

STATE OF MINNESOTA

IN SUPREME COURT

C1-84-2137

**ORDER FOR HEARING TO CONSIDER AMENDMENTS  
TO THE RULES OF CRIMINAL PROCEDURE**

WHEREAS on July 17, 2003, the Court requested that the Advisory Committee on Rules of Criminal Procedure consider proposed rule amendments and forms to effectuate the elimination of mandatory transcripts for felony and gross misdemeanor plea and sentencing hearings; and

WHEREAS the Committee filed a response, a copy of which is attached here, that opposes the elimination of mandatory transcripts,

IT IS HEREBY ORDERED that a hearing be held before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on October 15, 2003, at 2:00 p.m. to consider the adoption of amendments to the Minnesota Rules of Criminal Procedure that would obviate the need for mandatory transcripts.


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 the hearing, but who do not wish to make an oral presentation at the hearing, shall file 14 copies of such statement with Frederick Grittner, Clerk of Appellate Courts, 305 Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, Minnesota 55155, on or before October 10, 2003, and

2. All persons desiring to make an oral presentation at the hearing shall file 14 copies of the material to be so presented with the Clerk of the Appellate Courts together with 14 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before October 10, 2003.
3. Comments should particularly address:
  - the language of the amendments contained in the annexed response and/or suggestions for alternative language; and
  - the contents of the plea and sentencing forms contained in the annexed response with regard to their ability to capture required information from the plea and sentencing.

Dated: September 22, 2003

BY THE COURT:

  
\_\_\_\_\_  
Kathleen A. Blatz  
Chief Justice

OFFICE OF  
APPELLATE COURTS

SEP 23 2003

FILED

C1-84-2137  
STATE OF MINNESOTA  
IN SUPREME COURT

In Re:

Supreme Court Advisory Committee  
On Rules of Criminal Procedure

RESPONSE TO REQUEST TO PROVIDE  
PROPOSED AMENDMENTS AND FORMS TO ELIMINATE  
MANDATORY TRANSCRIPTS IN FELONY AND  
GROSS MISDEMEANOR CASES

September 18, 2003

Hon. Robert Lynn, Chair

Caroline Bell Beckman, St. Paul  
Leonardo Castro, Minneapolis  
James D. Fleming, Mankato  
Theodora Gaitas, Minneapolis  
William Hennessy, Grand Marais  
Candice Hojan, St. Paul  
Kathryn M. Keena, Hastings  
Thomas M. Kelly, Minneapolis

William F. Klumpp, Jr., St. Paul  
Wayne A. Logan, St. Paul  
John W. Lundquist, Minneapolis  
Arthur Martinez, Minneapolis  
Paul Scoggin, Minneapolis  
Hon. Jon Stafsholt, Glenwood  
Robert Stanich, St. Paul  
Hon. Heather L. Sweetland, Duluth

Hon. Russell Anderson  
Supreme Court Liaison

C. Paul Jones, Minneapolis  
Counselor

Philip Marron, Minneapolis  
Reporter

Kelly Mitchell, St. Paul  
Staff Attorney

By her letter of July 17, 2003, Chief Justice Blatz requested that the Criminal Rules Committee submit proposed amendments to the Criminal Rules that would eliminate preparation of mandatory transcripts in felony and gross misdemeanor cases.

In response, a subcommittee consisting of the District Court Judges on the Rules Committee drafted the following changes to Rules 15.09 and 27.03, subd. 6.

### **Rule 15.09 Record of Proceedings**

Upon a guilty plea to an offense punishable by incarceration, either a verbatim record of the proceedings shall be made, or in the case of misdemeanors, a petition to enter a plea of guilty, as provided in the Appendix B to Rule 15, shall be filed with the court. If a written petition to enter a plea of guilty is submitted to the court, it shall be in the appropriate form as set forth in Appendix A and Appendix B to this rule. ~~In felony and gross misdemeanor cases, any verbatim record made in accordance with this rule shall be transcribed and filed with the clerk of court for the trial court within 30 days after the date of sentencing. In misdemeanor cases, any such record need not be transcribed unless requested by the court, the defendant or the prosecuting attorney.~~ The defendant, prosecution, or any interested party may, at their expense, order a transcription of the verbatim record made in accordance with this rule. The Court may order transcription of the verbatim record where the Court makes particularized findings demonstrating reasonable cause to do so.

### **Rule 27.03 Sentencing Proceedings**

**Subd. 6. Record.** A verbatim record of the sentencing proceedings shall be made. ~~In felony and gross misdemeanor cases any verbatim record made in accordance with this rule shall be transcribed and filed with the clerk of court for the trial court within 30 days after the date of sentencing. In misdemeanor cases any such record need not be transcribed unless requested by the court, the defendant or the prosecuting attorney.~~ The defendant, prosecution, or any interested party may, at their expense, order a transcription of the verbatim record made in accordance with this rule. The Court may order transcription of the verbatim record where the Court makes particularized findings demonstrating reasonable cause to do so.

Additionally, the members of the subcommittee reviewed the appendix to Rule 15 plea petition and sentencing form submitted with Justice Blatz's letter, and revised them as shown in Appendix A.

While understanding the severe budget issues facing the Court, the members of the Rules Committee overwhelmingly oppose elimination of mandatory transcripts in these cases. To illustrate the concerns raised by the Committee during its discussion of this issue, some members of the Committee have individually submitted their objections, which are attached as Appendix B.

The Rules Committee also received written objections from several interested parties, and these submissions are attached as well as Appendix C.

Dated: 9/18/03

Respectfully Submitted,

/s \_\_\_\_\_  
Judge Robert Lynn, Chair  
Supreme Court Advisory Committee  
on Rules of Criminal Procedure

## **APPENDIX A**

**APPENDIX A TO RULE 15 PLEA PETITION**

**PLEA AGREEMENT**  
*(Check all boxes that apply)*

Defendant pleads guilty to Count(s) \_\_\_\_\_ (as amended to \_\_\_\_\_  
\_\_\_\_\_).

Count(s) \_\_\_\_\_ in File(s) \_\_\_\_\_ are Dismissed by the prosecuting attorney.

Continuance for Dismissal for \_\_\_\_\_ years/months on conditions listed below:

**SENTENCING RECOMMENDATIONS TO THE COURT:**

Prosecutor will remain silent at sentencing.

Joint recommendations of Prosecution and Defense as to Sentencing: *(Check all that apply)*

- \_\_\_ Stay of Adjudication for \_\_\_\_\_ years/months on conditions listed below.
- \_\_\_ Sentence pursuant to Minn. Stat. §152.18 on conditions listed below.
- \_\_\_ Staggered sentence pursuant to Minn. Stat. § 169A.275 on conditions listed below.
- \_\_\_ Stay of Imposition of Sentence.
- \_\_\_ Stay of Execution of Sentence.
- \_\_\_ Execution of Sentence (with cap of \_\_\_\_\_ years/months/days prison/local jail time).  
    \_\_\_ Conditional Release Term of \_\_\_\_\_ years is Applicable.
- \_\_\_ Aggravated Dispositional/Durational Departure.
- \_\_\_ Mitigated Dispositional/Durational Departure.

Jointly Recommended Conditions of Sentence or Stay: *(Check all that apply)*

- \_\_\_ Cap of \_\_\_\_\_ years/months/days of prison/local incarceration.
- \_\_\_ \_\_\_\_\_ years/months/days of prison/local incarceration.
- \_\_\_ Electronic Home Monitoring for \_\_\_\_\_ years/months/days.
- \_\_\_ Fine of \$ \_\_\_\_\_ plus applicable surcharges and fees.
- \_\_\_ Sentence To Service or Community Service may be used to work off incarceration time or fine.
- \_\_\_ Restitution of \$ \_\_\_\_\_/To be certified. \_\_\_ Joint and several restitution.
- \_\_\_ Chemical Dependency Evaluation and follow all treatment recommendations.
- \_\_\_ Intensive Alcohol Monitoring Program.
- \_\_\_ Psychological Evaluation and follow all treatment recommendations.
- \_\_\_ Sex Offender Evaluation and follow all treatment recommendations.
- \_\_\_ Domestic Abuse/Anger Management Evaluation and follow all treatment recommendations.
- \_\_\_ Circle Sentencing Program.
- \_\_\_ Participate in Victim/Offender Mediation.
- \_\_\_ No contact with \_\_\_\_\_.
- \_\_\_ Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Prosecutor

\_\_\_\_\_  
Defense Counsel

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Date

County \_\_\_\_\_

Judicial District \_\_\_\_\_ Case Number \_\_\_\_\_

State of Minnesota

**CRIMINAL JUDGMENT  
AND WARRANT OF COMMITMENT**

vs.

Name: \_\_\_\_\_ A/K/A: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Sex: \_\_\_\_\_ Race: \_\_\_\_\_ Ethnicity: \_\_\_\_\_

Custody Status: \_\_\_\_\_ DOB: \_\_\_\_\_

SJIS Controlling Control  
Complaint #: \_\_\_\_\_ Agency: \_\_\_\_\_ Number: \_\_\_\_\_

**JUDGMENT AND CONDITIONS**

Offense Date: \_\_\_\_\_

Date of:  Sentence  Violation / Revocation  Resentence  Correction \_\_\_\_\_

Level of Conviction:  Felony  Gross Misdemeanor  Misdemeanor

Count #: \_\_\_\_\_ Minn. Stat. § \_\_\_\_\_ Offense Description \_\_\_\_\_

Amended  Reduced M.O.C. \_\_\_\_\_ G.O.C. \_\_\_\_\_

On \_\_\_\_\_ the defendant:

- entered a plea of guilty  Alford  received probation before conviction (Minn. Stat. § 152.18)
- was found guilty by the Court  received a stay of adjudication
- was found guilty by a jury  other \_\_\_\_\_

Non-Conviction Dispositions: Count Number(s): \_\_\_\_\_  Dismissed  Acquitted

**FELONY LEVEL SENTENCE**

Committed to Commissioner of Corrections for \_\_\_\_\_ years, \_\_\_\_\_ months, and \_\_\_\_\_ days.

*(Minn. Stat. § 244.01: When the court sentences an offender to an executed sentence, the sentence consists of two parts: a specified minimum term of imprisonment equal to two thirds of the total executed sentence \_\_\_\_\_; and a specified maximum supervised release term equal to one-third of the total executed sentence \_\_\_\_\_. The amount of time the defendant actually serves in prison may be extended by the Commissioner of Corrections if the defendant commits any disciplinary offenses in prison.)*

Conditional release term:  5 years  10 years

Sentenced to jail for \_\_\_\_\_ days, of which \_\_\_\_\_ days must be served beginning \_\_\_\_\_ each year for \_\_\_\_\_ years.

*(Minn. Stat. § 169A.275: The court may stay the second or subsequent jail term upon motion by the defendant and consideration of any alcohol-monitoring results, probation recommendation, or other factors.)*

Stay of execution for \_\_\_\_\_ years, \_\_\_\_\_ months.

Stay of imposition for \_\_\_\_\_ years, \_\_\_\_\_ months.

**MISDEMEANOR**  **GROSS MISDEMEANOR LEVEL SENTENCE**

Sentenced to:  jail  work house for \_\_\_\_\_ months, \_\_\_\_\_ days, of which \_\_\_\_\_ months, \_\_\_\_\_ days are stayed for \_\_\_\_\_ years.

Sentenced to jail for \_\_\_\_\_ days, of which \_\_\_\_\_ days must be served beginning \_\_\_\_\_ each year for \_\_\_\_\_ years.

*(Minn. Stat. § 169A.275: The court may stay the second or subsequent jail term upon motion by the defendant and consideration of any alcohol-monitoring results, probation recommendation, or other factors.)*

Stay of imposition for \_\_\_\_\_ years, \_\_\_\_\_ months.

**Probation:**  Supervised \_\_\_\_\_  Unsupervised  **Jail Credit:** \_\_\_\_\_ days

Sentence is:  concurrent  consecutive to: Case #: \_\_\_\_\_ Count #(s): \_\_\_\_\_

Sentence is a departure from the presumptive sentence under the Minnesota Sentencing Guidelines. Departure report must be sent to the Minnesota Sentencing Guidelines Commission.

Sentenced under the Patterned and Predatory Sex Offender Provision (Minn. Stat. § 609.108).



COUNTY: \_\_\_\_\_ CASE #: \_\_\_\_\_ Defendant: \_\_\_\_\_

**CONDITIONAL LOCAL INCARCERATION**

\_\_\_\_\_ days in jail as a condition of a stayed sentence. In lieu of jail, defendant may do:  house arrest  
 community service  electronic surveillance  fine.

**ADDITIONAL JAIL / WORK HOUSE INFORMATION**

Report to jail on: \_\_\_\_\_

Jail credit: \_\_\_\_\_ days (time served)

May serve:  on weekends  
 on work release as approved by sheriff  
 on sentence to service (STS) program as approved by sheriff

**FINANCIAL CONDITIONS**

The following financial conditions also apply to Case # \_\_\_\_\_ Count(s) \_\_\_\_\_

<input type="checkbox"/> Fine	\$ _____	Fine Imposed \$ _____	Fine Stayed \$ _____
<input type="checkbox"/> Restitution	\$ _____	Restitution jointly and severally with: _____	
<input type="checkbox"/> PD Copay	\$ _____		
<input type="checkbox"/> Surcharge	\$ _____		
<input type="checkbox"/> Law Library	\$ _____		
<input type="checkbox"/> Court Costs	\$ _____		
<input type="checkbox"/> Chem Fee	\$ _____		
<input type="checkbox"/> Other _____	\$ _____		
<input type="checkbox"/> Other _____	\$ _____		
<b>TOTAL</b>	\$ <u>0.00</u>		

**PAYMENTS**

Payments are to be made at \$ \_\_\_\_\_ per \_\_\_\_\_ by \_\_\_\_\_.

Payment arrangements are to be made by:  
 Probation  Court Administration

Defendant is found indigent.

Other \_\_\_\_\_

In lieu of fine, defendant may do:  
 community service  
 sentence to service (STS) as approved by sheriff

**ADDITIONAL CONDITIONS**

\_\_\_\_\_ hours community service by \_\_\_\_\_.

No same or similar offenses.

No contact with: \_\_\_\_\_

House arrest  Electronic surveillance  Alco- sensor for \_\_\_\_\_ days  in lieu of \_\_\_\_\_

Complete the following evaluations and/or programs and follow recommendations:

<input type="checkbox"/> Chemical Dependency	<input type="checkbox"/> Evaluation	<input type="checkbox"/> Treatment	( <input type="checkbox"/> Inpatient <input type="checkbox"/> Outpatient)
<input type="checkbox"/> Sex Offender	<input type="checkbox"/> Evaluation	<input type="checkbox"/> Treatment	( <input type="checkbox"/> Inpatient <input type="checkbox"/> Outpatient)
<input type="checkbox"/> Domestic Abuse	<input type="checkbox"/> Evaluation	<input type="checkbox"/> Treatment	( <input type="checkbox"/> Inpatient <input type="checkbox"/> Outpatient)
<input type="checkbox"/> Psychological Evaluation/ Counseling	<input type="checkbox"/> Evaluation	<input type="checkbox"/> Treatment	( <input type="checkbox"/> Inpatient <input type="checkbox"/> Outpatient)
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Evaluation	<input type="checkbox"/> Treatment	( <input type="checkbox"/> Inpatient <input type="checkbox"/> Outpatient)

Other: \_\_\_\_\_

**COMMENTS:**

**IN COURT PERSONNEL**

Sentencing Judge: \_\_\_\_\_ Date: \_\_\_\_\_

Court Administrator / Deputy: \_\_\_\_\_ Date: \_\_\_\_\_

## **APPENDIX B**

September 12, 2003

The Members of the Supreme Court  
Minnesota Judicial Center  
25 Rev. Dr. Martin Luther King Jr. Boulevard  
St. Paul, Minnesota 55155

Re: Recommendations of the Advisory Committee of the Minnesota Rules of  
Criminal Procedure on Retaining the Mandatory Transcript Requirement  
Found in Minn. R. Crim. P. 15.09 and 27.03

Dear Members of the Court:

Please accept this as my comment to the Court on the advisability of abandoning mandatory transcripts as presently required under Minn. R. Crim. P. 15.09 and 27.03. I offer these comments in my personal capacity as a member of the committee and more generally as a member of the County Attorneys Association. This comment has two parts. First, it is a response to the Chief Justice's request for comments on the advisability of the change at all. Second, I forwarded specific suggestions on the language itself and the attached supporting forms.

#### **I. The Advisability of the Change**

As the manager of the largest felony prosecution unit in the state of Minnesota, I am acutely aware of the budget limitations faced by all of us in the criminal justice system. The near unanimous view of the practitioners on both sides of the adversary system as represented by the Rules Committee, however, should give this Court pause. I respectfully submit that these transcripts are more valuable than the Conference of Chief Judges suggest in their recommendation letter to the Chief Justice. I suggest this for two reasons. First, the transcripts have practical value in a system that uses probation more than any other system in the country. Second, and perhaps more importantly, the public nature of these transcripts are an important check on a system that disposes of thousands of matters every year largely out of the public's view.

I know that the Rules Committee has been bombarded with the practical ramifications of the proposed change. I'll simply summarize several of them here:

1. ***We use probation a lot – transcripts are an invaluable in sorting out probationary terms years later:*** We use probation, creatively, a lot in Minnesota. In my twenty years of practice I've seen the steady growth of complicated long-term probationary terms. From staggered sentencing in felony DWI cases to twenty year supervision in

child abuse cases – the process of untangling terms years after the fact will be hindered if the parties don't have quick access to the plea and sentencing transcripts. Obviously, those issues become worse as judges substitute for each other, new prosecutors take over for old, and court reporters rummage through their attics looking for notes taken of proceedings that took place many years earlier. The process now employed by court reporters to keep notes is neither uniform nor perfect. An example of the disastrous results that follow is found in *Hoaglund v. State*, 518 N.W.2d 531 (Minn. 1994).

2. ***We pride ourselves on speedy dispositions – this will slow us down:*** Delay is an anathema to the criminal justice system. We really do have contested *Morrissey* hearings within seven days of first appearance. There is little chance of maintaining this record if the transcript is demanded. And they will be demanded – I've done this long enough to know that zealous lawyers (and this is not a criticism) may not "need" a transcript if the transcript is readily available but will insist it is critical to the proceedings if the transcript is not available. Put simply, if these transcripts don't automatically exist, the defense bar will demand them in every case as part of putting the State to its burden of proving a violation of probation. If for no other reason because it would be malpractice not to do so.
3. ***There's great tension between State and local government over funding – this proposal makes matters worse:*** In tight budget times there's a natural tendency to shift costs to other units of government. The counties are reeling over losses in state aid and grant programs. Because the need for transcripts is significant, local prosecutors (who bear the burden of proof at revocation hearings) will be forced to shift this expense from the State general fund to local property tax rolls. This Court, of course, is in a far better position to negotiate favorable terms with its employees, the reporters, and control the cost of these transcripts than the 87 county attorneys, the district public defenders, and the scattered defense bar.
4. ***We want more information about the criminal justice process not less:*** The highest public priority for the law enforcement community and the criminal justice system as a whole in the last decade has been information systems. We've collaborated with courts, police, advocacy groups, and the legislature to pour tens of millions of dollars into providing more and better information to judges and practitioners alike. This proposal is a step in the opposite direction. The effect of this proposal is we will know less; less about potential other crime evidence, less about predicate crimes for enhancement purposes, less about accurate criminal histories for sentencing guidelines purposes.

The second reason I oppose this change may be less apparent to this Court. However, with respect, I suggest it is even more important than the practical ramifications of abandoning mandatory transcripts. This proposal undercuts the criminal justice system's commitment to public accountability.

As a prosecutor I wear several hats. I seek justice, I'm an advocate, and I am an officer of the court. Equally important, I'm a representative of a co-equal branch of government. I work for an elected county attorney and I bear the responsibility to conduct the public's business in an open and public manner. I am responsible to the public for both the justice process and its results. This is true at the micro level – an individual victim or interested party ought not be charged for the opportunity to know what happened in her case. This is also true at the macro level – the public, whether through the media, advocacy groups, academia, or any other outlet, shouldn't be frustrated in its attempts to know and understand what is essentially the public's business.

It follows that I'm equally concerned about what happens if the parties know that their acts and words in a particular case will never see the light of day. In my office, about 6000 felonies a year pass through our hands. I'm not worried about the 100 or so high profile cases. My office or other interested parties will pay for the privilege of a transcript. I'm worried about the other 5900 cases. The natural, if not inevitable, tendency to cut corners or disregard the rules festers without the cleansing effect of potential public scrutiny. The existence of a public record acts as an important (and often the only) check on all parties in the criminal justice system. The lack of a publicly available district court file containing plea and sentence transcripts has the potential to undermine the integrity of the criminal justice process and public confidence in the criminal justice results.

## **II. Comments on the Language and Supporting Forms**

The district court judges on the committee have forwarded specific language to effect a rule change and forms to support that change. The committee does not support these changes. Nevertheless, the prosecutors on the committee believe the forms may have some merit, without regard to changing the language of the rules, with some modifications. We suggest remanding the forms to the committee for further consideration:

1. The commitment form fails to account for multiple count convictions.
2. The commitment form fails to require **successful** completion of treatment as a term and condition of probation.
3. The plea petition form fails to account for sentence offers made by the court over the State's objection. This remains a common occurrence despite this Court's language in *State v. Nelson*, 257 N.W.2d 356, 359 n.1 (Minn. 1977); *State v. Schmidt*, 601 N.W.2d 846, 900 (Minn. 1999); and *State v. Johnson*, 156 N.W.2d 218, 223 (Minn. 1968).

**OFFICE OF THE HENNEPIN COUNTY ATTORNEY**

**AMY KLOBUCHAR** COUNTY ATTORNEY

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4. The plea petition form fails to account for negotiations in which the length of a prison commit or workhouse term is a "certain" term of the negotiation not just a recommendation (i.e., pled guilty to Count 1, dismiss Count 2 for a 24 month commit to the Department of Corrections – if the defendant wants a chance for something less he must plead to everything).
5. The commitment form fails to clarify that even in instances of a stay of imposition or a stay of execution a potential conditional release term may apply.
6. The commitment form should expressly delineate the number of days and/or hours of community service that are to be performed.
7. The commitment form fails to provide that restitution may be determined at a later date by probation. Courts quite often sentence defendants using language such as "restitution as determined by the Department of Court Services."
8. The commitment form's probationary terms checklist fails to include random chemical testing, abiding by the ordinary rules and regulations of the Department of Court Services, and geographic exclusions as a term and condition of probation. Likewise, the additional conditions section does not include language pertaining to house arrest or electronic surveillance allowing for a certain number of days or hours. The additional conditions form also should account for mandatory DNA samples and registration as a predatory offender.
9. The commitment form should also include the name of the court reporter for the hearing. If no transcript is created and the parties are searching for this information years later, the parties should be able to instantly determine which long gone or retired court reporter sat on the day of plea and sentence.

Respectfully submitted,

PAUL R. SCOGGIN  
Managing Attorney  
Violent Crimes Division  
Telephone: (612) 348-5161

PRS:ks

## **Email From Teddie Gaitas, Assistant State Public Defender**

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To: <Robert.Lynn@co.hennepin.mn.us>  
From: "Gaitas, Theodora" <Theodora.Gaitas@state.mn.us>  
cc:  
Subject: Report to Supreme Court on Mandatory Transcripts  
09/08/2003 12:56 PM

Dear Judge Lynn,

I am writing to you with a particular concern that I would like to have added to the Rules Committee's report on the proposal to eliminate mandatory transcripts. In addition to the issues that were raised at the committee's meeting on Saturday, I am concerned about the effect this proposal will have on sentencing appeals. Eliminating mandatory transcripts would significantly impede, if not eliminate, the expedited appeal of sentence currently permitted by Minn. R. Crim. P. 28.05. The rule is based on the assumption that the sentencing transcript has already been prepared. Often, public defender clients contact the appellate office shortly before the notice of appeal is due. Without a prepared transcript, our clients will have to wait longer to have their sentences reviewed in some circumstances.

Thank you.

Teddie Gaitas

**OFFICE OF PUBLIC DEFENDER  
FIFTH JUDICIAL DISTRICT**

**Chief Public Defender**  
James D. Fleming

12 Civic Center Plaza, Suite 2070  
Post Office Box 1059  
Mankato, Minnesota 56002-1059

(507) 389-5138  
Fax (507) 389-5139

The Members of the Supreme Court  
Minnesota Judicial Center  
25 Rev. Dr. Martin Luther King Jr. Boulevard  
St. Paul, Minnesota 55155

Dear Members of the Court:

I have been asked to articulate my organization's concerns to changes in mandatory transcripts in Rules 15.09 and 27.03. They are:

1. Cost shifting to my organization. The cost to my organization to incur these costs are way more than we can handle. This concern has been expressed to the Chief Justice already in a letter drafted by John Stuart and Larry Hammerling. I have attached this to this email. The cost would be reflected in getting transcripts for appeals and trial counsel who defend Probation violations. This letter outlines costs to our agency on an already financially strapped PD system.

2. There is great concern that client who are in jail were put there unfairly on the interpretation of term of probation articulated in the transcript. Without the transcript, clients are subjected to the whim of probation officer and jailed when that is not a term of probation. This issue came in in a Fifth District case last month. A client was sentenced on a criminal sexual conduct case. The court did not order treatment. But the probation officer believed treatment was ordered. The client refused to go to any evaluation. A probation A&D order was issued. At the admit deny the PD with the aid of the transcript pointed out treatment was not a condition of probation. The client was released. Without a transcript how many would have assumed treatment. And the client would have been in jail longer.

3. A number of appeals handled by the appellate office deal with withdrawal of guilty pleas. The merits of these appeals can be determined by reviewing the plea and sentencing transcript. Without a transcript, there will be more appeals filed. More cost incurred to get answer we already have. More work by the prosecution and defense to determine what is an appeal with merit. The courts will see more filings for certain.



Page 2.

4. Accuracy will be compromised. Touched on above, clerk notes often fail to state jail credit. They confuse stay of imposition with stay of execution. Terms of probation not ordered are added because the form has those terms. Months of a sentence are mistakenly put down as years. In the next few months counties across this state will be putting in data in MNCIS. To rely on the clerks' notes with about an 80% accuracy target is asking for trouble in the future as folks rely on MNCIS and CrimNet. Probation officers, defense attorneys, prosecutor will not be able to check the accuracy of the information. Time is often of the essence. More delay, more time and more cost will be the effect.

Thank you for your consideration.

Sincerely,

James D. Fleming

**STATE OF MINNESOTA**  
**OFFICE OF THE STATE PUBLIC DEFENDER**

An Equal Opportunity Employer

**Lawrence Hammerling**  
Deputy State Public Defender

2221 University Avenue Southeast  
Suite 425  
Minneapolis, MN 55414

Telephone: (612) 627-6980  
FAX No.: (612) 627-7979

July 16, 2003

Honorable Kathleen Blatz  
Chief Justice of the Minnesota Supreme Court  
305 Minnesota Judicial Center  
25 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155-6102

Re: Mandatory Transcripts

Dear Justice Blatz:

We want to offer comment on the plan to eliminate mandatory plea and sentencing transcripts and urge you not to endorse it. As we understand it, this plan would affect the rules of criminal procedure that mandate the preparation of plea and sentencing transcripts within 30 days of the hearing in felony and gross misdemeanor cases. We have policy and fiscal concerns about doing away with mandatory transcripts.

On the policy end, it should be recognized that the absence of mandatory transcripts would effectively eliminate the expedited appeal of sentence permitted by Minn. R. Crim. P. 28.05. This rule is based on the assumption that a sentencing transcript has been prepared.

More importantly, these transcripts are relied upon by state and local probation and correctional staff for calculating release dates and jail credit and for determining the appropriate classification of those in their custody. As you know, much of the work of these individuals is focused on making punishment and treatment accurately reflect the plea and the sentence imposed by the court. Not having the transcripts will, we believe, compromise the ability of these individuals to accurately carry out the intent of the parties and the court.

We don't think the importance of accurate records can be overstated. It is an unfortunate reality that errors in sentence and jail credit computation are common. If the system's alternative to the transcript is the use of a judgment/sentence form, our experience is that this doesn't work well enough to assure accuracy. One recent example of how forms can fail arose in a Ramsey County case that the appellate office reviewed a few months ago. The defendant received an executed sentence of 40 months. The Ramsey County warrant of commitment form was filled out to reflect 40 years. The Department of Corrections simply transferred the data from this form into their computer system, giving the defendant an SRD in 2029 and an expiration date in 2042. We had the transcript and were able to fix this error quickly. Without transcripts, it will be more difficult to spot errors of this nature and, when more subtle errors occur, impossible to do so. The cost to the individuals who serve more time behind bars is evident, but the societal cost in expensive prison and jail bed space is meaningful as well.

Honorable Kathleen Blatz

On the fiscal side, this change would have a serious affect on my office and upon district defender offices. This year we will open 1000 new files, almost all of which involve felony level convictions. We receive a copy of the sentencing transcript in every one of these cases when we order the district court file under Minn. Stat. § 611.271, and we also receive the plea transcript in those cases in which a guilty plea has been entered. Assuming an average total of 40 pages of mandatory transcript in each case, and an average cost per page of \$3.50, it would cost us \$140,000 to pay for transcripts we now automatically receive with the court file, plus the administrative overhead necessary to prepare and process 1000 additional transcript orders.

District defender offices also rely on plea and sentencing transcripts for many purposes, including addressing probation revocation issues. Last fiscal year (03) public defenders statewide handled 25,296 probation revocation cases. The cost to public defense of purchasing the transcripts required for these cases would be impossible for us to meet in our present financial situation. As is the case with the appellate office, there will also be additional administrative overhead in processing transcript orders, and additional delay in moving these cases through the judicial system while transcripts are being prepared.

We appreciate that the court system faces very difficult financial issues. Shifting the cost of transcripts to defender offices will save the court money on the front end. But further taxing defender resources in this way will inevitably result in staff reduction, delays in case handling, and a lower quality of representation, all of which add to the cost of the justice system.

In sum, doing away with mandatory transcripts in serious criminal cases would affect the justice system's ability to assure accuracy. It would also have a fiscal impact on the appellate and district defender offices. We hope you will weigh these concerns when you address this very difficult issue. Thank you for considering our thoughts and for all of your hard work.

Sincerely,

John M. Stuart  
Minnesota State Public Defender  
and

Lawrence Hammerling  
Deputy State Public Defender

LH:ch

cc: Kevin Kajer

## **APPENDIX C**

# BECKER COUNTY ATTORNEY

COUNTY ATTORNEY  
Joseph A. Evans

LINCOLN PROFESSIONAL CENTER  
P.O. Box 476  
Detroit Lakes, MN 56502-0476  
(218) 847-6590 • FAX (218) 844-6748

ASSISTANTS:  
Michael D. Fritz  
Gretchen D. Thilmony  
James W. Donehower

Hon. Robert Lynn  
Judge Hennepin County District Court  
C-828 Hennepin County Government Center  
Minneapolis, MN 55487

August 27, 2003

Re: Mandatory Transcripts

It is my understanding that the Criminal Rules Committee is considering eliminating the automatic creation of transcripts from plea and sentencing hearings. It is my belief that if this rule passes, it will hamper the accurate and efficient administration of justice.

I have been a prosecutor for nearly 27 years, and I can attest to the fact that all aspects of the plea agreement and/or sentence cannot be gleaned from the court's minutes or a sentencing order. The only reliable way to determine all of the salient facts relative to a plea or sentence is to have a transcript.

While I fully understand the need for finding ways to save money, the proposed rule, if adopted, would simply shift the cost to the counties. Funding for the state court system justifiably belongs with the state rather than the counties.

I would urge you to oppose any change in the current practice. Thank you for your consideration.

Sincerely yours,

Joseph A. Evans  
Becker County Attorney  
[jaevans@co.becker.mn.us](mailto:jaevans@co.becker.mn.us)

JAE/cju

cc: Justice Russell Anderson

307 N. PLEASANT AVE.  
POST OFFICE BOX H  
WINTHROP, MN 55396-0406  
Tel: (507) 647-5377  
Fax: (507) 647-5376

SEVERANCE / GORNISN - ALFSBORG - SIBLEY

KELSO  
INUE, NOERJ

DAVID E. SCHAUER, County Attorney

DONALD E. LANNOYE, Assistant County Attorney

AARON JONES, Assistant County Attorney

August 27, 2003

Chair of the Criminal Rules Committee  
Honorable Robert Lynn  
Judge of Hennepin County District Court  
C-828 Hennepin County Government Center  
Minneapolis, MN 55487

RE: Proposed Rule Change Regarding Transcripts

Dear Judge Lynn and Members of Committee:

I am writing this letter in opposition to the proposed rule change to eliminate the mandatory transcripts from plea and sentencing hearings.

The Committee is well aware of the CRIMNET effort being undertaken by the Courts. The whole purpose of this effort, at least as I understand it, is to increase the amount of information available to the criminal justice system participants and the public. The elimination of transcripts of pleas and sentencing is counter to this purpose. No amount of forms can replace the transcripts, unless the forms quote verbatim the reasoning and details for the plea and the sentence imposed. This would appear to be a huge duplication of effort to have verbatim forms filled out when the verbatim record is already being produced.

Further, not producing transcripts will cause the further delays in the criminal justice system. In a revocation proceeding there will be more adversarial proceedings concerning what were the terms of probation, or in the alternative, delays to obtain a copy of the transcript. Then there is the question of who will pay the cost of the transcript and can it be obtained to meet the timelines for a Morrissey hearing.

In the end, the proposed change is not in the best interest of the criminal justice system. I strongly recommend that the committee reject this proposed change.

Sincerely,

David E. Schauer  
Sibley County Attorney

PC: Justice Russell Anderson  
Minnesota Judicial Center  
25 Rev. Dr. Martin Luther King, Jr. Blvd.  
St. Paul, MN 55155

**County Attorney**  
CONRAD I. FREEBERG

ASSISTANTS  
KATHLEEN M. TRACY  
BRIAN J. MIDDENDORF  
DEBRA J. LUND  
KAREN JOHANSEN MEEKER

Government Center  
213 SE 1st Avenue  
Little Falls, MN 56345-3196  
320/632-0190  
Toll Free: 866-401-1111  
Fax 320/632-0193

# MORRISON COUNTY

August 26, 2003

Honorable Robert Lynn ..  
Judge of Hennepin County District Court  
C-828 Hennepin County Government Center  
Minneapolis, MN 55487

RE: Mandatory Transcripts

Dear Judge Lynn:

I object to the proposed Criminal Law Rule change which would eliminate mandatory transcripts for pleas and sentencings. As a prosecutor, I know how frequently our office uses transcripts to verify the details of a plea agreement, to explain sentencing decisions to victims, and to justify probation revocations. The lack of transcripts would have a significant impact on the ability of our office to do its job. Check-off forms, already too common in the criminal court system, do not explain the reasons for a plea agreement, do not include the admonitions a judge gives to a defendant, and are often inaccurate or misleading.

I understand the Court's need to save money. Prosecuting offices are faced with similar budget constraints. However, at the time of plea or sentencing our prosecutors can not know which case will need a transcript in the future. We do not know when the Defendant and prosecutor will disagree on the terms that resulted in a plea and cannot expect judges to remember nor judge's clerks to note every detail. We do not know which victim will want to know exactly what was said in court or what arguments persuaded a judge to make the decision she or he did. We do not know what defendant will violate his or her probation nor which terms they **will** violate. If transcripts are not mandatory they will have to be ordered when needed. Cases will be rescheduled, delayed or mishandled while the counties, defendants, and victims will incur substantial costs to obtain the needed transcripts. The administration of justice and justice itself will suffer from the proposed change.

I encourage the Rules Committee to maintain the mandatory transcript rule now in effect.

Conrad I. Freeberg  
Morrison County Attorney

CIF/ts

cc: Justice Russell Anderson  
Minnesota Judicial Center  
25 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

THE MINNESOTA  
COUNTY ATTORNEYS  
ASSOCIATION

TO: Judge Lynn, Chair  
Criminal Rules Committee, Minnesota Supreme Court

FROM: Amy Klobuchar, President;  
Minnesota County Attorney's Association

RE: Mandatory Transcripts

DATE: August 22, 2003

CC: Justice Russell Anderson

---

It is my understanding that on September 6, 2003 the Rules Committee will consider a proposal to eliminate the automatic creation of transcripts in plea and sentencing hearings. The Minnesota County Attorney's Association opposes this proposal. No one denies the need to economize in these tight budget times, but the elimination of mandatory transcripts for pleas and sentencings undercuts our ability to conduct the public's business. At the very least, transcripts should continue to be made for All felony-level cases.

The lack of transcripts will delay the criminal justice system and stymie our ability to hold that system accountable to the people we serve. In the past few sessions, the Legislature has appropriated tens of millions of dollars to the Supreme Court for CRIMNET in an effort to increase the amount of information available to the parties and the public. The ironic result of this proposal is, however, the reverse. We will operate with less information and the public records will be devoid of any explanations for a particular plea or sentence. While the Supreme Court has proposed replacing transcripts with forms, forms don't explain the details of sentence, much less why that sentence was imposed.

Among the many practical effects of the elimination of transcripts are these:

1. In a state where probation revocation proceedings are fairly common, the parties will be forced to guess at the nuances of a sentence imposed months or perhaps years before. Likewise, a substitute judge or prosecutor will be forced to guess at what his or her predecessor really meant in imposing, a term and condition of probation. This will create needless litigation as the parties wrangle over exact terms and conditions of a probationary sentence before a transcript is obtained.
2. In a state that prides itself on speedy case disposition standards, the parties will be forced to delay revocation proceedings as one side or the other orders a transcript. The implications for a poor defendant who cannot afford bail while



awaiting this transcript are obvious. The prospect of creating a transcript and meeting the seven-day contested Morrissey Hearing rule is daunting at best.

3. In a state that purported to stop the unfair practice of unfunded state mandates, the Supreme Court proposes unilaterally shifting the cost of these transcripts onto local prosecutor's offices. Unlike the court, local prosecutors are unable to negotiate with court reporters to control the price of these transcripts. There may well be more efficient ways for the court to work with its court reporters. Other jurisdictions have created court reporter pools in larger districts rather than the one reporter/one judge method common in Minnesota. Local prosecutors, however, are certainly not able to impose efficiencies on judicial employees such as court reporters.
4. Finally, in a state that has identified reliable access to prior criminal histories as the primary pressing need of its criminal justice system, law enforcement agencies and prosecutors will be denied vital evidence about past criminal acts. Law enforcement agencies and prosecutors who seek timely information on the factual basis used in prior pleas will be forced to undergo the delay and expense of finding the prior court reporter and ordering a transcript - sometimes years after the offense.

The public implications of the Court's plan are equally unappealing:

1. The public, either themselves or through media outlets, is denied important information about what is fundamentally a public matter: the plea and sentencing process. If a presumptive prison sentence settles for probation, the public is denied either the prosecutor's or court's explanation as to why such a result occurred.
2. Likewise, if a victim who could not face her attacker at sentencing wants a verbatim explanation of what happened, she will be forced to pay for the privilege of what should have been public justice.
3. Conducting the criminal justice process in the open is a cornerstone of our constitutional framework. If the court and parties know that a transcript of the proceeding is not automatically part of the public record, the natural inclination to cut corners or bend the rules goes unchecked. In the end, public accountability is reduced and public confidence eroded.

Ultimately the criminal justice system must be both efficient and accountable. The proposal to eliminate transcripts advances neither goal. I urge you and the committee to reject proposals that will undermine our ability to pursue the fair and open administration of justice.

Thank you for your consideration.

*CLEARWATER COUNTY ATTORNEY'S OFFICE*

213 Main Ave. N. Dept. 301

Bagley, MN 56621  
Phone: (218) 694-6566  
FAX: (218) 694-6540

E-mail:  
kip.fontaine@co.clearwater.mn.us  
jeanine.brand@co.clearwater.mn.us

Kip O.  
*Fontaine*  
County  
Attorney

Jeanine  
Brand  
Assistant  
County  
Attorney

Juanita  
Stuhaug  
Legal  
Secretary

August 22, 2003

Justice Russell Anderson  
Minnesota Supreme Court  
Minnesota Judicial Center  
25 Rev. Martin Luther King, Jr. Blvd.  
St. Paul, MN 55155

The Honorable Robert Lynn  
Chair of the Criminal Rules Committee  
Hennepin County District Court  
C-828 Hennepin Co. Govt. Center  
Minneapolis, MN 55487

RE: Transcribed records of plea and sentencing hearings, Rules 15.09 and 27.03, subd. 6 of the Rules of Criminal Procedure

Dear Justice Anderson and Judge Lynn:

It is my understanding that on September 6, 2003, the Supreme Court's Criminal Rules Committee will be meeting to consider a rule eliminating the requirement of transcripts from felony/gross misdemeanor plea and sentencing hearings. I strongly urge the Rules Committee to maintain the present requirement of transcripts.

These transcripts are not a luxury. They are used every day when making charging decisions, considering enhanceable charges, meeting Stewart/Nordstrom challenges, and contemplating and proving probation violations. Judges, who were not the sentencing judges, routinely use them to familiarize themselves with the cases. As you know, notes kept by deputy court administrators are no substitute for a verbatim transcript.

Justice Anderson and Judge Lynn

Page 2

August 22, 2003

In. a small county with limited resources, the potential shifting of the costs of these transcripts to my office will have a deleterious impact on my budget. In order to insure that the people, including victims, defendants, and the public, are accorded justice these transcripts are of vital importance. I ask you to oppose the proposed rule changes.

Thank you.

Very truly yours,

Kip O. Fontaine  
Clearwater County Attorney

KOF js

GAYLORD A. SAETRE  
County Attorney

TODD COUNTY ATTORNEY  
TODD COUNTY COURTHOUSE  
212 2ND AVENUE SOUTH, SUITE 2  
LONG PRAIRIE, MINNESOTA 56347  
PHONE: (320) 732-6039  
FAX: (320) 732-4120

JANE M. GUSTAFSON  
JOE E. JUDD  
Assistant County Attorneys

August 21, 2003

The Honorable Robert Lynn  
Judge of Hennepin County District Court  
C-828 Hennepin County Government Center  
Minneapolis, MN 55487

RE: Preparations of Transcripts

Dear Judge Lynn:

By now I am sure you have been inundated with letters or emails in your capacity as chairperson of the Criminal Rules Committee.

I will not take your time to list the obvious reasons why we are opposing any rule that would change the automatic preparation of transcripts. I am certain that you have heard all the arguments.

My main concern is that I cannot think of any reason why there should be a change other than for budgetary reasons.

I would hope that the Rules Committee would realize that we prosecutors, as well as defense attorneys and the judges themselves need these transcripts at subsequent hearings and reliance we place on them.

We ask that you and the Rules Committee members do the right thing and deny Chief Justice Blatz's request to eliminate the creation of these transcripts.

Sincerely,

Gaylord A. Saetre  
Todd County Attorney

smp

cc: Justice Russell Anderson  
Minnesota Judicial Center  
25 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

Minnesota County Attorney's Association  
100 Empire Dr., Suite 200  
St. Paul, MN 55103

*KITTSON COUNTY ATTORNEY  
State of Minnesota  
P.O. Box 790  
Hallock, MN 56728*

*Roger C. Malm, County Attorney  
Jeffrey W. Hane, Assistant  
Robert K. Severson, Assistant*

*Telephone (218) 843-3686  
FAX (218) 843-2724*

August 21, 2003

Justice Russell Anderson  
Minnesota Supreme Court  
Minnesota Judicial Center  
25 Reverend Dr. Martin Luther King, Jr. Blvd.  
St. Paul, MN 55155

Dear Justice Anderson:

I understand that you are a member of the Criminal Rules Committee that will be called upon to consider a request made by the Conference of Chief Judges of the District Court to eliminate the automatic creation of transcripts from plea hearings and sentencing hearings held in district court.

As a part-time county attorney, I appreciate the efforts to economize wherever that is feasible. However, I believe that the elimination of the automatic preparation of these transcripts will delay the administration of the criminal justice system.

If the intent is to eliminate the automatic preparation of these transcripts so that Kittson County is forced to order and purchase the transcripts whenever they are required, then it is another form of shifting of costs of administration from the State to Kittson County. In such a case, my budget will, of course, increase and if we are getting down to a situation where the State District Court cannot afford the cost and proposes a shift to Kittson County, then perhaps the Conference of Chief Judges should say that to all of the counties and we should set about to determine what the cost is to provide for the automatic preparation of plea and sentencing transcripts.

I cannot rely upon my recollection or my notes or the minutes of the Court Administrator's Office to determine exactly what was said at a plea or sentencing hearing and so the transcripts for me, even as a rural part-time county attorney, have proved to be important over the years.

It would be my hope that after due consideration the rules committee will not eliminate the practice of having the court reporters automatically create transcripts from plea and sentencing hearings. If the cost to continue such a practice is substantial, then I am of the opinion that we need to determine how we bear that cost or, if possible, reduce the cost while still carrying out the practice which I believe is an important one in our system of justice, including the timely review of decisions when such a review is required to be made.

Thank you for taking the time to hear of my concern.

Very truly yours,

Roger C.  
Malm

RCM:kci

Renken, Bev

---

From: Thomas A. Opheim [opheimlaw@loretel.net]  
Sent: Thursday, August 28, 2003 10:23 AM  
To: Anderson, Russell  
Subject: Mandatory Transcript

Dear Justice Russell Anderson:

Greetings from the North Country!

The County Attorneys Association has informed me that you are on the Rules Committee that is considering eliminating the automatic creation of transcripts from plea and sentencing hearings. Amy Klobuchar has made a list of many of the reasons why the County Attorneys oppose the elimination of these transcripts. I refer you to her correspondence with the Rules Committee. From my standpoint, many times the transcript is the only accurate record we have of what transpired at the sentencing hearing. Unfortunately, our own records sometimes contain what the original negotiations were and may not contain what the final disposition of the case was. These transcripts, while not a major expense, are of immeasurable benefit to the County Attorneys in handling probation violations. The actual sentence and the reasoning behind it are important tools in handling post judgment matters. They are the best record and it is important that an official record exists so that we are not relying on our own memories of events that occurred many months or years before.

In my 28 years of practice, this is the only time I have ever written to a Committee regarding a proposed Rule, so I hope that you appreciate how important I think it is that we keep these transcripts available.

Respectfully and sincerely yours,

Thomas A. Opheim, Norman County Attorney

8/29/2003

From: Tom Kelly  
[mailto:Tom.Kelly@co.wright.mn.us] Sent:  
Thursday, August 21, 2003 9:43 AM To: Anderson,  
Russell Subject: Transcripts

Dear Judge Anderson: I am the Wright County Attorney and I am writing regarding the need for transcripts in order for us to conduct business ...Without the need to re-invent the wheel I 100% agree with the argument and reasoning of Hennepin County Attorney, Amy Klobuchar. Thank you for your time and consideration ...Sincerely, Tom Kelly



OFFICE OF THE RAMSEY COUNTY ATTORNEY

SUSAN GAERTNER

County Attorney

September 2, 2003

The Honorable Robert Lynn, Judge  
Hennepin County District Court  
C-828 Hennepin County Government Center  
Minneapolis, MN 55487

Dear Judge Lynn:

I am writing to express my concern about a proposal under consideration by the Rules Committee of the Minnesota Supreme Court to eliminate mandatory transcripts. I am strongly opposed to this proposal and urge that the Rules Committee reject it.

Among the many arguments against the elimination of mandatory transcripts, I would like to emphasize two key points:

First, transcripts serve an invaluable function as the main record of any court proceeding. They are a particularly essential tool in determining facts surrounding guilty pleas and sentences. Our office and other arms of the criminal justice system routinely depend on such transcripts. The elimination of mandatory transcripts in felony cases would be an unfortunate step backward in terms of due process, fairness and efficiency.

Second, the elimination of mandatory transcripts has been promoted as a cost-savings measure. In fact, it would only shift costs from the courts to prosecutors, public defenders and private attorneys. At least one-third of the appeal and post-conviction cases in the Ramsey County Attorney's Office involve guilty plea withdrawals, sentencing issues or probation revocations. Many of those are raised pro se, so that our office would bear the burden of ordering the necessary transcripts. At a time when our resources are shrinking and demands increasing, this added cost would add to our

I appreciate your attention to this issue in your capacity as chair of the Criminal Rules Committee. Thank you for considering my views..

Sincerely,

Susan Gaertner  
Ramsey County Attorney

cc: The Honorable Russell Anderson

September 5,  
2003

Honorable Robert Lynn  
Judge of Hennepin County District Court  
C-828 Hennepin County Government  
Center  
Minneapolis, MN 55487

Dear Judge  
Lynn,

This letter is intended to make known to the Chief Judges and the Supreme Court Rules Committee that the Sherburne County Attorney's Office is opposed to the recent proposal to amend the Rules of Criminal Procedure to eliminate the automatic creation of transcripts form plea and sentencing hearings. This important document is essential in properly and efficiently conducting hearings for both the felony and gross misdemeanor cases.

These transcripts are used daily in court by all affected parties in the following types of proceedings:

1. In probation revocation hearings to determine the original sentence and the comments made by the court when the defendant was sentenced. Most violations of probation occur after months or years after probation has been imposed and many of these hearings are handled by attorneys or judges who are unfamiliar with the disposition of the case. Reviewing the transcript of the plea and sentence is an everyday occurrence to determine the exact terms and conditions of a probationary sentence before the case is resolved:
2. For criminal cases involving Spreigl material, the transcripts of the plea and sentence are commonly copied or certified to be used in other criminal cases. They are also disseminated to defense counsel to establish their client's criminal history and participation in prior criminal activity.
3. In sentencing hearings, the plea transcripts regularly resolve any disputes between the parties as to the terms, conditions and understandings of a plea agreement.
4. Victims, members of the public, future employers, correctional institutions, probation officer's and many other entities review the plea and sentencing transcripts for germane information relevant to their search of these documents.

September 5,  
2003  
Page 2

For these reasons, the attorney's in the Sherburne County Attorney's Office unanimously request that the proposed rule change not be adopted. We all realize in this time of budget constraints that some needless paperwork can be eliminated. However in this instance the transcripts in criminal matters are an integral part of conducting the competent prosecution of crime. Eliminating plea and sentencing transcripts would be penny wise and pound foolish.

Hopefully, common sense will prevail in this matter. Thank you for your consideration of our position in this proposed rule change.

Sincer  
ely,

Kathy A. Heaney  
Sherburne County  
Attorney

MINNESOTA TEAMSTERS PUBLIC & LAW ENFORCEMENT EMPLOYEES' UNION,

LOCAL NO. 320

*AFFILIATED WITH*  
International Brotherhood of Teamsters

Susan E. Mauren..... Michael J Golen    Joanne Derby    Paul Nelson    John Avery    Marty Lamb    Richard Wheeler  
*Secretary-Treasurer*                      *President*                      *Vice President*                      *Recording Secretary*                      *Trustee*                      *Trustee*                      *Trustee*

September 4, 2003

Faxed and mailed 612-317-6281  
Attention: Patti

The Honorable Robert H. Lynn  
Judge of District Court  
C-1200 Hennepin Co Govn't Center  
300 South 6th Street  
Minneapolis MN 55487

Dear Judge Lynn:

I understand the Rules Committee, which you chair, will be meeting on Saturday, September 6, 2003, and that mandatory transcripts is one of the agenda items to be discussed. On behalf of Teamsters Local 320, the exclusive representative of Minnesota's Official Court Reporters, I respectfully request the opportunity to be heard.

Unfortunately, I am unable to attend the meeting Saturday, September 6th, however, I would appreciate the opportunity to address the Committee prior to any decisions being made on the issue of mandatory transcripts, a matter of critical importance to our membership.

Please contact my office at the above address. Thank you.

Sincerely,  
**TEAMSTERS LOCAL NO. P20**

Kari Seime  
Business Agent

KS/mt  
opeiu#12  
c: Judge Russell Anderson, Supreme Court Liaison (Fax#651-282-5115)  
Lenny Castro (Fax #612-348-6179)  
Paul Scoggin (Fax #612-348-3061)  
mmt/CourtReporters/GenCorr/RLynn

# Sherburne County Attorney's Office

and

## Victim Witness Services

*Kathleen A. Heaney, Sherburne County Attorney*

September 5, 2003

Honorable Robert Lynn  
Judge of Hennepin County District Court  
C-328 Hennepin County Government Center  
Minneapolis, MN 55487

Dear Judge Lynn,

This letter is intended to make known to the Chief Judges and the Supreme Court Rules Committee that the Sherburne County Attorney's Office is opposed to the recent proposal to amend the Rules of Criminal procedure to eliminate the automatic creation of transcripts form plea and sentencing hearings. This important document is essential in properly and efficiently conducting hearings for both the felony and gross misdemeanor cases.

These transcripts are used daily in court by all affected parties in, the following types of proceedings:

1. In probation revocation hearings to determine the original sentence and, the comments made by the court when the defendant was sentenced. Most violations of probation. occur after months or years after probation has been imposed and, many of these hearings are handled by attorneys or judges who are unfamiliar with the disposition of the case. Reviewing the transcript of the plea and sentence is an everyday occurrence to determine the exact terms and conditions of a probationary sentence before the case is resolved.
2. For criminal cases involving Spreigl material, the transcripts of the plea and sentence are commonly copied or certified to be used in other criminal cases. They are also disseminated to defense counsel to establish their client's criminal history and participation in prior criminal activity.
3. In sentencing hearings, the plea transcripts regularly resolve any disputes between the parties as to the terms, conditions and understandings of a plea agreement.
4. Victims, members of the public, future employers, correctional institutions, probation officer's and many other entities review the plea and sentencing transcripts for germane information relevant to their search of these documents.

13880 Highway 10, Elk River, MN 55330-4601  
(763) 241-2565 - Fax (?63) 241-2575 • 1-800-433-5244  
*attorney@co.sherburne.mn.us*

September  
5, 2003  
Page 2

For these reasons, the attorney's in the Sherburne County Attorney's Office unanimously request that the proposed rule change not be adopted. We all realize in this time of budget constraints that some needless paperwork can be eliminated. However in this instance the transcripts in criminal matters are an integral part of conducting the competent prosecution of crime. Eliminating plea and sentencing transcripts would be penny wise and pound foolish.

Hopefully, common sense will prevail in this matter. Thank you for your consideration of our position in this proposed rule change.

Sincerely,

Kathy A. Heaney  
Sherburne County  
Attorney

KA  
\*\*

# Chisago County Attorney's Office

Katherine M. Johnson  
County Attorney

Wendy Stenberg  
Victim Witness  
Assistance Coordinator

313 North Main Street, Room 373  
Center City, MN 55012-9663  
Phone: (651) 213-0411

Fax: (651) 213-0260

Assistant County Attorney  
Alfred S. (Ted) Alliegro  
Susan E. Drabek  
Daniel R. Vlieger  
Christopher A. Anderson  
Mark D. Person

The Honorable Robert Lynn, Judge  
Hennepin County District Court  
C-828  
Hennepin County Government Center  
Minneapolis, MN 55155

September 2, 2003

RE: Mandatory Transcripts

Honorable Judge Lynn:

I am writing this letter in opposition to the proposed amendment to the Rules of Criminal Procedure that would eliminate the automatic creation of transcripts from plea and sentencing hearings. The value of the Rule as it stands far outweighs any monetary saving that the state may realize for several reasons, including but not limited to the following:

1. In a state where probation revocation proceedings are fairly common, the parties will be forced to guess at the nuances of a sentence imposed months or perhaps years before. Likewise, a substitute judge or prosecutor will be forced to guess at what his or her predecessor really meant in imposing a term and condition of probation. This will create needless litigation as the parties' wrangle over exact terms and conditions of a probationary sentence before a transcript is obtained.
2. In a state that prides itself on speedy case disposition standards, the parties will be forced to delay revocation proceedings as one side or the other orders a transcript. The implications for a poor defendant who cannot afford bail while awaiting this transcript are obvious. The prospect of creating a transcript and meeting the seven-day contested Morrissey Hearing rule is daunting at best.
3. In a state that purported to stop the unfair practice of unfunded state mandates, the Supreme Court proposes unilaterally shifting the cost of these transcripts onto local prosecutor's offices. Unlike the court, local prosecutors are unable to negotiate with court reporters to control the price of these transcripts. There may well be more



efficient ways for the court to work with its court reporters. Other jurisdictions have created court reporter pools in larger districts rather than the one reporter/one judge method common in Minnesota. Local prosecutors, however, are certainly not able to impose efficiencies on judicial employees such as court reporters.

4. Finally, in a state that has identified reliable access to prior criminal histories as the primary pressing need of its criminal justice system, law enforcement agencies and prosecutors will be denied vital evidence about past criminal acts. Law enforcement agencies and prosecutors who seek timely information on the factual basis used in prior pleas will be forced to undergo the delay and expense of finding the prior court reporter and ordering a transcript - sometimes years after the offense.

The public implications of the Court's plan are equally unappealing:

1. The public, either themselves or through media outlets, is denied important information about what is fundamentally a public matter: the plea and sentencing process. If a presumptive prison sentence settles for probation, the public is denied either the prosecutor's or court's explanation as to why such a result occurred.

2. Likewise, if a victim who could not face her attacker at sentencing wants a verbatim explanation of what happened, she will be forced to pay for the privilege of what should have been public justice.

3. Conducting the criminal justice process in the open is a cornerstone of our constitutional framework. If the court and parties know that a transcript of the proceeding is not automatically part of the public record, the natural inclination to cut corners or bend the rules goes unchecked. In the end, public accountability is reduced and public confidence eroded.

Thank you for your thoughtful consideration of the above.

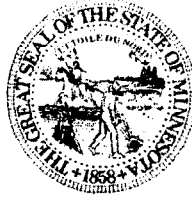
Chisago County Attorney

KMJ/jm

C1-84-2137

STATE OF MINNESOTA

Peggy Hill  
COURT REPORTER



BLUE EARTH COUNTY COURTHOUSE  
204 S. FIFTH ST. / P.O. BOX 347  
MANKATO, MINNESOTA 56001  
(507) 389-8233

September 25, 2003

OFFICE OF  
APPELLATE COURTS

SEP 29 2003

FILED

Mr. Frederick Grittner  
Clerk of Appellate Courts  
305 Judicial Center  
25 Rev. Dr. Martin Luther King, Jr. Blvd.  
St. Paul, MN 55155

Re: Mandatory Transcripts

Dear Mr. Grittner:

I have worked as a court reporter for over 10 years. During that time, there have been numerous court hearings where transcripts are referred to. This is just one scenario of what I see happening if a mandatory transcript is not in the file: The prosecutor and defense attorney will be present with the defendant at a hearing. A dispute will arise as to what was said at a prior hearing. Instead of being able to resolve the dispute immediately, another hearing will have to be scheduled. The court reporter will need to type the transcript. The prosecutor, defense attorney, defendant, probation officer, Judge, and court reporter will all have to return for another hearing. If the defendant is in custody, a transport officer will also have to be involved. Court administration will have to do extra work scheduling the hearing and entering it on the system. So instead of saving the state money by not preparing the transcript, it will still have to be prepared and paid for; but in addition it has cost the state additional time for the prosecutor, the defense attorney, the probation officer, the Judge, the court reporter, etc. These people are already overburdened and don't need additional unnecessary hearings. Doing away with mandatory transcripts will not be saving the state money when you look at the big picture.

Very truly yours,

Peggy Hill



OFFICE OF  
APPELLATE COURTS

OCT 2 - 2003

FILED

**OFFICE OF PUBLIC DEFENDER  
FIFTH JUDICIAL DISTRICT**

**Chief Public Defender**  
James D. Fleming

12 Civic Center Plaza, Suite 2070  
Post Office Box 1059  
Mankato, Minnesota 56002-1059

(507) 389-5138  
Fax (507) 389-5139

September 30, 2003

Frederick K. Grittner  
Clerk of Appellate Courts  
Minnesota Judicial Center  
25 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

Re: Criminal Rule Changes for Mandatory Transcripts in Criminal Rule 15.09 and 27.03

Dear Mr. Grittner:

I wish to make an oral presentation to the Supreme Court on the proposed rule change for mandatory transcripts. I am concerned about the proposed changes to Criminal Rules 15.09 and 27.03. My comments will focus on the significant cost shifting to Public Defense. I would also comment on the issue of accuracy of transcripts.

I provided the court with my written concerns regarding the proposed changes. My comments will briefly expand on what I have provided in writing.

If there is anything more that I could provide please do not hesitate to call me.

Sincerely,



James D. Fleming

cc: John Stuart

STATE OF MINNESOTA  
DISTRICT COURT  
SIXTH JUDICIAL DISTRICT

OFFICE OF  
APPELLATE COURTS

OCT 2 - 2003

FILED

Donald L. Narveson  
District Court Reporter

Carlton County Courthouse  
Carlton, Minnesota 55718  
218-384-9112

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September 30, 2003

The Members of the Supreme Court  
Minnesota Judicial Center  
25 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

RE: Proposal to Eliminate Mandatory Transcripts

Dear Members of the Court:

I respectfully submit this letter in opposition to the above-referenced proposal.

I have read the many letters from prosecution and defense in opposition to this proposal, and they put forth some very sound and salient reasons for retaining mandatory transcripts. From their respective positions, there are profound effects such a proposal would have.

There is yet another position of which the Court needs to be made aware, and that is the drastic impact this proposal will have on the official court reporters in Minnesota.

I cannot imagine an official reporter in this state that does not consider the income from mandatory transcript production to be an integral part of our employment package. Depending on the jurisdiction, that transcript production can comprise anywhere from 10 to 20-plus percent of our income. Our *entire* income package is one of the reasons why we leave the private sector of freelancing and/or relocate from other states to accept an officialship in Minnesota.

In my own case, I gave up a freelance practice to accept my officialship in the Sixth District. It required relocation, and to that end I assumed a mortgage in Duluth on a house that was *income appropriate*. I created a budget, bought a car, planned vacations – all decisions based on the income level I was then at, and never would I have imagined that my income would be subject to a future 20-percent hit – through no fault of my own.

On the contrary, I actually believed, just like every other believer in the American Dream, that through hard work and dedication my income level would rise or, at the very least, remain static.

Donald L. Narveson  
September 30, 2003  
Page Two

Notwithstanding all good argument to the contrary and with the realization that this proposal may actually pass, my wife and I have taken certain steps to deal with that eventuality.

My wife has applied for a teaching position back in Henderson, Nevada, and has actually flown out there for an interview. She taught in Henderson for 10 years prior to moving to Duluth, giving up that long-term employment in the belief, correctly at the time, that my income as an official would be sufficient for our family.

She has applied for teaching positions in Minnesota as far away as Roseville, which means a 300-mile roundtrip commute from Duluth or, in the alternative, her establishing a residence nearer Roseville. There is absolutely no prospect of teaching positions in northern Minnesota. My wife, a woman with 32 credits beyond her Master's degree, has also applied at Blockbuster Video. These are some of the things she has done to ameliorate an anticipated monstrous budget impact on our family.

I have begun soliciting freelance deposition work during evening hours, weekends and vacation days.

Together, we have cancelled planned vacations.

If this proposal is successful, it will put my mortgage in jeopardy, it will alter my retirement date, and it will have ramifications I have not even yet imagined. And this is the effect on just *one* reporter among all the officials in the state.

In light of the overwhelming opposition to eliminating mandatory transcripts from not only both sides of the adversary system but your own Rules Committee, as well as the Minnesota Legislature refusing to act on this issue, acceptance of this proposal by the Supreme Court would seem to indicate a collective personal agenda which has nothing to do with budgetary concerns. I would hope the distinguished members of this Court would rise above that.

I realize times are tough and that Minnesota is in the throes of a severe budget problem. I am certainly not averse to some belt-tightening, but I do strenuously object to putting my pants around my neck and cinching the belt to the last hole, which in effect this proposal will accomplish. I do not believe that one class of worker, the official court reporter, should be made to suffer such inequity to solve a system- and statewide problem. I respectfully suggest to the Court that passage of this unconscionable proposal would result in a weakened morale, and we are not in the kind of business that can suffer easily that weakening.

Donald L. Narveson  
September 30, 2003  
Page Three

All of us in the judicial system pride ourselves on providing a vital service to the citizens of Minnesota – courts of equity. It seems oddly paradoxical that we who labor here may not be treated with the same level of equity as the citizens we serve. After all, being an official reporter does not strip us of our citizenship. Just treat us fairly.

Respectfully,

A handwritten signature in cursive script, appearing to read "Donald L. Narveson".

DONALD L. NARVESON  
Official Court Reporter  
Six Judicial District

STATE OF MINNESOTA  
FOURTH JUDICIAL DISTRICT COURT



JACK NORDBY  
JUDGE  
HENNEPIN COUNTY GOVERNMENT CENTER  
MINNEAPOLIS, MINNESOTA 55487-0421  
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September 29, 2003

OFFICE OF  
APPELLATE COURTS

OCT - 2 2003

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Frederick Grittner  
Clerk of Appellate Courts  
305 Judicial Center  
25 Rev. Dr. Martin Luther King, Jr. Blvd.  
St. Paul, Mn. 55155

To: Minnesota Supreme Court

Re: Proposed Amendments Regarding Transcripts  
CI 84 - 2137

As a trial judge handling criminal cases, (and before that for almost thirty years a criminal defense lawyer), I write to protest as vigorously as I can the proposed amendments.

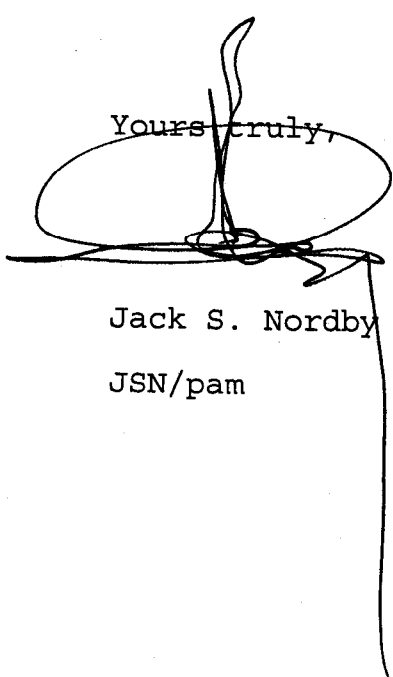
Sentencing transcripts are essential for a variety of reasons, and it is frequently important that they be available immediately. It is very common for commitments and other post-sentencing documents to be in error, and probation revocation hearings are a large and regular part of our business; immediate access to transcripts is indispensable in these matters.

Beyond this, I join the well-expressed remarks of Paul Scoggin, James Fleming, John Stuart, Lawrence Hammerling, Joseph Evans, David Shauer, Conrad Freeberg, Amy Klobuchar, Kip Fontaine, Susan Gaertner, Gaylord Saetre, Roger Malm, Thomas Opheim, and Kathy Heaney.

It should, I think, strike the Court as significant that this group consists of both prosecutors and defense lawyers, all of whom make essentially the same points, which are nicely summarized in Mr. Scoggin's submission.

From a judge's point of view, I can assure you that we simply cannot do our job without these transcripts, which embody the official and controlling statement of sentencing. See State v. Staloch, 643 N.W.2d 329 (Minn. App. 2002). And it is obvious from the enormous number of appellate decisions involving errors in sentencing that we trial judges cannot be expected or depended upon to eliminate mistakes in sentencing, no matter how assiduously we try. This court has recently shown itself to be particularly unforgiving of these. See State v. Geller, 665 N.W.2d 514 (Minn. 2003).

Yours truly,



Jack S. Nordby

JSN/pam



OCT 15 2003

FILED



**District Court of Minnesota**  
**SEVENTH JUDICIAL DISTRICT**

**BERNARD E. BOLAND**  
JUDGE OF DISTRICT COURT

CHAMBERS  
STEARNS COUNTY COURTHOUSE  
POST OFFICE BOX 152  
ST. CLOUD, MINNESOTA 56302

October 1, 2003

Hon. Kathleen Blatz  
Chief Justice  
Minnesota Supreme Court  
Minnesota Judicial Center  
St. Paul, MN 55415

Re: Mandatory Transcript Payments

Dear Justice Blatz and Members of the Supreme Court:

I am currently on leave of absence serving as an international judge in Bosnia and Herzegovina. I have strong opinions about the mandatory transcript policy, which I would like to submit for the record by this letter.

Until about six weeks ago judges of the State Court of Bosnia and Herzegovina, in addition to their salaries, were paid a dislocation allowance equal to their base salary because they were required to be away from their families during the day while at work. They were paid a training allowance in addition to their salaries for each day away from the Bench while attending mandatory training, and they were entitled to an apartment at state expense if their home was outside the Capitol City of Sarajevo. The government also provided lunch for each day they worked.

The recent termination of these benefits and the adoption of a more reasonable and transparent compensation package by the present government were extremely painful and rancorous. One has to assume that over the 52 years of communist government in this country prior to the Dayton Accords, policy makers established these ludicrous payments to judges in order to avoid the difficult and sensitive political issues inherent in judicial compensation. I mention them because they are not entirely dissimilar to the payments made to Minnesota court reporters for production of hearing transcripts that have little use except to increase the compensation of court reporters.

All of you are by now painfully aware of the cost of transcripts and the salary scale of court reporters. If reporters are, on the basis of the economy or comparable worth, entitled to increased compensation, it should be bargained for and granted on the same basis as increases for other employees. To the extent that transcript income is used to supplement a structured salary plan it is a disservice to the reporters and a shortsighted

**Hon. Kathleen Blatz**

**October 1, 2003**

**Page Two**

personnel policy. Moreover, mandatory transcripts cannot be measured on a cost-benefit basis—most of them are never read. While I understand a number of judges claim to frequently refer to these transcripts, even on a daily basis, I don't think it's an exaggeration to say that most of us use transcripts about as often as buggy whips.

The cost of transcripts can't merely be measured in money. Transcripts have not been insignificant in the debates surrounding unification of the trial courts and other critical policy decisions affecting the structure and efficiency of the judicial system. They have been a source of friction in courthouses for several decades. They were an issue in the unification of the trial courts in the early 1980s, when many court reporters joined in the bitter dispute among the states' judges in order to further their interests in the allocation of transcript income. There's little question that the pressure to produce transcripts and the claims resulting from carpal tunnel disease were a cause of the workers' compensation crisis in the judicial branch of a dozen years ago, and the competition for transcript income has not infrequently caused friction among court employees throughout the state.

In large part because court reporters have been unfailingly loyal and indispensable to the judges for whom they work, transcript policy has frequently been contentious. Court reporters are almost always skillful, professional and dependable employees. That is, at least, the case with my court reporter who has worked for me for more than 20 years. Under the circumstances, while it is difficult for the issue not to be personal, it would be a disservice to all concerned if the issue continues to be personal and the rule governing mandatory preparation of plea and sentencing transcripts is not repealed.

Very truly yours,



Bernard E. Boland *gbl*