

STATE OF MINNESOTA

IN SUPREME COURT

C1-84-2137

OFFICE OF
APPELLATE COURTS

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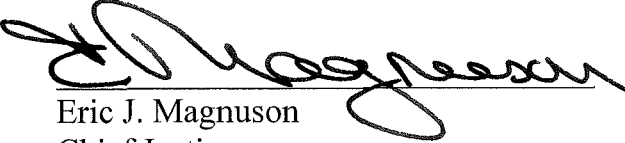
**ORDER ESTABLISHING DEADLINE FOR SUBMITTING
COMMENTS ON eCHARGING PILOT REPORT**

On November 17, 2008, the Court promulgated Minn. R. Crim. P. 1.06 as a temporary rule effective in Carver, Kandiyohi, Olmsted, and St. Louis counties for participants in the eCharging/e-filing pilot project. The Court also ordered Minnesota Justice Information Services (MNJIS) to file a report within six months after the start date of the eCharging/e-filing pilot project addressing an assessment of the functionality of the technology used in the pilot project, an analysis of the signature standard as promulgated in temporary Rule 1.06, subd. 3(b), and a general report of the successes achieved and any barriers encountered during the six-month period. MNJIS filed its report on September 18, 2009. The report contained several recommendations regarding the temporary rule and procedural issues relating to eCharging.

IT IS HEREBY ORDERED that any individual wishing to provide written comments relating to the recommendations in the eCharging Pilot Report shall submit fourteen copies of such statement addressed to Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, Minnesota 55155, on or before December 30, 2009.

Dated: October 27, 2009

BY THE COURT:



Eric J. Magnuson
Chief Justice

The eCharging Pilot

A Report to the Minnesota Supreme Court

Minnesota Bureau of Criminal Apprehension
Minnesota Justice Information Services Division

September 18, 2009

Bureau of Criminal Apprehension

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Introduction

In its temporary court rule authorizing the eCharging pilot in the four pilot counties of Carver, Kandiyohi, Olmsted, and St Louis, the Minnesota Supreme Court ordered a report from the Bureau of Criminal Apprehension's Minnesota Justice Information Services (MNJIS) Division to the Court within six months of the start of the pilot project. The rule is included as an attachment. It authorizes the pilot in Carver, Kandiyohi, Olmsted, and St Louis Counties; sets a 30 day parallel pilot requirement; and requires a report to the Supreme Court addressing:

- 1) "[A]n assessment of the functionality of the technology used in the pilot project";
- 2) "[A]n analysis of the signature standard as promulgated in [the temporary court rule]
- 3) "[A] general report of the successes achieved and the barriers encountered during the six month pilot"

The eCharging pilot began on March 19th, 2009, and the BCA is submitting this report in compliance with that order.

The BCA believes the project has been a success, saving processing time and improving data accuracy in the pilot counties and without encountering any substantial technical or legal challenges. The BCA therefore recommends that the temporary court rule allowing electronic signatures on criminal complaints be made permanent and extended to the entire state.

The BCA appreciates and recognizes the cooperation and support from the Minnesota Supreme Court, the Advisory Committee on Rules of Criminal Procedure, State Court Administration, and the judges, court administrators, and staff in the courthouses of the four pilot counties

Background

The BCA and its stakeholders envisioned the eCharging project as contributing to the solution of several problems in the criminal justice system.

- The current charging process involves triple-redundant data entry and the manual transport of paper complaints by peace officers with a loss of efficiency.
- The redundant data entry introduces higher error rates into criminal justice data, decreasing the accuracy of criminal justice data and increasing the likelihood of criminal justice decisions being made based on incomplete or inaccurate criminal histories.
- The manual process makes it difficult for the BCA to electronically determine which criminal justice events and individuals are linked to which other events and individuals. Making the process electronic renders these linkages far more clear and precise.

Early discussions between the BCA and State Court Administration noted that implementation of electronic signatures would require a change to the Rules of Criminal Procedure. State Court Administration representatives recommended presenting the proposed technological solution for electronic signatures to the Advisory Committee in April of 2008, and seeking the Committee's advice on the best method of gaining approval for the use of electronic signatures use in the criminal complaint process. The Rules Committee determined that it would be necessary to

propose a temporary court rule authorizing electronic filing of the complaint and electronic signatures. That rule was presented to the Supreme Court on August 29, 2008, and promulgated on November 17th, 2008.

The eCharging pilot began in Virginia, Minnesota on March 19th, 2009. The first electronic complaint was signed on March 20th. Per the court order, a parallel paper process was followed for 30 days after which time the Virginia Court ceased requiring a handwritten signature copy. The initial pilot in Virginia included the Virginia branches of the St. Louis County Attorney's Office and Sheriff's Office, and the Virginia Police Department. The Eveleth, Gilbert/Biwabik, and Ely Police Departments were added in April and May.

The eCharging project was then expanded to 5 more locations over the next 4 months. The Hibbing Courthouse was added on June 6th, Duluth was added on June 20th, Kandiyohi on August 10th, Carver on August 24th, and Olmsted on September 14th, 2009.

How eCharging Works

The eCharging complaint process is initiated either in a prosecutor's case management system or in the eCharging user interface itself. Most of the pilot agencies are submitting through their own systems. Typically, a legal secretary enters all of the data necessary for the creation of the complaint, clicks a button on their computer, and the data is submitted into the eCharging system via the secure Criminal Justice Data Network provided by the BCA.

Upon submission, eCharging validates the data in the complaint against business rules determined by the Court ensuring that all statutes are valid given the date of offense and all required fields are submitted and in a valid format. If there are any problems, a message identifying the problem (e.g., "statute invalid based on offense date") is returned to the submitter.

Prosecutor signing

The legal secretary then logs into the eCharging web site, reviews the complaint for accuracy, and when satisfied selects the signing attorney from a drop down box assigning the complaint to him or her. This action immediately generates an e-mail to the attorney notifying him/her of the assignment and containing a link to view the complaint.

The attorney clicks on the link, logs into eCharging, and is taken directly to a page summarizing the complaint. The attorney typically clicks a "preview" button displaying the complaint in the way it will look when eventually printed for the defendant. If the attorney sees errors, the complaint is amended in their case management system and is resubmitted back into eCharging. If the complaint meets the attorney's approval, they select the "sign" button that takes them to a screen where they enter their system password. This act constitutes their signature and locks down data entry on the complaint with the exception of adding signatures. The complaint is automatically assigned to the law enforcement agency listed on the complaint.

Law enforcement signing

The act of signing by the attorney immediately generates an e-mail to the law enforcement agency that a complaint is ready for their signature. Based on its own preferences, the agency determines which officer will sign the complaint. The officer clicks on the link in the e-mail, logs into eCharging, and reviews the complaint similar to the prosecutor. If the officer sees any issues they can reject the complaint and enter their reasons for the rejection, which strips off the prosecutor signature and returns the complaint to the prosecutor. This action generates another e-mail to the prosecutor and puts the complaint back in a state where it can be edited.

If the officer approves the complaint, they swear their oath and sign the complaint in the physical presence of a notary public. This is commonly a records management person in their agency. The law enforcement signing is performed via a biometric device as authorized by the temporary court rule. This is an inexpensive device that plugs into their computer, checks the officer's fingerprint against their previously registered set of prints, and validates their identity. Once this is done the officer assigns the complaint to the notary who gave the oath and witnessed the signing.

Electronic Notarization

The notary then logs into eCharging and opens the document signed by the officer. On their signing page, the notary attests that they witnessed the oath and signature and then attach their Electronic Notary Seal (ENS). The ENS is a certificate file obtained from the National Notary Association that is associated with their specific notary license and that requires a password to activate. Minnesota law (359.01) authorizes electronic notarization, requiring the notary public register with the Minnesota Secretary of State.

When the ENS password is entered, eCharging validates the seal against the National Notary Association's certificate authority – maintained on a remote web server. If the certificate is valid, the notary is allowed to proceed and add their signature to the complaint.

Once the Electronic Notary Seal has been validated, the notary signs the complaint with a password in a process similar to that for the prosecuting attorney. After signing, the complaint is automatically assigned to the court listed on the criminal complaint.

Judicial Assignment

The assignment to court triggers e-mail notifications for all court administrators who wish (or are assigned) to be notified when that assignment occurs. Local court business practices determine which court staff person assigns the complaint to which judge.

eCharging has flexibility with regard to what happens when the criminal complaint is assigned to the court. The system allows for automatic assignment to a default judge as may be specified in the system. In practice, pilot court administrators have preferred to have the complaints first assigned to court administration.

Once the court staff person has determined which judge is going to be signing the complaint, they can click on the link in the e-mail, log into eCharging, and select the judge via a drop-down box that lists all judges eligible to sign for that courthouse.

Judicial Signature

The assigned judge receives an e-mail notifying him or her of the assignment. Some judges have chosen to have the option of receiving those e-mails on the bench. Other judges prefer to receive them in their chambers only. Court staff has developed business processes to ensure that the judge is aware of the need for an immediate signature when that is necessary.

Once notified, the judge clicks on the link in the e-mail notification, logs into eCharging, and views the complaint. They typically click the “preview” button displaying the complaint in an easy-to-read format that is identical to what the defendant will eventually receive.

The judge has the option of rejecting the complaint if they choose. They would enter the reason for the rejection and the rejection would strip off all signatures and assign the complaint back to the prosecutor for edits. If the same complaint is updated and submitted again, eCharging will flag that the complaint was “previously rejected” when the judge (or another judge) subsequently reviews it.

If the judge approves the complaint, they sign by entering their password similar to the prosecutor and notary. Once signed, the complaint is reassigned back to court administration for publication into the Minnesota Court Information System (MNCIS).

Saving into MNCIS

Once the court staff person publishes the complaint from eCharging to MNCIS, the complaint passes through MNCIS validation rules and is accepted inside of MNCIS. This generates a court file number which is then transmitted back to eCharging both updating and closing out the complaint. The court file number is typically passed on to prosecutor records management systems and displays on printed versions of the complaint.

Printing the complaint

As the defendant will not be receiving an electronic copy, court staff are saving the electronic version of the complaint and printing out file copies for their own records and for the defendant and his/her attorneys. The court no longer is expected to provide copies of the complaint to law enforcement and prosecutors as they are notified when the complaint is completed and can save and print their own copies.

eCharging Features

eCharging has several features that were designed to meet the requirements of the users of the system and to handle the fact that the criminal justice process cannot always wait for someone to

get back to their desk to see an e-mail. Not every feature of the system will be described, but we are highlighting several that were requested most often.

“Soft” Assignments

Assignments to a particular individual are not irrevocable even if the assigner or the assignee is unavailable. Any authorized signer for prosecution, law enforcement and the judiciary can sign a complaint that has been assigned to their agency, listing the signer by name on the complaint. For instance, if the assigned judge is unable to sign a complaint, either another judge can log into eCharging and sign the complaint or any authorized court staff member can re-assign the complaint to a different judge.

Customized Notifications

Users can choose the events for which they want e-mail notifications. Most secretarial staff are choosing a wide variety of events (prosecutor signing, law enforcement signing, judicial signing, etc.) in order to monitor the progress of a complaint. Most judges, in contrast, are selecting no notifications other than whether a complaint has been assigned to them personally.

Customized workflow

eCharging allows for multiple ways of progressing documents through a specific agency according to their workflow preferences. Law enforcement agencies, for instance, can choose to directly receive an e-mail notification from eCharging of their need to sign a complaint, or their clerical staff can receive the notification prompting them to find an officer.

Paper options

Since the criminal justice process cannot come to a halt over technical problems, eCharging allows for the process to shift to paper at any point the users deem necessary. When a shift to paper occurs, the complaint is printed, with remaining signatures added manually, and the final version with handwritten signatures filed with the court.

Court Questions

The Minnesota Supreme Court order authorizing electronic signatures for the eCharging pilot required the BCA to respond to three different topics.

- 1) “[A]n assessment of the functionality of the technology used in the pilot project”;
- 2) “[A]n analysis of the signature standard as promulgated in [the temporary court rule]
- 3) “[A] general report of the successes achieved and the barriers encountered during the six month pilot”

Each of these will be addressed in turn.

Assessment of the Functionality of the Technology

The technology used in eCharging can most readily be divided into four sections: the eCharging application; the software adapters connecting local systems to eCharging; electronic signatures; and electronic notarization.

The eCharging Application

The eCharging application is a web site housed on a BCA web server only accessible to users who are on the secure Criminal Justice Data Network (CJDN). Users access eCharging via web browsers like Internet Explorer where they can set up their preferences (how they want their name and title displayed, what e-mail notifications they want, etc.), move charging documents through the system, run searches to track the progress, or simply view, previously submitted complaints.

As of September 17, 2009, 229 complaints have been sent all the way to the court via eCharging.

The BCA is pleased with how the application has worked during the pilot. Downtime has been minimal, limited to routine maintenance and a three day period in April where complaints could not be processed due to problems with the verification of Electronic Notary Seals (a problem that has not since re-appeared).

Feedback from pilot users has been very positive. The use of the system has been found to be very intuitive. In the BCA's first pilot in the City of Virginia, the eCharging team was following the first complaint through the system and answering any questions for users. After assigning the complaint to the judge, the judge was notified that a complaint was ready and that the team was on its way upstairs to assist in the process. When the team reached the judge's chambers, the complaint had already been signed and was now being processed in back in court administration where the team had.

Users have been extremely helpful in identifying areas of improvement. For instance, signing by judges in other courthouses was initially not supported, nor was the ability of court staff to re-assign a complaint that was assigned to a judge (judges could re-assign or assign themselves, however). That functionality has already been added to the system.

There are remaining areas for improvement, however. Customization of judicial edits, improved notification and tracking of "in-custodies", added support for users in multiple agencies and improved workflow options when complaints are forced to go to paper are all on the priority list for development this fall, prior to statewide deployment.

Software Adapters

Software adapters are computer programs that translate information from local information systems into a standard format recognized by the State and then submit the data into eCharging. These are central to eCharging in that they eliminate the duplication of data entry between local data systems and eCharging, saving time and reducing data problems due to data entry errors.

The BCA (and hence the State) has funded the construction of three software adapters for the pilot, two of which are in production. The Courtview adapter submits complaints and citations to eCharging from St Louis County. The MCAPS (Minnesota County Attorney Practice System) adapter submits complaints to eCharging from Carver, Kandiyohi, and St Louis Counties. The third adapter is for electronic referral of incident reports from law enforcement to prosecutor, with Computer Information Systems (CIS), used in Carver County. That adapter is scheduled for deployment in October 2009.

The adapters have been one of the biggest challenges with eCharging. Since the court has fairly detailed business validation rules on any data being electronically submitted into MNCIS, the BCA does not want to submit a complaint through for signatures only to have an error identified by MNCIS on submission (such as an invalid statute). Therefore eCharging validates against court rules upon submission to eCharging from the adapter. Getting past these validations has occasionally been a problem.

This problem is magnified by the fact that local data systems were not generally designed with consideration to eCharging and Court business rules. Therefore, some local systems do not store their statutes in a format recognized by eCharging and the Court nor do they contain data that the Court requires on specific offenses (such as posted and observed speed on a speeding statute included as a charge on a broader complaint).

These problems have resulted in the prerequisite of reformatting some of their data prior to any eCharging submission in two of our four pilot counties (St Louis and Kandiyohi). Prior to the eCharging deployments in those counties, charging language was stored in a format that was inaccessible to the adapters that their vendors wrote to connect to eCharging. In St Louis County charging language was stored in Wordperfect template files, and Kandiyohi was using an older version of MCAPS. This has forced the agencies to restructure their charging language whenever a charge is used for the first time in eCharging. This adds additional preparation work, and has constrained their ability to get complaints ready for eCharging on mornings when there are several in-custody complaints, due to time pressures. These problems have not existed in the other two pilot counties, Carver and Olmsted.

The BCA now has a better understanding of these potential issues subsequent to the pilot, and is taking steps to reduce their impact or compensate for them in the statewide rollout.

Electronic Signatures

The BCA uses two types of signatures for electronically signing complaints. Prosecutors, notaries, and judges sign by entering their password. Law Enforcement signs by using a biometric device. In both cases, the details of the act of signing (who, from what computer, when, what the document looked like when it was signed) are archived on the eCharging server in the event of any need for discovery or audit.

The password signature has not been a source of any problems in eCharging since launch. The BCA regularly receives feedback that the signing process is easy and intuitive, even by users who were some of the biggest skeptics prior to training.

The biometric signature has been very positively received technologically. The BCA has often had to work out some mild technical challenges with local information technology support prior to launch, but subsequent problems have been very rare. In addition, the biometric signing is very rapid and easy (simply swiping a finger past the sensor on the device) which has led to high user acceptance. There is an important caveat, however, that will be discussed further in this report. While the biometric signing itself is well-received, many law enforcement officers have told us that in being required to sign electronic complaints biometrically they think they are being unfairly singled out and held to a higher standard.

Electronic Notarization

Aside from a three day outage in April mentioned above, the electronic notarization process worked well once the notaries had completed the electronic notarization requirements and had installed their Electronic Notary Seals. However, there are two significant challenges with electronic notarization as implemented in eCharging, which are forcing the BCA to revisit the process for statewide deployment.

- 1) The application and installation process for the Electronic Notary Seal from the National Notary Association is administratively and technologically cumbersome for participants. This has led to considerable support challenges prior to launch either tracking down incomplete applications or solving installation problems. For instance, several agencies have had problems installing the electronic seals on their computers due to local security configurations.
- 2) The National Notary Association informed us in July that they are sun-setting the electronic notary method used in eCharging and that no new electronic notaries will be accepted with this method after September 30, 2009.

As a result, the BCA will be redesigning electronic notarization for the statewide rollout ensuring that any revised process remains in compliance with electronic notarization rules under state law.

Analysis of the Signature Standard

The BCA believes that the signature standard specified in the court rule has been a success. Electronic signatures have been one of the most well-received parts of the eCharging pilot and have resulted in no legal challenges.

The signature standard in the temporary court rule authorizing the pilot had two specifics:

- 1) That electronic signatures in eCharging must comply with the standard approved by the State Court Administrator.
- 2) That the law enforcement signature must be biometric.

State Court Administration standard

The standard set by the State Court Administrator required the following:

“The minimum security standard for electronic signatures used in connection with court proceedings shall be two-factor authentication that is uniquely reconcilable to a single actor, which results in a non-modifiable document after such electronic signature is affixed, but that allows additional electronic signatures to be affixed. A more secure method for electronic signatures may also be used, such as biometric identification.” (source: e-mail received by BCA from State Court Administration)

“Two-factor authentication” was clarified by State Court Administration to mean “name and password” as an example of two factors.

eCharging is in compliance with this standard. The password signature method described above (combined with the individual’s user ID entered at login) has been universally successful in the pilot.

Non-modifiability has resulted in some questions from judges in the pilot counties, who wish to have the option of adding bail information, changing the type of complaint, or striking out individual charges from the complaint if they do not believe probable cause is shown for that charge. A few judges have also requested the ability to make edits to the probable cause statement, such as the correction of apparent typographical errors. The BCA had chosen not to support these editing options for the pilot, partly due to concerns about the modifiability of a document that has already been signed. An additional concern was that computer programming does not allow for the distinction between corrections of minor typographical errors and re-writes of the probable cause statement – either a field can be edited by a specific user or it cannot be edited.

The BCA requests clarification as to which judicial edits to the complaint, if any, should be allowed at the time of the judge’s electronic signature.

Biometric Signature

The signature standard for law enforcement was developed based upon the current requirement in Minn. R. Crim. P. 2.01, subd. 2 that “the complaint must be made upon oath before a judge or judicial officer of the district court, court administrator, or notary public.” The concept of biometric signatures for law enforcement was brought up as one method of retaining the solemnity of the oath-swearing in the current rule. At that time, there were also discussions between the BCA and Court about the possibility that the biometric signature might eliminate the need for a witnessed oath swearing. This resulted in strong opposition from representatives of the Public Defender’s Office. The Public Defenders believed that witnessed oath-swearing was an extremely important part of the current rules governing the complaint process. The eventual agreement to combine electronic notarization of the oath-swearing with the BCA’s biometric proposal was then presented to the Advisory Committee and was the basis for the standard set in that rule.

Biometric signatures in eCharging have had high user acceptance by law enforcement. There have been individual requests by prosecutors and judges to have the option of signing in the same method and the BCA is planning to add that as a future enhancement. However, there are objections from law enforcement that they are mandated to comply with a higher standard than prosecutors and judges and a belief that notarization is redundant because the officer's identity has already been biometrically verified. This is an observation that has been made by law enforcement officers, or their representatives, in each of the pilot counties and at most public presentations about eCharging where officers have been present.

As such, the biometric signature requirement has had a mixed response. The technology itself is popular, but the mandate to use it is not, at least while still coupled with in-person oath-swearing.

Successes and Barriers

This section documents the successes of eCharging and describes some of the barriers and challenges.

Successes

Time Savings: The BCA's estimates from the pilot for the amount of time saved have varied depending on workflow and distances in the pilot agencies. For law enforcement, the time savings estimates have averaged 45 minutes per criminal complaint including driving and waiting-around time. The high-end estimates were in agencies with the longest travel time to the courthouse, which lead to some estimates of over two hours. Court time savings were estimated by court staff at 10 minutes per complaint. Prosecutors have not reported any time savings due to the validation and formatting challenges mentioned previously. They are anticipated to save data entry time when the electronic incident referral service is added to eCharging in Carver County, scheduled for October 2009.

Workflow Monitoring: Participants occasionally relayed stories of paper complaints that had been "lost" due to the inability to closely track workflow once a complaint left their agency. One of the elements of eCharging that has garnered the most favorable comments has been the ease of workflow visibility. A legal secretary can run a simple search in eCharging to see the status of all complaints that are currently in the signing process and see the individuals and agencies to which they are currently assigned. This allows for ease of tracking and monitoring. Additionally, workflow tracking is important as an audit function, in case the authenticity of the complaint or the signatures on it are challenged.

High Acceptance: Acceptance by law enforcement and the court has been extremely favorable. The signing process is equally well-received by prosecutors, but there are caveats to the process as a whole that are discussed further in the "barrier" section below.

Lack of Legal Challenge: Court administrators have generally chosen to inform local defense attorneys and public defenders of the pilot. This has resulted in two questions from public defenders (one about how the process worked, and another on whether eCharging flagged rejected complaints as such when resubmitted – it does), but there have been no major concerns and no legal challenges.

Electronic Citations: eCharging's inclusion of support for electronic citations should cut the software development costs of local systems that wish to submit electronic citations to Courts. Once an agency has written a software adapter for eCharging, it is considerably less expensive to include citations as an add-on than it is to write a new adapter. This has resulted in St Louis County submitting electronic citations to the Court and imminent electronic citation deployment in more counties in northeast Minnesota. The BCA is also in planning stages with other records management vendors to include citations in their adapters.

Integration: The standard-format data conversion that is part of the eCharging adapters is opening the doors to additional products and services that would add value to the criminal justice process. For instance, the ability to check BCA fingerprints at the time of complaint creation and inform users of any that still need fingerprinting is on the horizon. This would be of great benefit in reducing the criminal history "suspense" file. State Court Administration is piloting a service that would allow eCharging to pass its printable version of the criminal complaint directly into MNCIS enabling it to be called up electronically at a later date inside of MNCIS.

Favorable Publicity: The first-of-its-kind nature of eCharging has led to some media attention, little of which was initiated by the Department of Public Safety or the BCA. There has been favorable coverage on three Duluth TV networks, the Duluth newspaper and regional newspapers. Stories have been picked up on the AP wire and have resulted in some national press, including articles in the online version of the Los Angeles Times and CNNMoney. While media coverage is not a success in itself, the local initiation of several of these stories is a favorable indicator of their acceptance of eCharging. Again, this is the first such project in the country to reach this level of integration and accomplishment.

High Interest: Many other agencies have contacted the BCA about participating in eCharging and the BCA is in active project planning discussions with Hennepin County.

Barriers

Workflow: The shift from paper to electronic workflow has had direct impacts on the business processes of most pilot agencies. For instance, an agency might typically be informed of a complaint via a phone call allowing implicit assignment of finding someone to sign the complaint in the hands of the person who took the phone call. With e-mail notifications, ownership is less clear and agencies have had to develop new business processes to ensure complaints are signed promptly. This is something the eCharging team discusses with agencies during deployment and so far the problem has been surmountable. This is partially because the eCharging application enables easy workflow monitoring.

Validation: Several of the prosecuting agencies participating in eCharging are having challenges getting their data to pass into eCharging in a format that both meets the Court and BCA requirements and contains the text that the prosecutors want to include in the complaint. For instance, the charging language templates that the St Louis and Kandiyohi County Attorneys have previously used are not stored in a format that was accessible to the adapters their vendors wrote. As such, both agencies have had "preparation work" that is necessary to allow them to use their preferred charging language. This problem is situational and does not exist at the Carver or

Olmsted County Attorney's Office or the Chanhassen or Rochester City Attorney's Office. Nevertheless, it is expected that this is a problem that will be seen in other counties during a statewide rollout and the BCA is working with the records/case management system vendors to develop permanent solutions.

Electronic Notarization: As mentioned previously, the electronic notarization method chosen by eCharging has proven to be administratively and technologically cumbersome and is being phased out by the National Notary Association this fall. As such, this is a barrier that has forced its own solution and the BCA is revisiting its options this fall including, but not limited to, alternative methods offered by the NNA.

In-Custodies: Complaints for individuals in custody that need to be processed within the "36/48 hour rule" have presented their own challenges. Workflow is often dependent on verbal alerts when the complaint is handed off rather than systemic processes. As eCharging has eliminated the verbal handoff, agencies have often found themselves needing to cross-reference the complaint notifications against a custody list to identify urgencies. While most agencies have been able to manage these problems, some agencies have been cautious about in-custodies in eCharging until they are certain any workflow problems have been ironed out. eCharging was designed to flag in-custody complaints for users, but the records management system submitting complaint data to eCharging do not contain the data necessary to trigger those flags. They have not needed it before. The BCA's solution has been to avoid in-custodies in an agency until there is a high level of comfort with the system. The BCA is also planning enhancements to eCharging to better allow for the triggering of custody flags inside the eCharging application itself, and improve notifications for in-custody complaints.

Law Enforcement Signature: As mentioned, officers have given feedback that they think they are unfairly and unreasonably singled out by the requirement of a combination of biometric signatures with oath swearing done before a judicial official or notary public. The biometric signing itself has rarely been the concern, but rather the fact of it being required when it is not required for prosecutors or judges. Officers have suggested making the biometric optional or, allowing the oath swearing to be done electronically rather than in front of a judicial official or notary public. Some questioned whether the need to be physically in front of the oath-giver was relevant or necessary in an electronic world. While the disagreements over the law enforcement signature have not derailed the acceptance of the pilot, they have spawned frequent discussions during presentations and training sessions. The BCA sees these as Court policy questions and raises them to the attention of the Court at the behest of our pilot users.

Variations in Policies: While eCharging was designed to allow a reasonable degree of flexibility with regard to local business decisions, some business practices directly oppose each other or the variations proved impossible to completely accommodate. The standardized complaint form used in eCharging, for instance, is not easily amenable to local variations. The BCA's solution has been to identify areas where customization makes sense such as in the planned use of a preferred boilerplate for a probable cause statement.

Overall, these challenges have been solved, are solvable, or have not been sufficient to prevent the pilot from being a success.

Recommendations

Given:

- The high user acceptance of eCharging, particularly with the electronic signature process;
- The advantages of its widespread use for saving time, increasing data accuracy, and criminal justice system integration;
- The lack of insurmountable barriers or legal challenges; and,
- The availability of federal stimulus money in support of the project that has a mandate of being initiated by January 1, 2010

The BCA recommends the permanent adoption of Minn. R. Crim. P. 1.06, and proposes that it be extended to the entire State of Minnesota, with an effective date of January 1, 2010. Statewide deployment of electronic complaint-signing in eCharging cannot proceed without this step.

The BCA requests clarification as to which judicial edits to the complaint, if any, should be allowed at the time of the judge's electronic signature. While this is not a dependency for statewide deployment, clarification of at least judicial ability to add bail to the complaint and change the complaint type would make deployments easier.

The BCA also suggests that the Court further study whether there is a need for both biometric requirements and electronic notarization of the law enforcement signature (indicating in-person oath swearing) on the criminal complaint. While law enforcement was not unanimous on the issue, our experience from the pilot indicates that biometric signing is preferred over electronic notarization if both are not required.

Next Steps

If the Court chooses to promulgate a statewide rule, the BCA will implement the following statewide eCharging rollout plan:

- Include key enhancements deemed high priority, or necessary, for a statewide deployment such as support for users in multiple agencies and improved in-custody tracking and notifications.
- Conduct staggered deployments in counties currently supported by existing eCharging adapters which potentially cover 63 out of the 87 counties in Minnesota.
- Begin funding the development of adapters for the major records management systems not covered by existing adapters beginning with the Hennepin County Attorney's Office.

BCA MNJIS has budgeted its own money, and has been awarded Federal grant money to implement its statewide deployment plan. The targeted completion date for these deployments is December 31, 2011.

Conclusions

The BCA thanks the Minnesota Supreme Court for the participation and cooperation that has been instrumental to the success the eCharging pilot project, as evidenced in saving time, increasing data accuracy, and improving data integration. The BCA recommends the statewide and permanent implementation of the Minn. R. Crim. P. 1.06 in support of a statewide rollout that would begin in January of the coming year.

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STATE OF MINNESOTA
FOURTH JUDICIAL DISTRICT COURT



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January 6, 2010

OFFICE OF
APPELLATE COURTS

JAN 11 2010

FILED

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

Re: C1-84-2137
Comment on eCharging Pilot Report

Dear Mr. Grittner,

Parts of the proposal suggest what would amount to elimination of the oath in charging documents.

Article I Section 10 of the Minnesota Constitution commands that “no warrant shall issue but upon probable cause, supported by oath or affirmation.” (Emphasis added. *See also* U.S. Constitution, Amendment IV.)

The report seems to suggest that the oath is a mere requirement of a criminal rule and can therefore be changed by revision of the rule. This, of course, is not so. The Constitution cannot be amended or evaded by rules.

The purpose of the oath is not, as the report suggests, to identify the applicant or to make the occasion “solemn.” The point of the oath is to expose the applicant to the penalties of perjury, and thereby to encourage by the most forceful means that probable cause showings are true and accurate. This requirement, in unambiguous language which needs no interpretation, is embodied explicitly in the Constitution precisely because it is so important that people should

not be arrested or searched unless and until someone has been willing to run the risk of being prosecuted for perjury for initiating such an event. We sometimes lose sight of this, but we should not.

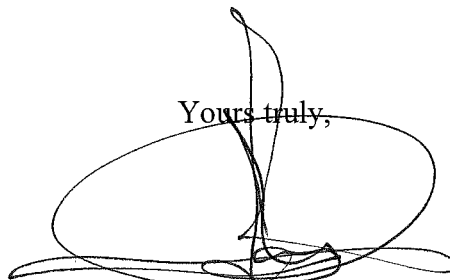
Although an oath may not be Constitutionally required for a charging document that does not result in a warrant (such as a summons), these often are modified into warrants later on (as when a defendant does not appear in response to a summons), and to omit the oath in the first place invites the argument that no Constitutionally proper probable cause was ever established.

Finally, since Minnesota's exclusionary rule has no so-called good-faith exception to the Constitutional warrant requirement, any decision to dispense with the oath creates a serious risk that evidence obtained incident to such arrests will be suppressed.

I have noticed in recent years a curious and troublesome indifference among judges to the Constitutional warrant requirement. I want to urge as strongly as I can that this indifference not be encouraged or codified in this name of mere efficiency. This is not a matter of elevating form over substance. When it is explicitly in the Constitution it is substance.

Thank you.

Yours truly,

A handwritten signature in black ink, appearing to be "Jack S. Nordby". The signature is written in a cursive style with a large loop at the top and a long vertical line extending downwards from the bottom of the signature.

Jack S. Nordby