

STATE OF MINNESOTA

IN SUPREME COURT

CX-84-2137

**ORDER ESTABLISHING DEADLINE FOR
SUBMITTING COMMENTS ON PROPOSED
AMENDMENTS TO THE MINNESOTA RULES
OF CRIMINAL PROCEDURE**

The Minnesota Supreme Court Advisory Committee on Rules of Criminal Procedure filed a report on August 29, 2008, proposing changes to the Minnesota Rules of Criminal Procedure; and

This Court will consider the proposed changes without a hearing after soliciting and reviewing comments on the proposed changes;

IT IS HEREBY ORDERED that any individual wishing to provide statements in support or opposition to the proposed changes shall submit twelve copies in writing addressed to Frederick K. Grittner, Clerk of the Appellate Courts, 25 Rev. Dr. Martin Luther King Jr. Blvd, St. Paul, Minnesota 55155, no later than November 3, 2008. A copy of the committee's report containing the proposed changes is annexed to this order.

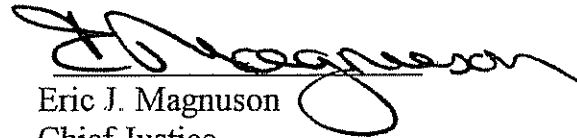
Dated: September 25, 2008

BY THE COURT:

OFFICE OF
APPELLATE COURTS

SEP 25 2008

FILED


Eric J. Magnuson
Chief Justice

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

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

CX-84-2137

August 29, 2008

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Hon. Heather L. Sweetland

Hon. Paul H. Anderson
Supreme Court Liaison

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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.

EXPLANATION 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.

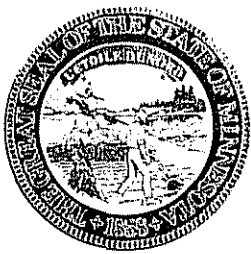
2. Comments – Rule 1

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.



District Court of Minnesota

SEVENTH JUDICIAL DISTRICT

GALEN J. VAA
JUDGE OF DISTRICT COURT

CLAY COUNTY COURTHOUSE
P O BOX 280
MOORHEAD, MINNESOTA 56561-0280
TELEPHONE (218) 299-5065
FAX (218) 299-7307

October 28, 2008

Frederick Grittner
Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

RE: Amendment to Criminal Rules of Procedure allowing for eCharging

Dear Mr. Grittner,

Please consider this letter as a statement in opposition to the proposed change in the Rules of Criminal Procedure which would allow the use of "eCharging" and electronic signatures in criminal complaints. The reasons for my opposition are set forth in the following paragraphs.

First, the concept of "eCharging" is a solution for a problem that does not exist. Apparently, the promoter of this concept is concerned about the amount of time and expense incurred by law enforcement in transporting the charging documents from the police station and/or law enforcement center to the county attorney and ultimately to the courthouse. However, in the vast majority of counties in this state, the law enforcement center, county attorney's office, and courthouse are either located in the same building or are in close proximity to each other. In some larger counties, the police station may not be in close proximity to the county attorney's office and/or courthouse. In those counties, the simple use of a facsimile machine eliminates any need for the officer to drive between the various offices. I'm confident that most law enforcement centers or police stations, however small, presently have a facsimile machine.

Second, the concept of "eCharging" assumes that the judicial officer would conduct his/her probable cause review of the criminal complaint on a computer screen. Personally, I would not like to undertake this important judicial task in the absence of a hard copy. It has been my personal experience that I tend to comprehend and remember what I read on a hard copy form much better than my comprehension and memory in reviewing matters contained on a computer screen. I believe that my experience in this regard is shared by many other judges.

Also, here in the 7th District criminal complaints are presented to a judicial officer for a probable cause review on an irregular basis throughout the week and during the time that said judicial

officer is assigned to Master Calendar. Law enforcement personnel present the long form complaints to the judicial officer for his/her review and signature throughout the day and on no particular time schedule. The existence of a pile of unsigned formal complaints on the chamber's desk of the judicial officer assigned to review them, constitutes a constant reminder of the need to attend to that process as early as possible. The use of "eCharging" would require the judicial officer to periodically check the computer at numerous times throughout the day to see if the prosecutor had filed any complaints. In my opinion, this would result in a significant needless waste of a judicial officer's time. It would also greatly increase the likelihood of the existence of a complaint (filed by the prosecutor for probable cause review) being overlooked by a judicial officer. The age old concept of something being "out of sight, out of mind" is applicable to this stage of the eCharging process.

Third, the use of "eCharging" in the courtroom would cause significant delay in the processing of criminal cases. Frequently, I preside over as many as fifty arraignment hearings when I'm assigned to Master Calendar on a Monday or Tuesday morning here in Clay County. Most of these hearings consist of initial appearances by criminal defendants. I am required by the Rules of Criminal Procedure to make sure that a defendant understands the nature of the charges that have been lodged against him or her and all of his/her constitutional and legal rights. During that process, it is necessary for the court to review the criminal complaint in some detail with the defendant. This requires the court to be in a position to *clearly communicate with the defendant* and counsel for the parties at all times, and to have undisturbed direct eye contact with them.

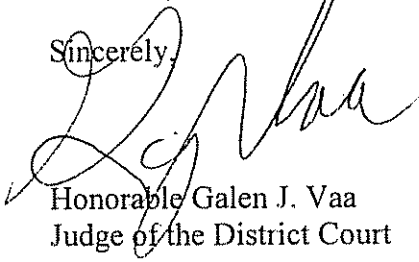
In my opinion, the use of "eCharging" would divert the court's attention from the defendant, counsel for the parties, and other participants at the hearing, to a computer screen and/or manipulation of the computer. Not only would this cause unnecessary delay in the process of the hearing, but it would also be extremely detrimental to courtroom decorum and public respect for the courts. In short, the use of "eCharging" would cloak the district court with the appearance of a bureaucrat and would *significantly disrupt direct communication* between the judge and the defendant at the hearing. As a judicial officer, I cannot overemphasize the importance of the judge having direct eye contact with the defendant, all counsel, and spectators throughout the arraignment hearing.

Also, during the packed courtroom which frequently attends an arraignment calendar, it is important for the court to be aware of any potential disruptions that may occur (or are occurring) among the audience/spectators. This function of the judicial officer will be severely impaired by the constant diversion of his/her attention from the whole courtroom environment to a computer screen and/or operation of the computer.

Finally, it is apparent that from the standpoint of constitutional law, a defendant will likely retain the right of obtaining a hard copy of the complaint at the arraignment hearing. Certainly, a defendant should always be entitled to have a hard copy of the complaint while he/she is incarcerated so that he/she can closely review the same and adequately prepare for his/her legal defense. If the goal of "eCharging" is intended to entirely eliminate all hard copies, that goal will fail because it would likely violate the defendant's due process rights to be fully informed of the complete factual basis for the criminal charges lodged against him/her.

Thank you for your consideration of the above opinions. In accordance with your requirements, I am attaching twelve signed copies of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Galen J. Vaa". The signature is written in a cursive style with a large initial "G".

Honorable Galen J. Vaa
Judge of the District Court

CC: Chief Justice Eric Magnuson
Hon. Charles Porter, President MDJA