

C1-84-2137

REPORT TO THE MINNESOTA SUPREME COURT
FROM

OFFICE OF
APPELLATE COURTS

THE SUPREME COURT ADVISORY COMMITTEE ON
RULES OF CRIMINAL PROCEDURE

JUN 9 1992

FILED

- JUNE 5, 1992 -

The Supreme Court Advisory Committee on Rules of Criminal Procedure recommends that the Supreme Court adopt the Proposed Amendments to the Minnesota Rules of Criminal Procedure submitted herewith. These proposed amendments are recommended to incorporate into the rules to the requirements of County of Riverside v. McLaughlin, ___ U.S. ___, 111 S.Ct. 1661 (1991) for a prompt judicial determination of probable cause following a warrantless arrest.

The Committee has met monthly since January 1992 concerning this issue and the proposed amendments. In making these recommendations the Committee reviewed not only the case law and existing rules but also solicited and reviewed information on the current practice and procedure in the different Minnesota judicial districts and in numerous other states.

The Committee continues to actively monitor and review the rules and expects to make further recommendations on other subjects in the future. In particular the Committee will be reviewing the reports and recommendations of the Minnesota Supreme Court Task Force for Gender Fairness in the Courts and the Minnesota Supreme Court Criminal Courts Study Commission as they relate to the Rules of Criminal Procedure. However, because of the importance of this issue raised by the decision of the

United States Supreme Court and the need to promptly establish uniform procedures throughout the state, the Committee recommends these proposed amendments now for consideration by the Court.

Dated: _____

Respectfully submitted,

Judge Joanne M. Smith, Chair
Supreme Court Advisory Committee
on Rules of Criminal Procedure

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

- June 5, 1992 -

1. Rule 4.03. PROBABLE CAUSE DETERMINATION
Add a new rule 4.03 as follows:

Rule 4.03. PROBABLE CAUSE DETERMINATION

Subd. 1. Time Limit. When a person arrested without a warrant is not earlier released pursuant to this rule or Rule 6, a judge or judicial officer shall make a probable cause determination without unnecessary delay and in any event within 48 hours from the time of the arrest including the day of arrest, Saturdays, Sundays and legal holidays. If the Court determines that probable cause does not exist or if there is no determination as to probable cause within the time as provided by this rule, the person shall be released immediately.

Subd. 2. Application and Record. The facts establishing probable cause to believe that an offense has been committed and that the person arrested committed it shall be submitted upon oath either orally or in writing. The oath shall be administered by the judge or judicial officer for any facts submitted orally and may also be administered by the clerk or deputy clerk of court or notary public for any facts submitted in writing. Any oral testimony shall be recorded by reporter or recording instrument and shall be retained by the judge or judicial officer or by the judge's or judicial officer's designee. Any written or oral facts or other information submitted upon oath to establish

probable cause may be made or taken by telephone, facsimile transmission, video equipment or similar device at the discretion of the reviewing judge or judicial officer. The person requesting a probable cause determination shall advise the reviewing judge or judicial officer of any prior request for a probable cause determination on this same incident or of any prior release of the arrested person on this same incident for failure to obtain a probable cause determination within the time limit as provided by this rule.

Subd. 3. Prosecuting Attorney. No request for determination of probable cause may proceed without the approval, in writing or orally on the record, of the prosecuting attorney authorized to prosecute the matter involved, unless the judge or judicial officer reviewing probable cause certifies in writing that the prosecuting attorney is unavailable and the determination of probable cause should not be delayed. If, in the discretion of the prosecuting attorney, a complaint complying with Rule 2 is obtained within the time limit provided by this rule, it shall not be necessary to obtain any further determination of probable cause under this rule to justify continued detention of the defendant.

Subd. 4. Determination. Upon the information presented, the Court shall determine whether there is probable cause to believe that an offense has been committed and that the person arrested committed the offense. If probable cause is found, the Court may set bail or other conditions of release or release the

arrested person without bail pursuant to Rule 6. If probable cause is not found, the arrested person shall be released immediately. The determination of the Court shall be in writing and shall indicate whether probable cause was found, and, if so, for what offense, whether oral testimony was received concerning probable cause, and the amount of any bail or other conditions of release which the Court may have set. A written notice of the Court's determination shall be provided to the arrested person forthwith.

2. Comments on Rule 4.

Amend the comments on Rule 4 by adding the following six new paragraphs at the end of those comments.

Rule 4.03 is based upon the constitutional requirement as set forth in County of Riverside v. McLaughlin, ___ U.S. ___, 111 S. Ct. 1661 (1991) for a prompt judicial determination of probable cause following a warrantless arrest. Pursuant to that case and Rule 4.03, subd. 1, the determination must occur without unreasonable delay and in no event later than 48 hours after the arrest. There are no exclusions in computing the 48-hour time limit; Rule 34.01 does not apply. Even a probable cause determination within 48 hours will be too late if there has been unreasonable delay in obtaining the determination. "Examples of unreasonable delay are delays for the purpose of gathering additional evidence to justify the arrest, a delay motivated by ill will against the arrested individual, or delay for delay's

sake." County of Riverside v. McLaughlin, ___ U.S. ___, 111 S.Ct. 1661, 1670 (1991). The requirements of Rule 4.03 are in addition to the requirements of Rule 4.02 that a person arrested without a warrant be brought before a judge or judicial officer within 36 hours after the arrest exclusive of the day of arrest, Sundays and legal holidays. Because of the exclusions permitted in computing time under the "36-hour rule", compliance with that rule will not assure compliance with the "48-hour rule".

However, if a defendant does appear in court within the time limits of the "48-hour rule" as well as the "36 hour rule" and a valid complaint is then issued, Rule 4.03 is satisfied and no further determination of probable cause is necessary.

The "48-hour" rule also applies to all misdemeanor cases. For gross misdemeanors prosecuted under Minn. Stat. § 169.121 or Minn. Stat. § 169.129 and for misdemeanors, Rule 4.02, subd. 5(3) requires only that a tab charge be entered on the records at the time of a defendant's appearance in Court within the "36-hour rule". A complaint may be issued at that time but is not then required and need only be issued later if requested by the defendant. However, the requirements of Rule 4.03 still apply and, even if not requested by a defendant, there must be a judicial determination of probable cause within 48 hours of an arrest and detention or the arrested person must be released whether the offense involved is a felony, gross misdemeanor, or misdemeanor. Rule 6.01 provides for the mandatory and permissive issuance of citations and an arrested person released on citation

prior to the 48-hour time limit need not receive a probable cause determination pursuant to Rule 4.03.

Release of an arrested person pursuant to Rule 4.03, subd. 1 because of a determination that probable cause does not exist, or because no determination is made within the specified time limit, does not prevent later prosecution for the offense involved or arrest for a different incident. However, it is not permissible to attempt to extend the time limit of the rule by releasing and then rearresting an individual without a warrant without additional facts to establish probable cause. As it is for the "36-hour rule" these rules do not provide sanctions for violation of the "48-hour rule." That is left to case law development. See State v. Wiberg, 296 N.W.2d 388 (Minn. 1980) as to the possible suppression of evidence for violation of the "36-hour rule."

Under Rule 4.03, subd. 2 the facts submitted to the court to establish probable cause may be either by written affidavit or sworn oral testimony. See Form 44, Application for Judicial Determination of Probable Cause to Detain, following these rules. If oral testimony is submitted, the oath shall be administered by the judge or judicial officer, but may be done by telephone, facsimile transmission, video equipment or similar device in the discretion of the reviewing judge or judicial officer. As of May, 1992, the only judicial officer in Minnesota serves in St. Louis County pursuant to Minn. Stat. § 487.08. See Rule 33.05 as to use of facsimile transmission generally. Any written

affidavits submitted may be sworn to before a clerk or deputy clerk of court or notary public as well as before the reviewing judge or judicial officer. The procedure for obtaining the probable cause determination is similar to that for obtaining a complaint under Rule 2 and no appearance by the arrested person is required.

Under Rule 4.03, subd. 3 the prosecuting attorney's written or oral approval is necessary in the probable cause proceedings. However, as for complaints under Rule 2.02, the court may proceed without such approval upon certifying in writing that the prosecuting attorney is unavailable and the determination of probable cause should not be delayed. Instead of obtaining a probable cause determination under Rule 4.03, the prosecuting attorney has the option of obtaining a complaint complying with Rule 2 within the time limit provided by Rule 4.03. If that is done, the time for the defendant's appearance before the judge or judicial officer is still governed by the "36-hour" provision of Rule 4.02.

Rule 4.03, subd. 4, sets forth the elements to be included in the court's written determination of probable cause. See Form 45, Judicial Determination of Probable Cause to Detain, following these rules. It need not contain a recitation of the facts upon which the court's determination was based. The court may set bail or other conditions of release. If the court sets conditions other than money bail on which the defendant may be released, the court shall also fix the amount of money bail

without other conditions upon which the defendant may obtain release. See Rule 6.01, subd. 1 and the comments to that rule. The arrested person must be provided with a written notice of the court's determination forthwith. See Form 46, Notice of Judicial Determination of Probable Cause to Detain, following the rules. It is not necessary that the actual determination or a copy of it be provided to the arrested person forthwith. That may be difficult or impossible in some cases, particularly if the telephone or other electronic means were used in obtaining the determination. The written notice containing the elements of the determination may be prepared by someone other than the reviewing judge or judicial officer. See Minn. Stat. § 611.32, subd. 2 and State v. Mitjans, 408 N.W.2d 824 (Minn. 1987) as to the obligation of a law enforcement officer, with the assistance of an interpreter, to explain to an arrested person handicapped in communication all charges filed against the person and all procedure relating to the person's detainment and release. It is not necessary to forthwith provide the arrested person with any affidavits, transcribed testimony, or other materials submitted to the court upon the application for a probable cause determination. If prosecution is commenced, those materials may be obtained by the defendant later through discovery under Rule 9.01, subd. 1 for felonies and gross misdemeanors and under Rule 7.03 for misdemeanors. Otherwise, access to any such materials is governed by Minn. Stat. § 13.82 of the Minnesota government data practices act.

3. RULE 34.01. COMPUTATION

Amend* the introductory phrase in Rule 34.01 as follows:

"Except as provided by Rules 3.02, subd. 2(2), 4.02, subd. 5(1), ~~and 4.02, subd. 5(3),~~ and 4.03, time shall be computed as follows:"

4. FORMS.

Amend the forms following the Rules by adding the following three forms as Form 44, Form 45, and Form 46.

*In the proposed amendment, deletions are indicated by a line drawn through the words and additions by a line drawn under the words.

STATE OF MINNESOTA

COUNTY OF _____

DISTRICT COURT

APPLICATION FOR JUDICIAL DETERMINATION OF PROBABLE CAUSE TO DETAIN

Name of Arrestee: _____
Date of Birth: _____ Present Location: _____
Arresting Agency: _____ CN#: _____
Date of Arrest: _____ Time of Arrest: _____
Offense(s): _____

Facts constituting probable cause to believe a crime was committed and arrestee committed it: _____

_____ Yes _____ No Was a prior application for probable cause to detain this person submitted to the court. If so, explain: _____

_____ I have attempted to contact the prosecuting attorney to approve this application and have been unable to do so for the following reasons: _____

The Complainant, being duly sworn, swears the above facts are true and correct to the best of Complainant's knowledge and belief and constitute probable cause to believe that the above-named arrestee committed the offense(s) described herein.

Complainant's Signature: _____
Agency: _____ Time: _____
Subscribed and sworn to before me this _____ day of _____, 19__.

Judge, Judicial Officer, Clerk or Notary Public

APPROVAL OF PROSECUTING ATTORNEY

_____, being duly authorized to prosecute the offense(s) specified in the attached Application, hereby approves this Application for Judicial Determination of Probable Cause to Detain.

Date and time: _____ (signature) _____
Name
Office

JUDICIAL DETERMINATION OF PROBABLE CAUSE TO DETAIN
page 2

_____ that the prosecuting attorney authorized to prosecute the offense(s) specified in the Application is unavailable to approve the application and the determination as to probable cause should not be delayed.

The proceeding was submitted: [] in writing [] in person
[] telephonically [] by FAX.

DATE: _____

TIME: _____

Judge or Judicial Officer



FORM 46

STATE OF MINNESOTA COUNTY OF _____ DISTRICT COURT

NOTICE OF JUDICIAL DETERMINATION OF PROBABLE CAUSE TO DETAIN

Name of Arrestee: _____
Date of Birth: _____ Present Location: _____
Arresting Agency: _____ CN#: _____
Date of Arrest: _____ Time of Arrest: _____

You, (name of arrestee), are hereby notified that at (time) on (date), Judge/Judicial Officer (name) reviewed whether there was probable cause to detain you further pending your first court appearance and determined:

- that the application to detain was timely presented to the court.
that the application to detain was not timely presented to the court and you shall be released immediately.
that no probable cause exists to detain you further and that you shall be released immediately.
that probable cause exists to detain you for the offense(s) of
pending your appearance in court or the posting of any bail that may have been set.
that bail without other conditions of release is set in the amount of
that other conditions of release, with or without bail, are established as follows:

The facts upon which this determination was made were submitted:

- by written application and sworn affidavit.
orally upon oath.

Date and time notice given: _____

(name of person giving notice)