

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

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

CX-84-2137

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USE OF ELECTRONIC FILING FOR CHARGING DOCUMENTS

INTRODUCTION

On May 3, 2008, representatives from CriMNet attended a meeting of the Advisory Committee on Rules of Criminal Procedure and demonstrated their eCharging project, which is designed to allow law enforcement and prosecution offices to electronically prepare and transmit charging documents to the courts. CriMNet also demonstrated technology to allow for execution of electronic and/or biometric signatures in those instances where signatures are required by the rules of procedure. Following the presentation, CriMNet representatives informed the committee that four pilot project counties – Carver, Kandiyohi, Olmsted, and St. Louis (Duluth) – would be prepared to implement a full test of eCharging and e-filing by winter 2008/2009, and requested that the committee develop and recommend to the Court rules of procedure to govern the pilot project. Following are the committee’s recommendations.

EXPLANTION OF THE PROPOSED RULE

Subdivision 1 of the draft rule defines two key terms that will be used throughout the rule: “charging document” and “e-filing.” The definition of the term “charging document” is purposefully broad. Though creation and filing of the complaint is the main focus of CriMNet’s pilot project, it is important to recognize that the courts are already receiving citations and tab charges by e-filing in the larger counties. The committee wanted to be careful not to draft a rule that would imply that those activities were unauthorized. The draft rule as written recognizes these activities and, if this rule becomes permanent, will incorporate them by reference.

The committee determined it was unnecessary to define CriMNet’s eCharging Service in the rule. The purposes of the service appear to be to: (1) create the charging document in an electronic form; (2) apply an electronic signature where necessary; and (3) transmit information from law enforcement to the prosecutor and then to the courts. Each of these steps could be completed independent of the eCharging Service if the prosecutor and law enforcement agencies were to invest in alternative technologies. Therefore, the rule was written without specific reference to the eCharging Service.

Subdivision 2 establishes authorization for e-filing. The indictment is specifically excluded from the authorization because it is not included in the eCharging/e-filing pilot project.

Subdivision 3(a) provides that any signatures required under the rules must be executed electronically if the charging document is e-filed. The required signatures for a complaint can be found in Rule 2.01. There are no required signatures for a citation or tab charge. The proposed rule makes clear that once a signature is executed electronically in compliance with the signature standard set by the State Court Administrator, that electronic signature is a valid signature on any printed copy of the document.

Subdivision 3(b) provides that the signature standard will be approved by the State Court Administrator. For this pilot project, the work to develop the signature standard has been a several-year project undertaken by CriMNet with input from all criminal justice partners,

including the Judicial Branch. This rule recognizes that it is the ultimate responsibility of the Judicial Branch to establish the standards for filing charges with the courts. Therefore, the committee has proposed that responsibility for approving the signature standard rests with the State Court Administrator.

Subdivision 4 requires that if an e-filed complaint is made under oath before a notary public, the complaint must be electronically notarized in accordance with state law. Electronic notarization is authorized under Minnesota Statutes Chapters 358 and 359.

Subdivision 5 clarifies that it is unnecessary to file a paper original of any e-filed document.

PILOT PROJECT RECOMMENDATIONS

The Advisory Committee on Rules of Criminal Procedures makes the following recommendations regarding the eCharging/e-filing pilot project.

1. The committee recommends that the Court promulgate the proposed e-filing rule as a temporary rule effective in the following counties for the duration of the eCharging/e-filing pilot project: Carver, Kandiyohi, Olmsted, and St. Louis (Duluth). This process will provide an opportunity to test and evaluate not only the technology but also the proposed rule of procedure.

2. The pilot project should be authorized in the four targeted counties for a period up to two years from promulgation of the temporary rule. This authorization should allow adequate time for testing, evaluation, and promulgation of a permanent rule if deemed appropriate. If the pilot project is determined to be unsuccessful, the Court can choose to terminate the pilot project sooner.

3. During the first 30 days of the pilot project, the participants should be required to follow a parallel paper process and file hard-copy complaints in the traditional manner. This procedure will ensure that the technology is functioning and no individual's rights are infringed during the startup of the pilot project. To accomplish this result, it is recommended subdivision 5 of the proposed rule either be suspended during this initial 30-day period, or that its promulgation be delayed until 30 days into the pilot project.

4. Finally, the committee recommends that the Court require CrimNet to file a report with the Court 6 months after the start date of the pilot project including an assessment of the functionality of the technology used in the pilot project, an analysis of the selected signature standard, and a general report of the successes achieved and any barriers encountered during the 6-month period.

Respectfully Submitted,

ADVISORY COMMITTEE
ON RULES OF CRIMINAL
PROCEDURE

PROPOSED AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE

Note: Throughout these proposals, unless otherwise indicated, deletions are indicated by a line drawn through the words, and additions are underlined.

1. Rule 1. SCOPE, APPLICATION, GENERAL PURPOSE, AND CONSTRUCTION

Insert new Rule 1.06 as follows:

Rule 1.06. Use of Electronic Filing for Charging Documents

Subdivision 1. Definitions.

(a) *Charging Document.* A “charging document” is a complaint, indictment, citation, or tab charge.

(b) *E-filing.* “E-filing” is the electronic transmission of the charging document to the court administrator.

Subd. 2. Authorization. E-filing may be used to file with the court administrator in a criminal case any charging document except an indictment.

Subd. 3. Signatures.

(a) *How Made.* All signatures required under these rules must be executed electronically if the charging document is e-filed.

(b) *Signature Standard.* Each signature executed electronically must comply with the electronic signature standard approved by the State Court Administrator.

(c) *Effect of Electronic Signature.* A printed copy of a charging document showing that an electronic signature was executed in compliance with the electronic signature standard approved by the State Court Administrator prior to the print out is prima facie evidence of the authenticity of the electronic signature.

Subd. 4. Electronic Notarization. If the probable cause statement in an e-filed complaint is made under oath before a notary public, it must be electronically notarized in accordance with state law.

Subd. 5. Paper Submission. E-filed documents are in lieu of paper submissions. An e-filed document should not be transmitted to the court administrator by any other means unless the court requests a printed copy.

2. **Comments – Rule 1**

Insert the following paragraphs at the end of the comments to Rule 1:

The signatures of the following persons must be executed electronically when a complaint is e-filed pursuant to Rule 1.06: (a) the complainant, as required under Rule 2.01, subd. 1; (b) the judge, court administrator, or notary public before whom a complaint is made upon oath, as required under Rule 2.01, subd. 2; (c) the prosecutor, as required under Rule 2.02; and (d) the judge, indicating a written finding of probable cause, as required under Rule 4.03, subd. 4. There are currently no signature requirements in the rules for citations or tab charges.

It is anticipated that if a complaint is commenced electronically, any actor in the chain (e.g., prosecutor or judge) could choose to print the complaint and proceed by filing a hard copy. If paper filing occurs, Rule 1.06, subd. 3 clarifies that any signatures executed electronically and shown on the hard copy complaint are valid so long as the signatures were executed in compliance with the electronic signature standard approved by the State Court Administrator.

Electronic Notarization, as required under Rule 1.06, subd. 4, is governed by Minn. Stat. Chs. 358 and 359.