

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8049

OFFICE OF  
APPELLATE COURTS

MAY 22 2014

**FILED**

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

The Minnesota Supreme Court Advisory Committee on the Rules of Criminal Procedure filed a report on April 23, 2014, proposing amendments to: identify the procedures for complaints filed during pretrial proceedings; clarify procedures related to payable ordinance violations; and address the admissibility of testimony given at a probation revocation hearing involving allegations of new criminal conduct. The 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 comments in support of or opposition to the proposed amendments shall file an original and one copy of those comments with AnnMarie O'Neill, Clerk of the Appellate Courts, 25 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul, Minnesota 55155, no later than July 21, 2014. A copy of the committee's report with the proposed amendments is attached to this order.

Dated: May 22, 2014

BY THE COURT:

  
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Alan C. Page  
Associate Justice

APR 23 2014

**FILED**

**REPORT AND PROPOSED AMENDMENTS TO THE  
MINNESOTA RULES OF CRIMINAL PROCEDURE**

**MINNESOTA SUPREME COURT ADVISORY COMMITTEE  
ON RULES OF CRIMINAL PROCEDURE**

ADM10-8049

April 23, 2014

Hon. Mark Wernick, Chair

Andrew Birrell	Timothy Richards
Helen Brosnahan	Prof. Ted Sampsell-Jones
Frederic Bruno	Heidi Schultz
Scott Christenson	Thomas Sieben
Richard Kyle	Hon. Robert Tiffany
Hon. Michelle Larkin	Greg Widseth
Daniel Lew	Hon. Jodi Williamson
Jessica Merz-Godes	Paul Young
Robert Plesha	

Hon. David Lillehaug  
Supreme Court Liaison

Karen Kampa Jaszewski  
Staff Attorney

## I. INTRODUCTION

As directed by the Supreme Court, the Committee met to discuss procedural issues relating to complaints filed during pretrial proceedings that charge new offenses, payable ordinance violations, and probation revocation hearings based on alleged new criminal conduct.

## II. DISCUSSION

### A. New Complaints

The Committee discussed the question of the extent to which the rules of procedure should specify the process that must occur when a complaint is filed during pretrial proceedings that charges an additional or different offense from that charged in the original complaint. This subject is currently addressed in Rule 3.04.

As a preliminary matter, the Committee recognized that judges, prosecutors and criminal defense lawyers throughout Minnesota typically refer to a complaint charging additional or new offenses as an “amended” complaint, whereas Rule 3.04 refers to such a complaint as a “new” complaint. The Committee noted the importance of retaining the phrase “new complaint” because it signals the need to revisit procedural matters applicable to all complaints.

The Committee considered whether Rule 3.04 or Rule 10 (Pleadings and Motions before Trial; Defenses and Objections) should be amended to specify the need for a notice of motion and motion to file a new complaint. The Committee concluded that Rule 3.04, subd. 2, adequately addresses this issue by recognizing the district court’s authority to prohibit an untimely filing of a new complaint. *See State v. Baxter*, 686 N.W.2d 846, 852-853 (Minn. App. 2004).

The Committee next considered what procedures are required upon the filing of a new complaint with respect to explanation of rights, probable cause and other motions, waivers of the right to counsel and other rights, and entering a plea. The Committee agreed that Rule 3.04 should provide that when a new complaint is filed, the district court must repeat the first appearance procedures under Rule 5.01(a), and review conditions of release. Beyond that, the Committee agreed it was adequate to direct the district courts to re-open pretrial proceedings as required by any legal issues raised when a new complaint is filed. Because each case will be unique regarding which proceedings are required to be re-opened, the Committee agreed no further direction should be included in the rule regarding what exactly is required in each case. The Committee proposes a new subdivision be added to Rule 3.04 regarding this process.

## B. Payable Ordinance Violations

The Committee considered a State Court Administration proposal to amend Rule 23 to update and clarify procedures relating to payable ordinance violations. That proposal was approved and is contained in the proposed amendments section below.

## C. Probation Revocation Hearings

Rule 27.04, subd. 2(4)(c), provides that if a probation violation report alleges the commission of a new crime, the district court “may” postpone the revocation hearing pending the outcome of the new criminal case. The court of appeals has held that a district court’s refusal to do so without offering “limited-use immunity” to the probationer is not an abuse of discretion nor does it violate due process. *State v. Hamilton*, 646 N.W.2d 915, 919 (Minn. App. 2002), *review denied* (Minn. Sept. 25, 2002), *abrogated in part on other grounds*, *State v. Modtland*, 695 N.W.2d 602, 606 (Minn. 2005). In this context, “limited-use immunity” means that the probationer’s probation revocation hearing testimony about a new criminal charge would not be admissible at the criminal trial except for impeachment. *See State v. Phabsomphou*, 530 N.W.2d 876, 878-79 (Minn. App. 1995), *review denied* (Minn. June 29, 1995). In a recent concurring opinion about this issue, Judge Cleary urged that the Rules of Criminal Procedure be amended to provide that in the absence of an offer of limited-use immunity, a probation revocation hearing based on a new criminal charge *must* be postponed pending the disposition of the new charge. *State v. Watts*, 2012 WL 6734455 (Minn. App. Dec. 31, 2012) (unpublished).

The Committee agreed that limited-use immunity should attach to a probationer’s testimony at a probation revocation hearing involving allegations of new criminal conduct if the hearing is held before new criminal charges are resolved. The Committee also concluded that this immunity should attach regardless of whether new charges had actually been filed at the time of the probation revocation hearing. The Committee discussed what would happen if numerous violations are alleged and only one is a new crime. Members agreed a comment to the rule should be added explaining the intent of the rule on this point. The Committee also agreed that the rule should address perjury so the rule does not inadvertently provide immunity for false testimony. Members discussed but ultimately decided against including in the rule a requirement that the court give an advisory to the defendant on this issue. An amendment to Rule 27.04, subd. 2(4)(c), is proposed.

Respectfully Submitted,

ADVISORY COMMITTEE ON  
RULES OF CRIMINAL PROCEDURE

## 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. Add a new subdivision to Rule 3.04 as follows:**

**Subd. 3. Procedure upon Issuance of New Complaint.** Upon the issuance of the new complaint, the court must inform the defendant of the charges; the defendant's rights, including the right to have counsel appointed if eligible; and the opportunity to enter a plea as permitted by Rules 5.06, 5.07, and 5.08. The court must also review conditions of release under Rule 6.02, subd. 2. Pretrial proceedings, including any prior waiver of rights, must be re-opened to the extent required by the new complaint.

**2. Amend Rule 23.03, subd. 2, as follows:**

**Subd. 2. Fine Schedules.**

(1) Uniform Statute and Administrative Rule Fine Schedule. The Judicial Council must adopt and, as necessary, revise a uniform fine schedule setting fines for ~~statutory~~ petty misdemeanors and for ~~statutory~~ misdemeanors as it selects. The uniform fine schedule is applicable statewide, and is known as the Statewide Payables List.

(2) County Ordinance Fine Schedules. Each district court may establish, under a process approved by the Judicial Council, ~~by court rule for each county~~ a fine for any ordinance that may be paid to the violations bureau in lieu of a court appearance by the defendant. ~~When an ordinance offense is substantially the same as an offense included on the uniform fine schedule, the fine established must be the same.~~

**3. Amend Rule 27.04, subd. 2(4), as follows:**

*(4) Time of Revocation.*

(a) The revocation hearing must be held within a reasonable time.

(b) If the probationer is in custody because of the violation report, the hearing must be within 7 days.

(c) If the violation report alleges a new crime, the revocation hearing may be postponed pending disposition of the criminal case. If the revocation hearing is not postponed, any testimony the probationer gives at the revocation hearing is not admissible against the probationer at a criminal trial arising from the alleged crime, except for impeachment purposes, or if the probationer is charged with the crime of perjury based on this testimony.

4. **Add a new paragraph in the Comment to Rule 27 after paragraph 13 as follows:**

*If the violation report alleges multiple bases for probation revocation, one of which is an allegation of new criminal conduct, the limited use immunity in rule 27.04, subd. 2(4)(c), attaches only at the criminal trial arising from the allegation of a new crime.*