORNEY

RICHARD
ARNEY

Washington County Government Center
14900 61st Street North — P.O. Box 6
Stillwater, MN 55082-0006

August 26, 1992

Frederick K. Grittner
Clerk of Appellate Courts
245 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

RE: Supreme Court Advisory Committee's Proposed Amendments Regarding County of Riverside v. McLaughlin

Dear Mr. Grittner:

The proposed rule changes to be addressed at the hearing on September 10 were reviewed and discussed within our office and we would like to make the following observations for your consideration.

It is our feeling that the proposed rule goes farther than is necessary to meet the mandates of Riverside. Our understanding of Riverside, which is a civil case, is that after 48 hours the detention of an arrestee is presumed unreasonable and the burden shifts to the government to demonstrate the reasonableness thereof. Therefore, it would seem unnecessary to mandate that any person who had been held for a period of 48 hours would automatically be released in every situation if a probable cause determination had not been made. At a minimum, there should be some ability for the government to request an extension. This would be consistent with the present practice under the 36-hour rule.

Likewise, it does not seem that the Riverside case would require a written or oral request on the record by a prosecuting attorney in order for the court to determine probable cause, or that a written notice be provided to the arrested person of such a probable cause determination.

Sincerely,

RICHARD M. ARNEY, COUNTY ATTORNEY
WASHINGTON COUNTY, MINNESOTA

Robert J. Molstad
Assistant County Attorney
(612) 430-6115

RJM:jb

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LAW OFFICES

WURST, PEARSON, LARSON, UNDERWOOD & MERTZ
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1100 FIRST BANK PLACE WEST
MINNEAPOLIS, MINNESOTA 55402

A. THOMAS WURST, P.A.
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THOMAS F. UNDERWOOD, P.A.
CRAIG M. MERTZ
ROGER J. FELLOWS

TELEPHONE
(612) 338-4200
FAX NUMBER
(612) 338-2625

August 28, 1992

Minnesota Supreme Court
c/o Frederick Grittner
Clerk of the Appellate Courts
245 Judicial Center
25 Constitution Avenue
St. Paul MN 55155

Dear Members of the Court:

Pursuant to Supreme Court Order #C1-84-2137, we wish to present this written statement to the Minnesota Supreme Court regarding the recommendation of the Supreme Court Advisory Committee on Rules of Criminal Procedure to Amend Rule 4.03 of the Minnesota Rules of Criminal Procedure.

RESOLVED:

The Hennepin County Suburban Prosecutors' Association is opposed to the proposed rule requiring a peace officer's signature to be under oath for the purpose of obtaining a 48 hour hold probable cause determination.

Such a requirement would create undue burden and delay in many police departments.

On behalf of the Hennepin County Suburban Prosecutors, we respectfully request that the oath requirement proposed in Rule 4.03 (Subd. 2) of the Minnesota Rules of Criminal Procedure be eliminated.

Further, the Hennepin County Suburban Prosecutors authorize Mr. Dan Mabley of the Hennepin County Attorney's office to make any oral or written presentation he sees fit to make related to this issue on our behalf.

Resolution passed unanimously at the August 20, 1992, meeting of the Hennepin County Suburban Prosecutors' Association.

Respectfully submitted,

Roger J. Fellows
On Behalf of the Hennepin
County Suburban Prosecutors'
Association

RJF:lh

District Court of Minnesota

NINTH JUDICIAL DISTRICT

CHAMBERS OF JUDGE JOHN A. SPELLACY/COURTHOUSE/P. O. BOX 237/GRAND RAPIDS, MINN. 55744

July 3, 1992

Minnesota Supreme Court
Clerk of Appellate Courts
245 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

RE: Proposed Amendment to Rule 4.03, R. Crim. Proc.

C1-84-2137

Dear Sir:

I strongly protest the proposed change of Rule 4.03 as contained in the July 3, 1992 issue of Finance and Commerce. There is absolutely no need for the officer's report to be under oath nor is there any need for the county attorney to become involved. To impose these additional requirements would make the procedure more complicated than a probable cause hearing under State v. Florence, 306 Mn. 442, 239 NW2d 892 (1976).

The procedure should be relatively simple. In Itasca County we require that the officer fill out a detailed probable cause report in his own handwriting and that he sign it when the arrestee is booked into the jail. He is seen the next day by myself or another judge if I am not available. I go into the jail each Saturday and Sunday when I am not out of town. Today, which is a holiday in Itasca County, I went to the jail and processed three persons detained. I will do the same thing tomorrow and Sunday. If the officer's report shows probable cause for the arrest without a warrant, I make a finding of probable cause using the enclosed form. I am also enclosing a copy of the officer's report form.

It is utterly impractical and unnecessary for the officer to make any attempt to contact the county attorney since the man is going to be seen by a judge within the 48 hour mandated period. There is likewise no need for the officer's report to be under oath. To engraft that requirement goes substantially beyond the McLaughlin decision and would require a notary public to be in the jail at all times. The alternative of having the officer go back to the jail when the judge arrives is cumbersome and quite ridiculous.

I do hope and trust for the sake of the officers, prosecutors, trial judges, jailers, and most of all, the arrestees, that we will not over-react and unnecessarily complicate the McLaughlin appearance.

Sincerely yours,

John A. Spellacy

JAS:ld

cc: Hon. A. M. Keith

FINDING OF PROBABLE CAUSE AND ORDER FOR DETENTION

FROM THE ATTACHED COMPULSORY DESCRIPTIVE REPORT (AND THE FOLLOWING SUPPLEMENTAL SWORN TESTIMONY):
[ ] None

_____

_____

_____

_____

_____

_____

_____

I have determined probable cause exists to detain the above-named arrestee. It is hereby ordered that the above-named arrestee be detained subject to the requirements of Minnesota Rules of Criminal Procedure and further order of this Court.

JUDICIAL OFFICER:_____
DATE:_____ TIME:_____

This proceeding was held: [ ] in person [ ] telephonically
[ ] by messenger

NOTE: IF PROCEEDING WAS TELEPHONIC, THIS DOCUMENT MUST BE EITHER SIGNED AND RETURNED BY FAX OR PRESENTED FOR THE COURT'S CONFIRMATORY SIGNATURE WITHIN TWO (2) REGULAR BUSINESS DAYS.

Order confirmed in person on (date):_____

COMPLAINANT, PLEASE NOTE: [ ] Jail Notified of Probable Cause to Detain

CHARGING/TICKET INFORMATION

OFFENDER'S NAME:_____ **Originating Case No.**_____

DOB:_____ **Address:**_____

ALLEGED VIOLATIONS:_____

DATE OF ARREST:_____ **TIME:**_____

DATE OF OFFENSE:_____ **TIME:**_____

Officer/Agency:_____

____ In Detox ____ In Custody **DID YOU ATTACH:** ____ '45 ____ Officer Notes
____ Misdemeanor ____ Gross Misdemeanor ____ Felony
____ Adult ____ Juvenile (Also Complete Juvenile Information on Reverse Side)

COMPULSORY DESCRIPTIVE REPORT REQUIRED: **(Probable Cause for Detention)**

Fact constituting probable cause to believe a crime/violation was committed and arrestee/offender committed it:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

The Complainant, being duly sworn, swears the above facts are true and correct to the best of his knowledge and belief and constitute probable cause to believe the above-named arrestee/offender committed the offense(s)/violation(s) described herein.

Complainant's Signature:_____ Badge #:_____

Date:_____ Time:_____

Subscribed and Sworn to before me this _____ day of _____, 19____.

_____
Notary Public

VICTIM INFORMATION

Name:_____ Phone No._____

Address:_____

Restitution Amount:_____

ALLAN HART CAPLAN & ASSOCIATES, P. A.
Attorneys at Law
525 LUMBER EXCHANGE BUILDING
10 SOUTH 5TH STREET
MINNEAPOLIS, MINNESOTA 55402
(612) 341-4570

July 30, 1992

Mr. Fred Grittner
Clerk of the Appellate Court
245 Judicial Center
25 Constitution Avenue
St. Paul, Minnesota 55155

Re: Proposed Rule 4.03, Minn. R. Crim. Proc.

C1-84-2137

Dear Mr. Grittner:

I wish to make a brief written comment about the newly proposed Rule 4.03 of the Minn. R. Crim. Proc., thus enclosed are twelve copies of this letter pursuant to the Order of the Chief Justice, dated June 23, 1992.

I am a criminal defense attorney. I was a prosecutor for 9 years and have been defending for over 5 years.

My only comment is to suggest clearer terminology for Rule 4.03, Subd. 3. The proposed language, relevant to my comment, reads:

> *If, in the discretion of the prosecuting attorney, a complaint complying with Rule 2* ***is obtained*** *within the time limit provided by this rule, it shall not be necessary to obtain any further determination of probable cause under this rule to justify continued detention of the defendant. [Emphasis added.]*

I am assuming that the emphasized language--"is obtained"--is intended to cover the situation where a judge has signed the complaint, with its attendant finding of probable cause, and that the language does not substitute the mere drafting of a complaint by the prosecutor for judicial review of probable cause. If that is correct, I

respectfully suggest a change from "is obtained" to language that makes it clear that the alternative to the judicial review envisioned by Subd. 1 is a complaint which complies with Rule 2, reviewed and approved by a judge.

Perhaps Rule 2 can be read to mean that in order for any complaint to be in compliance with said rule, it must be signed by or at least "made upon oath before a judge or judicial officer" (Rule 2.01), but the language proposed and the comment on that provision do not make it clear what is meant by allowing the prosecutor to "obtain" a complaint. Under Rule 2.01, a complaint is defined in the first sentence without reference to whether or not it has been reviewed by a judge or judicial officer. Thus, one could, arguably, "obtain" a "complaint" in compliance with Rule 2 without having yet gone to a judge or judicial officer for approval. The phrase "obtaining a complaint" is not a legally defined term in the rules, so far as this writer can see.

Thus, it is suggested that the new rule make clear that the alternative to the new probable cause determination within 48 hours is the review and approval of a complaint in compliance with Rule 2, by a judge or judicial officer.

Thank you for your kind consideration to this matter.

Yours very truly,

ALLAN H. CAPLAN & ASSOCIATES, P.A.

Jeffrey B. Ring

JBR/kt
Enclosure