

SUPREME COURT ADVISORY COMMITTEE
RULES OF CRIMINAL PROCEDURE

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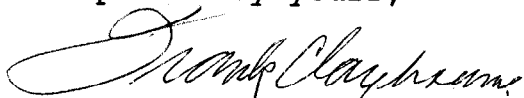
October 23, 1990

Chief Justice Peter S. Popovich
Minnesota Supreme Court
25 Constitution Avenue
245 Minnesota Judicial Center
St. Paul, MN 55155-6102

Dear Chief Justice Popovich: C1-84-2137

On behalf of the Supreme Court Advisory Committee on Rules of Criminal Procedure, I deliver to you herewith the original and ten copies of a Report to the Supreme Court from the Committee.

Respectfully yours,



Frank Claybourne
Chairman

enclosures

OFFICE OF
APPELLATE COURTS

OCT 29 1990

FILED

REPORT TO THE MINNESOTA SUPREME COURT
FROM
THE SUPREME COURT ADVISORY COMMITTEE ON
RULES OF CRIMINAL PROCEDURE

OFFICE OF
APPELLATE COURTS

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Pursuant to the Order of the Supreme Court dated December 13, 1989 promulgating the last amendments to the Rules of Criminal Procedure, the Advisory Committee has continued to monitor the rules, and to hear and accept comments concerning them. The Committee has also reviewed those matters referred to it by the Supreme Court. The Committee has met every other month in day-long meetings since the last amendments to the rules became effective on January 1, 1990. As part of the review process all comments received by the Committee or forwarded to it by the Court are distributed to Committee members and are fully considered at the meetings. The Committee is continuing to monitor the rules and to consider possible amendments. However, the Committee is prepared to report on several matters submitted to the Committee for consideration by the Court and other sources.

UNIFORM LOCAL RULES

The Supreme Court Task Force on Uniform Local Rules solicited the Advisory Committee's recommendations on the existing local rules concerning criminal practice. The Advisory Committee reviewed through all these rules and on July 10, 1990 reported its recommendations to the Task Force. (A copy of those

recommendations is attached to this report as an appendix.) Those recommendations have been endorsed and ratified by the Task Force and were incorporated into the discussion draft of the proposed Amendments to the Code of Rules published by the Task Force on August 31, 1990.

EARLY DISCLOSURE OF INDICTMENT

The Advisory Committee considered whether Rule 18.08 should be revised to permit the news media to be advised of an indictment before the defendant's arrest or appearance in Court if, in the discretion of the prosecuting attorney, the defendant or defense counsel is advised before the arrest or appearance under that rule. The Committee upon due consideration declines to recommend such an amendment to the rule at this time.

RECOMMENDATIONS OF GOVERNOR'S SELECT COMMITTEE ON THE IMPACT OF DRUGS

The Governor's Select Committee on the Impact of Drugs in its final report recommended that the Minnesota Supreme Court study the propriety of amending Rule 17.03 to permit joint prosecutions in certain drug cases. This rule was amended by the Court, effective July 31, 1987 and again effective January 1, 1990. Upon again reviewing this rule, the Committee has concluded that Rule 17.03 is broad enough to satisfy the concerns of the Governor's Select Committee on the Impact of Drugs and already permits joint trials in drug cases where appropriate.

The Governor's Select Committee also suggested that Rule 6.02 be amended to allow the prosecutor to request the right to be notified upon the posting of bail and to permit the prosecutor

to contest whether the posted bail money was acquired through drug dealing and is therefore subject to administrative forfeiture. After carefully considering this proposal, the Advisory Committee believes that no change is necessary to accomplish the suggested results. The Advisory Committee therefore recommends that no change be made in this rule.

APPELLATE TRANSCRIPTS

The Advisory Committee considered the time limits for preparation of transcripts for appeal and how that process may be shortened. It is the Committee's opinion that this is an administrative problem that goes beyond criminal appeals and criminal rules. The Advisory Committee on Rules of Criminal Procedure therefore recommends that the Supreme Court Advisory Committee on Rules of Civil Appellate Procedure consider the issues of court reporters, transcripts and appeal time limits for preparation of transcripts.

DNA TESTING

The Supreme Court in State v. Schwartz, 447 N.W.2d 422 (Minn. 1989) referred to the Advisory Committees on Rules of Evidence and Criminal Procedure the task of recommending appropriate standards and procedures for determining the admissibility of DNA test results. The Advisory Committee on Rules of Criminal Procedure has considered the procedural aspects of this issue and believes that the existing rules provide an adequate procedure for resolving this issue. The Omnibus Hearing provisions in Rules 11.03 and 11.04 provide the necessary forum

for determining the admissibility of the DNA test results prior to trial. Rule 9.01, Subd. 1(4) provides for discovery upon the defendant's request of the test results. Further, the defendant under Rule 9.01, Subd. 2(3) may request the court to order production of testing data and methodology information. The Committee therefore recommends that no changes concerning DNA test results be made in the Criminal Rules at this time. The Advisory Committee on Rules of Criminal Procedure leaves to the Advisory Committee on Rules of Evidence the question of whether standards for admissibility of DNA test results should be the subject of a rule.

PRETRIAL APPEAL TIME LIMIT AND STATEMENTS OF THE CASE

The Advisory Committee is concerned about the time limit for perfecting a pretrial appeal as set forth in Rules 28.04, subd. 2(2) and (8), because the short time limit may expire before the prosecuting attorney receives actual notice of the order sought to be appealed. To eliminate that unfairness and to add the requirement for a statement of the case on pretrial appeals as now contained in Rule 7 of the Minnesota Court of Appeals Internal Rules, the Committee recommends that Rules 28.04, subd. 2(2) and (8) be amended as follows:¹

"(2) Notice of Appeal. ~~Within five (5) days after entry of the order appealed from, the~~ The prosecuting attorney shall file with the clerk of the appellate courts a notice of appeal, a statement of the case as provided for by Rule 133.03 of the Minnesota Rules of

¹In any proposed amendment set forth in this report a line is drawn under any language to be added and a line is drawn through any language to be deleted.

Civil Appellate Procedure, and a copy of the written request to the court reporter for such transcript of the proceedings as appellant deems necessary. ~~Both the~~ The notice of appeal, the statement of the case, and request for transcript shall have attached at the time of filing, proof of service on the defendant or defense counsel, the State Public Defender, the attorney general for the State of Minnesota, and the clerk of the trial court in which the pretrial order is entered. Failure to serve or file the statement of the case, to request the transcript, to file a copy of such request, or to file proof of service does not deprive the Court of Appeals of jurisdiction over the prosecuting attorney's appeal, but it is ground only for such action as the Court of Appeals deems appropriate, including dismissal of the appeal. The contents of the notice of appeal shall be as set forth in Rule 28.02, subd. 4(2)."

"(8) Time for Appeal. The prosecuting attorney may not appeal under this rule until after the Omnibus Hearing has been held under Rule 11, or the evidentiary hearing and pretrial conference, if any, have been held under Rule 12, and all issues raised therein have been determined by the trial court. The appeal then shall be taken within 5 days after the defense, or the clerk of court pursuant to Rule 33.03, subsequently serves notice of entry of the order appealed from upon the prosecuting attorney or within 5 days after the prosecuting attorney is notified in court on the record of such order, whichever occurs first. All pretrial orders entered and noticed to the prosecuting attorney prior to the trial court's final determination of all issues raised in the Omnibus Hearing under Rule 11, or the evidentiary hearing and pretrial conference under Rule 12, may be included in this appeal. An appeal by the prosecuting attorney under this rule bars any further appeal by the prosecuting attorney from any existing orders not included in the appeal. No appeal of a pretrial order by the prosecuting attorney shall be taken after jeopardy has attached.

An appeal under this rule does not deprive the trial court of jurisdiction over pending matters not included in the appeal."

OMNIBUS HEARINGS

The Advisory Committee originally proposed and subsequently continues to support timely Omnibus Hearings in large part

because early resolution of motions provides for more efficient handling of criminal cases at subsequent stages. This includes suppression motions, evidentiary motions, and nonevidentiary motions such as motions to disclose the identity of an informant or to consolidate or sever trials or co-defendants. Early resolution of these motions also helps to focus the lawyers' attention on a smaller number of witnesses, including law enforcement officers and victims of crimes. When such motions are resolved early, uncertainty with respect to many significant issues in a case are removed. This early resolution of motions also permits timely and meaningful pretrial dispositional conferences at which time the parties can engage in significant plea agreement discussions. Setting a firm trial date and commencing a trial on that date are also important factors in minimizing delays. Firm trial dates are most likely to be found in courts that achieve early resolution of pretrial motions. Achieving early resolution of pretrial motions requires the cooperation of the court, the local bar and law enforcement agencies. When courts take early control of criminal cases with meaningful pretrial events it benefits all people within the criminal justice system and serves the efficient administration of justice. These conclusions by the Committee are supported by recent studies and reports concerning the management and elimination of delays in criminal litigation. See Examining Court Delay: The Pace of Litigation in 26 Urban Trial Courts, 1987, the final report on a research project conducted by the

National Center for State Courts by John Goerdts published on June 2, 1989; The Impact of Drug Cases on Case Processing In Urban Trial Courts, prepared by John A. Martin and John A. Goerdts for a seminar on "Managing Drug Related Cases in Urban Trial Courts" presented by the Institute for Court Management and the National Center for State Courts on July 17-18, 1989; and "Toward Better Management of Criminal Litigation", by Barry Mahoney and Dale Anne Sipes of the National Center for State Courts (1988) 72 Judicature 29.

Amendments to Rules 8.04, 11.07, and 19.04, subd. 5 concerning the time limits and restrictions on bifurcation of the Omnibus Hearing will become effective on January 1, 1991, pursuant to the Supreme Court's order of December 13, 1989. As indicated in our last report to the Court, the primary concern of the Committee in recommending these amendments was the delay and waste of judicial, law enforcement, and other resources caused in some districts by the large number of guilty pleas occurring on the day of trial. The Committee intended that the amendments would encourage the earlier settlement of cases so that this waste of resources and the emotional strain on private citizen witnesses would be minimized.

In order to provide time to adapt to these amendments, particularly in Hennepin and Ramsey Counties, the Supreme Court accepted the Advisory Committee's recommendation to delay the effective date of the amendments for one year. During the past year the Committee has heard extensive testimony and reviewed

thoroughly the numerous written comments submitted by the bench, bar, municipalities and other concerned persons regarding these amendments. From that review it appears that Hennepin and Ramsey County recently have made dramatic progress in disposing of criminal cases before the day of trial thereby serving the purpose about which this Committee was primarily concerned. The Committee is impressed by these efforts and believes that the procedures now being followed in Ramsey and Hennepin County are substantially in compliance with the Omnibus Hearing amendments scheduled to become effective on January 1, 1991. The Advisory Committee therefore recommends that the amendments to Rules 8.04, 11.07 and 19.04, subd. 5 become effective as now scheduled, but with some minor amendments as explained below.

Many of the Judicial Districts, including the Second and Fourth Judicial Districts, already make widespread and effective use of pretrial dispositional conferences to resolve cases at the earliest possible time. If such resolution is not possible, the conference can be used to determine the nature of the case so that further hearings or trial can be scheduled as appropriate. The use of such dispositional conferences is commendable and under existing Rule 11.04 should be considered as a part of the Omnibus Hearing. This is reflected in the comments to that rule which state that the rule "is broad enough to permit a pre-trial conference if the court considers it necessary." To further clarify this matter the Advisory Committee recommends that Rule 11.04 be amended by adding the following language at the

beginning of the first paragraph of that rule:

"The Omnibus Hearing may include a pretrial dispositional conference to determine whether the case can be resolved without scheduling it for trial."

At any dispositional conference portion of an Omnibus Hearing it is permissible under the language of Rule 11.07, to become effective January 1, 1991, to continue the evidence suppression portion of the Omnibus Hearing until the day of trial if the court determines that resolution of the evidentiary issues would not dispose of the case. Such a continuance would be "for good cause related to the particular case" under Rule 11.07 and under that rule the court could enter an order continuing both the Omnibus Hearing and the Court's decision on the evidentiary issues until the day of trial. Other grounds may also justify such a continuance and as long as the court finds that the good cause is related to the particular case the continuance is justified under the rule.

Even absent good cause related to the particular case, the Committee believes that in the absence of a demand by the defendant it is no longer necessary to require that the Omnibus Hearing be held within 14 days of the defendant's appearance before the Court under Rule 8 as is now required by Rule 8.04. This is particularly so in light of the option that now exists under Rule 5.03 to consolidate Rule 5 and Rule 8 appearances. When that is done, Rule 8.04(c) would still require that the Omnibus Hearing be held within 14 days of the combined appearance. Such a compression of the time limits is not

necessary to assure timely progress of criminal cases. The Committee therefore recommends that Rule 8.04(c), as it is to become effective on January 1, 1991, be further amended as follows:

"(c) The Omnibus Hearing provided for by Rule 11 shall be scheduled for a date not later than ~~fourteen-(14)~~ twenty-eight (28) days after the defendant's ~~initial~~ appearance before the court under this rule. The court may extend such time for good cause related to the particular case upon motion of the prosecuting attorney or defendant or upon the court's initiative."

With the additional time for the Omnibus Hearing set at 28 days, there is no need to have the 30-day continuance provision in Rule 11.07 scheduled to become effective January 1, 1991. The Committee therefore recommends that this rule be further amended as follows:

"RULE 11.07. CONTINUANCES; DETERMINATION OF ISSUES

Upon motion of the prosecuting attorney or the defendant or upon the court's initiative, the court may continue the hearing or any part thereof from time to time as may be necessary, ~~but may not continue it beyond 30 days after the defendant's appearance under Rule 8 except~~ for good cause related to the particular case. All issues presented at the Omnibus Hearing shall be determined within 30 days after the defendant's ~~initial~~ appearance under Rule 8 unless a later determination is required for good cause related to the particular case. When issues are determined, the court shall make appropriate findings in writing or orally on the record. The issues presented at the Omnibus Hearing shall be consolidated for hearing except as otherwise permitted by these rules."

Additionally, the Committee suggests that trial courts insist on timely discovery by the parties before the date of the Omnibus Hearing as required by Rule 9.01, subd. 1. The Committee also strongly commends the practice, now in effect in some

counties, of preparing the Sentencing Guidelines Worksheet prior to the Omnibus Hearing. This may be done in connection with a pre-release investigation under Rule 6.02, subd. 3 and later may be included with any presentence investigation report required under Rule 27.03, subd. 1. The completion of discovery and preparation of the Sentencing Guidelines Worksheet before the Omnibus Hearing will help assure that the pretrial dispositional conference portion of that hearing will be meaningful.

The Advisory Committee recommends that the few suggested clarifying amendments to the rules contained in this report be acted upon immediately so that Rules 8.04, 11.07, and 19.04, subd. 5 with these further amendments may take effect on January 1, 1991, as previously ordered.

Dated: October 23, 1990

Respectfully submitted,



Frank Claybourne, Chairman
Supreme Court Advisory
Committee on Rules of Criminal
Procedure

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CONSULTANT

July 10, 1990

Mr. Michael B. Johnson
Staff Attorney
Research and Planning
State Court Administration
1745 University Avenue
Suite 302
St. Paul, MN 55104

Re: Review of Local Criminal Rules by Supreme Court
Advisory Committee on Rules of Criminal Procedure

Dear Mr. Johnson:

As you requested the Supreme Court Advisory Committee on Rules of Criminal Procedure, at its last meeting on June 16, 1990, reviewed Rules 301 through 318 of the proposed new Code of Rules (COR). Our recommendations as to those proposed rules are as follows:

COR 301 Warrants. The Committee determined that there is no need for the first sentence of this proposed rule concerning filing of warrants after service because the subject is already adequately covered by existing Rules 3.03, subd. 4 and 19.03, subd. 4. The Committee recommends that the substance of the second sentence of COR 301, concerning retention of search warrant papers by the judge, be included in the Rules of Criminal Procedure. This matter will be considered further by the Committee and will be addressed in our next report to the Supreme Court.

COR 302 Bail. The Committee recommends that the subject of this proposed rule be included in the Code of Rules for statewide application. The Committee will add a comment later to the Criminal Rules referring to COR 302 and recommends that the Comments to the Code of Rules include a cross-reference to the pre-trial release provisions of Rule 6.

COR 303 Mental Examinations. The Committee recommends that this rule be deleted completely. Except for the specifics on the content of a motion for a mental examination this subject is fully covered by the rule 20 of the Rules of Criminal Procedure. Later the Committee will consider adding a form for such a Motion to the recommended forms following the Criminal Rules.

COR 304 Transcript for Indigent Defendant. The Committee recommends that this rule be deleted completely. The subject is adequately covered by Minn. Stat. § 563.01 and the Criminal Rules.

COR 305 Certificates of Representation. The Committee recommends that this matter be included in the Code of Rules for statewide application.

COR 306 Timely Appearances. The Committee determined that this provision is not appropriate for inclusion in the criminal rules. The Committee makes no recommendation as to whether it might be appropriate for inclusion elsewhere.

COR 307 Appearance at Arraignment. The Committee believes that this is a local administrative matter and recommends that it not be included in either the Criminal Rules or Code of Rules.

COR 308 Tab Charges. The Committee recommends that this provision be eliminated from any of the rules as unnecessary.

COR 309 Complaints - Fine Only Offenses. The Committee decided to consider revising Rules 2.01 and 3.01 of the Criminal Rules to include the substance of COR 309. The Committee therefore recommends that this subject not be included in the Code of Rules or any local rules.

COR 310 Complaints - Submission to Second Judge. The Committee recommends that this provision be included in the Code of Rules and that it be broadened to include search warrants and the substance of Rule 10 of the current Code of Rules.

COR 311 Bail Schedule. The Committee recommends that this proposed rule be eliminated and not included in any set of rules.

COR 312 Pre-Arraignment Release. The Committee recommends that this proposed rule be eliminated and not included in any set of rules.

COR 313 Sentencings. This subject is already covered by Minn. Stat. § 609.15 and Minn. Stat. § 643.29. The Committee therefore recommends that this proposed rule be eliminated and not included in any set of rules.

COR 314 Procedure on Revocation of Stay or Probation. This subject is now completely covered by Rule 27.04 of the Rules of Criminal Procedure, adopted effective August 1, 1983. The Committee therefore recommends that this proposed rule be eliminated and not included in any other set of rules.

COR 315 Scheduling of Non-Felony Arraignments. The Committee considers this to be an administrative matter for particular courts and recommends that it not be included in either the Criminal Rules or the Code of Rules for statewide application.

COR 316 Misdemeanor Violation Bureaus, County Fine Schedules. The Committee will be considering language to revise Rule 23.03, subd. 2 so that a county fine schedule need not be adopted by court rule. It will then be sufficient for the trial courts to establish violation bureaus and fine schedules by court order rather than court rule. The other provisions in COR 316 are already covered by the Rules of Criminal Procedure. The Committee therefore recommends that this rule be eliminated and not included in the Code of Rules or local rules.

COR 317 Court Appearance and Procedures Upon Non-Appearance. The Committee will consider amending the Criminal Rules to add the substance of COR 317(b) permitting counsel to appear by letter. The remaining provisions in COR 317 are either unnecessary or already covered in the Criminal Rules. The Committee therefore recommends that they be eliminated and not included in the Code of Rules or local rules.

The materials which you provided to the Committee also included a copy of an order from the Seventh Judicial District requiring written notice of issues and witnesses to be presented at the Omnibus Hearing. The Committee considers this order to be inconsistent with the existing Criminal Rules and recommends that it not be included in any set of rules.

In addition to the materials which you submitted to the Rules Committee for consideration, the Committee also considered all other Special Rules of Practice from the various judicial districts that appeared to be related to criminal procedure. This review included Rules 15 and 20 from the Second Judicial District, Rule 6.03 from the Fourth Judicial District, Rules 17 and 21 from the Sixth Judicial District, Rule 7 from the Eighth Judicial District, and Rules 13.06, 13.07, and 13.08 of the Tenth Judicial District. The Committee recommends that the Uniform Local Rules Task Force review Special Rule 6.03 of the Fourth Judicial District governing custody of exhibits in criminal cases and consider it for adoption in the new Code of Rules. The Committee found no need to continue the other Special Rules

Mr. Michael B. Johnson
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reviewed and recommends that they not be included in any set of rules.

Thank you for referring this matter to us and requesting the comments of the Advisory Committee. If the Committee can be of any further assistance or if you need any further explanation of our recommendations, please contact me.

Sincerely,



Frank Claybourne, Chairman
Supreme Court Advisory Committee
on Rules of Criminal Procedure

cc: Chief Justice Peter S. Popovich
David Herr
Committee Members

OFFICE OF
APPELLATE COURTS

OCT 29 1990

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