

STATE OF MINNESOTA

IN SUPREME COURT

ORDER PROMULGATING
AMENDMENTS TO THE RULES
OF CRIMINAL PROCEDURE

WHEREAS a hearing was held in the Courtroom of the Minnesota Supreme Court on Thursday, November 2, 1978 to afford the Court an opportunity to hear comments and suggestions on published amendments to the Rules of Criminal Procedure proposed by the Criminal Rules Advisory Committee and the Criminal Law Section of the Minnesota State Bar Association,

NOW, THEREFORE, IT IS HEREBY ORDERED that the Rules of Criminal Procedure be amended as follows:

I. That Rule 25 entitled Special Rules Governing Publicity, be amended by adding the following:

Rule 25.03 Restrictive Orders

Except as provided in Rule 33.04 the following rule shall govern the issuance of any court order restricting public access to public records relating to a criminal proceeding:

Subd. 1. Motion and Notice

- (a) A restrictive order may be issued only upon motion and after notice and hearing.
- (b) Notice of the hearing shall be given in the time and manner and to such interested persons, including the news media, as the court may direct.

Subd. 2. Hearing

- (a) At the hearing, the moving party shall have the burden of establishing a factual basis for the issuance of the order under the conditions specified in subd. 3.

(b) The public and news media shall have a right to be represented at the hearing and to present evidence and arguments in support of or in opposition to the motion.

(c) A verbatim record shall be made of the hearing.

Subd. 3. Grounds for Restrictive Order

The court may issue a restrictive order under this rule only if the court concludes on the basis of the evidence presented at the hearing that:

(a) Access to such public records will present a clear and present danger of substantially interfering with the fair and impartial administration of justice.

(b) All alternatives to the restrictive order are inadequate.

Subd. 4. Findings of Fact

The court shall make written findings of the facts and statement of the reasons supporting the conclusions upon which an order granting or denying the motion is based.

Subd. 5. Appellate Review

(a) Anyone represented at the hearing or aggrieved by an order granting or denying a restrictive order may petition the Supreme Court for review, which shall be the exclusive method for obtaining review.

(b) The Supreme Court shall determine upon the hearing record whether the moving party sustained the burden of justifying the restrictive order under the conditions specified in subd. 3 of this rule, and the Supreme Court may reverse, affirm, or modify the order issued.

That the comment to Rule 25 be amended by adding paragraphs to read: It is anticipated that Rule 25.03 will be utilized only "in exceptional cases" involving serious crimes. See Northwest Publications, Inc. v. Anderson, 259 N.W. 2d 254, 257, and note 7 (Minn. 1977).

Possible alternatives to a restrictive order indicated in Rule 25.03 subd. 3(b) are the following:

A continuance or change of venue under Rule 25.02; sequestration of jurors on voir dire under Rule 26.02, subd. 4(2)(b); regulation of use of the courtroom under Rule 26.03, subd. 3; sequestration of jury under Rule 26.03, subd. 5(1); exclusion of the public from hearings or arguments outside the presence of the jury under Rule 26.03, subd. 6; cautioning or ordering parties, witnesses, jurors, and judicial employees and sequestration of witnesses under Rule 26.03, subd. 7; admonitions to jurors about exposure to prejudicial material under Rule 26.03, subd. 9.

That Rule 33.04 be amended to read as follows:

Rule 33.04 Filing

(a) Except as provided in Rule 9.03, subd. 9, search warrants and search warrant applications, affidavits and inventories, including statements of unsuccessful execution, and papers required to be served shall be filed with the court. Papers shall be filed as provided in civil actions.

(b) Except as otherwise provided by this rule, search warrants and related documents need not be filed until after execution of the search or the expiration of ten days.

(c) A complaint, application, or affidavit requesting a warrant directing the arrest of a person or authorizing a search and seizure may contain a request by the

prosecuting attorney that the complaint, application or affidavit, any supporting evidence or information, and any order granting the request, not be filed.

(d) An order shall be issued granting the request in whole or in part, if the judge find from affidavits, sworn testimony or evidence that there are reasonable grounds to believe that: (1) in the case of complaint or arrest documents, such filing may lead to any person to be arrested fleeing or secreting himself or otherwise preventing the execution of the warrant or (2) in the case of a search warrant application or affidavit, such filing may cause this search or a related search to be unsuccessful or could create a substantial risk of injuring an innocent person or severely hampering an ongoing investigation.

(e) The order shall further direct that upon the execution of and return of an arrest warrant, the filing required by subd. (a) shall forthwith be complied with; and in the case of a search warrant, the application or affidavit in support thereof shall be filed forthwith following the commencement of any criminal proceeding utilizing evidence obtained in or as a result of the search, or at any other such time as directed by the judge. Until such filing, the documents and materials ordered withheld from filing shall be retained by the judge or the judge's designee.

That the comment to Rule 33.04 be amended by adding a paragraph to read:

The Rule as amended contains several safeguards against unwarranted orders which withhold the filing of documents referred to in the Rule. The prosecuting attorney, a responsible public official, must request the order; the request must be supported by adequate evidence showing the need for the order; the need must be found by a

judge to exist; and, finally, when the arrest or search warrant has been executed, the documents must be filed immediately, and thereupon become available to the public.

Supporting precedents for this Rule are: Grand jury secrecy about indictment issued; (Rule 18,08), Minn. Stat., Sec. 626A.06, subd.9, prohibiting disclosures of applications for and granting of warrants for interception of communications.

That the comment to Rule 2.01 be amended by adding a paragraph to read:

Because the documents supporting the statement of probable cause may contain irrelevant material, material that is injurious to innocent third persons, and material prejudicial to defendant's right to a fair trial, it is the recommended practice that a statement be drafted containing the facts establishing probable cause, in or with the complaint, and that irrelevant material, material injurious to innocent third persons and material prejudicial to defendant's right to a fair trial be omitted therefrom.

That Rule 9.03, subd. 9, be amended to read as follows:

Subd. 9. Filing

Unless the court orders otherwise for the purpose of a hearing or trial, discovery disclosures made pursuant to Rule 9 shall not be filed under the provisions of Rule 33.04.

The party making the disclosures shall prepare an itemized descriptive list identifying the disclosures without disclosing their contents and shall file the list as provided by Rule 33.04.

That Rule 26.02, subd.4, (1) is amended to read as follows:

Subd. 4. Voir Dire Examination

(1) Purpose - By Whom Made. A voir dire examination shall be conducted for the purpose of discovering bases for challenge

for cause and for the purpose of gaining knowledge to enable an informed exercise of peremptory challenges, and shall be open to the public.

That the following paragraph be removed from the comment to Rule 6:

"These conditions are taken from 18 U.S.C. § 3146 and ABA Standards, Pre-Trial Release, 5.2, 5.3 (Approved Draft, 1968), except that they do not include a condition permitting a cash deposit of 10 percent of the amount set as money bail. The Advisory Committee was of the opinion that with only 10 percent required to be deposited by the defendant, the amount of the money bail set did not truly represent the actual bail, but that bail in an amount equal to the 10 percent figure would be more realistic."

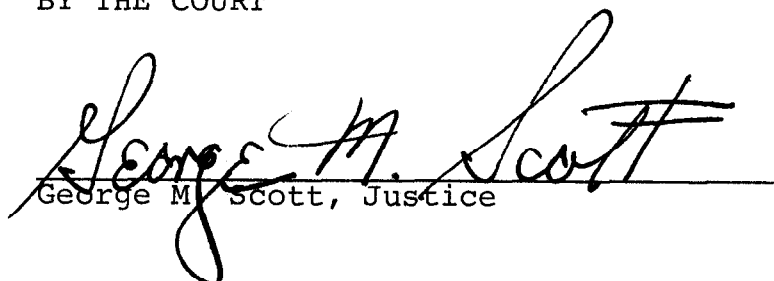
and be replaced by a paragraph which reads:

"Basically these conditions are taken from 18 U.S.C. § 3146 and ABA Standards, Pre-trial Release, 5.2, 5.3 (Approved Draft, 1968). They emphasize that the conditions of release should proceed from the least restrictive to the ultimate imposition of cash bail depending on the circumstances in each case. Release on monetary conditions should be reduced to minimal proportions. It should be required only in cases in which no other conditions will reasonably insure the defendant's appearance. When monetary conditions are imposed, bail should be set at the lowest level necessary to ensure the defendant's reappearance."

IT IS FURTHER ORDERED that these amendments shall be effective at 12:01 a.m. on January 1, 1979.

Dated: November 13, 1978

BY THE COURT


George M. Scott, Justice