

STATE OF MINNESOTA

IN SUPREME COURT

C1-84-2137

PROMULGATION OF AMENDMENTS TO
THE RULES OF CRIMINAL PROCEDURE

ORDER

WHEREAS, on December 13, 1989, this Court adopted changes in the Rules of Criminal Procedure, some of which were to become effective on January 1, 1991, and during 1990 a number of comments and objections were received concerning the changes to become effective in 1991, which were referred to the Supreme Court Advisory Committee on Rules of Criminal Procedure for review; and

WHEREAS, the Supreme Court Advisory Committee on Rules of Criminal Procedure has submitted a report and recommended amendments to Rules 8.04 (c), 11.07, 28.04 Subd. 2(2) and 28.04 Subd. 2(8) of the Rules of Criminal Procedure, and

WHEREAS, the Supreme Court has reviewed the recommendations and is fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The attached amendments to Rules 8.04 (c), 11.07, 28.04 Subd. 2(2) and 28.04 Subd. 2(8) of the Rules of Criminal Procedure be, and the same hereby are, prescribed and promulgated for the regulation of practice and procedure in criminal matters in the courts of the State of Minnesota.
2. The inclusion of Advisory Committee comments is made for convenience and does not reflect court approval of the comments made therein.
3. The Advisory Committee shall continue to serve to monitor said rules and amendments and to hear and accept comments for further changes, to be submitted to the court from time to time.
4. These amendments to the Rules of Criminal Procedure shall govern all criminal actions commenced or arrests made after 12 o'clock midnight January 1, 1991.

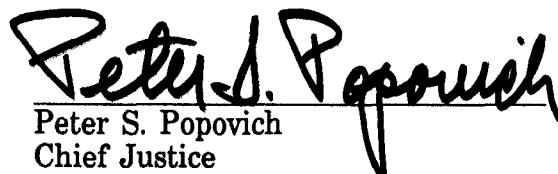
Dated: November 29, 1990

BY THE COURT:

OFFICE OF
APPELLATE COURTS

NOV 29 1990

FILED


Peter S. Popovich
Chief Justice

AMENDMENTS

TO THE MINNESOTA RULES OF
CRIMINAL PROCEDURE

Rule 8.04. Plea and Time and Place of Omnibus Hearing.*

Amend part (c) of Rule 8.04 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."

Rule 11.04. Other Issues.

Amend Rule 11.04 by adding the following sentence 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."

Rule 11.07. Continuances; Determination of Issues.

Amend Rule 11.07 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

[*In these amendments, except as otherwise indicated, deletions are indicated by a line drawn through the words and additions are

indicated by a line drawn under the words.] orally on the record. The issues presented at the Omnibus Hearing shall be consolidated for hearing except as otherwise permitted by these rules."

Rule 28.04, subd. 2. Procedure upon Appeal of Pretrial Order.

Amend part (2) of this rule as follows:

"(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 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)."

Rule 28.04, subd. 2. Procedure Upon Appeal of Pretrial Order.

Amend part (8) of this rule as follows:

"(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."

**Adoption of the Forgoing Amendments Requires
Changes in the Comments to the
Following Rules:**

Comments on Rule 1.

Amend the third sentence of the last paragraph of the Comments on Rule 1 as follows:

"Under Rules 8.04, 11.04, and 11.07, that hearing must be commenced within ~~14~~ 28 days after the appearance under Rule 8 and must be completed and all issues decided within 30 days after the appearance under Rule 8."

Comments on Rule 5.3.

Amend the second sentence of the fourth paragraph of the Comments concerning Rule 5.03 as follows:

"This means that under Rule 8.04 the Omnibus Hearing provided for by Rule 11 must be scheduled for a date not later than ~~14~~ 28 days after the consolidated hearing."

Comments on Rule 5.

In the Comments on Rule 5 amend number 7 of the timetable for felonies and gross misdemeanors as follows:

"7. Omnibus Hearing under Rule 11 within ~~14~~ 28 days after defendant's appearance in the district court under Rule 8 and within ~~28~~ 42 days after defendant's

initial appearance under Rule 5 when the Rule 5 and Rule 8 appearances are not consolidated."

Comments on Rule 7.

Amend the last sentence of the first paragraph of the Comments on Rule 7 as follows:

"If the defendant then demands a Rasmussen hearing, it will be included in the Omnibus Hearing (Rule 11) ~~14~~ no more than 28 days later."

Comments on Rule 8.

Amend the first sentence of the seventh paragraph of the Comments on Rule 8 as follows:

"The Omnibus Hearing shall be commenced not later than ~~14~~ 28 days after the defendant's initial appearance in court under Rule 8 unless the time is extended for good cause related to the particular case."

Comments on Rule 9.

Amend the second and third paragraphs of the Comments on Rule 9 as follows:

"It is the object of the rules that these discovery procedures shall be completed so far as possible by the time of the Omnibus Hearing under Rule 11, which will be held within ~~28~~ 42 days after the defendant's first appearance in court following a complaint under Rule 5, where the Rule 5 and Rule 8 appearances are not consolidated, or within 14 days after the first appearance in district court following an indictment (Rule 19.04) and that all issues arising from the discovery process, including the need for additional discovery, will be resolved at the Omnibus Hearing (Rules 11.04; 9.01, subd. 2; 9.03, subd. 8).

While a pre-trial conference originally was ~~is~~ not specifically provided for by these rules (Compare ABA Standards, Discovery and Procedure Before Trial, 5.4 (Approved Draft, 1970) containing a specific provision for a pre-trial conference), Rule 11.04 ~~is broad enough to permit~~ now expressly permits the court in its discretion to hold a pre-trial dispositional conference as a part of the Omnibus Hearing if it determines there

is a need for it. (See F.R.Crim.P. 17.1.)"

Comments on Rule 11.

Amend the fourth paragraph of the Comments on Rule 11 as follows:

"If the defendant does not plead guilty upon the initial appearance in the district court under Rule 8 following a complaint or, where permitted, a tab charge or upon arraignment in the district court under Rule 19.04, subd. 5 following an indictment, the Omnibus Hearing (See ABA Standards, Discovery and Procedure Before Trial, 1.1, 5.1-5.3 (Approved Draft, 1970).) shall be held as provided by Rule 11 not later than ~~fourteen-(14)~~ twenty-eight (28) days after the initial appearance or arraignment, unless the period is extended for good cause related to the particular case (Rules 8.04; 19.04, subd. 5)."

Comments on Rule 11.

Amend the sixth paragraph of the Comments on Rule 11 as follows:

"The purpose of the Omnibus Hearing is to avoid a multiplicity of court appearances and hearings upon these issues with a duplication of evidence and to combine all of the issues that can be disposed of without trial into one appearance and hearing. (See ABA Standards, Discovery and Procedure Before Trial, 1.1, 5.3 (Approved Draft, 1970).) 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."

Comments on Rule 11.

Amend the eleventh paragraph of the Comments on Rule 11 as follows:

"The court shall also on its initiative under Rule 11.04 ascertain and hear any other issues that can be heard and disposed of before trial and any other matters that would promote a fair and expeditious trial. This would include requests or issues arising respecting discovery (Rule 9), evidentiary issues arising from the Spreigl notice (Rules 7.01, 19.04, subd. 6(2)), or other evidentiary issues, and ~~is broad enough to permit a pre-trial~~ expressly permits a pretrial dispositional conference if the court considers it necessary. (See F.R.Crim.P. 17.1.) Many 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 may be used to determine the nature of the case so that further hearings or trial may be scheduled as appropriate. The use of such dispositional conferences, is commendable and highly recommended by the Advisory Committee. To assure that the pretrial dispositional conference portion of the Omnibus Hearing is meaningful, trial courts should insist on timely discovery by the parties before the date of the Omnibus Hearing as required by Rule 9.01, subd. 1. The Advisory 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."

Comments on Rule 11.

Amend the seventeenth paragraph of the Comments on Rule 11 as follows:

"By Rule 11.07 the Omnibus Hearing or any part thereof may be continued if necessary to dispose of the issues presented. At any dispositional conference portion of an Omnibus Hearing it is permissible under Rule 11.07 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 support 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. However, the Omnibus Hearing must be completed and any issues decided within 30 days after the defendant's appearance under Rule 8 unless a later time is justified by good cause related to the particular case. ~~The~~ However, the court should not as a general rule or practice bifurcate the Omnibus Hearing or delay the hearing or any part of it until the day of trial when that is not justified by the circumstances of the particular case. To do so violates the purpose of these rules. See Rule 1.02 and the comments thereto. All issues presented at the Omnibus Hearing shall be determined within 30 days after the defendants initial appearance under Rule 8 unless a later determination is required for good cause related to the particular case. (See also Rule 10.04, subd. 2)."

Comments on Rule 13.

Amend the last sentence of the sixth paragraph of the Comments on Rule 13 as follows:

"If the defendant does not plead guilty, Rules 8.04 and 19.04, subd. 5 provide that an Omnibus Hearing under Rule 11 shall be scheduled within ~~14~~ 28 days and 7 days respectively, and the defendant will not be required or permitted to plead earlier than that date."

Comments on Rule 28.

Amend the twentieth paragraph of the comments on Rule 28 as follows:

"To the extent that an order granting a defendant

a new trial also suppresses evidence, it will be viewed as a pretrial order concerning the retrial and the prosecuting attorney may appeal the suppression part of the order under Rule 28.04, subd. 1(1). State v. Brown, 317 N.W.2d 714, (Minn. 1982). A good faith timely motion by the prosecuting attorney for clarification or rehearing of an appealable order extends the time to appeal from that order ~~until 5 days after entry of the order deciding the motion for clarification or rehearing.~~ State v. Wollan, 303 N.W.2d 253 (Minn. 1981). Originally under Rules 28.04, subd. 2(2) and (8) the prosecuting attorney had 5 days from entry of an appealable pretrial order to perfect the appeal. It was possible for this short time limit to expire before the prosecuting attorney received actual notice of the order sought to be appealed. These rules as revised eliminate this unfairness and assure that notice of the pretrial order will be served on or given to the prosecuting attorney before the 5-day time limit beings to run."