

OCT 12 2012

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STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8049

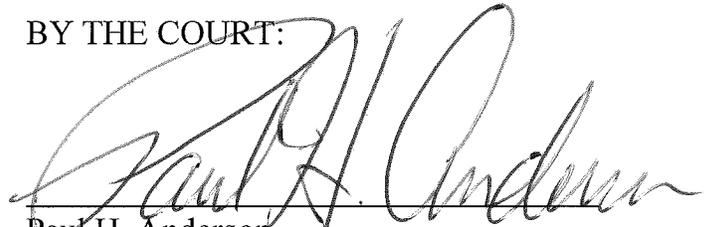
**ORDER ESTABLISHING DEADLINE FOR
SUBMITTING COMMENTS ON PROPOSED
AMENDMENTS TO THE RULES OF
CRIMINAL PROCEDURE**

The Minnesota Supreme Court Advisory Committee on Rules of Criminal Procedure filed a report on August 31, 2012, proposing amendments to Rule 23.05 of the Minnesota Rules of Criminal Procedure. This court will consider the proposed amendments after soliciting and reviewing comments on the proposal.

IT IS HEREBY ORDERED that any individual wishing to provide written statements in support of or opposition to the proposed amendments shall submit twelve copies addressed to Bridget Gernander, Clerk of the Appellate Courts, 25 Rev. Dr. Martin Luther King, Jr. Boulevard, St. Paul, Minnesota 55155, no later than November 26, 2012. A copy of the committee's report containing the proposed amendments is attached to this order.

DATED: October 11, 2012

BY THE COURT:



Paul H. Anderson
Associate Justice

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REPORT AND PROPOSED AMENDMENTS TO THE
MINNESOTA RULES OF CRIMINAL PROCEDURE

MINNESOTA SUPREME COURT ADVISORY COMMITTEE
ON RULES OF CRIMINAL PROCEDURE

ADM10-8049

August 31, 2012

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Paul Young

Hon. Paul H. Anderson
Supreme Court Liaison

Karen Kampa Jaszewski
Staff Attorney

I. INTRODUCTION

As directed by a March 30, 2012, letter from the Supreme Court to the Chair of the Advisory Committee on Rules of Criminal Procedure, the Committee met to discuss whether any amendments to Minn. R. Crim. P. 23.05, subd. 2, are needed in light of the August 1, 2012, amendments to Minn. Stat. § 609.131, subd. 1, which prohibits the appointment of a public defender to defendants charged with misdemeanors certified as petty misdemeanors.

II. DISCUSSION

The Committee discussed the current standard for court-appointed counsel in Rule 23.05, which states that a defendant charged with a misdemeanor offense certified as a petty misdemeanor cannot qualify for court appointed counsel unless the offense involves moral turpitude. The Committee agreed that moral turpitude is not a well-defined term and therefore is not a good standard for determining which defendants are entitled to court appointed counsel. The Committee agreed that the moral turpitude standard should be removed from the rule.

The Committee next turned its attention to the question of whether a new Rule 23.05, subd. 2, should apply to the right to “court appointed counsel” or be limited to the right to a public defender. Several Committee members expressed the view that district courts have inherent authority to appoint counsel other than a public defender to an indigent defendant in a petty misdemeanor case. If so, it would be unnecessary to grant that authority in Rule 23.05. Committee members were also concerned that if the rule authorized the appointment of counsel other than a public defender, the rule would raise questions about what government entity is responsible for payment. For these reasons, the Committee decided that the rule should be silent regarding the court’s authority, if any, to appoint counsel other than a public defender in petty misdemeanor cases.

The Committee also considered adding a comment to the rule stating that the amended rule is in no way intended to limit any inherent authority the court may have to appoint counsel other than the public defender in petty misdemeanor cases. The Committee ultimately decided against including such a comment. Because comments do not have the force of law, the Committee determined the better approach would be to note in this report the Committee’s concern that while it is not the Committee’s intent, the proposed rule change may imply some limitation on (or the elimination of) the court’s inherent authority to appoint counsel in petty misdemeanor cases.

After determining that the proposed rule should be limited to the right to public defender representation, the Committee addressed what standard should be adopted to define the scope of that right. The Committee agreed that the rule should recognize two principles: first, that as a matter of comity, the legislative prohibition against appointing

a public defender in certified petty misdemeanor cases should be adopted; and second, that when the defendant's consent is required to certify a misdemeanor offense as a petty misdemeanor, an indigent defendant must have an opportunity to consult with a public defender before making the consent decision.

The two sentences in the Committee's proposed Rule 23.05, subd. 2, reflect these two principles. Under the proposed rule, when a defendant's consent to certification is not required, the court may grant a prosecutor's certification motion without regard to a public defender. But when the defendant's consent to certification is required, the court must advise an unrepresented defendant of the right to apply for a public defender before ruling on a prosecutor's certification motion.

The Committee discussed whether the rule should address the right to continued representation by a public defender when a public defender is appointed while the case is a misdemeanor and the prosecutor later moves for certification. In light of the amended section 609.131, subdivision 1, the Committee agreed that the rule should not require the public defender to continue representing the defendant after a misdemeanor has been certified as a petty misdemeanor. But, the Committee also agreed that the rule should not prohibit the public defender from continuing with the representation after certification.¹

Also effective August 1, 2012, Minn. Stat. § 611.17(b) was amended to state that the State Public Defender must furnish a public defender application form, which must be used by district courts statewide. The State Public Defender has provided a form, which is posted on the Judicial Branch website (www.mncourts.gov) in the Court Forms section under the Criminal Forms, General category. In light of these developments, Form 47, Application for Public Defender has become obsolete.

Respectfully Submitted,

ADVISORY COMMITTEE ON
RULES OF CRIMINAL PROCEDURE

¹ Minn. Stat. § 609.131, subd. 1, provides that "When an offense is certified as a petty misdemeanor under this section, the defendant is not eligible for the appointment of a public defender." In light of its focus on "the *appointment* of a public defender," (emphasis added) the statute could be interpreted to allow such continued representation.

PROPOSED AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE

The Supreme Court Advisory Committee on Rules of Criminal Procedure recommends that the following amendment be made in the Minnesota Rules of Criminal Procedure. In the proposed amendment, deletions are indicated by a line drawn through the words and additions by a line drawn under the words.

1. Amend Rule 23.05, subd. 2, as follows:

Subd. 2. Right to Public Defender Representation~~Appointed Counsel~~.—Upon certification as a petty misdemeanor, the defendant is not entitled to representation of the public defender. In cases where the defendant's consent to certification is required, and the prosecutor moves for certification, the judge must advise an unrepresented defendant of the right to apply for a public defender. A defendant charged with a misdemeanor offense certified as a petty misdemeanor cannot qualify for court appointed counsel unless the offense involves moral turpitude. In these cases the defendant must qualify financially prior to appointment.

2. Delete the following form from the Appendix of Forms:

Form 47 Application for Public Defender